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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

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In Hybrid sittings, [V] after a Member's name indicates that they contributed by video call.

The following abbreviations are used to show a Member's party affiliation:

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

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

House of Lords

Tuesday 17 November 2020

The House met in a hybrid proceeding.

Noon

Prayers—read by the Lord Bishop of Salisbury.

Introduction: Lord Woodley

12.08 pm

Anthony Jonathan Woodley, having been created Baron Woodley, of Wallasey in the Metropolitan Borough of Wirral, was introduced and made the solemn affirmation, supported by Lord Collins of Highbury and Baroness Blower, and signed an undertaking to abide by the Code of Conduct.

Arrangement of Business

Announcement

12.12 pm

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, the Hybrid Sitting of the House will now begin. Some Members are here in the Chamber, respecting social distancing, others are participating remotely, but all Members will be treated equally. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

Oral Questions will now commence. Please can those asking supplementary questions keep them to no longer than 30 seconds and confined to two points. I ask that Ministers' answers are also brief.

Children in Care: Unregulated Accommodation

Question

12.12 pm

Asked by ***Baroness Doocey***

To ask Her Majesty's Government when they plan to respond to the report by the Children's Commissioner for England *Unregulated: children in care living in semi-independent accommodation,* published on 10 September.

The Parliamentary Under-Secretary of State, Department for Education and Department for International Trade (Baroness Berridge) (Con): My Lords, we are clear that unregulated provision for children in care and care leavers needs to be reformed. We have consulted on new measures, including banning the placement of children under the age of 16 in unregulated accommodation and introducing national standards to drive up the quality of provision for older children. We will set out our plans for reform in the Government's response to the consultation in due course.

Baroness Doocey (LD): My Lords, the commissioner's report is a harrowing catalogue of information from police about providers of unregulated accommodation who are affiliated with major organised crime organisations and are using staff members with criminal records to work with children. What action have the Government taken to deal with these very serious issues since they came to light?

Baroness Berridge (Con): My Lords, obviously, if criminal activity is taking place, that is a matter for the police. Unfortunately, due to Covid, the response to the consultation has been delayed, but we see that there is a need to reform this area. There are circumstances in which, according to their needs, it is best for a young person of 16 or 17 to be in this type of semi-independent or independent living accommodation. However, we recognise that it needs to be regulated, and I will take back the noble Baroness's concerns, looking in particular at where DBS and those kinds of barring checks will sit with any response to the consultation on regulation.

Baroness Massey of Darwen (Lab) [V]: My Lords, it is sad to hear that the situation is getting worse for vulnerable children placed in homes. Does the Minister agree that all forms of care should be monitored for quality standards and that all young people under the age of 18 should be classified as children under international agreements without any differentiation in being guaranteed a placement?

Baroness Berridge (Con): My Lords, the local authority has the primary statutory duty to safeguard all young people in their area up until the age of 18, or beyond under certain initiatives. I pay tribute to the enormous amount of work that goes on in our children's homes and by many foster carers, who work to improve the outcomes for these young people. We are clear that those under the age of 16 who need care, not just accommodation, should not be placed in these kinds of settings.

Baroness Bertin (Con) [V]: My Lords, only 12% of care leavers end up going to university compared with 42% of their peers. What are the Government doing to improve this situation?

Baroness Berridge (Con): My Lords, last year we published the higher education principles for care leavers. We are delighted that 60 higher education institutions have signed the care leaver covenant and published their offer to care leavers. Local authorities give a £2,000 bursary to care leavers who go on to university. We are supporting the Fostering Network's Tick the Box campaign so that any care leaver who applies through UCAS will be identified as such and the support they are entitled to will be signposted by that service. However, we agree with my noble friend: we want to see many more care leavers going into higher education.

Baroness Scott of Needham Market (LD) [V]: My Lords, the Children's Commissioner report outlines cases where young people are being housed in barges, caravans and even tents. One reported accommodation

[Baroness Scott of Needham Market]
had one shower between 14 residents. Does the Minister think that that is acceptable in this day and age? What steps will the Government take to work with local authorities to make sure that this does not happen?

Baroness Berridge (Con): My Lords, the circumstances that the noble Baroness has outlined are precisely why we recognise that this sector needs regulation. However, that does not bypass local authorities' other duties in relation to the fitness of housing in their area. We want to see good-quality accommodation, which is offered by many providers—it is not a case of one approach across the entire sector—and we want to regulate the sector so that these young people can transition into adult life with the support that they need.

Lord Hayward (Con): Can my noble friend indicate what discussions her department is having with judges in relation to cases coming before them where care is necessary?

Baroness Berridge (Con): My Lords, I am happy to tell my noble friend that the Minister for Children and Families meets regularly with the President of the Family Division. Secure schools, which provide education for those within the criminal justice system, have recently been introduced into the criminal justice estate. We have also just put £40 million of capital investment into secure children's homes, where, as well as accommodating those in the criminal justice system, children are placed for welfare reasons. Therefore, there is a close working relationship where institutions serve both education and the criminal justice system.

Baroness Watkins of Tavistock (CB) [V]: My Lords, I declare my interests. The report highlights that, in 2018-19, 651 vulnerable children were put in unregulated placements before they were aged 16. Most were placed there at 14 or 15 years of age. Can the Minister explain what urgent changes the Government plan to ensure that this situation is discontinued immediately?

Baroness Berridge (Con): My Lords, all these placements are for children looked after by local authorities, which, when they commission any placement, also have a duty to look at the safeguarding and at the provision in general. We have been clear that for under-16s this is not appropriate, because they need care and not only support. We will act to ban that practice so that it will no longer be able to take place. However, we need to recognise that we have more older children coming into the care system with complex needs. For certain children and young people over the age of 16, that is the appropriate placement to meet their needs, which should be paramount in any decision to place them.

Lord Watson of Invergowrie (Lab) [V]: My Lords, the report by the Children's Commissioner—a government appointee, it should be remembered—is a shocking indictment of the neglect found in the unregulated sector. Last year, the Office for National Statistics reported that 88% of 18 year-olds live with their parents, yet in February the Government issued a consultation on reforms to unregulated provision for children in care and care leavers, which, astonishingly, proposed that only children aged 15 and under should be offered placements that provide them with care. Why do the Government alone assume that 16 to 18 year-olds without parents are better able to look after themselves than their peers who have parents?

Baroness Berridge (Con): My Lords, the Government do not make such an assumption, and the placement of looked-after children is primarily and statutorily the responsibility of the local authority. The Government recognise that children should be placed where their needs are met, and some young people after the age of 18 want to stay with their former foster parents. That is why we have the Staying Put scheme, with £33 million available to local authorities, enabling young people who want to stay with their foster carers to stay until they are 21 years old. However, there are young people who wish to transition at age 16—that is the point when you can choose to become a care leaver. We are trying to have a system that puts the needs of children first and has placements that suit them.

Lord Addington (LD): My Lords, would the Minister tell us what support there actually is for children choosing what education and training they should do at about age 16 if they are in this sort of environment? It is very apparent that parents or carers usually provide a lot of guidance and support here. How is this being provided to people in this situation?

Baroness Berridge (Con): My Lords, every child or young person looked after by the local authority should have an education plan which outlines their future education. If they are in 16 to 19 provision, they are a priority for bursary support, and there is now a £1,000 grant as well for care leavers who take on apprenticeships. I welcome the noble Lord's comments; there will be a care review in relation to children's social care, and I would welcome his input into that review, particularly on children with special educational needs.

Lord Ramsbotham (CB) [V]: My Lords, what do the Government propose to do about the link between the number of children in care living in semi-independent accommodation and the number of children in care who end up in the hands of the criminal justice system?

Baroness Berridge (Con): My Lords, obviously, avoiding the criminal justice system is a priority for these young people. Over the past decade, it is astonishing that the youth justice population has actually fallen by 73%. The Government are clear that the criminal justice system is a last resort. We are going to regulate this sector precisely to provide the protection for these young people so that they can go into education or training and not end up—even though it is welcome we now have secure schools—in that kind of provision.

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, the time allowed for this Question has elapsed.

Integrated Communities Strategy
Question

12.23 pm

Asked by ***Baroness Cox***

To ask Her Majesty's Government what progress they have made towards their commitment in the *Integrated Communities Strategy Green Paper*, published on 14 March 2018, to "explore the legal and practical challenges of limited reform relating to the law on marriage and religious weddings".

The Advocate-General for Scotland (Lord Stewart of Dirleton) (Con) [V]: [*Inaudible*]—difficulties in addressing this issue that mean we are doing so with the greatest care. The Law Commission separately is looking at aspects of the problem and has consulted with a wide range of groups with an interest. The Government continue the exploration both of limited reform and of non-legislative options. Any proposals affecting how religious groups are permitted to conduct marriages must be thoroughly assessed for fairness.

Baroness Cox (CB) [V]: My Lords, I remain deeply concerned, because there is no evidence of any significant progress since the publication of the *Integrated Communities Strategy* Green Paper over two years ago. Given the strong recommendations of the Casey review, the sharia law review, the new Civitas report and the Parliamentary Assembly of the Council of Europe, and the Private Members' Bills I have submitted since 2011, with cross-party support and the support of Muslim women's groups, will the Minister give an assurance at last that government legislation will be introduced as a matter of urgency? So many Muslim women in this country are suffering in ways which are totally unacceptable and, as I always say, would make our suffragettes turn in their graves.

Lord Stewart of Dirleton (Con) [V]: My Lords, my noble friend's concern about this matter is indeed a matter of record. The Government are aware that the Law Commission is tasked with investigating the matter and reporting. Its report is anticipated by the middle of next year. The Government's manifesto commitment was to explore the matters; that exploration will be based upon the thorough and meticulous research which is being carried out.

Viscount Bridgeman (Con) [V]: The Government previously assured the House that there is no need for a change in the law because all citizens can access their rights according to law. Yet the chasm between the de jure situation and the de facto reality is an abyss into which countless women are falling and suffering as a result. Is the Minister able to assure the House that repeated commitments to "continue the exploration" of reform are not used to kick these issues into the long grass?

Lord Stewart of Dirleton (Con) [V]: My Lords, the Government have no intention of kicking the matter into the long grass. The Law Commission's report is anticipated in the second part of next year. In the meantime, the Government are contemplating also the introduction of interim measures and continue to explore the matter themselves, alongside the work being carried out by the Law Commission.

Lord Singh of Wimbledon (CB) [V]: My Lords, the Government have a clear responsibility to protect the legal rights of vulnerable girls entering into that religious marriage. Simply saying all citizens can access their legal rights is like saying that all citizens have a right to dine in the Dorchester. Will the Minister agree that, while religious ceremonies should be respected, both marriage partners should be made aware of the law of the land on gender equality and women's rights?

Lord Stewart of Dirleton (Con) [V]: My Lords, I agree with the noble Lord's point. As my predecessor, the noble and learned Lord, Lord Keen of Elie, has remarked in your Lordships' House in the past, the matter is a social and educational question as much as it is a legal one. It is in order to establish the extent of the problem that the Government are continuing to await the findings of the Law Commission and to look in detail at the meticulous research being carried out.

Lord Ponsonby of Shulbrede (Lab) [V]: My Lords, does the Minister understand that it is relatively common for couples to come to family courts in England and Wales saying that they are married under sharia law, only to be told that the court does not recognise this status of marriage? The Government plan to support awareness programmes arising out of Dame Louise Casey's review of marriage published in 2015. Can the Minister tell us what steps have been taken to provide such educational material in the citizens advice bureaux and in the family courts across the country?

Lord Stewart of Dirleton (Con) [V]: My Lords, sharia law is not part of the legal system of England and Wales, and that has been made clear in the past. In relation to the provision of material via the citizens advice bureaux, to which the noble Lord refers, I will write to him about the availability of that material and how it is being promulgated through these bodies.

Baroness Hussein-Ece (LD) [V]: Last month, I attended a nikah ceremony at the impressive Cambridge eco mosque, and I was impressed by the young imam there, who made it perfectly clear that he would refuse to perform a nikah for non-British couples and those who had not already taken part in a legal marriage in this country. Are the Government satisfied that this good practice is happening in all religious ceremonies across the country?

Lord Stewart of Dirleton (Con) [V]: My Lords, the point raised by the noble Baroness is important. To repeat the terms of a previous answer, that matter is part of the social and educational function, which the Government are exploring.

Baroness Uddin (Non-Afl): My Lords, for the record, may I set straight that it is not sharia marriages but sharia-compliant marriages, or religious ceremonies?

[Baroness Uddin]
My generation of women understood implicitly that a valid marriage is a registered one. This appears not to be the case for a significant proportion of my daughter's generation, because the law has allowed this ambiguous anomaly to continue. The Government are fully cognisant that up to 100,000 religious ceremonies do not proceed to civil register. Will the Minister undertake to address this at the Government's earliest convenience, through a small amendment to the Marriage Act, which has been called for for some time by leading organisations? That would not only safeguard women but empower women with their full rights.

Lord Stewart of Dirleton (Con) [V]: My Lords, I am obliged to the noble Baroness for her correction. With regard to a change in the law, it is precisely to avoid the creation of inconsistency and anomaly that the Government are waiting for the conclusion of the Law Commission's investigations and their own work before considering whether legislation is appropriate.

Baroness Sanderson of Welton (Con): My Lords, there seem to be complex reasons behind the number of marriages that are not legally binding. Does my noble and learned friend agree that any way forward must take account of these issues?

Lord Stewart of Dirleton (Con) [V]: Some couples have a legally binding religious marriage, while others do not, whether by choice or because they did not know that they could. We need a much better understanding of the factors behind this because, without such real insight into these matters, no solution can change what is happening or be sensitive to the issues facing individuals and the differing voices within communities. That is the Government's approach.

Baroness Warsi (Con) [V]: My Lords, the honourable Member for the Medway area recently introduced the Marriage (Authorised Belief Organisations) Bill in the other place. It would mean that people who wished to be wedded at a humanist ceremony would not to have to attend a registry office afterwards to make the marriage legally binding. Will the Government support this Bill? Secondly, nearly a decade after the issue of unregistered Muslim marriages was first discussed by a Conservative-led Government, how do the Government reconcile their stated support for the rights and protection of women with their failure to act on this issue for over 10 years?

Lord Stewart of Dirleton (Con) [V]: My Lords, the Government invited the Law Commission to make recommendations about how marriage by humanist and other non-religious belief organisations could be incorporated into a revised or new scheme for all marriages that is simple, fair and consistent. The Government will decide on provision on the basis of those recommendations. The Law Commission published a consultation paper on 3 September as part of its review, and welcomes responses from all.

Lord Beith (LD) [V]: My Lords, does the Minister appreciate that the right to a legally recognised marriage in their own place of worship was secured after a long struggle by non-conformists in England and Wales, and that nothing should be done to diminish that right or, indeed, to prevent us extending it to other groups? But what constitutes a legally valid religious wedding, and what rights, protections and obligations in law it confers, also needs to be clear. Nobody should be tricked, misled or pressured into a form of marriage that is not valid in law.

Lord Stewart of Dirleton (Con) [V]: My Lords, I wholeheartedly endorse the noble Lord's observation that nobody should be tricked or compelled into a marriage that is not recognised by law. To continue the theme of my earlier answers, the Government are very concerned that, as well as being an opportunity for legal reform, these matters are socially and educationally important, and the Government continue to investigate the social and educational reasons why people enter into marriages that are not valid.

The Deputy Speaker (Baroness Morris of Bolton) (Con): My Lords, the time allowed for this Question has elapsed.

Railways: Fare Structures

Question

12.35 pm

Asked by ***Lord Bradshaw***

To ask Her Majesty's Government what plans they have to amend their policies on rail fare structures.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, the Government are considering how we can modernise our fares and ticketing offer to develop more convenient and better-value options for everyone. However, our immediate focus must be on ensuring that we keep the railway available and safe for those who rely on it.

Lord Bradshaw (LD) [V]: The rail industry has made many proposals to the Government on the reform of fares structures to better reflect current market conditions. When will the Government make some of these decisions?

Baroness Vere of Norbiton (Con): The noble Lord is quite right. Indeed, the Government proactively approached the train-operating companies for proposals on how we can make our fares and ticketing system better for consumers. We have received a number of proposals over the summer and are considering them.

Lord Snape (Lab): My Lords, it is apparent that the Treasury will insist on an inflation-plus increase in rail fares next year. Does the Minister feel that such a policy will attract passengers back to the rail system following the pandemic? Is it not more likely that, given the continuation of the 11-year freeze on fuel duty, more motorists will take to the roads, causing even more congestion and pollution in future?

Baroness Vere of Norbiton (Con): The Government are considering plans for any increase in regulated rail fares. The taxpayer has provided huge support to train services during the pandemic; passengers must also contribute to maintaining and improving the service, and any fare rises will fund crucial investment.

Baroness Randerson (LD): My Lords, will the Minister tell us whether the rumours are true that next year's fare increase will not just be RPI, at 1.6%, but RPI plus 1%, so a 2.6% increase? Is that being considered by the Government, and does the Minister accept that rail passengers in Britain already pay fares that are very much higher than in the rest of Europe and really should not be expected, at this difficult time, to carry an extra burden?

Baroness Vere of Norbiton (Con): I am sure that the noble Baroness will understand that I could not possibly comment on rumours, but I refer her to the answer that I just gave to the noble Lord, Lord Snape, about the Government's plans for any increase in regulated rail fares.

Lord Moylan (Con): My Lords, public transport must provide sufficient capacity to meet demand in peak periods and so has excess capacity at other times of the day. If public transport is to maximise its own fares revenue and avoid dependency on the taxpayer, does my noble friend the Minister agree that operators should be allowed to offer a broad and flexible range of non-regulated fares so as to recognise variations in demand, and that a move to a rigid and simple fares regime is likely to force unnecessary increases in many fares?

Baroness Vere of Norbiton (Con): My Lords, fares revenue remains a core component of funding for the railways, and I agree that it is important that train operators manage their businesses in line with taxpayers' interests. Any proposals for changes to fare structures will, of course, be discussed with train-operating companies to ensure that they deliver for both passengers and taxpayers.

Lord Loomba (CB) [V]: My Lords, now is the opportunity to reset the balance and give rail passengers better value for money. Can the Minister tell us whether the Government will look into the pricing of unregulated short journey tickets that increase yearly at a higher rate than longer journeys, leaving passengers paying more over time than they should?

Baroness Vere of Norbiton (Con): I refer the noble Lord, Lord Loomba, to my previous response to my noble friend Lord Moylan. However, the Government are very clear that we want punctual and reliable train services, and at a price that is fair to the taxpayer and to the passenger.

Lord Rosser (Lab) [V]: In August, the Government provided the money to enable people to have cut-price meals, to help restaurants and similar establishments recover from the loss of business as a result of Covid-19 by getting people to eat out again. Do the Government have any similar plans for enabling people to travel at half price, or a significant discount, on our railways for a period of time, as a means of encouraging people to travel by train again after the end of the current lockdown?

Baroness Vere of Norbiton (Con): The noble Lord must be reading our minds. Of course, there will be man things that we might want to consider doing once the course of the pandemic is clear and we have come out the other side, and once there are no restrictions on people's travel. It may be that we introduce certain incentives, because we all know that the best way to travel is on public transport.

Lord Greaves (LD) [V]: My Lords, the Minister is being uncharacteristically coy in her answer to all these questions and saying nothing at all. She did say that the railways at the moment must be available and safe. They are available and are extremely safe, but the danger is that when the Covid emergency comes to an end, people will not go back to them. Can she tell us what the Government's plans are and what they are thinking about in order to get people back on trains once it is possible for everyone to go on them?

Baroness Vere of Norbiton (Con): I am not sure I have been called "uncharacteristically coy" before. However, the noble Lord is absolutely right: we are in a situation at the moment where people's habits may change, which means they may form the habit of not using public transport. This is the same for trains, light rail and buses, across our public transport system. Of course, the Government are thinking very clearly and hard about the sorts of mechanisms that we can use, whether that be marketing campaigns or incentives, as I outlined to the noble Lord, Lord Rosser. We will consider all of these things. However, now is not the right time for that; now is the time to follow the November restrictions to make sure that we keep the virus under control.

Baroness Jones of Moulsecoomb (GP) [V]: This is an area where I can help the Government. At the moment, rail fares have been going up, year on year, often above normal increases, but at the same time, since 2011, people driving have paid less and less. So the cost of driving on our roads falls because there is no more fuel duty, yet the cost of rail travel keeps rising. One way to make the railways competitive with driving again would be to reinstate fuel duty at a realistic level.

Baroness Vere of Norbiton (Con): I thank the noble Baroness for her advice; I am sure the Treasury is listening. As I said to the noble Lord, Lord Snape, earlier, we are considering plans for rail fares in the future, but we are working very hard on how to modernise our ticketing offer such that rail travel is as affordable as we can possibly make it.

Lord Young of Cookham (Con): My Lords, one of the challenges facing the railways is to spread the morning peak; reduced fares kick in after about 9 am. Would my noble friend consider reductions for journeys that begin before, say, 7 am, to spread the peak earlier as well as later?

Baroness Vere of Norbiton (Con): I thank my noble friend for that suggestion and I will make sure that the department looks at it. However, one thing that I discovered in my work with TfL is that the morning peak is now shockingly early and seems to start at about 5.30 am.

The Deputy Speaker (Baroness Morris of Bolton) (Con): Lord Berkeley. No? We will move on to the next speaker. I call the noble Lord, Lord Lancaster of Kimbolton.

Lord Lancaster of Kimbolton (Con): My Lords, commuters on the west coast main line have been jammed in like sardines for years—never an appealing prospect, and even less so in the time of Covid. As well as flexibility on pricing, do we not also need to look at increasing capacity on our railways if we are to tempt people back to rail use?

Baroness Vere of Norbiton (Con): The noble Lord is of course completely right. That is why the Government are investing £48 billion over control period 6, not only to maintain our railways but to enhance them and to increase capacity.

The Deputy Speaker (Baroness Morris of Bolton) (Con): We have a few minutes, so we will try the noble Lord, Lord Berkeley, again. No, he is not there. In that case, the time allowed for this Question has elapsed. We now come to the fourth Oral Question.

Canada-UK Trade Deal

Question

12.46 pm

Asked by ***Lord Wallace of Saltaire***

To ask Her Majesty's Government what assessment they have made of the comments by the Prime Minister of Canada on 11 November about the United Kingdom's prospects of a trade deal with Canada.

The Minister of State, Department for Business, Energy and Industrial Strategy and Department for International Trade (Lord Grimstone of Boscobel) (Con): My Lords, both the UK and Canada remain committed to a seamless transition of our trading relationship at the end of the transition period, so that British and Canadian businesses and consumers can continue to benefit. Officials have been in regular contact to discuss this and the Government are hopeful of securing agreement by the end of this year.

Lord Wallace of Saltaire (LD) [V]: My Lords, in August 2018, the Canadian Prime Minister said that the Canadians would be ready to start negotiations on what he thought would be a very easy roll-on agreement the day that Britain left the European Union—which was last January. He also offered to second Canadian officials to help us if that would improve matters. Here we are, six weeks before the end of the transition, and the agreement has not yet been fixed. Can the Minister explain why?

Lord Grimstone of Boscobel (Con): My Lords, I can explain exactly why. Agreement was almost reached with Canada in March 2019, but Canada did not like the temporary tariff reductions that we brought in and decided to walk away from the negotiating table, returning only in July this year.

Baroness Noakes (Con): My Lords, the UK is Canada's fifth-largest trading partner, but Canada ranks only 18th in terms of importance for the UK. Will the Minister agree that, while rolling over the Canada free trade agreement is highly desirable for both countries' interests, the Government were absolutely right to prioritise the excellent agreement with Japan, which is much more important to us in trade terms?

Lord Grimstone of Boscobel (Con): I thank the noble Baroness for her comments on the Japan agreement, but I am pleased to be able to assure her that the Department of Trade has the capacity and bandwidth to do a number of these agreements simultaneously.

Lord Bilimoria (CB) [V]: Securing continuity of the CETA deal before 1 January is absolutely crucial; in fact, UK exports to Canada increased by 14% in the first year of implementation. Will the Minister agree that, assuming we secure this and roll it over, we can then have a brand new, bespoke, super-duper new trade deal to strengthen both economies, in their best interests and best of class, including issues such as climate change? Would he also agree that we can see the CPTPP as a future opportunity for the UK's trading future and to broaden investment ties between the UK and Canada?

Lord Grimstone of Boscobel (Con): The noble Lord is completely right. The focus of our present discussions with Canada has been on continuity of trade and I am very confident that an agreement will be continued. The next priority will be to use that as a launchpad from which we can then deepen and strengthen our very important relationship with Canada in the future.

Lord Triesman (Lab) [V]: My Lords, it is helpful that Prime Minister Trudeau is enthusiastic about starting and sharing a trade deal with us. However, it is deeply worrying that he doubts our capacity and expertise. It is hard to see why Liz Truss feels such grounds for optimism. Given the capacity issues, will the Minister set out the Government's strategy in respect of the Regional Comprehensive Economic Partnership, concluded last weekend between China and 14 of its neighbours? This agreement covers 30% of global economic output. It makes no mention of the United Kingdom, despite the Government's assertion that this region affords the greatest global opportunities for free trade deals and future growth.

Lord Grimstone of Boscobel (Con): I encourage the noble Lord to distinguish between comments of substance

and those that are made purely as a negotiating tactic. We have closely observed the recent agreement in Asia. Our priority is negotiating to join the Trans-Pacific Partnership next year, which is a much deeper and richer agreement.

Lord Purvis of Tweed (LD): My Lords, it could be suggested that "walking away" from negotiations could be a government tactic, given that it was the no-deal temporary tariff published by the UK that prompted the Canadians to further consider our intentions. The UK has now published its permanent tariff regime. If we are hopeful of a deal, we may have to scrutinise this in short order. How many of these tariffs is Canada currently disputing?

Lord Grimstone of Boscobel (Con): It would not be appropriate for me to go into the detail of ongoing negotiations. But I assure noble Lords that talks are at an advanced stage and I am confident that they will be concluded satisfactorily.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, the Government promised that 40 rollover agreements would be in place by the end of the transition period. Only 20 have been considered so far under the CRaG procedure. We have fewer than 21 sitting days before 31 December, so it is not physically possible to ratify the remaining trade agreements under normal procedures. What advice can the Minister offer the country's importers and exporters about what they should be doing if their trade engages with, for example, Canada, Singapore, Mexico or Vietnam?

Lord Grimstone of Boscobel (Con): My Lords, first, I must correct the noble Lord: 23 agreements have now been signed. This is a moving target. I encourage British businesses to watch this space. I assure the House that all agreements will be put through the CRaG process. Some may need to be provisionally applied, but they will all be ratified by our standard agreements in due course.

Lord McLoughlin (Con): My Lords, does my noble friend agree that the new trade agreement signed with Japan and the continuity agreements reached with a number of other countries show that the department is well aware of the pressures and the desire of industry for these agreements, and is working flat out to ensure that they are brought to a conclusion as quickly as possible?

Lord Grimstone of Boscobel (Con): I thank my noble friend for his comments and for what he said about my department. My officials have worked extraordinarily hard in difficult circumstances during Covid. They are doing a marvellous job. I am sure we will see this progress continue.

The Lord Bishop of Salisbury: My Lords, early this morning, I had breakfast on Zoom, hosted by my colleague the Bishop of Sherborne, along with people from the Dorset churches and community. A farmer and local businessman said that his greatest fear for the future was uncertainty. How will this uncertainty be ended so that he will not be left just watching this space but will know what opportunities there are? How will the House assess these both in relation to the economy and to the environment?

Lord Grimstone of Boscobel (Con): The right reverend Prelate makes a good point. I assure him that these matters are at the front of our mind. Uncertainty is being progressively eliminated. I am looking forward to the time when there is no uncertainty whatever.

Lord McNicol of West Kilbride (Lab): Following my noble friend Lord Stevenson's question, why, if the Minister says we have no bandwidth issues, will all future continuity agreements fall outside the full, proper CRaG procedure and be dealt with through a partial cover? This will eliminate a lot of the parliamentary scrutiny we talked about in the Trade Bill.

Lord Grimstone of Boscobel (Con): My Lords, I can confirm that every single agreement will go through the comprehensive CRaG procedure. There may be issues of timing because these negotiations often go to the wire. But I assure the House that, even if they need to be provisionally implemented, every single agreement will be subject to appropriate parliamentary scrutiny.

Baroness Ludford (LD) [V]: My Lords, about an hour and a half ago, the International Trade Secretary, Liz Truss, tweeted that later today, at a conference of the trade body, TheCityUK, she would

"set out how the UK can become a global hub for services and tech trade … Services sits at the heart of my vision for values-driven and value-generating trade policy."

We have heard hardly a squeak from the Brexit talks about services, which represent 80% of our economy, or about the quest for a data adequacy decision, which is essential to the tech trade. We are six weeks out from the end of the transition period. Can the Minister tell us where we are on services and data?

Lord Grimstone of Boscobel (Con): I congratulate the noble Baroness on monitoring the International Trade Secretary's Twitter feed so carefully. I agree about the importance of services. I hope the noble Baroness will understand that it would not be appropriate for me to comment on ongoing negotiations.

The Deputy Speaker (Baroness Morris of Bolton) (Con): My Lords, the time allowed for this Question has elapsed.

12.56 pm

Sitting suspended.

Department of Health and Social Care: Unpaid Advisers

Private Notice Question

1.01 pm

Asked by ***Baroness Thornton***

To ask Her Majesty's Government what recruitment policy is used by the Department of Health and

[Baroness Thornton]

Social Care in the appointment of unpaid advisers to Ministers; and whether each such appointee is required to sign a confidentiality agreement.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, I welcome the challenge. Perhaps I may reassure the noble Baroness that all ministerial appointments were required to declare conflicts of interest and abide by well-established codes of practice, and that all procurement went through proper departmental governance. Perhaps I may also be clear that those who stepped forward to help this country at its time of need should be praised. We should all recognise the considerable contribution of those who brought skills, energy and networks when we needed them.

Baroness Thornton (Lab): My Lords, I do not see this Question as a challenge at all. It would appear that George Pascoe-Watson, the chair of the lobbying company, Portland Communications, was until recently an adviser to the Minister and used the words,

"the decision makers have told me personally",

with regard to the Government's intended Covid restrictions, in an email to his clients before the proposed restrictions have been publicly announced. In some places, this kind of thing could be regarded as insider trading—profiting from private information for one's own or a company's gain. Does the Minister believe that the rules of confidentiality have been broken? Will he be pursuing the matter? It clearly should be investigated. What form will the investigation take? Will it be departmental, or is it a matter for the Cabinet Office or the head of the Civil Service?

Lord Bethell (Con): My Lords, I am extremely grateful to the noble Baroness for giving me the opportunity to set the record straight. It is worth sharing with the House that the emails to which she referred were sent after George Pascoe-Watson left his role as an adviser to the department. With the greatest respect to Portland and its chairman, the emails contained nothing more than the kind of speculation that one might find in any national newspaper. Therefore, at this stage, I thank those who have served as advisers to me and the department.

Lord Rooker (Lab) [V]: My Lords, given the disclosures in the *Sunday Times* about the Minister's three telephone calls with suppliers and lobbyists at the same time, I am surprised that he has not recused himself. Has he complained about the newspaper placing him—the Minister—at the centre of the web of the Covid chumocracy? Does he agree with the chair of the Committee on Standards in Public Life, the noble Lord, Lord Evans, that too many in public life are disregarding the norms, ethics and propriety that have led to Portland Communications being secretly involved in government and then going off to make money?

Lord Bethell (Con): I am grateful to the noble Lord for highlighting three calls to suppliers. I should like to reassure him that those were absolutely exceptional times, when our supply chains had broken down and we were competing with other Governments for extremely scarce resources. I personally did not make three supplier calls; rather, I made 300. I put out literally hundreds of calls on behalf of the Government to try to find the medicines, supplies, diagnostics, PPE and all manner of medical requirements needed for this country. I could have done that only with the help of the networks, energy, skills and support of those who stepped forward to help us at our time of need. I repeat, I am extremely grateful for that support. It does not warrant a place on the front page of the *Sunday Times* but the lack of follow-up from that newspaper article speaks for itself.

Baroness Jolly (LD) [V]: My Lords, we all wish to live in a time of transparent government. On 6 April, I understand that a Minister in the department had a phone call with a former Conservative Party chairman and an adviser who had not been publicly declared, as well with as a businessman who had donated a significant five-figure sum to the party and who was later awarded PPE contracts of more than £150 million. Does the Minister know if the contract was open to tender? Given the donation and the nature of future PPE contracts, why was that not considered to be an inappropriate call?

Lord Bethell (Con): I take this opportunity to thank the very large number of Members of this House who contacted me during that period. My inbox was filled with thousands of emails every day, including emails from Lib Dem, Labour, Cross-Bench and Tory Peers, all of them seeking to help us during our time of need. I sought to reply to as many as I could, but I fear that I did not reply to enough and I did not mean any discourtesy. I spoke to a large number of those people, as my transparency register makes very clear. The telephone call on 6 April to which the noble Baroness has referred was not in any way inappropriate. I am extremely grateful to all those who stepped forward to help us when we needed it.

Lord Robathan (Con): My Lords, this is a huge crisis in unprecedented times. My noble friend the Minister has already thanked those who are trying to help the country at a very difficult time. Does he find it regrettable, as I do, that some are sniping at those who, for good reasons of public service, are giving their time, energy and expertise pro bono in service to this country and everyone in this Chamber?

Lord Bethell (Con): My Lords, scrutiny of appointments, a commitment to transparency and declaration of interests are absolute values that we should all subscribe to. However, sneering at those who step forward to help, denigrating the intentions of volunteers who try to play their role and smearing the good name of people who have done the right thing does not have any role in this House.

Lord Snape (Lab): My Lords, many years ago, the then political editor of the *Sun*, Mr Chris Potter, told me that the main qualification for his role was the ability to translate the musings of Ministers at the Dispatch Box for the benefit of his readers without using any words longer than "wheelbarrow". Now that one of his successors, Mr George Pascoe-Watson, attends confidential departmental meetings, can the Minister

tell the House whether the criteria for such a role has been enhanced or dumbed down these days?

Lord Bethell (Con): I thank the noble Lord for his description of the role. I do not endorse it but am entertained by it. Let me be clear: the people who stepped forward and took ministerial appointments brought a wide range of skills, some of them quite soft in terms of networking, energy, the ability to negotiate and understanding the important skills of communication. Those are the kinds of skills that we value. They were provided for free in the instance to which the noble Lord has referred, and were limited in their timescale, scope and interactions with the department.

The Deputy Speaker (Baroness Morris of Bolton) (Con): The noble Lord, Lord Scriven, has withdrawn.

Baroness Jones of Moulsecoomb (GP): My Lords, I deeply regret that some noble Lords are dragging this debate down to the issue of unpaid advisers. This is most inappropriate. No one could object to unpaid advisers; I have used them. I have even taken advice from people on the Benches opposite; that is how low I am prepared to sink. It is not about them being unpaid or giving advice; it is about the lack of transparency and accountability. Will the Minister agree that announcements should be made about unpaid advisers so we can know it is happening and guarantee there are no leaks—which there appear to have been so far.

Lord Bethell (Con): The noble Baroness makes her points extremely well. She rightly points out that we take advice from a wide variety of people. The only reason that we are talking about this today is because a transparency register is made of my appointments, which is published on GOV.UK and I would be glad to share the website link with anyone who would like to look at it more closely. The appointments of unpaid advisers follow the guidance on direct appointments from the Cabinet Office. We are scrupulous in our adherence to that guidance, and we will continue to be so in any future appointments we make.

Lord Cormack (Con): My Lords, in view of what has been said by the Minister, I am extremely sympathetic to him. Could he publish a full list of all those who have given of their time, talents and money at a time of great crisis? Could he place a copy of that in the Library of your Lordships' House?

Lord Bethell (Con): My Lords, I am not sure if I can make the commitment that my noble friend asks. It is a reasonable commitment and I take it in the spirit with which it is meant, but there have been literally hundreds of people—not all of them formal, not all of them documented—who have stepped forward in the spirit that the noble Baroness, Lady Jones, has spoken of to try and contribute to our thinking, our connections and our ability to respond to this pandemic. That is a long roll of honour, of which I am extremely proud. I will give some thought to the way in which we do it, but doing it in a formal fashion in the way my noble friend describes may not be feasible or approachable.

Lord Hunt of Kings Heath (Lab) [V]: My Lords, yesterday former Conservative Attorney-General Dominic Grieve described the Johnson Government as presiding over

"the disappearance of any standards of conduct at the heart of government",

and said that the cronyism of administrative decisions had communicated to young people in particular a sense of government as corrupt. Given that, can the Minister be surprised that there was concern over the conduct of Mr Pascoe-Watson after he had ceased to be an adviser?

Lord Bethell (Con): I always take the words and advice of former Attorney-General Dominic Grieve extremely seriously, and I value his opinion greatly.

Baroness Wheatcroft (Non-Afl) [V]: My Lords, I understand why the Government need as much help as possible in securing PPE in a time of emergency, but I struggle to understand why there still seems to be such a demand for public relations help. We recently learned that Kate Bingham, who is in charge of the vaccine programme, spent £690,000 on external PR help. Is it not the case that the Department of Health and Social Care has extensive PR expertise on its team? Is the problem that this Government is still too involved in fighting an election campaign rather than fighting Covid?

Lord Bethell (Con): It is a reasonable question and let me be clear. This year, we are seeing a massive change in the behaviours of our entire population—from the big macro challenges such as the rule of six, social distancing and adherence to infection control procedures, through to different uses of NHS and medtech. This morning, I spent my time looking at the marketing for "111 First"—the important new way of using 111 that will give people guidance on using the service before they get to A&E. This has been possible only because of the change in the use of medtech and the changing attitude to telephones and the internet brought about by the pandemic. The noble Baroness is right that there is a big focus on communications right now, but that is because things are changing so quickly and we need to get the message across to the population in clear, persuasive terms, to provide the guidance they need to protect and save themselves.

The Deputy Speaker (Baroness Morris of Bolton) (Con): My Lords, all supplementary questions have been asked.

Prevention of Trade Diversion (Key Medicines) (EU Exit) Regulations 2020

Common Rules for Exports (EU Exit) Regulations 2020

Motions to Approve

1.15 pm

Moved by ***Lord Grimstone of Boscobel***

That the draft Regulations laid before the House on 2 and 21 September be approved.

[Lord Grimstone of Boscobel]

Relevant documents: 26th and 29th Reports from the Secondary Legislation Scrutiny Committee (special attention drawn to the second instrument). Considered in Grand Committee on 10 November.

Motions agreed.

1.15 pm

Sitting suspended.

Arrangement of Business

Announcement

1.30 pm

The Deputy Speaker (Baroness Morris of Bolton) (Con): My Lords, hybrid proceedings will now resume. Some Members are here in the Chamber, respecting social distancing, others are participating remotely, but all Members will be treated equally. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

Social Security (Up-rating of Benefits) Bill

Report (and remaining stages)

1.30 pm

Relevant document: 25th Report from the Delegated Powers Committee

Report received. Standing Order 46 having been dispensed with, the Bill was read a third time.

Motion

Moved by ***Baroness Stedman-Scott***

That the Bill do now pass.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Stedman-Scott) (Con): My Lords, in moving this Motion, I would like to confirm how pleased I am to have introduced the Social Security (Up-rating of Benefits) Bill into this House. I thank all noble Lords for their positive engagement and the feedback that they have provided thus far. I thank in particular the noble Lords, Lord Addington, Lord Randall and Lord Shipley and the noble Baronesses, Lady Sherlock and Lady Janke, for their constructive contributions. I also thank the officials on the Bill team for their tireless work in helping all of us see the Bill proceed in a proper manner and to have the information needed.

The Bill reflects the Government's commitment to maintaining the income of pensioners in these difficult times. It allows for the uprating of the safety net in pension credit and of widows' and widowers' benefits in industrial death benefit. I am grateful, too, to noble Lords for ensuring that the Bill will be passed in time to receive Royal Assent before the Work and Pensions Secretary must conclude her uprating review of benefits and pensions. In doing so, the state pension and pension credit standard minimum guarantee can and will be uprated next year. I beg to move.

Baroness Sherlock (Lab) [V]: My Lords, I thank the Minister for her remarks. As I made clear at the outset, we support the Bill, while deeply regretting the economic circumstances that have made it necessary. During its brief passage, some important issues have been raised. I hope the Government have taken note of those issues and will apply themselves to them in the near future. During our consideration of the Bill many noble Lords raised the question of support for those of working age. I keep hoping that we will hear some good news on that—especially on universal credit and other working-age benefits—soon.

We have had some really interesting discussions about the difficult and growing issue of pensioner poverty. We now have 1.9 million pensioners living in relative poverty and the Government need to develop and implement a strategy for tackling pensioner poverty. That will require a proactive plan to boost take-up of pension credit. I regret that I was unable to attend the rearranged meeting with the Pensions Minister on this matter but I look forward to hearing what went on there. At the moment, four out of 10 eligible pensioners do not claim it, so they are missing out on that and on other benefits, including, increasingly, free TV licences for the over-75s.

Then there is the fact that the triple lock does not apply to pension credit. The Minister said in her opening remarks that there will be an uprating to the standard minimum guarantee in pension credit but I did not catch whether she said by how much. In Committee she told my noble friend Lady Drake that she would write to her to tell her whether the Government intend to pass through the triple-lock payment to pensioners on pension credit—which is of course crucial, because if they do not, the richest pensioners will get the full benefit of the triple lock but the poorest will not because it will be clawed back from pension credit. Can she clarify the position on that? If she has written to my noble friend Lady Drake, I apologise; I have missed the letter.

I am very glad that we were able to get the Bill through the House in good time. It was a pleasure to welcome two maiden speakers in Committee: the noble Lord, Lord Field of Birkenhead, and the noble Baroness, Lady Stuart of Edgbaston. I would like to express my thanks to the Minister and her officials who have met us and answered questions; it is a very co-operative department and I am very grateful. I thank colleagues across the House for their thoughtful contributions; Dan Stevens of our staff team for his support with the Bill; and the House officials and the broadcast team.

Pensioners deserve to spend their retirement in financial security. This Bill will enable the Government to fulfil their manifesto commitment to apply the triple lock to the state pension and we have been pleased to support it.

Baroness Janke (LD) [V]: My Lords, I, too, thank noble Lords for their contributions to our deliberations on the Bill, and I thank the Minister and her team for providing us with advice and information to help us

understand the issues raised by the Bill. We very much welcome the Government's commitment to the triple lock and hope that it will not be abandoned as a short-term political fix in the face of the economic difficulties that are no doubt ahead of us. I am sure that the Government have listened to the issues raised in the debate, and I hope they will look again at the position of overseas pensioners whose pensions are worth so little despite how much they have contributed over the years. It seems that the Government have committed to consider the numbers of pensioners living in poverty. I draw attention particularly to the plight of many women who have received very unfair treatment and unfair settlements on their pensions.

I welcome the work that is being started on pension credit and I believe that the Government are committed to ensuring that those who need it most are, in fact, able and willing to claim it. I thank the Minister again for the meeting yesterday, which I thought was extremely positive, and I look forward to working with her on that project. I also thank my colleagues for supporting the Bill and Sarah Pughe in the Liberal Democrats office, who supported us so ably. So saying, I give my support to the Bill.

Baroness Meacher (CB): My Lords, it is a privilege to have been asked to make the Cross-Bench concluding contribution at the end of our consideration of the Social Security (Up-rating of Benefits) Bill.

In Committee a number of noble Lords raised concerns about the level of pensioner poverty, most notably the noble Baroness, Lady Sherlock, and I very much support their comments; but others of us wanted some reassurance that while working people are experiencing job losses on a massive scale and abject poverty—often facing homelessness—many pensioners, including me I suppose, are in a much more secure position and should not be given disproportionate support. Those sentiments certainly do not apply at all to people on pension credit. I was delighted to hear—the Minister might be able to give us some figures—about the increase in the take-up of pension credit. That is at least a start. Like the noble Baroness, Lady Sherlock, I would certainly like to hear an assurance that pension credit will in fact be protected by the triple lock. I think that these pensioners and other subgroups mentioned by the Minister are in a very particular position and that any support that can be given should be given.

The other issue referred to by a number of noble Lords is the number of pensioners living in what I shall call unprotected countries abroad who have had their pensions frozen, often for many years, and find themselves in 2020 still living off something like £5 a week—serious, abject poverty. I hope the Government will give attention to that issue and also the other issues that noble Lords raised in Committee.

The noble Baroness, Lady Sherlock, as always, made a number of very powerful points. Importantly, she sought reports on current levels of pensioner poverty. I hope we will perhaps have a report on pensioner poverty shortly. She was also looking for an impact assessment of the Government's policy options. I am not sure whether we have had a commitment on that or not.

In conclusion, there was general acceptance of the thrust of this Bill, and no amendments were pressed to a vote. I want to thank the noble Baroness, Lady Stedman-Scott, for her cheerful and always courteous responses to our pleas and questions, which she always gives with a smile, which is quite disarming at times. Also, a big thank you to the Bill team, which, as always, makes sure our deliberations and debates are meaningful.

Baroness Stedman-Scott (Con): First, I thank all noble Lords for their contributions, which were valid and important. On the working-age benefits, as raised by all contributors, as soon as the Secretary of State has completed the review, Parliament will be advised of the outcome. I am glad the noble Baroness, Lady Janke, was with us yesterday for our pension credit meeting and our robust and creative discussion about increasing take-up. It was probably one of the best meetings I have been in since becoming a Minister. I am sorry the noble Baroness, Lady Sherlock, could not be with us, but my office did advise me prior to coming to the Chamber that it is finalising the read-out; I think she will be pleased with the actions we have agreed.

In respect of the letter to the noble Baroness, Lady Drake, I was sure that had been sent, but let me go back to my department, double-check and confirm that to the noble Baroness.

Regarding the potential for uprating the standard minimum guarantee, it is right that we protect the incomes of the poorest pensioner households in receipt of it. A decision on how to uprate it next April will be made in the review the Secretary of State is carrying out. It will be announced this month, and we will wait to see what the outcome is and report it to Parliament, as I have already said.

The Government are committed to action to alleviate levels of pensioner poverty. For current pensioners, this includes the contributions of the triple lock, the new state pension and pension credit.

As I have already said, the Bill reflects the Government's commitment to maintaining the income of pensioners in these difficult times. I am grateful to noble Lords for ensuring that it will be passed in time to receive Royal Assent before the Work and Pensions Secretary must conclude her uprating review of benefits and pensions. In doing so, the state pension and pension credit standard minimum guarantee can and will be uprated next year.

I commend the Bill to the House.

Bill passed.

1.43 pm

Sitting suspended.

Arrangement of Business

Announcement

1.45 pm

The Deputy Speaker (Baroness Morris of Bolton) (Con): My Lords, hybrid proceedings will now resume. Some Members are here in the Chamber, respecting

[Baroness Morris of Bolton]
social distancing, others are participating remotely, but all Members will be treated equally. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

I will call Members to speak in the order listed in the annexe to today's list. Interventions during speeches or "before the noble Lord sits down" are not permitted, and uncalled speakers will not be heard. Other than the mover of an amendment or the Minister, Members may speak only once on each group. Short questions of elucidation after the Minister's response are permitted but discouraged; a Member wishing to ask such a question, including Members in the Chamber, must email the clerk.

The groupings are binding and it will not be possible to degroup an amendment for separate debate. A Member intending to press an amendment already debated to a Division should have given notice in the debate. Leave should be given to withdraw amendments. When putting the Question, I will collect voices in the Chamber only. If a Member taking part remotely intends to trigger a Division, they should make this clear when speaking on the group.

Fire Safety Bill

Report

1.47 pm

Clause 1: Premises to which the Fire Safety Order applies

Amendment 1

Moved by ***Lord Bourne of Aberystwyth***

1: Clause 1, page 1, line 5, after "paragraph (1A)" insert "or paragraph (1C)"

Lord Bourne of Aberystwyth (Con) [V]: My Lords, the Fire Safety Bill is important legislation that I strongly support, as I do the building safety Bill, which is in draft form and which I believe your Lordships' House will receive early in the new year. The motivation behind the amendments I am proposing is that there should be a safer home environment—a motivation shared, I believe, by the whole House. Specifically, the amendments refer to high-rise blocks; that is the spur.

I thank my noble friend Lord Randall and the noble Lords, Lord Tope and Lord Whitty, who are also signatories to the amendment and have given strong support. I also thank many others for their strong support and particularly the noble Lord, Lord Best, who, unfortunately, is unable to speak today. I thank the Minister for making time to discuss these issues; I know he is sincere in his desire to do something constructive to move matters forward on checks in tower blocks. I also thank Electrical Safety First, an excellent charity dedicated to reducing deaths from fires caused by electrical accidents. It has been magnificent, and I would like to thank Rob Jervis-Gibbons in particular but also Lesley Rudd, Ron Bailey and Martyn Allen for their help.

We need to translate the good intentions of the whole House into action, and there are some important facts to bear in mind. Approximately 7,000 domestic fires per annum are caused by faulty electrical goods; that is 53% of domestic fires. Many of these are in high-rise blocks and, in those circumstances, they are particularly treacherous. We can all recall Lakanal House in 2009, Shepherds Court in 2016 and, of course, tragically, Grenfell Tower in 2017—all confirmed to be caused by electrical ignition.

My amendments essentially focus on two proposals, as they did in Committee. First, mandatory five-year electrical system checks in high-rise blocks—just high-rise blocks. The model for this is what is being done currently in the private rented sector, just introduced by the Government this year: I endorse that move. It applies, of course, to all the private rented sector, essentially, not just high-rise blocks. My amendments would apply just to high-rise buildings—those over 11 metres high—but would apply to social tenants and owner-occupiers as well as private tenants. I ask myself why social tenants should be excluded: I am a strong believer in the levelling-up agenda, which the Government also are strongly behind. It should apply to owner-occupiers too, of course.

Social tenants are a large part of the residents of high-rise blocks. In Grenfell, they constituted the vast majority of residents, for example. I should say, and I congratulate the Government, that I am pleased to see, in the social housing White Paper issued today, moves not just in relation to smoke and carbon monoxide alarms—I see that consultation is opening on extending that into social housing, quite rightly—but also consulting separately on ways to ensure that social housing tenants are protected from harm caused by poor electrical safety. That is certainly welcome. The wording confirms the direction of travel. What is at issue, of course, is the pace, the speed: that is what we need to pick up. This is something that should be done expeditiously. The most sensible course of action in high-rise blocks would surely be to mirror the checks in the private rented sector for all residents of tower blocks, to provide for the safety of everybody in those tower blocks.

I should say in passing that I certainly endorse other actions that have been taken to help protect and guard against fire. The Home Office "Fire Kills" campaign is very welcome and is supported by the charitable sector. The building safety Bill that is coming down the tracks provides, in Clause 86 currently, that responsibility should be placed on residents for electrical goods and their safety. I welcome that but, of course, it is not sufficient in itself and will not protect, in the way that this would protect, against the fires that we are all too familiar with.

The second of the two main proposals in my amendment would require that a person responsible for fire safety, who is of course being designated in this legislation, should be responsible for a register of electrical goods. The majority of fires are caused by faulty electrical goods, and many of these are goods that have been subject to recall by the manufacturer. The fire at Shepherds Court, for example, was caused by a faulty tumble dryer that was subject to a recall. The purpose of the register would therefore be to identify these goods and ensure that they were recalled

and either refitted or replaced. The person responsible for fire safety would be able to distribute information to residents, and there is a precedent for such a register in student accommodation throughout England.

I know that we all recall graphically the Grenfell Tower tragedy: it is forged on our individual memories, just as it is seared on the nation's conscience. I look to my noble friend the Minister, who I know is sympathetic, to provide some clear way forward, indicating the seriousness of the Government's intentions and the intention to move decisively on this agenda in the building safety Bill, possibly with a working party to move the agenda forward quickly. I beg to move.

Lord Randall of Uxbridge (Con) [V]: My Lords, I am pleased to support my noble friend Lord Bourne of Aberystwyth and I was delighted to put my name to his amendments, together with the noble Lords, Lord Tope and Lord Whitty. My noble friend has expressed very clearly and eloquently what his amendments are about. I also welcome the very constructive discussions we had with the Minister. As my noble friend Lord Bourne said, I believe that he understands fully what we are trying to achieve.

It seems strange to me and, I am sure, to many others, that the rules for private tenants are stronger than they are for social tenants. This inequality of responsibility should be addressed. That applies also to owner-occupiers, of course. As my noble friend said, in high-rise buildings the majority of tenants are, indeed, social tenants, and I think they need as much help as they can get in ensuring the safety of their premises and, of course, the safety of their neighbours.

On the issue of a register, again, I think this is extremely important. We have heard that this is already in place for student accommodation. I feel that there is a real problem: perhaps we should consider, with both of these proposals, that there is a huge number of, presumably, second-hand electrical appliances in existence. People will be buying them not necessarily from retail outlets; they may be buying them on eBay or elsewhere, and they will not necessarily be having them tested appropriately. This is something that I think we have to look at. Having somebody responsible for maintaining that these items are safe is, I think, of paramount importance.

I welcome the social housing White Paper that was published today, particularly the provisions around these matters. Even if we cannot get exactly what we want today—and I understand that the Bill may not be the ideal vehicle for these amendments—I look forward, when the building safety Bill comes before your Lordships, to being in a position to implement these excellent ideas and proposals from my noble friend.

Lord Tope (LD): My Lords, I begin, as always, by declaring my interests as a vice-president of the Local Government Association and co-president of London Councils, the body that represents all the London boroughs and the City of London. Particularly in respect of these amendments, I should declare my interest as patron of the charity Electrical Safety First.

I apologise that I was not able to be present in Committee when the noble Lord, Lord Bourne, moved and debated these amendments. We debated this issue fairly fully at Second Reading; we certainly covered amendments very similar to these in Committee—which I have read, even though I was unable to participate—and I have been very pleased to add my name to them again. I do not think I need to repeat today all the things that were said very ably by the noble Lord, Lord Bourne. The key points have been made; I think that they are understood and I believe that they are generally accepted.

We have made reference a number of times, and again today, to the fires that happened not only at Grenfell Tower but at Lakanal House and at Shepherds Court. In all those buildings, a significant number of residents living there were owner-occupiers. They were not tenants in the private sector or the social sector; they were owner-occupiers.

In a way, this is key to these amendments. In a high-rise block—these amendments apply only to high-rise blocks—there is what has been described as a tenure lottery. There is a mixture of tenure, yet, by the nature of a tower block, every resident in it—regardless of their tenure—is equally at risk from these dangers. We owe it to all of them, not to any particular sector, to provide as best we can not only to deal with the risks after they have happened but, even more importantly, to prevent them happening in the first place. That is the object of all these amendments.

2 pm

I again thank the Minister for meeting me and my Liberal Democrat colleagues to discuss this issue, among others that we will come to later. I am certain he understood exactly what we were trying to achieve. The issue before us is how and when.

Before I go on to that, I will deal with the other aspect of these amendments: the provision for a register of electrical appliances to be kept by the responsible person. The Local Government Association—I have declared my interest—is at least doubtful about that, suggesting it shifts the responsibility from the manufacturers. I do not agree at all. The responsibility to deal with recalls for their faulty goods rests fair and square, and will continue to rest, with manufacturers. I see this as a measure that helps the manufacturers do this more effectively than at present. It is very much a positive aid in that. I hope the Minister will be equally keen on accepting some form of mandatory register of all electrical appliances to be kept in high-rise buildings, not because the responsibility has shifted, other than to keep the register, but because it enables the residents in the block to be alerted to any recall and encouraged to take it up.

I will not divert into a discussion on the shortcomings of the present recall situation, but I think we all accept that it is by no means perfect and that most if not all manufacturers wish to see it improved. This is a significant way of being able to do that; it may not be perfect, but, as has been said, similar registers are voluntarily kept in student accommodation. It is a very long time since I have had any experience of student accommodation, but I suspect it is a lot harder to keep such a register there than it would be in any permanently residential high-rise block.

[LORD TOPE]

We come now to what exactly we will do, how we will do it and when. We will hear shortly that the Minister is sympathetic and certainly understands the issues. I would like to hear a clear commitment from him today on the action to be taken, whether through this Bill—perhaps not—the building safety Bill or any other course; what that action will be and, in particular, when it will be taken and subsequently implemented.

The noble Lord, Lord Bourne, mentioned the possibility of a working party. I think there was a similar working party before the introduction of the private rented sector provisions. It would be extremely helpful to all concerned, particularly the Minister, to have such a working party, comprised of Government and other interested parties in the sector, to make sure that such provisions can take effect as soon as they are put into practice. I would be interested to know what the Minister thinks about the possibility of that.

I support these amendments wholeheartedly. I look forward very much to hearing the Minister's response and commitment.

Lord Whitty (Lab) [V]: My Lords, I fully support all the amendments put down by the noble Lord, Lord Bourne. Many of the points have been made by my cosignatories already.

On the last point made by the noble Lord, Lord Tope, clearly this does nothing to undermine the essential responsibility of the manufacturer—and to some extent the retailer—in the safety of appliances. Indeed, some of the liability rests with the user or householder if they use them irresponsibly or unsafely or do not return them when a recall has been issued. However, it is also the case that the owner or manager of the building is responsible for all the tenants, leaseholders and owner-occupiers who occupy that building. If there is a fire, differential tenure is hardly relevant; the rules should be the same for all forms of tenure. An electrical fault could arise anywhere and could affect any neighbour in the block, as we have tragically seen all too often. It is important that a high-rise block is covered, with responsibilities to the owner or manager, regular clear inspections and a list of equipment. Electrical systems are presently dealt with differently from gas; there is a requirement for gas inspections for everybody. We need to require the owner to take account of the potential damage to others within his or her building.

Obviously, we hope the Government will take this up as rapidly as possible. There are issues around who bears the cost and whether this is the appropriate Bill for these clauses. The latter seems odd to argue; this is the Fire Safety Bill. We are arguing that it should include provisions about the single most frequent cause of fire and measures that have already been identified in the Grenfell inquiry. These are most relevant here. I understand the Minister might prefer to see them in the forthcoming building safety Bill, but they are not there; the fact that the provisions in these amendments are not in the pre-legislative version of the Bill at the moment, although some aspects of electrical safety are, makes us doubt the speed with which these clauses would be brought into operation. It would be much better if they were in this Bill.

On cost, I am indebted to the noble Lord, Lord Best, who wanted to speak in this debate but was somehow precluded. He calculated that, even if inspection costs for carrying out the regular inspection were £100, that would be £20 a year over five years, or 20p a week per premise, which would go on the service charge to leaseholders and tenants in one way or another. That is a minimal cost for a major contribution towards everybody's safety. It would not be logical for the requirement on the owner for inspection to be postponed until the building safety Bill comes through, but it would be better than nothing. If we can be given an absolute assurance, I will accept it as second best, but it really should be in this Bill to prevent fires starting now. I support all these amendments.

The Earl of Lytton (CB) [V]: My Lords, I first declare an interest as a vice-president of the Local Government Association and a chartered surveyor with some 45 years of experience in dealing with the management, maintenance and condition survey of properties, as well as matters of tenure. I apologise to the House for not having been able to participate directly on previous stages of the Bill. Many noble Lords will know that I have been following this extremely closely and have written to many of them, including the Minister.

Turning to the thrust of these amendments, I entirely agree with the purpose of the amendment on electrical systems: to make regular periodic tests and inspections of fixed electrical installations most desirable. However, with leases in long-leasehold tenure, the leaseholder is typically responsible for what is in the flat and is identifiably unit-specific to that bit of accommodation. Typically, that also applies to other conducting media and conduits such as drains, extraction ducts and water supplies. Some items are centrally operated, such as fire alarms and detection equipment, which may be within the flat and may be differently treated, but such provision does not always pertain to rack-rented letting. Straightaway, the legal obligations between different types of tenure, which are established in the case of long leasehold in their long leases, and therefore in their title, are not consistent across what I might call the flatted sector.

I also have concerns about the scrutiny and enforcement of the regulation, which in the past has sometimes been patchy. The issue is one of resources. The capacity, competence and finance are often insufficient or inadequate in the areas where the responsibility lies, or, in some circumstances, the responsibilities may be split. The Government must address these in the context of the Bill, because the subject matter is vital in terms of human safety, and too important to be left to chance, but I wonder how secondary legislation will deal with overriding established practices set out in the legal arrangements for tenure and occupation.

I appreciate that the noble Lord, Lord Bourne, is very enthusiastic about electrical appliances. I am a little less enthusiastic, not about the objective of greater safety, but about the practicality. There should be a clearer cut-off between what is "system" and what is "appliance". For instance, a hardwired electrical hot towel rail is regarded as appliance, not system. There should be a clearer definition, so that anything with a

square pin plug on the end of its lead falls under "appliance". Again, there are issues to do with things such as cookers, which are also hardwired.

I note and largely agree with the views of the LGA regarding the enforceability in real life, and the shifting of responsibility, in my definition, from the primary leaseholder or occupier of the unit, who is in charge of the items in the building, unless they have been supplied by the lessor or manager from inception. There is an assumption that there will be some degree of occupier co-operation. Logging the appliances on a register may capture the inventory at a moment in time, but that does not procure accuracy without continuous updating, so there are issues there as to how much time and energy are to be taken up with doing this. Some modern service lettings include white goods, and possibly many other smaller items, and, to give the example of holiday accommodation, typically the owner of the accommodation provides all the white goods and appliances, but even that does not stop someone coming along with their own appliance, which may not be tested. The same thing applies for normal rentals.

Therefore, accuracy is an issue. Retrofitting the sort of standard that might apply in circumstances where all the white goods and appliances are pre-provided by the lessor would be extremely difficult. If the intention is to include everything that might be caught under a normal PAT test, that will be extremely detailed, with a high turnover of items within any five-year period. If occupiers of flats are not obliged to declare all relevant items whenever exchanged for another, or whenever a new item is brought in, this could create an impossible task for managers. Therefore, if the Minister agrees to this amendment, in detail or in principle, some of these issues must be addressed.

I suggest a phased approach, to allow for the most at risk and the most dangerous situations to be dealt with as a matter of urgency. Here, I am with the noble Lord, Lord Bourne, but for the rest, one must ensure that the arrangements are put in place in a workmanlike manner, that they are practical and, particularly, that manufacturers and retailers be locked into the chain of compliance. Also, there has to be a cultural change, so that every occupier of a high-rise block realises that they have a responsibility and an input, and that they are pivotal in procuring safety and ensuring that they do not misuse—or fail to maintain and clean—their appliances or operate them in unsuitable locations. I recognise, approve and agree with the thrust of these amendments, but I remain concerned about some of the detail.

2.15 pm

Lord Mann (Non-Afl): My Lords, I declare an interest, having lived for nearly 20 years as a private tenant in—under the definition in this amendment—a high-rise block in London. I am trying to work through how a register would apply, because I have never solely rented. It has always been part of a multiple-occupancy residency within a council-owned block where a private owner has bought a property and then leased it out to the likes of me.

The amendment seems to be approaching this the wrong way around. The poorer one is, the more one will be buying second-hand goods and not buying direct from manufacturers, particularly with white goods. Systems of registration can never easily apply with that. The Government should be looking at the opportunity—although it cannot be fitted into this Bill at this moment—whereby there is an incentive at local authority level for there to be certificates of competence in relation to properties that are being let out, in relation to electrics and gas, so that one can see that the standard has been met. Such a system would quickly isolate those who were not prepared to have the relevant certificates in place, who would then become the primary targets for enforcement investigation. It seems that the market could assist in a significant part of the solution if it was required to parade its worthiness in an effective public way in terms of the safety of a property.

Under this definition, this building would be a high-rise building. In planning terms this is one building, with at least two occupied residences; there may be more that I am unaware of. That is not necessarily an argument against this amendment, and might even be one in favour of it, to fast-forward some of the building changes that are needed in here. However, rightly, the focus has been the Government's focus. I make no criticism whatever of this or of contributors in this debate, in terms of traditional high-rise. However, while I am in favour of the Government's approach in wanting more office-style or above-shop conversions over the last 20 years, often these buildings were not designed as accommodation, and, having seen first-hand some of those which have been done over the last 20 years, if they are badly designed, the fire risk seem disproportionately high. That aspect of "above-shop", which could be two, three, four or storeys in some cases, in terms of accommodation, needs more attention from the Government, and potentially, more powers for local authorities.

Finally, in the context of Clause 1—I hope that the building safety Bill is the appropriate place for this—the fire risk in fixed Traveller sites and park home sites is a different kind of problem. The problem could be immediately outside the property. Park home sites in particular may be constrained by a perimeter wall, and the fire risk comes from the lack of space therein. I have direct experience of challenging that, and it has been fiendishly difficult to do anything about it in law. I hope, as the Government move the building safety Bill forward, that the question of properties on fixed Traveller sites and park home sites will be looked at, including in the context of fire safety. More can and should be done there.

Lord Shipley (LD) [V]: My Lords, I remind the House that I am a vice-president of the Local Government Association. I strongly support this group of amendments, and it is good to see cross-party support for them.

At previous stages of the Bill, I spoke on the importance of increased electrical safety checks. In view of what we are now hearing from the Grenfell inquiry, such checks of electrical systems and appliances in high-rise blocks are vital. As the noble Lord, Lord Bourne, said, there should be a safer home environment and we should be translating good intention to action. I strongly agree. He reminded us that almost half of

[LORD SHIPLEY]
domestic fires relate to an electrical fault, and also of the precedent of a register of electrical equipment in student housing blocks.

The noble Lord, Lord Randall, made a number of points on second-hand electrical equipment, which I hope the Minister will note. The noble Lord, Lord Whitty, explained that the cost is minimal. This derives, in part, from the speech of the noble Lord, Lord Best, in Committee, where he identified how the cost could be much lower than people had thought. My noble friend Lord Tope called for a clear commitment from the Minister on what action the Government are proposing and when they are proposing to implement it.

It has been said that the legislation will be complicated to enforce. The noble Earl, Lord Lytton, made a number of detailed points about the responsibilities of leaseholders and those with other kinds of tenure. I hope the Minister responds to those points, particularly in view of the distinction that may have to be drawn between systems and appliances. The points made by the noble Earl, Lord Lytton, will be very helpful in drafting regulations. He said that we need a cultural change; that has to be right.

The noble Lord, Lord Mann, has personal knowledge of living in a residential block as a private tenant. That experience will clearly be helpful to the proceedings of the House. He raised a number of important issues on design, which I hope the Minister will note.

It is important to understand the issue properly. It is surely the right of tenants and leaseholders of high-rise blocks to feel more secure. This is a public safety issue. I cannot understand why checks are required in the private rented sector but not for high-rise blocks, except where the property in that block is privately rented. I hope that we hear something helpful on this from the Minister in a moment.

Finally, there is going to be a responsible person. I am fully in support of that, but such a person needs responsibilities to undertake. This group of amendments presents some responsibilities that seem central and core to the duties and obligations of a responsible person. For that reason, I fully support this group of amendments.

Lord Kennedy of Southwark (Lab Co-op): My Lords, as this is the first time I am speaking on Report today, I refer the House to my relevant registered interests—namely, as a vice-president of the Local Government Association, chair of the Heart of Medway housing association and a non-executive director of MHS Homes Ltd. I support the Fire Safety Bill. My main concern across the whole Bill is the speed with which we are moving forward. That is the main issue for me with this and other amendments.

I fully support the amendments before us today in the names of the noble Lord, Lord Bourne of Aberystwyth, and other noble Lords. I tried to sign up to these amendments, but I was too late; all the spaces had already gone when I contacted the Public Bill Office. I have made it clear to the noble Lord, Lord Bourne, that he has my full support, and I pay tribute to him for raising these issues, as he did on 29 October during the consideration of the Bill in Committee. I also put on record my admiration for the charity Electrical Safety First, and Robert Jervis-Gibbons and his colleagues, for all the work they do to highlight the danger of electrical fires to both property and people. Through their campaigning work, we have managed to make progress in recent years in the area of fires started by electrical ignition.

In speaking in this debate, noble Lords mentioned the fires at Lakanal House in Southwark, Shepherds Court in Shepherd's Bush and Grenfell Tower—all examples of the tragedies that electrical fires can cause. We need to ensure that action is taken. As has been clearly set out to the House, these amendments are intended to build on the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, which provide for mandatory checks in the private sector every five years. Those regulations were good news, and the noble Lord, Lord Bourne of Aberystwyth, deserves credit for all his work in bringing them into force.

What now needs to be addressed is the tenure lottery that has been created, as private tenants in a building will be covered by the regulations but social tenants and owner-occupiers will not. There are three types of tenure, but only one would be required to have electrical safety checks. You can see the problem: if you have a block of flats but only some of the properties are tested, covered and confirmed as safe, or have remedial work that is needed and undertaken, but others are not checked, the building is then not safe. How can some properties be required by law to be checked, when others are not? That has to change. I suggest that, to be certain the building is safe for all dwellings, it would need to be checked by a competent person. If it is for only some of the dwelling, you cannot deem the building to be safe.

The amendments before us also provide for a responsible person, which is a new role that I fully support, to be brought into being to compile a register of every white good in a building. This would ensure that, when a recall of a product occurs, we can quickly identify all the affected appliances and the safety issue can quickly be resolved. This does not take away responsibility from the people who sell the appliance or the manufacturers, but it is another important safety measure.

The Government may take the view that they cannot commit to this, at this stage. The noble Lord, Lord Bourne, has not indicated that he wishes to test the opinion of the House, but I hope to have a considered opinion from the noble Lord, Lord Greenhalgh, on these important amendments. I also hope that the noble Lord and his team will look at what goes on in other parts of the world—certainly in Australia—where there are much stricter regimes about electrical white goods than elsewhere. They need to be looked at because, clearly, if this can work in other parts of the world, it can work here. All these amendments are about keeping people safe, and I fully support them.

2.30 pm

The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con): My Lords, I refer to my relevant commercial and residential property interests as set

out in the register. I thank my noble friend Lord Bourne of Aberystwyth for his amendment, which shines a light on the important issue of electrical safety. Indeed, I thank the noble Lord, Lord Tope, for his clear focus and mission to prevent fires happening in the first place as a result of electrical faults as absolutely the key. I also thank my noble friend for the constructive meeting that we had on this issue last week, involving my noble friend Lord Randall of Uxbridge. I recognise the covering fire received from the noble Lords, Lord Tope and Lord Whitty, for this amendment, and in particular, as the noble Lord, Lord Kennedy of Southwark, mentioned, the work of the Electrical Safety First organisation. I commend the latter for the work that it is doing to raise awareness of the risks of electrical fires. I also thank the noble Lord, Lord Mann, for pointing out the issues around second-hand electrical goods; this is a particularly difficult area to regulate and something that we need to look into.

I will not reiterate all the points that I raised in Committee, but I will mention two concerns that I have in relation to this amendment. First, I note that the wording has changed to focus on high-rise buildings, but I am still concerned that it would not have the effect that my noble friend seeks to achieve. In particular, it is doubtful that the amendment would result in electrical appliances in private dwellings being brought within the scope of the fire safety order. This in turn will thwart the amendment's underlying objectives for systematic checks on electrical appliances and for the responsible person to keep a register of appliances, as required by the additional schedule proposed in this amendment.

My other concern is that the amendment risks delaying the implementation of necessary reforms to fire safety regulation. A number of concerns have been raised in both your Lordships' House and the other place about the pace of reform to fire and building safety legislation. We now have a package of reforms: this Bill, the upcoming fire safety order regulations, and the building safety Bill. The amendment would impact on the delivery of this package of legislation, and in particular on the fire safety order regulations.

A lot of the detail of this amendment is left to be implemented through regulations, and the work that this would require would lead to significant delays in our being able to deliver other key recommendations from the Grenfell inquiry. The answer to addressing the concern about electrical safety lies in the work that is being undertaken across government, which includes a number of strands. I will not repeat all of the work that I referenced in Committee but will pick out some key aspects.

A regulatory regime is in place on product safety, underpinned by legislation and overseen by a national regulator, the Office for Product Safety and Standards, which was created in 2018. This regime places responsibility for the safety of products on those actors best placed to ensure this before products are placed on the market. The draft building safety Bill reflects the role that all parties have to play in ensuring the safety of high-rise dwellings, from the developer to the accountable person to the residents themselves, and electrical safety is an important part of this. As mentioned by a number of noble Lords, there are standards for electrical checks in private rented accommodation, which require that electrical equipment is checked at least every five years. This is already in place for new tenancies and will apply to existing tenancies from 1 April 2021.

I recognise the concerns expressed by a number of noble Lords with respect to there being no mandatory checks on social housing. The inequality between social and private housing was raised by my noble friend Lord Randall and the noble Lords, Lord Shipley and Lord Kennedy. I am pleased to say that today we have published a social housing White Paper, which sets out our charter for social housing residents. It includes a commitment to undertake a consultation on keeping social housing residents safe from electrical harm. Among a range of issues, this will consider extending the safety measures already in the private rented sector to social housing.

I assure my noble friend that the Government take the issues raised in his amendment very seriously indeed. In that regard I am happy to give him a firm commitment that, outside the Bill process, my officials will engage Electrical Safety First and other key stakeholders in an official-led working group to inform the content of our consultation. Given the assurances that I have provided, I ask my noble friend to agree to withdraw his amendment.

Lord Bourne of Aberystwyth (Con) [V]: My Lords, I first thank everybody who has participated in the debate on the amendments in this group. It has been a very worthwhile discussion, and every noble Lord who participated added something valuable. It is clear that there is broad support within the House for action, and a recognition of the inequality that exists between private tenants on the one hand and social tenants—and indeed owner-occupiers—on the other hand.

I note what my noble friend the Minister said in relation to some of the detailed points in the consideration of the amendments that may cause concern; clearly they are matters that could be looked at. I agree with my noble friend the Minister on the importance of what has happened today in relation to the White Paper, although I note that there is no timescale attached to that. Before I withdraw my amendment, which I am minded to do, I will press my noble friend a little on two matters. First, would he be willing to meet with me and the other signatories to the amendment ahead of the building safety Bill to see how we can dovetail what we are seeking to do here with that Bill? I know from discussions with him that he felt that that Bill was a more appropriate medium to use, so I seek that from him.

Secondly, I thank him very much for the undertaking that he has given to meet with Electrical Safety First, along with officials, to consider the proposals in the social housing White Paper as to possible timescales. He will understand that we are now three and a half years after the dreadful events of Grenfell. The social housing White Paper has been a long time forthcoming, for reasons that I do understand, and we are now looking at a future consultation; we do not—and I am sure he does not—want this stretching out a long time into the future. So I will just press him a little bit on those two matters before I withdraw my amendment.

Lord Greenhalgh (Con): My Lords, I am very happy to give my noble friend the assurance that we can meet together before the introduction of the building safety Bill. Indeed, as soon as I have more information about the timescales in relation to the social housing White Paper being turned into legislation, I will be able to provide that to my noble friend. I am happy also to agree to meet with the Electrical Safety First organisation; I would find that very constructive indeed.

Lord Bourne of Aberystwyth (Con) [V]: My Lords, I know my noble friend and I know his sincerity so, with those undertakings, I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Amendments 2 to 4 not moved.

The Deputy Speaker (Lord Alderdice) (LD): My Lords, we now come to the group beginning with Amendment 5. I remind noble Lords that Members other than the mover and the Minister may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press this or any other amendment in this group to a Division should make that clear in debate.

Clause 2: Power to change premises to which the Fire Safety Order applies

Amendment 5

Moved by ***Lord Kennedy of Southwark***

5: Clause 2, page 2, line 11, at end insert—

"( ) The consultation under subsection (5) must involve—

(a) local authorities;

(b) relevant trade unions including but not limited to those representing firefighters;

(c) relevant organisations representing firefighters;

(d) bodies representing tenants and residents of impacted properties; and

(e) any other bodies deemed relevant by the Secretary of State.

( ) A report detailing the findings of the consultation under subsection (5) must be laid before Parliament."

Member's explanatory statement

This amendment would ensure that any consultation must include local authorities, trade unions, and representatives of tenants and residents.

Lord Kennedy of Southwark (Lab Co-op): My Lords, this is an issue that I raised in Committee, and I confirm that I have no intention of dividing the House on it this afternoon. I have tabled it again to give the Minister the opportunity to put beyond any doubt that the organisations that I have listed will be consulted, without question, because they are important in their different ways. I accept the point that has been made before that things change over time, but I think it is a reasonable assumption that we will have local authorities, trade unions representing firefighters and other workers in the sector more generally, and associations representing tenants and residents, for the foreseeable future, and that consultation must go much wider than the National Fire Chiefs Council.

Amendment 6 from the noble Baroness, Lady Neville-Rolfe, is a probing amendment, as the noble Baroness makes clear in her explanatory statement, allowing the Minister to offer clarity to the House. Again, I welcome the amendment made in that spirit by the noble Baroness and I beg to move.

Baroness Neville-Rolfe (Con): My Lords, it is always a pleasure to follow the noble Lord, Lord Kennedy. I think that he and I agree on the value of consultation in many different arenas.

My probing amendment relates to an appalling situation arising as an indirect consequence of the Grenfell tragedy. As a direct result of that fire, vast amounts of cladding, especially on high-rise blocks, will have to be removed. The requirements for improvement consequently imposed on those concerned—freeholders, leaseholders and so on—affect a very large number of multiple-occupation dwellings, unnecessarily, some might say, whatever their height. As a consequence, surveyors, insurers and mortgage lenders, all financially involved, have become very concerned by their clients' potential unquantified exposure to risk and are taking steps to minimise it. Inevitably, they are taking a cautious view. Wooden features such as staircases and partitions—used since the dawn of time and much more sustainable than steel or plastic derivatives—are often viewed with suspicion.

A particular uncertainty is what the remedial action will cost and who will bear that cost. There is currently no good answer to that concern and, as a consequence, much of the market is effectively frozen. Thus, many properties are in practice unsaleable, with knock-on effects on people's financial viability and the mobility of workers. As I emphasised in Committee, this is a nightmare for the young who want to move when they have a baby, for the old who want to trade down to something smaller and release capital for their care, and for the unemployed who need to move to get a new job.

I explained all that in Committee, and I think it would be fair to say that, although the Minister, in responding, accepted that there was a problem, he said nothing about how it might be solved. I hope that we can move a step forward today and that the Minister will be able to say something that will ease up the market in respect of at least some of the dwellings where the fire risk is small. Standing back, it is apparent that the Bill takes us in the wrong direction on this issue, because it provides for an increase in the number of requirements and regulations without providing a way forward on the threat to the housing market and our reputation as supporters of home ownership, which many people aspire to.

To be more specific, first, can the Minister provide a clear trajectory for the implementation of the Bill, the revisions to the fire safety order and the building safety Bill to reassure us on consistency and show how the uncertainty and unintended consequences for leaseholders arising as a result of these changes will be kept to a minimum?

Secondly, what assessment have the Government made of the availability of qualified assessors and fire safety engineers to account for the increased demand that will arise from the Bill? How can they help in this regard?

Thirdly, can the Government develop a system, such as you might see in the health and safety area, referenced earlier, that allows non-professionals involved in managing multiple-occupation properties to do the necessary risk assessments and give the assurances needed for the market to move? The EWS1 system—designed, I believe, to help with the mortgage problem—has, unfortunately, had a perverse effect.

Fourthly, can the Minister say anything to unfreeze properties—for example, those of a low height where the risk is much less?

This is a very difficult issue and I know that my noble friend the Minister, with his experience of local government, understands the issues and has been trying very hard. I welcome the considerable funds made available to deal with the most serious high-rise cladding issue and the progress that is therefore being made. He should also be thanked for his wider efforts to improve the housing sector and build more homes. However, the problem that I have described, with support from my noble friend Lord Shinkwin in Committee, is a very serious one and we need action now. As the noble Lord, Lord Kennedy, will be winding up on this group, I should like to say that I, like my noble friend Lord Bourne, would appreciate a further meeting on how we tackle this matter before the new order and the building safety Bill proceed.

2.45 pm

Lord Shipley (LD) [V]: My Lords, the noble Baroness, Lady Neville-Rolfe, has made a number of helpful and very important points. Amendment 6 seeks clarification from the Minister on a number of problems in relation to leaseholders and the impact on the housing market of the current problems with selling properties. I, too, look forward to the Minister's response, as it would be helpful to us all to have an up-to-date understanding of his thinking.

We shall, of course, address this matter on Amendment 13 as well, as it is central to the future management of high-rise accommodation, or the less high-rise accommodation that nevertheless still suffers from some of the problems of the high-rise blocks. As the noble Baroness said, we need a way forward for the housing market in solving the problems of some leaseholders. I entirely agree with that, and I hope that forthcoming meetings will be able to address those issues.

Amendment 5, moved by the noble Lord, Lord Kennedy of Southwark, is entirely sensible. Of course it is right to consult properly and fully in developing legislation, so I assume that the Minister will be able to confirm this afternoon his entire agreement to this amendment because it is so eminently sensible.

The Earl of Lytton (CB) [V]: My Lords, although I certainly agree with the thrust of Amendment 5, it is Amendment 6, in the name of the noble Baroness, Lady Neville-Rolfe, that I really wish to address.

Many of my years in the property profession have been spent in survey inspections, with a spell in estate agency and mortgage valuations and brief periods in block management, and I have spent a good deal of time on the forensic identification of defects. Therefore, I feel reasonably well qualified to support the noble Baroness, and I thank her for raising this important issue, which affects the residential sector. Rightly, she referred to the indirect effect of the Grenfell tragedy. That is a matter on which I have been in constant contact with the Chartered Association of Building Engineers, of which I am a patron and which has been very helpful in identifying various matters in respect of the Bill.

As the noble Baroness said, the effect on the residential market for flats in particular, and over a very broad spectrum by age and type, is now apparent. This has affected security for mortgage lending, exacerbated by the prospect of large and, as the noble Baroness said, unquantified remediation bills. Some sort of game of pass the parcel seems to be in train as to who will end up picking up those bills. It affects buildings insurance cover and premiums, and interim measures such as "waking watch" are racking up huge costs. These and the likely shortfall, as I see it, in the provision for remediation made by the Government—welcome though that is, but nevertheless there is a shortfall as against the widening scope of the buildings that might ultimately be affected—have seriously affected the ability to sell flats. It is not clear that this is in any way confined to high rise, as I am increasingly aware, as one of my children attempts to sell a flat in a four-storey modern and, I believe, conventionally constructed block.

A few days ago, a lady emailed me to say that she is a resident of a sister block to the one in Worcester Park which burned down last year. She is completely stuck with a currently worthless asset and no apparent movement on remediation. The latest *Sunday Times* carried an article about this, graphically illustrating the issues and defects that have been found to be present in a number of remaining identical buildings that are still standing.

Before this gets yet more problematic and starts affecting potentially a far wider range of properties than at present, the Government need to use their powers and influence to get all the interested parties round a table—constructers, lenders, insurers—and point out, as the noble Baroness said, the reputational as well as economic and social damage that needs to be contained beyond the issue of direct liability and who shoulders that, and require their active co-operation to resolve this in a constructive manner and not leave vulnerable homeowners, to put it bluntly, hung out to dry.

I appreciate the criticism of the EWS1 form, but it came about because of a particular need to do with mortgage lending. It is now being required for a much wider range of purposes, for which it was never intended. Why? Because it was the only tool available. The Government could step into this obvious void and make sure that some other form of certification solution was provided. But they, or somebody else, would have to take responsibility for that, and I realise that that is an issue. Meanwhile, the potential liabilities make it ever less likely that those without specific accreditation

[The Earl of Lytton]
to do the necessary inspections will be willing to undertake such work and, indeed, they may not be able to get professional indemnity insurance either.

The Government need to get ahead of the curve here. If these measures are rushed into effect with full force immediately and without additional steps, there will be more serious disruption and collateral damage to come. I suggest there be a phased and managed approach aimed at containing the ill effects, restoring trust and confidence, above all, in the measures being put in place and limiting financial loss while dealing, most importantly, with the most pressing issues where residents' safety is at the greatest peril. None of this is without risk; nor is the normal "Not my responsibility, guvnor" liability-passing response appropriate in these abnormal times, given the number of national issues we face and the effect on the wider economy.

This means temporary but probably arbitrary cut-offs, probably in height terms—11 metres may be the right figure for blocks of flats—perhaps with certain other definitions, then dealing with those and drawing the net more widely later on and inevitably, as one will, picking up legacy issues from older regulatory sign-offs on the way. Some sort of lower-tier interim certification, which the noble Baroness referred to, perhaps by a non-specialist, would enable low-risk properties to escape the contagion that might otherwise engulf the sector. I wonder if this is what the Minister will propose in Amendment 7. I will listen with great interest to his response.

Baroness Pinnock (LD) [V]: My Lords, I remind the House of my interests, as recorded in the register, as a councillor in Kirklees and as a vice-president of the Local Government Association.

I turn first to Amendment 6, through which the noble Baroness, Lady Neville-Rolfe, has raised concerns about the inclusion of all multi-occupied domestic premises within the scope of the Bill. The issues raised relate to leaseholders who find that they are, in effect, unable to move as their property is within the scope of the Bill and, therefore, that the fire risk exists but is not quantified. The later amendment in my name explores these issues in more detail.

In Committee, the noble Lord, Lord Parkinson, spoke on behalf of the Minister and confirmed that the Government intend that all multi-occupational buildings are within the scope of the Bill and the fire safety order 2005. He also argued in Committee that the height of a building is only one factor in assessing fire risk, and others have given recent examples of fires in such buildings that support that argument. The issue, then, is about prioritisation, as the noble Earl, Lord Lytton, has so expertly explained, and what actions the Government are able to take to minimise the impact on properties deemed low priority and, therefore, presumably of lower risk. It is that issue that the Minister needs to clarify. Will the Government bring forward regulations or guidance to demonstrate the criteria to be used to fire assess properties? Can these be used by leaseholders to demonstrate low risk, and thus release their property from being frozen out of the housing market? I look forward to the Minister's response to these concerns.

The other amendment in this group, in the name of the noble Lord, Lord Kennedy, raises issues about consultation. It lists consultees, as a very similar amendment did in Committee. My colleagues and I are always in favour of the widest possible consultation on any issue. However, there is an inherent risk in a list that becomes exclusive while intending to be inclusive. The list of consultees is one which we would expect, however, to be involved in all relevant consultations. As my noble friend Lord Shipley said, the list is inherently sensible, so I hope the Minister will be able to accept such a list. Again, I look forward to the Minister's response.

Lord Greenhalgh (Con): My Lords, I thank the noble Lord, Lord Kennedy of Southwark, for raising the issue of engagement to make sure the right groups and organisations are consulted on any changes or clarifications to the types of premises that fall within the scope of the fire safety order. The Government have given this matter further consideration since Committee stage. I support the noble Lord's aim of ensuring that the widest range of groups are given an opportunity to comment. It is sensible to seek views from all groups impacted by any future changes, which is why Clause 2 of the Fire Safety Bill provides a requirement to consult anyone appropriate, which is likely to include all the parties highlighted in the amendment.

Robust policy-making can be achieved only by reaching out to all sections of the fire sector and other interested parties, such as responsible persons and residents, not by relying solely on the expertise of certain groups. To be clear, of course we will consult with the National Fire Chiefs Council but equally, we will consult with the Fire Brigades Union and with tenants' and residents' associations.

The Government are committed to considering the most appropriate means of conducting any future consultation before making any regulations—regulations which Parliament would have an opportunity to scrutinise, should it so wish. It remains the case that the specified list as presented identifies groups whose role, name or function may change over time, potentially creating the need for future primary legislative changes or making such provision ineffective. However, the Bill as drafted safeguards against this while ensuring that relevant groups are not excluded. I want to assure your Lordships' House that we recognise the importance of consulting relevant stakeholders, but the wording of Clause 2 already allows us to do just that, without the need to be prescriptive in the way the noble Lord's amendment suggests.

I turn now to the very important consumer issues raised by my noble friend Lady Neville-Rolfe. I had a meeting with my noble friends Lady Neville-Rolfe and Lord Shinkwin, and I am very happy to commit to a further meeting before the introduction of the building safety Bill. These are huge consumer issues, and I praise my noble friend for being a champion of the consumer. We recognise that many leaseholders' properties have been valued at zero, they are waiting for remediation of their properties and they are unable to remortgage or to move. They are effectively trapped, and the Government recognise that that is a considerable issue

for them. We also recognise that the costs of historic building safety and fire safety remediation will be considerably more than the £1.6 billion already committed. It is important to address that in a way that is affordable to leaseholders, and there are only certain ways of doing that. We will make announcements on that in due course.

Equally, we recognise that the pace of remediation is important. I have talked to many people in the social housing sector about the fact that they have probably overspent on waking watch. I am very pleased that we provided guidance on waking watch, the cost of which is exorbitantly high; it can be replaced by a fire alarm system within six or seven weeks, which reduces some of the costs of interim measures. I draw the attention of those using waking watch for extended periods to the most recent guidance from the National Fire Chiefs Council and the work on waking watch costs. I am very happy to commit to a further meeting.

3 pm

Turning to the amendment, I thank the noble Lord for his continued input on the Fire Safety Bill and for his amendment seeking clarity on how the Government intend to use the power to change the types of premises to which the fire safety order applies. I remind noble Lords that the purpose of the Bill is to improve fire safety in all the buildings to which it applies to make sure that residents feel safe in their homes. I know this objective is shared by all in your Lordships' House and the other place. The Government believe we have the right buildings within the scope of the order at present, but it is important that we create the right legislative framework to provide the flexibility to make future changes to the types of buildings which may pose a risk. The Bill may be on the statute book for a long time, and this clause allows us to keep it agile and relevant to emerging changes. If, for example, a new design of building emerges in future, we will want to make sure that it can be captured without the need for further primary legislation.

The clause is not intended to be a blunt instrument. We have introduced a robust set of safeguards to ensure that relevant parties can comment on any future changes. However, I understand the concerns about the current mortgage and insurance situation that my noble friend is looking to address, and which I have already discussed. We are working with lenders on a more proportionate approach to the assessment of fire safety risks for valuation purposes, which will benefit residents. The updated fire risk assessments following this Bill should provide the further reassurance that lenders are looking for in the EWS1. I hope this gives my noble friend confidence that our aim is to ensure flexibility, and not a form of mission creep to bring more premises under the order. Given the assurances I have provided, I ask the noble Lord, Lord Kennedy, to withdraw his amendment and my noble friend Lady Neville-Rolfe not to move hers.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I thank the Minister for his response to this short debate and for putting clearly on the record his views on consultation, which I fully support. As he said, it is important to have a wide range of appropriate consultees.

I also fully support the points raised by the noble Baroness, Lady Neville-Rolfe. We cannot allow people to continue to live in properties that are, effectively, worth nothing. I hope that the meeting referred to will take place, but it is also important that when builders construct these buildings and give warranties and guarantees, they are upheld. It cannot be right to allow builders to walk away from their obligations under warranties and guarantees have given; they need to be held accountable. I hope that the Minister will take back that very important point. I beg leave to withdraw the amendment.

Amendment 5 withdrawn.

Amendment 6 not moved.

The Deputy Speaker (Lord Alderdice) (LD): We now come to the group beginning with Amendment 7. I remind noble Lords that Members other than the mover and the Minister may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press this or anything else in this group to a Division should make that clear in the debate.

Amendment 7

Moved by ***Lord Greenhalgh***

7: After Clause 2, insert the following new Clause—

"Risk based guidance about the discharge of duties under the Fire Safety Order

(1) Article 50 of the Regulatory Reform (Fire Safety) Order 2005 (S.I. 2005/1541) (guidance) is amended as follows.

(2) After paragraph (1) insert—

"(1A) Where in any proceedings it is alleged that a person has contravened a provision of articles 8 to 22 or of regulations made under article 24 in relation to a relevant building (or part of the building)—

(a) proof of a failure to comply with any applicable risk based guidance may be relied on as tending to establish that there was such a contravention, and

(b) proof of compliance with any applicable risk based guidance may be relied on as tending to establish that there was no such contravention."

(3) After paragraph (2) insert—

"(2A) Before revising or withdrawing any risk based guidance in relation to relevant buildings the Secretary of State must consult such persons as the Secretary of State considers appropriate."

(4) After paragraph (3) insert—

"(4) In this article—

"relevant building" means a building in England containing two or more sets of domestic premises;

"risk based guidance" means guidance under paragraph (1) about how a person who is subject to the duties mentioned there in relation to more than one set of premises is to prioritise the discharge of those duties in respect of the different premises by reference to risk.""

Member's explanatory statement

This amendment provides that, where the Secretary of State issues risk based guidance under the existing duty to ensure the availability of appropriate guidance, proof of compliance or a lack of compliance with that guidance can be used in legal proceedings. It also requires the Secretary of State to consult before revising or withdrawing risk based guidance.

Lord Greenhalgh (Con): My Lords, I shall speak also to Amendment 14. In Committee I made a commitment to set out during today's debate the Government's position on how the Fire Safety Bill will be commenced. Your Lordships' House is aware that the Home Office established an independent task and finish group, chaired jointly by the National Fire Chiefs Council and the Fire Sector Federation, which brought together interested parties from across the fire and housing sectors. Its role was to provide a recommendation on the optimal way to commence the Bill. The group advised that the Bill should be commenced at once for all buildings in scope. I have accepted this recommendation to commence the Fire Safety Bill at once for all buildings in scope on a single date.

The group also recommended that responsible persons under the fire safety order should use a risk-based approach to carrying out or reviewing fire risk assessments upon commencement by way of using a risk operating model, and that the Government issue statutory guidance to support this approach. I also agreed to this recommendation, which will support responsible persons to develop an effective prioritisation strategy for such assessments, which will be supported by a risk operating model currently being developed. The Home Office, with support from the National Fire Chiefs Council and the Fire Sector Federation, will also host this model once it has been finalised.

The government amendments tabled today intend to take forward the provision of statutory guidance to support this approach. These amendments ensure that the risk-based guidance which will be issued by the Secretary of State to support commencement of the Bill for all relevant buildings will have the legal status to incentivise compliance with it. It does this by stating explicitly that a court can consider whether a responsible person has complied with their duties under the fire safety order by compliance with the risk-based guidance. Equally, if a responsible person has failed to provide evidence that they have complied, it may be relied on by a court as tending to support non-compliance with the duties under the order.

The government amendment also creates a provision to allow the Secretary of State to withdraw the risk-based guidance, but this can be done only after consultation with relevant stakeholders and appropriate persons. Our rationale for inserting this provision is that we believe that a point will eventually be reached where, having followed a risk-based approach to prioritisation, responsible persons will have assessed all the fire safety risks for the external walls of their buildings in direct consequence of the commencement of the Bill. At that stage there may no longer be a need for the guidance to remain in place. I assure your Lordships' House that the Government will commence the Bill at the same time as issuing the guidance. Amendment 14 achieves this effect.

I thank my noble friend Lord Porter of Spalding for his amendment in Committee, which would have placed a duty on the Secretary of State to issue an approved code of practice to support the commencement of the Bill. I had a very constructive discussion with my noble friend and officials from the Local Government Association last week, and I am pleased that he supports our approach and agrees that there should be no delay in commencing the Bill.

One of the issues that the task and finish group considered was how responsible persons will be able to update their fire risk assessment where there is limited capacity in the fire risk assessor sector, primarily fire engineers, to advise on external wall systems. This underlines the recommendation for a risk-based approach to an all-at-once commencement, on which we are acting. Our approach sends a signal to the fire risk assessor sector, mainly fire engineers, that their expertise should first be directed to where it is needed most: to the highest risk buildings.

I draw attention the statement of the Fire Sector Federation, which supports our approach to commencement. It said that

"the introduction of further new measures … using systematic risk-based guidance, will lead a prioritisation approach towards helping to identify the fire risk status for a … building such that those presenting the highest threat to life are afforded the highest priority"

for "remedial action."

I thank all members of the task and finish group for their work in developing advice to the Home Office and my officials. I consider that the group has provided an optimal solution to commencing the Fire Safety Bill, allowing the Government to introduce the provisions at the earliest opportunity. It is important that we continue the good work undertaken with relevant stakeholders on the task and finish group, with a view regularly to monitoring the effectiveness of the risk-based guidance and risk-operating model. My amendments seek to take forward the recommendations from operational experts in the field of fire safety. I beg to move.

The Earl of Lytton (CB) [V]: My Lords, the proposed risk-based guidance set out in the amendment is extremely welcome, particularly if it means what I think it means: assessment not only by building type but in relation to the specifics. The risk-operating model is especially welcome in this respect, and I thank the Minister for tabling the amendment. When is the guidance likely to be finalised? It is linked to the Bill coming into force and it is important that it be done as soon as possible, subject to reasonable scrutiny. We need reasonable certainty and to calm financial, insurance and property market fears.

Knowing the limited scrutiny that secondary legislation receives, can the Minister give an assurance that the guidance will be unequivocal—in clear, jargon-free and plain English, capable of consistent application and not liable to misleading or alternative interpretations? I say that with some feeling, having had to deal with matters of regulation over many years. Can the Minister also say whether there will be consultation on the details —in the knowledge that, within reason, the sooner this measure is brought in, the better—and whether there will be parliamentary scrutiny of it?

I particularly welcome the Minister's reference to the signal that will be given to the accreditation sector and the insistence on indicating priorities. Getting capacity will clearly be an issue and the person responsible for a building—as happens in some employment situations—does not necessarily need to be an externally trained professional.

I will raise one further issue. A member of my family, as I mentioned earlier, has a flat in a relatively low-rise block in a London borough. I spent a bit of time on the borough's website looking for details of the 2006 planning consent that governed its construction. Unfortunately, all the information—bar the notice—was missing from the website. I was told that I could make an application; it is not clear whether or not I would have to pay for that.

The other aspect of this is the information that goes into building control, which should be the details of how the building is to be constructed. If people are to be able to make a reasoned assessment of the safety or otherwise of their building, having that constructional information is rather important. The standard approach, however, is that building regulation information is not readily accessible on demand and may involve copyright issues where plans are provided. This may be fair enough, but there is an overriding need to know. If the architect, or the approved inspector—or whoever might have this information, since it might not be in the local authority records—cannot be traced, the only solution, which may have to happen anyway to some extent, would be for someone to take intrusive steps to open up parts of the building for inspection.

That basic information, which at some stage must have gone into the public domain or been used for an approved building regulation inspection, needs to be rounded up. Can the Minister offer any comfort or reassurance that steps will be taken to make sure that this essential information is recovered and available to those who need it?

The Deputy Speaker (Baroness Morris of Bolton) (Con): My Lords, the noble Baroness, Lady Eaton, has withdrawn from speaking to this group of amendments so I call the noble Baroness, Lady Pinnock.

Baroness Pinnock (LD) [V]: My Lords, these government amendments, as described, seek to clarify what evidence of culpability, in relation to compliance with the regulations, is required. The very fact that government amendments have been tabled to the Bill at this late stage shows the importance and value of the scrutiny work of this House.

As the noble Earl, Lord Lytton, has just said, a risk-based approach is essential to ensuring that high-risk buildings are prioritised and to calming financial sector fears. The timing of the publication of the guidance to which the Minister has referred is vital if the implementation of the changes in the Bill, and the guidance, are to take effect as soon as possible. These are important additions to the Bill, and we support them.

3.15 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, I am very happy to support government Amendments 7 and 14 in the name of the noble Lord, Lord Greenhalgh. These amendments respond to the issues raised by the noble Lord, Lord Porter of Spalding, whose amendments I moved in Committee because he was having connectivity issues.

I have read the briefing from the Local Government Association, which confirms its support for the government amendments but reflects the concerns it raised about the fact that there were far too few fire risk assessors competent and insured to carry out the fire risk assessments of buildings with external wall cladding systems required under the Fire Safety Bill. We need to implement these powers quickly, and this is a reasonable way forward. The LGA is happy and I, too, am happy to support what the Minister is proposing today.

Lord Greenhalgh (Con): My Lords, I am grateful to all noble Lords who have contributed to this short debate. I will address a couple of points. I assure the noble Earl, Lord Lytton, that I will endeavour to see that the regulation is written in plain English that even I can understand. In response to the noble Earl and the noble Baroness, Lady Pinnock, I agree that the timing is important, and guidance will be available at commencement.

These government amendments ensure that the risk-based guidance issued by the Secretary of State to support commencement of the provisions in the Bill that apply to all relevant buildings has the right legal status to incentivise compliance. These amendments also ensure that the Government can commence the Bill for all relevant buildings as early as possible after Royal Assent and at the same time as the risk-based guidance is issued.

I am sure that noble Lords will agree that there should be no delays in bringing this Bill into force. I thank the task and finish group for all its hard work in developing the advice to the Home Office, which I consider the optimal solution for commencing the Bill. It is important that we get this right, which is why we have listened to the views of the experts who will have to implement the Bill. I beg to move.

Amendment 7 agreed.

The Deputy Speaker (Baroness Morris of Bolton) (Con): We now come to Amendment 8. I remind noble Lords that Members, other than the mover and the Minister, may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press this amendment to a Division should make that clear in debate.

Amendment 8

Moved by ***Lord Kennedy of Southwark***

8: After Clause 2, insert the following new Clause—

"Duties of owner or manager

The relevant authority must by regulations amend the Regulatory Reform (Fire Safety) Order 2005 (SI 2005/1541) to require an owner or a manager of any building which contains two or more sets of domestic premises to—

(a) share information with their local Fire and Rescue Service in respect of each building for which an owner or manager is responsible about the design of its external walls and details of the materials of which those external walls are constructed;

(b) in respect of any building for which an owner or manager is responsible which contains separate flats, undertake annual inspections of individual flat entrance doors;

[LORD KENNEDY OF SOUTHWARK]

(c) in respect of any building for which an owner or manager is responsible which contains separate flats, undertake monthly inspections of lifts and report the results to their local Fire and Rescue Service if the results include a fault; and

(d) share evacuation and fire safety instructions with residents of the building."

Member's explanatory statement

This new Clause would place various requirements on building owners or managers of buildings containing two or more sets of domestic premises, and would implement recommendations made in the Grenfell Tower Inquiry Phase 1 Report.

Lord Kennedy of Southwark (Lab Co-op): My Lords, Amendment 8 in my name seeks to make progress in respect of the recommendations of the first phase of the Grenfell Tower Inquiry. I intend to test the opinion of the House on this amendment.

It is disappointing that progress has been so slow, in all matters, following the tragedy at Grenfell Tower on 14 June 2017. That is a matter of huge regret and, quite frankly, unacceptable. I have stood at this Dispatch Box for years urging the Government to move forward on all aspects of the tragedy with greater speed and urgency, but that plea has so far not been answered. We have on record pledges from Ministers to implement the full recommendations in the report of the first phase of the inquiry, but this Bill does not include provision for any of those recommendations to be implemented. That is most regrettable.

When this Bill was before the other place the Government did not take the opportunity to correct this, and opposed bringing it forward. Instead, they said that they would launch a consultation. The consultation was launched in July and ended last month—a full year after they pledged to implement the first phase recommendations. That highlights the problem: we are not moving quickly enough. I hope the noble Lord, Lord Greenhalgh, will explain to the House why the timescale that the Government are working to is so slow. People have waited far too long for legislative action.

I do not understand why the Government are not even prepared to include in the Bill the simplest of the inquiry's recommendations, such as the inspection of fire doors and the testing of lifts. Perhaps the Minister will tell us why when he responds to the debate. These recommendations need to be implemented urgently. The Government need to do more and act with greater speed.

We remember that terrible night of 14 June 2017, with its dreadful loss of life and the ruin and devastation caused to the lives of those left behind. The physical scars may have healed, but the mental scars remain. It is beyond belief that, more than three years later, we have seen so little action.

This is the third piece of legislation from the Government. Today, people are still living in blocks of flats covered with ACM cladding; there are schools, hospitals and other buildings covered in it as well. Three years after the Grenfell Tower disaster, people will go to bed tonight having to rely on a waking watch. The cladding scandal has people trapped in their homes, unable to sell them and with the unimaginable worry that they are living in buildings which are potential death traps.

We ask the Government to take the long-overdue action to which they have committed themselves. It is urgent, necessary and right. Everyone concerned demands that these safety changes are put into effect. There is no justification for delay. The Government have given no reason for not acting immediately. They say that they want to do it not in this Bill but in the building safety Bill. That is just not acceptable, and I hope that the House will reject it. I beg to move.

Lord Stunell (LD) [V]: My Lords, I strongly support the eloquent plea made by the noble Lord, Lord Kennedy of Southwark, that we should get on with what everybody knows needs to be done. No one is apparently objecting to it, but the Government have not yet acted. The sense of impatience in your Lordships' House is much more strongly felt by those who live in blocks affected by ACM and by all the terrible flaws in building construction revealed during the Grenfell inquiry and in Dame Judith Hackitt's responses.

Amendment 8 systematically lists some of the key requirements that Dame Judith's report strongly commended and recommended be done. The Government came to your Lordships' House—not once, not twice, but at three-monthly intervals, for two years—promising that everything would be implemented and that this was a high priority. I am afraid to say that opportunities have been missed. The draft building safety Bill is silent on these issues, so it is not simply a case of saying that it will come up there: it does not. The opportunity has also been missed to include it in this Bill.

Among the recommendations is the inspection of individual flat entrance doors. We all know that tenants and leaseholders have individual views about personalising their accommodation. Not surprisingly, many flat doors do not comply. A survey in July showed that, of the roughly 750,000 fire doors in buildings of this type, perhaps as many as three-quarters needed some action to make them compliant. There is a potential risk to the residents in block after block after block. The Government are now resisting Amendment 8, which sensibly includes the core requirements of Dame Judith's report for making our buildings safe. We have to wonder exactly how sincere the Government are in their frequent, powerfully expressed commitments, which, unfortunately, they do not seem willing to implement.

Just this last week, I have been looking with members of the Greater Manchester Fire and Rescue Service at what needs to be done to satisfy the requirements emerging from the Grenfell inquiry. They told me that they have been inspecting high-rise buildings in Greater Manchester—as you would expect—with considerable diligence. Having reassessed the situation based on their professional knowledge, they have already required a number of those blocks to completely change their evacuation procedures. Surely it is time that these sensible requirements were included in legislation. It should not just be up to particularly diligent fire authorities to make residents safe, but to owners, leaseholders and the building industry.

Here is the opportunity for the Minister to accept the strength of the argument put forward by the noble Lord, Lord Kennedy. Will he come back at Third Reading and include provisions along these lines? If not, I shall certainly be joining the noble Lord, Lord Kennedy, in the Lobby at the end of this debate.

The Deputy Speaker (Baroness Morris of Bolton) (Con): My Lords, the noble Baroness, Lady Eaton, has withdrawn, so I now call the noble Lord, Lord Shipley.

Lord Shipley (LD) [V]: My Lords, I agree entirely with my noble friend Lord Stunell. There have been—and still are—legislative opportunities for the Government to act. When the Minister sums up, I hope that he will urgently clarify the Government's plans.

As the noble Lord, Lord Kennedy of Southwark, said in introducing this group, progress has been disappointingly slow. He went on to say that it is "beyond belief" that, three years after the Grenfell fire, action is so slow. He is absolutely right. The general public will become increasingly worried by the deeply disturbing revelations of the Grenfell inquiry.

This amendment seeks to implement recommendations made in the Grenfell Tower Inquiry phase 1 report. Surely that is the right thing to do as a matter of urgency. This new clause would clarify the duties of an owner or manager in relation to a building with two or more sets of accommodation to provide information on its construction to a local fire and rescue service. Secondly, it would introduce annual inspections of individual flat doors. This is an essential change, given recent experience and the growth of our knowledge about the state of so many entrance doors. This clause would also require monthly inspections, and for evacuation and fire safety instructions to be shared with the building's residents. What on earth can be wrong with these proposals?

There is nothing in this amendment which should be surprising or problematic. Frankly, the general public would expect nothing else. If the noble Lord, Lord Kennedy, decides to press this matter to a vote, I shall certainly support him.

Baroness Pinnock (LD) [V]: My Lords, this amendment, tabled by the noble Lord, Lord Kennedy, is fundamental to the effective implementation of the principles of this Bill. The role of the responsible person is one of the recommendations of the Grenfell inquiry phase 1 report which was published more than a year ago. I quote from the recommendations in the report:

"No plans of the internal layout of the building were available to"

the London Fire Brigade

"until the later stages of the fire … It should be a simple matter for the owners or managers of high-rise buildings to provide their local fire and rescue services with current versions of such plans. I therefore recommend that the owner and manager of every high-rise residential building"—[*Inaudible*.]

Lord Parkinson of Whitley Bay (Con): I am afraid that we are having a little trouble with the noble Baroness's connection. If she turns off her camera, perhaps that will help with the audio feed.

3.30 pm

Baroness Pinnock (LD) [V]: The report continued:

"I therefore recommend that the owner and manager of every high-rise residential building be required by law:

a. to provide their local fire and rescue services with up-to-date plans in both paper and electronic form of every floor of the building identifying the location of key fire safety systems;

b. to ensure that the building contains a premises information box, the contents of which must include a copy of the up-to-date floor plans and information about the nature of any lift intended for use by the fire and rescue services."

So last year, the Grenfell inquiry report asked for the speedy introduction of these recommendations. A year later, we are waiting.

I know that the Government have stated a firm commitment to implementing the recommendations of the inquiry, and the amendment seeks to rectify this absence of government legislative action. As my noble friend Lord Stunell so wisely said, we all agree that this action needs to be taken and we are all impatient for it to be put in place.

The Government said that this was a high priority. However, even the building safety Bill is silent on the matter. How then can we be assured that it is a high priority for them? Here we have an opportunity to show intent, as a consequence of that tragic fire at Grenfell, to ensure that others do not endure what Grenfell residents endured. If the noble Lord, Lord Kennedy, pushes this amendment to a vote, we on this side will vote in support of this vital change.

Lord Greenhalgh (Con): My Lords, the Grenfell Tower fire was a tragedy of epic proportions. It was the largest loss of life in a residential fire since the Second World War. We have to recognise that a lot has happened and that a lot of actions have been taken by the Government since that event over three years ago.

The Government took early and decisive action to announce an independent Grenfell Tower inquiry. They took decisive action to start the Independent Review of Building Regulations and Fire Safety, led by Dame Judith Hackitt, and they took decisive action to establish the building safety programme. The Government took decisive action in setting up a comprehensive aluminium composite material—ACM—remediation programme. They took decisive action in setting up an independent expert panel to provide advice to government and building owners. They took decisive action in providing £600 million to help with the remediation of ACM high-rises. They took decisive action in providing a further £1 billion to remediate high-rises with other forms of flammable cladding. They took decisive action to ban combustible cladding on buildings within the scope of the ban. The Government took decisive action in introducing a protection board.

I accept that the pace of remediation has been slow, but I point to the progress that has been made this year in particular. This was a year when we had a global pandemic with two national lockdowns, and nevertheless we have seen a considerably greater number of on-site starts in those buildings—high-rises with the same cladding as Grenfell—and we are on track to see that around 90% of buildings will either have had the cladding removed or people will be on-site to

[Lord Greenhalgh]
complete that in a matter of months. That is real progress. This is cross-party; I thank Mayor Burnham, and Mayor Khan in London, but also the local authority leaders for their work to make sure that there has been real pace in the remediation this year. It is not easy to continue these construction programmes in that sort of environment.

I thank the noble Lord, Lord Kennedy of Southwark, for the amendment on the duties of an owner or manager. It is important that we discuss this amendment given the attention it has already received in the other place and in Committee in your Lordships' House. I know that the noble Lord and other noble Lords have strong views on this issue and wish to see the Grenfell inquiry's recommendations implemented as soon as possible. I share that intention. However, the Government do not consider that this amendment provides the most effective means of giving effect to the inquiry's recommendations.

I hope to reassure the noble Lord that our shared objective can be achieved without the need for his amendments, which may in fact work against the swiftest possible implementation of the recommendations. I reiterate, as I said in my all-Peers letter and in Committee in your Lordships' House, that the Government are, and always have been, committed to implementing and, where appropriate, legislating for the inquiry's recommendations. This was a manifesto commitment and I am determined to ensure that we deliver on it.

I will set out our approach on this issue. It is right that we consulted before making regulations to deliver the Grenfell recommendations. As I set out in Committee, this was not solely because we have a statutory duty to do so—but we do, and this amendment is not in keeping with that duty. It also reflects Sir Martin Moore-Bick's own view on the need to ensure broad support for recommendations and an understanding of the practical issues associated with implementing them. Our 12-week public consultation, which closed on 12 October, is allowing us to do just that. I am pleased to say that over 200 responses were received. It is important that we consider carefully those responses before finalising the precise policy detail to implement these new duties. Due consideration has to be given to the views of those who have submitted a response to the consultation.

I will highlight an example of that. The amendment tabled by the noble Lord prescribes a minimum set period for checks of both fire doors and lifts. As we consider our responses to the consultation, other approaches may be suggested that may provide more practical and proportionate options which are no less effective. The amendment may hinder our ability to deliver what may be a better solution for the safety of residents. I hope that is not the noble Lord's intention, but I ask him to reflect on that fact. Understanding and acting on the consultation responses will ultimately help us to produce better, informed legislation, which we will deliver through regulations under the fire safety order as soon as possible after the Bill is commenced.

I reiterate that this amendment is not necessary and will not speed up the legislative process. It requires us to make regulations to amend the fire safety order to introduce new duties on the face of the order, but we consider that we already have the ability to implement such new duties through the power in Article 24 to make regulations, which we plan to use to implement a number of the Grenfell inquiry recommendations. Our intention is to introduce these regulations as soon as possible after the Bill is commenced.

I am also concerned about the impact of the misleading media coverage—even in recent media coverage written by Pippa Crerar that quotes the noble Lord, Lord Kennedy of Southwark—after this amendment was voted on in the Commons on the Grenfell community's faith in our commitment to deliver the Grenfell recommendations. I reassure the Grenfell community that the Government remain absolutely steadfast to their manifesto commitment to implement the inquiry's recommendations.

I think that all noble Lords are seeking the same thing—the swift implementation of the Grenfell inquiry's recommendations—and that is what the Government are committed to. While I understand the spirit of the amendment, it will not do that and may risk undermining our efforts. As such, I hope that the noble Lord will be content to withdraw the amendment.

The Deputy Speaker (Baroness Morris of Bolton) (Con): My Lords, I have received no requests to speak after the Minister, so I now call the noble Lord, Lord Kennedy.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I thank all noble Lords for their contributions in this important debate. While I have no doubt of the sincerity of the noble Lord, Lord Greenhalgh, on all these matters, it is most disappointing that again the Government have failed to take up the opportunity afforded to them to implement the recommendations of the first phase of the Grenfell Tower inquiry. They have said, and repeated today, that they are fully committed to implement those recommendations. What is the problem preventing that? The Government have repeatedly said that they are fully committed to doing so, but for some reason they will not do it. It is not good enough.

One goes home and reads or sees on the television the shocking revelations in the second phase of the Grenfell Tower inquiry, and, sadly, nothing that the noble Lord has said reassures me on these matters. The Government are not taking the decisive action that has again been referred to. It is three years and five months since the fire. I hope that the House will take decisive action and agree with my amendment. I wish to test the opinion of the House.

3.43 pm

Division conducted remotely on Amendment 8

Contents 269; Not-Contents 250.

Amendment 8 agreed.

Division No. 1

CONTENTS

Addington, L.
Adonis, L.
Alderdice, L.
Allan of Hallam, L.
Alli, L.
Alliance, L.
Alton of Liverpool, L.
Amos, B.
Anderson of Swansea, L.
Armstrong of Hill Top, B.
Ashton of Upholland, B.
Bach, L.
Bakewell of Hardington Mandeville, B.
Barker, B.
Bassam of Brighton, L.
Beecham, L.
Beith, L.
Benjamin, B.
Bennett of Manor Castle, B.
Berkeley, L.
Best, L.
Billingham, B.
Blackstone, B.
Blower, B.
Blunkett, L.
Boateng, L.
Boothroyd, B.
Bowles of Berkhamsted, B.
Bradley, L.
Bradshaw, L.
Brennan, L.
Brinton, B.
Broers, L.
Brooke of Alverthorpe, L.
Brown of Cambridge, B.
Brown of Eaton-under-Heywood, L.
Browne of Ladyton, L.
Bruce of Bennachie, L.
Bryan of Partick, B.
Bull, B.
Burnett, L.
Burt of Solihull, B.
Butler-Sloss, B.
Campbell of Pittenweem, L.
Campbell of Surbiton, B.
Carter of Coles, L.
Cashman, L.
Chakrabarti, B.
Chidgey, L.
Clark of Calton, B.
Clark of Kilwinning, B.
Clark of Windermere, L.
Clement-Jones, L.
Cohen of Pimlico, B.
Collins of Highbury, L.
Corston, B.
Cotter, L.
Coussins, B.
Crawley, B.
Crisp, L.
Cromwell, L.
Cunningham of Felling, L.
Curry of Kirkharle, L.
Davies of Brixton, L.
Deech, B.
Desai, L.
Dholakia, L.
Donaghy, B.
Donoughue, L.
Drake, B.
D'Souza, B.
Dubs, L.
Eatwell, L.
Elder, L.
Falkner of Margravine, B.
Featherstone, B.
Finlay of Llandaff, B.
Foster of Bath, L.
Foulkes of Cumnock, L.
Gale, B.
Garden of Frognal, B.
German, L.
Giddens, L.
Glasgow, E.
Goddard of Stockport, L.
Golding, B.
Goudie, B.
Grantchester, L.
Greaves, L.
Grender, B.
Grey-Thompson, B.
Griffiths of Burry Port, L.
Grocott, L.
Hamwee, B.
Hanworth, V.
Harris of Richmond, B.
Haskel, L.
Haworth, L.
Hayman of Ullock, B.
Hayman, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Henig, B.
Hogan-Howe, L.
Hollick, L.
Hollins, B.
Houghton of Richmond, L.
Hughes of Stretford, B.
Humphreys, B.
Hunt of Bethnal Green, B.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Janke, B.
Jay of Paddington, B.
Jolly, B.
Jones of Cheltenham, L.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Jones, L.
Jordan, L.
Judd, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kennedy of The Shaws, B.
Kerslake, L.
Kingsmill, B.
Knight of Weymouth, L.
Kramer, B.
Laming, L.
Lane-Fox of Soho, B.
Lawrence of Clarendon, B.
Layard, L.
Lea of Crondall, L.
Lee of Trafford, L.
Leitch, L.
Lennie, L.
Levy, L.
Liddell of Coatdyke, B.
Liddle, L.
Lipsey, L.
Lister of Burtersett, B.
Low of Dalston, L.
Ludford, B.
MacKenzie of Culkein, L.
Mackenzie of Framwellgate, L.
Mair, L.
Mallalieu, B.
Mandelson, L.
Mann, L.
Marks of Henley-on-Thames, L.
Maxton, L.
McAvoy, L.
McDonagh, B.
McIntosh of Hudnall, B.
McKenzie of Luton, L.
McNally, L.
McNicol of West Kilbride, L.
Mendelsohn, L.
Miller of Chilthorne Domer, B.
Monks, L.
Morris of Yardley, B.
Murphy of Torfaen, L.
Murphy, B.
Newby, L.
Nye, B.
Oates, L.
O'Loan, B.
Osamor, B.
Paddick, L.
Palmer of Childs Hill, L.
Parminter, B.
Patel of Bradford, L.
Pinnock, B.
Pitkeathley, B.
Prashar, B.
Prescott, L.
Primarolo, B.
Prosser, B.
Purvis of Tweed, L.
Puttnam, L.
Quin, B.
Ramsay of Cartvale, B.
Randerson, B.
Ravensdale, L.
Razzall, L.
Rebuck, B.
Rees of Ludlow, L.
Reid of Cardowan, L.
Rennard, L.
Ritchie of Downpatrick, B.
Roberts of Llandudno, L.
Rooker, L.
Rosser, L.
Rowlands, L.
Royall of Blaisdon, B.
Russell of Liverpool, L.
Sawyer, L.
Scott of Needham Market, B.
Scriven, L.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Sikka, L.
Simon, V.
Singh of Wimbledon, L.
Smith of Basildon, B.
Smith of Finsbury, L.
Smith of Gilmorehill, B.
Smith of Kelvin, L.
Smith of Newnham, B.
Snape, L.
Soley, L.
Somerset, D.
St Albans, Bp.
Stephen, L.
Stern, B.
Stevenson of Balmacara, L.
Stone of Blackheath, L.
Stoneham of Droxford, L.
Storey, L.
Stuart of Edgbaston, B.
Stunell, L.
Suttie, B.
Taverne, L.
Taylor of Bolton, B.
Taylor of Goss Moor, L.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
Thornton, B.
Thurlow, L.
Thurso, V.
Tonge, B.
Tope, L.
Touhig, L.
Triesman, L.
Truscott, L.
Tunnicliffe, L.
Turnberg, L.
Tyler of Enfield, B.
Tyler, L.
Uddin, B.
Verjee, L.
Walker of Aldringham, L.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walmsley, B.
Walney, L.
Warwick of Undercliffe, B.
Watkins of Tavistock, B.
Watson of Invergowrie, L.
West of Spithead, L.
Wheatcroft, B.
Wheeler, B.
Whitty, L.
Wigley, L.
Wilcox of Newport, B.
Willis of Knaresborough, L.
Wills, L.
Wilson of Dinton, L.
Winston, L.
Wood of Anfield, L.
Wrigglesworth, L.
Young of Hornsey, B.
Young of Norwood Green, L.
Young of Old Scone, B.

NOT CONTENTS

Aberdare, L.
Altmann, B.
Anelay of St Johns, B.
Arbuthnot of Edrom, L.
Arran, E.
Ashton of Hyde, L.
Astor of Hever, L.
Astor, V.
Balfe, L.
Barran, B.
Bates, L.
Berridge, B.
Bertin, B.
Bethell, L.
Black of Brentwood, L.
Blackwood of North Oxford, B.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bottomley of Nettlestone, B.

Bourne of Aberystwyth, L.
Brabazon of Tara, L.
Brady, B.
Bridgeman, V.
Bridges of Headley, L.
Brougham and Vaux, L.
Browne of Belmont, L.
Browning, B.
Brownlow of Shurlock Row, L.
Buscombe, B.
Caine, L.
Caithness, E.
Callanan, L.
Cameron of Dillington, L.
Carey of Clifton, L.
Carrington of Fulham, L.
Carrington, L.
Cathcart, E.
Cavendish of Furness, L.
Chadlington, L.
Chalker of Wallasey, B.
Chartres, L.
Chisholm of Owlpen, B.
Choudrey, L.
Clarke of Nottingham, L.
Colgrain, L.
Colville of Culross, V.
Colwyn, L.
Cormack, L.
Courtown, E.
Couttie, B.
Craig of Radley, L.
Craigavon, V.
Crathorne, L.
Cumberlege, B.
Dannatt, L.
Davies of Gower, L.
De Mauley, L.
Deighton, L.
Dobbs, L.
Dodds of Duncairn, L.
Duncan of Springbank, L.
Dundee, E.
Dunlop, L.
Eaton, B.
Eccles of Moulton, B.
Eccles, V.
Empey, L.
Erroll, E.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fairhead, B.
Fellowes of West Stafford, L.
Field of Birkenhead, L.
Fink, L.
Finkelstein, L.
Fleet, B.
Flight, L.
Fookes, B.
Forsyth of Drumlean, L.
Fox of Buckley, B.
Framlingham, L.
Freud, L.
Fullbrook, B.
Gadhia, L.
Gardiner of Kimble, L.
Gardner of Parkes, B.
Garnier, L.
Geddes, L.
Gilbert of Panteg, L.
Glenarthur, L.
Glendonbrook, L.
Gold, L.
Goldie, B.
Goldsmith of Richmond Park, L.
Goodlad, L.
Goschen, V.
Grade of Yarmouth, L.
Greenhalgh, L.
Greenway, L.
Griffiths of Fforestfach, L.
Grimstone of Boscobel, L.
Hague of Richmond, L.
Hamilton of Epsom, L.
Hammond of Runnymede, L.
Haselhurst, L.
Hay of Ballyore, L.
Hayward, L.
Helic, B.
Henley, L.
Herbert of South Downs, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Hooper, B.
Hope of Craighead, L.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
Inglewood, L.
Jenkin of Kennington, B.
Johnson of Marylebone, L.
Jopling, L.
Kakkar, L.
Kalms, L.
Keen of Elie, L.
Kilclooney, L.
King of Bridgwater, L.
Kirkham, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lancaster of Kimbolton, L.
Lang of Monkton, L.
Lansley, L.
Leigh of Hurley, L.
Lexden, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Livingston of Parkhead, L.
Lothian, M.
Lucas, L.
Lupton, L.
Mackay of Clashfern, L.
Maginnis of Drumglass, L.
Mancroft, L.
Manzoor, B.
Marlesford, L.
McColl of Dulwich, L.
McCrea of Magherafelt and Cookstown, L.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
McLoughlin, L.
Mendoza, L.
Meyer, B.
Mobarik, B.
Mone, B.
Montrose, D.
Moore of Etchingham , L.
Morgan of Cotes, B.
Morris of Bolton, B.
Morrissey, B.
Morrow, L.
Moynihan, L.
Nash, L.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
O'Shaughnessy, L.
Parkinson of Whitley Bay , L.
Patel, L.
Patten, L.
Pearson of Rannoch, L.
Penn, B.
Pickles, L.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Powell of Bayswater, L.
Price, L.
Rana, L.
Randall of Uxbridge, L.
Ranger, L.
Rawlings, B.
Reay, L.
Redfern, B.
Ribeiro, L.
Risby, L.
Robathan, L.
Rock, B.
Rogan, L.
Rose of Monewden, L.
Rowe-Beddoe, L.
Saatchi, L.
Sarfraz, L.
Sassoon, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Shackleton of Belgravia, B.
Sharpe of Epsom, L.
Sheikh, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shields, B.
Shinkwin, L.
Smith of Hindhead, L.
St John of Bletso, L.
Stedman-Scott, B.
Stewart of Dirleton, L.
Strathclyde, L.
Stroud, B.
Sugg, B.
Suri, L.
Swinfen, L.
Taylor of Holbeach, L.
Tebbit, L.
Trefgarne, L.
Trenchard, V.
Trimble, L.
True, L.
Tugendhat, L.
Tyrie, L.
Vaizey of Didcot, L.
Vaux of Harrowden, L.
Vere of Norbiton, B.
Verma, B.
Wakeham, L.
Warsi, B.
Wasserman, L.
Watts, L.
Waverley, V.
Wei, L.
Wharton of Yarm, L.
Whitby, L.
Wilcox, B.
Willetts, L.
Williams of Trafford, B.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

3.55 pm

The Deputy Speaker (Baroness Morris of Bolton) (Con): My Lords, we now come to the group consisting of Amendment 9. I remind noble Lords that Members other than the mover and the Minister may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press this amendment to a Division should make that clear in debate.

Amendment 9

Moved by ***Lord Kennedy of Southwark***

9: After Clause 2, insert the following new Clause—

"Application of the Fire Safety Order to short-term lettings premises

(1) The relevant authority must, by regulations under section 2, amend article 2 of the Regulatory Reform (Fire Safety) Order 2005 (SI 2005/1541) (interpretation) as follows.

(2) In the definition of "domestic premises", after "one such dwelling);" insert—

"but does not include any premises let to persons for gain as holiday or short-term accommodation during the occupancy of the premises by such persons.""

Member's explanatory statement

The new Clause will clarify that the Regulatory Reform (Fire Safety) Order 2005 applies to holiday lets.

Lord Kennedy of Southwark (Lab Co-op): My Lords, Amendment 9 tabled in my name and that of my noble friend Lord Mendelsohn, seeks to insert a new clause into the Bill. This is the same new clause I proposed on 29 October in Committee on the Bill. The

clause seeks to plug what is in effect a gap in the legislation: the protection afforded by the order. I am sure that this will be of concern to all.

The fire safety order applies to the common parts of buildings and to the planning and arrangements for escape through those common parts. The position of the Government on these matters when we last considered this new clause was that, where someone lets a property for a period, at that point it is covered by the fire safety order. When it reverts to a normal dwelling house, it is not covered and does not need to be covered. The guidance from the Government is confusing to say the least. Last time we discussed this, I referred to the guidance from the Government in the document called *Letting Rooms in your Home: a Guide for Resident Landlords*.

In the fire safety order, Article 26 states:

"Every enforcing authority must enforce the provisions of this Order … in relation to premises for which it is the enforcing authority".

But just look at large cities such as London. It surely must be of considerable doubt that the proper authorities have anywhere near the capacity to carry out the required inspections. How will they even know which properties come under the order, and at which time? In even greater doubt would be whether the owner of such a property has read the guidance and has any idea of their responsibilities under the order if their property is being used on sites such as Airbnb.

As I mentioned when this amendment was last debated, using freedom of information requests has revealed that no fire authority—not a single authority—has ever done an inspection of an Airbnb property, and the relevant authorities have no idea how many properties would come under the order. People renting property on a temporary basis should be properly protected. That means the owners or hosts understanding their obligations and demonstrating that to the people renting the property from them on a temporary basis.

My final point is that we are talking about people's homes. There will be no fire escape: none of the fire safety measures you would find in a hotel, for example. The law is deficient in this regard. I hope the Minister will reassure us that he accepts there is an issue here and that the Government will work to sort out the matter. I beg to move.

4 pm

Lord Mendelsohn (Lab) [V]: My Lords, I first associate myself with the excellent speech of my noble friend Lord Kennedy, who put the case extremely well. Perhaps it would be helpful if I provided some of the legal underpinnings of why this is an issue that requires plugging. In that regard, I would also like to offer my deepest thanks to the distinguished leading counsel, Richard Matthews, who has provided us with a lot of excellent legal advice on the underpinnings of this. When I spoke about him in the last session, I may well have done him a disservice by talking only about his skills in fire and health and safety matters and underplaying his overall exceptional status as a well-regarded QC in all matters of regulation and criminal defence relating to businesses. His advice has been extremely helpful and I hope that the Government have had time to reflect on what it means and the implications of it.

Case law, frankly, is clear about the Government's assumption that a private dwelling ceases to be one under a short-term let and that, therefore, this is covered by the fire safety order. The Government have made a number of statements on this in the House and have published guidance, *Do You Have Paying Guests?*, in this regard. In *Do You Have Paying Guests?* the Government's position is expressed: when anyone pays to stay in your property, other than to live there as a permanent home, the property is not a premises occupied as a private dwelling.

Such guidance is not capable of establishing, as a matter of law, that whenever anyone pays to stay in a property, other than to live there as a permanent home, the property is not a premises occupied by someone as a private dwelling. Furthermore, such guidance is not capable of creating a duty in law extending the operation of the articles of the fire safety order to all such premises where anyone pays to stay in this way; nor is it capable of amending the definition of "domestic premises" in the fire safety order to incorporate the definition of what apparently makes premises temporarily no longer domestic premises.

This point is strongly embedded in existing case law. Looking at, in particular, the elements related to definitions of "private dwelling", "occupation" and "occupier", it would be worth making noble Lords aware that case law, in the case of private dwelling, is recent and relevant. There have been a number of landmark cases, including Caradon District Council v Paton, which had some very emphatic judgments expressed by Lord Justice Latham and Lord Justice Clarke. In relation to the occupation and occupier elements, the Court of Appeal judgment by Lord Justice Lewison in Cornerstone Telecommunications Infrastructure Ltd v Compton Beauchamp Estates Ltd in 2019 is of course highly relevant.

What these case law examples identify is that the following considerations come from those points. First, particularly in regard to land and property, occupation can be simultaneous with another occupier and does not require either a continuing or exclusive physical presence. While a contract is not wholly determinative, the fact that a licence to occupy is limited and preserves extensive power of re-entry for the host, coupled with the temporary limitations of the licence, means that the host, particularly if, at other times, they are in occupation of the premises as a private residence, continues to be in legal occupation of the premises as a private dwelling during the period of the limited licence of the guest.

Therefore, of course, this, along with other considerations that come from those case law examples, demonstrates that there is a clear gap in the law. Whatever the intention of the Government to ensure that such short-term lets come under the fire safety order, in law, specifically definitionally and under case law, they do not; that obligation is simply not there. So this amendment plugs that gap, and I hope that the

[Lord Mendelsohn]
Government are highly sympathetic to it and more than willing to consider how they may integrate this into the Bill.

Finally, another matter raised previously, which is not part of this amendment but does not fit neatly into this Bill, is that there should be some consideration of other elements that are missing in law, which again seem to be omissions due to the nature of the short-term letting business. One of those relates to smoke and carbon monoxide detectors, which fall under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015. These specifically talk about the objective that landlords in the private rented sector in England should ensure that a smoke alarm is installed on every storey of a rented dwelling when it is occupied under a tenancy and that a carbon monoxide alarm is equipped in any room that contains a solid, fuel-burning combustion appliance. They also require landlords to ensure that such alarms are in proper working order at the start of a new tenancy.

Because short-term lets fall outside this definition, there is no obligation to ensure either that there are such smoke and carbon monoxide alarms or that they are working. To verify this, during the course of the week I went on to a site and found adverts for short-term lets of a number of properties that ordinarily should, even for building regulations or insurance purposes, have such things, which were explicit in saying that they did not have these devices. Therefore, it is very clear that in operating the law this is a clear error. This is not what the intention was, but this is another definitional problem. I do hope that the Government will be forthcoming in looking to clear up these clear gaps.

Lord Tope (LD): I am very grateful to the noble Lord, Lord Kennedy, for raising this issue today, and to the noble Lord, Lord Mendelsohn, for explaining it so fully and clearly. We have come a very long way in a fairly short time from the days when it was thought to be a good idea for people going on holiday for, say, a month to let out their home for a month to help cover the costs of the holiday, and everybody was happy. I recall lively debates in your Lordships' House during the Deregulation Bill, as it then was, when we did away with the requirement for planning permission to be granted if a home in London was to be let for more than 90 days. That was thought to be one of the regulations that should be done away with, and so it was.

Although this may have happened anyway and is not a consequence of that, there has been an explosion—perhaps I should not use that word, but that is the way it has been—in the number of properties being let, initially primarily in central London, then increasingly spreading to the suburbs of London and now, for some time, throughout the United Kingdom, particularly in areas of high visitor attraction. Properties that are no longer, frankly, people's homes, are let; probably most of these properties are not lived in by anybody who could conceivably be called an owner-occupier, as the people living in them change, often quite literally night by night.

If you talk to the Covent Garden Community Association, for instance, they will give you some considerable horror stories of the sorts of things that go on in that particular part of central London. We see whole blocks of flats where there is not a single resident—or, worse, there is a single resident surrounded by people who change on an almost nightly, and certainly weekly, basis. So it is a considerable issue, far wider than the very important one raised by the noble Lords, Lord Kennedy and Lord Mendelsohn, and I am grateful to them for spotting this particular loophole, if it is a loophole—this gap in the legislation.

We need to recognise that, for better or for worse—probably for better and for worse—it is no longer simply a question of people letting their home while they are away for a temporary period. This is now big business, and there seems to be a significant and important gap in the legislation. I hope the Government will, if not agreeing to this particular amendment, certainly recognise that this is a very important issue throughout the country, that it needs to be dealt with very urgently, and that this is an opportunity to do so.

The Earl of Lytton (CB) [V]: My Lords, I declare an interest here, as a co-owner of holiday cottages. I reassure noble Lords that for many years now these have been subject to precisely the type of matters raised by the noble Lord, Lord Mendelsohn, such as electrical system and appliance safety and smoke and carbon monoxide detection, which lie behind the amendment. To be honest, this is no more nor less than good practice; however, success depends on how intrusive the measures might be under the Regulatory Reform (Fire Safety) Order. There are, as I mentioned earlier, some good precedents for a degree of self-assessment.

The noble Lord, Lord Kennedy, in ably moving this amendment, referred, I think, to hotel standards in comparison with Airbnb. I suggest that trying to apply hotel standards for something that is purpose-built for that type of operation, and with the numbers involved, is probably a different situation. However, some of the principles undoubtedly apply. One of the most important factors is that, unlike the homeowner in their own flat, the visitor is not necessarily familiar, at any rate initially, with the layout of the building. It so happens that every time I have to rent a property such as an apartment, or take a hotel somewhere, I usually make it my business to work out where the fire escape is, because one hears so many horror stories about these things. Generally, it is fine, but I make that point.

The point has already been made [*Inaudible.*] flip in and out of principal or second home status largely undetected. A point arises as to whether, in every case, the mode and category of occupation by somebody who is paying to stay is actually different, whether they are a tenant on a short-term holiday or something even shorter than that, such as Airbnb. The important thing is that the amendment does not need to capture premises that are outside the intentions of noble Lords or, for that matter, fail to capture those that should properly be brought into it.

If I may digress, I make a plea for consistency in the way some of these regulations are applied. I shall use electrical systems as an example. Recently, I was alerted to the need for a certain type of electrician qualification because of a query from building insurers. It transpired

that accreditation for an electrician to self-certify their own installation work does not automatically permit them to inspect and certify somebody else's. Even electricians do not understand this, let alone householders, so knowing what to ask for is a science in itself, and I think that sort of thing needs to be resolved. To stay on that subject, just about every electrician I know is already tied up doing landlord testing, so getting anything in addition done is not at all easy, because there is not the manpower capacity in the system. Personally, I would not want some quick-fix form of training and accreditation on electrical matters, other than by somebody who had a background and a proper qualification in electrical installation.

Finally, however safe the system may be, occupiers bring in equipment of their own, or may do things that are unsafe. There should be a certain amount of saving provisions for that sort of eventuality. I think of a typical example: you go and do your regular inspection of a holiday home and you find that the cover of the smoke alarm is dangling, with the battery missing. It may be that somebody removed the battery because it was bleeping—although, because you put the battery in only three months ago, that is not a terribly likely situation. Then it occurs to you that perhaps the battery was needed for some child's toy and it was removed for that reason. Occupiers can do silly things, particularly when their minds are on holiday. If the noble Lord were to press the amendment, I am not sure at the moment which way I would vote, but I do think there is an issue about compliance in this case that needs to be addressed.

4.15 pm

Lord Whitty (Lab) [V]: My Lords, between them my noble friend Lord Mendelsohn and the noble Earl, Lord Lytton, have shown how complex this situation is and why we need much greater clarity to ensure that such premises as are referred to in this amendment are covered by the fire safety order and everything that flows from it.

Like the noble Lord, Lord Tope, I have considerable anxiety at the way in which the Airbnb model has mushroomed—Airbnb itself and other less identifiable organisations and individuals. Flats in both private and social housing have effectively become short-term let premises, with a continuous rotation of people moving in and out. I have, in other contexts, frequently in support of the noble Baroness, Lady Gardner of Parkes, who raises this frequently, been concerned for wider reasons, such as the effects on the housing market, environmental concerns. But in this context, there is also a safety concern.

The leaseholders, who are normally the owners of these flats, have quite frequently decided to make a business out of them. In terms of social housing, it has quite often been the people who have inherited what were once right-to-buy flats, or have bought them and turned them into a business. I have queried on previous occasions whether that is strictly legitimate, and quite what the role of the tax authorities is in this area, but in this context we are talking about safety. I am aware that in some of those flats, the leaseholders, sometimes in conjunction with the organisers of short-term lets, have changed the format of those flats—in effect dividing them up, increasing the number of bedrooms and, in some cases, knocking down walls and changing layouts, thereby compromising firewalls. More frequently, to allow for multi-occupancy, and in some cases for such things as disco equipment—because some of these flats are used not so much for tourist families but for parties and worse—the electrical systems are altered to cater for that clientele.

The requirements that would normally be on the owners to inform the occupants of the safety provisions and evacuation procedures, and to provide for detection instruments—smoke alarms, et cetera—are not observed in the often radical conversion to a different purpose than that of being a family home. If such premises can be seriously and dangerously subdivided, then there is a real risk here.

We have to be clear whose responsibility it is. In most cases, the responsibility is on the leaseholder, or it may be on whoever is supposed to inform the occupants of the safety provisions. Either way, if, for example, you are in a large block and a few of the flats in it are let by Airbnb or similar, you are a danger to the rest of the occupants. It is once again necessary, irrespective of the form of tenure, to ensure that all temporary as well as permanent inhabitants are made safe and do not impact on the safety of other families and occupants in neighbouring flats. It may be complex, but the outcome and intention are clear. We need clarity, consistency and to make sure that such premises are safe and covered by the legislation.

Baroness Pinnock (LD) [V]: My Lords, in Committee, the noble Lord, Lord Kennedy, raised important concerns about the application of fire safety legislation to properties that are, in part or in whole, let as holiday lets. It was unfortunate that the Government were not able to return on Report with a comprehensive response in the form of a government amendment, which would have accepted that there is confusion about the applicability of the legislation. The noble Lord, Lord Kennedy, has rightly raised these concerns again. What must not happen is that the growing sector of short-term lets falls into a grey area of the legislation, and that the Government wait for a serious fire incident to accept that omissions need to be closed.

The noble Lord, Lord Mendelsohn, has provided expert legal advice on this matter, which demonstrates that there is a gap in the legislation. It is complicated, as the noble Earl, Lord Lytton, explained. The noble Lord, Lord Whitty, raised further concerns about potential subdivisions of dwellings. However, the amendment proposes a way forward to close a gap that all noble Lords agree exists in the fire safety extent of the current and proposed legislation. I will listen carefully to what the Minister says in reply and I hope that he seizes the opportunity to put this matter right. I look forward to his response.

Lord Parkinson of Whitley Bay (Con): I thank the noble Lords, Lord Kennedy of Southwark and Lord Mendelsohn, for raising again this important issue—the treatment of short-term accommodation and holiday lettings under the fire safety order—just as they did in

[Lord Parkinson of Whitley Bay]
Committee. I thank all noble Lords who have spoken in this debate. Like them, I want to ensure that anybody staying in short-term or holiday accommodation is assured that their premises fall within the scope of fire safety legislation, and that there is a requirement on the owner to ensure, as far as is reasonably practicable, that they are safe from the risk of fire during their stay.

The noble Lords, Lord Kennedy and Lord Mendelsohn, mentioned the *Do You Have Paying Guests?* guidance that the Government issued. That was published in 2008 and is being updated, not least—as the noble Lord, Lord Tope, said—because of the growth of this type of short-term letting that we have seen since then. As part of that update, we have consulted many in the tourism sector, including Airbnb and similar platforms. It might reassure noble Lords to know that Airbnb has provided advice to its hosts in the past, including a leaflet that was drafted in partnership with the National Fire Chiefs Council, giving tips for those who use that platform on how to comply.

Turning to the law, the fire safety order applies to non-domestic premises. The responsible person for each premises is required to undertake a fire risk assessment and put in place adequate and appropriate precautions to manage the risk of fire to those lawfully on the premises. The question here is whether domestic premises, when let through peer-to-peer online platforms or similar means, continue to be domestic premises. I am grateful to the noble Lord, Lord Mendelsohn, for sharing the legal advice that he cited in Committee and again today on this point.

Richard Matthews QC submits that, if they are let as holiday accommodation, domestic premises do not necessarily cease to be domestic premises. A fire safety order would therefore not apply. As I explained in Committee, we had a different interpretation of the definition of domestic premises in Article 2 of the fire safety order but, as we said we would, we have taken the points raised by noble Lords and Mr Matthews on board and carefully considered them. To that end, the Home Office sought further legal advice, which acknowledges the points made by Mr Matthews and noble Lords that this is a complex issue with some legal ambiguity. That we are having this debate makes that point forcefully.

I hope I reassure noble Lords by setting out that the ambiguity is not a matter of arguing that either all or none of the premises are within the scope of the fire safety order, but that they must be considered case by case. I agree that ambiguity on such an important issue as this is not helpful. We want to ensure that fire safety legislation is clear, robust and properly protects the public. It is clear that further consideration of the points that noble Lords have raised is needed to ensure that the fire safety order captures the various types of premises let through peer-to-peer or similar platforms in a workable, practical and fair way.

Given the complexity of that undertaking, we do not believe that this Bill is the right vehicle through which to resolve it. It will, quite rightly, require consultation with interested parties, in both the fire safety and the tourism sectors. Doing that would delay the passage of the Bill, but we agree with noble Lords that that work needs to be done and I am happy to commit to undertaking it. I hope that noble Lords who have spoken today will continue to work with us as we do that, and that the noble Lord, Lord Kennedy, feels able to withdraw his amendment as a result of that reassurance.

Lord Kennedy of Southwark (Lab Co-op): I thank all noble Lords who have spoken in this debate. As my noble friend Lord Whitty said, clarity and consistency are important here. In particular, I pay tribute to my noble friend Lord Mendelsohn for first bringing this matter to my attention and enabling us to table the amendments in Committee. There has been good engagement from the noble Lord, Lord Parkinson of Whitley Bay, and I am genuinely grateful for that. I am also grateful for the meeting we had a couple of days ago and the response that the noble Lord gave to the issue we raised today.

We all accept that there is a problem. I am pleased that we acknowledge that and that the Government are going to look at it in detail. That is a good outcome, so I thank the noble Lord for that. At this stage, I am happy to withdraw the amendment.

Amendment 9 withdrawn.

The Deputy Speaker (Lord Alderdice) (LD): We now come to the group beginning with Amendment 10. I remind noble Lords that Members other than the mover and the Minister may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press this or anything else in the group to a Division should make that clear in the debate.

Amendment 10

Moved by ***Baroness Pinnock***

10: After Clause 2, insert the following new Clause—

"Public register of fire risk assessments

(1) The Secretary of State must, by regulations, make provision for a register of fire risk assessments made under article 9 of the Regulatory Reform (Fire Safety) Order 2005 (SI 2005/1541) (risk assessment).

(2) Those regulations must provide that the register is—

(a) publicly available, and

(b) kept up-to-date.

(3) Regulations under this section are—

(a) to be made by statutory instrument; and

(b) subject to annulment in pursuance of a resolution of either House of Parliament."

Member's explanatory statement

This new Clause would enable prospective and current renters, leaseholders and owners to check the fire safety status of their home, by accessing a public register similar to the EPC register.

Baroness Pinnock (LD) [V]: My Lords, Amendment 10, in my name and that of my noble friend Lord Shipley, seeks to establish the provision, in law, of a public register of fire risk assessments. I will speak also to Amendment 11 in my name and that of my noble friend Lord Stunell, which seeks to establish a public register of fire risk assessors. Amendment 12 in this group, in the name of my noble friend Lord Stunell, is on permitted developments. My noble friend will be speaking about this in detail. I say at the outset that

the Liberal Democrats support the Bill wholeheartedly but feel that there are opportunities for improvement, some of which are within the amendments in this group.

I thank the Minister very much for the opportunities that he has provided to discuss these and other amendments. They have been very useful, and we have been able to talk around some of the issues raised.

I turn to Amendment 10. Energy performance certificates are mandatory and open for potential homeowners to view. EPCs are now an accepted part of house buying and renting, and that requirement is having a significant impact on home energy improvements. Why, then, cannot the same process be used for an issue that can literally be one of life and death?

4.30 pm

The Grenfell inquiry is slowly but surely unravelling multiple causes of that dreadful tragedy. It has revealed an almost complete lack of basic information about the building and its adaptations that contributed both to the fire and to the response by the emergency services. Amendment 10, if accepted, will address that lack of information by mandating a public register of fire risk assessments. Such a register will bring vital fire risk assessments to the forefront of considerations by homeowners and tenants. Once those who live in a property take more notice of fire risks, such as the importance of well-fitting fire doors—a subject raised in earlier debates—the consequence will be that any replacements will be made with fire hazards in mind.

The other obvious benefit is that construction and maintenance companies will be aware that their work is being measured against a public test of fire risk. This knowledge will inevitably lead to safety-first construction and improvements. A mandatory, publicly available fire risk assessment register will be another important step in preventing further major domestic fires, as accountability and transparency become the norm.

Of course, as we heard in Committee, a register of assessments is dependent on qualified and competent fire assessors being available in the numbers required. We know that there have been significant cuts in government funding of fire and rescue services over the last 10 years, and one area of work that has borne the brunt of those cuts has been that of fire risk assessors. The Government have stated that they will develop a plan to greatly increase the numbers. That will of course take several years, but it must not slow down or prevent the start of this vital area of fire safety, even in a phased way.

Homeowners, tenants and freeholders will want to ensure that risk assessments are undertaken by fully qualified professionals—hence Amendment 11, which would establish a mandatory public register of qualified assessors. Again, the openness that this would enable would help property owners to have confidence in assessments, and there would surely be a knock-on effect on property insurance.

There would be many positive benefits from having both registers and I hope that, when he responds, the Minister will accept these proposals. However, if he is, unfortunately, not able to do so, I have to give notice that on Amendment 10 in particular, in the interests of householders, I will seek to test the opinion of the House.

The Earl of Lytton (CB) [V]: My Lords, it is a pleasure to follow the noble Baroness, Lady Pinnock, and I thank her for moving her amendment.

On the question of registers, I certainly agree that some list of assessments should be held for regulatory compliance reasons. However, there are likely to be several assessment bodies. Although something like the register of energy performance certificates, referred to by the noble Baroness, might be appropriate, I hope that the basis of assessment does not change every few years, as has happened with EPCs. I also hope that the standard of those accredited will be based on those with a professional standing and a working knowledge of construction. That standard was not adopted with the accreditation of energy inspectors, and I am sure that the noble Baroness would agree with me on that.

Beyond the minimum for regulatory purposes, it would probably be necessary to avoid a register that contained sensitive information. It is fair to say that some of the information that could be in a fire risk assessment might be sensitive. Therefore, it should not just be an online, free-public-access provision—at least, not in its full form.

It is also worth bearing in mind that this will, to a degree, for ever be a work in progress, so the register will not necessarily be accurate and up to date—but of course that is the situation with EPCs. However, somebody would have to maintain it. I think that that could be done only by a central government body, and that would have resource implications.

The really important thing is that occupiers and managers of buildings know that an assessment has been carried out, that it is in date and that occupiers in particular have the right to see it, and that any competent authority may do so as well.

Turning to Amendment 11, on the question of a public register of assessors, it is likely that many bodies will offer accreditation. Again, a central register would have to be held by some public agency if convenient public access was to be a reality. In practice, certifying bodies will themselves hold records of those accredited. I am not entirely convinced that others beyond occupiers, prospective purchasers and relevant public authorities need to have access to the register, and the public knowing that this matter is in hand, with enforcement of the need to carry out assessments, starting with those at greatest risk and progressing through the housing stock, would seem a fair balance.

The issue immediately before us, which has already been touched on, is the assessment of competence and, more particularly, capacity. This cannot be dealt with immediately. Not only does trainer capacity need to be built but issues to do with professional indemnity cover need to be resolved. I have already flagged up a number of these issues with the Minister, particularly the question of accrediting already competent professionals with a knowledge of construction. Therefore, the point was well made by the noble Baroness but there are issues that need to be taken into account.

[The Earl of Lytton]

On Amendment 12, in this group, I would much have preferred the noble Lord, Lord Stunell, in whose name it stands, to speak before me. This concerns one of the shortcoming issues that seem to be common in permitted development rights developments. Shortcomings in terms of living space, amenities, local environment, open green space standards and so on are all too frequent, and the health outcomes for occupants are also often very poor. Some of the buildings subject to conversion to residential have been quite unfit for that purpose. I have inspected some, so I can say that from professional experience. None the less, these projects have been signed off, although I suggest that that does not get owners off the hook on compliance more generally and that all developers who think themselves protected by completion certificates should think carefully about that. There is certainly an issue here.

In the meantime, ensuring fire safety in these permitted development conversions is a matter of top priority, particularly because they happen to house some of the most vulnerable people in society. I look forward to hearing the Minister's response.

Lord Stunell (LD) [V]: My Lords, I will speak to Amendments 10 and 11, but will speak more fully on Amendment 12, as prefigured by my noble friend Lady Pinnock and the noble Earl, Lord Lytton.

Amendment 10 requires there to be a national published risk register, of which the two key requirements we have set out are that it should be publicly available and up to date. I understand the noble Earl's concerns that this would always be a work in progress, but fire safety is always a work in progress. If we are talking about annual inspections, keeping a fire risk assessment up to date should come with the job.

If every landlord, designer, building contractor and construction operative always acted in strict compliance with the spirit and letter of every part of the existing regulations, this amendment would be superfluous. In my former professional life, I spent some years supervising building construction work; in case every anecdote about shoddy builders has bypassed your Lordships, I can confirm that such strict compliance is rare. However, one thing I thought sacrosanct was compliance with fire regulations. Even if the brickwork was shoddy and the plumbing a nightmare, at least the fire doors would fit. I now know I was wrong.

The picture emerging with devastating force from the evidence given to the Grenfell Tower inquiry is that at every level, from client and specifier to designer, contractor, subcontractor, and, as it now seems from the evidence this week, even specialist suppliers of critical components, it was not just a case of a few unfortunate errors because of lack of skill or experience but in some cases deliberate efforts to defeat the rules—even safety-critical rules on which many lives depended.

In the months and years since that terrible fire, evidence has been accumulating that this was not a one-off event in a particular building that happened to have a terrible outcome. There now seem to be, right across the country, many hundreds of buildings containing thousands of homes that are not just non-compliant, but pose a real and significant risk of harm to the people who live in them.

None of this would have emerged had the horrific events of that night not brought it very starkly to light. There was no transparency or openness to inquiry but a dismissive casualness in handling the legitimate concerns of those who had worries. In the case of the residents of Grenfell, those who had practical observations of non-compliant building work were completely swept aside. There was certainly no register you could check to show that your home was not a death-trap.

That underlines a significant truth: when those with power and authority find out about bad things and high risks that do not affect them but have a great or even fatal impact on the vulnerable and the weak, their natural reaction is to keep the news to themselves in order to avoid trouble and expense and to hope for the best. We must decisively end the hoarding of bad news on fire safety by the informed and powerful and empower the vulnerable who carry the risks and sometimes pay the ultimate price of life itself.

From now on there will be fire safety assessments. That is a very good thing, but it is essential that those assessments are in the public domain. I take the caveats that the noble Earl, Lord Lytton, has rightly made about privacy, security and so on, but the essentials of a fire safety certificate should be available for public inspection. They should be at least as public and accessible as an energy performance certificate from which you can discover how much insulation I have in my loft and I can discover how much the noble Earl has in his. We put up with that because of the greater good; we ought to be ready to put up with the same sort of thing for the far greater good of saving life post Grenfell.

It is unacceptable for landlords and building owners to hoard that assessment to the detriment of those to whom they rent and lease their properties and whose lives are in their hands. Grenfell Tower residents' legitimate and specific fears about weaknesses they could see with their own eyes were swept away by those in authority. No one knew if any assessment had been made, what it said or what should be done about it, and who should rectify the faults disclosed.

4.45 pm

In Committee, I said that only an open public register can safeguard residents and that I hoped to hear the Minister fully accept that case. He readily conceded that it was important that residents should have safe homes, but I missed his agreement that an open public register was a vital safeguard and essential step in securing their safety. I and my noble friends are back again, asking him to endorse this straightforward provision.

Amendment 11 mandates an open register of fire risk assessors, the people who draw up the assessments, and every building owner will be looking for a competent assessor. Let us stop there for a moment. Not every builder owner will do so; an unscrupulous or impoverished landlord—one perhaps is more common than the other—may want not so much a competent assessor as a compliant one. Here the risk is linked to the likely

shortage of fully competent professional assessors and the very big risk of people who would be attracted to passing themselves off as suitable and qualified when they are not.

More positively, when diligent and caring landlords want to recruit an assessor, a public register of qualified persons makes that a much simpler prospect. That list might be produced, as the noble Earl, Lord Lytton, has hinted, by deeming certain professional qualifications achieved in one of the chartered institutes as evidence for entry on to the register. It might be by a separate professional route as well or instead. In either case, we must look carefully at making sure the number of assessments required reasonably matches the number of qualified assessors in place. We need to make absolutely sure that there are no unqualified assessors making compliant assessments.

We should remember that there are many semi-professional landlords with a modest property portfolio of perhaps only one or two properties and no great professional competence themselves. However well-intentioned they are, they will often not have the capacity to do meaningful due diligence on an assessor. Making sure they have a safe route to the recruitment of a qualified and competent assessor is vital to the integrity of the new regime. In Committee, the Minister said that there were plans coming that would cover all this and, indeed, all our other concerns, but he failed to explain what they would be or when they would come, and he did not commit to an open register of fire risk assessors. I hope his thinking has developed some more in the meantime and I look forward to hearing from him.

Amendment 12 in my name is rather different and does not quite fit into the group, but here it is. It arises from a specific, recent, worrying case in my own borough of Stockport. I am indebted to the chief fire officer of the Greater Manchester Fire and Rescue Service for providing me with support and paperwork in connection with it. I shall refer to some of that in a minute. The amendment requires that any building being converted to two or more residential units under the permitted development rules must have a fire risk assessment before any of the premises are occupied.

This brings me to a building called Regal House in the centre of Stockport. It is a multi-storey office block, recently converted to residential accommodation under the expanded permitted development right extension. After occupation, the fire service carried out an inspection, resulting in an immediate enforcement order requiring a waking watch to be put in place pending remediation. The alternative, they made clear, would have been to evacuate the block.

Under permitted development rights, no application for planning was required, and although building regulations would have been required, there is no requirement for fire inspection before occupation.

In fact, my concern about Regal House turns out to have been justified not so much by that incident, where a prosecution may follow—I do not think it right to expand on that—but by the matter that it has brought to light; namely that under the terms of the draft building safety Bill, which is currently before the House of Commons Select Committee, there is no requirement for such a fire safety inspection at all for permitted development property.

The Greater Manchester Fire and Rescue Service copied me into the evidence that the Greater Manchester High Rise Task Force submitted to the House of Commons Select Committee, in which it raised precisely that point. The evidence stated that

"the key findings of the Independent Review of Building Regulations and Fire Safety which the Government accepted in principle are already being watered down. The principles of Gateways was welcomed by the Task Force"—

that is, the Greater Manchester task force—

"and in particular Gateway 1 as a means of embedding safety into the lifecycle of the building from the initial design stage. It is astonishing therefore, that there is no legislative provision within the Bill"—

the building safety Bill—

"for this and the Government plans to exempt buildings developed under Permitted Development Rights from this vital stage. It cannot be right that consideration of key safety features should not be required for all buildings at the outset and there are numerous examples in Greater Manchester of conversions undertaken without planning approval under permitted development posing a risk to residents".

In other words, far from the situation being set to improve, the Government propose to entrench the permitted development right to bypass fire safety at what is known as gateway 1—the all-important design stage when critical decisions are made about layout and structure. This amendment quite simply says that that is the wrong approach.

What I am looking for today is for the Minister to say that he accepts the view of the Greater Manchester Fire and Rescue Service that the fire service should be fully engaged from the start of the design process; that this should apply not just to new builds but also to conversions under the permitted development right regime; and that under no circumstances should the use of permitted development rights be used to circumvent the early and proper application of fire safety policies. I look forward to the Minister's answers on all of those points.

Lord Kennedy of Southwark (Lab Co-op): My Lords, it is a pleasure to speak in this debate and to support the noble Baroness, Lady Pinnock, and the noble Lord, Lord Stunell, on their amendments in this group. Both have comprehensively explained the intent of their amendments and, as I said, I fully support them. If the noble Baroness decides to test the opinion of the House on Amendment 10, I can assure her that the noble Lords on these Benches will support her in that endeavour.

Amendment 10 is particularly important as it talks about the public register of fire risk assessments, and I fully support it. As we heard from the Grenfell Tower fire inquiry and from elsewhere, the complete lack of important information about buildings is a huge issue. This amendment requires the Secretary of State to make provision for a register of fire risk assessments that is publicly available so that tenants and residents can see it. Importantly, the amendment also requires the register to be kept up to date. The relevant regulations would be brought before Parliament and subject to

[Lord Kennedy of Southwark]
parliamentary procedure. I very much agree that there must be a safety-first approach to fire risk, and that is why I fully support these amendments.

Amendment 11 provides for a public register of fire risk assessors, which we have talked about. This amendment again raises an important issue that has arisen in a number of amendments throughout our consideration of the Bill; namely whether people are sufficiently qualified to do the assessments. Like many other noble Lords, I am concerned that we must never have fire risk assessment on the cheap. We need to have properly qualified people who know what they are doing and who can spot and correct the problems. A publicly available and up-to-date register of such people will make the difference.

The noble Lord, Lord Stunell, in speaking to Amendment 12, again made the point about permitted developments. It is absolutely right that fire safety and the work of the fire authorities is paramount when we are building buildings.

I fully support all the amendments in this group. As I said, if the noble Baroness, Lady Pinnock, tests the opinion of the House on Amendment 10, these Benches will support her.

Lord Greenhalgh (Con): My Lords, I thank the noble Baroness, Lady Pinnock, and the noble Lord for raising this important issue on establishing a public register of fire risk assessments. The fire safety order currently places no requirement for responsible persons to record their completed fire risk assessments, save for in limited and specified circumstances. The self-regulatory and non-prescriptive nature of the fire safety order is the cornerstone of the legislation. It provides for a proportionate approach to effective regulation of fire-related risks across the wide range of buildings that fall within its scope.

I do, though, agree with the noble Baroness, Lady Pinnock, that it is of paramount importance that residents have access to the information they need to feel safe and be safe in their homes. However, the creation of a fire risk assessment register would place a new level of regulation upon responsible persons that could be seen as disproportionate. There are also questions in relation to the ownership and maintenance of such a register and where the costs would lie. There is a delicate balance to be struck.

The Government do, however, acknowledge that there is work to be done and that improvements can be made in respect of the sharing of important information with residents and other relevant persons. That is why the fire safety consultation set out a range of proposals to ensure that those persons are provided with vital fire safety information.

First, the fire safety consultation proposed to change the current position that a responsible person does not have to record their fire risk assessment by including a proposed new requirement on all responsible persons to record their full fire risk assessments. This would provide a level of assurance that their duty to complete a suitable and sufficient fire risk assessment has been fulfilled. In addition, the consultation also included proposals for responsible persons to take steps to provide vital fire safety information to residents, including the fire risk assessments on request. We are considering responses to the consultation to ensure that we take the needs of residents into account when establishing the final policy approach. The full consultation can be found online at GOV.UK and we will publish a response at the earliest opportunity.

I turn now to the related amendment from the noble Baroness, Lady Pinnock, and the noble Lord, Lord Stunell, which seeks to create a public register of fire risk assessors. I agree with the noble Lord and the noble Baroness that there is a clear need for reform in relation to fire risk assessors to improve standards. That is why the Government included a proposal for a competence requirement for fire risk assessors and other fire safety professionals in the recent fire safety order consultation.

Noble Lords will recall that, in Committee, I mentioned the work of the industry-led competency steering group and its subgroup on fire risk assessors. The group published a report on 5 October, which included proposals in relation to third-party accreditation, a competence framework for fire risk assessors and the creation of a register of fire risk assessors. The working group recommend that the register should be compiled from the existing registers and should be easy to use, with open public access to records of individuals and organisations. It is right that industry leads this work and continues to develop the competence and capacity of these professions.

I wish to assure your Lordships' House that the Government are committed to working with the fire risk assessor sector to develop a clear plan to increase its capacity and capability. However, it is necessary to establish this basic principle of competence before we consider how the sector can be further professionalised. Again, the responses to the fire safety consultation proposals will inform the approach on issues relating to competence.

The right approach is for the Government to first establish a basic principle of competence and consider the competency steering group's and subgroup's proposals in relation to a register of fire risk assessors. The Government's position is that this work should continue to be led and progressed by industry. We will support industry in taking forward this vital work.

5 pm

I do not disagree with the idea of a professional register of fire risk assessors, but establishing a register for inclusion within the Fire Safety Bill is not the appropriate way forward, given that we are looking to deliver the fire safety consultation outcomes and the recommendations of the competence steering group. It would also significantly delay commencement of the Bill and place significant pressure on capacity in the sector. I also need to consider any regulatory impact of the recommendation on a professional register, as a result of the non-regulated principles of the fire safety order.

I turn to Amendment 12, tabled by the noble Lord, Lord Stunell, and the noble Baroness, Lady Pinnock. I will explain how the fire safety order and building regulations already cover the issues that they are concerned

about. Article 9 of the fire safety order already places a duty on the responsible person to update the fire risk assessment if there has been any significant change to the premises in scope. This includes when premises have undergone significant changes, extensions or conversions. As a result, the fire safety order already covers the scenario that the noble Lord and the noble Baroness have set out in their amendment. I thank them for raising the issue, and I am pleased to have the opportunity to clarify this point in your Lordships' House.

I assure noble Lords that all homes must meet building regulations, irrespective of the route to planning permission. Noble Lords will know that national permitted development rights play an important role in the planning system. They provide a national grant of permission for specific types of development set out in legislation to have the right to provide a more streamlined planning process with greater planning certainty, while at the same time allowing for local consideration of key planning matters through prior approval. However, permitted development rights do not exempt work from building regulations requirements, or exempt the responsible person from their duties under the fire safety order.

When the use of a building is altered such that it comes to contain two or more sets of domestic premises, the requirements for material change of use in building regulations will apply. Regulation 5 of the Building Regulations 2010 defines a "material change of use". It includes situations where

"the building contains a flat, where previously it did not"

and where

"the building, which contains at least one dwelling, contains a greater or lesser number of dwellings than it did previously".

Regulation 6 then sets out the requirements applicable where such a change takes place, requiring that work

"shall be carried out as is necessary to ensure that the building complies"

with a list of technical requirements set out in Schedule 1. This includes all five of the fire safety provisions known as part B. Regulation 6 was amended by the Building (Amendment) Regulations 2018, such that, in addition to the five requirements of part B, work must also be carried out as is necessary to ensure that any external wall or specified attachment to the building contains only non-combustible materials.

In the light of that explanation, and the assurance that I have given, I invite the noble Baroness to withdraw her amendment. Finally, I point out that on the draft building safety Bill, we are working with experts to explore, with stakeholders, the best way forward to ensure that the key elements of gateway 1 can be considered for in-scope building with permitted development rights. I hope, therefore, that the amendment can be withdrawn.

The Deputy Speaker (Lord Duncan of Springbank) (Con): I have had no requests to speak after the Minister, so I call the noble Baroness, Lady Pinnock. No? It will be slightly unfortunate if we cannot get the noble Baroness on the line—perhaps not for the Government but for others. Lady Pinnock, are you with us?

Lord Parkinson of Whitley Bay (Con): My Lords, the noble Lord, Lord Shipley, also has his name to Amendment 10. With the leave of the House we could perhaps hear from the noble Lord, if he can be reached. No? It seems that we have a technical problem. I beg to move that the House do now adjourn for 10 minutes until 5.15 pm.

5.05 pm

Sitting suspended.

5.20 pm

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, perhaps I may recapitulate. We return to Amendment 10. The noble Baroness, Lady Pinnock, is now on the line and very much in presence. I call on her to make her remarks and to indicate whether she intends to press her amendment.

Baroness Pinnock (LD) [V]: I thank noble Lords for that brief wait while technical glitches were sorted out, and I thank everyone who has contributed to our debate on these important issues of public transparency and accountability in terms of fire safety. I especially thank my noble friend Lord Stunell for his knowledgeable and powerful argument, and the noble Earl, Lord Lytton, for his expert input. I assure him that I totally accept the detailed points that he raised and, if we have an opportunity for this amendment regarding public registers for assessments, I am sure that they will be properly considered, and in detail.

I listened carefully to the Minister and I thank him for being so clear in his response to these amendments. I heard him accept the need for, and principle of, transparency in supporting fire safety. Unfortunately, he was unable to go on to say that the Government would accept a register of fire safety assessments so that people can see the issues relating to the properties they live in. He said that householders could ask for fire assessments, but they would have to be on request. I reflected that that would not work well for the residents of Grenfell, who repeatedly raised issues of fire safety and were unable to be heard. A public register would have given huge strength to the concerns that they raised.

Given that the Minister has, unfortunately, been unable to give me an assurance that the Government will provide for a public register for fire safety assessments, I should like to test the opinion of the House.

5.24 pm

Division on conducted remotely on Amendment 10

Contents 284; Not-Contents 267.

Amendment 10 agreed.

Division No. 2

CONTENTS

Addington, L.	Adonis, L.
Adebowale, L.	Alderdice, L.

Alli, L.
Alton of Liverpool, L.
Anderson of Ipswich, L.
Anderson of Swansea, L.
Andrews, B.
Armstrong of Hill Top, B.
Ashton of Upholland, B.
Bach, L.
Bakewell of Hardington Mandeville, B.
Barker, B.
Bassam of Brighton, L.
Beecham, L.
Beith, L.
Bennett of Manor Castle, B.
Berkeley of Knighton, L.
Berkeley, L.
Best, L.
Bhatia, L.
Bichard, L.
Billingham, B.
Blackstone, B.
Blower, B.
Blunkett, L.
Boateng, L.
Bonham-Carter of Yarnbury, B.
Bowles of Berkhamsted, B.
Boycott, B.
Bradley, L.
Bradshaw, L.
Brennan, L.
Brinton, B.
Brooke of Alverthorpe, L.
Brookeborough, V.
Brown of Cambridge, B.
Brown of Eaton-under-Heywood, L.
Browne of Ladyton, L.
Bruce of Bennachie, L.
Bryan of Partick, B.
Burnett, L.
Burt of Solihull, B.
Butler of Brockwell, L.
Butler-Sloss, B.
Campbell of Pittenweem, L.
Campbell of Surbiton, B.
Campbell-Savours, L.
Carter of Coles, L.
Cashman, L.
Chakrabarti, B.
Chandos, V.
Clancarty, E.
Clark of Calton, B.
Clark of Kilwinning, B.
Clark of Windermere, L.
Clement-Jones, L.
Cohen of Pimlico, B.
Collins of Highbury, L.
Cooper of Windrush, L.
Corston, B.
Cotter, L.
Coussins, B.
Crawley, B.
Crisp, L.
Cunningham of Felling, L.
Davidson of Glen Clova, L.
Davies of Brixton, L.
Davies of Oldham, L.
Desai, L.
Dholakia, L.
Donaghy, B.
Donoughue, L.
Doocey, B.
Drake, B.
D'Souza, B.
Dubs, L.
Eatwell, L.
Evans of Watford, L.
Faulkner of Worcester, L.
Featherstone, B.
Filkin, L.
Finlay of Llandaff, B.
Foster of Bath, L.
Foulkes of Cumnock, L.
Gale, B.
Garden of Frognal, B.
German, L.
Giddens, L.
Glasgow, E.
Goddard of Stockport, L.
Golding, B.
Goldsmith, L.
Goudie, B.
Grantchester, L.
Greaves, L.
Greengross, B.
Greenway, L.
Grender, B.
Grey-Thompson, B.
Griffiths of Burry Port, L.
Grocott, L.
Hain, L.
Hamwee, B.
Hanworth, V.
Harries of Pentregarth, L.
Harris of Haringey, L.
Harris of Richmond, B.
Haskel, L.
Haworth, L.
Hayman of Ullock, B.
Hayman, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Hendy, L.
Henig, B.
Hollick, L.
Hollins, B.
Houghton of Richmond, L.
Howarth of Newport, L.
Hoyle, L.
Hughes of Stretford, B.
Humphreys, B.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Hutton of Furness, L.
Janke, B.
Jay of Paddington, B.
Jolly, B.
Jones of Cheltenham, L.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Jones, L.
Jordan, L.
Judd, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kerr of Kinlochard, L.
Kerslake, L.
Kestenbaum, L.
Knight of Weymouth, L.
Kramer, B.
Layard, L.
Lea of Crondall, L.
Lee of Trafford, L.
Leitch, L.
Lennie, L.
Levy, L.
Liddell of Coatdyke, B.
Liddle, L.
Lipsey, L.
Lister of Burtersett, B.
Low of Dalston, L.
Ludford, B.
Lytton, E.
MacKenzie of Culkein, L.
Mackenzie of Framwellgate, L.
Mallalieu, B.
Mandelson, L.
Marks of Henley-on-Thames, L.
Maxton, L.
McAvoy, L.
McConnell of Glenscorrodale, L.
McDonagh, B.
McIntosh of Hudnall, B.
McKenzie of Luton, L.
McNally, L.
McNicol of West Kilbride, L.
Miller of Chilthorne Domer, B.
Monks, L.
Morris of Aberavon, L.
Morris of Yardley, B.
Murphy of Torfaen, L.
Murphy, B.
Newby, L.
Northover, B.
Nye, B.
Oates, L.
O'Loan, B.
O'Neill of Bengarve, B.
Paddick, L.
Palmer of Childs Hill, L.
Pannick, L.
Parminter, B.
Patel of Bradford, L.
Pendry, L.
Pinnock, B.
Pitkeathley, B.
Ponsonby of Shulbrede, L.
Prashar, B.
Primarolo, B.
Prosser, B.
Purvis of Tweed, L.
Puttnam, L.
Quin, B.
Ramsay of Cartvale, B.
Ramsbotham, L.
Randerson, B.
Ravensdale, L.
Razzall, L.
Rebuck, B.
Redesdale, L.
Rees of Ludlow, L.
Reid of Cardowan, L.
Rennard, L.
Ritchie of Downpatrick, B.
Roberts of Llandudno, L.
Robertson of Port Ellen, L.
Rooker, L.
Rosser, L.
Rowlands, L.
Royall of Blaisdon, B.
Russell of Liverpool, L.
Sandwich, E.
Sawyer, L.
Scott of Needham Market, B.
Scriven, L.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Sikka, L.
Simon, V.
Singh of Wimbledon, L.
Smith of Basildon, B.
Smith of Finsbury, L.
Smith of Gilmorehill, B.
Smith of Newnham, B.
Snape, L.
Somerset, D.
St Albans, Bp.
Stephen, L.
Stern of Brentford, L.
Stern, B.
Stevenson of Balmacara, L.
Stone of Blackheath, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Taylor of Bolton, B.
Taylor of Goss Moor, L.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
Thornton, B.
Thurlow, L.
Thurso, V.
Tonge, B.
Tope, L.
Touhig, L.
Triesman, L.
Truscott, L.
Tunnicliffe, L.
Turnberg, L.
Tyler of Enfield, B.
Tyler, L.
Uddin, B.
Verjee, L.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walmsley, B.
Watson of Invergowrie, L.
Watts, L.
West of Spithead, L.
Wheatcroft, B.
Wheeler, B.
Whitaker, B.
Whitty, L.
Wigley, L.
Wilcox of Newport, B.
Willis of Knaresborough, L.
Wills, L.
Wood of Anfield, L.
Woodley, L.
Woolf, L.
Wrigglesworth, L.
Young of Hornsey, B.
Young of Norwood Green, L.
Young of Old Scone, B.

NOT CONTENTS

Aberdare, L.
Agnew of Oulton, L.
Ahmad of Wimbledon, L.
Altmann, B.
Anelay of St Johns, B.
Arbuthnot of Edrom, L.
Arran, E.
Ashton of Hyde, L.
Astor of Hever, L.
Austin of Dudley, L.
Baker of Dorking, L.
Balfe, L.
Barran, B.
Barwell, L.
Bates, L.
Berridge, B.
Bertin, B.
Bethell, L.

Black of Brentwood, L.
Blackwood of North Oxford, B.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bottomley of Nettlestone, B.
Bourne of Aberystwyth, L.
Bowness, L.
Brabazon of Tara, L.
Brady, B.
Bridges of Headley, L.
Brougham and Vaux, L.
Browne of Belmont, L.
Browning, B.
Brownlow of Shurlock Row, L.
Buscombe, B.
Caine, L.
Caithness, E.
Callanan, L.
Cameron of Dillington, L.
Carey of Clifton, L.
Carrington of Fulham, L.
Carrington, L.
Cathcart, E.
Cavendish of Furness, L.
Chadlington, L.
Chalker of Wallasey, B.
Chartres, L.
Chisholm of Owlpen, B.
Choudrey, L.
Clarke of Nottingham, L.
Coe, L.
Colgrain, L.
Colville of Culross, V.
Colwyn, L.
Cork and Orrery, E.
Cormack, L.
Courtown, E.
Couttie, B.
Craig of Radley, L.
Craigavon, V.
Crathorne, L.
Cumberlege, B.
Curry of Kirkharle, L.
Dannatt, L.
De Mauley, L.
Deben, L.
Devon, E.
Dobbs, L.
Dodds of Duncairn, L.
Duncan of Springbank, L.
Dundee, E.
Dunlop, L.
Eaton, B.
Eccles of Moulton, B.
Eccles, V.
Empey, L.
Erroll, E.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fairhead, B.
Fall, B.
Farmer, L.
Fellowes of West Stafford, L.
Field of Birkenhead, L.
Fink, L.
Finkelstein, L.
Finn, B.
Fleet, B.
Flight, L.
Fookes, B.
Framlingham, L.
Fraser of Corriegarth, L.
Freud, L.
Fullbrook, B.
Gadhia, L.
Gardiner of Kimble, L.
Gardner of Parkes, B.
Garnier, L.
Geddes, L.
Gilbert of Panteg, L.
Glenarthur, L.
Glendonbrook, L.
Gold, L.
Goldsmith of Richmond Park, L.
Goodlad, L.
Goschen, V.
Grade of Yarmouth, L.
Greenhalgh, L.
Griffiths of Fforestfach, L.
Grimstone of Boscobel, L.
Hague of Richmond, L.
Hailsham, V.
Hamilton of Epsom, L.
Hammond of Runnymede, L.
Haselhurst, L.
Hay of Ballyore, L.
Hayward, L.
Helic, B.
Henley, L.
Herbert of South Downs, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Hoey, B.
Hogan-Howe, L.
Hogg, B.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Lympne, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Johnson of Marylebone, L.
Kakkar, L.
Kalms, L.
Keen of Elie, L.
Kilclooney, L.
King of Bridgwater, L.
Kirkham, L.
Kirkhope of Harrogate, L.
Laming, L.
Lamont of Lerwick, L.
Lancaster of Kimbolton, L.
Lang of Monkton, L.
Lansley, L.
Leigh of Hurley, L.
Lexden, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Livingston of Parkhead, L.
Lothian, M.
Lucas, L.
Mackay of Clashfern, L.
Maginnis of Drumglass, L.
Mancroft, L.
Mann, L.
Manzoor, B.
Marland, L.
Marlesford, L.
Mawson, L.
McCrea of Magherafelt and Cookstown, L.
McGregor-Smith, B.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
McLoughlin, L.
Mendoza, L.
Meyer, B.
Mone, B.
Montrose, D.
Moore of Etchingham , L.
Morgan of Cotes, B.
Morris of Bolton, B.
Morrissey, B.
Morrow, L.
Moylan, L.
Moynihan, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
O'Shaughnessy, L.
Parkinson of Whitley Bay , L.
Patel, L.
Patten, L.
Penn, B.
Pickles, L.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Powell of Bayswater, L.
Price, L.
Rana, L.
Randall of Uxbridge, L.
Ranger, L.
Rawlings, B.
Reay, L.
Redfern, B.
Renfrew of Kaimsthorn, L.
Ribeiro, L.
Ridley, V.
Risby, L.
Robathan, L.
Rock, B.
Rogan, L.
Rose of Monewden, L.
Rotherwick, L.
Saatchi, L.
Sarfraz, L.
Sassoon, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Sharpe of Epsom, L.
Sheikh, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shields, B.
Shinkwin, L.
Shrewsbury, E.
Smith of Hindhead, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Strathclyde, L.
Stroud, B.
Stuart of Edgbaston, B.
Sugg, B.
Suri, L.
Taverne, L.
Taylor of Holbeach, L.
Tebbit, L.
Trefgarne, L.
Trenchard, V.
Trimble, L.
True, L.
Tugendhat, L.
Ullswater, V.
Vaizey of Didcot, L.
Vaux of Harrowden, L.
Vere of Norbiton, B.
Verma, B.
Vinson, L.
Wakeham, L.
Walker of Aldringham, L.
Walney, L.
Warsi, B.
Wasserman, L.
Watkins of Tavistock, B.
Waverley, V.
Wei, L.
Wharton of Yarm, L.
Whitby, L.
Wilcox, B.
Willetts, L.
Williams of Trafford, B.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

5.35 pm

Amendments 11 and 12 not moved.

The Deputy Speaker (Lord Duncan of Springbank) (Con): We now come to the group consisting of Amendment 13. I remind noble Lords that Members other than the mover and the Minister may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press the amendment to a Division should make that clear in the debate.

Amendment 13

Moved by ***Baroness Pinnock***

13: After Clause 2, insert the following new Clause—

"Prohibition on passing remediation costs on to leaseholders and tenants

(1) The owner of a building may not pass the costs of any remedial work attributable to the provisions of this Act on to leaseholders or tenants of that building.

(2) Subsection (1) does not apply to a leaseholder who is

[Baroness Pinnock]

also the owner or part owner of the freehold of the building."

Member's explanatory statement

The purpose of this new Clause is to prevent freeholders passing on remediation costs to leaseholders and tenants, such as through demands for one-off payments or increases in service or other charges.

Baroness Pinnock (LD) [V]: My Lords, many tenants and leaseholders in blocks with cladding that is now known to be a serious fire hazard find themselves in a very bleak place indeed. This amendment seeks to address that. Leaseholders have purchased flats in good faith with building surveys, mortgage insurance and building warranties in place. They have done the right thing. Now, through no fault of their own, they are being threatened with additional service charges of several hundred pounds each month to pay for the so-called waking watch, a 24/7 in-person lookout for potential fires. On top of that, they are being asked to fund the considerable costs of remediation work to remove the dangerous cladding and replace it with a safer system. Figures I have seen for some of this work run to tens of thousands of pounds. How are leaseholders, who already have a hefty mortgage, supposed to afford, say, an additional £40,000 bill for the remediation work?

During the debate on an earlier amendment, the Minister referred to leaseholders being asked to pay only affordable costs. I am very disappointed if that reflects the Government's thinking. Leaseholders should not be asked to pay towards remediation of problems that are not of their making in any way. The question that then arises is: who was responsible for including these dangerous cladding panels in the first place? The construction companies surely have some responsibility. The warranties that were provided on the building should surely cover errors made during construction. The people who do not have any responsibility are those currently being asked to pay the bills. This is not just and not right, and we have an opportunity today to take the first step towards removing the anguish and anxiety faced by homeowners and tenants in this position.

I thank the Minister for making time available for a very useful discussion of this issue, and I accept that the scale of the problem is very large and that the cost of remediation works will run to tens of billions of pounds. I also accept that the Government have made some attempt to relieve the financial pressure on homeowners by providing a £1.6 billion fund towards the costs. However, I suspect that that is just a small portion of the total cost. Perhaps the Minister can indicate the scale of the problem.

I bring us back to the basic question: who should take responsibility? Just yesterday, during the Grenfell inquiry, evidence was given by one of the suppliers of the cladding system about the misinformation provided to win the contract. Evidence has been provided that the Building Research Establishment had already shown the high flammability of these cladding systems. The Grenfell inquiry phase 1 report stated that

"there was compelling evidence that the external walls … failed to comply with Requirement B4(1) of Schedule 1 to the Building Regulations 2010, in that they did not adequately resist the spread of the fire having regard to height, use and position of the building. On the contrary, they actively promoted it."

Clear evidence, then, of culpability during construction or refurbishment at Grenfell. Of course, we do not know if this is the case elsewhere, but we have sufficient information to demonstrate that those who pay for this extensive remediation must not be the tenants and leaseholders.

We on these Benches feel very strongly that there is a just and moral case for leaseholders and tenants not to be required to contribute to any of the costs. I will listen carefully to what the Minister has to say but if the Government do not accept the amendment, I will feel it necessary to test the opinion of the House.

Lord Shipley (LD) [V]: My Lords, I listened to the Secretary of State on the "Today" programme this morning, in which I heard him say that the cost of removal and remediation of dangerous cladding from residential buildings should be as affordable as possible for leaseholders. This afternoon is an opportunity for the Minister to make clear what this means. I understand that builders and freeholders may have responsibilities in meetings such costs, but where a leaseholder is not a freeholder, why should they have a responsibility to pay out?

The uncertainty for so many leaseholders who are stuck trying to sell their properties or are worried about their possible financial exposure needs swift resolution. The amendment would protect leaseholders who are not freeholders, and tenants, from extra costs, be they single or staggered lump sums, increases in service charges or increases in rents. The responsibility for making safe a building with a fire risk should not lie with the leaseholders or tenants. The amendment would make it clear that it is unreasonable to expect them to be responsible for those costs when they are the ones exposed to risk through no fault of their own. I hope the Minister will agree that this amendment, which would protect leaseholders and tenants, is justified.

The Earl of Lytton (CB) [V]: My Lords, this is an enormously complex issue, as I outlined in an earlier amendment. The current legal framework makes liability for the matters that have been referred to by the noble Baroness and the noble Lord a patchwork, and entirely uncertain of outcomes. So significant are the matters at stake that in a normal course of events it may be years before matters are resolved by the courts. We need a quicker fix than that, which is why earlier I suggested that the Government should take a firmer hand in this and not leave it to the industry and markets to sort out. In other words, there is a strong case for government intervention. I welcome this amendment, although not precisely on its own terms, because I think it has some potential flaws. However, certainly the opportunity to debate the issue is absolutely vital.

5.45 pm

I am satisfied in my own mind that where basic construction standards have been skimped, some residual duty of care ought to be capable of being invoked to

make those directly responsible—constructors and developers and, to some extent, those responsible for construction warranties—liable. However, I am no lawyer and I fear that my hopes will not be fulfilled. Developers use increasingly sophisticated means to ring-fence liabilities of individual development projects, normally by means of a special purpose vehicle or similar device.

Enormously profitable housebuilding enterprises, which observed the provisions of approved documents but did not read the broad statement of objectives in the parent building regulations document, tell us they complied with the requirements at the time. The noble Lord, Lord Stunell, told us just now about a deliberate evasion of proper test procedures and certification. I must have seen the same BBC TV footage as he did, reporting on the investigation by Sir Martin Moore-Bick and the evidence of insulation materials suppliers, also referred to by the noble Baroness in moving this amendment.

The noble Baroness is right: the long leaseholder has paid hard cash in good faith. It is really wrong that they should be obliged to pay any significant sum in addition. Mortgage lenders have likewise relied on completion certificates, construction warranties and so on, although it appears that the construction warranty providers in particular have a role in monitoring quality of build—unlike the eventual building insurer, whose only concern is with subsequent post-construction insurance against specified perils. I do believe that construction warranty providers have some co-responsibility here.

The PI—professional indemnity—insurers, of course, may have some exposure in relation to professionals acting in the matter. I do not know about that, but I do know that these are powerful and well-funded interests. In order to break this logjam, it would require significant legal change. I think it would be necessary to lift what is known as the "corporate veil" to remove the assumption of "buyer beware". These two matters in themselves would open up a whole area of wider responsibility which may yet have other serious implications.

I agree that the vulnerable and invariably innocent leaseholders and tenants should not pay twice. But if not them or the developer—who? Management is likely to have no asset beyond the management and maintenance generated via the service charge and guaranteed in terms of recovery from the occupiers, be they leaseholders or tenants. Freehold owners of the long-leasehold flats have an interest which, in general terms, is some multiple of the cumulative ground rent, so they do not have an interest of any significant value. The likelihood is that both management functions and freehold ownership are themselves vested in corporate structures for precisely the same reasons of delimiting potential liabilities to individuals that, of course, are common with special-purpose vehicles. Of course, the freeholder may not even be the original developer; they may have purchased in good faith.

I have written to the Minister previously to express my fears about orphan liabilities. This amendment allows us to consider the whole range of issues that arise if we are trying to establish or apportion liability. While everyone is saying "not me", there is a real concern that the focus will not end up where it ought to be. Some sort of government initiative is needed unless the Minister can reassure us that something is already happening to try to resolve this.

I have enormous sympathy with the sentiments behind this amendment, but I do not think it works. Liability cannot fall on one person without establishing where else it might fall and what the consequences might be.

Lord Stunell (LD) [V]: My Lords, it is a pleasure to follow the contributions of my noble friends Lady Pinnock and Lord Shipley and to support this amendment. I hope the Minister will see the strength of the argument and accept the amendment. If not, I regret that I shall also be seeking the opinion of the House on the matter.

I thank the noble Earl, Lord Lytton, for his—as ever—very thoughtful and constructive contribution. I am sure the Minister is aware that this is a complex and difficult question with many different moving parts, which the noble Earl so eloquently summarised. The one set of people who are not moving are the tenants and leaseholders stuck in flats which they cannot sell. They may be putting themselves at considerable personal as well as financial risk. These tenants, residents and leaseholders have no control over the circumstances in which they find themselves. They played no part in the decision-making—or lack of it—that has left them stranded. They are the vulnerable people whom the mighty, the powerful, the professionals and those with big pockets have left stranded. Our amendment is saying, "Right, let us at least fix this bit of the moving parts—these bits of the equation."

I agree with the noble Earl, Lord Lytton, that there is a much bigger set of problems to be confronted. I hope that the Minister will accept this and will say that the Government are going to launch a wholesale consideration. I suspect that this is of concern far beyond the Home Office. Perhaps some prime ministerial attention can be given to sorting out this difficult and complex area.

The key question is: who will pay for the necessary works? Our amendment is simple and, I hope, clear. The innocent occupiers—the renters and leaseholders of millions of homes across the country—should not be held to ransom by building owners. They should not be forced to pay for making their homes safe, when they should have been safe from the start.

I know that the Government have begun to face up to the excessive costs facing leaseholders. The Minister has a well-tried set of statistics which he will give us again. The noble Baroness, Lady Pinnock, ticked that box for him by recounting them. I know the Minister believes—as I do—that far more remains to be done.

The noble Earl, Lord Lytton, mentioned the construction warranty guarantees. Most of them are turning out to be virtually worthless. At the same time, they are often sold to residents and leaseholders as though they were some kind of guarantee that, if things went wrong, they would be compensated. This is not so. For the moment, at least, they are not delivering. The rush of people disclaiming that their warranty warrants anything is remarkable.

That puts an interesting light on something the Minister said in discussion of the previous group. He said that we did not need registers or government

[LORD STUNELL]
oversight because self-regulation would deal with it. He said that was the way to go and they did not want to increase the regulatory burden on anyone. I know that is the Government's mantra in general, but one of the few positive things to come out of Grenfell was the tearing up of that whole story—that regulation was for losers—and the understanding that regulation provides a safety net that secures people's future. This is just another case where self-regulation failed and none of the industrial, insurance and construction sectors stepped up to regulate their own behaviour and safeguard tenants. No case at all, therefore, can be made that tenants and leaseholders should be the ones collecting the bill.

I shall not rehearse any of the hard-luck stories that we are familiar with, but a straightforward case can be made to the Treasury: the longer this issue hangs around, the longer it will take to put all the remedial work in hand. If there are arguments over who pays, it will not be done and, if it is not being done, the risk of another major incident—and all the public money that will be spent on that—looms in the distance. And it is not just that, of course: there are also the long-term costs of health and stress that will be loaded on to the NHS as a result of thousands, or hundreds of thousands, of people finding that the home they live in is worthless. I wonder how many bankruptcies there will be. If you are a sole trader and the bank has a guarantee on your home, what is your position when you cannot get an EWS1 form? How does that leave you in terms of business survivability?

Today the Minister has talked about phasing things, going slowly and proportionately, and getting fire tests and so on, but every time that we have looked further than the end of our noses we have discovered that there is more stuff to do—an estimated 750,000 fire doors around the country, just for starters.

I hope, therefore, that the Minister can give millions of leaseholders some words of comfort and support in backing our amendment. If not, I fear that I shall join my noble friends in testing the opinion of the House.

Lord Kennedy of Southwark (Lab Co-op): My Lords, Amendment 13, tabled by the noble Baroness, Lady Pinnock, adds a new clause to the Bill that would prohibit the owner of the building from passing the cost of any remedial work attributable to the requirement of the Act on to leaseholders or tenants, except where the leaseholder is also the owner of the building.

As the noble Baroness has said, these leaseholders have done absolutely nothing wrong. They have actually done everything right: they have bought their property and are paying their mortgage, and they are being penalised for the failure of others. That surely cannot be right. The fact that their building has been given dangerous cladding has made their flats worthless. They cannot sell them but they still need to pay their mortgage. They cannot get the work done. They may be paying for a waking watch.

6 pm

In some cases, these properties will have guarantees on them; there will be warranties for the work done. As the noble Earl, Lord Lytton, said, the people who have done nothing wrong are the leaseholders or tenants in the flats. We should all stand up to support the leaseholders and tenants, and get those who have done the work to accept their responsibility and put this right. Whether it is the individual builder or the company or organisation, it cannot be right for these people to wriggle out of their responsibility.

The Government need to take firm action. I hope the Minister will set out for us now what action they will take to support leaseholders, who are in a terrible situation. If he does not do that, I and other noble Lords on these Benches will certainly be joining the noble Baroness, Lady Pinnock, in supporting this amendment.

Lord Greenhalgh (Con): My Lords, I thank the noble Baroness, Lady Pinnock, and the noble Lord, Lord Shipley, for their Amendment 13 on remediation costs. I often think that we need to apply a *Daily Mail* test to discover whether the opinion of the House will be tested. We have had an article in the *Mirror* from Pippa Crerar indicating one Division, and an article on this amendment from a different *Mirror* journalist—the online political editor. So I am not surprised that there will be a test of the opinion of the House.

I want to make clear the sincerity of our view that we need to understand the scale of the problem. Removing the cladding is like unpeeling an orange. You then find greater defects: the internal compartmentation issues, the missing firebreaks, and the issues around fire doors and wooden balconies. These historic structural defects will involve a colossal sum of money. We do not know how much; there are estimates and there are guesstimates, but we accept that there is a significant job of work to be done to deal with the historic defects that have accrued over many, many years.

As the Minister with responsibility for building—as well as fire—safety, I am regularly in contact with leaseholders hit with high bills for remediation to help make their homes safer. I fully understand the anxiety and distress that these people are going through. These are people who have done the right thing, investing their hard-earned savings into a home for themselves and their families, yet now many of them are facing unaffordable bills. I fully understand the intention behind this amendment, and I want to assure noble Lords that we are working very hard in the Ministry of Housing, Communities and Local Government to improve the situation that people find themselves in.

Finally, we have already committed £1.6 billion to fund the removal and replacement of unsafe cladding on high-rise residential buildings, and we have been putting pressure on building owners to step up to the plate, as well as using warranties and recovering costs from contractors for incorrect or poor work.

However, I can assure noble Lords that we want to go further to protect people from unaffordable costs. Noble Lords will be aware that we published the draft building safety Bill on 20 July 2020. This includes important public safety measures; the Government are committed to progressing the Bill as quickly as possible so that reforms can be implemented in a timely manner. The Bill will be introduced to Parliament once the Government have considered the scrutiny committee's recommendations.

My right honourable friend the Secretary of State for Housing, Communities and Local Government is committed to updating our position on remediation costs when the building safety Bill returns to Parliament. Michael Wade, senior adviser to MHCLG, is accelerating work with leaseholders and the financial sector to identify financing solutions that protect leaseholders from unaffordable costs while ensuring that the bill does not fall entirely on taxpayers. We have had regular meetings with leaseholder groups, on this and a range of other issues, since the draft Bill was published.

While I support the underlying intention to protect leaseholders and have gone on the record today saying so, this amendment falls down in three main areas, which might make the problem worse rather than better.

First, the safety of residents in their homes is of the highest priority. This is the intention behind today's Bill and all the Government's wider work on building safety. There is a range of options for meeting the costs of safety-critical remediation work, which will be appropriate in different circumstances. It would be irresponsible to close off one of the potential routes to funding these works. This amendment risks leaving a building with known fire risks in a position where the work is not taken forward.

Secondly, this new clause would stop all remediation costs from being passed on to leaseholders. For example, service and maintenance charges would at present meet the cost of safety work required as a result of routine wear and tear, such as worn fire door closers. These costs would now fall to building owners—who are, in many cases, also not responsible for original building defects, as they did not build the property—rather than being determined by the terms of the lease.

Thirdly, the fire safety order is not the appropriate legislative framework to resolve remediation costs. The primary focus of the fire safety order is to place duties on any person who has some level of control in a premises—the responsible person or the dutyholder—to ensure that they identify the fire safety risks for the buildings they are responsible for and, if necessary, put in place general fire precautions. As I have said, we are looking to the building safety Bill to address the issues raised in this amendment.

I thank the noble Earl, Lord Lytton, for his comment about orphan liability. He underlined the point that we need to keep the options open. I also thank the noble Lord, Lord Stunell, for his comment about construction warranties. Typically, the market leader is the NHBC. I met the council very recently and, effectively, that is only a 10-year protection: two years for defects, with eight years insurance-based. While we are looking at ways of increasing the compliance period to align with the 10 years, it would be possible through other legislative means to extend the period, because I do not see why someone who has put their life savings into a home has such minimal protection when they purchase a property. I buy a pair of tweezers to take the hair out of my ears and they have a lifetime guarantee. When someone puts their entire savings into a home, they deserve protection over time. That is something we as a Government need to look to do, and will do in due course. This is not the moment to resolve this particular issue, but it is well noted.

I ask that your Lordships' House recognises the complexity of this policy area, which cannot be solved through this amendment, and considers the assurances I have given today. For the reasons set out in my response, I ask the noble Baroness to withdraw her amendment.

Baroness Pinnock (LD) [V]: My Lords, I thank the Minister for his response and all noble Lords who have contributed to this debate. This is about saving thousands of householders from crippling debts when none of the fault for this awful situation is of their making: none of it. I accept what the Minister has said; this is a problem that is hugely costly and complex. However, Governments regularly—daily, probably—have to find solutions to complex and costly issues, and this is one. I trust that the Minister can find a fair and just solution to it.

I again thank the noble Earl, Lord Lytton, in particular for sharing his expertise in this matter. He has rightly pointed out that this is a difficult, complicated and knotty problem, but the principle must be right: somewhere in government legislation we need the principle to be accepted that these leaseholders and tenants have, in good faith, bought a flat, or are tenants or residents of a flat, and that these problems have arisen through no fault of their own. They should not, as my noble friend Lord Stunell said, be held to ransom for these problems when it is not their issue. They have every right to expect, as my noble friend said, to have bought a home that is safe, when they have all the guarantees and insurances in place.

I thank the noble Lord, Lord Kennedy, who spoke about flats that are worthless and residents who are being penalised through no fault of their own. I thank the Minister for his reply, and I know that this is difficult. What I want him to do is to accept that the principle we are putting forward is the fair and just one. It is no good, to my mind, saying that nobody is going to expect house owners to have to pay anything more than is affordable, whatever that means. Worse still came from the lips of the Minister when he said that what is happening is that, when they take off the cladding, they are revealing and exposing further terrible defects. Frankly, that makes matters worse and the principle of what the amendment proposes more just.

I fully understand the Government's intention to try and find a fair way to pay for this. My view, and the view of my colleagues, is that the costs should not fall on those who in good faith have bought their home and, through no fault of their own, are in this terrible and difficult situation. Good intentions are okay but the path to hell, as they say, is paved with good intentions. In this regard, good intentions are not sufficient. We need the principle to be accepted that none of the costs of the remediation of poor building works or poor standards and fire hazards should fall on leaseholders or tenants. Given that I have not had a sufficient reassurance from the Minister, I wish to test the opinion of the House.

6.10 pm

Division conducted remotely on Amendment 13

Contents 275; Not-Contents 262.

Amendment 13 agreed.

Division No. 3

CONTENTS

Addington, L.
Adebowale, L.
Alderdice, L.
Allan of Hallam, L.
Alli, L.
Alton of Liverpool, L.
Armstrong of Hill Top, B.
Ashton of Upholland, B.
Bach, L.
Bakewell of Hardington Mandeville, B.
Bakewell, B.
Barker, B.
Bassam of Brighton, L.
Beith, L.
Benjamin, B.
Bennett of Manor Castle, B.
Berkeley of Knighton, L.
Berkeley, L.
Best, L.
Bichard, L.
Billingham, B.
Blackstone, B.
Blower, B.
Blunkett, L.
Boateng, L.
Bonham-Carter of Yarnbury, B.
Bowles of Berkhamsted, B.
Boycott, B.
Bradley, L.
Bradshaw, L.
Brinton, B.
Brooke of Alverthorpe, L.
Brown of Cambridge, B.
Browne of Ladyton, L.
Bruce of Bennachie, L.
Bryan of Partick, B.
Bull, B.
Burnett, L.
Burt of Solihull, B.
Butler of Brockwell, L.
Butler-Sloss, B.
Campbell of Pittenweem, L.
Campbell of Surbiton, B.
Campbell-Savours, L.
Carter of Coles, L.
Cashman, L.
Chakrabarti, B.
Chandos, V.
Clancarty, E.
Clark of Windermere, L.
Clement-Jones, L.
Cohen of Pimlico, B.
Collins of Highbury, L.
Colville of Culross, V.
Corston, B.
Cotter, L.
Coussins, B.
Cox, B.
Crawley, B.
Davidson of Glen Clova, L.
Davies of Brixton, L.
Davies of Oldham, L.
Deech, B.
Desai, L.
Dholakia, L.
Donaghy, B.
Donoughue, L.
Doocey, B.
Drake, B.
Dubs, L.
Eatwell, L.
Elder, L.
Faulkner of Worcester, L.
Featherstone, B.
Filkin, L.
Finlay of Llandaff, B.
Foster of Bath, L.
Foulkes of Cumnock, L.
Fox, L.
Gale, B.
Garden of Frognal, B.
German, L.
Glasman, L.
Goddard of Stockport, L.
Golding, B.
Goudie, B.
Grantchester, L.
Greaves, L.
Greengross, B.
Grender, B.
Grey-Thompson, B.
Griffiths of Burry Port, L.
Grocott, L.
Hain, L.
Hamwee, B.
Harries of Pentregarth, L.
Harris of Haringey, L.
Harris of Richmond, B.
Haskel, L.
Haworth, L.
Hayman of Ullock, B.
Hayman, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Hendy, L.
Henig, B.
Hoey, B.
Hollick, L.
Howarth of Newport, L.
Hoyle, L.
Humphreys, B.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Hutton of Furness, L.
Janke, B.
Janvrin, L.
Jolly, B.
Jones of Cheltenham, L.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Jones, L.
Jordan, L.
Judd, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kerr of Kinlochard, L.
Kerslake, L.
Kestenbaum, L.
Kingsmill, B.
Knight of Weymouth, L.
Kramer, B.
Lane-Fox of Soho, B.
Lawrence of Clarendon, B.
Layard, L.
Lea of Crondall, L.
Lee of Trafford, L.
Lennie, L.
Levy, L.
Liddell of Coatdyke, B.
Liddle, L.
Lipsey, L.
Lister of Burtersett, B.
Ludford, B.
Lytton, E.
MacKenzie of Culkein, L.
Mackenzie of Framwellgate, L.
Mallalieu, B.
Mandelson, L.
Marks of Henley-on-Thames, L.
Massey of Darwen, B.
McAvoy, L.
McConnell of Glenscorrodale, L.
McIntosh of Hudnall, B.
McKenzie of Luton, L.
McNally, L.
McNicol of West Kilbride, L.
Meacher, B.
Mendelsohn, L.
Miller of Chilthorne Domer, B.
Mitchell, L.
Monks, L.
Morris of Aberavon, L.
Murphy of Torfaen, L.
Murphy, B.
Newby, L.
Northover, B.
Nye, B.
Oates, L.
O'Loan, B.
O'Neill of Bengarve, B.
Osamor, B.
Paddick, L.
Palmer of Childs Hill, L.
Parminter, B.
Patel of Bradford, L.
Pendry, L.
Pinnock, B.
Pitkeathley, B.
Ponsonby of Shulbrede, L.
Prashar, B.
Prescott, L.
Primarolo, B.
Prosser, B.
Purvis of Tweed, L.
Puttnam, L.
Quin, B.
Ramsay of Cartvale, B.
Ramsbotham, L.
Randerson, B.
Ravensdale, L.
Razzall, L.
Rebuck, B.
Redesdale, L.
Rees of Ludlow, L.
Reid of Cardowan, L.
Rennard, L.
Ritchie of Downpatrick, B.
Roberts of Llandudno, L.
Robertson of Port Ellen, L.
Rooker, L.
Rosser, L.
Rowe-Beddoe, L.
Rowlands, L.
Royall of Blaisdon, B.
Russell of Liverpool, L.
Sawyer, L.
Scott of Needham Market, B.
Scriven, L.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Sikka, L.
Simon, V.
Smith of Basildon, B.
Smith of Finsbury, L.
Smith of Gilmorehill, B.
Smith of Newnham, B.
Snape, L.
Soley, L.
Somerset, D.
St Albans, Bp.
Stephen, L.
Stern of Brentford, L.
Stern, B.
Stone of Blackheath, L.
Stoneham of Droxford, L.
Storey, L.
Stowell of Beeston, B.
Stunell, L.
Suttie, B.
Taverne, L.
Taylor of Bolton, B.
Taylor of Goss Moor, L.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
Thornton, B.
Thurlow, L.
Thurso, V.
Tonge, B.
Tope, L.
Touhig, L.
Triesman, L.
Tunnicliffe, L.
Turnberg, L.
Tyler of Enfield, B.
Tyler, L.
Uddin, B.
Verjee, L.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walmsley, B.
Warwick of Undercliffe, B.
Watkins of Tavistock, B.
Watson of Invergowrie, L.
Watts, L.
West of Spithead, L.
Wheatcroft, B.
Wheeler, B.
Whitaker, B.
Whitty, L.
Wigley, L.
Wilcox of Newport, B.
Willis of Knaresborough, L.
Wills, L.
Winston, L.
Wood of Anfield, L.
Woodley, L.
Wrigglesworth, L.
Young of Hornsey, B.
Young of Norwood Green, L.
Young of Old Scone, B.

NOT CONTENTS

Aberdare, L.
Agnew of Oulton, L.
Ahmad of Wimbledon, L.
Altmann, B.
Anderson of Ipswich, L.
Anelay of St Johns, B.
Arbuthnot of Edrom, L.
Arran, E.
Ashton of Hyde, L.
Astor of Hever, L.
Austin of Dudley, L.
Balfe, L.
Barran, B.
Barwell, L.
Bates, L.
Berridge, B.

Bertin, B.
Bethell, L.
Black of Brentwood, L.
Blackwell, L.
Blackwood of North Oxford, B.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bottomley of Nettlestone, B.
Bourne of Aberystwyth, L.
Brabazon of Tara, L.
Brady, B.
Bridges of Headley, L.
Brougham and Vaux, L.
Brown of Eaton-under-Heywood, L.
Browne of Belmont, L.
Browning, B.
Brownlow of Shurlock Row, L.
Buscombe, B.
Caine, L.
Caithness, E.
Callanan, L.
Cameron of Dillington, L.
Carey of Clifton, L.
Carlile of Berriew, L.
Carrington of Fulham, L.
Carrington, L.
Cathcart, E.
Cavendish of Furness, L.
Cavendish of Little Venice, B.
Chadlington, L.
Chalker of Wallasey, B.
Chartres, L.
Chisholm of Owlpen, B.
Choudrey, L.
Coe, L.
Colgrain, L.
Colwyn, L.
Cork and Orrery, E.
Cormack, L.
Courtown, E.
Couttie, B.
Craigavon, V.
Crathorne, L.
Cumberlege, B.
Dannatt, L.
Davies of Gower, L.
De Mauley, L.
Deben, L.
Deighton, L.
Devon, E.
Dobbs, L.
Dodds of Duncairn, L.
Duncan of Springbank, L.
Dundee, E.
Dunlop, L.
Eaton, B.
Eccles of Moulton, B.
Eccles, V.
Empey, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fairhead, B.
Fall, B.
Farmer, L.
Fellowes of West Stafford, L.
Fink, L.
Finn, B.
Fleet, B.
Flight, L.
Fookes, B.
Forsyth of Drumlean, L.
Fox of Buckley, B.
Framlingham, L.
Freud, L.
Fullbrook, B.
Gadhia, L.
Gardiner of Kimble, L.
Gardner of Parkes, B.
Garnier, L.
Geddes, L.
Gilbert of Panteg, L.
Glenarthur, L.
Glendonbrook, L.
Gold, L.
Goldie, B.
Goodlad, L.
Grade of Yarmouth, L.
Greenhalgh, L.
Greenway, L.
Griffiths of Fforestfach, L.
Grimstone of Boscobel, L.
Hague of Richmond, L.
Hailsham, V.
Hamilton of Epsom, L.
Hammond of Runnymede, L.
Haselhurst, L.
Hayward, L.
Helic, B.
Henley, L.
Herbert of South Downs, L.
Hill of Oareford, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Hogan-Howe, L.
Hogg, B.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Hunt of Wirral, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Johnson of Marylebone, L.
Jopling, L.
Kakkar, L.
Kalms, L.
Keen of Elie, L.
Kilclooney, L.
King of Bridgwater, L.
Kirkham, L.
Kirkhope of Harrogate, L.
Laming, L.
Lamont of Lerwick, L.
Lancaster of Kimbolton, L.
Lang of Monkton, L.
Lansley, L.
Leigh of Hurley, L.
Lexden, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Livingston of Parkhead, L.
Lothian, M.
Lucas, L.
Lupton, L.
Mackay of Clashfern, L.
Maginnis of Drumglass, L.
Mann, L.
Manzoor, B.
Marland, L.
Marlesford, L.
Mawson, L.
McColl of Dulwich, L.
McCrea of Magherafelt and Cookstown, L.
McGregor-Smith, B.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
Mendoza, L.
Meyer, B.
Mone, B.
Montrose, D.
Moore of Etchingham , L.
Morgan of Cotes, B.
Morris of Bolton, B.
Morrissey, B.
Morrow, L.
Moylan, L.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
O'Shaughnessy, L.
Pannick, L.
Parkinson of Whitley Bay , L.
Patel, L.
Patten, L.
Pearson of Rannoch, L.
Penn, B.
Pickles, L.
Pidding, B.
Polak, L.
Popat, L.
Powell of Bayswater, L.
Price, L.
Rana, L.
Randall of Uxbridge, L.
Ranger, L.
Rawlings, B.
Reay, L.
Redfern, B.
Ribeiro, L.
Ridley, V.
Risby, L.
Robathan, L.
Rock, B.
Rogan, L.
Rose of Monewden, L.
Saatchi, L.
Sanderson of Welton, B.
Sarfraz, L.
Sassoon, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Shackleton of Belgravia, B.
Sharpe of Epsom, L.
Sheikh, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shinkwin, L.
Shrewsbury, E.
Smith of Hindhead, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Strathclyde, L.
Stroud, B.
Stuart of Edgbaston, B.
Sugg, B.
Suri, L.
Taylor of Holbeach, L.
Tebbit, L.
Trefgarne, L.
Trimble, L.
True, L.
Tugendhat, L.
Ullswater, V.
Vaizey of Didcot, L.
Vere of Norbiton, B.
Verma, B.
Vinson, L.
Wakeham, L.
Waldegrave of North Hill, L.
Walker of Aldringham, L.
Warsi, B.
Wasserman, L.

Waverley, V.
Wharton of Yarm, L.
Whitby, L.
Wilcox, B.
Willetts, L.
Williams of Trafford, B.
Wyld, B.
Young of Cookham, L.
Young of Graffham, L.
Younger of Leckie, V.

6.22 pm

Clause 3: Extent, commencement and short title

Amendment 14

Moved by ***Lord Greenhalgh***

14: Clause 3, page 2, line 28, at end insert—

"( ) Section (Risk based guidance about the discharge of duties under the Fire Safety Order) comes into force at the same time as section 1 comes fully into force in relation to premises in England."

Member's explanatory statement

This amendment provides that the proposed new Clause in the Minister's name to be inserted after Clause 2 comes into force at the same time as Clause 1 in relation to premises in England.

Amendment 14 agreed.

Clause 3 agreed.

Amendments 15 and 16 not moved.

Pension Schemes Bill [HL]

Returned from the Commons

The bill was returned from the Commons agreed to with amendments. It was ordered that the Commons amendments be printed. (HL Bill 152)

House adjourned at 6.23 pm.

Grand Committee

Tuesday 17 November 2020

The Grand Committee met in a hybrid proceeding.

Arrangement of Business

Announcement

2.30 pm

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): My Lords, the hybrid Grand Committee will now begin. Members will be aware of the need to wipe down surfaces and the clerk has already instructed them in the changed rules regarding the microphones. I do not anticipate the capacity of the Room being breached today unless something exciting happens, so I shall push straight on with the sixth day of the Grand Committee on the Medicines and Medical Devices Bill.

Medicines and Medical Devices Bill

Committee (6th Day)

2.31 pm

Relevant documents: 19th Report from the Delegated Powers Committee, 10th Report from the Constitution Committee

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): A participants' list for today's proceedings has been published by the Government Whips' Office, as have lists of Members who have put their names to the amendments or expressed an interest in speaking on each group. I will call Members to speak in the order listed. Members are not permitted to intervene spontaneously; the Chair calls each speaker. Interventions during speeches or "before the noble Lord sits down" are not permitted.

During the debate on each group, I will invite Members, including those in the Grand Committee Room, to email the clerk if they wish to speak after the Minister, using the Grand Committee address. I will call Members to speak in order of request and will call the Minister to reply each time. The groupings are binding, and it will not be possible to degroup an amendment for separate debate. A Member intending to move formally an amendment already debated should have given notice in the debate. Leave should be given to withdraw amendments.

When putting the Question, I will collect voices in the Grand Committee Room only. I remind Members that Divisions cannot take place in Grand Committee. It takes unanimity to amend the Bill, so if a single voice says "Not content", an amendment is negatived, and if a single voice says "Content", a clause stands part. If a Member taking part remotely intends to oppose an amendment expected to be agreed to, they should make this clear when speaking on the group. We will now begin.

Clause 16: Information systems

Amendment 95

Moved by ***Baroness Finlay of Llandaff***

95: Clause 16, page 9, line 18, leave out "may" and insert "must"

Member's explanatory statement

This amendment is designed to seek assurances from the Minister that the Government will proceed to make regulations under the Bill, setting up the new information system envisaged by Clause 16.

Baroness Finlay of Llandaff (CB) [V]: My Lords, this is a large group of amendments relating to expert registries. I have Amendments 95, 99, 100 and 101 and support the others in this group.

First, I welcome Clause 16, which the Government added during the Bill's passage in the other place. The clause is a clear step in the right direction. Amendment 95, like Amendment 96, would build on this to ensure efficacy by tracking the use, and the outcomes from the use, of all medical devices rather than just a select few. We must not forget the conclusions of the Cumberlege review that registries are too

"few and far between and all too often prompted by catastrophe".

The Bill provides a prime opportunity to move away from that position. Without tracking all devices, we will allow another scandal, involving an as-yet-unknown device, to emerge undetected until many have been affected. A proper warning system is essential.

Amendment 99 seeks to make the list of objectives for regulations listed under Clause 16(2) mandatory rather than permissive. These should be minimum standards against which to hold any regulations the Government publish, not just aspirations.

Amendments 100 and 101 then seek to add to that list of standards. In doing this in Grand Committee, I would welcome some commitments from the Minister, setting out where the Government share the objectives in those amendments. In essence, the difference between the Government's approach and mine is that the Government foresee a future in which some medical devices continue not to be tracked, hoping that their outcomes will be audited. I strongly believe that this is a mistake.

Registries, which track patient outcomes through proper monitoring and audit, are an essential component of post-market surveillance and a prerequisite for patient safety. They should be the rule, not the exception. This is a principle that the Royal College of Surgeons of England strongly supports too. Indeed, its former president, Professor Derek Alderson, made this clear in his evidence to the review of the noble Baroness, Lady Cumberlege. As he put it

"a registry of its own right does not create patient safety; it's just a list. The registry must contain information that can be audited".

Essentially, as the Cumberlege review acknowledges, a registry is a registry only if it contains patient outcomes, which are then subject to expert oversight. To that end, Amendment 100, which is at the core of this group of amendments, sets out the following principles.

First, the use of all implantable devices should be recorded in a registry. That goes to the heart of the issues explored by the Cumberlege review and is surely

[Baroness Finlay of Llandaff]
the central lesson that must be learned from the unnecessary—and unnecessarily long—suffering of thousands of women whose experiences with mesh were horrific.

Secondly, other devices used in the course of operations should similarly be subject to outcomes tracking. I raise this in particular because it is not just devices left inside people that can later cause problems. We know, for example, that machines used in the heating and cooling of blood during open heart surgery can cause a Mycobacterium chimaera infection. The NHS now warns people of this risk, but it seems clear that the Bill should put in place measures to ensure that the use of particular machines is tracked, and that where infections develop later, a flag can be raised against that machine. To be clear, the machines involved do not actually make contact with the patient or their blood. The heater-cooler units contain two water tanks and tubing. One water tank uses warm water, which, through indirect thermal transfer, keeps the patient warm during the surgical procedure, often through the use of a warming blanket. The second water tank contains cold water, used, again indirectly, to cool the cardioplegic solution that slows or stops the patient's heart to allow the surgical procedure to proceed. It is thought that where Mycobacterium chimaera develops in these machines, it can escape as aerosol—a fine spray—into the surgical area and thus cause infection from there. I raise the example simply to illustrate that medical devices are not only about what is left inside people, or even what comes into contact with people. The new provisions for information systems need to be flexible in recognising that.

The third provision of Amendment 100 is that information systems must be subject to expert oversight. That is to deal with the central point raised by the Royal College of Surgeons of England, which is that without this oversight a registry is just a list—not really a registry at all. A good example of a registry in action is the National Joint Registry, which is overseen by a steering committee of experts. The expert committee monitors outcomes achieved in joint replacement surgery, analysing procedures by brand of prosthesis, hospital and surgeon. Instances where performance falls below expected levels are highlighted to ensure appropriate investigation and follow-up. This is a standard we need to see replicated across surgical specialities and across the NHS.

Fourthly, and perhaps most critically, the amendment seeks assurances from the Minister that information systems set up under the Bill will provide a direct route for patients to report their own outcomes. Clinicians, of course, want to assume the best about the treatment they have commissioned and undertaken for a patient. It is a natural and not ignoble instinct to try to reassure a patient who presents with a problem following a procedure. There is human nature in a clinical transaction. When a problem emerges, patients are often reassured that they "need to give it more time" or "things will settle down". Each GP may see only one or two patients who have been subject to a particular device or procedure. With follow-up appointments decreasing, these patients with problems can become invisible to secondary care. Yet the patients know that they feel worse, feel that they are not being properly listened to and speak to others in online communities, discovering a specific pattern of concerns.

The yellow-card notification scheme is greatly underused, and patients do not know how to self-report on it. For that reason, we need two ways for information to reach a registry. We hope that a majority will be tracked from patients, through clinicians. Where there are multiple instances of concerning outcomes, these should be flagged through expert monitoring, but there must be a failsafe for patients to approach the holders of the registry directly to have their outcome reported and considered in its monitoring. The fourth limb of Amendment 100 seeks to achieve this objective and Amendment 101 reflects the same principle. Together, the measures in Amendments 100 and 101 seek to implement this key conclusion of the Cumberlege review:

> "A central patient-identifiable database should be created … This can then be linked to specifically created registers to research and audit the outcomes in terms of both the device safety and patient reported outcomes measures."

That surely is the goal to which we must all aspire.

I want finally to address Amendment 104, to which I have added my name. The noble Lord, Lord Lansley, draws attention to the balances we have to get right in collecting all this data in the name of patient safety. As I said on a previous group of amendments, I hope and expect that dealing with consent to recording this data could and should be dealt with as part of shared decision-making between the clinician and the patient at the point of agreeing to a procedure. Of course, it should be open to a patient to have a procedure without the data being recorded, but they would have to be made aware of the increased risk to their own health if problems with a device used in the operation were later to arise.

I have sought to reflect this point in Amendment 100 by making clear that collecting data should be subject to patient consent. None the less, the noble Lord, Lord Lansley, offers another way to deal with the issue by putting in the Bill that regulations under Clause 16 should have regard to the Caldicott principles. I do not see how the Minister could argue with that and I hope he will be able to give a positive response.

This group of amendments is designed to assist the Government and to catalyse faster movement on their part. I understand that Ministers see tracking and auditing the outcomes from the use of all medical devices as the right direction of travel, but as yet we do not have a destination or an estimated time of arrival. We need to hear both from the Minister this afternoon. I beg to move.

Lord Ribeiro (Con) [V]: My Lords, I thank the noble Baroness, Lady Finlay, for introducing this group. As a surgeon, I will focus on the registries and, in particular, the National Joint Registry—the NJR—and the Breast and Cosmetic Implant Registry. The noble Lord, Lord Hunt, was Parliamentary Under-Secretary of State when the NJR was introduced in 2003, with the aim to

> "improve surgery through learning from best practice, and … improve the quality of care to patients."

The NJR is the largest of its kind in the world, with data from 3 million hip, shoulder, knee, elbow and ankle replacements. In the last year before Covid-19, nearly 200,000 hip and knee replacements were recorded. By analysing this information, surgeons are supported in choosing the best artificial joints for their patients. It helps surgeons decide whether their patients need to return to hospital by flagging up problems with a particular type of implant. I was lucky enough to have bilateral metal-on-ceramic hip implants. Had I received a metal-on-metal implant, I would be concerned, as the NJR in 2010 identified higher than expected revision rates for metal-on-metal implants, with metal debris damaging patients' soft tissue and causing pain and loss of function. Without the NJR's comprehensive registry, hospitals would be unable to track their patients' progress and identify problems early. Similarly, the Breast and Cosmetic Implant Registry records implants used in patients, along with the surgeon and organisation responsible for the procedure, allowing patients to be traced in the event of a safety concern or product recall.

2.45 pm

As we were informed in the Minister's useful briefing this morning, the NJR is able to capture details on patients, procedures, place or site, and the device with its product identification and unique identifier, thus allowing comparison with other devices that are underperforming. Amendment 100 adds four new paragraphs to Clause 16(2). They are subject to the patient's consent and require that information about any medical device implanted in the human body is registered and retained in the information system outlined in Clause 16. The information system should be subject to expert review and, more importantly, patients should be empowered to enter reports of their experiences, following the use of medical devices in their treatment. The noble Baroness, Lady Cumberlege, identified this in her review and she will doubtless comment further.

In conclusion, I also support Amendment 101 in the name of the noble Baronesses, Lady Finlay and Lady Bennett. These amendments will give patients a voice and ensure that they consent to the information used about their care.

Lord Lansley (Con): My Lords, I am very glad to have the opportunity to follow my noble friend Lord Ribeiro and to speak to my Amendment 104. I am grateful to the noble Baroness, Lady Finlay of Llandaff, for bringing forward her amendments as well. They highlight some useful points and—particularly Amendment 101—focus on the necessity for patients to be provided with information and for patient experience to have its place in the information systems to be created under Clause 16. My noble friend Lord Ribeiro very helpfully illustrated that the benefit of the joint registry and similar information systems is not simply to promote safety but also to improve outcomes. We can certainly look forward to seeing both happening in the future.

My Amendment 104, to which the noble Baroness, Lady Finlay, and the noble and learned Lord, Lord Woolf have added their names, requires that the regulations made under Clause 16 include specific reference to the Caldicott principles. Noble Lords will recall the establishment of those principles back in 1997. They say that an organisation should:

"Justify the purpose for using confidential information"

and that the NHS should not

"use confidential data unless absolutely necessary".

The NHS should:

"Use the minimum necessary personal confidential data",

while

"Access to personal confidential data should be on a strict need-to-know basis … Everyone with access to personal confidential data should be aware of their responsibilities"

and, when using data, NHS personnel should "comply with the law". In 2003, a seventh principle was added:

"The duty to share information can be as important as the duty to protect patient confidentiality."

In a sense, a balancing principle was added as number seven. The amendment refers to those two reports, which have given rise to those principles. I am interested generally in the proposition of how certain we are that the Caldicott principles are being applied in every case. I think in these regulations it would be to the benefit if they were restated, given the importance of this as an information system.

I will ask three questions of my noble friend. First, can he assure us that the regulations themselves will make specific reference to the Caldicott principles? This would mean that we did not need to put it in the Bill. Secondly, in establishing these information systems, can we be assured that Caldicott Guardians will be appointed specifically in relation to each of the information systems that are to be established? Thirdly, can my noble friend tell us any more about the National Data Guardian's consultation, which opened in June and closed in September, on an eighth principle:

"Inform the expectations of patients and service users about how their confidential information is to be used"?

This ties very directly into Amendment 101 in the name of the noble Baroness, Lady Finlay of Llandaff.

If it is endorsed by the National Data Guardian, that principle would give rise to an additional principle being reflected in the regulations. I freely confess that this is a good reason not to put my amendment in the Bill, because the nature of the Caldicott principles might well change in the immediate future, so it is not very helpful to entrench it in its current form. If we get the assurance that we are looking for from my noble friend, I hope the regulations, when they are made, will be able fully to reflect the Caldicott principles.

Baroness Burt of Solihull (LD) [V]: This string of amendments all talk about recording information, and I broadly agree with all of them. I particularly mention Amendment 104, in the name of the noble Lord, Lord Lansley, because of the mention of the Caldicott principles. Many people, particularly noble Lords in the Liberal Democrat party, jealously guard our right to privacy—hence the promissory tone of Amendment 100 in the name of my noble friend Lady Jolly.

The purpose of the proposed new clause in Amendment 107, to which I have put my name, is slightly different from that of the other clauses because

[Baroness Burt of Solihull]
it seeks to ensure that a proper systematic analysis is made of the effectiveness of mesh implants through registers. The Cumberlege review notes that registries are

"few and far between and all too often prompted by catastrophe"

in relation to transvaginal mesh and PIPs. This is obviously a good phrase because the noble Baroness, Lady Finlay, has already picked it out of the report.

This clause proposes a register. It requires the Secretary of State to report on progress towards creating databases relating to other devices. I appreciate that there are many databases out there—far more than I anticipated when first became involved in this Bill. The idea of the registries is to draw all this information together. As the Cumberlege report says,

"a 'registry' … would act as a repository for more complex patient related information datasets enabling research and investigation into patient outcomes."

This would be more holistic and far more useful than just a database, enabling any adverse outcomes to be spotted early and not allowed to fester, literally, for years before defaults are spotted.

Patient groups must be consulted on devising the register. Time and time again, victims reported that they had not been listened to, despite the fact that the mesh felt "like razor blades" inside them. Never again must a patient feel patronised, unheard or left to suffer in silence. Of course, those healthcare professionals at the coal face, as it were, of the issues must have their say. We know that some registries exist today, but this database would bring everything together, instead of the piecemeal system we have at the moment.

I will go back to the lady whose poignant testimony I quoted at Second Reading, whom I called Jane. Jane had an estimated five pieces of mesh inside her, although the health professionals treating her maintained that there were only two. How can this be? I leave noble Lords to speculate but, in my view, this is a sharp indictment of the state of the service our health service gives to patients in this area. Unless we have a proper register of everything that is inside a patient, when it was inserted and what its performance record is, how are we going to enable them to be given the appropriate treatment when problems arise? The Royal College of Surgeons endorses this view—it wants all medical device implants overseen by registries.

Finally, I express my gratitude to the noble Lord, Lord Bethell, for the briefing this morning. I was very heartened to learn of the hard work going on in this area and the aspiration that a register for vaginal mesh implants could be up and running in only a year. I wish the Bill well.

Baroness McIntosh of Pickering (Con) [V]: My Lords, first, I apologise for not being able to participate at earlier stages of the Bill because of the clash with speaking in the Chamber. I congratulate the noble Baroness, Lady Finlay, on introducing these amendments and, especially, my noble friend Lady Cumberlege for all her work in preparing her report in advance of this. I also thank the Minister, my noble friend Lord Bethell, for briefing us this morning. I will particularly speak in favour of Amendments 100 and 101.

I hope that my noble friend the Minister will look favourably on patients being able to report directly to the register. The testimony that my noble friend Lady Cumberlege and others heard in the context of her report was very moving. As my noble friend Lord Ribeiro said, it is absolutely essential that the voice of patients is heard. This absolutely goes to the heart of medical and surgical treatment. We must ensure that, whether they have had a good or a bad experience, patients are able to place their experiences on the record. Amendments 100 and 101 go some way to achieving that. Were my noble friend not to like those amendments, I hope that the Government would come forward with a similar provision to put our minds at rest. I thank the noble Baroness, Lady Finlay, for these amendments, and I lend my support to them.

Baroness Masham of Ilton (CB) [V]: My Lords, Amendments 100 and 101 make clear that there should be means by which patients can report into registries directly so that they can be heard even if there is divergence of opinion with their clinician. Patients need to be protected. I support all the amendments in this group and thank those who tabled them, giving extra thanks to my noble friend Lady Finlay, who works so hard.

This is exceedingly important for many patients who have rare and complicated conditions. I speak from experience, as a high-lesion paraplegic. Many GPs and general doctors or surgeons may not be familiar with several of the peculiarities and may not understand the patient's needs. For people with spinal injuries, for example, the three Bs are very important: bowels, bladders and bedsores. If not treated by specialists, patients can get into serious problems. Severely disabled people use all sorts of complicated devices that need to be kept on a register and to be easy to track if they go wrong. Suitable mechanisms should be found for the variety of needs, which can be inside and outside the body. This is particularly difficult in this time of Covid-19.

3 pm

The NHS is so big, and there are so many different bodies, that it is vital that patients should have a direct route to report their experiences into any information system with a clear remit. Plain English should be used and there should be clear translations into other languages, so that patients understand and are understood. Patients need to feel that they are having their voices heard, so that improvements can be made and mistakes will not happen to other patients.

I endorse the recommendations from the noble Baroness, Lady Cumberlege, in her report *First Do No Harm*. It is important that MHRA works closely with NICE, but I hope that it will also work with patients. Patients should be trusted: it is their life, and their hope for the future. The overriding need for better patient safety is, I hope, what this Bill will advance.

Baroness Jolly (LD) [V]: My Lords, I particularly welcomed the remarks of my noble friend Lady Burt, as they took me back to the days in the 1990s when I taught IT. I taught A-level students the differences between databases, tables and registers. I totally support these amendments about registries and databases relating

to medical devices. They form one of the key recommendations of the review of the noble Baroness, Lady Cumberlege, in light of the scandals relating to, for example, vaginal mesh.

A huge number of patients have been affected by these incidents, and introducing registries allowing the use of implantable devices to be tracked, and allowing patients to view information relating to the data stored, would make a huge difference. Amendment 95, from the noble Baroness, Lady Finlay, changing "may" to "must", is designed to seek assurances from the Minister that the Government will proceed to make regulations under the Bill setting up the new information system envisaged by Clause 16.

Amendment 96, in the name of the noble Baroness, Lady Thornton, is a probing amendment seeking clarity about whether the Government intend to track all medical devices used in the UK, rather than a selection. Amendment 99, in the name of the noble Baroness, Lady Finlay, seeks to make mandatory the list of specified issues for regulations to cover. Her Amendment 100, to which I have added my name, would allow for the creation of a system of information regarding implants, with appropriate consents and oversights. It would also allow a patient's experiences to be reported and stored; they should be subject to oversight. The noble Baroness, Lady Finlay, has also included the point about patient experience in her Amendment 101.

Amendment 104, in the name of the noble Lord, Lord Lansley, would require regulations under this section to have regard to the Caldicott principles. It was just over 20 years ago, when I was a non-exec director in a local NHS trust, that these principles were first introduced. I can remember the way that clinicians—in particular, senior clinicians—really welcomed the new measures. They certainly changed the way that clinicians thought about information and data. We are now moving through a different step change.

Finally, my noble friend's Amendment 107 would require the introduction of a registry for patients who have had surgical mesh implanted. Though I appreciate that this looks retrospective, there should be data held in hospital databases that could be imported into the new registry. It would then give a complete overview of surgical mesh implantations. It would require the Secretary of State to report on progress towards creating databases relating to other devices or implants and how they would lead to the creation of registries.

Like other noble Lords, we favour registries as opposed to databases because, according to the Cumberlege review, registries act as a repository for more complex patient-related information datasets, enabling research and investigation into patient outcomes. A database is really just a three-dimensional table held in store, but a registry is a richer, more useful resource than a database. However, often a database is required before a registry can be created, which is why our amendment is framed in that particular way.

Baroness Thornton (Lab): My Lords, this group concerns the need to set up information systems—registries—which will serve the purpose of tracking medical devices. I thank the Minister and the Bill team for their very enlightening and useful presentation this morning. The noble Baroness, Lady Finlay, and other noble Lords have already explained to the Committee how these registries and databases might work. The key point, which was made by the noble Baroness, is that they should be mandatory rather than permitted. Changing "may" to "must" so that the Secretary of State has to produce the information system envisaged by Clause 16 is a small but vital change. The Minister will need to explain to the Committee why, at this stage and after the experiences expressed and covered in the report of the noble Baroness, Lady Cumberlege, there should be any discretion in this matter.

The other amendments seek to ensure that patients have a direct route to report their experience to any information system established. Again, after the dismissal of so much patient experience over so many years in the cases outlined in *First Do No Harm*, it would seem to be the only way to guarantee that patient experience can be heard and registered.

Amendment 96 in my name is a probing amendment which seeks clarity about whether the Government intend to track all medical devices used in the UK, or just some of them. As other noble Lords have pointed out in the course of this Committee, if supermarkets have the technology and wherewithal to track the provenance of every single food product from anywhere in the world, we would need to understand why this would not be possible for medical devices.

Amendment 107 specifically addresses the issue of surgical meshes, and requires the production of a registry for patient safety. I hope that the Committee will be seeking to discuss registries and how they are linked. On Amendment 104 on the Caldicott principles, I do not see how anybody could possibly object to that.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, we had an excellent debate last week on the subject of medical device information systems at Clause 16, which is critical for how we will go forward on these points. The noble Baroness, Lady Finlay, seeks in Amendment 95 to confirm that the Government will make regulations to establish the system, not that they might. We will introduce this system; the noble Baroness provides no timescale attached to the obligation she introduces. It is essential that the regulations are informed by consultation. The discretion that "may" provides allows for this consultation to be conducted. We want the regulations to be right, not rushed.

I spoke last week on Amendment 96, in the name of the noble Baroness, Lady Thornton. Devices have varying levels of risk profile; it is our intention in the first instance to use the power in Clause 16 to require all implanted devices to be recorded in information systems. Implanted devices pose the greatest risk to patients and it is right that these should be prioritised. Consultation will help us to determine which devices ought to be captured by the information system.

On Amendment 99 in the name of the noble Baroness, Lady Finlay, we recognise the importance of all the issues in Clause 16(2): that is why they were explicitly referred to. However, there may be occasions where the inclusion of provisions in regulations on all four of the issues listed here is not appropriate or necessary.

[Lord Bethell]

For example, in future we might wish to update the types of information in Clause 16(2)(a) to include, perhaps, a new way of recording a procedure or a device. We might have no immediate need for further provision under 16(2)(b) to 16(2)(d). Without the flexibility afforded by the current drafting, we would be prevented from making proportionate regulation limited to what was necessary.

On Amendment 100 in the name of the noble Baroness, Lady Finlay, the drafting of Clause 16(2) is sufficiently broad as to say, "among other things". Regulation is not limited to the four suggested areas for provision at subsection (2)(a) to (d).

The noble Baroness suggests mandating recording of information on any medical device implanted into the human body and the information related to any other medical device as considered necessary for patient safety. Clause 16(2)(a) is sufficient for both these matters. While they are clearly important, the addition is unnecessary.

The noble Baroness adds a requirement of patient consent for the information to be recorded in the information system. I hope that the assurances that I provided to my noble friend Lady Cumberlege last week gave her some comfort on this point. I am happy to write further on this, but the noble Baroness will know that the information systems are conditional on regulations, on which we must consult.

The noble Baroness adds in her amendment expert oversight of any information system established under Clause 16(1). I do not think this is necessary. The information system acts as a database. Where expert oversight is needed is in the assessment of patient outcomes, where information is reviewed by clinical registries operated by experts in their field.

I understand the intent behind Amendment 101. I pay tribute to the noble Baroness, Lady Masham, and my noble friend Lady McIntosh, who put it very well. The patient voice is very important in the assessment of the efficacy and safety of medical devices, but I do not wish to confuse the purpose of the information system. It is a hub; it is not a decision-making tool. There are existing routes to raise specific concerns and experience of devices.

The yellow card scheme allows patients to complete and submit reports themselves. This gives a single, clear route for patients to avoid confusion about who to tell and how, and to ensure that all necessary parties receive all data relating to patient concerns. However, data used for analysis needs to be consistent in format and terminology to ensure that comparisons can be drawn and to maximise the ability to spot common themes and issues.

Amendment 101A in the name of the noble Baroness, Lady Finlay, is unnecessary. Even though the overarching objective of the information system is medical device safety, and therefore a reserved matter, I have made it clear that I am committed to ensuring early and ongoing consultation and engagement with colleagues in Scotland, Wales and Northern Ireland as we look to develop a UK-wide system. I say for the record that it is of great importance to us all that we work together to improve the safe use of medical devices across the four nations. I strongly agree that there is a need for a centralised approach to address the existing gaps in the traceability of medical devices placed on the market. The Government have already introduced Amendment 126 to Clause 41. Therefore, it is neither necessary nor appropriate to set out the engagement or working arrangements between the four nations in regulations.

I understand that the aim of Amendment 104 in the name of my noble friend Lord Lansley is to ensure that organisations protect any information that could identify a patient, such as their name and their records. I reassure him and others who have spoken to the amendment that this information is used and shared only when it is appropriate to do so.

On the Caldicott principles and guardians, I am sure that these matters will be brought forward by others in consultation. That is the forum for addressing these points. Adherence to the Caldicott principles is expected of all NHS organisations, including—some would say most of all—NHS Digital. The Caldicott principles have been developed into the national data guardian principles that apply in England. GDPR also requires that personal information be treated in this way. All data collected by the information system will be subject to GDPR. The intention is that the medical device information system should hold patient-identifiable information. Information that is de-identified will be shared with the relevant organisations to ensure the protection of that patient. It is unlikely that there would be any requirement to share patient-identifiable information with other organisations. MDIS would be programmed to know, when provided with notices by MHRA or others, that action needed to be taken and which patients it applied to.

Parliament oversees data protection legislation. The standards are very high, and we have no intention of lowering them. I do not think, therefore, that having regard to the Caldicott principles is necessary or would add anything material to the legal constraints that would apply to this information. Of course, we have no intention of doing anything contrary to those principles through this legislation. Regulations under Clause 16 will be subject to public consultation. Under GDPR, they are also subject to the requirement to consult the Information Commissioner's Office. We have already begun discussions with the Information Commissioner's Office on this basis.

3.15 pm

I commend the spirit of Amendment 107, but it is unnecessary. It seeks to establish a registry of those patients who undergo procedures to insert surgical mesh in order to research and audit patient outcomes and device safety. The amendment would also require a report to be laid before Parliament within six months. I stand by all remarks that I have made to date on the importance of my noble friend Lady Cumberlege's report, which dealt with the specific issue of vaginal mesh. I appreciate that, as she stated earlier in the proceedings, this did not cover other uses of mesh, but the consequences set out in her report for some patients can be similar. I take these concerns very seriously. That is why work is already under way under a direction from the Secretary of State to NHS Digital, the Surgical Devices and Implants Directions of 15 July 2020, to develop a national database for pelvic floor procedures

involving mesh. Work is also under way to determine how the information collected could best be clinically assessed to identify potential issues at the earliest point. NHS Digital is also working with the devolved Administrations on this project.

As the noble Baroness, Lady Finlay, put very well, existing clinical registries have been established through various mechanisms in the past, from direct action taken by the sector in the creation of the National Joint Registry through to commissioning by DHSC and NHS England and NHS Improvement. The geographical scope of each registry is different. Some work across the whole of the UK while others are nation-specific.

Amendment 107, however, would require the establishment under the Bill of a clinical registry for the monitoring of all procedures that use surgical mesh. I do not think it appropriate to single out one clinical area for inclusion in this Bill. Other clinical registries operate without being established under legislation. The National Joint Registry demonstrates that the best basis on which to create a registry is a decision based on clinical need. Clinical needs may change over time, potentially rendering some registries obsolete as procedures change and technology develops. We recognise that further clinical registries will be necessary. Work is under way with existing registries to identify areas of best practice and establish any pitfalls to avoid in the future. The intention is to create a best-practice model that is flexible enough to respond to different clinical specialties' needs while retaining core similarities to ensure that the registries operate effectively to deliver maximum benefit to patients.

Further on Amendment 107, we are committed to full consultation on the regulations under Clause 16. It may take longer than six months to develop and lay those regulations before Parliament. I think the best way to update Parliament on our progress is by taking the steps to establish the system.

I hope that the noble Baroness, Lady Finlay, feels able to withdraw her amendment and that others do not press theirs.

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): I have received a single request to speak after the Minister, so I hope that we can now go to the noble Baroness, Lady Cumberlege.

Baroness Cumberlege (Con) [V]: No, that is a mistake. Somebody else involved with the conversation that I have been having thought that I wanted to come in on this occasion. I thought that I would give noble Lords a rest—they hear enough from me, so on this occasion I did not want to come in.

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): I thank the noble Baroness, Lady Cumberlege—that is very gracious. On that basis, we have nobody else to come in after the Minister at this point so I come directly to the noble Baroness, Lady Finlay of Llandaff.

Baroness Finlay of Llandaff (CB) [V]: My Lords, I thank all noble Lords who not only spoke in support of the amendments in this group but expanded on them and provided additional information.

I understand the Minister saying that it is important to get this right and not rush, and that the consultation will inform the SIs. I also understand him pointing out the rigidity of primary legislation. I accept his points and am glad for the assurances he was able to give.

I stress the importance of looking at all implantable devices, even those that look as though they are in such common use that we do not need to worry about them. An example happened just a couple of weeks ago when a guide wire for a pacemaker snapped inside a patient. Completely unknown previously, these things can happen. They need to be picked up and recorded.

We also need to update the way in which we record information and use the new artificial intelligence computer systems to analyse it. The reason I asked for expert oversight is that there is no point in putting information into any kind of database unless the right information is extracted from it, and expertise is needed to set that up. I accept, however, that this is a hub, not a decision tool in itself.

The yellow card system that the Minister spoke about needs to be publicised much more widely. I hope that, as we go forward, there will be a positive move across the whole of healthcare, in particular to make sure that patients are aware of this scheme so that they can use it appropriately and early. It is an amazing scheme; I pay tribute to Professor Phil Routledge, who instigated it many years ago—decades ago, I think—as a way of collecting adverse reactions.

I appreciate the Minister's assurance about working with the devolved nations, particularly in the light of the unfortunate remarks made recently about devolution. It is important to have compatible information systems and oversight that allows the free movement of information. That happens in the UK Foundation Programme Office and the UK medical and dental recruitment offices, where four-nation oversight works well. I know that those types of medical practice are outside the Bill's remit but we have examples of good working, which needs to be built on to cement the sharing of information across the different healthcare systems.

With that and with all the points made, which I hope will thoroughly inform the statutory instruments as they are developed, I beg leave to withdraw the amendment.

Amendment 95 withdrawn.

Amendments 96 to 104 not moved.

Clause 16 agreed.

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): I should alert the Committee to the fact that the House may divide during the next debate. I will adjourn our proceedings accordingly. We now come to the group beginning with Amendment 105. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate.

Amendment 105

Moved by ***Baroness Wheeler***

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

"Requirement for consultation with devolved authorities

(1) Before making regulations under section 16 that contain provision which is within the legislative competence of a devolved legislature, the Secretary of State must consult the relevant devolved authority on that provision and have regard to the views of that devolved authority.

(2) In this section—

"devolved authority" means the Scottish Ministers, the Welsh Ministers, Northern Ireland ministers or a Northern Ireland department; and

"devolved legislature" means the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly.

(3) A provision is within the legislative competence of a devolved legislature if—

(a) it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of the Scottish Parliament;

(b) it would be within the legislative competence of Senedd Cymru if it were contained in an Act of Senedd Cymru (including any provision that could only be made with the consent of a Minister of the Crown); or

(c) the provision, if it were contained in an Act of the Northern Ireland Assembly—

(i) would be within the legislative competence of the Assembly, and

(ii) would not require the consent of the Secretary of State."

Member's explanatory statement

This new Clause would require the Secretary of State to consult the devolved administrations before making regulations concerning UK-wide information systems.

Baroness Wheeler (Lab): My Lords, I am moving Amendment 105 on behalf of my noble friend Lady Thornton; it leads the group of amendments following Clause 16, which provides the legal framework for the medical devices information system. I will also speak to our other amendments in this group—Amendments 128, 130 and 132—and on the remaining amendments, including government Amendment 126.

The number of amendments in this group shows the strength of feeling on this issue. Key issues raised last week and in debate on Clause 16 earlier today are also relevant here. As we have all stressed, *First Do No Harm*, the landmark report by the noble Baroness, Lady Cumberlege, very much places the importance of the MDIS system centre stage. The complete lack of safety data and record-keeping on pelvic mesh implants in thousands of women—including basic details about the patient's name, medical history and health problems, and manufacture and supply information for these devices after implantation, which would have enabled patients to be traced and treated—reinforces the need for MDIS and its future role as both an information and tracing system.

Amendment 105 would add a new clause after Clause 16 to place a statutory requirement in the Bill that the devolved Administrations in Scotland, Wales and Northern Ireland must be consulted before regulations on the MDIS are laid and that the Secretary of State must have regard to the views of the devolved authority. Government Amendment 126 and Amendments 105, 127, 128, 129 and 132 all aim to strengthen consultation provisions, including public consultation before making regulations under any provision of Parts 1, 2 or 3 of the Bill or under Clause 16(1).

This focus on the importance of consultation and ensuring that NHS Digital—with its existing remit and expertise limited to England—fully engages in meaningful and active collaboration with the devolved authorities is absolutely crucial for the UK-wide development of MDIS. If the system is to be fit for purpose, the work to deliver it must be informed by and responsive to the local requirements and realities across the devolved Administrations. The devolved nations must be fully involved in the system's design and modelling, have equal access to MDIS data analysis and sharing, have a governance structure for MDIS that includes representatives from all the devolved authorities' institutions, and have parity of funding across the four nations.

I am very grateful for the helpful correspondence of 9 November from the Minister to the noble Baroness, Lady Finlay, regarding MDIS and working with the devolved Administrations. It was shared with Members, together with the 4 November letter from NHS Digital setting out its intended "collaborative approach". These letters contain a number of assurances on both the current work being undertaken and how the future four-way relationship needs to be taken forward to develop the UK-wide system.

The remaining amendments in this group, including the government amendment, refer to the general duty under Clause 41 to consult before making regulations. Our Amendment 132 would insert a new clause on the duty to consult the devolved Administrations and "have regard" to their views. I hope the Minister will agree that that is not an unreasonable requirement.

Government Amendment 126 would amend Clause 41 to ensure consultation with the devolved authorities under Clause 16, headed "Information systems". Although the inclusion of this statutory duty to consult as far as Clause 16 goes is a step forward, other key parts of the Bill have an impact on the devolved authorities. We want to see a general duty in Clause 41 to consult the devolved Administrations, as is common practice in a number of Bills—not just limited to consultation in relation to Clause 16. I hope that the Minister will undertake to review the Bill after Committee and consider this key point in relation to Clause 41.

In his 13 October letter to noble Lords, the Minister refers to the Government's amendments as providing "certainty" that the Government will ensure that the devolved authorities' views are heard throughout the development of the regulations and in their implementation. The certainty given, however, is in relation only to Clause 16 and not to the rest of the Bill, as we would like to see.

Amendment 130 is a probing amendment that would remove the permissive provision in Clause 41(3) that consultation carried out before the Act was passed could satisfy the duty to consult. This clause is very open-ended. Can the Minister provide details of the purpose and intended use of this provision? There is no explanation in the Explanatory Notes. Will there be a time limit on how up to date a consultation needs to be for it to be considered done and dusted?

3.30 pm

Clause 41 is very scant in detail, so our Amendment 128 specifies cohorts that must be consulted under the clause—healthcare, pharmaceuticals, veterinary, medical

research and patient representative organisations, and other such persons considered appropriate. Amendment 129 in the name of the noble Lord, Lord Sharkey, covers similar ground and gives welcome clarity on the consultation details, including the terms, start date and length of consultations.

Amendment 127, in the name of the noble Lord, Lord Patel, quite rightly brings the focus back to listening to the voices of patients directly affected by the regulations. Can the Minister tell the Committee what structure and formal processes will be in place to ensure that the knowledge and expertise from health organisations, patients and staff across health and social care impacted by MDIS is drawn on in the system's development and operation?

I have a few questions for the Minister on the various letters to Peers and to the noble Baroness, Lady Finlay, and from NHS Digital, to which I referred earlier. If he does not have the answers to hand, I am happy for him to write to me. First, on NHS Digital's reference in its letter of 4 November to the need for further detailed discussions with the devolved authorities to design and plan the MDIS solution and proposal to formally review where further input is needed with further workshops and consultation, can the Minister update the Committee on the programme of work that has occurred so far and what regular engagement is planned regarding both the content of the regulations on MDIS under Clause 16 and its future operation?

Secondly, NHS Digital refers to engagement with stakeholders, including clinicians, patients, devolved authorities, private providers, MHRA, the CQC and NICE, as the key to delivering "a full interoperable UK-wide system". This is, of course, welcome. We are told that there are active discussions with the devolved authorities and how they can best be supported in their engagements with stakeholders within their own nations. Can the Minister tell the Committee what work is being undertaken and how that is progressing?

Thirdly, the letter of 9 November from the noble Lord, Lord Bethell, also reminds us of the involvement of the private provider sector in MDIS, which we have not really looked at yet. Can the Minister say what discussions have been held and what work has taken place with private providers and how it is envisaged that they will participate in MDIS?

Fourthly, in that same letter, the Minister refers to reassurances given by NHS Digital, NHSX—which has responsibility for setting national policy and developing best practice for NHS technology, data and digital—and the Department of Health and Social Care teams responsible for developing the regulations, that they will engage with the devolved Administrations "to ensure there is an effective system across the UK". How will this three-way relationship be overseen and co-ordinated?

Finally, the Minister's letter of 9 November updates on the ongoing process of consultation on Clause 16 with the devolved authorities. The Scottish Health and Sport Committee has agreed to recommend consent to the clause to the Scottish Parliament and Northern Ireland officials have laid a legislative consent memorandum at the Assembly business office for scrutiny. However, in Wales there are "residual concerns". Can the Minister tell us what these are and what has been done to address them? As a result of the overall consultation, does the Minister envisage changes to the Bill on Report and, if so, will he undertake to ensure that any such amendments are circulated to Peers in advance of their submission to the Marshalled List? I beg to move.

Lord Patel (CB): [V] My Lords, in speaking to my Amendment 127, I also speak in support of the amendments referred to by the noble Baroness, Lady Wheeler, on consultation with the devolved Administrations. While Scotland is devolved in terms of healthcare, the regulations on medicines and medical devices, particularly market authorisation, is not. I support the comments on consulting the devolved Administrations and I have no doubt that the Minister will respond.

I am extremely grateful to my friend, the noble and learned Lord, Lord Mackay of Clashfern, for adding his name to my Amendment 127. I am pleased to see that he might speak to it later. The amendment would add to line 9, page 24 of the Bill, the words

"patients and end users directly affected by the regulations".

It would strengthen the consultation provision by requiring that patients and end users be part of any consultation relating to potential new regulation on medicines, veterinary medicines and medical devices.

Clause 41 creates a duty to consult the relevant authorities when using the delegated powers to make provisions for medicines, veterinary medicines and medical devices. However, this duty refers only to who the authority thinks it should consult, giving a wide area of discretion and providing no guidance or guarantee on consulting patients and end users of medicines and medical devices.

The Cumberlege review found widespread failure to listen to patients' voices. It recommended that the regulatory framework underpinning the MHRA, and medicines and medical devices in general, be reformed to better take into account patients' perspectives in the future. In addition, the review recommended that the MHRA regulatory framework should have a requirement to demonstrate how patient views have been taken into account and influenced regulatory design. With this in mind, it is surely crucial that any duty to consult on the exercise of powers should also include reference to the need to consult patients and end users of medicines and medical devices where that is considered reasonable.

I have been deliberately brief because this proposal is so obvious that I do not, I hope, need to speak at length. I am sure that the Minister recognises this, and I look forward to his response.

Lord Sharkey (LD) [V]: My Lords, all the amendments in this group deal with the very important question of consultation. As the DPRRC has pointed out in its report on the Bill, consultations are not a substitute for proper parliamentary scrutiny, which the Bill so obviously fails to provide, but in the absence of any real parliamentary mechanisms for real scrutiny, consultations take on an added importance.

[Lord Sharkey]

Clause 41 is slightly improved by the Government's Amendment 126. The obligation to consult the devolved Administrations is obviously critical, although it would be helpful if the Minister could explain why in Northern Ireland it is the Department of Health that must be consulted rather than Ministers.

The Minister may also be able to reassure the Committee that the government amendment does not provide only one overriding consultation; the text seems to suggest that when it refers to carrying out "a public consultation". Can we assume that there will be not portmanteau consultations but individual consultations on each proposed significant policy introduction, change or amendment?

The introduction of a new obligation in proposed new subsection (1B) to include a summary in the consultation document, with the relevant authority's assessment of the matters addressed by the proposed regulations is welcome, as far as it goes. But quite what depth or rigour should these assessments have? Can the Minister assure the Committee that the assessments will have the same reach, depth and rigour as the standard impact assessments produced for SIs?

Apart from naming the devolved Administrations, it is notable that the government amendment does not specify, or even hint at, who should be consulted in any of these consultations. The Bill is entirely silent on the matter. This leaves open the possibility of narrowly drawn consultations and the omission of important interested groups, not to mention short consultations over holiday or very busy periods. I am particularly concerned that the voice of the medical research charities be clearly heard in all the appropriate consultations. I remind the Committee of my interests as chair of the Association of Medical Research Charities, whose 150 members spent £1.9 billion on research last year—the same amount as was spent by the Government. Despite this enormous contribution, the Government have form in overlooking the medical research charities sector. It took an amendment moved in your Lordships' House to persuade the Government to agree that the board of UKRI should include a person with experience of the sector. We do not want to see the same omission here.

Our Amendment 129 is very similar to Amendment 128 in the name of the noble Baroness, Lady Thornton, which we are happy to support. Both amendments list who must be included in any consultation. The lists should not be contentious or surprising. We include

"representatives of the relevant patient groups … medical research charities"

and pharma as statutory consultees, along with academic researchers. We leave it open to the relevant authorities to add others to that list.

Our amendment also addresses the problems that could be caused by short and short-notice consultations, perhaps over holiday periods among a less than comprehensive range of consultees. It simply requires the relevant authorities to publish on their websites the terms, start dates and lengths of the consultations, along with the proposed consultees and

"date and method of the publication of … results".

I rather hope that the Minister will tell us that this part of our amendment is not necessary. I hope that he will see our amendment as an opportunity to give firm assurances to the Committee that the groups we name will be consultees, and about the form and detail of each consultation, as we propose. I hope the Minister will feel able to oblige us.

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): I have been made aware that a Division may happen in the course of the next contribution. I apologise in advance to the noble Baroness, Lady Bennett of Manor Castle, should we have to suspend the Committee. I now call the noble Baroness, Lady Bennett.

Baroness Bennett of Manor Castle (GP) [V]: It is a pleasure to follow the noble Lord, Lord Sharkey. I share his concerns about the quality, depth and effectiveness of far too many consultations. As he was speaking, I was looking at an editorial article in the *British Medical Journal*, which says:

"The medical-political complex tends towards suppression of science to aggrandise and enrich those in power."

That is a powerful message.

I will speak specifically to Amendments 105 and 132, in the name of the noble Baroness, Lady Thornton, to which I have attached my name and which have been ably introduced by the noble Baroness, Lady Wheeler. I do not feel the need to speak at great length—maybe I will manage to beat the bells, but we shall see. However, I want to reflect on the fact that both Amendment 105, in addressing information systems and Amendment 132, in addressing regulations, specify full consultation with the devolved Administrations. As the noble Baroness, Lady Finlay, noted in her summing up on the previous group, the Government's attitude towards devolution is a little uncertain. It would seem that the Prime Minister's view changes from one hour to the next, according to recent reports, but it is terribly important that we see in the Bill an absolute commitment and requirement to consult the devolved Administrations.

In his comments on the initial group, the Minister noted that data needs to be consistent. Speaking as someone who has occasionally been forced to manipulate databases and work with Excel spreadsheets, although that is certainly not my favourite thing, I think we all know the problem with inconsistent data and the kind of outcomes that it can produce. It is crucial—

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): I am afraid I have to interrupt the noble Baroness, Lady Bennett, because we are now about to have that Division.

3.43 pm

Sitting suspended for a Division in the House.

3.50 pm

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): My Lords, we are now reconvening the Grand Committee and I call upon the noble Baroness, Lady Bennett of Manor Castle, to perhaps recapitulate her speech and continue thereafter.

Baroness Bennett of Manor Castle (GP) [V]: Thank you. I will not go back to the beginning but I was speaking about the need for consistent data, which the Minister referred to in his earlier summing up. We have, of course, diverging systems and that is the point of devolution: it is for the devolved nations and Administrations to be able to go their own way and end up with quality, easily comparable data. It is obvious that there will need to be very tight consultation and working together. Amendments 105 and 132 would put this into the Bill, Amendment 105 being particularly important in terms of data.

I will also refer briefly to the other amendments in this group. As the noble Baroness, Lady Wheeler, said, government Amendment 126 is an improvement. Any kind of strengthening of consultation, as in the references to the public and devolved Administrations, is good but it is only partial. I can only commend Amendments 127 to 130 for pushing further on these issues. We know from the report of the noble Baroness, Lady Cumberlege, that so much needs to be done better. Transparency, openness and consultation are clearly key to all of that.

Lord Mackay of Clashfern (Con) [V]: My Lords, I join my noble friend Lady McIntosh of Pickering in apologising for having my name to amendments here while I have found myself in proceedings on another Bill which was fairly encompassing in the sense that it required a good deal of attention to understand what was going on. We were not able to achieve the result that the noble Baroness, Lady Finlay, managed of being in both places at once. However, I am glad to be here on this occasion and I am particularly interested in Amendment 117, which we may reach later.

In this group, I particularly support Amendment 127, which the noble Lord, Lord Patel, has carefully referred to already. I generally support all that has been said by others before me on this group of amendments, especially the reference of the noble Lord, Lord Sharkey, to the need to keep in mind the medical charities. I think particularly of Cancer Research, but it applies equally, as he said, to all of them.

I wondered whether the government amendment made unnecessary some of our amendments, but I really wonder about that, because a public consultation is not specifically targeted, and I think the groups that we have represented—particularly in relation to Amendment 127—require to be consulted more directly. I do not know how your Lordships feel about consultations, but I often find that I did not know that there was a consultation at all until the time allowed for it was well passed. That is no doubt due to my lack of efficiency, but I suspect that a lot of patients will not know that a public consultation is happening unless it is drawn specifically to their attention. It is important that the consultation, public as it is, has direction as well. Therefore, I think that Amendment 127 and the other specific amendments are well worth considering in relation to the new government amendment.

I am also extremely anxious that the devolved Administrations should be properly consulted. Of course, devolution and independence are different things, and we are talking about devolved institutions at present. This group of amendments is important, and I agree with most of what has been said about them. Therefore, I do not need to say any more on this occasion.

Lord Hunt of Kings Heath (Lab) [V]: My Lords, it is a great pleasure to follow the noble and learned Lord. I have added my name to that of my noble friend Lady Thornton to Amendment 128, which was introduced by my noble friend Lady Wheeler. This regards the organisations to be consulted—other noble Lords have already referred to this—and concerns the provisions of Clause 41 for consultation on Parts 1, 2 and 3 of the Bill. As noble Lords have said, at the moment, it is entirely up to the Secretary of State who is consulted, other than the clarification the Government have brought in relation to the devolved Administrations.

The context of this amendment is the extensive power given to Ministers under the Bill. We have debated this before, but it is worth reminding the Committee that the Delegated Powers Committee in its report on the Bill was highly critical of Ministers for failing to provide sufficient justification for parts of the Bill adopting a skeletal approach. As the committee said, the Bill gives Ministers wide powers to almost completely rewrite the existing regulatory regime for medicines and medical devices.

It is also worth reminding the Committee that the Constitution Committee described the Bill as

"a skeleton bill containing extensive delegated powers, covering a range of significant policy matters, with few constraints on the extent of the regulatory changes that could be made using the powers."

It went on to say:

"The Government has not provided the exceptional justification required for this skeleton approach."

The case for a sunset clause is readily apparent, but in its absence, the way in which consultations are done assumes more importance than normal. It is very surprising that the duty to consult is open-ended and simply leaves it to Ministers to decide who to consult. The Minister may say that he does not like lists of organisations to be consulted, but legislation is littered with lists of organisations because it is important to reflect the range of bodies that ought to be consulted. Discretion is always given to Ministers to add to those lists of organisations.

I hope that the Minister will be prepared to take this back because in the end, certainly in the absence of a sunset clause, we have to beef up the provisions on consultation.

Baroness McIntosh of Pickering (Con) [V]: My Lords, I support in particular Amendments 105 and 127 in this group, but I shall speak briefly to Amendment 105 and thank the noble Baroness, Lady Wheeler, for introducing this short debate on it. In the context of the proposal for a requirement to consult the devolved Assemblies, I share the concern expressed by my noble and learned friend Lord Mackay of Clashfern: it is essential that we keep all the devolved Assemblies in tune with Westminster thinking as the Bill and the regulations under it progress.

4 pm

Will my noble friend the Minister please explain what form of consultation he imagines will take place in preparation for the regulations under the Bill? What

[Baroness McIntosh of Pickering]
timeframe will be allowed for the consultation? What regard will the Government and his department have to the result of the consultation? Also, will the responses to the consultation be published? In my experience, every consultation from the Government solicits many responses, particularly on controversial issues. I think this will excite a lot of interest as well. Are the Government now out of the habit of publishing responses to consultations, rather than their brief resumé of them? Are they inclined to revert to the former practice of publishing all the results, which I think is enormously helpful?

With those few words, I support the sentiments behind Amendments 105 and 127, but I am concerned that there should be proper consultation over a 12-week period, and that the results of and responses to the consultation will be published for us all to read.

Baroness Jolly (LD) [V]: My Lords, these amendments relate to consultation. My noble friend Lord Sharkey's Amendment 129, to which I have added my name, specifies some people or classes of people who should be involved but who have in the past been omitted—patients or representatives of patient groups, medical research bodies, the pharmaceutical industry and academic researchers.

My noble friend asked a good question of the Minister about why the consultation in Northern Ireland is with the department and not the Minister. The Select Committee on which I sit has engaged with the Northern Ireland Government in various areas of policy. They often do things well, but they do it their way.

The amendment also calls for details about consultation timings, consultees and proposed publication details. The point the noble and learned Lord, Lord Mackay of Clashfern, made about contacting patients was a really good one. His remarks follow on from those of the noble Lord, Lord Hunt of Kings Heath. Many consultations involve patients, but they are often with what I might call professional patients. This is not a derogatory statement, but sometimes they are the usual suspects and the story does not change. That can lead to a loss of a total patient view.

Government Amendment 126

"requires a relevant authority to carry out a public consultation before making regulations under any provision of Part 1, 2 or 3, and to set out the authority's assessment of any matter to which the authority must have regard in making the regulations".

It also requires the Secretary of State

"to consult the devolved administrations in relation to regulations under clause 16 (1)."

In this morning's useful meeting—I join others in thanking the Minister for hosting such a fascinating session—we touched briefly on Scotland, Wales and Northern Ireland. Would the Minister confirm that the devolved nations are being consulted on their involvement in their use of our registries, and maybe ours of theirs?

Amendments 125, 127 to 130 and 132 all relate to consultation when making regulations, including, but not limited to, the devolved Administrations, patient groups, various healthcare organisations and academics. Consultation is key to all this, with clinicians, who will give you one set of information, but even more so with patients, who will give you a different, richer, more detailed dataset.

Lord Bethell (Con): My Lords, Amendment 105, tabled by the noble Baroness, Lady Thornton, would mandate consultation with the devolved Administrations before making regulations under Clause 16. This question has been raised by a very large number of those who have contributed. Amendment 132, also tabled by the noble Baroness, would insert after Clause 41 a separate obligation to consult on regulations made under the Bill that relate to matters within devolved competence.

Both amendments are unnecessary. It goes without saying that we will consult the relevant Northern Ireland departments where it may be possible to make regulations jointly under Parts 1 and 2 of the Bill for the benefit of the whole of the UK. I reassure the noble Baronesses, Lady Jolly and Lady Masham, and all others who mentioned consultation with the devolved assemblies that we are in very regular contact. There are fortnightly four-nations calls. These include NHS Digital where necessary. We intend to maintain this level of engagement. It has proved constructive and has contributed enormously to our plans for broad consultation on the mechanics of the Bill.

While medical device regulation relates to reserved matters, the provision of healthcare services, including the healthcare data collected, is devolved. As the regulations about the establishment and operation of the information systems encompass both areas of responsibility, it is right and proper that the Secretary of State is required to consult the devolved Administrations before making regulations under Clause 16(1).

The noble Baroness's amendment appears on the list before my own, but Amendment 126 in my name, which I will come to shortly, is appropriate for this situation. It makes it very clear that the devolved Administrations will be consulted on regulations to be made under Clause 16. This reflects that provisions in those regulations may relate to devolved as well as reserved matters.

Amendment 127 in the name of the noble Lord, Lord Patel, is unnecessary. My Amendment 126, which I will come on to shortly, would apply a statutory duty to carry out a public consultation precisely because we know how important it is for patients and other stakeholders to be involved. The intent of Amendment 127 is already achieved by Clause 41 and is further clarified by the government amendment.

Amendments 128 and 129, tabled by the noble Baroness, Lady Thornton, and the noble Lord, Lord Sharkey, would commit the appropriate authority to consult all those listed before making regulations under the Bill. We all wish to ensure that a range of views are adequately captured. However, we do not wish to inadvertently rule out contributions from those accidentally not listed. Those listed in the amendments would not necessarily be directly affected by each regulation. For example, regulations relating to human medicines prescribing would not affect veterinary medicines. I reassure the noble Lord and the noble Baroness that the consultations will have depth and reach, and that medical research charities will be fully

involved. Requiring consultation with all those listed would be unduly burdensome and seemingly add little value to the making of regulations.

On Amendment 130 in the name of the noble Baroness, Lady Thornton, I completely understand that there are perhaps some concerns with the extent of consultation, or, indeed, its duration, or that the Government might seek to consult on proposed regulations without sufficient notice to those wishing to comment. This is simply not the case, but limiting us in this way may hinder the delivery of important regulations coming into force. If the Bill were to be significantly delayed, it would mean that we could not make an efficient start on consulting stakeholders on key policy areas, such as on a future regulatory system for medical devices.

Whether consultation is conducted prior to the Bill achieving Royal Assent or afterwards, we will make it clear to stakeholders when the consultation processes will start and end. Consultations will be targeted, form part of a process of engagement and last for a proportionate amount of time. For my part, I cannot wait for the process to begin. It is very exciting.

I know that noble Lords want to know our plans for consultation, as do I, and when precisely that will begin. I reassure my noble friend Lady McIntosh that we will publish responses to consultation. We will follow the Cabinet Office guidance, which is extremely stringent. I am incredibly enthusiastic to reach that next step and to begin to make changes to the regulatory regime to deliver a comprehensive, stand-alone and first-class medical devices system, as well as to consult and have the benefit of informed views, like those of the noble Lords, Lord Kakkar and Lord Patel, among others, when we discussed provisional rapid licensing.

I want to make changes to the clinical trials regulations and to consult on how we can make improvements and update definitions. Also, of course, I want to bring in the medical devices information system regulations so that we can establish a world-leading medical devices safety regime. I indicated the intention to consult in the first quarter of 2021 on the innovative medicines fund. We intend to start public consultation on the medical devices information system in May 2021. We also hope to take forward the medical devices regulations consultation over the summer of 2021. There is obviously sequencing to do on all the other measures that we will want to bring in. I will update the House on our consultation plans in due course. The dates are dependent on getting the Bill done, of course.

As to Amendment 126 in my name, I heard the noble Lord, Lord Blencathra, ask at Second Reading how Parliament could be consulted on regulatory changes. Others reflected on the importance of consulting patients on the regulatory changes that impacted or mattered to them. I know that there has been concern about whether the relationship to the pharmaceutical and medical device industries is such that they might be unduly weighted in consultation, but I assure noble Lords that that is not the case.

To provide reassurance, Amendment 126 changes the obligation in Clause 41 to public consultation. The effect of the amendment would not be to prevent the appropriate authority from inviting responses from certain stakeholders or groups as the authority might consider appropriate. Engagement and close working will continue, but Amendment 126 will ensure greater transparency and enable even more people to become involved in the consultation.

The duty to consult the devolved nations on Clause 16 has been the subject of ongoing conversations and correspondence between Ministers in the devolved nations and me. I spoke earlier about the nature of these regulations relating to both reserved and devolved matters. Specific considerations will need to be taken into account in relation to how the devolved healthcare systems function and we want to ensure that any information system that we create is as effective as it can be. The information system will provide an important tool for improving the safety of medical devices for patients throughout the four nations of the United Kingdom. It has always been our intention to consult fully the devolved Administrations on the development of the regulations. I am making this change to provide greater reassurance and confidence, both to the devolved nations and to Peers who have raised the significance of ensuring interoperability between any such information system and devolved healthcare systems.

The final change made to Clause 41 by Amendment 126 will mean that participants engaging with the consultation can understand how the considerations have been taken into account so far. This additional transparency will, I hope, provide noble Lords with assurances that we have taken the criticisms on board and have provided a method for Parliament, the public and stakeholders to know how our thinking progresses throughout the development of regulations made under the Bill.

The combination of these changes strengthens the consultation requirement in the Bill. I hope that, taken together with amendments that I have made elsewhere in the Bill, it goes some way to meeting your Lordships' concerns and that the noble Baroness will feel able to withdraw her amendment. I commend my Amendment 126.

The Deputy Chairman of Committees (Baroness Fookes) (Con): I have received a request to speak after the Minister from the noble Lord, Lord Hunt of Kings Heath. I am not clear whether the noble Lord, Lord Patel, also wishes to do so. Perhaps that could be clarified.

Lord Hunt of Kings Heath (Lab) [V]: I thank the Minister for his extensive response. Essentially, he has relied on the well-known departmental argument that, by listing certain categories of organisation, you exclude others. However, legislation that has been passed in the last few years has often contained extensive lists of organisations to be consulted. Amendment 128, which I support, would give Ministers the power to consult any other persons that the authority considered appropriate. I wonder whether the Minister will just answer this. He would surely accept that this Bill is highly unusual in giving a huge amount of powers to Ministers essentially to change primary legislation through regulation and extensively to alter the regulatory framework for medicines and medical devices. Given that, we should be careful about similarly open-ended regulations on consultation. The amendment would provide reassurance to the key sectors that they will be

[Lord Hunt of Kings Heath]
consulted, but it would also give discretionary power to Ministers to add to that on the occasions when greater flexibility was needed.

4.15 pm

Lord Bethell (Con): My Lords, I acknowledge the noble Lord's point that the Bill puts huge emphasis on the effective and impactful nature of our consultation arrangements. That is very much our approach. He is entirely right that these consultations are key. That is why we have sought, as I have this afternoon, to give reassurances about our approach to consultation.

On the noble Lord's point about the listing of groups, we have in mind two considerations. The first is that, by listing one group and not another, you assign a degree of legislative weight on one group and not the other. That is an unfortunate result of a listing process such as he describes. Secondly, as I have said, not all the groups that you could list in one part of the Bill would be relevant for all parts of the Bill. For that reason, we are reluctant to provide lists of groups that technically have to be consulted on every aspect of the Bill.

I take the noble Lord's point that broad, effective and deep consultation is critical to the effective implementation of the Bill and to the drafting of thoughtful and effective regulations. All those involved in the Bill, including the department and me, very much agree with that point. That is why I tabled the amendment.

The Deputy Chairman of Committees (Baroness Fookes) (Con): I have not received any further requests to speak, so I call the noble Baroness, Lady Wheeler.

Baroness Wheeler (Lab): I thank the Minister for his extensive and helpful response, particularly on the comments made by my noble friend Lord Hunt about the groups that are consulted. This has been an excellent debate and I have little to add, as noble Lords put forward the issues so ably, in particular on the importance of listening to patients and patient representatives so that the consultation is meaningful and well thought through, given the enormous powers that are in the Bill and will be set out in the regulations. It is timely for my noble friend to remind us of the context of the DPRRC and Constitution Committee reports. I asked the Minister to consider whether Clause 41 should specifically include reference to consultation with the devolved authorities. If he could come back to me on that, that would be helpful. I also asked some questions about his correspondence, which I hope he will agree to follow up.

Lord Bethell (Con): On the question why the government amendment is being made to Clause 41 rather than Clause 16, which I think is what the noble Baroness is asking about, Clause 41 is concerned with consultation. It is important that consultation requirements are provided for in one place, as that assists with clarity and understanding. The legal effect is the same, irrespective of where in the Bill the obligation to consult the devolved Administrations when making regulations under Clause 16 is found.

Baroness Wheeler (Lab): I thank the Minister for that and I beg leave to withdraw the amendment.

Amendment 105 withdrawn.

Amendments 106 and 107 not moved.

Clauses 17 to 34 agreed.

The Deputy Chairman of Committees (Baroness Fookes) (Con): We now come to the group beginning with Amendment 108. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate.

Clause 35: Disclosure of information

Amendment 108
Moved by ***Lord Patel***

108: Clause 35, page 19, line 22, at end insert—

"( ) The Secretary of State must disclose information for the purpose of warning the public about concerns relating to a medical device where there is a clear threat to public safety."

Member's explanatory statement

This amendment places a duty on the Secretary of State to disclose the information where there is a clear threat to public safety.

Lord Patel (CB) [V]: My Lords, in moving Amendment 108, I will also speak to Amendment 114. I am immensely grateful to my friend, the noble and learned Lord, Lord Mackay of Clashfern, for his support. I beg noble Lords' indulgence because I intend to explore these two amendments in some depth as I have some concerns about them.

Amendment 108 places a duty on the Secretary of State to disclose information

"where there is a clear threat to public safety."

Clause 35 provides that the Secretary of State

"may disclose information for the purpose of warning members of the public about concerns that the Secretary of State has in relation to the safety of a medical device."

This is welcome, but the power is discretionary. There is no duty to disclose information in these circumstances. It is not clear why there should not be an unambiguous duty to disclose information to the public where their safety is an issue. The Government have repeatedly committed themselves in their guidance and policy documents to patient safety as their primary concern, and have given reassurances about it in the other place. However, this clause is yet another example of where there is no explicit legal commitment to patient safety. For this reason, an amendment to this clause is suggested to create a duty to disclose information where there is a threat to medical device safety.

In addition, it must be queried what is meant by a "threat to public safety" and how any such threat is to be judged or even detected. The Cumberlege review reviewed the failure of medical professionals and the system in general to listen to patients' own reports of pain and the seriously adverse effects of their implants. The duty to disclose a threat is only as meaningful and effective as the processes behind it that monitor and capture the information relating to patients' adverse events. A safety issue will not be recognised if patients are not being taken seriously.

Part of the findings of the Cumberlege review related to the ineffectiveness of the current yellow card system for self-reporting adverse events. There is a lack of a clear and well-publicised route for patients to report their experiences. Clear and effective processes need to be in place to capture the information relevant to identifying potential threats to public safety. This duty to disclose should be supported by such processes.

Clause 16 gives the power to create an information system, and a later amendment introduced by the noble Baroness, Lady Cumberlege, on the setting up of a patient safety commissioner, could form part of the processes needed to ensure that the experiences of patients and the reporting of adverse events are effectively monitored, recorded and evaluated. However, effective self-reporting processes and clear routes for patients to self-report need to be established. Clarification of how such reporting is to be integrated into effective communication across the NHS and the medicines and medical device regulatory framework as a whole is needed.

As the Bill stands, so much is left unsaid and what has been laid out for Parliament to discuss was drafted and conceived before the findings of the Cumberlege review were published. Any patient safety commissioner would need to be properly resourced if they were to work in practice—equally there should be more consideration by the Government of processes for patient reporting and communication across the system. That ought to be put before Parliament.

Amendment 114 would mean that Regulation 3B on the requirement for confidentiality in the Medical Devices Regulations 2002 would remain in place. It is suggested in the Bill that this is removed. Clause 37 provides for "Consequential and supplementary provision". Subsections (3) to (7) of Clause 37 variously amend the Medical Devices Regulations 2002. In particular, subsection (5) removes Regulation 3B from the 2002 regulations. This was only recently inserted into the law by the Medical Devices (Amendment etc.) (EU Exit) Regulations 2019. Regulation 3B requires that

> "all parties involved in the application of these Regulations must respect the confidentiality of information and data obtained in carrying out their tasks in order to protect … (a) personal data in accordance with the Data Protection Act 2018; (b) commercially confidential information … (c) the effective operation of … inspections, investigations or audits."

It is not clear why the requirement for confidentiality has been removed so soon after it was created. While Clause 35 provides that commercially sensitive data cannot be disclosed except where necessary for the Secretary of State to warn of serious harm in civil proceedings or criminal proceedings, no other clauses in the Bill reflect the similar requirements that have now been removed by Clause 37. It is concerning that in removing the requirement for confidentiality, the Bill seems to emphasise protection for commercial interests more than those of patients and users.

The Government should provide clarity on why they wish to remove this condition to respect patient confidentiality in operating the Medical Device Regulations. This not notwithstanding, Clause 37(5) should be removed.

Lord Mackay of Clashfern (Con) [V]: My Lords, I warmly support the noble Lord, Lord Patel, in both these amendments. First, in relation to safety, the idea that the Secretary of State "may" disclose information in relation to concerns about patient safety strikes me as extraordinary. If I knew that something was dangerous and that somebody was just about to take it, I think I might be in very grave difficulty if I did not warn the person. The idea that the Secretary of State can have information that suggests a danger to people, and yet is allowed to keep it to himself in the exercise of his discretion, strikes me as extraordinary. It may require some explanation from the Minister as to why that should be. There is a tendency to provide for discretion rather than compulsion. We have seen a bit of that already this afternoon. In the area of safety, discretion should certainly give way to compulsion where it is a matter of risk to a person who is involved.

Amendment 114 concerns confidentiality. Patient confidentiality is one of the most important aspects of the law on medical treatment. It requires to be taken into account very carefully because people have a great concern about the confidentiality of their medical situation—some people more than others because it depends on the origin of the difficulties of the medical history. The general principle of confidentiality in relation to patients is, in my opinion, extremely important and I cannot understand why this little provision has been included that interferes, in my mind, with a very important principle, without much explanation. I support both these amendments.

4.30 pm

Baroness Cumberlege (Con) [V]: I put my name to Amendment 108 and, when listening again to the noble Lord, Lord Patel, and my noble and learned friend Lord Mackay of Clashfern, it was so good to hear this tremendous commitment to the safety of patients. The public must be paramount and know where there are issues, conflicts and risks. It seemed to me that if there really are concerns that a medical device, for instance, may pose a threat to safety, surely the public have a right to know?

We should have the right to make informed decisions about our healthcare, our treatment options and the medicines and medical devices available to us. Too often—we have heard this and written about it in the report, *First Do No Harm*—the healthcare system has shown itself to be unwilling, or even unable, to be transparent. There are too many examples of cases where people have had treatments or medical devices inserted without really being aware of the known safety concerns surrounding them. That is quite unacceptable.

My hope and expectation is that, once we have an independent patient safety commissioner—of course, we are coming on to that in the next amendment—these safety concerns will be more swiftly and thoroughly identified and communicated so that patients and the public know what is going on. I fully support the amendment. It would provide another layer of transparency and assurance, which is why I am very happy to support my noble and learned friend and the noble Lord, Lord Patel, who I consider my noble friend, on this amendment.

The Deputy Chairman of Committees (Baroness Fookes) (Con): I understand that the noble Baroness, Lady McIntosh of Pickering, has withdrawn, so the next speaker will be the noble Lord, Lord O'Shaughnessy.

Lord O'Shaughnessy (Con): My Lords, I will speak to Amendment 108. In doing so, I remind noble Lords of my interests as listed on the register and my membership of the First Do No Harm All-Party Group, set up by my noble friend Lady Cumberlege. It seems that the debate and discussion on this issue revolve around the use of "may" or "must", as is often the case in legislation —we are all familiar with this. I fully understand why the Bill uses the word "may" in relation to concerns as set out currently in the clause because, as described, they involve ambiguity. That is implicit in the way the clause is framed. It therefore requires judgment about the balance of risks, which is difficult to prejudge.

It seems that Amendment 108 is a build, as they say, on this and an elegant solution to the existence of a higher-risk category of the kind that the noble Lord, Lord Patel, my noble and learned friend Lord Mackay and my noble friend Lady Cumberlege have talked about. It would leave "may" in place for when ambiguity exists, but would introduce "must" when, in their words,

"there is a clear threat to public safety",

which is the highest category of risk. It seems unconscionable to think that, when there is knowledge of such risks, they should not be communicated; indeed, there should be, if there is not already, an obligation to do so. Consequently, I feel that this amendment improves on the Bill. It seems perfectly logical and rational to me, and I hope my noble friend the Minister will be sympathetic.

The Deputy Chairman of Committees (Baroness Fookes) (Con): I next call the noble Baroness, Lady Jolly, and I dare say that there will be a little pause before she speaks.

Baroness Jolly (LD) [V]: I support Amendment 108, led by the noble Lord, Lord Patel, which would place a duty on the Secretary of State to disclose information they hold

"relating to a medical device where there is a clear threat to public safety."

Amendment 114, also in the name of the noble Lord, Lord Patel, would retain Regulation 3B of the Medical Devices Regulations 2002, which was inserted by the Medical Devices (Amendment etc.) (EU Exit) Regulations 2019 and, among other things, requires the 2002 regulations to comply with the Data Protection Act 2018.

I support these amendments but wonder what might be the process to contact patients in the event of a fitted medical device fault, which might lead to a threat to public safety if it was more than just one. Would it be the same sort of process as that for recalling certain faulty domestic appliances, which, by law, also need to be recorded? Noble Lords may chuckle, but there is a system there. Where the patient has a medical device implanted, who is responsible for taking patient contact information?

More importantly, how does the patient ensure that their contact data is up to date? Will it link, using the unique patient reference number: their 10-digit NHS number? It would need the patient to ensure that their personal data is kept up to date via the website or app. Many do use the NHS app, but, given the patient demographic, I would not be that confident in relying on that mechanism. I am not sure that the general public are ready for that requirement or, in many cases, have the capacity or devices to fulfil it. Could the Minister clarify this for me?

Baroness Thornton (Lab): I am very grateful to the noble Lord, Lord Patel, and the noble and learned Lord, Lord Mackay of Clashfern, for bringing these amendments to the Committee. They are quite different, although linked. On Amendment 108, which would place a duty on the Secretary of State to

"disclose information … about concerns relating to a medical device where there is a clear threat to public safety",

the noble Lord, Lord O'Shaughnessy, absolutely got it when he said that this is not a "may" but really is a "must". The thing about this that would interest me most, because it is an important duty, is how it could happen: what would trigger such a disclosure, where would it come from and how would it be handled?

The only thing I would ask about this issue is whether a Secretary of State is the right person to do that. I have in mind someone who is now a respected noble Lord of this House, who fed his daughter a burger to show us that beef was safe during the BSE outbreak, which led to the creation of the Food Standards Agency as an independent organisation that would say, "This food is actually unsafe", to the Government. It quite rightly has the powers to bring about a closure or recall. This is exactly the right place to be on patient safety. The only question I would pose is: is that the right person to do it?

Amendment 114, on Regulation 3B, worries me enormously. I would need to have an explanation from the Minister as to why he would remove confidentiality and seemingly protect commercial interests. It is very worrying, and the Committee needs to know the justification for that because it looks to me like it probably needs to remain in place.

The Deputy Chairman of Committees (Baroness Fookes) (Con): I understand that there was an error, and the noble Baroness, Lady Bennett, was not called, so I call her now.

Baroness Bennett of Manor Castle (GP) [V]: Thank you, Madam Deputy Chairman; I resisted the urge to leap in. My contribution, anyway, will be brief. I want to build on my remarks in the previous group and, in particular, to address Amendment 108 in the name of the noble Lord, Lord Patel. I referred then to the article in the *British Medical Journal* about the medical-political complex. We have seen over the decades, again and again, in respect of medicines, pesticides and herbicides, situations where there has been growing concern about a particular chemical. Critics have come under tremendous pressure, including critics often from Governments—critics in official positions—from very large, powerful commercial interests to remain silent.

The noble and learned Lord, Lord Mackay of Clashfern, asked how anyone could not speak out in a situation where they saw that there was a danger or a serious cause for concern. We have seen again and again, however, situations where people, including Ministers in Governments, have come under tremendous pressure. Does the Minister not think that an amendment such as that proposed by the noble Lord, Lord Patel, would protect the Government, the individual and the public if she or one of her successors were in a situation where there was grave cause for concern but also very powerful multinational company forces at play?

Baroness Penn (Con): My Lords, I thank the noble Lord, Lord Patel, for his amendment, designed to ensure that the public are always warned about concerns relating to a medical device where there is a clear threat to public safety. The Government agree that sharing information with the public—as well as the healthcare system—is important. Safety information is provided already to relevant special interest groups and through social media channels to ensure that messages are accessible and reach those affected who need to be aware or take action. This can include patients, healthcare professionals and members of the public. For example, MHRA recently urged users of Safe and Sound Infrared Ear Thermometers to check their product code and lot number due to a voluntary recall of specific lots because of a two-degree temperature overreading fault. This is a safety concern for members of the public who are monitoring their temperature, particularly in view of the pandemic. However, noble Lords are correct that it is critical that we do more to improve transparency and share more safety information to support patient safety. This has been made even more apparent in the findings of the report by my noble friend Lady Cumberlege.

Clause 35, along with Clause 13(1)(h)(iii), is designed to ensure that in future we can share information with key parts of the healthcare system, academia and the public in a considered and effective way. Under the current medical device legislation, MHRA does not have a clear legal basis to report all incidents involving medical devices occurring in the UK. By contrast, this has been common practice in the USA, via the FDA's MAUDE database, and in Australia, via its DAEN database. Medicines legislation already enables MHRA to provide its interactive drug analysis prints, or iDAPs. It is therefore right that, via the information-sharing powers in this Bill, we are able to disclose in an appropriate manner all medical-device serious incidents. This will provide greatly improved transparency about the safety of medical devices in the UK.

Amendment 108 would place a legal requirement on the MHRA to disclose information to the public to warn them about concerns relating to a medical device where a clear threat to public safety had been determined. The amendment is unnecessary, as the MHRA would always share safety information with the public where it was necessary to do so. However, issuing warnings and safety information to the public needs careful management, a good understanding of the situation, full verification of the data and consideration of wider complexities. There is a high risk that mandating the disclosure of clear threats to public safety would commit MHRA to regular disproportionate direct communication to the public about safety issues that the public cannot act on.

The great majority of MHRA's medical device safety alerts require healthcare workers, not members of the public, to take action to remove a public health threat. For example, MHRA's national patient safety alert of 23 September 2020, addressing a clear threat to public health, instructed all hospital trusts and other healthcare providers on actions to be taken to avoid potential unexpected shutdown, leading to a complete loss of ventilation, when using the Philips Respironics V60 ventilator. Such messages should not be targeted and promoted to the public but should be made available passively to the public; for example, via access to a website. Otherwise, this would likely create unwarranted anxiety in the public about safety issues that they themselves could address because they required the intervention and clinical support of healthcare professionals.

4.45 pm

Clause 35(2) will ensure that the public are warned of concerns about the safety of devices in the most appropriate and effective way. We can proactively warn the public when there are actions that they can take to protect their own or others' safety. In addition, we will be able to ensure that the public have access to wider information about the safety of devices, passively through the MHRA website. All adverse incidents with medical devices, for example, are published on the MHRA website.

Amendment 108 would risk the MHRA being forced to put out information that may cause harm. We must ensure that patients receive safety information in a proportionate manner, and that they will be in a position to engage with the information when serious safety warnings are given that affect them.

In response to the question about who makes the decisions on issuing such safety warnings and what that process is, I undertake to write to noble Lords with more detail.

Amendment 114 from the noble Lord, Lord Patel, would retain Regulation 3B of the Medical Devices Regulations 2002, as amended by the Medical Devices (Amendment etc.) (EU Exit) Regulations 2019. This imposes certain confidentiality requirements on those operating the regulatory system for medical devices. I believe that the noble Lord's intent is to ensure that confidentiality requirements apply when information is shared under Clause 35. I reassure the noble Lord that subsections (5) and (8) already take into consideration the disclosure of commercially sensitive information and personal data, as described under Regulation 3B of the Medical Devices Regulations 2002, and provide safeguards to ensure that commercially sensitive information will not be disclosed unless necessary and proportionate and that any disclosure of information will not contravene data protection legislation.

Keeping in place Regulation 3B of the Medical Devices Regulations 2002 would create two conflicting provisions: Regulation 3B, which would, on its face, restrict the regulator operating under those regulations; and what is currently Clause 35, which, with certain restrictions and limitations, would allow the regulator

[Baroness Penn]
to disclose some information to which that restriction in Regulation 3B might apply. The Government seek to use the powers within this Bill to improve transparency around medical devices and want to be as clear as possible in law about what they can and cannot disclose and the circumstances in which that disclosure could take place. By leaving Regulation 3B in place, there would be contradictory and overlapping provisions concerning confidentiality and disclosure of information that would be unnecessarily confusing.

I reassure noble Lords that the provisions relating to confidentiality that we are talking about in respect of these clauses is the confidentiality of manufacturers and not patient confidentiality. While respecting manufacturers' confidentiality, the measures that we are taking in this Bill will allow us once we have left the EU at the end of the transition period to share more information with a view to patient safety than is currently allowed under EU regulations. The steps that we are taking are about being able to do more on patient safety than we currently can under the EU and do not contravene any of the measures on patient confidentiality that noble Lords have expressed concerns about.

I hope that I have reassured noble Lords that Clause 35 provides for an appropriate level of transparency while providing appropriate safeguards, and that neither of these well-intentioned amendments are therefore necessary or appropriate. I therefore hope that the noble Lord, Lord Patel, feels able to withdraw his amendment.

The Deputy Chairman of Committees (Baroness Fookes) (Con): I have received a request to speak after the Minister, so I call the noble Baroness, Lady Thornton.

Baroness Thornton (Lab): My Lords, I thank the Minister for her explanation in response to Amendment 114. My desire to explore the issue slightly more is partly a result of what the noble Baroness, Lady Cumberlege, and others have said. It is also partly a result of the very helpful discussions this morning about the time that it is going to take to get the protection on devices in place. If we have another mesh situation, will that be able to emerge in this period of time? If so, who will be responsible for saying that it is not a safe device?

Baroness Penn (Con): I believe that responsibility will continue to lie with the MHRA. We have existing systems, such as the yellow card reporting system. The report by my noble friend Lady Cumberlege will have made an important difference; as we discussed earlier and in other sittings, not just the systems but the culture will need to change. That culture change has begun already.

We must get the systems right so that they operate as intended and deliver the results that we all want, but the noble Baroness, Lady Thornton, is right: in the space that there will be while we implement these changes, we need to be extra vigilant about these potential issues.

As I have already said, adverse incidents involving medical devices are published on the MHRA website. The job is to take all that information and make sure that it is not just dispersed but that people can build the bigger picture. That is what we are working towards.

Lord Patel (CB) [V]: My Lords, before I start, let me thank my noble friend Lady Cumberlege enormously for putting her name to Amendment 108. I apologise for not alluding to that earlier.

The noble Lord, Lord O'Shaughnessy, got it: my amendment leaves it to the discretion of the Secretary of State that there might be times when disclosure is not required.

To my friend the Minister, I say: good try, but I am not convinced. I do not see why my amendment cannot be accepted—it provides discretion but just removes "may".

As far as Amendment 114 is concerned, the point is exactly this. The Minister may recollect the journalist's report on the regulation of devices in the EU, which raised concerns about manufacturers not agreeing to provide safety information that they may have had when they were testing the devices. Removing that requirement for manufacturers does not help patient safety—hence my amendment asking to leave Regulation 3B as it is.

I have listened. In the meantime, I beg leave to withdraw the amendment.

Amendment 108 withdrawn.

Amendments 109 to 111

Moved by ***Lord Bethell***

109: Clause 35, page 19, line 33, at end insert—

"(4A) The Secretary of State may disclose information to a person outside the United Kingdom where required for the purpose of giving effect to an international agreement or arrangement concerning the regulation of medical devices."

Member's explanatory statement

This amendment makes clear that information held by the Secretary of State in connection with medical devices can be disclosed, subject to certain restrictions, to persons outside the United Kingdom in order to give effect to a relevant international agreement or arrangement.

110: Clause 35, page 19, line 35, leave out "or (4)" and insert ", (4) or (4A)"

Member's explanatory statement

This amendment is consequential on amendment in the Minister's name inserting a new subsection into Clause 35.

111: Clause 35, page 19, line 37, leave out "or (4)" and insert ", (4) or (4A)"

Member's explanatory statement

This amendment is consequential on the amendment in the Minister's name inserting a new subsection into Clause 35.

Amendments 109 to 111 agreed.

Clause 35, as amended, agreed.

Clause 36 agreed.

Clause 37: Consequential and supplementary provision

Amendments 112 to 114 not moved.

Clause 37 agreed.

Amendments 115 and 116 not moved.

Clause 38 agreed.

The Deputy Chairman of Committees (Baroness Fookes) (Con): We now come to the group consisting of Amendment 117. Once again, I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate.

Amendment 117

Moved by ***Baroness Cumberlege***

117: After Clause 38, insert the following new Clause—

"Independent Patient Safety Commissioner

(1) An independent Patient Safety Commissioner is established.

(2) The Office of Patient Safety is to be hosted and funded by the Cabinet Office.

(3) The Patient Safety Commissioner must publish a business plan, reviewed annually, which sets out, in relation to the discharge of the Commissioner's functions—

(a) the Commissioner's proposed main activities for the period covered by the plan (including the matters he or she intends to consider or investigate), and

(b) the Commissioner's proposed strategic priorities for that period.

(4) The Patient Safety Commissioner must appoint an advisory board to provide the Commissioner with advice and assistance relating to the discharge of his or her functions, consisting of persons who (taken together) represent a broad range of interests which are relevant to the Patient Safety Commissioner's functions, and must from time to time publish a report on the procedure followed and the criteria used when making appointments to the advisory board.

(5) The Commissioner's functions are to—

(a) promote and improve patient safety with respect to the use of medicines and medical devices;

(b) promote the views and interests of patients and other members of the public in relation to the safety of medicines and medical devices;

(c) make recommendations to the Secretary of State;

(d) establish and, when deemed appropriate, revise Principles of Better Patient Safety;

(e) receive direct reports from patients and other members of the public, any other persons (whether natural or corporate), and the Secretary of State and, when the Commissioner deems appropriate, share those reports with relevant organisations and the Secretary of State;

(f) produce and lay before Parliament for the attention of any committees of either House whose remit covers medicines and medical devices—

(i) an Annual Report and Accounts, and

(ii) any other reports regarding patient safety, which may include recommendations to improve patient safety with respect to the use of medicines and medical devices.

(6) For the purposes of subsection (5)(d), the Principles of Better Patient Safety must—

(a) describe expected patient safety outcomes relating to the safety of medicines and medical devices; and

(b) be drafted in consultation with the public.

(7) For the purposes of subsection (5)(f), the Commissioner may require a public body and other persons (whether natural or corporate) to provide such information as is reasonable in order to fulfil that function relating to the safety of medicines and medical devices.

(8) In fulfilling his or her functions, the Commissioner may do anything which appears to be necessary or expedient for the purpose of, or in connection with, the performance of his or her functions.

(9) The Commissioner has the duty to involve and inform patients and other members of the public in carrying out his or her functions.

(10) The Commissioner may make recommendations to the Minister for the Cabinet Office for any additional powers which the Commissioner considers may be necessary to fulfil the duties and functions under this section.

(11) The Minister for the Cabinet Office may by regulations make any other provision relating to the establishment of the Commissioner, including—

(a) the appointment of a Commissioner,

(b) the terms of office,

(c) remuneration and financial and other assistance,

(d) staff, and

(e) any other matters the Minister for the Cabinet Office considers appropriate.

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

Member's explanatory statement

This new clause would establish the Patient Safety Commissioner on a statutory basis, as recommended in the report of the Independent Medicines and Medical Devices Safety Review.

Baroness Cumberlege (Con) [V]: My Lords, this proposed new clause, which would implement one of the most important recommendations in our report, *First Do No Harm*, is about the independent patient safety commissioner. I am conscious that you cannot change history, but you can plan for the future; that is what we seek to do through the independent commissioner.

I thank noble Lords from all sides of the House who have put their names to this amendment, particularly the noble Baroness, Lady Jolly, and the noble Lords, Lord Hunt of Kings Heath and Lord Patel. I also thank the noble Lords who spoke in favour of the commissioner at Second Reading and have done so often since then.

Many people outside Parliament have also voiced their support. It really gladdens my heart, when we live in such troubled times, to have a rock-solid consensus. Of course, I await the response from my noble friend the Minister but I really do hope that he will choose not to stand apart but to be instrumental in improving safety and the lives of thousands of people by supporting this amendment, even if it requires a bit of redrafting.

I think that noble Lords will be grateful that I will not go through the amendment subsection by subsection, paragraph by paragraph, because that would take all night and it is all there for noble Lords to see. First, though, let me put a question. Why do we need this independent patient safety commissioner? It is quite simple: because there is no one person whose task it is to listen to the voices of patients, to stop the trends and patterns that give rise to safety concerns, and to encourage or require the healthcare system to act on those concerns when they are not being recognised and realised.

[Baroness Cumberlege]

The healthcare system has failed to listen to patients' concerns. Our review vividly and tragically illustrated that. Thousands of people have suffered. Lives have been ruined. I am absolutely convinced that, had we had a patient safety commissioner—that is, if that person had existed—much of the harm done could have been prevented.

It is not only what we found in our review that proves the need for this. Think of the recent Paterson inquiry. Its findings echoed ours, with patients voicing concern but their voices not being heard and avoidable harm going undetected. Sadly, we all know that there is a long line of similar examples; indeed, Essure, a contraceptive device that has caused many women terrible suffering, was reported on by the BBC last weekend.

We know our own bodies. We know when something is not right. We know when a treatment is causing a problem. We are the first to know, yet patient voices and experiences are all too often simply referred to as anecdotes and written off. They are not; they are serious research. We think that a patient safety commissioner would put an end to that—an end to anecdotes simply being written off.

There have been suggestions that existing organisations are already responsible for patient safety so we do not need another one. I want to tackle that fallacy head on. If it is true that organisations in the healthcare system are performing this task and doing it effectively, why has so much avoidable harm occurred?

The system simply is not working. Yes, the organisations within the healthcare system are doing their job; people are working very hard as individuals, and in the organisation, but they are disjointed and siloed, and patient safety is not their overriding purpose. They did not prevent the avoidable harm that we discovered. While some organisations have elements of safety within their remit, not one has patient safety as their total focus, and not one considers that they have the responsibility to listen, spot trends, raise concerns and get the system to act.

5 pm

When as a review team we worked together in July, in the early days when we first met, we heard from patients the enormity of their suffering, and we said, "Come on, we must act now." But we were only a review team and could only recommend. Sir Cyril Chantler, my vice-chairman, and I went to talk to NHS England, to Professor Keith Willett and to the department's then Chief Medical Officer, Dame Sally Davies. We asked them for these mesh operations to be paused until six safety measures were introduced. I have to say that those individuals were amazing and, to their credit, agreed to halt operations immediately. Today, more than two years later, those safety measures still have not been delivered.

I have heard some people say that we could nest a patient safety commissioner inside an existing body in the healthcare system. Quite frankly, that troubles me. The commissioner needs to be independent of the system—a person who is outside the system looking in, not somebody being in and looking out. We want someone who is independent, outside the system looking in. The commissioner must have an uncluttered and single-minded focus on patients and patients' needs, and that person needs to hold their trust. The notion that such an important and major role should be nested within something else is practically flawed. Rather than being subsumed by an existing body, it would amount to a reverse takeover.

Similarly, the answer is not to set up another regulator within the system. We do not need another regulator; the space is too crowded already, as it is. No, we need a new voice, one which will talk and act from the patients' perspective and encourage the system to do what needs to be done and hold it to account. Crucially, the commissioner must have statutory powers; he or she must have their powers established in legislation, which is why I am proposing this amendment today.

We have looked at other commissioners—certainly the Children's Commissioner, who has proved herself so effective. She speaks for children. When I looked at her job description, I thought, "Yes, that's what we want from the patient safety commissioner." I was really interested to hear her on Radio 4 when there was a lot of controversy about children going to school or not. Parents were worried, as were the trade unions and the teachers—as were the children, to some extent. The Children's Commissioner said, "Stop your squabbling. These children need to get back to school." And I thought, "That's great—that's what we want from our patient safety commissioner."

We need a person of standing, independent, accountable to Parliament and with the Cabinet Office as their sponsor, within government but avoiding conflicts of interest with other departments. This new voice will continue the work we started in our review, pressing the healthcare system to take timely action, where action is needed to minimise harm.

The remit of the patient safety commissioner as set out in the proposed new clause extends to medicines and medical devices. I have been asked whether the remit should not be wider, to cover all forms of treatment or even all patient experiences, not just those linked to safety. My answer is this: let us get to first base. The remit could be extended in future beyond medicines and devices, but this is where I believe the need is most urgent and we should address it.

Our healthcare system is very good. It is full of wonderful people, working hard to treat illness and to help people live healthy lives. But we discovered in our review that something is missing. We need something—no, we need someone—to be the patients' port of call, their listener and their advocate. We need a person who holds the system to account, monitors trends and requires it to act. We need this person to be the golden thread tying this disjointed system together in the interests of those who matter most: the patients. Quite simply, we need an independent patient safety commissioner. I beg to move.

The Deputy Chairman of Committees (Baroness Fookes) (Con): Before I call the next speaker, I must tell the Committee that we normally have a break about now but it has been suggested that we delay it until there is the vote in the Chamber, expected very soon, and that we then take 15 minutes. In the meantime, I call the noble Lord, Lord Patel.

Lord Patel (CB) [V]: My Lords, first, it was a privilege to put my name to the amendment moved by my noble friend Lady Cumberlege. It is a pleasure to follow her powerful speech, which made the case for an independent patient safety commissioner so powerfully that I am tempted to say that no more needs to be said about the amendment except for the Minister to accept it. But of course I cannot do that. I will try to make a case for why now is the time to accept what the noble Baroness is asking for. The time for her amendment has come.

I strongly support the amendment. It was one of the key recommendations of the noble Baroness's report *First Do No Harm* to establish an independent commissioner for patient safety and to do this through legislation. The need to address patient safety as an important aspect of healthcare was identified in England following the publication of the report *An Organisation with a Memory*. This was the watershed moment in the history of patient safety development. In 2001, a report was produced, *Building a Safer NHS for Patients*, which led to the establishment of the National Patient Safety Agency for England; a national reporting and learning system was to be developed as part of it. In 2006, *Safety First*, a report for patients, clinicians and healthcare managers, was published, with the objective of recasting the functions of the National Patient Safety Agency. It was after that that I took the chair of it.

The National Patient Safety Agency did develop several good and respected methodologies and publications, and introduced some fundamental patient safety protocols, but it lacked the power and authority of an organisation established in statute. Functioning as an arm's-length body of the Department of Health, and at its behest, was not the way to establish patient safety. In my view, it weakened its ability to deliver patient safety across the NHS.

As chair, I remember having to try to persuade management at NHS Confederation meetings that alert notices related to patient safety needed to be implemented. This lack of statutory authority meant that hospital trusts were not required to follow any guidance or alert notices. On Friday 1 June 2012, the functions of the NPSA were transferred to the special commissioning board as the NPSA fell victim to the cull of quangos. So what has happened since? Regulatory organisations have come and gone. NHS structures have changed and continue to do so. The NHS is a bit of a political football; I remember that, when I suggested that the political parties stop using it as one, the noble Lord, Lord Hunt, laughed at my comment. Change is a constant feature.

Patient safety documents and policies from 2000 to the present day all sound alarmingly familiar: progress is slow and incremental, even at present. An NAO report criticised the pace of change as regards patient safety, saying that it was too slow and that those who manage trusts focused more on financial budgets than patient safety. One result was the Mid Staffs crisis: we all remember how devastating that report was, particularly in what it had to say about the major patient safety failings.

We now have another devastating report, *First Do No Harm*. It is the second, and I hope the last, call for us to establish patient safety through legislation and on behalf of patients. The Government's response to the Francis report defines the current patient safety system. Patient safety became an important aspect of government policy, with several initiatives and three global ministerial meetings, et cetera, but the processes are the same. Have things changed? In my view, not much, especially in terms of a clear demonstration of reducing patient harm. The patient safety organisations that exist are still part of and accountable to NHS departments, not to patients.

The noble Baroness focused her amendment on the safety of medicines and medical devices. Of the top five areas of patient safety errors, harm related to medicines and medical devices rank second and fourth. She is right to focus on these two areas as the first task of the commissioner for patient safety. A 2018 review of errors related to medicine estimated that 237 million errors occur every year in England. The national reporting and learning system had 204,000 incident reports related to medicine, while 712 deaths are attributed yearly to medicine-related harm, costing annually something like £70 million.

Data in relation to the harm associated with medical devices is not as readily available, except when investigated as part of a report such as *First Do No Harm*. However, figures from the USA can be used as a proxy, as its larger population may give some indication of the scale and types of devices implicated. A recent report in the USA showed the following as examples: 60,000 cases related to the use of surgical mesh; a similar number in relation to defibrillators; and 104,000 cases related to hip prosthesis. There were many more. These data clearly show not just the level of safety issues in relation to medicines and medical devices but the need to address them.

It is time to give patient safety the legal status it needs, as the noble Baroness, Lady Cumberlege, said. It is time for a bolder and more ambitious vision to make patient care safer. I believe that her amendment does this and I strongly support it.

The Deputy Chairman of Committees (Baroness Fookes) (Con): I understand that there may be a delay in the vote taking place in the House for technical reasons. I do not think that we can go on here indefinitely so I suggest that I call the noble Lords, Lord Hunt of Kings Heath, and we break then regardless.

5.15 pm

Lord Hunt of Kings Heath (Lab) [V]: My Lords, it is a great pleasure to follow the noble Lord, Lord Patel. No doubt we will have further debates about the role of politics in the National Health Service. I would just say to him that I think the failure of NHS England is, in many ways, an example of how we end up with a quango that seems unaccountable to Parliament but Ministers wash their hands of many of the decisions that they make. The problem is that you can end up with the worst of all worlds.

That perhaps reflects some of the issues relating to patient safety because, thanks to the Minister, we all enjoyed meeting the person responsible for patient

[Lord Hunt of Kings Heath]
safety in NHS England. The problem is that NHS England has many other responsibilities, including financial and target responsibilities. Patient safety does not really seem to be that body's top concern.

This seems to be the very point that the noble Baroness, Lady Cumberlege, makes. Her report's conclusion is really rather shocking in many ways. She made a general conclusion from the three areas that she investigated. She said that the healthcare system

"is disjointed, siloed, unresponsive and defensive. It does not adequately recognise that patients are its raison d'etre. It has failed to listen to their concerns and when, belatedly, it has decided to act it has too often moved glacially."

That is a devastating critique, particularly in relation to patient safety.

I forgot to declare an interest as a member of the GMC board, but I must make it clear that I am not speaking on behalf of the GMC.

The noble Baroness's recommendation of a patient safety commission is so powerful because she proposes that somebody sits outside the current system, accountable to Parliament and not to Ministers or the devolved NHS management system. She argues for the commissioner to have the necessary authority and standing to talk about, report on, influence and cajole where necessary without fear or favour on matters related to patient safety.

In pointing to the Children's Commissioner, the noble Baroness, Lady Cumberlege, has really put her finger on it. This gives us an idea of the sort of person we need—someone who, like the Children's Commissioner, challenges the positions of Governments, schools, unions and local authorities. As the noble Baroness said, I am certain that it was the Children's Commissioner's comments that led to the reopening of schools. I do not believe that somebody in a government department or a quango could have done that. She did it because, personally, she is a very admirable person, but structurally, because she is wholly independent.

The noble Baroness made some very telling points when she anticipated a potential criticism of her report. The core of it is that many organisations already have some responsibility for patient safety in their remit. That is true, and they all do good work, but she is right because none of them really has patient safety as a systematic approach to the NHS as their sole remit. Until we have some independent agency or person with patient safety as their sole remit, I am afraid that I do not think that we will make progress. We must accept that, if patient safety is one of many objectives of an organisation, compromises inevitably have to be made.

There is a tension between funding, throughput, targets and patient safety—not always, but sometimes. Here, I turn back to my experience as a foundation trust chair. The trust boards hold a huge amount of tension within them. Of course they are concerned with patient safety and quality, but they are also under the cosh from NHS England and the regulator, NHS Improvement, for their overall performance, whether financial or in throughput. I certainly accept the argument that many of the best organisations where everything runs well include patient safety, but to deny that there is a tension between these other objectives and patient safety is disingenuous.

That is why we look forward to the Minister making a strong statement. If he simply says that this is outside the Bill's scope, as we have been told consistently, it will not cut the mustard, because we could easily start expanding and extending the Bill as we get other legislation and when the Government finally respond to the report of the noble Baroness, Lady Cumberlege. In my view, the Bill will not leave this House unamended unless the Government can make it clear that they are determined to implement the noble Baroness's central recommendation.

The Deputy Chairman of Committees (Baroness Fookes) (Con): My Lords, I suggest that the Committee adjourn for 15 minutes.

5.21 pm

Sitting suspended.

5.36 pm

Lord Mackay of Clashfern (Con) [V]: My Lords, the Bill will confer a power to amend or supplement the law relating to human medicines, veterinary medicines and medical devices. I respectfully submit that a power to create a system to protect the public in relation to all three, but particularly two of them, is well within the scope of the Bill.

When I first read the report of my noble friend Lady Cumberlege, I was extremely upset by what it disclosed. When the noble Lord, Lord Hunt, followed me last time, he said that doing so was a privilege. I want to say that following him is a tremendous privilege because he knows much more about the internal structures of the health service and its related services than I do.

I was privileged to represent the Medical and Dental Defence Union of Scotland for a good number of years before I joined the public service. The work was concerned primarily with mistakes of one kind or another that doctors or dentists had been involved in, but the need for safety was absolutely clear in most of the cases I was involved in. The first time I ever came to the House of Lords was on the instruction of the Medical and Dental Defence Union of Scotland, but of course, that was long ago. The case concerned the safety of a patient.

The message that cries out from the report of the committee chaired by my noble friend Lady Cumberlege is that people are suffering considerable harm as a result of treatments given in the health service, but they have no one to turn to. There is no direct public voice for patients to come to and discuss the matter. It is essential to have someone to whom patients can bring their concerns, which may not always be complaints. It may start as something much less than a complaint—a concern that becomes a complaint if not attended to in any way.

It is essential that somebody with authority and complete independence of the health service be put in place now who is able to listen to what any patient may want to say in connection with the treatment he or she has received. There is a huge deficiency, as has been

exposed clearly by the examples given in the report. Therefore, there is an urgent need for Her Majesty's Government to deal with that immediately. It is all very well to say that it is not this or that, but the truth is that this is urgent, because people are suffering and have suffered from the absence of anybody to whom they can turn in situations such as those described in the report. The Government would be heavily at fault if treatments and difficulties of this kind emerged in the future without them having done anything about it.

The setting up of a patient safety commissioner seems to require in the first instance the appointment of a completely independent person who would be a voice for patients, with a knowledge of the service but independent of it. He or she could bring a patient's question or trouble to the attention of the part of the service that was intimately concerned with it and do something about it. The report makes it clear that the full powers that a patient safety commissioner should have is a matter for detailed work by a taskforce, but in the meantime statutory authority should be given to an independent person to listen to those suffering in some way from a difficulty in relation to the health service so that it can be brought to people who understand the nature of the subject. The independent person could bring it to the appropriate authority. It is a serious matter that should be dealt with straightaway.

I am very impressed by the example of the Children's Commissioner, which has been referred to. In the recent discussion about whether to keep schools open, the Children's Commissioner could not be said to be an organ of the Government, of the trade unions, or particularly of children; she stood independently in a relationship that considered all three parties. That gave her tremendous authority in a very difficult situation, which remains difficult. She was able as an independent person authoritatively to say that children should come back to school. Of course, it was necessary to take effective steps to protect them, but I believe that she was influential in bringing that about. In Scotland also, that has been an important area in delivering people from the stringency of the lockdowns.

So that is a very good illustration of what an independent person can do. I strongly hope that the Government will put forward an amendment to deal with this matter in the simplest possible terms at present, but with the possibility of enlargement as time goes on. Indeed, I suggested some time ago to the Department of Health that it would be useful for it to consider an amendment that would give effect to the report—but I gather that nothing has happened in that direction so far. So we might have to think about amendments to try to deal with some of those matters, as well as the present one. But I strongly support the essence of the present amendment, and I strongly support it happening now.

The Deputy Chairman of Committees (Lord Russell of Liverpool) (CB): Before I call the next speaker, could I request that the noble Lord, Lord Patel, mutes himself?

5.45 pm

Lord O'Shaughnessy (Con): My Lords, it is a pleasure to follow my noble and learned friend Lord Mackay of Clashfern in talking to my noble friend Lady Cumberlege's important amendment. It is impossible to match the passion and forensic skill with which she introduced her amendment—no one can make the case better and I will not try—but I offer her my deepest support for what she is trying to achieve through it.

The review that my noble friend carried out is quite simply one of the most remarkable of its kind, detailing as it does the extraordinary harm done to patients, mostly women, because of an inadequate safety regime that was too lax on products coming into the market, not capable of fully monitoring the adverse effects of products while they were used in the health system, and unwilling to heed the voices of those crying out in agony because of the harm being done to them and their families.

The *First Do No Harm* report is full of arresting facts: the 11-year delay between the first statistically significant evidence of the links between hormone pregnancy tests and malformations in babies; the lack of clinical evaluation of the use of mesh—a supposedly inert and harmless device—in the treatment of pelvic organ prolapse in tens of thousands of people; and the 20,000 people exposed in utero to sodium valproate in the UK, around half of whom have been affected physically or mentally, often very severely. But its true power comes from the testimony of those women whose lives were turned upside down by the adverse effects of these tests, pelvic mesh, sodium valproate and other medical scandals.

It was a privilege to hear this testimony at first hand when I was a Minister in the department, and I pay tribute to those brave women who led delegations to bring their message of pain and sorrow, and of being patronised by those who claimed to care for them, to us. Marie Lyon, Kath Sansom, Emma Murphy, Janet Williams—women like them are the reason why Ministers, and ultimately the then Prime Minister, asked my noble friend to carry out her review. It is to tens of thousands of women like them and their families that we owe a duty to implement the findings of that review.

There are many excellent proposals in the report, and it is my sincere wish that my noble friend Lord Bethell and his colleagues at the department will implement its recommendations as soon as possible. However, one recommendation stands out: the proposal for a patient safety commissioner, which is the subject of the amendment. Having served in government, I know that there is often internal resistance when a review proposes a new arm's-length body or something of that kind, so I will explain why I believe that this one is so important and why there is a strong precedent for a Conservative Government introducing one.

As my right honourable friend Jeremy Hunt said when he first launched the medicine and medical device safety review in February 2018, it is the responsibility of the Government to listen, hear and act with compassion, speed and proportionality when things are going wrong. As the exhaustive findings of my noble friend's review show, this did not happen, time and again, over many decades—and it must.

Whose responsibility, then, should it be? I, like other noble Lords, have great confidence in the NHS, the MHRA, the DHSC and other bodies, but we must

[LORD O'SHAUGHNESSY]
be honest that none of them has consistently lived up to the maxim propounded by the former Secretary of State. More importantly, too many patients have had negative experiences interacting with these organisations when they were seeking help, so confidence in their ability to act in patients' interests is not robust.

As the review continued, it became clear to me, as it did to my noble friend Lady Cumberlege, that there was a need for an entirely independent body that could act as the patient's friend on safety in the system, a gateway and a support mechanism where those who were not being listened to could go—if you like, a conscience for the system. This would benefit the health system too, providing aggregated access to new information on safety issues and a potential to spot emerging concerns. Nothing that currently exists could perform both these essential functions in a way that carries the support of patients.

These are precisely the roles that the patient safety commissioner is proposed to play. There are different ways it could be implemented, of course, but it must be independent of the department and the NHS, as other noble Lords have said, and it must be patient-facing in all it does. We already have examples of how this could and should work. Many noble Lords have referred to the excellent work of the Children's Commissioner. I also point to the Victims' Commissioner, a role fulfilled until recently with great expertise by my noble friend Lady Newlove, and the new independent office of the Domestic Abuse Commissioner. It is absolutely right that these new positions have come into being, and I am proud that it was a Conservative Government who created them.

So once again I throw my weight behind the proposals of my noble friend Lady Cumberlege. I am sure that my noble friend the Minister is highly sympathetic to this cause. For the sake of all those women—and the men and children who have also been harmed—I hope that we can work together to make it happen.

Lord Blunkett (Lab): First, I declare a tangential interest in the sense that I am patron of the Society of Occupational Medicine and, together with the faculty, it obviously has a real interest in this area, as well as its broader remit. I apologise to the noble Baroness, Lady Cumberlege, and the Committee for not being in my place at the beginning of her incredibly powerful speech, and I endorse what people have said already about not only the speech but the incredible work and reflections in the report.

The history that the noble Lord, Lord Patel, gave us, indicates very clearly the challenges that have been faced in this area. I am the first Member to speak who, as a former Member of Parliament, had people at my surgery bewildered, frustrated and not in a position, as they were in America, to go down the litigious route to get any satisfaction. But, of course, down the road and down the line is, as the report of the noble Baroness, Lady Cumberlege, indicates, is too late. Having someone who can intervene to prevent misery, hurt and, for many, terrible trauma for life is really important.

When you have the noble and learned Lord, Lord Mackay, and a former Health Minister, the noble Lord, Lord O'Shaughnessy, on your side, you are on a winner, and I hope that the noble Lord, Lord Bethell, will be able to indicate that he is prepared to go back to what we used to call the Legislative Committee—difficult as that is, because there is enormous resistance in government, as the noble Lord, Lord O'Shaughnessy, will remember and my noble friend Lord Hunt will be painfully aware, to having substantial amendments to Bills and to conceding that measures were not thought of first within the department. But I hope that on this occasion it will be possible to do so.

Reference has been made to other commissioners, and I endorse what the noble Lord, Lord O'Shaughnessy, said about the noble Baroness, Lady Newlove, and the powerful work that she did. I respect her greatly, as I do Anne Longfield, the Children's Commissioner. I say to my good friend and noble friend Lord Hunt that I like to think that some of us in the political arena played a bit of a part in getting the schools reopened as well as the commissioner, but she did a phenomenal independent job in that area. I hope that the commissioner recommended by the noble Baroness, Lady Cumberlege, would be able to do the same in this sometimes forgotten area.

I am not sure that she will thank me for this, but perhaps the noble Baroness will accept that there may be a connection with the Health and Safety Executive, because the research and testing facilities it has may have a relevance here, and some connection with the commissioner that she has recommended may be sensible. My noble friend Lord Hunt and I shared an interest in this when we were both at the Department for Work and Pensions and the HSE reported to us. We had a number of ideas which, because we had both moved on, did not come to fruition—but here we are, all those years later, with an opportunity to do something that would be of great benefit to many people—mainly, as the noble Lord, Lord O'Shaughnessy, said, women—who have suffered so grievously and did not need to.

The Deputy Chairman of Committees (Lord Russell of Liverpool) (CB): The noble Baroness, Lady McIntosh of Pickering, has scratched from this group, so we move on to the noble Baroness, Lady Ritchie of Downpatrick.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, it is a great pleasure to follow the noble Lord, Lord Blunkett, on this group. I pay tribute to the noble Baroness, Lady Cumberlege, for her report and for introducing this proposed new clause, which I feel the Minister should accept.

I apologise for not participating on previous days but I was involved in debates in the Chamber, so I ask your Lordships to accept my apologies.

I fully accept the need for this new clause. At Second Reading, I indicated that the recommendation of an independent patient safety commissioner, on a statutory basis—one of the central recommendations in the report of the noble Baroness, Lady Cumberlege, and her team—should be given legislative effect. The provision of high-quality healthcare in which all citizens can have confidence defines any nation. For me, that is why this Bill is so important and why it should be amended to include this proposed new clause, among others. Our ethical practices are of the highest standard,

and any medical product available in the UK, or indeed anywhere, must be rigorously tested and be shown to be safe and effective. That also goes for the Covid vaccines which are currently under investigation and awaiting licence.

I have long campaigned to get justice for pelvic mesh sufferers who have been left with internal damage and intense, chronic pain. They were failed by an appalling culture of mismanagement, ignorance and apathy within the health system. These victims deserve better justice and we must ensure that this sort of systemic failure never happens again. I remember, as a Member of the other place, meeting many constituents —in the main, women—who had a pelvic mesh inserted and suffered immeasurable pain. They were trying their very best to have it removed.

The recent report by the noble Baroness, Lady Cumberlege, *First Do No Harm*, on surgical mesh and other medical interventions, was scathing in its assessment of the failure of a disjointed and defensive health system to listen to and address patient concerns. Much of the suffering, it concluded, was entirely avoidable. As I said, I met victims of this appalling mismanagement when I was a Member in the other place. I learned at first hand of the pain they had been forced to endure and the impact that it had on the quality of their lives and those of their families. Therefore, I am pleased that the report was commissioned and I am happy to support the recommendation for an independent patient safety commissioner, as per the proposed new clause. It should be placed on the face of the Bill. I believe that, if the Government are serious about that report and about the Bill, this recommendation should be given legislative effect, and I urge the Minister to accept the amendment.

It would be vital for the commissioner to lead with full patient group engagement, and be accountable to Parliament. Patient groups should also be involved in developing a set of better patient safety principles that would govern the way the commissioner fulfilled her or his remit.

As other noble Lords have referred to, we now have experience of the work of various commissioners. I can speak about those that exist in Northern Ireland. There is now a Veterans Commissioner, a Children's Commissioner and a victims' commissioner. They all do good work, acting as advocates for people in their specific fields, and bring forward recommendations to the devolved Administrations. In this particular instance, there is absolutely nothing to suggest that this commissioner, if established through this legislation, would not do likewise. They would be a listening ear and would seek to improve existing health service regulations and practice, particularly in the area of medical devices.

Therefore, I am very happy to support this proposed new clause, and I urge the Minister to accept it.

6 pm

Lord Sheikh (Con) [V]: My Lords, I commend my noble friend Lady Cumberlege on putting forward this important amendment, which has my full support.

I referred to this issue when I spoke at Second Reading. At the outset, I congratulate my noble friend on her thorough and excellent review, including the bravery of its participants. The Cumberlege review was clear that there is an urgent need for action. I welcome this Bill, which aims to put patient safety first.

We need to listen to the review's recommendations and create an independent patient safety commissioner through the enactment of this amendment. This commissioner would be a trusted voice for patient safety and would ensure that the Primodos, valproate and mesh scandals, or any other previous scandals, are not repeated. As the Cumberlege review shows, the harm caused should have been avoided—and could have been, if patients' concerns had been properly listened to and acted on.

Furthermore, Sir Cyril Chantler, one of the review's panel members, rightly said that if such a commissioner had existed before, there would have been no need for this latest inquiry as the Primodos, valproate and mesh scandals would have been dealt with at an early stage, thus preventing the high number of patient incidents that were allowed to occur. Instead, thousands of patients and their families suffered for many years. Many of them were not listened to even though they were right. If this Bill is to succeed in its goal of promoting patient safety, we must accept this amendment.

Patients should not have to fight to be heard. They should not be made to feel that they are in the wrong. Patients and their families need to be consulted, listened to and given a voice. Through this amendment, the patient safety commissioner would be that voice. As is stated in the amendment, the commissioner would

"promote the views and interests of patients"

and would be able to

"receive direct reports from patients and other members of the public".

This way, all concerns will be listened to and properly acted on. The amendment also states that the commissioner will be able to produce

"reports regarding patient safety … with respect to the use of medicines and medical devices."

This information will be essential in making patients aware of any potential risks or harms so that they can make fully informed decisions about their treatment. I am glad to see that the commissioner would be independent so that the public know that any information is accurate and unbiased.

Our healthcare system is one of our greatest assets. I would like to state my gratitude for all the marvellous work that the NHS has done and continues to do. As we have seen during this pandemic, NHS staff have done sterling work and work effectively as a team. Unfortunately, some key workers have paid the ultimate price and we are for ever grateful to them.

The NHS is a very large organisation that does many great things but it cannot do everything right. Sometimes it is better when activities are undertaken by outside bodies that have specific duties and expertise. This is where a patient safety commissioner will play an important role in overseeing the whole system. Furthermore, as in this amendment, an advisory board will support the commissioner in their work, using its wide range of experience.

[Lord Sheikh]

Our current complaints system is too complex and there have been issues with reports being misplaced and poor co-ordination between the different departments and actors. As the commissioner would be constantly reviewing patient safety and be completely aware of any potential issues, they would be able to keep the Minister and the Cabinet Office informed, for the benefit of patients. The commissioner will be able to join the dots in our big healthcare system so that nobody gets lost, and will provide a more straightforward direction.

I am also supportive of this amendment because it requires the commissioner to publish an annual business plan. As a businessman, I know how important this is in creating a clear strategy to bring together different stakeholders and respond to current issues. This annual plan, alongside establishing and updating the principle of patient safety, will help guide the whole healthcare system. I am also glad to see that subsection (6) of the proposed new clause means that these principles must

"be drafted in consultation with the public."

This will make them more accurate, and help build public trust.

Unfortunately, the Primodos, valproate and mesh scandals are not the only cases of a lack of patient safety and we must learn from previous historic mistakes. In 1958, Distaval was licensed in the UK. It was sold as a wonder drug for insomnia, coughs, colds and headaches. It also gave many women relief from morning sickness symptoms, but this drug contained thalidomide and had not been tested on pregnant women.

In November 1961, it was withdrawn from sale and, in May 1962, the Government released an official warning against its use by pregnant women. Thalidomide harmed the development of unborn babies, causing serious life-threatening birth defects, and affected 10,000 babies worldwide, and many more are thought to have died before birth. The drug led to the arms or legs of the babies being very short or incompletely formed, as well as causing deformed eyes, ears and hearts. In the UK, more than 400 adults are still living with these consequences.

In 1968, the UK producer Distillers paid 62 families of thalidomide-affected babies compensation amounting to 40% of assessed damages. A similar amount was paid to a further 367 children in 1973. However, it later became clear that these settlements were not large enough to support those affected in their day-to-day lives. Only in the last 10 or 15 years since the scandal have significant settlements been made and provided by Distillers, now part of Diageo, as well as by the UK Government.

Although there have been many improvements in drug testing since the thalidomide scandal, the delays in dealing with potential risks and proper compensation were totally unacceptable. I comment again that, if there had been a patient safety commissioner, the scale of harm would have been limited, action could have been taken more quickly and compensation may have been paid earlier.

It is imperative that we learn from these historic scandals and the more recent scandals related to Primodos, valproate and mesh. Therefore, we must have a patient safety commissioner. We have to support this amendment, and I welcome its objective to lay reports before Parliament and committees. It is important to take quick and appropriate action against any harmful medicines or medical devices before they become a scandal. It also means that the correct bodies and people can be held to account so that the right improvements can be made.

Independent commissioners have been incredibly valuable in certain areas; for example, the Children's Commissioner, which was established in 2004. Since the start of the pandemic, 14 different reports and policy briefs have been produced by the Children's Commissioner. They have provided key information on how children are affected, different vulnerabilities and how the Government—

The Deputy Chairman of Committees (Lord Russell of Liverpool) (CB): My Lords, excuse me. The Grand Committee will adjourn for five minutes because there is a Division. We will reconvene at 6.16 pm.

6.11 pm

Sitting suspended for a Division in the House.

6.16 pm

The Deputy Chairman of Committees (Lord Russell of Liverpool) (CB): My Lords, the Grand Committee will reconvene again, and I call upon the noble Lord, Lord Sheikh, to finish his contribution.

Lord Sheikh (Con) [V]: Thank you. My Lords, I have nearly finished. I conclude by saying that a patient safety commissioner will be a champion to mobilise changes and deliver necessary improvements. This is vital for creating a healthier system that works for everyone because it can listen to everyone. We must ensure that historical or recent scandals are not repeated, and we must therefore accept this amendment.

Baroness Masham of Ilton (CB) [V]: My Lords, I would support an independent patient safety commissioner, as its aim would be to

"promote and improve patient safety with respect to the use of medicines and medical devices,"

which is vital. In the past years there have been some tragic cases: patients have been left in long-term pain after operations with medical mesh; pregnant women have taken medicines that have caused disabilities in their children; and people have died due to the wrong dose of morphine or potassium chloride by the wrong button being pressed on the infusion pump.

I hope that, if established, the patient safety commissioner would be able to help patients from the private health sector as well. There have been some unfortunate incidents in plastic surgery, for example.

I would like to ask a few questions, but I do not know whether it is the noble Baroness, Lady Cumberlege, or the Minister who can answer them. The NHS is so huge and has so many different bodies and groups. Many people get confused about who does what. Would the patient safety commissioner co-operate with the Healthcare Safety Investigation Branch and the Citizens' Partnership, which will work with HSIB on healthcare safety investigations?

AvMA—Action against Medical Accidents—which works for patient safety and justice, would be happy to work with an independent patient safety commissioner. Would that be helpful? Many all-party groups take evidence from patients and experts on safety issues. Would the safety commissioner be interested in collecting the data and promoting what is appropriate? A great deal of time, energy and experience goes into producing these reports.

There are still cover-ups and fears about reporting safety issues. Patients and their supporters need to feel that their voices are heard and will be acted on independently, and that they will stay safe and not be victimised for reporting patient safety matters. I thank the noble Baroness, Lady Cumberlege, for her report and for bringing this subject up the agenda to where it should stay, with the lead of a patient safety commissioner.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I can only begin this contribution, as I did at Second Reading, by paying tribute to the power and importance of the report by the noble Baroness, Lady Cumberlege, as so many other noble Lords have. I also note that the length of the list of Peers speaking to this amendment reflects the fact that this is perhaps the most important element of her recommendations, or certainly the most easily and directly deliverable through legislation.

When thinking about how I could contribute within this long list of speakers in a positive way, I decided to go back to the noble Baroness's report and to the patients who spoke to her. If I were delivering this as a public speech, I would at this point deliver a trigger warning: what I am about to say is very disturbing. That needs to be said now.

I will quote three of the patients quoted in the noble Baroness's report. The first is identified as a mesh-affected patient who said:

"I have had a constant battle to get the help and treatment I needed with my mesh complications. 'Gaslighting' and a 'fobbing off' culture appears to be rife".

The second quote is from a former GP and mesh-affected patient:

"I do … believe there is a huge unconscious negative bias among you all towards middle aged females in chronic pain."

Finally, the third quote is from Teresa Hughes, from Meshies United:

"They would tell you there is nothing wrong with you and that you are just a hysterical woman".

It is worth reflecting briefly on the history of medicine and the medical profession. The idea of a wandering womb—with strange afflictions supposedly affecting women, particularly those of reproductive age—goes back to the ancient Greeks. We have something here that has been embedded for literally millennia. If we look to more recent history, it was the book on hysteria by Edward Jorden in 1603 that really pinned down in English something that became medical doctrine for centuries. This treatment of female patients has a very long and embedded history.

If we look back at the 1960s and 1970s, up until that point in time the culture of medicine was very much one of paternalism. The doctor, who was most often a male, knew best; the patient was told what they should do and how they should be treated. The doctor knew what was best for them and the patient had very little say or control. We can credit the women's movement as an important part of the forces driving for change in the medical profession. We have seen change, but medical habitus does not change quickly in its practices and culture. It is clear from those quotes I just read out that there is still a long way to go. There is a strong gender aspect to this, but many male and child patients were affected by it as well.

A patient safety commissioner could be someone to go to: someone who knows the system and has sufficient technical support to understand the issues, and to see where systematic breakdowns are happening and act on them. The Children's Commissioner is a wonderful example—the noble Baroness, Lady Cumberlege, referred to it—and by chance I was referring to that commissioner approvingly in this very same Room yesterday.

We have already seen action on the recommendation for a patient safety commissioner in Scotland, and I am proud that the England and Wales sister party, the Scottish Greens, was very strong in supporting that. With this amendment, your Lordship's House has a real chance, as we have been doing with so many Bills lately, to insert an important and key improvement.

I hope that, if not today then sometime very soon, the Government might see the sense of following the Scottish lead and the recommendations of the report of the noble Baroness, Lady Cumberlege. However, if that is not the case, I can certainly offer the Green group's very strong support for pushing this further—as far as it needs to be pushed—to deliver this vital figure.

Baroness Jolly (LD) [V]: My Lords, Amendment 117 would establish the independent patient safety commissioner on a statutory basis, as recommended in *First Do No Harm*, the report of the Independent Medicines and Medical Devices Safety Review. As the noble Baroness, Lady Cumberlege, said, it is a future-facing amendment towards a proposed organisation. It has not been a surprise that all noble Lords who have spoken have been hugely supportive of her report. This recommendation from the Cumberlege review was overwhelmingly supported by the House at Second Reading and is vital to ensure that the interests of patients are represented, to try to prevent scandals such as that regarding mesh implants from recurring. We support it wholeheartedly, and I was delighted to add my name to the amendment.

At present, there is no one to listen to the voice of patients, act on concerns, gather data and put together a clear picture to report back to the department. Commissioners can bring a fresh pair of eyes to an area but also a strong voice for patients. Of course, as the noble and learned Lord, Lord Mackay of Clashfern, said, they bring independence too. In addition, they will have unique statutory powers and responsibilities, such as powers to get access to data, and investigatory powers, with power of entry if necessary. Of course, patients' voices would need to be heard, so in all probability, there would be a helpline, as well as email access and access via a website and by letter.

The noble Baroness, Lady Cumberlege, spoke of the Children's Commissioner, and she was not alone. It has been a great success. The commissioner knows

[Baroness Jolly]
her remit and, as the noble Lord, Lord Hunt of Kings Heath, said, she speaks with no vested interest except in children, and she stays within it. She champions children and, as has already been said, this has given her authority. As a consequence, the organisation is hugely respected.

I have heard the criticism of the cost of such a body as the patient safety commission, and I feel sure that the noble Baroness would have squared off the funding for a commissioner and their office with the Cabinet Office, which would be the funding vehicle. However, compared with similar commissions, it would amount to less than £1 per head of population per year—less than tuppence per person per week. I defy anyone to claim that that is excessive. This is indeed of value, and patients of course deserve it.

Baroness Thornton (Lab): The last remark of the noble Baroness, Lady Jolly, was very pertinent indeed.

After this debate, I probably need to say only that, from these Benches, we support the noble Baroness, Lady Cumberlege, in her proposal to establish a patient safety commissioner on a statutory basis. We have heard powerful contributions from the noble Baroness, Lady Cumberlege, herself, the noble Lord, Lord Patel, and my noble friend Lord Hunt. I always thought, when I was a Minister and since, that you should always listen when the noble and learned Lord, Lord Mackay of Clashfern, says that, in his "respectful submission", something is a good idea; it is always a good idea for the Minister to take note of that.

6.30 pm

The scale and severity of avoidable harm that resulted from the three interventions over a period of several decades is shocking, as noble Lords have said. As the noble Baroness says, such experiences resulted in

"relationships destroyed, careers broken, and as a result financial ruin, with no income, many lost their homes, and faced their children being taken into care".

The report also strongly states that patients and their families should not be left to

"join up the dots of patient safety"

for themselves.

Over the 20 years that I have been in your Lordships' House, there have been at least three reports about patient safety—some as a result of scandals—yet the systematic causes of unsafe care persist. I recall Liam Donaldson's report in 2000, *An Organisation with a Memory*, a report of an expert group on learning from adverse events in the NHS, and Ian Kennedy's heart-wrenching 2002 report on the public inquiry into children's heart surgery at the Bristol Royal Infirmary, *Learning from Bristol*. Of course, I was the Minister who, from the Dispatch Box, had to deal with the *Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry,* or Francis report, which was as harrowing in what it said as the report of the noble Baroness. And yet we have still not learned how to ensure that patient safety is at the heart of our work in the NHS and that patients have a voice. That is what is at the heart of this amendment.

The amendment also deals with health inequalities. The interventions focused on in the report were all taken and used by women, and its findings highlight consistent themes around sexist attitudes to patients' concerns. That is yet another reason why having an independent patient voice is so important.

I hope that the Minister supports this amendment and, if he cannot, that he will commit to bringing an amendment back on Report which recognises the patient voice and influence within the NHS, and that a new patient safety commissioner would strengthen that voice and the NHS enormously by bringing a focused perspective to improving patient safety.

Lord Bethell (Con): My Lords, I start by profoundly thanking my noble friend Lady Cumberlege. It has not escaped the notice of anyone in this Grand Committee that her amendment has the support of a very large number of noble Lords, including the noble Lords, Lord Patel and Lord Hunt, and the noble Baronesses, Lady Jolly and Lady Thornton. Many Members spoke in favour of her report's recommendation at Second Reading, and I expected that we would spend time on these matters now.

Let me say at the outset that the Government take very seriously the report of the Independent Medicines and Medical Devices Safety Review, led by my noble friend Lady Cumberlege. We are absolutely determined to learn from it. We are taking time to carefully consider the report and all its recommendations before we respond, which is reasonable. Given the important issues it raises, it is only right that the report gets due consideration. It is right that, on a report of this length and breadth, we take the time to do this properly.

At the heart of the review are harrowing stories of hundreds of people and their families. It is right that the Government have made an unqualified apology on behalf of the health system to all the individuals affected by this report.

I shall say a word about the pause in the use of vaginal mesh in the treatment of prolapse and incontinence which was introduced in mid-2018. As my noble friend Lady Cumberlege rightly observed, the pause introduced a period of high vigilance, restricted practice to ensure that NICE guidance was followed. A blanket ban on the relevant procedures was not recommended as there needed to be some exceptions within the pause. I am aware of the six conditions that must be met before the pause can be lifted. The majority of the six measures are in hand. NHSE is working closely with providers to set up specialist mesh removal centres and is working in partnership with the British Association of Urological Surgeons and the British Society of Urogynaecology to ensure that there is a consistent approach to informed consent and shared decision-making in these centres with clear and accessible information available for patients. I am aware that a data solution is yet to be fully implemented, but I reassure noble Lords that I understand that NHS Digital, working with NHSX, has put together a programme of work to establish an information system to collect surgical implants and devices data from all NHS and private provider organisations, starting with mesh-related procedures, and that this work is in the pilot stage with a view to establishing a medical device information system.

We recognise that Amendment 117 stems from the centrepiece recommendation of that bold and far-reaching report to establish an independent patient safety commissioner. He or she would promote the interests of patients and other members of the public in relation to the safety of medicines and medical devices. We recognise that the role would be to help patients navigate the healthcare system architecture and to troubleshoot problems and that, as my noble friend put it in her report, the commissioner could be a golden thread tying our complex health system together in the interests of patients and the public. We recognise the significance of the intention of this amendment. We wholeheartedly accept that listening to patients is a key step to preventing the sort of issues that the report by my noble friend Lady Cumberlege has highlighted.

We accept that policymakers, the NHS, private providers, regulators, professional bodies, pharmaceutical and device manufacturers need to do more to engage patients and families, and to recognise and use their insights as a vital source of learning. It is only by listening to patients, their families and staff that we can learn from mistakes and continually improve. On this point, it has been imperative that we listen, and I am listening very carefully today to the points made by colleagues about the arguments for a commissioner and how this might sit within the wider system. I will continue to listen.

However, before I turn to Amendment 117, allow me to explain why patient safety is an unwavering commitment for the Government and the measures we are taking to embed patient safety throughout the NHS. These include putting a positive learning culture at the heart of the NHS and ensuring that providers are listening to those who raise concerns at the time they are raised, whether by patients, their families or staff, and that they show empathy and sensitivity when they respond. This is a culture where patients are listened to in the first place and not one where they feel they must resort to a third party in order to be heard.

Following the tragedy of Mid-Staffs, which the noble Baroness, Lady Thornton, referred to, and some other very concerning cases, we have overhauled the infrastructure underpinning safety and quality in the past decade. That includes taking steps to help staff speak up when they see things going wrong. A culture that listens and responds to concerns in the first place is crucial if the right lessons are to be learned and errors are to be minimised. Our measures include establishing: the Healthcare Safety Investigation Branch to examine the most serious patient safety incidents and promote system-wide learning; medical examiners to provide much-needed support for bereaved families and to improve patient safety; a duty of candour so that hospitals tell patients if their safety has been compromised and apologise; and protections for whistleblowers and freedom to speak up guardians across all trusts, supported by a national guardian.

In addition, the NHS people plan for 2020-21 sets out our vision for a health service that is compassionate and inclusive, that is not hierarchical and where people are listened to. We know that implementing change can be a slow and complex process for many organisations and individuals. Healthcare will always involve risks, but they can be reduced by analysing and tackling the root causes of patient safety incidents.

However robust our regulatory and oversight system is, ultimately, improving patient safety requires those at the executive level of our health service to act just as much as individuals involved in patient care. It is why in 2019 we commissioned the NHS national director of patient safety, Dr Aidan Fowler, to publish a new NHS patient safety strategy. Substantial programmes are planned which include: a framework to support patients to contribute to their own safety by having patients or their advocates on all safety-related clinical governance committees in NHS organisations; a requirement for all NHS organisations to identify a specialist to lead on patient safety; the first ever system-wide patient safety syllabus and training for all staff so that they have the knowledge to make care safer themselves; a new patient safety incident response framework to improve the handling of patient safety investigations in the NHS; a successor to the national reporting and learning system to support safety improvement and help the NHS when things go wrong; and a national patient safety improvement programme to prioritise the most important safety issues in the NHS, including medicines safety.

Implementation of the 10-year NHS patient safety strategy is being led by a team that is more than 50 strong. At its core, the strategy seeks to significantly improve the way the NHS learns, treats its staff and involves patients. The strategy seeks to ensure that all healthcare organisations in England adopt a different focus for patient safety that is based on culture and systems. NHS England and NHS Improvement have assessed that getting patient safety right could save 1,000 lives and £100 million in care costs each year from 2023, with the potential to reduce claims provision by around £750 million a year by 2025. The NHS patient safety strategy will be refreshed each year to support our ambition of cementing patient safety into the everyday fabric of the NHS and encouraging a safety and learning culture. NHS safety bodies are doing more to involve patients to better understand issues that give rise to patient safety concerns. Let me give a couple of examples.

The Healthcare Safety Investigation Branch has established a citizen partnership panel to bring in patient insights and ideas for referrals or improvements in HSIB's investigations. The experiences of patients and their families are central to the regulatory approach of the CQC and its future direction. The MHRA has begun a substantial programme of work to drive forward change in its culture, where a key priority is listening and responding to patients.

Lest we forget, the healthcare system architecture is complex. This means that patient safety regulation is prone to overlaps of remit and gaps between oversight bodies. It is why our consideration of the recommendations by my noble friend Lady Cumberlege includes how a patient safety commissioner would interact with other bodies across the healthcare landscape, ensuring that they could make a difference without creating duplication or confusion.

[Lord Bethell]

With this in mind, although Amendment 117 from my noble friend Lady Cumberlege, the noble Lords, Lord Patel and Lord Hunt, and the noble Baroness, Lady Jolly, would give the patient safety commissioner considerable latitude about how he or she would operate, it is without detail about how the commissioner would interact with other bodies. For example, proposed new subsection (5)(e) would allow the commissioner to receive direct reports from patients and the public. However, the CQC, the Parliamentary and Health Service Ombudsman and the MHRA, among many others, are all open to receiving direct reports from patients and the public. They have a responsibility to listen to complainants whatever the cause of the complaint may be. These bodies also have their own routes for reporting. For example, adverse incidents relating to medicines and medical devices are reported through the MHRA's yellow card scheme. Proposed new subsection (5)(e) does not address how a new route for patients to report safety concerns would mitigate the risk of drawing patients away from reporting these incidents to the MHRA or of causing a delay in the MHRA receiving this vital information or receiving it at all.

Proposed new subsection (7) enables the commissioner to require information from public bodies and others for the purposes of producing and laying before Parliament reports regarding patient safety. Although this power does not, as we might expect, extend to requiring information for the purposes of fulfilling the commissioner's other functions, it is otherwise broad, because it would apply to both public and private bodies, and individuals, and could involve requests for sensitive personal data and confidential commercial information that these bodies may not agree are reasonable for the purposes of the commissioner's public reports.

6.45 pm

The Government want to ensure that patients in England are not let down by our most loved institution, which was set up to protect each and every one of us. There is no doubt that the report by my noble friend Lady Cumberlege gives the Government and everyone in healthcare a lot to think about. My noble friend has done a great service by highlighting the importance of listening to patients and we are considering carefully her recommendation to establish a patient safety commissioner.

Whatever structures we put in place, the reality is that patient safety is a combination of culture, behaviours and underlying conditions. Patients should be able to trust that their concerns will be listened to without feeling that they must resort to a third party to be heard. It is ultimately about the way we work with, and behave towards, each other, and towards patients and their families. Any approach to add a further layer to an already complex health system architecture should aim to mitigate the potential for issues to get lost, confused or duplicated. It definitely should not hamper the effectiveness of existing patient safety bodies. It is absolutely right that we put the patient at the heart of the system and improve the system around them.

I am very grateful to my noble friend Lady Cumberlege, to the noble Lords, Lord Patel and Lord Hunt, and to the noble Baroness, Lady Jolly, for tabling their amendment. However, with the utmost respect to them, the Government are unable to accept it for the reasons I have outlined. I therefore hope the noble Baroness feels able to withdraw her amendment.

The Deputy Chairman of Committees (Lord Russell of Liverpool) (CB): I have received one request to speak after the Minister. Baroness Thornton.

Baroness Thornton (Lab): I am grateful to the Minister for that detailed answer, but as far as I can see, it underlined the point about the fragmentation of patient safety. He is undoubtedly right about the need to change culture. Will the Minister look at this again, because I mentioned the three inquiries in the past 20 years that I knew about very well, and every one of them said very similar things to what the Minister has said? None of them has produced the kind of support that one would want for patients or been the catalyst required here from the patient safety commissioner. Will the Minister go back and think about this again?

Lord Bethell (Con): I take the encouragement of the noble Baroness to heart. I would be very happy to think further on it. She makes a very good point: we know about the terrible incidents of the past and the very substantial responses that they had. I share with her the frustration that these problems continue to arise. For that reason, as I said, we are looking for a really thoughtful, considered response to the review overall. As I said in my earlier remarks, the case for a patient safety commissioner is one that we are looking at. I listened to absolutely everyone who has spoken in its advocacy, but we do not regard it as a silver bullet or a single point of catalysis, which I do not think the noble Baroness was alluding to. We are looking for a broad response to the review that would ultimately take on all the different points that the noble Baroness and her review team have made.

Baroness Cumberlege (Con) [V]: My Lords, I will come to the Minister's summing up at the end, but I thank all noble Lords who have taken part in this debate. I have not heard anything really contrary or disturbing against a patient safety commissioner. It has been supported, and I am very grateful for that.

I first thank the noble Lords, Lord Patel and Lord Hunt of Kings Heath, and the noble Baroness, Lady Jolly. I know that the noble Lord, Lord Patel, has been a champion of safety both in Scotland and in this country. I share his impatience. He considered some of the interesting reports that have been produced and we hope that they all have made a little difference—but not enough. He is so right to say that we are searching for independence, as other noble Lords have mentioned. The person who we appoint to this position is so important. We do not want a patsy or someone who is just going to do what the department and Ministers want. We want an independent voice. I thank all those who also talked about a patient safety commissioner and the Children's Commissioner, who, as we all said, has been outstanding. I also thank the noble Lord, Lord Patel, for his revealing statistics, which were interesting.

I understand the cynicism of the noble Lord, Lord Hunt of Kings Heath, about NHS England. I say just one thing about it, but I should have declared

my interest at the start of the debate because I am employed by NHS England in the context of maternity services. The chief executive took our report, *Better Births*, and said, "I am giving you five years to implement it". He gave us the people, resources and everything else. We were making real progress until March. The virus has really knocked us back—we did not expect it. However, in the four years that we have completed, we have changed much of the culture within maternity services and improved the lot of many women. We have not had that response from the Government on this report. They have not said, "We will give you five years and some resources. See what you can do". No, they have been silent. Today, the Minister told us a bit about what he has been doing. However, none of that was news to us. We know all that already.

Moving on, I refer to what the noble Lord, Lord Hunt of Kings Heath, said about the tension within boards. I chaired the Brighton health authority board when the Grand Hotel was bombed. It was a tragedy—lives were lost—but when one looked at the whole system, it worked. Why was that? It was because we had a good leader in A&E who conducted a rehearsal three weeks before the bombing. That rehearsal paid off. Preparation is extremely important. The noble Lord was of course right about the financial problems that must be weighed up within trusts.

We are so lucky to have in our House my noble and learned friend Lord Mackay of Clashfern, a previous Lord Advocate and Lord Chancellor. I remember working with him on debates about the family and all sorts of matters. If you want somebody with true wisdom, understanding and foresight, you go to him. He has done it all, knows about it and always has such integrity. I thank him very much for his support and his impatience, which I share. We know today that babies are being born deformed. One in two have a chance of having a disabled child if they are on sodium valproate, and they do not know about it. We are impatient. We do not want to see more of that. We want to see safety become a reality.

My noble friend Lord O'Shaughnessy has, of course, been a Minister in the House and he knows the tensions and difficulties. One of the things that I know about him is that he listens to patients: he takes time out to do that. He appreciates, almost more than all of us, how people have waited for decades in terrible conditions, suffering terribly. I know that he has done a lot with sodium valproate and the patient groups there, and I thank him for that. What he was telling us about Jeremy Hunt and the way that this review was first commissioned was really helpful, because Jeremy Hunt set the parameters. He was invited to take on three different areas by the Prime Minister, Theresa May. It was really her initiative first, and then Jeremy worked extremely well. I am of course delighted that he appointed me to chair the team.

I want to say a word about the noble Lord, Lord Blunkett. I am very pleased that he is taking part in this Committee; he apologised for not being at Second Reading. Whenever he comes in on a debate, we welcome him. Again, with him having been a really strong leader in his own area and then in the Commons, it is really good to have had him join us today. He talked about the Health and Safety Executive and how we have to work with it. He is of course right.

The Minister, in his summing up, asked who this patient safety commissioner is going to work with. We do not know exactly—of course not. He can read the amendment, which sets out quite a lot. He can read the report and see there what we were thinking about, but of course this needs more work. In fact, one of the members of our team said to us, "Do not lose out on the coroners' courts; you learn a lot from them". Her husband is a judge, so she knows a bit about it. We are saying that you have to map the whole horizon and see where things are not quite right. Why is something going wrong? That is something we ought to look at more carefully.

It is about listening to patients but, much more than that, it is about working with all the different healthcare systems. My noble friend Lord Sheikh and others talked about the NHS. We are thinking much more broadly than the NHS. We are thinking about it, of course, and we know it has done a fantastic job with the coronavirus, but we are also thinking about private providers. I was very interested that the noble Baroness, Lady Masham, brought in private providers. We need to think about other public bodies and certainly about the royal colleges, the pharmaceutical and devices industries, the manufacturers and of course the policymakers—the politicians. I appreciate that it is a broad area but that is the problem with it at the moment: it is disjointed and siloed, it is unresponsive and defensive. We need some person who is going to get into all of that and call all the organisations to account—encourage them but call them to account when things are not working right.

7 pm

I thank the noble Baroness, Lady Ritchie of Downpatrick, for her strong support and what she said about the different stories she had heard. It is shocking that they have been avoidable. Perhaps I could pick up just one. Throughout the report, there are a lot of quotes but this one really struck me. This is a woman who had mesh, and she says:

> "This device took everything from me my health my life my job my dignity my marriage my freedom. There are a lot of us suffering."

That is the impact that some of this has had on thousands of individuals. That is our nation's tragedy.

I thank the noble Lord, Lord Sheikh, very much for his report. We were working as a very small team and met very often; through Cyril Chantler and others, we were thinking about the patient. We said, "Where is the patient?". The patient is the pilot, while the clinician is the navigator. We said that often what happens is that the clinician is the pilot and the patient is the passenger. We want to change that. Who is this service run for? It is run for the patients. Who pays for it? The public, who are patients. We were really thinking a lot about that. Of course, we want to trust patients and to have someone who is going to help them and join the dots, as the noble Lord, Lord Sheikh, said.

I thank the noble Baroness, Lady Masham. As I have said, she was on the button with the private health sector. We always have to include it, and we

[Baroness Cumberlege]
have, when we talk about the healthcare system as a whole. She mentioned charities, which are also terribly important. We essentially worked with 15 charities and with hundreds and hundreds of individuals. I still have a postbag full of their worries and requests, such as "What is happening to your report? Why isn't it implemented? What are the Government doing?"—I get all those questions all the time.

I thank the noble Baroness, Lady Bennett of Manor Castle. She is so correct—go back always to the patients' quotes. That is what this is all about. We have certainly talked a lot about Anne Longfield and the patient safety commissioner. People have spoken glowingly of her, and perhaps we ought to canonise her—I do not know.

I thank the noble Baroness, Lady Thornton, for all her support and the encouragement she has given me. She was also so right to talk about three reports on patient safety, complete with Mid Staffs. The problem with Mid Staffs was that it had so many recommendations; I think it was about 160, but I cannot remember the exact number. That is why we had only nine, but these nine are key. One of them was about an apology, which we asked for and which was given by the Secretary of State, so we have eight. But those eight are key to ensuring that in the future we have a much better system that is totally influenced by patients and their experiences. That is really important and this Bill brings a lot of it in. I am very grateful for that.

I thank my noble friend the Minister for his summing up. He warned me beforehand that it was likely to be long. It was very thorough but for us, there was no news. We know all about special centres, and we have been working with the people there to establish them. Of course, we have worked with the British Society of Urogynaecology. We have talked a lot about consent and how that should operate. Of course, a lot of work has gone on with NHS Digital and NHSX. We have talked to their leaders and listened to what they have to say. As the Minister knows, we asked certain questions of them and we had the replies.

Of course we must listen to patients, but we need to do much more than that. We need some sort of mechanism. We need something that makes this a reality. We do not want warm words; we want action. We have thought about this for two and a half years. What would make a real difference? The eight recommendations would, but the most important, and the one that needs legislation, is that of an independent patient safety commissioner.

I say to my noble friend the Minister that of course we know about the HSIB, the duty of candour, speak up guardians, the MHRA, the CQC and all that. We are trying to promote something and someone different—someone who is not part of the system and is not going to have a vested interest in how it works. We want someone independent. I know that scares the pants off the Department of Health and Ministers. They do not like independence but, my goodness, it is so important, as we have learned with the patient safety commissioner.

I understand my noble friend talking about the fact that it is a big report and the Government will have to think a lot about it. I have done a lot of reports in my time. The first was to ensure that nurses could prescribe. It took me 20 years to get that to happen. I have not got 20 years. The people suffering now do not have two years or 18 months. Suffering cannot wait. This is important and it is critical that we move quickly because our people are in a terrible state and are suffering. I will talk later about redress and things like that, but that is another amendment.

I thank my noble friend for his summing up. I am disappointed but I am delighted that he said, in answer to questions from the noble Baroness, Lady Thornton, that he will think further. We know that we have something important here. Nobody has countered this in the Lords, the Commons or anywhere else. They have all agreed with it. I have talked to Aidan Fowler, who is newly appointed and has his strategy, and he told me that if we have a patient safety commissioner he would work with him or her.

We need somebody. Perhaps all of us here, with all our contacts, should be thinking about who would be a good person to take on this role. I am not going to be on the appointments commission, but we should be moving this forward. We cannot just sit on it because there are too many people suffering now and who will continue to suffer unless we really get to grips with this.

Finally, on sodium valproate, surgical mesh and Primodos, a lot of these people are very sick. They have nevertheless given their lives to help others and to take forward what they know needs to be done. We have had no opposition at all from those people. On the contrary, we have had a lot of support.

At a time of great difficulty for this country, when we know that it is divided, here is something consensual that we can be proud of as a nation. Yes, we have been managing the coronavirus and that will be part of our legacy, but what a tragedy if that alone is our legacy. We want something more than that. We could go down in history as having made a real difference to the population, to people who would have suffered if we had not made a stand.

I say to my noble friend the Minister: do not be worried about disturbing the pond. I can see that he is worried that this will upset some people, but they have not come to me about being upset. This is the time when we should all be on the side of the angels. I beg leave to withdraw the amendment.

Amendment 117 withdrawn.

Amendment 118 not moved.

The Deputy Chairman of Committees (Lord Russell of Liverpool) (CB): We now come to the group beginning with Amendment 119. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate.

Amendment 119

Moved by ***Baroness Wheeler***

119: After Clause 38, insert the following new Clause—

"Northern Ireland and regulatory divergence

(1) The Secretary of State must work together with the appropriate authority in Northern Ireland to minimise the potential for and mitigate against regulatory divergence in relation to human medicines, veterinary medicines and medical devices.

(2) Where the Secretary of State has identified areas of regulatory divergence in relation to human medicines, veterinary medicines and medical devices between Northern Ireland and the rest of the UK, the Secretary of State must lay a report before both Houses of Parliament setting out how the divergence will impact—

(a) the UK; and

(b) Northern Ireland.

(3) The report must set out the steps the appropriate authorities have taken to mitigate against such divergence."

Member's explanatory statement

This Clause would require the Secretary of State to work with the appropriate authority in Northern Ireland to minimise the potential for regulatory divergence relating to medicines and devices, and report any areas of regulatory divergence to Parliament, including the impact they will have, and report on actions to mitigate against adverse consequences arising from divergence.

Baroness Wheeler (Lab): My Lords, on behalf of my noble friend Lady Thornton, I am moving Amendment 119 on the important issue of regulatory divergence with Northern Ireland and reporting to Parliament. I am grateful for the support of the noble Baroness, Lady Ritchie, who raised this key issue at Second Reading, as did the noble Lord, Lord Patel, whose Amendment 120 is grouped with this amendment. I look forward to their contributions and to those of other noble Lords.

Amendment 119 would add a new clause to the Bill on the interpretation of Part 3, "Medical Devices". It would require the Government to work with the appropriate authority in Northern Ireland to

"minimise the potential for and mitigate against regulatory divergence in relation to human medicines, veterinary medicines and medical devices."

Where an area of divergence is identified, the Secretary of State would be required to lay a report before Parliament on the impact it will have and the steps being taken to mitigate it.

Human and veterinary medicines are transferred matters in Northern Ireland. For this reason, Clauses 1 and 8 lay out in black and white the possibility of regulatory divergence, as they give separate powers to Northern Ireland departments to make regulations relating to Northern Ireland. However, despite this being in the Bill, the rest of the legislation as drafted is completely silent on the implications this may have, or on any mechanism for dealing with them. This means Northern Ireland could end up passing different legislation.

As well as those powers in the Bill, there is the wider context of the Northern Ireland protocol, under which Northern Ireland will continue to apply certain European Union standards that will no longer automatically be part of the law governing Great Britain. For example, in the Government's own guidance on regulating medical devices from 1 January 2021, it is stated that, unlike in Great Britain, the EU medical device regulations and the EU in vitro diagnostic medical device regulations will apply in Northern Ireland from May 2021 and May 2022 respectively.

The risks of divergence have been raised by Members in both Houses, including the risk that what may on the face of it seem to be only minor or technical differences could create a butterfly effect, leading to much larger legal and operational problems. The Bill does not itself create divergence and nor for that matter does the Northern Ireland protocol, but both permit it or create a situation in which it may arise. It is therefore vital that the implications of this are part of discussions on the Bill.

7.15 pm

On the issue of reporting to Parliament, Amendment 120, in the name of the noble Lord, Lord Patel, which we support, calls for an

"annual report to Parliament on potential areas of regulatory divergence between Northern Ireland and the rest of the United Kingdom in matters covered by this Act."

Can the Minister tell the Committee what preparatory work is being done, specifically in response to this Bill, to minimise and mitigate against any adverse consequences of possible divergence between Great Britain and Northern Ireland in the medium and longer term? What structures will be put in place to address this issue? Who will have responsibility for identifying possible areas of divergence? How will Parliament be kept informed?

There is deep concern about this issue and what happens if Northern Ireland and Great Britain end up with increasingly different legislation covering medicines and medical devices. I look forward to the debate and the Minister's response.

Lord Patel (CB) [V]: My Lords, I will speak to Amendment 120 and, again, I am very grateful to my friend the noble and learned Lord, Lord Mackay of Clashfern, for joining me on this amendment. I beg noble Lords' indulgence because, when I read the legislation and the Bill related to this and then looked at the advice or guidance issued by MHRA, I got more and more confused about what the divergence is going to be, how much of it there will be and how clear the Bill is. I am sorry, but I will be labouring the point at length to get some answers.

My proposed new clause would require the Secretary of State to report on

"regulatory divergence between Northern Ireland and the rest of the United Kingdom".

This amendment would address the issues of potential regulatory divergence between Northern Ireland and the rest of the United Kingdom. In relation to medicines and veterinary medicines, Northern Ireland is referred to separately from the rest of the UK. This means that, as set out in Clause 1(4)(b) and Clause 8(4)(b), the power to make regulations in respect of Northern Ireland lies with the Department of Health in Northern Ireland or both the department and the Secretary of State, when acting together.

Clause 40 limits the capacity of the Department of Health in Northern Ireland to act alone, only allowing it to do so when it would be

"within the legislative competence of the Assembly, and … would not require the consent of the Secretary of State."

It is not clear in the Bill which areas would be in the sole competence of the Northern Ireland Assembly. Will the Minister clarify that?

Furthermore, while powers on medical devices are not reserved, the guidance most recently published by the MHRA paints a picture of two different systems—market authorisation and registration, among other

[Lord Patel]
issues—and distinguishes between the "Northern Ireland market" and the "Great Britain market". This implies that regulation different from that in the rest of the UK may be intended for Northern Ireland in respect of medical devices.

The MHRA published guidance on medicines and medical devices based upon the potential situation at the end of the transition period, days before this House was due to sit for the Second Reading of the Bill. This advice implies that a dual system would be operating in respect of Northern Ireland for both medicines and medical devices due to the operation of the Northern Ireland protocol, to which the noble Baroness, Lady Wheeler, referred. This assumes that the Government will actually honour that agreement. The Northern Ireland protocol requires that EU regulations relating to medicines, veterinary medicines and medical devices apply to Northern Ireland.

The MHRA guidance makes a distinction between the EU market, the market of Great Britain and the market of Northern Ireland. It sets out that CE marks will cease to be recognised in the market of Great Britain from July 2023, unless the products in question are from manufacturers based in Northern Ireland. There are essentially two different baskets envisaged in the guidance for manufacturers that are based in Northern Ireland to bring a medicinal or medical product to the markets of Great Britain and Northern Ireland.

The first is to go through UK-based approved bodies for their assessments and market authorisations, which would be approval for the Great Britain or Great Britain and Northern Ireland markets, but it would not be recognised in the EU. The second is to submit their application to approval or notified bodies in the EEA, gaining a CE mark and thus access to the markets of Great Britain, Northern Ireland and the EU without further needing to apply to a UK body for approvals for the Great Britain market. Noble Lords will see how confusing the whole system sounds.

In contrast, manufacturers based in Great Britain would need approval from UK-based bodies to place their products on the market in Great Britain and Northern Ireland but would need to undertake the separate task of getting an EU-based responsible person and applying separately for a CE mark in the EU if they were to bring their product to the EU market.

Further, from 30 June 2023, CE-marked devices originating from the EU market but not manufactured in Northern Ireland will no longer be able to flow to Great Britain. This regulatory set-up in Northern Ireland could therefore be an incentive for EU manufacturers to base their European operations in Northern Ireland to have unfettered access to both markets. Discussions about whether this constitutes state aid and would distort the EU single market are still ongoing.

On the face of the MHRA guidance, it appears that the recognition of the CE mark on medicines and devices coming from Northern Ireland provides easier access for Northern Ireland-based manufacturers to both the UK and EU markets. It certainly suggests a dual system applying between Northern Ireland and the UK, but the extent to which those systems will diverge in substance in future is not clear. It is not clear how systems of pharmacovigilance or the monitoring of medical devices will be co-ordinated for products available in the Great Britain market that are manufactured in Northern Ireland and subject to EU regulations and monitoring. If monitoring systems and databases are to be fit for purpose in the EU, surely it is essential that the UK has access to EU databases. In the absence of this access, how can the Government guarantee, or claim to be prioritising, the safety of patients?

What is clear, because the guidance states it, is that draft regulations with reference to medicines and medical devices exist but have not yet been introduced to Parliament. These draft regulations are what the guidance claims to be based on. If these regulations exist to the extent that the MHRA is publishing guidance based on them on issues of significant policy in these areas, why has this House not had sight of them? Why have they not been included as part of the substance of the Bill where they would receive proper scrutiny and provide much-needed clarity to all stakeholders for medicines and medical devices?

The situation regarding regulatory alignment or divergence between Northern Ireland and the rest of the UK is politically charged and should be dealt with explicitly. Given the potential for some aspects of medicine and veterinary medicine to be subject to the distinct competence of the Northern Ireland Assembly, there is potential for the requirement to have regard to "attractiveness" to have different interpretations in Northern Ireland and the rest of the UK. Further, the ambiguity surrounding the Northern Ireland protocol and its implications raises the potential for divergence, even where the United Kingdom Government have competence to regulate in respect of medical devices. For these reasons—I hope that I have made this point at length—the Government should clarify the position. This amendment would provide greater transparency about the potential regulatory divergence with a commitment to mitigate where possible.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I am delighted to follow the noble Baroness, Lady Wheeler, and the noble Lord, Lord Patel, on these amendments dealing with regulatory divergence and Northern Ireland. I am a signatory to Amendment 119 in the name of the noble Baroness, Lady Thornton.

During Second Reading, I stated that there is the issue of potential regulatory divergence in relation to Northern Ireland, as medicines are a devolved power but medical devices are not. The Bill raises the possibility of future regulatory divergence between Northern Ireland and the rest of the UK, and that matter requires clarification, hence my support for Amendment 119. Both amendments seek to ensure greater accountability and transparency, to which the noble Lord, Lord Patel, referred, in that Parliament should receive reports on regulatory divergence as a means of oversight and accountability—with which I totally agree.

In some areas, this also relates back to the Northern Ireland protocol. There is no doubt that we must ensure the highest level of standards in relation to veterinary medicines, human medicines and medical devices. In his response at Second Reading, the Minister indicated to me that the Government intended to

implement the Northern Ireland protocol, but I ask how that squares with the UK internal market Bill, this Bill and the need to ensure that we have the highest standards for medicines, medical devices and veterinary medicines—how does this all square?

I note that the NHS Confederation will continue to follow developments, analyse the implications for the health sector in the UK and push for as much clarity as possible on the implementation of the Northern Ireland protocol from 1 January 2021. It has also been stated that Northern Ireland will remain part of the UK customs arrangements constitutionally, so HMRC—not EU officials—and the UK's Medicines and Healthcare products Regulatory Agency should administer the necessary controls. The MHRA remains responsible for placing the goods on the market and monitoring products once sold, but they will have to be approved through the European procedures because Northern Ireland will be treated as a member state in terms of regulatory decisions.

There is also concern that there will be delays in the import and export of medicines and medical devices, which need to continue to reach patients as quickly as possible, and we must ensure that any such delays are minimised, particularly during a pandemic. Avoiding delays caused by tariffs and regulatory barriers requires the UK and the EU to reach agreement on shared standards, such as manufacturing and inspections, so that goods can be licensed for rapid release into the UK market, or vice versa. With potential new checks and the lack of clarity on how the regulatory framework will apply, this could create unnecessary delays and impact on individual patients but also on medical practitioners.

There is also a need, as the Northern Ireland Affairs Committee said, for the Government to commit to covering all costs to businesses for complying with the protocol, which includes the whole area of medicines. I ask the Minister, the noble Baroness, Lady Penn, what discussions she and the noble Lord, Lord Bethell, have had with Minister Swann in the Northern Ireland Executive, as the Minister responsible for the Department of Health, about these issues, particularly in relation to the measures to minimise and mitigate the impact of divergence and how that will be achieved. We want to ensure the least impact from regulatory divergence on the availability and accessibility of medical devices and any other forms of medicine, whether for humans or for animals.

Baroness Penn (Con): My Lords, we have unfortunately come to the end of our allotted time for this Grand Committee. I am afraid that I will need to adjourn our debate for today.

The Deputy Chairman of Committees (Lord Russell of Liverpool) (CB): That concludes the work of the Committee this afternoon. I remind Members to sanitise their desks and chairs before leaving the Room.

Committee adjourned at 7.30 pm.