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OFFICIAL REPORT

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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 SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
Lab Co-op	Labour and Co-operative Party
LD	Liberal Democrat
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 or for the Lords spiritual.

House of Lords

Friday 4 February 2022

10 am

Prayers—read by the Lord Bishop of Carlisle.

Wellbeing of Future Generations Bill [HL]

Third Reading

10.07 am

Lord Ashton of Hyde (Con): My Lords, I have it in command from Her Majesty the Queen to acquaint the House that Her Majesty, having been informed of the purport of the Wellbeing of Future Generations Bill, has consented to her place her interest, so far as it is affected by the Bill, at the disposal of Parliament for the purposes of the Bill.

Motion

Moved by ***Lord Bird***

That the Bill do now pass.

Lord Bird (CB): My Lords, I thank the many people who have been involved in the life of this Bill. It started very much as an imitation of our Welsh friends' and cousins' Well-being of Future Generations (Wales) Act. This Bill was inspired by that. I remind noble Lords that it was also inspired by the fact that I came into the House to prevent poverty and not to make the poor slightly more comfortable than they were before I came in. I have always started from the premise that what is important is finding preventive methods, methodologies and systems that allow us to intervene before the problem presents itself. As we always seem to be living and treading on the mistakes of the past—past interventions, past actions, past acts and past activities—it is important that we look again at how we can prevent the future from being a poor version of the present and the past.

Therefore, I thank all the people who got behind this. The APPG for Future Generations has been sterling, as has the steering committee. I also thank my office, whose members are up there somewhere. They have worked very hard and led me on this. They have pushed me, cajoled me and supported me to ensure that we were in places where we could influence the decision-makers. I spent a lot of time talking to members of the Government. It is surprising that certain departments are very much for the idea of a future generations Bill becoming an Act. Obviously, there are others who will find it difficult.

I thank the many Peers from all sides of the House who have said to me that this is a very good Bill, which we must see go through to the other place and not get kicked into the long grass simply because the Government cannot make the time. I cannot think of anything else to say except thank you very much and God bless you all.

Lord Watson of Invergowrie (Lab): My Lords, we are all indebted to the noble Lord, Lord Bird, not only for bringing this Bill forward and thus allowing the important issues that it encompasses to be debated in your Lordships' House but for displaying today the customary flourish and passion that he brings to his contributions. That noble Lords endorse the need for such a Bill was clear at Second Reading, when 36 spoke in a debate that lasted in excess of two hours. With very few exceptions, the Bill's aim to ensure that government policy-making takes into account the interests of future generations was warmly welcomed.

I will not repeat any of the arguments, but I will repeat a line that I used at Second Reading. The question should not be what the cost will be of pursuing the actions called for in the Bill but rather what the cost will be of not doing so. The Government adopted a strong stance at COP 26 and worked hard to build support for it, surprising many of us who had not anticipated that they would do so. That demonstrated an understanding of the issues that were facing future generations and the need to act decisively now. A positive response today by the Minister would not only reinforce that forward-looking approach by the Government but would allow this Bill to move to another place with a fair wind behind it. I very much hope that, here and in another place, the Government are equal to that challenge.

Lord Blunkett (Lab): My Lords, I will not delay the House but I just want to reinforce the words of the noble Lord, Lord Bird, and my noble friend Lord Watson. I had the privilege of speaking at Second Reading. On a day when the figures of young people being referred to the child and adolescent mental health services should disturb us all, the future of our generations—of our young people, our children and grandchildren, our nephews and nieces—and the importance of prevention and early intervention should be at the top of the agenda. I can see no reason why the Government would oppose this Bill.

Bill passed and sent to the Commons.

Health and Care Bill

Committee (8th Day)

10.13 am

Relevant documents: 15th, 16th and 19th Reports from the Delegated Committee, 9th Report from the Constitution Committee

Lord Ashton of Hyde (Con): My Lords, before we commence proceedings on the Bill, I will outline the plan for today. We will shortly begin the eighth day in Committee on the Bill. There is no other business, but we will take a short break around 2 pm. We will sit until 7 pm. At the outset, I thank the staff of the House for supporting this additional lengthy Friday sitting, both those here in the Chamber and those who do the enormous amount of work that goes on behind the scenes to get the House up and running.

I fear that noble Lords know what I will say next. I do not want to deny the House the fullest chance to scrutinise this Bill. As over 40 hours have been devoted to that end, not even my fiercest critics could say that time for debate has been curtailed. However, we still

[Lord Ashton of Hyde]
have a lot of amendments to get through. I know, based on the experience of last Wednesday, that good progress can be made. I know that the Front Benches will work to ensure that their contributions are concise and to the point and I hope that all noble Lords will do the same.

We should perhaps bear in mind the late, great Nicholas Parsons and make our speeches without repetition, hesitation or deviation and perhaps for just a minute. This is a self-governing House, so all I can do is ask and implore noble Lords to respect the conventions and courtesies of the House to ensure effective and efficient scrutiny of this legislation.

The Lord Speaker (Lord McFall of Alcluith): My Lords, before calling the first amendment, I indicate that the noble Baroness, Lady Brinton, will be taking part remotely.

Clause 141: Provision of social care services: financial assistance

Amendment 237

Moved by ***Baroness Bennett of Manor Castle (GP)***

237: Clause 141, page 119, line 17, at end insert—

"(c) after subsection (2) insert—

"(3) No financial assistance provided under this section may be used for the purposes of—

(a) repaying debt;

(b) paying interest on debt;

(c) making distributions to shareholders.""

Member's explanatory statement

This amendment ensures that financial assistance given by the Secretary of State is not distributed to shareholders or used to repay debt obligations.

Baroness Bennett of Manor Castle (GP): My Lords, I will also speak to Amendments 238 and 239 in my name. Predatory and rent-seeking financial practices by investment firms and hedge funds, which are often based in tax havens and have extremely complex ownership structures, have placed unmanageable financial and human costs on the UK care sector. I first learned about this issue in 2016 from the brilliant Centre for Research on Socio-Cultural Change, which was then based in Manchester but is sadly no longer extant. Since then, the issue has become a staple on the pages of the *Financial Times*. If any noble Lord does not know about this issue, I urge them to look up "UK social care" on ft.com. They will see there a long string of stories from a publication that does not generally represent my side of politics saying how much of a problem this is.

I also note that, last week, the noble Lord, Lord Sikka, not currently in his place, initiated an Oral Question that highlighted some of the worst abuses in financialised care homes, from HC-One siphoning off 20% of its revenues to offshore affiliates through intra-group transactions to—as was highlighted by the noble Baroness, Lady Brinton, who may raise this again later—the industry average of 16% of the money going not to care but to the financial sector. The crisis is here and was further highlighted by the recent "Panorama" report.

What is lacking, however, and I have been looking for them since 2016, is solutions. How do we change this situation? It is worth pointing out that this is not how things have always been. Back in the 1980s, the NHS was generally known as a world leader for geriatric care, as it was then known, picking up half of the care sector for older people. In 1982, there were only 44,000 private care home beds. By 1994, there were 164,000. The number of charity, non-profit, local authority beds plummeted and the private sector came in or displaced the public.

The amendments to the Health and Care Bill that I am presenting today rely on the work of the All-Party Parliamentary Group on Limits to Growth. Its excellent report covers these issues in much more detail than I have time to do today and I urge noble Lords to look at it. The group worked on and produced these amendments.

Amendment 237 takes what I think could be a deeply dangerous element of the Government's Bill, which has received little attention thus far. It is the provision allowing for government support of private care facilities. This is not possible now. Amendment 237 would add the provision that these funds cannot be used to make payments on debt obligations for for-profit bodies or in distributions to shareholders—huge payouts that were highlighted in last week's debate.

However, that takes us further, and it is interesting that the government amendment—I suspect unintentionally—actually gives us a way forward to start to unwind the privatisation, as there is a potential problem. We have already seen two major private care home crashes: Southern Cross in 2011 and Four Seasons Health Care in 2019. When—I will not say if—more crash, how do we start to move towards worker co-operatives, social enterprises, local authority homes and charity-run homes? How do we ensure that people can stay in those homes safely and be cared for, and not see the money siphoned off into offshore tax havens? We can use Clause 141 with this amendment for potentially very positive, even revolutionary, purposes.

Amendment 238 picks up a point that I often make that a foundation for tackling our out-of-control financial sector and ensuring that fair taxes are paid by companies is country-by-country reporting. The amendment requires any related companies within the same corporate group that are registered offshore to be under the same financial reporting and publication requirements as those bodies registered in the UK. That means that expenditure on dividends, directors' fees, interest payment and similar would have to be fully and transparently declared. I have to ask the Minister: what does he have against transparency in the financial sector? What could the Government possibly have against seeing exactly where the money goes—whether it is the money of older, vulnerable people in our society or the state money that is supporting them? That is all that this amendment does; it demands that transparency.

These two amendments are not a total solution—I do not have a panacea for the situation—but they are a start, and that is why they combine with the third

amendment in this group, Amendment 239, which calls for a review. It is a very simple, obvious amendment of a type often seen in your Lordships' House. I note that I am joining the former Conservative Health Secretary Jeremy Hunt, who also recently called for a review of the funding. We see some unusual alliances in this House; this is an unusual alliance between the two Houses.

As we all know and has just been highlighted, the many hours of this debate have focused on what a mess the care sector is. These are the most vulnerable members in our society, and a significant part of that mess is because money is being siphoned away from their care. We can use the Bill, with these three modest amendments, to start to turn around that situation. I beg to move.

The Lord Speaker (Lord McFall of Alcluith): My Lords, the noble Baroness, Lady Brinton, is taking part remotely. I invite her to speak.

Baroness Brinton (LD) [V]: My Lords, I support Amendments 237, 238 and 239 in the name of the noble Baroness, Lady Bennett of Manor Castle, which aim to ensure that private providers are regulated, especially those using obfuscatory financial structures, instruments with inter-company loans and large amounts of debt. They should be fully transparent about those arrangements. She was right to highlight the excellent reporting of the *Financial Times* on this, along with the financial editors and journalists of other papers.

The typical small business social care home owner does not fall into the category I have just described. The problem in the sector is the private equity providers who decided to start buying up care home groups because they felt that the assets could be milked to provide healthy-looking returns for them. This differs from those homes borrowing in order to, perhaps, buy new homes to enlarge their group; what is happening here is purely financial instruments to benefit the directors and investors. Typically, private equity-backed providers spend around 16% of the bed fee on complex buyout debt obligations. The accounts of Care UK show that it paid £4.1 million in rent in 2019 to Silver Sea Holdings—a company registered in low-tax Luxembourg, which is also owned by Care UK's parent company, Bridgepoint.

These kinds of buyouts are also associated with an 18% increase in risk of bankruptcy for the target company. In the case of Four Seasons Health Care, heavy debt payments contributed to the company's collapse into administration in 2019. Two of the other largest care home providers in the UK, HC-One and Care UK, have also undergone leveraged buyouts and, as a result, their corporate group structures remain saddled with significant debts. Some of these types of company are also struggling to provide the best possible care with their overall CQC scores—so it is affecting the lives of the most vulnerable patients.

The Office for National Statistics says that 63% of care home residents are paid for by the public purse. Surely the Government must have a duty towards the public purse. It is not acceptable for the public purse to pay for these complex financial arrangements that are intended to provide not care or capital for the growth of a care business but purely a larger return for directors and shareholders. These amendments would provide for transparency and accountability and an assurance that the public purse and the private payer are not being taken for a ride.

Baroness Tyler of Enfield (LD): My Lords, I support these amendments from the noble Baroness, Lady Bennett. I thank her for putting them forward. The care sector is both complex and very little understood. Back in 2020, there were approximately 15,000 care homes in the UK, run by approximately 8,000 providers. Some were very small; others were providing very large networks of homes—it is a mixed economy. These figures are a couple of years old but, at that time, 84% of homes were run by the private sector, including by private equity firms, both British and offshore.

Funding is a complex mix of private funders, local authorities and the NHS. I was very grateful to the noble Baroness, Lady Bennett, for highlighting the work that the *Financial Times* has done, because I was first alerted to this issue by an investigation that the paper did back in 2019 which revealed how Britain's four largest privately owned care home operators had racked up debts of £40,000 per bed, meaning that their annual interest charges absorbed eight weeks of average fees paid by local authorities on behalf of residents. Many have argued, and I absolutely agree, that this sort of debt-laden model, which demands an unsustainable level of return while shipping out profits of 12% to 16%, often to tax havens, is entirely inappropriate for social care.

I want to make it clear that I do not have an ideological problem with the private sector being involved in the care sector and providing care homes—provided that they are good quality—but I have a real problem with the financial models used. Most fair-minded people in this country, not least those whose loved ones are in care homes, would, frankly, be horrified if they knew how the money—either theirs, if they are self-funded residents, or indeed the money of hard-pressed local authorities—was being used and where it was being siphoned off to.

I greatly support amendments to increase transparency and reporting. Frankly, I would like to see the regulator being a lot tougher and a lot more proactive in this area, so I very much support the review in the amendment put forward by the noble Baroness.

Baroness Altmann (Con): My Lords, I support the thrust of the amendments laid by the noble Baroness, Lady Bennett. I fully agree with her that there is a systemic problem in the care home sector.

In 1991, the community care Act reforms meant social care was transferred from a public sector function—or NHS function when it came to nursing homes—to what was called a mixed market. But, having observed the worsening care crisis, the financial engineering, the periodic failure of large care home operators and the inadequacy of regulation or oversight of their financial backing, I cannot help but urge my noble friends on the Front Bench to look urgently at

[Baroness Altmann]
the need for much greater controls. Southern Cross and Four Seasons Health Care have been in and out of insolvency or near bankruptcy for the past few years, but there are still inadequate controls on their ownership structure.

10.30 am

I am sure that my noble friend will cite the market oversight scheme, established by Sections 53 to 57 of the Care Act 2014. However, after being involved in the Southern Cross problems in 2011 and the Four Seasons near-collapse in 2016, it is clear to me that the system is inadequate. The regulatory oversight of this system, which is responsible for the lives of some of the most vulnerable people in our country, has no control of the financial models that are used to back the operators of those homes. A care home operator can take in a resident and promise to house them for the rest of their life, but there is absolutely no requirement for them to have the resources, in particular the equity resources rather than being laden with debt, to provide security that those obligations can be met. Compare that with an insurance company which promises, in the form of an annuity, to pay a pension to somebody for the rest of their life. Those products have stringent reserving requirements and the financial models behind someone who sells annuities ensure that there is security for the promises being made. When it comes to the market oversight scheme, it is very much a case of stable doors. The scheme has to warn a local authority only when a company is approaching failure. There is no proper early-warning system. Indeed, there is no reserving required for some kind of financial buffer to ensure that care home operators have resources to withstand unexpected pressures or sudden changes that might arise.

I think it is time that we looked carefully at the requirements placed on care home operators. The need for transparency is important. I do not have a problem with offshore companies that make profits if they offer good services, or with private equity and hedge funds that deliver good returns to their shareholders. However, I do have a problem if those companies are taking advantage of some of the most vulnerable people in our society without proper oversight or controls. For example, in the case of Four Seasons, once the company was on the verge of collapse the CQC's only option was to close it down, which is the last thing you would want it to, and, when the restructuring occurred, there was no ability for the regulator to insist on equity financing, so we still have very heavily debt-laden companies in an environment, of course, where interest rates are heading upwards. So I urge the Minister to consider this carefully before Report. I hope that we can introduce some proper controls. I will be looking to try to bring this back on Report.

Lord Blunkett (Lab): My Lords, I will take to heart the strictures of the Government Chief Whip and see whether I can speak in a minute without repetition. Way back in the 1970s, I was chair of social services in Sheffield, at a time when all residential care was under the auspices of the local authority. We then believed that what we were doing was in the interests of the people being cared for, the families that required support and the care workers. I want to make a very simple point: as well as the taxpayer being exploited, as well as those being cared for being exploited, we are also seeing the exploitation of workers on the lowest possible pay whom we are desperately trying to recruit, and we owe it to all those people to get this right.

Baroness Thornton (Lab): I thank my noble friend Lord Blunkett for speaking very briefly and giving us some very wise words. The noble Baroness, Lady Altmann, is absolutely right that the system is inadequate. I am grateful to the noble Baroness, Lady Bennett, for tabling these amendments and opening up this discussion. They address the issue of ownership of the organisations that provide social care. We know that almost all social care provision, residential and domiciliary, is not in the public sector and has not been for some time. We also know that the current system is wholly dysfunctional, as the noble Baronesses, Lady Bennett and Lady Brinton, said. It does not work for the service users, for the staff or even for the providers, which go bust fairly regularly, as the noble Baroness, Lady Altmann, described. Of course, it used to be a money spinner for hedge funds and others that got involved to asset strip and leverage profits and remuneration at the expense of service users, both individual self-funders and taxpayers and ratepayers who were paying for other residents.

I have always taken the view that this sector would benefit from an enormous influx of social enterprises and co-operatives. Where social care, domiciliary care and residential care are provided through social enterprises, community enterprises and co-operatives, they are sustainable, they keep their staff and they invest their surpluses back into their social purpose, so everybody gains. To suggest that the Government will fix social care through this legislation is laughable, because the existing market solution cannot be fixed. So we have sympathy with these amendments and fully understand the intent that the noble Baroness, Lady Bennett, outlined for us.

I am interested to know how the Minister will respond, because it is quite clear that something must happen in this sector because it is so unsatisfactory. I suspect that if the Government are not going to move on this, we may have to return to this later in the Bill.

Earl Howe (Con): My Lords, I appreciate the way that the noble Baroness, Lady Bennett, introduced these three amendments and I am grateful to her for the clear explanations she gave for them. I will take them sequentially, beginning with Amendment 237.

This amendment seeks to place restrictions on the power for the Secretary of State to provide financial assistance to bodies engaged in the provision of social care services. It would prevent use of the power for the purposes of repaying debt, paying interest on debt and making distributions to shareholders.

To begin with a general but important point, it is incumbent on all Ministers and public servants to ensure that public money is used effectively for the greater good, and that purpose is implicit in the power contained in Clause 141. However, I fear that this

amendment could make the proposed power unworkable in practice. If we look at the way the amendment is worded, any adult social care provider with a trade creditor of any kind would be caught, as would any organisation with an overdraft facility designed to support day-to-day working capital. A company's working capital, by its nature, is money that is used to fund day-to-day operations in general, and one cannot associate a particular pound with a particular business activity. Furthermore, any private company would be prevented from paying dividends, as it would be logically impossible to disassociate the long-term effects of the assistance from the ability of the company to pay such dividends.

The pandemic has demonstrated the need for speed and flexibility in providing support to the care sector. We do not intend to use the power in the way the noble Baroness fears, but we have designed it in such a way as to provide the maximum flexibility to respond in times of crisis; each individual case will be considered on its merits. Placing additional restrictions through this amendment would impede our activity to provide emergency support to critical providers.

Any future use of this power, whether for emergency purposes such as those we have seen in the pandemic or to deliver specific policy on a national basis, would be subject to the usual scrutiny and safeguards around use of public funds, as set out in Treasury guidance on *Managing Public Money* and *Accounting Officer Assessments*. As with any use of public resources, the power would be exercised with a clearly defined purpose, with strict criteria applied in practice relating to the use of the funding to ensure that it delivers maximum value for money.

I turn now to Amendments 238 and 239. Amendment 238 seeks to undertake a review of the financial regulation of companies providing social care, with a view to ensuring that it supports the effective provision of social care. Amendment 239 aims to increase the financial transparency of offshore corporate groups providing social care.

We are committed to ensuring that we have a sustainable care market. This was made clear in *People at the Heart of Care: Adult Social Care Reform White Paper*, published in December. It is vital to ensure that people have a wide range of high-quality care and support options to choose from, supported by a workforce that is empowered to deliver high-quality care. With that in view, we have already set out a number of planned actions to support the effective provision of social care services.

As the Committee will be aware, under the Care Act 2014 it is the responsibility of local authorities to shape their local markets to ensure that a diverse range of high-quality, sustainable care and support services is provided. We consider that they are the ones best placed to understand the needs of their local populations.

Maintaining quality and high standards is vital, and that means regulation. The Bill introduces a new duty on the CQC to assess local authorities' delivery of their adult social care responsibilities. Alongside existing duties on the CQC to monitor, inspect and regulate health and care services, this will drive up quality so that everyone can access the care they need, wherever they live.

We are also committing £1.4 billion of funding over three years to support local authorities in moving towards paying providers a fair cost of care. This funding will strengthen the capacity of local authorities to plan for and execute greater market oversight and improved market management to ensure that markets are well positioned to deliver on our reform ambitions, to address underinvestment and poor workforce practices and to provide a stable base for reform of adult social care.

In addition, we are investing at least £500 million over the next three years to begin to transform the way we support the social care workforce. This funding will go towards continuous professional development, so that people can experience a rewarding career with opportunities to develop and progress, now and in the future.

The noble Baroness stressed the importance of transparency in the market and I understand the points she made, particularly about overseas-registered companies. The Department for Business, Energy and Industrial Strategy is continuing to finalise the draft registration of overseas entities Bill, which underwent pre-legislative scrutiny in 2019, to align with the broader reform of Companies House and our plans to verify the data it holds. The Joint Committee concluded that

"this draft legislation is timely, worthwhile, and, in large part, well drafted."

In their July 2019 response, the Government accepted many of the committee's recommendations, such as ensuring that Companies House is given adequate resources and introducing a reporting facility. The Government have been exploring how best to implement these recommendations and others, such as civil sanctions. We are also considering how verification will work with this register. The Department for Business, Energy and Industrial Strategy is amending the draft Bill in line with the committee's recommendations and will introduce it when parliamentary time allows.

As the noble Baroness, Lady Tyler, said, adult social care is a mixed economy. The majority of adult social care providers are private companies. Like other sectors, many private businesses employ debt as an ordinary part of their capital structures or funding arrangements.

10.45 am

I listened with care, as I always do, to my noble friend Lady Altmann and what she said about companies with debt on their books and the financial risk associated with this. I will lay out for the Committee that, to mitigate the risk posed by debt and other financial pressures in the sector, and above all to ensure that people's care is not interrupted due to provider failure, we have had in place for a number of years, as my noble friend mentioned, the market oversight scheme, operated by the CQC, which monitors the financial health of the largest and most difficult-to-replace providers in the adult social care sector.

Since the establishment of the market oversight scheme in 2015, there have been no major business failures of care providers that have resulted in the cessation of care. If we believe it is service users who matter most, I believe the market oversight scheme has

[Earl Howe]
performed its function. The Government continue to keep the scheme under review, but at present we do not believe that the financial transparency measures in this amendment are proportionate or necessary.

I am afraid I cannot provide the noble Baroness, Lady Bennett, with any comfort on these amendments. However, I hope I have been of some help to her and the Committee in explaining the Government's position and what we are doing to address some of the important priorities associated with the adult social care agenda.

Baroness Bennett of Manor Castle (GP): My Lords, I thank the Minister for his courteous and comprehensive response, which was very useful. I very much thank all noble Lords who took part in this debate, which was a powerful exploration of the issues.

The noble Baroness, Lady Brinton, talked about assets being milked. If we think about what we are actually talking about here—some of our most vulnerable citizens—and what is happening to them, that is a really crucial point. The noble Baroness, Lady Tyler, talked about a stunning figure: £40,000 of debt per bed. If you think of that physically, visually, that is just unsustainable—a word the Minister himself used.

I particularly thank the noble Baroness, Lady Altmann; I hope the Government will listen to their noble friend. She made a comparison with the insurance sector and stressed that this is about people's most basic security. These care homes—people's homes—being ladened with debt in the circumstances we are talking about is supremely insecure.

I thank the noble Lord, Lord Blunkett, for raising the plight of workers. These are people who, both through the pandemic and just in their everyday lives, have gone above and beyond the call of duty to care for people. They do really difficult jobs paid at the absolute base level.

I actually take some comfort from the Minister's response. I take his point about how Amendment 237 is worded on debt. It is meant to address the kind of debt held in hedge funds, not debt to the local linen washing service or something, and I will think about how that might be addressed in different terms.

I pick up what the Minister said about dividends. I suggest that, should a care home chain be rescued by the Government in a state of great financial crisis, it should pay that rescue money back before it pays out any dividends. The Minister talked about the use of public funds, and I could almost feel the House restraining itself, since we are in constructive Committee form, from giving any reaction at that point. If the Government wish to avoid future scandals, the transparency offered by these amendments or something like them would be an ideal way for them to do that.

We were discussing yesterday in Grand Committee the Registration of Overseas Entities Bill—how long it has taken, how much we have been waiting for it and how crucial it is. This is picking one sector, producing a trial run to see how it works and taking it forward immediately in an emergency situation where we cannot wait many years for change.

This has been a very useful debate. I note the expressions of support from all sides of the House, and I reserve the right to take this issue forward on Report. In the meantime, I beg leave to withdraw the amendment.

Amendment 237 withdrawn.

Clause 141 agreed.

Amendments 238 and 239 not moved.

Clause 142: Regulation of health care and associated professions

Amendments 240 to 242 not moved.

Debate on whether Clause 142 should stand part of the Bill.

Baroness Thornton (Lab): My Lords, Clause 142 seeks to amend Section 50 of the Health Act 1999 in relation to making changes to the professional regulatory landscape through secondary legislation. It will simultaneously widen the scope of Section 60 and extend the Secretary of State's powers. At the moment the Government have powers to bring new professions into regulation or make modifications through secondary legislation but can remove a profession from regulation only through primary legislation. The clause enables the removal of a profession through secondary legislation and makes it clear that a profession would be removed from regulation only when it was no longer required for the purpose of protecting the public.

I went and had a little look at the record. I am sorry the noble Earl is no longer here today, because in 2009 I was in Grand Committee, as the then Health Minister, and we were discussing the regulation of psychologists. I have to tell the Committee that that was not an uncontroversial matter. We had gone through whole series of regulatory reforms that year, as noble Lords who have been following these matters will be aware. I said at the time that

"the reforms set out in this draft order aim to enhance public confidence in the ability of the healthcare regulatory bodies to protect the public and deal with poor professional standards."—[*Official Report*, 5/5/09; col. 510.]

The debate we had that day included the noble Earl, Lord Howe, who, at the time, was in my position now, as it were. He also welcomed the fact that the regulatory regime was in existence and, although he rightly had questions about the regulation of psychologists, which was indeed a controversial matter at the time, he did not question the need for public scrutiny of professional regulation.

That is why I have tabled the Motion that clause 142 not stand part. I am left wondering what exactly the yardstick will be, what criteria will be used to determine when there is no longer a need to protect the public and who will decide those criteria. Does professional regulation not also help to facilitate consistent common standards? What is lacking at the moment is any sense of the principles that will be allowed to inform decisions to bring professions into regulation

or remove them. Will patients' organisations, representative bodies or regulators be consulted on any new criteria applied? I can tell the Minister that in 2009 we went through weeks and weeks of discussion and consultation about every single independent regulatory body that this House helped to establish.

I suggest that the system works and there is absolutely no need to change it, though perhaps the Minister can tell me why there is such a need. Moving the power to abolish professions to secondary legislation is not putting scrutiny and transparency at the forefront. I have to say that doing so without putting any indication on the record of which professions are being considered does not instil confidence that this power grab has been considered properly or is in fact needed at all. The implications for the devolved nations, particularly Scotland, are also important but it was clear from discussions in another place that they had not been addressed. Perhaps they have by now, and the Minister would like to tell us what the outcome of that consultation is.

At the risk of repetition, there is a consistent theme in the Bill of seeking greater powers for the Secretary of State without parliamentary oversight, for reasons that are quite unclear. I beg to move.

Baroness Pitkeathley (Lab): My Lords, I declare an interest as a former chair of the Professional Standards Authority. I was happy to go down memory lane with my noble friend on the Front Bench.

When thinking about professional regulation, we always have to bear in mind—I hope the Minister will be able to convince the House that this is what the Government bear in mind—the protection of the public. It is never about the glorification or protection of a profession; it is always about the protection of patients and the public.

The Professional Standards Authority developed the concept of right-touch regulation, whereby you identify the problem before the solution, quantify and qualify the risks, get as close to the problem as possible, focus on the outcome and use regulation only where necessary. I draw the House's attention to the very successful project of accredited registers, which the Professional Standards Authority has developed in order to have, as it were, regulation at a lesser level than the very tight regulation that is necessary for some professions. You should keep it simple; the system is far too complex at present. You should check—as we always must with legislation, but it seems to me that we do it far too seldom—for unintended consequences. You should also review and respond to change, and the Government are doing just that with the proposals.

However, I must echo the caution of my noble friend on the Front Bench regarding the new powers for the Secretary of State to deregulate as well as regulate professions. We know that the risk profile for different occupations changes over time and a more agile method of responding is sometimes necessary. I hope that is what the Government have in mind. However, I emphasise, and I hope the Minister will reassure me on this, that a commitment to keeping patients safe must guide any decisions made to deregulate professions. There must be a robust and independent process to ensure that decisions are made after a clear assessment of risk—and I emphasise "independent".

If the Secretary of State has the power to abolish regulators by secondary legislation, will there not be a threat to the independence of the regulators? If they know that the Secretary of State can abolish them at a stroke, as it were, might they become too focused on pleasing—or, rather, on not antagonising— whichever Government are in power, instead of, as I have stressed, working always and solely in the public interest? I hope the Minister will assure the House that that is the Government's intention.

Lord Young of Cookham (Con): My Lords, Clause 142, which comes under the heading "Professional regulation", deals with the regulation of healthcare and associated professions. One of the objectives of the Bill is to integrate health and social care, and I very much hope that under the heading "associated professions" it will be possible to look at the registration and regulation of social care as well as those who work for healthcare.

Noble Lords may remember a brief exchange three weeks ago at Question Time when I asked the Government what plans they had to regulate and register social care. I was grateful for the reply, which outlined the welcome support being extended to the social care workforce. It also mentioned a skills passport, but the Minister was silent on the issue of a register.

I pressed the Minister and pointed out that Scotland, Wales and Northern Ireland already have a registration scheme for their social care workforce, and that if we are truly to integrate health and social care, as the Bill seeks to do, we need to have parity of esteem between health staff and social healthcare staff with improved pay, working conditions and career opportunities—much of which was mentioned in the debate we have just had. A registration scheme could facilitate the professionalisation of the social care workforce.

We then had an interesting exchange, in which the Minister mentioned a voluntary register and the need to assess the skills of the existing workforce, 56% of which has no qualifications. He said that he was consulting on whether registration should be mandatory and was concerned that mandatory registration might cause people to leave the sector. However, I do not believe that that has been the experience in other parts of the UK.

11 am

Can my noble friend say a little more about the views of those who represent the workforce, the relevant trade unions, those who run care homes—some of those whom I have met favour registration—and those currently responsible for registering the health professions, many of whose employees do exactly the same work as the social care workforce and do not seem to have been deterred by registration? Finally, what is the timescale for any decision on this important matter?

Lord Bethell (Con): I will also speak briefly in support of the register for social care workers, and I very much echo the words of my noble friend Lord Young. During the pandemic, we faced a huge challenge

[Lord Bethell]
in identifying who social workers were. That meant that we struggled to distribute PPE, to get testing to the right people, to allocate and reallocate responsibilities when we tried to move away from itinerant service, and to create the vaccine prioritisation list. In the longer term, the question of the education of social care workers is absolutely essential, and a register is imperative to do that. In contrast with the NHS, the lack of a register of social care workers is a real impairment to the modernisation of social care working. For that reason, I ask the Minister to say a little more about his consultation and think very carefully about a mandatory register.

Baroness Walmsley (LD): My Lords, last week, when we debated the call for a separate list of properly qualified cosmetic surgeons, I received a briefing from the GMC about the forthcoming new system of professional regulation. I asked the Minister when this would be forthcoming, but I fear that he was not able to give me a clear answer. This matter has been hanging around for a very long time, but, when I scrutinised Clause 142, I saw that there was another problem: in future, the regulation of healthcare professionals can be made through secondary legislation—and whether this would be agreed by the negative or affirmative procedure is not clear.

The Explanatory Notes make clear that subsection (2)(e)
—the powers to remove certain professions from regulation—

"includes the currently unenacted provisions concerning social care workers".

Like the noble Lord, Lord Young of Cookham, I want to ask the Minister about this, because many noble Lords, including me, have been asking that social care workers have the opportunity to obtain qualifications that would provide them with registration and a career path to better pay and conditions—but this sounds like the opposite to me. Perhaps the Minister can explain this and tell the House when the new regulatory system will be ready. The 2017 report of your Lordships' House's Select Committee on the long-term sustainability of the NHS said:

"The current regulatory landscape is not fit for purpose. In the short term, we urge the Government to bring forward legislation in this Parliament to modernise the system of regulation of health and social care professionals"—

I emphasise "social care professionals"—

"and place them under a single legal framework as envisaged by the 2014 draft Law Commission Bill."

That was five years ago.

I have also received a briefing from the Health and Care Professions Council. It appears from this that the HCPC has a rather different view from the GMC: it wants the new professional regulation of health and care professionals to be collaborative and innovation focused. It believes that the current system is "siloed", and it is looking for multiprofessional regulation, which, it believes, better reflects current working practices in the NHS. I am not an expert in this matter, so I express no opinion on that, but I am looking for some clarity from the Minister on which direction the new regulation system will take and the evidence that this will be better than before and contribute to better quality and safety of care for patients. I would also like to know when it will happen, because Clause 142 appears to me to open the door to a fight between different regulators, which would not be helpful.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Kamall) (Con): I thank all noble Lords who spoke in this debate. As a number of noble Lords have acknowledged, the case for reforming professional regulation has long been acknowledged, and stakeholders have long expressed concern that having nine separate professional regulatory bodies is confusing for the public. So our response in 2019 to the public consultation on regulatory reform reflected the desire for fewer regulatory bodies to deliver benefits to the professional regulation system.

In the 2020 consultation *Regulating Healthcare Professionals, Protecting the Public*, we committed to a review of professions that are currently regulated in the UK to consider whether statutory regulation remains appropriate for these professions. A consultation seeking views has been published, and it will close at the end of March this year. We also commissioned KPMG to carry out an independent review of the regulatory landscape, and it submitted its report at the end of last year. Officials and others are now poring over the findings to consider how best to respond. However, as with any use of Section 60, a public consultation will be carried out on any legislation made under these powers, and this would face scrutiny through the affirmative parliamentary process.

On the core criteria and principles, the professions protected in law must be the right ones, and the level of regulatory oversight must be appropriate and proportionate to the risks to the public. This is why we have sought a number of views on the criteria for determining whether statutory regulation is appropriate. As I said, we will wait for the outcomes.

These proposals have been developed in partnership with the devolved Administrations, and we will continue to work in partnership with Scotland, Wales and Northern Ireland in taking forward any proposals for using these powers. This will also be subject to affirmative parliamentary approval.

Clause 142 provides additional powers that would widen the scope of Section 60 of the Health Act 1999 and enable the Privy Council to make additional changes through secondary legislation, as was acknowledged. Subject to consultation, we are aiming to enable the professional regulatory landscape to become more streamlined and work more flexibly. We think that this clause will make it easier to ensure that the professions protected in law are the right ones and that the level of regulatory oversight is proportionate to the risks to the public. The Government keep the professions subject to statutory regulation under review. As I said, as part of our work to reform healthcare professional regulation, we are continuing to consult.

As I said, any secondary legislation made using the new powers would be subject to Schedule 3 of the Health Act 1999, public consultation and the affirmative parliamentary procedure, thus ensuring that there is clear parliamentary scrutiny and transparency in relation to any changes made by secondary legislation in this area.

I also refer back to the questions on the social care register, which I discussed at length, both before and after the recent Oral Question. When I spoke to officials about why the register cannot be compulsory, they said that this was fair, given the demographics of some of the people in the skilled sector, who quite often have some suspicions of authority and a lack of trust—we have seen that with vaccine take-up, for example—and so there were concerns about making it compulsory at this stage. It is voluntary. They want to understand the range of qualifications across the sector. There are a number of different qualifications, and, in professionalising the sector better, they want to make sure that they are consistent at all the various levels in our education system—levels 2, 3, 4, 5, 6 and upwards—to make sure that those qualifications are mutually accepted and recognised to make social care an attractive career and vocation.

For these reasons, I ask that Clause 142 stand part of the Bill.

Baroness Thornton (Lab): My Lords, I thank the Minister, but that was not a satisfactory response, I am afraid. The only word I heard that justified these extra powers being taken was "streamlining", and, frankly, that is not good enough. It seems to me that the Secretary of State should not be taking powers to put forward the abolition of regulatory bodies on the basis of a public consultation and statutory regulation. The Minister must understand the difference between primary legislation and statutory instruments—that is the crux.

The reason for that is about the independence of the bodies we have, such as the General Medical Council and the General Dental Council. Those bodies need to feel that they cannot be subject to abolition at the whim of a Secretary of State. They have to be sure that they are protected by primary legislation in Parliament, and the Minister has not given me or the Committee an explanation as to why that should change. That independence is very important and precious.

On the issue of social care, I found the Minister's explanation a bit patronising. It seems to me that, if we are to value social care and the people who work in it, we need to strive to give them the equality of regulation and supervision that the medical professions have. I realise that there is a journey and a process but, to me, that has to be the aim because it is the only way we can give that profession and the people who work in it the equality of regard that they deserve.

Clause 142 agreed.

Amendment 243 not moved.

Clause 143 agreed.

Amendment 243A

Moved by ***Lord Kamall***

243A: After Clause 143, insert the following new Clause—

"Human fertilisation and embryology

Storage of gametes and embryos

Schedule (Storage of gametes and embryos)—

(a) contains amendments to the Human Fertilisation and Embryology Act 1990 which make provision relating to the storage of gametes and embryos, and

(b) makes transitional provision in relation to those amendments."

Member's explanatory statement

This new Clause introduces a new Schedule relating to the storage of gametes and embryos.

Lord Kamall (Con): My Lords, in moving this amendment I will also speak to the Amendments 313A, 314A and 315A standing in my name. Before I start, I thank the noble Baroness, Lady Deech, for her many years of advocacy on reproductive health and look forward to hearing the points she will raise today. I am grateful for the productive meeting that we had a few weeks previously and welcome the noble Baroness's support of the government amendments tabled in my name.

As many noble Lords will be aware, fertility preservation is achieved through the freezing and storage of gametes or embryos; it is an increasingly common procedure in the UK. The Human Fertilisation and Embryology Act sets limits on the length of time that frozen gametes and embryos can be stored for. The current statutory storage limit is 10 years, with the possibility of an extension up to a maximum of 55 years for those who are certified as prematurely infertile. Extended storage limits were introduced to help those people who became prematurely infertile preserve their fertility, with the hope of starting a family in the future. This would include children who may have undergone treatment for childhood cancers.

However, this approach appears to discriminate between those who have a medical need to freeze their gametes and embryos, and those who do not. This message was clear in response to our 2020 public consultation, and we accept that the current approach creates unfairness. Therefore, we are introducing a new scheme for all who currently freeze or wish to freeze their gametes or embryos. The new scheme will consist of 10-year renewable storage periods up to a maximum of 55 years for everyone, regardless of medical need. It is for these reasons that I ask noble Lords from across the House to support the government Amendments 243A, 313A, 314A and 315A in my name.

Baroness Deech (CB): My Lords, Amendment 280 stands in my name and that of the noble Baroness, Lady Barker. I declare an interest as former chair of the HFEA.

Let me start by offering the Government what must be a rare and welcome tribute in these troubled days for bringing forward an amendment that reflects compassion and efficiency. They listened to the consultation and have picked up the result of at least two years of campaigning, in a way that I can only admire. As the Committee can see, my own miserable little drafting of Amendment 280 was really only an entry to allow the Government to do their own complicated drafting, which of course I will accede to—and there will be no need for my amendment.

[Baroness Deech]

I am profoundly grateful to the noble Lord, Lord Kamall, and, before him, the noble Lord, Lord Bethell, and the noble Baroness, Lady Blackwood, all of whom helped this along. It has the support of the Royal College of Obstetricians and Gynaecologists, the British Fertility Society, Progress Educational Trust and the specialist lawyers Natalie Gamble and Emily Jackson. Everyone is behind this amendment, and I am profoundly relieved that it has come forward just in the nick of time, because there was a possibility that later this summer women whose eggs were frozen for 10 years, and who took advantage of the two years' extra time given them, might have run out of time.

This amendment will bring the UK's law in line with advances in science and changes in modern society, and it will give individuals greater reproductive choices. It will also give patients more time to make important decisions about planning their family. On behalf of hundreds, maybe thousands, of women, let me express my gratitude to the Government for something that will be helpful in many years to come. I give my wholehearted support to the amendments in this group.

11.15 am

Baroness Barker (LD): My Lords, it has been a great privilege to work alongside the noble Baroness, Lady Deech, and I can only admire the persistence with which she has stayed on this issue to get the change which so many people have wanted for so long, and for such good and compelling reasons. I am but one of several Members of your Lordships' House who have taken part in debates on assisted reproduction over many years.

It was a privilege to discuss these matters in the presence of Baroness Warnock, who was responsible for setting the ethical framework, all those years ago, to which we still refer when dealing with these matters. She was a remarkable person and one of the most important things she did was to foresee that science, knowledge and society would change. What she did was to set down a basic ethical framework, to which we could return as knowledge and scientific understanding increased. This provision is one such part of that.

Other issues in the field of reproductive medicine are equally deserving of our attention. For example, we are starting to uncover the extent to which LGBT people face unfair discrimination when it comes to access to assisted reproductive technology. If, in a heterosexual couple, one of the partners happens to be HIV positive but it is undetectable, and therefore untransmissible, the couple will not be disbarred from receiving treatment; that is not so for lesbians and gay men.

In the last week, some of us who work on these issues have been engaging on the issue of access to telemedicine. In this field it is true, as it is right across the NHS, that it is important to make these services more widely and easily accessible to women by using telemedicine. I hope the Minister might confirm that on another important aspect of women being able to control their fertility, in access to abortion services, we may see the extension of the highly successful scheme which has been run throughout the pandemic to enable women to have consultations and receive treatment at home. In that vein, and in the hope that we may fairly soon have a more comprehensive review of advances in reproductive medicine, which is needed across the piece, it is very pleasing today to welcome this amendment.

Baroness Altmann (Con): It is a pleasure to follow the noble Baroness, Lady Barker, and I too commend the noble Baroness, Lady Deech—my noble friend, really—for all her work in this area. I particularly thank my noble friends the Minister and Lord Bethell, who I know have listened carefully and responded in the most compassionate and caring way. They have done a great service for many women across the country. I thank my noble friend for these amendments.

Baroness Thornton (Lab): When the Minister and I were discussing government amendments, on this issue I said: "If Baroness Deech is happy with this, then I am happy with this," and indeed I am.

Lord Kamall (Con): I can confirm that that conversation did take place. When we were dividing up the groups for today, I thought about offering this to someone else. One of my noble friends turned to me and said, "You're going to be bashed around enough today, Syed, at least take something you'll get a bit of credit for." But I cannot take credit: that has to go to the noble Baroness, Lady Deech, and the many noble Lords who have pressed this issue. The noble Baroness has also demonstrated the power of persistence and continuing the argument in a constructive way. On many of the other issues noble Lords believe in strongly—even if they feel that the Government may not be listening today, or that we are not sympathetic—I hope they will continue to be persistent.

On the general point that the noble Baroness, Lady Barker, made about reproductive health, I ask her to be more persistent. One of the great things about technology, not only digital but science and biology, is that often, it challenges the basis on which legislation was made. That is one thing we always have to be open to. Thanks to advances in technology, we are able to bring forward this amendment today. I will not say much more; I just hope that noble Lords agree that the time is right to change the legislation because of the progress made since the 2008 Act. I beg to move.

Amendment 243A agreed.

Clause 144: Advertising of less healthy food and drink

Amendment 244

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

244: Clause 144, page 123, line 39, at end insert—

"(2) The Secretary of State must, no later than one year after this Act is passed, consult on including alcoholic products in the definition of less healthy products for which advertising will be restricted, and publish a report on the consultation."

Member's explanatory statement

This amendment would require the Secretary of State to consult on including alcohol in the proposed advertising restrictions for less healthy food and drink and publish a report.

Baroness Finlay of Llandaff (CB): My Lords, this is a very broad group. As part of the Government's obesity strategy, Clause 144 and Schedule 17 introduce advertising restrictions on less healthy food and drink, a 9 pm watershed for TV and on-demand services and the prohibition of paid-for advertising online. I declare my interest as chair of the Commission on Alcohol Harm. I will speak only to my amendment, which addresses the problem that currently, the definition of "less healthy food and drink" does not include alcohol beverages as it was drawn from the 2001 *Nutrient Profiling Technical Guidance*.

The amendment requires the Government to consult on including alcohol in the proposed advertising restrictions, because alcohol is the leading cause of death and ill-health among 15 to 49-year-olds in England. Under the Bill, adverts for sugary soft drinks will be restricted but adverts for alcoholic drinks will not, even though they can be very obesogenic. To quote from the Government's own obesity strategy, they recognise that

"alcohol is highly calorific … It has been estimated that for those that drink alcohol it accounts for nearly 10% of the calories they consume … each year around 3.4 million adults consume an additional day's worth of calories each week from alcohol, that is nearly an additional 2 months of food each year."

The calorie load of 100 millilitres of 40% spirit is 244 calories, compared to just 42 calories in 100 millilitres of coke. A pint of beer has the same calories as a Mars bar and a glass of wine equates to three Jaffa cakes.

Some sweet alcohol products contain more than 100% of the daily recommended sugar intake in a single serving. There is significant evidence that children exposed to alcohol marketing drink more and drink earlier than they otherwise would, and early-age drinking is linked to higher risk drinking and even alcohol dependence in adolescence and early adulthood.

Existing advertising codes are failing. In the past month more than 80% of 11 to 14 year-olds have seen alcohol advertising. Almost 60% of 11 to 17 year-olds had seen alcohol adverts on television and more than 40% saw alcohol adverts on social media platforms. One-fifth had interacted with alcohol marketing online in the past month, despite being underage and therefore not allowed to buy alcohol. These adverts achieve their aim. Children as young as 11 can identify, reference and describe brands and logos of various alcohol companies—which leads them to start drinking more and earlier—making these images most attractive. Ten to 15 year-olds are exposed to more TV alcohol marketing than adults.

Alcohol itself is linked to more than 200 diseases and conditions, including seven cancers, is obesogenic and should be classified as a less healthy product. It should be included in the advertising restriction codes proposed, because the current self-regulatory codes are clearly failing. Children would accept this. The Children's Parliament investigators and the Young Scot health panel have recommended a TV watershed for alcohol advertising. I beg to move.

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): The noble Lord, Lord Howarth of Newport, should be taking part remotely. If the noble Lord is there, would he like to speak? We will continue with the debate and when we can get hold of him, we will bring him in.

Baroness Boycott (CB): My Lords, I declare my interests—there are a lot of them in terms of food, but this is for a specific reason: I am a trustee of the Food Foundation, chair of Feeding Britain, a patron of Sustain, an adviser on the national food strategy and chair of VegPower. I also work with Cancer Research and the Obesity Health Alliance.

We welcome the Health and Care Bill, which contains provisions to limit adverts of unhealthy food and drink on TV and online to protect children's health. I also support the amendment tabled by the noble Baroness, Lady Finlay, on alcohol, which is not covered in my amendment. She is completely right about the fact that such advertising encourages people to drink—something I know a lot about, to my cost—and put on weight.

These provisions are found in Schedule 17 of the Bill. All the different charities and NGOs I have worked with have argued for this for many years and we are incredibly pleased that the Government have made these provisions part of the Bill. They have been supported by all of us, and the Obesity Health Alliance and all cancer charities. So, I am shocked—we all are—and puzzled that during this Committee, quite a lot of amendments have been tabled in the names of the noble Lords, Lord Moylan and Lord Vaizey of Didcot, that would directly weaken or delay these proposals. As far as I know, and I have worked in the food business for a long time, I have not seen their names associated with campaigns to do with children's health—in particular, around obesity.

I want quickly to explain what these amendments would do. Amendments 245, 255, 256, 257 and 317 would delay implementation of the various restrictions—for example, blocking the 9 pm TV watershed until a full calendar year after Ofcom publishes the technical guidance. This would delay the planned implementation by at least six months. We all appreciate that the food and advertising industries will need time to review the technical guidance, but this is just too long.

Amendments 245A and 250ZA would limit the restrictions, so that they apply only at weekends, but kids do not watch TV only at weekends. Amendments 247, 250A and 253A would enshrine exemptions for brand adverts if specific products are not displayed; for example, McDonald's could advertise lettuce. The Government have already stated that brand advertising will be exempt from some of these restrictions, so why do we have to go further?

Amendments 248 and 251 would exempt certain unhealthy products from the restrictions, including

"chocolate confectionery in portion sizes smaller than 200 kcal".

The amendments conflict entirely with the purposes of the policy, which is to limit children's exposure to the advertising of products that are high in fat, sugar and salt. Quite frankly, some products of under 200 calories can contain more than half of a child's recommended daily sugar limit.

11.30 am

Finally, Amendments 249A, 252A and 257A would impose a sunset clause resulting in the regulations being repealed after a review period if a set of undefined criteria were not met. As with all government policies, these regulations are already subject to a standard five-year review period where the impact will be assessed. The proposed sunset clause has absolutely no precedent.

More generally—I will keep this short because I think we all know it—Covid-19 has made clear the high prevalence of excess weight and has come up with new and very scary data. The scale of the issue is only growing. Two in five children in England are now above a healthy weight, with a quarter of them living with actual obesity when they leave primary school—they are only 10 or 11. This last year saw the fastest increase in childhood obesity prevalence on record, and children with obesity are five times more likely to become adults with obesity, increasing the risk of developing type 2 diabetes, cancer, heart disease and liver disease. Many noble Lords have spoken about this; I am not going to go on about it.

My Amendment 244A would make it a requirement for the Secretary of State to review whether it is desirable to impose further restrictions on the advertising of less healthy food and drink within the definitions given in paragraph 1 of Schedule 17, with particular attention to outdoor advertising, which is all too often placed near schools or at bus stops where kids wait to go here and there. This has had quite a bit of success in London, where it already happens.

I—indeed all of us—have been very disappointed to see the level of opposition from certain sectors of the food and advertising industries to these incredibly modest proposals to improve public health and ensure that only healthier products should be advertised. Unfortunately, lobbying of this nature has derailed many attempts—I have had a lot of lobbying myself. We urge the Government to resist this industry-backed lobbying, both from food industries and the media. We would have hoped that more companies would have taken the opportunity to proactively transition to advertising more healthy products or indeed use this time to reformulate their products, which has happened really well as a result of the sugar tax.

We are also concerned about a number of government amendments that have been moved to enable Ofcom to publish technical guidance on the regulations in advance of the proposed restrictions, which are due to come in on 1 January next year. Crucially, Amendments 249 and 252 would allow the Secretary of State to delay this beyond that planned date. Without a doubt, that would open the door to yet further industry lobbying.

Advertising works—we all know it. I mention now a particular personal situation that I would like to have on record. I am the chair of VegPower. We did a campaign called Eat Them to Defeat Them, which produced a series of incredibly good ads in which children and vegetables were in a war, and where the vegetables were trying to attack people. It was hugely supported by ITV, Channel 4 and Sky. They ran these adverts for free, and I am very grateful for that, but I do not believe that one big right necessarily mitigates another wrong. They do not support the Government's amendment because this is clearly an attack on big revenue. Food advertising pays. At the moment, 96% of advertising goes on unhealthy food; a mere 2% goes on unadorned things such as vegetables. Kids are widely advertised at, and we must not back-track.

ITV asked me specifically about the unfairness of limiting terrestrial broadcasters to these restrictions while allowing online ones to do what they like. That is why I have introduced Amendment 253AA, to try to place restrictions on online platforms. I know that is much more difficult, but that does not mean that we should not try. Cash must not outweigh children's health. I support this government amendment and I am completely thrilled that they have tabled it. I just urge the Government, on behalf of all the charities and outfits that I mentioned: do not back-track.

Lord Vaizey of Didcot (Con): My Lords, I support the amendments in my name and I may also comment on some of the amendments that I have signed. I am delighted that my noble friend Lord Ashton mentioned Nicholas Parsons at the beginning of this debate. I will try to avoid repetition and hesitation, but the reason I am delighted is because Nicholas Parsons was an Old Pauline and I am president of the Old Pauline Club—I just want to put that on the record. I refer to my registered interests, particularly my work with the media boutique bank, LionTree.

I confess that I am still slightly smarting from the remarks of the noble Baroness, Lady Boycott, who seemed to imply that it was inappropriate for me to put down these amendments because I had not been campaigning for children's health. The reason I put down these amendments is because I have always campaigned for and supported the importance of public service broadcasting. One unkindness should not follow another, but I wondered as I looked at the noble Baroness—who was an extremely distinguished newspaper editor—what she would have done if the Government were legislating to eradicate HFSS advertising from newspapers. I am sure that she would have stuck to her principles. The thought occurred to me that I might bring back an amendment on Report to ban it from newspapers, so that that would at least ensure that the fourth estate paid attention to this important issue and the impact that it will have on our media. I am afraid that that would probably lose me the support of my noble friend Lord Black, so I may have to think twice about that.

It will be quite clear from the direction of my remarks that I think these proposals are wrong-headed and extremely damaging for our public service broadcasters. I gather that the Government's own impact report assesses that they would reduce calorie intake in children by 1.7 calories—that is, as noble Lords will know, either a Tic Tac or half a Smartie, depending on your predilections. However, it is estimated that they would cost broadcasters some £200 million a year.

In the debates that I take part in on the future of our media, we rend our garments thinking about how our public service broadcasters will compete against the likes of Netflix, Disney+ and Amazon Prime. We think about the importance of public service broadcasting

provided by companies such as ITV and we talk about the potential privatisation of Channel 4, which is a government flagship policy. But as the Government move Channel 4 towards the marketplace, these amendments will hobble it and its income.

What depresses me most of all, and where I think we would have common ground with those who very rightly campaign against obesity and put in place strategies, is that these clauses are a fig leaf and a complete red herring. They are an excuse for the Government to say that they are taking action on obesity when these measures will have zero impact on obesity. What is so galling is that they are based on no proof at all—they have become a sort of mantra for the Department of Health. I fought these proposals when I was a Minister at DCMS, and it depresses me that DCMS has not had the clout to see them off this time round.

There is an absence of a comprehensive policy on school food and on education about nutrition in schools. By the way, at the risk of annoying all sides in this debate, I am not a libertarian or a non-regulator. I supported the sugar tax and I would support measures that looked at, for example, the prevalence of takeaways, particularly in low-income areas; I would look at how supermarket promotions are undertaken; and I would look at the content of food and the prevalence of processed foods. But if noble Lords look at, for example, Leeds or Amsterdam, where obesity rates have fallen, they will see that it was because of interventions in primary school to the food children were eating and the education they were receiving.

Where an advertising ban has been implemented as an excuse for an anti-obesity policy, it has comprehensively failed. At the risk of being trolled in both French and Canadian on Twitter, I gather that, in Quebec, which has had a ban for 40 years, the Québécois have gotten fatter, faster, than the rest of Canada. Nowhere has an advertising ban had an impact on obesity.

Of course, further evidence of why this ban will not work is that there has been no analysis of who sees advertising on our public service broadcasters. Some 95% of TV viewing before 9 pm is by adults, and Ofcom has concluded that a 9 pm ban could be disproportionate. It also—I am surprised by the remarks of some noble Lords—shows a comprehensive misunderstanding of how advertising works. If you are going to eat a burger, you are going to eat a burger—unless you live in Leeds and have been well educated in your primary school. The purpose of the advertising is to encourage you to eat a McDonald's burger rather than a Burger King burger; it is not simply to increase the number of burgers eaten.

When this ban comes in—I am sure it will; it has its own illogical momentum—you will see in-store promotions in supermarkets and, worst of all, price promotions. If McDonald's cannot persuade you through an advert to eat its burger rather than a Burger King burger, it will persuade you to eat its burger because it is 99p, whereas Burger King's burger is £1.29. It will reduce the opportunity for our food producers to advertise healthy products and it completely misses the opportunity to look how our technology has become so advanced that it can target adverts in a much more sophisticated way, working with industry and broadcasters rather than introducing this appalling and crude ban which will hit our broadcasters in the face.

I turn to the amendments in my name. The first point of them, to a certain extent, goes with the grain of the government amendments, which is to say that we need flexibility on implementation. If you are going to implement this ban, advertisers and broadcasters need time to come to terms with it. As things stand, the ban is due to come in at the end of this year, on 1 January 2023. As I said, the Government have allowed some flexibility, because they know there will have to be secondary legislation, consultation, a process of designating the regulators, and guidance, before the final version is published.

However, these government amendments give no clear timetable. Businesses need one, with time to understand the secondary legislation and the final detailed regulatory guidance. They need time for their marketing teams and agencies to absorb and fully understand the changes required. They cannot just implement them the day they are published. New rules require familiarisation, to allow for internal review processes, legal guidance and interpretation. As many noble Lords know, it can take up to a year or even more to plan, develop and execute an advertising campaign, and companies are already trying to plan for 2023 with many unknowns. It is a lengthy and costly investment, and involves issues such as how you position your business for the long term. Companies do not want to get this wrong and be forced to pull their advertisements or face the Advertising Standards Authority adjudicating against them.

Let us say that the Bill becomes law two months from now. It would then have to go through the following process before the advertisers know the final shape of the rules. Ofcom must be designated as the regulator, and it must then designate the day-to-day regulator—it is likely to be the Advertising Standards Authority, but Ofcom will have to consult on that. If it is the Advertising Standards Authority, that must then ask the Committee of Advertising Practice to put together the new rules to go in the advertising codes. Of course, the Committee of Advertising Practice will have to run a public consultation on this. All this will take until at least the end of the year, at which point the Government presumably expect industry to have got it immediately and be ready to act.

Here are just some of the gaps in knowledge the industry faces. For example, new Section 321A(2)(a) in Schedule 17 contains an exemption from the watershed and online advertising bans for small and medium-sized businesses. They can continue to advertise food products, including HFSS, but larger companies cannot. A consultation is forthcoming, but how do you determine the size of the business? Could a global business still be an SME if it has just a few employees in the UK? What about the now ubiquitous third-party delivery companies? Where does their liability sit? On the application of the *Nutrient Profiling Technical Guidance*, it is vital to understand what products will be defined as HFSS for advertising and promotions—but this is guidance, not law. When will the guidance be updated and published so that companies can calculate the

[Lord Vaizey of Didcot]
NPM scores for their products? Will a standard online calculator be shared? Because this is guidance, there will be no parliamentary scrutiny of how this has come about.

11.45 am

Other noble Lords will talk about the brand advertising exception, where product advertising is banned but brand advertising and sponsorship are not. This seems pretty clear, but there are still many unanswered questions. We need answers from regulatory bodies which have not even been designated yet. For example, what is an "identifiable HFSS product" that would not be permitted in brand advertising? Would this include a product that was not in a package, for example?

So the first major point I make in support of my amendments is that there should be a significant delay in the implementation. I take the point made by the noble Baroness, Lady Boycott, that this will be an opportunity for industry to lobby again, but I assure her that that is not the spirit in which I have tabled them. I have done so to provide a practical road map to introduce sensible guidance and measures to ensure that the Government's policy can be implemented properly.

I have also tabled amendments to try to level the playing field between online platforms and broadcasters. In the Bill as drafted, broadcasters are responsible for enforcing the proposed new restrictions, with significant penalties if they do not. Online platforms such as Google and Facebook have no responsibility to do so; I believe the responsibility rests with the advertising and, in my view, this is not appropriate since Facebook, Google and other online advertising platforms are clearly the publishers of the advertising. They sell it and profit from it. Google and Facebook of course control what advertising is placed where, so control and responsibility should rest in the same place.

The proposed online regime is in stark contrast to that which will apply to the broadcasters, which will continue to be held responsible for compliance. As a result, broadcasters effectively have to pre-clear the advertising which appears on their channels. There are significant sanctions on the broadcaster—large fines and even the prospect of revoking their licence—if they fail to do this, but there is no such equivalent duty on the platforms. So not only do we plan to cost our public service broadcasters a great deal of money, we also propose metaphorically to put them in prison—but not the US platforms.

If the Government are going to introduce online advertising restrictions on HFSS products, they should include a responsibility on platforms under the system that is being put in place now. Otherwise, it will be an ineffective and inconsistent system that disadvantages broadcasters, to the benefit of online platforms. It could be in this Bill, or it may come back when we debate the online safety Bill, but it needs to be looked at.

We know that, under the self-regulatory system, the online players fail to keep even fraudulent advertising off their platforms. I was delighted to see that an Australian billionaire is suing Facebook in the criminal courts in Australia on this issue. The CMA, the FCA and the Bank of England have all highlighted this lack of effective regulation—so I look forward to the Minister's response on that.

Finally, my amendments seek to alter the watershed. I freely admit to noble Lords that this is a bit of a try-on and I am sure I will not get very far with it. However, I put them down simply to emphasise what a ridiculous, blunt instrument this comprehensive ban on broadcasters is. The proposed approach is to prohibit prescribed HFSS food and drink advertising from 5.30 am to 9 pm, seven days a week. The majority of viewers—95% or more—during this period are adults rather than children, and the adult percentage is increasing all the time, to echo my earlier remarks, as more and more children migrate to viewing content online. Clearly, for considerable portions of the time, children are actually at school. A much more proportionate approach would be to restrict only the weekends, from 4 pm to 9 pm on Friday and 5.30 am to 9 pm on Saturday and Sunday on TV and TV on demand. This would cover the key viewing times that many have expressed particular concern about, particularly early and mid-evening on Saturdays.

I felt strongly about this issue for many years, because I have seen it slowly trundle down the track—the train leaving the station. I want to reach out a hand and say I have enormous admiration for some very close friends who campaign vigorously on obesity, and who sent me some very rude emails last night after reading the editorial in the *Grocer*. I understand why they are passionate about the ban as a great signal that progress is being made on obesity. But since 1997, successive Governments have come up with a total of 640 obesity strategies and none of them has been implemented or worked. This is an excuse for an obesity strategy. If noble Lords support my amendments, we can force the Government to go back and to come up with something that will actually work—which, in my opinion, is education for children and great nutrition in schools.

Lord Moylan (Con): My Lords, it is a great pleasure to follow my noble friend Lord Vaizey of Didcot. Might I say, before I get into my stride, that certain noble Lords may have received an email that emanated a week or so ago from what I call the "cold dip" wing of the Conservative Party. Essentially, the message was, "Those rotters Vaizey and Moylan are out to spoil our whizzo scheme". This is not true, in my case. Unlike other speakers, I declare that I have no interests to declare. I am not aligned with the food industry, the advertising industry, the broadcasting industry or any of the charities that wish to restrict, ban or control various foods and drinks. That seemed to cause a little upset to the noble Baroness, Lady Boycott, who seemed to think that because I could speak in a disinterested fashion I was somehow precluded from taking part in the debate, but I hope noble Lords will not agree that is the case.

I have put my name to a number of amendments in the name of the noble Lord, Lord Vaizey. The ones I have signed up to are essentially to do with giving enough time to implement the ban, if it is brought into effect, and I hope that they are accepted. I note that

the Government have brought forward amendments of a similar character; they improve the Bill, but they do not go as far as they should. But it is a good sign, and it shows that what we are engaged in here is improving the Bill, not trying to destroy it.

I will add a particular word in support of my noble friend's Amendment 247A, which seeks to make the identification of HFSS food a matter that would be subject to parliamentary scrutiny. In effect, what the Government are seeking through this schedule is a power to make binding law—with all the apparatus of fines and other enforcement—by way of mandatory guidance that will not be subject to parliamentary scrutiny. Instead, business planning and investment will always be at the whim of civil servants with no recourse to Parliament. That is not a situation that, in other circumstances, your Lordships' House would feel comfortable with. We should apply the same standards here and insist that, with Amendment 247A, parliamentary approval is required before these punitive measures can be amended.

The other amendments in this group in my name cover a wide range of issues, but all of them are aimed at helping business plan for and implement the bans that the Government contemplate. That said, I noted last Friday that "Red Box" in the *Times* was reporting a change of heart by the Prime Minister on the whole policy of introducing the advertising and promotions ban. If this is true, we can happily move on and ignore Schedule 17, since all the evidence—including the Government's own impact assessment—shows that the policy will, as my noble friend said, have a minuscule effect. The Government's own assessment suggests that there will be a reduction of fewer than three calories a day. I ask my noble friend the Minister to confirm, when he wraps up, whether or not this planned change of policy is in hand.

Amendments 247, 250A and 253A in my name deal with the question of whether the ban applies to brand advertising and sponsorship—already mentioned by the noble Baroness, Lady Boycott, and my noble friend Lord Vaizey. This concerns advertising when no product of an unhealthy character is included in the advertisement or sponsorship statement. Putting the brand advertising exemption into the Bill is important for business—businesses which are looking for certainty as they are already planning advertising campaigns which will run after 2023.

The exemption for brand advertising was confirmed in Committee in the other place when the Minister there said:

> "Products are deemed identifiable if a person could reasonably be expected to identify the advertisements as being for that product. This means that brand advertising is not in scope of the restrictions, as the purpose of the restrictions is to prohibit identifiable products."—[*Official Report*, Commons, Health and Care Bill Committee, 26/10/21; col. 676.]

He made similar remarks on Report. This is helpful but putting the exemption into the Bill—alongside the other exemptions—would mean, should the Government wish to revisit this exemption in the future, that they would be obliged to return to Parliament to set out their reasons for doing so and seek the consent of both Houses.

The noble Baroness, Lady Boycott, commenting on this, seemed to say "Why do we need all this paraphernalia? Let's just trust the Government and go with what they say". I almost fell off my Bench when I heard her say that. So often in this House we are saying quite the reverse; we are saying let us not trust the Government and insist that, if we want something to happen, it should be on the face of the Bill. That is all I am saying. I believe the Government of course, and in my own small way I trust the Government—but Governments change. If we believe in this, let us see the Government put it on the face of the Bill. This has been called for by the Delegated Powers and Regulatory Reform Committee and the Constitution Committee, which have signalled their dissatisfaction with this way of proceeding.

I turn to Amendments 249A, 252A and 257A in my name, which concern how the Government will assess the effectiveness of the ban. I am assuming, perhaps optimistically, that all noble Lords will agree that the restriction on freedom of expression involved in the Government's policy should be continued only if it is seen to be effective in its purpose of reducing calorific intake. Indeed, that is the Government's view, because the Bill contains a five-year review of the effectiveness of the restrictions, in line with better regulation principles, but it is not clear how "effectiveness" will be judged.

The purpose of my amendments is to seek some clarity on the issue now, as we adopt the new rules, so that the effectiveness criteria are not shaped retrospectively in five years' time. This needs to be done now, in the interests of transparency and to enable the collection of data. It also needs to be done if the industry is to respond by changing its product mix—something which the noble Baroness, Lady Boycott, said she hoped for and looked forward to, and said there was evidence of its having done so in the past. But unless it understands in advance the criteria by which the ban will be judged effective, how can it possibly begin the process of changing the product mix to meet those criteria? The lack of impact of the ban is clear, but the criteria judging how it will be assessed effectively need to be addressed right at the outset.

There is also the question of what the Government will take into account in assessing those criteria. Their impact assessment envisages that the policy will likely reduce calorie consumption by around three calories a day, which is roughly equivalent to half a gram of butter, or one-five-hundredth of a standard pack of butter. This is so small as to be insignificant in terms of health benefits, yet the policy will undoubtedly have wider economic costs, including on competition, innovation, prices, media revenues, advertising and the wider creative industries. Are the Government going to assess this wider picture?

Noon

There are also particular effects on certain industries. For example, I should not have been surprised about this, but I learned the other day that 90% of pizzas are now sold online, from which, presumably, their advertising is going to be banned. Where in the Government's calculation of the effects of the total and, I would say, disproportionate ban on advertising HFSS online is

[Lord Moylan]
its effect on investment and employment in this sector? Will they be taking account of lost jobs and opportunities that could arise? For example, will the Government decide that the rules are effective based on a reduction in the amount of HFSS advertising that children see, or will they be looking at whether they lead to a decline in childhood obesity? If so, how will they evaluate the impact of the advertising bans as opposed to other measures being taken? Again, business needs to know now in order to plan and invest.

Next, my Amendment 257A would introduce a sunset clause so that, should the restrictions be ineffective, they would not continue indefinitely. There is no value in keeping rules in place if they are not fulfilling the purpose for which they were intended. That would just be bad lawmaking. Again, the noble Baroness, Lady Boycott, said that it is unprecedented to have such an excellent measure attached to a new set of regulations, but we are free of the European Union now and sunset clauses should be standard measures when we regulate something for the first time, should it turn out to be ineffective.

Amendments 248 and 251 in my name address an anomaly in the proposed advertising regulations regarding the food products that are within their scope. A daily serving of nuts has been found to reduce heart disease risk by 20%, so products made from nuts sold in bags are quite reasonably outside the scope of these proposed new restrictions, yet the same products in bar form are in scope—but the shape of a food is not a nutritional consideration. The proposed scope is inconsistent with well-established public health policies on foods that are beneficial to include in the diet, and the regulations are internally inconsistent. I ask my noble friend to review these inconsistencies and ensure that the new advertising restrictions support consumers in making healthier choices and incentivise food manufacturers to make the right kinds of products.

Similarly, Amendment 248A in my name relates to high-protein bars. It is already the case under EU regulations still in force in the United Kingdom that a claim that a food is low in sugars may be made only where the product contains no more than 5 grams of sugars per 100 grams for solids, or 2.5 grams of sugars per 100 millilitres for liquids. A claim that a food is high in protein may be made only where at least 20% of the energy value of the food is provided by protein. There are small businesses—one has approached me—that have carefully crafted their product to meet these regulations to put them in the category of good and healthy food. That is the purpose of the regulations. Yet those businesses' high-protein, low-sugar bars, which have been operating perfectly lawfully until now, will fail to meet the Government's new regulations as they stand and their advertising will come to an end. I ask my noble friend what assurance he can give them that their legitimate business is not in effect to be criminalised by this Bill.

Lord Clement-Jones (LD): My Lords, I rise to speak to a number of amendments in this important group focused on the Government's proposals in Schedule 17. I will speak first to Amendments 247A, 249ZA, 249ZB, and so on, tabled by my noble friend Lady Walmsley and me. I am grateful for the support of the noble Lord, Lord Vaizey, too. These arise from the 15th report of the Delegated Powers and Regulatory Reform Committee of 16 December—already referred to by the noble Lord, Lord Moylan—supported by the 9th report of the Constitution Committee of 7 January and its clear recommendation about Schedule 17. Alongside the Secondary Legislation Scrutiny Committee, both committees have expressed strong views as to the increasingly skeletal nature of current government legislation and the increasing tendency not just to avoid detail in primary legislation but to avoid secondary legislation through issuing guidance which does not come before Parliament. The House debated this aspect on the first day of Committee, when noble Lords made clear their views about the skeletal nature of the Bill.

The DPRRC says in paragraph 20:

"The merits of restrictions on food and drink advertising are not within our remit; but the method of implementing the policy is."

The committee goes on to say, in paragraph 23:

"Legislation, which of its nature affects the legal rights and liabilities of people, should not be capable of being altered by guidance."

It concludes, in paragraph 26:

"We consider that the power to define a food or drink product that is 'less healthy' should be exercised solely through the making of regulations and not also through the making of guidance."

Explicitly, under paragraph 1 of Schedule 17 amending the Communications Act 2003, new Section 321A(3)(c) provides that

"a food or drink product is 'less healthy' if … it falls within a description specified in regulations made by the Secretary of State, and … it is 'less healthy' in accordance with the relevant guidance".

This crucial guidance is the nutrient profiling model, over which Parliament has exercised no scrutiny. It has been in place since 2011 and it can be changed by the Government without any parliamentary debate or input from affected businesses. The NPM is a tool used by Ofcom and the Committee of Advertising Practice to give food and drink products a score, which determines whether products can be advertised during children's television currently and in non-broadcast media, including print, cinema, online and social media. At the very least, the definition of "less healthy"—giving rise as it does to such severe economic consequences for broadcasters, manufacturers and online media—should be contained in secondary legislation, which, as the DPRRC noted, should normally be introduced by the affirmative procedure. The Constitution Committee entirely endorsed the conclusions of the DPRRC.

Much has changed in the last 10 years. It would be a travesty if such important new provisions having such a major impact on broadcasters and manufacturers were based on out-of-date guidance and not subjected in any way to parliamentary scrutiny. I hope that the Government will accept that secondary legislation is the only legitimate way forward. I also hope that the Minister will not try to satisfy us with the consultation on the NPM that took place in 2018. That has still not seen the light of day and still would not be subject to parliamentary scrutiny, however onerous its new provisions were—for example, they could in future include free sugars in fruit juices and smoothies.

I have also tabled Amendments 248B and 253C. Many in the food industry are concerned that the new definition of food or drink SME introduced by paragraph 1 of Schedule 17 is based purely on employee numbers and could create a competitive disadvantage for UK businesses. As currently drafted, large multinational businesses could be exempt from the restrictions by reason of having less than 250 UK-based employees. This may inadvertently encourage companies to divert manufacturing abroad in order to qualify as an SME. To ensure a level playing field and to protect UK manufacturing, the amendment substitutes an SME definition that also includes a turnover threshold, currently of not more than £36 million, in line with the definition of medium-sized company in Section 465 the Companies Act 2006.

I have also signed and support amendments spoken to variously by the noble Lords, Lord Vaizey and Lord Moylan, which propose: provisions to allow further time for implementation of the provisions of Schedule 17; the sunset clause, which provides the necessary post-legislative scrutiny; explicit exemptions for brand advertising; and ensuring a level playing field for liability for the online platforms. I also support my noble friend Lady Walmsley's consultation amendment, Amendment 259A.

Above all, I support the amendments spoken to by the noble Lord, Lord Vaizey, in spirit, designed to change the watershed. I sponsored the Private Member's Bill that banned tobacco advertising 20 years ago, so I am not averse to strong action on advertising where necessary, where the evidence of harm is there. I absolutely support a national obesity strategy and believe we have a serious problem. Campaigns such as the Daily Mile and Eat Them to Defeat Them are the way forward, alongside the sugar tax, targeted interventions and nutrition education. However, I believe that Schedule 17, as it currently stands, is disproportionate in what it seeks to do.

As we have heard, the Government's own impact assessment of March 2019 confirms the minimal impact on obesity of these measures, but they represent a demonstrable threat to broadcasters and to jobs and investment across the country. The impact assessment estimated that a pre-9 pm TV watershed ban would reduce children's calorie intake by 1.7 calories a day—it is there in black and white. At the same time, it sets out that children's exposure to such advertisements has declined by 70% since the rules were tightened in 2008. The latest BARB data suggests that the decline is accelerating far beyond that predicted previously.

So while exposure levels have declined significantly, childhood obesity levels have risen. It seems extraordinary to proceed with that policy as regards television, when the evidence is that it will do little to address obesity. Given that the most likely response of the industry will be to move to alternative in-store price promotions, this is not surprising. These are not subject to any government restrictions and this was what much of the food and drink sector told the strategy consultants OC&C it would do in the event of a pre-9 pm ban.

The Obesity Health Alliance states that

"evidence shows children who already have a weight classed as overweight or obese eat more in response to advertising."

To put this in context, overweight and obese boys consume between 146 and 505 excess calories per day, while the figures are 157 to 291 for girls. Using the Government's own numbers and methodology, overweight children would still lose just 2.63 calories per day. Such a small reduction will make no meaningful difference to health outcomes.

The impact assessment predicts a £171 million loss to broadcasters in advertising revenue, and it is here that I have my most fundamental concerns: the proposals will have a major detrimental impact on the funding of public service broadcasters and news media. That is the key problem. The Government, in their consultations, relied heavily on the idea that broadcasters would be able to mitigate most of the impact of the ban. I have explored that proposition carefully and it is not the case. Broadcasters cannot easily shift existing HFSS advertising from pre to post-9 pm slots. Non-HFSS advertisers will resist being moved out of post-9 pm airtime since this would reduce the impact of campaigns and make them relatively more expensive.

Broadcasters make the strong point that they do not have a queue of advertisers who currently have no TV space waiting patiently in the wings for slots to become available, nor brands with other products unable to get enough space. ITV has experienced four years of successive decline in TV advertising revenue, so the pre-9 pm ban will cause great damage to commercial public service broadcasting, which is already under pressure. In the circumstances, the compromise watershed suggestion put forward by the noble Lord, Lord Vaizey, and supported by the commercial public service broadcasters, to cover the viewing times for children seems eminently reasonable. Again, I hope the Government will reconsider.

12.15 pm

Lord Krebs (CB): My Lords, on the one hand, I am strongly in favour of the government proposals in Schedule 17 to bring in further curbs on the promotion and advertising of junk food by introducing a 9 pm watershed and a ban on paid-for advertising online. I also support the amendments in the names of my noble friends Lady Boycott and Lady Finlay of Llandaff. On the other hand, I strongly oppose a raft of amendments in this grouping that we have heard a lot about in the last half an hour or so that seek to dilute or delay the measures in various ways. I do not have time to go through each one in detail, but if the Government were to accept any of them, it would be children, particularly those from disadvantaged backgrounds, who would suffer the consequences.

Before I move on, I want to try to find an area of common ground with the noble Lords, Lord Vaizey, Lord Clement-Jones and Lord Moylan. I agree with the implication of what they have said that this is not a single-fix magic bullet. Promotion and advertising of food makes a contribution to the obesity crisis, but there are many other factors, whether education, school meals or in-store promotions, which the noble Lord, Lord Clement-Jones, just referred to. I do not think anybody would claim that this is going to solve the crisis, but the question is: would it make any difference at all? We have heard various arguments that it would not, but I want to refer back to the evidence.

[Lord Krebs]

I first came across this nearly 20 years ago when I was chairman of the Food Standards Agency. We commissioned an independent review by Professor Gerard Hastings of the University of Strathclyde on the impact of the promotion and advertising of food on children's diets. It showed incontrovertibly, with the range of evidence available, which was partly observational and partly experimental, that, yes, it does affect children's diets. It affects not just brand loyalty but preferences for categories of food—chocolate versus apples, for example. In a way, that is blindingly obvious because, if it had no effect, why on earth would the food industry spend so much money doing it? We do not really need to have research to show it, but nevertheless the research is absolutely clear cut. Other reviews since then have supported the Hastings findings.

The second point I want to make is about the various objections that come from the food and advertising industries that this will have a negative impact on revenues and broadcasting. If noble Lords want to look at the analysis on this, I suggest they read pages 39 to 42 of Henry Dimbleby's *National Food Strategy Part One*, where he thoroughly debunks the arguments we have heard. I will read a quote from the report, from John Hegarty, founder of the leading brand agency, Bartle Bogle Hegarty—I gather it created the Audi slogan "Vorsprung durch Technik" and is very well known. He said:

"Advertising junk food … is no longer a decent thing to do. Instead of fighting the new 9pm watershed rule, the advertising industry should be using its power to help fight the health crisis. We all have our part to play in encouraging food companies to invest in healthier meals, and encouraging the public to buy them.

No one is against profit – but profiting from illness and misery is not a sustainable business model."

That is from the advertising industry itself.

I have talked about evidence and the impact on industry. My third point is really about inequality. Two days ago, we had the levelling-up White Paper, which contains a number of missions. One of the missions is to reduce health inequalities by 2030, and as we know, they are absolutely staggering. According to the King's Fund's latest analysis, males from the least deprived areas in the United Kingdom have a healthy life expectancy of 71 years; from the most deprived areas, they have a healthy life expectancy of 52 years. The White Paper states:

"we will act now to deal with one of the biggest contributors to ill health: poor diet and obesity."

Whatever one thinks the average effect of these measures might be across the country, we must bear in mind that those effects will not be borne equally by different parts of society. The people who will bear the brunt if we do not implement these measures will be the poorest and most disadvantaged children in the country.

I thank the noble Lord, Lord Bethell, who, a week ago last Monday, organised a moving and interesting session with an organisation called Bite Back 2030. I hope he will not mind me quoting a little from that session. The facts and figures are absolutely mind-boggling. The raw statistics are that, in the UK, 15 billion junk food adverts are pumped out every year—in other words, 500 adverts per second—targeted mainly at young people. That is one of those numbers that is so outlandish that it is hard to grasp. That is why I found that the personal accounts of the young people and teenagers we heard from told a richer story. I will give your Lordships an example.

Dev Sharma, who I think is a 16 year-old boy, said: "junk food advertising is part of my life".

It is on bus tickets, Spotify, Instagram, YouTube, et cetera. Particularly chilling for me was the fact that Domino's Pizza sends him an advert every day at 4 pm, just as he is leaving school and is really hungry, like any teenage boy. That is when he is at his most vulnerable, and he is being persuaded to buy calorie dense junk food then. Another witness, Becky Odoi, talked about "subliminal conditioning" of young people, and Yumna Hussen said that food companies are preying on young people when they are most vulnerable.

These are not my ideas; they are the ideas of the young people on the receiving end. I could go on at greater length, but I think I have made my point. I strongly disagree with the amendments that would dilute these measures, and I strongly support the measures. I regret that the Government's own amendments introduce the possibility of delaying implementing the measures, and I ask the Minister to confirm that the Government do not intend such a delay. They will not be the total solution, but they will play a significant part in tackling the obesity crisis in this country, which, in the longer run, is a far bigger health crisis than Covid. We must not get distracted by the short term from looking at the long term.

Baroness McIntosh of Pickering (Con): My Lords, I am delighted to follow the noble Lord, Lord Krebs, and pay tribute to the work he has done in this area. I shall speak to Amendment 257C, but I shall first make just one general comment on something to which he alluded, and which follows from the earlier remarks of the noble Baroness, Lady Boycott. We are working in a vacuum at the moment, and it would be extremely helpful if the Government could say when they will publish their food strategy, drawing on the excellent work done by Henry Dimbleby, who is the main adviser to the Government on this.

I support and have appended my name to Amendment 257C in the name of the noble and learned Lord, Lord Hope of Craighead. He is unable to be here today, which he regrets greatly. The offending part of the Bill in this regard is on page 241, in proposed new Section 368Z18 on the guidance the Government intend to draw up from time to time. Subsection (2) states:

"The appropriate regulatory authority must consult the Secretary of State before drawing up or revising the guidance."

Subsection (3) states:

"The appropriate regulatory authority must publish the guidance and any revised guidance in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it."

I draw the Committee's attention to the Constitution Committee's report on the Bill, and the following statement on Clause 144:

"This is a Henry VIII clause, enabling the Secretary of State to modify an Act of Parliament, an Act of the Scottish Parliament, a Measure or an Act of the Senedd Cymru, or Northern Ireland legislation. The Secretary of State is required to consult those he or she considers appropriate before making regulations via the affirmative resolution procedure."

The Constitution Committee concludes:

"The House should consider amending Schedule 17 to require either the consultation of the relevant devolved administration or the consent of the relevant devolved legislature if the Secretary of State were to use this power to enact regulations modifying devolved legislation."

I speak as a non-practising member of the Faculty of Advocates and must say that it is a source of concern to all of us who have an interest north of the border, west of the border in Wales or in Northern Ireland that, sadly, the Government are developing a history of not consulting the devolved Administrations where appropriate.

Regarding Amendment 257C, which is, in my view, a probing amendment, I put it to the Minister that the clause gives the Secretary of State the power to alter the legislation of devolved Administrations by regulations, as set out in the guidance to which I referred. The Committee will be aware that the Sewell convention does not apply to the exercise of delegated powers, so there is no obligation on the Government to seek consent. In its very helpful report on the Bill, the Constitution Committee suggests that, given the nature and extent of this power, consent should nevertheless be sought. There is nothing in the Bill to respect the spirit of the convention, not even a duty to consult. How do the Government square that with the respect they should give to the devolved Administrations, especially in view of my right honourable friend Minister Gove's initiative on intergovernmental relations and the levelling-up agenda, to which the noble Lord, Lord Krebs, referred and which I, for one, support?

I conclude by asking my noble friend what precisely the Government intend to do, or what action they would be willing to take, to address this issue when the power in the guidance is being exercised.

Viscount Colville of Culross (CB): My Lords, I declare an interest as a freelance television producer. I speak in support of Amendments 253ZA, 255A, 255B and 257B, which all attempt to give some parity in HFSS advertising restrictions between broadcasters and platforms. I apologise for having not been able to speak on Second Reading.

The noble Lord, Lord Clement-Jones, has already spoken about the reduction in broadcasters' advertising revenue as the platforms take an ever-increasing share of the market. The restriction in the Bill on television advertising further tilts the playing field in their favour. What concerns me is that this part of Schedule 17 is about the media which disseminate HFSS advertising taking responsibility for it, yet once again the platforms are allowed off scot free. My concern is the complete absence of tech companies' responsibility for the content of ads appearing on their video-sharing platforms—mainly YouTube, but also Facebook video and Snapchat's vertical video service. This is the media to which children are migrating. Enders Analysis estimates that by 2027, children will spend more than half their viewing time looking at content on these platforms—an average of 85 minutes per day per child. Clearly, this is where advertisers and brands are going to push HFSS products.

Yet, as noble Lords know, the digital space is the Wild West. Last year, the digital task force produced its excoriating report on the near-monopoly control of digital advertising by the big platforms. The report also mentioned the opacity of the programmatic interface, which allows advertisers to target products at specific users. Of course advertisers are themselves responsible for where they place their ads. This marketplace is the basis of the platforms' wealth, but it is where they shirk any possibility for the content of ads. I am sure that, if platforms were made legally responsible for imposing restrictions on HFSS advertising, they would soon insert filters—or, better still, humans—into the process, much in the same way as we are seeing them do in content mediation.

12.30 pm

The concerns about children's access to inappropriate ads are compounded by the lack of regulation online for these ads. As the noble Lord, Lord Vaizey, said, broadcasters must put their ads through the Clearcast process, which enforces the CAP and BCAP codes. The self-regulating CAP code also applies to online ads. It does prohibit the advertising of HFSS products to non-broadcast media, where 25% of the audience is under 16, but the lack of information from the platforms about audience age breakdown makes this very hard to check and enforce. This is compounded by the absence of a digital enforcement body to ensure compliance. As a result, HFSS products, which this Bill aims to stop being targeted at children, are being advertised and marketed in myriad online ways.

Among the worst transgressors are the content makers who use product placement. Your Lordships will know about products being placed in prominent positions in films, such as in the James Bond franchise, where huge sums are paid for the hero to use certain products on camera. The same is happening with online content. Content makers increasingly receive large amounts of money for product placement. This includes for snacks and sugary drinks, which qualify as HFSS—the very stuff this Bill is trying to restrict. Surely noble Lords would agree that this kind of insidious marketing should be regulated. It is much easier for platforms such as Facebook to tag words and take down written content, but it is more difficult for them to police visual content on video-sharing platforms. However, surely, with a nudge from the Government to restrict this kind of marketing, the companies that have dominated the world with their technology and algorithms can start to work on verifying visual content and restricting HFSS ads.

This is the area where age-assurance legislation is urgently needed. Many noble Lords will know from the experience of their own children and grandchildren that it is only too easy for them to lie about their age to gain access to 16-24 content and game the system. If they can access adult content, they can also access inappropriate advertising. There is even a fear that platforms and advertisers will take this gaming of the system into account and make it part of their digital ad campaigns. I hope that the online safety Bill will legislate for age assurance. However, even if it does, I fear that it will still be four years until it is implemented. Action needs to be taken now to make platforms responsible for inappropriate adverts appearing to children. These amendments will be very useful in starting that process.

[Viscount Colville of Culross]

Thousands of hours of consultation have gone into introducing these restrictions, but, if the Government really want to reduce childhood obesity, they need to address the media that children are viewing: the video-sharing platforms. Unless the Government act now to bring responsibility and regulation to how children access these ads online, all this good work will be in vain.

Lord Bethell (Con): My Lords, I will speak to Schedule 17 generally and in support of Amendment 244 in the name of the noble Baroness, Lady Finlay. In doing so, I declare my wife's interest as a board director of Tesco and Diageo.

I will focus my comments on the amendments supported by my noble friends Lord Vaizey and Lord Moylan. In doing so, I seek to address all the amendments they have put forward, which seek to: extend the implementation period for the new restrictions; introduce brand advertising exemptions; and bring in effectiveness reviews and sunset clauses, and all the other clauses that seek to water down the really important measures in the Bill on junk food advertising. I recognise that the noble Baroness, Lady Boycott, has already gone through some of these amendments in detail, so I do not want to go through that again. However, I am aware that my noble friend Lord Vaizey and other noble Lords have brushed off the Government's obesity strategy as wrong-headed and doomed; indeed, the noble Lord, Lord Clement-Jones, has shared his view that the measures in the Bill are disproportionate.

I want to reflect for a moment on what we are trying to do here. As a country, we have got into a situation where, by every measure, we are seriously overweight. The worst affected are our children. We have heard, both in this debate and many times in this Chamber, that two in five children are overweight. The worst-affected children are the poorest children, who are twice as likely to be overweight. In thinking about the environment our children are being brought up in—this question of environment is absolutely critical—what are our values as a nation if we knowingly create an environment that encourages children to develop addictions to foods that we know will hurt them, adversely affect their moods, hold back their learning, reduce their self-worth and damage their health for years to come?

Through the pandemic, we have seen that now is the time to lean into this ongoing national disaster. The measures in this Bill are necessary because they are an essential condition for an overall change in the direction of travel of childhood obesity prevalence. The challenge is going from an increase in the weight of our children of around 1% per year to a decrease of 4.2% per year. That is an astonishing mission and a massive challenge. No country has ever undertaken such a thing.

However, I am not convinced that we can just hope that our primary schools will do all the heavy lifting to achieve this. Somehow, as a country, we have to change the way in which we run our lives. This will require a change in the environment in which our children learn about, engage with and buy food—and that includes the media they consume. If we fail, for every year that this is not achieved, the rate of change needed in future years will grow, and thousands more children will be exposed to the physical and mental health impacts of obesity.

The noble Lord, Lord Krebs, talked eloquently about how, 20 years ago, the Hastings report had this research nailed. There is now a sense of urgency, which is why these measures are needed. It is why we cannot seek to extend the implementation periods for new restrictions; this will just drag them out indefinitely and undermine the seriousness of the programme. It is why we cannot give brand advertising an exemption that clearly leaves the door wide open for the same old advertising in different ways. It is why we should not commit to effectiveness reviews that will become a rear-guard action to unpick these regulations, nor commit to sunset clauses that will give industry false hope that somehow the Government will just give up on these measures or the problem will go away.

To reach the 2030 target, it is absolutely crucial that the Government continue with these plans to restrict junk food advertising on TV and—as the noble Viscount rightly said—online, and do not waste any more time. It is also crucial that we introduce fiscal measures to speed up reformulation at the same time, making healthy eating more accessible to everyone. It is absolutely clear from our data that any delay in action or the implementation of proposals to address childhood obesity will have a significant impact on the ability of the Government to achieve their ambition. More children will grow ill and live shorter lives.

I hear—loudly and clearly—the concerns of my noble friends Lord Vaizey and Lord Moylan, and the noble Lord, Lord Clement-Jones. I hear their concerns about the science, the research and the public health epidemiology that underpin these measures. I do not agree with their scepticism but I do hear their concerns, so let me pick off a couple of them.

My noble friend Lord Vaizey expressed scepticism about the effectiveness of these measures. He is right that these advertising restrictions will not work on their own. Obesity is a complex issue and no one single policy can solve it. However, small steps matter. It can take as little as 46 extra calories a day for children to gain excess weight, and seeing just one minute of HFSS adverts leads to children eating an extra 14 calories a day on average.

As I said earlier, this question of environment is absolutely critical. I accept that we need population-level structural policies to address the social and economic drivers of obesity, to then address the growing inequalities between the most and the least-deprived children. That is why the levelling-up White Paper earlier this week that tackles housing, education, deprivation and many other aspects of British life was critical to this debate and forms the context in which we should discuss these measures. It is also why my noble friend should not feel that the broadcast and food industries are in some way being uniquely scapegoated. This is a national programme that will touch on many lives.

My noble friends are right to express concerns about the fortune of the broadcast and internet industries, two jewels in Britain's creative industries and employers

that drive local economies. I want to reassure them. I once worked in the media industry and have not forgotten the intense competition for advertising and the existential battle with big tech, but my noble friend Lord Vaizey spoke as if many of these companies would find that all communication by these companies on all their products to all their target markets would somehow be terminated forthwith and that the British public service broadcast industry would be thrown into destitution. That is just not quite right. Cancer Research UK found that ITV, Channel 4, Channel 5 and Sky One derive a small proportion—just 8% of their total ad revenue—from adverts for HFSS foods.

It is true that almost two-thirds of HFSS product adverts aired between 6 and 9 pm fall within the category that UKHSA has identified as the highest contributors of sugar calories in people's diets, a fact that I found quite alarming, but under a 9 pm watershed broadcasters would have lost only 5% of their total advertising revenue if all HFSS adverts were removed completely, without anything in their place. Noble Lords should know that over three-quarters—79%—of potential revenue loss from removing HFSS adverts could be mitigated against by companies advertising their existing non-HFSS products instead of promoting their HFSS products. Healthy foods can still be advertising.

It is just not right to call these measures appalling and crude or ridiculous and blunt. To change the environment in which our children make decisions about food is critical for this national mission, and to contribute to a campaign to improve the health of children is a commendable aspiration for these government measures.

Lord Stevens of Birmingham (CB): My Lords, perhaps channelling the noble Baroness, Lady Deech, from this morning, I congratulate the Government on including in the Bill these measures to tackle childhood obesity. As we have heard, with one in four children not just overweight but clinically obese, we are storing up huge problems for the future because we know that what starts in childhood continues into adulthood. In that sense, diet is destiny. Unfortunately, obesity is the new smoking. We know that it is the cause of avoidable heart attacks, strokes, 13 different types of cancer, and respiratory disease, and causes a far higher risk of dying from Covid. Clearly action is needed, and the Bill makes a start.

If anything, these measures, which are certainly proportionate, may be overly targeted. Some of the criticisms levelled at the Bill should have given rise to amendments to extend its scope to deal with some of the loopholes or to level the playing field into other digital aspects that people are concerned about. That would have been a constructive response to legitimate concerns. Instead, I cannot help feeling that this morning we have heard from opponents who are simultaneously arguing that the measures in the Bill go too far and at the same time will not be effective enough, and to ensure that this becomes a self-fulfilling prophecy they have included amendments which would essentially fillet the Bill of its active ingredients.

These are familiar tactics. This is the tactic of deny, dilute and delay. The first is denying, claiming to us as parents that ads and marketing make little meaningful difference to kids' consumption; but on the other hand we have companies—presumably rational economic actors—spending maybe hundreds of millions of pounds every year on the basis that exactly the opposite is true. Like Schrödinger's cat, which is simultaneously dead and alive, it seems that junk food advertising and marketing simultaneously does and does not work. What is at stake here is not quantum physics but the physical and mental health of millions of children.

Lord Vaizey of Didcot (Con): Given the noble Lord's extraordinary expertise, having worked all over the world, does he know any example of any country where a junk food advertising ban has had an impact on obesity? This is a genuine question.

12.45 pm

Lord Stevens of Birmingham (CB): As the noble Lord will know, the genuine problem that we have in this country is that unfortunately we are a world leader in childhood obesity. It therefore falls to us to take world-leading action to respond to that.

Even classical economic liberals will accept that children are not sovereign consumers. The noble Lord, Lord Vaizey, in his earlier remarks, said that there was no evidence that advertising leads to increased consumption. My noble friend Lord Krebs has comprehensively rebutted that point but, to underline the matter, I say that studies of children's ventromedial prefrontal cortices—the areas of their brains associated with reward valuation—suggest that watching food commercials systematically alters the psychological and neurobiological mechanisms of children's food decisions. Even small but sustained reductions in at-risk children's calorific content provide demonstrable physiological benefit.

By the way, this figure of 1.7 calories or 3 calories, as my noble friend Lord Krebs pointed out, is a mistaken application of epidemiological maths—that is, dividing the assumed totality of calorific reduction against the totality of children on an even basis, when in fact the children who will disproportionately benefit are those who are disproportionately exposed and disproportionately obese.

Systematic evidence reviews conclude that

"screen advertising for unhealthy food results in significant increases in dietary intake among children."

Therefore, once we have had the denial, the second tactic is to dilute the regulatory effort—to insert loopholes, to neuter regulators, to drive a coach and horses through what is proposed. We have a number of amendments which seek to do that. They pretend, as the noble Baroness, Lady Boycott, pointed out, that advertising to children of a smaller item is not in practice also advertising the identically packaged larger item. They exempt ads for certain bars which by themselves may contain half of a child's maximum daily recommended sugar intake. They give a green light to brand advertising, even where children perceive the fast food or confectionary brand and its associated unhealthy products as essentially the same. Widespread evidence shows that current narrow restrictions on

[Lord Stevens of Birmingham]
children's exposure to harmful junk food ads are routinely breached, and frankly these amendments seek to repeat the trick.

Even more absurdly, Amendments 245A and 250ZA would restrict harmful advertising only on a Saturday and Sunday. The noble Baroness, Lady Boycott, pointed out that those of us who are parents know that our kids are not exposed to screens only on a Saturday or Sunday; it turns out that Monday, Tuesday, Wednesday, Thursday and Friday are also days of pressure for those of us trying to be responsible parents. Or are we asked to believe that rising obesity in pre-school and school-age children does not happen on school days? If so, these amendments imply the discovery of a phenomenon unknown to medical science: weekend-only obesity.

Finally, when denial has been disproved and the dilution tactic has been debunked, the amendments try for delay—for more time to lobby for a weakening of the political will, to live to fight another day. "Lord make us pure, but not yet"; even St Augustine would blush at these amendments. Nor for that matter do government Amendments 249, 252 and 254 have anything to commend them. We have heard this morning a strange contradiction between the acknowledged urgency of the spiralling health crisis affecting our children versus the long and leisurely gap that some still want before further action is taken. These preventive measures were first announced by the Government in 2018. Three years is more than long enough to prepare and adapt. The Government's goal is to halve childhood obesity by the end of the decade, but we are nowhere near being on track. We had better get on with it because, as the saying goes, children may be only a fifth of our population but they are 100% of our future. In the past, the blocking tactics of deny, dilute and delay have often succeeded—but today, perhaps not, because young people and parents want change, and because today, in this Bill, the Government are showing resolve; so too should we, my Lords.

Lord Black of Brentwood (Con): My Lords, I will speak to Amendment 245, tabled by my noble friend Lord Vaizey, and to others in this group to which I have added my name. I declare my interests as a director of the Advertising Standards Board of Finance and deputy chairman of the Telegraph Media Group, and note my other interests in the register. I am also a vice-chairman of the ITV APPG.

This does not need repeating: I support the Government's aim to tackle childhood obesity, but I am wholly opposed to their proposals to tackle it through an advertising ban. I believe that even now, at the 11th hour, they should think again, because it is disproportionate and based on scant and frankly implausible evidence. It will damage the creative economy, which is already under such stress, and it will have unintended consequences, like so much legislation that impacts on the media.

Also—and this is a very important point—it sets a hugely dangerous precedent for the Government to interfere with advertising freedoms, which are a fundamental aspect of freedom of expression. This is bad legislation.

As we have heard so often, the reduction in calories will be minimal, but this ban will take £200 million out of the media and creative industries when they can ill afford it and when they are in a life-and-death struggle with the all-powerful platforms. My noble friend Lord Bethell said that it would take out only 8% of revenues. When you are in day-to-day combat with the platforms for advertising revenue, 8% of revenues is a huge amount of money. More than 265 news media outlets have closed over the last 15 years, and many more will follow if the burden of regulation is increased, not cut in the way it should be.

This ban will not impact just broadcasters; it will disproportionately affect news publisher websites, too. This blunderbuss of a ban will reduce freedom of choice for advertisers and harm the ability of news media publishers to monetise content online, which is crucial for their long-term survival. At the same time, astonishingly, it will allow the tech platforms to continue to derive enormous amounts of revenue from HFSS advertising.

Here is the great irony: the platforms have a significant audience of children, because that is where children go to get their news, but they will not be impacted. News publisher websites have only a de minimis child audience but will suffer directly as a result of this policy—and they will do so at a time when the entire industry is under great stress, as countless reports, including the Government's Cairncross and Furman reviews, the report from our own Communications and Digital Committee and a comprehensive report from the CMA, have demonstrated. In winding up, could my noble friend explain why news publishers are caught but the platforms are not? It is, as somebody famously said, "voodoo economics".

Even at this late stage, I hope the Government will think again and drop these ill-thought-out restrictions. In case they do not—I am a practitioner of the art of realpolitik and I know this ban may end up going through—as we have heard from a number of noble Lords, we must at least make sure the policy is workable. That is the job of this House and this Committee because, at the moment, the measures are not fit for purpose.

As noble Lords know, during my career I have had one or two encounters with the issue of regulation, and I am clear that, for regulation to work properly, it must have a number of inherent qualities. First, you cannot rush regulation. Stakeholders from those affected need to have their input and they need time to adapt. That is what the amendments in this group, starting with Amendment 245, are all about. This is not just delay for delay's sake; it is delay because that is what the real world demands. When this Bill becomes law, that is just a starting point. As my noble friend Lord Vaizey said, you have to designate a regulator, then the regulator has to implement it and there has to be public consultation on code changes. That long process could easily take the rest of the year and possibly longer.

Once that is all complete, in the real world, advertisers, agencies and media owners will need time to assess how the system is going to work in practice. This is a very complicated part of the creative economy, as the

noble Lord, Lord Clement-Jones, said. You cannot just flick a switch and expect everything to change at once. It will take at least a year for all those involved in the advertising supply chain to adapt, review processes, set new legal procedures in place and so on—leaving aside the impact on the creative aspects of their work. That is why I genuinely believe that this Bill must not come into force until one year after the final publication of the rules and guidance from the appointed regulator.

A judicious approach to implementing the rules is one characteristic of sensible regulation. Another is certainty, which is what Amendment 247 and others are about. The Bill quite rightly focuses on ads where an identifiable HFSS product is shown, with brand advertising and sponsorship exempt. I applaud that, but the Bill is not crystal clear on the point. Within the creative industries, there is a huge amount of uncertainty, which is the enemy of effective regulation, about what is and is not permitted. I believe the terms of the exemption should be set out in the Bill, not least so that, if this or a future Government wish to revisit the matter, they must come back to this House to set out why they are doing it and to seek our consent. Given the potential harm this legislation could cause and the precedent it sets, that must be right.

The final aspect of sound regulation must be the measurement of its effectiveness. Regulation that does not work—and I am afraid that I am sure this will not—should not remain on the statute book simply for the sake of it. If it is found wanting—or, worse, damaging—it should be repealed. This is too important an issue to leave to chance. We should therefore know now what metrics the Government will use to measure the success of these restrictions, the definitions they will employ and how data will be collected. Will they measure the impact on the creative economy as well as on obesity? We should know. If those metrics are not met, the restrictions should fall at the end of the review period.

In the absence of dropping this legislation—I notice some reports that its demise might be part of Operation Red Meat, which we are hearing so much about, and let us hope so—our job is to ameliorate its worst aspects and ensure that it is sound and workable. These amendments do that, and I hope they will find widespread support across the Committee.

Lord Grade of Yarmouth (Con): My Lords, I speak in support of my noble friend Lord Vaizey's amendments. He said all I could possibly say to support them. This is a shocking piece of bodged legislation, which needs the support of these amendments to make it fairer and more proportionate, practical and sensible.

At the heart of all this legislation and all the speeches today, I think we are all agreed, is that unhealthy food is the real villain here. It is not the messengers, the advertisers or the media; it is the people who create the formulations that are doing so much harm and increasing obesity at a scary rate, which we can all unite in trying to fight. I am afraid that the noble Baroness, Lady Boycott, is in for a terrible disappointment if she thinks that just banning ads in some form on television is the answer to all our problems. Many Governments—

Baroness Boycott (CB): I never said—and other noble Lords who oppose these amendments never said—that the single act of banning junk food advertising at certain times on television will solve the obesity problem. When McKinsey did a survey on what needed to be done, eight or nine years ago, it came up with 81 different measures the Government needed to undertake. This is just one of them. It happens to be an important one that the Government have put forward, and I believe the Committee should support it.

Lord Grade of Yarmouth (Con): I will continue. Successive Governments throughout my too many years in the media, faced with intractable social problems, have turned to bashing television, television advertising, violence on television, the Troubles and so on. I remember Prime Minister Thatcher introducing a measure that banned direct speech by duly elected Members of Sinn Féin, thinking that it would in some way contribute to the end of the Troubles. The list is endless, and this is yet another one.

The Government have missed the target. The target is the manufacturers of unhealthy foods. I ask the Minister whether, at the end, she will kindly give us a sense of what the Government are doing to get to the heart of the problem, which is the reformulation of these unhealthy foods. It is no good blaming the messenger and the media; you have to get to the heart of the problem, and at the heart of the problem are products that have too much sugar and other harmful—maybe even addictive—contents in them.

I will conclude, in the interests of brevity, by expressing my great sympathy for the Front Bench in having to defend this ghastly piece of legislation.

1 pm

Lord Lansley (Con): My Lords, I am pleased to follow my noble friend Lord Grade. The point he made relates to my own experience in that, when the nutrient profiles in question were introduced in January 2011, I was Secretary of State. They were very much in the context of precisely the programme that I think he is looking for. It was about the reformulation of foods in the manner that had been done in relation to salt and to do the same for sugar and fats and the voluntary removal of transfats, which I think has essentially been accomplished. I have to say to my noble friend and the Committee that we have to be very careful because a lot of progress was made, but much more could have been made on a voluntary basis with the industry.

The nature of the attack made upon the Government and the industry was that, I paraphrase, "You're working with the industry and, therefore, your activity is undermined by that fact." It was rejected by many of the organisations that were seeking to achieve a public health objective. That was misplaced, and I am very disappointed that it happened like that. It would be a justifiable approach only if less healthy foods—HFSS foods or, for that matter, alcohol—were in the same position as tobacco. We do not deal with the tobacco industry because there is no safe level of tobacco consumption; we deal with the food and drink industry because there are safe levels of food and drink consumption.

[Lord Lansley]

My noble friends are nodding merrily, but I have to warn them that I actually agree with the Government's proposals, partly because I think they are capable of being implemented in some respects in ways that meet some of the objectives that my noble friends are setting out. They can put practical timetables in place. They can give clear guidance about identifiable products, as distinct from brand sponsorship and the like. I do not like sunset clauses if we do not have to have them—if we have too many of them, as my noble friend Lord Moylan suggested, we would be clogged up with re-legislating all the time—but the Government can, by regulations, significantly change this.

I support the Government partly because they are clearly being attacked for doing too little and attacked for doing too much, so they are probably doing about the right thing. I think they are doing the right thing because we all know—the noble Baroness, Lady Boycott, said it—that obesity, and perhaps especially childhood obesity, is a multifactorial problem, so we must have multifactorial solutions. The one thing I would not accept is the proposition that I have sometimes heard from Governments of all persuasions: something must be done; this is something; therefore, it must be done. We need to implement many responses to this major public health issue—the noble Lord, Lord Stevens, is quite right—and we must tackle it as if it really matters. It is one of those missions that a mission-led Government should be seeking to achieve. It will need a wide range of different responses, of which this is one. All of them should be examined carefully to see whether they are evidence-based and effective.

I have to say that it is very difficult to say what is effective in this context because, for example, although we know that children who consume relatively more less healthy foods have a less healthy diet and are more likely to be obese, if we look at all the correlations, there are quite a lot of children who have a poor diet but it is not necessarily particularly heavy in less healthy foods. There are a lot of children whose poor diet is directly the consequence of their poverty, as my noble friend Lord Bethell said. The idea that we will see direct cause and effect is difficult to accomplish, but that does not mean we should not try. So, for public health reasons, I support what the Government are setting out to do.

I shall make one final point. The lead amendment in this group was tabled by the noble Baroness, Lady Finlay, and we have a later group on alcohol labelling. I have to say to her that I think that, in this context, her amendment is misplaced, first, because I think it derives from the idea that alcohol is like tobacco. For only a small minority of people is it necessary not to drink at all; most people who have a low or moderate alcohol consumption are at low risk. Secondly, she dismissed with a wave of the hand the codes and what has been achieved. I do not think that is fair. I think the alcohol marketing code has made a difference in relation to alcohol. I wish there was an HFSS marketing code that had been similarly effective because, where alcohol is concerned, the *Health Survey for England 2019* said that, in 2003, 45% of eight to 15 year-olds had consumed an alcoholic drink and that, by 2019, that had dropped to 15%. These things can move in the right direction. We just need to make them do so. It does not automatically follow—

Baroness Finlay of Llandaff (CB): Will the noble Lord clarify some of his statement about young people? We know that there are specific cultural groups among young people who do not drink at all, which has brought the average down, just as we know that there is a spectrum in poverty and obesity. Does the noble Lord feel that the current guidelines or whatever are working, given that there were 7,000 deaths from alcohol liver disease in 2020 and that there has been a 400% increase in the number of deaths from alcohol liver disease since 1972? If this had been working really well, we would not be seeing these increases. At the moment, we have a catastrophically large number of people dying from alcohol liver disease, which has got much worse during lockdown.

Lord Lansley (Con): The noble Baroness is drawing me into what is a very important debate, but I do not think it is this one in this group. We will come on to it perhaps on Amendment 259 at a later stage. I do not disagree that we have not succeeded where alcohol consumption is concerned, but the nature of the problem has manifested itself more recently, especially in smaller numbers of people consuming alcohol, some not at all, but those who do very often doing so through binge drinking, which is exactly what is giving rise to what we are all most concerned about, which is the significant harm that is resulting for those people. We need to think behaviourally about the nature of the problem in order to find behaviourally what is the nature of the solution.

I need to stop, but I shall raise just one point with my noble friend on the Front Bench. I started with nutrient profiling. Nutrient profiling is terribly important. The noble Lord, Lord Clement-Jones, made the point that we do not get to look at that, but what it says is terribly important. As I understand it, we are due for a revision, but we have not yet seen it. There was a 2013 study that looked at our nutrient profiling and compared it to that of the WHO and five European countries. It concluded that, in relation to a large number of processed and packaged foods, under our system 47% would be able to be advertised to children, while under the WHO system it was 32%. There is a significant difference in what one puts into the nutrient profiling. It is not an objective truth, and putting alcohol in it completely misses the point, since it is not constructed around that proposition. I ask my noble friend to tell us a bit more about the nutrient profiling process, the timetable, the evidence and how we are going to put it together to meet the objectives under the Bill.

Baroness Stowell of Beeston (Con): I will be very brief. I declare my chairmanship of the Communications and Digital Committee. A lot of powerful speeches have been made all around the House today and clearly, we are all united in our care and concern for the issue of child obesity. The complexity of what is proposed in this legislation has been illustrated to such an extent that there is a case for delaying implementing these measures so that it is got right.

But the main reason for my decision to speak in this debate is the issue of fairness, equal treatment and the difference in the way these regulations apply to broadcasters and to the online platforms. The noble Viscount, Lord Colville, and my noble friend Lord Black of Brentwood have already spoken in some detail about the inequality of treatment between broadcasters and news publishers, and the online platforms.

I spell out clearly that what we are talking about here is that responsibility for the control and compliance of advertising that appears on television or radio rests with broadcasters, which can be sanctioned severely with huge fines by regulators if they allow anything that is non-compliant to air. But responsibility does not rest with the online platforms, which take far more in profit from the advertising they publish on their sites than any broadcaster is able to. They are equally able to control what appears on their platforms, as the noble Viscount powerfully described. Could my noble friend the Minister therefore explain why the Government are not ensuring parity between broadcasters and the likes of Google and Facebook at the point of legislation, to ensure parity in the way this will be applied?

Also under the heading of fairness, I say that, in the case of the small manufacturers of the products affected by the advertising ban, I support the amendment tabled by the noble Lord, Lord Clement-Jones, which ensures that the definition of "SME" in the Bill does not provide a loophole exempting large international manufacturers from these advertising restrictions just because they have a small workforce in this country.

Baroness Bennett of Manor Castle (GP): My Lords, I feel the need to balance the sides of this debate. I attached my name to Amendment 244 in the name of the noble Baroness, Lady Finlay. I associate myself with everything said by her and the noble Baroness, Lady Boycott, in particular, as well as the noble Lord, Lord Krebs, who gave powerful and well-evidenced presentations of why we need to see action here. Given the time and the fact that I have a train to catch, I will be brief.

The noble Lords, Lord Black and Lord Moylan, talked about freedom of speech—the freedom of the advertisers to push on to children whatever they want to push. I put against that the freedom to flourish and live a healthy life with a decent lifespan. The figures quoted by the noble Lord, Lord Stevens, illustrated that that is not being achieved and there is a deep inequality in our society.

The noble Lord, Lord Lansley, talked about how difficult it would be to measure or separate out the impact of these measures. We are in a hugely obesogenic environment. We have this huge problem with obesity not because human nature has suddenly changed and people have lost self-control, but because they are bombarded and barraged from all sides with ultra-processed pap, which we should stop all advertising of. I do not think that "High in fat, sugar and salt" goes far enough. There is evidence that under-11s—primary school kids—cannot distinguish between adverts and editorial content, so we have to protect them.

Finally, the noble Lord, Lord Black, asked about the international comparisons. Perhaps one of the most obvious ones is Norway, which brought in a ban somewhat similar to this in 2012. It has struggled for the reasons outlined by many noble Lords. Indeed, a study was produced by Oslo Metropolitan University last year, using the categorisation of the WHO European Office for Prevention and Control of Noncommunicable Diseases. Eight out of 10 adverts that young people in Norway were seeing online were for unhealthy food. That is a problem, but it is an argument not for doing nothing but for tackling the whole obesogenic environment that our young people are growing up in, with demonstrable effects. Norway, which has taken similar action to that which we are talking about today, as have Spain, Portugal, Slovenia, Latvia and Lithuania—that is just a shortlist—has half the level of childhood obesity that we do, and it regards it as a serious problem.

1.15 pm

Lord Naseby (Con): My Lords, I apologise to the House that I did not take part in the Second Reading debate; I am afraid that my wife was in hospital at the time. I was a trainee and marketing manager with Reckitt Benckiser—Reckitt & Colman in its early days—which is obviously associated with Colman's foods and Robinsons drinks. As my career developed, I changed from the company side to the advertising agency side and was responsible for a fair amount of food advertising for the next 15 years. I am particularly proud of Jacob's Club biscuits, which are full of chocolate—more than any other chocolate biscuit. So, I suppose I have a heritage to declare in that area.

I have supported a number of the amendments that my noble friends Lord Vaizey and Lord Moylan have tabled, and I also listened to my noble friend, in this case, on the Liberal Benches. But I will not talk about them because they have been more than covered; I will keep it quite simple.

We are thinking and talking about a major industry in the UK: the food and drinks industry—not the alcohol side. It has co-operated with previous Governments of both dimensions—or three dimensions, if you include the joint one with the Conservatives—so it has had a long history of involvement. It declares and has indicated that it is helping to reduce child obesity, and it has performed on this, so it is not as if it is resisting anything. It is very important that there is a good working relationship with a dynamic industry like this.

As I see it, the tragedy is this. The ISBA, IAB, IPA and the Food and Drink Federation have worked closely with previous Governments and succeeded in coming a long way in trying to tackle obesity. The industry has demonstrated that by the number of initiatives that have taken place, which have been mentioned already: projects like The Daily Mile and Eat Them To Defeat Them. It has put forward a proposal to Her Majesty's Government, although I will not go into it because it is fairly technical: targeting filters, based on robust audience data. Some of your Lordships are particularly tech-oriented; I am not, but I am advertising-oriented. When an industry puts forward a proposal of a high-tech nature that will achieve the objectives that the Government of the day want, and set in the first place, it seems to me very strange when that approach is totally rejected.

[Lord Naseby]

It goes deeper than that, because unless Her Majesty's Government listen to my noble friends and think long and hard about their amendments, this will undermine public health policy. Manufacturers have been working in partnership with government for years—over two decades—to reformulate products, reducing salt, sugar and calories and offering smaller portion sizes. Now, all of a sudden, my Government have decided that they will not work with the industry but will handicap it. That will even affect the future, because it will stifle the investment we want in this country, particularly at this time. Finally, this will undermine the Government's ambition for the UK to be a digital leader.

I ask my noble friend on the Front Bench to have another look at what the industry offered. Yes, it is high-tech and yes, it is quite difficult for us normal humans to really get a hold on what it is about and how it actually works, but, after 25 years in the communications world before I entered the other place, I believe, and hope, that my noble friend on the Front Bench is broad-minded enough to go and have another look at what was on offer, before the sword of Damocles falls on this aspect of allegedly helping to reduce poverty.

Lord Moynihan (Con): My Lords, the great Nicholas Parsons, who is the Chief Whip's go-to source of quotations for today, also said:

"The saddest thing about getting old is seeing my cricket bat in the corner and wondering if I will ever play again."

I am sure that Amendment 297C in my name and those of some colleagues, who I will come to in a moment, would have been warmly welcomed by him, as I hope it is across the Committee. If accepted by the Government, it will ensure that many more cricket bats are rehabilitated with a wipe of linseed oil and put to good use again.

I did not want to interrupt the excellent debate, so I have waited until this point to come forward with my amendment, but I say to the noble Lord, Lord Stevens, that if there was ever an amendment in this group to tackle obesity, this is the one. I declare my interests as set out in the register.

Amendment 297C stands in my name and those of the noble Baroness, Lady Morris of Yardley, from the Labour Benches, the noble Lord, Lord Willis of Knaresborough, from the Liberal Democrat Benches—who admirably chaired the National Plan for Sport and Recreation Committee, which recently published a unanimous report that recommended a requirement for a national plan for sport, health and well-being to be placed in primary legislation—and the noble Baroness, Lady Grey-Thompson, who has been campaigning with me for this change in the law for well over 20 years.

Of course, the Select Committee of your Lordships' House ceased to exist on the publication of its report. However, unusually, after hearing 76 witnesses in public evidence sessions and reviewing 163 pieces of written evidence, in addition to four round tables, we were unanimous in our hope that this Health and Care Bill could be amended, to reflect the views from all sides of the House, to include a statutory responsibility on the Secretary of State for Health to draft and publish a national plan for sport, health and well-being. The Minister for Sport would be moved from DCMS to the Department of Health to oversee the process of preparing the national plan, presenting it to Parliament and undertaking the additional functions that the Minister for Sport's office currently undertakes with a very small staff of just 33, who work on sport and recreation, as set out in the Minister's written reply to me on 29 July. Despite DCMS's good work, participation rates in sport and recreation in this country are lamentably low and add to the problems of obesity.

Our rationale for encouraging the Prime Minister to make such a move was more than the obvious natural fit that sport and recreation sit more appropriately with health and well-being than with data protection, cybersecurity and the TV licence fee; more than the natural policy fit between sport and health; more than an attachment to a department on the fringes of government, established courtesy of David Mellor's charm in persuading his good friend John Major to create the department in the first place; and more than a recognition that a Minister at the heart of government could position sport and recreation where it should be: an essential component of a fit and healthy nation, as part of preventive care, health and well-being.

The purpose of our amendment is to create a catalyst for change. The status quo simply does not work. We heard evidence from the Deputy Prime Minister of New Zealand, where the Minister of Finance is responsible for setting out a well-being budget that fully includes and embraces sport and recreation in that portfolio.

In the context of the UK, the three key elements of our amendment include focusing on outcomes that meet the needs of present generations, at the same time as thinking about the long-term impacts for future generations; taking a holistic—not the current siloed—approach to the subject; ensuring that society is fitter, healthier and happier; and increasing sports participation rates by at least 10% per annum, which happens on the continent, as opposed to the static levels of participation since 2005 in this country and the major lost opportunity to deliver a participatory sports legacy from London 2012. We face a crisis of obesity, as we have heard in this excellent debate. We have to take action now. We also face a crisis of inactivity, and we need a national plan.

Secondly, we need to break down departmental and agency silos and work across government to assess, develop and implement policies that improve sport, health and well-being. Efforts to increase levels of participation as a percentage of the population have simply failed, and that should be the most important outcome for the Minister for Sport at DCMS. In our view, it requires the major clout that comes with a central, large department of state to co-ordinate and deliver cross-departmental initiatives. There is hardly a department of state now that does not have to promote policies in sport and recreation—including, for example, the Department for Transport, which recently announced a £2 billion package to create a new era for cycling and walking, equal to the total

amount of money spent by Sport England on all sport and recreational activities, outside Covid, over the last eight years.

Thirdly, we need to track progress with broader measures of success, including the health of people, communities, the environment and public finances. This is exactly what the Prime Minister said when launching the office for health promotion on 29 March last year. Our amendment backs the Government's announcement of that day, which stated:

"New Office for Health Promotion will lead national efforts to improve and level up the public's health … It will help ministers design and operationalise a step change in public health policy".

Above all, it said that the

"New approach will see action across government to improve the nation's health by tackling obesity, improving mental health and promoting physical activity".

The Prime Minister had this to say:

"The new Office for Health Promotion will be crucial in tackling the causes, not just the symptoms, of poor health and improving prevention of illnesses and disease."

Backing his words is all we are asking for. He went on:

"Covid-19 has demonstrated the importance of physical health in our ability to tackle such illnesses, and we must continue to help people to lead healthy lives so that we can all better prevent and fight illnesses."

The then Health and Social Care Secretary, Matt Hancock, said:

"Good physical and mental health are central to our happiness and well-being. Yet so much of what keeps us healthy happens outside of hospital and the health service. By establishing the Office for Health Promotion we will bring health promotion into the heart of Government, working to the Chief Medical Office, so we can level up the health of our nation, working across national and local government."

For reasons unknown, the cross-governmental approach to improving the nation's health by tackling obesity and promoting physical activity was quietly dropped last summer. The office for health promotion was reorganised and rebranded as the Office for Health Improvement and Disparities, which retained all the objectives of the office for health promotion, save the essential component of promoting physical activity. Let us add that essential goal, so strongly backed by the Prime Minister and the Government at the time. This amendment would do that, and would add this core objective to the work of the OHID.

In the interests of time, I will not argue the case for all the issues that need to be covered by a national plan, some of which are set out in the amendment. I also will not go into detail, further than to say that my noble friends and colleagues who have worked on this, not least the noble Baroness who will follow me, will cover some of those issues in this debate in Committee. In conclusion, the case is admirably set out in detail by the noble Lord, Lord Willis, and his committee, in the excellent, unanimous Select Committee report. In that spirit, I commend the amendment standing in our names to the Committee.

Baroness Grey-Thompson (CB): My Lords, I draw your Lordships' attention to my declaration of interests: I am chair of ukactive and a board member of the National Academy for Social Prescribing, and I also sat on the Select Committee which the noble Lord, Lord Moynihan, mentioned. My name is attached to Amendment 297C.

1.30 pm

The debate so far has been really interesting. Our amendment would offer some solutions, or at least support, to the main arguments around obesity and diet. The amendment, which is in a large group of amendments, looks as though it is asking for many things but in reality is quite simple. It asks: where is the best place for physical activity and sport to sit to get the most benefit from the investment that is put into them? After all, we are talking about the health of our nation and our desire to protect and support the National Health Service. The noble Lord, Lord Moynihan, was absolutely right when he talked about silos. This amendment is about bringing in and supporting the work of different government departments.

The statement that major games inspire the long-term physical activity of the nation has been disproved; it is a misnomer. The noble Lord and I both worked on the 2012 Games in different ways. They were stunning and they were amazing; they will be the best Olympics and Paralympics for a long time to come. But they were a moment in time, and we know that people's relationship with physical activity changes, depending on numerous factors. As a legislative body, we can do better and do more to change this pattern of inactivity.

Subsection (4)(g) of the proposed new clause in Amendment 297C, which looks at schools, is really important but we also need to look beyond that at our lifelong habit of physical activity. Shifting sport from DCMS to the Department of Health would allow us to have a really different conversation, plan differently and bring a different lens to what we are trying to do. We know that disabled children experience deep-rooted inequalities in their ability to be active. We know that children who are out of school for the six-week summer holiday lose 80% of their fitness, and that the children who are hit hardest are those from lower socioeconomic backgrounds. During Covid, children were out of school for multiples of the summer holidays, and we know the impact that inactivity often has on school attainment. Being able to look at this differently would also allow us to help the Government with their levelling-up agenda.

I know the physical activity sector is so much behind the Government in trying to change this pattern of behaviour. The pathways to elite sport will still exist, and I am incredibly proud of what our GB teams have done. This is not about building a broader base of the pyramid—that is not my main motivation. It is about the health of our nation. We can no longer afford not to think radically differently about how we use physical activity preventatively and for good health. The fact that we have got so far into this debate with physical activity barely having been mentioned shows that we need to do more to raise it up the agenda.

I hope that my noble friend Lord Stevens will forgive me, because I will now quote extensively from when he was head of the NHS. At the 2016 ukactive national conference he said:

"The pharmaceutical industry dreams of discovering a treatment that could cut 3% of strokes, prevent 30% of dementia, 30% of osteoporosis, radically reduce breast cancer and bowel cancer, not to mention prevent depression, reduce stress, eliminate type 2 diabetes and cut the falls that our parents' generation"—

[Baroness Grey-Thompson]
more than one-third of them—

"experience each year."

He continued:

"If you could pack all of that into a magic pill, it would be a worldwide pharmaceutical blockbuster. But the label on the side of this treatment says 'activity and exercise'."

I know we do not have much time today, but I would really value spending more time with the Minister exploring how we can put activity at the heart of what we are trying to do, and I know there are amendments on social prescribing which seek to do that. But some of the things that we have been talking about, such as trips and falls, fit into the Building Safety Bill as well, and the issue of safer stairs. So we should not just talk about sport but about wider physical activity as well. Although it might feel a big change to some, an office for health promotion is a much more natural home for physical activity and sport and would give us a bigger chance of maximising investment. I hope the Minister will look favourably on this amendment, and I look forward to further making our case.

Lord Willis of Knaresborough (LD): My Lords, I first apologise for not being present at Second Reading. It is unusual for me not to be there when a health Bill is being discussed, but I have had a lot of personal family problems.

Never, in the years I have been in both the Commons and the House of Lords, have I been as proud of a committee as I have been chairing the one on sport and recreation. I thought the committee would look very narrowly at sport and recreation and what could be done for them, but it ended up with a set of proposals that are quite revolutionary, which state something really quite different about the way forward, not only for sport and recreation but for the NHS itself. I am deeply indebted to the noble Lord, Lord Moynihan, for his leadership as our special adviser and for his membership of the committee, and of course to the noble Baroness, Lady Grey-Thompson, and the noble Baroness, Lady Morris, who is not here today, whose experience of working in the Department for Education was invaluable. As we heard earlier in the debate, that department has a crucial role to play in developing some of these key policies.

Like the noble Baroness, Lady Grey-Thompson, I would have preferred for this proposed new clause to be debated as a separate entity, but perhaps it was fitting that it was grouped with amendments that have a common theme, because despite the disagreements between various parts of the House on the previous set of amendments, they are all based around the same issue of how we get a healthier nation. It was incredibly rewarding to see that.

It might seem quite obvious that during the Health and Care Bill in the House of Lords we should be talking about health matters and improving health, but I have to say that, together with the 2012 Bill, so much of this legislation is about shifting the chairs again; it is not about looking at the future health of the nation. There will be marginal improvements from the bureaucratic changes in the Bill, but I was looking at what we can do to make a fundamental difference, and we will not do that until we change the fact that, as the noble Lord, Lord Stevens, said in that debate, the NHS is currently a repair-and-maintain service. It cannot go on like that because the money will run out and the number of people serving it will run out. We have to change it to a prevent-and-improve service, and that is what the new clause proposed by Amendment 297C is about.

It proposes just a minimum of reorganisation: for instance, simply moving sport from DCMS to the Department of Health is not a massive reorganisation. With moderate investment—nowhere in our report do we spend time talking about massive investments to get change; this is really about changes of attitudes—it has the potential to change the way in which the NHS operates to a very different mode of making sure that people do not get ill, as the noble Lord, Lord Stevens, quite rightly said. Indeed, the previous amendments were all about that too. Those amendments rounded on obesity and childhood obesity, and that is an area that we should be tackling; there should be masses of things in this Bill which are about supporting that, not just the odd one or two. Making people active from the cradle to the grave, or near the grave, seems to me the right thing to do.

Other amendments in this group rightly observe that what people eat and drink is related to their health outcomes. Given the alarming levels of obesity we have heard about this morning, I am very supportive of some of those, and particularly what the Government are doing in advertising. I fully support their approach, though clearly it is not a once-and-for-all idea.

How is it possible that the UK is world-leading in elite and professional sports, that 3 billion people across the world watch our Premier League matches in over 187 different countries and that, as the noble Baroness, Lady Grey-Thompson, has consistently said, at Olympics after Olympics we are near the top of the league in terms of our elite activities, yet for decades we have failed at grass-roots level to get more people from more diverse backgrounds to be more active, despite all the investment that successive Governments have made?

With one-third of the adult population at the moment getting less than 150 minutes of moderate activity each week; with schoolchildren doing consistently less activity both at school and at home; with PE marginalised in the school curriculum and no longer inspected by Ofsted while, as we heard in our evidence, many primary school teachers get less than three hours' training in a three-year degree course, which is shameful, so physical literacy in most of our primary schools means nothing, frankly, because it does not appear on the league tables; with access to facilities ever more difficult; with local authorities closing swimming pools and leisure centres to save resources; and with transport non-existent for large parts of the day for large swathes of the community, we have become one of the most lazy, inactive nations in the modern world. Those sections of the population with the poorest diets and the worst levels of deprivation are, not surprisingly, the least active, too, and of course the pandemic has disproportionately affected all the target groups.

My colleagues and I sought in our report not to blame Governments, local authorities or sports and recreation providers, who have worked hard to maintain facilities. This is not a party-political amendment at all; all the groups on the committee were totally united. All the empirical evidence that we looked at shows the huge benefits from being active: improving learning at school; improving mental health; building up resilience and resistance to disease; and, above all, making people happier and more positive in life.

What is more, investing in active lives, as the Health Foundation research demonstrated, would save countless billions of pounds of future NHS spending by placing sport, physical activity and well-being at the heart of government within the Department of Health; by establishing in law an office for health promotion, sport and well-being to replace the Office for Health Inequalities and Disparities—whatever that means—with the same personnel as initially proposed by the Prime Minister himself; by making the Minister for Public Health, Sport and Wellbeing responsible for preparing the national plan that the noble Lord, Lord Moynihan, has so ably proposed, a plan that is at the centre of government policy in New Zealand, Australia, Norway and Sweden; by ensuring that the school curriculum places physical literacy alongside numeracy and literacy as a core subject; by making it mandatory for local authorities to provide active-life facilities; and by ensuring that the duties of care and safeguarding, so brilliantly articulated in the earlier review by the noble Baroness, Lady Grey-Thompson, are actually given legal enforcement status, years after they were proposed. We can begin by addressing the physical well-being of this nation. There need be no massive new bureaucracies. Using existing organisations, centralising policy and using the office for health promotion would be a game-changer.

If the noble Earl, Lord Howe, is a supporter of the levelling-up agenda, and I am pretty sure that he is a strong supporter, how better to make his mark than by supporting this amendment? It goes right to the heart of those government policies. If you are going to level up, level up at the start and make sure that we have an active nation.

Baroness Walmsley (LD): My Lords, I regret that I cannot follow the edict of that late, great Liberal Democrat, Nicholas Parsons, and speak for only one minute. The Committee knows that it is my habit to speak very briefly, but unfortunately I cannot do that on this occasion, although I will do my best. It is my duty as a member of the APPGs for health, obesity and a fit and healthy childhood to scrutinise this legislation and the large raft of amendments that have been made to it.

The intention of Clause 144 is of course to reduce the rise in childhood obesity, an objective with which we all agree. An early attempt to do this via legislation was the UK soft drinks industry levy, the so-called sugar tax, which was introduced in 2018. Before the levy was introduced, it had already resulted in over 50% of manufacturers reducing the sugar content of their products after it was announced in March 2016, the equivalent of 45 million kilograms of sugar every year. That was the intention: to reformulate, not to raise tax. Since then it has continued to be highly effective in encouraging reformulation. In the 12 months following its introduction, the consumption of soft drinks rose by 7.7% as people chose healthier options, so neither the food industry nor the TV advertising industry suffered at all.

1.45 pm

The Government resorted to that legislation because voluntary measures had not worked well enough and childhood obesity had continued to rise. My Amendment 259A asks the Government to consult on further measures that might result in the reformulation of unhealthy food and drink products in the light of the findings from the implementation of the soft drinks industry levy. I hope that the noble Lord, Lord Grade, would support that, because I agree with him about the importance of reformulation. I think that it is a reasonable request for evidence on which future policy could be based.

In Amendment 244, the noble Baroness, Lady Finlay, and my noble friend Lord Shipley ask for a consultation on whether alcohol advertising should also be further restricted. I support the idea that we should get appropriate evidence about that.

We all know that obesity can cause a massive range of diseases, as we have heard from the noble Lord, Lord Stevens—including cancer, which a lot of people do not realise—so anything that can lead to reductions in obesity must be welcomed. That is why I support the general thrust of the measures in Clause 144, although of course, like all measures, it must be evidence-based and appropriately reviewed, so probing amendments are appropriate. It is on the basis of the need for evidence that I have added my name to Amendments 247A and so on in the name of my noble friend Lord Clement-Jones, all of which would require a proper, up-to-date definition of what is meant by "less healthy food" to be established by regulation, not by guidance. A recent scientifically-confirmed definition of what is being regulated is essential for obtaining the evidence for effectiveness, which I think we will get, and will assist companies that are willing to reformulate their products. However, that definition does not appear in the Bill; indeed, the definition is to appear in regulations and guidance.

The first stage in determining whether a product is less healthy, as the DPRRC reported, is where it fits in the *Nutrient Profiling Technical Guidance*, which dates back to January 2011—11 years ago. This is just lazy legislation. There has been a lot of change to the products available in the last 11 years and a great deal of scientific work done on what comprises a healthy diet, so it is just not acceptable to base this legislation on guidance that is 11 years old. Can the Minister assure me that it will be updated following appropriate consultation with doctors and nutritionists—and Parliament—before the measures are implemented?

There is no doubt that children and young people's food choices are affected by the advertisements that they see on TV and online; I have often received letters from schoolchildren confirming this. Those noble Lords probing the amendments to Clause 144 claim that they would have a very small impact on the amount of

[Baroness Walmsley]
calories that children consume—we have heard 2 calories a day being mentioned, although, frankly, I do not believe that, and the noble Lord, Lord Krebs, has explained why we should not rely on it. I believe that this is for online advertising only, but children watch linear and on-demand TV as well. Put together, all this exposure has an effect.

The National Institute for Health Research's obesity policy research unit undertook a meta-analysis of quantitative studies which measured the impact of screen advertising on children's and adolescents' calorie consumption. This research showed that just 4.4 minutes of ads on TV for less healthy foods led to the consumption of over 60 calories, on average, and the figure is about 40 calories higher for obese children. Few children watch less than 4.4 minutes of TV advertisements every day.

The next issue is the need to review the effect of the measures. It is essential that this is done to ensure that we have evidenced-based legislation. In Amendment 244A the noble Baroness, Lady Boycott, requires this review to take place after six months to see whether further restrictions are needed. Amendment 249A and others seek a review after five years from implementation, against criteria set down by the Secretary of State. If not, the section would expire; in other words, a sunset clause, which is totally unnecessary. While it seems that six months is too soon and five years too long, I will be interested to hear from the Minister how and when the Government plan to assess the success of this measure.

While it may be difficult to untangle the effect of Clause 144 from that of all the other measures to reduce childhood obesity already in place, and those which are to come as a result of Henry Dimbleby's review of food policy, it can be done—and this has been proved. Perhaps we should look at how many products have been reformulated to avoid the advertising ban and thus how much less sugar, fat and salt have been put in front of children to tempt them in their food choices. It has worked for sugary drinks; I hope it will work with this legislation, too.

On Amendments 250A and others, which would allow brands to advertise before the watershed as long as a specific HFSS food is not shown, I am uncomfortable. I heard a professor of communication say last week that brands are very powerful and young people, in particular, are influenced by them. They know very well which brands produce which foods and identify with the cartoon characters often found in them. I fear that this would dilute the effect of Clause 144, but perhaps it is something else that could be researched within a couple of years of implementation. Do the Government have any plans for that?

I believe that the Government's intention is not to impact British SMEs, which is why I support my noble friend Lord Clement-Jones on his Amendments 251A and 253C, which would provide for a well-accepted definition of what an SMEs is.

Amendment 245A and others seek to restrict the advertising ban to Saturdays and Sundays on the basis, it is claimed, that this is when children watch the most TV. However, I have obtained contrary evidence from Ofcom—and it should know. In 2018, Ofcom researched the hours spent watching TV on a television set, both linear and on demand, by age. The figures were as follows: for three to four years of age, 1 hour 54 minutes on a weekday and 2 hours 18 minutes on a weekend day; five to 15 years of age, l hour 36 minutes on weekdays and on a weekend day 2 hours 30 minutes. On the percentage of total hours spent watching TV by age, on Monday to Thursday three to four year-olds saw 54% of their weekly TV viewing, while from Friday to Sunday it was 46%. For five to 15 year-olds, 49% of weekly TV viewing was from Monday to Thursday, and 51% was from Friday to Sunday—so it is about half and half.

In a survey of teenagers reporting the adverts they saw online over three weeks, 73% were for less healthy foods and 53% more of these were reported by children from lower demographic groups, so there is an issue of inequalities here, as noble Lords have mentioned. On the basis of this research, I do not support Amendment 245A because children actually spend about half of their total TV viewing time during the week, and half at the weekend.

In Amendments 248 and 248A the noble Lord, Lord Moylan, seeks to exempt certain fruit and nut bars and other high-protein bars, as well as chocolate bars of less than 200 calories in portion size. While I accept that there may be an issue for so-called sports bars, perhaps this problem could be solved by a new definition of less healthy foods which exempts them. There may also be a case for certain exemptions for foods for people on special diets. On portion size, I received an interesting briefing from Ferrero showing that the industry has gradually been reducing portion sizes for some time. However, I was amused to see from its graphs that, over the same period, the value of the industry has gone up—which suggests that it is charging more for smaller products and that this is doing the industry no harm at all. Smaller portion sizes are desirable, of course, although a 200-gram chocolate bar contains half of what a child should be having in sugar in any one day. So they are desirable, unless they come in large bags which people can munch all the way through while watching a TV programme. That is not a good idea for either children or adults.

I will briefly comment on government Amendments 249 and 252, which would allow the Secretary of State to take powers to defer implementation beyond January 2023. Given the notice the industry has already had about these measures and the fact that the Government have already deferred implementation, a year from now should be quite enough time. Why do the Government feel they need these further powers? I hope the Minister can explain, and I hope that the industry will use this time to prepare advertising campaigns for its healthier products, while looking at what it can do to reformulate its HFSS products to reduce sugar, salt and fat.

Government Amendment 316 allows regulations to be laid two months after Royal Assent. I hope this means that the Government will be getting on with

things rapidly, because the industry needs to know what it is facing and children need their health to be taken into account.

Finally, I support the noble Baroness, Lady Boycott, on her Amendment 297B, which asks for research into the impact of universal free school meals and holiday meals on children's health—and, I would add, on their ability to learn. I hope the Government will also listen carefully on the amendment about sport in the name of the noble Lord, Lord Moynihan, and my noble friend.

I have asked a lot of questions, which I hope the Minister can answer, because I am confident that a well-drafted and well-evidenced measure of this kind could make a valuable contribution to reducing the scourge of childhood obesity.

Baroness Merron (Lab): My Lords, today we have had a very extensive and impassioned debate, and we have heard in your Lordships' House challenge and counter-challenge. I will seek to pick up the main broad points that we have heard about. What we cannot turn away from is the fact that two in five children in England are above a healthy weight when they leave primary school, while last year saw the fastest increase in childhood obesity on record.

Children with obesity are five times more likely to become adults with obesity, increasing the risk of developing conditions including type 2 diabetes, cancer, and heart and liver disease. As we heard from the noble Lord, Lord Krebs, the incidence of this is not equally spread. As we observe from the levelling-up White Paper, there is a huge need to tackle poor diet and obesity in order to reduce health inequalities and the damage that obesity causes, both in childhood and adulthood.

I welcome the provisions in the Bill that help people to make informed choices about what they eat and drink, but this should not be misunderstood. Choice can only really be choice if there is no distortion, and if those making the choices have the information they need. They need to be able to make decisions and be supported in doing that. When I look at the Government's analysis, which suggests that a watershed on TV and online that introduced restrictions to prohibit advertisements for products high in fat, sugar or salt being shown before 9 pm could lead to 20,000 fewer obese children, I think that this is something that should not be dismissed. This is about not only the direct outcome but shifting the environment, so that we can manage the challenges we all face in supporting good health.

2 pm

Government Amendments 249 and 252 would allow the Secretary of State to delay the implementation of these restrictions beyond their planned date of 1 January 2023, as a number of noble Lords have already said. I understand the intention of these amendments and appreciate the need to ensure that technical guidance is complete ahead of implementation, but the Minister will have heard concerns that this could lead to unnecessary delay. Can the Minister give an assurance on this point and perhaps indicate the circumstances in which a delay might be envisaged? Furthermore, in light of the suggestion we read in the *Times* and other media that the Prime Minister may be prepared to drop plans to tighten regulations on the promotion of unhealthy foods and drinks, I hope the Minister can assure your Lordships' Committee that this will not happen.

In contrast, there are a number of amendments tabled by noble Lords seeking—in my opinion and that of other noble Lords—to weaken, dilute and delay these important steps by changing the implementation of different parts of the restrictions. The noble Baroness, Lady Boycott, some time ago set out a clear analysis of what these amendments would mean, so I will not repeat those points. I listened closely to the noble Lords supporting these amendments, including the noble Lord, Lord Grade. I certainly accept the point made by the food and drink industry, and that the need for reformulation is key. But as the noble Lord, Lord Lansley, said, tackling obesity involves many responses; it is not an "either/or" but an "as well as".

The amendments seeking to change the Government's course are opposed by the Obesity Health Alliance, a coalition of over 45 health organisations, including the British Heart Foundation, Cancer Research, Diabetes UK, the British Medical Association and the Academy of Medical Royal Colleges. They all remind us that there is an urgent need for action. As we heard from the noble Lord, Lord Stevens, and others, these measures have been trailed for long enough to allow companies, many of which have healthy alternatives available to advertise, to adapt their marketing strategies.

It is also important that we listen to young people themselves. A new report by Cancer Research UK on young people's attitudes to marketing restrictions on foods that are high in fat, sugar and salt shows that they broadly support marketing restrictions and seek an environment in which they can make proper decisions, because they know the impact on their and others' health.

The noble Viscount, Lord Colville, and the noble Baroness, Lady Stowell, made important points about the need to tackle the influence and prevalence of advertisements on online platforms, because children and adults get their information and influences from a range of different places. It is important that we respond to that. I hope the Minister will consider the valid points in that regard.

Importantly, the noble Baroness, Lady Grey-Thompson, and other noble Lords raised the issue of physical activity and sport, and the need to change a pattern of inactivity in this country. I hope the Minister will consider proposals, which do have merit, to involve activity—I emphasise activity, and not just sport—more closely in the prevention of ill health, both physical and mental, and to see how efforts to tackle obesity could be better organised through those means.

I hope the Government will press on and will not be diverted from measures that will have an impact on the health and weight of the nation. We should have particular regard to children and give them the greatest opportunities.

Baroness Penn (Con): My Lords, this has been an important and engaging debate. There has been consensus that childhood obesity is one of the biggest health problems this nation faces—and maybe not just a health problem. We have also talked about the impact of inequality and broader life chances. The latest national child measurement programme data, from 2020-21, showed that some 40% of children leaving primary schools in England were overweight or living with obesity.

That is why, as part of our ambition to halve childhood obesity by 2030, it is imperative that we reduce children's exposure to less healthy food and drink product advertising on TV and online. To be clear, the Government know that this is not a silver bullet, and this action alone will not solve the problem; it is part of a multifaceted plan. I can reassure my noble friend Lord Grade and the noble Baroness, Lady Walmsley, that this includes working with manufacturers on reformulation and to produce healthier food. Indeed, we are clear that products that are reformulated to pass the MPM will be able to be advertised, and we hope this provides a motivation for brands to do so. Obesity is a complex problem that builds over time through frequent excessive calorie consumption. Through this one action, as part of a wider programme, we estimate that we can remove up to 7.2 billion calories from children's diets per year in the UK.

Turning to specific amendments and looking first at what should be covered by these priorities, I will speak to Amendments 253B, 254A, 254B, 247A, 249ZA, 249ZB, 250B, 252ZA, 252ZB, 248, 248A, and 251. We believe that the current approach to defining food that is less healthy provides sufficient legal certainty and is consistent with other healthy weight restrictions and policies. For example, it is used in a similar way in the promotions and placement restrictions for less healthy food and drink, which were made law last December.

It is important to provide detail in the Bill on the two-step criteria to determine what is less healthy, in order to ensure that the primary legislation is sufficiently clear. The nutrient profiling model has been used by Ofcom since 2007 to determine what can be advertised around child-specific programming on TV, although outside the statutory framework. The technical guidance of January 2011, which provides the steps to calculate the nutrient profiling model score, is an existing document that has been specifically developed and used to support industry since it was published. Its substance is not changeable at the discretion of the Secretary of State and, as an additional safeguard, the Government have already amended Schedule 17 to include a statutory duty to consult in the event that a change is proposed to the meaning of "the relevant guidance".

I can assure noble Lords that the current approach would allow healthier products, which may contain fruit, nuts and seeds or be a source of protein, to not be caught by restrictions, while still restricting those which are less healthy overall. However, that will also need to be underpinned by secondary legislation, which the Government will be consulting on shortly, and the points your Lordships have raised will be considered as part of this.

The proposed amendment to permit the advertising of confectionery of less than 200 calories could mean that adverts for chocolate confectionery products could still be permitted on TV before the watershed and online, given the likely difficulty in determining portion sizes in such adverts. This would undermine the policy and send out the wrong message to consumers and producers.

In response to Amendment 244, we do not believe it is necessary to consult on whether alcohol should be included as a "less healthy" product, as these provisions are aimed at reducing the exposure of children to less healthy food and drink advertising. Unlike alcohol, less healthy food and drink products are not age-restricted at the point of purchase. In addition, as noble Lords have noted, there are other measures in place that address the advertising of alcohol.

Turning to Amendments 247, 250A and 253A, I assure noble Lords that brand advertising is out of scope of the restrictions, as these clauses focus on identifiable products. Including an exemption in the Bill for something that is already out of scope would have no legal effect and therefore may cause undue confusion.

I turn to Amendments 248B, 251A and 253C on who will be covered by these proposals. We intend to define food and drink SMEs as businesses with 249 employees or fewer, as outlined in our consultation response. By doing this, the Government want to ensure consistency with other similar definitions, such as for out-of-home calorie labelling. We will consult on the secondary legislation defining food and drink SMEs shortly, but this approach will allow Ministers to act promptly to change the definition of food or drink SMEs in future, should it be necessary.

I turn to platform liability and other questions regarding the watershed hours in Amendments 250ZA, 253ZA, 254A, 255A, 255B, 257B and 253AA. Platform liability is incredibly important. During the 2020 consultation, we considered whether other actors in the online advertising supply chain should have responsibility for breaches alongside advertisers, but concluded that this was not the right place for this broader issue, given the far-reaching impacts for the industry. However, I reassure my noble friend Lady Stowell, the noble Lord, Lord Clement-Jones, and many others that the Government intend to consider platform liability as part of the wider online advertising programme.

On the question of when these restrictions should apply, Ofcom's research—

Baroness Stowell of Beeston (Con): I am so sorry to interrupt my noble friend, but can she please give us a timescale for that?

Baroness Penn (Con): I believe it is being conducted this year, but I will check that and come back to my noble friend and all other Members of the Committee, because I know there is significant concern on that point.

On the timing of the restrictions on television, Ofcom research suggests that children's viewing peaks in the hours after school, with the largest number of child viewers concentrated between 6 pm and 9 pm. In

this period, half of children's viewing takes place during adult commercial programming. We do not therefore believe that introducing advertising restrictions only on the weekend is sufficient to meet our policy objectives.

We are committed to ensuring that businesses are supported now and when the regime comes into force. We will, of course, consult on the secondary legislation and guidance, which should give stakeholders more clarity. However, in response to Amendments 245, 255, 256, 257 and 317, we believe that the overall policy direction has been set out effectively and we do not think that there is a need to add the kind of gap between publication of final guidance and implementation, as proposed by my noble friend's amendment.

In response to Amendments 249A, 252A and 257A, I can assure your Lordships that we will conduct a post-implementation review five years after implementation. This is intended to be based on the variables set out in the impact assessment, published in June 2021. However, the Government believe that further tying down of the criteria at this stage would be counterproductive. We will also use this opportunity to look at any displacement of advertising to other media not covered by the restrictions, such as outdoor advertising.

However, in response to Amendment 244A, there is insufficient evidence at this stage of the influence of further national advertising restrictions in other media on calorie consumption in children, which is why these restrictions focus on TV and online only. We would also advise against adding a sunset clause, as it would pre-empt this evaluative work and could undermine compliance. We have heard quite a bit from noble Lords about the need for certainty on the Government's approach in this area. I say to my noble friend that a sunset clause on these regulations would undermine that case.

2.15 pm

I turn now to the amendments in the name of my noble friend the Minister, on behalf of the Government. These amendments are intended to enable the smooth implementation of these restrictions.

Amendment 316 would allow Clause 144 and Schedule 17 to be commenced two months after Royal Assent, thereby allowing the necessary preparatory work to take place before the restrictions come into force on 1 January 2023. Amendments 246, 249 and 253 make it clear that the implementation dates for these restrictions nonetheless remains 1 January 2023. Amendments 249, 252 and 254 separately introduce the ability to delay that implementation date via secondary legislation, should this be deemed necessary after the Bill receives Royal Assent. We have taken this decision to provide flexibility should emerging challenges mean that implementation from 1 January 2023 proves unworkable. However, I should emphasise that we currently have no plans to delay the introduction of these restrictions.

I turn to a number of other amendments in this group, starting with Amendments 257C and 254AA, on consultation with the devolved Administrations. I remind noble Lords that tackling obesity is a UK-wide challenge, and the Government are committed to working with all four nations on this. As these restrictions relate to the reserved matters of broadcasting and internet services, we are legislating on a UK-wide basis. As such, amendments calling for the Secretary of State to obtain the consent of the devolved Administrations to make amendments to this legislation via regulations, to specify in regulations exemptions to the online advertising prohibition or to make consequential amendments that might be needed following the passage of the Bill are inappropriate and may hinder the effectiveness of the Government's ability and power to regulate on these matters. However, as we do in so many other areas of policy, we expect to continue to work with all devolved Administrations on the implementation of these matters.

In respect of Amendments 254AB and 254AC, the Government believe that the current approach to the legislation provides safeguards and appropriate levels of parliamentary scrutiny, but also enables regulations of a technical or administrative nature to be brought into force quickly following consultation. This will ensure that the regime remains up to date and that any proposed regulations are appropriately scrutinised by Parliament.

Turning to Amendment 297C, on the office for health promotion, I would like to thank all noble Lords who were part of that committee for their work. Their recently published report makes a number of recommendations, some of which we see in the amendment today. The Government are carefully considering these recommendations and will publish their response in due course.

However, we do not believe that a new course is necessary; the Office for Health Improvement and Disparities already has a significant role to influence, advise and work with government—national and local—and the NHS on matters of health improvement. OHID is working constructively with other government departments, the NHS and local authorities to ensure that our approaches to promote physical activity across the population are informed by the best available evidence and practice. We are refreshing the physical activity framework Everybody Active, Every Day, which can help enable people to accrue the positive physical and mental health benefits of moving more.

I note that the noble Baroness, Lady Grey-Thompson, asked for a meeting to discuss these proposals further. I will take that away—I am sure the Government would be very pleased to discuss the findings of that report in more detail.

Lord Grade of Yarmouth (Con): Before my noble friend sits down, can she give the House some sense of what the Government would regard as success as a result of the advertising ban? Is there some target of reduction that they expect to see at the end of five years as a result of this ridiculous ban?

Baroness Penn (Con): I believe that I said that the criteria for measuring the success of this policy have been set out in the impact assessment. I will happily send that to my noble friend. I do not think that it is a finalised list. We have discussed in this Committee the difficulty of assessing success, so we would not want to preclude new research or information that would help us to assess our approach better in future.

[Baroness Penn]

My noble friend was right in anticipating that I was about to conclude. This has been a substantial group of amendments—

Lord Lansley (Con): Before my noble friend sits down, can I ask her about the nutrient profiling technical guidance? What is the timetable and process for its review?

Baroness Penn (Con): My noble friend was of course eagle-eared—I am mixing a metaphor—in that I did not address his point on that. I can tell him that, in 2016, the Government commissioned Public Health England to review the UK NPM algorithm that has been in place since 2004, to ensure that it aligns with dietary recommendations from the Scientific Advisory Committee on Nutrition, particularly for free sugars and fibre. I am afraid to say that my next line is that the outcome of that review will be published in due course.

Lord Clement-Jones (LD): I want to follow up on that question. It was in 2018 that the consultation took place; is the Minister aware of that? We are now four years down the track and nothing has come out.

Baroness Penn (Con): The date that I have for the commissioning of the work is 2016, which means that we are even further down the road on that piece of work. I am well aware of the time that has passed since then. I will undertake to see if I can provide any update beyond "in due course", but I do not want to raise noble Lords' hopes too far on that.

I hope that I have been able to provide noble Lords across the Chamber with assurances as to our plans and, therefore, that noble Lords will feel able not to press their amendments.

Baroness Finlay of Llandaff (CB): My Lords, we are three hours and 49 amendments on and I am sure that everyone in the House will join me in saying that we have enjoyed hearing from the noble Baroness the Minister now that she is back in Committee with us.

It is perhaps a crumb of comfort to those who have been worried about advertising and the outcomes that Norway's ban since 2013 has shown that other products moved into the space and there was not a total loss of income. Quebec has had the least rise in childhood obesity in Canada since its ban. I will not comment any more on that other than to say that we have all recognised that obesity is a serious problem that needs to be addressed. The Wild West digital space of the platforms needs to be addressed quite urgently and will be more difficult, but I hope that this will not deter the Government from their action to tackle obesity.

For my amendment, I just remind the House that alcohol adverts are tempting young people into early consumption. It is a highly obesogenic and highly addictive substance, which is why my amendment was there. I am disappointed that the Government are not even considering incorporating it in the list of substances, but I beg leave to withdraw my amendment.

Amendment 244 withdrawn.

Amendment 244A not moved.

Clause 144 agreed.

Schedule 17: Advertising of less healthy food and drink

Amendments 245 and 245A not moved.

Amendment 246

Moved by ***Baroness Penn***

246: Schedule 17, page 234, line 23, at end insert—

"(1A) OFCOM must ensure that the prohibition provided for by the first standards set by virtue of subsection (1) takes effect from the beginning of 1 January 2023."

Member's explanatory statement

This amendment ensures that the watershed on television advertising of unhealthy food and drink will not apply until 1 January 2023.

Amendment 246 agreed.

Amendments 247 to 248B not moved.

Amendment 249

Moved by ***Baroness Penn***

249: Schedule 17, page 235, line 18, at end insert—

"(4A) The Secretary of State may, before the date specified in subsection (1A), amend that subsection so as to substitute a later date for the date that is for the time being specified there."

Member's explanatory statement

This amendment allows the Secretary of State to defer beyond 1 January 2023 the date when the watershed on television advertising of unhealthy food and drink begins to apply.

Amendment 249 agreed.

Amendments 249ZA to 249A not moved.

Amendment 250

Moved by ***Baroness Penn***

250: Schedule 17, page 235, line 30, leave out from beginning to "include" in line 31 and insert "From the beginning of 1 January 2023, on-demand programme services must not, between 5.30 am and 9.00 pm,"

Member's explanatory statement

This amendment ensures that the watershed on advertising of unhealthy food and drink in on-demand programme services will not apply until 1 January 2023.

Amendment 250 agreed.

Amendments 250ZA to 251A not moved.

Amendment 252

Moved by ***Baroness Penn***

252: Schedule 17, page 236, line 16, at end insert—

"(5A) The Secretary of State may, before the date specified in subsection (1), amend that subsection so as to substitute a later date for the date that is for the time being specified there."

Member's explanatory statement

This amendment allows the Secretary of State to defer beyond 1 January 2023 the date when the watershed on advertising of unhealthy food and drink in on-demand programme services begins to apply.

Amendment 252 agreed.

Amendments 252ZA to 252A not moved.

Amendment 253

Moved by ***Baroness Penn***

253: Schedule 17, page 236, line 32, at beginning insert "From the beginning of 1 January 2023,"

Member's explanatory statement

This amendment ensures that the prohibition on online advertising of unhealthy food and drink will not apply until 1 January 2023.

Amendment 253 agreed.

Amendments 253ZA to 253C not moved.

Amendment 254

Moved by ***Baroness Penn***

254: Schedule 17, page 237, line 38, at end insert—

"(6A) The Secretary of State may, before the date specified in subsection (1)—

(a) amend that subsection so as to substitute a later date for the date that is for the time being specified there, and

(b) make corresponding amendments to the references to that date in subsections (10) and (11)."

Member's explanatory statement

This amendment allows the Secretary of State to defer beyond 1 January 2023 the date when the prohibition on online advertising of unhealthy food and drink begins to apply.

Amendment 254 agreed.

Amendments 254A to 257C not moved.

Schedule 17, as amended, agreed.

Clause 145: Hospital food standards

Amendments 258 and 258A not moved.

Clause 145 agreed.

2.27 pm

Sitting suspended. Committee to begin again not before 3.08 pm.

3.09 pm

Clause 146: Food information for consumers: power to amend retained EU law

Amendment 259

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

259: Clause 146, page 124, line 42, at end insert—

"(3) The Secretary of State must, no later than one year after this Act is passed—

(a) publish a report on alcohol labelling, considering the question of whether to require the following on alcohol product labels—

(i) the Chief Medical Officers' low risk drinking guidelines,

(ii) a warning that is intended to inform the public of the danger of alcohol consumption,

(iii) a warning that is intended to inform the public of the danger of alcohol consumption when pregnant,

(iv) a warning that is intended to inform the public of the direct link between alcohol and cancer, and

(v) a full list of ingredients and nutritional information; and

(b) lay the report before Parliament.

(4) A Minister of the Crown must arrange to make a statement to each House of Parliament setting out in detail any steps which will be taken to implement the findings of the report prepared under subsection (3)."

Member's explanatory statement

This probing amendment requires the Secretary of State to report on the alcohol labelling consultation.

Baroness Finlay of Llandaff (CB): My Lords, these amendments also relate to alcohol. Amendment 259 is about alcohol labelling to prevent harm and Amendment 296 concerns dealing with the harm when someone has become addicted to alcohol. I shall cut what I was going to say dramatically because of the time spent on other amendments earlier today.

Labelling is the way we inform the public of what they are getting. About 70 people die every day from alcohol-related causes in the UK. Alcohol is responsible for 12,000 cancers every year. Covid has compounded this harm, with deaths from alcohol now at the highest rate since records began. There is more information on a carton of orange juice than a bottle of beer. Awareness of the health risks of alcohol is very low. Just one in five people can identify the low-risk drinking guidelines and less than one-quarter know that alcohol can cause breast cancer. Alcohol is linked to the worst pregnancy outcomes and serious lifelong impacts for a baby, yet one in three people are unaware that it is not safe to drink in pregnancy. It has been estimated that 41% of pregnant women consume alcohol.

Alcoholic drinks are also extremely calorific, as we have heard. We have already spoken about the number of calories those who drink take in and I will not go there again, but calories need to be included on the labelling. People have a right to know what they are consuming, but they cannot make informed choices about their drinking. Voluntary inclusion of information on labels has not worked and has been very low: 70% of labels do not include the CMO's low-risk drinking

[Baroness Finlay of Llandaff]
guidelines, over 70% do not list ingredients and only 7% display nutritional information, including calories. The public want the information. In July 2020, the Government agreed to consult on requiring calories and drinking guidelines to be on alcohol labels, yet here we are all this time later and we are still waiting for the consultation to even be launched.

Amendment 296 refers to treatment services. Alcohol addiction is a complex problem, with many factors driving and perpetuating harmful drinking. People who are trapped by alcohol dependence need help to move towards recovery. The benefits for the health service are reductions in emergency service call-outs and unnecessary hospital admissions, and the benefit for everyone is a reduction in avoidable deaths. These are the outcomes by which the effectiveness of any measure can be assessed.

Many people who require alcohol dependency treatment also have problems with other substance abuse, mental health, domestic abuse and homelessness. It is alarming that, during the pandemic, only 20% of people who need help for problem drinking have been able to access it and there has been a significant and sustained increase in the rate of unplanned admissions for alcohol liver disease. Since 2012, there have been real-term funding cuts in alcohol treatment services, yet every £1 invested in alcohol treatment yields £3 in return; that rises to a return of £26 after 10 years. Only 9% of people with alcohol dependence account for 59% of in-patient alcohol-related admissions. So, a cohort of more than 54,000 people accounts for 365,000 admissions and more than 1.4 million bed days, at an estimated cost of £858 million a year. There are also significant pressures on the treatment workforce because there is a shortage of psychiatry trainees.

I hope that these amendments are self-explanatory, and that the Government will look favourably on doing something about the problem of alcohol harm. I beg to move.

Lord Scriven (LD): My Lords, I rise to support Amendments 259 and 296 in the name of the noble Baroness, Lady Finlay of Llandaff. I speak on behalf of my noble friend Lord Shipley, who, unfortunately, cannot be here today but has added his name to those amendments.

The amendments are on the Marshalled List to push the Government to move faster on something that the public want that has now been shown to be effective, particularly alcohol labelling. A recent YouGov poll showed that 71% of the British public want to know the number of units in an alcoholic drink, 61% want to know the calorific content and 53% want to know the amount of sugar in alcohol. There is clear public support for this, so it is interesting that we have not moved faster.

3.15 pm

Not only is there public support, but a recent study in Canada last year showed that consumers exposed to health warnings on labels were three times more likely to be aware of drinking guidelines, and were more likely to know about the link between alcohol and cancer and to understand the daily rate of safe alcohol intake, according to the Canadian guidelines. It is quite interesting that, when you look at the areas where this was introduced against the control areas, you see that people were not only aware of the safe levels and the health risks but were also more likely to purchase less alcohol. It was not just effective because people understood the risks but, in areas of Canada where these labels were introduced against the control group of provinces where they were not, there was a reduction in the amount of alcohol sold. In both public support and effectiveness, the labelling of alcohol works. The Government should work towards that at speed.

On Amendment 296, I say that alcohol treatment is essential to support those with alcohol dependency towards recovery. It is vital for reducing emergency service call-outs, unnecessary hospital admissions and avoidable deaths. Pre pandemic, only one in five dependent drinkers was believed to be in treatment, leaving a shocking 80% lacking healthcare. Probably the reason for this is that, between 2016 and 2018, more than two-thirds of local authorities in England cut their alcohol treatment budgets, with 17 imposing cuts greater than 50%. I declare my interests as in the register, particularly as a vice-president of the Local Government Association. I know that Ministers at the Dispatch Box normally say that this is to be determined by local authorities, but it is happening because local authorities have had their budgets cut so significantly that they are struggling to provide statutory services. It is not a choice; it is a necessity to make sure that certain statutory services are provided.

Each treatment is cost-effective and brings significant benefits. For an average local authority, every 5% reduction in yearly spending on alcohol treatment would see an extra 60 alcohol-related hospital admissions per 1,000 of the population. There are also significant pressures on the workforce who deal with treatment. Most strikingly, there is a lack of addiction psychiatry trainees in England.

I say to the Minister that these amendments are effective and are required. They not just give people information so that they can make informed choices but, as the Canadian example shows, reduce the amount of alcohol that people purchase. They are vital now that we have a real understanding of the economic, social and health effects of a lack of investment in treatment services. If they are invested in, they can bring not just economic but social and health impacts.

Baroness Walmsley (LD): My Lords, I have been in this House for 22 years and I have been asking for this for at least 20 of them. It really is time that the Government got on with it. At the time, I was told that most wine comes from abroad and we cannot legislate for what is put on the labels, but it cannot be impossible to put information on the shelf labels or online. If people do not know what they are putting inside their bodies, they cannot moderate it.

Lord Sentamu (CB): My Lords, I support this amendment. I will tell a true story of a teetotal preacher who harangued his congregation that nobody should

be drinking because it is dangerous, damages our health and damages everything else. "Alcohol should be banned," he said, "and the best thing to do is go and drown it in the river." Unwittingly, he then said, "Our final hymn is 'Shall We Gather at the River?' The beautiful, the beautiful river." He did not see the contradiction in what he said. This amendment is full of clarity, clarifying areas that need to be put fairly clearly. The obligation that it puts on the Secretary of State and, incidentally, all of us is very clear. Because of the real danger in what overdrinking does to a lot of people, I say: no, we shall not gather at that river, that beautiful, beautiful river.

Baroness Merron (Lab): My Lords, it is a pleasure to follow the noble and right reverend Lord, who reminds us of our obligations to assist with alcohol-related ill health. I thank the noble Baroness, Lady Finlay, and the noble Lord, Lord Shipley, for putting these amendments before your Lordships' House today. The first is a probing amendment about the need to report on the consultation on alcohol labelling. It is absolutely right to raise this: consumers have a right to know what is in their drinks, to make informed choices about what and how much they drink. Currently there are no legal requirements for alcohol products to include health warnings, drinking guidelines, calorie information or even ingredients. Research by the Alcohol Health Alliance found that over 70% of products did not include the low-risk drinking guidelines, and only 7% displayed full nutritional information including calories. I certainly add my voice to welcoming the forthcoming consultation on alcohol calorie labelling. When can we expect to see this, and what is the reason for the amount of time that it has taken to bring it forward?

Amendment 296 requires the Secretary of State to make a five-yearly statement on the cost efficacy of alcohol services. As we know, rigorous impact evaluation is absolutely key to good policy-making and improving the lives of those who use alcohol services. At present, the Government cannot say that they are meeting their responsibility to tackle alcohol harm with the requisite financial commitment and in the right places. Perhaps the Minister will tell your Lordships' House what evaluation measures are already in place.

Of course, the background to all this is that, since 2012, there have been real-terms funding cuts to alcohol services of over £100 million. Pre pandemic, only one in five dependent drinkers was believed to be in treatment, leaving a shocking four out of five without help. The pandemic has only worsened the situation. I hope that the Minister will agree that there is a need to do better to ensure that we know how policies and services help or hinder the treatment of problem drinking, in order that efforts and resources can be targeted to where they work best.

Earl Howe (Con): My Lords, I pay tribute to the noble Baroness, Lady Finlay, for her work as chair of the Commission on Alcohol Harm. I thank her for this opportunity to set out the current state of play on the Government's alcohol policy. I am the first to acknowledge the seriousness of the harms caused by the consumption of alcohol, which she pointed out.

Effective alcohol labelling is an important part of the Government's overall work on reducing alcohol harm. I am pleased to tell the noble Baroness that the legal powers available to the Government are already sufficient to enable us to consult and report on alcohol labelling. The kind of power proposed in her probing amendment is highly prescriptive, and, from a purely practical point of view, would not allow for sufficient flexibility in the consultation process, which could make the process less effective.

As she knows, as part of the Government's *Tackling Obesity* strategy, published in July 2020, the Government committed to consult on whether mandatory calorie labelling should be introduced on all pre-packed alcohol as well as alcoholic drinks sold in the out-of-home sector. I repeat that commitment today, and, as part of our public consultation, we will also seek views on whether provision of the *UK Chief Medical Officers' Low Risk Drinking Guidelines*, which includes a warning on drinking during pregnancy, should be mandatory or continue on a voluntary basis. The noble Baroness, Lady Merron, asked when we might expect that consultation to be forthcoming. I am afraid I can say no more than "in due course" at this stage, which I realise is not wholly enlightening, but it is as far as I can go at the moment.

Turning to Amendment 296, which proposes additional reporting and government statements, we do not think a new reporting requirement is necessary. The Office for Health Improvement and Disparities already publishes annual data on estimated numbers of alcohol-dependent adults within local authorities in England. Health commissioners can use this data to estimate local need and appropriately plan their alcohol treatment services. Outcomes for local authority-funded alcohol treatment services are already published at local and national level via the national drug treatment monitoring system. The Office for Health Improvement and Disparities also provides a number of data tools to enable local areas to compare their performance against other areas and nationally, including the public health outcomes framework, local alcohol profiles for England and the spend and outcomes tool.

On funding, local authorities are currently required to report on their spend on alcohol services annually to the Department for Levelling Up, Housing and Communities. Through the "why invest?" online guidance, the Office for Health Improvement and Disparities already produces data and information on the return on investment for alcohol and drug treatment. The guidance includes cost savings data on treatment interventions in primary and secondary care and on specialist and young people's treatment services. There is a strong programme under way to address alcohol-related health harms and their impact on life chances, and to reduce the associated inequalities which the noble Baroness emphasised, including an ambitious programme to establish specialist alcohol care teams in hospitals and to support children of alcohol-dependent parents.

Throughout the Covid-19 outbreak, drug and alcohol treatment providers continued to support and treat people misusing drugs and alcohol. OHID supports local authorities in this work by providing advice, guidance and data. OHID is developing comprehensive

[Earl Howe]
UK guidelines for the clinical management of harmful drinking and alcohol dependence. These aim to develop a clear consensus on good practice and to improve the quality of service provision. The work is expected to be completed later this year.

Finally, we are currently developing a new commissioning standard for drug and alcohol treatment which aims to increase the transparency and accountability of local authorities on how funding is spent. It will include requirements to commission services—

Lord Sentamu (CB): I am sorry to disturb the Minister in mid-flow. He described this amendment as prescriptive. Seat belts became prescriptive, and most people now wear their seatbelt. There was no question of an in-between. Smoking was another, and the effect has been to improve our public life. Without clarity—and we still will not have options—how will the Government achieve what wearing seatbelts and not smoking have achieved in terms of health? Alcohol needs to have similar treatment.

Earl Howe (Con): The noble and right reverend Lord makes an extremely cogent set of points. I criticised Amendment 259 only on the grounds that it was overprescriptive. Surely, what we want in any consultation is a broad enough question to put to the public and those who have expertise in this area. If we make it too narrow—I said "overprescriptive" rather than "prescriptive"—we are in danger of introducing a lack of flexibility. That was my only point there.

I was just mentioning the development of a new commissioning standard. It will include requirements to commission services to meet a wide range of individual needs, and services will be monitored against these. I hope that information provides the noble Baroness and the Committee with a useful update on where we are with this important agenda and will enable her to feel reasonably comfortable in withdrawing her amendment.

3.30 pm

Baroness Finlay of Llandaff (CB): I am most grateful to the Minister, and particularly to the noble and right reverend Lord, Lord Sentamu, for pushing on the point of whether the amendment was overprescriptive or adequately prescriptive. Given that, and the rather disappointing remark that the consultation will happen "in due course", I will withdraw my amendment but am minded to return to something like it on Report if we do not have even a provisional date for when the consultation might start. We seem to have been waiting for it to start for a long time. With that, I beg leave to withdraw the amendment.

Amendment 259 withdrawn.

Clause 146 agreed.

Amendment 259A not moved.

Clause 147: Fluoridation of water supplies

Amendment 259B not moved.

Amendment 259C had been withdrawn from the Marshalled List.

Amendments 259D to 261 not moved.

Clause 147 agreed.

Amendment 262 not moved.

Clause 148 agreed.

Amendments 263 and 264 not moved.

Amendment 265

Moved by ***Lord Hunt of Kings Heath***

265: After Clause 148, insert the following new Clause—

"Regulation of the public display of imported cadavers

(1) The Human Tissue Act 2004 is amended as follows.

(2) In subsections (5)(a), (6)(a) and (6)(b) of section 1 (authorisation of activities for scheduled purposes) after "imported", in each place it occurs, insert "other than for the purpose of public display"."

Member's explanatory statement

This amendment would ensure that imported bodies for display would need the same consent requirements as bodies sourced from within the UK.

Lord Hunt of Kings Heath (Lab): My Lords, in moving Amendment 265 I will also speak to Amendment 282. I am glad to have the support of the noble Lords, Lord Ribeiro and Lord Alton, and the noble Baronesses, Lady Finlay and Lady Northover, for our endeavours.

Article 3(2) of the Universal Declaration on Combating and Preventing Forced Organ Harvesting states:

"The killing of vulnerable prisoners for the purpose of harvesting and selling their organs for transplant is an egregious and intolerable violation of the fundamental right to life."

My two amendments seek to prevent UK citizens' complicity in forced organ harvesting by amending the Human Tissue Act to ensure that UK citizens cannot travel to countries such as China for organ transplantation and to put a stop to the dreadful travelling circus of body exhibitions that sources deceased bodies from China.

As noble Lords know, I come from Birmingham, where in 2018 an exhibition called Real Bodies by Imagine Exhibitions visited the National Exhibition Centre. It consisted of real corpses and body parts that had gone through a process of plastination, whereby silicone plastic is injected into the body tissue to create real-life mannequins or plastinated bodies. The exhibit advertised it as using

"real human specimens that have been respectfully preserved to explore the complex inner workings of the human form in a refreshing and thought-provoking style."

But those deceased human bodies and body parts are unclaimed bodies with no identity documents or consent, sourced from Dalian Hoffen Bio-Technique in Dalian, China. Notably, Dalian labour lamp from 1999 to 2013 was notorious for its severe torturing of Falun Gong practitioners, as the noble Lord, Lord Alton, has reminded the House on many occasions.

The commercial exploitation of body parts in all its forms is surely unethical and unsavoury, but when it is combined with mass killings by an authoritarian state, we cannot stand by and do nothing. In 2019, the China Tribunal, led by Sir Geoffrey Nice QC, stated:

"The Tribunal's members are certain—unanimously, and sure beyond reasonable doubt—that in China forced organ harvesting from prisoners of conscience has been practiced for a substantial period of time involving a very substantial number of victims."

Most recently, further evidence was heard during the course of the Uyghur Tribunal, including from Sayragul Sauytbay, who testified during the June hearings that she discovered medical files detailing Uighur detainees' blood types and results of liver tests while she was working at a Uighur camp. In June this year, 12 UN special procedure experts raised the issue of forced organ harvesting with the Chinese Government in response, as they said, to "credible information" that

"Falun Gong practitioners, Uyghurs, Tibetans, Muslims and Christians"

are being killed for their organs in China.

The recent findings of the Uyghur Tribunal, again chaired by Sir Geoffrey Nice, were profoundly disturbing. We discussed some of this in our debate on genocide only a few days ago, but I think it bears repeating. The tribunal concluded:

"Hundreds of thousands of Uyghurs—with some estimates well in excess of a million—have been detained by

Chinese

"authorities without any, or any remotely sufficient reason, and subjected to acts of unconscionable cruelty, depravity and inhumanity … Many of those detained have been tortured for no reason, by such methods as: pulling off fingernails; beating with sticks; detaining in 'tiger chairs' where feet and hands were locked in position for hours or days without a break; confined in containers up to the neck in cold water; and detained in cages so small that standing or lying was impossible … Detained women—and men—have been raped and subjected to extreme sexual violence … Detainees were fed with food barely sufficient to sustain life and frequently insufficient to sustain health, food that could be withheld at whim to punish or humiliate."

This is the context in which we debate these amendments. I feel a sense of, shall I say, sadness, at least, that this is the opening day of the China Winter Olympics.

Currently, human tissue legislation in this country covers organ transplantation within the UK itself, but it does not cover British citizens travelling abroad for transplants, and British taxpayers' money has to pay for anti-rejection medication for those people who then come back to the UK and go to the National Health Service, regardless of where the organ was sourced. According to the excellent NHS Blood and Transplant, between 2010 and 2020, there were 29 cases on the UK transplant registry of patients being followed up in the UK after receiving a transplant in China. This is a billion-pound business in China, using the bodies of executed prisoners—mainly prisoners of conscience.

The Human Tissue Act 2004 has strict consent and documentation requirements for human tissues sourced in the UK, but it does not restrict human tissues from abroad in this way; it is merely advisory. My amendments seek to amend the Human Tissue Act in the following ways.

First, they would prohibit a UK citizen from travelling outside the UK and receiving any controlled material for the purpose of organ transplantation when the organ donor or the organ donor's next of kin had not provided free, informed and specific consent. Secondly, they would prohibit a UK citizen from travelling outside the UK and receiving any controlled material for the purpose of organ transplantation when a living donor or third party receives a financial gain or comparable advantage; or, if from a deceased donor, a third party receives financial gain or comparable advantage. Thirdly, it would provide for the offence in Section 32 of the Human Tissue Act 2004 to be prohibited even if the offence did not take place in the UK, if the person had a close connection to our country. Fourthly, it would provide for regulations for patient-identifiable records and an annual report on instances of UK citizens receiving transplant procedures outside the UK by NHS Blood and Transplant. Finally, it would provide for imported bodies on display to have the same consent requirements as those sourced from the UK.

Article 4 of the Universal Declaration on Combating and Preventing Forced Organ Harvesting says:

"All governments shall combat and prevent forced organ harvesting by providing for the criminalisation of certain acts and facilitate the criminal prosecution of forced organ harvesting both at the national and international levels."

I believe we must take action internationally and in the UK to do all we can to prevent this abhorrent practice. I know from the success we had in the medicines Bill that a change in the law of this country has a much wider impact; it gives great encouragement to those brave people fighting these practices in China and globally. I very much hope the House will support this. I beg to move.

Lord Ribeiro (Con): My Lords, I apologise for not speaking in the Second Reading debate, for reasons of ill health.

It is a pleasure to follow the noble Lord, Lord Hunt, who has set out the case against genocide most convincingly. As he said, there is a risk of repetition, as we covered so many of these issues in the Medicines and Medical Devices Bill in 2020 and in the noble Lord's Organ Tourism and Cadavers on Display Bill only last year. I said then that the Human Tissue Act 2004 made it clear that written consent was required while the person was alive before donated bodies or body parts could be displayed.

The Government were supportive of our amendment in the Medicines and Medical Devices Bill and the noble Baroness, Lady Penn, who I am pleased to see in her place, said the Government would undertake

"to strengthen the Human Tissue Authority's code of practice".—[*Official Report*, 12/1/21; col. 705.]

The noble Lord, Lord Bethell, who was here earlier, stated in summing up that the new code laid before Parliament in June 2021 was clear that

"the same consent expectations should apply for imported bodies and body parts as apply for such material sourced domestically."

In relation to exhibitions such as "Real Bodies", which the noble Lord, Lord Hunt, mentioned and to which our Amendment 265 applies, the noble Lord, Lord Bethell, said

"it would need proof of the donor's specific consent to be displayed publicly after death. If it failed to provide such proof",—[*Official Report*, 16/7/21; cols. 2123-24.]

that would prevent a licence being issued. In relation to organs for transplantation, our Amendment 282 makes it clear that consent must be given and that there must be no evidence of genocide in the country from which the organs are sourced.

[Lord Ribeiro]

As a former president of the Royal College of Surgeons, I associate myself with the statement of December 2021 on the abuse of Uighurs in China made by the British Medical Association and the presidents of the Academy of Medical Royal Colleges—of which the Royal College of Surgeons is a member—the Royal College of Anaesthetists and the Royal College of Pathologists. It said:

"We … and the organisations we represent, in advance of the report of the Uyghur Tribunal, express our grave concern regarding the situation in China and the continuing abuse of the Uyghur population … as well as other minorities."

The UN special rapporteurs have continued to raise concerns surrounding organ harvesting from Uighurs in China, which the evidence overwhelmingly suggests continues to this day, with hearts, livers, kidneys and corneas being the most commonly taken.

In January this year, the BMA condemned the appalling involvement of doctors in China in what was a fundamental abuse of human rights and genocide against the Uighurs. It urged Her Majesty's Government to exert pressure on the Chinese Government to stop these inhumane practices and to allow the UN investigators into Xinjiang region. The Minister may wish to comment on the Government's response.

I will leave your Lordships with a quote from Dr Zoe Greaves, chairman of the BMA ethics committee. She said:

"It is a doctor's duty to help improve health and ease suffering, not to inflict it on others. The use of medical science and expertise to commit atrocities is abominable and represents an appalling antithesis to every doctor's pledge to 'first, do no harm'".

3.45 pm

Baroness Northover (LD): My Lords, the noble Lord, Lord Hunt, has introduced Amendments 265 and 282 on this appalling subject extremely effectively and I wish to make clear the support for both those amendments from these Benches. I am also sympathetic to the different but separate Amendment 297H on tissue being retained for research, educational and audit purposes, which would bring legislation in England and Wales into line with that in Scotland and which I am sure the noble Baroness, Lady Finlay, will address shortly.

To return to the issue of human abuse—it is more than the abuse of tissue—this subject has been much debated in your Lordships' House and I pay tribute to the noble Lords, Lord Hunt and Lord Alton, and others for making sure that we do so and for ensuring that step by step we make progress. I also pay tribute to the noble Baroness, Lady Penn, for listening and engaging, for her responsiveness when dealing with the issue and for helping to take it forward in earlier legislation. However, we all know that there is a distance to go.

As the noble Lord, Lord Hunt, said, these amendments seek to protect UK citizens from complicity in forced organ harvesting and organ trafficking. Amendment 282 prohibits UK citizens from travelling to countries for the purpose of organ transplantation. The restrictions are based on ensuring appropriate consent, with no coercion and no financial gain. If appropriate consent is not given, the country supplying the organ must have a legitimate opt-out system in place and must not be considered to be committing genocide, as now determined, as the Government have moved to agree, by resolution of the House of Commons. This will be based on an annual assessment by the Secretary of State.

We cannot say that we do not now know about forced organ harvesting. We also have the reports of both the China Tribunal and Uyghur Tribunal and much other evidence. I pay tribute to the FCDO for engaging in relation to the Uyghur Tribunal. As the noble Lord, Lord Ribeiro, mentioned, UN human rights experts have called on the Chinese Government to allow independent monitoring by international human rights bodies. If China had nothing to hide, it would accede. We have previously debated the conclusions of the China Tribunal and referred briefly to the Uyghur Tribunal. In 2020, the China Tribunal reported:

"Forced organ harvesting has been committed for years throughout China on a significant scale".

As I said, more recently we have had the Uyghur Tribunal reports, which give a lot more detail. A number of countries, including Spain, Italy, Belgium, Norway and Israel, have already taken action to prevent organ tourism to China. We surely must do the same.

Amendment 265 aims to put a stop to real human body exhibitions being put on display in the UK when the cadavers do not have proof of identity or consent, such as those sourced from China. Again, the noble Lord, Lord Hunt, laid this out clearly. Almost a decade and a half ago, exhibitors in New York were forced to add a disclaimer stating that these bodies came from China and could have come from prisons, which clearly rubbished the idea that people had willingly donated their bodies for such displays.

Once again, certain countries, including France and Israel, and certain US cities have banned such body exhibitions from coming into their territories. We have high standards for dealing with human tissue in this country, as noble Lords are aware. Various noble Lords here today, including the noble Lord, Lord Hunt, have played a part in producing those. We need to make sure that we do not become complicit in what happens elsewhere, particularly—as we speak—in China. The noble Lord, Lord Alton, and others have made it crystal clear that we know what happens. I therefore commend these amendments.

Lord Alton of Liverpool (CB): My Lords, I am raising my voice to speak in favour of Amendments 265 and 282. Following the noble Baroness, Lady Northover, and the noble Lords, Lord Ribeiro and Lord Hunt of Kings Heath, I hope that it demonstrates to the Minister that there is widespread concern from all parts of your Lordships' House, especially in support of these amendments. It also gives me the chance to thank the noble Lord, Lord Hunt, for the leadership that he has given on this issue. He has been dogged and focused, insisting that we ensure that this country never becomes complicit in one of the greatest crimes committed against humanity. I join the noble Lord, Lord Ribeiro, in thanking the noble Baroness, Lady Penn—like others, I am pleased to see her back in her usual place. During

the course of the earlier legislation, she was not only receptive in dealing with the issues that we raised, but organised meetings for us at the department with officials. I thought that the attitude that was shown at that time was exemplary and I am grateful to her.

It disturbs me that, although the United Kingdom signed the Council of Europe Convention against Trafficking in Human Organs, unlike 11 other European countries the United Kingdom has not ratified it. I would be grateful if the Minister, when he comes to reply, could say why we have not and whether we have any intentions of doing so. In addition, though, the signature of the United Kingdom has the following reservation:

"In accordance with the provisions of paragraph 3 of Article 10 and paragraph 1 of Article 30 of the Convention, the Government of the United Kingdom reserves the right not to apply the jurisdiction rules laid down in paragraph 1.d and e of Article 10 of the Convention."

Given all that we now know and what has been said in your Lordships' House this afternoon, I wonder whether we are going to persist with that reservation. The reservation means that the United Kingdom does not have to take legislative or other measures to establish jurisdiction over any offence established in accordance with the convention when the offence is committed by a UK national or a habitual resident of the United Kingdom, unless it is within our own territory. Therefore, in short, the reservation means that even if it were to be ratified, it would not prohibit citizens of the United Kingdom from partaking in unethical organ tourism.

Let us not forget why the Human Tissue Act was created in the first place. Thousands of families, some in my former constituency in the city of Liverpool, had devastatingly found their deceased family members, including children, had had their body parts and organs removed and kept in National Health Service facilities without consent. The Liverpool Alder Hey scandal created a public outcry and it was our parliamentary duty to respond and take appropriate legislative action, as we did.

Today, throughout China, forced organ harvesting of prisoners of conscience is taking place. What legislative action are we going to take concerning that? The predominant victims have been Falun Gong practitioners, the Buddhist spiritual meditation group that, at its peak in 1999, had an estimated 100 million adherents in China. The former CCP leader, Jiang Zemin, set up the 610 Office and gave the order to—his word—eradicate Falun Gong. It is believed by many experts that, while young Falun Gong organs gradually became less available over the years, the CCP—the Chinese Communist Party—began to also target Uighurs, as we have heard this afternoon, for forced organ harvesting, with the same torture methods, blood tests and organ scans happening in the Uighur camps as those in the Falun Gong camps. There are also some lines of evidence of Tibetans and Christians in China, referred to by the noble Lord, Lord Hunt, suffering the same fate. I should declare my interest as the vice-chair of the All-Party Parliamentary Group on Uyghurs and as a patron of the Coalition for Genocide Response.

For those who had any doubts about China's state-sanctioned organ harvesting, it is worth noting that as early as 1994 Human Rights Watch reported that

"it has become increasingly evident that executed prisoners are the principal source of supply of body organs for medical transplantation purposes in China",

and that

"executions are even deliberately mishandled to ensure that the prisoners are not yet dead when their organs are removed."

Dr Enver Tohti, a Uighur doctor whom I have personally met and taken statements from, described to me that he had been required to remove organs and ordered to "cut deep and work fast" on a victim who was still alive. The theft of organs has been described as an almost perfect crime, because no one survives. Just this week Dr Tohti was interviewed by the *London Evening Standard*, from which I quote:

"Driven well out of town, he recalls: 'There was a small hut and two surgeons there waiting. They said, "wait here and come around when you hear gun shots". Time passed and I started to hear the noise of people shouting, chanting, whistles blowing, trucks running, then gun shots, many rifles shooting at the same time. So, we got in the van and came around the mountain to find 10 corpses in prisoners' clothes with shaved heads on the left side slope of the mountains.' He was called away from the corpses to the body of another man in civilian clothes and was told 'that is yours', and ordered to remove the liver and kidneys. The man was not dead. 'I had no choice but to harvest the organs,' he said."

It is extraordinary, as we heard from the noble Lord, Lord Hunt, that on this day of all days, when what are now known as the "Genocide Games" are beginning in Beijing, we should be having this timely debate in your Lordships' House. Not since 1936, when the Nazi games were held in Berlin and the world saw Hitler use the Olympics to promote his hideous ideology, and most Jewish German athletes were barred from taking part in the Games, have we seen the Olympic ideal so scandalously debased.

However, forced organ harvesting is just one of many human rights abuses taking place in China. Other noble Lords have referred to Sir Geoffrey Nice's Uyghur Tribunal, which met here in Westminster in Church House. I sat through many of its hearings and, during our recent debate on this Bill concerning genocide and the purchasing of equipment and medical supplies from places such as Xinjiang, I heard harrowing accounts from those who gave evidence to that tribunal. Sir Geoffrey Nice QC—the prosecutor in the Milosevic trials, who knows more about these issues than probably any other living person—and his panel came to the conclusion that what is happening in Xinjiang amounts to genocide. As the noble Baroness, Lady Northover, has said, so has the House of Commons—and, indeed, so has our Foreign Secretary, Liz Truss, who has said "it is a genocide".

Uighurs and other ethnic minorities have suffered torture, rape and forced abortion and sterilisation by the CCP, but the crime does not end there. There is a further twist to this infamy. Anonymous plastinated corpses taken from Chinese prisons have been paraded, as the noble Lord, Lord Hunt, told us earlier, in a carnival of horrors at money-making exhibitions, a final sneering insult to these victims. In 2018, after the exhibition that the noble Lord referred to, I wrote to the *Times*, along with Professor Jo Martin, president of the Royal College of Pathologists, and 55 others. We said:

"We believe that the legislation requires reform."

[Lord Alton of Liverpool]
However, I would go further—here, I agree with the noble Baroness, Lady Thornton, who it is good to see in her place—and ask why on earth we allow these things at all. There should be a complete prohibition by law.

I conclude by returning to the opening ceremony of the Beijing 2022 Winter Olympic Games. The Olympic charter states:

"Olympism seeks to create a way of life based on the joy of effort, the educational value of good example, social responsibility and respect for universal fundamental ethical principles."

The irony of that is beyond belief. This simply should not be acceptable, at least to those corporations and companies that are sponsoring the Games in Beijing, such as Coca-Cola. The China Tribunal stated:

"Governments and any who interact in any substantial way with the"

People's Republic of China

"should now recognise that they are, to the extent revealed above, interacting with a criminal state."

We must do more to stop these human rights abuses. I wholeheartedly support the amendments, which are not country-specific but would serve to close the loopholes in the Human Tissue Act so that the United Kingdom could do its part in preventing collaboration in these appalling crimes.

4 pm

Baroness Finlay of Llandaff (CB): My Lords, I declare my interest as an elected member of the BMA ethics committee, which looked at these issues and was involved in producing the statement quoted earlier by the noble Lord, Lord Ribeiro. I strongly support these amendments and cannot see any reason for anyone not to. They set a basic moral standard. As the noble Lords, Lord Hunt, Lord Alton and Lord Ribeiro, and the noble Baroness, Lady Northover, have laid out, the arguments they have given us are in many ways only the tip of the iceberg. There is so much more than could be said.

Our Human Tissue Authority's guiding principles have a code of practice which has consent, dignity, quality, honesty, and openness as key pillars. These principles should reflect not only how human tissue is sourced from within our own nation but how we treat human tissue and organs from overseas. There is overwhelming evidence now that in China, Falun Gong practitioners and Uighurs, Tibetans and house Christians are being killed on demand for their organs. There is no consent, no dignity and no transparency. Only yesterday I received a letter from a woman whose mother had been a Falun Gong practitioner, and who has been in prison and effectively disappeared. She has no idea where her mother is; she has not heard from her. That is happening all over this population.

I will not repeat the statement that has already been read out, but I just hope that the Government can see that we have a moral obligation to accept these amendments. I hope that they will do so.

Amendment 297H, in my name, is supported by the Royal College of Pathologists. Post-mortem examinations here are subject to careful legislative control and we have the Coroners (Investigations) Regulations 2013, which oversee post-mortems. When a post-mortem happens, it happens without the consent of the next of kin, of course, because there are questions around the cause of death. The coroners' statistics for England and Wales in 2020 show that 79,400 post-mortem examinations were ordered by coroners. A fifth included histology and a quarter included toxicology samples being taken.

When the coroner's work is complete, the tissue samples and any fluids taken—the tissue being in the form of blocks and slides—must be destroyed unless specific consent has been provided by someone in a qualifying relationship. However, consent is logistically very difficult to obtain in practice. The McCracken review of the Human Tissue Act in 2013 recommended that:

"Consideration should be given (inter alia) to reducing the scope so that microscope slide and tissue block samples and bodily products such as saliva, urine, and faeces are excluded".

The Government accepted this recommendation, but the issue has not subsequently progressed.

There are some real difficulties with post-mortems. A post-mortem is effectively a snapshot of the deceased at the point of death. It is only by going back into the clinical records that the pathologist gets some picture of what happened pre-mortem, and many of the other factors. But at the end of the day, it is often subjective in terms of determining the likely cause of death for the report that is then signed off. In Scotland, tissue blocks and slides are deemed to be part of the clinical record and therefore do not have to be destroyed after the procurator fiscal's investigations are complete. However, no whole organs can be retained in Scotland without explicit consent. In the light of Alder Hey, it is important to stress that point.

Changing to a system that reflects Scottish law could be beneficial because it would provide information about the cause of death if new circumstances came to light months or years after an investigation was complete. Indeed, we have recently had the case of the Farquhar family, where the evidence of long-term poisoning probably came to light many years after the person had died. Crucially, forensic deaths can be masked by natural disease processes and storage of tissues and fluids as part of the medical record would help clarify these at a later date when new information came to light. In a way, that is essential for completion of justice.

In addition, genomics research is rapidly developing, so the family may want to access the tissue later on as disease processes become more clarified. Metabolic storage disorders such as Fabry or Gaucher disease have been examples of this.

The tissue blocks from post-mortems are usually larger than the small pieces of tissue in a biopsy from a living person. That is particularly relevant where you want a piece of the heart or the brain, because a large biopsy from a living person would be impossible. There is also a third use of these tissue blocks and slides, which is as teaching material for autopsy pathologists. There is now a real shortage of teaching material, not only for pathologists who are in training but for ongoing audit of pathology processes.

So this amendment would bring the Human Tissue Act in line with the position in the Human Tissue (Scotland) Act 2006, where tissue samples as blocks and slides, but not—I stress not—organs, automatically become part of the person's medical record after a post mortem. Explicit consent to keep them does not have to be sought from a grieving family, but it would allow justice in the long term to be pursued if necessary, and it would allow better development of autopsy pathologists.

Lord Cormack (Con): My Lords, I apologise for missing the first minute—but it was only the first minute—of the splendid speech of the noble Lord, Lord Hunt. I am delighted to add my support to his initiative, most splendidly supported by my noble friend Lord Ribeiro. We entered this House on the very same day and it was very good to hear what he had to say. Of course, the noble Baronesses, Lady Northover and Lady Finlay, and the noble Lord, Lord Alton, all have an impeccable record on these matters.

Earl Howe (Con): I hope that my noble friend will forgive me but, as he was not here at the beginning of the debate, strictly speaking it is not permitted for him to speak. If he could make his remarks brief, I am sure that would be appropriate; I do not want to stop him mid-flow.

Lord Cormack (Con): Well, I certainly was going to make my remarks brief, and I am sorry that I was detained for one minute. I just want to give my wholehearted support to these amendments. There is no more despicable trade than the trade in human organs and no more despicable practices than those that are going on in China at the moment, simultaneously with the opening of the shameful Games. I very much hope that my noble friend, who so politely interrupted me, will be able to give us a very supportive statement when he comes to wind up this debate.

Lord Sentamu (CB): My Lords, I also stand to support Amendments 265 and 282. I am grateful to the noble Lords, Lord Hunt, Lord Ribeiro and Lord Alton, and the noble Baronesses, Lady Northover and Lady Finlay.

I declare an interest as, quite a number of years ago now, I was one of those who signed up to say that, at the moment of death, all my organs will be left to the National Health Service for any scientific work that may be required. I carry a card, but it says that my organs should be kept in this country and not exported anywhere else, because I have no trust that they would not be used for purposes for which they were not intended.

When I was doing philosophy in Cambridge, Professor Williams posed a question. He said "Surprising things happen—that they are no longer surprising. Comment." Noble Lords who have done philosophy will know how complicated that question is.

In Uganda, Idi Amin was known for the people that he feared most. He would cut off their heads, put them in the fridge, and put their organs in another fridge. People did not believe this, and he was overthrown. His treating of the human body like something you simply dispose of was horrific. No wonder a lot of people died under that terrible Government of his when he was in power. What we are being asked is: should the standards in this country also be somehow given over to other countries so that they can learn? But we too have got to be very careful that our standards are as high as the tissue Act says.

We live in a world that is so perilous at times, and where some people may disappear and you never see them. In Uganda, quite a number of leading people disappeared and, up to today, we do not know where they went. The thing is, they would be put in drums of acid and their bodies would be dissolved. Surprising things happen—that they are no longer surprising. May we be so vigilant. These two amendments do the job, so I hope that the Minister when he responds will have heard the urgency in the speeches, but, most of all, in the amendments themselves.

Baroness Thornton (Lab): My Lords, can I say how much I agree with my noble friend Lord Hunt, the noble Baroness, Lady Northover, and the noble Lords, Lord Ribeiro and Lord Alton? They know I have been with them on this journey throughout. I probably would go a bit further than my noble friend Lord Hunt's Amendment 265, because I believe that this country should follow the example of France and ban the exhibition of plasticised cadavers and human body parts.

In 2019, we had an OQ on this, which many noble Lords here today took part in. I said at that time that there is an

"ethical issue at play here"

and that it seemed that the businesses that had

"the exhibitions which use plasticised cadavers and foetuses for supposedly educational purposes could use modern materials and production to create the same exhibits. That begs the question: why use cadavers and human body parts at all? If the answer is that people want to see such things and will pay to do so, I remind noble Lords that people used to flock … to see public executions until 1868."

It is an ethical issue. I am afraid that the noble Baroness answering that debate at the time said that

"the ethical position is not one for government."—[*Official Report*, 27/2/21; cols. 228-29.]

Well, I would say that this debate shows that the ethical position is absolutely one for government.

Earl Howe (Con): My Lords, I begin by thanking the noble Lord, Lord Hunt of Kings Heath, and many other noble Lords for bringing these amendments relating to these important and sensitive issues to the Committee today.

Amendment 265 seeks to prohibit the use of imported bodies or parts of bodies for the purpose of public display without the specific consent of the donor. The Government share the concern motivating Amendment 265 that bodies may in the past have been displayed in public exhibitions without the donors' consent. We therefore committed in this House, during the passage of the Medicines and Medical Devices Act, to address this concern, and have since worked closely with the Human Tissue Authority to strengthen its code of practice on

[EARL HOWE]
public display, which was laid before Parliament last July. The code now guarantees that robust assurances on consent for all donor bodies, including imported bodies, are fully received, assessed and recorded, before the authority issues any licence for public display. The Government therefore do not believe that this amendment is necessary.

4.15 pm

I listened with great attention to the noble Lords, Lord Hunt and Lord Alton, my noble friends Lord Ribeiro and Lord Cormack, the noble Baronesses, Lady Finlay and Lady Northover, and the noble and right reverend Lord, Lord Sentamu, on these grave matters on which they spoke so powerfully. We covered much of that ground in the debate we held on Monday of this week, the details of which have been very clearly noted.

On the specifics of Amendment 282, it is already an offence to arrange or facilitate another person's travel, including travel outside the UK, for the purposes of their exploitation, which includes the supply of organs for reward in any part of the world. The Human Tissue Act also already prohibits the giving of a reward for the supply of, or for an offer to supply, controlled material in any circumstance where a substantial part of the illicit transaction takes place in England, Wales or Northern Ireland. Not only does existing legislation already capture many instances of organ tourism, we are also concerned that this amendment could cause significant unintended consequences as a result of criminalising the recipient of an organ, rather than the supplier and buyer. This amendment creates the risk of vulnerable transplant patients facing the prospect of imprisonment after being misled as to the provenance of their organ.

Finally, we are not convinced that extending existing offences would deter a determined organ tourist. All indications suggest that the scale of organ tourism by UK patients is small. This informs our belief that the best way to tackle it is to continue on the path of improving the rates and outcomes of legitimate organ donations while maintaining the highest standards of care for those in need of an organ. I will write to the noble Lord, Lord Alton, on his questions about the convention, but let me add that we are working with key stakeholders to assess what more can be done about this issue and are committed to informing those in need of an organ transplant of the legal, health and ethical impacts of purchasing an organ overseas. As I noted, our belief is that the best approach is to focus on continuing to increase the availability of legitimately donated organs.

Lord Ribeiro (Con): My Lords, would it be possible to collect data to substantiate what my noble friend has said about the reduction in people going overseas to get organs for transplantation? Can we get some figures to be absolutely clear that the numbers are reducing and not continuing, as some of us fear?

Earl Howe (Con): I expect it is possible to capture some data but, of course, there will always be cases of people going overseas who are invisible to those who collect data, and we can never guard against that.

Lord Alton of Liverpool (CB): I will follow the noble Lord's point. Even though it may be impossible to collect credible data on people leaving who are not going to say they are going overseas to collect organs, when they return—as the noble Lord, Lord Hunt, pointed out—many of them will receive treatment and care inside the National Health Service as a result of having an organ that has not come from within the United Kingdom. That is data that could surely be collected.

Earl Howe (Con): The noble Lord makes a very good point and, if I may, I will investigate the feasibility of doing that and what systems are in place to capture that kind of data.

I am grateful to the noble Baroness, Lady Finlay, for her Amendment 297H, which covers the retention and use of tissues after coroner post-mortem examinations. I of course share the commitment to promoting education and research. However, I am afraid I do not believe that this amendment represents the right approach to supporting this aim. I appreciate that the noble Baroness emphasised that she was referring to blocks, slides and urine samples; the amendment refers to tissue samples. The advice I have received is that it is important that we remain committed to the principle that consent is fundamental to how we treat the remains of the deceased. I remember the passage of the Human Tissue Act; the noble Lord, Lord Alton, was absolutely right in what he said earlier about that. All of us should have a choice about what happens to our bodies after we die, and if we cannot exercise that choice, those close to us should be able to.

Post-mortems can already be distressing to the families of the deceased. Denying them a say as to what happens to the remains of their loved ones will compound that distress—often unnecessarily, as many of the retained tissues will never be put to use.

There are three other defects, as I see them, in the amendment; I am concerned that it would allow tissues to be stored indefinitely; it would allow for an overly broad interpretation of what constitutes a tissue sample —that is, in fact, my main concern; and it does not address the considerable challenge of how to effectively catalogue, audit or access the large amount of new material that would have to be retained.

Having said that, I believe that under the current consent-based model we can and should do more to encourage the active identification of tissues that could serve an important purpose, and to communicate the significance of retaining this tissue to the deceased's family when seeking their consent. I understand the force of what the noble Baroness is trying to achieve and there may be different ways of doing that.

While I am grateful to noble Lords for their amendments in this area, I respectfully ask them to withdraw or not press them at this stage.

Baroness Finlay of Llandaff (CB): Will the Minister undertake that the Government ask the Scottish Government about their experience of retaining tissue blocks and slides? Only tissue blocks and slides—not, I stress, organs—are being retained as part of the clinical record, so that we have some information

about problems that have arisen. Also, given that the Government accepted the McCracken review, how do they then intend to implement that acceptance? If you accept the need to have consent, there has to be a process by which consent is obtained. You cannot ask for consent prior to the post-mortem because the post-mortem is a judicial process.

Earl Howe (Con): I noted that the amendment tabled by the noble Baroness is closely modelled on the current law in Scotland. Because of that, it fails to account for the significant differences between how Scotland, and England, Wales and Northern Ireland, regulate the storage and use of human tissue. In England, Wales and Northern Ireland, that storage and use is regulated by the Human Tissue Authority. In Scotland, there is no equivalent body and the amendment is silent as to what impact it would have on the authority, especially given the challenges involved in managing the great quantity of tissue that would be retained.

I am aware that many Scots share my concerns about consent for retaining tissue. A recent petition to the Scottish Government highlighted the anguish faced by a grieving mother on learning that she did not have the choice to have some of her child's remains returned to her. She was upset at how long it took for those remains even to be located, so although this amendment would apply only to adults the same kind of issues would apply.

Lord Hunt of Kings Heath (Lab): My Lords, it has been a very good debate. First, I say to the noble Baroness, Lady Finlay, that I sympathise with her Amendment 297H, but clearly it is a sensitive area. The noble Lord, Lord Alton, mentioned Alder Hey; I had ministerial responsibility at the time, and it was very traumatic meeting the parents of children who, in the end, had body parts buried up to three times or more because of the dreadful way in which both the hospital and university managed the situation, as well as the pathologist himself. On the other hand, the reasons put forward by the noble Baroness seem very persuasive, and I hope there will be a continuing debate on this with the Government.

As far as my two amendments are concerned, I am very grateful to the noble Lord, Lord Cormack, the noble and right reverend Lord, Lord Sentamu, the noble Baroness, Lady Finlay, and my noble friend Lady Thornton for their support. As the noble Lord, Lord Ribeiro, said, the concession given by the noble Baroness, Lady Penn, on behalf of the Government during discussions on the then Medicines and Medical Devices Bill was highly significant both for this country and for the message it gave globally. The debate today, and the amendments, are as much about global messages as UK legislation.

As the noble Baroness, Lady Northover, said, we cannot say that we do not know; we do know. The noble Lord, Lord Alton, sat through many of the harrowing sessions of the Uyghur Tribunal and the evidence—before a hard-headed panel—is absolutely convincing. There can be no doubt that this is an abhorrent practice and, as my noble friend Lady Thornton said, it may not be on the same scale but these wretched exhibitions that take place are a product of those abhorrent practices. She has persuaded me that my amendment is rather soft and needs to be hardened up. I look forward to her helping me to get the wording right.

The noble Earl, Lord Howe, referred to the HTA code of practice; I think we need to go further than that. On organ tourism, I will obviously study very carefully the issues that he raised about my amendments, but we have the figures from NHS Blood and Transplant: I think 29 people have come to the NHS for help following a transplant abroad, which gives us some clue as to the numbers but clearly it is not the whole picture. At the end of the day, you come back to the issue of ourselves and China. Clearly, there is huge ambiguity in our policy, whether that is to do with security, trade or human rights. Some of that ambiguity is understandable, given the scale and size of the Chinese economy—we understand that—but I do not think there is any room at all for ambiguity about this country making a strong response to these appalling practices. Having said that, I beg leave to withdraw my amendment.

Amendment 265 withdrawn.

Amendment 266 not moved.

Amendment 267

Moved by ***Lord Hunt of Kings Heath***

267: After Clause 148, insert the following new Clause—

"Vaccine damage payments

Within 6 months of the passing of this Act, the Secretary of State must establish an independent judge led review into the operation of the Vaccine Damage Payments Act 1979 and the adequacy of payments offered to persons seriously injured, or bereaved, consequent upon vaccination against any of the specified diseases to which the Act applies."

Member's explanatory statement

The Vaccine Damage Payment Act is now more than 40 years old and the aim of the amendment is to ensure that a judge led review takes place into the operation of the Act.

Lord Hunt of Kings Heath (Lab): My Lords, I will also speak to Amendment 268. I indicate in advance my support for Amendment 288 in the name of the noble Baroness, Lady Cumberlege. The amendments are all linked, in a sense, in trying to find a way of ensuring that patients damaged in one way or another through the National Health Service are dealt with in the most open, transparent and sympathetic way. Each amendment tackles the issue differently but, in the end, there is a sense that we have not got it right and that we need to do very much better.

4.30 pm

I start with Amendment 267, on vaccine damages. I am a strong supporter of the vaccine programme, but the fact is that a small number of individuals have paid the highest personal price for the success of the vaccination programme generally and suffered bereavement or serious injury as a direct consequence of adverse

[Lord Hunt of Kings Heath]
reactions to vaccination. This has been accepted for more than 40 years, which is why the Vaccine Damage Payments Act 1979 was introduced: to provide a safety net for such individuals, and provide a modest ex gratia payment to the injured or bereaved in recognition of the fact that their injuries and losses flowed directly from doing the right thing for the benefit of society. However, that Act is 40 years old and no longer fit for purpose. I have gained much knowledge of it through the work of Sarah Moore, a partner in Hausfeld, and her colleagues because of the briefings they have given me about the experience of families who have been so grievously affected.

What are the problems? The maximum payment is capped at £120,000, which is far too little to provide financial support for families who have suffered the death of a main wage earner. The current scheme requires all eligible applicants in the UK to meet the 60% disablement criteria, but those criteria are antiquated and unfair. Many applicants will have significant injuries. They can be disabled up to the 59% level yet, on the basis of the current scheme, have no access to funds.

The causal connection between certain injuries and Covid vaccination is accepted by clinicians and regulators. Here, despite providing death certificates that identify Covid-19 as a cause of death and medical reports confirming Covid-19 as a cause of injury, the scheme still estimates that it will take more than six months to begin to process claims submitted under the scheme more than 10 months ago. Why? Will the Minister tell the scheme to pull its finger out on this one and start to make payments?

Earlier this year, a multidisciplinary team of experts outlined what a viable and fair Covid-19 vaccination payment scheme could, and should, look like. Writing in the *Lancet*, Fairgrieve and colleagues identified five elements, stating:

"Such a compensation scheme should be based on a no-fault model, with a simple, swift, and accessible procedure, providing a fair and equitable remedy. Compensation should be based on need, and the sums available should be sufficiently high that victims are not tempted to litigate to top-up the award. There should be no arbitrary cap on damages. Proving causation could be facilitated by an expert-led process allowing for identification of situations in which vaccination is linked to a particular adverse effect. The scheme could be funded by a mixture of public and private funds."

Examples of best practice can be drawn from other jurisdictions, including the Norwegian vaccination damage scheme, which has already begun to make payments to those affected. Why can we not do the same?

This issue is not going to disappear any time soon. In relation to Covid, vaccination boosters and any associated adverse effects will be a perennial issue for the Government to deal with, and similarly with other vaccine programmes. Surely the Government accept that the current scheme offers too little too late to too few, such that many of the hundreds of individuals affected have suffered bereavement or life-changing injuries as a result of vaccinations and been left with no financial support. I hope that, at the very least, Ministers will agree to meet some of the families to see at first hand the issues they face.

Turning to my more general amendment on clinical negligence, I am delighted to have the support of the noble and learned Lord, Lord Mackay of Clashfern. He cannot be here but he has kindly put his name to my amendment. He is concerned, as I am, about the rise in the cost of clinical negligence to the NHS, and believes that there is scope to do better.

I am aware of the very recent consultation by the Government on fixed recoverable costs in lower-value clinical negligence claims. This was presented as a key part of the Government's approach to addressing the rising costs of clinical negligence, but it is clearly not the whole answer. We need a much more fundamental review to tackle head-on three related challenges. First, the NHS is imbued with a defensive culture, with a reluctance to be open about mistakes and to apologise when things go wrong. Secondly, mistakes are endlessly repeated, with a systematic failure to learn from them. Thirdly, the reluctance of the NHS to be open about what has happened and the inadequacies of the complaints system mean patients have little recourse but to go down the clinical negligence route.

Over the last 25 years, there have been endless reviews. Looking back to 2003, the then Chief Medical Officer, Sir Liam Donaldson, published a consultation paper called *Making Amends*, which set out proposals for reforming the approach to clinical negligence. He describes how "no-fault" schemes would provide compensation without proving liability in tort, but rejected a comprehensive no-fault compensation system for reasons including that it would lead to a huge increase in costs or provide compensation that might not meet patients' needs. This was then followed by the NHS Redress Act 2006, which was intended to introduce a faster, low-cost admin scheme for settling smaller claims. The legislation was passed but this has never been brought into force. Amendment 297E in the name of the noble Lord, Lord Storey, is highly relevant here.

In 2011, the Health Select Committee in the Commons published a report on complaints and litigation. It concluded that

"'no-fault' compensation schemes may increase the volume of cases seeking compensation from the NHS whilst reducing the compensation available to those most in need".

The committee felt then that

"the existing clinical negligence framework based on qualifying liability in tort offers patients the best opportunity possible for establishing the facts of their case, apportioning responsibility for errors, and being appropriately compensated."

However, the new Health Select Committee is looking at this again, to see how the litigation process could be reformed in the light of its recent inquiry into maternity safety. This found that, too often, the mechanism for awarding compensation, based on proving clinical negligence,

"perpetuated a culture of apportioning blame"

and sees the NHS spend

"increasingly eye-watering amounts of money but prevents lessons being learnt when things go wrong."

What are the prospects of reform? I suspect they are limited in the case of any fundamental change in the current system, since I cannot see this or any Government going down the uncertain and costly

route of a no-fault system or tort-based administrative scheme. That seems to be the inevitable conclusion when one looks at all the efforts that have been made in the past. I think we are left with funding special schemes, such as the one the noble Baroness is putting forward or the vaccine damage schemes, where there is a specific case where the system is failing. In general, instead of looking for the nirvana of a no-fault scheme that we know will never be brought in, we should look at ways in which the current system can be improved.

I am very influenced by a paper produced by Michael Powers and Anthony Barton on clinical negligence litigation reform. I think it is fair, as they point out, that the adversarial system provides a robust, rigorous and independent review of patient care according to clinical norms, being self-funding and free at the point of need, with the defence costs being paid and taken on by the legal firms, rather than the individual. However, there are ways we can improve it.

First, I would start with Section 2(4) of the Law Reform (Personal Injuries) Act 1948, which provides that

"an action for damages for personal injuries … shall be disregarded, in determining the reasonableness of any expenses, the possibility of avoiding those expenses or part of them by taking advantage of facilities available under the National Health Service".

The effect of this provision is to compensate on the basis of private healthcare provision where NHS care is available and often provided. In a recent debate in your Lordships' House on the costs of clinical negligence, the noble and learned Lord, Lord Mackay of Clashfern, argued for the repeal of this, and I agree with him.

Secondly, we have to look searchingly at the performance of NHS Resolution. The Society of Clinical Injury Lawyers has argued that it can reduce costs by making early admission of liability and making or accepting early offers of settlement. This is strongly backed up by Powers and Barton, who have argued that we need to look at how the conduct and cost of litigation can be influenced by the behaviour of lawyers, which is in turn influenced by how they are paid. Claimant lawyers are privately funded; NHS lawyers are publicly funded. Three-quarters of cases are funded by no-win no-fee agreement, and just 1% of cases is funded by legal aid, which imposes commercial discipline and economic prudence. Case selection is clearly critical here: many cases are investigated at no cost to the taxpayer in order to fund a suitable claim.

In contrast, damages are paid by the NHS in 80% of litigated claims—how many of those cases could have been settled without resorting to litigation? We should certainly consider paying NHS lawyers a conditional fee in cases where proceedings are issued because liability is an issue. Surely there should be no reward for failure or incentive to deny, delay or defend behaviour, which is the common experience, I am afraid, in the huge amount of time that it seems to take to settle these claims. We can improve the system in other ways as well.

In conclusion, the current consultation will deal only with a limited aspect of clinical negligence. It is no good thinking that there is some magic solution around the corner, so let us improve the current system but also deal sympathetically with special cases, such as those that the noble Baroness is pointing out and in relation to vaccine damages. We will probably then have a better system that is more fit for purpose, provides more value for money for the taxpayer and, above all, is fairer for patients. I beg to move.

Baroness Cumberlege (Con): My Lords, I have Amendment 288 in this group. I thank the noble Lord, Lord Hunt, for the way that he has introduced this group of amendments; he is quite right that there is a lot of synergy between them.

Before I get to my subject, as it were, I will address litigation. We have been working very hard with NHS England and others to introduce the rapid resolution and redress system—RRR—for maternity services. The damage done to babies costs a huge amount of money. It is very rare, but some of the settlements are now over £10 million per baby, so this issue really needs to be addressed. The noble Lord is right that, when litigation comes in with force, it causes enormous trouble and heartache for those involved in it. We know that, when it is based on clinical negligence, the trouble is that the learning disappears or is suffocated. If we had a system that gave rapid redress and resolution, we would learn so much more from the cases that come to court.

Amendment 288 requires the Secretary of State to bring forward proposals for a redress scheme to help those who have suffered avoidable harm linked to the three medical interventions that were examined in my Independent Medicines and Medical Devices Safety Review: hormone pregnancy tests—the most common of which is Primodos—the epilepsy drug sodium valproate and pelvic mesh, which is used to treat stress urinary incontinence and pelvic organ prolapse.

4.45 pm

I believe that the test of a good and decent society is how it looks after and takes responsibility for those who, through no fault of their own, have suffered and had their lives changed for the worse or completely ruined. A society that turns its back on those people and refuses to listen or help is surely not what we would wish.

I am not speaking about a handful of people. Many thousands have suffered avoidable harm linked to the three products that I mentioned. They have been living with the terrible consequences for years, in some cases decades. The suffering does not go away or get better. All three have caused and are causing avoidable psychological harm. Mesh has undoubtedly caused appalling physical harm. Sodium valproate has caused physical and neurodevelopmental harm. Only last week, the First Do No Harm All-Party Parliamentary Group, which I co-chair with Jeremy Hunt, held a meeting with people affected by mesh, valproate and Primodos about the damaged lives that they and others are having to lead and the kind of help or support that they need but do not receive. Their stories are heartbreaking today and they will be as the years go on, because this does not get any better.

As well as children, we are talking mainly about women, who have been harmed by mesh, many in the prime of life—young, active, healthy, successful women,

[Baroness Cumberlege]
who have had their lives turned upside down and devastated by this product that was implanted in them. They were not told of the risks, but now there is no escape from constant piercing pain. They have restricted mobility. They cannot travel, play with their children or work and their lives have disintegrated.

Women took sodium valproate when pregnant to control their epilepsy unaware that there is a one in two chance of having a damaged baby, born with physical abnormalities and cognitive problems. Many require constant care and will do so for the rest of their lives. These women face the double whammy of suffering the crippling effects of epilepsy while having to look after their disabled children.

Women who took a hormone pregnancy test back in the 1960s and 1970s and went on to have damaged babies are now becoming elderly and for decades have been left with the anguish and constant guilt that it was their fault, even though it was not. As they grow older, they have to care for their adult children, many of whom are dependent on them.

Many of these women and their families receive little or no formal help. Their needs are not adequately met by the healthcare system, the social care system or the benefits system. It would be a scandal—a disgrace—if they lived their lives unable to accept the redress that they deserve.

In the case of these three interventions, there is a moral and ethical responsibility to provide ex gratia payments for the avoidable damage that has occurred. The new clause that I am proposing would provide discretionary payments and each of the three schemes would have tailored eligibility criteria. I do not believe that Ministers need to be concerned by the potential cost of these schemes, because I am not talking about a blank cheque. The schemes can be cash-limited funds. Some of the needs that people have are not costly to meet and, if the funds run out, the Government would then have to decide whether to top them up. They can base that decision on the extent of unmet need at that time.

Payments that the scheme made would not be intended to cover the cost of services already available free of charge, such as healthcare and social security payments. They would be for other needs, the kinds of needs that we heard about at our all-party group last week—for example, the cost of travel to medical appointments, which for many of the people we met is a significant cost burden, or mobility aids, respite breaks, home help or emergency payments where a parent has had to stop work in order to cover the care that is needed. These redress schemes are not in place of litigation nor will they be there to deliver compensation. People should retain the right to take legal action to obtain compensation if they wish.

These people have suffered for years, in some case for decades. They have tried to obtain compensation through the courts. That is time-consuming, costly and very stressful and it has not worked, because the necessary public funding, which was originally promised, was later withdrawn before the court case was decided.

I said that a measure of a decent society is how well it looks after those who have suffered harm, especially where that harm has been avoidable. Having met many hundreds of people who have suffered and having heard from many more, I am clear that help is needed and deserved. People should not be made to wait any longer. I know that my colleagues on the Front Bench are compassionate people. I have met my noble friend Lord Kamall and others. I thank them for their precious time and I know that these issues are understood. On behalf of all those suffering now, I ask my noble friend to consider further and to seek a way by which a responsible Government can alleviate the suffering that has ruined so many lives.

Baroness Hodgson of Abinger (Con): My Lords, I support Amendment 268, to which I have added my name, and thank the noble Lord, Lord Hunt, for moving it so eloquently. I also support the two other amendments in this group.

I declare my interest as chair of ISCAS—the Independent Sector Complaints Adjudication Service—and because I have been involved personally in two clinical negligence situations. The first involved a death. We did not take legal action but tried to get answers. Answers were very difficult to obtain because all the papers that the hospital had disappeared. On the second, we had to take legal action.

Amendment 288 will, as discussed, do exactly what it says on the tin. It will ensure an independent review of the process for handling clinical negligence. The present situation where the only solution is to resort to law to get damages is far from satisfactory. Where a patient sustains damage, as my noble friend Lady Cumberlege so eloquently explained, the impact on them and their family is utterly devastating. In some cases, there is a need to get damages, because the situation means that there are ongoing costs for ongoing care, as we have just heard. They need financial help in these situations. Legal cases can often take years to settle. The one that I helped with took five or six years going over and over what happened, going to endless meetings, going to meetings with the lawyers and chasing the lawyers, who seemed to have dropped it. It was unbelievably stressful. I cannot think that anybody would want to go down that route unless they really had to. For the patient, if they are still alive, or the relatives, it means reliving and reliving the incident on top of coming to terms with the damage that has been inflicted.

Moreover, I understand that the costs of medical negligence have quadrupled in the last 15 years to £2.2 billion in 2020-21, equivalent to 1.5% of the NHS budget. I understand that about 25% of this goes on legal fees. I believe we urgently need to find a better way to deal with these cases, rather than resorting to the law. Not only do long, drawn-out legal wrangles put patients through years of unnecessary stress, but huge legal fees eat into the resources that should be available for front-line care.

An independent review would hopefully be able to examine and deliver a more satisfactory solution for patients and the NHS alike, and I hope the Minister can support this amendment.

Baroness Walmsley (LD): My Lords, I certainly support these three amendments so ably introduced by the noble Lord, Lord Hunt, and the noble Baroness, Lady Cumberlege. The beauty of their presentations is that they not only outlined the terrible suffering that can be caused by the things we are discussing but came up with very reasonable solutions to make the situation better. That is what we always try to do in your Lordships' House.

My noble friend Lord Storey put down Amendment 297E in this group. Because he was unable to make it today, I do not intend to speak to it. I do not think that would be appropriate in case he wishes to bring it back on Report. I think he would be happy to support all three of the other amendments, in particular Amendment 268 from the noble Lord, Lord Hunt.

I was interested to hear the noble Baroness, Lady Hodgson of Abinger, say just now that clinical negligence costs £2.26 billion per year. That is about the same as the whole budget of the Ministry of Justice and, as a result, hardly anybody can get legal aid these days. That is a very good reason why we should look carefully at the performance of NHS Resolution. There is clearly no incentive for the NHS lawyers to get things through quickly, because they are being paid anyway. The fact is that there is no equality of arms; I have said this on this subject before. It should be a principle of justice in this country that there is equality of arms, but in this case there is not—so I very much support the noble Lord, Lord Hunt.

Baroness Wheeler (Lab): My Lords, this is an important group and there is little to add to the expert contributions on the amendments, which have been spoken to so comprehensively. We have always championed the need for patients' voices to be heard and listened to in the care and treatment they receive, and are doing so in pressing for the patient voice to be properly embedded in the new structures established under the Bill.

When appalling safety incidents occur, such as those so graphically spelled out in the *First Do No Harm* report from the noble Baroness, Lady Cumberlege, we need not only to ensure that there are effective systems to make sure that victims receive the care, treatment and proper financial compensation needed but to enable the NHS to acknowledge and learn from what has happened, both to prevent further harm and to promote future patient safety.

In opening this group, my noble friend Lord Hunt made a strong case for an urgent, expert-led review of the 40 year-old Vaccine Damage Payments Act in the light of major developments and growth in vaccine usage and, of course, huge gains in population health and ill-health protection as a result. But the small numbers of individuals and their families who sustain serious injury or adverse reactions to vaccines—now to the fore as a result of the highly successful Covid vaccination programme—need legislative protection and a scheme that is up to date, fit for purpose, properly resourced and based on compensation levels and criteria that fully reflect the needs of today's victims.

I am sure the noble Lord, Lord Storey, would have made an equally strong case for the repeal of the NHS Redress Act, a slightly younger 16 year-old scheme for adverse health incidents, which is out of date and also not fit for purpose.

The noble and learned Lord, Lord Mackay, led an expert and informed debate in Grand Committee last December on the NHS clinical negligence scheme and its ever-escalating costs, which is reflected today in my noble friend Lord Hunt's Amendment 268 and its call for a major review of the scheme, including consideration of the Law Reform (Personal Injuries) Act and repealing its Section 2(4).

5 pm

As the contributions today underlined, the case for urgent review continues to be overwhelming. As my noble friend reminded us, the Commons Health and Social Care Committee is currently undertaking a major review of the scheme, with liability costs in 2021 the equivalent of a staggering 1.5% of the NHS budget, as pointed out today. The review is extensive, covering the legal and systematic changes needed to award compensation to victims of medical harms and how processes can be simplified for claims to be speeded up and patients to receive redress more quickly. It also covers how the current adversarial legal process can be changed and collaboration requirements between legal advisers representing both sides can be strengthened to facilitate earlier constructive engagement between the parties, rather than the current drawn-out, protracted process which causes such frustration and distress to patients and their families. The committee's findings will need to inform and shape the terms of reference of any future overall review of compensation. I look forward to hearing from the Minister how the Government intend to take this forward.

Key to this is looking closely at the work of NHS Resolution, as the amendment stresses. Underlining everything is the importance of the system being able to learn from common failures—medical, procedural, training, managerial, policy or technology. The priority of better safe care must be paramount. That is why the messages of the report of the noble Baroness, Lady Cumberlege, as we have again heard today, are so crucial to today's deliberations. We strongly supported her determination to establish the post of patient safety commissioner. We also support her Amendment 288, which calls for schemes to be established for the care and support of victims who suffered avoidable harm from hormone pregnancy tests, sodium valproate and pelvic meshes. Her work on the rapid redress system provides a way forward in dealing with some of the issues raised by noble Lords. I look forward to the Minister's response.

Earl Howe (Con): My Lords, this has been an important and moving debate. We should recognise that, behind the technical aspects of the topic, there are stories of real harm and life-changing events for people and families.

Amendment 267 would establish an independent judge-led review into the operation of the Vaccine Damage Payments Act 1979. I appreciate the spirit

[Earl Howe]
behind this amendment and agree that we need to ensure the vaccine damage payment scheme works as effectively as possible. We recognise that the scope and scale of the scheme has significantly changed since 1979; it has expanded from the original eight diseases to cover 18 and the payment value has increased from the original value of £10,000 in 1979 to the current level of £120,000.

Most recently, responsibility for the operation of the scheme transferred from the Department for Work and Pensions to the Department of Health and Social Care on 1 November last year. The NHS Business Services Authority has now taken over the operation of the scheme. It is looking to improve the claimant journey on the scheme in three main ways: increasing personalised engagement; reducing response times; and making more general support available to claimants. It has also allocated additional resource to the operation of the scheme. I can tell the noble Lord, Lord Hunt, that the department will further engage with the NHS Business Services Authority to progress service improvements and, in particular, greater digitalisation.

Our focus now must be on completing the transfer of the scheme, getting support to those who are eligible as quickly as possible and improving the claimant experience. Against that background, I am not convinced that an independent review at this stage would support these goals. Indeed, it might risk delaying progress.

I shall just comment on a couple of detailed points made by the noble Lord. The first is on the disablement threshold. The 60% disablement threshold is aligned with the definition of "severe disablement", as per the DWP's industrial injuries disablement benefit. It is not clear that this is a significant barrier to claimants. In 2019 and 2020, just one claim out of 151 was rejected due to the 60% disability threshold not being met. Of course, there is also the option for claimants to appeal the decision.

The noble Lord also expressed concern about the length of time that it was taking to settle claims. NHS Resolution aims to get to the right answer as quickly as possible in every case but, equally, each case has to be considered on its own merits, and it is important that a proper investigation is undertaken. The department keeps NHS Resolution's performance under regular review and is satisfied that its approach to settling claims strikes the right balance in delivering timely resolution. Recent performance on time to resolution has been influenced by the pandemic—that is not meant to be an excuse; it is just a statement of fact—and the need to relieve pressure on front-line NHS staff. To mitigate this, NHS Resolution worked with a range of industry stakeholders to introduce a specific Covid-19 clinical negligence protocol to support the management of claims during this time. This collaborative approach has been widely welcomed in the written evidence to the HSCC inquiry on NHS litigation reform.

On Covid-19 vaccines in particular, clearly, they are new, and establishing a causal relationship between the vaccines and their purported side effects is not a straightforward matter and takes time. So, while we would like to have an accelerated process, it was vital that we did not make assessments before the scientific evidence reached a settled position, to avoid payments being made in error, or those who qualify potentially missing out on payments. The NHSBSA will be writing to claimants when there is an update on their claim, and we appreciate the continued patience of claimants at this difficult time.

I turn now to Amendment 268, also tabled by the noble Lord, Lord Hunt, and supported by my noble friend Lady Hodgson of Abinger. The Government already have robust arrangements for reviewing public bodies such as NHS Resolution. Our assessment is that NHS Resolution is a well-run organisation. The National Audit Office noted in its 2017 report the efficiency gains it has achieved, including significant progress in reducing unnecessary litigation through the use of mediation and alternative dispute resolution. In 2020-21, 74% of claims handled by NHS Resolution were resolved without formal court proceedings. In fact, very few cases—0.3% of litigated claims—actually go to trial. Of the 56 cases that went to trial in 2020-21, NHS Resolution achieved a judgment in favour of the NHS in 38 cases: roughly two-thirds.

I also draw the Committee's attention to the work under way to manage rising clinical negligence costs—a topic very appropriately raised by the noble Lord, Lord Hunt. The department is working intensively with the Ministry of Justice, other government departments and NHS Resolution, and we will publish a consultation to address this issue. An independent review would duplicate this work and, in any case, legislation would not be necessary to establish such a review.

In 2017, the NAO identified the main drivers of the cost rise as, first, compensation payments; secondly, claim volume increases; and, thirdly, legal costs. Since then, the picture has changed: payments for compensation now drive the increase and are growing at rates above inflation. We share the noble Lord's concern that existing legislation may mean that the state pays twice for care. While from our analysis we do not think it is likely to be a significant driver of increasing costs, we remain open to evidence. Furthermore, the Government recently submitted evidence to the Health and Social Care Committee inquiry on NHS litigation reform. We welcome the inquiry and look forward to its recommendations.

Turning to Amendment 288, I thank my noble friend for her and her team's diligence and dedication and the brave testimonies of those who contributed to the Independent Medicines and Medical Devices Safety Review. Anyone who has read that review cannot fail to be moved by the evidence submitted to my noble friend's team. I assure your Lordships that the review has been a powerful call to action. The Government have accepted the majority of the report's nine strategic recommendations and 50 actions for improvement.

I understand my noble friend's point about redress, but, at the same time, I believe it is important that we focus government funds on initiatives that directly improve future safety. For this reason, the Government have already announced that redress schemes will not be established for people affected by hormone pregnancy tests, sodium valproate or pelvic mesh. However, as my noble friend knows, in order to put patient safety

at the heart of the system, we have established—thanks to her recommendation—the new patient safety commissioner. The appointment of the commissioner will put the patient voice at the centre of patient safety and deliver improvements in how the system listens to and responds to concerns raised by patients.

We are also improving the safety of medicines and devices and embracing the new opportunities to reform regulatory frameworks following the UK's departure from the European Union. The Medicines and Medical Devices Act delivers further on our commitments to patient safety, embedding reform and delivering an ambitious programme of improvements for medicines and medical devices.

I hope I have provided at least some assurance and that noble Lords will feel able not to press their amendments.

Baroness Cumberlege (Con): My Lords, I very much welcome my noble friend's response. Of course he is right: we must always look to the future safety of our services. I am really grateful to Ministers and the department for what they have done in response to our report. It is not 100% yet, but we are nearly there, and I thank them for that.

But I am not talking about the future. I am talking about the people who are suffering now as a consequence of the treatment they received, not knowing that it would do them harm. So I ask my noble friend to take this away and think further on it. As I tried to explain, we have devised in the amendment a system that is not, as we said, an open cheque. It is not huge amounts of money; it is not huge numbers of people. It is to help those who are struggling with their lives as a consequence of the harm that has been caused to them. I just ask my noble friend to take this away and think further.

Earl Howe (Con): I appreciate of course my noble friend's remarks, and I undertake to bring them to the attention of my right honourable friend the Secretary of State.

Lord Hunt of Kings Heath (Lab): My Lords, this has been a very good debate, again, and I am grateful to the noble Earl, Lord Howe, for his sympathy. I really support the plea from the noble Baroness, Lady Cumberlege, for more thought to be given to the specific area of redress for the three groups of patients she mentioned. Any of us who have met some of the women involved—I think in particular of the women I have met who have been affected by surgical mesh issues—will be taken with the huge damage that has been done to their lives and well-being. I think they deserve listening to.

I will also say that I was very grateful to the noble Baroness, Lady Hodgson, for her support and for the information she brought to your Lordships, and to the noble Baroness, Lady Walmsley, and my noble friend Lady Wheeler, who pinpointed the need for action in this area.

5.15 pm

In relation to my first amendment, on the vaccine damage scheme, I was very glad to hear what the noble Earl had to say about the improvements coming as a result of the transfer of responsibility to the DHSC, and the work being taken by the NHS Business Services Authority. He did not mention engagement with the patients, and I just wonder if he is prepared to give some kind of commitment that it would be possible for the patient groups to meet officials, the NHS Business Services Authority and a Minister, to just discuss the progress.

This is the second debate that your Lordships' House has had on clinical negligence in the last few weeks. The noble Earl, Lord Howe, gave one of those speeches where he seemed to suggest that, in general, all was well with the world and progress was being made. I think one has to go back to the intervention made by the noble Baroness, Lady Hodgson; unfortunately, experience suggests that in some way we have ended up with a damaged system where, instead of trying to reform what we do, there is always some kind of fantasy ahead that someone will come up with a magical no-fault system that most of us know is not going to happen because the cost would be open-ended. We need to look at how we can improve the current situation. I know what he said about NHS Resolution, and I know he has referred to the NAO report, but the delays in the current system and the failure of the NHS—still—to be open about failure shows that many things are still to be done.

However, having said that, I was hoping I could just tempt the noble Earl to say a little something about how those affected by vaccines—particularly by the Covid vaccine—might be brought into the system of discussing it.

Earl Howe (Con): My Lords, I rather wish it were my noble friend Lord Kamall handling this group because he is the Minister, and I am not. However, what I can do is undertake to bring the request of the noble Lord to his attention—I am sure I do not have to—and I am sure he, in turn, will wish to respond as soon as possible to that request.

Lord Hunt of Kings Heath (Lab): My Lords, I know how generous the noble Lord, Lord Kamall, has been with his time. I can but hope for a sympathetic response and beg leave to withdraw my amendment.

Amendment 267 withdrawn.

Amendments 268 and 269 not moved.

Amendment 270

Moved by ***Lord Faulkner of Worcester***

270: After Clause 148, insert the following new Clause—

"Age of sale for tobacco

(1) The Secretary of State must, no later than six months after this Act is passed, consult on raising the age of sale for tobacco from 18 to 21, and publish a report on the consultation.

(2) The Secretary of State must lay the report before Parliament, and a Minister of the Crown must arrange to make a statement to each House of Parliament setting out in detail any steps which will be taken to implement the findings of the report."

Member's explanatory statement

This new Clause would require the Secretary of State to consult on raising the age of sale for tobacco products to 21 and report to Parliament.

Lord Faulkner of Worcester (Lab): My Lords, I move Amendment 270, and add my support to Amendments 271 to 279 in this group. I have added my name to each of these, and they will be spoken to by noble Lords in all parties in the Chamber and by the noble Baroness, Lady Masham. I pay particular tribute to them for all being present at this late hour on a Friday—but this is an important issue.

We have signed these amendments because we see them as important steps on the journey towards a smoke-free Britain by 2030, which is the aspiration the Government have identified. They are in line with the approach that has been repeatedly taken in your Lordships' House in recent years, to reduce harm caused by tobacco smoking and which has been consistently supported by the noble Earl, Lord Howe, when he was answering for the department of health in earlier debates. His support for tobacco control measures has always been appreciated.

As recently as 14 July, your Lordships approved the Motion to Regret that I tabled, regretting that the draft pavement licences regulations were not revised to take into account the evidence of benefits of 100% smoke-free pavement licences. That was agreed by a majority of 30 in a Division.

The amendments in this group are based on the recommendations in the 2021 report of the All-Party Parliamentary Group on Smoking and Health; I declare an interest as an officer of it. The Public Health Minister in the other place has committed carefully to review these recommendations as she develops the forthcoming tobacco control plan. I suspect that we may hear a little more about that from the noble Earl.

The rationale for Amendment 270 is clear. Raising the age of sale would have a larger impact in reducing smoking rates among young adults than any other single intervention. Experimentation has been found to be rare after the age of 21, so the more we do to prevent exposure and access to tobacco before this age, the more young people we can stop from being locked into a deadly addiction from which they may never escape. Two-thirds of those who try smoking go on to become regular smokers and only a third succeed in quitting during their lifetime, with the remainder at serious risk of smoking-related disease, disability and premature death.

When the age of sale was raised from 16 to 18 in 2007, smoking rates among 16 and 17 year-olds declined by 30%. When the age was raised to 21 in the United States, there was a similar reduction there, which in the UK would equate to 100,000 fewer smokers aged 18 to 20, simply by making it harder for young adults to buy tobacco.

Raising the age of sale would also help to reduce inequalities. Compared with non-smokers aged 18 to 20, smokers in this age group are more likely to be from lower socioeconomic backgrounds. This means that the effect of increasing the age of sale would be particularly beneficial in poorer and more disadvantaged communities. The Government's levelling-up White Paper, published earlier this week, rightly states on page 203:

"Tobacco is still one of the single largest causes of preventable mortality, and smoking rates remain high in some areas of the UK. In 2019, the UK Government set the ambition for England to be Smokefree by 2030. A new Tobacco Control Plan for England is due to be published in 2022, setting out how the UK Government will deliver on this commitment, with a focus on reducing smoking rates in the most disadvantaged areas and groups."

Elsewhere, the White Paper states:

"These and other changes will contribute to narrowing the gap in Healthy Life Expectancy … between local areas where it is highest and lowest by 2030, and increasing Healthy Life Expectancy by five years by 2035".

I hope that, with those very desirable aspirations, the Government may be able to accept these amendments or propose similar ones of their own on Report. These amendments are designed to help them to achieve what they want to do.

Raising the age of sale is simple and inexpensive to implement and enforce, as retailers are already required to check the age of young people trying to purchase tobacco, so it is not an additional regulatory burden. Raising the age to 21 would do more than any other measure to help achieve the Government's ambition of a "smokefree generation" and has already proved effective in the US.

I shall conclude with a brief word on Amendment 271. This requires the Government to prohibit the free distribution of nicotine products to under-18s and to regulate the marketing of any novel nicotine products, not just e-cigarettes. Unsurprisingly, tobacco companies have shown themselves more than willing to exploit this loophole. Free vapes have reportedly been handed out without age checks in cities all around the country. After all, it is not illegal to do so, although it clearly contravenes the spirit of the existing regulations, which set the age of sale at 18. I hope the Minister will agree that the current situation is unacceptable and will take action now to prevent e-cigarettes and other nicotine products being promoted to children. Including all nicotine products, not just e-cigarettes, will ensure that any new nicotine products introduced into the UK in future will be properly regulated from the outset.

I commend all the amendments in this group to the Committee, and remind the Minister that all that Amendment 270 requires at this stage is a consultation and a report back to Parliament. Surely that is not too much to ask for a measure which has majority support among small tobacco retailers as well as the adult population, makes a major contribution to public health and reduces health inequalities. I beg to move.

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): My Lords, the noble Baroness, Lady Masham of Ilton, is taking part remotely and I invite her to speak.

Baroness Masham of Ilton (CB) [V]: My Lords, I support all these amendments but will speak to Amendments 276 and 277, to which my name is attached, requiring health warnings on cigarettes and inserts in cigarette packs containing quitting advice.

My father used to smoke, as very many people did in the war. At the age of 52, he died of coronary thrombosis; I always felt that smoking caused his death. In addition, one of my best friends who smoked died early. At this very time, my housekeeper is in

St James's University Hospital in Leeds receiving treatment for cancer. The other day, she scolded herself for having smoked. Smoking causes serious disability as well as premature death; far too many people have died because of smoking.

I strongly support the Government's Smokefree 2030 ambition. The measures in the amendments will help put us on track; they are well-evidenced, cheap to implement and easy to enforce. Health warnings on cigarette packs have progressively increased in size over time and, most recently, their impact has been enhanced by the removal of colourful banding. Warnings on cigarettes is the logical next step, and it will have particular impact in preventing children and young people starting to smoke. Hundreds of children start smoking every day in the UK. Children are much more likely to have access to individual cigarettes than full packs, meaning that warnings on cigarettes are likely to be particularly effective in preventing youth uptake. This measure has strong public support. Adding health warnings to cigarettes and cigarette papers is a simple measure with minimal cost which would help deliver the Government's Smokefree 2030 ambition.

Amendment 277 would give the Government powers to require that health information messages be inserted in cigarette packs. This is not a novel idea; it has been a legal requirement in Canada since 2000. They are proven to work, and there is already good evidence from Canada on which messages are most effective. If the Government could give an assurance today regarding the increased use of health warning inserts—they already have the power to do this—these amendments might not be necessary and we could save time on Report. If not, Amendments 276 and 277, which are by no means the only measures needed to address this terrible addiction, would be a small and significant step in the right direction. I commend them to the Committee.

Lord Young of Cookham (Con): My Lords, it is a pleasure to follow the noble Baroness, Lady Masham, who spoke in favour of Amendment 276, which replicates a Private Member's Bill I am endeavouring to pilot through Parliament; we will see which of us has the fastest track towards the statute book. It is also a pleasure to follow the noble Lord, Lord Faulkner, who has campaigned against the damage done by tobacco for as long as I have known him, and I agree with every word he said.

I will speak to Amendments 272 to 275, which are in my name but supported by all parties. They apply the polluter pays principle to tobacco manufacturers. In view of the lateness of the hour, I will curtail my remarks as much as I can. The principle that the polluter should pay has been accepted by Conservative Governments for over 30 years, starting with the landfill levy to promote recycling, running through the sugar tax on soft drinks to tackle obesity, and referred to only on Wednesday this week by my noble friend Lord Greenhalgh in the debate on building safety, advocating a levy on the construction industry to finance remediation.

5.30 pm

The Covid-19 pandemic has put enormous pressure on public finances, with severe reductions in the public health budget. But without more resources, the tobacco control plan to deliver the Government's smoke-free ambition by 2030 is unachievable. Making smoking obsolete by 2030 will achieve three of the missions in the Government's levelling up White Paper, referred to by the noble Lord, Lord Faulkner, and published two days ago: to reduce the gap in life expectancy, to reduce that in productivity, and to promote well-being between the top-performing and other areas. However, there was no new investment attached to the White Paper and investment is needed to achieve that ambition.

At current rates of decline, the Smokefree 2030 ambition will not be achieved for our most disadvantaged communities until 2047. Investment is needed to replace the 33% real-terms cut in tobacco control and smoking cessation since 2015-16. Investment in public education campaigns is needed to increase the number of smokers trying to quit and help the stop smoking services triple the success rate when people try. Investment is also needed to crack down on illegal sales and to discourage new smokers from starting to smoke.

The APPG on Smoking and Health, of which I am a vice-chairman, believes the polluter pays principle applies as much, if not more, to the tobacco industry as any other. Tobacco manufacturers make lethal products which have killed 8 million people in the United Kingdom over the last 50 years—that is more than 400 people a day, far more than Covid. To quote the Chief Medical Officer:

> "a small number of companies … make profits from the people who they have addicted in young ages … to something which they know will kill them".

This is an industry that should be made to pay to counter the damage it has done and continues to do, and it has the resources so to do.

The Treasury initially conceded the principle of such a levy, as it consulted on one, but the Government decided not to go ahead because the manufacturers would have simply passed the cost on to consumers. Now we have left the EU, we can prevent that by imposing utility-style price controls and a cap on industry profits rather like the PPRS for medicines. This is a true Brexit dividend—whatever one's views on Brexit.

Calculations carried out for the all-party group have estimated that a levy could raise as much as £700 million a year from the tobacco manufacturers. The devolved Governments would have the ability to opt into this scheme, which could therefore benefit all parts of the UK. Making the manufacturers pay for tobacco control measures is not a new idea; the US has been doing it since 2009. Its model, which we propose here too, is not a tax but a charge allocated to tobacco manufacturers according to their sales volumes.

The policy is popular. The public believe a levy is justified: 77% support manufacturers paying a levy or licence fee to the Government for measures to help smokers quit and prevent young people taking up smoking, with just 6% opposing. Support for a levy is strong across voters of all the main parties, including the Conservative Party, which both the Minister and I represent. In 2019, when the Government announced their Smokefree 2030 ambition, they promised to consider the polluter pays approach to raising funds for tobacco control. It is long past time to do so.

[Lord Young of Cookham]

The amendments are carefully drafted; we are not asking for the immediate introduction of a levy. They require the Government to consult on a statutory scheme and report back to Parliament within six months of the passage of this Act. Going ahead thereafter would reinforce the levelling up White Paper and help the Government secure their ambition for a smoke-free nation. I urge my noble friend to consider this very modest step.

Baroness Northover (LD): My Lords, I have put my name to Amendment 270, which requires the Government to consult on raising the age of sale for tobacco to 21, and which the noble Lord, Lord Faulkner, has just introduced. I also express my support and that of these Benches for all the anti-smoking amendments in this group. My noble friend Lord Rennard will speak on them shortly. Together, these amendments seek to close loopholes, strengthen regulation and provide a mechanism to reinstate vital funding for tobacco control and smoking cessation. Tackling tobacco and the tobacco industry has strong cross-party support, as the noble Earl well knows, having been very much part of that himself over the last 20 years. He will note the number of us speaking to support these amendments, even though only four can sign each one. He will also note the contribution made by his noble friend Lord Young, not only here but in his Private Member's Bill, and he will no doubt note that there are very few voices—possibly one—who tend to speak against such measures.

I welcome the progress that the Department of Health has made in this area, and that of local government, but other parts of government are not always totally aligned. We found that with pavement licences—the noble Earl will remember this—in the now-termed Department for Levelling Up, even though the new White Paper on levelling up has, rightly, as the noble Lord, Lord Faulkner, pointed out, identified addressing health inequalities as vital, and addressing smoking as part of that. Two cities in the north have the highest smoking rates in the country: Kingston upon Hull, at over 22%, and Blackpool, at over 23%. The average in the south-east is just over 12%.

These amendments are designed to help the Government and the Department of Health take forward their very welcome apparent intention for the country to be smoke free by 2030. The Government say they are committed to delivering a smoke-free country by 2030 but keep putting off what they have themselves declared to be the "bold action", promised in 2019, needed to deliver what they said was an "extremely challenging" ambition. The tobacco control plan promised in July 2021 has been delayed again. When will it be published? No doubt "in due course".

Meanwhile, instead of those bold actions, according to a recent leak to the *Sunday Times*, the Secretary of State "plots vaping revolution", by providing e-cigarettes on the NHS. I agree that vaping has a role to play in a comprehensive strategy to end smoking. Vaping doubles people's ability to quit smoking compared with existing nicotine replacement therapy. However, as we know, smoking is highly addictive, and even doubling success means that only a small proportion of smokers who were trying to quit would remain quit at the end of one year. Vaping is not a magic bullet and, although it will increase quitting, it will not prevent youth uptake, as raising the age of sale would, as the noble Lord, Lord Faulkner, has indicated. He set out extremely cogently the evidence for why this measure would be highly effective. I will briefly focus on why it would be proportionate and justified.

The age of 18 is often considered to be the age at which someone acquires all the rights and obligations associated with adulthood. However, this is not the case, and there are several examples of rights or obligations which are acquired earlier or later than the age of 18. Raising the tobacco age of sale to 21 would be consistent with the flexible approach that we apply to other age-restricted activities: those prohibited to under-21s in England include adopting a child, driving a large passenger vehicle, and supervising a learner driver, for example. Thresholds change over time, as demonstrated by the Government's support for a Private Member's Bill, which I welcome, to raise the age of marriage from 16 to 18.

It is now accepted that the late teens through to the early 20s—ages approximately 18 to 26—are a distinct period of life: young adulthood, when young people may still need support and protection. It was the period during which I hoped that my sons would develop what I thought of as a judgment gene—a gene that my daughter seemed to have had from at least the age of four, but they noticeably lacked. For care leavers it was excellent, for example, when in recent years social care was extended from 18 to 25. That had long been needed.

As we know, smoking is highly addictive and uniquely harmful, and an addiction which, if not begun by the age of 21, is very unlikely to happen at all. Tobacco is the only legal consumer product which kills when used as intended, causing the death of more than 200 people a day in the UK. This means that a unique response is required to minimise the burden of preventable death and disease that smoking inflicts. The evidence is surely sufficient to proceed with raising the age of sale, therefore this amendment is simply a modest proposal requiring the Government to consult. I commend this proposal and the other amendments in this group.

Baroness Finlay of Llandaff (CB): My Lords, it is a great pleasure to follow the noble Baroness, Lady Northover, because I would like to pick up almost where she ended, on raising the age for the sale of tobacco. That measure has been successfully implemented in the United States, where smoking among 18 to 20 year-olds has been reduced by nearly a third as a result, so I support Amendment 270.

On Amendment 271, which affects the sale of nicotine products to children, it is rather horrifying to realise that it is not illegal for free samples of e-cigarettes to be given out to those under 18, even though it is illegal for them to be sold to those under 18. Amendment 271 would cover this. It would also cover the novel nicotine products, such as Japan Tobacco International's widely advertised nicotine pouches—I do not particularly want to use their name because I do not want to advertise them. Unlike e-cigarettes, the marketing of these products is currently completely unregulated,

despite the high levels of nicotine, which is an addictive substance. A quick search on the internet to look at the questions around them reveals that it is admitted that they are highly addictive, that they could affect the development of the brain and that they could result in mood changes in the user as well, possibly making them emotionally volatile. These are loopholes in the law, which can easily be fixed by our Amendment 271.

In Amendment 278, the noble Lord, Lord Rennard, seeks to ban all flavours in smoked tobacco. Again, this is another gaping legislative loophole which has allowed tobacco manufacturers to flout the current flavour ban.

I have led on Amendment 279, which relates to the packaging and labelling of nicotine products such as e-cigarettes. A cursory search online for these reveals that widely available electronic cigarette e-liquids feature cartoon characters in garish, appealing colours, with child-friendly descriptors, including sweet names such as gummy bears. Such branding is clearly unacceptable; it is targeted at the young. It is therefore deeply disappointing to discover that an amendment giving the Government powers by regulation to prohibit child-friendly packaging was voted down by them in the other place. The Minister said then that the Government

"are committed to ensuring that our regulatory framework continues to protect young people and non-smokers from using e-cigarettes."—[*Official Report*, Commons, 22/11/21; col. 88.]

The Government can prove their commitment by supporting Amendment 279, which requires the Secretary of State to consult and report to Parliament on e-cigarette packaging, in particular the branding elements designed to be attractive to children.

Lord Naseby (Con): My Lords, I have never smoked and I have no wish to smoke, but I am a marketing man by profession. We have here a legal product, the consumption of which has been steadily falling, particularly in recent years, in every age group throughout the country.

5.45 pm

Amendment 270 suggests that the minimum age should be raised from 18 to 21. People at 18 are adults, not children. Those young adults can make a decision one way or the other. They cannot be dictated to by their parents or grandparents—I have a granddaughter who is 17 and one who is 16. As young people, they are well able to make an evaluation of the pros and cons of all sorts of things—not least alcohol, which we discussed, or half-discussed, earlier today. Frankly, it is up to them to be free to make their decision. If we raise the age to 21, it will not change the demand for the product at all. All that will happen is that 18 to 21 year-olds will go and find a way of purchasing it, legally or illegally, and if it has to be illegal then it will be the smugglers who benefit from it.

I can admit—though this is not on the smoking front—that, along with about 10 other young men, I was on a NATO course to learn to fly in Canada in the mid-1950s. You could not drink alcohol in Canada if you were under 21. Thankfully, one of us—not myself—was 21, so he was able to buy all the alcohol and the other three of us in my small group who were aged 18 consumed it. That is exactly the same as what would happen in this situation so, frankly, it is quite a daft idea altogether.

On the levy side, I am surprised that my noble friend the Minister did not mention the negotiations that were conducted with the Treasury in 2015 over the design of a levy on tobacco manufacturers' profits. On that date, not so very long ago, the Government concluded that it would be unworkable, so they decided not to introduce it. I am even more surprised that my noble friend, who is usually well-briefed on these matters, did not know that on 10 January 2022 the Exchequer Secretary confirmed, in correspondence to the shadow Exchequer Secretary, that she

"can confirm that our position regarding the 2015 consultation stands. A levy would be a complex and costly way of raising money to fund tobacco control measures and would be unlikely to provide a stable revenue stream."

I would add that the tobacco manufacturers themselves have not stood still; they have worked long and hard and put millions of pounds into finding alternative products. One thinks of e-cigarettes, the nicotine pouches that have been mentioned and heated tobacco products. Further taxes on manufacturers would actually reduce those levels of investment and slow down that change.

In my judgment, the introduction of a levy would only represent a further punitive tax on a legitimate product. What signal would that send to other companies and markets that have legal products—that all of a sudden a levy can appear? That is not going to help investment in the UK one iota. It is extraordinary to me that we have these existing taxes on tobacco products that are among the highest in the world, accounting for over 90% of the price of cigarettes. According to the most recent HMRC figures, the Government themselves collect £12.5 billion in excise and VAT from tobacco products.

Finally, on packaging, a number of noble Lords know that I spent 15 years of my life in advertising. I know a bit about packaging and, in my judgment, there is an enormous awareness today from all people about the risks associated with smoking. There are already significant health warnings. I nipped into my local CTN this morning to double-check exactly what is available for the consumer to see. It is all hidden away. Add to that the significant health warnings on the tobacco product packaging itself. That is a powerful tool—far more powerful than the bizarre idea that you could write on the side of a cigarette and communicate from that, not least because it will be burned away pretty quickly, long before you had even read it. It is totally bizarre.

We have an industry that, along with other industries, is harmful to people to some degree, but we are talking about adults. In our society, adults can choose what they do. I do not gamble, but I am quite sure that some Members of this House do. That is equally addictive and is taxed. We should tread very carefully in treating our adults of 18 as if they were young children.

Lord Rennard (LD): My Lords, for decades, all the various weak arguments associated with the tobacco industry, opposing tobacco regulation, have been

[Lord Rennard]
comprehensively and completely disproved by the effectiveness of that regulation at reducing the prevalence of smoking rates. Tonight, we will argue why we need to go further with measures of tobacco regulation to further reduce the prevalence of tobacco smoking. I will speak briefly on Amendments 276, 277 and 278.

It is topical that, this week, mission seven of the Government's *Levelling Up* White Paper committed

"to narrowing the gap in Healthy Life Expectancy … between local areas where it is highest and lowest by 2030".

As Ministers regularly acknowledge, half of that gap is down to smoking, so real commitment to levelling up means that immediate action must be taken on these issues.

The tobacco-related amendments in this group will assist the Government in their stated aim to reduce the prevalence of tobacco smoking to below 5% by 2030. Amendment 276 requires the Secretary of State to introduce health warnings on cigarette sticks and rolling papers, in addition to the existing pack warnings. The claim that there is not yet sufficient evidence to justify the policy is a very weak excuse for inaction, and similar claims were made before the introduction of health warnings on cigarette packs. That is why the tobacco industry opposed them so strongly. These warnings on the packs are proven to be effective in reducing the prevalence of smoking tobacco, saving the lives of some of the people who were addicted to tobacco.

What is effective on the pack must be effective on the product, and 29 different studies have concluded that this would be the case. Other countries are considering this measure, and there is no reason why this country should not again lead the way.

Amendment 277 requires the Secretary of State to mandate pack inserts advising smokers about how to quit, and we know that very many smokers do want to quit. When the Government announced their smoke-free ambition in 2019, they said they believed that there was a "positive role" for such inserts, which they would consider as part of their review of regulations on exiting the EU. But the Government have inexcusably held back so far, making the lame excuse that

"further research"

is supposedly required to

"establish the public health benefit"—[*Official Report*, Commons, Health and Care Bill Committee, 28/10/21; col. 813.]

before proceeding.

The best research would be to introduce the inserts—at worst a harmless policy and something the tobacco companies could easily pay for from the huge profits they make from shortening the lives of half their customers. As the noble Baroness, Lady Masham, said, pack inserts have been mandatory in Canada for two decades. They have been shown to enhance motivation to quit, increase quit attempts and sustain quitting tobacco.

Amendment 278 would close a loophole in current legislation. In May 2020, it was rightly recognised that menthol can hide the harsh taste of tobacco and make cigarettes easier to smoke and more appealing to children; that is why it was banned. However, a massive loophole allowed flavouring to continue. The Government's response on this issue in the other place was that

"it is not clear how a ban on flavours would be enforced in practice, as it would include a ban on flavours that do not give a noticeable flavour to the product."—[*Official Report*, Commons, Health and Care Bill Committee, 28/10/21; col. 815.]

However, this has not been a problem in either the Canadian provinces or our European neighbours, such as Germany and Finland, which have successfully implemented a complete ban on flavourings.

In the year after the ban on menthol cigarettes came into force, Japan Tobacco made more than £90 million in profits from selling 100 million packs of its so-called "menthol reimagined" brands, which, it argued, were entirely legal. The loophole must be closed. I hope that the Minister will confirm that the Government plan urgently to step up a gear on tobacco regulation and support the tobacco-related amendments in this group.

Lord Moylan (Con): My Lords, I am aware that, in your Lordships' House, any lack of zeal for persecuting smokers marks one out as an aberration, but some realism has to be brought to this debate. It is my understanding that the Government will rightly resist these amendments so, in the interest of brevity, I will leave it to my noble friend the Minister to give a detailed rebuttal of each of them. However, I have a few things to say.

Unless smoking tobacco is made illegal, which would only bring with it all the organised-crime consequences associated with illegal drugs, the UK will not be smoke-free by 2030 or any other foreseeable date. There is likely to be an irreducible demand for smoking among both a small core of regular smokers and a wider population of people who enjoy the occasional cigarette. A sensible policy would recognise this and seek to accommodate it. There are widely understood risks to health associated with smoking, of course, but, as we have heard in this Committee, so there are with fat, salt, sugar and even fluoride. Despite all that, we have the constant efforts of well-funded zealots to bully and humiliate smokers and place burdens in the path of businesses engaged in the manufacture and distribution of this lawful leisure product.

Each of these amendments falls into one of those categories in one way or another, despite the smoothly expressed words of those who tabled them about increasing public information and the like. The public are already better informed about the risks of smoking than about almost any other topic. The UK is already highly regarded globally for its success in reducing the number of smokers. Those who wish to give up smoking deserve some modest help from public authorities, I agree, but they can be helped in other ways—for example, by diverting into products with much lower health risks. However, the campaigners against smoking cigarettes have been almost as determined to kill vaping as an alternative—although, as was indicated by the speech of the noble Baroness, Lady Northover, even public health officials are now beginning to question whether the initial blanket opposition to vaping is preventing some people making the transition from smoking cigarettes.

A similar question arises now as non-combustible tobacco products increasingly come on to the market. These contain tobacco but it is not heated to the point of combustion, although they still deliver nicotine to the user. Most of the harmful effects of smoking come not from the nicotine as such but from the smoke. Non-combustible tobacco products do not give rise to any smoke. The Government should be able to say, and make clear in their tobacco control policy, whether there should not be distinct regulations covering, separately, combustible and non-combustible tobacco products. I hope that my noble friend the Minister will be able to assure me that this will be so on sound public health grounds.

6 pm

Lord Crisp (CB): My Lords, I imagine that your Lordships' House and Parliament generally very often have a choice in terms of the rightful tensions between, on one level, supporting freedom of action and speech and, on the other, balancing that against harms to individuals and society as a whole from smoking. I know that I am on the latter side of the argument in this case.

It is also worth noting that this is not about just the risk that comes from smoking—risk comes from many sources—but rather the scale of the risk and the impact that it has across the whole of the health system. Despite everything else that has been said about public health, it is worth remembering that this is the biggest risk and that half of the difference in life expectancy between people in poorer neighbourhoods and those in richer ones is due to smoking. That scale is the issue that we are talking about.

I was pleased to add my name to the four polluter pays amendments led by the noble Lord, Lord Young. On the notion that a payment or levy based on income—not a tax—will be used for reducing smoking, providing smoking cessation clinics and improving public health, I believe that this is a different arrangement from that consulted on by the Government in 2015.

I will make several other quick points that very much fit in with what has been said. First, this is about what the Government need to do if they are going to level up under the ambitious plans that were set out only yesterday for delivering improvements in life expectancy and the differences in life expectancy around the country—that is really important, and something will need to be done about smoking if those plans are going to be achieved.

Secondly, this is also about poverty: the average smoker spends £2,000 a year on smoking, and some new research suggests that this leads something like half a million households around the country into poverty. I have not studied that, so I only say "suggests", but it seems to me to be an important point.

Thirdly, perhaps at one level, this started off for people as a lifestyle choice, but it is actually an addiction. I speak as a former smoker who made an enormous effort to give up. The average number of attempts before you give up is around 30, but I think that I probably exceeded that, and I can tell you the day on which I finally succeeded. It is an addiction, and this whole business runs on addiction—not on the occasional cigarette or the cigar at Christmas—and we should never forget that.

Fourthly, I ask whether the polluter paying is right in principle or just pragmatic. In a sense, it does not really matter: it is pragmatic. Over the last five years, NHS smoking cessation treatment services have been cut: about £23 million a year was spent on such campaigns, but now it is less than £2 million. There is not a lot of money around at the moment, obviously, and this seems a very pragmatic solution for finding money to support smoking cessation services—in addition to the fact that I would see it as being right in principle.

Finally, there is real evidence that those smoking cessation services work. Therefore, it would be money well invested in the future health of our nation.

Baroness Merron (Lab): My Lords, this has been an interesting debate, and we have heard various views. I thank my noble friend Lord Faulkner for leading on this group of amendments, and I thank noble Lords for putting forward their amendments and views so that we can explore how we respond to the challenge of smoking.

My first point leads on very neatly from the comments of the noble Lord, Lord Crisp. Smoking remains the leading preventable cause of premature death. As the noble Lord observed, it is a matter where we should consider the scale of the effect and the fact that this is about addiction. It is not about free choice but is something that we must assist people to overcome. While rates are indeed at record low levels, there are still more than 6 million smokers in England, and the need to reduce this number is particularly important now, as smokers are more at risk of serious illness from Covid.

The economic and health benefits of a smoke-free 2030 would be felt most keenly among the most disadvantaged. However, as we heard from the noble Lord, Lord Young, at current rates we will miss this target by seven years on average, and by at least double that amount for the poorest groups in our society. So it is vital that we motivate more smokers to quit while reducing the number of children and young people who start to smoke.

Within this group of amendments, noble Lords have suggested a broad raft of anti-smoking measures, including information inserts and warnings printed on rolling papers, a consultation on raising the age of sale to 21 and a "polluter pays" approach which argues that tobacco companies should pay for smoker treatment programmes. All these measures can be underpinned by broad cross-party support and public support. Certainly, the All-Party Group on Smoking and Health is very supportive of this group of amendments.

The pandemic has posed new challenges to us, and there is a new group of people who started smoking but who otherwise would not have done so. We have been promised a new tobacco control plan, and I hope that the Minister tells your Lordships' House when we can expect it. The labelling and information interventions contained within this group of amendments have a strong evidence base from other countries, as well as from research in the UK. I hope that the Minister will be amenable to them.

[Baroness Merron]

Picking up on a few of the points raised within this group, it is very shocking to note that more than 200,000 11 to 17 year-olds who have never smoked previously have tried vaping this year. It is a very strange situation that e-cigarettes and similar products can be given free to somebody under 18 but they cannot be sold to them. We do not want to see a situation where young people are brought to smoking by smoking substitutes.

In reference to the amendment that proposes a United States-style "polluter pays" model to fund all these interventions, including the restoration of lost smoking-cessation services, the noble Lord, Lord Young, described practical ways in which this could come about. Certainly, the Minister in the other place did not close the door to this idea in Committee. I hope that we will hear from the Minister some agreement towards this.

Amendment 270 promotes a consultation on raising the age of sale, because we know that the older a person gets, the less likely they are to start smoking. If this is to happen, it requires proper consultation with relevant stakeholders, not least young people themselves, including those who are underage. It must be rigorous in checking what will work. Attitudes to the incidence of smoking have changed over the years, but the direction now is firmly one way, and that is to prevent ill health and premature death. This group of amendments contains proposals to keep us moving in this direction, to assist those who smoke and to prevent those who seek to smoke, particularly those at the younger end of the scale. I hope that this group of amendments will find favour with the Minister.

Earl Howe (Con): My Lords, I am grateful to the noble Lord, Lord Faulkner, and other noble Lords for bringing this discussion on tobacco control before the Committee today. In responding to these amendments, I begin by emphasising the Government's commitment to the smoke-free agenda. Over the past two decades, successive Governments have successfully introduced a strong range of public health interventions and regulatory reforms to help smokers quit and protect future generations from using tobacco. Our reforms have included raising the age of sale of tobacco from 16 to 18, the introduction of a tobacco display ban, standardised packaging for tobacco products and a ban on smoking in cars with children.

The Government are committed to making this country smoke free by 2030, and we will outline our plans in a new tobacco control plan to be published later this year. As part of our Smokefree 2030 programme of work, I am pleased to announce that we have launched an independent review into smoking. The review, led by Javed Khan OBE, will make a set of focused policy and regulatory recommendations to government on the most impactful interventions to reduce the uptake of smoking and support people to stop smoking for good. I am sure he will consider many of the policies raised by noble Lords in today's debate as part of his review, which is expected to report in late April.

The action I consider vital for the Government is to conduct research and build a robust evidence base before bringing any additional measures forward, such as those outlined in Amendment 276, which would impose a duty on the Secretary of State to make regulations requiring tobacco manufacturers to print health warnings on individual cigarettes and rolling papers. This evidence-base principle also applies before raising a proposal, even through a consultation such as that outlined in the requirement in Amendment 270 to consult on raising the age of sale.

Several amendments that have been put forward by noble Lords are not required, because relevant legislation is already in place. For example, legislation is already in place that prohibits the sale of tobacco and e-cigarettes to under-18s, including proxy sales, as outlined in Amendment 271, and provision to enable this to be extended to all nicotine products. While we support proposals further to protect young people from these products, we do not have the evidence base at present to suggest that free distribution is a widespread problem. We challenged the industry on this, and it claimed that it is targeting only smokers who are over 18 when it gives free samples. Whatever one may say about that, there would undoubtedly be reputational damage to businesses if they did give out samples to minors. I am sure that evidence in this area will be gratefully received by the department.

When looking at further regulation of e-cigarettes, we need to assess which policies provide us with the best opportunities to reach our bold Smokefree 2030 ambition. Once we have fully considered the evidence, the most ambitious policies will be included in a new tobacco control plan. I do not in the least intend to sound complacent, but it is worth noting that in 2018 regular use of e-cigarettes among 11 to 15 year-olds remained very low, at 2%.

The noble Baroness, Lady Finlay, referred to nicotine pouches. There are existing powers in the Children and Families Act 2014 which allow us to extend the age-of-sale restrictions to include any nicotine products, such as nicotine pouches, so the proposed new clause is not strictly needed in relation to sales.

We recognise the need to address disparities in smoking across the country and we are committed to helping people quit smoking and to levelling up outcomes, as referenced in the recent levelling-up White Paper. There is already a lot of good work going on within both the NHS and local authorities in this area, but it is a theme that we will be developing in our tobacco control plan.

6.15 pm

There is already legislation in place under the Children and Families Act 2014 which would cover introducing a requirement for manufacturers to insert leaflets containing health information inside cigarette packaging. Inserts could be required for public health messaging through amendments to the Standardised Packaging of Tobacco Products Regulations 2015—the SPOT regulations, for short. The current SPOT regulations prohibit the use of inserts as, during their development, there was limited evidence that placing public health messaging inserts inside cigarette packets was more

effective than messaging on the outside of packs. As noble Lords may be aware, the Government have a statutory duty to undertake a post-implementation review of the SPOT regulations to assess whether they have met their objectives. This is currently in progress and we will publish the report of the review as soon as possible.

Amendments 272 to 275, relating to the regulation of prices and the profits of tobacco manufacturers and importers, are a matter for Her Majesty's Treasury, given that they relate to taxation. As my noble friend Lord Young is aware, the tobacco industry is already required to make a contribution to public finances through tobacco duty, VAT and corporation tax, and we have kept tobacco taxation high as a means to help smokers quit. The Department for Health and Social Care will, along with other interested departments, such as Her Majesty's Treasury, continue to consider and review the most effective regulatory means of making the industry pay for the harm its products cause our population.

Amendment 278 would impose a duty on the Secretary of State to make regulations, no later than six months after the Bill has passed, to change the current flavour ban, which is based on characterising flavours in cigarettes and hand-rolling tobacco, to one based on all flavours for all tobacco products, as well as accessories used to flavour tobacco products. Through the Tobacco and Related Product Regulations 2016, we have already banned characterising flavours in cigarettes and hand-rolling tobacco. This means flavours that are noticeable before or during smoking the product. While the Government are sympathetic to the aims of this amendment, I come back to the issue of evidence. We will need to review the evidence on why banning flavours is better than the current characterising flavours regulations, taking into account the enforcement costs. The Government are also in the process of a post-implementation review on the Tobacco and Related Products Regulations 2016 and will publish our response soon.

Amendment 279 would impose a duty on the Secretary of State to consult on the retail packaging and labelling of electronic cigarettes and other novel nicotine products no later than six months after the Bill has passed. While we are committed to ensuring our regulatory framework continues to protect young people and non-smokers from using e-cigarettes, the latest data from the 2021 ASH YouGov Smokefree youth GB survey suggests that the regular use of e-cigarettes by young people remains low. Again, the post-implementation reviews currently under way for both the Tobacco and Related Products Regulations 2016 and the SPOT regulations will be published soon, and we await their outcomes to see if they have found concerns with the current regulatory framework. The independent review work may also identify policy proposals to protect youth from e-cigarettes and other novel nicotine products, and we await the outcome of this.

I hope I have been able to convince the Committee that, while we are sympathetic to the aims of many of these amendments, we will need to review the evidence of public health benefits from the measures and costs to business before bringing forward legislation in this area. The Government are committed to a smoke-free country by 2030. As I mentioned earlier, the independent review led by Javed Khan OBE will identify to the Government the most impactful interventions to reduce the uptake of smoking and support people to stop smoking. As I said, we will outline those plans in our new tobacco control plan to be published later this year. Against that background, I ask noble Lords to consider withdrawing or not moving their amendments.

Lord Faulkner of Worcester (Lab): My Lords, it has been a fascinating debate, which has taken a little over an hour. I thank all noble Lords who have taken part, particularly those who signed the succession of amendments we have been debating. We have heard marvellous speeches from each of them. A huge number of points have been made, which we need to take away and consider in terms of what we should do with amendments such as these on Report.

I am encouraged by the tone and content of the Minister's reply. I am particularly pleased that he did not close the door on the possibility of some form of polluter pays levy on the industry. I shall read what he said quite carefully, but that is certainly how it appeared to me. The commitment to be smoke-free by 2030 is still there, but I think we all take the view that, if we are going to reach that target, we must do more now or we will miss it. The key to that is doing something about the problem of smoking among poorer people in more deprived parts of the country.

To argue that this is just another product that people can choose whether to start or stop is complete nonsense, as all the evidence has demonstrated over the years. Apart from the fact, as the noble Baroness, Lady Northover, pointed out, that it is the only product which kills a high proportion of its users if they follow the instructions exactly as set out by the manufacturers—that is not the case for gambling, incidentally, which can be dangerous but does not cause people to die in the way that tobacco smoking does—the point about the tobacco industry is that we are not dealing with a normal industry with normal ethics or morality.

That is why the Framework Convention on Tobacco Control was adopted by the United Nations in 2005. It is a supranational agreement that seeks

"to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke"

by enacting a set of universal standards, stating the dangers of tobacco and limiting its use in all forms worldwide. We have done well in following the framework convention; it is important that we follow it in engaging with the industry, which is utterly unscrupulous, as anyone who has had any exposure to it over the years will know. It denied that smoking was dangerous or caused disease, then it denied that nicotine was addictive, then it denied that second-hand smoke was dangerous, and now it is saying that it is just another product.

These are important issues which need to be looked at and addressed. I take comfort from what the Minister has said. I shall read very carefully what he and other noble Lords have said in this debate but, for the moment, I beg leave to withdraw the amendment.

Amendment 270 withdrawn.

Amendments 271 to 282 not moved.

Amendment 283

Moved by ***Baroness Cumberlege***

283: After Clause 148, insert the following new Clause—

"GMC register: interests

In section 2 of the Medical Act 1982, after subsection (4) insert—

"(5) The register shall include a list of financial and non-pecuniary interests for medical practitioners, as well as their clinical interests and their recognised and accredited specialisms.""

Member's explanatory statement

This amendment requires the General Medical Council to include the financial and non-pecuniary interests of medical practitioners on its register.

Baroness Cumberlege (Con): My Lords, I am delighted that the noble Baroness, Lady Finlay, is supporting me. She is a clinician of distinction and a palliative doctor, but so much else besides. She will know as well as any of us—those of us who are not doctors—that one thing is at the heart of good, safe care: trust. As patients, we place our trust in our doctors. We trust them to use their skills and knowledge to treat us, to cure us and to keep us healthy to live our lives. We trust our doctors with our bodies, our minds and our lives. That brings great power and great responsibility. Doctors must make decisions and take actions in our interests; that is what we trust them to do. We know that trust is fragile. It is said that trust arrives on foot but leaves on horseback.

Noble Lords who were in the Chamber for the debate on Amendment 288 will know the context of the Independent Medicines and Medical Devices Safety Review, which I chaired. The people—the children—who were harmed placed their trust in their doctors and the wider healthcare system. They were let down. The lives of many have been turned upside down as a result of the harm they suffered. One woman who had been terribly harmed by a pelvic mesh implant told us:

"As patients, we allow the medical profession access to our bodies, our thoughts and our lifestyles. All manner of information to better assist them in reaching decisions about the best course of treatment for us. We, the patients deserve the same, we should be aware of clinicians' allegiances or involvements whether they be financial or other. So we too can reach informed decisions about who is best to treat us, and how they should treat us."

Doctors do wonderful work, often in extremely difficult circumstances. Decisions they make are not always perfect—they cannot be; we know and accept that—but must always be led by the best interests of the person who is their patient, not by external factors and commercial interests.

Amendment 283 would require the General Medical Council to expand its register of doctors to include their financial and non-pecuniary interests, as well as their particular clinical interests and their recognised unaccredited specialisms. In doing so, it would implement one of the nine major recommendations we made in our review.

The concept of declaring interests is hardly new, not least to all of us in this place. We know that it is important. It brings transparency and accountability, and the public have a right to know. Who in a position of responsibility can have a clearer, more significant impact on someone's life and well-being than a doctor or a surgeon? Maintaining information about doctors' clinical interests and specialisms is a vital foundation of patient safety.

I was pleased that, in their response to the recommendations of the Paterson inquiry, the Government committed in principle to creating a single repository of the whole clinical practice of consultants across England, setting out their practising privileges and other clinical consultant performance data—for example, how many times a consultant has performed a particular procedure and how recently. This information should be accessible and understandable to the public. It should be mandated for use by managers and healthcare professionals in both the NHS and the independent sector. It would be a way of measuring outcomes and ensuring safety and quality. For all these reasons, we urgently need a register.

I have been extremely encouraged that the leading journal for doctors, the *British Medical Journal*, is in full support. It has written extensively about it. Its editor has spoken expertly on the subject at a meeting of the First Do No Harm All-Party Parliamentary Group. The *BMJ* found that current reporting of interests, which is meant to be done locally and held by employers, is at best patchy. Many hospitals do not keep the information and, when they do, it is hard to find and may be out of date.

We need a central register, one that is easily accessible and complete. The General Medical Council already holds the register of qualified doctors. Adding their financial interests to the register is not difficult; it can be done via the annual appraisal. Every doctor must undertake an annual appraisal to maintain their registration. I have spoken to the GMC about this, but it seems—shall we say—lukewarm.

6.30 pm

I am disappointed and surprised by that. The GMC does not have to shoulder the burden alone. Each year, at appraisal time, the doctor would complete a short form declaring their financial interests. That would be held by their employer or their contractor, private provider or clinic, whichever is the most appropriate. The information would be linked to the GMC register, so that the public could go to one place—the GMC—to see at a glance the interests of their doctor. As Sir Cyril Chantler says in his recent article in the *BMJ*,

"this arrangement would be an administratively simple, quick and effective way to improve transparency and begin to rebuild trust."

Some, including the Department for Health and Social Care, have said that we should have a register not just for doctors' interests but for all health workers. I do not disagree, but we must start somewhere.

Doctors are the primary decision-makers. They diagnose, prescribe, treat and operate. Of course, other health professionals should declare their interests, and I look to the professional regulators of nurses and allied health professionals, and others, to take that forward using a similar approach to that which I advocate for doctors. But we should not wait for that to happen before ensuring that there is transparency of doctors' interests.

I hope that my noble friend will agree that those who have suffered so much through no fault of their own from harm that could and should have been avoided deserve the practical help and support that the amendment would deliver.

Baroness Brinton (LD) [V]: My Lords, I support the noble Baroness, Lady Cumberlege, in her Amendment 283, which would include financial and non-pecuniary interests of medical practitioners alongside clinical interests and their recognised and accredited specialisms on a register. I particularly thank her for explaining exactly why this is so important for patients. Currently, the GMC does not require them to hold or publish that data, but it is the obvious place for it to be held—and then linked, as she explained, to local employers, contractors and organisations. Anything that reduces the complex maze for a patient or a member of the public trying to find out whether a doctor is being paid for doing some work or using particular devices, and might therefore have an interest, has to be one of the cornerstones of a truly accessible and accountable register of interests. In today's data-rich society, patients and the wider community want to understand what interests a doctor may have, but which may not be obvious.

A website called whopaysthisdoctor.org at Sunshine UK—so-called, I presume, because sunlight is always the best disinfectant—was set up by number of doctors, including Ben Goldacre. It is a database where doctors who want to be transparent about their interests can declare and register them, and the public can see whether their doctor is listed. The problem, of course, is that those who do not want to make these declarations voluntarily may be those we most want to see. That is why the amendment would make it compulsory.

I thank the GMC for its helpful brief, in which it recognises that the

"current arrangements to register conflicts of interest fall short of delivering adequate transparency and assurance for patients."

However, the GMC would prefer this register to be maintained just at a local level and

"published by a doctor's employer, contractor or organisation".

The noble Baroness, Lady Cumberlege, has already referred to the recommendations in the *First Do No Harm* review and the Government's response, in which they said that it was proposed that information would be published locally at an employer level. However, I believe that there is also a golden thread from the obvious place to go, where doctors already have a duty to register other information, and that is the GMC.

Like the noble Baroness, Lady Cumberlege, I am keen to see action on this. Personally, I believe that the registration body is a good place to hold that data and, as she said, we need to start somewhere. But, frankly, we need to see progress on a register of interests. I hope the Minister can give your Lordships' House some encouraging news on this.

Baroness Finlay of Llandaff (CB): My Lords, I was—it is fair to say—flattered when the noble Baroness, Lady Cumberlege, asked me to co-sign her amendment, because I have admired all the work she has done, and I think her report, *First Do No Harm*, has had influence way beyond the group of patients she was looking at. Indeed, I was vice-chair of a NICE review, and we referred to it in terms of helping to empower the voice of the patients we had in that review process, which was, first, very important and, secondly, particularly helpful because they were very clear in their thinking, and they worked extremely hard.

I am also grateful to the noble Baroness, Lady Brinton, for referring to the General Medical Council's briefing, because the GMC agrees that a solution to this needs to be

"Accurate, up-to-date, accessible and presented in a way that is useful for patients, so that they can have confidence in it".

It also said that it must be "Enforceable", and the GMC also wants it to be "Multi-professional". However, I agree that we have to start somewhere. Your Lordships may think that the advantage of a local register is that it is more accessible, but the disadvantage is that doctors move around in different jobs, particularly trainees—but even consultants' time in one post is now relatively short; it used to be a lifetime appointment.

It is important that, as a doctor, I am prompted to be completely open so that there can be no subliminal influence on my decision-making. The most dangerous influences are the subliminal ones—not the ones where you are completely open about what is going on. There has been a great clamp-down over recent decades on the pharmaceutical industry because of sponsorship and so on, and that has decreased influences on prescribing. But when it comes to using other products in medicine, the same can apply. I think that a register would help the profession itself in making clinical decisions. I do not see this in any way as inhibiting research; on the contrary, it would display who is research active and who is achieving results through their research.

A register would support the development of innovative healthcare and support novel thinking because it would be declared and open. It would also support the move that people should always publish their results, whatever they are.

Baroness Neuberger (CB): My Lords, I support Amendment 283 in the names of the noble Baroness, Lady Cumberlege, and my noble friend Lady Finlay. Like my noble friend Lady Finlay, I want to say how grateful I am and how touched I was that the noble Baroness, Lady Cumberlege, asked me to add my support to this amendment. I also need to beg your Lordships' indulgence: if we do go beyond 7 pm, which I sincerely hope we will not, it is actually the beginning of the Jewish Sabbath. I should not be here now, and I certainly cannot be here after 7 pm. I will pretend that I am just slipping out briefly, but I am vanishing at 7 pm whatever happens. Your Lordships will be very glad to hear that I am not going to talk until then.

When the noble Baroness, Lady Cumberlege, asked me to support the amendment, I said that I would consult with the medical directors at the two NHS trusts that I chair, the University College London Hospitals Foundation Trust and Whittington Health NHS Trust. I did exactly that, and I have never had emails back so quickly from the medical directors—there

[Baroness Neuberger]
are four of them between the two trusts. The amendment was welcomed unreservedly; they really want this to happen. The medical directors had no doubt that this was both an ethical requirement and indeed something to be encouraged in how doctors think about their own practice. That is the point that my noble friend Lady Finlay made. It is something about the subliminal; it makes you start thinking differently and your reactions become different.

One of the medical directors pointed me to Patrick Radden Keefe's superb book about Purdue in the United States, *Empire of Pain*, and said that in a way that is exactly the issue here. Some of the people clearly knew that what they were doing was totally wrong, but some did not realise that what they were doing was wrong, because they had not got the subliminal way of judging, because this was accepted practice. That is the really strong argument for this: we need to be able to encourage people to think differently. There are lots of doctors who desperately want it, as the medical directors at my two hospitals have made entirely clear.

I pay huge tribute to the noble Baroness, Lady Cumberlege, for her report *First Do No Harm*—as well as for the many other things she has done, but in particular for that report. It has changed the way that quite a lot of people think; it is quite hard to achieve that with a report and it is a very remarkable thing to have done. This is a national and international issue. We are concerned here only with the national, but we could—and should—set an international example of good practice.

After the Paterson review and *First Do No Harm*, this is now urgent. The GMC is obviously the right body to hold such a register, and I say so as a former member of the GMC. I was rather sad to see its somewhat lukewarm reaction in its briefing and I think that it has got this wrong. They are the right people to hold the register and to make it available to patients. The public must be able to access it. The employers, individual doctors, the Medical Royal Colleges and others must all play their part and, of course, other health professions must follow suit.

Let us start here. This needs to happen, and it needs to happen fast.

Baroness Thornton (Lab): My Lords, I can only add to the last remark of the noble Baroness that this does need to happen. I can see why the GMC is so unenthusiastic, as it was in its briefing note, because it looks like it is probably about 300,000 people and that is a big job. However, the question that I ask myself is, if a large pharma or large manufacturer of medical products is having a national campaign that involves hundreds of clinicians across the country, how will we know that is happening if all the registers are local? It seems to me that that is absolutely the point. It has to be a national register and the GMC probably has to be persuaded. If it is not the GMC, we would have to set up something different, and that would probably be a ridiculous thing to do. So the noble Baronesses, Lady Cumberlege and Lady Finlay, are quite right: we have to make progress on this.

Baroness Penn (Con): My Lords, I am grateful to all the noble Baronesses who have spoken in this group, and in particular to my noble friend Lady Cumberlege for all the work that she has done on patient safety. I have noted their points very carefully and look forward to the further discussion of transparency and scrutiny of healthcare professionals in the debate on the next group where, on the point that the noble Baroness, Lady Thornton, made about payments from pharma and so on, it is my understanding that it will be on industry to declare those nationally.

6.45 pm

As the Government's response to the *First Do No Harm* report set out, we agree that the lists of doctors' interests should be publicly available. It is our belief that this information will be most accessible to patients if it is published by healthcare providers, rather than the GMC. I know this is a point of disagreement with the Committee, but I point to a report by the Council for Healthcare Regulatory Excellence which shows that many patients do not have any knowledge of the regulators and their registers. There is qualitative research that shows that patients are more likely to seek information from the organisation that provides their treatment and care. I think we are trying to reach the same aim of accessibility; our understanding of how that can be best delivered may be different from the Committee's, but that demonstrates some of the Government's thinking and good faith on this question.

The role of the professional regulator's register is to ensure public protection by keeping a register of healthcare professionals who meet required standards. This would be a significant expansion of its functions. We are working with professional healthcare regulators to be clear that all regulated healthcare professionals, not just doctors, must declare their potentially competing interests. I hear from my noble friend and others that they support it going beyond doctors, but we must start somewhere, and that is the approach as we take this forward.

We are also working to ensure that this information is published by employers. This approach will ensure information on healthcare professionals' interests is accessible for patients at a local level, and research suggests that patients are more likely to seek information from the organisation that provides their treatment and care. It also means patients can be supported to interpret relevant information.

Employers are best suited to identify concerns as they arise and, where required, notify the appropriate regulator. The department is working with the Care Quality Commission, and equivalent organisations across the devolved Administrations, to embed local systems for monitoring and assessing conflicts of interest in existing systems of clinical governance. To move forward at pace we are first prioritising the implementation of a system for doctors to declare their interests, before moving on to other healthcare professionals.

I hope I have given the noble Baroness sufficient reassurance and that, at this stage, she will feel able to withdraw her amendment.

Baroness Cumberlege (Con): My Lords, I thank so much the noble Lords who have supported this amendment. I always welcome the support of the noble

Baroness, Lady Brinton, because she is clear, concise and very authoritative; she commented that doctors already have a duty and that we should see progress. As always, the noble Baroness, Lady Finlay, was accurate; she talked about accuracy and accessibility for patients, and said that the register really is so important because it actually safeguards doctors, a point that has been put to us by some doctors. The noble Baroness, Lady Neuberger, is a chair of one of our great hospitals in London, and I was so grateful for her contribution. She went to her medical directors and found out that they thought this was an ethical way forward and should be encouraged. I also thank her for her generous remarks about the report—I would just like to say it is not my report; it was the team's report, and I had some really good people on the team. I thank the noble Baroness, Lady Thornton, who was right: it has to be a national register, not a local one, and it has to be accessible to patients.

In summing up, I thank the Minister very much for her comments. There is such feeling about this in the country that it would be very helpful if she could convene a meeting with me, my team and the GMC to discuss this together. I think that a little more persuasion—especially from sources such as those on the Front Bench—would make all the difference.

Amendment 283 withdrawn.

House resumed.

House adjourned at 6.50 pm.