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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
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

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House of Lords

Monday 7 March 2022

2.30 pm

Prayers—read by the Lord Bishop of Leeds.

National Insurance Contributions
Question

2.36 pm

Asked by ***Lord Sikka***

To ask Her Majesty's Government what assessment they have made of the impact of the planned increase in the rate of national insurance contributions on the poorest sections of society.

Baroness Penn (Con): My Lords, the Government have published several assessments of the health and social care levy's impacts, including distributional analysis of the tax and spending announcements' combined impact, a technical annexe in our plan for health and social care, and a tax information and impact note. Some 6.1 million individuals earning less than the primary threshold, equivalent to £9,980 in 2022-23, will not pay the levy; the highest-earning 15% will pay over half the levy's revenues.

Lord Sikka (Lab): My Lords, from next month, workers with earned annual income above £9,880 will pay national insurance at a rate of 13.25%. At the same time, 265,000 recipients of at least £65.8 billion of chargeable capital gains will not pay a penny, even though they use the national health service and social care. Does the Minister agree that this is outrageous and that this injustice should end as soon as possible?

Baroness Penn (Con): My Lords, we have introduced the levy through the national insurance system—that is the system that we have used previously to fund improvements to the healthcare system and, in this case, the social care system. We have ensured that the levy also applies to dividend income, so that it reaches a wider number of people who will benefit from it.

Baroness Kramer (LD): My Lords, last Friday, disgracefully, to my mind, Shell bought 750,000 barrels of Russian crude at a record discount price of £28.50 to lock in a minimum of £20 million in additional profits. Brent crude has soared to £139 a barrel, cascading yet greater profits to the oil and gas companies. Can the Minister think of a single excuse not to cancel the rise in NICs and replace it with a windfall tax on those companies?

Baroness Penn (Con): My Lords, we have discussed a windfall tax before and, in addition to the reasons that I gave then, the increase in NICs—the health and social care levy—funds an ongoing increase in health and social care funding in this country. A windfall tax would be a one-off tax; it would not provide the sustainable basis that we need to fund our health and social care system.

Lord Browne of Ladyton (Lab): My Lords, the Minister will be aware that, even before the pandemic, the poorest 10% of households paid 47.6% of their income in direct and indirect taxes. That compares with 33.5% by the richest 10% of households. So the national insurance hike will just worsen the hit on the poorest. Can the Minister explain what the latest hike in national insurance will do to the tax burden on the poorest, and when the Government will begin to reverse that trend?

Baroness Penn (Con): My Lords, as I explained in my original Answer, the 6.1 million individuals earning less than the primary threshold will not pay the levy at all. In addition, in the analysis that I mentioned earlier, if you take the package together, both the levy and the spending that is ring-fenced for the health and social care system, lower-income households will be the largest net beneficiaries from this package, with the poorest households gaining the most.

Lord Grade of Yarmouth (Con): My Lords, does my noble friend the Minister agree with me that those who call for a windfall on the oil companies would in fact be penalising the shareholders? And who are the shareholders? They are the pensioners of this country—they are the one who hold most of the shares in these oil companies.

Baroness Penn (Con): My Lords, we have strayed more on to a windfall tax than I expected, but I say to my noble friend that he makes a good point. The issue of energy security is at the top of people's minds at the moment. The Government see gas, for example, as part of our transition towards net zero. We want to allow people to invest in our North Sea oil and gas fields as part of that, so a windfall tax could also have a negative impact on that.

Lord Woodley (Lab): My Lords, there is no doubt at all that at the lowest level this tax will be a detrimental pay cut for most workers in our country—there is no doubt at all about that. It will be felt most harshly by them, while they are at the same time caught up in the cost of living crisis that we have. They are being squeezed dry, as we know, by soaring inflation—and that is before next month's massive hike. Can the Minister possibly justify this attack on the lowest-paid workers in our country and, if so, how can she?

Baroness Penn (Con): My Lords, the Government have been very clear in their justification for the health and social care levy. The Government are committed to the responsible management of the public finances, which is why we have had to take tough but responsible decisions to increase taxes in order to fund a significant increase in permanent spending on the NHS and social care. On the cost of living challenge, that is why, this year and next, the Government will provide £20 billion of support to help those people who are struggling to meet their household bills.

Lord Brownlow of Shurlock Row (Con): My Lords, if the Government were persuaded to go down the windfall tax route, would they be further persuaded to go down the windfall rebate route in the years that oil companies make a loss, such as last year?

Baroness Penn (Con): My Lords, my noble friend is correct that, as well as seeing record highs in prices recently, we have in recent years also seen record lows. With that came record lows of investment; that is why the Government are very careful before considering questions such as a windfall tax.

Lord Wigley (PC): My Lords, would it not be more socially equitable if the upper cap on national insurance were removed, so that those on high incomes pay the same marginal rate as those who are earning modest incomes? Would that not be a far fairer way of doing it?

Baroness Penn (Con): I say to the noble Lord that it is important to take the impact of national insurance and income tax together. When you do that, the combined tax rate for those earning in the lower bracket is 32% and, in the upper bracket, it is 42%. So, overall, we still have a progressive system.

Lord Watts (Lab): My Lords, there is no doubt that the social care and health sectors need money from the taxpayer, but why can it not be from those people who are the richest—the large companies that pay no tax? When will the Government get round to them, rather than oppressing ordinary working families?

Baroness Penn (Con): My Lords, an important aspect of the health and social care levy is that it is paid by employers as well as employees—because they benefit from having a healthy, supported workforce. Of course, we have also announced increases in corporation tax, because the Government did an awful lot to support businesses during the pandemic and everyone needs to contribute now to getting us back on to a path of sustainable finances.

Lord Forsyth of Drumlean (Con): My Lords, I declare an interest as I am of pensionable age and therefore will not have to pay national insurance until next year. Given the extra money the Government will receive as a result of taxes on fuel, is there not a case for considering deferring the increase in national insurance until next year, so that everyone is in the same boat, as it were? People are going to be faced with immense costs for fuel, as well as the impact of inflation on the standard of living.

Baroness Penn (Con): My Lords, the additional spending from the levy kicks in from this year onwards, so we matched the introduction of the levy with the introduction of the new spending, which cannot wait; we need to address the significant backlogs we have in our healthcare system. But my noble friend is correct that we have designed the new levy to apply also to people over pensionable age, as they will benefit in no small degree from the increased spending.

Lord Tunnicliffe (Lab): My Lords, the decision to increase national insurance this April and introduce a longer-term health and social care levy was taken in a certain economic context. Things have changed substantially since. Inflation is high and will rise further. The Bank is likely to hike interest rates as a result. The Russians' illegal invasion of Ukraine will bring its own economic consequence. A U-turn is supported by the public, businesses, Conservative Back Benchers and even some in the Cabinet. Will the Chancellor finally take note and act immediately to ease the cost of living crisis?

Baroness Penn (Con): My Lords, I acknowledge that the circumstances have changed—that is why the Government have also changed our approach by, for example, announcing £9 billion of support to help people with their increased energy costs. The things that have not changed are the pressure on our healthcare system, the pressure on our social care system and the long waiting lists we see as a result of Covid. We need to start dealing with those now; they need proper funding and that has to come from within the levy.

Lord Fox (LD): My Lords, the Minister is right to point out the pressure on the health and social care sectors. Assuming the Government do carry on with their plan, does she agree that it is unlikely that social care is going to see very much of this money and, even if it sees all of it, it is completely not enough to solve the problem in our social care service?

Baroness Penn (Con): My Lords, the noble Lord is correct that in the early years it will go further towards the NHS to help deal with the backlogs; the spending on social care is aligned with the introduction of our social care reforms. But that is not the only funding that is going into the social care system; in recent years, additional funding has gone in to support the social care system.

Global Refugee Forum

Question

2.48 pm

Asked by ***Lord Hylton***

To ask Her Majesty's Government what assessment they made of the outcomes of the first Global Refugee Forum, held in Geneva in December 2019.

The Minister of State, Department for the Environment, Food and Rural Affairs and Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con): My Lords, at the first Global Refugee Forum the international community demonstrated its commitment to responding to the plight of refugees and host communities, announcing pledges and sharing examples of good practice. The UK underlined our leadership in longer-term approaches, highlighting support for Syrian refugees in Jordan and the Rohingya in Bangladesh.

Lord Hylton (CB): My Lords, I thank the noble Lord for his reply. Earlier this year, my noble friend Lord Alton's debate discussed the huge number of refugees and displaced people. Now, the brutal invasion of Ukraine has caused a whole new crisis. Does the noble Lord agree that the Global Refugee Forum calls for continuous co-operation between Governments and their officials? Can he give the House some good news of progress, especially in relation to eastern Europe and the Mediterranean?

Lord Goldsmith of Richmond Park (Con): I thank the noble Lord for his question. Of course, he is right; the UK is one of the High Commissioner for Refugees' largest financial supporters. We provided more than £714 million in funding across bilateral and multilateral channels between 2016 and 2020, and the same is true in relation to other refugee and migration-related organisations. We provided the International Organization for Migration with around £89 million in 2020, making us the third-largest donor. We were the second-largest donor to the UN Office for the Coordination of Humanitarian Affairs, the second-largest donor to the International Committee of the Red Cross—I could go on. The UK has a proud record of supporting refugees globally.

Lord Dubs (Lab): My Lords, does it show leadership by this country when we take a handful of Ukrainian refugees, and when we send those who arrive in Calais to Paris or Brussels to get their papers sorted out? Is that not a miserable response compared with Ireland, which has so far taken nearly 700, has committed to taking 2% of all the refugees and is talking about a figure of 100,000 to avoid another Calais? Should we not be ashamed of ourselves?

Lord Goldsmith of Richmond Park (Con): The figure that has been quoted and to which I think the noble Lord is referring—that the UK has so far accepted 50 people—is, in reality, growing very significantly. To quote Minister Cleverly from the other place, he says that we are looking to create something very large-scale very quickly. Initially it will be slower, but that will pick up. There is no doubt from the words spoken by the Home Secretary, Priti Patel, today that we have created a new system in record time, precisely to allow a far larger number of refugees into this country.

Baroness Boycott (CB): My Lords, we have all been ashamed, I think, to see the people in the railway stations in places such as Berlin holding up placards saying that they can host one person or two people. Many people in this country would do the same thing. Why are the Government not making this system available so that good people in this country can help people in Ukraine?

Lord Goldsmith of Richmond Park (Con): We are creating exactly that system. We are creating a humanitarian sponsorship pathway which will open up a route to the UK for Ukrainians who may not have family ties with the UK but who can match with individuals, charities, businesses and community groups of the sort the noble Baroness just mentioned. Those under this scheme would be granted leave for an initial 12 months. There is no limit to the number of people who could be eligible for this scheme: we will welcome as many Ukrainians as wish to come, if they have matched sponsors.

Baroness Fraser of Craigmaddie (Con): My Lords, this weekend one of the problems seemed to be that there are very few appointments available in the visa application centres in Poland and other surrounding countries. The website through which refugees are trying to access these visa schemes could not cope with the capacity. Does the Minister know when capacity will be in place so that the people fleeing Ukraine to the neighbouring countries can get appointments, get their documents checked and travel to the UK to be reunited with family?

Lord Goldsmith of Richmond Park (Con): The noble Baroness is right that there have been serious capacity issues. We have just sent a group of UK experts to bolster the UK's support to countries surrounding Ukraine, to receive and support the increasing flow of refugees fleeing that country. For example, a four-person team has arrived in Poland to support the regional response, providing logistics advice, analysis of needs on the ground and so on. We are also deploying additional experts right across the region in the coming days, including to Moldova where we have humanitarian experts already stationed.

The Lord Bishop of Durham: My Lords, it was my privilege to speak at the resettlement conference that happened before the Global Refugee Forum in Geneva in 2019. One of the key lessons that came out of both events was to listen to the voices of refugees in helping to create the system, so that it is more effective. Could the Minister tell us how the voices of refugees in this country are being listened to in order to make the Ukraine system as effective as possible?

Lord Goldsmith of Richmond Park (Con): The teams are designing an entirely new scheme for an entirely new situation as quickly as possible. That is reflected in the numbers that have so far been reported. But from everything we have heard today— from the Foreign Secretary and the relevant Minister—we are up and running and we are ready now to absorb larger numbers of refugees from Ukraine.

Baroness Northover (LD): I referred a case to the noble Lord, Lord Ahmad, of a very frail lady in her 90s who has been brought to my attention by World Jewish Relief. She is in Warsaw and, as I say, she is very frail. Will the Minister please return to his department and make sure that her case is expedited? Her granddaughter is a UK citizen. She clearly qualifies to come to the United Kingdom. She is very frail, and she is an example of many others in that situation. Can we make sure that, in this case, the Home Office is not proving to be the kind of block that it has been over Afghan refugees?

Lord Goldsmith of Richmond Park (Con): My Lords, I am not familiar with the case the noble Baroness describes, but I assure her that I will convey her message back to both the Foreign Office and the Home Office. We will do whatever we can.

Lord Laming (CB): My Lords, in Ukraine, there are a number of orphanages where there are helpless children, who cannot do anything for themselves. Could the noble Lord assure the House that thought will be given to how we can protect these children, who have the least in the world?

Lord Goldsmith of Richmond Park (Con): The noble Lord makes a hugely important point. The answer is yes: this is something that both the Home Office and

[Lord Goldsmith of Richmond Park]
the Foreign Office are looking at. I would add that the UK has committed an additional £120 million of humanitarian assistance to Ukraine and the region. That money will be used in many different ways, but particularly in supporting those at the front line in terms of vulnerability, of the sort that the noble Lord just mentioned.

Lord Anderson of Swansea (Lab): My Lords, the Government were prepared to disclose the figure of 50 refugees received from Ukraine. What is the current figure?

Lord Goldsmith of Richmond Park (Con): My Lords, it is a very fast-moving situation. I do not know the current figure, but I do know that there is no limit to the number of people this country is willing and able to absorb, as I described when outlining the policy just a few moments ago.

Lord Brownlow of Shurlock Row (Con): My Lords, there was a moving interview on the television this morning of a 25 year-old who has bought a bus and is going to Ukraine to bring orphans back and move people around. Could the Minister tell me what support the Government will give to such people, who are going into this danger zone of their own accord?

Lord Goldsmith of Richmond Park (Con): My Lords, as I said, we are creating pockets of expertise in countries surrounding Ukraine, specifically to help them deal with the escalating problem of people fleeing Ukraine. Without knowing the details of the case my noble friend described, I imagine that the occupants of that bus would be exactly the kind of people those experts are there to support.

Lord Collins of Highbury (Lab): My Lords, the compact is from 2019, so we have had three years that the international community should be addressing. One of the things the International Rescue Committee has highlighted is that women and girls are being left behind in the global effort towards the ambitions of that compact. Can the Minister tell us what we are doing to deal with the disadvantages they face in terms of justice, inclusion and safety so that we respond properly? In particular, how is he addressing this issue in the context of Ukraine?

Lord Goldsmith of Richmond Park (Con): My Lords, stepping back and looking at the UK's contribution to tackling human migration, a problem that has become dramatically worse in the last few days, we are one of the largest bilateral humanitarian donors globally. Since 2015, we have provided over £11 billion in humanitarian funding to support the most vulnerable people, including of course a huge focus on women and girls. This year, despite the cuts that have been questioned many times in this House, we are on track to spend £900 million on humanitarian aid. Despite us being the sixth-biggest economy in the world, that represents about the third or fourth-largest contribution of any country.

Mike Veale: Police Conduct Report

Question

2.58 pm

Asked by ***Lord Lexden***

To ask Her Majesty's Government what assessment they have made of the Independent Office for Police Conduct report of August 2021 into allegations of misconduct against Mr Mike Veale, former Chief Constable of Wiltshire and of Cleveland.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, following an investigation by the Independent Office for Police Conduct, the then acting police and crime commissioner for Cleveland determined that former Chief Constable Mike Veale had a case to answer for gross misconduct. The matter is now subject to a misconduct hearing and it would therefore be inappropriate to comment further while those proceedings remain ongoing.

Lord Lexden (Con): I congratulate my noble and now right honourable friend, one of the hardest-working Ministers in our House over many years, on becoming a member of Her Majesty's Most Honourable Privy Council. How could it possibly be right for a disgraced former chief constable deemed, as my noble friend said, to have a case for serious misconduct to answer with a legal hearing pending to be receiving a salary in the region of £100,000 plus expenses from public funds as adviser to the police and crime commissioner for Leicestershire and Rutland—who purports to be a Conservative, which makes the matter even worse? Is there no time limit on starting the legal hearing, which was announced last August?

Baroness Williams of Trafford (Con): I thank my noble friend. Not only do I personally feel very honoured, but it is an honour for the House as well. As regards someone being up for investigation and now having a case to answer for alleged misconduct while drawing their salary, someone who is still innocent of misconduct is still able to draw their salary until it is proven otherwise. I can understand my noble friend's frustration, but that is the case.

Lord Bach (Lab): My Lords, I congratulate the noble Baroness as well. I remind the House that I have been a police and crime commissioner for Leicestershire. Does the Home Office really have nothing to say regarding the behaviour of Leicestershire's current police and crime commissioner in bringing in Mr Veale—unvetted, I believe—on his first day in office and continuing to employ him on high remuneration as his chief adviser, even though the local police force was embarrassed and many in Leicestershire are offended? The Home Office is not often shy about giving its opinion. Why is it so shy in this case?

Baroness Williams of Trafford (Con): My Lords, I thank the noble Lord for his kind words. We are not shy. It is important that the various legal proceedings are followed before the IOPC and, indeed, the Home Office make a comment.

Lord Howell of Guildford (Con): My Lords, I endorse the comments of my noble friend Lord Lexden about the Minister's work, which has been very valiant during the whole of this difficult case. I think it is generally agreed that Operations Conifer and Midland are now utterly discredited. One appreciates that the Government do not want to intervene in the present conduct inquiries, but can we at least be assured that they are constantly pointing out to the police administration, with which they cannot of course intervene, their expectation that there will be a full calling to account of those who made these absolutely disastrous misjudgments and caused so much unfair discredit to so many hard-working and public-serving people? Can we at least have that assurance so that there is some movement to restore confidence in our otherwise quite excellent police force?

Baroness Williams of Trafford (Con): Certainly the current proceedings are evidence that things are at least being taken forward. I appreciate that many noble Lords will feel very disgruntled about this, but several layers of scrutiny have been afforded to both Operations Conifer and Midland. The whole proceedings have been well scrutinised, but I still appreciate the frustrations of the noble Lord and other noble Lords.

Lord Morris of Aberavon (Lab): My Lords, the Library has informed me that the report has not been made publicly available. Why not? Is it not time to finally remove the unproven stain on the character of distinguished servants of the state and for the Prime Minister, with the support of the leader of the Opposition, to grip the situation and instruct the Cabinet Secretary to take every administrative step to achieve this end?

Baroness Williams of Trafford (Con): I think I just answered that question. As regards the IOPC publishing its investigation report, it would not be right to do so while there were ongoing legal proceedings. However, in due course it will be published.

Lord Lancaster of Kimbolton (Con): My Lords, putting this case to one side, as a result of a number of unfortunate incidents there seems to be a general deterioration in trust between the police and the general public. This is an absolute tragedy, because every police officer I have ever met polices entirely for the right reasons and in the public interest. Can my noble friend say what steps she is taking to try to rebuild this level of trust, which is so essential if we are to effectively police?

Baroness Williams of Trafford (Con): I wholeheartedly agree with my noble friend that trust has been diminished, certainly in the past couple of years. The death of Sarah Everard exemplified that lack of trust. I hope that getting Dame Elish Angiolini in to do the inquiry into the killing of Sarah Everard, the circumstances surrounding it and the police's practices will go some way to restoring trust and confidence in the police.

Baroness Jones of Moulsecoomb (GP): My Lords, can the Minister, now a privy counsellor, give us an update on the IOPC's examination of Charing Cross police station, where a lot of protesters have now made reports that they were treated badly by the officers there, who also treated women very badly? For example, their names were not released so people did not know whether they were being held there and they were held longer than they needed to be—that sort of thing. Is it possible to have an update?

Baroness Williams of Trafford (Con): The IOPC does not usually provide updates on its investigations, but certainly when it has completed its investigations, its reports are published.

Lord Cormack (Con): My Lords, can I take my noble friend back to the Question asked by my noble friend Lord Lexden? I entirely endorse his personal comments about her, but the case of Mr Veale, who appears to have tarnished every office he has held and whose traducing of Edward Heath still remains on the record, really is extremely unsatisfactory. This should be properly investigated. For reasons I do not understand, we have heard constant refusals to have a proper inquiry into Conifer and Midland. We need one. It is not too late to have one now.

Baroness Williams of Trafford (Con): I am afraid that I must disappoint my noble friend by telling him that we do not have any plans to commission a review of either the conduct of the investigation into the allegations made against Sir Edward Heath or the findings of that investigation.

Lord Pannick (CB): My Lords, the Minister has emphasised that there is an ongoing inquiry into the conduct of Mr Veale. Does she accept that, in many areas of public and private life, persons against whom serious allegations are made are suspended from their office, employment or other contributions to public life while an investigation is conducted? Why is that not happening here?

Baroness Williams of Trafford (Con): I understand that, having been appointed as the Cleveland chief constable in March 2018, Mr Veale resigned in January 2019 following the allegations that he had behaved inappropriately and acted in a discriminatory manner.

Lord Hunt of Wirral (Con): I want to ask my noble, and now right honourable, friend one simple question: will anyone ever be held to account for Operation Conifer? As my noble friend pointed out, it was a grotesque witch hunt against Sir Edward Heath—a public servant of the highest integrity—conducted by someone who is now deemed by the IOPC to have a case to answer for gross misconduct, with a legal hearing pending against him. Will anyone ever be held to account?

Baroness Williams of Trafford (Con): My Lords, Operation Conifer has been subjected to extensive scrutiny by its own independent scrutiny panel, two reviews by Operation Hydrant, in September 2016 and September 2017, and a review in January 2017 by HMICFRS. We have talked about the Independent Office for Police Conduct; it has also considered specific allegations relating to the former chief constable.

Single-Use Plastics
Question

3.09 pm

Asked by ***Baroness Jones of Whitchurch***

To ask Her Majesty's Government what steps they are taking to ban (1) the sale of single use plastics, and (2) other single use materials.

The Minister of State, Department for the Environment, Food and Rural Affairs and Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con): My Lords, where evidence supports the case for a ban we will act, as we have with a number of plastic items—straws, stirrers, cotton buds—and as we plan to do on further single-use plastic items. The Environment Act enables us to introduce a range of other measures to tackle single-use items, including a deposit-return scheme for drinks containers, extended producer responsibility schemes and charges on any single-use items, regardless of material.

Baroness Jones of Whitchurch (Lab): I thank the Minister for that reply, but why are the Government insisting on consulting on every plastic single-use item separately, when the damage to the environment is well known? We have just finished the consultation on plates, cutlery, and balloon sticks, then there is a longer drawn-out process to consult on wet wipes and plastic cups, and I am sure that there will then be a further delay, then a few more items will be investigated. We gave the Government powers in the Environment Act to introduce a comprehensive ban on polluting single-use items, so why are they not dealing with this on a comprehensive basis? It would be hugely popular. Why must it be done item by item over such a long time?

Lord Goldsmith of Richmond Park (Con): I very much share the frustrations of the noble Baroness about how long some of these things take, but it is worth pointing out that, as she says, we now have the power to ban products which cause environmental pollution and are harmful to human or animal health and harmful to nature more broadly. The bans that have already been introduced, on plastic bags, for example, resulted in a 95% reduction in sales. Straws, stirrers and cotton buds have reduced by similar amounts and there are many more products in the pipeline where the UK Government are very likely to be introducing the necessary bans.

Baroness McIntosh of Pickering (Con): My Lords, I congratulate my noble friend and the Government on going as far as they have. Is part of the difficulty the confusion over the different types of plastics? On 4 March, the Government produced a press release on post-consumer plastic, which includes household plastic and other uses. Would it not be better for this to be disposed of through issues such as energy from waste, so that we were dealing with two problems at the same time: disposing of plastics and feeding into energy for households to use locally?

Lord Goldsmith of Richmond Park (Con): My Lords, our approach must put the main emphasis on reducing the amount of plastic being created in the first place. There are vast numbers of items that are made of single-use plastic where there is no justification for doing so, especially since we know that the vast majority of them will end up in the environment or managed inappropriately. This must be the focus, but my noble friend makes an important point.

Viscount Colville of Culross (CB): My Lords, the Government's resources and waste strategy is to eliminate all avoidable plastic waste by 2042, which is laudable but far in the future. The plastics pact for businesses and NGOs has called on all plastics packaging to be reusable, recyclable or compostable by 2025. Will the Minister support this more immediate target for eliminating plastic pollution?

Lord Goldsmith of Richmond Park (Con): I warmly welcome the work that the pact has done and very much support its ambition. Just a few days ago, the member states of the United Nations Environment Assembly agreed to a historic deal whereby we will now be creating a global treaty to tackle plastic pollution. The UK has championed this for a long time. We co-sponsored the resolution, and the aspiration is for this new treaty to become for plastic what the Montreal protocol was in relation to the ozone layer.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, while it is important to reduce the production of single-use items, there are some which, for health and safety reasons, should be excluded. These include hypodermic needles, medical and cleaning gloves, and medical dust respirators. However, there are others which could be targeted, such as disposable nappies. What are the Government doing to promote the use of washable, reusable nappies?

Lord Goldsmith of Richmond Park (Con): My Lords, there is a whole range of plastics, not least disposable nappies, where work must be done. We are currently taking advice in relation to wet wipes, single-use coffee cups, and cigarette filters, almost all of which are made of plastics, although as a smoker, I use biodegradable paper filters; they are just as good and you can drop them on the ground without feeling too bad—or, indeed, you could stop smoking. All these items, and there are others, are within the range of what the Government are looking at in relation to the action that we will be taking in the coming months.

Lord Browne of Ladyton (Lab): My Lords, the Minister will be pleased that the Scottish Parliament passed legislation banning an extensive list of single-use plastics from being supplied and manufactured in Scotland, which is due to come into force on 1 June this year. Of course, the problem is that, because there is no similar ban in any other part of the United Kingdom, if these items are manufactured, imported or sold in any other part of the UK, they can be supplied in Scotland because of the United Kingdom Internal Market Act 2020. That is likely to happen, and it will undermine the Scottish decision. Not even Northern Ireland, which should be subject to EU

regulations because of the Northern Ireland protocol, has implemented this ban. Was it intended that the United Kingdom Internal Market Act would put a cap on the ecological ambitions of the devolved Administrations, or is this an accident? If it is an accident, can we do something about it, please?

Lord Goldsmith of Richmond Park (Con): My Lords, I am not convinced that the argument follows. We are among the most ambitious countries in the world in terms of where we are heading in relation to single-use plastics. The European Union is also putting a lot of emphasis on reducing unnecessary single-use plastics, as is Scotland. We may be operating in different ways, implementing different rules and using different tools, but we are heading in the same direction, and there is no doubt in my mind that we are moving to an era where the casual use of single-use plastic is coming to an end.

Baroness Finlay of Llandaff (CB): Do the Government intend to have an initiative with the NHS over the use of plastics, given that it is has been estimated that 133,000 tonnes of waste plastic are produced by the NHS each year, which make up 22.7% of its total waste? Some plastics are important for infection control, yet 13.7% of all this waste is plastic film, often used just in packaging, so the approach across the whole NHS needs to be different from that across other aspects of society.

Lord Goldsmith of Richmond Park (Con): The noble Baroness makes an important point. Single-use plastics that are necessary within the context of delivery of health services are well known and, clearly, they would not be caught up in the measures that the Government are introducing. Beyond those specific items, the same rules would apply in relation to the NHS. I welcome our gradual abandonment of the use of disposable face masks for even the most ludicrous events. The numbers of face masks abandoned around the world defy belief and have come to dwarf some of the plastic pollution caused by things such as stirrers, straws and balloons that we are all obsessed by. I warmly welcome the world gradually dropping the theatrics in relation to those masks.

Baroness Bennett of Manor Castle (GP): My Lords, building on the question from the noble Baroness, Lady Jones, about the powers under the Environment Act, the Secretary of State, George Eustice, has said,

"it's time we left our throwaway culture behind".

With that in mind and, noting that the Refill Coalition is bringing in plans to replace plastic—or indeed any—containers for washing-up liquid, laundry liquid, shampoo, hand wash, pasta, rice, cereal, seeds, grains, nuts and dried fruits, will the Government consult on every one of those kinds of packaging, or will they simply tell industry and retailers that this has to end by a certain, reasonable date in line with the UN Environment Programme proposals, so that they can have the certainty to plan for that future?

Lord Goldsmith of Richmond Park (Con): The problem with government is that, sometimes, you cannot just undermine a sector in a way that has a dramatic impact on its business model without offering the necessary respect that comes with a consultation and having thought through the policy properly. Simply banning these items, which, of course, is where I want to end up, would have a massive impact on a number of different businesses. It is right that the Government should tread carefully when it comes to making decisions which impact so directly people's business models.

Russian Oil and Gas Imports

Private Notice Question

3.19 pm

Asked by ***Lord Forsyth of Drumlean***

To ask Her Majesty's Government what plans they have (1) to impose sanctions on the import of gas and oil from Russia, and (2) to encourage (a) coal-fired power generation, and (b) investment in (i) shale gas fracking, and (ii) offshore energy sources.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, we have imposed the most severe package of sanctions that Russia has ever seen. Although there is currently no ban on Russian oil and gas imports, this is under urgent review. However, the UK is in no way dependent on Russian gas. In 2021, it made up less than 4% of our supply. Most of our gas came from domestic production and reliable suppliers such as Norway. To boost energy security, we need to generate more domestic renewable power.

Lord Forsyth of Drumlean (Con): My Lords, although we all want a cleaner, greener future, surely we have a duty to put the maximum pressure on President Putin when the situation in Ukraine is beyond grim. Should we not therefore develop our own resources—in the North Sea, through fracking and through nuclear power—to guarantee security of supply, which surely must be the first duty of any Government?

Lord Callanan (Con): I agree with a number of the points my noble friend made. Of course we should put the maximum pressure on Putin because of his appalling actions, and continue to invest in the North Sea for our domestic production. We should also continue to invest in nuclear power and renewables. One point I differ with him on slightly is fracking, which I am afraid does not offer the silver bullet many people think it does.

Lord Anderson of Swansea (Lab): My Lords, is it the Government's view that the current and proposed increases in energy prices fundamentally alter the economic and security case for tidal barrages, such as that proposed for Swansea Bay?

Lord Callanan (Con): Not directly. The cheapest and most effective renewable source in the UK is offshore wind, which is why we are continuing to develop that at pace. We already have one of the largest offshore wind sectors in the world. We have a target of considerable extra capacity, moving up to 30 gigawatts by 2030.

Lord Stirrup (CB): My Lords, Russia is clearly the immediate focus, but will the Government take a wider strategic view and set urgent work in hand to reduce our dependence on the supply of resources, goods and services from all autocracies, most particularly China?

Lord Callanan (Con): Of course we need a diverse mix of energy, which this Question is about, and to generate as much of our own power as possible. The noble and gallant Lord makes a good point about reducing our dependence on autocracies.

Lord Oates (LD): Does the Minister agree that, if we think we can solve the current fossil fuel crisis by pretending that the clear and present danger of climate change does not exist, we will simply call down a far greater catastrophe on the world? Does he agree that the answer to the fossil fuel crisis is to invest to get off them as soon as possible, not to burn more of them?

Lord Callanan (Con): The answer to the high price of oil, gas and fossil fuels is to use less of them. To that extent I agree with the noble Lord. That is why we are generating as much as we possibly can from renewables. That is why we accelerated the contracts for difference round, why we have one of the largest capacities in the world, and why we need to expand it even further.

Lord Howell of Guildford (Con): Is my noble friend Lord Forsyth not entirely right that some very tough short-term measures will have to be taken to help break the Russian monopoly—one part of the measures we need to put pressure on them? Should we not take this opportunity to develop a solid future energy security strategy? Should not a central part of that be to seize the moment to recommit ourselves to rebuilding a strong, low-carbon nuclear sector, as we once had in this country, to meet all contingencies, particularly when disruptions occur, such as Ukraine, or when the wind does not blow?

Lord Callanan (Con): Indeed. I agree very much with my noble friend, who makes some extremely good points. We need to bear in mind that a relatively small percentage of our supply is from Russia, of both oil and gas; it makes up less than 4%. I totally agree with him regarding nuclear. Indeed, for those noble Lords who are interested, the Nuclear Energy (Financing) Bill is in Grand Committee tomorrow.

Lord Bassam of Brighton (Lab): My Lords, I have heard the Minister's response, taking on board in part the point from the noble Lord, Lord Forsyth, and recognise that we live in uncertain times. For clarity, can the Minister reconfirm the Government's commitment to prioritising the development of renewables and that Ministers are looking to speed this programme up, and further commit to ensuring that the Government will renew measures to protect the poorest in our communities from the worsening impacts of rising energy prices?

Lord Callanan (Con): I agree in large part with what the noble Lord said. Of course we need to expand our renewable capacity as quickly as possible. We already have record amounts and we need to pursue that. We are introducing contracts for difference rounds every year to maintain the ongoing flow of supply. As the noble Lord is aware, we introduced a £9.1 billion package of support for the poorest households.

Lord Wigley (PC): My Lords, we need to maintain the maximum possible pressure on Putin, obviously. The biggest problem facing mankind is global warming, which could wipe out humanity within a couple of centuries. That being so, would it not be totally irresponsible to restart coal burning in order to generate electricity when that generates 30 times more units of carbon than renewable and offshore generation?

Lord Callanan (Con): That is a very wide-ranging question. I think I would disagree with the noble Lord: I think Putin is a bigger threat at the moment to worldwide peace and stability. The important thing to bear in mind with regard to climate change, which is of course an important subject, is the tiny percentage of global warming caused by our emissions in the UK, which are rapidly decreasing. It is something that we need to work on, on a global basis; just eliminating our emissions on our own is really not going to make any difference.

Baroness Meacher (CB): My Lords, I very much agree with the various points already made, but in the light of the Ukrainian crisis, have the Government got serious plans to bring forward and radically increase investment in green hydrogen development? If they do have such plans, will the Minister write to me with the details and put a copy of the letter in the Library?

Lord Callanan (Con): We have a very ambitious hydrogen strategy and it is perfectly possible that hydrogen will be one element of our campaign to decarbonise the UK economy. We will shortly be moving towards a hydrogen business model and we will attempt to roll out hydrogen production. However, again, no decisions are imminent, and it will be a few years before we know the full potential that hydrogen can offer.

Baroness Sheehan (LD): My Lords, Germany has announced a £222 billion plan to transform its economy between now and 2026. Central to that is to wean itself off fossil fuels fast. Where is our big plan for immediate climate-compatible action?

Lord Callanan (Con): I do not think the noble Baroness is quoting a very good example. The Germans have made a singular mess of much of their policies by phasing out nuclear power, which has resulted in the burning of much more coal. I am not sure that that is an example of what the noble Baroness wants us to follow. We have an excellent plan in this country. We have a much bigger renewable sector than Germany, which puts far too much reliance on gas from Russia and now may well be paying the consequences.

Lord Naseby: Going back to Ukraine, is it not a fact that Russian gas is coming to this country by ship, in LNG tankers? In that case, why do we as a country not refuse entry to any of those tankers from this day forward?

Lord Callanan (Con): We have already banned all Russian oil and gas tankers entering UK ports and we are looking to go further to ban cargoes from Russia as well.

Lord Eatwell (Lab): My Lords, the market for oil and gas is global, and therefore the figure that the Minister has cited twice about our dependence being only 4% is entirely irrelevant to what happens to the price of energy in the UK. If there is a shortage of gas in Germany, the gas price goes up globally. The only answer to this is to reduce hydrocarbon use throughout Europe, and therefore reduce the market which the Russians are exploiting.

Lord Callanan (Con): The noble Lord makes a sensible point. Of course it is an international market. It is usually operated by private companies, and any shortages in Russia will feed through into the UK. It will not affect the price, but it will affect our energy security, which is why I used the fact that only 4% of our gas is Russian. Most of our supply comes from our resources in the North Sea or from Norway. Security of supply is not affected, but the noble Lord is right about international pricing.

Baroness O'Loan (CB): Given that the increase in fuel prices for both domestic and commercial use has been very significant—the consequence of which is that the Government are taking hugely increased revenues from the taxes applicable to that fuel—do the Government have any plans to cap or reduce the level of tax charged on fuel in those circumstances, and to redistribute that money for the benefit not just of people at the extreme end of the poverty line but of those seeking to be involved commercially?

Lord Callanan (Con): I will leave the setting of taxation policies to the Chancellor, but the noble Baroness makes a good point. Of course, we have already announced a record-breaking £9.1 billion package to alleviate some of the worst excesses of the current increases in fuel prices, but I do not want to mislead anyone: this will not solve all of the problem. This is a global crisis and we cannot insulate ourselves completely from international pricing.

Lord Cormack (Con): My Lords, as the Question put by my noble friend Lord Forsyth of Drumlean indicates, this is an urgent crisis. We do not have time to develop many things but we do have time to stop Russian imports full stop and, although it may be painful, the sooner that is done, the better.

Lord Callanan (Con): We are looking at this seriously and decisions will be announced shortly but it is important to bear in mind that, while we would all love there to be quick and easy solutions, the building, construction and implementation of energy infrastructure takes many years, sometimes even decades. I am afraid there are no quick solutions to any of this.

Lord Fox (LD): My Lords, the remarkable spike in gas prices today indicates a real challenge ahead for gas distribution in this country. To date, the big companies have absorbed the customers of the smaller companies that have gone bankrupt. As things stand, those big companies will themselves come under huge pressure with forward contracts that they cannot cover. What is the department doing, in consultation with the gas companies in this country, to maintain security of supply for the consumers of Great Britain?

Lord Callanan (Con): A number of companies are indeed under pressure and, unfortunately, we have seen a number exiting the market. I assure the noble Lord that we are in regular contact with all the gas and electricity supply companies; my right honourable friend the Secretary of State meets them regularly. This is indeed an unprecedented crisis but we are closely following events and I can say that, while there is obviously a problem with the price, there is no problem with security of supply.

Lord Hunt of Kings Heath (Lab): My Lords, the Minister referred to the German decision to discontinue nuclear energy but is he satisfied with the progress that we are making in developing new nuclear?

Lord Callanan (Con): Yes, I am satisfied with the progress that this Government are making. It is disappointing that previous Governments did not take action on new nuclear urgently; should the noble Lord wish to follow the debate tomorrow, we will be in Grand Committee on the Nuclear Energy (Financing) Bill.

Baroness Butler-Sloss (CB): My Lords, the Minister referred to sanctions against oil coming in through Russian tankers but I understand that oil is coming in through other tankers owned by other companies. What are the Government going to do about that?

Lord Callanan (Con): That was indeed the point I made in response to the Question. We have banned Russian vessels but, at the moment, cargo can still be imported, in relatively small quantities, from other vessels. We are in urgent consultation with our allies on whether we can go further.

Lord Lancaster of Kimbolton (Con): My Lords, I have listened carefully to this debate. While I accept that it is no silver bullet, is the real question in the short term not if the Government will start fracking but when?

Lord Callanan (Con): I understand the attraction of this option but I am afraid that, having looked closely at this, there are some severe environmental problems—we cannot hide this fact—with original fracking operations. Lancashire is not Texas; it is much more heavily populated. Fracking is a relatively unproven technology in the UK. The reality is that it would be many years, if not decades, before we got meaningful quantities of gas out of the ground, even if we could resolve all the environmental problems—and none of that would affect the current price. We would not be producing anywhere near enough gas to affect the high prices in an international market so I am afraid, much as I would love it to be the case, it really is not the silver bullet that people think it is.

Health and Care Bill

Report (3rd Day)

3.36 pm

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

Amendment 113

Moved by ***Baroness Pitkeathley***

113: After Clause 80, insert the following new Clause—

"Carers and safe discharge from hospital

(1) This section applies where—

(a) a person ("the patient") is a qualifying hospital patient at a hospital, and

(b) the responsible NHS body considers that it is unlikely to be safe to discharge the patient from hospital unless care provided by one or more carers is available to the patient.

(2) It is the duty of the responsible NHS body to—

(a) consult the patient about their preferences regarding their care following discharge from hospital, and

(b) take reasonable steps to identify and consult any carer or potential carer of the patient about to be discharged.

(3) The NHS body must consult any carer or potential carer identified under subsection (2) to ascertain—

(a) whether the carer is able, and is likely to continue to be able, to provide care for the patient needing care, and

(b) whether the carer is willing, and is likely to continue to be willing, to do so.

(4) Having consulted the carer, the NHS body must cooperate with the local authority in relation to their duties under the Care Act 2014, the Health and Care Act 2006 and the Children Act 1989.

(5) For the purposes of this section—

(a) a "qualifying hospital patient" means a person being accommodated at—

(i) a health service hospital, or

(ii) an independent hospital in pursuance of arrangements made by an NHS body,

who is receiving (or who has received or is expected to receive) care.

(b) a "carer" means any person, including any child under the age of 18, who provides or intends to provide care in respect of a patient to whom the NHS may provide services, but a person is not to be regarded as a carer if they provide or intend to provide care under or by virtue of a contract, or as voluntary work."

Member's explanatory statement

This provision retains the principle and duty on a hospital, whether it be an NHS hospital or an independent hospital, to ensure that a patient must be safe to discharge from hospital and mirrors carers' rights which were established in the Community Care (Delayed Discharges, etc) Act 2003.

Baroness Pitkeathley (Lab): My Lords, Amendment 113 focuses on carers and safe discharge for hospital patients. The amendment defines the patient and the carer and is focused on safeguarding the rights of unpaid carers when the person they care for is discharged from hospital. I am grateful for the support of the noble Lord, Lord Young of Cookham, who is sadly unable to be in his place because he is isolating, the noble Baronesses, Lady Meacher and Lady Hollins, and all the other Peers who have expressed it. My thanks go also to Professor Luke Clements, professor of law and social justice at the University of Leeds, for his wise advice on the drafting of this amendment. I am also grateful to the Minister and his officials for the time and effort they have put in to meeting Peers and Carers UK—I declare an interest as its vice-president.

I continue to be amazed at what I am going to say next because, as it stands, the Bill revokes the Community Care (Delayed Discharges etc.) Act 2003, which includes a requirement to consult carers prior to discharge. Thus, for the first time, the rights of unpaid carers will be removed without being replaced by additional or improved rights. Many people, me included, have been fighting to get rights for carers recognised for over 30 years. We first achieved rights through Private Members' Bills over several Parliaments and under Governments of all colours. No one could have been more delighted than I when these were later enshrined in government legislation such as the delayed discharges Act and the Care Act, but here there is no question of enhancing carers' rights.

On the contrary, the Government's own impact assessment of the Bill recognises that carers may be asked to take on additional hours of care, which could mean they have to reduce their hours of work or give up paid work entirely. It states that while the Government anticipate that in some cases

"carers may choose to … There is an expectation that unpaid carers might need to allocate more time to care for patients who are discharged from hospital earlier."

I should point out that "may choose to" is a late addition to the impact statement. Originally, it said simply "There is an expectation that" carers may allocate more time, with no reference to choice at all.

Perhaps this may remind some of your Lordships that the Secretary of State for Health has said that families must be the first port of call for caring responsibilities. I always found that puzzling, since families always are the first port of call. Whatever reforms we make, the bulk of health and social care will continue to be provided by the so-called informal army of family, friends and neighbours. The contribution they make to the economy is now estimated at £193 billion annually—almost the cost of the NHS itself.

The point of hospital discharge is often the most vulnerable time for patients and carers. Carers UK research shows that more than half of carers were not involved in decisions about discharge, two-thirds were not listened to about their willingness or ability to provide care, and 60% received insufficient support to protect the health either of themselves or of the person being discharged. Anyone who speaks to a carer will hear horror stories about hospital discharge. I am reminded of Norman, a man in his late 70s and a carer for his wife who has multiple disabilities—Norman spoke to a group of your Lordships by Zoom recently. His wife went into hospital for a procedure, which was a relief to him as he himself had been diagnosed with cancer and was having chemotherapy. While he was actually hooked up receiving the chemo, he received a

call from the hospital saying that they were discharging his wife. He received no prior notice that she was ready to be discharged. "Okay," said Norman, "but could you just wait till I get home to receive her?" "No," was the reply, "she is already in the ambulance on her way home." Norman's response was not, "Well, please take her back again," as I suspect many of us would have been tempted to say, but to ask the oncologist whether the drip that he was on could be speeded up so that he could get home quickly. As it was, he arrived home to find his wife had been left in a bed, frightened and alone. Many of your Lordships will have heard similar stories.

This amendment would place a duty on the NHS to ensure that carers are consulted and to check that they are willing and able to care, as well as ensuring that the patient is fit to be discharged—I emphasise not just medically fit but fit to be at home—and putting the right support in place. It would avoid the experience of another carer, who said, "We knew she was on her way home only when she was on hospital transport. We had to drop everything and rush around to try to get a commode just so she could go to the toilet when she got home."

The Government suggest that rights in primary legislation will be replaced by statutory guidance. I have been assured of this by the Minister and officials, and I know they are sincere in the belief that this will be more than adequate. But guidance, however strongly worded, is not the same as having concrete rights in legislation that can be quoted and used. I cannot express how disappointed I and all who work with carers are that the Government are for the first time rowing back on the rights of carers, for which we have fought so hard.

With the leave of the House and at his request, I shall quote some of what the noble Lord, Lord Young of Cookham, would have said had he been able to be present. As your Lordships know, he is especially concerned about young carers. He says—

Baroness Penn (Con): My Lords, while I have a lot of sympathy with my noble friend Lord Young wanting to contribute to the debate, in order to do so, he needs to be in it.

Baroness Pitkeathley (Lab): I apologise to your Lordships. I will just say that the noble Lord said it was a "backward step" to leave only guidance.

This is not only morally wrong but very short-sighted. If a discharge is unsatisfactory, the inevitable consequence is readmission—and think how much that costs. The Government believe that the new discharge to assess procedures will deal with discharge problems, but carers report that discharge to assess takes place as the discharge itself is happening, with no chance to order suitable devices, equipment or changes to the home, let alone to consult the carer. I must point out that two earlier versions of the discharge to assess guidance did not even mention carers and did so only after pressure from Carers UK.

I am sorry to say that the Government and the NHS have form on ignoring carers. They were not mentioned in the health and care White Paper, which set out the foundations for the Bill and only marginally in the integration White Paper, yet I have never heard any Minister say anything other than that carers are essential, that they must be valued and respected and that we owe them a debt of gratitude. Similarly, I have always heard Ministers and officials agree that carers must be supported to combine paid work with caring to help them financially now and to avoid future poverty, yet here we are with a Bill which states baldly that carers must allocate more time, requiring a reduction in work hours and associated financial costs. I asked the Minister at Second Reading and I ask him again: does he expect carers to go on benefits in order to provide care?

Carers and patients need this amendment badly, and I hope the Minister understands that. I have no doubt of his good intention, but I fear for the plight of carers and patients if he does not accept the amendment, which is essential if we are to ensure that all carers, including young carers, are not overlooked in the hospital discharge process but retain concrete rights and recognition in primary legislation. I beg to move.

The Deputy Speaker (Baroness Fookes) (Con): The noble Baroness, Lady Brinton, is taking part remotely, and I invite her to speak.

3.45 pm

Baroness Brinton (LD) [V]: My Lords, I declare my interest as a vice-president of the Local Government Association. I will speak very briefly from the Liberal Democrat Benches to offer our support for both the amendments in this group.

The amendment tabled by the noble Baroness, Lady Pitkeathley, Amendment 113, says that unpaid carers, including those under 18, must be properly consulted by the NHS to ensure that they are able to provide the care needed to keep patients safe. In Committee—and, more recently, at the excellent and moving round table with family carers organised by Carers UK, about which the noble Baroness, Lady Pitkeathley, just spoke—we heard evidence of hospitals discharging patients before assessments had been completed and before carers had even been told. The burden that this places on carers is totally unacceptable and unsafe. Worse still—and unsurprisingly—the home arrangements too often break down when family and unpaid carers are not a full part of the consultation process. We support the noble Baroness, Lady Pitkeathley, in this vital amendment.

The second amendment, Amendment 144, to which I have added my name, was tabled by the noble Baroness, Lady Wheeler. The amendment ensures that there are always proper social care needs assessments to ensure that both the family and unpaid carers are consulted, along with the relevant local authority; and that ICBs must have an agreement in place with the relevant parties to ensure that vulnerable people are not discharged without the right support. Some carers are themselves vulnerable people, and we need to make sure that all protections are in place for them too.

Equally importantly, it ensures reporting by the relevant authorities back to the ICB so that it can monitor discharge effectiveness. It says—as a bit of stick to go with the other carrot parts—that the ICB must pay for any

[Baroness Brinton]
"additional costs borne by a local authority in caring for a patient whilst carrying out social care needs assessments",

in the event that the patient has been discharged before this was completed.

There are 1.4 million unpaid carers who save the state just under £3 billion a year—and they need more than guidance. Both of these amendments will ensure that the patient and their unpaid carer are assessed and supported properly, and that the key stakeholders—the NHS, the relevant local authority and the ICB—must work together to make this happen.

Baroness Meacher (CB): My Lords, I rise to support Amendment 113. I applaud the noble Baroness, Lady Pitkeathley, both on this amendment and on the years and years of commitment she has given to the support of carers.

It is extraordinary what this Government are prepared to do in this Bill. In revoking the Community Care (Delayed Discharges etc.) Act 2003, they are abolishing the "safe to discharge" test, which requires processes to have been followed to ensure that appropriate and adequate care is, or will be, in place for a patient's discharge from hospital. The Government are proposing that carers' rights in primary legislation should be put in statutory guidance instead.

As a member of the Delegated Powers and Regulatory Reform Committee, I am very conscious that, under this Government, secondary or delegated legislation is used more and more to concentrate power in the hands of Ministers rather than in Parliament. The only possible reason for the Government to remove carers' rights from the Bill, and to put them into secondary legislation, is to weaken those rights. Can the Minister give any reassurance on that point? It is a very important question.

A number of us recently met with a group of so-called adult carers—teenagers and adults—and also with a group of young carers. Both of those experiences were humbling from my point of view. I will mention a couple of points that came up. One teenager rather casually mentioned that she had begun being a carer at the age of three. This is unbelievable, is it not? I forgot to ask her what she actually had to do at the age of three; it is difficult to imagine. But, whatever she had to do, the idea that she somehow had a sense of responsibility at that age is truly alarming.

The other memorable moment was when a teenager was asked, "What is the most difficult thing for you, or the biggest problem that you have as a carer?" I thought she would say that she did not have any time to play with her friends or that she had to do all sorts of boring and horrible jobs that her friends do not. But no, she did not say any of that; what she actually said was, "The biggest problem I have is that the hospital staff won't tell me how much medication my mum needs. They say they've got to talk to my mum, but that's impossible." The selflessness implied in that is just completely extraordinary—and of course there were lots of other incredible points.

If these young carers are not consulted before their dependent relative is discharged from hospital, they may be at school or in the middle of a hockey match—it is just unimaginable that this requirement should be in any way weakened. I ask the Minister to take extreme care on this issue when going back and considering the Bill; only then can we be sure that patients are not just medically fit to be discharged from hospital, as the noble Baroness, Lady Pitkeathley, said, but are safe to be discharged—that is, carers or others are there to look after them.

BASW rightly points out that revoking a local authority's Care Act duty to integrate care and support provision with health provision at the time of the key decision about where a person should be discharged to from hospital undermines the model of integration between social and health care staff—surely the absolute opposite of the whole objective of the Bill. I understand that discharge to assess is probably reasonable for medium and long-term care planning. However, an assess to discharge approach is even more important and should be done in hospital, from the date of admission to hospital. Where is that commitment in the Bill? I look forward to the Minister's response.

Baroness Hollins (CB): My Lords, I am very pleased to support the noble Baroness's amendment, and my thanks go to Carers UK for its briefing. I declare an interest as a family parent carer of an adult disabled man.

Earlier in Report, community rehabilitation was debated, and Amendment 113 complements this by acknowledging the vital role that carers play in supporting people's discharge from hospital and promoting a community-based model of care. In Committee, I promoted an amendment that sought to define carers within the Bill, as they are mentioned in three clauses. This amendment incorporates that approach, to ensure that parent and young carers are not overlooked. I cannot stress sufficiently strongly how important rights in primary legislation are for carers, who often have all the responsibility for caring but very few of the rights. They are often experts in how people like to be treated, and they can be experts in a condition that professionals may have little detailed knowledge of.

Carers UK heard from carers directly about their experiences of being shut out of the system as part of the discharge to assess process. For new carers, it was often described as bewildering; promises to contact them just did not materialise. Carers UK research found that carers were not consulted and were not given information and advice or the support that they needed to care safely and well for the person who had been discharged. For several of these people, this involved admission to longer-term intensive support or, sadly, readmission back into hospital again. The amendment would have provided the checks and balances needed to ensure that this did not happen.

Carer experience surveys are also important, and they found that carers' experiences of accessing health and care services for themselves have either plateaued or deteriorated in the recent past. Carers are twice as likely to have ill health as a result of caring; too often, they are overlooked in policy and practice in relation to health services. This is particularly true for parents of disabled children and for young carers. The work that they do has invaluable medical and economic benefit, often at the expense of their own well-being. I therefore urge the Minister to accept the amendment.

Baroness Tyler of Enfield (LD): My Lords, I strongly support the two amendments in this group.

In Committee, I spoke on hospital discharge, focusing particularly on carers who are working. As the noble Baroness, Lady Pitkeathley, said, until very recently the impact assessment talked about an expectation that carers would have to provide more care. It said:

"There is an expectation that unpaid carers might need to allocate more time to care for patients who are discharged from hospital earlier. For some, this may result in a … reduction in work hours and associated financial costs."

While Ministers have talked of carers being able to choose whether or not they give up work to care, we have heard that many have not been given a choice, been consulted or been given the right information to care safely and well. We know that, on occasions, carers do make an informed choice to take on more care, which is great, but we have heard far more stories where the system is working against carers. Indeed, the research from Carers UK shows that two-thirds did not feel listened to about their willingness and ability to care by healthcare professionals.

I am particularly concerned about carers who are trying to juggle working and caring. They may be willing to take on and provide more care, but they are juggling work as well. The impact assessment makes an assumption that, when carers give up work, it will be a short-term thing because the care provided will not be significant. Yet the stories we have heard from carers show that, too often, that is not the case because patients with significant needs are discharged into the community without sufficient support.

To conclude, this is not a minor issue. It affects millions of people, and it particularly affects women. There have been 2.8 million more carers juggling work and care during the pandemic, and many have had to give up work. We also need to remind ourselves that women are more likely to be reducing their working hours to juggle work and care, and they are a group that is already often under-pensioned.

Baroness Walmsley (LD): My Lords, we on these Benches, as has been said, support both amendments in this group. I just ask the Minister one question. We have heard about people who might have to give up work or reduce their hours in order to care. I do not know if the Minister has ever tried to apply for benefits, but it takes a while, and it certainly takes a while for the benefits to turn up in somebody's bank account. Given that situation, will the Minister talk to the relevant department to see if a fast-track process could be put in place for people in that position?

Baroness Wheeler (Lab): My Lords, I fully endorse my noble friend Lady Pitkeathley's excellent speech and the other contributions on Amendment 113. The amendment focuses on three fundamental issues for unpaid carers: being fully consulted and involved before their loved one is discharged from hospital; having a proper assessment both of their own needs and of those who they care for; and clinging on to the few concrete rights they have under the health and care and family legislation that refers to and defines carers, including parent and young carers, and the right of all carers to have a carers' assessment.

I also thank the noble Baroness, Lady Brinton, for adding her name to my Amendment 144 and for her usual forensic analysis of how the discharge to assess approach is working and its impact on both carers and their loved ones being discharged from hospital. I spoke on this amendment in Committee, but the noble Baroness has underlined the key points and I will not therefore press my amendment today. We can instead concentrate on showing strong support from across the House for carers and for Amendment 113.

Speakers made this support very clear in Committee. At the very least, we could have hoped that this would lead to a commitment from the Government to reinstate the carers' rights that the Bill deletes and to ensure that carers are consulted before the partner, husband, relative or friend they care for is discharged from hospital, as per their current entitlement under the 2003 delayed discharges Act. Instead, there have been no reassurances or movement in these crucial areas, despite some helpful meetings with the Minister. As my noble friend Lady Pitkeathley points out, we are once again having to defend existing carers' rights rather than working to enhance them to recognise the worth of carers and reflect the vital role that they play.

If the Minister was hoping that his recent letter and the accompanying updated draft guidance on discharge to assess would address the deep concern and frustration felt by carers, then he knows today that this has not worked. The promise of statutory guidance, and of carers being able to undertake judicial review if it is breached, is not the same as legal rights. In reality, how many carers would be able to go down the judicial review route? The Government just do not seem to understand how deeply ignored, undervalued and unrecognised carers feel.

We should remember, on discharge to assess, that the evidence from key stakeholders to the Commons committee dealing with the Bill clearly showed a very mixed experience of how the approach was working. In some areas, the perennial and disruptive issues around delayed transfers have eased and it is working relatively well, whereas in others, there were calls for much tougher safeguards or for the process to be ended altogether. The Government need to recognise that the system is in its early days but that, as we have heard, the horror discharge stories are happening now—and all too often, as we see from the briefings from Carers UK.

In his response, the Minister needs to reassure the House about the action that the Government are taking now to ensure that hospitals involve and consult carers about arrangements before discharge of patients. I hope that he will also accept Amendment 113 and fully recognise that carers' existing rights must be reinstated in the Bill.

4 pm

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Kamall) (Con): My Lords, I thank all noble Lords who have spoken and particularly thank the noble Baroness, Lady Pitkeathley, for her continuing championing of carers.

Discharging people as soon as they are clinically ready is increasingly recognised as the most effective way to support better outcomes. The evidence shows

[Lord Kamall]
that the "discharge to assess" approach reduces time spent in a hospital bed and supports people to remain independent at home wherever possible. Although the hospital discharge clause does not mandate discharge to assess, the Government are supportive of local areas that choose to implement this best practice model. We believe that carrying out long-term needs assessments at a point of optimum recovery leads to a more accurate evaluation of people's abilities and needs and more appropriate care packages. Many people discharged from hospital require longer than two weeks to recover. Requiring social care needs assessments to be completed within two weeks of discharge would not necessarily be in the patient's best interests.

I understand that noble Lords are concerned about safe discharge from hospital and safeguards for patients and carers. However, relevant NHS bodies are expected to ensure that patients' health needs are met safely in hospital and in the community. Local authorities also have duties to assess patients' and carers' needs and, where relevant, ensure that appropriate support is put in place for them. In addition, the CQC monitors, inspects and regulates services to make sure that they meet the fundamental standards of quality and safety, which are set out in legislation.

The Government do not believe that these amendments are in the best interests of either carers or patients. They would create new burdens on NHS bodies and local authorities, and Amendment 144 would create new penalties for local authorities for failing to carry out assessments within a specified timeframe. In doing so, the amendments would undermine the entire purpose of Clause 80 and hinder the ambition, shared across the health system and by Members of this House, to ensure that people are discharged in a safe and timely manner. The creation of significant bureaucracy between local authorities and the NHS risks damaging relationships and would go against the spirit of integrated working that this Bill seeks to support. We agree, however, that accountability and transparency are key to ensuring that local systems deliver high-quality and safe discharge services, which is why we welcome the fact that NHS England now publishes hospital discharge data.

Additionally, a duty on NHS bodies and local authorities to co-operate with one another is already set out in Section 82 of the NHS Act 2006. To specify how this duty will apply to hospital discharge, we are co-producing guidance with organisations including Carers UK, the Carers Trust and Barnardo's. This will set a clear expectation that, where appropriate, unpaid carers should be consulted during the discharge process. As noble Lords have acknowledged, this guidance will be statutory; NHS bodies and local authorities will therefore be required to have regard to it or risk claims for judicial review potentially being brought against them. We agree that, where we can do more to "think carer" across the NHS, we should. With this in mind, we can commit that we will consult with the public, staff and carers on including a stronger reference to the role and regard of unpaid carers in the NHS constitution, for which a review will be launched this year.

I am also mindful of the specific concerns that have been expressed in relation to young carers. As well as using the guidance to include a much broader definition of carers than that set out in Schedule 3 to the Care Act, I can inform the House that the new Explanatory Notes for the Bill provide clarity that young carers and parent carers are included within the everyday definition.

In response to a number of noble Lords' questions, I repeat what I said earlier: our new guidance includes a broader definition of carers than Schedule 3 to the Care Act, which applied only to adult carers of patients requiring a long-term needs assessment before discharge. Adult carers' rights to an assessment of their own needs, under Section 10 of the Care Act, and young carers' rights, including those as part of the Children Act, remain unchanged under the proposed hospital discharge arrangements.

We believe that statutory guidance is more appropriate here. At the moment, current guidance is not statutory; this will be statutory. Where a young carer is identified, or staff have concerns, the local authority should be notified. Local authorities must then carry out a needs assessment if it appears that the young carer needs support. We are not imposing new duties on local authorities; the existing legislative duties placed on local authorities to assess and meet patients' and carers' eligible needs remain unchanged.

I recognise the good intentions behind Amendments 113 and 144, but we believe they would have the effect of undermining the ability of local areas to adopt best practice for hospital discharge. I am not confident when I say this, but I hope that, having heard what I have said, noble Lords may feel able not to press their amendments when reached.

Baroness Pitkeathley (Lab): My Lords, I thank all noble Lords who have spoken and the Minister for his responses, particularly about consultation and about broader definitions and identification of carers. I was a little puzzled when he mentioned transparency, since the latest updated version of the impact assessment says:

> "The level of support required as well as the associated impact on work hours and salary would vary significantly case-by-case and the impact on unpaid carers is difficult to assess. We are therefore unable to quantify the impact on unpaid carers at this stage."

I am very concerned that, if we cannot quantify the impact on carers, we cannot really do anything to support them.

The problem with guidance, good practice guidance or statutory guidance, is that we have been here before. I have seen other bits of guidance—the identification of carers by GPs, breaks for carers—I have seen those bits of guidance fall away when another priority takes over. Therefore, I am very concerned that we need to have the rights of carers enshrined in primary legislation, and I wish to test the opinion of the House.

4.06 pm

Division on Amendment 113

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Amendment 113 agreed.

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4.23 pm

Amendment 114

Moved by ***Lord Howarth of Newport***

114: After Clause 80, insert the following new Clause—

"Creative health

(1) Within six months of the passing of this Act the Secretary of State must establish a review to consider and report on social prescribing and other creative health interventions, including—

(a) the existing provision, quality and effectiveness of social prescribing and other creative health interventions,

(b) the evidence base and research requirements,

(c) the benefits in terms of preventing ill health and aiding recovery,

(d) the impact on health inequalities, social value and communities,

(e) barriers to innovation,

(f) sustainability,

(g) means to integrate creative health with other approaches to health care and social care, and

(h) the potential to extend and improve creative health provision, including—

(ii) the costs and benefits of doing so, and

(iii) the resources and actions needed to realise this potential.

(2) The Secretary of State must appoint as Chair and members of the reviewing committee individuals who appear to the Secretary of State likely to have an informed and independent view of the relevant issues.

(3) The review must consult—

(a) creative health practitioners,

(b) people with lived experience of social prescribing and other creative health interventions,

(c) charities working in the field of creative health,

(d) the National Academy for Social Prescribing,

(e) the Office for Health Improvement and Disparities,

(f) Integrated Care Partnerships,

(g) Royal Colleges,

(h) NHS Providers,

(i) the NHS Confederation,

(j) Health Education England,

(k) the Local Government Association,

(l) social care providers,

(m) Research Councils,

(n) Academic Health Science Networks, and

(o) others that the Chair of the review considers appropriate.

(4) The review must make recommendations to the Secretary of State on the topics described in subsection (1).

(5) The report of the review must be published within 18 months of the passing of this Act.

(6) Within three months of receiving the report the Secretary of State must lay before Parliament a statement specifying how he or she intends to implement the recommendations of the review, including timescales and budget."

Lord Howarth of Newport (Lab) [V]: My Lords, I will speak to only Amendment 114, the proposed new clause on creative health. While I fully support Amendment 184ZB in the name of the noble Baroness, Lady Greengross, in view of the pressures of time today, I will not add to what I said on that subject in Committee. I am grateful to the noble Lords who have added their names to my amendment.

The term "creative health" denotes a range of non-clinical approaches to healthcare. These include working with cultural, natural and other community assets to effect a radical improvement of people's experience at any stage in the life course. People receive expert support to engage creatively with, for example, the arts, crafts, museums, heritage and the natural world. There is a body of powerful evidence for the benefits of creative health, set out for example in the 2017 *Creative Health* report of the APPG on Arts, Health and Wellbeing and the World Health Organization Europe's scoping review of 2019. Tapping into their own and others' creativity has significant benefits for people in relation to a range of mental and physical health conditions, mitigating for example the distressing impacts of loneliness, anxiety, depression and dementia, as well as addictive behaviours and obesity. Health and well-being in social care settings also benefit significantly from creative health interventions. I detailed some of these benefits in speeches in Committee.

In the NHS long-term plan, the Government have already recognised social prescribing, and the National Academy for Social Prescribing has been established and made encouraging progress. With the establishment of the integrated care systems through the Bill, it is time now to examine a wider, systemic application of creative health approaches. In the new clause, I propose that the Secretary of State commissions a thorough

review of the potential to integrate creative health fully within the new structures and the modern orthodoxies of health and social care.

I am sure Ministers will recognise the ways creative health can support them in their agendas. We know that creative health can help significantly with some of the most pressing, intractable and expensive problems in long-term health, including mental illness and obesity. It can reduce demand pressures on GPs, hospitals and pharmacological budgets. When adopted to support people working in the NHS and social care, it reduces staff turnover and losses. At very little cost it can support the prevention agenda, enabling people to have the confidence to take responsibility for their own health, and building resilience against ill health. Striking results are in evidence from creative health programmes in deprived communities such as Blyth and Grimsby. In such communities, through building confidence, energy, co-production, relatedness and social capital, creative health can prepare the ground to reduce health inequalities and improve productivity, serving the place-making and levelling-up agendas. So much more can be achieved if we develop creative health across the country.

These are the reasons why I believe it would be appropriate for the Government to set up the review described in the proposed new clause. If the Minister tells us today at the Dispatch Box that they will do so, we shall not need to legislate. I beg to move.

Lord Crisp (CB): My Lords, I have added my name to the amendment from the noble Lord, Lord Howarth. He has made very powerful arguments, and I will add only three quick points.

First, I congratulate the noble Lord on the way he has championed creative health throughout the Bill, not just on this amendment, as well as the health impact of creative activity and beginning to move this into the mainstream.

Secondly, I have talked to a number of GPs about this, and they talked to me about the benefits they have observed: for example, of singing for respiratory health, of dancing for exercise and of gardening for contact with nature. Most involve some social engagement and all give meaning and purpose to life. For all these things there is some evidence base to show their impact on health. However, as the noble Lord, Lord Winston, said in Committee, we do not yet have decent evidence of the impact of specific creative health activities or of when and where they are most appropriately used. That is why it is very useful that the review specifically sets out to understand how and when specific creative activities impact on health and searches for the evidence and research requirements that will make this whole new approach as vital as it can be.

My third point is very simple. Throughout this whole process, it has been evident that we are reaching for new understandings of health from those that we perhaps had 10 or 20 years ago and certainly in the last century: an understanding that we need to pay great attention to healthcare and health services, an understanding that we need to pay a great deal of attention to prevention—by which I mean tackling the causes of ill-health—but also an understanding that we need to pay attention to the causes of health and the creation of health. That is another reason why this is such an important amendment. I hope the Government will look on it favourably.

4.30 pm

Baroness Greengross (CB): My Lords, I will speak very briefly to these two amendments: 114 and 184ZB. The amendment of the noble Lord, Lord Howarth, would require the Secretary of State to review and commission a report on social prescribing and other creative health interventions which have already been outlined. My Amendment 184ZB follows on from the discussion in Committee, when the Government agreed to include social prescribing as part of the overall dementia plan, and I am very pleased about that.

In the Committee debate, the noble Lord, Lord Watson, cited a study that cast some doubt on the merits of social prescribing. Briefly, I refer the House to the research conducted by the Global Brain Health Institute, which showed that lifestyle interventions, including art and music, can reduce dementia risk by up to one-third—that is a huge proportion. We have real-life studies such as that of Chris Norris, a 67 year-old man who was diagnosed, aged 58, with frontotemporal dementia in December 2012. Musical interventions have slowed the advance of his dementia. There are plenty of other real-life examples of this which I would be very happy to share with any Member of the House or, indeed, the Government.

The Government have already made commitments in this area, so I will not take up any more of the House's time. However, I ask the Government to give serious consideration to Amendment 114 moved by the noble Lord, Lord Howarth, as this could make a huge difference to many people's lives.

The Lord Bishop of Durham: My Lords, I rise to speak to Amendment 114 in the absence of my right reverend friend the Bishop of London, who is having to self-isolate due to having tested positive for Covid—which seems to be a bit of a theme of the first two amendments.

Members of the House will know that my noble friend is very involved, and was very involved in Committee, in speaking about health inequalities. Today, we want to share and highlight the strength of social prescribing and especially the role of faith organisations in helping to deliver this. There is evidence from the All-Party Parliamentary Group on Arts, Health and Wellbeing and the National Academy for Social Prescribing. But everyone who sits on these Benches would be able to tell you stories of where faith communities and local charities aid and assist with health improvements through activities which happen through them. Through cultural, creative, art, nature—all sorts of—interventions, people find health relief and are moved forward in improving their health.

My right reverend friend the Bishop of London herself runs a health inequalities action group, which she shares with six different faith leaders, healthcare workers and people with lived experience of health inequalities. They all highlight the role of faith organisations as legitimate community assets in delivering social prescription. An example is Art is Freedom, an

[The Lord Bishop of Durham]
art exhibition which features the work of survivors of modern slavery, curated by the crisis charity Hestia, which works closely with the Salvation Army. Not very far away from here, in Hackney, some churches run an intervention called Psalms & Stretches—a meditative form of gentle exercise which uses breathing, stretching and strengthening.

There is growing knowledge among multifaith groups—of all faiths—and volunteer organisations of informally doing work to reduce health and social inequalities, so our ask is simply that local communities are included in the solutions towards personal and community health. Civil society and all the people and groups that make it up are doing work that is worth learning from, and we need to consult them, as is mentioned in subsection (3) of the new clause proposed by the amendment. Alongside the professionals, they have insights to offer, so I hope that the Minister will consider the amendment and join us in creatively tackling health inequalities and improving population health through social prescribing.

Baroness Whitaker (Lab): My Lords, I warmly but very briefly support these proposed innovations in fortifying and enhancing health, not least in their application to the treatment of dementia. Will the Minister consider the work of Arts 4 Dementia, whose aim is empowerment through artistic stimulation, and which promotes social prescribing of arts and well-being activity at the onset of dementia, including through its seminal report, *A.R.T.S. for Brain Health*?

Baroness Bennett of Manor Castle (GP): My Lords, I rise briefly to offer support from the Green group for both these amendments. In Committee, I spoke extensively on the issues around creative health, and I will not repeat any of that. I just note that, looking at the Government's response, I get no sense that they have got the point that this is not an additional "nice to have"—something that is done after you have done the medical stuff—this has to be a core part of allowing people to get well again, and keeping people well.

On Amendment 184ZB, it is interesting that the Covid pandemic has seen a really large increase in private medical provision, such as testing on our high streets, et cetera. Now that they are there, those businesses will be looking out for different procedures to keep them going, and it is really important that we have full transparency about the advice that people are getting at those kinds of places.

Baroness Finlay of Llandaff (CB): My Lords, I say very briefly that I hope the Government will look favourably on this amendment from the noble Lord, Lord Howarth, and others. I hope that they will build into a review an assessment of the cost efficacy because as well as all the positive aspects that we have heard about, we must remember that, if you can decrease medication prescribing, you will decrease not only costs but adverse side-effects, which also have a cost. All these initiatives tackle the problem of loneliness, isolation and not having contact with other people—people who may be able to empathise with the way that you feel about your condition when you are undertaking a common activity with them. That can become particularly important for the psychological well-being of patients as well as their physical improvement.

Baroness Merron (Lab): My Lords, I congratulate my noble friend Lord Howarth on bringing this subject before your Lordships' House again. I am grateful to noble Lords from all sides of the House for providing their support for embedding the conditions and opportunities for art, creativity and culture in improving public health. These amendments provide something of a focus for action and I hope will be regarded seriously as such.

We know that the practices relating to creative health can be very effective and good value for money. Some 20% to 30% of all visits to the doctor are for non-medical reasons; for example, social isolation or loneliness. Therefore, the potential that we have in the United Kingdom is huge. Indeed, evaluation of the Arts on Prescription scheme suggested an average return of £2.30 for every £1 spent.

These amendments support the idea that art-based approaches can help people to stay well, recover more quickly, manage long-term conditions and experience a better quality of life. I hope that the Minister will be able to take these amendments on board.

Lord Winston (Lab): My Lords, if I may, I will introduce a slightly discordant note, seeing as my name has been mentioned. I did not intend to speak, but I do think we need to be a little cautious about all this. I congratulate deeply the noble Baroness, Lady Greengross, on her remarkable work in this area, and nobody would doubt for a moment that everybody here is speaking in very good faith and for the best of purposes.

However, as medical practitioners, we must say that the placebo effect is very powerful and can cure people or improve their health in all sorts of ways and with all kinds of activities, not only dementia. Feeling well is not a simple matter. One concern is that we might spend much more money than we expect on these activities, without coming to the gist of why and whether they work, rather than something that substitutes for them.

I remind the House of one thing. For many decades, the health service supported homeopathy. Homeopathy—like cures like—has been widely used across the world and many people have great faith in it. There is actually no evidence at all that it has any genuine medical or chemical benefit; it is probably essentially a placebo effect. I am not suggesting for a moment that we should not look at exercise, music and all the other things, but I implore the Government; if we do this on the health service, there is a duty to ensure that research is done as well, because we must have a health service that looks at evidence-based medicine. That is fundamentally important.

Baroness Penn (Con): My Lords, I thank the noble Lord, Lord Howarth, for initiating this debate, and for the work he has done on this issue.

A common theme runs through the comments of noble Lords. The noble Lord, Lord Winston, at the end, talked about evidence and evaluation informing

government policy. I hope that we can all agree on that. With regard to Amendment 114, as part of the Government's plans to roll out social prescribing across the NHS in England, a large evaluation has been commissioned by NHS England and NHS Improvement, through the National Institute for Health Research, which will evaluate many of the points raised. It will seek to find out how social prescribing services operate, how well they work, who does and does not use them, whether they are of benefit to people and a good use of NHS resources, and how cost effective the interventions are. The research will benefit patients by identifying how link worker services can be developed further. It will also study how to help people access social prescribing services and use them effectively, and how to ensure that everyone has access to them, no matter where they live or who they are. Importantly, it will also evaluate the economic sustainability and capacity of social prescribing services.

Furthermore, as part of the cross-government project to prevent and tackle mental ill-health through green social prescribing, another large evaluation has been commissioned to assess models, processes, outcomes and value-for-money of green social prescribing, to inform the scale-up of green social prescribing across England. We are already embedding social prescribing in current non-statutory integrated care systems. In September 2021, NHS England and NHS Improvement published the *ICS Implementation Guidance on Partnerships with the Voluntary, Community and Social Enterprise Sector*, which outlines the importance of the voluntary, community and social enterprise sector as a key strategic partner in ICSs and provides guidance on how sector partnerships should be embedded in how the ICS operates. This will apply to ICBs in the future, following the successful passage of the Bill. It also describes the importance of embedding social prescribing services, which provide the bridge between health and community by connecting people to local activities and services for practical and emotional support.

Turning to Amendment 184BZ, as of December 2021, there were 1,803 additional social prescribing link full-time equivalent workers in place, and more than 826,000 referrals to social prescribing through NHS primary care. This will make us well placed to reach the target set out in the *NHS Long Term Plan* of 900,000 referrals by 2023-24 well ahead of time—and this is in addition to other social prescribing schemes across the NHS, local authorities and the voluntary, community and social enterprise sector. Furthermore, NHS England, the National Academy for Social Prescribing and the department worked closely with Music for Dementia to facilitate a series of webinars on creative health and on the publication of guidance for social prescribing link workers and for social workers on music prescriptions for those with dementia.

We will also set out a new dementia strategy later this year. We are working with stakeholders, including people living with dementia, and their carers, and we will be looking at how we can improve the lived experience of dementia. This will include a focus on promoting personalised and integrated approaches to health and care. For some individuals this may include the use of music and arts-based interventions.

The Government are already putting substantial resources into social prescribing. I therefore hope that the noble Lord will feel able to withdraw his amendment.

4.45 pm

Lord Howarth of Newport (Lab) [V]: My Lords, I am most grateful to noble Lords from all parts of the House who have supported this proposed new clause, whether they have spoken today or, in the interests of enabling the House to make progress with other important business, refrained from speaking.

I invite my noble friend Lord Winston to study the research and evidence that is already available. The proposed review would, of course, consult with the research councils, a number of which are also engaged in this field of research, commissioning important work.

I say to the Minister that of course I am glad the National Institute for Health Research is already considering social prescribing, but I point out that creative health goes beyond that and embraces a range of other important and proven approaches. Of course, the review would look at a whole range of other issues as well. Her particular focus on social prescribing, important as it is, neglects to address the full range of relevant considerations.

That being so, I am sorry that Ministers have not seen fit to take the lead in establishing the review proposed in the new clause. They are missing an opportunity to act in the interests of the health and well-being of our society. That being so, the National Centre for Creative Health, which I chair, will look for resources to enable us to lead the review ourselves. We will still, of course, want to engage with government and NHS England. I hope they will see value in that. In due course, we will make recommendations as to how to develop creative health approaches on a national scale, and we will seek to resume dialogue with Ministers. I beg leave to withdraw the amendment.

Amendment 114 withdrawn.

Clause 91: Relevant bodies and Special Health Authorities

Amendment 115 not moved.

Clause 92: Power to transfer functions between bodies

Amendment 116

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

116: Clause 92, page 86, line 30, at end insert—

"(3A) Regulations under this section may not transfer a function as defined in Part 9 of the Health and Social Care Act 2012."

Member's explanatory statement

Part 9, Chapter 2 of the Health and Social Care Act 2012 lays out the safe haven for patient data across health and social care, required for national statistics, for commissioning, regulatory and research purposes, and for patient care. The amendment seeks to keep these statutory protections in place and ensure that NHS England do not take on this responsibility because of a potential conflict of interest in their role.

Lord Hunt of Kings Heath (Lab): My Lords, we debated this amendment on patient security of data last week. I wish to test the opinion of the House.

4.49 pm

Division on Amendment 116

Contents 207; Not-Contents 169.

Amendment 116 agreed.

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5.01 pm

Amendment 117 not moved.

Clause 93: Power to provide for exercise of functions of Secretary of State

Amendment 118 not moved.

Clause 94: Scope of powers

Amendment 119 not moved.

Clause 95: Transfer schemes in connection with regulations

Amendment 120 not moved.

Clause 96: Transfer schemes: taxation

Amendment 121 not moved.

Clause 97: Consent and consultation

Amendment 122 not moved.

Clause 98: Establishment of the HSSIB

Amendment 122A

Moved by ***Lord Etherton***

122A: Clause 98, leave out Clause 98

Member's explanatory statement

This amendment, and other amendments in the name of Lord Etherton to Part 4, will remove the provisions concerning the Health Services Safety Investigations Body.

Lord Etherton (CB): The amendments in this group that are in my name would remove Part 4 in Schedules 13 to 15 of the Bill, all relating to HSSIB. I am very grateful to the Minister and the Bill team for their engagement with me and other Members of the House on these amendments. An alternative, narrower amendment—Amendment 124 in the name of the noble Lord, Lord Hunt of Kings Heath—would simply remove the permission of HSSIB to disclose protected material to coroners.

The basis for these amendments can be stated in four words: it will not work. The safe space within which HSSIB is intended to operate cannot work because, under the provisions of the Bill, HSSIB responds to specific incidents which have, or may have, implications for the safety of patients. Those same incidents may be the subject of an inquest, and senior coroners are entitled under Schedule 14 to require the disclosure by HSSIB of protected material if it is relevant to the investigation being undertaken by the coroner. Once the coroner has that material, he or she is in practice bound to disclose it at the inquest, and the High Court will inevitably order such disclosure if it is relevant to one or more of the questions that the inquest is required by statute to resolve—in particular, in the present context, if it is relevant to deciding how the deceased died. That is because, in the words of a leading Court of Appeal case, the duty of the coroner is

"to ensure that the relevant facts are fully, fairly and fearlessly investigated"

and

"are exposed to public scrutiny".

Article 2 of the European Convention on Human rights does not add materially to the intensity of that investigatory duty of coroners which already exists under our domestic law. The materiality of Article 2 is only that it imposes the obligation not merely to decide by what means the deceased came to his or her death but in what circumstances.

I am very sceptical that coroners need protected material from HSSIB since they have managed perfectly well without any such right of access to similar material held by the PHSO since the PHSO was established under its founding statutes of 1967 and 1993. Be that

[LORD ETHERTON]
as it may, my focus today is on what the senior coroner must do when in receipt of protected material from HSSIB. In short, the material must be disclosed by the coroner.

Although an inquest is in legal terms an inquisitorial process, the ascertainment of the relevant facts is often, as many members of the House will know, highly contentious. Those who have been designated interested persons by the coroner, who include a wide range of family members, may cross-examine witnesses either in person or by representatives. It is inconceivable that a coroner could keep secret from interested persons protected material obtained by the coroner from HSSIB which is relevant to the matters that have to be decided by the inquest. This may have very serious implications for those who have given evidence to HSSIB which is deployed in the inquest, including the possibility of a conclusion of unlawful killing by gross negligence manslaughter.

No medical practitioner could possibly feel confident that, in giving evidence to HSSIB, it is being given in a safe space in view of the need for public disclosure of such evidence by coroners if it comes into their hands and is relevant to the inquest. I beg to move.

Lord Hunt of Kings Heath (Lab): My Lords, I have put my name to the amendments tabled by the noble and learned Lord and have tabled amendments of my own. As the noble and learned Lord said, his amendments simply take out the HSSIB provisions from the Bill, whereas mine take out the reference to senior coroners.

I think we are all united in supporting the concept of HSSIB improving safety in the health service. A stand-alone Bill in 2019 had a Second Reading in which we were beginning to get to grips with some of the issues around the construct of HSSIB and, particularly, the safe spaces concept. This is very important in the health service because of the traditional reluctance of staff to come forward with information about where things have gone wrong because experience has shown that whistleblowers have often been treated very poorly indeed.

I fully support the concept of HSSIB and safe spaces and believe that if it is implemented properly it will lead to improved safety. However, as the noble and learned Lord has so eloquently pointed out, the problem is that the inclusion in the Bill of the coroner's ability to access this information would render the whole safe space concept unworkable. Staff will simply not trust it if these provisions are left in the Bill.

We are faced with two options. One is to take out the whole of the HSSIB provisions. Ideally, I would support that because it would benefit from a stand-alone Bill, where we could give it the scrutiny it clearly deserves. On the other hand, our job here is to be constructive as a revising Chamber. On that basis, we would be much safer removing the coroner elements and giving the Government a little more time to discuss this further before the Bill goes on to Third Reading and back to the other place.

I think there are ways through. I have been attracted, for instance, to one solution put forward by the noble Baroness, Lady Brinton, in relation to a memorandum of understanding between the noble Earl's department and the MoJ. We need to discuss that; in order to do so now, I believe we should remove the coroner provisions from the Bill.

Lord Patel (CB): My Lords, I apologise for rising because I know we need to move on but before I speak to this amendment perhaps I may take the opportunity, as I was not here on the first day of Report, to thank the Ministers for listening—and taking action after doing so on many aspects. I thank them all for that. I also thank all those who sent me good wishes. It helped, and I did not realise I had so many friends.

I shall not speak at length on this group. I have my name on both sets of amendments. The reason I supported removing the whole clause was that there are a lot of issues arising, not just the invasion of the safe space. However, I agree with the noble Lord, Lord Hunt of Kings Heath, that it gives the Government another chance if it is confined to removing the coroner provisions. I agree with what has been said: the medical profession particularly, but even other health professionals, will find it difficult if the safe space of what they say confidentially can be invaded, so I support that proposal.

Baroness Walmsley (LD): My Lords, I well recall hearing Jeremy Hunt announce that we would have this organisation and thinking at the time how important it would be in turning the NHS into a learning organisation, in the interests of patient safety. I would prefer not to take the whole clause out but to amend it.

The predecessor non-statutory organisation's chief inspector has written to us, pointing out that when his organisation was set up it was made clear that full statutory independence, along with the fully enclosed prohibition on disclosure, would be essential to its success. I am concerned that if this power to disclose information to coroners is left in then this organisation, which we all so much support, will be set up to fail. That would be a very bad thing for patients and the whole NHS.

Quite honestly, the number of cases that the HSSIB is going to investigate—only 30—is highly unlikely to cut across anything that the coroner wants to do. In fact, the Joint Committee which scrutinised the previous Bill in 2018, which got only as far as Second Reading, concluded that the safe space would in no way impede the ability of coroners, regulators, the PHSO or the police in undertaking their own investigations or speaking to witnesses. That is not what we heard in the meetings which the Ministers have been kind enough to set up on Zoom, or from the Ministry of Justice. They obviously disagreed with the Joint Committee that scrutinised this carefully.

I hope the Minister is not going to rely on paragraph 6(7) of Schedule 14 because, as it stands, the so-called protections in that part of the Bill are completely unknowable. How can the High Court know whether a disclosure to the coroner will deter future witnesses from giving full disclosure? It simply cannot know that but there is a big danger. Nor can it know whether it will have an

"impact on securing the improvement of the safety"

of the health service. This is an empty protection and I hope the Government will not rely on it when arguing against the amendment of the noble Lord, Lord Hunt.

5.15 pm

Baroness Merron (Lab): My Lords, I am grateful to the noble and learned Lord, Lord Etherton, for so forensically and carefully introducing this group of amendments. The debate on the subject today, as on previous occasions, has been both rich and constructive. I hope it will lead to improving this clause; as we have heard, there are multiple issues in respect of its drafting. The main issue and debate today focused on coroners having access to protected information which has been shared in confidence under safe space conditions. Therefore, I will make my brief remarks in respect of Amendment 124, tabled in the name of my noble friend Lord Hunt and supported by the noble Baroness, Lady Walmsley, and the noble Lord, Lord Patel. We are all pleased to see the noble Lord, Lord Patel, back in his place.

It cannot be right, on the one hand, for someone to be compelled to give information and to do so on the understanding that they act within a safe space and would be committing an offence if they did not give information, yet, on the other hand, to enable that very information to be made publicly available. It is not the purpose or duty of HSSIB to act as a branch of the coroner. The coroner has multiple other avenues of access to information and powers of investigation. It does not need the access to this protected material simply because of the convenience of the existence of HSSIB. Therefore, I hope the Minister will understand this point and take it on board. If not, and if noble Lords are so minded to test the opinion of your Lordships' House, these Benches will support the relevant amendment.

Earl Howe (Con): My Lords, every day, the vast majority of NHS patients receive safe, effective and world-class care. Sometimes, though—and very sadly—errors occur which lead to harm. This is what the HSSIB will help us to address. The HSSIB will be an independent arms-length patient safety investigation body, with a statutory safe space and powers to discharge its investigative functions effectively across the NHS and the independent sector. This body will be one of the first of its kind in the world. Its independence will give the public full confidence that it will arrive at impartial conclusions and recommendations. The aim will be to drive improvements by learning and not blaming.

The provisions in the Bill were developed after considerable thought and scrutiny. We have had extensive stakeholder engagement, including an expert advisory group. The clauses, broadly in their current form, were scrutinised by a specific Joint Committee comprising Members of both the House of Commons and the House of Lords in December 2018. We accepted many of the Joint Committee's recommendations—for example, to include independently funded healthcare within scope and to exclude local maternity investigations. The HSSIB had widespread support across both this House—when it was introduced in a previous Session and again during earlier debates—and the other place. I know that many noble Lords here today, having heard some of them, are enthusiastic about the prospect of a fully independent investigation body. I very firmly believe that we need to continue with the same enthusiasm and see this new body through to fruition. We should not delay this important work by rejecting this part of the Bill.

I honestly think that removing Part 4 would be a backward step. It would be greeted with dismay by those patient safety campaigners who have argued so eloquently for the creation of this body. The current investigation branch does not have the necessary independence or the range of powers to truly drive change as a world-class investigation body. This is what we are trying to address by creating a new body with all the tools it needs to thrive. By the way, those noble Lords who think that removing Part 4 and keeping things as they are will prevent access to information by coroners are wrong: coroners currently have such access, but without our proposed restrictions. Key to the HSSIB's function is the creation of a statutory safe space, whereby non-compliance with those safe space protections can result in criminal sanctions.

I turn to the issue of access to safe space, which I recognise has caused concerns. We firmly believe that the only way to bring about a cultural shift in the NHS, so that people feel confident to share information and concerns are addressed promptly, is that there be a robust safe space. The current investigation branch does not have a statutory safe space. The Bill would create one, with tight restrictions. There are very limited circumstances when protected material can be disclosed—for example, if the HSSIB discovered information which demonstrated there was a serious and continuing risk to the safety of a patient or to the public—but this disclosure would occur only to the extent necessary to address those risks.

I know that direct access to protected material for senior coroners, as raised in Amendments 124 and 125, is an area of concern, but coroners have a unique role. A coroner's investigation is an independent judicial process that aims to provide bereaved families with the truth regarding the death of their loved one—who has died, where, when and how—and enable society to learn from any mistakes that may have caused or contributed to a death. When a death occurs, and when that death requires coronial investigation for the sake of families and of the public, that work should not be hampered. It is an important principle that we should trust our judiciary. I am confident that coroners will take seriously their responsibilities to safeguard any safe space material that they may see. They are used to doing this; they already routinely handle sensitive, confidential material.

It is most unlikely that senior coroners will need to access safe space information on a frequent basis. Of the 57 national investigations conducted by the current investigation branch, 10 were investigated by the local coroner. However, only one gave rise to a request from a coroner for material held by the current investigation branch. Having said that, even though we expect requests for protected material will be rare, the principle of coroners having access when they need it is an important one.

Baroness Walmsley (LD): In the case the noble Earl has just mentioned, could not the coroner have obtained the information by another means?

Earl Howe (Con): My Lords, I am afraid I do not know the answer to that. I can, of course, find out and let the noble Baroness know, if those details are available.

I know there have been concerns that inquests can seem to be adversarial, and that protected material passed on to the coroner could be used in them. Inquests are, by definition, designed to be inquisitorial; statute prohibits inquests from determining criminal and civil liability, and interested persons are prevented by the inquest rules from making submissions on the facts. Coroners seek to obtain the objective truth—how and not why someone has died. I submit that not allowing coroners to see relevant safe space material could prevent justice being done and seriously undermine public confidence in the coronial system.

I turn to the important issue of funding, raised by Amendment 123, although I do not know that noble Lords have spoken to that. The noble Lord is shaking his head so, to save time, I will not cover that point.

Finally, let me just say that an independent HSSIB is an excellent concept that has wide support. In my submission, it would be a terrible pity if noble Lords rejected it because of doubts about how well it would work. I believe that it will give patient safety a valuable boost and hope that the House will support it.

Lord Etherton (CB): I am extremely grateful to the Members of the House who have spoken, and to the Minister for his reply.

The Minister appears to accept that, if it is necessary to ask HSSIB for its material to reach a proper verdict or conclusion on the cause of death at an inquest, the material ought to be supplied and be made known to the families so that they have the benefit of what I described as the legal test: a full, fair and fearless investigation of the facts, in public. That is the problem.

Although the Minister referred to the extensive past consideration of safe spaces, I have not yet heard from any Minister, not even in the long letter we were helpfully sent on 3 March by the noble Lord, Lord Kamall, an explanation of how the safe space would operate in a coronial setting—in practice, that is, not in theory. As I said, I have not heard any explanation of how the information obtained by the coroner, which can be obtained only if it is relevant to the inquest, can be kept secret from the participants in the inquest. It cannot be; it is simply not possible. That is the fundamental problem with this particular provision relating to disclosure to coroners.

Having said all that, I heard what the noble Lord, Lord Hunt, had to say. In view of what he and others said, I beg leave to withdraw my amendment.

Amendment 122A withdrawn.

Schedule 13: The Health Services Safety Investigations Body

Amendment 122B not moved.

Clause 99: Investigation of incidents with safety implications

Amendment 122C not moved.

Clause 100: Deciding which incidents to investigate

Amendments 123 and 123A not moved.

Clause 101: Criteria, principles and processes

Amendment 123B not moved.

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Clause 110: Offences relating to investigations

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Clause 111: Prohibition on disclosure of HSSIB material

Amendment 123M not moved.

Clause 112: Exceptions to prohibition on disclosure

Amendment 123N not moved.

Schedule 14: Prohibition on disclosure of HSSIB material: exceptions

Amendment 124

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

124: Schedule 14, page 237, line 41, leave out paragraph 6

Member's explanatory statement

This amendment would remove the provision allowing coroners to require the disclosure of protected material.

Lord Hunt of Kings Heath (Lab): My Lords, I would like to test the opinion of the House.

5.28 pm

Division on Amendment 124

Contents 210; Not-Contents 169.

Amendment 124 agreed.

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5.41 pm

Amendment 124A not moved.

Clause 113: Offences of unlawful disclosure

Amendment 124B not moved.

Clause 114: Restriction of statutory powers requiring disclosure

Amendment 125

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

125: Clause 114, page 101, line 34, leave out subsection (7)

Member's explanatory statement

This amendment, along with another amendment to Schedule 14, would remove the provision allowing coroners to require the disclosure of protected material.

Amendment 125 agreed.

The Deputy Speaker (Baroness Fookes) (Con): On Amendment 125A, I think there may be a number of amendments in a similar vein.

Amendment 125A

Tabled by ***Lord Etherton***

125A: Clause 114, leave out Clause 114

Lord Etherton (CB): I am so sorry, Deputy Speaker, but I asked for my amendment to be dealt with by way of just removing the whole of Part 4, but I was told by the Public Bill Office that every single clause had to be mentioned. The Public Bill Office was unable to explain why that was, other than that was how it had always been.

The Deputy Speaker (Baroness Fookes) (Con): If it is down on the Marshalled List, it has to be dealt with. May I assume that the noble Lord is seeking not to move Amendments 125A to 125M?

Lord Etherton (CB): Yes.

Amendment 125A not moved.

Clause 115: Co-operation

Amendment 125B not moved.

Clause 116: Assistance of NHS bodies

Amendment 125C not moved.

Clause 117: Investigations relating to Wales and Northern Ireland

Amendment 125D not moved.

Clause 118: Failure to exercise functions

Amendment 125E not moved.

Clause 119: Review

Amendment 125F not moved.

Clause 120: Offences by bodies corporate

Amendment 125G not moved.

Clause 121: Offences by partnerships

Amendment 125H not moved.

Clause 122: Obligations of confidence etc

Amendment 125J not moved.

Clause 123: Consequential amendments relating to Part 4

Amendment 125K not moved.

Schedule 15: Consequential amendments relating to Part 4

Amendment 125L not moved.

Clause 124: Interpretation of Part 4

Amendment 125M not moved.

Schedule 16: Virginity testing: consequential amendments

Amendment 126

Moved by ***Lord Kamall***

126: Schedule 16, page 242, line 11, after "(h)" insert—

"(a) omit the "and" at the end of sub-paragraph (iv);"

Member's explanatory statement

This amendment is consequential on paragraph 5 of Schedule 16 to the Bill, which adds a new sub-paragraph (vi) to section 19A(6)(h) of the Criminal Procedure (Scotland) Act 1995.

Amendment 126 agreed.

Clause 151: International healthcare arrangements

Amendment 126A

Moved by ***Lord Sharkey***

126A: Clause 151, page 117, line 40, leave out subsection (3) and insert—

"(3) In section 1, omit "an EEA state or Switzerland" and insert "a relevant state or territory".

(4) In subsection 2(1)(b) omit "an EEA state or Switzerland" and insert "a relevant state or territory".

(5) In subsection 2(2) after (i) insert—

"(j) make provision to make payment (otherwise than under a healthcare agreement) in respect of healthcare provided in a relevant country or territory, but only when the Secretary of State considers that exceptional circumstances justify the payment and has laid before Parliament the reasons for such consideration and the details of the payments;".

(5) Omit subsection 2(7).

(6) After section 2 insert—

"(2ZA) Regulations under section 2 may—

(a) confer functions on a relevant public authority or a Scottish or Welsh health board (including discretions);

(b) provide for the delegation of functions to a relevant public authority or a Scottish or Welsh health board.

(2ZB) The Secretary of State may give directions to a person about the exercise of any functions exercisable by the person under regulations made by virtue of section 1 (and may vary or revoke any such directions).""

Lord Sharkey (LD): I shall speak to all the amendments in this group. I am very grateful to the noble Baronesses, Lady Brinton and Lady Thornton, for their support. All the amendments in this group address Clause 151. The purpose of this clause is to enable the Secretary of State to implement reciprocal healthcare agreements with countries other than the EEA states and Switzerland, where we already have such agreements. These agreements were provided for by the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019. This Act was the subject of intense debate as it passed through this House. Noble Lords approved the inclusion in the Act of explicit constraints on the powers of the Secretary of State to make such agreements. This ensured that wider and different purposes, such as privatisation, could not be included. I make it clear at this point that we strongly support the intention to extend the geographical range of reciprocal healthcare agreements.

5.45 pm

Clause 151 works to do this by amending and then renaming the 2019 Act. However, the structure of an amended 2019 Act would differ significantly from what it is now. These differences are chiefly in removing the list of explicit constraints on the way in which the Secretary of State can use the regulatory powers and in changing the definition of a "healthcare agreement". This can be read as suggesting a wider agenda than just providing reciprocal healthcare. In particular, removing the list of constraints and the redefinition of "healthcare agreement" seems to allow far wider scope to alter our existing healthcare provisions, perhaps including elements of privatisation. This all looks a lot like a potential privatisation Trojan horse, or at least a privatisation Trojan pony.

All the amendments in this group, taken together, restore the detailed constraints imposed on the Secretary of State by the 2019 Act. There are eight of these constraints; the main three are:

"Regulations … may only do one or more of the following things … specify or describe levels of payment and how they are to be calculated … specify or describe persons in respect of whom payments and provision may be made",

and

"specify or describe the types of healthcare in respect of which payments and provisions may be made".

These are very tight and prescriptive constraints, whose meaning is entirely and immediately clear. They make it absolutely plain that the powers granted to the Secretary of State by the Act can be used only in the narrowly defined context of reciprocal healthcare agreements and for nothing else. It is puzzling and worrying that the Government seek to remove these explicit constraints. It would be good to hear from the Minister the reason for their removal, and perhaps even better to hear an assurance that the Secretary of State's discretion has not been materially widened.

The second major area for concern is over the proposed revised definition of a "healthcare agreement". The existing definition, in Section 3 of the 2019 Act, is

"an agreement made between the government of the United Kingdom and an EEA state or Switzerland or an international organisation, concerning either or both of the following … healthcare provided in an EEA state or Switzerland, payments in respect of which may be made by the government of the United Kingdom"

or, the reverse,

"healthcare provided in the United Kingdom, payments in respect of which may be made by an EEA state or Switzerland".

All that is perfectly clear, and defines precisely the meaning of a "healthcare agreement".

The Government propose in Clause 151 to drop this simple and narrow definition and intend to replace it with new Section 2B(5). The new definition would read

[LORD SHARKEY]
"an agreement or other commitment between the United Kingdom and either a country or territory outside the United Kingdom or an international organisation, concerning healthcare provided anywhere in the world".
There is no mention of payments in this definition. Why is it more widely drawn? What other elements could be put into a healthcare agreement, and what are these other commitments that suddenly appear? Those are the major changes that the amendments address.

There is one further change proposed by Amendment 184ZC; it makes all the statutory instruments generated by Clause 151 subject to the affirmative procedure. As the Bill stands, all these statutory instruments would be subject to the negative procedure, which of course provides no real opportunity for parliamentary scrutiny at all.

I close by offering my sincere thanks to the Minister and his officials for their very close engagement on all the issues that I have mentioned. I am very grateful for their generosity in providing time for our many discussions, and I look forward to the Minister's response. I beg to move.

The Deputy Speaker (Baroness Fookes) (Con): The noble Baroness, Lady Brinton, is taking part remotely. I invite the noble Baroness to speak.

Baroness Brinton (LD) [V]: My Lords, I echo the thanks of my noble friend Lord Sharkey to the Ministers and their officials for the very helpful discussions that we have had with them on reciprocal healthcare agreements. I also thank my noble friend for his persistence in leading on those discussions between Committee and Report on the two points of difference between us—the definition of reciprocal healthcare, with our concerns about the ability to create a privatisation of parts of healthcare, and that an SI under a negative resolution is not strong enough for Parliament to scrutinise properly. My noble friend's amendments are, as he said, very specifically aimed at removing these concerns, and I look forward to the Minister's response.

I also particularly thank Ministers for understanding that the House was deeply unhappy with the original proposals for regulations via a negative resolution. I hope to hear that Ministers will now agree to the affirmative resolution proposed in the amendment of my noble friend Lord Sharkey. Scrutiny by Parliament needs to be timely, and Parliament needs to be allowed to effectively challenge proposals about which it has concerns.

Baroness Thornton (Lab): My Lords, it is a great pleasure to speak about reciprocal healthcare, which is not how I felt several years when we dealt with this exact issue in your Lordships' House, as many noble Lords might remember. It was with some trepidation that I and these Benches looked at this part of the Bill, because we were so concerned and had to do so much work to protect our NHS in the passage of the 2019 Act.

I am very grateful to the Minister and the Bill team for engaging with us so thoroughly to take on the board our concerns, which needed to be built into this part of the Bill. I say particularly how impressed I am by the noble Lord, Lord Sharkey, and how grateful I am to him for his understanding and persistence—and his ability to read long, complex documents, understand them and then translate them so that other people can understand them too. That is a great talent.

From these Benches, with the idea that the affirmative resolution will be agreed, we are very happy indeed.

Baroness Penn (Con): My Lords, I too thank noble Lords for their helpful engagement on this matter over the last few weeks and for bringing forward the debate on this issue today. It is important that the results of those discussions are on the record, so I hope that noble Lords will forgive the length of my response.

I am pleased that we agree on the overarching benefits of having reciprocal healthcare arrangements with countries across the world, which would provide support to UK residents when travelling abroad and can be particularly valuable to those with long-term health conditions. Such arrangements can also support enhanced healthcare co-operation with our international partners. It is for these reasons that the Government have negotiated new arrangements with the EU and Switzerland and now wish to refresh arrangements with countries outside Europe and with our overseas territories and Crown dependencies. This policy is fundamentally aimed at assisting UK residents to access healthcare abroad.

Turning to the amendments tabled by the noble Lord, Lord Sharkey, I start by making some assurances to him and to the House over the policy intentions of the international healthcare arrangement clause in the Bill. To be clear, this legislation is not about the negotiation of international healthcare agreements. Those agreements are negotiated using prerogative powers. This clause and the 2019 Act that it amends simply ensure that the Government have the powers to implement international healthcare agreements. Healthcare agreements contain substantive provisions, such as eligibility criteria and which treatments will be covered. New Section 2(1) gives us the power to implement those healthcare agreements; for example, by putting in place administrative arrangements and conferring functions on public bodies to deliver our reciprocal healthcare commitments. We could, for example, set out which public body will administer the global health insurance cards. It is anticipated that any regulations made under new Section 2(1) will be materially the same as the current Healthcare (European Economic Area and Switzerland Arrangements) (EU Exit) Regulations 2019 No. 1293.

The department has been undertaking careful analysis of how to take forward international healthcare agreements, balancing the benefits for citizens when abroad with the Secretary of State's duties in the NHS Act 2006, which apply when exercising functions in relation to health services, for example, the duty to continue the promotion in England of a comprehensive health service. Our analysis to date shows that there are clear benefits to be derived from state-to-state reimbursement models, but that these will generally work only with countries with public healthcare systems.

I recognise the noble Lord's concerns about the breadth of the powers, and I reassure him that Clause 151 narrows the powers under the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019

to better reflect what is necessary now that the UK has left the EU and has reciprocal healthcare arrangements in place through the trade and co-operation agreement. It does this by revoking existing powers in Section 1 of the 2019 Act, which currently enable the Secretary of State to pay for unilateral healthcare policies in the EEA and Switzerland; enabling payments to be made for treatment outside the scope of a healthcare agreement only if exceptional circumstances justify the payment; allowing the payment power to be exercised only if authorised by regulations. and limiting the Secretary of State's ability to make regulations in areas of devolved competence.

Our approach follows concerns raised by noble Lords in the original Bill debates in 2019 about the breadth of the unilateral payment and regulation-making power. Under the current Sections 1 and 2, the wide powers given to the Secretary of State to fund healthcare in the EEA and Switzerland were intended to cover various EU exit options and ensure that UK nationals were not left in a cliff-edge situation in the EEA and Switzerland in the event of a no-deal scenario. There was limited additional scrutiny for the payment power in the original 2019 Act due to the circumstances at that time. We consider that this power is no longer appropriate or necessary now that the trade and co-operation agreement is in place.

Amendment 126A would limit the exceptional payments power so that it is exercisable only after the Secretary of State has set out reasons for, and details of, any payments made before Parliament. However, I do not believe that this would work in practice. The policy intention is that the exceptional payments power will be used in circumstances where an individual falls marginally outside of the scope of a healthcare agreement. We have, for example, used discretionary payment powers under the 2019 Act to provide crisis mental health support to a minor in the EU who was not covered under the European health insurance card scheme due to the structure of the member state's healthcare system. These circumstances are often where an individual has a very serious and urgent medical need, and it remains essential that the Government are able to move quickly to support that person and ensure their welfare. An amendment where this power is exercisable only after the reasons and details of payments have been laid before Parliament could severely hamper our ability to act quickly—something that I am sure is not the intention. Furthermore, the Government are already obliged under Section 6 of the 2019 Act to lay before Parliament an annual report outlining the payments made pursuant to the Act. This ensures that there is transparency and will continue to apply following amendments made by this Bill.

I confirm that the amended definition of a "healthcare agreement" in this Bill is materially the same as the current 2019 Act definition. Both cover commitments between the UK and a country, territory or international organisation for healthcare provided outside the UK in whatever form. Making reference to "other commitment" is a drafting change to make it clearer that the regulation-making power can be used to implement non-legally binding arrangements, such as memoranda of understanding. This ensures that implementation of reciprocal healthcare arrangements made with close partners, such as the overseas territories and Crown dependencies, are in scope of the 2019 Act, as they do not have the authority to become parties to treaties in their own right. They can, therefore, enter only into non-legally binding arrangements.

Amendment 184ZC would make regulations subject to the affirmative resolution procedure. With thanks to the noble Lord, Lord Sharkey, for his constructive engagement, the Government are content to accept this amendment and, as the noble Lord is aware, may amend it further to ensure that the drafting is optimal for our shared objective.

The purpose of the 2019 Act and the provisions that we have put forward in Clause 151 is not to implement trade deals. The Government have categorically stated in their manifesto that the NHS is off the table when we are negotiating agreements with our international partners. To be clear, it is important to state that reciprocal healthcare agreements that we agree with other countries do not relate to the commissioning and provision of services for the NHS. The policy intention in that reciprocal healthcare should cover publicly available healthcare.

This legislation narrows the scope of the powers compared with the 2019 Act and is tailored to negotiate more comprehensive healthcare agreements with our closest partners, as well as provide support to our citizens when they need it most. For that reason, I ask the noble Lord to withdraw this amendment and not move Amendments 126B to 126G. I confirm the Government's support for Amendment 184ZC.

6 pm

Lord Sharkey (LD): My Lords, I am very grateful to the Minister for the comprehensive way she addressed the various anxieties about Clause 151. I am reassured by her clear statement that the purpose of the 2019 Act, as amended in this Bill, is not to implement trade deals, and by her equally clear statement that reciprocal healthcare agreements do not relate to the commissioning and provision of services for the NHS. I heard the Minister say that Clause 151 actually narrows the power given under the 2019 Act and explained how this was so. I am grateful for that explanation too. I am even more grateful that all the regulations produced by Clause 151 will now made under the affirmative procedure. On that note, I beg leave to withdraw the amendment.

Amendment 126A withdrawn.

Amendments 126B to 126G not moved.

Clause 155: Cap on care costs for charging purposes

Amendment 127

Moved by ***Baroness Wheeler***

127: Clause 155, page 124, line 16, leave out subsection (2)

Member's explanatory statement

This amendment is linked with the amendment in the name of Baroness Wheeler to leave out Clause 155.

Baroness Wheeler (Lab): My Lords, I will also speak to my Amendment 141, which would delete Clause 155. I am very grateful to the noble Baronesses, Lady Campbell and Lady Brinton, and to the noble Lords, Lord Warner and Lord Lansley, for their combined support of these amendments. Sadly, the noble Baroness, Lady Bull, and the noble Lord, Lord Lansley, cannot be here, but the noble Baroness, Lady Campbell, and the noble Lord, Lord Warner, will speak to my amendments. I understand that they will move Amendments 143 and 144A.

In the Care Act 2014, we have a carefully crafted, step-by-step, cross-party agreement implementing the key recommendations of the 2011 Dilnot commission on the cap-and-floor model of social care funding, which went through the full parliamentary processes in both Houses. It built a consensus for implementing and funding the introduction of the care cap in 2016, and enshrining the key Dilnot principles of fairness and equity across all those needing social care. However, as we know, this agreement was never implemented following two separate postponements and a final cancellation in 2019.

Instead, the short Clause 155 we have before us on the Government's proposals is a last-minute, hastily scraped together, ill-thought-through mishmash of subsections added to an essentially NHS Bill after its Commons Committee had finished, which was then bombarded through that House without any time for close scrutiny and debate. Our own Committee session on this clause started late in the evening at 10.30 pm and lasted not much more than an hour, so we fared little better on such a major and fundamental issue that will impact hundreds and thousands of lives. Moreover, the Minister, despite his offer on the record in Committee to talk to noble Lords about their questions and concerns, has been given no authority to discuss or agree any possible changes to the clause, which is so clearly ill thought through—contrast this with the fruitful discussions that have been held on a number of other important issues in the Bill.

My Amendments 127 and 141 to delete Clause 155 would ask the Commons to think again about how it implements the care cap. It presents a key opportunity for fundamental reconsideration of the Government's proposals. There has now been time for greater analysis and scrutiny of the proposals and their impact by key stakeholders and expert think tanks, such as the Nuffield Trust and the King's Fund, both of which have called for the clause to be removed. Its deletion would restore the full provisions on the cap under the Care Act 2014. It would mean that there would be reconsideration of how the cap should be implemented, not whether it would be implemented. Amendment 144A would reinforce this.

Labour strongly supported the 2014 negotiated care cap, its charging package and the costs involved. This has always been in the context of the care cap as part of a much wider social care reform that is needed to address the current crisis and build long-term sustainability and growth, which the Government have yet to address. We know that the Government's proposals for the cap were discounted by Dilnot in 2011 as unfair, because they will result in people with low levels of wealth spending the largest proportion of their income on their care. The cap at £86,000 is set too high to benefit the majority of people who need to be protected, and the bombshell of abandoning the key safeguarding Dilnot principle enabling local authority care costs to count and accrue towards the cap means that poorer people will be exposed to the same care costs as the very wealthiest in society.

Despite the pledge that nobody should have to sell their homes, the fact is that someone with assets of £100,000 will lose almost everything, whereas someone with assets worth £1 million and over will keep almost everything. This is clearly shown in the extensive modelling by stakeholders such as Age UK, Mencap, the Alzheimer's Society and the think tanks. That was detailed during our Committee debate, particularly the impact across some of the most deprived areas in the country. The Government's own figures show that more than one in five older people will not see the benefit of the cap at all, and poorer care users are much more likely to die before they reach the cap than someone who is better off with the same care needs. Only 19% of people with dementia will reach the cap.

Moreover, Amendment 143, which will now be spoken to by the noble Baroness, Lady Campbell, and the principle of which we strongly support, reinforces the key point that a fair cap and charging system has to provide essential support to older adults and working age disabled adults, many of whom have lifelong conditions, including those with learning difficulties and who have to draw on social care support for their daily needs and support. The Dilnot proposals recognise this by seeking to ensure that adults entering the care system under the age of 40 or who were under 40 when they first entered it would have their care capped at zero.

I commend Amendment 144A from the noble Lord, Lord Lansley, to which I added my name. This fully complements the deletion of Clause 155 in restoring the current charging provisions in the Care Act. It would add a new clause to require the Secretary of State to make regulations under the Care Act to ensure that all its provisions on the care cap—Sections 15 and 16—come into force before 1 April 2023. This would mean that there would be no delays to the implementation of the care cap based on the relevant sections of the Care Act. It also means that the uprating of the care cap value from the level fixed in 2014 could take place—the concern of Amendment 182.

What is crystal clear is that the Minister's repeated claim—or rather, as he described it in Committee, his "hope"—that

"no one will lose out when compared to the current system"—[*Official Report*, 31/1/22; col. 751.]

or face "unpredictable care costs" just is not borne out by the evidence proving otherwise, which is stacking up every day. Increasing the complexity of local authority charging arrangements on personal budgets, as the government amendments to the Care Act seek to do, makes an already hugely complex and system-heavy admin and technical system even worse. How many care users will be able to understand what is happening? I was particularly interested in the comment by the noble Lord, Lord Lansley, in Committee that a number

of the issues that the government amendments sought to rectify or amend were never introduced in 2014 anyway.

How much more straightforward to use the sections of the Act developed for implementation than to try to patch up the provisions and hang them on a different Bill. We support the ambitions of self-funders to pay the same rate for care as local authorities pay for the people they fund, but there is absolutely no evidence of any government intention to provide cash-starved councils with the huge costs involved in this, and bearing in mind the massive underfunding of social care over the past decade.

Clause 155 must be deleted so that the key Dilnot principles of fairness and equity across all those needing social care can be reinstated. Deletion of the clause would mean that implementation of the care cap could proceed but under the provisions of the fully scrutinised Act designed to implement it: the Care Act. Under Amendment 144A, all provisions relating to the cap would be implemented by 1 April 2023.

At the appropriate time, I shall withdraw Amendment 127 and then move Amendment 141 in its place and seek to test the opinion of the House. I understand that the government amendments to Clause 155, which come before Amendment 141, will be agreed on the nod and will then fall if Amendment 141 is carried. I beg to move.

The Deputy Speaker (Baroness Garden of Frognal) (LD): My Lords, the noble Baroness, Lady Brinton, is taking part remotely. I invite the noble Baroness to speak.

Baroness Brinton (LD) [V]: My Lords, I thank the noble Baroness, Lady Wheeler, for introducing so comprehensively this group of amendments on care costs. Given the lateness of hour in Committee, the House needed to hear the detail of this.

Her Amendments 127 and 141, which I have signed and which we will support if she calls a Division, would remove the cap on care costs which was announced and introduced by the Government in the Commons. It was not widely consulted on, and is a deeply unfair element of the Government's proposals for the new social care payments arrangements. Far from fixing the ongoing crisis in social care "once and for all", which the Prime Minister said from the steps of No. 10 Downing Street in 2019 he would do, these divisive plans will not stop people needing to sell their homes to pay for care and are a breach of the Government's promise in that election. It is very important that the Commons have the time to discuss the consequences of the detail of removing that cap now that the announcement has been better understood, especially by the professionals, including the think tanks, who are very concerned about it.

We also support the noble Baroness, Lady Campbell of Surbiton, who will speak to Amendment 143 in the name of the noble Baroness, Lady Bull, which would ensure a zero amount for personal care charges for those under 40. It is absolutely against the spirit of Dilnot and a deep injustice to those under 40 with personal care needs that they are treated the same as those whose working years are behind them. It is a huge injustice that we have an NHS that is free at the point of use and yet younger people with learning disabilities and life-limiting health conditions are charged for essential care. There are also a number of deep, practical contradictions in this arrangement that make it particularly shocking, including a survey that found that charges made by cash-strapped local authorities—made because they could charge them—had forced people to stop the care they needed or made them face difficult choices for financial reasons, with the results showing an increased reliance on family members and high levels of deteriorating mental health, including suicidal thoughts.

Amendment 144A from the noble Lord, Lord Lansley, and as outlined by the noble Baroness, Lady Wheeler, supports the principles behind both Amendments 127 and 141, which would remove Clause 155. It proposes that all provisions on the care cap are brought into force by 1 April 2023 by regulation under the Care Act, resulting in no delay to its implementation. We support that too.

The Deputy Speaker (Baroness Garden of Frognal) (LD): My Lords, the noble Baroness, Lady Campbell of Surbiton, is also taking part remotely. I invite the noble Baroness to speak.

Baroness Campbell of Surbiton (CB) [V]: My Lords, I support Amendments 127 and 141 in the name of the noble Baroness, Lady Wheeler; Amendment 143 in the name of my noble friend Lady Bull; and Amendments 144A and 182. Sadly, my noble friend Lady Bull is unwell, so I will speak to Amendment 143 and do my best to encapsulate her reasons, as well as mine, for returning to it on Report. I shall not move it later when it is called.

Unfortunately, at this hour, my voice is fading because I have had to use it a great deal today, so I shall use my speech facilitator, as allowed by the House, more than I would usually.

6.15 pm

Clause 155 overall is a regressive measure which will particularly affect younger disabled adults. Amendments 127 and 141 would restore the current charging provisions in the Care Act. Amendment 143 would apply a zero cap to the care costs of people under the age of 40 who develop or have developed eligible care support needs. It would effectively make their care needs free.

The Government's current proposals seek to apply one charging system to two very contrasting groups: older adults and working-age adults. They are significantly different, not only in their care needs but in their financial profile. Working-age adults starting out in life with high care costs have little chance of saving for the future. As one social care commentator has noted, the catastrophe for many working-age disabled people takes the form of years of poverty and denial of opportunities.

The Disability Discrimination Act 1995, which came into force under a Conservative Government, acknowledged for the first time that treating everyone the same discriminates against disabled people. It is necessary to treat some people differently in order to give them equal life chances—to work, to travel and to be free; in other words, to improve one's lot.

[Baroness Campbell of Surbiton]

The Government should look at a charging formula to address the economic hardship of those reliant on social care. Social care is an investment; it makes economic sense for a thriving, healthy society. Keeping people in a state of dependency is infinitely more expensive than enabling them to live active, independent lives.

Having to give a large part of your modest income to the state—almost 40% in some cases—because you happen to be born disabled, or to become disabled early in life, impoverishes those who already have disability costs, averaging £583 a month. The evidence shows that this group will suffer most in terms of their health and well-being. Trapped in poverty, they will never achieve what the Government claim they want disabled people to aspire to—so much for the levelling-up agenda.

The Government say that nobody will be worse off than they are now. That is of no comfort to young disabled people whose means-tested benefits and entitlements are not keeping pace with the rising cost of living. The Government's own impact assessment undermines their claim. It assumes that working-age adults do not contribute to their care costs from their income, but it then admits that

"income from some benefits would be included".

It cannot be right that benefits intended to help individuals meet the additional costs of disability are used to fund the gap in local authorities' care budgets.

When the Government announced the cap last September, they said it reflected the Dilnot charging reforms, but Dilnot recommended a zero cap for those under 40, as it did not think that younger adults could

"realistically be expected to have planned for having a care and support need, nor will they have accumulated significant assets".

This solution is not radical or expensive. Few under-40s are able to contribute to their care costs—on the Government's figures, 90% of all working-age adults have their care costs supported by the state. Basic estimates suggest that around 9,000 might benefit in 2022-23 and up to 10,500 in 2031-32. The absence of government data on this sector makes it difficult to estimate the cost more accurately.

It cannot be right to proceed with a policy on such inadequate evidence. If the Government do not accept this amendment, will the Minister at least commit to improving the quality of data on working-age adults? The Minister raised concerns in Committee that the zero cap would create a cliff edge at the age of 40. But cliff edges exist in numerous policies in legislation, such as pension ages and the £20,000 limit in the current charging proposals.

At the start of the Tokyo Paralympic Games last summer, the Prime Minister referred to the newly launched national disability strategy, saying that

"we are harnessing that same ambition and spirit, to build a better and fairer life for all disabled people living in the UK."

I am afraid that in Clause 155 there is a very hollow ring to that much-trumpeted fairness—in fact, it does the opposite. I therefore urge the Minister to go back and think again about the effect of these charging proposals on younger working-age disabled adults. Clause 155 denies them the right to equal life chances, and I urge Members to reject it.

Lord Warner (CB): My Lords, I rise to speak to Amendments 141, 143 and 144A—to all of which I have added my name. In the unavoidable absence of the noble Lord, Lord Lansley, through Covid, I shall be moving Amendment 144A with his agreement. I also declare my interest as one of the three members of the Dilnot commission and, unsurprisingly, I shall be supporting the findings of the commission's report in speaking to these amendments.

The coalition Government passed the Care Act 2014 to enable the Dilnot cap to be implemented but, since then, there has been no action to do this until now, with Clause 155 of this Bill. Unfortunately, that clause has major unfairnesses and shortcomings, as has been pointed out by all three speakers—the noble Baronesses, Lady Wheeler, Lady Brinton and Lady Campbell—so I am not going to repeat what they have said. This is a deficient clause, and no reasonable person would see it as a fair and reasonable implementation of the Dilnot proposals on the cap. As far as I am concerned, Clause 155 is an unsatisfactory attempt at implementing that commission's report and should be deleted from the Bill.

I turn to Amendment 144A in the name of the noble Lord, Lord Lansley. The purpose of this amendment is very simple: to require the Government to bring Sections 15 and 16 of the Care Act 2014 into force by April 2023. That is the time when one might expect the Government to bring the cap into force if Clause 155 remained in the Bill, so I do not think we are doing anything very adventurous by putting that date in the amendment. However, the removal of Clause 155 without any replacement would create uncertainty as to whether Sections 15 and 16 of the Care Act would be activated. If, as I and the noble Lord, Lord Lansley, hope, Clause 155 is deleted, Amendment 144A would ensure that the cap was brought into force by April 2023, but also on the basis that the cap was calculated to include the costs of all eligible needs met by the responsible local authority. In short, Amendment 144A would ensure a date for the Dilnot report on fairer care funding to finally start being implemented.

I acknowledge that if the noble Lord, Lord Lansley, were here to move this amendment, he might be more trusting than I am and willing to accept assurances from the Minister that Sections 15 and 16 would be activated by April 2023. I am afraid that someone who wrote and contributed to a report over a decade ago—which has been subject to prevarication ever since then—is rather less trusting, and I think it is absolutely essential, if we want to implement the Dilnot recommendations, that we should not offer that comfort of assurances to the Minister.

I turn briefly to Amendment 143, spoken to so well by the noble Baroness, Lady Campbell, in the absence of the noble Baroness, Lady Bull—another Covid casualty. The Government have made—if I may put it this way—a total hash of the Dilnot recommendations on page 24 of our report. These made it absolutely clear that anyone born with an eligible care need—or who developed an eligible care need before the age of 40—should have a zero cap. We set out the evidence and the arguments for this recommendation extremely clearly. The Government have chosen to ignore our clarity and have muddled up—for charging purposes—the

income and capital circumstances of two very different groups of people: older adults and disabled working-age adults. As the noble Baroness, Lady Campbell, has shown, this is very unfair to working-age disabled people. I suggest to the Minister that the Government need to remember the title of our report was *Fairer Care Funding*—that is what it said on the tin, and that is what we expected to be implemented. The extra cost of sticking to our recommendations on working-age disabled people is—at the most—about the cost of 10,000 people by about 2030. That, if I may put it crudely, would be about the cost of a few rather dodgy PPE contracts.

These three amendments—141, 143 and 144A—work together well as a package. They remove dubious government amendments; they restore the Dilnot proposals for younger disabled people at a modest cost; and they start the implementation of the Dilnot cap in April 2023 on the basis that we recommended.

Lord Lipsey (Lab): My Lords, it gives me great pleasure to follow the noble Lord who sat on the Dilnot committee. I think it was a first-class report, which, at the time, I was prepared to endorse as the least bad solution to the social care problem. But I have changed my mind since then. Why? Because the facts have changed. I set out some of those facts when I spoke in Committee, and they include the large rise in house prices that makes many people much more able to pay for care for themselves at the moment. The facts have changed again in the last couple of weeks because of this disgusting war that has broken out in Ukraine. As a consequence, we are going to have to spend more on defence, as the Germans have already recognised. Therefore, public budgets are going to have to be squeezed in other areas. I regret those squeezes, but it is President Putin's fault, not ours.

6.30 pm

In those circumstances, to add more than £2 billion to the cost of the welfare state seems an extravagance. It seems still more of an extravagance to add a further £1 billion, which will be necessary if the amendment proposed by my noble friend Lady Wheeler is accepted. We just cannot play around with money on that scale at this time, however good the cause.

I have previously put to the Minister my own preferred way forward, which is to look for a private-public partnership, at much less cost to the public purse, which could enable people who wish to protect themselves and their heirs from care costs to do so without recourse to the state. In addition, just in case the Government persist with the Bill, I suggest that if they really want to help poor people, my own side would not be looking to get rid of the amendment moved by the Government in the other House at the last moment but would be doing something to reduce the taper, which viciously attacks people with assets up to £100,000. The amendment that the Government have put forward and which Labour opposes stretches help up to people with £186,000. To reduce the taper, as I propose in my Amendment 142, would concentrate all the help on the people with less than £100,000.

I am afraid that we are on the wrong course here and getting out of it will not be easy. However, this is a weight of public expenditure that is ill directed, aimed at—and indeed entirely benefiting—the better-off half of the population, and which does nothing for the worse-off half of the population, who, most of all, need better care. It is misconceived policy in today's circumstances and I hope that the amendments, apart from my own, will not carry.

Baroness Altmann (Con): My Lords, I rise briefly to support Amendment 141, which I would have added my name to had my noble friend Lord Lansley not done so himself. As he is not here, from these Benches I add my support for the deletion of Clause 155. As an adviser to the Dilnot commission at the time—around 2011—I believe it runs directly counter to the aims of the cap, which had such strong cross-party support. I am sorry to say to my noble friend that I struggle to understand the Government's concept of fairness in this regard when Clause 155 imposes much greater losses of wealth on the least well off and forces longer waits on them while those with significantly more assets lose only a small proportion of their wealth before state funding starts.

I support Amendment 141. I hope my noble friend will either be able to accept it or that the other place will have a chance to consider this unfair change, which was added at the last moment without giving Members there an opportunity to do so.

Baroness Greengross (CB): My Lords, I am in favour of deleting Clause 155, as proposed by the noble Baronesses, Lady Wheeler, Lady Brinton and Lady Campbell. I will also speak to my Amendment 182, which would lower the social care cap to £51,000 from 2023. I will not be putting my Amendment 182 to a Division but I feel that it is important to bring it back on Report as this would be the level of the cap recommended by the 2011 Dilnot report, then adjusted for care cost inflation. I understand that the Government's cap of £86,000 is based on the increase in property values since the Dilnot report was published—can the Minister please confirm that? If so, was this for properties throughout the country and does it factor in that, while property values in London have increased significantly over the last decade, in many parts of the country they simply have not? Can the Minister please explain how the Government came up with that figure?

Clause 155 is a break with what is currently in the Care Act, which would mean that means-tested support does not count for an individual's progress towards the social care cost cap. According to analysis from the Institute for Fiscal Studies, with Clause 155, someone with that care need who has an annual income of £16,000 and assets of £100,000 would take almost six and a half years to reach the cap, whereas without Clause 155 the cap would be reached after three to four years. I declare my interest as set out in the register as co-chair of the All-Party Parliamentary Group on Dementia. For many people with long-lasting forms of dementia who require many years of care, Clause 155 will disadvantage them considerably.

I will be voting to delete Clause 155 and for the Government to return to the sound and sensible recommendations from the 2011 Dilnot report, with numbers adjusted for inflation, and implement them.

Baroness Walmsley (LD): My Lords, these Benches support Amendments 141, 143 and 144A. I congratulate all who have spoken and laid out the very important issues that we are talking about in this group. I will add one more point, which is that the fairly small savings that the Government might make under these measures, unless they are amended, would be paid for by the most vulnerable people. That is unworthy of a Government who say that their ambition is to level up across the country.

Lord Kamall (Con): I thank all noble Lords who have spoken in this debate and I am sorry I was unable to engage as much on this issue as I was on others. I will speak first to government Amendments 128 to 140 and 187. We believe that these amendments are crucial to make the adult social care charging reforms work as intended. If they do not stand as part of the Bill, it will lead to unfairness between those whose needs are met by a local authority and those who self-fund their care. The intention of these amendments is to correct this.

Without these amendments, some costs which individuals have incurred will not meter towards the cap when they should do so. Currently, individuals eligible for funded support who have not had a timely needs assessment may incur costs in getting their needs met in the interim. This applies whatever system of charging we come up with. The costs incurred during periods of delay currently do not count towards the cap, and my amendments fix this. We came across this issue when we were looking back at previous Bills and unintended consequences.

I have also tabled an amendment to clarify the circumstances in which an independent personal budget must be provided by a local authority and what information those documents must include. We want these to be forward-looking documents, personal to the care user. To support this and to simplify the metering process, we are also removing the link between these documents and what meters.

Finally, as set out in the recent impact assessment, our charging reform implementation plan includes a small number of trailblazer local authorities that will implement charging reform earlier than others. I have tabled Amendment 187 to allow these trailblazer local authorities to begin implementing the reforms before others. For these reasons, I ask that noble Lords support my amendments.

On the other amendments, a number of noble Lords have asked questions and I will try to answer them. We believe that the £86,000 level set for the cap balances people's personal responsibility for planning for their later years with a need to put in place a system to ensure that nobody faces unpredictable costs. Removing Clause 155 or simply omitting Clause 155(2) would have the effect of removing the ability to meter towards the cap by individual contribution only. Instead, progress towards the cap would be based on both individual and local authority contributions to care costs. This policy is unfair. However, it is also considered unaffordable.

Removing these clauses would increase the cost of the overall reforms by about £900 million per year, if you keep all other parameters the same—although. of course, other noble Lords have asked for other amendments, so those parameters would not necessarily be the same. This would require raising the cap, reducing means-tested support or expecting people to make contributions towards their daily living costs that are unaffordable from most people's income. None of these is preferable to the approach that the Government are proposing to take.

We argue that the Government's reform package is affordable and deliverable. We have indeed seen many reports over the years, and I understand that the noble Lord, Lord Warner, was on the Dilnot commission, but we have to ask ourselves why these were not implemented. Although we may see many merits in a number of a different systems, and we all have our own biases or views on what the system should—

Lord Warner (CB): May I give the Minister the answer to why they were not implemented? Successive Conservative Chancellors declined to implement them.

Lord Kamall (Con): The noble Lord may say that, but I have been advised that they were considered unaffordable.

On Amendment 142, I thank the noble Lord, Lord Lipsey, for his engagement with me on his very interesting idea. I agree with him; I regret the fact that the private sector has not come forward sufficiently to offer products. I agree that that could have solved a number of problems, but I should clarify that the taper rate is not linked to income, as suggested. It is what people are considered to be able to afford to pay towards the costs of their care, based on their capital.

The amendment would make the means-testing regime significantly more generous than in the Government's proposal, and I can see why that is attractive. However, once again, to answer the questions from many noble Lords, that would be considered to make charging reform unaffordable. We would be unable to afford to invest in wider improvements in the social care system that we are all keen to see. The Government's plans balance providing protection and predictability when it comes to care costs with how much additional burden should be placed on the taxpayer. We believe that our reform is responsible, deliverable and affordable. I repeat that although it may not be optimal, our proposal is better than the existing system, where there is no cap.

Amendment 143 suggests a zero cap, which would equate to free personal care for those identified as having eligible care needs before the age of 40. We considered this issue carefully and, as acknowledged by the noble Baroness, Lady Campbell of Surbiton, we looked at this system and engaged with her, but, as she rightly said, the issue was the cliff edge. One may disagree about the cliff edge, and there are other cliff edges, but we felt that one of this magnitude was unfair. We also believe that younger adults will benefit from the announced charging reforms. From April 2022, the social care allowances will be uprated in line with inflation to allow everyone to keep more of their income.

The noble Baroness, Lady Campbell, asked about data on the under-65s. We need to improve the data that we hold on under-65s who are drawing on care

and support so that we better understand their needs and how reforms impact them. The Minister for Care and the Minister for Disabled People this week met a large number of organisations representing working-age disabled adults to discuss this and other issues. This group will continue to meet as our reform programme progresses. I hope that that offers some reassurance to the noble Baroness.

Amendment 144A would require the full rollout of the government reforms to be commenced before 1 April 2023. One of the reasons we looked at October is that we recognise that implementing reforms of this magnitude —noble Lords will have heard me say previously that we have grasped the nettle—requires a significant lead-in time to enable local authorities to prepare. We have invested £3.6 billion in preparation for these reforms, and we cannot do it overnight. In addition, we want to have the flexibility to work with some of those trailblazer authorities to make sure that we really get the best of the discovery process to ensure that it works and that we can spot any unintended consequences.

We do not believe that there is sufficient time for local authorities to prepare for full national rollout by April 2023. It is vital that we take the time to work with the sector and local authorities on the process of implementation if we are going to get this right. To enable a successful rollout, we want to see how the trailblazers will work before we go for the full national rollout by 2023. Trialling and engagement with the sector would have to happen anyway, whether Clause 155 stood or not. As I have said, if Clause 155 does not stand, we would not be able to afford to implement charging reform.

6.45 pm

On Amendment 182, I reassure noble Lords that the recommendations of Sir Andrew Dilnot and the commission were fully considered. However, inevitably, the priorities and challenges regarding the funding have changed over the last decade. For example, increases in housing assets have significantly outstripped CPI inflation. Attempts to implement the precise recommendations that the commission would have liked to see have failed in the past because, as many noble Lords will recognise, Governments have considered them unaffordable.

I hope that, with my pleas, noble Lords will acknowledge that although it may not be perfect, this system has taken a very careful balance across government to make sure that no one is worse off. That is the important thing. It may not be the ideal system, but we have to balance a number of different requirements, including it being deemed affordable. It has been a careful balance; it is not a perfect system, but it is one that we can implement now and, in later years, look at how it has rolled out and whether it could be improved. These are the only proposals that are affordable by October 2023. We want to grasp this nettle, so I urge noble Lords to please enable us to do so.

I hope that noble Lords have been reassured, but maybe that is my eternal optimism. As I draw my remarks to a close, I invite noble Lords to support Amendments 128 to 140 and Amendment 187, in my name.

Baroness Wheeler (Lab): My Lords, I thank the Minister for his response, and all noble Lords who have spoken. Between them, the supporters of my amendment seeking to delete Clause 155 have all mounted the overwhelming case for its deletion, so in view of the time I will say just a few words.

The Government insist they have a social care strategy; they do not. They have the cap, hastily tacked on to an NHS Bill—a Bill that does not deal with integration across health and social care—and two subsequent White Papers on integration which set out how social care should look in the future, but with no plan, road map, timescale or massive funding injection out of the health and care levy to show how we will get there.

On the question of why Dilnot was not implemented, I absolutely endorse what the noble Lord, Lord Warner, said. As somebody who was around when the Care Act was carried, I remember that £6 billion was allocated to implement it, so I often wonder what happened to that.

The Minister still has not provided convincing evidence that nobody will be worse off under the Government's proposals. I asked him in Committee to explain his comments that 90,000 people would be better off under the new eligibility criteria, and have since asked the Bill team, but I have still not received a response to my request to show how this figure was arrived at and, importantly, how it breaks down between older people and younger, working-age disabled adults.

The deletion of Clause 155 would enable the care cap to be reintroduced under the Care Act, under the Dilnot principles of fairness and equity across all those needing care. As I said earlier, I will withdraw Amendment 127; I will move Amendment 141 in its place, on which I wish to test the opinion of the House.

Amendment 127 withdrawn.

Amendments 128 to 140

Moved by ***Lord Kamall***

128: Clause 155, page 124, leave out lines 19 to 29 and insert—

"(a) in relation to eligible needs met by a local authority, to any amount the local authority charged the adult under section 14(1)(a) or 48(5) for meeting those needs;

(b) in relation to eligible needs met by a person other than a local authority, to what the cost of meeting those eligible needs would have been to the local authority that was the responsible local authority when the needs were met."

Member's explanatory statement

This amendment de-couples the costs that accrue towards the care cap from the costs specified in the budgets and simplifies the drafting for determining those costs that accrue.

129: Clause 155, page 124, leave out lines 33 and 34 and insert "at any time after a local authority was required to carry out a needs assessment that resulted in the preparation of a personal budget or an independent personal budget for the adult"

Member's explanatory statement

This amendment means that, where there is a delay in carrying out a needs assessment or a delay in preparing a budget, costs incurred by an adult after the local authority was required to carry out a needs assessment will accrue towards the care cap.

130: Clause 155, page 125, line 1, after "Where" insert ", following a determination under section 13(1),"

Member's explanatory statement

This amendment clarifies that a local authority is only required to prepare an independent personal budget when there has been an eligibility determination.

131: Clause 155, page 125, leave out lines 6 to 8 and insert—

"(b) the adult has at any time either—

(i) asked a local authority that was, at that time, the responsible local authority, to prepare an independent personal budget, or

(ii) had needs met by a local authority as mentioned in section 24(1)."

Member's explanatory statement

This amendment means that the responsible local authority will automatically be required to prepare an independent personal budget where an adult with eligible needs has a personal budget and then no longer has any needs met by a local authority.

132: Clause 155, page 125, leave out lines 13 to 18 and insert—

"(a) the current cost to the local authority of meeting those needs,

(b) how much of that cost the adult will be required to pay under section 14(1)(a), and

(c) the balance, if any, of the cost referred to in paragraph (a)."

Member's explanatory statement

This amendment means that the personal budget will specify the cost the local authority is incurring in meeting needs, the cost the local authority is charging the adult under section 14(1)(a) for meeting those needs and the balance of the two costs.

133: Clause 155, page 125, leave out lines 21 to 24 and insert—

"(a) the current cost to the local authority of meeting those eligible needs,

(b) how much of that cost the adult will be required to pay under section 14(1)(a), and"

Member's explanatory statement

This amendment means that the personal budget will specify the cost the local authority is incurring in meeting eligible needs and the cost the local authority is charging the adult under section 14(1)(a) for meeting those eligible needs.

134: Clause 155, page 125, line 27, after "adult" insert "has needs which a local authority is required or decides to meet as mentioned in section 24(1) and"

Member's explanatory statement

This amendment clarifies that the personal budget is only required to specify costs in respect of eligible needs which are not being met by any local authority, if a local authority is meeting some of the adult's needs.

135: Clause 155, page 125, leave out lines 29 and 30 and insert—

"(a) what the current cost would be to the responsible local authority of meeting those eligible needs, and"

Member's explanatory statement

This amendment means that, in relation to eligible needs that are not being met by a local authority, the personal budget must specify what it would currently cost the responsible local authority to meet those needs.

136: Clause 155, page 125, leave out lines 33 to 37

Member's explanatory statement

This amendment leaves out language that is no longer needed in light of the amendment to page 125, lines 13 to 18 and the amendment to page 125, lines 21 to 24 that both appear in the Minister's name.

137: Clause 155, page 125, line 41, leave out from beginning to "(but" in line 42 and insert "what the current cost would be to the responsible local authority of meeting the adult's eligible needs"

Member's explanatory statement

This amendment means that, in relation to eligible needs that are not being met by a local authority, the independent personal budget must specify what it would currently cost the responsible local authority to meet those needs.

138: Clause 155, page 125, line 45, after "authority" insert "or at any time when the adult has needs which a local authority is required or decides to meet as mentioned in section 24(1)"

Member's explanatory statement

This amendment clarifies that the independent personal budget does not need to specify costs in respect of eligible needs which are not being met by any local authority if a local authority is meeting some of the adult's needs (those costs will be in the adult's personal budget).

139: Clause 155, page 125, line 46, leave out paragraph (b)

Member's explanatory statement

This amendment leaves out language that is no longer needed in light of the amendment to page 125, line 41 that appears in the Minister's name.

140: Clause 155, page 126, line 8, leave out subsections (7) and (8) and insert—

"(7) In section 31 (adults with capacity to request direct payments), in subsection (1), for paragraph (a) substitute—

"(a) a personal budget for an adult specifies an amount under section 26(1)(c) in respect of any needs, and".

(8) In section 32 (adults without capacity to request direct payments), in subsection (1), for paragraph (a) substitute—

"(a) a personal budget for an adult specifies an amount under section 26(1)(c) in respect of any needs, and"."

Member's explanatory statement

This amendment is consequential on the amendment to page 125, lines 13 to 18 that appears in the Minister's name.

Amendments 128 to 140 agreed.

Amendment 141

Moved by ***Baroness Wheeler***

141: Clause 155, leave out Clause 155

Member's explanatory statement

This amendment would remove Clause 155 (Cap on care costs for charging purposes) from the Bill.

Baroness Wheeler: I wish to test the opinion of the House.

6.49 pm

Division on Amendment 141

Contents 198; Not-Contents 158.

Amendment 141 agreed.

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7.03 pm

Amendment 142 not moved.

The Deputy Speaker (Baroness Henig) (Lab): My Lords, the noble Baroness, Lady Campbell of Surbiton, may be moving the next amendment on behalf of the noble Baroness, Lady Bull. The noble Baroness, Lady Campbell, is taking part remotely and I invite her to say whether she wishes to move the amendment.

Amendment 143

Tabled by ***Baroness Bull***

143: After Clause 155, insert the following new Clause—

"Social care cap for younger adults

In section 15 of the Care Act 2014 (cap on care costs), after subsection (4) insert—

"(4A) The Secretary of State must ensure that regulations made under subsection (4) specify a zero amount for adults—

(a) who are under the age of 40 when they first receive care and support to meet their eligible needs, or

(b) who have eligible needs which first required care and support before they reached the age of 40.""

Member's explanatory statement

This new Clause would ensure that adults entering the care system under the age of 40, or who were under 40 when they first entered it, would have their care costs capped at zero, in line with the Dilnot report recommendation.

Baroness Campbell of Surbiton (CB) [V]: Although I do not accept the Government's arguments with respect to the effect that these proposals will have on younger disabled people, and do not accept the cliff edge reason either, I will not be taking this to a vote. I hope we have learned something here tonight.

Amendment 143 not moved.

Amendment 144 not moved.

Amendment 144A

Moved by ***Lord Warner***

144A: After Clause 155, insert the following new Clause—

"Commencement of sections 15 and 16 of the Care Act 2014

The Secretary of State must make regulations under section 127(1) of the Care Act 2014 (commencement) to ensure that all provisions under sections 15 and 16 of that Act have come into force before 1 April 2023."

Lord Warner (CB): I wish to test the opinion of the House.

7.04 pm

Division on Amendment 144A

Contents 187; Not-Contents 143.

Amendment 144A agreed.

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7.17 pm

Amendment 144B

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

144B: After Clause 155, insert the following new Clause—

"Complaints about care services

(1) The Care Quality Commission (CQC) must establish procedures for investigating complaints of conduct which breaches, or potentially breaches, the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 ("the regulations").

(2) In establishing the procedures, CQC must take into account, by regular surveys, the views of—

(a) appropriate representative bodies,

(b) those representing users and their families, and

(c) such other persons or groups of persons as it considers appropriate.

(3) Nothing in this section affects the requirement for registered persons to comply with regulation 16 of the regulations.

(4) Complaints under this section include those made to CQC about regulated care services by users, their relatives or advocates, staff, or other relevant persons.

(5) A user of a service, their relative or advocate may make a complaint directly to CQC.

(6) CQC may, after due consideration, redirect a complaint to the registered person where it is satisfied that the conduct complained of does not constitute a breach of the regulations.

(7) CQC must—

(a) regularly publish a written report which includes examples of breaches of the regulations, and

(b) provide guidance to registered persons and others to illustrate how such complaints can be resolved to the satisfaction of service users, their relatives or advocates, staff or another relevant person.

(8) CQC must regularly review the procedures that it has established under this section.

(9) Procedures established under this section must be made available by the registered person to any person who receives services, or to their relative or advocate.

(10) CQC must publish information about procedures established under this section and take appropriate steps to make the procedures available to any person or group who may require such information."

Member's explanatory statement

The amendment requires the Care Quality Commission to establish procedures for investigating complaints of conduct which breaches, or potentially breaches, the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

Lord Hunt of Kings Heath (Lab): My Lords, there is a series of amendments in this group. My amendment does not really relate to the others in the group, but it is about an important issue.

In Committee, I raised the problem that a number of members of the public and the Relatives & Residents Association have brought to my attention: in a minority of care homes, if residents or relatives complain, the homes take retaliatory action in the form of making visits even more restrictive than they currently are and, in some cases, even evict, or threaten to evict, the person on whose behalf the complaint has been made. As I said, this is in a minority of homes— over the past few years I have been impressed by how many homes have continued to provide high-quality care in very difficult circumstances. None the less, this is an important issue.

In 2019, the Relatives & Residents Association was coming across at least one case a week of such intimidatory behaviour. We discussed this in Committee. The Minister said that she did not really think that the department had received much evidence of this, that in any case residents and their relatives and friends should complain to the home in the first instance, and that the Care Quality Commission would also pick up concerns.

This is a very confusing picture. If you go to the CQC's website, you will see that it states:

"we do not settle individual complaints ourselves, but we still want you to tell us about your experiences of care."

To most people, that is pretty confusing. If you are worried that a home is going to be intimidatory in its response to legitimate complaints raised, you are hardly likely to have confidence in its complaints system.

Up until about 2008, the CQC did take individual complaints but, due to a funding cut, it stopped doing so, even though, in Scotland, the equivalent body investigates specific complaints, and the predecessors of CQC investigated complaints. We know that there is huge pressure in care homes. We also know that some care homes are continuing extremely restrictive practices around relatives and friends being able to visit. This has become quite a serious problem in which, while they may not be in total lockdown, they come near to it, clearly more for the convenience of the home than for a public health reason. My amendment simply asks the CQC to go back to receiving and dealing with individual complaints in these cases. I hope that the Minister will perhaps be sympathetic to this. I beg to move.

The Deputy Speaker (Baroness Henig) (Lab): My Lords, the noble Baroness, Lady Brinton, is taking part remotely; I invite her to speak.

Baroness Brinton (LD) [V]: My Lords, the noble Lord, Lord Hunt, introduced his Amendment 144B on complaints about care services very well. He is absolutely right: this is a muddle. Are people to go to the CQC or to a particular home when they wish to make a complaint? Any complaints system where the person making the complaint feels in a less strong position than the organisation to which they are complaining, or indeed—sometimes they might even put this strongly—which is wielding power over them is a complaints system that will not work. I hope that the Minister will understand this, and will respond and ensure, first, that there is a clear and understood system, and, secondly, that if some funding needs to be restored to the CQC to take us back to where we were, that will happen.

I want to speak particularly to two of the issues covered in this wide-ranging group of amendments: the licensing of cosmetic procedures and medical practitioners' financial and non-pecuniary interests. I also have sympathy for the other two, on registration of social workers and hospital rehabilitation accommodation.

The amendments laid by the Minister, beginning with 153A, on the licensing of cosmetic procedures by local authorities and, indeed, Amendment 169 in the name of the noble Baroness, Lady Finlay, on cosmetic procedures, which I have signed, set out models for registration for those who work using devices that breach the skin and who are not covered by medical registration or, currently, by any effective regulation. I know that considerable discussions have taken place between Committee and Report, and it is welcome that the Government have felt that they can now lay their own amendments, signed by the noble Baroness, Lady Merron, and the noble Lord, Lord Lansley. I look forward to hearing the comments of the noble Baroness, Lady Finlay, on those amendments.

Amendment 184ZBB in the name of the noble Baroness, Lady Cumberlege, which I have signed, brings us back to the debate on medical practitioners' financial and non-pecuniary interests. Our debate in Committee highlighted the problem that the financial and non-pecuniary interests arrangements do not match those that many others in the public sector have to make, where the registration body holds the information. The GMC has said once again that it does not particularly like the style of this amendment and would prefer the records to be held directly by the employer. However, I

believe the argument that the registration body, which also has the power to take action, should be the place where these are kept.

I hope that, regardless of whether a vote is called, the Minister will take this away and look at it in more detail. We need an open, transparent and clear system of registration of financial and non-pecuniary interests.

The Deputy Speaker (Baroness Henig) (Lab): My Lords, the noble Baroness, Lady Masham of Ilton, is taking part remotely; I invite her to speak.

Baroness Masham of Ilton (CB) [V]: My Lords, I will speak to Amendments 169 and 181. I have my name down for Amendment 169 on the licencing of cosmetic procedures. During the passage of this Bill, I have had my eyes opened to just how enormous this industry is and how a great many people are putting themselves at huge risk. I have heard of some disturbing cases in which procedures with collagen have gone wrong. At a conference about plastic surgery and cosmetic procedures, one-third of the attendees were from the plastic surgery field and two-thirds from cosmetic procedures, which shows how popular this is becoming.

All Members of your Lordships' House taking part in these amendments share the desire that these procedures should be registered and safe. I am very pleased that the noble Lord, Lord Kamall, has accepted that this matter needs addressing and making safe. I thank him and his team for the hard work that they must have gone through in producing these amendments.

Amendment 181 is a very practical and important amendment, which I could not resist supporting and speaking to. It would reduce bed-blocking—a most unfortunate problem for a busy hospital that needs all its acute beds for ill patients, and frustrating for patients who still need rehabilitation but not in acute beds. These patients cannot go home because their accommodation is not suitable for their needs; for example, they might have to use a wheelchair and they need time to get organised. One of the problems is the time that it takes to get necessary adaptations completed. Housing authorities and social services need to work together with health authorities. If suitable rehabilitation accommodation is available, it can also be used for patients who need specialised treatment that is a long distance from their home. St James's hospital in Leeds has a hotel for such patients, and incorporated into the hospital is a Marks & Spencer food shop; this is a very valuable service. I hope that the Minister will agree that these provisions should be available throughout the country.

Baroness Finlay of Llandaff (CB): My Lords, I am most grateful to the Government for tabling Amendments 153A and 157A; I will not be moving my related Amendment 169. I should declare that I am married to an academic dermatologist, and that I am vice-president of the Chartered Institute for Environmental Health.

I am very grateful to the officials with whom I have had many discussions over the issue of cosmetic procedures. These government amendments are a welcome step in the right direction, by ensuring that individuals who carry out cosmetic procedures such as Botox fillers, threads under the skin and so on will have to meet consistent safety standards. Anything that breaches the barrier function of the skin—going through the live layer of cells of the epidermis—can cause inflammation, introduce infection and cause scarring and other reactions. The government amendments are most welcome because they are broad-reaching and tackle the real problem of people doing things to other people with no proper training and in premises that are not even properly inspected and licensed.

Perhaps I could just ask the Government two questions on this. First, when we had discussions we were considering the use of the term "energy-based device" to cover all the different modalities that can be used to get different types of radiation, whether as heat or whatever, through that layer—the barrier of the epidermis. That phrase would have captured such things in future regulations. Can the Minister assure me that subsection (2)(e) of the proposed new clause will also cover forms of energy not in the wording of the amendment, such as radio frequency and ultrasound devices, which are currently in use on the high street for cosmetic skin-tightening purposes? The idea is, of course, that they produce a small amount of scarring and tighten the skin, but if that goes wrong then you have a problem.

Secondly, can the Government confirm that, in order to obtain a licence, practitioners will be required to meet the agreed standards for training and education and that, in order to maintain their licence, they will be required to undergo appraisal and report adverse events so that such events can be collated and appropriately followed up on?

7.30 pm

It is important to acknowledge the wider issue around the safety of cosmetic surgery overall. The fact remains that, nine years after the Keogh review, recommendations to improve the safety of cosmetic surgery still have not been fully implemented. People who come to the UK using the term "surgeon", which they may be in their own country but are not registered with the GMC, cannot undertake surgical procedures; even if they are registered in their own country, or if they are registered here but undertake procedures in premises that are not CQC inspected, they are acting illegally and subject to prosecution. However, there is a catch: any doctor on the General Medical Council register can undertake cosmetic procedures, whatever their training, if they do so in premises that have been inspected. No specific qualifications have been required by the GMC and there is no curriculum or assessment process, so patients can still experience unacceptable and sometimes shocking aspects of care.

There may be a solution. In 2017, the intercollegiate cosmetic surgery certification scheme, supported by the four royal colleges of surgeons in the UK and Ireland, has been developed to keep patients safe and raise standards. That scheme is supported by all relevant surgical specialties. I hope that the Government can provide assurance that they will put increasing pressure on the GMC to work towards cosmetic surgery credentialing, which will be welcome and long overdue, and that such a scheme will include not only those surgeons but people such as dermatological surgeons who may then move into cosmetic procedures.

[Baroness Finlay of Llandaff]

Amendment 181, in my name and that of the noble Baroness, Lady Greengross, is about hospital rehabilitation accommodation. Rehabilitation units need to be there for people who need step-down care but cannot get home. These facilities need to have appropriate rehabilitation, such as gyms and hydrotherapy, the right range of staff, such as physiotherapists and people who can support patients psychologically as well, as they may have been very traumatised. Their environment should, overall, support recovery. We can learn from the military rehabilitation units and the new NHS rehabilitation centre near Loughborough, because there is evidence that people recover quicker in these. Then, with a good community rehabilitation plan, they can move home to improve co-ordination and integration, and continue with their rehabilitation better.

Lastly, I would like to address the amendment whose lead name is that of the noble Baroness, Lady Cumberlege, and to which I have added my name. This is a crucial part of patient safety and arises out of her very important review, *First Do No Harm*. I declare that I have been developing teaching materials on informed consent with the Welsh Government and that I chair the National Mental Capacity Forum. The issue of informed consent has become very important.

In clinical practice, there is always unconscious bias. This is far wider than direct funding that may go into a clinician's pocket. There is a risk of incentives created by past successes of which the person is proud, such as funding for their department or staff, and grants that may help towards their own career progression or higher qualifications—there are myriad influences. This amendment would allow a patient to find out about a clinician to whom they may have been referred and to ascertain any issues of such influences by such a register being publicly available.

The GMC has suggested that such a register is best held at local level, but clinicians move around. Some do extra contracted sessions in other units, while GPs are self-employed. There could also be a consortium of people working in private practice. One way to hold a register that could be checked up on regularly would be if it was held by the General Medical Council. In an ideal world, it should of course be multiprofessional, but we have to start somewhere, and it would seem sensible to start with the medical register, as almost all the people to whom a patient is referred are doctors on that register—although people may sometimes have been referred directly to specialist nurses, such as wound-care nurses and so on. Holding it centrally would ensure the register is accurate and accessible; it would be kept up to date through appraisal and therefore enforceable. It could eventually become multiprofessional in scope. I hope the Government will take this concept forward.

Baroness Cumberlege (Con): My Lords, I thank the noble Baronesses, Lady Brinton and Lady Finlay, for supporting Amendment 184ZA, which I have tabled. I think the noble Baroness, Lady Neuberger, is going to speak—yes, she is—and I look forward to that. I very much hope that other noble Lords will want to support this amendment, too. They would be in very good company with the royal colleges and the remarkable past editor of the *British Medical Journal*, Professor Fiona Godlee, who has done a lot on this subject. We have also had contact with a host of doctors and some very rewarding conversations with them. Many feel it would actually be to their benefit to make this all transparent and accessible to the public.

I pay tribute to Simon Whale and Professor Sir Cyril Chantler, who have done sterling work on this amendment. I know that Sir Cyril is known to many in this House because he has so many qualities: of leadership, clinical management and research, and in lots of other fields. This is my one opportunity to pay tribute to him through the Bill.

I also thank my noble friend the Minister and his officials. They have given their precious time, working very hard with me and my colleagues throughout the Bill's passage. I mention particularly the government amendments concerning the declaration of industry payments to doctors and others that my noble friend introduced in Committee, and which I thoroughly welcomed.

Turning to the amendment before us, I am delighted to say that together we have fashioned a form of words which reaches, I hope, common ground. Together with my team, we have constantly amended many amendments in discussing with officials what they thought was particularly important and what we thought was important. I think we have reached a happy place. My noble friend the Minister and his officials deserve praise and thanks for their tireless efforts and, unreservedly, I give those to them now.

In Committee, we debated an amendment on establishing a register of doctors' interests. My noble friend made the point that this information should be collected locally by those who employ doctors, rather than nationally by the GMC. I understand what the noble Baroness, Lady Finlay, said about it making sense to have the GMC involved, but in the end we agreed that this information should be collected locally. The problem is that these declarations are often out of date or incomplete, and in some cases the information is not collected at all, so it is very difficult for patients and the public to find out where that information is—and now they will have to go to the employer of the doctor. Sometimes it is hard for them even to find out if it exists, so I understand the logic that has just been proposed by the noble Baroness, Lady Finlay, that the GMC should be the body that collects this information. However, we have had very strong pushback on this. So, in the end, we have agreed with my noble friend that this information should be collected locally and made available to patients and the public.

Amendment 184ZBB simply puts into law what should be happening already. It would require any organisation that employs, contracts with or commissions a medical practitioner to provide medical services, or provides practice rights—we put that in because we wanted to cover the private sector as well—to obtain from that doctor a declaration of his or her financial and nonpecuniary interests. This, as I have said, can be done locally and it will be done through the annual appraisal that trusts have to carry out with employees. I think the missing piece in this puzzle is the doctors'

regulator. This amendment requires the GMC to take reasonable steps to assure itself that doctors are providing this information locally: that is very important. Following discussions with the Minister's officials, the amendment now also requires the CQC to assure itself that employers are collecting the information and publishing it. We think this is sensible and I am pleased that we are all agreed.

I hope this puts all of us—my noble friend, the GMC and those of us who have tabled this amendment and support it—on the same page. However, I would be very concerned if none of this was laid down in legislation. These requirements and responsibilities are clearly spelled out in law at present, and we see from the research that this leads to very patchy compliance. This is not acceptable to any of us. So, finally, this amendment is simple and clear and is aligned with the position of the Government and the GMC. It requires employers and doctors merely to do what they should already be doing, but are not in all cases. It places a light but important duty on the GMC and the CQC to assure themselves that doctors and employers are indeed doing what they should. This is in the interests of doctors. Indeed, Professor Carl Heneghan, in oral evidence to our review *First Do No Harm*, stated:

"I think it's important that if I'm treating you, you know who's paying me."

We owe it to patients and the wider public to improve transparency and to ensure that nothing undermines trust in our medical professionals. I hope my noble friend the Minister will agree that this amendment does achieve this in a way that he can support and that it fulfils all our aims.

Baroness Neuberger (CB): My Lords, I support the noble Baroness, Lady Cumberlege, in what she has just said, as well as my noble friend Lady Finlay and the noble Baroness, Lady Brinton. I pay tribute to the noble Baroness, Lady Cumberlege, for the extraordinary work she did on *First Do No Harm*, which led—gradually—to this amendment. I too pay tribute to Cyril Chantler, who I first knew when serving on the General Medical Council with him. I declare an interest as chair of University College London Hospitals NHS Foundation Trust and of Whittington Health NHS Trust. I am, as I just said, a former member of the General Medical Council, and I am somewhat surprised, I must say, that it has said yet again, including this afternoon by email, that it does not really support this.

7.45 pm

The only point I want to make that has not been made so far by the other three speakers on the subject is that I spoke to the medical directors at both the NHS trusts I chair. In the case of UCH, we have three medical directors; at the Whittington, we have only one. All four, to a man and woman, are strongly supportive of this amendment and this direction of travel. They think it is important for both doctors and patients. It is not only to protect patients; it is to protect doctors and to make it really clear that doctors are being transparent in their practice about who is paying them and who is paying their research funds and putting that money into what used to be called, in my early days in the NHS, a "little slush fund". If the trust medical directors support this, I really think we should encourage the GMC to think again, and I very much hope that the message to the GMC from this House will be that it should think again. I also very much hope that the Minister will look closely at this again and see how far he can take it, because there is really no doubt that this should be supported.

Baroness Merron (Lab): My Lords, this group of amendments concerns the licensing of non-surgical cosmetic procedures and other important considerations, such as hospital rehabilitation accommodation and the doctors' register of interests. They all relate to the interests of patients.

I shall address particularly the issue of cosmetic procedures and I start by thanking the Minister and his Bill team for giving so much support, showing such interest and bringing this into being today. I know we all welcome it; it is much appreciated. I am glad to have taken part in the meetings and to have tabled an amendment in Committee relating to cosmetic regulation. The amendments before us today have been very much welcomed by medical associations, because we all know that lack of regulation has been a ballooning problem. For example, the Save Face organisation received more than 2,000 complaints of botched procedures in 2020 alone and the true number, as we know, is likely to be higher.

The other point to make is that this is a fast-moving industry and I am glad that these amendments will be able to keep pace with an ever-changing landscape. We have seen a significant rise in recent years in the number and type of non-surgical aesthetic procedures performed in the UK. Practitioners, both medically and non-medically trained, are performing procedures without even being able to evidence appropriate training and the required standards of oversight and supervision of procedures that can be described only as high-risk. When they go wrong—and we have all heard the stories of intense and lasting damage from untrained practitioners carrying out procedures in unlicensed premises—we all know that it will then fall to the NHS to pick up the pieces. This, today, is a meaningful step in protecting more people from rogue operators.

I close by thanking noble Lords for their contributions not only to this debate but to shaping the legislation. Once again, I thank the Minister and his team for all their efforts. I hope we will come to see a much safer set of non-surgical cosmetic procedures than we have at present.

Lord Mawson (CB): My Lords, just before the Minister stands, I rise to support Amendment 184ZA in the name of the noble Baroness, Lady Cumberlege.

Over the last 28 years, it has been my privilege to work with a fantastic team of GPs in the East End of London who are now responsible for 43,000 patients. I know what great GPs and doctors are like. If I am honest, however, I have also had to deal with a number of dodgy doctors, which is a very difficult matter to deal with. One doctor undertook female circumcision in his practice, unbeknown to the health authority for quite a period of time. He ended up marrying his practice manager and, some years later, he murdered her. Another practice, when I dug under the carpet, had bought a

[LORD MAWSON]
cheap fridge from B&Q and, over a period of three years, kept 10,000 injections at the wrong temperature and injected 10,000 patients with dead, illegal injections. Another doctor, as we learned when we took over his list, had countless ghost patients. As a result, I started to discover what ghost patients are. It took our team two years to sort out the realities of who were and were not real patients.

For the sake of GPs and patients, we need to protect them in the way the noble Baroness is suggesting. Doctors are flawed human beings like the rest of us, and we need to protect them from themselves and from us. It is really important that these things are taken seriously. This amendment puts its finger on a very important matter.

Baroness Wyld (Con): My Lords, this morning, I told my three daughters that they needed to be more assertive at school, but I have completely failed to intervene tonight. I will be very quick in paying tribute to the noble Baroness, Lady Merron, and my noble friend Lord Lansley, who is not here tonight, and in thanking the Government for the amendments on cosmetic interventions. I sponsored the Botulinum Toxin and Cosmetic Fillers (Children) Bill in this House, which assisted with the regulation of non-surgical interventions for children. At the time, we said that this was only the start and that there was a lot more to do. We acknowledged that others had done a lot of spade work, and I pay tribute to all those who have done yet more spade work. I want to put on record my appreciation to the Government for listening and reacting.

Baroness Greengross (CB): I will be very brief because this is a slightly different subject. I shall speak to Amendment 181, which places a duty on the Secretary of State to ensure that each hospital has sufficient accommodation for patients who are rehabilitating and no longer require a hospital bed but still have needs. Further, as part of this duty, the Secretary of State must ensure that any spare land owned by the NHS is considered for this use.

In Scandinavia, patient accommodation of this nature has been part of the state health system since the late 1980s. Having patients stay in these facilities, which are designed to cater for people still needing some medical care, has delivered considerable savings to the public health system. The savings from these facilities is significant. In the previous group, much of our discussion—as always—was about the cost of our health and care system to the taxpayer, and to those who need care. This amendment, as well as delivering better rehabilitation and care for someone recovering from being in hospital, also delivers a significant saving. As I pointed out in Committee, NHS trusts are currently spending money putting up patients in hotels, with rooms costing as much as £275 a night. One London hospital has spent over £1 million on hotel rooms in the last three years. The cost of someone staying in a hospital bed for longer than they need is even greater than that. This is something that I would very much like to take up further with the Government.

Over the last few years, I have been working with a chartered architect who has identified various sites where this could happen throughout England. One is not terribly far from here. This is a real opportunity and I hope the Government will take it to include this as part of the Bill.

Lord Kamall (Con): My Lords, I start by thanking noble Lords who have spoken in this debate. In the end, this turned out to be an eclectic mix of amendments. Given that, I hope I can get the right balance between giving noble Lords comprehensive enough responses, while bearing in mind the more basic need of a dinner break for some noble Lords who have been in this debate today. I will be as brief and as comprehensive as I can be.

I turn first to Amendment 144B. We should be clear that the CQC is not intended to be an investigative body for an individual seeking redress. Other statutory bodies already exist to investigate individual cases and complaints, including the NHS complaints system. If complainants remain unsatisfied, they can raise their complaint with the independent Parliamentary and Health Service Ombudsman. Where the risk is serious or life-threatening, the CQC can act on a single concern and take regulatory action. Similarly, complaints about adult social care services should be made first to providers. They can also be made to the local authority, if the local authority is commissioning the care. Thereafter, complaints can be made to the Local Government and Social Care Ombudsman. Providers must investigate all complaints thoroughly and take necessary action where failures have been identified. The CQC monitors health and social care providers' complaints processes and can compel providers to provide a summary of complaints received and their responses. Failure to do so within 28 days is considered a breach of the regulation and could lead to prosecution of the provider.

On Amendment 147A, I hope to assure the noble Lord that work is already in place for a framework for assuring the quality of people working in social care. Registered managers are already assessed by the CQC, to confirm their fitness to be registered. Nurses are regulated by the Nursing and Midwifery Council and social workers by Social Work England. Any person delivering personal care must have a DBS check. If, in the future, it was decided that adult social care workers in England should be subject to statutory regulation, the power to do so already exists in Section 60 of the Health Act 1999.

I turn now to the amendments in my name. I start by thanking the noble Baroness, Lady Merron, for raising this issue with the House, and thank all those noble Lords, including the noble Baroness, Lady Finlay, who have raised concerns about the need for regulation of this ever-evolving industry. As I hope noble Lords will now acknowledge, the Government are committed to improving the safety of non-surgical cosmetic procedures by establishing a licensing system. This will support the introduction of consistent standards that individuals carrying out such cosmetic procedures will have to meet, as well as hygiene and safety standards for premises. The definitions in the amendment are intended to cover the broad range of cosmetic procedures which, if improperly performed, have the potential to

cause serious injury and harm. The subsequent regulations will set out in detail the treatments to be covered by the licensing system, and the detailed conditions and training requirements individuals would have to meet. The purpose of this amendment is not to ban procedures or stifle innovation, but rather to ensure that consumers who choose to undergo a cosmetic procedure can be confident that the treatment they receive is safe and of a high standard. The Government will work with stakeholders, including noble Lords, to put in place a licensing regime that works for both consumers and providers, protecting those who choose to receive cosmetic procedures without placing unnecessary restrictions on legitimate businesses.

The noble Baroness, Lady Finlay, asked me a number of questions, so I will try to answer them. I begin with radiofrequency. Given the broad range of skin-tightening procedures, proposed new subsection (2)(e) provides scope to encompass a variety of treatments which involve a wide range of application techniques, including radiofrequency and ultrasound devices. The aim of the licensing scheme is to protect the public from the risk of harm. To achieve this, the regulations will specify the standards of training required. The proposed new clause will also allow regulations to make provisions about the duration, renewal, variation, suspension or revocation of licences.

The range of non-surgical cosmetic procedures available to consumers is vast. Therefore, drawing up the regulations will require detailed consultation with a range of stakeholders. This will include a number of partners, such as the cosmetics industry and local authorities. We will try to do this as quickly as possible, while ensuring that the list is as comprehensive as possible. We will try to get that balance. For these reasons, I hope I can ask noble Lords to support these amendments and I ask the noble Baroness to consider not moving her amendment.

8 pm

Let me now turn to Amendment 181. A number of initiatives are under way to support future discharge routes in a way that is sustainable and cost effective and provides the choice for patients to return to their communities. These will be pursued locally by NHS trusts and NHS foundation trusts in ways that best fit their clinical requirements.

On the points made by the noble Baroness, Lady Greengross, about surplus land, which she has raised previously with me personally, I appreciate the sentiment but we believe that it is for local organisations, not the Secretary of State, to decide. However, if the noble Baroness is open to a suggestion, perhaps we could facilitate a meeting with NHS England to see whether it would be interested in discussing her plans—especially since she has gone to a number of lengths, including with architects, in formulating her amendment.

On Amendment 184ZBB, I am grateful to my noble friend Lady Cumberlege, for her constructive engagement. I hope she agrees that we now have a shared approach to increasing transparency around the interests of doctors and other healthcare professionals. We agree that information on healthcare professionals' interests will be most accessible to patients if it is published by healthcare providers rather than by the relevant professional regulator, including the GMC; we are now taking that forward. My department will work across the devolved Administrations to implement a system for all healthcare professionals to declare their interests. We have set up a series of working groups, prioritising the implementation of a system for doctors to declare their interests before moving on to other healthcare professionals. We hope to have a system for doctors by July 2022.

The only area where I do not agree completely with my noble friend is the need for primary legislation to address this issue. I assure the House that existing legislation in relation to the GMC and the Care Quality Commission can be used to achieve the same effect as this amendment, which we therefore believe is not necessary. Doctors are already required to declare their competing and potentially competing interests. The GMC can take, and has taken, action against doctors who fail to meet these requirements, and serious or persistent breaches that pose a risk to patient safety or public trust can put a registrant's registration at risk. My department is working with the CQC and equivalent organisations across the devolved Administrations to ensure that effective monitoring of the system is in place.

My noble friend Lady Cumberlege raised the important issue of appraisal. As part of their annual appraisal, doctors are required by the GMC to submit a probity statement, which requires them to confirm that they have declared and managed any conflicts of interest appropriately. We are looking to take forward work in this area and we will work with stakeholders to make sure that this is clearer. Work is moving forward to ensure that doctors are open and honest about their competing and potentially competing interests, to avoid some of the problems that the noble Lord, Lord Mawson, pointed out. My officials would be delighted to meet my noble friend Lady Cumberlege and other Peers in early summer to provide an update on the progress of implementation.

With all that, I hope I have given noble Lords sufficient reassurance that they feel able to withdraw or not press their amendments and I commend the amendments in my name.

Lord Hunt of Kings Heath (Lab): My Lords, I am grateful to the Minister, who summarised a variety of amendments, none of which seemed to have much connection at all to each other. I should have declared my interest as a member of the GMC board but, of course, under the rules of the House, I am not allowed to comment on anything to do with the GMC.

On my Amendment 144B, all I would say is that the Minister is absolutely right that the CQC is not there to investigate complaints. The fact is that, if you are a relative of a resident and you are concerned about quality so you complain, you are then threatened that you will not be able to visit if you carry on doing it. You cannot go to the CQC, effectively, the ombudsman is far too remote and long-distance, and the provider does not have a satisfactory complaints system. That is the problem. We still have to find a solution. Having said that, I beg leave to withdraw my amendment.

Amendment 144B withdrawn.

8.04 pm

Consideration on Report adjourned until not before 8.49 pm.

Trade Union (Levy Payable to the Certification Officer) Regulations 2022

Motion to Approve

8.05 pm

Moved by ***Lord Callanan***

That the draft Regulations laid before the House on 14 December 2021 be approved.

Relevant document: 25th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, these regulations enact the reforms made by the Trade Union Act 2016 to the powers of the Certification Officer, the regulator of trade unions and employers' associations. These regulations have been commented on by the Secondary Legislation Scrutiny Committee in its 25th report on grounds of policy interest.

Before I explain the contents of the regulations, it is important to provide the context to these reforms. Trade unions have an important role in effective industrial relations and in wider society. There is a legitimate public interest that trade unions run their affairs according to what is required of them, so it is necessary that they have a responsible and diligent regulator. The reforms in the Trade Union Act are about proportionate and effective regulation. We are bringing the powers of the Certification Officer up to date with those of comparable regulators in other sectors.

The Trade Union Act brings three reforms to the role. The first enhances the Certification Officer's investigatory powers. These reforms were implemented in commencement regulations made in December 2021 and will commence in April. They are not the subject of these regulations, so I will give only a brief overview. Currently, union members may bring complaints to the Certification Officer—for example, on the conduct of elections. The Trade Union Act gives the Certification Officer the same powers to investigate all breaches that she currently has for financial matters and the register of members. This will enable her to act without having to rely on a complaint from a member. This is a wholly reasonable power for a regulator.

These regulations bring into effect the second and third reforms introduced under the Trade Union Act: financial penalties and a levy. We consulted separately on these reforms in 2017 and conducted a further engagement exercise on the levy last year. Unsurprisingly, trade unions made up the majority of the responses to these consultations and the further engagement exercise. I will go on to explain the measures that we have put in place to address the concerns raised.

The Trade Union (Power of the Certification Officer to Impose Financial Penalties) Regulations 2022 strengthen the Certification Officer's enforcement powers by allowing her to impose financial penalties against organisations that breach their statutory obligations. Penalties will be banded into three groups, according to the severity of the obligation breached. This approach was supported during consultation. For breaches of the most important statutory obligations, including the proper conduct of union elections and political funding, the Certification Officer will be able to impose a maximum penalty of £20,000. This is in line with penalties imposed by other bodies, such as the Electoral Commission.

For other breaches of statutory governance requirements, including keeping the membership register up to date, the Certification Officer will be able to impose a maximum penalty of £10,000. For breaches relating to requirements to provide information or comply with investigatory requirements, or breaches of internal union rules, the maximum penalty will be £5,000. The regulations provide for a 50% reduction in the maxima for unions whose membership is under 100,000 people. In response to concerns raised in the consultation regarding the impact on small unions, we will not be charging interest for late payment of penalties. The Trade Union (Levy Payable to the Certification Officer) Regulations provide for a levy on unions and employers' associations to fund the Certification Officer's work. In this time of financial constraint, it is right that organisations should contribute towards a levy. This is a widely used way to fund such regulators.

The regulations establish a levy framework that is equitable, affordable, predictable and simple. To ensure that the levy is equitable, the Certification Officer will be able to broadly apportion the levy between the different categories of regulated organisations—that is, non-federated trade unions, federated trade unions, non-federated employers' associations and federated employers' associations—based on how much time she spends on each of them. To ensure the levy is affordable for all, lower-income organisations will be exempt from the levy entirely. No organisation will pay more than 2.5% of their annual income, as set out in their annual return to the Certification Officer.

To ensure that the levy is predictable each year, the Government will continue to fund the cost of any external inspectors, as the use and cost of these is variable. This was discussed at the time that we debated the Trade Union Bill. For the same reason, the Government will also fund the cost of any external legal advice that the Certification Officer may seek. This was not identified during the passage of the Act, but we believe it will allow for a fairer levy. Finally, to ensure the levy is simple and transparent, the Certification Officer will need to aim to ensure that income from the levy matches her expenditure over a three-year period. She will also need to explain how she calculates the amount of levy that each organisation is charged.

Separate regulations will abolish the majority of the Certification Officer's existing fees, which will be subsumed into the levy. These will be made under the negative procedure, and we intend that they come into force at the same time as the levy. In response to requests by trade unions during consultation, two fees will be preserved: the fee for listing as an organisation, and the fee for a union to be granted a certificate of independence.

We recognise that these are significant changes for the organisations involved, albeit that they are a clear and required implementation of the Trade Union Act 2016. That is why we announced these reforms in June last year, to allow trade unions and employers' associations time to prepare before they are implemented in April 2022. This also allowed the Certification Officer time to put the systems in place to determine and charge the levy.

In conclusion, these reforms are not about constraining the ability of unions and employers' associations to do their valuable work. These regulations will give the Certification Officer the tools that she needs to do her job as effectively as possible, and ensure that the taxpayer no longer foots the whole of a bill that unions and employers' associations can well afford to pay in part. I commend both these regulations to the House.

Amendment to the Motion

Moved by ***Lord Bassam of Brighton***

As an amendment to the above motion, at the end insert "but that this House regrets that the Regulations impose an effective tax on trade unions to cover the costs of the Certification Officer, to whom very few complaints have been recorded, and which is not the case for other civil society institutions."

Lord Bassam of Brighton (Lab): My Lords, these statutory instruments introduce what is, effectively, a tax on trade unions and subject them to criminal-style fines for breaches of complex labour law. This is part of a package of measures that includes allowing anti-union organisations to file time-consuming complaints against them, without a full parliamentary consideration.

These changes are the wrong priority for Ministers and come at a tough time for unions. Union members, including doctors, nurses, school staff, transport workers, care staff and shop workers, have been on the front line of the coronavirus pandemic, and unions have worked flat-out to support workers working right across our economy. Adjusting to an array of new rules, and facing time-consuming complaints initiated often by hostile groups and additional financial burdens, will drain union resources from the vital work that they undertake. Unions are accountable to their members and have a strong track record of complying with their legal duties. The Certification Officer's annual report for 2020-21 reveals that she dealt with just 34 complaints in that year. Not one enforcement order was imposed.

The Government have portrayed these changes as tidying up and as unfinished business left over from the Trade Union Act 2016, but it is notable that Ministers have not dealt with other outstanding issues stemming from that legislation—issues that could benefit trade union members by extending and improving the quality of democracy, such as electronic balloting.

8.15 pm

The Trade Union Act 2016 contained measures to overhaul the role of the Certification Officer, who is responsible, as we have heard, for statutory functions relating to trade unions and employers' associations. That legislation contained a levy to fund the CO's work, financial penalties on unions for breaches of statute, and to enable the CO to be given greater investigatory powers. For the past five years, these provisions have remained dormant. However, without much notice, in June 2021, the Government announced that they intended to activate the powers. They then ran a further engagement exercise—as the Minister has fairly set out—on the levy element, which closed in July.

We contend that these plans are bad for working people in our country. The Government intend to recoup the cost of running the Certification Officer from those she oversees from April this year. The vast bulk of this will come from trade unions and their members. Some costs, including external legal advice and external investigators, will be excluded. The Certification Officer has estimated that she is likely to need a budget of £1.15 million. The TUC believes it is inappropriate to treat trade unions like profit-making companies, which are often required to fund their own regulator. Unions are not, as we have argued on many occasions, for-profit organisations; they are set up solely for the benefit of members. Other bodies with social roles, such as political parties or charities, do not pay levies to the Electoral Commission or the Charity Commission, respectively.

As a result of the levy, unions will have less capacity to negotiate better pay and conditions for working people. There is no significant limit, as far as we can judge, on how much the levy can grow in the future. There is huge scope for a future Certification Officer to further expand their role, confident of course that the expenses for such activity will be met by unions.

The Government also propose disproportionate penalties of up to £20,000 for statutory breaches; for example, in the running of general-secretary elections. These penalties resemble fines in criminal proceedings. However, they can be imposed on the basis of a civil rather than criminal standard of proof. In our view, there is no need or justification for these new penalties. Unions are accountable to their members through their democratic structures and have a long track record of complying with their legal duties.

As I said earlier, the Certification Officer's annual report shows that she dealt with just 34 complaints last year—that is one complaint for every 200,000 union members. Not a single enforcement order was necessary or imposed. This is a disproportionate measure, having disproportionate impact on working people's organisations.

The provisions, which require just a commencement order, will give the Certification Officer new, wide-ranging investigatory powers on matters such as elections, political fund management and union mergers. Currently, the Certification Officer can act only on complaints from a union member, but unions could now face often time-consuming complaints stimulated by groups hostile to the work of unions.

I mentioned earlier that there are other priorities to which the Government could have turned their attention for improving the way in which unions operate. Introducing a levy and increased powers for the

[Lord Bassam of Brighton]
Certification Officer is not merely tidying up; it goes much further than that. Other issues, including electronic balloting, remain outstanding. The Act required an independent review of allowing unions the option of using electronic balloting during statutory votes, such as elections of general-secretaries. Unions increasingly use them for non-statutory ballots, such as indicative votes on pay claims. Other organisations, such as the National Trust and even the Conservative Party, use such approaches for their selection procedures, using e-balloting for key votes.

The review, which was published in December 2017, recommended pilots as a first step. However, more than four years on, Ministers have yet to respond to it. Unions believe that electronic balloting would better meet the expectations of members and encourage greater participation in their democratic structures. Surely that objective is one we can all share. I therefore invite the Minister to give a commitment this evening to bring forward regulations that would enhance democratic participation by union members, rather than adding burden to the work that unions undertake.

This Government have rarely shown themselves to be a friend of our unions, but they could begin to repair the damage to that relationship by simply parking this vindictive, unnecessary and redundant legislation without losing face. It adds wasteful expense to union activity and will force unions to deal with additional red tape—both things Conservatives traditionally oppose.

What of the levelling-up agenda? Unions have levelling up in their DNA; it is in the way they think and act. This measure goes against the spirit that the Government are trying to mobilise to improve our communities—our working communities in particular—up and down the country.

I hope—not with much expectation—that the Minister will adopt a sensible and proportionate course of action this evening, but in the absence of that, I hope the House will support my amendment to the Motion. I beg to move.

Lord Razzall (LD): My Lords, like many debates on statutory instruments in this House, the real substance of this debate is not particularly about the topic on the agenda. A moment's thought will tell us that this is really about party funding. Of course, the noble Lord, Lord Bassam, on behalf of the Labour Party, has to oppose this in the way the Labour Party will oppose most attempts to place any form of restriction on the trade union movement. As we all will realise, historically, the Labour Party started as the political wing of the trade union movement. Of course, in recent years Labour is even more dependent on funding from the trade union movement.

I have obviously been a critic for many years of our system of funding, which has led Labour to be in a position where they require this, but the problems Labour has are as nothing compared with the current funding problems of the Tory party, with Russian donations and skirting very close to the line on the sales of honours. I do not think it is for the Tory party to criticise Labour for taking the position of the trade union movement on this.

I have every sympathy with the noble Lord, Lord Bassam, on this issue. As he and one of his colleagues in the House of Commons commented, to make trade unions pay for certification is like making charities pay for the Charity Commission. That is a very valid point that the Minister needs to answer.

As the noble Lord, Lord Bassam, indicated, the sums taken from the unions, for minimal advantage to the taxpayer, would mostly be spent on the necessary protection of their members. I know people assume that unions are simply political activists, but most of the money they raise is spent on that. This money will be taken directly from their members and will not be used for that purpose.

Finally, I thought the noble Lord, Lord Bassam, went slightly light on the Tory party and the Government on this issue. Having watched them over my 25 years in your Lordships' House, I think that hostility to the trade union movement is deep in the Tory party's DNA. It goes back to the reforms created by Margaret Thatcher, which they believe sets the standard for all future activity by the Tory party. It is unfortunate. I support the noble Lord, Lord Bassam. These proposals are very unfair.

Lord Woodley (Lab): My Lords, this is the first opportunity I have had to speak since my near-death experience nine months ago. It would be wrong not to thank the Lord Speaker for all the support he has given me and my family and to thank the rest of the noble Lords here who know what has gone on. I also thank Dr Wong in Liverpool general hospital for somehow saving my life. It is a privilege to be back.

I declare an interest as the former leader of Unite. This levy is correctly being called a trade union tax. Indeed, it is nothing less, as we know, than an ideological attack on workers and their families. It is part of a pattern of anti-trade union legislation that also includes the Elections Bill. As the previous speaker just said, taxing trade unions to fund their own regulator makes as much sense as taxing charities to fund the Charity Commission. It could be up to 2.5% of annual income. How on earth can that be justified? How on earth can that be right? By taking this money from trade unions, the Government are restricting their ability to support members at work at a time when workers are facing a cost-of-living crisis and trade union help is needed more than ever.

The new regulations unfortunately also open the door to vexatious complaints—whether from vindictive employers, far-right organisations or even the Conservative Party itself—which threaten to consume the regulator's time and resources, and therefore cost more money for the trade unions. Is that the aim? As has been said, last year, 34 complaints were made to the Certification Officer and no enforcement action was taken. Clearly, this is a solution to a problem that does not exist. Unions naturally fear that this number will dramatically rise when absolutely anybody, not just union members, has the power to make complaints. Of course, it will be the unions who foot the bill.

I will close on some straightforward questions for the Minister, one or two of which have already been mentioned. Why are the Government bringing forward

these aspects of the Trade Union Act 2016, but not making any progress on the important issue of electronic balloting? Where are the pilot projects called for in the Knight review, which could be very helpful? We find ourselves in a situation where they are not being brought forward now. Is it the very fact that, democratically, people do not want trade unions to really be democratic? It is just an attack. Could the Minister also tell me when we can expect to see the much-promised employment Bill that will

"make the UK the best place in the world to work"—

a manifesto commitment no less, unlike so much of the government business we are currently dealing with—or was this just an empty pledge to fool the workers into voting for the bosses' party at the last election? Actions speak louder than words, and this cynical and repressive trade union tax speaks for itself. We must stop or remove this vindictive legislation.

Baroness Neville-Rolfe (Con): My Lords, it is a pleasure to see the noble Lord, Lord Woodley, back in his place. We all welcome him back, although I do not agree with everything he had to say.

I have three questions on these instruments. First, is this package too bureaucratic? This is something we spoke about wanting to avoid during the passage of the Trade Union Bill, but have red tape and vexatious claims been minimised? Contributions to the debate so far suggest not, but is that fair? I hope the Minister will be able to enlighten us.

My second question is about electronic balloting. What is the Minister's latest assessment? So much of our world is now online and Covid has accelerated that extraordinarily—indeed, we are about to debate the online harms Bill. Can we safely move forward on electronic balloting in this area or others, or do the reservations I remember being raised during the passage of the Trade Union Bill remain?

Finally, noble Lords will recall my happy experiences with the union USDAW in my own career at Tesco. Did it respond to the consultation? If so, what did it say?

8.30 pm

Lord Monks (Lab): My Lords, to follow on from those last points, it almost seemed to be the case from the Minister's presentation that unions had somehow agreed with quite a lot of the proposals being put, which is very far from the case.

I do not want to go over the 2016 Act, but, at the time, many of us thought it was the product of a certain mindset in parts of Conservative Central Office, which was still bent on fighting the battles of the 1970s and 1980s. If you were that kind of Tory, why not ladle extra dollops of red tape, as the noble Baroness, Lady Neville-Rolfe, just said, on the old enemy? After all, it polishes your credentials in the eyes of some of the Conservative associations, it does not cost very much and it kicks your opponents hard, which with a workable majority you can do.

Unions are now to face a Certification Officer with new and extended powers to impose these fines—very steep fines in terms of union finances—and to make unions pay the bills of the Certification Officer. These are the motives of a suspicious, hostile Government, who regard unions as conspiracies, plotting mayhem and confusion—much as some of us regard the present regime in Downing Street. Yet unlike our views on Downing Street, the Government's view is certainly not borne out by the facts. British unions are already heavily regulated by any standard applying in western democracies, yet the Certification Officer is rarely troubled by complaints of maladministration and injustice, as has been pointed out already in this debate. There is a handful of complaints each year, and the vast majority are dismissed or withdrawn, and there were no enforcement orders last year.

So what is the problem? There is not really one at all. The motive for this legislation is ignoring the fact that unions are a hallmark of a free and democratic society, and a force for greater equality in an increasingly unequal society.

The new Certification Officer could well be like a police officer looking for work to justify his or her existence, no doubt having actively to encourage people to come forward with complaints. The Certification Officer can take them themselves, as we heard the Minister spell out. Perhaps there will be advertising for complainants, to boost the workload if it is meagre. The aim is to tie up unions in expensive litigation and force them to pay the costs of that litigation, as well as for the administration of the Certification Officer's office.

Can the Minister tell us precisely whether there are any other regulators of voluntary, not-for-profit, democratic organisations which have to pay for their regulator? Political parties do not, as we have heard, and charities do not, so who else does? It is not the same as the City or the banks, which are profit-making, private sector bodies, yet unions collectively are likely to face a seven-figure bill for the privilege of being complained against. After all, this is fertile territory for opponents of the national executives of unions. Unions are lively, democratic organisations, with all the cut and thrust that goes with that, and sometimes it is fair to say that the losers do not always lose gracefully.

These regulations and the Act which spawns them are unworthy of a great democracy. I take this opportunity before the regulations pass into law to register my disgust and contempt for them and their promoters.

Lord Balfe (Con): My Lords, first, I should declare an interest as the president of BALPA, the TUC-affiliated union for pilots.

This is just unnecessary, is it not? The Act was passed in 2016. I remember that my noble friend who just spoke was the Minister then and we had one or two set-tos, but in the end, to my mind, her knowledge of the trade union movement helped ameliorate that Bill and get it on to the statute book. I had liked to think that the non-activity over the past two or three years meant that the Government had had another thought and decided that these regulations did not need to be brought into being—and of course they do not. They are not going to add anything. We have heard about the 34 complaints with no enforcement orders and about the fact that no other voluntary

[Lord Balfe]
organisation pays for its regulator, and we know that the whole of this office is really not needed for the purpose for which it is being put forward.

What I would say though, particularly to the noble Lord, Lord Razzall, is that we should not make this a battle between the Labour Party and the Conservative Party over funding. It is not. It is about unnecessary control of the trade union movement. The majority of my union members voted for this Government. I am absolutely convinced of that, having talked to them. Some 30% of paying trade unionists vote Conservative. We have got to get over this idea that somehow the trade union movement is comprised of hard-working, left-wing socialists.

My wife was a district councillor for some years; she dealt with unions in rural England, and said that most of them were well to the right of her in their political beliefs. Most of them were voting for the Conservative Members of Parliament to be found in the depths of East Anglia. So let us get over this idea that union members are all Labour and not Conservative. It is important to get over it because I think the Minister needs to get over it and the Government need to get over it.

I have said over many years that we will have reached an achievement in this country when, just as the leader of the Opposition goes to the CBI on a regular basis, so the leader of the Conservative Party appears at the TUC and makes a speech and answers questions. Breaking down this divide is really quite essential if we are going to have industrial relations peace in this country.

We have not got a lot of time, so I am going to leave the Minister with just two questions, one of which has already been asked in one form. First, what, if anything, are the Government prepared to do about vexatious litigants? There will be people who will go to the regulator purely to cause trouble—every union has them; even BALPA has the odd member who gets great pleasure out of trying to run rings around its national executive. To what protection are the Government prepared to look to protect vexatious claims against unions? Secondly, the Government have pussyfooted around on electronic balloting the entire time I have been in this House. There are no questions about having a secure electronic ballot. Is it not time that the Government made a generalist gesture to the trade union movement and let it have what is a totally secure system, at its own choice, for running internal elections?

Those are two things the Government can give us. It will cost them nothing but it will show the Conservative-voting trade unionists of this country that the Government are a Government of the country and not just one part of it.

Lord Hendy (Lab): My Lords, the Minister's justification for the levy is that it is entirely normal for a regulator to be paid for by those whose businesses are subjected to regulation. That argument is untenable for at least five reasons.

First, the CO is not a regulator in the same way that others are. She has an administrative role to list trade unions and employers' associations but her principal function is judicial, regulated exclusively by the Trade Union and Labour Relations (Consolidation) Act 1992. It is confined to the following matters: elections; disciplinary proceedings; balloting, other than for industrial action; the constitution and proceedings of the executive; elections for president, general-secretary and executive committee; political funds; amalgamations; transfers and engagements; accounting records; and annual returns. All these are purely matters of internal trade union affairs. The Secretary of State has the power to specify other matters by order but has not done so.

In relation to these issues, the CO acts judicially. If she receives an application from a member against the union which manifests a prima facie case, the CO conducts a formal hearing. Both parties take their turns—often through counsel—to present their evidence, cross-examine witnesses and make legal submissions. The CO then hands down a decision and may make a declaration if she finds a breach.

Appeals lie from the CO to the Employment Appeal Tribunal, which is of course a division of the High Court presided over by a High Court judge. There are few regulators with such judicial functions and where the governing legislation has specified a direct route of appeal to the High Court. However, one such is the employment tribunal, from which there is the identical route of appeal to the EAT. Noble Lords will recall that the Government legislated to impose fees on employment tribunal claimants but the Supreme Court, in the Unison case, held that that was unlawful; the Government consequently withdrew the fees regime. However, what is significant in this debate is that the Government have never suggested a levy on employers to pay for employment tribunals. It is not surprising therefore that trade unions point to the fundamental injustice of them paying a levy to meet judicial costs under the legislation which applies to them when the costs of adjudication under the legislation which applies to employers is met by taxpayers.

The second point is that the justification for the imposition of virtually every regulator is the need to protect the public. That does not apply to the CO. The primary purpose of bodies such as the CO and the employment tribunal is not to protect the public but to adjudicate in disputes between specified classes of claimants and respondents. In the case of tribunals, this is between workers and employers, and in the case of the CO between unions and members. The jurisdiction of each is limited to the statutorily specified subject matters. That is why members of the public cannot complain to the employment tribunal or to the CO that a friend of theirs has been unfairly dismissed by an employer or unfairly disciplined by a union.

Therefore, the CO is not there to protect the public from breaches of the relevant rules but to give trade union members, and only trade union members, an avenue of judicial complaint. It is true that the Government have now extended the remit of the CO to investigate matters on her own initiative, even where no member has complained, but the scope of her jurisdiction is still confined to the specific items I have listed. An infraction by a trade union in any of those matters will not impinge on members of the public

and neither will any member of the public have the right to bring proceedings before the CO about it. So the public interest argument is simply without merit.

This is important, for although unions are complaining that newspapers and political parties hostile to them will rush to make complaints to the CO, such complainants cannot make a formal application and, if she thinks there is any merit in an informal complaint, the CO will be called upon herself to act as investigator, prosecutor and judge. That is not a position she is likely to enjoy, I imagine. Indeed, I doubt that she will welcome the extra workload of investigating allegations from unaffected outsiders about the internal workings of a union where no member feels sufficiently aggrieved to make a formal application to her.

My third point, which has already been dealt with by my noble friends Lord Bassam and Lord Monks, is that where regulators are funded by a levy, they are invariably conducting a business for profit, or at least earning a living from the regulated activity. That does not apply to trade unions, which make no money from the regulated activities.

That leads to the fourth point, which is that where a regulator is funded by a levy, those who must pay it are able to deduct the cost of their levy from the tax they pay on their profits. Trade unions cannot do that. Their income is derived, as has been said, almost exclusively from members' subscriptions and goes to offset their running costs. They have no profits to tax. They do not have a tax bill against which to claim their levy.

8.45 pm

The fifth and final point—there is a lot more which could be said—is that this is utterly unwarranted. My noble friends have already suggested how rare these cases are, but let me contrast the CO's jurisdiction with that of the employment tribunal. There are 32 million workers in the UK. Last year, some 118,000 complaints were made against employers in employment tribunals. That is a rate of four in 1,000—one in 250. In comparison, there are 6.56 million trade union members in 141 trade unions. Last year, the CO received 14 applications—which, it is true, contained a number of complaints. The year before that, she received seven applications, and in the preceding year, 15 applications. Last year, there were 14 applications against 11 unions—I include applications which were dismissed as having no merit. This level of applications in proportion to the number of trade union members is infinitesimally small—two in a million. It should also be noted how few unions receive a complaint, yet all are to pay for the levy except for the smallest.

This legislation is unfair, unnecessary and speaks only to the Government's malevolence towards trade unions, which they regard as distorting the labour market and preventing wages being driven down to the lowest level that workers will tolerate. I support the amendment.

Baroness Blower (Lab): My Lords, in 2016, I was not yet a Member of your Lordships' House and I protested on many occasions, very loudly, outside this House at the trade union legislation then going through the processes here. I trust that I shall always be able to protest very loudly outside this House, whether standing still or moving around, when legislation of this type is proposed.

The Minister talks of the valuable work of unions, but the actions of this Government belie that. My noble friends on this side, in particular my noble friend Lord Monks, have talked about the level of constraint and regulation on the trade union movement in this country. From my engagement with trade unions across Europe, both east and west, I know that to be true. This is therefore a regulation too far. While I do not agree with all the remarks made by the noble Lord, Lord Balfe, I certainly agree with his opening remarks that this is unwarranted and gives rise to the view that this Government are anti-trade union.

Lord Callanan (Con): I thank all noble Lords for their valuable contributions to the debate. It is great to see the noble Lord, Lord Woodley, back with us in such hale and hearty form. I had the pleasure of replying to the debate when the noble Lord made his maiden speech, so I regard it as a particular honour that I get the chance to respond to him again tonight, albeit in slightly less harmonious circumstances.

Turning to the amendment put forward by the noble Lord, Lord Bassam, I thank him for raising his concerns, although, as will become clear, I do not agree with very much of what he said. However, I reiterate what I said at the start: unions play an important role in some aspects of industrial relations and have an important part to play in our economic recovery. It is therefore crucial that the public have confidence that they are regulated effectively and fairly.

These reforms will bring the Certification Officer in line with the powers and funding arrangements of other regulators. They will allow the Certification Officer to take robust enforcement action against an organisation that breaches its statutory obligations. The reforms will ensure that the taxpayer no longer has to pay in full for the regulation of trade unions and employers' associations. The cost will be borne in part by the organisations that can afford it.

Despite many of the comments that were made, there are many precedents for this: a number of other regulators are funded by a levy. For example, the Groceries Code Adjudicator, the Office of Rail and Road, and the Pensions Regulator are all funded by a variety of levy schemes. The Pensions Regulator uses a banded scheme based on membership of pension funds. Companies House is partly funded by fees from company directors. The Financial Reporting Council is paid for in large part by the auditors that it regulates.

Other regulators also have a range of sanctions at their disposal. The Electoral Commission and the Information Commissioner's Office, like the Certification Officer, can either take civil enforcement action or launch criminal prosecutions. The Electoral Commission's compliance notices are similar to the Certification Officer's enforcement orders. The Electoral Commission also has a range of financial penalties at its disposal, from £200 to £20,000, which mirrors those proposed for the trade union Certification Officer. Those instances are all slightly different, but it is not true that this is somehow something being imposed uniquely on trade unions.

[Lord Callanan]

In reply to the noble Lord, Lord Bassam, we have of course considered the affordability of the levy and how much it can grow in the future. As no organisation will pay more than 2.5% of its annual income, and lower-income organisations will be exempted from the levy entirely, I think his criticisms on that were unwarranted and have no validity. As the Certification Officer regulates both employers' associations and unions, it is fair that employers' associations also contribute in part towards the levy.

The Trade Union Act 2016 contains an important safeguard that requires the Certification Officer to aim to ensure that the total amount levied over a three-year period does not exceed the actual expenses she has incurred. We believe that this will ensure that the levy remains predictable and affordable. The Certification Officer has always gone about their duties in an independent and impartial way, and of course that will continue.

I will now answer some of the other points raised during the debate. The noble Lord, Lord Bassam, and my noble friends Lady Neville-Rolfe and Lord Balfe all raised the issue of electronic balloting. Indeed, the Trade Union Act included provisions to introduce electronic balloting for union elections. A review of electronic balloting was conducted by Sir Ken Knight, but before responding to the recommendations in his review, the Government were required by Section 4 of the Trade Union Act 2016 to consult relevant organisations, including professionals from expert associations, to seek their advice and recommendations. We have now done this, and we are finalising our consideration of Sir Ken's recommendations before we issue our response in due course.

I have answered many of the points made by the noble Lord, Lord Razzall, about the comparison with other regulated bodies. I reiterate that the role of the Certification Officer is unique, as is the role of trade unions, and that comparisons with other sectors, while there are some parallels, are not totally relevant.

The noble Lord, Lord Woodley, and my noble friend Lord Balfe raised the possibility of vexatious complaints being made at a cost to unions. I must say, respectfully, that the Government disagree. When there are vexatious complaints, we do not expect that the Certification Officer will spend much time on them. The CO is a public authority, and she has to act reasonably. She cannot appoint an inspector unless a new, higher judicial test has been met that she has reasonable grounds to suspect that a breach of the regulations has occurred.

The noble Lord, Lord Bassam, raised the point about the significant limit on how much the levy could raise in similar years. The noble Lord, Lord Monks, also raised the point that the Certification Officer can somehow just do as she pleases. I responded to that in my previous comments, but we have removed most of the variable costs from the levy and, as I said, the Certification Officer, as a public authority, has to act reasonably, and that is a higher judicial test than in the current regulations.

Lastly, my noble friend Lady Neville-Rolfe asked me whether USDAW had responded to the consultation. I am afraid I do not have that information with me, but I will ask officials to look through the consultations and write to her accordingly.

In conclusion, this is not about constraining the ability of unions and employers' associations to do their work. There is, unquestionably, a strong public interest in appropriately regulated trade unions. These reforms are about modernising the Certification Officer's role to ensure that she can continue to deliver exactly on that. Therefore, I commend these draft regulations to the House.

Lord Bassam of Brighton (Lab): My Lords, I am very disappointed by what the Minister has had to say to the House this evening. I am not persuaded away from my view that this is a vindictive piece of secondary legislation. The Minister has not really adduced a strong case in his own defence, I fear. It was interesting to hear Back-Benchers on the Government Benches making the point that this could be seen as vindictive and as having a go at unions for the sake of it, and that there was a need in the Government to grow up and try to learn to live with the trade union movement even if they do not like what it seeks to do.

The Minister did not really fully answer my noble friend Lord Hendy's point about for-profit and not-for-profit organisations and there being a distinction. Many of the organisations that the Minister referred to have resources far in excess of those that trade unions have and are much better placed to make a contribution towards the regulation that they currently enjoy. I think the closest comparator is the Charity Commission and it does not seek to impose levies on charities. That would be unthinkable. Trade unions operate as not-for-profit organisations. They are there entirely for the benefit of their members and their role is very narrowly circumscribed to that.

I accept that we are not going to agree across the Dispatch Box on this issue. I regret that the Government have this attitude towards the valued work that unions undertake. The Minister himself talked of that. Looking at the hour and at the Chamber, it is not my intention to press my amendment because I can see that Members probably wish to move on with the Health and Care Bill. I am grateful for the time that we have had to discuss and debate these issues. No doubt we will return to them in future. I beg leave to withdraw the amendment.

Lord Bassam's amendment to the Motion withdrawn.

Motion agreed.

Trade Union (Power of the Certification Officer to Impose Financial Penalties) Regulations 2022

Motion to Approve

8.58 pm

Moved by ***Lord Callanan***

That the draft Regulations laid before the House on 14 December 2021 be approved.

Relevant document: 25th Report from the Secondary Legislation Scrutiny Committee

Motion agreed.

Health and Care Bill

Report (3rd Day) (Continued)

8.58 pm

Clause 156: Provision of social care services: financial assistance

Amendment 145

Moved by ***Baroness Bennett of Manor Castle***

145: Clause 156, page 126, line 37, 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 incurred outside of the business's normal day-to-day operations;

(b) paying interest on debt incurred outside of the business's normal day-to-day operations;

(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 incurred as "financial engineering" or leveraging.

Baroness Bennett of Manor Castle (GP): My Lords, in moving Amendment 145, which appears in my name, I will also speak to Amendments 146 and 147. I thank the noble Lord, Lord Howarth of Newport, who has swung behind these amendments since Committee, and I also very much thank the noble Baroness, Lady Tyler of Enfield, for her support for Amendment 147.

As we discussed at some length in Committee, all of these amendments address predatory finance in the care sector. We keep seeing more and more reports, whether from "Panorama", Tortoise Media or the *Financial Times*, that there is a huge unfolding scandal in this area.

9 pm

I note that, in Committee, the noble Baroness, Lady Altmann, said that there is a problem with companies

"taking advantage of some of the most vulnerable people in our society without … oversight or controls."—[*Official Report*, 4/2/22; col. 1159.]

In his response, the Minister provided some suggestions for how these oversights were being provided for—but of course the fact is that we have a huge problem. As was set out in Committee and in other debates in your Lordships' House, we have very many cases where 16%—up to 20% in places—of the return is being taken out of the cost of care.

In Committee, the noble Baroness, Lady Thornton, said that the current system is "wholly dysfunctional", and Amendment 146, which calls for a review, seeks to deal with that issue in particular. I would love to hear that the Government see that as a great idea and that they will step forward today—I am not expecting it, but one lives in hope.

Amendment 145 picks up an issue with financial assistance. Something quite new and perhaps surprising that is introduced in the Bill, and that has had very little discussion, is the fact that the Government can provide financial assistance to care home providers in a way that has never happened before. My amendment in Committee said that this could not be used to repay debt. The Minister quite rightly pointed out that there was an issue where, if a care home wanted to pay, say, a debt that it owed to the local linen service for washing its linens or similar operational costs, that would potentially be a reasonable form of rescue. What was intended to be addressed was, as the amendment now says, debt incurred outside the business's normal day-to-day operations, interest on debt—we know that those are the kind of financial instruments often used to extract these extraordinary rates of return—and paying dividends to shareholders.

During the Covid pandemic, we saw the payouts that went to care home providers that were, at the same time, paying very significant dividends to shareholders. There was considerable public shock and anger about that, and this addresses a similar kind of situation.

If the Minister says to me that the wording I have come up with in this amendment does not quite meet the demands, I will accept that that might well be the case; this is perhaps a first effort at it. But does he really think it is right that money paid for rescue goes to dividends or debt that is a product of financial engineering?

Responding to this in Committee, the Minister said that there would be the "usual scrutiny and safeguards" around spending public money—I think that we could all feel the House drawing a deep breath and being terribly reasonable at that point by not reacting. I point out that we seem to have reports—perhaps not daily but certainly weekly—from the National Audit Office expressing grave concerns about the way in which public money is being spent. These are after-the-fact reports that do not seem to ever have any impact, so we need to stop this public money flooding out.

Finally, I will pick up another of the Minister's points in Committee. He said:

"Maintaining quality and high standards is vital"—[*Official Report*, 4/2/22; col. 1161.]

and that that is the Government's focus. It is utterly impossible to maintain high standards and top levels of quality if 16% or 20% of the money being paid is going into profits—it clearly cannot be the best possible quality.

We are at a point where we have had considerable debate and expressions of support for these amendments on addressing these issues. In your Lordships' House, we may perhaps not be ready to push a change into law at this moment, but an issue is being very much highlighted here, and I hope that we see some movement from the Government. We will see movement in a similar and related area on Wednesday, with the economic crime Bill—a sudden last-minute rush, reacting to public pressure—and it would be nice to see the issues being raised in these amendments dealt with in a more orderly way, in the manner of an orderly review, to actually fix what is very clearly a problem with the funding of our care sector. I beg to move.

The Deputy Speaker (Baroness Pitkeathley) (Lab): My Lords, the noble Lord, Lord Howarth, is taking part remotely. I invite him to speak.

Lord Howarth of Newport (Lab) [V]: My Lords, I congratulate the noble Baroness, Lady Bennett of Manor Castle, on bringing back this issue on Report; I was sorry not to be able to speak in Committee. We must also be grateful to the academics at the University of Surrey who followed the money and, a year ago, published their exposé, *Careless Finance*.

The noble quartet of the noble Baronesses, Lady Bennett, Lady Brinton, Lady Tyler and Lady Altmann, has previously provided the House with an excellent analysis of predatory financial manipulation of the social care sector by hedge funds and offshore entities. I just want briefly to underline certain points.

What we have been seeing is legalised theft. Financial operators are leeching, for their own profit and benefit, substantial proportions—16% to 20%—of the funds provided for social care by both the public purse and self-funding individuals; "grey gold", the profits thus extracted are sometimes called. This racket, unacceptable at any time, has been perpetrated during a period when the Government have chosen to underfund social care lamentably. Because sufficient budgets are not available to local authorities, many people who should be eligible for social care are not receiving it and many who are in social care are experiencing threadbare services. The workforce is depleted and miserably paid.

It is in the context of this crisis that unscrupulous operators have been ripping off a broken system. In their greed they are putting the business survival of providers at risk. As Christine Corlet Walker, Angela Druckman and Tim Jackson of the University of Surrey have reported, we have been seeing a large-scale transfer of money from the poorest to the richest. As they say,

"the ongoing cost is the silent tragedy of the most vulnerable in society."

Meanwhile, the Government have made little or no effort to address the problem, which indeed they do not appear to acknowledge exists. The noble Earl, Lord Howe—for whom personally I have great regard—in his response on behalf of the Government in Committee, said that the noble Baroness's amendment to improve transparency was not proportionate or necessary. He suggested that the Care Act 2014 and the CQC's market oversight scheme should take care of any problems. However, since the abuses continue, it is obvious that these policies have been ineffectual with regard to them.

The noble Earl also said that it was for local authorities to shape, oversee and manage the market, but only the Government can act to close opportunities for rogue investors to carry out these abuses. He suggested that BEIS was on the case, but BEIS has been inexcusably dilatory.

The Government claim to be fixing social care, but all they are doing is providing a meagre and delayed increase in funding for social care by dint of imposing extra tax on the poor. The only reform they are truly interested in is to relieve the affluent of the need to sell their homes to pay for care.

Even the Government are now exercised about the abuses by Russian kleptocrats. So too they should be very seriously exercised by the abuses of the social care system by unscrupulous investors. Can they not see the evils that have flowed from marketising the social care sector? As the noble Baroness has just said, on Wednesday, the House will debate the Economic Crime (Transparency and Enforcement) Bill. We should also be debating an overdue "social care financial abuse (transparency and enforcement) Bill", brought forward by the Government.

The Deputy Speaker (Baroness Pitkeathley) (Lab): My Lords, the noble Baroness, Lady Brinton, is also taking part remotely. I invite her to speak next.

Baroness Brinton (LD) [V]: I thank the noble Baroness, Lady Bennett, for tabling these amendments, slightly amended from Committee, and in particular for responding to the Minister's concerns that the first amendment had perhaps been too broad and would catch the day-to-day business of companies. That cannot be said about Amendment 145.

I also want to pick up a point that the noble Earl made in Committee. He said:

"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."—[*Official Report*, 4/2/22; col. 1161.]

Yet the Charity Commission does have the ability to intervene in the event that a charity, or series of charities stretches—shall we say?—those rules. Its *Internal Financial Controls for Charities*, CC8, provides very specific guidance. Indeed, in recent years, one charity, the Plymouth Brethren Christian Church, was investigated for a circular set of donations. Each donation to each different body was paid tax relief out of the public purse, coming back to serve the schools that the adults at the community church sent their children to. The way that was structured was similar to a financial instrument employed by the few companies that abused the funding they received from the public purse for social care.

The noble Earl also referred to the Treasury guidance *Managing Public Money* and *Accounting Officer Assessments*. I have been through that, too. It is very interesting and clear. Under the heading

"expenditure which may rely on a Supply and Appropriation Act",

Managing Public Money lists

"routine administration costs: employment costs, rent, cleaning etc … lease agreements, eg for photocopiers, lifts".

It does not say: "Re-charging sister/parent/daughter companies for large amounts of borrowing and the interest thereto", which is what has been happening.

It is important that we start to debate how public funding is spent by these companies, particularly those overseas, when we cannot see how that money is spent. I also support the other amendments in the group, which ask for a review of financial regulation. It is interesting that the Treasury guidance refers constantly to the Nolan principles, which are absolutely vital in talking about transparency and responsibility when spending public money. These amendments might not be quite right to deliver that, but it would be good if there were a review under way.

The other thing we must have when these companies spend large amounts of public money is publication of their full accounts. They should not be able to hide behind very short, superficial accounts from overseas.

Baroness Tyler of Enfield (LD): My Lords, I support these amendments tabled by the noble Baroness, Lady Bennett, as I did in Committee. In essence, they are about financial practices in the social care sector that I find completely unacceptable.

The social care provider market, as we all know, is complex, fragmented and too often inherently unstable. One of the causes of instability is financially risky behaviour by a small number of large, equity-backed, highly debt-laden companies in the residential care sector. This has resulted in some high-profile sudden exits from the market, such as Southern Cross and Four Seasons. The key point is that, in the event of the closure of a care home, the provider bears no responsibility for continuity of care. That falls on the local authority, with the direct impact felt by care home residents and their families. That just cannot be right.

It is also concerning that, in its 2021 social care market report, the NAO was unable to analyse the accounts of five of the large equity-backed providers because of difficulty in accessing their accounts. Of course, the issue of the lack of transparency over accounts, profits and shareholders is exacerbated when company ownership is offshore.

As the noble Baroness, Lady Bennett, explained, Amendment 147 seeks to require local authorities and other public bodies to commission care from non-UK domiciled companies only if they publish full accounts and offer transparency over their ownership. There is an interesting international precedent for the latter part of this. Indeed, in February 2022, the Biden Administration announced a set of measures around improving quality and transparency by requiring private equity firms to disclose ownership stakes in nursing homes.

I will finish by making a couple of broad points. For a measure like this to be implemented effectively, it will clearly be essential that local authorities are equipped with sufficient complex accounting knowledge to scrutinise the ownership and financial practices of a provider. Although this amendment would help ensure transparency and enable better scrutiny of offshore entities, I am conscious that complex ownership structures are not limited to companies owned abroad. I hope the time will come when this sort of financial transparency is extended across all providers, wherever they are based.

9.15 pm

This measure is necessary but not sufficient. In my view, requirements to ensure that fees are invested back into care delivery rather than leaked into offshore accounts need to be part of the mix. Again, I am interested that countries such as France currently take this approach by offering increased payments to domiciliary care providers which can demonstrate investment in staffing and improved service quality.

The Bill misses an opportunity to strengthen the CQC's financial management regime for large providers. At present, that regime is light-touch and largely reactive, with limited capacity to monitor providers and scrutinise their accounts. Bolstering the CQC's capacity would make it more possible for it to intervene proactively, before a provider fails. This is a big and serious issue and there is much to do but I hope that these amendments will provide a much-needed first step.

Baroness Thornton (Lab): My Lords, I am grateful to the noble Baroness, Lady Bennett, for returning us to this issue because I have reflected on the noble Earl's remarks when we discussed this in Committee. He made an impressive contribution in that it listed many of the safeguards that the Government say are in place to deal with what are clearly very unsatisfactory situations in the care sector, which affect the most vulnerable in our communities.

My question to the noble Earl is: does he really believe that the Government are dealing effectively with the problems that face this sector, which is dysfunctional—I thank the noble Baroness for reminding me that I said that—and places insecurity in the hearts of some of the most vulnerable and eldest members of our communities? If all the things that he listed the previous time we discussed this were working, why would we return to this and say that those safeguards are clearly not working? Asset stripping is clearly still taking place. There are huge dangers to this sector and the noble Baroness has brought this back to the House because of them.

Earl Howe (Con): My Lords, the noble Baroness, Lady Bennett, has brought us back to issues that we debated in Committee and I understand her concern about propriety in the deployment of public funds. I have no problem with the idea that Ministers and public servants should do all they can to ensure that public money is used effectively for the greater good. That is what they are obliged to do anyway. However, I do not feel that this duty is best served by accepting the amendment, even though it has been newly worded.

In my answer in Committee, I described how during the pandemic we learned about the importance of speed and flexibility in the way that we respond to a crisis. I suggest that this amendment would impede the Government's ability to provide emergency support to critical providers. That does not mean handing out money willy-nilly. Any use of the power will be subject to the usual scrutiny and safeguards around the use of public funds, as set out in Treasury guidance on *Managing Public Money* and *Accounting Officer Assessments*.

There is a fundamental problem with the proposition that the noble Baroness has advanced. The amendment refers to "day-to-day operations" but there is no single accepted definition of that term. Any company could find itself excluded from receiving critical funding depending on how its accounts and finances are structured. For example, there are potential scenarios where the Government could ask providers to carry out activities at pace which may involve them in creating unavoidable debts, for which they would need reimbursement. In that situation there would be nothing improper in any government funding being used to repay that debt, but even if there were no such debts involved, the problem remains that any private company would be prevented

[Earl Howe]
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. I understand the concerns of the noble Baroness about unscrupulous people and fraud, but the amendment as worded is not well conceived.

Turning to Amendments 146 and 147, again, nobody can be comfortable with the idea of rogue investors or unscrupulous care providers. However, I made clear in Committee that the Government are committed to ensuring that we have a sustainable care market. We have already set out a number of planned actions, most notably in the *People at the Heart of Care: Adult Social Care Reform* White Paper, to achieve this objective. Noble Lords are aware that the adult social care sector is complex, as it contains both the public and the private sector. One thing that the two sectors have in common is the need to maintain not only quality of care but financial stability. To ensure that these businesses provide the care that they are required to, local government and regulators, such as the Care Quality Commission, monitor, regulate and support the sector.

As I mentioned in Committee, the CQC has market oversight responsibility, and in discharging those responsibilities, it performs comprehensive financial sustainability analysis for each provider in the scheme, including some private equity ownership structures. Debt leverage and capital structure are important components of this work, but consideration is also given to current and future trading trajectories, cash headroom and market positioning.

We also have in place the CQC-operated market oversight scheme, which monitors the financial health of the largest and most difficult-to-replace providers in the adult social care sector, ensuring that people's care is not interrupted due to provider failure, which must be a proper concern. Since its establishment in 2015, there have been no major business failures of care providers that have resulted in the cessation of care.

We have always been clear that fraud is unacceptable. We are acting against those abusing the system; 150,000 ineligible claims have been blocked on the Covid-19 schemes, and £500 million was recovered last year. The HMRC tax protection task force is expected to recover an additional £1 billion of taxpayers' money. Therefore, even if cash is diverted fraudulently, there is still the ability of the authorities to recover such cash.

I assure the noble Baroness that the Government will continue to keep the measures which I have outlined under review but, at present, we do not believe that the proposed and very prescriptive amendments are either proportionate or necessary. I hope she feels that she can come back to this matter at a future date. With that, I am clear that these amendments should not be accepted.

Baroness Bennett of Manor Castle (GP): My Lords, I thank all noble Lords who have taken part in this debate, and the Minister for his typically comprehensive response. It is interesting that the Minister very much focused on the issue of fraud and fraudulent transactions. I go back to the words of the noble Lord, Lord Howarth of Newport, who referred to what is happening as "legalised theft". None of these amendments seeks to deal with things that are illegal; they seek to deal with things that are now an established part of our financialised, privatised system, which has all this simply built in.

I thank the noble Baroness, Lady Brinton, particularly, who provided a pre-answer in advance of the Minister's response to Amendment 145, by saying that it was very difficult to separate out day-to-day operations and debts versus financialised debts. In demonstrating what the Charity Commission has done, the noble Baroness showed an effective example of how that can be done and different kinds of debt can be identified. The Minister said that you might need to create some special new financial structure to deal with an emergency situation. I think we know the practical reality of the financial-type structures that we are talking about, and that they are not created under those sorts of situations; they are created in a way to hide where the money is going—to ship the money offshore. That is not something that you would do in a situation where you are simply trying to rescue something.

The point made by the noble Baroness, Lady Tyler, about the inherent instability really brings home the point that what we are talking here, with regard to care homes, is people's homes. I am glad to see that the noble Lord, Lord Kamall, is in his place, because in another discussion I raised with him the fact that people who are forcibly moved when homes are closed can actually die as a result of it happening. I hope he has made himself more aware of that situation and the risk it presents to people's lives.

The noble Baroness, Lady Tyler, focused on some of the difficulties that the National Audit Office has had in scrutinising this whole situation. She highlighted the facts that I was talking about—how, when the National Audit Office is able to scrutinise situations, all we get is complaint. The noble Baroness highlighted how it is not even able to conduct scrutiny in this sector because of the kind of financialised structures that we have.

I am pleased that the Minister finished by noting that I am likely to come back—he perhaps even invited me to come back on these issues. It is something that I certainly intend to do. These are very complex areas, as I acknowledge, and this is an attempt to take on some extremely well-funded organisations and professional groups. Just to conclude, it is interesting that the noble Lord, Lord Howarth of Newport, as I did, contrasted the Russian kleptocrats we will talk about on Wednesday versus what we are talking about here. Of course, it is possible that they are not two groups and there might be some overlap. I invite any investigative journalists listening to have a look at whether we might be able to see an overlap there.

At the moment, it is my intention to withdraw the amendment, but I do not regard this issue as in any way dealt with or finalised. I beg leave to withdraw the amendment.

Amendment 145 withdrawn.

Amendments 146 to 147A not moved.

Schedule 18: Advertising of less healthy food and drink

Amendment 148

Moved by ***Lord Moylan***

148: Schedule 18, page 254, line 34, after "State" insert "which may not include products containing more than 20% of their calorific value by way of protein and not more than 5 grams of sugar per 100 grams in their composition"

Member's explanatory statement

This amendment, along with others to Schedule 18, ensures that foods that can be advertised as "low sugar" and "high protein" under Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods are exempt from the restrictions on advertising proposed in that Schedule.

Lord Moylan (Con): My Lords, in moving Amendment 148, I will also speak to Amendments 150 and 152 in my name. There are a number of interesting amendments in this group but I intend to stick to my last, broadly, and speak only to the ones in my name.

I had a number of amendments to this schedule—it has been renumbered; it was Schedule 17 but is now Schedule 18—in Committee, but I have decided to stick with just these three. I apologise that there are three; there is only really one, of course, but the schedule is drafted in such a way that everything has to be said three times. This amendment effectively relates to high-protein, low-sugar bars. Noble Lords may wonder why I have developed an interest in such bars; to answer that, I will tell them a story. That is all I am going to do. I will tell noble Lords a story about a real business; I will then ask my noble friend the Minister a question.

9.30 pm

In 2015, in response to a government campaign for confectioners to develop new alternatives to overly sweet snacks, a husband and wife living near Solihull set up a company and produced a product called Grenade. In fact, its proper name is the Grenade Carb Killa. It is a high-protein, low-sugar bar. Frankly, it is not something I would particularly want to eat. It may be something that other noble Lords find equally not high on their agenda. It certainly is not marketed at children; it is largely marketed at and taken up by young people who enjoy going to the gym, exercising and doing all the things my noble friend Lord Bethell frequently illustrates himself doing on Twitter, such as plunging into cold pools in the middle of winter. What they want—perhaps my noble friend is an example of this—is an alternative on-the-go snack that is full of protein and will not give them too much sugar. That is what this product was aimed at; it was not aimed at children in any sense at all.

What is it that allows the manufacturers of this product to call it a high-protein, low-sugar bar? The answer is Regulation (EC) 1924/2006 of the European Parliament and the Council, which defines what you may call particular types of food. It says that, to be able to call something low-sugar, the product must contain

"no more than 5g of sugar per 100 g for solids".

Similarly, it says that, to call something high-protein,

"20% of the energy value of the food"

must be "provided by protein". Of course, the Grenade Carb Killa was carefully crafted to match these regulations so that it could be called a high-protein, low-sugar food. The product is a success. It is heavily promoted online and on social media. Not counting manufacturing staff, there are 82 staff there. The net sales are now around £35 million a year.

So what does this Bill do to its producers? I take them only as an example that I am aware of, as they have approached me and explained their business to me. First, the Bill says that the criteria set out in the EU directive will effectively cease to apply, so the parameters by which they have created their product will no longer have any effect. This was confirmed to me in what has turned out to be quite a full correspondence with my noble friend Lady Penn; let me say how I grateful I am for the effort she has put into it.

Secondly, the Bill says that the Government will now consult on whether products will be allocated to one of 15 groups set out in the draft guidance. It is by no means clear to the Grenade company which group their product might be allocated to, as the groups are very broad. One of them is "sweet biscuits", for example, so not all food will be allocated to a group; a chicken breast will not be allocated to one of these groups because that is not what is in scope, but biscuits and things like that might be. This allocation is phase 1 of a process, as I understand it. Assuming that a product is allocated to one of those groups, it is then rated against the nutrient profiling model.

Now, noble Lords may think that we might just see some light at this point since the very high level of protein in the product should get it racing through the nutrient profiling model—but no, because the Bill requires that there should be a protein cap in the nutrient profile modelling applied to the 15 groups. This is because the Government are terrified that companies might put protein in the cornflakes and get around the regulations that way, so the large amount of protein does not help it very much at all because of the protein cap.

My noble friend may say that all this is mildly fantastical because—have I not noticed?—there is an exception for companies with fewer than 250 employees, and, as I said earlier, this company has 82 employees. The problem, however, is that two years ago, so successful were they that they were taken over by a larger company. It is now completely unclear to them—and it is not clear from the Government—whether the 250 cap applies to them as a stand-alone subsidiary or is to be applied to the larger group of which they are now part; nobody knows.

It also has some rather bizarre consequences. It means that the food that will be risky and dangerous would not have been risky had it continued to be produced by a small company—it would have been perfectly okay as long as they kept their employment down. I thought we wanted employment to go up. The second thing of course, is that no small company manufacturing compliant food will ever dare to be taken over by a larger company in the future, so this has a real consequence for business practice.

The only hope the company has is to reformulate its products, which is expensive and, as we all know, takes a long time and can go awry. Noble Lords may remember

[Lord Moylan]
the Cherry Coke episode, which was a disaster for the Coca-Cola company when it reformulated the product. Against what criteria will Grenade reformulate its product anyway? Nobody knows; and this sort of thing is being replicated up and down the country.

In the meantime, zealous Lords have other amendments in this group saying that what the Government really need to do—so clear is their understanding of business requirements—is move ahead more rapidly with this and have a hard deadline against which it must all be brought into effect, irrespective of the consequences for jobs, businesses and prosperity, and all to save three calories a day. So, that is my story. I am sure that the Grenade company is watching this now on parliamentlive.tv. I ask my noble friend: when I speak to the company tomorrow, what comfort can I offer? I beg to move.

Lord Naseby (Con): My Lords, I support my noble friend on these amendments. Of course, this is an extension of the debate that we had on the eighth day in Committee on the Bill. I want to look at the central problem behind the case history that my noble friend has outlined so clearly this evening. We need to remind ourselves that we are dealing with the food industry, one of the largest industries in the United Kingdom.

To the best of my knowledge having contacted all the trade associations, all parties want to reduce childhood obesity. There is no argument about that anywhere and, in the case of this industry, there are several areas of trade association activity, through ISBA, the IPA, the Food and Drink Federation and—of particular relevance to digital advertising—the IAB, which has worked very closely with DCMS. In a sense, that is part of the problem, because my noble friend on the Front Bench is not speaking on behalf of DCMS but about the Health and Care Bill on behalf of the DHSC.

The IAB, representing all food manufacturers dealing with digital advertising, has worked very closely with DCMS. It has kept it up to date on the latest developments, but DCMS has not engaged or worked with the industry in finding a solution. The industry has worked constructively for a long time to propose a tech-based solution that would achieve the Government's objective of a further reduction in the number of HFSS advertisements that are viewed by children. This proposed solution would use proven, targeted technology and includes an element of advertising campaign evaluation which would be future-proof—this is important—and ensure that it continues to improve. The irony is that the industry wants to work with the Government on this matter, but so far the Government are sadly ignoring this industry's expertise and dismissing its proposals.

I had the privilege of working in the advertising industry for 25 years, and I have seen these sorts of developments in other fields. When you have an industry working with government on an area that is important to both parties, it is a tragedy that Her Majesty's Government, through DCMS, are not working. Yes, it is new technology, and the Government might feel happier if there was some experimental work in special test markets or whatever, but the sad thing is that this technology is there, and is proven, but still Her Majesty's Government are refusing to use it and are seemingly—perhaps I am being too critical from the outside—unable to understand whether it will work. This is hugely frustrating for any company in this market.

I am sure my noble friend on the Front Bench is aware that the Prime Minister wants this country to lead digitally, and here we are on the frontiers of this area where we are leading, yet we cannot move forward. If the Government have reservations—and it is difficult for someone from another department, in this case the Department of Health and Social Care, who has therefore not been party to what has been going on—would it not be more sensible to have another look and evaluate it properly with those who really understand how it works and how it is developing? If the Government are still not convinced, I suppose we will have to try again later. As someone who comes from that industry—I have no involvement now and am not speaking for any particular party—I want to see companies in this area, like the one my noble friend described this evening, to be able to succeed in future.

Finally and frankly, the Government's blunt and disproportionate advertising ban will not be effective. When there is another system on the table, my noble friend ought to take it back, have another look at it and see whether it will help everybody.

Lord Black of Brentwood (Con): My Lords, I am speaking to Amendment 151A in my name and to four other consequential amendments which relate to the responsibility of online platforms for enforcing the ban on HFSS advertising. The amendments have been signed by the noble Baroness, Lady Merron, the noble Lord, Lord Clement-Jones and the noble Viscount, Lord Colville of Culross, a cross-party group which underlines how important the issue is, and I am grateful to them.

I declare an interest as a director of the Advertising Standards Board of Finance and deputy chairman of the Telegraph Media Group, and note my other media interests as set out in the register. I am also a vice-chairman of the APPG on ITV.

I intend to be very brief as these issues were discussed at great length in Committee. Indeed, over a marathon three-hour session, when many noble Lords raised concerns about the implementation of the proposed ban, they noted that it would not be effective as structured: it was not proportionate, it was an infringement on freedom of expression, and it was unfair and unbalanced because it penalised broadcasters and publishers and did not provide for any enforcement by the platforms—Google, Facebook, and others—where the vast majority of HFSS advertising sits.

9.45 pm

To be clear once again, like all other noble Lords, I recognise the scale of the obesity challenge. I recognise too the strong political impetus behind the ban on HFSS advertising. Therefore, I am not seeking to swim against the tide and try to unpick this policy—rather, to ensure that the ban is implemented effectively and equally. That is what these amendments seek to do.

In essence, the Bill as drafted simply will not work, because it places all the responsibility for compliance with the online HFSS ban on advertisers. It places no responsibility on online platforms which control when and where advertising is placed, and which profit directly from it. That cannot be right or just. These amendments simply ensure that the online platforms are also held responsible for compliance, just as the Bill requires of the broadcasters. It does this by supplementing the Bill's requirement not to "pay for" online advertising—which restricts the actions of advertisers—with the requirement not to "market, sell or arrange" online advertising, which levels the playing field between media owners and platforms. This is modelled on Ofcom's existing regulatory regime for online advertising for some UK video-sharing platforms. It is not inventing a new concept, but simply building on what has been proven to work. It will be easy to implement through the Advertising Standards Authority which already regulates advertising online, and which has been designated as Ofcom's statutory co-regulator in relation to online advertising controlled by the video-sharing platforms. This means that responsibility for compliance sits with those who control when, where and to whom advertising is served. It is vital that this is a statutory requirement.

I will make two other simple and brief points. First, these amendments are absolutely not about watering down the policy relating to HFSS advertising restrictions. They ensure only that they will be effective by making those responsible for controlling advertising, and who profit substantially from it, are held responsible. There is no reason at all why it should delay the implementation of the new regime.

Secondly, these amendments ensure that this Bill aligns with government policy in other crucial areas, and does not—ironically, as it stands at the moment—run counter to it. According to the Secretary of State, the online safety Bill seeks to ensure that the platforms are held accountable for scam advertising and other illegal content. If that legislation makes the platforms accountable, what could possibly be the objection to this flagship Bill doing the same for HFSS advertising? It is not just a question of joined-up government, but of ensuring the quality of public policy.

I know that my noble friend will say that all this can be addressed in the long-awaited online advertising review. That has already taken two years just to get to a second consultation, and that excuse is not good enough. We are not talking about just long grass—it is deep in the jungle. I doubt that it will see the light of day in this Parliament, joining other much-needed legislation levelling the playing field between platforms and content providers. If this legislation goes through without appropriate amendments, it will be years before another legislative vehicle comes along to right these wrongs. In the meantime, the HFSS ban will have completely failed under the weight of its own contradictions. Is that really what the Government want?

These amendments are actually about making the Government's own policy work, which it will not, as it stands. They are about fairness, the sustainability of the media and ensuring that platforms are responsible. I hope they will find support across the House from those who support the ban and those who do not—that point is actually now behind us—because they are designed to strengthen this important Bill and make the implementation of the policy more effective. I hope, therefore, that my noble friend will say that the Government will accept them, so that it is not necessary to divide the House.

Lord Bethell (Con): My Lords, I shall speak to Amendments 149, 151 and 153 in my name and those of the noble Lord, Lord Krebs, and the noble Baronesses, Lady Walmsley and Lady Boycott. The amendments refer specifically to a deadline for the implementation of the junk food advertising restrictions.

I completely applaud the Minister for the approach of bringing in government amendments to try to refine the terms of the Bill; it is a collaborative approach, which I think all of us have really appreciated. However, in this matter, a government amendment has, I think, overshot, by removing the previous deadline in the first draft of the Bill. These amendments seek to rectify that.

I will not speak at length, but many have said, both in Committee and at Second Reading, how urgent it is to address the issue of obesity in this country. We cannot have any delay or rolling procrastination around these measures, so it is entirely right, proper and suitable for there to be a deadline in place in a Bill such as this.

It is also right to have certainty. I have huge consideration for Grenade and its low-sugar, high-protein bar. I will certainly look out for its excellent product when I am next in the gym, and I think the uncertainty it faces, which my noble friend Lord Moylan has described, is heartbreaking. That is why it is important to start the mechanisms now for answering its quite reasonable questions and to put a deadline on when those answers should be delivered.

I am not blind to the fact that many in the industry have voiced concerns that the deadline is too tight. I have looked at it and I do not accept those concerns. I think the bans have been around and on the books for a very long time and preparations have been in place. I worked in publishing during the tobacco ban: the turnaround for that was quite tight, but it was quite transparent and it happened without too much trouble. I think that a deadline is entirely right and suitable and that the deadline proposed is reasonable. I would like to hear reassurance from the Minister that there will be clear scheduling for these measures.

I would also like very briefly to address Amendment 151A, from my noble friend Lord Black, and the related amendments. On this, I feel utterly conflicted. The harms caused by online advertising have been mounting over several years. They are currently far too damaging and they are set to grow, both in scale and sophistication, without any clear sight of regulatory control. That is of grave concern, and the points made by my noble friend were very persuasive: I think he was right about bringing in compliance by the platforms. On the other hand, I accept that government regulation in this area is so off the pace; the online harms Bill is so far behind and the online advertising

[LORD BETHELL]
review has taken so long that the Government are just not in a position to implement the measures in this amendment.

I shall not be supporting these amendments in any votes that might happen, but my sentiments are very much along those lines. I ask the Minister to say very clearly what the Department for Health and Social Care and the Government will do around these concerns, not just on junk food advertising but on the advertising of alcohol, betting and non-surgical cosmetics, which all face similar concerns around the explosion of complex and persuasive online advertising which is underregulated.

Lord Krebs (CB): My Lords, I shall speak in support of the amendments in the name of the noble Lord, Lord Bethell, to which I have added my name. I do not really need to say anything more than has already been said. We know that this country, according to the *World Obesity Atlas* published last week and supported by the World Cancer Research Fund, is now top of the European league table for projected levels of female obesity by 2030 and joint top for projected levels of male obesity. Sadly, it is probably already too late to stem this trend, but by acting now on these measures we might be able to protect the next generation. That is why I support the idea of having a firm deadline by which time the measures will be introduced.

I actually wanted to speak in slightly more detail about Amendments 148, 150 and 152 in the name of the noble Lord, Lord Moylan. As he explained, they are really just one amendment.

I promise you that this was not set up, but I have in my hand the very Grenade bar to which the noble Lord, Lord Moylan, referred. I wish to explain why this Grenade bar should definitely not be excluded. I am grateful to Dr Emma Boyland, of the University of Liverpool's Institute of Population Health, for giving me a briefing on the Grenade Carb Killa bar—this particular one is high-protein, low-sugar, white chocolate and salted peanut. I bought it at the weekend from Holland & Barrett, in its health food section; it is marketed and advertised as a healthy product. Is it a healthy product? The answer is no.

First of all, no age group in this country is short of protein. We simply do not need to eat more protein. So the fact that this bar is high-protein is completely irrelevant in terms of health benefits. Secondly, remember that HFSS is high fat, salt and sugar. The bar may be low-sugar, but what about fat? It contains a third of an adult's recommended daily limit of saturated fat; it is definitely high in fat. It also contains more salt than a bag of salted crisps. Is it right to exclude something that is fatty and salty from the definition of HFSS? I am convinced it is not right, and therefore I completely reject the argument of the noble Lord, Lord Moylan. These products should not be excluded from the measures proposed in Schedule 18 to the Bill.

Lord Hunt of Kings Heath (Lab): My Lords, I have two amendments in this group—Amendments 154 and 155—though they are rather different from those discussed in the debates that we have just heard. I declare my interest as the president of the Hospital Caterers Association.

We have heard a lot about the risk of obesity, but we also know that many patients coming into NHS hospitals come in with nutritional issues, where good food and good nutrition could very much help them on their way to recovery. The research has indicated problems where patients are not feeding properly.

We are very grateful to Ministers for the meeting we had with the Hospital Caterers Association and the National Association of Care Catering, with the noble Baroness, Lady Barker. We are very grateful too that Clause 161 sets out specifications for hospital food standards.

There are just two quick points I want to make. First, it is a great pity that we do not have a similar process in relation to the care sector—care homes, in particular. One of the amendments relates to that: we want to see the provisions extended to the care sector. We also want to ensure that staff working in the care sector are suitably trained and that there is a suitable framework to ensure there is a high level of professional staffing.

My second point relates to the National Health Service. Although lip service has always been paid to good standards of hospital food and nutrition, unfortunately the boards of NHS organisations have often found it difficult to provide the resources to enable that to happen. The suggestion in my first amendment is, in fact, that a board-level director should be appointed to oversee this to ensure that the standards laid out as a result of the Bill, when it becomes law, will be put into practice. Alongside it go similar provisions in relation to ensuring that we have high-quality staff who can take advantage of a focused approach to training, which, at the moment, has been missing because a lot of the national infrastructure for training for staff in the NHS in the ancillary services has been neglected.

I hope that, following the discussions we had with Ministers, the noble Baroness will be able to be positive in relation to this tonight.

10 pm

Lord Clement-Jones (LD): My Lords, the noble Lord, Lord Black, has put a convincing and comprehensive case for his amendments, which I have signed. He has knocked back nearly every argument made by the Government in this House and in correspondence against a level playing field being established for platform liability.

In his letter after Committee, the noble Lord, Lord Kamall, said:

> "The scale and speed of advertising online, as well as the personalised nature of advertising and the lack of transparency in this system, makes it difficult for platforms to have control over what is placed on them."

They have far more control than the broadcasters. They run their own digital advertising agencies. Facebook and Google have massive market share in their own individual digital markets.

It is extraordinary that the Government are buying these arguments from the social media platforms. They are on extremely thin ground. If the noble Lord, Lord Black of Brentwood, pushes these amendments to a vote, we will support him.

Baroness Boycott (CB): My Lords, I support noble Lord, Lord Bethell, in his amendments demanding a timescale for the ban on such adverts. Advertising is the only business in the world that spends an enormous amount of money and then suggests that it does not work. It is a curious state of affairs that the advertising industry, as well as the food industry, which spends upwards of £0.5 billion a year on advertising HFSS food, says that advertising does not work, but the fact is that it does.

Research has shown that half of all food ads shown in September on ITV, Channel 4, Channel 5 and Sky One were for HFSS products. That number rose to nearly 60% between 6 pm and 9 pm. Ofcom research also suggests that children's viewing peaks in the hours after school, with the largest number of child viewers concentrated around family viewing time, between 6 pm and 9 pm. People in food policy have worked, as I have worked, for a very long time for this ban. We thoroughly applaud the Government for doing it. I also applaud my noble friend Lord Krebs for taking apart that protein bar, because it illustrates the way in which the food industry works. I have heard all too often, especially when I first came into this House—albeit not so much now—people saying, "All you need to do is exercise to get rid of the excess weight." We know that that is a line put out by the industry. The industry is very clever. Yes, they have managed to sell the noble Lord, Lord Moylan, their protein bar, but they have not sold it properly. I hope that, with this ban, the Government will look at all the other sneaky ways in which food companies put things through, whether it is high-energy drinks or whatever, that are incredibly destructive to our health. As my noble friend Lord Krebs, said, we have an unenviable first position in the scale of obesity around the world, and we need to end it now.

Baroness Stowell of Beeston (Con): My Lords, I should declare that I am chairman of the Communications and Digital Select Committee. I support Amendment 151A and the others in the name of my noble friend Lord Black of Brentwood. I do so because this is a matter of fairness.

Following on from what the noble Baroness, Lady Boycott, has just said, the broadcasters have accepted that a pre-watershed ban on junk food advertising is coming. They and I also understand that the online platforms face a complete ban. However, once again, the legacy or heritage media businesses are the only ones which will face serious financial penalties if they make a mistake and, for whatever reason, allow a non-compliant piece of advertising to slip through and appear on air. I am sure that my noble friend the Minister will emphasise that the difference between the online platforms and broadcasters is only therefore about regulatory burdens and sanctions, but that is the point, and it is why this is unfair.

Why should the media businesses which will be significantly disadvantaged commercially by the ad ban be the only ones fined if something goes wrong? Why should the media businesses which continue to lose ad revenue to online platforms stand by and watch as those same platforms—Google, Facebook, YouTube—are not yet subject to any statutory regulatory regime to prevent their unfair market dominance? How can it be right that they shrug their shoulders when it comes to liability for the ads they profit from? They profit from them to a much larger degree than the broadcasters profit from the ads they run.

When I spoke in Committee, the Minister said in reply that all this would be dealt with via the online advertising programme and that a consultation would start shortly. Any progress on that will be welcome, but there is a limit to how much consultation the media industry can take. What it needs is action, which means legislation to deal with these various digital market and competition issues that currently favour big online platforms and are detrimental to everyone else, including consumers. To fail to do that while prioritising legislation that hits the traditional broadcasters more harshly than online platforms is unfair.

As I have said, those of us who support the amendments in the name of my noble friend Lord Black do not want to delay the ban on junk food advertising, but in introducing it, we should make sure that liability for mistakes and failures to comply with regulations is fair. The Bill as it stands is not. I am very grateful to the Minister for the time she has given to hearing these arguments, but urge her to reconsider the merits of these amendments, especially bearing in mind that we are still a long way from new legislation that will finally level the playing field across the media sector. If my noble friend divides the House, I will vote with him.

Viscount Colville of Culross (CB): My Lords, I too am very pleased to support Amendment 151A and the following amendments. I also read the letter from the noble Lord, Lord Kamall, to Peers following the debate on this in Committee. He said that it was

"difficult for regulators to keep pace with advertising code breaches without the cooperation of platforms who hold significant data on the process, and host the services".

That seems to me a recognition of their responsibility in the ad process. As the noble Lord, Lord Black, said, ads create the vast majority of the platforms' revenue and so they are responsible for controlling their content.

I read a recent survey on the effect of online advertising on young people, which was carried out by the healthy living charity, Global Action Plan. It showed that the average teen sees on Instagram alone one ad every eight seconds. That is the equivalent of 444 ads per hour. The survey also revealed that Facebook's ad manager directly targeted young people with risky and unhealthy advertising, including for fast food and alcohol. It was the platforms' data and algorithms which directed these ads, and they need to be made responsible for any restrictions on HFSS advertising as quickly as possible. There are other, more insidious forms of online advertising, such as product placement in digital content, especially among influencers. All these should be made the responsibility of the platforms to control. I hope the amendments will do just that.

[Viscount Colville of Culross]

I was glad to hear that the Government are looking at the online advertising programme, but I, like many noble Lords, am concerned by the laggardly start. Can the Minister say when she thinks the consultation will conclude? I hope that will happen quickly, because every day, thousands of young people are going to be harmed by the delay. I also ask the Minister to guarantee that platform liability for hosting product placement and others sorts of insidious advertising will be in scope of the consultation.

Baroness Barker (LD): My Lords, at this late hour, I simply want to express my support for the noble Lord, Lord Hunt, and Amendments 154 and 155 in his name by making three simple points. First, we are learning all the time about the importance of nutrition and health. We are also understanding increasingly how poor nutrition can have a devastating effect on recovery and health inequality. It is therefore remarkable that in both hospitals and, more particularly, care homes we have no standards or training for the people involved in the preparation and delivery of food. That is a serious omission.

Therefore, it is time for us to move away from the traditional way in which care catering has developed, which is by scandal and omission, turning it round into a positive by developing new standards of training. We also need to try to get particularly teachers in colleges to get young people to understand that catering in care settings is far more complex then catering in restaurants. Within the NHS we have the opportunity to drive some world-beating standards on nutrition and care, and that is all that we are asking for by asking for this framework and these amendments.

Lord Grade of Yarmouth (Con): My Lords, I am tempted to express my concern that the computer of the noble Lord, Lord Moylan, may have been hacked by the noble Lord, Lord Krebs, with the coincidence of the Grenade bar being at the heart of their contributions to this debate.

That said, I offer a word of warning about the imposition of a hard deadline for the implementation of the advertising ban. However desirable a deadline, it is actually impractical. I do not seek here to delay anything; I accept totally that the argument about the futility of an advertising ban has been lost, and we move on to the implementation. A deadline of 1 April—and all the delegated powers—creates a huge number of time-related consequences following that. Advertising, as well as the delegated powers and the need to produce and consult on guidance on secondary legislation, is a consequence of this. Companies will have no time to assimilate what the new rules mean for their advertising campaigns. Advertising campaigns can take up to a year from conception to final production. The Government have yet to publish the secondary regulations consultation, which will lay out exemptions, such as how SMEs are defined for the purposes of the restrictions.

Once the Bill becomes law, which will not happen for several months, Ofcom—that wonderful organisation—will then need to delegate to the relevant regulator, which, according to the amendments, will not happen until two months after the Bill receives Royal Assent. The designated regulator—most likely the ASA, as we heard—will then need to hold a consultation on the details of the guidance and process the consultation responses before putting out final guidance, which will then take several months. Only once this final guidance is published will brands be able to implement it when it comes to their marketing campaigns.

Some noble Lords may argue that the Government have already made clear what are permissible and what are not identifiable HFSS products and that industry and businesses can prepare around this. The questions and detail of the guidance are far more complicated than that. Industry has a plethora of unanswered questions that need to be resolved and which will take time, covering everything from how liability will apply to third-party delivery companies to the definition of transactional content and what rules might mean for loyalty apps. I hope that your Lordships will reject Amendments 149, 151 and 153 to avoid a chaotic transition to the new rules.

I finish by speaking in support of my noble friend Lord Black's Amendment 151A and the resulting amendments. My noble friend laid out the case extremely well and I hope he will seek the opinion of the House on this matter. I can add nothing to the arguments that he and other noble friends have laid out. If there is a vote, the simple choice of the House is: do we want to let these monolithic, monopolistic platform giants carry on getting away with murder in this country? They have been allowed to get away with stealing copyrights, they do not regard themselves as publishers, and they create more harm—which, one hopes, the online safety Bill will seek to amend.

This is discriminatory legislation, which makes a difference between two people doing the exactly the same thing: the broadcasters, who will be liable, and the online platforms, for which there is no parity at all. It is about time we recognised that we must deal with these people and regulate them properly and sensibly. This is a perfect opportunity, and I hope your Lordships will support the amendment.

10.15 pm

Baroness Bennett of Manor Castle (GP): My Lords, I wish to briefly reinforce a point made by the noble Lord, Lord Krebs, backed up by the noble Baroness, Lady Boycott, about how so much food is advertised as being healthy when it is clearly nothing of the sort. I want to pick up the point made by the noble Lord, Lord Moylan. I will not advertise any further a particular brand of allegedly healthy food for athletes, but these foods are presented as though they are consumed by people who have just done extraordinary physical efforts—as exemplified in your Lordships' House by the noble Lord, Lord Bethell, who, I can attest, I saw at the APPG for Running, looking like he was appropriately involved in the acts that he was supporting. However, more than half the calories consumed in the UK are in ultra-processed foods. That figure rises to 65% for children and teenagers. We need action urgently. This is a health crisis; it is an epidemic.

Baroness Walmsley (LD): My Lords, I wish we were talking about restricting the advertising of gambling; that would have more effect on the health of the country than this. However, these are very important measures. Before I talk about the three major groups in this grouping of amendments, I thank the noble Lord, Lord Hunt, and my noble friend Lady Barker for raising the really important issue of nutrition to patients in hospital and people living in residential care homes.

The rest of the amendments fall into three broad groups. First are the amendments in the name of the noble Lord, Lord Moylan. While he was telling us the very sad story about the manufacturers of the Grenade bar, about how much protein it has and how little carbohydrate, I was wondering: what about the other major nutrient, fat? Noble Lords will remember from their biology lessons that, gram for gram, fat has twice as many calories as either carbohydrate or protein, and if you eat an awful lot of those bars, you will get fat—the "F" in HFSS foods. Of course, one "S" in HFSS foods stands for salt, and the noble Lord, Lord Krebs, has now told us exactly what is in that bar—far too much fat and far too much salt.

However, the noble Lord, Lord Moylan, raises a point which I raised in Committee: the nutrient profiling model is 11 years old. I asked the Minister whether there are any plans to update it, because companies really need up-to-date information about exactly what will fall within the ban and what will not. So I ask the question again: are there plans to update that 11 year-old guidance? We really do need it, because then companies such as the one mentioned by the noble Lord, Lord Moylan, and many others, will really know what they are dealing with. It certainly does not sound to me as though that bar will fall outside the restriction on advertising.

I have added my name to the amendments in the name of the noble Lord, Lord Bethell. I remember when, in Committee, the Government introduced this power to extend the deadline—they did not say how long for—and I asked what this was for and why the Government needed to extend the implementation of these restrictions. The Minister, the noble Baroness, Lady Penn, said it was just in case there were any hitches with the consultation. I think the noble Lord, Lord Bethell, is right and there is certainly a hint of long grass in what the Government were trying to do. I was a bit suspicious about it in Committee, and I still am. I support what the noble Lord, Lord Bethell, is trying to do.

All the industries concerned with these measures have had plenty of notice of what the Government wanted to do, and I think, once the detail comes forward, they will have had plenty of time. Perfectly reasonably, the noble Lord, Lord Bethell, is asking for that power that was taken to extend the deadline to be limited to just three months. That is quite enough.

As for the amendments from the noble Lord, Lord Black, I agree with my noble friend Lord Clement-Jones, although not necessarily for the same reason. Of course, there is a fairness issue here, but I think that, if the responsibility for implementation and making sure there was compliance was extended to online platforms, it would strengthen the objectives of these measures from the Government, which I support. Therefore, if he puts his amendment to the vote, we will vote for him.

Baroness Merron (Lab): My Lords, we have had a considerable debate on these issues, in Committee and this evening in your Lordships' House. From these Benches, we absolutely support the provisions to tackle obesity. The reasons have been gone over many times, but I make one point in respect of children—that children with obesity are five times more likely to become adults with obesity, and increase their risk of developing a range of conditions, including type-2 diabetes, cancer and heart and liver disease. It is incumbent on us to take the steps that are necessary.

Given the lateness of the hour—and I know that noble Lords wish to get to the question whether there is to be a Division—I shall focus my comments on the amendments relating to advertising, Amendment 151A, in the name of the noble Lord, Lord Black, and the subsequent amendments, to which I have put my own name. There has been a great clarity of argument as to why those amendments deserve favour, but the one that sticks out for me is about ensuring the effectiveness of the legislation that we are speaking about.

We already know that legislation can have a huge impact. For example, the soft drinks industry levy has led to manufacturers reducing 44 million kilograms of sugar each year from drinks in the UK. We also know of the support for the measure of the watershed for advertising of high-fat sugar and salt products—in other words, to protect children from those influences. We know that the measure is supported by organisations such as the British Heart Foundation, the Food Foundation and many other experts as being able to make the difference, because children are influenced by advertising. We should really be ensuring that children see adverts for healthier food and drinks.

Should the will of the House be tested on these amendments, these Benches will certainly be in support, because we feel that the Government should make sure that the proposed pre-9 pm ban on advertising unhealthier foods on TV, with a total ban online, has to be implemented effectively and appropriately across all media and platforms. If it is not and remains as it stands, it will not do the job that it is intended to do, and we will miss an opportunity, which we hope the Minister will reflect on, as the case has been made so clearly and directly.

Baroness Penn (Con): My Lords, I thank noble Lords for this debate. I will turn first to the amendments in the name of my noble friend Lord Bethell. As noble Lords are aware, the Government introduced an amendment in Committee to enable adjustments to the date of commencement of the HFSS advertising restrictions, should emerging issues require it to be moved.

We will continue to work with regulators and businesses to ensure that guidance is produced promptly to support timely implementation; our intention remains to implement restrictions from 1 January 2023. We think that date balances ambition with the importance of sufficient time for business to prepare. However, limiting

[Baroness Penn]
this flexibility to a period of only three months, as proposed by my noble friend's amendment, would be counterproductive, as that timeframe may not allow us to respond adequately to any unforeseen challenges or ensure smooth delivery of this policy.

Turning to the amendments tabled by my noble friend Lord Moylan, I seek to reassure him that our current approach provides an overall assessment of the nutritional content of products, as it accounts for nutrients of concern as well as beneficial nutrients. As such, we consider it to be an effective mechanism for permitting healthier products to be advertised, while still restricting those which are less healthy overall. The detail of the products in scope will be underpinned by secondary legislation, which can provide the necessary detail and be adapted in response to future changes to products on the market. The Government will consult soon on this and other definitions included in the draft regulations, such as the small and medium enterprise exemption.

I turn now to the amendments on platform liability. The Government believe that the online advertising programme remains the best way to address such issues on an industry-wide basis, rather than in a piecemeal fashion. I am pleased to be able to confirm that the DCMS consultation, which should launch in the next fortnight, will examine the harms associated with paid-for advertising online and consider the measures that could apply to platforms and others in the supply chain in order to increase accountability and transparency.

It is our intention to legislate on those conclusions in this Parliament, as we share the view that it is the right time to put in place holistic measures to tackle platform liability. However, it is also right to bring forward powers in this Bill now, so that we can begin to tackle obesity via restrictions to TV, on-demand programme services and online, in line with current enforcement frameworks for advertising that are familiar to industry. Platforms are not able to pre-vet adverts in the same way that broadcasters can. We recognise that there is a need to address that issue, but to do so in the round.

Amending this Bill in relation to online platforms without wider consultation and at a late stage risks unintended consequences. Those could include undermining the clear responsibility of advertisers to adhere to the restrictions that we are debating; interfering with the competitive dynamics that apply across the online advertising supply chain; not addressing accountability and transparency issues that apply elsewhere in that ecosystem; the danger of the restrictions applying to a wide range of internet service providers beyond those intended, including intermediaries and publishers; and not providing regulators with the right tools, funding or structures to regulate effectively. Were this amendment to pass, the Government would need to consider very carefully whether implementation from 1 January 2023 remained possible. The risks posed by creating a more complicated regulatory framework are likely to result in a delay.

Lord Grade of Yarmouth (Con): My Lords, I am grateful to my noble friend the Minister for giving way. Do the Government understand the difference between mass brand advertising on free-to-air linear television and the direct addressability to individuals online, where they have all the data—the address, postcode, email address and phone number—of the kids they are advertising to? The Government seem not to understand the pernicious nature of advertising online.

Baroness Penn (Con): My Lords, in our 2020 consultation on advertising, we outlined our concerns about online targeting of adverts, so we did look at the approach suggested by my noble friend. There is no evidence to suggest that targeting online does not account for the use of shared devices and profiles between parents and children, the communal viewing of content or false reporting of children's ages. This—combined with concerns around the accuracy of internet-based targeting and other behavioural data as a way of guessing a user's age and a lack of transparency in reporting online—shows why the Government believe that we need to introduce these advertising restrictions online in the way that we have.

10.30 pm

I was about to address the points that my noble friend made. He spoke against the amendment restricting the flexibility that the Government have in implementing these provisions because of the time that it might take to implement these measures, because they are complex and have a long feed-in time, because we must get guidance out to industry, and all the other measures that we have talked about. We consulted on these measures and on different approaches to them previously. We have engaged business in the way that we are taking these measures forward to give them time to prepare.

However, there is a tension between that and what the noble Baroness, Lady Walmsley, said: businesses have plenty of notice on the approach that we are taking and plenty of time to prepare, and that a fundamental change in approach to how we are dealing with online advertising in this Bill for these measures today would not result in any delay. I emphasise that we completely agree on targeting online advertising as well as broadcast advertising. That is why it is in the scope of this Bill and the provisions that we are talking about. We also agree that we must address the question of platform liability. We are committed to doing so as part of that wider piece of work on the online advertising programme.

My noble friend Lady Stowell talked about the issue at heart being one of parity between broadcasters and online platforms. I understand how important that is, but we must not forget the issue at the heart of all of this, which is bringing in measures to protect children who are unhealthy and at risk of obesity so that they do not them see messages which are inappropriate; we know the statistics. This Bill, and the measures in it which we do not want to delay, do this. We will address the question of online liability.

Turning to the amendments tabled by the noble Lord, Lord Hunt of Kings Heath, as he is aware, officials are working closely with NHS England to implement the recommendations from the *Independent*

Review of NHS Hospital Food, which was published in October 2020. One of the recommendations from that review was for NHS England to publish an updated version of the NHS food and drink standards document. It is intended to be published in May and I assure your Lordships that it will contain a standard which requires that NHS trust boards have a designated board member with responsibility for hospital food.

We have been clear that the detailed standards and requirements in relation to hospital food should be provided in secondary legislation and not in the Bill. As with the advertising restrictions, this approach will enable Ministers to act in future years if new or emerging evidence suggests that amendments are needed.

The standard of food in social care settings is just as important as the standard of food in health settings but the context is different. This Bill already includes powers to set food standards across the hospital estate. However, adult social care settings are fundamentally different from hospitals, with services based on the principles of personalisation and choice. Regulated care settings that provide food will mostly be residential care. These are people's homes. As such, their needs, wishes and preferences should be well known to staff, and blanket requirements are unlikely to be appropriate.

The Care Quality Commission regulates hydration and nutrition across health and social care as one of the fundamental standards of quality and safety. It also ensures that staff are adequately trained, and its guidance recommends that all staff complete the care certification which includes content on food standards. The Government are currently working with the sector on a new delivery model for the care certificate to improve the quality of training, so setting out those levels of training in legislation would not be proportionate at this time.

Therefore, I hope that my noble friend can withdraw his amendment, and that other noble Lords will not move theirs when they are reached.

Lord Moylan (Con): My Lords, especially at this time of night, it is very taxing to try to summarise what is a complex debate raging across a number of issues, and in particular to thank everyone who has spoken. If I fail to thank everybody by name, I hope I will be forgiven in the interests of brevity, but I thank my noble friend the Minister again, not only for her remarks but for the attention, care and hard work she has put into addressing all these issues with me and many other noble Lords who have spoken on the various topics we are addressing.

I have to thank one or two other noble Lords. In particular, I express my gratitude to the noble Lord, Lord Krebs, who went out, no doubt at considerable personal risk and with some arduousness, to purchase an example of the Grenade Carb Killa. I had never seen one in captivity or in nature until he produced it in the Chamber today. That in itself is something I am very grateful for. He chose the one that I think is called "white chocolate" or something like that.

Here the noble Lord, Lord Krebs, has been helpful to me. I believe there are 14 different flavours of Grenade Carb Killa. It is the view of the confectioner that manufactures them that some will comply with the profiling model while others will not. Perhaps next time the noble Lord could try a different flavour and have it tested in Liverpool, I think it was, and that would generally help to advance things. The difficulty for the company, though, is that this is not a game. It needs to know which of these products has to be reformulated and how for it to remain compliant and stay in business. This was a very helpful illustration of the difficulties.

One other noble Lord I will mention is my noble friend Lord Bethell, who referred to the tobacco advertising ban as if it were some sort of comparison. There is no comparison. Nobody had to carry out a profiling exercise to decide whether something was a cigarette: it was a cigarette or it was not. There was no question of putting it through a model to discover it was a cigarette. Nobody in the cigarette manufacturing business had to reformulate their product and market test it to make it compliant with regulations. What you can do with a tobacco ban very quickly is simply irrelevant to the hurdles the Government are setting in front of businesses.

Apart from that, the many noble Lords who spoke on other aspects of the Bill, some with great knowledge and experience, have illustrated something that I hope everyone in the House can agree on, with the possible exception of my noble friends on the Front Bench: it really is a crying shame that issues of such importance and complexity should be rammed into a major Bill in a schedule when in fact it must be clear to us all now that this schedule should really have been a Bill in its own right, and should have received the attention and scrutiny these complex commercial and nutritional issues deserve. With that, I beg leave to withdraw my amendment.

Amendment 148 withdrawn.

Amendments 149 to 151 not moved.

Amendment 151A

Moved by ***Lord Black of Brentwood***

151A: Schedule 18, page 256, line 23, after "for" insert ", market, sell or arrange for"

Member's explanatory statement

This amendment and other amendments to Schedule 18 hold both advertisers and online platforms responsible under statute for compliance with the online HFSS advertising restrictions in the Bill, enforced by a statutory regulator with meaningful sanctions for non-compliance. The concept of "market, sell or arrange" is one already adopted by Ofcom for its statutory regulation of online advertising on some Video Sharing Platforms (VSPs), so it is already well established.

Lord Black of Brentwood (Con): My Lords, I am very grateful to my noble friend the Minister for the comments she made, but I am afraid I am wholly unconvinced by them. I do not think she has understood the point made by so many in passionate speeches that action is needed this day, not at some future point. The regulation of the platforms is an issue of principle on which this House should be proud to take a decisive stand. I would therefore like to move the amendment and test the opinion of the House.

10.39 pm

Division on Amendment 151A

Contents 59; Not-Contents 99.

Amendment 151A disagreed.

Division No. 6

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10.51 pm

Amendments 152 to 153ZD not moved.

Schedule 18 agreed.

Amendment 153A

Moved by ***Lord Kamall***

153A: After Schedule 18, insert the following new Schedule—

"LICENSING OF COSMETIC PROCEDURES

Introduction

1_ This Schedule is about the provision that may be made by regulations under section (Licensing of cosmetic procedures).

Grant of licence

2_ The regulations may—

(a) require a local authority not to grant a licence unless satisfied as to a matter specified in the regulations;

(b) require a local authority to have regard, in deciding whether to grant a licence, to a matter specified in the regulations.

3_ The regulations may make provision requiring a local authority not to grant a premises licence unless the premises have been inspected in accordance with the regulations.

Licence conditions

4_(1) The regulations may make provision for the grant of a licence subject to conditions.

(2) Provision of the kind mentioned in sub-paragraph (1) may—

(a) enable a local authority to attach conditions to a licence;

(b) require a local authority to attach to a licence a condition specified in the regulations.

Duration of licence etc

5_(1) The regulations may make provision about the duration, renewal, variation, suspension or revocation of licences.

(2) The provision that may be made under sub-paragraph (1) includes provision conferring power on a court by which a person is convicted of an offence under the regulations to vary, suspend or revoke a licence.

Reviews and appeals

6_ The regulations may make provision for—

(a) the review of decisions under the regulations;

(b) appeals against decisions under the regulations.

Offences

7_(1) The regulations may create offences in relation to—

(a) the breach of a prohibition imposed by virtue of section (Licensing of cosmetic procedures)(1);

(b) the breach of a condition attached to a licence;

(c) the provision of false or misleading information to a local authority in connection with anything done under the regulations.

(2) The regulations must provide for any such offence to be punishable on summary conviction with a fine or a fine not exceeding an amount specified, or determined in accordance with, the regulations.

Financial penalties

8_(1) The regulations may confer power on a local authority to impose a financial penalty in relation to—

(a) the breach of a prohibition imposed by virtue of section (Licensing of cosmetic procedures)(1);

(b) the breach of a condition attached to a licence.

(2) The amount of the financial penalty is to be specified in, or determined in accordance with, the regulations.

(3) If the regulations confer power to impose a financial penalty in respect of conduct for which a criminal offence is created under the regulations, they must provide that a person is not liable to such a penalty in respect of conduct for which the person has been convicted of the offence.

(4) If the regulations confer power to impose a financial penalty they must include provision—

(a) requiring the local authority, before imposing a financial penalty on a person, to give the person written notice (a "notice of intent") of the proposed financial penalty;

(b) ensuring that the person is given an opportunity to make representations about the proposed financial penalty;

(c) requiring the local authority, after the period for making representations, to decide whether to impose the financial penalty;

(d) requiring the local authority, if it decides to impose the financial penalty, to give the person notice in writing (a "final notice") imposing the penalty;

(e) enabling a person on whom a financial penalty is imposed to appeal to a court or tribunal in accordance with the regulations;

(f) as to the powers of the court or tribunal on such an appeal.

(5) The provision that may be made by the regulations by virtue of sub-paragraph (1) includes provision—

(a) enabling a notice of intent or final notice to be withdrawn or amended;

(b) requiring the local authority to withdraw a final notice in circumstances specified in the regulations;

(c) for a financial penalty to be increased by an amount specified in or determined in accordance with the regulations in the event of late payment;

(d) as to how financial penalties are recoverable.

Enforcement

9_ The regulations may confer on a local authority the function of enforcing the regulations in its area.

Fees

10_ The regulations may include provision for fees in relation to the carrying out of functions of a local authority under or in connection with the regulations (including the cost of its enforcement functions under the regulations).

Guidance

11_ The regulations may require a local authority, in carrying out functions under the regulations, to have regard to guidance published by the Secretary of State.

Interpretation

12_(1) In this Schedule—

"grant", in relation to a licence, includes vary or renew;

"licence" means a personal licence or premises licence;

"personal licence" has the meaning given by section (Licensing of cosmetic procedures)(2);

"premises licence" has the meaning given by section (Licensing of cosmetic procedures)(2).

(2) Nothing in this Schedule is to be read as limiting the scope of the power to make regulations under section (Licensing of cosmetic procedures)."

Member's explanatory statement

This new Schedule sets out some of the things that may be included in regulations establishing a licensing regime relating to non-surgical cosmetic procedures (including provision for the imposition of fees, the creation of offences and financial penalties).

Amendment 153A agreed.

Clause 161: Hospital food standards

Amendment 154 not moved.

Clause 161 agreed.

Amendment 155 not moved.

Clause 163: Fluoridation of water supplies

Amendment 156

Moved by ***Baroness McIntosh of Pickering***

156: Clause 163, page 133, line 34, at end insert—

"(10) The Secretary of State may not exercise the powers provided by virtue of—

(a) this section to request a water undertaker to enter into arrangements to increase the fluoride content of the water, or

(b) section 164 to request modifications to old English fluoridation arrangements,

until an impact assessment has been published setting out the impact on health and the environment, including a cost-benefit analysis."

Baroness McIntosh of Pickering (Con): My Lords, Amendment 156 is in my name, and I declare at the outset that I am co-chairman of the All-Party Parliamentary Water Group. This is a simple amendment, and I would like to cover ground that has possibly not been covered at earlier stages of the Bill.

I understand from the Bill and, more particularly, its Explanatory Notes that the purpose of the clause to which this amendment relates is to transfer from local authorities the power, which they have had since 2013 through the Water Industry Act 1991, to propose and consult on new fluoridation schemes and variations to or terminations of existing schemes. It transfers that authority to the department, the reason being that local authorities and the NHS, which previously had responsibility for water fluoridation schemes, have faced difficulty in implementing them. This includes, most recently, the fact that local authority boundaries are not coterminous with water flows, which requires the involvement of several authorities in such schemes in a complex and burdensome way.

[Baroness McIntosh of Pickering]

The first question, to which I will return later is: if this authority is passing from the local authorities to the Secretary of State for Health and Social Care, where in the scheme of things do water companies fit? Presumably, it is the water companies themselves that will perform the act. In Amendment 156, I therefore ask simply that the Secretary of State does not exercise the powers within the Bill until such time as

"an impact assessment has been published setting out the impact on health and the environment, including a cost-benefit analysis".

I was very grateful to my noble friend the Minister for arranging a teach-in, if you like, with the officials in the department and my noble friend Lord Reay. We both benefited from that and were very grateful for it. Subsequently, I also thank the officials for providing, in the first instance, a number of responses to my questions. In particular, I query with my noble friend the level of expenditure, which is significant. We know that we are facing a time of additional pressures—not just an energy crisis but a cost-of-living crisis—and the expenditure incurred by each fluoridating local authority in the financial year 2020-21 is not insignificant.

I will pick out those councils that relate to the largest area, broadly speaking: the West Midlands. I will round the figures up, rather than giving each individual figure. Birmingham City Council spent over £290,000 in that calendar—or, presumably, financial—year. Coventry City Council spent over £206,000. Dudley Metropolitan Borough Council spent over £198,000. Sandwell Metropolitan Borough Council spent over £188,000. Solihull Metropolitan Borough Council spent over £56,000. Walsall Metropolitan Borough Council spent over £167,000. Finally, the City of Wolverhampton Council spent over £121,000. How is this financing passed on to the consumers in those local councils? If adding fluoride to the water supply is passed in the Bill, it is for the Department of Health and Social Care to pick up the cost, so how will it do so? From which part of the budget will this come? Perhaps I have missed it, but I do not see anything in the Bill or the Explanatory Notes that says how water companies have been consulted and how they are expected to enter fluoride into the water supply.

Clearly, the debate on which I have not reached agreement with my noble friend the Minister and the department is on the extent to which it is legal to add fluoride to the water supply. In the court case that I was involved in in my training for the Scottish Bar, in preparation for joining the Faculty of Advocates, I sat through pretty much the whole of the McColl v Strathclyde Regional Council case. The petitioner could see no benefit from fluoride being added to her water supply because she had dentures and was not in need of fluoride for that reason. In fact, it was deemed ultra vires. I shall quote the relevant passage of the judgment:

"In my view the word 'wholesome' falls properly to be construed in the more restricted sense advocated by the petitioner as relating to water which was free from contamination and pleasant to drink. It follows that fluoridation which in no way facilitates nor is incidental to the supply of such water is outwith the powers of the respondents. The petitioner therefore succeeds on this branch of her case."

If my recollection is correct, although they lost on the ultra vires point, the Scottish Government—I cannot remember whether it was in the UK Parliament or the Scottish Parliament—reintroduced a water Act that made legal provision in Scotland that gave them the authority. However, and as my noble friend Lord Reay rehearsed in Committee, I understand that Scotland has chosen not to go down that path. I will come on to that in a moment.

11 pm

I contend—I put this to my noble friend the Minister—that adding fluoride to the water supply is a profoundly un-Conservative thing to do because it removes the element of choice. You are asking people to prevent caries; I argue that it would be better to do this through public health education by encouraging parents to teach their children to brush their teeth. I accept that removing and reducing dental caries is a public health issue, but having caries is not in itself a fatal condition, whereas fluoride is a carcinogen so adding it to the water supply is, I would argue, inherently dangerous. One thing Lord Jauncey confirmed in the case of McColl v Strathclyde Regional Council was that fluoridation potentially causes the mottling of teeth, which is surely not a public health benefit.

I want to refer briefly to Professor Vyvyan Howard. She submitted a letter to the Prime Minister in September 2021 in which she skilfully argued from a scientific basis that fluoride creates a danger of causing bone fractures. In a subsequent letter in which she put research to the Prime Minister, she said that it potentially causes damage to children's brains. That evidence has yet to be refuted by the Department of Health and Social Care, I believe, so I look forward to hearing my noble friend respond to that this evening.

Another academic practitioner, Paul Clein BPharm, MRPharmS, has raised a number of issues, perhaps the most alarming of which concerns the main substance used in the fluoridation process in admitting fluoride to the water supplies of those councils to which it is already applied in England. Through his persistence and freedom of information responses, it has been confirmed that hexafluorosilicic acid is not a legal source of fluoride in food products. I am in possession of a letter from the MHRA that dates from as far back as 22 September 2005. It clearly states:

"Drinking water (whether fluoridated or not) clearly falls within the definition of 'food' for regulatory purposes. Food safety and food labelling regulations control the claims which may be made for foods."

My understanding is that the regulations to which the Government subscribed when we were in the European Union have been transferred into retained EU law, and we are therefore still covered by the ban introduced in the EU in 2006. The position has not changed since we left the European Union: if hexafluorosilicic acid is used for these purposes as a biocide, it is strictly illegal. I want to understand on what legal basis the Government are using that substance—"hexa" for short, because it is easier to pronounce—because it would seem to be a complete abuse of, and in breach of, the Control of Pesticides Regulations and the retained EU law to which we have subscribed.

I will also refer briefly to the Scottish example of Childsmile, which has had a very vigorous and highly successful programme of ensuring that children brush their teeth by encouraging them to do so through a public health and public education campaign. As a result, the incidence of dental caries has been reduced in Scotland.

With those remarks, my opposition to the fluoridation of the water supply remains. I would like to understand further the reasons for which this power to fluoridate the water supply is being transferred away from the local authorities—which, to me, would be a better and more local way of accepting or rejecting this. What consultation has there been with the water companies and from which budget of the Department of Health and Social Care will this come?

Baroness Finlay of Llandaff (CB): My Lords, the hour is late and I shall be brief. The findings of the systematic review of the subject need to be taken into consideration. Screening of over 3,000 papers resulted in careful analysis of 254—quite a large number for a systemic review. Going through this, there are overall benefits. The benefits outweigh any documented harms, and I welcome the clause.

Baroness Bennett of Manor Castle (GP): My Lords, I am also aware of the hour, and offer Green support for the amendment of the noble Baroness, Lady McIntosh. We are talking here about a cost-benefit analysis. Some of the costs on which I would focus, and their impacts, go beyond the narrowly medical impacts of the people who consume the water. The question I raised in Committee was whether people today actually consume tap water, and whether they will continue to do so. I made the point that 90% of people drank tap water in 1978, but that figure had fallen to 73% by 1998. I do not believe that there have been detailed national figures since then.

I thank the noble Lord, Lord Kamall, for writing to me in response to that debate and providing a set of figures which the Government had researched. I will note two of the figures which the Minister cited in that letter. One was a 2010 Ipsos MORI survey in the West Midlands showing that two-thirds of surveyed people supported water fluoridation if it was going to improve dental health. That, of course, shows that a third of people are not supporting it. This is the group about which I am concerned—a group which I have encountered many times and in many parts of the country. I do not agree with all their concerns, but that is a fact.

I noted that the Minister also cited a north-east survey from 2021 where 60% of people backed water fluoridation. As the noble Baroness, Lady McIntosh of Pickering, said, we are talking about people not having a choice about consuming that water, unless they choose to buy bottled water. Anyone going to a supermarket in Sheffield, particularly in its poorer areas, will see people buying bottled water in very large quantities. One of my concerns, and where I hope the cost-benefit analysis would come in, is looking at the sociological issues. The Government should be doing a great deal more to promote the consumption of tap water and to discourage the use of bottled water. However, as the Bill currently stands, it risks pointing us in the opposite direction.

The noble Lord, Lord Storey, talked in Committee about how Liverpool City Council had very successfully engaged in a targeted programme to address the most vulnerable communities and ensure that dental health was improved. It demonstrably was improved.

The Minister said, "Oh well, any local authority can do the same thing." I point out to him that local authorities' budgets are enormously overstretched—something we have addressed in the social care elements of the Bill in particular. Would the Government consider perhaps taking the money that might be spent on fluoridation and giving it to local authorities for targeted campaigns to reach the children who need it most?

Baroness Merron (Lab): I thank the noble Baroness, Lady McIntosh, for moving this amendment. I feel that we have discussed these issues at considerable length at previous stages of the Bill, so I do not wish to go over old ground, other than to say that the Royal Society for Public Health, the British Dental Association, the Chief Medical Officer and many others are very much in favour of greater fluoridisation because, on balance, there is strong scientific evidence that it is an effective public health intervention. In other words, it is the single most effective way to reduce oral health inequalities and tooth decay rates, especially among children, and it is, as your Lordships' House knows, recommended by the World Health Organization. On all these positive points, I am very much inclined to agree, and do not feel that the amendment before your Lordships' House would be helpful to support that intervention.

Earl Howe (Con): My Lords, I thank my noble friend Lady McIntosh for her clear introduction to Amendment 156. The first thing for me to underline is the point she made: the water fluoridation provisions in the Bill will simply transfer the power to initiate fluoridation schemes from local authorities to the Secretary of State. The Bill does not compel the expansion of fluoridation. Any future proposals to establish new schemes would be subject to funding being secured and public consultation, and I will come on to both those things in a second.

The noble Baronesses, Lady Finlay and Lady Merron, are quite right that the evidence is strong that water fluoridation reduces the incidence of tooth decay for both adults and children, but nobody is complacent about public health. We will continue to be under a legal duty to monitor the health effects of water fluoridation on populations with schemes and to report no less than every four years. Monitoring the evidence is a continuous process and involves colleagues from multiple disciplines, including toxicology.

The law here is explicit. Water companies are required to comply with legislation to protect employees, consumers and the environment from harms. The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and other legislation set out the thresholds and criteria for which an environmental impact assessment is already required in relation to developments. The installation of water fluoridation plants in some areas may fall within scope. Furthermore, the Environment Act 2021 will, when brought into force, place a duty on Ministers of the Crown to have due regard to the policy statement on environmental principles in our policy-making; hence new and revised policies will need to take into account their impact on the environment. I would like again to reassure your Lordships that the evidence is kept under review.

[Earl Howe]

My noble friend referred to the case of McColl v Strathclyde, in which I think she said she was involved. Perhaps I could just state for the record that the plaintiff's arguments in that case about the safety and effectiveness of fluoridation were all explicitly rejected by Lord Jauncey, who found that there was no convincing scientific evidence supporting that position. Since that ruling by Lord Jauncey, 38 years ago, it remains the case that there is no convincing scientific evidence of water fluoridation being harmful to health. Indeed, were we not to have any fluoridation, there would still be areas of the country where fluoride is naturally present in drinking water at a similar level to that achieved by a fluoridation scheme.

11.15 pm

My noble friend suggested that a useful alternative to fluoridation might be a scheme such as those we see in various areas of the country—she mentioned Scotland—where toothbrushing is supervised. Certainly, daily supervised toothbrushing programmes can be entered into by local authorities and there are already schemes around the country; Public Health England publishes guidance to support local authorities interested in entering into such schemes. However, we are not necessarily dealing with an either/or; water fluoridation works well with other oral health improvement programmes such as supervised toothbrushing. Water fluoridation also benefits both adults and children and, unlike other approaches, does not rely on behaviour change.

My noble friend asked about costs. Any expansion plans in this area will be subject to funding being secured, as I mentioned, and the cost of a new scheme is bound to vary depending on the size of the area to be fluoridated and the number of water fluoridation plants that might be needed. However, I suggest to her that one should not simply look at cost; based on Public Health England's current return on investment tool, water fluoridation in areas of high deprivation offers a projected return on investment after five years of £35 for every £1 spent on operational costs.

My noble friend asked about the consultation process and how this will be tackled. We will carry out a public consultation to gather views on future consultations. Following that consultation, we will be required to set down in secondary legislation how we will consult on water fluoridation proposals in the future. These regulations will be subject to the affirmative procedure and will be debated in Parliament during the coming year.

Finally, any future public consultation on expansion would also include information on the impact of any proposals on health, the environment and cost-benefit analysis. I hope that these reassurances will satisfy my noble friend, at least in part, and that she will feel able to withdraw her amendment.

Baroness McIntosh of Pickering (Con): My Lords, I am most grateful to all those who have spoken and to my noble friend for the reassurances that he has given. I am particularly grateful to the noble Baroness, Lady Bennett, for pointing out the importance of the cost-benefit analysis. It is disappointing that we have not been told the relative cost-benefit of supervised toothbrushing, particularly since a number of experts, including the adviser to the Select Committee in the other place, have argued that it would be a much better route to go down. I take great comfort from my noble friend saying that the situation will be kept under constant review and that this will continue as more evidence emerges from Sweden, the US and other places outside the UK. I shall, obviously, watch very carefully the secondary legislation to which my noble friend referred. With those few remarks, I beg leave to withdraw my amendment at this stage.

Amendment 156 withdrawn.

Amendments 157 and 157A

Moved by ***Lord Kamall***

157: After Clause 164, insert the following new Clause—

"Child safeguarding etc in health and care: policy about information sharing

(1) The Secretary of State must publish and lay before Parliament a report describing the government's policy in relation to the sharing of information by or with public authorities in the exercise of relevant functions of those authorities, for purposes relating to—

(a) children's health or social care, or

(b) the safeguarding or promotion of the welfare of children.

(2) In this section, "relevant functions" means functions relating to children's health or social care, so far as exercisable in relation to England.

(3) The report must include an explanation of whether or to what extent it is the government's policy that a consistent identifier should be used for each child, to facilitate the sharing of information.

(4) The report must include a summary of the Secretary of State's views about implementation of the policy referred to in subsection (1), including any views about steps that should be taken to overcome barriers to implementation.

(5) The report must be published and laid before Parliament within one year beginning with the date on which this section comes into force.

(6) In this section "child" means a person aged under 18."

Member's explanatory statement

This amendment inserts a new clause requiring the Secretary of State to publish and lay before Parliament a report describing the government's policy in relation to information-sharing by or with authorities with health and social care functions, for purposes relating to children's health or social care or the safeguarding or promotion of the welfare of children.

157A: After Clause 164, insert the following new Clause—

"Licensing of cosmetic procedures

(1) The Secretary of State may, for the purposes of reducing the risk of harm to the health or safety of members of the public, make regulations—

(a) prohibiting an individual in England from carrying out specified cosmetic procedures in the course of business, unless the person has a personal licence;

(b) prohibiting a person from using or permitting the use of premises in England for the carrying out of specified cosmetic procedures in the course of business, unless the person has a premises licence.

(2) In this section—

"cosmetic procedure" means a procedure, other than a surgical or dental procedure, that is or may be carried out for cosmetic purposes; and the reference to a procedure includes—

(a) the injection of a substance;

(b) the application of a substance that is capable of penetrating into or through the epidermis;

(c) the insertion of needles into the skin;

(d) the placing of threads under the skin;

(e) the application of light, electricity, cold or heat;

"licensed premises" means premises in respect of which a premises licence is in force;

"local authority" means—

(a) a county council in England;

(b) a district council in England;

(c) a London borough council;

(d) a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009;

(e) the Common Council of the City of London (in its capacity as a local authority), the Sub-Treasurer of the Inner Temple or the Under Treasurer of the Middle Temple;

(f) the Council of the Isles of Scilly;

"personal licence" means a licence, granted by a specified local authority under the regulations, which authorises an individual to carry out a cosmetic procedure of a description specified in the licence;

"premises licence" means a licence, granted by a specified local authority under the regulations, which authorises premises to be used for the carrying out of a cosmetic procedure of a description specified in the licence;

"specified cosmetic procedure" means a cosmetic procedure of a description specified in the regulations;

"specified local authority" means a local authority of a description specified in the regulations.

(3) The provision which may be made by regulations under this section by virtue of section 166(1)(a) includes—

(a) provision amending Schedule 5 to the Consumer Rights Act 2015 (investigatory powers);

(b) provision repealing, revoking or amending provision made by or under any local Act.

(4) Before making regulations under this section, the Secretary of State must consult such persons as the Secretary of State considers appropriate.

(5) Schedule (Licensing of cosmetic procedures) makes further provision about regulations under this section (including provision for the imposition of fees, the creation of criminal offences and financial penalties)."

Member's explanatory statement

This new Clause confers power on the Secretary of State to establish a licensing regime in connection with non-surgical cosmetic procedures.

Amendments 157 and 157A agreed.

Consideration on Report adjourned.

House adjourned at 11.19 pm.