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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

No party affiliation is given for Members serving the House in a formal capacity or for the Lords spiritual.

House of Lords

Tuesday 5 April 2022

2.30 pm

Prayers—read by the Lord Bishop of Oxford.

NHS: Abuse of Nurses

Question

2.37 pm

Asked by ***Lord Clark of Windermere***

To ask Her Majesty's Government what steps they are taking to reduce the abuse of nurses in the NHS.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Kamall) (Con): Abuse directed towards nurses is unacceptable, and we are determined to tackle this. NHS England has established a violence reduction programme to address deliberate violence and aggression towards NHS staff and to ensure that offenders are punished quickly and effectively. This includes implementing the NHS violence prevention and reduction standard, which requires employers to implement plans to tackle violence in the workplace. In addition, the Government are legislating to double the sentences of those who are violent towards NHS staff.

Lord Clark of Windermere (Lab): I thank the noble Lord for his Answer. He is clearly aware of the problem, which is indeed growing. Nurses and other NHS staff are abused daily and many are being reduced to tears. As the retention of nurses is at a critical stage, with abuse being a key contributing factor, what specific plans have the Government to tackle this problem as a matter of urgency in trying to build up the key respect in which the general public used to hold NHS workers?

Lord Kamall (Con): The noble Lord is absolutely right that we have identified the issue, and the NHS is working on a number of plans. All of us abhor any abuse of nurses or indeed any other NHS staff. The NHS has looked into this and has seen that many cases of violence against NHS staff are committed by individuals who are in a mental health crisis, or suffering from dementia or other neurological conditions, rather than the classic perception of attacks on staff by the public. The NHS has not only the violence prevention and reduction programme but a number of other initiatives to try to tackle this unwarranted issue.

Baroness Watkins of Tavistock (CB): My Lords, I declare my interests as outlined in the register. I particularly want to raise the issue of nurses on shifts who are having difficulty parking both near the hospital for a reasonable cost—that cost was removed during Covid, which made life much easier for them—and in the community, where we have reports of them being abused for parking near patients' homes. What strategy will the Government achieve to reduce this stress and the associated verbal violence?

Lord Kamall (Con): The NHS is looking at a number of different ways of tackling violence towards staff, as well as supporting them in how to handle difficult situations and giving them well-being support. On the specific issue that the noble Baroness raises, it is probably better if I commit to writing to her.

Lord Scriven (LD): My Lords, the individuals who abuse healthcare staff should understand and then pay for the harm they cause and be helped to change their behaviour. To augment existing arrangements, will the Government therefore look at implementing an NHS restorative justice scheme?

Lord Kamall (Con): We are looking at the way in which abusers are treated. On 13 November 2018, the Assaults on Emergency Workers (Offences) Act 2018 came into force, and since 2020 we have also been working with the Ministry of Justice in consulting on doubling the sentence for such assaults to two years. The Government are now legislating for this through the Police, Crime, Sentencing and Courts Bill. In addition, a *Joint Agreement on Offences Against Emergency Workers* was agreed between NHS England and NHS Improvement and the Crown Prosecution Service in January 2020.

Baroness Pitkeathley (Lab): My Lords, will the Minister outline how the training of nurses is being adjusted or extended to take account of this regrettable violence towards them? Does he agree that when we are thinking about training, we must include all nurses—not just those who work in hospitals but, most especially, those who work in communities and therefore go individually into people's homes?

Lord Kamall (Con): As well as various programmes such as the NHS violence prevention and reduction standard, against which trusts are measured and held accountable, there are a number of different local initiatives to see what works and what does not in different places. There are a number of innovative ones, and I will give one example, rather than take up too much time. The No Force First initiative at Mersey Care NHS Foundation Trust has resulted in a 46% reduction in physical assaults against staff. There are a number of other examples that I could lay out in detail.

Lord Bird (CB): There are many opportunities to stop the violence. My nephew is involved in security in a major hospital, and he says the pressure they are under is enormous. They have to work very long hours to make the necessary money. We must look at those kinds of policing operations within our major hospitals.

Lord Kamall (Con): The noble Lord is absolutely right: it is not a simple issue, and people abuse for lots of different reasons. We are looking at different ways to deal with this, including training staff to deal with violence from patients with dementia or mental illness. We are also looking at various security measures. Money is being made available for trusts and primary care to take security measures, including the installation of cameras and screens for receptionists.

Lord Hamilton of Epsom (Con): My Lords, does my noble friend have any idea who the people are who are abusing nurses, how many of them are drunk and how many of them are mentally ill?

Lord Kamall (Con): I thank my noble friend for his question. When the NHS started investigating and digging deeper into this issue, the assumption was that it was often just members of the public. It is finding that it is individuals who have had a mental health crisis or are suffering from dementia or another neurological condition, rather than the classic perception of members of staff being abused by the public.

Baroness Merron (Lab): My Lords, yesterday's Health and Social Care Committee report emphasised that earlier diagnosis and prompt cancer treatment will not be possible without a plan to address gaps in the cancer workforce, including the need for nearly 3,500 additional specialist cancer nurses by 2030. Does the Minister accept that a workforce plan is essential to improving cancer diagnosis, research and treatment, and how will the Government attract new staff and improve staff retention by improving day-to-day working conditions, which must include preventing abuse and giving support where it does occur?

Lord Kamall (Con): I hope the noble Baroness will appreciate that I have laid out some of the initiatives that are taking place, and which are not only trying to prevent abuses against members of staff and nursing staff but supporting staff to de-escalate them. On well-being and getting more nurses, the Government are committed to continuing to grow the NHS workforce. We are still committed to the figure of 50,000 more nurses and to putting the NHS on a trajectory towards a sustainable long-term supply in the future. We are working on a number of well-being schemes to ensure that nurses are supported and feel safer and more willing to stay in service.

Lord Laming (CB): My Lords, does the Minister agree that sometimes, nurses find themselves in this difficult situation because, as the most junior staff, they are required to give unwelcome messages about the limitations of resources? There are a lot of managers in the health service, but they put nurses forward to give that unwelcome message to patients and their relatives. Can the Minister see whether there are better ways to protect the most junior staff in the organisation?

Lord Kamall (Con): I must admit that I was not aware of that, but I will take it back to the department to investigate and will write to the noble Lord. We have been looking at how to train staff not only to deal with abusers but to handle different situations and to de-escalate. There are also a number of staff health and well-being support programmes, including website session support lines, certain apps, well-being seminars and coaching seminars.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, abuse and violence is increasing towards not just nurses but others providing frontline services, such as shopworkers, teachers and police officers. The abusers are usually bullies and a minority in the community. I remember years ago as a rookie police officer being assaulted. The cavalry came to rescue me in the form of members of the public, led by a bus driver who turned out to be a special constable. This exemplifies the importance of voluntary public service. Does the Minister agree with this analysis, and what are the Government doing to encourage voluntary organisations such as the special constabulary to increase their numbers?

Lord Kamall (Con): The noble Lord makes a very important point—it is not just about nurses but people right across the care sector, including doctors and receptionists, and public services. My father was a bus driver and he used to come home once or twice with a knife that he had taken off an attacker, having had to defend himself. This has been going on for years, and it is really important that we work in partnership with trade unions and others to ensure that we look after all our staff, particularly those in vital public services.

Energy Storage Capacity

Question

2.48 pm

Asked by ***Lord Oates***

To ask Her Majesty's Government what plans they have, if any, to increase energy storage capacity in the United Kingdom.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, energy storage is an essential source of flexibility for net zero and for energy security. The Government are analysing whether further intervention is needed to support deployment of long-duration energy storage, including hydrogen storage, to help ensure a least-cost transition to net zero. The diversity of the UK's gas supply is a strength of our approach to energy security, and GB gas storage tops up supply during periods of high demand.

Lord Oates (LD): I thank the Minister for his response. He will be aware that due to the UK's lack of long-term energy storage, we waste enough wind energy every year to power over 1 million homes. Does he recognise that long-term energy storage, alongside renewables, could end this waste and provide the most cost-effective solutions to decarbonising the grid? Can he tell the House why the revised energy policy statement was so unambitious on long-term storage, and when we will get some decisive action in this area?

Lord Callanan (Con): The noble Lord is right to point out the importance of long-term storage. We are aware that long-duration electricity storage—for example, pumped hydro—can struggle to deploy because of the high capital costs and the lack of forecastable revenues. We are analysing responses to a consultation from last

year on a call for evidence on facilitating further deployment of this type of storage. We already have a considerable amount, but he is right that we must do more.

Lord Howell of Guildford (Con): My Lords, I am sure most noble Lords agree that more storage of gas and electricity, and more nuclear power and wind, are desirable in the long term. But, as none of these will have the slightest effect on energy prices now, which are causing suffering and real fear for millions of households, is it not a bit feeble to offer them as the only answer? The real and immediate answer is surely for the world to pump more oil and gas, which OPEC is perfectly capable of doing with its spare capacity. Should we not press further on that? Is it not unwise and despicable of OPEC to refuse to replace Russian gas and oil exports now?

Lord Callanan (Con): I take slight issue with my noble friend, in that I do not think we are offering long-term energy storage as the solution to the current massive price spikes but as something we need to do in the longer term. As we have more intermittent forms of power, it is important to store the power we generate for times when its intermittency means power is lacking. My noble friend also made a point about the importance of ramping up our own production, particularly from the North Sea, to help with security of supply. Unfortunately, it will not affect price, but it will affect security of supply.

Lord Wigley (PC): My Lords, the Minister will be aware of the outstanding pumped storage scheme at Dinorwig in Gwynedd, which has enabled the network system to meet capacity demands without the extra necessity to meet the peak. Is he aware that two of the four surge shafts are being taken out of commission now and may be out of commission for two or three years, for renovation and safety checks? In these circumstances, is any provision being made to meet the loss that is a consequence of this work? Are there plans for further pumped storage facilities side by side with the nuclear programme?

Lord Callanan (Con): Indeed, I am aware of the excellent Dinorwig facility. I remember studying it when I was an engineering student many years ago and it is an incredible feat of engineering. The noble Lord can be reassured that the capacity market auction has already secured enough standby capacity market supplies, through to 2025-26. We are aware of the point about Dinorwig.

Lord Lennie (Lab): My Lords, given that in the last year energy storage capacity increased to record levels, which is something the Government can be congratulated on, what are they doing to turn this into savings for hard-pressed consumers, who are already dealing with a cost of living crisis that is not of their making?

Lord Callanan (Con): As I responded to my noble friend earlier, more storage is not the answer to high prices at the moment. It benefits the system in the longer term. Sadly, in energy policy, nothing happens in the near future and everything is long term. The noble Lord is aware of the £9.1 billion package of support that the Chancellor announced to try to mitigate the effect of high prices at the moment.

Lord Fox (LD): My Lords, the success of offshore wind was driven by the contracts for difference structure that has caused private money to pour into the sector. The Government have recently passed the Nuclear Energy (Financing) Act, which looks at the RAB model. What models are they now looking at to finance storage because, without companies knowing how they will make money from building storage facilities, they will not build them. It is really important that the Government step forward now to explain how this will work financially. What are the plans to deliver a structure that will finance this?

Lord Callanan (Con): The noble Lord is correct and, as I said earlier in response to the noble Lord, Lord Oates, we had a call for evidence last year and we will announce our analysis and the results of that shortly.

Lord Lilley (Con): My Lords, could my noble friend confirm that the cost of providing storage for periods when the wind does not blow, which can last for days, will be astronomical? That is particularly true of batteries, since the cost of lithium is 10 times what it was a year ago. We will continue to need gas for quite a considerable while to provide that back-up. Will the Government implement the recommendations of the Dieter Helm report that, when bidding to go on the grid in future, intermittent suppliers should do so in conjunction with the back-up supplies that are needed when theirs are not available as the wind is not blowing?

Lord Callanan (Con): My noble friend's question deserves a long answer because it is a complicated subject. We need to differentiate between short-term storage, particularly from batteries and elsewhere, which is currently expensive—although prices are coming down—and longer-term storage provided by the likes of pump storage stations such as Dinorwig. That has been around for decades, and there are similar schemes in Scotland too. We need to do all these things. We need to get more offshore wind because it is a very cheap form of power, but it is intermittent, so we also need storage capacity to balance out that intermittency. As the noble Lord, Lord Fox, said, we also need more nuclear for baseload power.

Baroness Wheatcroft (CB): My Lords, storage is a long-term solution, so can the Minister tell me whether Dungeness B, which was finally decommissioned only last year, might be brought back into service? Has the department examined the possibility of doing that as a short-term solution?

Lord Callanan (Con): Of course we will want to ensure that the existing nuclear stations, of which Dungeness B is an excellent example, will continue into their lifespan as long as possible, but we will need to replace many of these ageing nuclear stations, which is why we recently passed the nuclear financing Act.

Lord Grantchester (Lab): In a climate emergency it makes little sense to increase fossil fuel storage capacity. What steps are the Government taking to speed up battery storage as a vital first step to store renewable power?

Lord Callanan (Con): We have some fossil fuel storage capacity, particularly for gas, and we have 90 days' worth of oil storage capacity because of our IEA commitments. All these technologies are important, but we do not need to increase our gas storage capacity; we have tremendous security of supply from our suppliers in the North Sea, from Norway, from interconnectors with the continent, and from LNG storage. We are well supplied there, but we need to increase our battery storage as well as our pump storage, and we will.

Baroness Foster of Oxton (Con): My Lords, I think we all agree in this House that we need to generate enough energy to store in the first place. I understand that the Secretary of State has called for a review of shale gas extraction. Can my noble friend the Minister assure this House that this will be carried out swiftly and by people who have certainly not opposed fracking in the past? If it goes forward, we should then anticipate the storage for shale gas along with the other storage requirements that we need.

Lord Callanan (Con): My noble friend makes an important point. She is right that the Secretary of State has asked the British Geological Survey to carry out a review of fracking technologies to see whether it is possible to carry it out safely, without seismic events. We have always said that we will be led by the science on these policies.

Baroness Bennett of Manor Castle (GP): My Lords, does the Minister agree with me that the other side of energy storage capacity, which is reducing the need for it, can be done by storing up demand and unleashing it when the capacity is available? With that in mind, I am not sure whether the Minister is aware of the industry report that said that we should be saving £12 billion a year by 2050 by demand-side management ensuring that heat pumps, household appliances and car chargers come on only when there is capacity in the grid. The report calls for common standards and for the demand-side response having the same language so that appliances and the grid talk to each other. What are the Government doing to ensure that that is ready and able to take its place to cut the demand for storage?

Lord Callanan (Con): In general, I do agree with the noble Baroness, for a change. Demand-side management is important and is why we are rolling out smart meters and suppliers are increasingly offering variable tariffs—for instance, you can get your electric car charged when electricity is cheap during the night, et cetera, and, if consumers are willing, sell that power back into the grid again at times of high demand. A flexible system, providing the appropriate storage capacity, and demand-side management with the consent and acquiescence of consumers are all important, and we are looking at all these matters through our smart grid policy.

Public Procurement: British Standard 95009

Question

2.58 pm

Asked by ***Lord Haskel***

To ask Her Majesty's Government what plans they have to incorporate British Standard 95009 in the simplified approach to public procurement proposed in their white paper *Levelling Up the United Kingdom*, published on 2 February.

Baroness Scott of Bybrook (Con): My Lords, the Government consider that the adoption of British Standard 95009 may place additional burdens and barriers on small businesses and the expertise of charities, public services, mutuals and social enterprises, as there is a cost to becoming fully accredited. As part of our plans to completely overhaul the procurement regime, we will create a simpler and significantly more transparent system that reduces costs for businesses and the public sector alike, as well as supporting the levelling-up agenda.

Lord Haskel (Lab): My Lords, there is considerable public concern that levelling-up funds or prosperity funds will be politicised, favouring certain areas or businesses. This British Standard lays out how businesses can demonstrate their suitability for public procurement and at the same time enables procuring bodies to assess bidders readily and accurately in a fairer and more open way. Surely this helps companies to become more effective, productive and relevant to their local economy. Is this not exactly what levelling up is about?

Baroness Scott of Bybrook (Con): My Lords, the Government are committed to introducing new and reformed rules to streamline and simplify the procurement process. That is to add to the levelling-up Bill that will come to Parliament in the near future. This will help to deliver that level playing field for all businesses across this country to supply public services.

Lord Shipley (LD): My Lords, the Minister referred to a simpler procurement system and that would be welcome. The Government have recently introduced the concept of the most advantageous tender and have changed the term for that from the "most economically advantageous tender". This phrase appears in the levelling-up White Paper. Does this mean that value in levelling up can in future be as important a procurement test as value for money? I hope it does.

Baroness Scott of Bybrook (Con): Yes, my Lords, it does. That is one of the things that we are changing. It is important that the principle of public good, which is set out in that White Paper, will become an objective of maximising the public benefit to support wider considerations of social value and other benefits. As part of a requirement on contracting authorities to have regard to the national procurement policy statement, they have to consider the national priority outcomes of their procurement, including social value, which will cement this.

Lord Trefgarne (Con): My Lords, I was Minister for Defence Procurement, admittedly a very long time ago now. Will these new arrangements apply to defence procurement or only to civilian business, as is usually the case?

Baroness Scott of Bybrook (Con): My Lords, they will apply to all government procurement, including defence and security.

Lord Watts (Lab): My Lords, has Covid not shown that Britain now no longer produces a range of things that are important to us in times of need? Should the Government not now be looking at what those things are and helping to make sure that they are produced in the UK so that we do not have the problem of sending billions of pounds to China when we have an epidemic like the one we have just had?

Baroness Scott of Bybrook (Con): The noble Lord is absolutely right. As we put the Bill forward, we will look to ensure that when we have a situation like the recent pandemic, which I am sure the noble Lord is referring to, we have procurement arrangements that are suitable for that.

Baroness Smith of Basildon (Lab): My Lords, having listened carefully to the Minister's answers, I am slightly confused. She seems to be saying that rules for proper scrutiny of procurement are being worked on and new legislation—a new Bill—will come forward, yet the Government are spending £300 billion a year on procurement. If we look at some of the recent scandals around PPE, we see there is urgency about this. The British Standard that she referred to is not called "the trust standard" without a reason. It is to create trust in public procurement. Is it not time that the Government sought to do something urgently, perhaps adopting this standard for all major government contracts to be sure that there can be trust in public procurement? At the moment, it is sadly lacking.

Baroness Scott of Bybrook (Con): I understand what the noble Baroness is saying, but I think it is important that we do this in a measured way. The procurement data will be published in a standard and open format which will make it easier for people to understand. There will be clearer requirements on the identification and management of conflicts of interest, which I am sure is in the noble Baroness's mind as well, and there will be clear arrangements for how procurement can be conducted in situations where there is extreme urgency, which relates to the previous question. We need to do this in a measured way. We understand that we need to do more, and we will do more. This Bill will come forward shortly.

Lord Alton of Liverpool (CB): My Lords, pursuant to the question the Minister has just been asked by the noble Baroness, Lady Smith of Basildon, will she confirm that her noble friend Lord Kamall said in a parliamentary reply that we purchased more than 20 billion items of PPE from the People's Republic of China at a cost of more than £10 billion to this country? What does this say about dependency? What does it say about resilience? Will the Minister confirm that she will support the amendment to the Health and Care Bill to be moved later today by her noble friend Lord Blencathra on the subject of procurement of items manufactured in the Uighur-dominated state of Xinjiang?

Baroness Scott of Bybrook (Con): I shall not make any comment on the amendment this afternoon, because I have not read it in any detail.

Noble Lords: Oh!

Baroness Scott of Bybrook (Con): In any detail, my Lords.

The DHSC has worked tirelessly to source life-saving PPE and has delivered more than 19.1 billion items to the front line. Having too much PPE was preferable to having too little in the face of an unpredictable and dangerous virus. Where contracts are in dispute, the DHSC is seeking to recover costs from suppliers wherever possible. It expects to recover significant amounts of taxpayers' money.

Lord Lansley (Con): My Lords, my noble friend will recall that the Chancellor said in his Spring Statement how vital innovation is to the increase in productivity in our economy. Public procurement can play a significant part in promoting innovation. When we follow up on *Transforming Public Procurement*, will we make sure that small firms in particular have an opportunity for the kind of early, pre-commercial engagement that enables them to meet public procurement objectives in an innovative way?

Baroness Scott of Bybrook (Con): My noble friend is absolutely right. That is part of what we are trying to deliver with this Bill: making the bidding process simpler particularly for SMEs and VCSEs and making it easier and more efficient for them to bid for these contracts, not just in the normal areas across the country but where we are trying continually to level up.

Lord Jones (Lab): My Lords, will the Minister define what Her Majesty's Government perceive as levelling up? Is it possible for her to indicate some principal areas that they intend to level up?

Baroness Scott of Bybrook (Con): My Lords, I think that I do not have enough time to answer all that. The United Kingdom is one of the greatest countries in the world, but not everyone shares in its success. Talent is everywhere but opportunity is not, and where people live unfairly affects their chances of getting on in this life. The Government's central mission is to reverse this unfairness and level up the UK by spreading opportunity more equally across the country, bringing left-behind communities to the level of more prosperous ones. I think that is the answer to the noble Lord.

Lord Forsyth of Drumlean (Con): My Lords, in considering their net-zero targets and procurement, will the Government take account of the amount of carbon imported in products coming from countries that do not comply with the requirements put on our own industry, thus making them uncompetitive but doing nothing to save the planet?

Baroness Scott of Bybrook (Con): My noble friend asks a very interesting and in-depth question. If he does not mind, I will respond to him in writing.

Ukraine: Lethal Weapons

Question

3.09 pm

Asked by ***Lord Bellingham***

To ask Her Majesty's Government what plans they have to expand the range of lethal weapons exported to Ukraine.

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): My Lords, the UK is committed to supporting Ukraine to defend itself against Russia's ongoing aggression. With our allies, we are working to provide more lethal defensive equipment to help the armed forces of Ukraine. The Government continue to identify and pursue options to meet the requests and requirements of the armed forces of Ukraine, including by actively co-operating with our global partners. We will continue to rapidly assess a range of equipment types to meet those needs.

Lord Bellingham (Con): My Lords, does the Minister share my admiration for the bravery and tenacity of the Ukrainian defence forces as they take on a numerically superior enemy? Their actions have obviously been greatly assisted by UK-supplied anti-tank and anti-aircraft missile systems. Does she agree with me that, now that Ukrainian forces are moving on to the offensive in some sectors and counterattacking, the time has come to supply them with more equipment—heavy equipment—including armoured fighting vehicles, artillery and perhaps anti-ship missiles? Surely, in their time of need, our Ukrainian allies deserve our support as they take on an evil dictator who we now know is a war criminal.

Baroness Goldie (Con): I thank my noble friend, and I am sure that he speaks for the whole Chamber when he articulates our respect and admiration for the people of Ukraine in a quite breath-taking display of bravery and determination. I thank him for expressing these sentiments. We constantly review the situation. The noble Lord will be aware that we had the second international defence donor conference, and I can confirm that we will continue to give humanitarian and military support. We have offered to conduct logistics operations to support the delivery of donations from partner nations, and we set that out at the first donor conference. My noble friend is right: we constantly assess and review; we listen to what the Ukrainians tell us they want; and we assess these requests.

Lord Craig of Radley (CB): My Lords, can the Minister confirm—bearing in mind the large numbers of weapons being used by the Ukrainians—that the United Kingdom can continue to support those requirements without reducing our own defence needs below essential? What cost is the Ministry of Defence having to bear, if any, for all these weapons?

Baroness Goldie (Con): I can confirm to the noble and gallant Lord that the MoD continually manages and reviews all of its stocks of weapons and munitions to ensure that it can meet its commitments. That includes supplying to Ukraine while ensuring that UK Armed Forces stocks are sufficiently maintained. Where replenishment is required, this is expected to be funded from the HM Treasury special reserve.

Lord Campbell of Pittenweem (LD): My Lords, is it not the case that there is no more powerful reason for continuing with the supply of lethal weapons to Ukraine than recent events at Bucha? If language fails to convey sufficiently the illegality, the butchery and the brutality of the behaviour of Russian forces, the case will certainly be that the pictures from Bucha will ensure that both the name of the place and the nature of the behaviour will never be forgotten.

Baroness Goldie (Con): Again, the noble Lord speaks for us all in the Chamber. This illegal war, with all its hideous and barbaric consequences, must fail. Certainly, we in the United Kingdom, with our allies and partners, are doing everything we can to ensure that Ukraine is robustly supported in its attempt to see off this evil.

Lord Houghton of Richmond (CB): My Lords, the question illuminates a difficult choice for the Government. The war in Ukraine, by military definition, remains limited. It is limited in strategic aim, in geography and means employed. Injecting greater lethal aid into that war is unlikely to be decisive. Indeed, far from it, it runs two very severe risks. One is the risk of prolongation and the other is the risk of escalation. The way to eliminate those risks can only be through dialogue. Can the Minister please update the House on what she believes to be the progress of that dialogue?

Baroness Goldie (Con): I think my noble friend Lord Ahmad of Wimbledon answered a Question recently on this very issue. He was quite clear that, although normalisation of relations with Russia is not possible at the moment, robust diplomatic engagement is necessary. This is very much an FCDO responsibility. I can reassure the noble and gallant Lord that the MoD is regularly in dialogue, not just with our defence allies and partners—whether within NATO or outwith—but also, of course, with the armed forces of Ukraine.

Lord Anderson of Swansea (Lab): Can the Minister confirm that there are considerable logistic problems in the supply of main battle tanks, which are, of course, vulnerable to air attack, and political problems in the supply of aircraft, which, again, are much needed? However, there are no such problems in the

supply of air defence systems and, possibly, of missiles, which might protect Odessa from attacks from the sea. So will such be delivered?

Baroness Goldie (Con): The noble Lord will be aware of the mixture of anti-tank missiles that we have previously supplied. We have also taken the decision to supply Starstreak high-velocity man-portable anti-air missiles. This will allow the Ukrainian forces to better defend their skies.

Lord Hannan of Kingsclere (Con): My Lords, many Ukrainians attribute their successful defence to the lethal effectiveness of British weaponry. Who cannot be stirred by reports of Ukrainian soldiers shouting "God save the Queen" as they fire their missiles? But will my noble friend the Minister comment on recent remarks by the Russian ambassador that British arms will be treated as a target and that convoys will be subject to Russian military attack?

Baroness Goldie (Con): I respond to my noble friend by saying that the United Kingdom is a friend of Ukraine and Ukraine is a friend of the United Kingdom. We stand by our friends. We have a clear mission diplomatically, politically, economically and militarily as we continue our enduring bilateral partnership with Ukraine. As I said earlier, this hideous, barbaric venture of Vladimir Putin's must end in failure.

Lord Coaker (Lab): My Lords, I start by reiterating our full support for the actions being taken by Her Majesty's Government to help Ukraine in the face of unprovoked Russian aggression. We read in the media about the Prime Minister and the Defence Secretary talking of the need to send more lethal weapons to Ukraine. Are we sending more of the same or are we sending different weapons? In other words, what does the Prime Minister's statement actually mean? What is our response to President Zelensky's call for more weapons of a type not only to defend Ukraine from Russia but to drive Russian forces from Ukrainian soil? Ukraine's fight is our fight and we must do all we can to help.

Baroness Goldie (Con): I referred earlier to the second international donor conference held on 31 March. At that conference, the international community committed to widening its package of military support for Ukraine. This included exploring new ways of sustaining the armed forces of Ukraine over the longer term, including the provision of increasingly capable air and coastal defence systems, artillery and counter-battery capabilities, armoured vehicles and protected mobility, as well as wider training and logistical support. I hope that reassures the noble Lord that there is a coherent response.

Lord Stirrup (CB): My Lords, have the Government made any assessment of the industrial capacity for the increased production of the kinds of modern weapons that are being employed in Ukraine and of the resilience of their associated supply chains, particularly for sophisticated electronic components?

Baroness Goldie (Con): In so far as that impacts on our industry partners in the UK, yes, as I said earlier to the noble and gallant Lord sitting behind, we do make assessments and consult constantly with our industry partners. We are satisfied that we are balancing the need to support a friend in need with maintaining the necessary supplies for our own indigenous and domestic security.

Lord Cormack (Con): My Lords, is it not important that we do not lose sight of the fact, notwithstanding what the noble and gallant Lord, Lord Houghton of Richmond, said, that Putin's original aim six weeks ago was to accomplish annihilation? It is vital that the wonderful resilience that the Ukrainians have shown is supported in every possible way, because, if this were ultimately to end in the subjugation of Ukraine—which is possible—that would be a defeat for all freedom-lovers around the world.

Baroness Goldie (Con): My noble friend articulates a powerful sentiment; that is why there is such resolve on the part of the United Kingdom as a bilateral friend of Ukraine and in the global response—whether that is the response to calls for specific equipment and kit or the application of sanctions and financial restrictions. It indicates just how isolated Putin has become and how serious the consequences are for this ill-judged and disastrous expedition.

Lord Harries of Pentregarth (CB): The re-election of Viktor Orbán in Hungary highlights again the very unhelpful and negative attitude shown by that country with respect to support for Ukraine. Does Her Majesty's Government have any leverage or influence to persuade the Hungarian Government that in the long run, far from being a friend, Putin will be a threat to Hungary as well?

Baroness Goldie (Con): That strays very much outwith my immediate area of responsibility and into that of the Foreign, Commonwealth & Development Office. I am sure that my noble friend Lord Ahmad would be happy to respond in more detail to the noble and right reverend Lord.

Channel 4 Privatisation

Private Notice Question

3.20 pm

Asked by ***Lord McNally***

To ask Her Majesty's Government what plans they have regarding the privatisation of Channel 4.

Lord McNally (LD): My Lords, on behalf of my noble friend Lady Bonham-Carter, I beg leave to ask the Question of which she gave private notice.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, following a consultation, the Culture Secretary has come to a decision that, although Channel 4 as a business is currently performing well, government ownership is holding it back in the

[Lord Parkinson of Whitley Bay]
face of a rapidly changing and competitive media landscape. The Secretary of State is now consulting her Cabinet colleagues on that decision. The Government will set out their future plans for Channel 4 in a White Paper shortly.

Lord McNally (LD): My Lords, will the Government publish immediately the consultation, which was completed over six months ago and has not yet seen the light of day, on which the Secretary of State is allegedly making this decision? Is the Minister not ashamed that this extraordinarily well-run company is being dealt with in this way—a shabby decision, made in a hole-in-the-corner way—while the House of Commons is in recess? The chairman of the DCMS Committee, Julian Knight, has commented that this is "payback time" for the record of Channel 4 in holding the Government to account and helping our collective creative industries. Does the Minister not feel a little ashamed answering this Question today?

Lord Parkinson of Whitley Bay (Con): On the noble Lord's first point, the responses to the consultation will be published alongside the White Paper to which I alluded in my initial Answer. I disagree deeply with the rest of his question: the Government value highly Channel 4 and the part it plays, and has played for 40 years, in our broadcasting ecosystem. We want to ensure that its next 40 years and beyond are just as successful and that it can flourish. It is doing that in a very rapidly changing and increasingly competitive media landscape. Channel 4 is uniquely constrained by its current ownership model and limited access to capital. It is such a successful broadcaster that we think it will make an attractive proposition for people to buy, and private ownership will allow it to create new revenue streams and compete as effectively as possible to be fit for the future.

Lord Bassam of Brighton (Lab): My Lords, last Friday the energy price cap increased by £700; inflation continues to climb and may reach 10%; we face record costs at petrol pumps and bumper increases to phone and broadband bills; and social security payments are to be cut in real terms from tomorrow. All this is at the same time as fines have been dished out to Downing Street officials for breaches of Covid regulations, so can the Minister tell us why the Government have chosen now to announce the privatisation of Channel 4, and can he give us three good reasons for doing so? It is not in the interest of public services or public service broadcasting.

Lord Parkinson of Whitley Bay (Con): I must say that I find that a weak argument from the noble Lord. The Government are capable of doing many things. There is an urgency in addressing this issue so that Channel 4 is fit for what is a rapidly changing media landscape. The proportion of viewing on subscription on-demand services has trebled since 2017; it is important that Channel 4 is able to compete with the likes of Netflix and Amazon, so that it can continue to support the independent production sector and produce the viewing for which it is rightly renowned. That is why, as part of a wider package of reforms to public service broadcasting, the Secretary of State has announced her decision, ahead of having the vehicles to do that.

Lord Deben (Con): Perhaps my noble friend could help me. If a former constituent came up to me in the street and said, "Lord Deben, given Covid, the disastrous Brexit, the European war and the cost of living crisis, why have the Government thought it urgent to bring forward something for which there is no public demand, and real opposition across the House?", what would my noble friend say?

Lord Parkinson of Whitley Bay (Con): I am not sure that all my noble friend's constituents might phrase it like that. As I said to the noble Lord, Lord Bassam, the risk of doing nothing is to leave Channel 4 reliant on linear advertising. Currently 74% of its income comes from linear advertising, which is part of the broadcasting landscape that is changing rapidly. It is trying to compete with the likes of Netflix, which spent £9.2 billion on original content in 2019, compared with £2.1 billion by all the UK's public service broadcasters. We want to ensure that Channel 4 is fit for the future so that it can continue to thrive and flourish.

Lord Newby (LD): My Lords, in his initial Answer the Minister said that the current structure of Channel 4 was holding it back and that there was an urgency to move now. Yet in its own evidence to the Government, Channel 4 said that it had

"proposed a vision for the next 40 years"

seeking to

"build on the successes of the first 40".

That is from the management of Channel 4. Why do the Government think they know better than the management of Channel 4 about its future?

Lord Parkinson of Whitley Bay (Con): My Lords, the Government recognise the huge success that Channel 4 has been over the last 40 years. We want to make sure that it is fit for the future. Sometimes people who are close to organisations can be restricted in their thinking because of it. A responsible Government are looking to the next 40 years and the rapidly changing media landscape to ensure that Channel 4 has access to private capital to borrow, invest and continue to do what it is rightly renowned for.

Lord Stevenson of Balmacara (Lab): My Lords, the Minister mentioned a long-awaited and much-needed White Paper. This is a very complicated and difficult issue which he has attempted to unscramble, but we will need a White Paper to see behind what he is trying to tell us today. Will the sale proceeds—which are highly contingent on a number of very key policy decisions that are yet to be taken—be dealt with in the White Paper? This is so that we will know about the new licence required for Channel 4, the prominence issues affecting its online and offline support, and the question of advertising he mentioned—which is buoyant beyond all measure at the moment. It is very difficult to see why it needs to suddenly be brought forward.

These matters all need to be considered in the context of what the Government plan to do with the BBC and what they plan for other areas. We need a White Paper. Can he give us some timings?

Lord Parkinson of Whitley Bay (Con): The noble Lord is absolutely right; there are many issues of detail which of course we cannot cover in a 15-minute exchange on a Private Notice Question. The White Paper will set out more detail and legislation will be brought forward to enable both Houses to have their say on all those points of detail. It is our intention to publish the White Paper in the coming weeks.

Lord Forsyth of Drumlean (Con): My Lords, does my noble friend not think it extraordinary that people who constantly complain about the need for more public expenditure are opposed to a policy which will result in revenue for the Exchequer, and more importantly, enable Channel 4 to grow and expand without competing for resources with the health service and other groups?

Lord Parkinson of Whitley Bay (Con): I heartily agree with my noble friend. Of course, the production companies in the independent sector, which are privately owned and run, are a shining example of how private investment can deliver the content which is enjoyed by people not just across the UK but around the world.

Baroness McIntosh of Hudnall (Lab): My Lords, the Minister has made much of the competitive challenges facing Channel 4 and has referred particularly—as have many other commentators today—to Netflix and the other streaming services. Does he believe that those are the right comparators? Netflix is doing a completely different job from Channel 4, and it is not reasonable to suggest that Netflix represents a significantly greater threat to Channel 4 than to anybody else, or indeed, that Channel 4 and Netflix cannot coexist within a complicated and sophisticated media landscape.

Lord Parkinson of Whitley Bay (Con): Of course they can coexist. What we want to make sure of is that Channel 4 is existing, competing and able to continue to attract the viewership it deserves for its excellent programming. Netflix, Amazon and many others are increasingly competing, particularly among a younger audience—who make up such an important part of Channel 4's current viewership. The way people consume television is changing rapidly. Netflix spends two and a half times as much as Channel 4 does on original content. We want to make sure that Channel 4 has the ability to borrow and invest so that it can compete and continue to attract viewers.

Lord Watts (Lab): My Lords, is it not the case that the Government do not like criticism? They have cowed the BBC over the licence fee. Now they are taking on Channel 4. Can the Minister explain how the privatisation of Channel 4, which will have to pay dividends to shareholders, will give Channel 4 more money for programmes?

Lord Parkinson of Whitley Bay (Con): At the moment, Channel 4 is uniquely constrained; it can neither borrow nor benefit from private investment in the way that other companies can. We see how you can be a privately owned public service broadcaster—ITV does it very well. What we want is to ensure that Channel 4 is able to borrow, invest and create excellent content, some of which may be critical of the Government and some of which may entertain people. This is not about the output of Channel 4; it is about ensuring that it is fit for the future.

Lord Sherbourne of Didsbury (Con): My Lords, does the Minister realise that it was the Labour Party in the 1950s which bitterly opposed the establishment of independent television? He should not be surprised by the reaction of the party opposite.

Lord Parkinson of Whitley Bay (Con): I am grateful to my noble friend for that reminder; he is absolutely right. It is important that our broadcasting sector continues to innovate and to remain competitive. It is doing so in an increasingly innovative and competitive field.

Lord Dubs (Lab): My Lords, if the Government insist on pursuing this policy, what safeguard will there be against a foreign company buying Channel 4 and yet another of our major media becoming owned by people outside this country?

Lord Parkinson of Whitley Bay (Con): Like the sale of any Government asset, the sale of Channel 4 will need to meet a careful assessment process to ensure value for money for the taxpayer. Further details will be set out in the White Paper to address that. We expect a lot of interest in Channel 4 from around the world.

Lord Campbell of Pittenweem (LD): My Lords, but is not Netflix a complete red herring? How many journalists and camera crews has Netflix sent to Ukraine?

Lord Parkinson of Whitley Bay (Con): Netflix is not a news producer in the way that Channel 4 is a public service broadcaster, but it is competing with Channel 4 for all the other things which Channel 4 does, including its entertainment and other content. This debate is not about the remit of Channel 4 but about ensuring that it can continue to compete with those, such as Netflix, which produce different but, at the moment, very competitive things.

Baroness Altmann (Con): My Lords, I understand the need for Channel 4 to have extra resources, but could my noble friend the Minister reassure the House that Channel 4's particular benefits—in sponsoring some of the very newest companies and young producers, especially in current affairs and documentary programming, which I often find of huge value—will be considered carefully when any buyer is found?

Lord Parkinson of Whitley Bay (Con): Absolutely. The independent production sector has exploded since Channel 4 was created 40 years ago. The revenues have grown from £500 million in 1995 to £3 billion today. However, Channel 4's competitors spend more on commissioning original programming than Channel 4 does—ITV spends twice as much and Netflix spends two and a half times as much in the UK. This is why we want to ensure that Channel 4 can borrow, invest and continue to support the independent sector, which it has done so much to support over the last four decades.

Lord Hannan of Kingsclere (Con): My Lords, ever since the announcement was made, we have been hearing about all these rare cultural gems which are made possible by the unique way in which Channel 4 is financed and which somehow would not be possible in a red in tooth and claw jungle capitalism. So I have just been looking at what the programming is now. With permission, I will tell your Lordships' House: "Kitchen Nightmares", "Undercover Boss", "Steph's Packed Lunch", "Countdown", "A Place in the Sun", "A New Life in the Sun" and "Sun, Sea and Selling Houses". Is it really credible to say that we are defending something which could not be provided by the private sector? Will my noble friend the Minister comment on the disparity between the funds which come from the private sector to independent production companies and those which come from state broadcasters?

Lord Parkinson of Whitley Bay (Con): I will not join my noble friend in singling out particular programmes —de gustibus non est disputandum, and all that. This is not about the content which Channel 4 currently produces or about its recent results; it is about ensuring that it is able, in the decades to come, to compete, invest and continue to provide a range of programming from which a range of people can benefit.

Lord Addington (LD): My Lords, following on from the last question, would the Minister give us his thoughts on which other body could have done the work which has been done for the Paralympics and disability rights in general? Once he has dealt with that, could he possibly tell us how that will be put into some sort of bidding contract?

Lord Parkinson of Whitley Bay (Con): Channel 4 did a fantastic job in broadcasting the Paralympics, and indeed in bringing the entire country together to cheer on Emma Raducanu in the US Open final. We want it to keep doing that fantastic job in the years to come, and that is why we want to set it on the right path, so that it is a sustainable and successful organisation.

Lord Grocott (Lab): I have been trying to follow the Minister's logic over the last 14 minutes. Basically, he is saying that it is a wonderful company, doing a fantastic job, and so we need to change it fundamentally—that does not follow.

Lord Parkinson of Whitley Bay (Con): It is a wonderful company doing a fantastic job, but the last 40 years look very different from the next 40 years, and it is the job of a responsible Government to make sure that Channel 4 is fit to face those next 40 years.

Professional Qualifications Bill [HL]

Commons Amendments

3.35 pm

Motion on Amendments 1 to 3

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

That this House do agree with the Commons in their Amendments 1 to 3

1: Clause 16, page 11, line 42, at end insert—

"(7) In Schedule 7B to the Government of Wales Act 2006 (general restrictions on legislative competence of Senedd Cymru) in paragraph 11(6)(b)

(exceptions to restrictions relating to Ministers of the Crown)—

(a) omit the "or" at the end of paragraph (vi), and

(b) after paragraph (vii) insert "; or

(viii) the Professional Qualifications Act 2022"."

2:. After Clause 16, insert the following new Clause—

"Consultation with devolved authorities

(1) Before making regulations under this Act, the Secretary of State or the Lord Chancellor must consult—

(a) the Welsh Ministers, to the extent that the regulations contain provision which could also be made by the Welsh Ministers by virtue of section 16(2) (ignoring any requirement for the consent of a Minister of the Crown under section 16(5));

(b) the Scottish Ministers, to the extent that the regulations contain provision which could also be made by the Scottish Ministers by virtue of section 16(3);

(c) a Northern Ireland department, to the extent that the regulations contain provision which could also be made by a Northern Ireland department by virtue of section 16(4).

(2) The Northern Ireland department which is to be consulted in accordance with subsection (1)(c) is such Northern Ireland department as the Secretary of State or (as the case may be) the Lord Chancellor considers appropriate having regard to the provision which is to be contained in the regulations concerned.

(3) Before making regulations under this Act in relation to which the Secretary of State or the Lord Chancellor has consulted a devolved authority (or more than one devolved authority) in accordance with subsection (1), the Secretary of State or (as the case may be) the Lord Chancellor must publish a report on the consultation.

(4) But the Secretary of State or (as the case may be) the Lord Chancellor may not publish the report unless either—

(a) the devolved authority concerned (or, if more than one, each of them) has agreed to the description included in the report for the purposes of subsection (5)(a), or

(b) there is no such agreement but the period of 30 days, beginning with the day on which a draft of the report was first sent to the devolved authority concerned (or, if more than one, the last of them), has expired.

(5) The report on the consultation must include—

(a) a description of—

(i) the process undertaken in order to comply with subsection (1), and

(ii) any agreement, objection or other views expressed as part of that process by the devolved authority (or devolved authorities) concerned, and

(b) an explanation of whether and how such views have been taken into account in the regulations (including, in a case where the Secretary of State or (as the case may be) the Lord Chancellor proposes to make the regulations despite an objection, an explanation of the reasons for doing so).

(6) The duty to consult in subsection (1) does not apply in relation to any revision of the regulations which arises from the consultation; and, for the purposes of subsection (4)(b), the draft report need not be identical to the published report for the period of 30 days to begin.

(7) In this section "devolved authority" means the Scottish Ministers, the Welsh Ministers or a Northern Ireland department."

3: Clause 21, page 15, line 11, leave out subsection (2)

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, with the leave of the House, I beg to move that the House do agree with the Commons in their Amendments 1 to 3. In doing so, I will briefly summarise the changes which have been made to the Bill since it was last before your Lordships' House.

As noble Lords will recall, there has been a great deal of interest in the issues of concurrent powers and devolved competence in relation to this Bill. Before the Bill left this place, my noble friend Lord Grimstone, to whom I am sure the whole House wishes a speedy recovery, committed to continue to engage with his counterparts in the devolved Administrations to persuade them of the merits of the Government's approach and, in so doing, to try to secure support for legislative consent. Since then, my honourable friend in the other place, the Minister for Small Business, Consumers and Labour Markets, and my noble friend Lord Grimstone, have worked hard to honour that commitment. However, following extensive discussions at both ministerial and official level, it has proved impossible to secure that agreement. It is therefore with great regret that the UK Government will be legislating without the consent of the devolved legislatures.

The Government's preferred approach throughout has always been to secure legislative consent Motions. Although the UK Government are disappointed with this outcome, we are satisfied that all avenues to secure legislative consent have been exhausted. The UK Government have been consistently clear that a consent mechanism, as requested by the devolved Administrations, is not appropriate for this Bill, but the amendments tabled unconditionally in the other place look to provide reassurances and address DA concerns.

The UK Government cannot agree to the insertion of a duty to obtain consent, as this could give rise to a risk that the UK Government would not be able to implement provisions in international agreements on recognition of professional qualifications promptly and consistently. This could jeopardise the UK Government's credibility in securing ambitious provisions to support UK services' exports with global trade partners.

In October of last year, my noble friend Lord Grimstone made the offer to all three DAs of a legislative commitment to consult with the devolved Administrations before the UK Government make regulations under certain powers in this Bill. That offer was made in exchange for legislative consent but was rejected. Following further discussions, the Government offered two further concessions, in December 2021.

First, we offered an enhanced statutory consultation duty for all the devolved Administrations. This duty includes a requirement to publish a report in advance of any regulations being made by the UK Government which would be within devolved legislative competence. The report should set out the consultation process and whether and how the representations made by the devolved Administrations during the consultation have been taken into account.

Secondly, we offered an amendment to carve out the Bill from the requirements of Schedule 7B of the Government of Wales Act 2006. This amendment would allow for an Act of the Senedd to remove the ability of UK Ministers to make regulations under the Bill in an area of Welsh legislative competence, without the need to first obtain the consent of a Minister of the Crown. The Welsh Government would still be required to consult the UK Government on any removal of powers. This is in line with similar approaches taken by the Government in relation to the Environment Act 2021, the Fisheries Act 2020 and the Agriculture Act 2020. These concessions were also offered to the devolved Administrations in exchange for support for legislative consent Motions from their respective legislatures. However, that offer was also rejected.

Subsequently, my noble friend Lord Grimstone wrote to the devolved Administrations confirming the Government's intention to table both the concessions unconditionally, despite not securing legislative consent. Although the UK Government have not been able to reach agreement with the devolved Administrations, it is our strong view that this Bill will operate best and in the interests of all the nations of the UK if we work together as collaboratively and transparently as possible. These amendments demonstrate that the UK Government have kept their promise and negotiated in good faith. Moreover, we have always been clear that any regulations the UK Government made in devolved legislative competence would be limited in scope and exceptional and would always be made in consultation with the appropriate devolved Administrations, and I am happy to reiterate that now. I therefore hope your Lordships will agree to both these amendments. I reassure your Lordships that the Government look forward to continuing to work closely with the devolved Administrations across the full range of regulated professions policy and implementation.

Amendment 3 is wholly procedural and removes the privilege amendment made in your Lordships' House, as is the procedure in these cases. I therefore hope that your Lordships will also agree to this amendment. I beg to move.

Lord Hope of Craighead (CB): My Lords, I join the noble Baroness in expressing good wishes to the noble Lord, Lord Grimstone. I wish him a speedy recovery. It is a matter of great regret that an agreement has not been possible with the devolved Administrations. I know from having listened to the noble Lord, Lord Grimstone, previously how much effort he and his team have put into trying to obtain consent through frequent meetings in Scotland and many discussions. Of course, it turns on the essential difference between consultation and consent, as the noble Baroness explained. It is a shame, because there are aspects of this Bill which affect professional bodies in Scotland, which need to be properly regarded and protected against misadventures as a result of this legislation. I do not think that the devolved Administrations have been acting out of malice or anything like that; it is a matter of principle. That having been said, I would be grateful if the Minister would repeat the point she made that there will be continuing effort as this Bill is being put into effect and regulations are being drafted and so on to maintain contact with the devolved Administrations

[Lord Hope of Craighead]
with all the good will possible, to try to make this legislation work as well as possible in the best interests of all the professional bodies concerned.

Lord Fox (LD): My Lords, I think all in this House would send good wishes to the noble Lord, Lord Grimstone, and wish him a hasty return to the Front Bench opposite. The noble Baroness, Lady Bloomfield, did an excellent job in representing his interests and setting out the extent of the work that has gone on to reach across that devolution gap.

We should welcome the amendments, to some extent. The fact that they have been done unilaterally and without legislative consent is, as the noble and learned Lord, Lord Hope, said, a matter of great regret. It is also not a surprise. If the Bill had been delivered in isolation, the efforts of the noble Lord, Lord Grimstone, and the Minister in the other place might have borne more fruit, but of course it has not been in a vacuum. It has been delivered in an environment where the devolved authorities have successively found their role being usurped in Westminster. I use as examples the then Trade Bill, the then internal market Bill and the Subsidy Control Bill; all are Bills where the Government in London have sought to take over responsibilities that the devolved authorities were clear in their own minds were theirs. As long as this approach goes on, every Bill, like this one, which seeks to get resolution with the devolved authorities will find that difficult if not impossible. The level of distrust has been cranked up exponentially by each successive Bill that we have dealt with in your Lordships' House over the last 18 months.

I welcome these amendments, but that comes with a plea, because we have to find a way to reach across that gap with the devolved authorities. If we do not achieve that, and if Westminster continues to erode the devolved settlement as it is at the moment, the union is very much under threat—and I think that most if not all of us in this House do not want that to happen. We should urge Her Majesty's Government to take this as an example and to go back and find better ways in which to re-develop relationships that are clearly breaking down each day with the devolved authorities.

3.45 pm

Lord Wigley (PC): My Lords, I shall add a word, while apologising that I was unable to take part in earlier stages on this Bill because of involvement in other legislation, as a number of colleagues know. But this amendment and this debate touch on a matter central to the relationship between the devolved Administrations and the Government in Westminster, and this matter is critical to the future of relationships between the nations and these islands.

Is it not in the Government's own interest important to find a way in which there can be a meeting of minds in matters such as this? If there is not a meeting of minds on issue after issue, we are stoking up the fires that will lead to a break-up of the United Kingdom—not just a change to the United Kingdom as we know it now. Many of us who want radical change would be able to live with a United Kingdom that has a confederal relationship, and so on, and where there is a mutual understanding. But not acknowledging the role of the Government in Scotland and Wales—and, to the extent that Northern Ireland comes into this, in Northern Ireland—is inevitably driving the relationship in that direction. I cannot see what the Government could lose by coming to a conclusion that the consent of the Governments in Cardiff and Edinburgh would be needed for some of the provisions covered by this Bill. I should have thought that it was in the Government's own interest; it seems common sense to me. Is it too late now to act on that basis?

Baroness Blake of Leeds (Lab): My Lords, I sincerely hope that the noble Lord, Lord Grimstone, is progressing well. He seems to have fallen to the unfortunate propensity of the BEIS team to suffer from Covid. From experience, I hope that he gets through it quickly and I pass on my best wishes. I am very sorry that he is not here for the concluding comments around the Bill. I thank the noble Baroness, Lady Bloomfield, for her introductory comments, which were delivered with clarity on the matters that we are considering.

I think many of us who have been involved in this Bill throughout its passage will recognise that it has not been the finest moment for legislation coming through the House. It was the first Bill that I was involved with, so it was quite a steep learning curve for me—but it has been described as chaotic. Indeed, it is quite extraordinary that the Bill was introduced without knowing which professions were actually in scope in the first place. Many concerns have been expressed about the Bill in its stages across the House. We note the considerable number of amendments that have gone through and gone to the other place—as the result, probably, of poor drafting in the first place. Of course, we do not wish to open the debate again on all those and other issues, but it is right to emphasise that particular concern was expressed right at the start with regard to the lateness of consultation, especially with devolved authorities. As was predicted at the time, I believe that it is that which has led to the lengthy delays and, of course, to the devolved authorities formally rejecting the Minister's reassurances in early January.

On Report, we took a decision not to divide the House based on the assurances made by the noble Lord, Lord Grimstone, that he would continue to work on the Bill to secure support from the devolved authorities. We note the further work that has been undertaken, as outlined by the noble Baroness, Lady Bloomfield, to seek legislative consent from the devolved authorities and to overcome the impasse that still exists. As has been expressed, this is indeed regrettable.

We note the amendments tabled today and the further assurance from the Minister of the Government's intention to work collaboratively and transparently with all the devolved authorities. We understand that the amendments are designed to introduce the enhanced consultation duty and to formalise the Government's standard good practice in consulting devolved authorities before making regulations, as discussed on many occasions in this House.

Along with many other Members of this House, I am a passionate believer in devolution. Real devolution requires trust, transparency, honouring commitments and, above all, respect. Sadly, there are too many instances,

across many policy areas, where government is falling short. I hope we can have further assurance from the Minister that timely consultation will become the norm and that any concerns arising from discussions will be dealt with transparently and in good faith. We recognise that the amendments are a step forward. With these comments, and noting our continuing interest and concerns, we recognise that the amendments will lead to the Bill moving on to be accepted.

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, I start by thanking your Lordships for the constructive approach that has been in evidence throughout the Bill's passage. We have had robust discussion and debates, and the Bill is all the better for that. I take on the chin the comments of the noble Baroness opposite about how we may not have started in the best place with the Bill.

The UK Government have been grateful for the close engagement of colleagues in all the devolved Administrations at both ministerial and official level throughout this process. Even though we are disappointed that the devolved Administrations have not been able to support legislative consent, I know that my noble friend Lord Grimstone and Minister Scully have listened carefully to their concerns. To that end, we have heard and understood the particular concern of the Welsh Government around Schedule 7B to the Government of Wales Act 2006. In answer to the noble and learned Lord, Lord Hope, and indeed the noble Baroness, Lady Blake, I again confirm that we shall continue to work closely with all the DAs to make the Bill work for all areas of the UK.

This amendment and the consult-plus amendment underline the Government's determination to work collaboratively and transparently with all devolved Administrations and devolved regulators under the provisions of the Bill and on wider regulated professions policy. Although it is regrettable that legislative consent Motions have not been passed for the Bill, the UK Government are fully committed to the Sewel convention and the associated practices for seeking consent, as set out in the devolution memorandum of understanding and devolution guidance notes. We will continue to seek legislative consent from the devolved legislatures when introducing Bills at Westminster which legislate within all areas of devolved competence.

In answer to the noble Lord, Lord Fox, who was asking about the BEIS Bills, these situations are clearly exceptional. BEIS has explored all avenues to secure the consent of devolved Administrations, including offering packages of concessions on these Bills and committing, importantly, to further meaningful engagement with the DAs to ensure their input in the future of these new regimes.

In answer to the noble Lord, Lord Wigley, I do not agree that there is any question that we do not recognise the role of the DAs. We have held three ministerial round tables with devolved regulators and have had regular engagement at official level. It is completely incorrect to say that the DAs have not been given enough time or information to engage with the Bill. However, I acknowledge and hope that we may all find a better way of working together and re-establishing that important trust that should exist between the four nations and their respective Governments and assemblies.

Lord Fox (LD): To follow up on the points that the noble Lord, Lord Wigley, and I made about the relationship between Westminster and Cardiff, Edinburgh and Belfast, does the Minister agree with us that there is an issue and that relationships are breaking down? She said that she—and therefore I suppose the Government—hopes that things will improve. Perhaps she can give an undertaking to actually do things to improve the relationship rather than hope. Could she comment a little around that area?

Baroness Bloomfield of Hinton Waldrist (Con): Yes, I think I can agree that we can do things better, and that message will have been heard loud and clear in the departments with which I am involved. To be clear, the reason that we thought that the consent mechanism would not be appropriate for this Bill is that we thought that it would give rise to a risk that the UK Government would not be able to implement trade agreements promptly and consistently. The same happened with the trade and co-operation agreement in Europe; we could not get consent for professional qualifications to be added because the European Commission was not confident of individual countries' ability to deliver on that commitment. The same could be true of the four nations within the UK. Entering into negotiations with a weak hand, we felt, was good enough a reason to legislate without consent from the four nations.

To sum up, it gives me great pleasure on behalf of my noble friend Lord Grimstone to thank all those who have ably worked to support the Bill's progress. I commend the good work of noble Lords from all parts of the House, as well as those in the other place, who have brought their expertise and challenge to this Bill. I know that my noble friend would wish to pay tribute to his private office, his officials and, in particular, the Bill team for their work so, on his behalf, I thank Zack Campbell, Ben Kerindi, George Whelan, Jamie Wasley, Jen Pattison, James Banfield, Monique Sidhu, Hadeeka Taj, Jerome Healy, Nick French, Raegan Hiles, Tom Corker, Alpa Palmar, Hannah Marshall, Ben Clifford, Funmi Olasoju, Aneesa Ahmed and Tim Courtney. I also personally thank them for stepping into the breach to help me to prepare for today.

This Bill will go on the statute book to end unequal EU-based recognition arrangements, while giving regulators confidence in their own autonomy. It will help to deliver a global Britain and assist professionals to enter new markets through its information-sharing provisions. On that basis, I proudly commend the Bill to the House.

Motion on Amendments 1 to 3 agreed.

Health and Care Bill

Commons Amendments and Reasons

3.58 pm

Motion A

Moved by ***Lord Kamall***

That this House do not insist on its Amendment 11 and do agree with the Commons in their Amendment 11A in lieu.

11A: Page 138, line 35, at end insert—

"(4) If the constitution includes provision under this paragraph allowing committees or sub-committees to exercise commissioning functions, the constitution must—

(a) provide for the members of any such committee or subcommittee to be approved or appointed by the chair of the integrated care board, and

(b) prohibit the chair from approving or appointing someone as a member of any such committee or sub-committee ("the candidate") if the chair considers that the appointment could reasonably be regarded as undermining the independence of the health service because of the candidate's involvement with the private healthcare sector or otherwise.

(5) In sub-paragraph (4) "commissioning functions" means the functions of an integrated care board in arranging for the provision of services as part of the health service.".

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Kamall) (Con): My Lords, I start with the amendments on ICB membership, children's palliative care, hospital discharge and adult social care.

On integrated care boards, I hope noble Lords will recognise that the Government have listened to both this House and the other place. We have proposed some changes to the drafting of Amendment 105 in the name of the noble Lord, Lord Bradley, which I am aware that the noble Lord has seen. We hope that he recognises that our amendment in lieu meets the original intent of his amendment.

On Amendment 11, we hope that Amendment 11A in lieu, proposed in the other place, meets the expectations of your Lordships' House. To avoid a number of unintended consequences or implications, we proposed an amendment in lieu that will ensure that those who pose a threat to the independence of the health service are excluded from the ICB and its committees. We have applied the same test to committees as we have to the main board, and the conflict of interest provisions and safeguards in the Bill also apply. We are grateful for the discussions on this question that we have had with noble Lords, including with the Front Bench opposite, and we hope that this amendment will be satisfactory.

4 pm

I now turn to one of the first areas where the other place has chosen to disagree with the amendments made by this House: hospital discharges. The Government listened to the strength of feeling expressed by your Lordships' House, and I am grateful to many noble Lords —in particular, the noble Baronesses, Lady Pitkeathley and Lady Wheeler—for their insights and persistence in ensuring that we try to get this right. We are also grateful to Carers UK for working with the department to co-produce the new statutory guidance on hospital discharge.

The Government wholly agree that carers should be involved in discharge planning where appropriate. Our amendment in lieu achieves this in a way that can be implemented effectively and does not create unintended discharge delays. It introduces a new duty on NHS trusts and foundation trusts to involve both patients and carers in discharge planning. It explicitly states that they should be involved as soon as is feasible. Unlike Schedule 3 to the Care Act, this duty applies whenever the adult patient has care and support needs following discharge.

Existing discharge guidance stresses that discharge teams should consider carers' preferences and ascertain whether they are willing and able to provide care and support post-discharge before an assessment of longer-term needs. This will be set out in the new statutory guidance, and because people should not be put under undue pressure to provide care, we will stress that no assumptions should be made about their willingness or ability to care. We anticipate that the new duty, supported by this statutory guidance, will promote a culture of including carers in decision-making while avoiding some of the unintended consequences.

We have heard the concerns expressed in this House about young carers being left out of discharge planning. This duty includes young carers, and statutory guidance will also highlight existing duties for hospitals to notify local authorities if they identify a young carer or have concerns. Local authorities must then carry out a young carer's needs assessment if it appears that the young carer may have a need for support. Similarly, robust protections already exist in law for parent carers and sibling carers of a disabled child. We will continue working closely with the Department for Education to ensure that we use guidance to signpost existing rights and protections.

Existing carers' rights to an assessment of their own needs will remain unchanged under the new arrangements. Guidance will make it clear that hospital staff should make carers aware of these rights and signpost them to relevant services. This should trigger local authorities to carry out assessments and put in place support for those who are eligible. I hope that noble Lords will feel reassured that this amendment achieves much of what Amendment 51 sought to achieve, while not putting barriers in the way of local areas adopting the discharge to assess model.

I turn to dispute resolution in children's palliative care. We ask the House to support the amendment passed by the other place in lieu of Amendment 90. This requires the Secretary of State to commission a review of the causes of disagreements in the care of critically ill children between the providers of care and persons with parental responsibility, how we can avoid those disagreements and how we can sensitively handle their resolution. This report will be laid before Parliament with a set of recommendations, alongside the Government's response.

We share the aim of the noble Baroness, Lady Finlay, to ensure that best practice is embedded across the system, but our efforts should be focused on working together to develop holistic evidence-based solutions. There are already a number of examples of best practice and work in this area, but more can and should be done. From the work already undertaken, it is clear that there needs to be a focus on making sure that everyone involved, especially families, understands the process and has their voices heard. No final decisions have been taken on how this independent review will be carried out or who will run it, but the department will engage with relevant stakeholders, including the noble Baroness, to develop its scope. The review will engage with a broad range of stakeholders to gather evidence. We expect this to include evidence from

parents and clinicians who have been involved in children's palliative care disputes, including disputes that did not progress to court.

Finally, we turn to the issue of the adult social care cap. We strongly recommend that the House consider accepting the settled view of the other place and retain the clause. The Government's Motion also contains several crucial amendments to support the operation of charging reform. These changes were originally tabled in this House but were lost through the removal of the clause on Report.

The Government have announced their plan for a sustainable social care system. It is the only affordable plan on the table. It is also the only fair plan on the table, ending unpredictable care costs for everyone by introducing the £86,000 cap on an individual's personal care costs. We heard the suggestion that the cap on care costs is somehow a target for everybody. That is absolutely not the case: it is meant as a protection, a backstop. It is also vital to recognise that where someone is drawing on care in their own home or is in a residential home, but has a qualifying relative such as a partner or child still living at home, their housing assets are not taken into account at all when working out how much they need to pay.

Removing the Government's cap on care costs would be fundamentally unfair. It cannot be right that two people living in different parts of the country, contributing the same amount, should progress towards the cap at different rates based on differences in the amount their local authority is paying. If a less well-off person living in Hertfordshire got more of their care paid for by their local council than someone making exactly the same contribution to their care in Hartlepool, the person from Hertfordshire would hit the cap first, through something neither person had control over.

A final important point is that those who oppose the Government's proposed approach to how the cap works may not have compared it in a like-for-like way with the parameters proposed in 2014, when the Care Bill was passed—proposals that were never implemented because they ended up being unaffordable. The analysis typically accepts the more generous elements of the Government's plans before opposing the elements where we have had to make some very difficult trade-offs.

Reverting to the unfair form of metering in the Care Act, while keeping the more generous parts of the Government's plans, would cost about £900 million per year by 2027-28. To make the same level of savings we would have to raise the cap, reduce means-testing support or expect people to make contributions towards their daily living costs that are unaffordable from most people's income. None of these are desirable options. Opposing Motion G in my name and supporting Motion G1 would result in additional cost, plus the additional funding required to cover the cost of free care of people under the age of 40 with a disability.

Amendments 80P and 80Q, tabled by the noble Baroness, request a regulation-making power which would force trailblazer local authorities to implement a metering-at-cost policy. It would be wrong to trial and report on a policy which the Government are not implementing. This would clearly affect financial arrangements to be made by the other place. As such, we believe that these amendments involve financial privilege.

The Government have also previously considered this issue and concluded that the fairest system was for the cap to be the same for everybody, no matter their age, where they live in the country or the nature of the care and support they need to draw on. Younger adults will benefit from the announced charging reforms. From 6 April 2022, the social care allowances are being uprated in line with inflation to allow everyone to keep more of their income. The Government's reform plan also includes a more generous means test, which means that more people will be eligible earlier for state support towards the cost of care, reducing the amount that people will have to pay for their care each week.

I am afraid that we will also be opposing Motion G2 in the name of my noble friend Lord Lansley. It seeks to amend a primary power and would enable the introduction of a percentage cap, which is currently not possible under Section 15 of the Care Act 2014. The Government considered a percentage cap previously, but even Sir Andrew Dilnot, after looking at the issue for some time, considered it unworkable.

People's asset values fluctuate regularly, and regular assessments would have to be made to ensure that they are paying the right amount for their care. Such a system would be intrusive for people who must comply with full disclosure of all assets. The likely consequence is that some people would avoid approaching their local authority to seek the care they need. It would also mean that if somebody's circumstances changed and the value of their chargeable assets changed significantly —for example, if they entered residential care or their spouse died—the level of their cap would change very significantly too. Nobody would be able to plan for what their future care costs might be, and, of course, far more people would need to have their assets assessed.

Therefore, after careful consideration, the Government decided against a percentage cap and in favour of a flat cap. The Government do not think it helpful to suggest through an amendment to primary legislation that something is workable and implementable when we know it is not in practice. Furthermore, this House cannot be expected to assess such a complex proposal at this late stage of the Bill.

We on the Government Benches must insist on Motion G and that this clause be restored with the necessary additional amendments to support the operation of charging reform. The other place has now voted on these clauses twice, and overwhelmingly. In opposing it, this House could be directly undermining the Government's attempts to put social care on a sustainable footing for years to come and thwarting the clear will of the democratically elected Chamber. I gently urge noble Lords that this matter should not be returned to the House of Commons.

Finally, I am afraid we must also reject Amendment 81. While we agree on the need to make progress, it is not in the interests of good government to be forced to implement reform of this complexity and scale through a deadline set in primary legislation—and the other place shares this view.

[Lord Kamall]

We are getting on and implementing social care reform. We have operational guidance out for consultation. We have announced a small number of local authorities that will act as trailblazers to test the reforms from January 2023, but we must take time to engage with local authorities as they build the necessary infrastructure and use these trials to refine delivery systems and guidance ahead of a full national rollout. We must go through the learning process.

I remain grateful for all the work and consideration this House has given to the Bill and I hope that noble Lords will feel able to accept the Motions standing in my name.

The Deputy Speaker (Lord Duncan of Springbank) (Con): I remind the House that we have three noble Baronesses beaming in. The first is the noble Baroness, Lady Brinton.

Baroness Brinton (LD) [V]: My Lords, I declare my interests as a vice-president of the Local Government Association and vice-chair of the APPG on Adult Social Care.

I thank the Government for their Motion E relating to carers and safe discharge, which goes a considerable way to providing the reassurance that patients and their unpaid carers will be included in discharge planning. I am pleased to hear that Carers UK is working closely with the department on the guidance, and it is good to see that the guidance will be further updated when the Bill is passed and will include more mentions of carers and young carers—that is also welcome.

The guidance links to a number of background documents, such as action cards and the Home First documents, which are short, summary versions to help discharge from hospital but seem to be slightly out of step with the new provisions. So, while I am grateful for the Government's amendment, will the Minister clarify whether these will also be updated?

I turn to Motions G, G1 and G2 on the social care cap. The Government's changes to the care cap announced, late in the passage of the Bill in the Commons, that the amounts accrued towards the £86,000 cap are now based solely on the individual's out-of-pocket expenses. Although individuals will still qualify for means-tested financial support if their assets fall below £100,000, in practice this will no longer act to protect people with more modest means and will simply see them contributing over a longer period. This is much more regressive and would leave poorer, older people and working-age adults with less protection from the catastrophic care costs than others who are wealthier.

I have been happy to sign previous amendments to remove the social care cap, and these Benches support Motion G1. The measures in Motion G1, especially in Amendment 80P, ensure that the original principles of the Dilnot commission recommendations are fully implemented. It is also important that the results of the trailblazer pilot schemes can be fully evaluated with an impact assessment and that Parliament has a proper opportunity to debate that review. The changes proposed by the Government just before the Bill came to your Lordships' House are very different from those that Parliament understood right at the start of the Bill's passage.

This is not just a problem for older people. Mencap has reminded us that the Government's impact assessment shows that their proposals will benefit only around 10% of working-age care users and that there will be a limited impact on improving the funding spent on working-age disabled adults. It is still a disgrace that the arrangements for older people, which assume decades of working and earning, are also used for younger adults with disabilities, who we know are much more likely to be assets and savings poor and to need care and support for much longer, and who will therefore accrue much higher levels of cost than older people. These proposals from the Government are just not fit for purpose and need to be reviewed for this group of younger adults. That is why we support Motions G1 and G2.

4.15 pm

Finally, on Motions L and L1 on the dispute resolution for children's palliative care, I thank the Government for their amendment, which goes a considerable way towards achieving what the noble Baroness, Lady Finlay, sought. As one of the signatories to her previous amendments, I ask the Minister to give firm assurances to your Lordships' House that the review will definitely take written and oral evidence from parents. In his speech he mentioned clinicians, other stakeholders and professionals, but it is important that parents are involved as well at an early stage, particularly making sure that what they are seeking with disputes achieves mediation rather than ending up in court.

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, the second beaming Baroness is the noble Baroness, Lady Campbell of Surbiton.

Baroness Campbell of Surbiton (CB) [V]: My Lords, I wish to speak to and strongly support Motion G1 in the name of the noble Baroness, Lady Wheeler. These amendments will ease the catastrophic effects of the Government's proposed charging cap reforms on the lives of those dependent on social care.

Disabled people who rely on social care just to survive, let alone thrive, are deeply disappointed that the Government's charging proposals have been overturned by the other place and are now returning to this House. Amendment 80P would help to alleviate these detrimental effects by addressing the worst affected, particularly those under the age of 40. The trailblazer pilots are also very welcome, but evaluation is key. Crucially, it must assess the impact of charging reform on a variety of social care users, including younger adults, where there is so little current data, and should cover every aspect of their rights. These people are not statistics.

A further impact assessment is also vital. The current one is totally illogical. It needs to focus on the impact on younger adults and encourage proper mechanisms for data analysis: for example, the significant impact on the under-40s of having their contributions paid from benefits. The chronic financial hardship that long-term disabled people endure, with additional costs averaging £583 a month, remains a very worrying issue.

This is a bleak time to endorse charging for social care, capped at an extortionate £86,000. Hundreds of thousands of disabled people in Britain are in crisis because of the ever-increasing cost of living. Local authorities in England are imposing stricter charging policies for care because they are basically running out of money. Disabled people are already being referred to debt collection agencies because they cannot pay their care charges.

The Government talk about levelling up for disabled people, but really they are doing the opposite. These charging reforms force them to contribute to their care and stop local authority care costs counting towards the cap. They deny disabled people the life opportunities that others take for granted.

If Motion G1 is not supported, the Government will be defying the principles of the UN Convention on the Rights of Persons with Disabilities. The UK is signed up to the convention. Article 19 recognises the equal right of all disabled people to live in the community, with the same choices as others; it requires parties to the convention to ensure that they can enjoy full inclusion and participation in the community. Yet this Bill does not respect it.

Far from ensuring the rights enshrined by the convention, I fear the Bill will lead to increased poverty, ill health and poorer life outcomes for disabled people. Some will undoubtedly die. What does that say about our moral compass, especially when disabled people have already endured two years of disproportionate suffering and death during the pandemic?

This Bill provided a small opportunity to take action before it was too late, but it was squandered by the other place. I hope the Government will think again when the White Paper on social care integration is finally published, and address this deep injustice. For now, I urge noble Lords to support Motion G1.

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, the final remote participant is the noble Baroness, Lady Masham of Ilton.

Baroness Masham of Ilton (CB) [V]: My Lords, I will speak about disputes in the critical care of children.

First, I thank and congratulate the Minister, the noble Lord, Lord Kamall, on his hard work in trying to understand the enormity of the Health and Care Bill. I also thank my noble friend Lady Finlay of Llandaff for her persistence in including the importance of palliative care in this Bill, especially dealing with the heart-rending problems when there are disputes between parents or legal guardians responsible for critically ill children and their doctors and care staff.

To understand the anxiety and fear parents have, and their wanting to do the very best for their child, they need a sympathetic doctor in charge. Some treatments are available abroad, and desperate parents sometimes know better than the doctors if they are not experienced in the very rare conditions. There is a vital need now, in this difficult time of staff shortages, to listen and help solve the problems if there are disputes.

I will understand if my noble friend thinks that today, unfortunately, a bird in the hand is worth two in the bush. I also support many of the other amendments.

Baroness Wheeler (Lab): My Lords, I open this group from these Benches by speaking to Motion G1 on the care cap. My noble friend Lord Hunt will speak to Motion A on integrated care boards, my noble friend Lady Pitkeathley will speak to Motion E on carers, and we will leave the issue of palliative care under Motion L1 in the capable hands of the noble Baroness, Lady Finlay. I thank the noble Baronesses, Lady Brinton and Lady Campbell, for their support in respect of the social care cap.

I hope that my Motion G1 on social care will provide the opportunity that the Government so sorely need to think again about how the care cap is to be implemented—in particular, the impact that its proposed changes to the eligibility and charging rules before the cap kicks in will have on hundreds of thousands of lives across some of the most deprived areas of the country.

I remind the House that, despite the Prime Minister's pledge that nobody should have to sell their homes, the fact is that somebody with assets of £100,000 will lose almost everything while someone with assets worth £1 million and over will keep almost everything. People with low levels of wealth will be exposed to the same care costs as the very wealthiest in society. They will end up spending the largest levels of their income on care. As my colleague, the shadow Minister Karin Smyth, succinctly put it:

> "No wait for care will be shortened because of this Bill and nobody excluded from care will now receive it".—[*Official Report*, Commons, 30/3/22; col. 941.]

Since the Government's announcement of the £86,000 cap last year, and then, two months later, the body blow of not allowing local authority contributions to people's care to accrue towards the cap, designed to save £900 million, the evidence for all this has been stacking up every day, and it is overwhelming. Extensive modelling and evidence by stakeholders such as Age UK, Mencap, the Alzheimer's Society, and from the King's Fund, Nuffield Trust and Health Foundation expert think tanks, prove just how badly older people and working-age disabled adults with no assets or with modest means will fare under the current charging proposals.

Even the Government's own impact assessment figures show more than one in five older people will not see the benefits of the cap at all, and poorer care users are much more likely to die before they reach the cap than others with the same care needs. Alzheimer's Society research shows that, without means-tested local authority funding counting towards the cap, only 21% of people with dementia will reach it, and it could take people drawing on care double the amount of time to get there, compared to the original Dilnot proposals.

On top of this—and particularly alarming in light of the Government's professed levelling-up ambitions—the joint research from the Institute for Fiscal Studies and the Health Foundation clearly demonstrates that, among older people, those affected and worse off will be the ones with modest assets and wealth living in the north-east, Yorkshire and the Humber, and the Midlands. Regionally, just 16% of people with dementia in the north-east and 19% of people with dementia in the east Midlands would hit the cap, compared to 29% in the south-east. The Minister's repeated claim that no

[Baroness Wheeler]
one will lose out when compared to the current system, or face unpredictable care costs, flies in the face of all this. As the Health Foundation says of the new charging basis,

"the changes are poorly conceived and a step in the wrong direction",

taking protection away from poorer home owners and working-age adults with care needs.

The Government must therefore look closely at the evidence and think again. My Motion provides a structured way of enabling them to do just that. We are calling for: regulations to be drawn up that define how the costs accrued to meeting eligible needs are determined, as well as specifying the timescale for care cap implementation; ensuring that local authority care contributions, as well as individual private contributions, count towards the care cap; ensuring that the results of the much-vaunted, but little explained, five local authority care cap trail-blazer pilots that have just been set up are evaluated and open to parliamentary scrutiny before the cap is implemented; and, just as important, ensuring the completion of a further impact assessment that provides a detailed regional analysis and breakdown of eligibility for social care and the effect of the cap on working-age, disabled adults under 40. The final point in the Motion concerns this, and the noble Baroness, Lady Campbell, has again spoken very movingly on this vital issue, which any plan to fix social care—and particularly this one—has to address.

The five trail-blazer councils—Wolverhampton, Blackpool, Cheshire East, Newham and North Yorkshire—are developing and testing the new charging system, and they will be early implementers of the cap in January 2023 before rollout in October. I noticed the DHSC fanfare press release announcing them claims that they will,

"implement a new and improved adult social care charging reform system".

Can the Minister explain how a system which has already started cutting costs at the expense of some of the poorest people in our society can be "new and improved"?

The press release also says of the pilots that the

"insight … and lessons learned … will be useful to providers and authorities … allowing the Department of Health and Social Care to test key aspects of the reforms … The initiative will generate valuable evidence and insight to help the Government to monitor progress, identify challenges and improve understanding."

In the light of the growing evidence of the impact that the charging proposals will have in some of the most deprived areas of the country, can the Minister explain why the trail-blazers' remit has not been widened to look closely at these vital issues too? These pilots must focus not only on systems and implementation but also on the vital work and analysis that the impact of the revised charging arrangements will have on the communities they cover and on people desperately in need of social care support.

We must ensure that we understand the full impact of the changes before they are implemented. That is why the further impact assessment on regional eligibility and other issues such as the impact on working-age disabled adults, called for in my Motion, is also important. These are all issues not addressed in the Bill's current impact assessment.

The savings that the Government are aiming to make by reducing eligibility for the care cap and not allowing local authority costs to accrue towards the cap will result in older and poorer people in some of the most deprived areas of the country, and working-age disabled adults, paying more towards the cost of their care, particularly those with life-long conditions. My Motion provides a structured way forward for the Government to look closely at the mounting stakeholder and independent evidence and think again.

4.30 pm

My hope is that every MP, particularly in areas where this expert research is showing the changes will have the most serious impact, knows what is happening and who will be affected. That is what levelling up means, and it also means addressing these issues. As the Nuffield Trust has summed up, the Government have an opportunity to make real changes to the broken social care system. The cap is not the solution to all the problems but as one component it is important that it is designed to be as fair as possible and protect those with the least. I will move Amendment G1 and test the opinion of the House at the appropriate time.

Lord Hunt of Kings Heath (Lab): My Lords, in very much welcoming my noble friend's introduction to her amendment, I refer to Motion A, to which the Minister referred in his opening remarks and to which he has brought Amendment 11A in lieu. This relates to potential conflicts of interests within membership of committees or sub-committees appointed to exercise commissioning functions on behalf of integrated care boards. This is important because those committees will form the basis for what is widely described in the NHS as place-based decision-making.

The Minister in Committee—which must seem a long time ago to him—referred to his hope

"that the ICB will exercise functions through place-based committees, where a wider group of members can take decisions".—[*Official Report*, 20/1/22; col. 1852.]

This was in relation to the series of amendments from the noble Lord, Lord Crisp, about primary care and the need for it to be round the table. I see the potential of that, but as they are given increased responsibilities, there are questions about how placed-based committees are to be held to account. It is important that they are transparent, have robust governance arrangements in place and are properly held to account. Equally important is to ensure that potential conflicts of interest are avoided—particularly that members with private sector interests who could undermine the independence of decision-making should not be appointed to such bodies.

I welcome the Minister's amendment in lieu but there are a couple of points I want to raise with him. First, in Lords Amendment 11, to which the Commons disagreed, there is in proposed new subsection (c) a reference to members of a committee or sub-committee of the integrated care board obtaining

"information that might be perceived to favour the interest or potential interest"

of that member. However, in the noble Lord's amendment in lieu there is no reference to access to information which could undermine the independence of the health service. Is this point regarding information implicit

within his own amendment? Can he assure us that the issue must be covered when each ICB sets up its governance arrangements?

I also want to ask him about the chair of an integrated care board committee or sub-committee. His Amendment 11A follows the approach of the Bill and prohibits the chair of an ICB appointing someone who would undermine the independence of the health service. Can the Minister confirm that no chair would be appointed if they were also someone who would undermine the independence of the health service because of their involvement with the private healthcare sector?

I conclude by reiterating to the Minister that there are clearly more general conflicts of interest within integrated care boards that are going to prove challenging in the future. With NHS healthcare providers playing an increasing role in the commissioning and funding of local services through ICBs, there is a blurring of the line between those procuring a public service and those being paid to deliver it. It is very likely that conflicts of interest issues will emerge, with decisions potentially taken to benefit providers, with limited due process and transparency.

It is vital that, alongside the Bill, there are very strong governance arrangements to ensure that ICBs and their committees and sub-committees make decisions in the best interests of local populations. I hope the Minister agrees.

Baroness Pitkeathley (Lab): My Lords, I rise to express support for the Motion in the name of my noble friend on the Front Bench but principally to comment on Motion E. I know that the Minister and his officials listened carefully and took note of the strength of feeling about unpaid carers expressed on all sides of your Lordships' House in Committee and on Report. I am most grateful for that strength of feeling and the wise advice given by this House, which has resulted in what I would describe as a satisfactory outcome in the form of a new amendment.

The other place has replaced the amendment passed by a large majority in your Lordships' House and put forward its own, which was accepted there and brought to us today. I am most grateful to the Minister and all his officials for the work that they have put into drafting this amendment, and for the understanding shown for the position of unpaid carers and the importance of involving patients and carers in discharge planning, as soon as is feasible in that process.

I seek the Minister's further assurance on a couple of other points. The first is that parent carers are not excluded when a disabled child is discharged from hospital. This is referred to in the guidance when their own discharge is happening but not when the child they care for is being discharged. We need to ensure that services across different disciplines are married up. I know that other Lords and colleagues will be seeking assurances about this and about young carers.

My second point is that the guidance contains references to checking that a carer is willing and able to care. I hope that the Minister may be able to enlarge on this a bit. There will be occasions when the carer's own situation makes caring impossible: they may simply be too ill to take on the responsibility, for example, however willing they may be. We need to ensure that no pressure is brought to bear in such a situation and that no assumptions are made in the discharge process about the carer's ability. We have all seen too many examples of where this was not acknowledged, inevitably leading to the readmission of the patient.

We all seek to make hospital discharges as safe and efficient as possible, while not exerting undue pressure on the most important components: the patient and their carers. Of course, we shall need to monitor carefully how the guidance is applied, and we have to be sure too that carers are informed about their rights. I hope that the Minister's department will promote suitable publicity as the reforms are implemented. I assure him that I, Carers UK and, I am sure, other Peers will be constantly on the case to ensure that carers and patients can trust the discharge system to support them.

Lord Lansley (Con): My Lords, I want to contribute to this group and speak to Motions G1, G2 and H. As context, I say that my noble friend, the Front Bench team and their Bill team have gone to enormous efforts to try to reach a number of compromises; at this stage it is incumbent on us to recognise that. If we were to send further amendments to the other place, we should confine ourselves to doing so only in circumstances where we believe that there is a realistic prospect of reaching a compromise on them.

I was a signatory to Amendment 80. There was a compelling reason to send that to the other place and ask it to consider again the question of excluding local authority contributions from the calculation of the social care cap. The reason was, very straightforwardly, that it was introduced in the Commons at a late stage in the passage of the Bill. At that point—on Report—MPs themselves complained vociferously that they had not had an opportunity to consider it for any period of time, so it has gone back. In sending it back, we have done our job, but I am afraid I see no evidence that the Government, given their majority in the Commons, are going to reconsider the central question of excluding local authority contributions from the cap. I think they are wrong but, particularly given the substantial financial consequences it would entail, it would be wrong for us to think that we could insist—and if we cannot insist, we should not send it back.

Where Motion H is concerned, I am grateful to the noble Lord, Lord Warner, who kindly moved my amendment—which was entirely in my name— as at that point I was down with Covid for the first time. I would not now insist on that provision, not least because it entails financial privilege. From my point of view, it was to say, "Would you please get on with it?" My noble friend said in his introduction that the Government are getting on with it. I can promise him that, if they do not get on with it by the latter part of next year, we will be complaining and will be right to do so.

I turn to Motion G. Why have I tabled Motion G2? I confess that I have done it not in the expectation that we will send it to the other place because, as my noble friend said, that would be to intervene with quite a significant argument at this very late stage. However, I think the development of these arguments on the part

[LORD LANSLEY]
of the Government has been quite interesting. First, they said, "Well, we are doing something and something is better than nothing." Indeed, something is better than nothing, but it is not necessarily the best thing. So we said, "Hang on a minute. You said you would do this last September and introduce the cap." We thought they were doing something that was very much in line with the Dilnot recommendations, even if the cap was set at a higher level, but it then turned out that they were not and that they were excluding local authority contributions.

On the financial implications of that, as the noble Baroness, Lady Wheeler, set out very well, if it saves £900 million, from whom principally is that saving to be derived? It is from those who are otherwise the beneficiaries of local authority contributions and who, as a consequence, are not asked to pay towards the cap. As the noble Baroness said, particularly if they have dementia and long-term care needs, over the years their assets will be substantially more depleted than would otherwise have been the case. I do not think we should kid ourselves: the Government are planning to do something which, in my view, exacerbates significantly the inequitable characteristics of the way the cap works. It is regressive in its effects.

Curiously, when they were debating this at the other end, they looked at the risk that incorporating local authority contributions would mean that, in different places across the country, different local authorities would provide different levels of contributions and therefore people would end up with some inequity in the amount they had to pay. This is no doubt true, but it feels like the Government shrieked at the mouse of inequity that would result from that and ignored the elephant of inequity that is in the removal of the local authority contribution to the cap.

I am always rather amused when the Minister is briefed—this happened at the other end as well—to tell us about what happened in 2012 or 2014 on the Care Act. Yes, Andrew Dilnot looked at whether the cap should be expressed as a percentage of people's assets and did not recommend it, but that is not what is proposed in Motion G2. The model that was rejected was that there would not be a cap figure and that the cap would simply be expressed as a percentage—the so-called limited liability model. We did not support it, but the Dilnot model also had a lower cap and its structure, with the changes in the means test, would have had the effect that nobody would have lost more than about 45% of their assets. The structure the Government are now bringing in will mean that people with relatively few assets will continue to lose, in effect, 100% of their assets. As the noble Baroness, Lady Wheeler, correctly said, people who have substantial assets will only ever lose a modest proportion of those. It is not fair.

I am going to retreat, but I tell my noble friend that I think the Government should say, and I hope he will say in response, that if this turns out to be inequitable, which I believe it will, and the Government want to find the money to do something about it, they have the means to do so. I think that using the concept of a percentage of one's assets is a legitimate way of doing it. Finally, just to put this on the record, my noble friend said that we cannot do that and that it is unworkable because people's assets are constantly changing. No: if you do it in the context of the cap, people whose assets are significantly in excess of the requisite calculation of the amount of relevant assets would never have to be checked again. It is therefore perfectly possible to do it in relation only to those people whose financial means have to be regularly assessed for the purposes of the local authority means test in any case.

It is entirely workable; it could be done. Frankly, I think that with the passage of time the Government will realise that it is a better way of managing the cap; saying, for example, that 50% or 60% of one's assets may be required to meet the cap but never as much as 100%. So I am retreating, and I encourage noble Lords not to insist on something that has substantial financial implications and on which the other place—as was quite clear from the debate—is not willing to shift. I hope my noble friend will say that, if this or indeed any future Government were to decide that they wanted to ameliorate the regressive effects of the exclusion of local authority contributions, there are other routes to doing so. Setting a percentage of the assets of people who are subjected to the means test as their contribution to the cap would be an effective way.

4.45 pm

Baroness Finlay of Llandaff (CB): My Lords, as others have spoken fully to other amendments in this group, I will confine my remarks to Motion L1 in my name. I thank the Minister for the open-door policy that he has had and for his willingness on many occasions to discuss with me the problems for parents who can feel completely overwhelmed in the face of not being listened to by clinicians. I am also particularly grateful to the noble Baronesses, Lady Brinton, Lady Masham and Lady Stowell, for their helpful comments and advice behind the scenes, and to the noble Lord, Lord Balfe, who has shared with me his extensive experience on mediation.

In drafting my amendment to the amendment, I was particularly concerned that we must take evidence directly from parents, including parents whose dispute has not necessarily progressed to court. While it is quite extreme to progress as far as court, there seem to be a lot of parents who have felt completely overwhelmed in the face of personal tragedy. In an interview, Rob Behrens, the Parliamentary and Health Service Ombudsman, said about mediation:

> "We've got to get better at communicating with complainants, better at learning from bad experiences, and better at using early resolution and mediation so that sometimes we don't have to use adjudication at all."

He went on to point out some of the cultural characteristics of the health service that make these encounters hard. He listed professional dominance, clinical hegemony, hierarchy and defensiveness as characteristics that make it particularly difficult.

I am grateful to the noble Baroness, Lady Pitkeathley, for flagging up parent carers. They often feel deeply disempowered because they are completely dependent on the help of others to manage a very difficult situation and so particularly inhibited in the face of any professional dominance; of course, there have been some stories in the press.

In response to the Minister, I will gladly be involved in developing the scope of this review. I hope that he will rapidly put me in contact with the official who will be responsible for it because we need to start as soon as possible. The government amendment stipulates a year—actually a very short time to run an inquiry—so it needs to happen quickly. I hope that there will be funding resources attached to this; it cannot be done on thin air or a shoestring. I hope also that there will be support for it to be done properly so that we can take evidence. Developing the scope of the review will be very important and I think there are parent groups who would particularly wish to be consulted at that early stage as well.

In the letter that we were sent, I note that the Government said:

"Should the review make recommendations for legislative change, and the Government agrees with those recommendations, we would seek to bring forward legislation where parliamentary time allows."

I see that the Government have left themselves a small out, but, if this is to be a properly conducted review with clear recommendations, I hope that they will listen to that evidence and will not shirk at taking whatever steps are necessary.

I conclude simply by thanking the Minister, the Bill team and the other officials who have engaged in many hours of discussion on this issue. I look forward to working with speed on getting this review up and running.

Lord Bradley (Lab): My Lords, I will speak very briefly to Motion Q: Amendments 105 and 105A. I declare my health interests as in the register, particularly my role as a trustee for the Centre for Mental Health.

I was disappointed that the Government did not accept my Amendment 105, which was passed in this House on Report, regarding mental health membership on integrated care boards. I repeat my thanks for the support I received for the amendment from Labour and Liberal Back-Benchers, particularly the noble Baroness, Lady Walmsley, some Cross-Benchers, and from my own Front Bench, my noble friends Lady Wheeler, Lady Merron and especially Lady Thornton, who has been tremendously supportive throughout. I am also extremely grateful for the continuing and unstinting support of organisations outside Parliament, such as the Centre for Mental Health and the Mental Health Foundation.

However, I am satisfied that the Government's amendment in lieu, Amendment 105A, captures the essence of my amendment: that the voice of mental health should be at the board table at the inception of the 42 ICBs, and play a crucial part from the start in determining service priorities, budget and resource allocation, workforce growth and development, and commissioning arrangements, among other things. The chairs of ICBs will now have responsibility for the appointment of mental health representation and will be held accountable for their decisions. This House, the other place, external bodies, the public and I will all scrutinise these appointments very carefully.

The Government's amendment, devised by the noble Baroness, Lady Walmsley, and passed on Report, will put a double lock on mental health representation because of its intention to review the skill mix and expertise of ICB membership in the future. We had further assurance in the Minister's letter to all noble Lords, which said:

"We strongly agree with the principle underpinning Lord Bradley's amendment and with his view that ICBs will be strengthened by having at least one member with knowledge of Mental Health on the Board. As it stands, however, the current drafting would create significant legal ambiguity, which is why we tabled an amendment in lieu in the Commons to ensure that the principle is maintained in a legally robust way".

I am grateful to the Minister for this assurance, and I believe that in taking it together with the two amendments, the ambition for parity of esteem between physical and mental health will, as a result, take a further significant step forward.

The Government's amendment in lieu of my amendment should ensure that the voice of mental health is heard clearly on ICBs and in the wider integrated care system, and that the mental health and well-being services needed and demanded by the public are at the heart of integrated health policy in the future.

Lord Balfe (Con): My Lords, I rise to speak to Motions L and L1. Where we have got to today is a good example of what the House of Lords is for. When this Bill came to the Lords it had nothing in this area—but by working together, particularly with my friend, the noble Baroness, Lady Finlay, we have produced an acceptable clause. I would have liked more, but it is acceptable.

My skill, so to speak, was mediation, not health. What I hoped to do was to alter subtly but importantly the power relations in the hospital setting. The aim of compulsory mediation is that the patient would be given some power, although only the power to ask for mediation, which is, after all, a system whereby both sides have to agree. None the less, it would give them a way of articulating an issue. One of the jobs of a mediator is to make sure that both sides of any case are understood not only by the other side but by the side presenting it. I did the odd mediation in my time, and when we got down to it, it was clear that the people asking for it were not quite sure what they were asking for. So mediation is a way in which to calm things down, and that is what I was hoping to do. In the middle of all this, the Ministry of Justice came forward and said that it would cover certain legal costs. My aim was actually to reduce costs on the NHS by producing a rather cheaper way—but I am sure that that is something to be welcomed.

I will make just two or three small points. First, when this review is done, it is important that the mediation system that comes out is capable of being enforced. There are basically two types of mediation—what in lay man's terms we used to call family mediation, and commercial mediation. The weakness with family mediation was that it was non-binding. I never did family mediation, but I belonged to a group with both sides in it, and one of the most distressing things was the huge amount of time that could be put in, and then the mediation agreement was just renounced and set aside. That has to be avoided; we cannot be in a situation where there is an NHS mediation and, let us say, the senior consultant says, "I'm not having that—I

[Lord Balfe]
refuse to agree." There has to be something equivalent to what in commercial mediation is known as the Tomlin order, which is the order whereby the court underwrites the mediation; it does not intervene in it but it gives it the force of law so that it can be enforced.

The detailed points that I would like to make to the Minister are as follows. First, in the clause that he has tabled, the department refers to

"the carrying out of a review into the causes of disputes".

It needs to go a bit wider than the causes; it needs to be a review into the causes and the ways of solving disputes. It is no good having a catalogue saying, "This is where there are disputes." It has to actually provide a solution to the disputes.

My second point is about where the provision refers to

"a report on the outcome of the review, within one year beginning with the date on which this section comes into force."

It is a very simple question here: when does the Minister envisage that the section will come into force? There are things in Acts that have been around for years and which have never actually come into force. When will this come into force? I also hope that he will be able to give us a favourable answer on Motion L1, and the additional amendment, tabled by the noble Baroness, Lady Finlay. It adds a couple of very important points to this amendment, and I hope that it will be accepted.

5 pm

My final point is that I have been struck by the imbalance of power in the health service. As some noble Lords will know, I am, among other things, the president of BALPA, the airline pilots' union. It has the doctrine of "every flight a safe flight", and it encourages people, right down to the most junior staff, to say what is wrong. There is too much hierarchy in the health service. I recall with some happiness, since I am still here, going into hospital two-and-a-bit years ago for a heart bypass operation. I said something casually in passing to one of the nurses, "Do you think you could tell the doctor?"—the rest does not matter—and she said, "Oh no, I'm sorry, sir, we're not allowed to talk to the doctors, we can only talk to the staff nurse." I took this up with the staff nurse, who said, "Yes, well, it is very important that we have these things because we don't want the doctors getting mixed messages." I said that it might not be a mixed message, but rather an alternative or a complaint. It could be something which has been spotted, and junior nurse speaks to staff nurse, and staff nurse thinks, "Oh, God, we must not let the doctor know about that; we better sort that out."

One of the principles of "every flight a safe flight" is that even a steward or stewardess who is on their very first flight, if they see something wrong, can go to the captain—or anyone else—because there is no hierarchy of complaint. Every time I read a report from the NHS where it says that lessons will be learned, I generally think, "My God, you're slow learners, aren't you?", because we have seen it time and again. When looking at this area of disputes, I urge the Minister to look also at the hierarchy within the health service. I do not think that he is 100% happy with this clause, but I think that his officials were not too happy with the idea of "mediation" which might go into a hospital and start making some recommendations which could have the force of law and could uncover things which they would rather have hidden.

I ask the Minister to please give this resolution godspeed and bring the clause into action as soon as he can. Let us try and move this forward so that—maybe by the time we have gone a year or 15 months from now—we have a real opportunity of making a change which will benefit many parents, and which will not produce adversity but help produce consensus by giving parents a real say in the level of treatment.

Baroness Tyler of Enfield (LD): My Lords, I wish to comment extremely briefly on Motion E, in relation to unpaid carers and hospital discharge, and to ask the Minister one question. I want first to pay tribute to the noble Baroness, Lady Pitkeathley, for her unstinting leadership on this issue. I very much welcome the amendment in lieu which the Government have brought forward to ensure that carers and patients are properly involved in discharge decisions.

My one point is that the cost of living crisis is a reality and life is getting tougher for many people. Involving carers at the point of discharge gives them the opportunity to say that they are unable to care, or unable to get the support they need for caring because they are juggling work and care—for example, if it is impossible for them to give up work fully because they need to feed the family or pay the bills. Can the Minister give me assurance that carers' needs to juggle work and care will be both properly covered and explored in the guidance which I know that the Government are committed to producing, and which I am very much looking forward to seeing?

Baroness Walmsley (LD): My Lords, I shall make a few brief comments about Motions A, E, G1, L1 and Q. On Motion A, we very much welcome the Government's amendments in lieu, to make it clear that no commissioning organisation within the ICS can have a member appointed to it who could reasonably be regarded as undermining the independence of the health service because of their involvement in the private sector. The Government have listened to the concern expressed by the noble Lord, Lord Hunt of Kings Heath, whom I congratulate for spotting the loophole, and that is very good and welcome.

On the matter of carers and safe discharge in Motion E, we on these Benches were concerned that unpaid carers would not be sufficiently consulted and their own health and well-being might not be sufficiently taken into account. I am grateful to the Minister for spelling out, at my request, how the impact on carers will be assessed before a patient is discharged into her or his care. However, at the moment, when there is an outbreak of Covid-19 in a hospital ward, the carers are not allowed to visit the patient. Therefore, those conversations are not taking place. I should be very interested to know what the Minister will suggest about how those conversations can take place in that situation.

It is very important that appropriate action is taken to address the carer's needs as well as those of the patient. Indeed, if those needs were not addressed, it would affect the ability of the carer to look after the patient, so both would suffer. I know this is a big responsibility

for local authorities, which are strapped for cash, but it is vital that these needs are catered for, especially in light of the fact that those many thousands of unpaid carers save the public purse a massive amount of money, as well as looking after their loved ones with the loving care and attention that it would be very difficult for professionals, however dedicated, to give.

On Motions L and L1, I have listened carefully to the concerns of the noble Baroness, Lady Finlay, and she is quite justified. Governments have a habit of promising action but then moving on to something else, so we on these Benches, like the noble Baroness, will be looking out very carefully for the results of the review and the actions which we hope will follow.

We very much welcome Motion Q and congratulate the noble Lord, Lord Bradley, on achieving what he has. We particularly welcome the mention in the amendment in lieu of the word "prevention" of mental ill-health, as well as diagnosis and treatment.

Finally, as my noble friend Lady Brinton said, we support Motion G1 from the noble Baroness, Lady Wheeler. I want to add just two comments to those of my noble friend. We should support the amendment because the government savings will be paid by the poorest and most vulnerable, and 80% of those with dementia who have very long-term caring needs will be worse off under the Government's proposals, and that is not right.

Lord Kamall (Con): I thank all noble Lords who took part in this wide-ranging and interesting debate. Perhaps I can deal quickly with some of the issues. On mental health membership of the ICBs, I thank the noble Lord, Lord Bradley, for his persistence, but also for accepting the amendment that we produced in lieu.

On conflicts of interest, I thank all noble Lords for acknowledging the work that the Government have done, and I shall try to answer a couple of points. The noble Lord, Lord Hunt, asked about the chairs of the ICBs. They are appointed by NHS England, with the Secretary of State's approval, which is the route by which the Department of Health and Social Care can ensure that the chair does not undermine the independence of the NHS. NHS England and the Secretary of State will want to appoint people who meet the highest standards and will not undermine the interests of the NHS. On the second question, ICBs will have to make arrangements to manage conflicts of interest to ensure that they do not affect, or appear to affect, the integrity of ICBs' decision-making. This would implicitly include data sharing and access to information. I hope that that meets with the noble Lord's approval and addresses his concerns.

On palliative care, I once again thank the noble Baroness, Lady Finlay, for all her work and for teaching me so much about the subject. Indeed, the officials in my department are very grateful for what they have learned about the whole palliative care process: the noble Baroness has definitely put it right on the agenda for consideration.

It is clear that the views of parents are very important, and it is essential that their voices are heard. That is why we expect the review to include evidence from both parents and clinicians who have been involved in disagreements in the care of critically ill children.

I also thank my noble friend Lord Balfe for the points that he made and I hope that we will have further conversations. I would be happy to put my noble friend in touch with officials in my department, so that they can benefit from his wisdom and many years' experience of mediation.

There are already robust duties to involve parent carers in hospital discharge planning. Parent carers of a disabled child are covered by the right, under the Children and Families Act 2014, to request a carers assessment at any time. We will continue working closely with the Department for Education to ensure that, in guidance, we signpost to existing rights and protections for these individuals. The existing guidance stresses that discharge teams should ascertain whether the carer is willing and able to provide care and support post discharge, before an assessment of longer-term needs. No assumptions should be made about their willingness or ability—that includes all forms of ability—to care. This will be set out in the new statutory guidance. As the noble Baroness rightly knows, we will be working with Carers UK on the guidance.

I will finish on the adult social care cap. I understand the concerns that many noble Lords have expressed. In the current system, individuals with more than £23,500 face unlimited costs. The cap is not a target to work towards; it is a backstop to make sure that people are not liable for unlimited costs of care. There are a number of different issues and views on this, but we believe that our proposal is better than the current system. Although I understand the concerns of this House, I once again urge noble Lords to consider that the other place has considered this and rejected noble Lords' amendments. The Government Benches will be opposing Motions G1 and G2.

I am also grateful to my noble friend Lord Lansley for the points he raised. We will look at all aspects of the trailblazer schemes; it would not be wise to limit what we look at. We want to get the best from that discovery and learning process, and perhaps spot with the trailblazing and piloting any unintended consequences. So we will look in a holistic way at how the trailblazer schemes are working before we roll them out nationally. We believe that that is wise and prudent.

I think that completes my points.

Motion A agreed.

Motion B

Moved by ***Lord Kamall***

That this House do not insist on its Amendment 29, to which the Commons have disagreed for their Reason 29A.

29A: Because there is already a clause in the Bill about reporting in relation to workforce and it is not necessary to impose further or different reporting duties on that topic.

Lord Kamall (Con): My Lords, I have the notes just in time. I just hope I have impressed noble Lords with our lean operation—although sometimes the leaner the operation, the more brittle it is.

[Lord Kamall]

The amendments in this group all relate to questions of accountability. Amendment 29 addresses the question of workforce projections. I draw noble Lords' attention to the sustained disagreement of the other place to this amendment. The Government are committed to improving workforce planning and we recognise the importance of having a properly trained workforce. Indeed, during my short time as Minister, noble Lords have asked a number of parliamentary Questions on workforce issues.

We are taking a number of steps to ensure that we have record numbers of staff working in the NHS and we are committed to continue to grow and invest in the workforce. This year, we have seen record numbers of staff in NHS trusts and CCGs, including doctors and nurses. The monthly workforce statistics for December show that there are more than 1.2 million full-time equivalents.

These workforce numbers come on the back of our record investment in the NHS, which is delivering on our manifesto commitment of 50,000 more nurses. We are on target with that, with nursing numbers a little over 27,000 higher in December 2021 than they were in September 2019. The spending review settlement will also underpin funding the training of some of the biggest undergraduate intakes of medical students and nurses ever. We recognise that doctors are liable to stay in the places they are trained, which is why we have opened up a number of new medical schools. That will take time to come through, but it is making sure that we are looking at the workforce in terms of longer timeframes.

5.15 pm

On social care, we have put in a range of measures to increase retention and recruitment, including making care workers eligible for the health and care visa and adding them to the shortage occupation list. We also announced in our recent *People at the Heart of Care* White Paper that we would invest at least £500 million to develop and support the workforce over the next three years.

We are also committed to improving workforce planning. The department has commissioned Health Education England to work with partners and review long-term strategic trends in the health and social care workforce for the next 15 years—I should probably labour that point—which, for the first time, includes regulated professionals in adult social care. We hope to publish this in spring 2022. Building on that work, the Department for Health and Social Care recently commissioned NHS England to develop a workforce strategy and will set out the key conclusions when it is ready.

Finally, we are committed to increasing transparency and accountability. The unamended clause already increases transparency and accountability on the roles of the various actors within the NHS workforce planning and supply system. Subject to the passage of the enabling powers, we will merge Health Education England and NHS England to bring responsibility for service, financial and workforce planning together in one organisation.

We recognise the strength of feeling behind this amendment, but we do not think that it is necessary, and I gently remind the House that nor does the other place. The Commons has now voted twice with a clear majority against amendments on workforce projections. I therefore hope that noble Lords will recognise that the Government are already doing substantial work to improve planning, with 15-year plans and working with Health Education England. In addition, as we integrate health and social care, with an audit of the current social care workforce so that we understand who is out there and what they are doing, we will be able to align qualifications to make sure that it is a more worthwhile career that people will want to work in. So I urge your Lordships to accept the view of the Commons and remove Amendment 29 and Amendment 29B, tabled in lieu.

On Amendments 30 and 108, which relate to reconfigurations, our counterparts in the other place have recognised the legitimate role the Secretary of State has in service change and their accountability for it, in twice supporting the place of this clause in the Bill. We therefore think it is important to enable the Secretary of State to intervene with greater flexibility—but where that intervention is warranted.

While the Secretary of State already has powers over reconfigurations, we believe that our proposals will allow them to be more effective and respond in a more timely way to the views of the public, health oversight and scrutiny committees, and parliamentarians. We believe that that will reduce wasted time and effort and will allow Ministers to become involved at the appropriate stage—not simply at the end stage—of the process.

On the amendment suggested by the noble Baroness, Lady Thornton, Members of both Houses have stated their support for any action to be taken expediently by Ministers; instead, this amendment is likely to extend the process by months. Colleagues in the other place clearly voted, with a majority of 109, for greater flexibility in this power, which necessitating regulations would remove. This amendment would limit the power far more than the current system. I remind your Lordships that the Secretary of State already has legal duties to ensure that any decision or intervention he or she makes is in the interest of promoting a comprehensive health service. For these reasons, I am afraid that we cannot accept the amendment in the name of the noble Baroness, Lady Thornton, and I gently ask her not to press it.

On Amendment 48, we have heard the strength of feeling here and in the other place about the gravity of this issue, and I know that no one in this House would support the use of forced labour in creating NHS goods. In fact, I think there is probably wide agreement across the House on the need to tackle forced labour or slave labour. For this reason, and to ensure that we are managing any risk, we have proposed, as an amendment in lieu of Amendment 48, a duty on the Secretary of State to carry out a review into the risk of slavery and human trafficking taking place in NHS supply chains, and to lay a report before Parliament on its outcomes. The review will focus on Supply Chain Coordination Limited, which manages the sourcing,

delivery and supply of healthcare products, services and food for NHS trusts and organisations across England. As well as supporting the NHS to identify and mitigate risk with a view to resolving issues, this review will send a strong signal to suppliers that the NHS will not tolerate human rights abuses in its supply chains and will create a significant incentive for those suppliers to review and improve their practices.

I must turn to a mischaracterisation of the Government's position when we did not accept my noble friend Lord Blencathra's amendment. There was a perception that avoiding modern slavery in procurement was somehow being balanced against the needs of NHS patients. This is not the Government's position. The Government's position is that modern slavery across the globe, including where it exists in the UK, ought to be identified, mitigated and tackled. This is what we seek to achieve, both through measures outside the Bill and through our supply chain review. We want to ensure that any measures we take are effective in working towards the eradication of modern slavery.

We are fully committed to ensuring that modern slavery is tackled but, as we have said, we are doing so through other legislative vehicles that, unlike this Bill, cover a wider range of public sector bodies, not just the NHS. The forthcoming procurement Bill will further strengthen the ability of public sector bodies to exclude suppliers from bidding for contracts where they have a history of misconduct, including forced labour. We will publish the review of the *Modern Slavery Strategy* in spring 2022 to build on the progress we have made and adapt our approach as, sadly, these terrible crimes evolve.

In addition, the NHS is undertaking a range of measures under existing law. On 24 March, NHS England and NHS Improvement set out new measures in their new M*odern Slavery and Human Trafficking Statement 2022/23*, particularly in vetting and auditing suppliers, creating category-specific guidance and taking a robust, risk-based approach to onboarding suppliers.

We are taking these measures seriously. We all want to eradicate modern slavery, not just in the health sector but across all public bodies where we have the ability to look at it more generally in our economy.

On the transfer of NHS Digital functions, I thank the noble Lords, Lord Hunt and Lord Clement-Jones, and the noble Baroness, Lady Brinton—I hope I have not missed any others—for their co-operative engagement with me and our officials to make sure we got this right. I can assure your Lordships that the proposed transfer of functions from NHS Digital to NHS England would not in any way weaken the safeguards. Indeed, when I spoke to the person responsible in the department, who the noble Lords met, he was very clear that in fact we want to strengthen the safeguards and take them further.

I hope that, even after this Bill, we can continue those constructive conversations to address future concerns as the NHS seeks to digitise and share data, not only across the system but perhaps with suppliers and outside. It is really important that we ensure there is trust in what we do when it comes to digitisation and sharing NHS data. I look forward to working with noble Lords across the House to make sure we take the politics out of it and really get to where we want to be. We are keen to provide greater protection, and I hope noble Lords have been reassured by what we have done.

We come to Lords Amendment 89 and our government amendment in lieu on organ tourism. While the Government are sympathetic to the aim, which is to make sure that the law captures anyone with a close connection to this country who purchases an organ overseas, we still have serious concerns, which we have shared with noble Lords. We believe that our amendment in lieu would have a similar effect to Amendment 89 without creating disproportionate impact on vulnerable recipients and NHS staff. It would mean that, wherever in the world their actions take place, most UK nationals and all residents of England, Wales and Scotland would be prosecuted for existing offences that cover the trade in human organs. I hope noble Lords will be able to accept our amendment. I thank the noble Lord, Lord Hunt, and others for their constructive engagement in this area.

I hope I have been able to provide some reassurance on these outstanding issues, and I ask that these amendments are withdrawn from the Bill. I beg to move.

Motion B1 (as an amendment to Motion B)
Moved by ***Baroness Cumberlege***

At end insert ", and do propose Amendment 29B in lieu—

29B: Clause 35, page 42, leave out lines 14 to 19 and insert—

The Secretary of State must, at least once every three years, lay a report before Parliament describing the system in place for assessing and meeting the workforce needs of the health, social care and public health services in England.

(2) This report must include—

(a) an independent assessment of health and social care workforce numbers, current at the time of publication, and the projected workforce supply for the following five, ten and 15 years, and

(b) an independent assessment of future health and social care workforce numbers based on the projected health and care needs of the population for the following five, ten and 15 years, taking account of the Office for Budget Responsibility long-term fiscal projections.

(3) NHS England and Health Education England must assist in the preparation of a report under this section.

(4) The organisations listed in subsection (3) must consult health and care employers, providers, trade unions, Royal Colleges, universities and any other persons deemed necessary for the preparation of this report, taking full account of workforce intelligence, evidence and plans provided by local organisations and partners of integrated care boards.""

Baroness Cumberlege (Con): My Lords, I thank my noble friend for that wide-ranging introduction on workforce. There are a lot of issues that we will want to consider later, but at the moment we have before us the issue of what the Commons have done. They have returned our amendment back to the Lords, and it is now for us to consider whether we wish to pursue it.

I want to go back to the situation on Report in this House, and the amendment to Clause 35 of the Bill on the subject of workforce planning. That was passed by your Lordships with an overwhelming majority in this House. I thank noble Lords who gave their support

[Baroness Cumberlege]
and welcomed that we wanted to return this issue to the Commons on that occasion. I want to stress strongly that it was supported not only in this place but by over 100 different organisations throughout the country—charities, patient groups, think tanks, royal colleges, professional bodies and organisations representing NHS management and those working in the service. They are extremely worried about our workforce numbers and the future. What is going to happen to our services if we do not have enough people in the workforce? We need a proper plan. We need to know how we are going to take this forward.

We had hoped that the Government would listen to the strength of the arguments put last time and the strength of feeling, not to mention that in the Commons. We also hoped that the Government would agree that workforce planning is the greatest problem facing the NHS and social care and that we are in crisis. We have to handle this problem. We hoped there would be agreement that we need better planning, because we know that, without improved planning, we will not be able to tackle the growing backlog in procedures and appointments, with people waiting to be treated by the service. Even this morning, on the "Today" programme, one of our charities—Macmillan Cancer Support—came forward to speak about cancer services and to strongly say, "Please will you sort this problem because it needs sorting?"

Regrettably, despite the extraordinary consensus in favour of the amendment, it was, as noble Lords know, rejected in the other place. The case for improvements to workforce planning has been made by me and many others many times during the passage of this Bill. The current NHS waiting list stands at 6.1 million, and it is rising. More people are joining the waiting list every day—more than those who are being treated. This is not a new problem; according to the King's Fund, it has been like this since 2016. Of course, we have had to deal with the pandemic, which has made matters a great deal worse.

I thank my noble friend the Minister very sincerely for the time he and the Bill team have spent with me trying to sort this problem out. But today, and often in previous debates, we are told that there are record numbers of staff in the health service. The fact remains that this does not seem to be enough—but of course we do not really know. We can experience it but we have not got the figures. We do not know whether we have the right people in the right place at the right time. We do not know if we have a plan for retention of the wonderful staff already working within the NHS and social care. As the backlog figures suggest, we are not meeting, and we will not meet, the public's expectations when they turn to the NHS for care and support.

5.30 pm

The NHS is spending huge sums on bank and agency staff, which reached £6.2 billion in the financial year 2019-20. That figure has been increasing since then, and the projections are that it will continue to increase year on year. This is expensive and inefficient, and I suggest to your Lordships that it is no way to run the NHS—the huge, very important organisation that so many of us rely on.

However, no organisation can do everything. The NHS cannot do everything, but surely we need it to do everything it can to treat people who need very high-quality care and treatment. If we want the NHS to do everything it can, it needs a clear assessment of workforce needs and a clear plan to meet those needs.

When the amendment we passed on Report was considered in the House of Commons, the Health Minister at the Dispatch Box suggested that it was not acceptable "in its current form". That was not an off-the-cuff remark but words that he obviously meant to say in his summing-up. I took some heart from that, and I hope that my noble friend will agree that the new form of words that we have in front of us today will be acceptable. I thought carefully about how to make the amendment more palatable to my noble friend and his colleagues at this late stage.

The version now before us has several significant changes. It would require the Secretary of State to publish a workforce assessment every three years, rather than two. We are suggesting that because we hope that my noble friend will agree that it makes it less onerous and less bureaucratic. The maximum length of projection of workforce needs is now 15 years, rather than the 20 years that we previously proposed in our amendment. We decided on that because it is aligned with the Government's own plans. For example, framework 15 also spans 15 years and we thought it sensible to marry the two. Under this amendment, the workforce would not need to include an independently verified assessment of workforce numbers; it now requires only a simple "independent assessment", because I knew that the department did not like the word "verified".

I hope that these changes will make it easier for the Government to live with the amendment, without their having to dismantle it. I am pleased to say that the 100 organisations—the charities, patient groups, think tanks, royal colleges, professional bodies and organisations representing NHS management—that I mentioned earlier are all supportive of this version. Every time we want to make a change, we ask the 100, "Do you support this?" and they do.

I hope my noble friend and his colleagues are now able to join the consensus, support the amendment and ensure that we start to improve workforce planning for the benefit of the NHS, its staff and, of course, most importantly, the people it is here to care for. I beg to move.

The Deputy Speaker (Lord Geddes) (Con): My Lords, the noble Baroness, Lady Brinton, is taking part remotely.

Baroness Brinton (LD) [V]: My Lords, although my noble friend Lady Walmsley will be speaking from our Benches on the workforce amendments, I just want to commend the noble Baroness, Lady Cumberlege, on the eloquent speech she made on the need for proper and effective workforce planning. I support everything she said.

I will now speak to Motions D and D1 on genocide and modern slavery, having added my name to amendments at earlier stages of the Bill. I thank the Government for their Amendment 48A in Motion D. Frankly, a review of the NHS supply chains should undoubtedly happen, regardless of the Bill, but the

amendment does not go nearly far enough to stop the practice of suppliers to the NHS purchasing goods where there has been a risk of slavery and human trafficking. The amendment talks only about the Secretary of State having to "mitigate the risk". In the linguistic range of a Minister making commitments, mitigation does not hit even the halfway bar.

We need to be blunt. A very large quantity of NHS medical equipment is sourced, in whole or in part, from the People's Republic of China. Despite the Government denying that any equipment is sourced from the Uighur region, reports have found that the UK Government have bought more than £150 million-worth of PPE from Chinese firms directly linked to abuses of Uighur rights abuses. As recently as this month, supply chain specialists revealed that the NHS continues to be supplied PPE from a company known to use Uighur forced labour programmes. Without legislation mandating transparency and due diligence, it seems very unlikely that the Government will be able to ensure that they are not sourcing goods from companies practising modern slavery.

Amendment 48B in Motion D1 in the name of the noble Lord, Lord Blencathra, goes beyond the Government's proposals for a review by seeking to ensure that the Secretary of State must by regulation make provision to ensure that all procurement of goods and services for the health service in England avoids slavery. The UK Government have to face up to their obligations to prevent through the law any forced labour and people trafficking in UK health supply chains. From these Benches we will support Amendment 48B in Motion D1.

Lord Stevens of Birmingham (CB): My Lords, I will speak in support of Motion B1 on workforce planning and Motion C1 on the Secretary of State's powers on reconfiguration. As the noble Baroness, Lady Cumberlege, has just reminded us, there is a huge groundswell of support for the need to do proper workforce planning in the NHS, but the fact is that today we do not need to relitigate the fundamental arguments, because your Lordships have already decided, by a margin of 171 to 119 votes on 3 March, that that is indeed what is required.

Of course, if the facts change, we should change our minds. Have the facts changed since 3 March? Have we seen the long-awaited detailed workforce plan for the health and social care sector that has been promised yet suppressed for the last six years? Regrettably, we have not. Have we even had concrete commitments to the detailed, costed and quantified five, 10 and 15-year outlooks that will supposedly be forthcoming in the spring? No, we have not had commitments that those numbers will be able to be produced without fear or favour, or Treasury veto.

However, we have before us two new data points. One is the survey of 650,000 NHS front-line staff, half of whom—52%—are now telling us that they cannot do their jobs properly because of a shortage of staff in their local service. The second data point is the results of the British Social Attitudes survey, telling us that nearly half of our fellow citizens have noticed that fact; they too believe that one of the fundamental problems standing in the way of performance by the health service is the shortage of staff.

If the Government are not inclined to listen to the hundred or so organisations that have supported this amendment or, indeed, to the results of surveys of front-line staff or the public, perhaps they will listen to a commentator from the *Spectator*:

> "The lack of workforce planning by the Government—and its continual refusal to commit to it—means satisfaction from patients and staff is likely to plummet still further."

I do not believe the Government want that. Nobody wants that, which is why we should take this opportunity to listen to the clear message that we have been sent by patients, staff and the public.

I turn briefly to Motion C1 on the Secretary of State's powers on reconfigurations. There is an obvious read-across between the discussion on workforce and the discussion on reconfigurations. In the real world, it is often staff shortages which give rise to concerns about the safe provision of services, hence the request for reconfigurations. In these circumstances, and coming just a few days after the Ockenden review of maternity safety, it is all the more dangerous that the new powers in Clause 40 and Schedule 6 would allow the Secretary of State to suppress changes needed to keep patients safe and to pre-empt and override the concerns of local clinicians, local patient groups, local authorities and even the Care Quality Commission.

There could be safeguards but, unfortunately, to date at least—perhaps, depending on what we do today, this will resurface after Easter—we are being asked to support the original text of the Bill, which has taken no account of any of the concerns that have been raised in both Houses during its passage. Instead, on the reconfiguration powers, today the Government are essentially praying in aid an argument not on the substance but on the merits of democratic oversight by the Secretary of State. This is despite the fact that previous Health Secretaries have managed democratically to supervise the National Health Service without requiring these new powers, despite the fact that former Health Ministers—Conservative Health Ministers, Labour Health Ministers and Liberal Democrat Health Ministers—all oppose these measures and have spoken out, including in your Lordships' House, and despite the fact that democratically elected Health Ministers in just about every other European country have never sought and do not possess these types of powers.

If the Government want to argue Motion C on the crucible of democratic oversight, it seems that by that logic they should indeed support Motion C1 tabled by the noble Baroness, Lady Thornton, which further enhances the democratic oversight of the use of these proposed new powers, giving Parliament the ability to scrutinise these types of interventions. Therefore, for those reasons, frustratingly, perhaps, I find that we are in a position where Motions B1 and C1 are still necessary.

Baroness Harding of Winscombe (Con): I rise to congratulate my noble friend Lady Cumberlege on her excellent speech and to support her on Motion B1. Addressing workforce shortages in our health system is a wicked problem. It is complex and complicated and it is a problem that is shared by every healthcare system in the world. I have no doubt that my noble friend the Minister and the Government are sincere in

[Baroness Harding of Winscombe]
their belief that they are doing a lot to address the problem but, as my noble friend said, the problem is that we do not know its scale. Until we do and we are open and honest about the complexity and size of the problem. we will not be able to move forward.

Sadly, this ought to be one of the reasons why the NHS is the best healthcare system in the world. It, above all other healthcare systems, ought to be able to do this sort of long-term, complex, detailed planning as a single-payer, state-provided system. Most developed countries do not have those benefits, yet today we are in a place where the Government appear to be saying that we should just keep doing what we have always done. There is a basic maxim in life that if you always do what you have always done, you will always get what you have always got. The reality is that unless we are willing to bend and change, we will not get any meaningful, sustained solutions to this burning problem. My noble friend Lady Cumberlege has bent and changed and has adapted her amendment to try to address what I know were some of the major concerns of the Government about the risk of a verified, firm and unwavering false certainty in a forward forecast and the need to recognise that this is a complex problem where there is likely to be a range. If we are not open and honest about that, we will never really address the issues.

This is a wicked problem that requires us to be brave enough to admit that we do not have all the answers. That is the courage we would need to see in publishing a workforce plan and is why I support Motion B1.

5.45 pm

Lord Blencathra (Con): My Lords, I rise to speak to my Motion D1. It is straightforward and I need not detain the House long. We all know the situation in Xinjiang province; it has been set out in graphic detail in this House by the noble Lord, Lord Alton, and others.

In recent years, the Government have procured billions of pounds' worth of medical equipment sourced in whole or in part from Xinjiang. Despite widespread reports of forced labour in that region, our supply chain laws have failed to prevent such procurement. The Government have repeatedly condemned China over its treatment of Uighur Muslims in Xinjiang province and has imposed sanctions in response to its human rights abuses. Indeed, my right honourable friend the then Foreign Secretary said that torture "on an industrial scale" was happening there. Then the new Foreign Secretary, my right honourable friend Liz Truss, told our ambassador to China that China was committing genocide—at last someone in the FCDO was admitting the truth. Everyone knows that it is genocide. The independent Uyghur Tribunal, the US Government, our own Parliament and five other Parliaments determined it.

However, every time we try amendments, however modest, on trade with companies using slave labour in Xinjiang, the Government throw a wobbly if we use the word "genocide" and give the usual, simply unbelievable answer that only a court can pronounce on that, despite there being no court capable of holding China to account. There have been an awful lot of government pronouncements in the past two days about Putin and Russia committing war crimes and atrocities, and rightly so, but there has been no suggestion of a court needing to pronounce on that. However, let us park all that.

The Government will not accept any amendment which remotely hints at genocide. So my amendment does not seek to go there. Instead, it uses the Modern Slavery Act 2015, which is already on the statute book. We sent a simple, three-section amendment to the Commons: first, to make regulations ensuring that the DHSC did not buy goods and services from a country which may be in contravention of the genocide convention; secondly, a Minister should assess whether there was a serious risk of genocide; and, thirdly, a Minister had to make that assessment if a chair of a Select Committee requested it. That was rejected in the Commons and the Government gave us back the complicated and rather complex Amendment 48A in lieu. As we see from the government amendment, the Secretary of State would have to carry out a review in case there was slavery and human trafficking. He would determine the scope of the review and what parts of the NHS it might apply to. Then he must lay it before Parliament within 18 months and give his own views on how he would mitigate it.

My amendment combines that government review amendment with a simple one-line clause. This one-line amendment was moved in another place by my right honourable friend Iain Duncan Smith MP and was supported by all Opposition Front Benches and Conservatives who included the former Secretary of State, Jeremy Hunt MP, and the latterly Lord Chancellor, Robert Buckland MP. In the other place this simple amendment was rejected by my honourable friend Ed Argar MP. Now Ed Argar is a good Minister but someone drafting his speech obviously found an old "Yes Minister" script and wrote a classic Sir Humphrey response:

> "In developing the modern slavery strategy review, it will continue to be important to engage across Government and civil society, nationally and internationally, to collect the necessary evidence to agree an ambitious set of objectives … We remain of the view that this is not the right legislation for the proposed changes."

Can your Lordships not just hear Sir Humphrey adding, "A very courageous decision, Minister"?

Well, the right time is right now and the right legislation is this Bill. Of course, the Government always have a better Bill coming along in the future. The government amendment in lieu relies on the Modern Slavery Act, and so does mine, and while I criticise the obfuscating waffle of the government amendment in lieu, I am not attempting to replace it or reject but will support it. I am merely adding a one-line sentence to it. It is simple and does what the Minister in the other place said the Government wanted; that is, to

> "further strengthen the ability of public sector bodies to exclude suppliers from bidding for contracts where they have a history of misconduct—or extreme misconduct in the case of slavery, forced labour or similar."—[*Official Report*, Commons, 30/3/22; cols. 926-27.]

Ignoring the fact that genocide and slavery are a wee bit worse than misconduct, my amendment gives the Department of Health and Social Care the opportunity to desist from buying goods and services from anywhere practising modern slavery.

I do not blame those involved in procurement for the sorry fact that slave-trade goods have entered our supply chains. Those working in the Cabinet Office, NHS procurement and the Department of Health have worked jolly hard in very difficult circumstances over the past few years. The fault is not theirs. We clearly need better tools to keep slavery out of our supply chains and this neat little amendment would allow the Government to do exactly that.

We do not need to engage the whole of government, nor civil society here and abroad. After all, Dominic Raab has just cancelled a contract for solar panels on prisons because parts were made in Xinjiang province, and I am certain that he did not consult civil society here or overseas before doing so. If the Secretary of State for Justice can make that unilateral decision, so can the Department of Health and Social Care. Nor need we worry that we will be deprived of essential PPE from Xinjiang. On 31 March, I found the following announcement by the Department of Health and Social Care:

"Personal protective equipment for sale by the Department of Health and Social Care (DHSC) including visors, gowns, aprons and goggles",

alongside a link to a site listing:

"Various Locations - Online Auction of Pallets of New PPE Equipment to include Gowns, Visors, Goggles, Sanitizer & Aprons - NO RESERVE!"

Let us be honest: the DHSC is the Government's biggest procurer and happens to be the department with the biggest problem. More than any other department, it needs extra help to keep slavery away. I am grateful for what my noble friend the Minister has said, but in view of the fact that the Government will not support my amendment, I regret that I shall have no option but to test the opinion of the House in due course.

Lord Hunt of Kings Heath (Lab): My Lords, first, I thoroughly endorse what the noble Lord, Lord Blencathra, has said. I find it extraordinary that the Government are taking such a slow pace in relation to the important issue he raises. Of course, I relate it to my own amendments on forced organ harvesting, which is yet another example of the deplorable behaviour of the Chinese authorities. I refer the House to the China Tribunal, led by Sir Geoffrey Nice in 2019, which stated:

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

Current human tissue legislation covers organ transplantation within the UK, but it does not cover British citizens travelling abroad for transplants. My amendment, which the House accepted, went to the other place. It was not accepted there but, as the Minister has kindly said, the Government put in their own amendment in lieu which we see here this afternoon. I am very grateful to the Minister for this. The impact of the Government's amendment is to ensure that offences under Section 32 of the Human Tissue Act 2004, which currently prohibits people in this country from commercial dealings in human material for transplantation, will now be extended to acts outside the United Kingdom. The amendment covers people who give or receive a reward for the supply or for an offer to supply an organ or any controlled material. That is very welcome indeed. It is welcome because it deals with a gap in UK legislation, but it is especially welcome because it sends a powerful message internationally that the UK will not be complicit in this appalling crime. I am very grateful to the Minister and very much support the amendment he brings.

I now turn to my Amendment 57B, set out in Motion F1, which relates, as the Minister said, to issues to do with patient data and the proper protection of it. Laid out in the Health and Social Care Act 2012 is the concept of a safe haven for patient data across health and social care. Because of the sensitive nature of that data, I sought, and the House agreed, to keep those statutory protections in place and not allow NHS England to take on that responsibility because of a potential conflict of interest in that role.

The issue arises because, last November, the Secretary of State announced that NHS Digital and NHSX would merge with NHS England to accelerate the digital transformation of the NHS. The Bill gives the Secretary of State powers to do this by the transfer of a function from one relevant body to another. NHS Digital is currently the statutory safe haven for patient data and my concern is whether it is appropriate to place that responsibility in NHS England, in view of the inherent conflict of interest that might occur in its wider role. As a matter of principle, I and a number of other noble Lords consider that the collection, analysis and publication of public data should be independent of any operational body. In effect, NHS England will be able to decide that its legitimate interests override those of the citizen and the patient, with little or no external constraint or scrutiny.

The noble Lord and I are at one in wanting to speed up digital transformation. I will set out what I am trying to do here, with the noble Lord, Lord Clement-Jones, and the noble Baroness, Lady Brinton. We are trying to be helpful. We want to make sure that the integrity of the safe havens is retained within this digital transformation. As the noble Lord said, we have had an extremely useful discussion with officials who are leading this programme in the department. I hope the Minister will be able to offer assurances that the integrity of the safe haven concept will be retained; that no transfer will take place until those safeguards are fully set out in the regulations necessary to bring the transfer into force; and, in particular, that strict governance arrangements will be put in place, subject to external independent scrutiny and oversight established on a statutory basis.

Can the Minister also confirm that the merged entity will at the least maintain the status quo of transparency and, indeed, go further for the patients whose data it is and whose trust and confidence are so necessary? Can he further confirm that a data usage register will be published which covers all projects accessing patient-level data and shows which data was accessed? Will the National Data Guardian be consulted on all this before the Government progress the regulations? Finally, will the Minister ensure that the regulations will avoid the need for NHS England—this was raised by the noble Lord, Lord Clement-Jones—to be in the difficult position of sending legal directions to itself, and can he say how in practice this would work?

Lord Alton of Liverpool (CB): My Lords, at earlier stages of this Bill, with my noble friend Lady Finlay, the noble Baroness, Lady Northover, and the noble Lord, Lord Ribeiro, it was a great pleasure to be able to support the noble Lord, Lord Hunt of Kings Heath, in moving his amendments on organ transplantation. It is a crucial issue and I congratulate the Minister on responding so constructively and positively with that amendment. I think that we all wish it a fair wind as it goes on to the statute book.

No one was more relieved than me to see my noble friend—if I may call him that—Lord Blencathra back in his place today, because it fell to me on Report, when he was afflicted by Covid, to move his amendment. It is a pleasure to follow the speech he made earlier and the remarks of the noble Baroness, Lady Brinton, committing her Front Bench—I think the Opposition are of a similar mind—to support this amendment if the noble Lord takes it to a vote. I have only a couple of additional points to make to your Lordships.

One is about the sheer volume of items of personal protective equipment for which China is recorded as the country of origin—I raised this during Oral Questions earlier today. Since Report, the Minister has confirmed that 24.1 billion items have been bought from the People's Republic of China, where of course the Chinese Communist Party exercises control over all companies. The cost to the British taxpayer has been £10.9 billion.

6 pm

I am especially pleased to see that the noble Baroness, Lady Hodgson of Abinger, who was a sponsor of this amendment in Committee, and who asked the question of the noble Lord that extracted this information recently, is in her place. It was she who said to me, "Put it another way; £10 billion is about the size of our entire reduced overseas aid and development budget for last year alone". That begs many strategic questions about UK manufacturing capacity, about resilience, and about dependency on the state that was judged in our integrated review to be hostile to the United Kingdom and its interests. I draw the attention of the House to the Foreign Affairs Select Committee report, published only today in another place, on the sale of the United Kingdom's biggest producer of microchips and semiconductors to a Chinese company, which, it says, "potentially compromises national security".

Earlier this week, the Minister told me that no assessment had been made of the security consequences for his department of the use of surveillance cameras used by the National Health Service and made by Hikvision —an issue which the noble Lord, Lord Clement-Jones, and I raised on the Floor of the House a few weeks ago. That same company makes the cameras being used in Xinjiang to monitor the Uighurs, as referred to by the noble Lord, Lord Blencathra, and has been banned in the United States. It is extraordinary that a Five Eyes ally would take the decision to ban a company and we blithely say, "We have made no assessment of it and we don't have any intention to do so, either".

The Prime Minister and the Foreign Secretary have said that a genocide is under way in Xinjiang and that there must be a complete review of our policy towards genocidal states. I hope that the Minister will take note of that. Beyond security, resilience and dependency is the further question, which the noble Lord raised earlier, of slave labour in Xinjiang. The National Health Service is of course about saving life and what is happening in Xinjiang has been about the deprivation and the taking of life.

On 20 March, at column 914 of *Hansard*, Sir Iain Duncan Smith set out the case for the amendment now before the House. In the House of Commons, it was signed by 20 other Conservative Members of Parliament, as well as being supported by the Opposition Front Benches. The amendment creates a duty to avoid slavery in National Health Service procurement and, in addition to recent revelations in the *Spectator* about products directly banned and linked to Xinjiang slave labour, I remind the House of the *Daily Telegraph* report that at least £150 million was paid to companies linked to genocide in Xinjiang.

In a letter today to Peers, the Minister says that we can have a review—a point he made earlier—but we have been offered reviews on countless occasions. The road to hell is paved with reviews and good intentions. The noble Lord, Lord Blencathra, offers us something much better, and I hope that the House will vote for it, as Sir Iain has asked us to do, to give the House of Commons a chance to incorporate a measure that enjoys widespread support across all Benches and across both Houses.

Lord Rooker (Lab): My Lords, in our debate on 31 January, I made the point at some length that it was not possible to trust accreditation of products based on paper and supply chains. I assume that the Minister has been briefed on this. After that debate, on 3 March, he wrote a long letter to me and the noble Lord, Lord Alton, and towards the end of it raised my point about the supply of cotton-based products.

I had explained that it is possible, using the techniques of element analysis, to take a product and find out where the cotton was grown. You do not need paperwork to do that, or trusted supplier chains. The technique and the technology are there. You can find out whether it was grown in Xinjiang, another part of China, or another part of the world. The Minister said in his letter that bidders to the NHS supply chain will have to certify that they are better-cotton-initiative certified. That is the very thing that we need to avoid. You cannot trust paper-based systems of supply. You must use the technology to find out where the cotton is grown.

In the government amendment that has come from the Commons, paragraph 3 specifically refers to cotton-based products—so, given the final paragraph of the Minister's letter, saying that the NHS supply chain does not have a contract to use the element-analysis services supplied by Oritain, what has happened since? Has there been any contact between the Department of Health and the NHS supply chain with the company that has the technology? I have no interest to declare here. I made it absolutely clear in the debate that this came out of a "long read" in the *Guardian* way back in September. The technology is there, not just in cotton but in other issues. Here I am just using it for cotton—the uniforms, the mattresses and the products. In subsection (3) of the new clause proposed by Amendment 48A, the Government are going to assess cotton. Have they

done anything since our debate in Committee to make arrangements to use the technology, on the basis that you cannot trust paper-based supply chain accreditation? It is a simple question, and I would like an answer.

Baroness Finlay of Llandaff (CB): My Lords, I rise very briefly to support Amendment D1, tabled by the noble Lord, Lord Blencathra. Last night I was part of a BMA web conference mounted by the Ethics Committee, of which I am an elected member, looking at the powerful evidence coming out of Xinjiang province in China. The concern is that, if we are purchasing products from there, we are complicit in the appalling human rights abuses that we were shown evidence of in this webinar. Therefore, I hope the House will support that amendment.

I return to the very important Amendment B1, tabled by the noble Baroness, Lady Cumberlege. This is not just a static situation. It is worsening. All that we have done is not just more of the same; we are actually sliding downhill rapidly. I want to give a little bit of data to the House to support that statement. There are now 1,565 fewer GPs than in 2015, meaning that there is a shortfall of 2,157 against the target that was set by the Government in their manifesto promise, in terms of where we are tracking to date.

The number of fully qualified GPs by headcount has decreased by over 600, so there are now just 0.45 fully qualified GPs per 1,000 patients in England, down from 0.52 in 2015. This means that each GP is responsible for about 300 more patients than previously. In terms of physiotherapy—I declare an interest as president of the Chartered Society of Physiotherapy—the model shows that 500 new physios are needed each year for multiple years to meet demand. There needs to be a trebling of the 6,000 NHS physio support workers. In nursing, the district nursing numbers have dropped from 7,055 in 2009 to 3,900 in 2021, which is a 45% drop. This is all going in the wrong direction. From the data that I could obtain, it looks as if three-quarters of nursing vacancies are filled by temporary staff.

This amendment, tabled by the noble Baroness, Lady Cumberlege, is crucially important. It would be a dereliction of our duty to ignore supporting that amendment, given all that we know and all the work that has gone on. That is not to be critical of the Minister and his team at all, because I am sure that it is not his personal wish that we do not have this in place—but we certainly do need a completely new approach to workforce planning.

Baroness Tyler of Enfield (LD): My Lords, I wish to lend my support very briefly to Motion B1, moved so very compellingly by the noble Baroness, Lady Cumberlege. I simply wish to pick up and echo the telling point from the noble Baroness, Lady Harding, who I think broadly said that if you carry on doing the same thing, you are going to get the same results.

I have had a look over the last week at what results we are getting. We have had the frankly shocking revelations in the Ockenden review, highlighting the really severe implications for patient safety, particularly for women and babies, when there are just not enough suitably trained staff around to do the vital job that they are there to do. I looked at that review last night and found it truly shocking. In the last 24 hours, we have had a Care Quality Commission report looking at Sheffield Teaching Hospitals. It said that they lacked enough qualified clinical staff to keep women and infants safe from avoidable harm and to provide the right treatment. There is also today's report—it may have been yesterday's—from the Health and Social Care Select Committee, highlighting the critical NHS staff shortages affecting cancer services in England, meaning that too many people are missing out on that critical early cancer diagnosis which is so vital to their chances of survival.

I know those are the worst things happening and that there are lots of good things, but those things are not acceptable. Things like that are why public satisfaction in the NHS, as the noble Lord, Lord Stevens, said, is sadly going down. That is a real problem; it is the reason I so strongly support Motion B1 and why there is such strong cross-party support for it in this Chamber.

Baroness Watkins of Tavistock (CB): My Lords, I support Motion B1 in the name of the noble Baroness, Lady Cumberlege. I will be brief and not repeat what others have said. However, it is worth noting that in the Statement on the Ockenden report, the Secretary of State for Health said:

> "I am also taking forward the specific recommendations that Donna Ockenden has asked me to. The first is on the need to further expand the maternity workforce."—[*Official Report*, Commons, 30/3/22; col. 819.]

That phrase could be repeated for every part of the NHS and social care workforce, so I believe that has changed the situation since the other House debated this issue.

The public are asking what the national insurance levy is for if not to increase the number of professional staff in training. We are turning away people who want to be paramedics and nurses, as my noble friend has just said, who want to train locally. Of course we should undertake ethical overseas recruitment as well, but we need both. I firmly believe that this amendment needs the full support of this House.

Baroness Bennett of Manor Castle (GP): My Lords, it is a great pleasure to follow the noble Baroness, Lady Watkins, and to ensure that full support for Motion B1 has been presented from all round your Lordships' House, including the Government Benches. The Green group also supports Motion C1 particularly strongly, and Motions D1, F1, G1 and L1, but I will speak briefly only to Motion B1 because it is so crucial.

In introducing this group the Minister spoke, as the Government often do, about the record numbers of staff in the NHS. I do not think anyone has yet mentioned the NHS staff survey conducted between September and November. Just 21% of nurses and midwives thought that there were enough staff in their unit to do their job properly and provide an adequate standard of care; almost 80% thought there were not enough. The noble Baroness, Lady Tyler, referred to the Ockenden report: that helped to highlight that, despite the fact that the Government have been trying to recruit more midwives, in the last year the number of midwives has actually gone down.

[Baroness Bennett of Manor Castle]

We really have to ask ourselves why the Government are so opposed to this amendment when there is such strong support for it around this House and among all the key bodies around the country. It may be that the Government have an ideological objection to the word "planning", or that the Minister does, but this is about the future of our NHS and all the evidence says that this is an essential amendment. Surely the Government are not going to let ideology stand in the way of the future of our NHS.

I finish by commenting on the typically wonderful introduction to this group from the noble Baroness, Lady Cumberlege, who referred to the strong civil society campaign. The hashtag for it on Twitter is #StrengthInNumbers, and that says so much. We need the numbers and the facts so that we can get the numbers of staff in the NHS.

6.15 pm

Lord Clement-Jones (LD): My Lords, briefly, I support the remarks of the noble Lord, Lord Hunt, regarding Motions F and F1. He, assisted by my noble friend Lady Brinton and I, has pursued the question of the future of data governance in the NHS with great determination and persistence. I pay tribute to him and to medConfidential in that respect. I know that the Minister, the noble Lord, Lord Kamall, is equally determined to make sure that data governance in the new structures is designed to secure public trust. I very much hope that he will give the assurances sought by the noble Lord, Lord Hunt.

The key problem we identified early on was the conflict of interest referred to by the noble Lord, Lord Hunt, with NHS England in effect marking its own homework, and those who have data governance responsibility reporting directly to senior managers within the digital transformation directorate. I hope that the assurances to be given by the Minister will set out a clear set of governance duties on transparency of oversight, particularly where NHS England is exercising its own statutory powers internally. I look forward to what the Minister has to say.

Baroness Walmsley (LD): My Lords, I plan to address matters in the group that have not been addressed by my noble friends. They are workforce planning, reconfiguration and organ tourism.

First, on Motion K, on organ tourism, I congratulate the noble Lord, Lord Hunt of Kings Heath, my noble friend Lady Northover and others on their success in convincing the Government that something must be done about this dreadful trade. I also thank the Minister for listening.

On Motions B and B1, we support the noble Baroness, Lady Cumberlege, and will be right behind her when she leads us into the electronic Content Lobby on her Motion B1. It was made clear during earlier stages of the Bill that Peers across the House believe proper planning for training and providing a safe health and care workforce is essential. We also hear that almost 90% of trust leaders do not think the NHS has robust plans in place to deal with the workforce shortage. We are asking a lot of the NHS and care workforce at the moment; they are badly understaffed but, at the same time, are being asked to reduce the backlog of treatments that built up during the pandemic, while Covid-19 is still rampant in the population and thousands of patients are still in hospital with that as the primary cause.

In these circumstances, we have a desperate need for a reliable system to plan for and provide the staff we need, but nobody has confidence in the current system—if you can call it that. However, it seems that the Treasury has stuck its oar in. I find that rather odd, since neither the Bill as drafted nor the various amendments of the noble Baroness, Lady Cumberlege, have mandated the Treasury to fund the numbers of workers at every level who may be identified as necessary to deliver the health and care we need.

I accept that, when the yawning gap becomes clear between the numbers we have and the numbers we need for safe care, there would indeed be pressure on the Treasury to provide the money. However, it has been pointed out many times—including this afternoon, by the noble Baroness, Lady Cumberlege—that the NHS spends £6.2 billion every year on expensive agency staff, whose roles could be provided much more cheaply, and with better continuity for patients, by permanent employed staff. Considerable savings could be made to offset this.

It is significant that the Government are resisting the noble Baroness's amendment. They know very well that the reviews she recommends would shine a light on the fact that the NHS and care systems do not know what they have got or need, and are badly short-staffed. The Government would be pressured to do something about it.

Since the Ockenden report, something else which is rather crazy has emerged. The Government have agreed to comply with all Ockenden's recommendations, including on planning for and providing adequate staff in obstetrics and gynaecology. Hopefully, all maternity units will be safer in future, but it would be ridiculous to have a maternity unit adequately staffed in the same hospital as a cancer or stroke unit that was not. In voting for the amendment from the noble Baroness, Lady Cumberlege, we will attempt to save the Government from making such a dreadful and unnecessary mistake. We will be voting for safe health and care services in the future, in the interests of patients and staff alike.

On Motions C and C1, we support the amendment in the name of the noble Baroness, Lady Thornton, which she will no doubt speak to in a moment. In voting for this amendment, we will again be attempting to save the Secretary of State for Health and Care from getting himself into an awful pickle. There may be far too much temptation for a Secretary of State to use the powers in the Bill as it stands to meddle in matters far better decided by the professionals and local authorities on the ground. A clear process, which is rooted in local accountability, already exists for reviewing proposals for NHS reconfiguration—there is no call for the Secretary of State to be further involved except now and then if an election is in the offing. The Government have emphasised accountability throughout this Bill, but that accountability must be at the right level. Many of the decisions that might be made under the power that we are attempting to

curtail today should be accountable to local people through those operating the local integrated care systems. By interfering, the Secretary of State may well corrode the very accountability that the Government say they want. We will be voting with the noble Baroness, Lady Thornton.

Baroness Merron (Lab): My Lords, I sense a deepening of support in your Lordships' House for the issues contained within this group. I start by thanking the noble Baroness, Lady Cumberlege, for introducing Motion B1. I also put on record my thanks to the 100 organisations which have indicated their support and got involved to make this an even better Motion for us to consider.

Yesterday's Health and Social Care Committee report said:

"Neither earlier diagnosis nor additional prompt cancer treatment will be possible without addressing gaps in the cancer workforce"

through a workforce plan. The lack of staff, both currently and projected, is not restricted to the cancer workforce but extends to the total staff shortage of some 110,000 across the NHS as well as 105,000 vacancies in social care, while some 27,000 NHS workers voluntarily left the health service in just three months last year, the highest number on record.

As we have heard, just last week your Lordships' House debated the Ockenden review, which I believe has provided great focus on the issue of workforce planning. The review shockingly laid bare the reasons why hundreds of babies' lives were avoidably cut short or damaged and mothers died; to their great credit, the Government have accepted every one of the recommendations. The clear finding here is that we must safely staff our maternity wards, yet midwives are leaving the NHS in greater numbers than it is possible to recruit them. If the Ockenden review does not illustrate why we need a workforce plan then I do not know what does.

It is worth reflecting on what Motion B1 is not about, in case that offers some late reassurance to the Minister. Despite needing all of these things, it does not commit the Government to hiring thousands more doctors and nurses, nor does it commit to new funding for the NHS. It does not even commit the Government to finally publishing the workforce strategy that the NHS is crying out for—even though the NHS has not had a comprehensive workforce strategy since the Government's plan was published in 2003.

What Motion B1 talks about is an independent review of how many doctors, nurses and other staff are needed in health, social care and public health, both now and for the future, and that the report, which must be brought before Parliament, must be informed by integrated care boards, employers, trade unions and others—people with expertise and a great contribution to make. This is not just a question of recruitment, important though that is, but one of retention. There is absolutely no way out of planning and preparation; without them, it is just not possible to magic up the necessary staff. Motion B1 is about facing up to the scale of the workforce challenge so that we can see safe and efficient health and care. These Benches will certainly be supporting Motion B1 if the will of the House is tested.

I turn now to Motion C1 in the name of my noble friend Lady Thornton. The inclusion of a clause about changes to reconfiguration shows that not all of the Bill was what the NHS was asking for. The powers in this clause are unnecessary and introduce a very considerable new layer of bureaucracy. Just about every commentator and representative group has said that this approach of an interventionist Secretary of State is quite wrong. As many have pointed out, the power that any proposal can be taken over by the Secretary of State takes us down a road of politicisation and will deter some from even trying to pursue necessary but controversial changes. It matters not that we are told that this power will be used only sparingly; if it is there, that will influence behaviour.

Given where we are in the parliamentary process, outright rejection of this provision would, of course, be problematic. Our alternative in this Motion is to say that, if the power is only rarely to be used—in exceptional circumstances, when intervention is justified—then the way to deal with this is to make that case to Parliament, to put it up for proper scrutiny and to show the evidence. If we are potentially to deprive people of their right to be consulted, then at least let Parliament do a proper job of examining this.

I now turn very briefly to Motions D1 and K. I thank the noble Lord, Lord Blencathra, for presenting Motion D1 today. It seeks to ensure that health service procurement of all goods and services avoids modern slavery; in other words, it takes us further than Motion D. I thank the Minister for the move forward contained within that Motion; however, if the noble Lord, Lord Blencathra, wishes to test the will of the House, we on these Benches will certainly be in support.

I congratulate my noble friend Lord Hunt and other noble Lords for their persistence in ensuring that Motion K is before us today. Again, I thank the Minister for being so responsive on this point. I hope that, in the votes that follow, your Lordships' House will swiftly take the opportunity to ask that we might further improve this Bill.

Lord Kamall (Con): I thank all noble Lords for their contributions and their constructive debate and engagement, not only this evening but throughout the process of the Bill. I thank noble Lords also for their agreement to the measures we have drawn up on organ tourism. I thank the noble Lord, Lord Hunt, for the way he pushed the Government, making sure that we were able to find a constructive way of closing that gap.

6.30 pm

I turn to reconfigurations. The public expect Ministers to be accountable for the health service—which includes reconfigurations of NHS services—and this was made clear in the support for this clause in the other place. The reconfiguration power will ensure that decisions made in the NHS which affect all our constituents are subject to democratic oversight—and are done so with the appropriate flexibility and timeliness. I remind noble Lords that, at a previous stage—at Second Reading or on Report—the accusation was made that the Independent Reconfiguration Panel would be abolished. However, that panel will still be there to guide the decisions of the Secretary of State.

[Lord Kamall]

I am grateful to noble Lords for raising the challenging topic of modern slavery. I do not think anyone disagrees with the outrage that we all express at the events in China—particularly in Xinjiang province—and the treatment of people, and horrific things we have seen, in that area. As I have made clear, the Government have sympathy with these aims, but we maintain that this is not the Bill for these changes. We have the new rules for transforming public procurement, and we want to see those transform and strengthen the ability of all public sector bodies to exclude from bidding for contracts suppliers which have a history of misconduct—including forced labour or, to put it another way, slave labour. In developing the modern slavery strategy review, it will continue to be important to engage across Government and civil society, both nationally and internationally, to collect the necessary evidence to agree an ambitious set of objectives. The measures in the procurement Bill have been consulted upon, and there has been comprehensive agreement with stakeholders to inform the development of the forthcoming modern slavery strategy. We believe that these are the right places to address the issue.

Noble Lords have raised specific concerns about Xinjiang, and I reassure them that, within the range of goods included in the supply chain review that we have announced, we will include goods with the potential for exposure to Xinjiang, such as cotton. We have specifically referenced this in the amendment. In response to the specific question from the noble Lord, Lord Rooker, we recognise that there are emerging technologies which could help in this area. We will continue to discuss their value with NHS Supply Chain, and we will report back to the noble Lord. Indeed, if the noble Lord would like an additional meeting with my officials, I would be very happy to facilitate this so that the noble Lord could push his case. It is right that the Government take action to identify and tackle the crime of modern slavery. We believe that we will do so through this cross-government review, as well as the forthcoming procurement Bill and the range of non-legislative measures which I have announced that the NHS is planning, including the review of its whole supply chain.

I will now spend some time on the transfer of functions, because I have assured noble Lords that I will say things from the Dispatch Box. We understand that this amendment was tabled due to concerns about ensuring that patients' data was properly protected. I hope I have reassured your Lordships that it is our intention to use the regulations which affect the transfer to provide as much statutory protection as possible for the continuation of a data safe haven in NHS England—particularly to retain the confidence of the public in how we make best use of their data, and to improve outcomes.

If we get this right, we could transform not only our system of healthcare across this country but our life sciences industry, and we could provide better outcomes for patients. This has huge potential, but there is no point in the Government going ahead and saying, "We have done all this wonderful stuff", and then people decide to opt out. This is why we must get patients to have confidence in the system. I thank noble Lords across the House—including the noble Lords, Lord Hunt and Lord Clement-Jones, and the noble Baroness, Lady Brinton, and previously the noble Lord, Lord Warner—for raising this issue in a constructive manner. I understand that they want the same thing. They are not trying to destroy our ambitions in any way; they want to see a modernised NHS, and I thank them for this.

There are some issues which I promised I would address from the Dispatch Box. First, we will certainly want to maintain the current level of transparency, but our intention is to go further to ensure greater transparency on how data is collected and disseminated, and to whom. This will be established as part of our approach to secure data environments. Noble Lords may not be aware that NHS Digital publishes a comprehensive data uses register which is updated every month, and to which the noble Lord, Lord Hunt, referred. This covers all its data-sharing agreements, setting out with whom data is shared and for what purpose. I am happy to see how we can build on that. I confirm that the consultation with the National Data Guardian has already begun. I met the National Data Guardian yesterday, following the very helpful meeting with noble Lords, to discuss these proposals. The National Data Guardian supports maintaining the data safe haven, and I will of course continue to involve and consult her, formally and informally, on these regulations.

Secondly, the Bill provides power when making regulations under Part 3 to make consequential provision modifying the function of bodies, including conferring and abolishing functions. We would ensure that these powers are used so that the functions of NHS England work as functions of NHS England, and that we avoid a situation where NHS England is tasked with directing itself. The Secretary of State will remain able to direct NHS England.

Finally, I turn to some of the issues around workforce. We recognise the work that my noble friend Lady Cumberlege has done to alter her amendment. However, we remain unconvinced that a statutory approached is required. The Department of Health and Social Care has recently commissioned NHS England to develop the workforce strategy and will set out the key conclusions. Workforce planning is also a responsibility of a number of organisations at a number of different levels—local, regional and national. In some ways, we want to look at that sort of bottom-up approach to planning, not only to meet local needs but to ensure that it contributes to the overall national picture.

We have set out clearly the substantial programme of work that the Government have to both support and grow the workforce, and it is closely monitored by the department and other bodies. In addition to the 15 years in the review, we will look at the changing trends of health and therefore the workforce we need. As we move to more modern and digitised forms of decision-making—perhaps by making better use of AI—we must ensure that we have the appropriate functions in place. We hope that, together, they will be sufficient. I understand that there may well be some concerns.

In addition, noble Lords have mentioned the current backlog, of which approximately 80% are awaiting diagnostics. We know that there are a lot of people waiting for diagnostics, and this is why we have rolled out a number of community diagnostic centres. We continue to roll these out—not only in hospitals but in sports stadiums, shopping centres and other places where they are more accessible to the public. In addition, when you look at those who are not wating for diagnostics but for surgery, the majority—between 75% and 80%—are waiting for surgery which does not require an overnight stay. We understand what the problem is, and we are looking at the workforce to ensure that we can tackle the backlog. This is driven by the needs of patients.

Given all this, I humbly ask my noble friend Lady Cumberlege to consider not moving her Motion and ask that the House accepts the Motions in my name.

Baroness Cumberlege (Con): My Lords, I thank my noble friend Lord Kamall for that masterful summing up. It has been such a wide-ranging debate, so full of interest, and I thank all those who have supported the amendment, which is rather narrow compared to the enormous expanse of interest that we have had—and it has not only been about the UK. People have gone abroad and talked about China and all the things that are happening over there.

I particularly thank the noble Baroness, Lady Brinton, who has been such a stalwart friend of mine and a great supporter of workforce planning. The noble Lord, Lord Stevens, has, of course, had more experience of this than most of us, running the great NHS England and NHS Improvement. I very much want to thank the noble Baroness, Lady Harding, who has been a really strong supporter. I remember that in an earlier debate she said that no great organisation would run without knowing their workforce. Here we are with the NHS, this tremendous organisation that we have in this country, and we really do not know where it is going or how many staff are employed. We must look forward to see how it is going. As the noble Baroness, Lady Harding, said, it is a wicked problem that we have to solve.

I thank the noble Lord, Lord Blencathra, so much. The noble Lord said that he supported this amendment, and then we had this very interesting segue to China and other countries, about the way in which certain products are sourced from around the world and how we have to be very careful that they are not subject to slavery. Certainly, that was true of the remarks of the noble Lords, Lord Hunt, Lord Alton and Lord Rooker, and I thank them all very much for that very interesting part of the debate.

I also thank the noble Baroness, Lady Finlay, who really works in the NHS. She knows what it is like, and she can understand what it is like not to have enough staff to do what you want to do, and her figures were so worrying and interesting. She described it as a dereliction of our duty if we do not grab this issue and come to some resolution on it.

I thank the noble Baroness, Lady Tyler, so much, too, for her support, as well as the noble Baronesses, Lady Watkins of Tavistock, Lady Bennett of Manor Castle and Lady Walmsley, who again has always supported the workforce plan. Finally, I thank the noble Baroness, Lady Merron, very much for what she was saying, and for the support that she has given us. We have to face this challenge and come to some resolution.

I say to my noble friend Lord Kamall that I really am very grateful for the work that he has tried to do on this, and the meetings that I have had with him and the Bill team. He has explained the other issues that he and the Bill team want to explore. However, rhetoric is very compelling. We have the most wonderful wordsmiths in the Department of Health, and in the Civil Service generally. They can win our hearts with the words that they use—the rhetoric—but that is not good enough. We want the numbers; we want to know exactly where people are working, what their skills are and what the future is, to take this forward.

I thank my noble friend, whose patience is amazing and inexhaustible. We have been round this issue so often, but I am afraid that I was not convinced by what I heard today. I am not convinced by strategies or reports, unless they really have the figures, and I have no confidence that the reports that he mentioned, and the strategy, will have that. So with great regret, I would like to test the opinion of the House.

6.42 pm

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Motion B1 agreed.

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Brady, B.
Brownlow of Shurlock Row, L.
Buscombe, B.
Caine, L.
Caithness, E.
Callanan, L.
Carrington of Fulham, L.
Chisholm of Owlpen, B.
Choudrey, L.
Cormack, L.
Courtown, E.
Crathorne, L.
Cruddas, L.
Davies of Gower, L.
De Mauley, L.
Deben, L.
Deighton, L.
Dobbs, L.
Duncan of Springbank, L.
Dundee, E.
Dunlop, L.
Eaton, B.
Eccles of Moulton, B.
Empey, L.
Erroll, E.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fall, B.
Farmer, L.
Faulks, L.
Fleet, B.
Flight, L.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Oxton, B.
Framlingham, L.
Frost, L.
Gadhia, L.
Garnier, L.
Glendonbrook, L.
Godson, L.
Gold, L.
Goldie, B.
Goodlad, L.
Greenhalgh, L.
Hamilton of Epsom, L.
Hannan of Kingsclere, L.
Harlech, L.
Harrington of Watford, L.
Haselhurst, L.
Hayward, L.
Helic, B.
Henley, L.
Herbert of South Downs, L.
Hill of Oareford, L.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Johnson of Marylebone, L.
Jopling, L.
Kamall, L.
Kirkham, L.
Lamont of Lerwick, L.
Lancaster of Kimbolton, L.
Lansley, L.
Leicester, E.
Leigh of Hurley, L.
Lexden, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Mancroft, L.
Manzoor, B.
McInnes of Kilwinning, L.
McLoughlin, L.
Meyer, B.
Morgan of Cotes, B.
Moynihan, L.
Naseby, L.
Neville-Rolfe, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
Offord of Garvel, L.
Parkinson of Whitley Bay, L.
Patten, L.
Penn, B.
Pickles, L.
Pidding, B.
Popat, L.
Porter of Spalding, L.
Price, L.
Randall of Uxbridge, L.
Ranger, L.
Robathan, L.
Sanderson of Welton, B.
Sandhurst, L.
Sassoon, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Shackleton of Belgravia, B.
Sherbourne of Didsbury, L.
Smith of Hindhead, L.
Spencer of Alresford, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Suri, L.
Taylor of Holbeach, L.
Tugendhat, L.
Tyrie, L.
Udny-Lister, L.
Vere of Norbiton, B.
Verma, B.
Wakeham, L.
Wasserman, L.
Wei, L.
Wharton of Yarm, L.
Whitby, L.
Willetts, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Young of Cookham, L.
Younger of Leckie, V.

6.55 pm

Motion C

Moved by ***Baroness Penn***

That this House do not insist on its Amendments 30 and 108, to which the Commons have disagreed for their Reasons 30A and 108A.

30A: Because it is appropriate for the Secretary of State to have greater powers to scrutinise and intervene in NHS reconfigurations given the Secretary of State's accountability to Parliament in relation to these matters.

108A: Because it is appropriate for the Secretary of State to have greater powers to scrutinise and intervene in NHS reconfigurations given the Secretary of State's accountability to Parliament in relation to these matters.

Motion C1 (as an amendment to Motion C)

Moved by ***Baroness Thornton***

At end insert ", and do propose Amendments 30B and 108B as amendments to the words so restored to the Bill—

30B: Clause 40, page 48, line 42, at end insert—

"(1A) In section 272(6) of that Act (regulations), omit the "or" at the end of paragraph (b) and after paragraph (c) insert "or

"(d) regulations under paragraph 6A of Schedule 10A,"."

108B: Schedule 6, page 198, line 34, at end insert—

"6A (1) A direction under this Schedule may only be given if made in regulations.

(2) No direction may be given under this Schedule unless the Secretary of State has reasonable grounds to believe that the proposal for reconfiguration would be in the best interests of patients.""

6.56 pm

Division on Motion C1

Contents 169; Not-Contents 161.

Motion C1 agreed.

Division No. 2

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Adams of Craigielea, B.
Addington, L.
Adebowale, L.
Allan of Hallam, L.
Alton of Liverpool, L.
Anderson of Swansea, L.
Armstrong of Hill Top, B.
Bach, L.
Bakewell of Hardington Mandeville, B.
Barker, B.
Bassam of Brighton, L.
Benjamin, B.
Bennett of Manor Castle, B.
Bichard, L.
Blackstone, B.
Blake of Leeds, B.
Blower, B.
Blunkett, L.
Boateng, L.
Bonham-Carter of Yarnbury, B.
Bradley, L.
Brinton, B.
Brooke of Alverthorpe, L.
Browne of Ladyton, L.
Bruce of Bennachie, L.
Bull, B.
Campbell of Pittenweem, L.
Campbell of Surbiton, B.
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Cashman, L.
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Clancarty, E.
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Clement-Jones, L.
Coaker, L.
Collins of Highbury, L.
Corston, B.
Crisp, L.
Davidson of Glen Clova, L.
Davies of Brixton, L.
Dholakia, L.
Donaghy, B.
Drake, B.
Dubs, L.
Featherstone, B.
Finlay of Llandaff, B.
Foulkes of Cumnock, L.
Fox, L.
German, L.
Glasman, L.
Goddard of Stockport, L.
Golding, B.
Grantchester, L.
Greenway, L.
Grender, B.
Grocott, L.
Hacking, L.
Hain, L.
Hamwee, B.
Harding of Winscombe, B.
Harris of Haringey, L.
Harris of Richmond, B.
Hayman of Ullock, B.
Hayman, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Hendy, L.
Henig, B.
Hollins, B.
Hope of Craighead, L.
Howarth of Newport, L.
Humphreys, B.
Hunt of Kings Heath, L.
Hussein-Ece, B.
Jay of Paddington, B.
Jolly, B.
Jones of Cheltenham, L.
Jones of Moulsecoomb, B.
Jordan, L.
Kennedy of Southwark, L.
Kerslake, L.
Khan of Burnley, L.
Kingsmill, B.
Kramer, B.
Lansley, L.
Lawrence of Clarendon, B.
Layard, L.
Lea of Crondall, L.
Liddle, L.
Lipsey, L.
Lister of Burtersett, B.
Londesborough, L.
Low of Dalston, L.
Ludford, B.
Lytton, E.
Marks of Henley-on-Thames, L.
Masham of Ilton, B.
Maxton, L.
McAvoy, L.
McConnell of Glenscorrodale, L.
McIntosh of Hudnall, B.
McNally, L.
McNicol of West Kilbride, L.
Merron, B.
Miller of Chilthorne Domer, B.
Monks, L.
Morgan of Drefelin, B.
Morgan of Huyton, B.
Murphy of Torfaen, L.
Newby, L.
Nye, B.
Oates, L.
Osamor, B.
Paddick, L.
Parekh, L.
Parminter, B.
Pendry, L.
Pinnock, B.
Ponsonby of Shulbrede, L.
Primarolo, B.
Purvis of Tweed, L.
Ramsay of Cartvale, B.
Razzall, L.
Redesdale, L.
Reid of Cardowan, L.
Rennard, L.
Ritchie of Downpatrick, B.
Roberts of Llandudno, L.
Rooker, L.
Rosser, L.
Scriven, L.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
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Stevens of Birmingham, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornton, B.
Tope, L.
Triesman, L.
Tunnicliffe, L.
Tyler of Enfield, B.
Uddin, B.
Walmsley, B.
Warwick of Undercliffe, B.
Watkins of Tavistock, B.
Watson of Invergowrie, L.
Watts, L.
Waverley, V.
Wheatcroft, B.
Wheeler, B.
Whitaker, B.
Whitty, L.
Wigley, L.
Wilcox of Newport, B.
Wood of Anfield, L.
Young of Norwood Green, L.
Young of Old Scone, B.

NOT CONTENTS

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Altmann, B.
Altrincham, L.
Anelay of St Johns, B.
Ashton of Hyde, L.
Astor of Hever, L.
Attlee, E.
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Black of Brentwood, L.
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Blackwood of North Oxford, B.
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Borwick, L.
Bottomley of Nettlestone, B.
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Brownlow of Shurlock Row, L.
Buscombe, B.
Caine, L.
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De Mauley, L.
Deben, L.
Deighton, L.
Dobbs, L.
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Dundee, E.
Dunlop, L.
Eaton, B.
Eccles of Moulton, B.
Eccles, V.
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Evans of Bowes Park, B.
Fairfax of Cameron, L.
Falkner of Margravine, B.
Fall, B.
Farmer, L.
Faulks, L.
Flight, L.
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Foster of Oxton, B.
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Frost, L.
Gadhia, L.
Garnier, L.
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Godson, L.
Gold, L.
Goldie, B.
Goodlad, L.
Greenhalgh, L.
Hamilton of Epsom, L.
Hannan of Kingsclere, L.
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Hayward, L.
Helic, B.
Henley, L.
Herbert of South Downs, L.
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Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Hogan-Howe, L.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
James of Blackheath, L.
Jenkin of Kennington, B.
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Kamall, L.
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Lamont of Lerwick, L.
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Lexden, L.
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McInnes of Kilwinning, L.
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Meyer, B.
Morgan of Cotes, B.
Moynihan, L.
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Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
Offord of Garvel, L.
Parkinson of Whitley Bay, L.
Patten, L.
Penn, B.
Pickles, L.
Pidding, B.
Popat, L.
Porter of Spalding, L.
Price, L.
Randall of Uxbridge, L.
Ranger, L.
Ribeiro, L.
Robathan, L.
Sanderson of Welton, B.
Sandhurst, L.
Sassoon, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Shackleton of Belgravia, B.
Sherbourne of Didsbury, L.
Shinkwin, L.
Smith of Hindhead, L.
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St John of Bletso, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Sugg, B.
Suri, L.
Taylor of Holbeach, L.
Taylor of Warwick, L.
Thurlow, L.
Tugendhat, L.
Tyrie, L.
Udny-Lister, L.
Vere of Norbiton, B.
Verma, B.
Wakeham, L.
Wasserman, L.
Wei, L.
Wharton of Yarm, L.
Whitby, L.
Willetts, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Young of Cookham, L.
Younger of Leckie, V.

7.08 pm

Motion D

Moved by ***Lord Kamall***

That this House do not insist on its Amendment 48 and do agree with the Commons in their Amendment 48A in lieu.

48A: Page 49, line 3, at end insert the following new Clause—

"Review into NHS supply chains

(1) The Secretary of State must carry out a review into the risk of slavery and human trafficking taking place in relation to people involved in NHS supply chains.

(2) The Secretary of State may determine which NHS supply chains to consider as part of the review or otherwise limit the scope of the review.

(3) But the review must at least consider a significant proportion of NHS supply chains for cotton-based products in relation to which companies formed under section 223 of the National Health Service Act 2006 (taken as a whole) exercise functions.

(4) The Secretary of State must publish and lay before Parliament a report on the outcome of the review before the end of the period of 18 months beginning with the day on which this section comes into force.

(5) The report must describe—

(a) the scope of the review, and

(b) the methodology used in carrying out the review.

(6) The report must include any views of the Secretary of State as to steps that should be taken to mitigate the risk mentioned in subsection (1).

(7) NHS England must assist in the carrying out of the review or the preparation of the report under this section, if requested to do so by the Secretary of State.

(8) In this section—

"health service in England" means the health service continued under section 1(1) of the National Health Service Act 2006;

"NHS supply chain" means the supply chain for providing goods or services for the purposes of the health service in England;

"slavery and human trafficking" has the meaning given by section 54(12) of the Modern Slavery Act 2015."

Motion D1 (as an amendment to Motion D)

Moved by ***Lord Blencathra***

At end insert "and do propose Amendment 48B in lieu—

48B: After Clause 40, insert the following new Clause—

"Health service procurement and supply chains: modern slavery

The Secretary of State must by regulations make provision for the purposes of ensuring that procurement of all goods and services for the purposes of the health service in England avoids modern slavery.""

7.09 pm

Division on Motion D1

Contents 177; Not-Contents 135.

Motion D1 agreed.

Division No. 3

CONTENTS

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Addington, L.
Adebowale, L.
Allan of Hallam, L.
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Alton of Liverpool, L.
Anderson of Swansea, L.
Armstrong of Hill Top, B.
Bach, L.
Bakewell of Hardington Mandeville, B.
Balfe, L.
Barker, B.
Bassam of Brighton, L.
Benjamin, B.
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Bichard, L.
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Bonham-Carter of Yarnbury, B.
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Brooke of Alverthorpe, L.
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Bruce of Bennachie, L.
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Campbell of Pittenweem, L.
Campbell of Surbiton, B.
Campbell-Savours, L.
Chakrabarti, B.
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Clancarty, E.
Clark of Windermere, L.
Clement-Jones, L.
Collins of Highbury, L.
Cormack, L.
Corston, B.
Crisp, L.
Davidson of Glen Clova, L.
Davies of Brixton, L.
Dholakia, L.
Dodds of Duncairn, L.
Donaghy, B.
Drake, B.
Dubs, L.
Featherstone, B.
Finlay of Llandaff, B.
Foulkes of Cumnock, L.
Fox, L.
Framlingham, L.
German, L.
Glasman, L.
Goddard of Stockport, L.
Golding, B.
Grantchester, L.
Greenway, L.

Grender, B.
Grey-Thompson, B.
Grocott, L.
Hacking, L.
Hain, L.
Hamwee, B.
Harris of Haringey, L.
Harris of Richmond, B.
Hayman of Ullock, B.
Hayman, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Henig, B.
Hodgson of Abinger, B.
Hogan-Howe, L.
Hollins, B.
Howarth of Newport, L.
Humphreys, B.
Hunt of Kings Heath, L.
Hussein-Ece, B.
Jay of Paddington, B.
Jolly, B.
Jones of Cheltenham, L.
Jones of Moulsecoomb, B.
Jordan, L.
Kennedy of Southwark, L.
Kerslake, L.
Khan of Burnley, L.
Kilclooney, L.
Kingsmill, B.
Kramer, B.
Lawrence of Clarendon, B.
Layard, L.
Liddle, L.
Lister of Burtersett, B.
Londesborough, L.
Low of Dalston, L.
Ludford, B.
Lytton, E.
Mann, L.
Marks of Henley-on-Thames, L.
Masham of Ilton, B.
Maxton, L.
McAvoy, L.
McConnell of Glenscorrodale, L.
McIntosh of Hudnall, B.
McNally, L.
McNicol of West Kilbride, L.
Merron, B.
Miller of Chilthorne Domer, B.
Morgan of Drefelin, B.
Morgan of Huyton, B.
Morris of Aberavon, L.
Morrow, L.
Murphy of Torfaen, L.
Newby, L.
Nye, B.
Oates, L.
Osamor, B.
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Palmer of Childs Hill, L.
Parekh, L.
Parminter, B.
Pendry, L.
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Primarolo, B.
Purvis of Tweed, L.
Ramsay of Cartvale, B.
Razzall, L.
Redesdale, L.
Reid of Cardowan, L.
Rennard, L.
Ribeiro, L.
Ritchie of Downpatrick, B.
Roberts of Llandudno, L.
Rooker, L.
Rosser, L.
Scriven, L.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shinkwin, L.
Shipley, L.
Smith of Basildon, B.
Snape, L.
St John of Bletso, L.
Stansgate, V.
Stevens of Birmingham, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Taylor of Warwick, L.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornton, B.
Tope, L.
Touhig, L.
Triesman, L.
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Tyler of Enfield, B.
Walmsley, B.
Warwick of Undercliffe, B.
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Watts, L.
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Wheatcroft, B.
Wheeler, B.
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Wilcox of Newport, B.
Wood of Anfield, L.
Young of Old Scone, B.

NOT CONTENTS

Agnew of Oulton, L.
Altrincham, L.
Anelay of St Johns, B.
Ashton of Hyde, L.
Astor of Hever, L.
Attlee, E.
Barran, B.
Bellingham, L.
Benyon, L.
Blackwell, L.
Blackwood of North Oxford, B.
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Brady, B.
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Carrington of Fulham, L.
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Dobbs, L.
Duncan of Springbank, L.
Dundee, E.
Dunlop, L.
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Eccles, V.
Empey, L.
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Fairfax of Cameron, L.
Fall, B.
Farmer, L.
Faulks, L.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Oxton, B.
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Glendonbrook, L.
Godson, L.
Gold, L.
Goldie, B.
Goodlad, L.
Greenhalgh, L.
Hamilton of Epsom, L.
Hannan of Kingsclere, L.
Harding of Winscombe, B.
Harlech, L.
Haselhurst, L.
Hayward, L.
Helic, B.
Henley, L.
Herbert of South Downs, L.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Johnson of Marylebone, L.
Jopling, L.
Kamall, L.
Kirkham, L.
Lamont of Lerwick, L.
Lancaster of Kimbolton, L.
Lansley, L.
Leicester, E.
Leigh of Hurley, L.
Lexden, L.
Lilley, L.
Lindsay, E.
Mancroft, L.
Manzoor, B.
McInnes of Kilwinning, L.
McLoughlin, L.
Meyer, B.
Morgan of Cotes, B.
Moynihan, L.
Naseby, L.
Neville-Rolfe, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
Offord of Garvel, L.
Parkinson of Whitley Bay, L.
Patten, L.
Penn, B.
Pidding, B.
Popat, L.
Porter of Spalding, L.
Price, L.
Randall of Uxbridge, L.
Robathan, L.
Sanderson of Welton, B.
Sandhurst, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Shackleton of Belgravia, B.
Sherbourne of Didsbury, L.
Smith of Hindhead, L.
Spencer of Alresford, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
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Verma, B.
Wakeham, L.
Wei, L.
Wharton of Yarm, L.
Whitby, L.
Willetts, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Young of Cookham, L.
Younger of Leckie, V.

7.22 pm

Motion E

Moved by ***Lord Kamall***

That this House do not insist on its Amendment 51 and do agree with the Commons in their Amendment 51A in lieu.

51A: Page 70, line 20, leave out "omit section 74 and" and insert—

"(a) for section 74 substitute—

"74 Discharge of hospital patients with care and support needs

(1) Where a relevant trust is responsible for an adult hospital patient and considers that the patient is likely to require care and support following discharge from hospital, the relevant trust must, as soon as is feasible after it begins making any plans relating to the discharge, take any steps that it considers appropriate to involve—

(a) the patient, and

(b) any carer of the patient.

(2) In performing the duty under subsection (1), a relevant trust must have regard to any guidance issued by NHS England.

(3) For the purposes of this section, a relevant trust is responsible for a hospital patient if the relevant trust manages the hospital.

(4) In this section—

"adult" means a person aged 18 or over;

"carer" means an individual who provides or intends to provide care for an adult, otherwise than by virtue of a contract or as voluntary work;

"relevant trust" means—

(a) an NHS trust established under section 25 of the National Health Service Act 2006, or

(b) an NHS foundation trust.";

(b) omit".

Motion E agreed.

Motion F

Moved by ***Lord Kamall***

That this House do not insist on its Amendment 57, to which the Commons have disagreed for their Reason 57A.

57A: Because the Amendment would limit the power to transfer functions under the Bill.

Motion F1 (as an amendment to Motion F) not moved.

Motion F agreed.

Motion G

Moved by ***Lord Kamall***

That this House do not insist on its Amendment 80 and do agree with the Commons in their Amendments 80A to 80N in lieu.

80A: Page 116, line 41, leave out from beginning to end of line 9 on page 117 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."

80B: Page 117, leave out lines 13 and 14 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"

80C: Page 117, line 25, after "Where" insert ", following a determination under section 13(1),"

80D: Page 117, leave out lines 30 to 32 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)."

80E: Page 117, leave out lines 37 to 42 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)."

80F: Page 117, leave out lines 45 to 48 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"

80G: Page 118, line 3, after "adult" insert "has needs which a local authority is required or decides to meet as mentioned in section 24(1) and"

80H: Page 118, leave out lines 5 and 6 and insert—

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

80I: Page 118, leave out lines 9 to 13

80J: Page 118, line 17, leave out from beginning to "(but" in line 18 and insert "what the current cost would be to the responsible local authority of meeting the adult's eligible needs"

80K: Page 118, line 21, 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)"

80L: Page 118, line 22, leave out paragraph (b)

80M: Page 118, line 32, 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"."

80N: Clause 153, page 129, line 14, at end insert—

"(5A) In relation to section (cap on care costs for charging purposes), different days may be appointed under subsection (4) for different areas."

Motion G1 (as an amendment to Motion G)

Moved by ***Baroness Wheeler***

Leave out from "House" to end and insert "do insist on its Amendment 80, do disagree with the Commons in their Amendments 80A to 80N in lieu, and do propose Amendments 80P and 80Q instead of the words so left out of the Bill—

80P: After Clause 139, insert the following new Clause—

"Cap on care costs for charging purposes

(1) The Secretary of State may by regulations amend the Care Act 2014 as regards how "costs accrued in meeting eligible needs" for the purposes of section 15 of that Act are to be determined.

(2) The regulations must ensure that any costs incurred by any local authority to meet eligible needs are included within that determination.

(3) The regulations are to have effect in accordance with a timetable specified in the regulations.

(4) The regulations may not be made unless—

(a) the results of the Trailblazer pilot schemes have been evaluated, and the Secretary of State has laid that evaluation before Parliament, and

(b) the Secretary of State has completed a further general impact assessment covering distributional regional analysis, regional eligibility, and the effect of the care cap on disabled adults under 40.

(5) The regulations must ensure that no charges may be imposed under section 14 for any adult under the age of 40 with a disability."

80Q: Clause 150, page 128, line 20, at end insert—

"(ca) regulations under section (Cap on care costs for charging purposes);""

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

The Deputy Speaker (Baroness Pitkeathley) (Lab): I should inform the House that if Motion G1 is agreed to, I will be unable to call Motion G2 by reason of pre-emption.

7.23 pm

Division on Motion G1

Contents 160; Not-Contents 151.

Motion G1 agreed.

Division No. 4

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7.36 pm

Motion G2 (as an amendment to Motion G) not moved.

Motion H

Moved by ***Earl Howe***

That this House do not insist on its Amendment 81, to which the Commons have disagreed for their Reason 81A.

81A: Because it could affect financial arrangements to be made by the Commons, and the Commons do not offer any further reason, trusting that this Reason may be deemed sufficient.

Earl Howe (Con): My Lords, on behalf of my noble friend Lord Kamall, who has already spoken to Motion H, I beg to move.

Motion H agreed.

Motion J

Moved by ***Lord Kamall***

That this House do not insist on its Amendments 85 to 88, to which the Commons have disagreed for their Reasons 85A to 88A.

85A: Because it is unnecessary to impose a legal duty to carry out a consultation in relation to the subject-matter of this Amendment.

86A: Because it could affect financial arrangements to be made by the Commons, and the Commons do not offer any further reason, trusting that this Reason may be deemed sufficient.

87A: Because it is consequential on Lords Amendment 86, and the Commons do not offer any further Reason, trusting that this Reason may be deemed sufficient.

88A: Because it is consequential on Lords Amendment 86, and the Commons do not offer any further Reason, trusting that this Reason may be deemed sufficient.

Lord Kamall (Con): My Lords, I beg to move Motion J and, with the leave of the House, I will speak to Motions M, N and P. This group of amendments relates to questions of patient safety, patient engagement, public health and building a learning culture in the NHS.

Last week in the other place we tabled amendments to ensure the full operability of Lords Amendment 91, in the name of the noble Baroness, Lady Hollins, on mandatory training on learning disabilities and autism. We have discussed and agreed these changes with the noble Baroness, and together these amendments will require all health and social care providers who carry out regulated activities to ensure their staff receive specific training on learning disabilities and autism.

At Report stage of this Bill the Government committed to accept in principle the amendment by the noble Lord, Lord Sharkey, on reciprocal healthcare and to change the process for regulations that give effect to international healthcare agreements so that they are subject to the affirmative resolution procedure. To ensure this Bill achieves the intended effect, the Government tabled Amendment 95A in lieu, which achieves the same objective but amends the international healthcare agreements clause, rather than the regulations clause. This will ensure that all regulations made under the soon to be named healthcare (international arrangements) Act 2019 are subject to the affirmative procedure, including any regulations made by the devolved Governments. I urge noble Lords to accept all these amendments.

I now turn to the issue of abortion at home pills. This group contains Lords Amendment 92 and related amendments. Both this House and the other place voted to make provision to permanently allow both pills for early medical abortions to be taken at home. These were, rightly, free votes of both Houses, but the Government brought forward this amendment in lieu to ensure that the legislation operates in the way that this House intended it to. I therefore ask noble Lords who agree with the intention of my noble friend Lady Sugg to instead support the Commons amendment in lieu.

I am also grateful to my noble friend Lady Eaton for bringing the important topic of safeguarding before the House. I reassure her that the well-being and safety of women and girls accessing abortion services has been, and will continue to be, our first and foremost priority. Safeguarding is an essential aspect of abortion care, and it has been long-established that a doctor or health professional is legally able to provide contraception, sexual and reproductive health advice, and treatment, including abortion, without parental knowledge or consent to a person aged under 16 years, provided that the doctor or healthcare professional is satisfied that certain conditions, including ability to consent, are met.

As a matter of best practice, every effort should be made to encourage those under age 16 to involve their parents, and if they cannot be persuaded to do so, they should be assisted to find another adult, such as another family member or specialist youth worker, to provide support. All abortion providers are already required to have effective arrangements in place to safeguard vulnerable children and to assure themselves, regulators and their commissioners that those are working. Having effective safeguarding arrangements in place will be essential for clinicians to make a robust assessment of whether a home abortion is suitable for anyone under age 16 and those under age 18.

I noted the statement from the Royal College of Paediatrics and Child Health, which stated that all young women aged under 18 and care leavers aged under 25

should be actively encouraged to attend an abortion service in person. With that in mind, we will work with the royal colleges, including the Royal College of Paediatrics and Child Health, and NHS safeguarding leads, to ensure that children and young people are actively encouraged to take up a face-to-face appointment and that anyone at risk of harm is identified and supported appropriately, including through referrals to other agencies.

The Government will continue to work closely with relevant professional bodies to ensure that the principles and duties of safeguarding children, young people and adults at risk are consistently and rigorously applied and that we continue to monitor all impacts of home use of both abortion pills. I hope that my noble friend will be reassured to hear that we will work with NHS England, the Care Quality Commission and abortion providers to ensure that they can safely offer telemedicine abortion services on a permanent basis and that all women are genuinely offered the choice of a face-to-face appointment.

On other issues, the Government cannot accept Amendment 88B, which has been put forward by the noble Lord, Lord Crisp, as an amendment in lieu of Lords Amendments 85 to 88, which were rejected by the other place. It would bind the Government in statute to consult, to a particular timeframe, on all recommendations within the Khan independent review which in the opinion of the Secretary of State require a consultation to implement. The review itself is not yet complete and is not scheduled for publication until May, when we will of course consider our next steps.

As the review is currently in the process of being drafted, the Government should not pre-empt what it will include. Importantly, the Government should not be put under a duty to consult on a range of proposals that they have not yet seen and may not support. Some proposals may require further development and agreement across government and across the UK before a consultation. We risk wasting government resource and time to consult, and stakeholders' time to respond, by consulting on proposals that we may not intend to pursue.

The Government are firmly committed to Smokefree 2030 and we look forward to the outcome of the independent review. The review will inform both the health disparities White Paper and the Government's new tobacco control plan, which will be published later this year. If any changes to tobacco legislation are proposed by the Government in that plan, I can commit that they will be consulted on. The need for additional spending to deliver our Smokefree 2030 ambition—and possible funding mechanisms—will be considered as part of the tobacco control plan and agreed with Her Majesty's Treasury in the usual way.

I beg to move the Motion standing in my name and commend many of these amendments to the House.

Motion J1 (as an amendment to Motion J)

Moved by ***Lord Crisp***

At end insert ", and do propose Amendment 88B in lieu—

88B: Insert the following new Clause—

"**Smokefree 2030 consultations**

(1) The Secretary of State must, no later than the relevant date, consult on—

(a) any recommendations of the independent review into tobacco control announced by the Secretary of State on 4 February 2022 which in the opinion of the Secretary of State require consultation before implementation, and

(b) any other options for tobacco control considered appropriate by the Secretary of State.

(2) The Secretary of State and the Treasury must, no later than the relevant date, consult on one or more statutory schemes to regulate the price of tobacco products which fund delivery of—(a) the Government's Smokefree 2030 ambition, (b) a reduction of inequalities related to health, and (c) improvements in public health.

(3) In subsections (1) and (2) the relevant date is the earlier of—

(a) the last day of the period of 6 months beginning with the day on which this Act is passed;

(b) the last day of the period of 3 months beginning with the day on which the report of the independent review referred to in subsection (1) is published; (c) 31 December 2022.

(4) The Secretary of State must lay reports before Parliament on the consultations carried out under subsections (1) and (2) and a Minister of the Crown must, within 12 weeks of completion of the consultation, arrange to make a statement to each House of Parliament setting out in detail any steps which will be taken to implement the findings of the reports, and the proposed timescales for doing so.""

Lord Crisp (CB): My Lords, this amendment replaces the "polluter pays" tobacco levy Amendment 85 and consequential Amendments 86 to 88, which were passed by this House on Report by 213 votes to 154.

I very much thank the Minister for the time that he and other noble Lords and colleagues in the Bill team and Treasury have taken to explore with us opportunities for reaching an agreement. We are disappointed that we have not yet been able to achieve a compromise. I also thank other Lords very much for their support for this Motion, which has come from all sides of the House.

The reasons for moving this amendment are very obvious. They are about the impact of smoking on health and about inequalities and levelling up. First, Members of your Lordships' House understand very well that smoking is the leading avoidable risk factor in health and is responsible for years of ill health—chronic illnesses, years of misery, early death and, for the country, loss of talent and productivity to the nation as a whole. What noble Lords may not appreciate—I did only relatively recently—is that it is also a leading factor, perhaps the leading factor, in the differences in health outcomes between different sectors of the population. Some 50% of the difference in health outcomes between those in the highest socioeconomic group and those in the lowest socioeconomic group is due to smoking.

7.45 pm

I am a great enthusiast for talking about the social determinants of health and addressing all the factors such as housing, which I have talked about in your Lordships' House before. However, at the bottom of it, we also need to understand that there are some very straightforward health issues, and smoking is the biggest single issue that makes a difference around inequalities. The other point I will make in these opening remarks is that the smoking rate is coming down generally but it is not coming down as fast in that lowest socioeconomic group as it is in other groups within the country, and there needs to be intervention.

[Lord Crisp]

I do not think that on any of this there is any difference between my view and the Government's view or indeed in our purpose. However, levelling up—addressing these inequalities—requires precise, practical, timely and funded action. As the Minister for Levelling Up, Neil O'Brien, has said, it is time to put the foot to the floor, and that is the point of this amendment.

There is also a curious addendum here that I will just make. Tobacco companies have seen the writing on the wall and want to move out of smoking tobacco, but I understand that they have not found anything yet remotely as profitable as tobacco and smoking tobacco. While this is so profitable—indeed, it is very profitable—they will keep finding new ways of promoting their product. In other words, the tobacco companies too are addicted to cigarettes, and this proposal of a levy will of course incentivise them to change.

On the discussions that we have had with the noble Lord and others, I will first address the Khan review. I and other noble Lords very much support the review and look forward to seeing its outcomes in due course. We in no way wanted to prejudice the outcome of this but we believed that it is important to address our concerns with this revised amendment in parallel with that review. I have therefore put two points in this amendment. The first requires the Secretary of State to consult on any of the recommendations of the independent review or other options for tobacco control

"which in the opinion of the Secretary of State require consultation before implementation".

The way we have phrased that deals with the point that the Minister has already raised about the possibility that the review itself will produce recommendations which the Government do not want to implement or consult on.

The second consultation requires the Secretary of State and the Chancellor to consult on funding mechanisms. This takes into account the concerns raised, both in Committee and elsewhere, that financial matters are for Her Majesty's Treasury by ensuring that the consultation is the responsibility of both the health and finance ministries. I have also removed the detail of implementation from those earlier amendments so that this amendment is therefore very much about the need for consultation in a timely fashion.

In particular, one of the comments that was brought to our attention by the Treasury is that this amendment was in danger of putting the cart before the horse to investigate how much could be raised by a proposed "polluter pays" funding mechanism before the Treasury knew how much was required to deliver the Smokefree 2030 ambition. My point here is that we can do these things in parallel. These are consultations; they do not tie the hand of the Government but rather enable considerations of the policies needed to deliver the Smokefree 2030 ambition in parallel with developing the plans. Therefore, very simply—I know that other noble Lords will speak to some of these other concerns—the issue here is one about making progress: getting on with it. We know what needs doing and we know how money can be found to pay for it, and I do not believe that there are any other routes for finding that money at this moment. In the words of the Minister in the other place, we need to put the foot to the floor. I beg to move.

Lord Young of Cookham (Con): My Lords, I rise briefly to support Amendment J1, so ably moved by the noble Lord, Lord Crisp. I also join him in thanking my noble friends Lord Howe and Lord Kamall, the two Ministers involved, for their engagement with movers of the amendment on Report and for the genuine attempt they made to seek agreement to narrow the small gap between the Government's position and ours—an attempt which, I fear, was blocked by HM Treasury.

On this subject, on Report, my noble friend Lord Howe said:

"Our strong preference is to continue with high tobacco taxation and excise as the best means and the most efficient process through which to generate revenue that can be put back into public services."

I wish I shared his optimism, given the current pressure on the public purse and the recent experience with the levelling-up White Paper, published in February. The Institute for Fiscal Studies said that

"the White Paper contains no new funding; instead, departments will be expected to deliver on these missions from within the cash budgets set out in last autumn's Spending Review. Departments and public service leaders might reasonably ask whether those plans match up to the scale of the government's newfound ambition—particularly in the face of higher inflation."

The same is true for tobacco control. Even before the rise in inflation, budgets for tobacco control and smoking cessation had been cut by a third since 2015. Already by 2019, it was clear that the Treasury's claim that the tax system would provide funding for tobacco control was misplaced. That is why, when the Government announced the smoke-free 2030 ambition in 2019, they also promised to consider a polluter pays approach to funding tobacco control and smoking cessation, which is the substance of the amendment before your Lordships this evening.

On Report, my noble friend Lord Howe said:

"The proposal may look simple on the surface but it is complex to implement. It may also take several years to materialise."

Our proposals build on the pharmaceutical pricing scheme operated by the Department of Health, which is a far more complex industry with far more complex products. If the Department of Health can successfully run a scheme for pharmaceutical products—an industry and set of products that are complex and evolving—I fail to see why it cannot operate such a scheme for cigarettes. These are simple, commodity products produced by an oligopolistic industry, with four main manufacturers responsible for more than 95% of sales.

The noble Lord, Lord Stevens of Birmingham, who I am pleased to see in his place, said on Report that

"if it is deemed appropriate to have a form of price and profit regulation for the medicines industry, which delivers products that are essential and life-saving, it does not seem too far a stretch to think that an equivalent mechanism might be used for an industry whose products are discretionary and life-destroying."—[*Official Report*, 16/3/22; cols. 294-98.]

I agree. However, I also accept that further investigation of our proposals would be needed, which is precisely why a consultation without commitment is the appropriate way forward, as the all-party parliamentary group's amendment proposes.

I hope that, even at this late stage, my noble friend might demonstrate some flexibility in order to try to bridge the narrow gap between the Government's position and that in the amendment.

Lord Hunt of Kings Heath (Lab): My Lords, I, too, support the noble Lord, Lord Crisp, in his amendment. My noble friend Lord Faulkner would of course have been in his place to speak in favour, but he is unable to be here, so perhaps I may make a few remarks which I think he might have made.

Going back to Report, the Minister suggested that the tobacco industry is already required to make a significant contribution to public finances through tobacco duty, VAT and corporation tax. But I do not think that states the case as accurately as possible, because we know that tobacco manufacturers are skilled at minimising the amount they pay. For example, between 2009 and 2016, Imperial Brands, the British company that is market leader in the UK, received £35 million more in corporation tax refund credits than it paid in tax. The largest amount of tax collected by the Government comes from excise tax and VAT. This, of course, is not paid by the manufacturer; it is passed on to the consumer. That was a point HM Treasury made in 2015, when the Government consulted but, alas, decided not to put an additional tax on tobacco products to pay for tobacco control.

My understanding is that, in total, smokers spend nearly £11 billion on tax-paid tobacco products, more than three-quarters of which goes to the Government in taxes. We know that the majority of smokers are not well off; they often suffer multiple disadvantages. We must compare that huge tax take with the pitiful amount that is actually spent by the Government encouraging people to stop smoking. It is certainly not enough to make England smoke-free by 2030.

I listened carefully to the Minister's introductory remarks. The noble Lord, Lord Kamall, objected to the terms of the amendment of the noble Lord, Lord Crisp, because, he said, the independent review had not yet reported and therefore we were seeking to pre-empt what the review will say. I thought the noble Lord, Lord Crisp, responded to that incredibly well. I do not think he is seeking to pre-empt the review; his amendment asks the Government to consult on recommendations in the review if the Secretary of State thinks that it is required. It is left entirely in the Secretary of State's hands to act according to whether he or she considers that the recommendations should be consulted on.

This is a sensible amendment, it points us in the right direction, and I hope that, even at this late stage, Ministers may be sympathetic.

Lord Rennard (LD): My Lords, if I understood the Minister correctly in his introductory remarks, he was saying that the Government's case against the amendment is that they do not want to consult on something to which they are not already committed. So what is the point of consultations if they are only on things to which the Government are already committed? Should the Government not consult on what they might do, and take into account the opinions of experts and others?

Amendment 85B, in the name of the noble Lord, Lord Crisp, has the support of these Benches. It is in accordance with my party's policy but, more importantly, it is essential to the Government's stated objective of reducing the prevalence of smoking to below 5% by 2030. The amendment does not require the Government to do anything that they do not want to do; it just asks them to consult on something which they have said that they would consider—namely, to make tobacco companies pay more towards helping save and prolong the lives of their customers.

Last year, I found myself outside the HQ of British American Tobacco. It is an enormous headquarters: it looked like a palace of which any Russian oligarch would be proud. This company makes huge profits that could be diverted towards ameliorating the damage done by its products. The amendment would mean taking action to help people live longer and more healthily, with fewer families living in poverty because of smoking.

I expect we will have more warm words from the Minister and from the Department of Health and Social Care, but I believe that Parliament wants to adopt the polluter pays principle in relation to tobacco. So I end with a quote from a great parliamentarian, John Pym, who, in 1628—I am sorry that I do not have the *Hansard* reference—said: "Actions are more precious than words".

8 pm

Baroness Eaton (Con): My Lords, I speak to Amendment 92B in my name. It seeks to reinstate essential, in-person safeguarding checks for girls under 18 when seeking abortion. I have no doubt that the noble Baroness, Lady Sugg, had the best of intentions when she brought her abortion-at-home amendment to your Lordships' House in support of women's right to choose in respect of pregnancy. Unfortunately, Amendment 92A leaves a glaring gap: that of the interests of young and vulnerable females. My Amendment 92B is simply about requiring a face-to-face consultation with a qualified health professional for girls under the age of 18.

This is an amendment purely about child safeguarding: specifically, minimising the risk of harm to children through the use of abortion pills. It is not an amendment about the moral question of abortion. There would be no change to where the pills are taken or administered. The amendment is supported by the NHS body made up of doctors and nurses who are the leading experts in the field of children safeguarding, the National Network of Designated Healthcare Professionals for children, or NNDHP.

The NNDHP, which supports safe access to abortion for young people, has released a statement saying:

> "All children and young people—those under 18 and in care under 25—must be seen face to face, and the age of the other applicants must be confirmed. The purpose of this position is to clinically assess the mid-trimester risk and prevent coercion and exploitation."

The network expressed particular concern that phone and video consultations

> "enable unseen and unheard coercive adults to influence the patient"

[Baroness Eaton]

and

"enable pills to be obtained under false pretences."

These NHS child-safeguarding experts have also raised concerns about the effects of trauma and neglected birth, pointing to evidence of the home use of abortion pills resulting in highly traumatic incidents. These are traumatic episodes, and they point out that children do not have the emotional resources and the brain maturity needed to access support in these cases. Even worse, they are aware that the policy has led to the births of very premature but potentially viable infants.

The Royal College of Paediatrics and Child Health, the UK's leading professional body for paediatricians, which represents more than 20,000 child health professionals in the UK and abroad, has backed the amendment. It has voiced its support for the amendment due to concerns about the risks to girls under the age of 18 with the at-home abortion amendment that passed in the Commons. The RCPCH has warned of a "glaring gap" in the legislation—namely, children and young people. Moreover, it has asked for children's vulnerabilities to be taken into greater account as the Health and Care Bill reaches its final stages. The college points out that

"telemedicine can present particular challenges"

for children and young people, and points to the need to

"assess any safeguarding issues as part of the pathway for early medical abortions."

I have mentioned the views of the NHS safeguarding experts and the royal college that specialises in children's health, but I would like to end by touching on the story of a 16 year-old girl in his country that demonstrates the need for this amendment. The BBC reported on a girl called Savannah, who took abortion pills at home after a telephone conversation with an abortion provider. The clinic she had spoken to had calculated that she was less than eight weeks pregnant, but she was neither examined nor scanned. She took the pills and, when she felt terrible pain, she was taken to hospital. It was discovered that she was actually between 20 and 21 weeks' pregnant, and she gave birth to a baby with a heartbeat. Indeed, she said, "My boyfriend said he could see feet". Savannah said she had been left traumatised and said, "If they scanned me and I knew that I was that far gone, then I would have had him."

It is hard to comprehend the trauma of an experience such as this for such a young woman. The BBC report highlighted how her case was just one of dozens. Surely, we in this House owe it to our young women and girls, our daughters and granddaughters, to do more to protect their safety and well-being. This is not an amendment nor a debate about abortion or a woman's right to choose; it is about children's welfare and enshrining in law the essential protections for girls under the age of 18. This Government, and, indeed, previous Governments, have rightly prioritised children's welfare, and all of us in Parliament who make laws should keep this in mind.

I am pleased that my noble friend the Minister has understood the very real concerns of many noble Lords and professional bodies in the medical profession. He has expressed a clear commitment to us today to ensure that the concerns are raised and addressed. It is vital that regulations and guidance deal with the safeguarding of young women. My noble friend has committed to working with the Royal College of Paediatrics and Child Health and the NNDHP, and I hope that they will be consulted and will work with the Government to make sure that these extremely challenging and difficult conditions for young women are given great concern and protection in any further work on the Bill. Because my noble friend has given such reassurances, I will not push this to a vote this evening.

Baroness Finlay of Llandaff (CB): I am grateful to the noble Baroness, Lady Eaton, for raising this issue. I should declare that some years ago when I was a GP, I was responsible for looking after three care homes with children with really quite profound psychological disturbance because of what they had gone through prior to being taken into care. I carefully read the briefing from the Royal College of Paediatrics and Child Health. It is very important to listen to that college in particular, which has put out a remarkably strong briefing that also takes account of children up to the age of 25 when they are care leavers.

The last time we debated this I was concerned about contraceptive advice. I therefore contacted an abortion provider to ask about the contraceptive advice provided and was assured that really sound contraceptive advice is part of the telemedicine procedure. Does the Minister have any data on the number of second-time and third-time abortions that are being requested through telemedicine, as compared with those from face-to-face consultation? Certainly, in my time in practice, when one provided contraceptive services, one always felt that when somebody was presenting for an abortion, somewhere along the line one's contraceptive advice had failed—often because of coercion by the male partner, one way or another. But for those who are emotionally vulnerable it can be very important.

I will address in just one sentence the excellent speech by my noble friend Lord Crisp in relation to his Motion J1. I hope the Government will listen to it, because we cannot carry on allowing the tobacco industry to exploit public health in the way that we have.

Baroness Barker (LD): My Lords, the noble Baroness, Lady Eaton, is a stalwart of these debates and she always takes a view that is contrary to mine. I say at the beginning of my speech that I do not question her integrity in any way at all, but I do question the briefing on which she has based her speech tonight—and I question the briefing from this particular college. It has a public position which says that young women should have the option and be

"actively encouraged to take up a face-to-face appointment".

That is the policy now; there is no policy that says that people cannot and should not be allowed to have a face-to-face appointment if they need it.

Secondly, this amendment would require there to be a face-to-face appointment, whereas the position arrived at following the amendment moved by the noble Baroness, Lady Sugg, and in the Commons is that a teleconsultation can happen and that, at that point, if it becomes evident that there is a need for a face-to-face

appointment, it must happen. As we explained when we debated this issue a few weeks ago, the greatest coercion is on women not to have an abortion rather than women being forced to have an abortion. Professionals, who took great care to design the telemedicine system at the start of the pandemic, made sure that they included safeguarding as an integral part of what they did.

The noble Baroness, Lady Eaton, is right in one respect and wrong in another. There was one case, within the first month of the scheme being set up, where a woman got her dates wrong. That was discovered and that case was used to change the questions and the training. I have to say that I take exception to her saying that there are dozens of cases, because in the peer-reviewed assessments that have been done in three countries, Scotland, England and Wales, that has not been seen to be the case. If anything, professionals have erred on the side of caution when they think that a woman might be approaching the deadline. I am afraid that in this respect I do not think the noble Baroness, Lady Eaton, is correct.

More to the point, throughout the discussions here and in another place, the professionals who have been responsible for not just delivering the services but for making sure that they are within ethical and professional frameworks and are monitored closely took into account all the ways in which they thought that young women and girls might be exploited. They took care to make sure that the services discovered that, and they have. They have found young women who have been trafficked. They have found young women who have been pressurised by partners. They have found young women who were prevented from going out to get contraception and therefore became pregnant.

I do not for one minute question the noble Baroness's motivation, but I say to noble Lords that if they really want to protect young women and particularly girls, they should reject this amendment and accept the government amendment, which has been informed not just by the work of the noble Baroness, Lady Sugg, and others but by the majority of the royal colleges that practise in this field.

Baroness Verma (Con): My Lords, I want to raise one thing that may be an unintended consequence of telemedicine abortion pills. In communities such as the one that I come from, having a girl is still seen as not a good sign of family life. I hope that when we discuss this, we discuss it in the round. There are communities in this country that may take advantage of the facts that women do not have to have a face-to-face and that women in those communities as often as not cannot communicate. We must ensure that we do not become complicit in them being forced into abortions. It is not about not wanting an abortion to be available if you require it. That is my point and my fear. I see it often in my community. It is not as if it is distant. It happens because those women and girls—some of them get married very early in life—do not have the ability to speak up, simply because of the confines of the communities they live in. I do not want it to be an unintended consequence that we end up being complicit in something that by and large is a choice issue but here may well become normalised within families where women and girls have very little say.

8.15 pm

Lord Morrow (DUP): My Lords, I rise to speak to Motion N1 and Amendment 92B. I want to put on record that it is extremely regrettable that a profound change in the way that abortions are delivered has been rushed through at the end of this Bill, without the opportunity for scrutiny and consideration in Committee and on Report of whether additional safeguards needed to be added. I thank the noble Baroness, Lady Eaton, for proposing a modest, child-safeguarding amendment through Motion N1, Amendment 92B, to the amendment agreed in lieu to continue telemedicine abortion in England.

The concerns about the telemedicine regime were stated, albeit briefly, on 16 March. They focused on concerns about whether all pregnancies really are below the 10-weeks limit set out in Amendment 92A, that complications at home are not properly monitored, and that telemedicine abortions mean that women can be vulnerable to coercion. However, this revised amendment specifically and simply states that the consultation must be in person for a pregnant woman under the age of 18. I welcome that, and hope that young women who want such a consultation will not feel pressured into a remote consultation. As was said in another place last week,

"I do not think that many people in this House would think that a 14-year-old girl should be ringing up and receiving abortion medicines over the telephone, but that is indeed what the legislation allows".—[*Official Report*, Commons, 30/3/22; col. 879.]

While either an in-person or a remote consultation meet the requirements of the law as drafted in Amendment 92A, it does not mean that they both meet the health requirements of all sections of the population. Two key organisations qualified to speak on this matter have specifically said that remote consultations do not work for children. Both the Royal College of Paediatrics and Child Health and the National Network of Designated Healthcare Professionals for Safeguarding Children have called for face-to-face appointments. In a letter to the *Times* last Friday, the president of the royal college said:

"However, the change in the legislation through the Health and Care Bill leaves a glaring gap. Children and young people are a distinct group, and telemedicine can present particular risks. We must consider their safeguarding and holistic wellbeing as well as their physical health needs."

She went on to say that

"a face-to-face appointment would allow a healthcare professional to talk to them, examine them if necessary and spot any safeguarding issues".

The concerns about telemedicine abortions are more acute for under-18s, so the proposal that we should make a further exception for children in the regime introduced through Amendment 92A on where abortions can take place seems entirely sensible. We do so on a wide range of legislative measures; indeed, the Labour Front Bench only last night advocated for different treatment for children under the modern slavery legislation debated as part of the Nationality and Borders Bill. I hope that the noble Lord, Lord Coaker, will forgive me and not mind me quoting him when he said, quite rightly:

"We do that in every area of law; we provide differently for children than for adults".—[*Official Report*, 4/4/22; col. 1942.]

Amendment 92B does exactly that by requiring in-person consultations for under-18s.

[Lord Morrow]

I shall end with the closing paragraph of the letter to the *Times*, which said:

"The bill is nearing its final stages. The government and parliamentarians must make sure this vulnerable group is taken into account."

I urge your Lordships to adopt this Motion.

Baroness Sugg (Con): My Lords, I rise to speak to Motions N and N1. I fully support the Government's Motion N; it delivers the same outcome as the cross-party amendment supported by your Lordships' House and received cross-party support from the other place last week. I am grateful to the Health Secretary and my noble friend the Minister for their engagement on this issue, and to the officials and lawyers in the department for their assistance in drafting.

Motion N makes the provision of access to telemedical early medical abortion permanent. It is supported by the vast majority of medical professionals, vulnerable women's groups and by women themselves. Following the largest ever abortion study, the service was shown to be safe, effective and compassionate.

I cannot support my noble friend's Motion N1 for two reasons. First, it was debated in full in the other place, including substantive discussions on whether under-18s should be included. MPs voted in support of this service in its entirety, without requiring any changes. Your Lordships' House also supported making this service permanent. Both Houses are in agreement, and I do not believe we should reopen an already considered and agreed position.

Secondly, I cannot support it for safeguarding reasons. It is absolutely crucial that we protect young people—I am sure all noble Lords agree on that—which is why the Royal College of Paediatrics and Child Health, the Royal College of Obstetricians and Gynaecologists, the DHSC and abortion providers have already agreed to produce a set of best practice standards on safeguarding and abortion care for young people. I appreciate the Minister reassuring us on this; it is how clinical guidelines should be developed. It is standard professional activity for medical royal colleges and does not warrant any additional legislation.

If Motion N1 is agreed, as a result of the inequitable provision, young women will be more likely to have poorer access to and experience of abortion care. It would mean that young women who are physically unable to make it to a clinic, as a result of a health condition, or who live in a very rural area, have no access to transport or are at risk of violence and abuse, will have no legal way to access abortion services in England and Wales. They would be forced either to access illegal pills online or to continue with their unwanted pregnancies.

I will address a couple of the points that have been raised. I also have anecdotes about how this has helped women and girls, but I do not believe it is helpful to share individual cases—we should listen to the experts on this—but the poor girl in the terrible case raised by my noble friend Lady Eaton was actually seen in a clinic, so my noble friend's amendment would not have helped. On the point raised by my noble friend Lady Verma, of course we want to avoid sex-selective abortions, but this goes up to only nine weeks and six days, and it is not possible to find out the sex of your baby until after then. That would not be possible in early telemedical abortion.

Children must be protected. I appreciate and agree with my noble friend Lady Eaton's desire to do this. However, as my noble friend the Minister has set out, this should be done through clinical guidelines and safeguarding best practice. I am pleased there will not be a vote on this, as I could not support it.

Lord Alton of Liverpool (CB): My Lords, I made my substantive points when we debated this on Report, so I will not be tedious in repeating all those arguments about the nature of abortion, why I feel there should be a more thorough consideration of the way the law works in Britain today and why there have been 9 million abortions—one every three minutes. That does not suggest a lack of access to abortion in this country. But I support what the noble Baroness, Lady Eaton, said to us about the lack of safeguards in the amendment that we passed, against the wishes of Health Ministers, during the tail end of the Report stage consideration of the Bill.

If the noble Baroness, Lady Sugg, was right that there had been substantive discussion, I would feel easier about this, but she will agree that there was no discussion of this at Second Reading or in Committee here, and there was no discussion of it in another place. When this was voted on in another place, there was a relatively close majority at the end of a very short debate—215 votes to 188. This demonstrates that this question is not settled.

If one winds back the clock to 1967, only 29 Members of the House of Commons voted against the Abortion Act 1967. That demonstrates that not only is this not settled but there are deep concerns about the way that this public policy has been enacted. That is why I pleaded, on Report, that rather than making policy on the hoof, it would be far better if—despite our differences of opinion, some of them fundamental, on the substantive issue—at some point, there is a review of the legislation, in which we can at least talk to one another, in a civilised way, about the best approach.

That brings me to this amendment, which was introduced with such sensitivity and compassion by the noble Baroness, Lady Eaton, and which deals with safeguarding issues. I will not repeat the quotation that was just given to us by the noble Lord, Lord Morrow, but it comes from a royal college. The royal colleges may be divided about this too—I do not dispute that—but that is exactly the sort of thing that should be laid before a commission of inquiry or a Select Committee of this House to examine the workings of the legislation.

We have heard the quotation about the safeguarding, well-being and physical needs of children from the Royal College of Paediatrics and Child Health, but I was also struck by what a designated doctor for child safeguarding said in a briefing which many of us have been sent by the National Network of Designated Healthcare Professionals for Safeguarding Children. Dr Helen Daley says:

"The considered expert position of the NNDHP is that all children (i.e. those under 18) and looked after individuals under the age of 25, should be seen face-to-face when applying to take

both sets of abortion pills at home so as to prevent coercion, child sexual exploitation and abuse, and so that clinical assessments can be made to check the risk of an inadvertent mid- or late-trimester abortion."

I note what the noble Baroness, Lady Barker, said about specific individual cases. I do not know about the individual cases, other than that one was cited, and one is enough. It struck me, as a parent and someone who has worked with children with special needs, some of whom had significant emotional problems, to think how it would be if, in a home abortion, someone was to abort a late-trimester baby and the children in that household saw what happened. I think that would remain with them for the rest of their lives and it could have a deeply distressing and traumatic effect on them. That is why we should listen to Dr Helen Daley when she says

"We have very real concerns about the harm"

that this amendment to the Bill

"(which would allow girls to take abortion pills at home without a prior face-to-face consultation for any early abortion) will do to children."

There is one other point, which was not referred to in our early debates. There is evidence about the physical effects on women. For me, this is not a choice between the unborn child and the woman—both lives matter. One in 17 women, or 20 a day, who had taken at least one abortion pill at home in 2020 needed hospital treatment for side-effects. This evidence was provided through a freedom of information request by the previous global director of clinics development at Marie Stopes International. There are significant risks.

I plead with your Lordships: when we make laws on issues such as this, let us always be respectful of each other's opinions, attitudes, beliefs and principles, and listen to each other carefully, which we are doing in this House tonight; bluntly, I think we are a very good example to others about how this debate should be conducted. When the noble Baroness, Lady Verma, talks about the risks of, for instance, sex-selection abortions, we must take that seriously, because there have been examples of it and we know to what it can lead; we have seen that in other jurisdictions and countries. When the noble Baroness, Lady Eaton, tells us there could be risks to children over safeguarding, we must take that seriously. I promised to be brief and will now sit down.

Baroness Bennett of Manor Castle (GP): My Lords, I rise very briefly, having contributed quite significantly to the debate on Report. I support the Government's amendment, which is not a position I find myself in very often. I respectfully disagree with the noble Lord, Lord Alton of Liverpool, who said this was not settled. As the noble Baroness, Lady Sugg—who has been such a leader, working on this issue in the House with great tenacity and determination to defend the well-being of patients—said, it has been settled in both Houses of Parliament and has been debated extensively.

The point the noble Lord, Lord Alton, just made about the sex-selection question was comprehensively answered. The dates do not work; we are talking about early medical abortion and you do not know by that stage. We have to come back to the evidence. We had an unintended experiment as a result of Covid, which showed us that telemedicine not only reduced the rate of abortion complication but increased the level of safeguarding disclosures. It is really important that we think about an equalities issue here. Access to telemedicine is medically preferable and results in more safeguarding disclosures. We do not want to deny that to young women where it is judged that it is medically appropriate.

I note that the National Network of Designated Healthcare Professionals for Safeguarding Children is working with the Royal College of Obstetricians and Gynaecologists to develop standards. It says that this should not be subject to discrimination in the law, as the safeguarding standards and guidelines are adequate. If we think about this as an access issue, this minimises the risks of young people going to provision outside the healthcare system. This is a crucial equalities issue.

8.30 pm

Lord Moylan (Con): My Lords, I rise briefly to support the amendment in the name of my noble friend Lady Eaton. I listened very carefully to what my noble friend the Minister said about protections and safeguards offered by the NHS, and the system of abortion provision to young people. But it seemed to me that those safeguards related principally to pregnant children up to the age of 16. There is a gap here, because the age of 18 is important in this debate, and it does not seem to be covered. As the noble Lord, Lord Morrow, said, it was only last night that an opposition amendment said that, in the case of child refugees, the Government must give priority to the best interests of the child—and, as I recall, that amendment was passed and is now back in the Bill. But "child" was defined in the amendment as a person under the age of not 16 but 18. So the best interests of the refugee child must take priority but the best interests of the pregnant child are not even mentioned anywhere in the amendment.

If I recall correctly, only last week we were debating a Private Member's Bill—but one which I believe had government support—which would raise the permitted age of marriage to 18. Marriage is a natural law right, and also arguably a convention right, because there is a right to a family life, but, correctly, we are allowed to moderate how that right is implemented and effected by putting age restrictions on it. We may decide that 16 is an appropriate age or that 18 is an appropriate age; these are all perfectly legitimate decisions to make. But if our movement is in the direction of saying that 18 is the age at which you should be allowed to marry, it seems to me that there is a huge gap in the amendment in Motion N, which my noble friend Lady Eaton is doing her best to correct.

I regret that my noble friend has said that she is not going to move to a vote, so I am left to ask my noble friend the Minister whether he can explain to me, when he replies, what it is that the Government see as being the means of safeguarding pregnant children between the ages of 16 and 18, who are regarded so carefully in relation to other types of protection that are debated in this House and command widespread cross-party support but seem to have fallen through the traps here.

Baroness Thornton (Lab): I shall be very brief, because it is time we draw this ping-pong session to an end. First, I congratulate the Minister on his introduction

[Baroness Thornton]
to the tele-abortion amendment, and on the reassurance that he gave to the House and the noble Baroness, Lady Eaton. The issue has been expressed very eloquently by the noble Baronesses, Lady Sugg and Lady Barker, and I have no intention of going into detail.

The only other matter before us right now on which we need to take a decision is that of the amendment put by the noble Lord, Lord Crisp. From these Benches, I need to say that we absolutely support the noble Lord in his amendment, and we will vote with him, if he divides the House.

Lord Kamall (Con): I thank all noble Lords who have taken part in this debate and the debates throughout the day. We managed to stick to the point and tried to be as brief as possible. I am afraid I will not be as brief as the noble Baroness, Lady Thornton, but I will try to be briefer than I usually am.

I should just make some acknowledgements, looking at the whole group. First, on learning disabilities and autism, I thank the noble Baroness, Lady Hollins, in her absence, for her constructive engagement with the Government.

On tobacco, I once again urge noble Lords to reject Amendments 85 to 88 and 88B. The independent review is not scheduled for publication until May, when we will of course consider our next steps. I understand that the noble Lord told us to get on with it, but we do not want to pre-empt the independent review. As it is in the process of being drafted, we really want to make sure that we have proper consultation and agreement, both across government and across the UK with the devolved Administrations.

I hope the noble Lord is in no doubt that we are also committed to the tobacco plan and the reduction of smoking. We just do not feel that this is the right amendment, but the noble Lord may feel otherwise. Any changes to tobacco legislation proposed by the Khan review, a plan supported by the Government, will be consulted on. We firmly want to make sure we reach our smoke-free 2030 ambition or get as close to it as feasibly possible.

There is a debate about the polluter pays principle. I am sure the noble Lord, Lord Crisp, will recognise the debate about Pigouvian taxes, taxing negative externalities and who is responsible. Who is the polluter? In the car industry we tax the driver, as they put more petrol in. Should it be the smoker or the industry? There is a debate about this, but I hope these issues will be considered by the Khan review.

I also thank the noble Lord, Lord Sharkey, for his constructive engagement on reciprocal healthcare. I am pleased that we were able to narrow the gap and get to the same place.

I turn now to the telemedicine abortion issue. The Government felt that we should have gone back to pre-pandemic measures, but it was right that there was a free vote. We saw the results of the votes in your Lordships' House and the other place, and we accept them. The democratic will of both Houses is quite clear. At the same time, we also accept that there were some concerns, as my noble friend Lady Eaton rightly said, about underage women being forced to have abortions and safeguarding. My noble friend Lady Verma also made a point about issues in certain communities; we know that these things go on in certain communities and that there are close relationships.

After the reassurances I gave at the beginning, my noble friend Lady Eaton said she was reassured enough not to push her amendment to a vote. I hope that remains the case and that my noble friend has not been persuaded otherwise. It is important that we consult, treat this sensitively and get the appropriate guidance, but the decision has been made by both Houses and we have to make sure that it works and that we address some of the legitimate concerns that noble Lords have raised in this debate.

Given that, I ask this House to accept the Motions in my name.

Lord Crisp (CB): My Lords, let me first say how much I respect the Ministers and appreciate the time they have given to me and other noble Lords to discuss the "polluter pays" amendment. I really appreciate it and found it very useful. I think it was the noble Baroness—I cannot remember the name.

Noble Lords: Eaton.

Lord Crisp (CB): No, forgive me. It was the noble Baroness, Lady Cumberlege—my apologies for that very public senior moment—who earlier commended the Ministers on their patience and good humour, right to the end of this long Bill.

I think there is very little difference between us and that what I am arguing for is very much government policy, but there still is a difference. Let me also thank the other noble Lords who have spoken in this debate for their support. I was reflecting on this difference while the debate was happening and, at bottom, it is about making sure that something happens. It is not just about consultation, which we did not discuss. It is about the timetable too. It is about ensuring that we have a consultation to a timetable and that there is scope for action.

It is also about the reality. The noble Lord, Lord Young, spelled out for us that we have seen cuts in tobacco control over recent years and that there was a commitment given to considering "provider pays"—I think it was two or three years ago. We are all familiar with the fact that things can slip. At the moment, I suspect that we are going in the wrong direction on tobacco control and that it is slipping down the agenda.

I am left with two questions. First, where will the funding come from for the action that needs to be taken to intervene on tobacco control, which is something that we all want? I absolutely accept the noble Lord's point on that. Secondly, will action actually be taken? I was very struck at our meeting with the Treasury, which the Minister kindly arranged, to find that the Treasury officials are rather opposed to any levy, despite the attractions and success of the pharmaceutical levy referred to by the noble Lord, Lord Stevens, in Committee.

While there is also enormous waiting list pressure, which we all know about and which I suspect has already been discussed many times during these debates, how will we find the money for something that is

going to have a long-term impact, as opposed to dealing with the emergency right in front of us? Of course, we will all be aware that an election will be coming in due course. I suspect some things will rise up the agenda and some slip down it. You do not have to be a cynic to think that this could slip very easily. Therefore, for those reasons, I want to test the opinion of the House.

8.42 pm

Division on Motion J1

Contents 130; Not-Contents 132.

Motion J1 disagreed.

Division No. 5

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8.54 pm

Motion J agreed.

Motion K

Moved by ***Lord Kamall***

That this House do not insist on its Amendment 89 and do agree with the Commons in their Amendment 89A in lieu.

89A: Page 123, line 35, at end insert the following new Clause—

"Commercial dealings in organs for transplantation: extra-territorial offences

(1) After section 32 of the Human Tissue Act 2004 insert—

"32A Offences under section 32 committed outside UK

(1) If—

(a) a person who is habitually resident in England and Wales, or who is a UK national and not habitually resident in

Northern Ireland, does an act outside the United Kingdom,

(b) the act, if done in England and Wales, would constitute an offence under section 32(1), and

(c) the controlled material to which the act relates is controlled material consisting of or including a human organ,

the person is guilty in England and Wales of that offence.

(2) In this section "United Kingdom national" means an individual who is—

(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,

(b) a person who under the British Nationality Act 1981 is a British subject, or

(c) a British protected person within the meaning of that Act."

(2) After section 20 of the Human Tissue (Scotland) Act 2006 insert—

"20A Offences under section 20 committed outside UK

(1) If—

(a) a person who is habitually resident in Scotland, or who is a UK national and not habitually resident in Northern Ireland, does an act outside the United Kingdom, and

(b) the act, if done in Scotland, would constitute an offence under section 20(1), and

(c) the part of the human body to which the act relates consists of or includes a human organ,

the person is guilty in Scotland of that offence.

(2) In this section "United Kingdom national" means an individual who is—

(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,

(b) a person who under the British Nationality Act 1981 is a British subject, or

(c) a British protected person within the meaning of that Act.

(3) Where a person outside the United Kingdom commits an offence under section 20(1) the person may be prosecuted, tried and punished for the offence—

(a) in a sheriff court district in which the person is apprehended or in custody, or

(b) in a sheriff court district determined by the Lord Advocate, as if the offence had been committed in that district.

(4) Where subsection (3) applies, the offence is, for all purposes incidental to or consequential on the trial and punishment, deemed to have been committed in that district.

(5) In this section "sheriff court district" is to be construed in accordance with section 307(1) of the Criminal Procedure (Scotland) Act 1995 (interpretation)."

Lord Kamall (Con): I have already spoken to Motion K—more than once. I beg to move.

Motion K agreed.

Motion L

Moved by ***Lord Kamall***

That this House do not insist on its Amendment 90 and do agree with the Commons in their Amendment 90A in lieu.

90A: Page 127, line 39, at end insert the following new Clause—

"Review into disputes relating to treatment of critically ill children

(1) The Secretary of State must arrange for the carrying out of a review into the causes of disputes between (on the one hand) persons with parental responsibility for a critically ill child and (on the other) persons responsible for the provision of care or medical treatment for the child as part of the health service in England.

(2) The Secretary of State must publish and lay before Parliament a report on the outcome of the review, within one year beginning with the date on which this section comes into force.

(3) In this section—

"child" means a person aged under 18;

"health service in England" means the health service continued under section 1(1) of the National health Service Act 2006;

"parental responsibility" has the meaning given by section 3 of the Children Act 1989."

Motion L1 (as an amendment to Motion L) not moved.

Motion L agreed.

Motion M

Moved by ***Lord Kamall***

That this House do agree with the Commons in their Amendment 91A as an amendment to Lords Amendment 91.

91A: Line 2, leave out subsections (1) to (6) and insert—

"(1) The Health and Social Care Act 2008 is amended in accordance with subsections (2) to (6).

(2) In section 20 (regulation of regulated activities), after subsection (5) insert—

"(5ZA) Regulations under this section must require service providers to ensure that each person working for the purpose of the regulated activities carried on by them receives training on learning disability and autism which is appropriate to the person's role."

(3) After subsection (5C) (as inserted by section 145) insert—

"(5D) In subsection (5ZA)—

"learning disability" has the meaning given by section 1(4) of the Mental Health Act 1983;

"service provider" means a person registered under this Chapter as a service provider in respect of a regulated activity."

(4) After section 21 insert—

"21A Learning disability and autism training: code of practice

(1) The Secretary of State must issue a code of practice about compliance with requirements imposed by virtue of section 20(5ZA) (requirements relating to training on learning disability and autism).

(2) The code must make provision about—

(a) the content of training; (b) training appropriate to different roles;

(c) circumstances in which it is appropriate for training to be delivered in person;

(d) the involvement of people with learning disability, autistic people, or their carers, in the provision of training;

(e) accreditation of training;

(f) procurement of training;

(g) monitoring and evaluation of the impact of training;

(3) The code may make different provision for different cases or circumstances.

(4) The Secretary of State must, at least once every five years—

(a) review the code, and

(b) lay before Parliament a report setting out the findings of the review."

(5) In section 22 (consultation in relation to code of practice under section 21)—

(a) for the heading substitute "Codes of practice: consultation and Parliamentary scrutiny";

(b) in subsection (1), after "21" insert "or 21A";

(c) in subsection (2), after "21" insert "or 21A";

(d) in subsection (3), after "(2)" insert "in relation to a draft of a code or revised code under section 21"; (e) after subsection (5) insert—

"(5A) Where, following consultation under subsection (1) or (2) in relation to a draft of a code or revised code under section 21A, the Secretary of State decides to proceed with the draft (in its original form or with modifications), the Secretary of State must lay a copy of the draft before Parliament.

(5B) The Secretary of State may not issue the code or revised code if, within the 40-day period, either House of Parliament resolves not to approve it.

(5C) In this section "40-day period" means—

(a) the period of 40 days beginning with the day on which the draft is laid before Parliament, or

(b) if the draft is not laid before each House on the same day, the period of 40 days beginning with the later of the days on which it is laid before Parliament.

(5D) For the purposes of subsection (5C), no account is to be taken of any whole days that fall within a period during which—

(a) Parliament is dissolved or prorogued, or

(b) either House of Parliament is adjourned for more than four days."

(6) In section 25 (effect of code under section 21 and guidance under section 23)—

(a) in the heading, after "s. 21" insert "or 21A";

(b) in subsection (1), for "A code of practice under section 21" substitute "Codes of practice under sections 21 and 21A";

(c) in subsection (2),

(i) for "A code of practice under section 21 or" substitute "Codes of practice under sections 21 and 21A and";

(ii) for "is" substitute "are";

(d) in subsection (3), after "21" insert "or 21A".

(7) Until the first regulations made by virtue of section 20(5ZA) of the Health and Social Care Act 2008 (as inserted by subsection (2)) come into force—

(a) the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (S.I. 2014/2936) ("the 2014 regulations"), and

(b) the Health and Social Care Act 2008, are to be read as if regulation 18 of the 2014 regulations contained such requirements."

Motion M agreed.

Motion N

Moved by ***Lord Kamall***

That this House do not insist on its Amendment 92 and do agree with the Commons in their Amendment 92A in lieu.

92A: Page 127, line 39, at end insert the following new Clause—

"**Early medical termination of pregnancy**

(1) Section 1 of the Abortion Act 1967 is amended as follows.

(2) In subsection (3), for "subsection" substitute "subsections (3B) to".

(3) In subsection (3A)—

(a) the words from "includes" to the end become paragraph (a);

(b) after that paragraph insert—

"(b) is not limited by subsections (3C) and (3D)."

(4) After subsection (3A) insert—

"(3B) Subsections (3C) and (3D) apply where—

(a) the treatment referred to in subsection (3) consists of the prescription and administration of medicine, and

(b) the registered medical practitioner terminating the pregnancy is of the opinion, formed in good faith, that, if the medicine is administered in accordance with their instructions, the pregnancy will not exceed ten weeks at the time when the medicine is administered (or in the case of a course of medicine, when the first medicine in the course is administered).

(3C) If the usual place of residence of the registered medical practitioner terminating the pregnancy is in England or Wales, the medicine may be prescribed from that place by the registered medical practitioner.

(3D) If the pregnant woman's usual place of residence is in England or Wales and she has had a consultation (in person, by telephone or by electronic means) with a registered medical practitioner, registered nurse or registered midwife about the termination of the pregnancy, the medicine may be self-administered by the pregnant woman at that place.""

Motion N1 (as an amendment to Motion N) not moved.

Motion N agreed.

Motion P

Moved by ***Lord Kamall***

That this House do not insist on its Amendment 95 and do agree with the Commons in their Amendment 95A in lieu.

95A: Clause 150, page 112, line 27, leave out paragraphs (c) and (d) and insert—

"(c) for subsection (4) substitute—

"(4) A statutory instrument containing regulations under this Act may not be made by the Secretary of State unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.";

(d) omit subsection (5);

(e) after subsection (5) insert—

"(5A) Regulations made by the Scottish Ministers under section 2A are subject to the affirmative procedure (see Part 2 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).

(5B) A statutory instrument containing regulations under section 2A may not be made by the Welsh Ministers unless a draft of the instrument has been laid before and approved by a resolution of Senedd Cymru.

(5C) Regulations may not be made by a Northern Ireland department under section 2A unless a draft of the regulations has been laid before and approved by a resolution of the Northern Ireland Assembly.""

Motion Q

Moved by ***Lord Kamall***

That this House do not insist on its Amendment 105 and do agree with the Commons in their Amendment 105A in lieu.

105A: Schedule 2, page 137, line 41 at end insert—

"(5A) The chair must exercise the approval function mentioned in subparagraph (1)(b) with a view to ensuring that at least one of the ordinary members has knowledge and experience in connection with services relating to the prevention, diagnosis and treatment of mental illness."

Motions P and Q agreed.

Parole System: Public Protection

Statement

The following Statement was made in the House of Commons on Wednesday 30 March.

"Today I am publishing the root and branch review of the parole system, and copies have been deposited in the Library.

I start by paying tribute to the chief executive officer and the chair of the Parole Board for England and Wales, Martin Jones and Caroline Corby, and to all the staff who work so tirelessly to discharge their important responsibilities. They are dedicated and committed public servants.

Before I address the detail of the Statement, and with your forbearance, Madam Deputy Speaker, I will update the House on this morning's news. In the light of the Parole Board's direction to release Tracey Connelly, and having carefully read the decision, I have decided to apply to the Parole Board seeking its reconsideration.

More generally, the role of the Parole Board in deciding on the appropriateness of releasing a criminal offender from prison, including many convicted of very serious violent and sexual offences, is clearly of paramount importance to protecting the public and to maintaining and sustaining public confidence in our justice system. It is the first duty of government to protect the public.

In recent years, a number of decisions to release offenders who committed heinous crimes have led to disquiet, concern and, regrettably, an erosion of public confidence. Take the case of John Worboys, who is serving a discretionary life sentence for rape and other sexual offences. The Parole Board's decision in January 2018 to release him on licence caused deep concern among his victims and the wider public. It was subject to a successful legal challenge, after which the Crown Prosecution Service successfully prosecuted him for attacking four further women.

I know that honourable Members on both sides of the House have raised the case of Colin Pitchfork, who was convicted of the rape and murder of Lynda Mann and Dawn Ashworth. The Parole Board decided to release Pitchfork in 2021, and it rejected the challenge by the then Justice Secretary, my right honourable and learned friend the Member for South Swindon, Sir Robert Buckland. The understandable public anxiety was further compounded when Pitchfork was recalled to prison just two months after release for approaching women in breach of his licence conditions.

I make a broader point that in these kinds of cases, and in many others that do not attract the same level of media attention or public interest, victims feel their trauma and raw fear are neither recognised nor understood. Likewise, the public inevitably begin to question the reliability of decision-making when serious offenders are recalled to prison for breaches of their licence or for committing further offences on release.

To give the House a sense of scale, in 2020-21 the Parole Board's annual report stated that 27 offenders went on to be charged with a serious further offence following release directed by the Parole Board panel. There were 40 cases of serious further offences being charged in each of the preceding two years. Placed in context, it is fair to say this is only a fraction of all cases, but more than once a fortnight an offender goes on to commit a serious offence while subject to supervision.

At present, victims who wish to challenge a decision by the Parole Board to release a prisoner have the option of asking the Justice Secretary to apply for the decision to be reconsidered, which is an important innovation that I exercised today for a person convicted in the harrowing case of Baby P. There have been 39 interventions since the challenge mechanism was set up two years ago, with four leading to a change in the release decision.

Following the review published today, I believe the case for reform is clear and made out. In arriving at this conclusion, it is worth pausing to acknowledge the shift in the Parole Board's approach over time. The statutory test was established in 1991 and states:

'The Parole Board must not give a direction'—

for release—

'unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined.'

It is clear from this that the overriding test focuses on public protection. However, in the absence of further guidance from Parliament, the way in which the release test has been interpreted and applied over time has shifted, moving away from Parliament's original intention. In fact, as early as the Bradley judgment in 1991, the High Court concluded:

'The Parole Board have to carry out a balancing exercise between the legitimate conflicting interests of both prisoner and public.'

To summarise, the statutory test has morphed over time from a strict public protection test to a balancing exercise between, on the one hand, the responsibility of the state to protect the public and, on the other hand, the rights of the prisoner. Whatever the rights and wrongs, that was palpably not the original intention of Parliament.

I make it clear that I am not criticising the courts, which have sought to apply a generic statutory test without more prescriptive guidance from Parliament, nor am I criticising members of the Parole Board, as I hope I have made clear. It is worth saying that, contrary to public perception, it is often fiendishly difficult to come to a reliable assessment of an offender's risk many years after their original crimes. Although psychiatric assessments and social science can offer guidance, risk assessments in such cases are inherently uncertain and imprecise. We need to be more honest and open about that in our public debate.

In any case, I believe the focus in this critical decision-making has become adrift from its original moorings. This Government will again anchor Parole Board decision-making on the cardinal principle of public protection. When it comes to assessing the risk to victims and public safety, we will introduce a precautionary principle to reinforce public confidence in the system. In cases involving those who have committed the most serious crimes, we will introduce a ministerial check on release decisions, exercised by the Justice Secretary.

The package of reforms published today will strengthen the focus on public protection at every stage. First, we will revise the statutory test for release and replace the current approach that balances the rights of dangerous offenders against public safety with an overriding focus on public protection, by providing in primary legislation further detailed criteria for the application of the statutory test.

Secondly, we will make sure that the Parole Board is better equipped to make credible and realistic assessments of risk. It is striking that, as of last year, only 5% of all Parole Board panel members come from a law enforcement background. Again, I make no criticism of the current panel members, but that is a significant deficit. I believe the deficit is wrong, and our reforms will ensure that the people we charge with making finely balanced assessments of future risk have greater first-hand operational experience of protecting the public from serious offenders. We will change this imbalance by mandating the Parole Board to recruit more members with operational law enforcement experience, and the Ministry of Justice will run a recruitment campaign to bolster its numbers. Critically, in Parole Board cases involving the top-tier cohort of serious violent and sexual offenders, we will require by law that at least one of the three panel members has a law enforcement background.

The third key reform is that, for the top-tier cohort of high-risk offenders who have committed the most serious offences, we will introduce ministerial oversight of Parole Board decisions to release such offenders back into the community, based on our assessment of the dangerousness of the offender, the risk of serious further offending and public confidence. These top-tier offenders will comprise those serving sentences for murder, rape, terrorism and causing or allowing the death of a child. In those cases, we will make two specific changes. The Parole Board will be able to refer a case to the Justice Secretary if it cannot confidently conclude whether, on the evidence, the statutory test for release has been met. In addition, we will introduce ministerial oversight over any decision to release any offender in the top-tier cohort of serious offenders. Under our reforms, in that top tier of cases the Justice Secretary will have the power to refuse release, subject to judicial challenge, on very clearly prescribed grounds, in the Upper Tribunal. I believe that is warranted as an extra check and safeguard to protect the public. I have not yet ruled out entirely an alternative model that could establish a three-person panel chaired by the Justice Secretary with the same power to refuse release, subject to judicial review in the normal way. We will consider further detail of the mechanism in order to strike the most effective balance.

We are making these reforms because the concept of risk is notoriously difficult to assess in these kinds of cases. We are doing it because the public expect their safety to be the overriding consideration and because, ultimately, it involves a judgment call about public protection, and the public expect Ministers to take responsibility for their safety. Let me be equally clear that there is no such thing as a risk-free society; we cannot guarantee that no one released from prison will go on to commit a serious crime. Let us be very clear about that as we have a more honest debate about the assessment of risk. Nevertheless, I believe that these measures are necessary to reinforce public safety and public confidence, and we will legislate for them as soon as possible. I should also say that we will do so alongside our proposed Bill of Rights, to ensure that the will of Parliament and that focus on public protection is not undermined by the Human Rights Act. Indeed, our reforms to parole yet again highlight the compelling case for a Bill of Rights.

Our fourth reform will increase victim participation in parole hearings, thereby delivering on this Government's manifesto commitment. I recognise that parole decisions will be immensely and acutely traumatic moments for many victims, as they are forced to remember, go through and revisit the ordeal and suffering that they have already been through. Some will not wish to be involved, whereas others will want their voices to be heard, and I believe they should have that right. So we will give victims the right to attend a parole hearing in full, for the first time, should they wish to do so. In addition, we will require the board to take into account submissions made by victims and allow victims to ask questions through those submissions. The voice of victims will be at the centre of the process, not just some lingering afterthought.

Finally, although separate from parole decision-making, similar considerations of risk and public concern have arisen in the context of decisions to transfer prisoners to prisons in open conditions. That is why in December 2021 I changed the process to introduce a ministerial check on such decisions, guided by similar principles to those that I have already set out. That is what led to my decision this month to reject the Parole Board's recommendation to move Steven Ling, who raped and killed a woman, to an open prison. I declined the move in the interest of public protection and public confidence.

In sum, our reforms will ensure that those offenders who present the highest risk to public safety are reviewed more rigorously, with additional ministerial oversight. Protecting the public is the Government's top priority. The proposals in this review will reinforce public safety. I commend this Statement to the House."

8.56 pm

Lord Ponsonby of Shulbrede (Lab): My Lords, I am commenting on the Statement in the House of Commons on the parole system and public protection. The Government have said that they will legislate for a new precautionary approach to the release of a top tier of the most serious offenders. They have said that there will be a more proscriptive release test. In the Labour Party, we support this approach in a broad sense but we have some questions.

[Lord Ponsonby of Shulbrede]

First, who did the Government consult and what evidence are their proposals based on? Having looked at it, there seems to be very little, if any, citation in this report, which calls itself a root-and-branch review of the parole system. The Parole Board will be required to apply a precautionary approach in the top-tier cases, meaning that if it cannot conclude that the release test is met, it must either refuse release or refer the case to the Secretary of State. What is the estimate of the number of extra cases which the Secretary of State is likely to receive? What are the cost implications for legal aid, the cost of the new Upper Tribunal appeal model and the cost of internal civil servant resourcing to review the top-tier offender cases?

Another resource question is around the likely increase in time served by this group of prisoners. What modelling has been done on this increased cost? These proposed reforms may well increase prisoner discontent due to the increased difficulties in obtaining parole in a timely manner and the perceived unfairness in the way in which different prisoner categories are treated. Has this potential problem been modelled?

Proposed changes in legislation will increase the number of Parole Board members from a law enforcement background and ensure that such members sit on panels in top-tier cases. Can the Minister confirm that these new members could be serving or retired police officers? Does the Ministry of Justice anticipate any recruitment or retention problems with this new model?

The proposed new Parole Board rules will make it possible for public parole hearings in some cases and, for the first time, will allow victims to apply to attend hearings in full, if they wish. In general, we support this too, but it needs to be very carefully handled.

What about special measures for victims and/or prisoners, or remote attendance via a video link? In my experience of remote and hybrid hearings, they can be effective but need to be managed very carefully. A possible unintended consequence is that the Parole Board may not have a full and frank discussion with the prisoner at the hearing about their likelihood of release if the victim is present. Is this something the Ministry of Justice has factored into its thinking?

There are proposed new processes for the transfer of life and other indeterminate sentence prisoners to open prison conditions. This would deliver greater ministerial scrutiny of cases where prisoners have committed the most serious offences. As the noble Lord will know, there are recent examples where serious offenders have absconded from their open prison, which has been of great concern to the local community. Nevertheless, open prisons can be an important part of an offender's rehabilitation, especially at the end of a long sentence. Does the Minister agree that transfer to an open prison should be seen as a privilege and not a right? Does he have an estimate for the number of extra prisoner transfers which would be considered by the Lord Chancellor?

Finally, I question whether the Ministry of Justice has sufficiently thought through the implications of a system that has the Secretary of State as the public face of parole and the ultimate arbiter in decisions. One could argue that there is a significant reputational risk to the Government, the Secretary of State and the Ministry of Justice from being put in this position. Does the Minister agree that this is a risk?

Lord Thomas of Gresford (LD): My Lords, the Statement says that

"there is no such thing as a risk-free society; we cannot guarantee that no one released from prison will go on to commit a serious crime. Let us be very clear about that as we have a more honest debate about the assessment of risk".—[*Official Report*, Commons, 30/3/22: col. 831.]

Well, let us have an honest debate. In 2020-21, the Parole Board conducted over 6,000 oral hearings and considered over 20,000 paper applications. A record 16,443 cases were concluded, and 4,289 prisoners were released, while 11,437 remained in prison for the protection of the public.

Who made these decisions? The Parole Board consists of over 300 members: 169 independent members from all backgrounds, all jobs and all parts of the country; 61 judicial members such as Crown Court judges or retired judges with a lifetime experience of the criminal justice system; and 68 psychologist members and 35 psychiatrist members with active careers in the prison system. It is, you may think, an experienced pool of people to assess risk.

What percentage of prisoners released by the Parole Board have committed further serious crime? The Parole Board itself said in an earlier report that the percentage of offenders who committed serious further offences in 2018-19 following a release decision or a move to open conditions was 1.1%. Can the Minister give a more up-to-date figure? If that is correct, it suggests that the professional and experienced Parole Board gets it as right as you would expect in its assessment of risk. As the Statement says,

"there is no such thing as a risk-free society"

and it cannot be guaranteed that no one will reoffend.

But the Parole Board, unlike a court or tribunal, is quasi-judicial. That means that politicians can interfere and get their hands on its decisions. That is what is happening here. The Government promise to provide

"further detailed criteria for … the statutory test."

The statutory test is that the Parole Board

"must not give a direction"—

for release—

"unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined."

So my second question is: what "further detailed criteria"? Why are we not told today if this is necessary? This Statement, I suggest, is all bluster with nothing thought through.

The Statement goes on:

"In cases involving those who have committed the most serious crimes, we will introduce a ministerial check on release decisions, exercised by the Justice Secretary."

Well, there have been nine Justice Secretaries since 2005, with an average tenure of 21 months and two of them for less than a year. Five of the nine were non-lawyers. When justice was in the hands of the Lord Chancellor in this House, it was the pinnacle of his career; he did not need to look for further ministerial office. Today, Justice Secretaries move on from their comparatively small departments: consider Liz Truss or Michael Gove, for example, whose political ambitions may not even now have been fulfilled.

The current Justice Secretary is a lawyer. His page on the government website says:

"Dominic started his career as a business lawyer at City law firm Linklaters, working on project finance, international litigation and competition law."

He later worked in Brussels. You might think that that was not the best training for the assessment of the risk of reoffending by an offender. Let us contrast that experience with that of the Parole Board members, which I have outlined. Has Mr Raab ever been in a criminal court—except to close it down or, if it is new, perhaps to cut the tape—or a prison? Is he the man to second-guess the decisions on risk taken by the highly experienced Parole Board? That is what is being thrust upon us.

The Statement declares that only 5% of the Parole Board come from "a law enforcement background". Well, they do include a number of retired chief constables and prison governors. What is the Government's intention? They say it is that members will

"have greater first-hand operational experience of protecting the public from serious offenders."

The Statement also suggests that one such law enforcement person should sit with two other members on each hearing to form a tribunal. Does that mean that we can now expect a flood of police and prison officers to be appointed? Is the whole purpose of this alleged reform to skew the Parole Board towards negative decisions?

An alternative apparently being considered is that the Justice Secretary should sit as a judge with two assessors when he makes his decision. Is he serious? Personally, I think it would be an excellent use of his time to have direct experience of all the things that he is responsible for: the delays, the listing, the adjournments, the frustrations and the raw emotions of victims and the families of defendants. He would then discover that he is dealing with real people, mostly from disturbed backgrounds—people with problems and illnesses. I think he would then turn for help to psychologists and psychiatrists, and perhaps even to experienced judges. Perhaps he would create his own personal parole board to advise him. "Sit, sit"—I invite him to do so.

So the truth is that this Statement is not oven-ready. It aspires to be half-baked, but the central filling has not been decided on. Still, we are coming up to the end of the Session, and a few headlines for the Justice Secretary are very acceptable when his career has not finished.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Wolfson of Tredegar) (Con): Well, my Lords, I do not know whether my career has even begun, but I will respond to the points that were made, dealing first with the questions from the noble Lord, Lord Ponsonby of Shulbrede. I should say first that I am grateful for his broad support for the thrust of what we are seeking to do. As to consultation, the department has consulted extensively throughout the review. We had a public consultation on opening some parole hearings to the public, including discussions with a wide range of practitioners and experts. Round tables and individual discussions with stakeholders with in-depth knowledge and understanding of the parole process were held, and these informed some of the outcomes of the review.

Some of the consultation regarding the victims Bill was also relevant here because it went to the issue of victim participation. Regarding the number of officials who would be working on this, the cost thereof, and the resource points that the noble Lord made, I say that modelling and costs are to be worked through in detail as the legislation is developed. A full impact assessment will be published when the legislation is introduced.

So far as potential unfairness is concerned, a point which I will come back to when I respond to the noble Lord, Lord Thomas of Gresford, one of the issues here is that whichever of the two models to which he referred we end up putting in place, there is always court review. That is built in, to ensure that there is no substantive unfairness and that the system is compliant with our convention obligations, particularly Article 5.4.

Remote hearings were raised by the noble Lord, Lord Ponsonby, and in particular the involvement of victims. During the pandemic, the Parole Board made extensive use of virtual hearings and has indicated that it will continue the practice. It has also resumed traditional oral hearings and it will be for the Parole Board to ensure that all representations can properly be made. For example, if there were representations, or the victim wanted to say something either with or without the offender there, it would be up to the Parole Board to ensure that the proceedings were substantively fair to all parties.

I respectfully agree with the noble Lord that being moved to an open prison is indeed a privilege and not a right. They are a valuable resource supporting successful and safe resettlement into the community of prisoners who have been suitably risk-assessed, but only those prisoners identified as being appropriate to hold in lower security conditions should be moved to an open prison. Although in this context the Parole Board makes a recommendation, the final decision is for Ministers. In December, the Lord Chancellor took the decision to require greater scrutiny of Parole Board recommendations on open prison moves and will now oversee the decisions in the most high-risk cases personally, those being offenders who have committed murder, other homicide, rape, and serious sexual offences or cruelty against a child, and in cases where officials do not reject a recommendation from the Parole Board, Ministers will consider the recommendation of the Parole Board.

The final point that the noble Lord made was of the Secretary of State being the final arbiter and whether that meant that there was a reputational risk for the Secretary of State. There are two points. First, as to the ultimate arbiter, this brings into play the fact that there is a court oversight to ensure that the system is procedurally fair, so to that extent the Secretary of State is not the ultimate arbiter as there is court involvement as well. However, I respectfully take the noble Lord's point about reputational risk. The flipside is that ultimately, it is Ministers' responsibility to ensure that dangerous offenders are not released on to the streets and so, if I may put it this way, it is quite right that the buck stops with elected Ministers.

I turn now to the points made by the noble Lord, Lord Thomas of Gresford. I accept, as the Lord Chancellor made clear in the other place, that the

[Lord Wolfson of Tredegar]

Parole Board has a great deal of experience and generally does a good job. The majority of parole decisions are unproblematic. That is why these reforms apply only to offenders who have committed the most serious offences. However, there have been cases involving the release of the most serious offenders which have given rise to significant public concern and undermined confidence in the system: Pitchfork, Worboys and others. Therefore, this is not a case of politicians interfering, which I think was the verb used by the noble Lord. As I said a moment ago, politicians have a duty to protect the public and it is quite right that they step up, so to speak, and ultimately take responsibility for the system and those very risky or higher-risk decisions.

So far as a test is concerned, the test in legislation was set out in the substantive Statement but is worth bearing in mind. It says:

"The Parole Board must not give a direction"

for release

"unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined."

However, the courts have interpreted that and, to be fair, one can see why. In particular, in the case of Bradley in 1991, a court judgment stated that the role of the board is to

"carry out a balancing exercise between the legitimate conflicting interests of both prisoner and public".

Therefore, the statutory test has changed to become a balancing exercise between the rights of the prisoner to be considered for release and the responsibility of the state to protect the public. I suggest that that was not the original intention of Parliament.

We propose to set out release test criteria. The noble Lord asked what they were. I could read them out, but, if he will forgive me, I will drop him a note setting them out, which will then be available, rather than read them all into *Hansard*, so to speak. I hope that is satisfactory.

Some Justice Secretaries may have political ambitions —I am responding as somebody with no political ambition and very little of a political career—but, as I said, the ultimate decision does not rest only with the Justice Secretary; there is court involvement. There are two models being looked at. The first would be for Ministers personally to take the decisions. In that case, there would be a route of appeal to the Upper Tribunal. The second would be to create a new review panel to take the decision, which would comprise the Secretary of State and two independent panel members. Decisions by this panel could be challenged through judicial review. Either option introduces ministerial oversight into the release decisions of the highest-risk offenders to keep people safe and to give public confidence in the system. Also, either alternative would be lawful under the convention, in particular Article 5(4), which says:

"Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

We are confident that either model would be consistent with those obligations.

I hope that I have responded to all the substantive points made, but I will check the *Official Report* and when I write with the criteria, if there is anything I have not picked up, I will add it to that letter.

House adjourned at 9.19 pm.