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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

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

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

Wednesday 7 December 2022

3 pm

Prayers—read by the Lord Bishop of Carlisle.

Aviation: Cost of Travel

Question

3.08 pm

Asked by ***Baroness Hoey***

To ask His Majesty's Government what assessment they have made of the options for reducing the cost of travelling by plane from Great Britain to (1) Northern Ireland, and (2) other parts of the United Kingdom not attached to the mainland.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, the Government recognise the importance of air travel for UK connectivity, and we are supporting this connectivity through public service obligations, or PSOs, and a 50% cut in air passenger duty on domestic flights from 1 April 2023.

Baroness Hoey (Non-Afl): My Lords, I thank the Minister. Does she realise that air passenger duty will still be payable both ways, whereas when you fly out of the UK, you only pay it one way? Is she concerned about the escalating costs of flights to Northern Ireland and back? The prices are outrageous now. Dublin Airport has no air passenger duty and a huge subsidy from its Government, and you can get duty free from Dublin to London—but you cannot do so from Belfast to Mallorca because we are still accordingly in the EU. Does the Minister not realise that something has to be done if we mean levelling up? We cannot level up without a fair opportunity for people to fly within the United Kingdom.

Baroness Vere of Norbiton (Con): There is a fair opportunity for people to fly in the United Kingdom. Indeed, in the week commencing 27 November, there were 143 flights a day between Northern Ireland and Great Britain. The provision has recovered, demand is back to 2019 levels and it is a competitive market.

Lord Deben (Con): I understand what the noble Baroness said about Northern Ireland because that is divided by sea, but it is very difficult to understand why we have lowered the cost of internal flights when the French have banned theirs on climate change grounds, and why we have very high rail fares instead. Why did we not reduce the rail fares between England and Scotland, not the carbon-intensive air fares?

Baroness Vere of Norbiton (Con): I am sure that my noble friend is aware that, when we reduced domestic air passenger duty, we added a new ultra-long haul distance band to ensure that the revenues to the Exchequer were maintained. It is the case that the Government have stringent and detailed plans in place to decarbonise our aviation sector, and there will be more on that to come.

Baroness Randerson (LD): With all due respect to the Minister, she did not answer the main thrust of the question from the noble Lord, Lord Deben, which related to the availability of reasonably priced train services as an alternative to aviation. I add an additional point to his question: the train services should not just be reasonably priced; they should also be reliable, and recent debates here have proved that they are not so.

Baroness Vere of Norbiton (Con): I know that the noble Baroness will have the opportunity to quiz me on rail tomorrow. It is the case that we want rail fares to be as low as possible. To achieve that, we need a modern, seven-day railway, which is what this Government are trying to achieve.

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, a person recently booked a single ticket for a flight from Belfast to London which cost £420. This would be the same as the cost of a flight from London to the United States of America. There are few other modes of transport between Belfast and London, so how are families expected to pay such exorbitant prices and what real action can the Government take to assist them?

Baroness Vere of Norbiton (Con): The reality is that this is a competitive market and fares are a commercial decision by the airlines. I have already noted that provision has recovered to where it was before. It is the case that peak-time fares will be expensive, but I believe that there are significantly cheaper fares available than the one he quoted.

Lord Forsyth of Drumlean (Con): My Lords, this is not just a problem across the Irish Sea; it is also a problem when going to Scotland. I have just checked what the fare will be to travel from London City Airport to Edinburgh tomorrow evening one way: it is £425.46. That is ridiculous. It is not a competitive market; we do not have enough competition, which is why people can charge these exorbitant fares.

Baroness Vere of Norbiton (Con): We have one of the most liberal aviation markets in Europe and, indeed, in the world. It is the case that, at peak times, including travelling to Scotland in the evening, flights may well be very expensive, but people who can be flexible with their time will be able to find cheaper alternatives.

Lord Soley (Lab): I put it to the Minister that, if she wants to preserve the union of these islands, we need to remember that there are more islands than just Northern Ireland. The Scottish National Party makes great play of the fact that it subsidises visits to Shetland, but of course you cannot do that if you are English, and there is no subsidy if you go to the Scilly Isles. It is

[LORD SOLEY]
time that we started looking at a fare subsidy system throughout the UK, if we want to hold this union together.

Baroness Vere of Norbiton (Con): It is the case that there are 17 PSOs in Scotland, and an agreement was reached between the Scottish Government and the UK Government that they would be administrated and paid for by the Scottish Government. Again, the Government are open to any local authority able to set out a business case for a PSO. We will look at that on a strategic and economic basis, and, if it makes sense and stacks up, we would be able to support it.

Baroness McIntosh of Hudnall (Lab): My Lords, I think that some of us may be struggling to understand the Minister's definition of "competitive". My understanding of the term in these circumstances is that it is to do with pushing prices down, not pushing them up. It is very hard to understand how she can describe the evidence that the noble Lord, Lord Forsyth, has just put before her as evidence of a competitive market. Could she explain?

Baroness Vere of Norbiton (Con): Absolutely. In a competitive market, if one chooses to book 24 hours ahead of a particular journey, I should imagine one is going to pay more. However, we also know that costs for the aviation sector are quite high at the moment; fuel costs are particularly high, and they have had to restaff after the pandemic. It is a competitive market because there are many providers operating from many London airports that are able to offer a service.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I have been looking around the House as the Minister has been answering the Question, and there is a look of disbelief on all sides. No one believes that she understands what is actually happening in the country, in relation to this. The Question refers also to the islands of Scotland, as I understand it. Could she try to advise us how to get from the mainland of Scotland to some of the islands, when air fares are exceptionally high and there are no ferries, because the Scottish Government cannot build any?

Baroness Vere of Norbiton (Con): Ah, yes, the sorry saga of the Scottish ferries—I am very pleased that that is not in my inbox for the time being. It is the case that the public service obligations operate between the Scottish islands. They are supported, so those fares are subsidised. But the point here is that it is not up to this Government to take taxpayers' money gathered from teachers and policemen and all sorts of people to subsidise air fares where there is a competitive market. The Government simply are not going to do that. What we will allow is for new operators to come into the market, which is what we are trying to encourage, to make the market as competitive as possible.

Lord Cormack (Con): My Lords, it certainly is the Government's obligation to think carefully about the question asked by my noble friend Lord Deben. It is appalling that we are not encouraging people in every possible way, when we get over this series of terrible strikes, to use the railways between Scotland and England rather than to fly. There is a far better option.

Baroness Vere of Norbiton (Con): The Government believe in choice. While we absolutely want to resolve the rail strikes as soon as possible, because they will be turning people away from the railways, which is absolutely not what we want to see, when it comes to flying we believe that it is the case that we can decarbonise aviation. That is what we set out in our *Jet Zero Strategy*, and that is the plan that we are going to follow.

Lord Rogan (UUP): My Lords, the Minister on certain occasions has mentioned that it is a competitive industry. We know that some airlines have chosen to cut back services, and customers' choice, from Northern Ireland to the mainland. What precise discussions has the Minister had with airlines, including easyJet and Aer Lingus, to find out why they are removing such services? What more can be done to ensure that leisure and business travellers to Northern Ireland do not suffer?

Baroness Vere of Norbiton (Con): I can reassure the noble Lord that the numbers of flights per day between Northern Ireland and Great Britain are the same as they were before the pandemic. However, he is right that Aer Lingus has had to make a change to its schedule. What happened was that the Aer Lingus flights were taken up by another operator in the International Airlines Group, so there was no diminution in the number of services. We hope to see Aer Lingus back on that route soon.

Lord Watts (Lab): My Lords, the Minister has not answered the question. Price per mile—both by air and on trains—is much higher here than in many parts of Europe. Why is that, when there is supposed to be competition?

Baroness Vere of Norbiton (Con): There are numerous factors when it comes to that, but in *Flightpath to the Future* we set out the 10 points that we can do in terms of making our aviation sector as competitive as it possibly can be. We will look at airspace modernisation and slot reform, and we will look at decarbonisation—and that will bring down prices.

Scottish Independence

Question

3.19 pm

Asked by ***Lord Foulkes of Cumnock***

To ask His Majesty's Government what discussions they have had with the Scottish Government about that government's policy paper *Building a New Scotland: A stronger economy with independence*, published on 17 October.

The Parliamentary Under-Secretary of State, Scotland Office (Lord Offord of Garvel) (Con): My Lords, I can answer the Question from the noble Lord, Lord Foulkes, by confirming that His Majesty's Government have

had no discussions with the Scottish Government about the recent policy paper entitled *Building a New Scotland: A Stronger Economy with Independence*, dated 22 October. This is the third of seven glossy documents currently being produced by the Scottish Government as they continue to bypass devolution by spending £20 million of taxpayers' money and wasting civil servants' time on matters reserved for the United Kingdom Government.

Last month, the Supreme Court gave a decisive, unanimous ruling that the Scottish Government have no legal competence to legislate on reserved matters. The constitution is clearly and unequivocally reserved to Westminster. It follows now that His Majesty's Government calls on the Scottish Government to cease and desist from constantly crossing the line from devolved matters into reserved matters. As the Secretary of State for Scotland said last year in the other place:

"I think most right-minded Scots would agree that using civil service resources to design a prospectus for independence is the wrong thing to be doing at this time."—[*Official Report*, Commons, 8/9/2021; col. 289.]

Lord Foulkes of Cumnock (Lab Co-op): I am very grateful to the Minister for his reply: I could have written it myself. However, now that the Supreme Court has decided that the Scottish Government have no responsibility whatever for calling a referendum, surely the production of all these publications he described, and indeed the employment of so many civil servants, is ultra vires. Since it is the United Kingdom Government who have the ultimate responsibility for the propriety of the expenditure of all UK taxpayers' money, when and how are they going to exercise this responsibility?

Lord Offord of Garvel (Con): As the noble Lord was an active parliamentarian at that time, I am sure he can confirm that the devolution settlement enacted in the Scotland Act 1998 did not envisage a scenario where the Scottish Parliament in Holyrood would act in confrontation, instead of in co-operation, with Westminster. The Scotland Act assumed there would be a very clear demarcation between reserved and devolved matters, respected by both sides. Therefore, there are no penalties, fines or surcharges built into the parliamentary architecture for ultra vires activities of the sort previously described to the House by the noble Lord, Lord Forsyth, as applying, for example, to local councillors. However, I reassure noble Lords that this matter has now been reviewed at the highest reaches of the UK Civil Service.

Following the Supreme Court judgment, the United Kingdom Cabinet Secretary is in discussion with the Scottish Government's Permanent Secretary on the role of the Civil Service in Scotland. My own observation from 15 months as a Minister in the Scotland Office is that if only we could get the Scottish Government focused on the day job of administering Scottish affairs in devolved areas and working in co-operation with the UK Government in reserved areas, there is no doubt in my mind that, working together, we could turbocharge Scotland.

Lord Robathan (Con): My Lords, my noble friend the Minister will recall that in 1997, Tony Blair and Gordon Brown said that devolution and giving the Scottish Parliament greater powers would kill nationalism stone dead. Does he think that the recent idea—floated, I think, on Monday—to give the Scottish Parliament more powers would kill the idea of an independent Scotland stone dead again?

Lord Offord of Garvel (Con): The noble Lord should be well aware that Gordon Brown has been on this journey for quite a while; he proposes a federal United Kingdom. But when one of the four nations has 85% of the population and 90% of the wealth and it does not want devolution, you have a problem. So I agree with the noble Lord that devolution did not kill independence stone dead, but I am very clear that the Scottish National Party commands the support of only one-third of the Scottish electorate and therefore it should get on with the job in hand, which is to manage Scotland within the devolution settlement.

Lord Bruce of Bennachie (LD): My Lords, does the Minister recognise that while this document is strong on nationalist rhetoric, it is almost entirely deficient in detail? Does he say that the SNP does not have the capacity to second-guess the outcome of negotiations with either the rest of the UK, the EU or the financial markets, and that it should recognise that Scottish opinion is still divided and what it should be doing is getting on with the job in hand, addressing what matters in the ailing health service and declining education, and end this embarrassing distraction?

Lord Offord of Garvel (Con): The noble Lord is obviously well versed in the Scottish economy and Scottish affairs. I make two observations on the paper, the glossy document. First, as we have come to expect from a Scottish Government with 27 Ministers and 56 press officers, for every policy initiative there is a glossy document and a glitzy, headline-making press release. The problem the Scottish people have, which we have found to our cost, is that actual policy delivery on the ground ranges from non-existent to incompetent. Secondly, any reader of the glossy document will discover four glaring omissions: no explanation of how an independent Scotland would reduce our annual deficit of £24 billion, which is 25% of our annual budget; no explanation of how an independent Scotland would fund this deficit without access to international bond markets through its own currency; no explanation of how an independent Scotland would operate a hard border on the island of Great Britain; and no explanation of how an independent Scotland would access the knowledge economy when the SNP has wrecked our education system.

Baroness Bennett of Manor Castle (GP): My Lords, the Minister referred, in responding to the noble Lord, Lord Foulkes, to "right-minded Scots". Is he aware that an Ipsos MORI poll on independence came out just a couple of hours ago, after the release of this *Building a New Scotland* policy paper and the Supreme Court judgment, which shows a significant rise in support for Scottish independence? Should the Scottish people not be allowed to have their say?

Lord Offord of Garvel (Con): As we have said many times in this Chamber, the Scottish people had their say in 2014. Some 3.6 million Scots voted: 84% of the

[Lord Offord of Garvel]
electorate. It was the highest turnout anywhere other than Australia, where it is compulsory to vote. In it, 2 million voted to stay and 1.6 million voted to leave. That is a decisive result.

Lord West of Spithead (Lab): My Lords, does the Minister agree that one exemplar of the SNP's capability in economic and industrial terms is shipbuilding? We have provided incredible orders on the Clyde and at Babcock for our Navy, yet the only area in which the SNP has been involved are some ferries which are something like three years overdue and had to have windows painted on them because holes had not been cut. It is now thinking of building them somewhere else. Does the Minister agree that that is an exemplar of what the SNP can achieve?

Lord Offord of Garvel (Con): The noble Lord has great knowledge of these matters. The UK Government have just announced £4 billion of new shipbuilding orders coming to the Clyde and Rosyth. It has been noted that in the last five years the naval shipyards in Scotland have built four frigates while the SNP cannot get two rusting ferries off the dock. It is very clear that we have great competence and strength in our naval shipyards. Sadly, that is not the case within the Scottish Government's remit.

Lord Selkirk of Douglas (Con): Will the Minister accept that Scotland's greatest market is England, the scale of which is substantial? Whether Scotland can go it alone is the wrong question. The question is: wherein lies the balance of advantage? Conclusively, in my view, it is in the United Kingdom.

Lord Offord of Garvel (Con): I agree with the noble Lord; 60% of Scottish trade is with England, 20% is with the EU and 20% is international. This is part of the issue not addressed in the paper. I point to a couple of observations. The IFS has said of the paper that

"Scotland's much higher levels of public spending … mean that it … would need to make bigger cuts to … spending or … increases to taxes".

Richard Murphy, traditionally a pro-independence economist, said to the *National* that the

"currency plans are 'so wrong' he would vote No in a future referendum."

A pro-independence campaigner, Robin McAlpine, commented that the prospect was dismal—Scotland has no lender of last resort under these plans and there is no solution to the border. In summary, he said the whole thing is "utter pish". I defer to the Lord Speaker to explain to more genteel noble Lords that that is a Glaswegian euphemism for utter balderdash.

Baroness Chapman of Darlington (Lab): My Lords, is not the truth that neither the Scottish Government nor the UK Government are doing a good job for the Scottish people at the moment? Does the Minister not think the Labour leader in Scotland, Anas Sarwar, makes a very strong point when he proposes that there should be an emergency cost of living Act, including halving rail fares, capping bus journeys, emergency debt legislation, a top-up to the welfare fund and a fully costed plan for £100 water rebates? Would that not be a better use of the Scottish Government's time?

Lord Offord of Garvel (Con): That is quite a long shopping list. We can see the strength of the United Kingdom in the measures recently put forward to address the cost of living crisis, which are distributed equally across all four parts of the United Kingdom. Scotland is a major beneficiary of those and is funded much more securely within the United Kingdom than it would be as an independent country.

Nigeria

Question

3.29 pm

Asked by ***Baroness Cox***

To ask His Majesty's Government what representations they have made to the government of Nigeria regarding the violent targeting of Christians, non-Islamist Muslims, and other minority faith and non-faith groups in that country, including reports of massacres, destructions of homes and clinics, forced displacement, and abductions.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con): My Lords, the UK Government believe that violence against any person because of their religion or belief is unacceptable. In Nigeria, attacks by terrorists and criminal gangs as well as localised community violence are having an unacceptable impact on people's lives. We regularly raise our concerns, including about the impact that violence is having on different faith and non-faith groups, with Nigeria's Ministers, state governors and security professionals. Through the UK-Nigeria security and defence partnership, we are committed to supporting Nigeria to improve security across the country and protect human rights.

Baroness Cox (CB): My Lords, I thank the Minister for his very principled reply. Is he aware that, according to Intersociety, 4,020 Christians have been killed by militant Islamists; that more than 2,000 were abducted between January and October this year alone; that, according to Open Doors, 3,500 killed were last year; and that many Muslims have also been killed? I have visited Nigeria many times, including twice this year, and I have seen the mass graves of civilians, the burned villages, and met survivors who described the atrocities perpetrated by militants. Will His Majesty's Government therefore make representations to the Nigerian Government to call perpetrators of violence to account and protect its civilians from the escalating massacres and abductions?

Lord Goldsmith of Richmond Park (Con): The noble Baroness is absolutely right: it is a grim picture, with atrocities being committed far too regularly. Of course, we continue to encourage the Nigerian Government to take urgent action to protect people at risk, bring perpetrators to justice and implement long-term solutions that address the causes of violence. Most recently, the British high commissioner for Nigeria raised our concerns about violence with all the main presidential candidates

ahead of the 2023 elections. Our high commissioner works very closely with state governors, local community faith leaders, NGOs and so on to address these issues, including through our work with the Nigeria Governors' Forum. In January, the Minister for Africa raised our concerns with Nigeria's Vice-President during his visit here. She also raised the various security challenges that Nigeria is facing with Nigeria's National Security Adviser, General Monguno, at our security and defence partnership meeting in February. The former Prime Minister also raised the issue during his meeting with President Buhari at CHOGM in June.

Lord Collins of Highbury (Lab): My Lords, the Minister has mentioned the security and defence partnership twice. Bearing in mind that this has resulted in police advisers being deployed to Nigeria from the UK, as well as wider support for community policing, has the FCDO assessed how that is working? Has it made any commitment to it continuing?

Lord Goldsmith of Richmond Park (Con): My Lords, we refreshed our security and defence partnership with Nigeria in February this year. We committed to work together to respond to shared threats such as serious and organised crime and terrorism, and to support Nigeria to tackle its domestic security challenges. Our support is very wide-ranging, a reflection of improvements we brought to the partnership. It includes training, mentoring and advice on tackling serious and organised crime, countering terrorism, reforming and strengthening civil policing, improving capacity to prevent and respond to kidnappings, which are an increasing occurrence, and complying with international human rights law.

Baroness Northover (LD): My Lords, does the Minister agree that the situation in northern Nigeria—poverty, malnutrition and a perceived absence of government—could create the opportunity for terrorist groups, along with its potentially wide effect? This is a region on which DfID, when it existed, focused. Can he tell the House what used to be spent on the programme in northern Nigeria in 2020 and what is spent now?

Lord Goldsmith of Richmond Park (Con): The noble Baroness is right to highlight the problems in north-east Nigeria, where extremist groups and the ongoing conflict are having a massive impact on communities. These terrorist organisations are set on undermining the right to freedom of religion or belief by attacking those of all faiths who do not subscribe to their limited, extremist views. We are taking a co-ordinated approach to supporting Nigeria and its neighbours to address both the causes and impacts of that conflict. That involves political and defence engagement, humanitarian development and counterterrorism support, and stabilisation and mediation assistance. I do not have figures solely from the time of DfID, but I have some which overlap; over the last five years, the UK has provided £425 million in humanitarian aid to north-east Nigeria. We believe that has reached around 1.5 million vulnerable people.

Lord Alton of Liverpool (CB): My Lords, it is four years since a 14 year-old girl, Leah Sharibu, was abducted by Boko Haram. She was forcibly taken, raped and impregnated, and she has never been returned to her family. As recently as last week, the Nigerian high commissioner, speaking here in your Lordships' House, said that she is still alive. The Minister has just referred to kidnappings and abductions. Can he tell us when we last raised Leah's case with the Nigerians? What is happening to the Chibok girls and what more can be done to secure their release?

Lord Goldsmith of Richmond Park (Con): The case the noble Lord mentions is truly devastating and grotesque in so many respects. Of course, we continue to condemn Islamic State West Africa Province for that abduction and the ongoing captivity of Leah Sharibu. We have raised her case with the Nigerian Government on numerous occasions—I cannot tell the noble Lord exactly when the last time was, but I will ask the Minister for Africa—and we have called for her release and that of everyone held by terrorist groups in Nigeria. The problem, as the noble Lord knows, is that kidnappings are occurring frequently across Nigeria, and they are carried out by criminal gangs and violent extremist organisations which are indiscriminate in the treatment they mete out to those they capture. Needless to say, the UK condemns all such activities and we are doing everything we can to help the Nigerian police force cope with and tackle this growing problem.

Lord Cashman (Lab): My Lords, the Minister refers to upholding international human rights standards. As has been raised, there is increasing concern about the treatment of women and girls. Will he therefore reassure the House that he will go back to the Nigerian Government and raise this issue of the treatment of women and girls, as well as the discrimination faced by lesbians, gay men, bisexuals and trans people, who indeed face the death penalty?

Lord Goldsmith of Richmond Park (Con): The figures are truly horrifying. Just last year, an estimated 1.3 million people were in need of services to prevent and respond to gender-based violence in Borno, Adamawa and Yobe states alone. The numbers are staggering: 82% of those people are women and girls. Sexual violence and exploitation are a serious problem across Nigeria, but particularly in those regions. The UK delivered sexual exploitation and abuse training to the Nigerian army the year before last and last year, to ensure that gender perspectives are taken into account during security operations. The Conflict, Stability and Security Fund has also supported community-led reporting structures, which give women a place to report sexual harassment and violence and seek support. Over the past five years, humanitarian funding from the FCDO in Nigeria has provided more than 590,000 people with access to services that can help protect them from conflict-related sexual violence.

Lord Singh of Wimbledon (CB): My Lords, does the Minister agree that when violence and atrocities take place in the name of religion, the leaders of that religion should be the first and foremost to condemn those atrocities? Does he further agree that an opportunity was lost at the recent freedom of religion and belief conference, hosted by the UK, to get a binding commitment from religious leaders to that effect?

Lord Goldsmith of Richmond Park (Con): The noble Lord is of course right that leaders of all the great religions need to take every opportunity to condemn violence in the name of their religion. Obviously, religious belief—and indeed non-belief—is a driver for attacks by terrorist groups. Mostly in north-east Nigeria, Christian communities in particular are targeted by groups, as are Muslim communities which do not subscribe to a particular narrow and extremist point of view. Religious identity can of course be a factor in intercommunal violence, but the causes of these attacks go further than that. They are complex and frequently relate to competition over resources, historical grievances and sometimes just base criminality.

Lord Kamall (Con): My Lords, can my noble friend the Minister tell us about some of the work the Government are doing with not only local but international civil society organisations, particularly those which focus on interfaith initiatives and anti-radicalisation?

Lord Goldsmith of Richmond Park (Con): The FCDO base in Nigeria works frequently through religious organisations there, but also through civil society, on a wide range of issues, such as countering violence against women and girls, promoting media freedom and doing what we can to undermine the organisations behind some of the atrocities we have been talking about today. This is very much a focus of our work.

Lord Boateng (Lab): My Lords, how are we measuring the impact of this £425 million spent on humanitarian assistance alone? Listening to noble Lords on all sides of the House this afternoon, and drawing on one's own experience, it seems that very little benefit is accruing to the people of Nigeria.

Lord Goldsmith of Richmond Park (Con): There is no doubt that Nigeria is a deeply troubled country, for all the reasons we have talked about today. It has also been a big recipient of ODA. However, it is possible to measure the impact of the investments we have made. Our assessment, which has already been cited, is that we have provided £140 million in bilateral ODA to Nigeria since 2021, and since 2015 we have supported more than 2 million Nigerians to improve their incomes and jobs sustainably. Since 2009, education has been reaching more than 8 million children in 11 states, and since 2012 more than 1.5 million additional girls have been accessing schooling in six states as a result of our funding. In fact, there are many other areas in which we have measurable success as a consequence of our support.

Strike Action

Question

3.40 pm

Asked by ***Lord Walney***

To ask His Majesty's Government what steps they are taking to minimise disruption to essential services over the Christmas and new year period, given proposed strike action by workers in several sectors.

The Minister of State, Cabinet Office (Baroness Neville-Rolfe) (Con): My Lords, as a responsible Government, we have been planning and continue to prepare for a wide range of scenarios. Tried and tested contingency measures are in place to minimise the impact of potential strike action on the public. Our priority over the coming weeks is to limit the disruption to the public as much as possible and protect critical services over Christmas and the new year.

Lord Walney (CB): I thank the Minister for that Answer. On the health service, is it not the case that this dismal negotiation over what constitutes a category 1 emergency—that is, life-threatening—itself risks further increasing unnecessary loss of life if people are deterred from ringing 999 in their hour of need? On the wider situation across the transport network, regardless of people's views on the overall merits of particular pay claims, is it not the case that we all, both in this House and in the other place, have a responsibility to say unequivocally that it is wrong to bring the economy to its knees and threaten mass damage to people's livelihoods, particularly in the hospitality sector, at this critical time of year?

Baroness Neville-Rolfe (Con): On the noble Lord's first point, I will write to him as it is really for the Department of Health and I do not know the answer. On his wider point, I agree with him that it is very important that people take account of what is happening across the country and how industrial action has affected businesses in lots of different sectors, as he said. Of course, we regret the decisions taken by multiple unions to strike. We greatly value the work of the public services but pay deals have got to be fair and affordable.

Lord Houghton of Richmond (CB): Can the Minister confirm whether, in the scenarios that are being planned for, the deployment of regular and reserve military manpower might be called upon? If that is the case, can she also confirm whether the new, revised chapter of last year's integrated review might reverse the decisions on reductions in the manpower strength of both the Army and the Volunteer Reserves?

Baroness Neville-Rolfe (Con): Although I sympathise with the noble and gallant Lord's points on the wider question of the Army, this is not something that I can comment on. However, I can say that, as he knows, the Government are able to utilise the military aid to the civil authorities protocol as a last resort to respond to major strikes. It is a tried and tested process that covers a range of risks, obviously including strike action. We are stepping up contingency measures, with around 2,000 military personnel, and some civil servants and volunteers, currently being trained to support a range of services if the need arises.

Lord Watts (Lab): My Lords, it suits the Government to claim that these are union disputes but is it not the case that the members of those unions have voted unanimously for action because their living standards have been squashed so much by this Government? Instead of interfering in those negotiations, would it not have been better for the Government to have tried

to find a solution to the rail and health service strikes rather than sitting back and claiming that they are nothing to do with them?

Baroness Neville-Rolfe (Con): The Government have done a great deal to try to move things forward. On rail, which the noble Lord referenced, a new and improved deal, backdated, at 4% this year and 4% next year, has been offered. But although we want pay deals to be fair and affordable, and want independent pay review bodies to help with that process, our number one priority must be tackling inflation, which currently stands at 11%.

Baroness Hoey (Non-Afl): My Lords, does the Minister understand that Royal Mail is being destroyed by the current management, and that although it would be very disappointing that the strike may stop some Christmas cards getting through, the vast majority of the public, particularly in rural areas, realise that the working conditions of ordinary post men and women across the country are being changed deliberately? This is not a dispute about pay; it is about how the Royal Mail wants to destroy letter posts throughout the country.

Baroness Neville-Rolfe (Con): I have a great deal of admiration for Royal Mail. The way that it kept going and delivered all our mail through Covid, and has changed its operating model to do parcels and compete with others, is amazing. We are in touch with Royal Mail. It has well-developed contingency plans for strikes and will continue to do what it can to keep services running through December. We continue to monitor the dispute closely, and obviously urge people to post early for Christmas. There is a wider process of change within Royal Mail, and the noble Baroness makes some important points.

Lord King of Bridgwater (Con): Is it not a tragic comment that the present situation in the railways appears to be that those who are putting in the pay claims will get 9% over the next few years but those on lower pay will get an extra payment as well? It may be that the union leadership is looking for another 1% or 2%, but is not the fact of the matter that, against that background, they are going to cause chaos and confusion for a huge number of people, a lot of whom earn a lot less than those who are going on strike? Must one not hope that, in the interests of their own industry, and the rail industry, the membership of the unions, and the RMT in particular, will show a rather more constructive approach than their leadership?

Baroness Neville-Rolfe (Con): That is often the case; my noble friend is right. As I have already said, they were offered an improved deal. Obviously, negotiations are a matter for unions and employers, but we are clear that the dispute on the railways has gone on too long. We will continue to facilitate negotiations to reach an agreement that is fair: fair to workers, to passengers and to taxpayers. I think that upping the strikes over Christmas risks driving even more people away from the railways, at a time when passengers and businesses should be taking advantage of the festive period.

Baroness Chapman of Darlington (Lab): My Lords, that being the case, why is it that this Government spent the summer aggravating the situation and failing to sit down with representatives to negotiate a settlement? That is why we have ended up in the situation we are in.

Baroness Neville-Rolfe (Con): As I said, the Government do not negotiate; it is for the employers and the unions to get together. There have been negotiations that involve not only pay but changing practices, which I strongly support and which will help with services and productivity on the railways, which I strongly support. I regret that people cannot come together and come to an agreement on this, which will help to save the railways' future.

Baroness Brinton (LD): My Lords, the Minister referred to the deployment of military. I want to follow the question of the noble and gallant Lord, Lord Houghton. There are proposals that the military be deployed to replace ambulance workers who are on strike. How many serving military personnel are qualified paramedics or have the formal equivalent recognised qualification, and are not currently on, just back from, or due to go on deployment? We know that our military is under considerable pressure as well.

Baroness Neville-Rolfe (Con): I thank the noble Baroness for her question. These are the sorts of details that the military, the COBRA unit and the departments that may need help from the military are looking at on a contingency basis. One problem we have is predicting what is going to happen with the strikes; every day there seems to be an announcement of different plans, and we are trying to work to make sure that the strikes do not happen.

Lord Clarke of Nottingham (Con): My Lords—

Lord Cashman (Lab): My Lords—

Baroness Williams of Trafford (Con): My Lords, looking at my notes, I see that it is the turn of the Conservative Benches.

Lord Clarke of Nottingham (Con): Noble Lords may recall the long ambulance strike of the 1980s that lasted six months and more. The military actually enjoyed the experience because it had real casualties to deal with instead of the pretend ones used in paramedic training—the military then had more paramedic training than the civilian ambulance drivers in the NHS. Is not our recollection of the 1960s and 1970s that, if the Government intervened in every strike to ensure that some improved offer was made above what the employers wished to make, it made every strike seem successful and encouraged people to vote for more strike action in the succeeding round? Whatever happens this year—and we hope we can resolve these issues—we must not return to the old wage-price spiral that was so destructive in those days.

Baroness Neville-Rolfe (Con): I agree with my noble friend, and that is a very good point on which to end this useful exchange.

Extraterritorial US Legislation (Sanctions against Cuba, Iran and Libya) (Protection of Trading Interests) (Amendment) (EU Exit) Regulations 2022

Motion to Approve

3.51 pm

Moved by ***Viscount Younger of Leckie***

That the draft Regulations laid before the House on 8 November be approved.

Considered in Grand Committee on 5 December.

Motion agreed.

Immigration Skills Charge (Amendment) Regulations 2022

Immigration (Persons Designated under Sanctions Regulations) (EU Exit) (Amendment) Regulations 2022

Motions to Approve

3.52 pm

Moved by ***Lord Murray of Blidworth***

That the draft Regulations laid before the House on 17 October and 1 November be approved.

Considered in Grand Committee on 5 December.

Motions agreed.

Money Laundering and Terrorist Financing (High-Risk Countries) (Amendment) (No. 3) Regulations 2022

Social Security (Class 2 National Insurance Contributions Increase of Threshold) Regulations 2022

Motions to Approve

3.52 pm

Moved by ***Baroness Penn***

That the draft Regulations laid before the House on 7 and 14 November be approved.

Relevant document: 19th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 6 December

Motions agreed.

Higher Education (Freedom of Speech) Bill

Report

3.53 pm

Clause 1: Duties of registered higher education providers

Amendment 1

Moved by ***Lord Hope of Craighead***

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

"(1A) "Freedom of speech" refers to the Convention right of freedom of expression set out in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms as far as it consists of a right to impart ideas, opinions or information by means of speech, writing or images (including in electronic form)."

Member's explanatory statement

This amendment seeks to avoid a possible inconsistency between the right to freedom of expression which this Bill seeks to protect and the right to freedom of expression in Article 10 which is the subject of other legislation which may come before the House.

Lord Hope of Craighead (CB): I will pause for a moment to allow noble Lords to leave the Chamber.

My Lords, there are two amendments in this group to which I will speak, and two government amendments in the same group on which I will comment. Before I go further, I express my appreciation to the Ministers, the noble Earl and the noble Baroness, for their very kind co-operation and discussions with me and others in trying to resolve the points I am raising in this group. I appreciated it very much and, for reasons I will explain later, those discussions were extremely fruitful.

My first amendment is in exactly the same terms as an amendment that I tabled in Committee. It simply asks that a provision be included in the Bill to explain what is meant by the expression "freedom of speech" in this context. The problem arises because those of us who are familiar with Article 10 of the European Convention on Human Rights are used to the expression "freedom of expression", which is what the article talks about. I was concerned that, by some mischance, the Bill was seeking to create a different freedom from that which Article 10 is talking about. By simply putting in the definition in the fairly stark terms that I proposed in my amendment, I thought I could achieve some degree of certainty. I am glad that there was a certain amount of support in Committee for what I proposed, and the noble Lord, Lord Collins, has very kindly added his name to my amendment; I appreciate his support.

My other amendment in this group is Amendment 10, in which I have the support of not only the noble Lord, Lord Collins of Highbury, but the noble Lord, Lord Moylan, with whom I discussed this issue in some detail. It seemed to me and I think to the noble Lord, Lord Moylan, that more needed to be said about the checks and balances which surround the whole concept of freedom of speech or freedom of expression, whichever terminology you choose to use. The convention makes this very clear, because Article 10 sets out the basic right in paragraph 1 and then in paragraph 2 makes a number of qualifications, which make comparatively good sense, to explain that the freedom is not unqualified.

In discussion with the noble Lord, Lord Moylan, I proposed to put forward an amendment which did not come before the Committee to explain what the phrase "within the law" means. I should explain that the way the Bill expresses the idea of freedom of speech is to encompass it as freedom of speech within the law. It seemed to me that the words "within the law" beg the question of what exactly that expression means. A simple way of doing it is to put in a definition, which is what Amendment 10 does. It states:

"'within the law' means that the exercise of this freedom is subject to the duty to respect the rights of others and not to do or say anything that is prohibited by any enactment or rule of law."

I suggest that this simple terminology encompasses what "within the law" means, because the phrase suggests that there is some qualification on the idea of freedom of speech, and this amendment is trying to explain exactly what that qualification is.

Those are my amendments, and I do not think I need to say much more about them. I have discussed them both in some detail with the Minister—the noble Baroness, Lady Barran.

As for the government amendments, I am delighted to see that, as a result of discussions, the Government have brought forward amendments which recognise the place which Article 10 of the convention has in our overall understanding of what the freedoms we are talking about really mean. For that reason, I am happy to see these amendments, and if they are to be moved I shall not press my first amendment. However, I remain of the position that my second amendment, which has been supported by the noble Lord, Lord Moylan, has real force. When we come to the point, I suggest that it requires considerable thought and support because it is essential that we understand what the words "within the law" really mean. Either they are there for a purpose, and if the purpose is there it should be explained, or they have no purpose at all, in which case those words should not be in the Bill. I hope I have explained my position as shortly as I can. With that introduction, I beg to move.

Lord Moylan (Con): My Lords, it is a great privilege to speak after the noble and learned Lord, Lord Hope of Craighead. I have the impression—perhaps I am making it more explicit than he was willing to—that the Government have slightly misconceived the issue: it is not a definition of freedom of speech but rather a definition of the legal framework within which freedom of speech is to be understood. That is, the meaning of the words "within the law" is at issue slightly more than that of the words "freedom of speech".

4 pm

I am of course subject to correction by the noble and learned Lord because the amendments are in his name but, as I see it, Amendments 1 and 10 offer a reasonably clear choice as to the legal framework within which freedom of speech is to be understood. The first, Amendment 1, roots it firmly in Article 10 of the European Convention on Human Rights.

As an historical aside, in reference to the remark by the noble and learned Lord when he drew the contrast between freedom of expression and freedom of speech, when reading Article 10 one carries away the impression that it was drafted by people whose first thought was to preserve a free press. Given the history of much of Europe in the 19th and 20th centuries—when we already had a free press by the beginning of the 19th century, the use of press censorship was the principal means of political control in many European countries—one can understand why the freedom of the press was so vital to those who drafted the European convention, whereas freedom of speech, perhaps a broader concept, encompasses more than simply freedom of the press. The idea that one would go around regulating what people said in university lectures or on street corners is probably one that even the most oppressive of Prussian policemen would not have considered reasonable in the early 19th century. Here we are nowadays with a different approach to the regulation of speech, perhaps an even more restrictive one than the Prussian policemen had, so we have to tackle this issue in a slightly different way.

Lord Macdonald of River Glaven (CB): My Lords, the noble Lord may be being rather kind to the Prussian police. I have no doubt that in the early 19th century the Prussian police were extremely interested in what was said in colleges and on street corners.

Lord Moylan (Con): I am happy to take the historical dispute offline, as they say, and discuss it with the noble Lord afterwards.

Our concept of freedom of speech in traditional English law is broader. It concerns not merely things that are said in the press but what you might say at Speakers' Corner, among your friends or in colleges and universities. Amendment 10 seeks to root the notion of the legal framework in which we are considering freedom of speech in that broader English common-law tradition. I see a relatively clear contrast between the two, which is why I had no hesitation in supporting Amendment 10. I am happy to acknowledge the discussions I had with the noble and learned Lord about it before he tabled it.

It seems that the Government are not taking either of those clear choices. They have come up with a third option, which frankly I regard as a little bit of a muddle. In the first place, it seeks to root the legal framework within which we are to understand freedom of speech in Article 10, but it refers specifically to Article 10(1).

As the noble and learned Lord said, Article 10(1) is perhaps the positive part of Article 10. It is the part that goes out and says, "Freedom of expression is very important and has to be protected". It is paragraph 2 of Article 10 that goes on:

"The exercise of these freedoms"

and so forth

"may be subject to such formalities, conditions, restrictions or penalties"

for various purposes, which it then lists. I will not detain the House by reading them out, but it is the restrictive part.

There is no mention of the second part of Article 10 in the Government's amendment. Ministers with whom I have had the benefit of discussions about this, for which I am grateful, have said to me that it is clear they intend this to be a freedom which is consistent with what I have described as the English common-law tradition of freedom of speech. That brings me to the question: if that is what they mean but they still wish to root it in Article 10, what has happened to its paragraph 2? Does the Government's amendment mean that paragraph 2 is disapplied in relation to the understanding of freedom of speech as it is to sit in the Bill, following their amendment? As drafted, the amendment is pregnant with paragraph 2, but we do not know whether the birth is going to take place. What is the role of that part of Article 10 in this?

[Lord Moylan]

My own view is that the Government have a lot of explaining to do on this late amendment to try to make clear to your Lordships what is being achieved. If this is the right means of achieving it and their intention is to have a broad understanding of freedom of speech, why are they rooting it in Article 10 in the first place and what has happened to the second part of that? Would it not be much better if my noble friends on the Front Bench simply opted for one of two amendments tabled by the noble and learned Lord, ideally Amendment 10?

Baroness Garden of Frognal (LD): My Lords, from these Benches we very much welcome the government amendments in this group. We consider that "opinions" is a much safer term than "beliefs or views". We also welcome Amendment 7, which aligns freedom of speech more closely to other conventions. I am afraid that I do not have the legal knowledge to discuss the views of the noble Lord, Lord Moylan, on whether paragraph 2 should be there.

However, we support the other amendments in the names of the noble Lord, Lord Collins, and the noble and learned Lord, Lord Hope. We are also very pleased that the Minister has signed Amendment 6, which should help to protect freedom of speech and well-being on our campuses. We realise it is unlikely that the other amendments in this group will go any further; meanwhile, we thank the Ministers very much for listening.

Lord Collins of Highbury (Lab): My Lords, I thank the noble and learned Lord, Lord Hope, for introducing this group. When we were discussing these points in Committee, what prompted me to support him was how we should try to future-proof this legislation, particularly where there was speculation about human rights definitions and things that might lead to other changes. I therefore also welcome the Government's own amendments. They are extremely helpful, and we welcome them in relation to this issue. I must admit that I am quite happy to support a third way. It has been part of my political tradition to do so, so I will support that.

I come to Amendment 6 in my name. We had an extremely positive exchange about how we protect these freedoms and stop a nasty practice of non-disclosure agreements inhibiting free speech. I am extremely pleased that the Government have signed the amendment and agreed to support it. I also appreciate all the discussions I have had with the Minister, whom I thank very much.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, I would like to address the group of amendments concerning the free speech duties. As your Lordships have already noted, we had an important debate on these issues in Committee which sought to bring clarity and consistency both to the definition of freedom of speech and what the Government mean by "within the law". Our amendments seek to address the first of these points. I hope that my remarks will cover the latter. I am disappointed that my noble friend Lord Moylan still thinks we are muddled on this issue; I will do my best to bring a little clarity.

Amendment 7 amends the provision in new Section A1(11), which currently sets out what freedom of speech as referred to in this Bill includes. The amendment refers to the

"freedom to impart ideas, opinions or information …by means of speech, writing or images (including in electronic form)".

This wording is derived from Article 10(1) of the European Convention on Human Rights, which is also used in the Bill of Rights Bill. This was a particular concern of the noble and learned Lord, Lord Hope. There is also a reference to Article 10(1) of the ECHR as incorporated by the Human Rights Act 1998. This has been carefully drafted to reflect the fact that the freedom of speech in this Bill is a broader concept than freedom of speech in Article 10 because students' unions are not public authorities and are not subject to the ECHR.

The other amendments are consequential. For example, they refer to "ideas or opinions" in certain provisions rather than "ideas, beliefs or views". That is to reflect Amendment 7 and is not intended to change its meaning. I will comment on the phrase "within the law" when I respond to the noble and learned Lord's Amendment 10.

As your Lordships are aware, these amendments are in response to Amendment 1, which was moved and eloquently explained by the noble and learned Lord, Lord Hope of Craighead. This is similar to our amendments, but we have some issues with it. The wording is from the Bill of Rights Bill, but this amendment would cause difficulties if inserted into this Bill. First, as I have already said, it is not right regarding the application of Article 10 to students' unions. Secondly, it refers to the "right" to freedom of speech, which would lead to new Section A1(2), a duty to take steps to secure an individual's freedom of speech—by which we mean the exercise of that freedom—instead being a duty to take steps to secure an individual's right to freedom of speech. This is not what is intended in the Bill.

Regarding consistency with the Online Safety Bill, that Bill does not refer to freedom of speech but rather to the wider concept of freedom of expression. My sense was that the noble and learned Lord is not planning to press this amendment. I hope he will accept that the government amendment answers his concerns and those of the other signatories to Amendment 1.

Amendment 10, also tabled by the noble and learned Lord, seeks to define "within the law" as regards freedom of speech under the Bill. This Bill does not change an individual's right to freedom of speech. That right is established in common law and under Article 10 of the ECHR, as incorporated into UK law by the Human Rights Act. People are free to say what they want, so long as their speech is not prohibited under the law. As the noble and learned Lord explained, the right to freedom of speech is a qualified right, meaning that, for example, there is no right to incite racial hatred or to harass others. I am aware that my noble friend Lord Moylan is concerned that freedom of speech is perhaps becoming more qualified by some of the restrictions set out in Article 10(2) but that is beyond the scope of this Bill which does not change how Article 10(2) applies.

This Bill does not change what is or is not lawful under UK law; that is for other legislation to do. The reference to

"freedom of speech within the law"

in new Section A1(2) simply means freedom of speech that is lawful. It might be helpful to note that we do not understand there to be a legal duty

"to respect the rights of others",

as specified in the amendment.

4.15 pm

It is vital to understand that new Section A1(2) cannot be read in isolation. It is part of the duty on providers to take reasonably practicable steps to secure

"freedom of speech within the law"

for staff, members, students and visiting speakers. The purpose of that reference to freedom of speech within the law is to set the scope of the duty such that it applies only as regards lawful speech. I hope that this explanation offers reassurance to your Lordships.

I turn to Amendment 6, tabled by the noble Lord, Lord Collins of Highbury, which seeks to prohibit providers and constituent colleges from entering into non-disclosure agreements with staff, members, students and visiting speakers in relation to complaints of sexual misconduct, abuse or harassment or other forms of bullying or harassment. I thank the noble Lord for tabling this amendment following the debate in Committee and in the other place. As your Lordships will have seen, I have put my name to the amendment.

While the very existence of NDAs makes it difficult to understand the full extent of the practice, a 2020 BBC investigation found that nearly one-third of universities had used NDAs to resolve student complaints. I agree with the noble Lord that we cannot allow this practice to continue. It has been encouraging to see that many institutions have signed up to a voluntary pledge rejecting the use of NDAs in such circumstances—a pledge launched by the previous Minister for Higher and Further Education, my right honourable friend Michelle Donelan, together with the campaign group Can't Buy My Silence. However, it is telling that many institutions have not done so, despite strong encouragement from the Government. So this amendment follows on from the Government's work in this area over the last year. Just today, the OIA has advised against the use of NDAs. I am pleased to support this amendment on behalf of the Government, and hope very much that your Lordships will also support it.

Lord Hope of Craighead (CB): My Lords, I am grateful to all those who have spoken in this short debate and, in particular, to the Minister for her explanation.

If I may concentrate particularly on government Amendment 7, it achieves my main purpose in my Amendment 1 to avoid the suspicion that, when you talk about freedom of expression in this Bill, you are talking about something quite different from what is referred to in Article 10 of the convention. The reference here makes it clear that we are talking about the same thing.

Baroness Barran (Con): I think I heard the noble and learned Lord say "freedom of expression" in this Bill, but I think he meant to say "freedom of speech".

Lord Hope of Craighead (CB): Yes—I have got them the wrong way round, as I frequently do. But it does not really matter, because we are talking about the same thing, which is the particular problem that I was concerned with.

I have great respect for the noble Lord, Lord Moylan, with whom I had a very deep and interesting discussion. I must confess that I do not have the same concern as he does about the reference to Article 10(1) only in the definition that the Government are proposing. If we read on beyond that reference, it says

"Article 10(1) of the Convention as it has effect for the purposes of the Human Rights Act".

The way in which you work out its effect is to read on to paragraph (2). I therefore think that, in short and very subtle terms, it achieves the very point. I do not really agree with the noble Lord's concern, which I think is met by those particular words "as it has effect".

For these reasons, and with thanks to the Government for their willingness to come forward as far as they have done, I withdraw Amendment 1.

Amendment 1 withdrawn.

Amendments 2 and 3

Moved by ***Baroness Barran***

2: Clause 1, page 2, line 4, leave out ", beliefs or views" and insert "or opinions"

Member's explanatory statement

This amendment is consequential on the Minister's proposed new definition of "freedom of speech" (see the amendment to Clause 1, page 2, line 36 in the Minister's name).

3: Clause 1, page 2, line 5, leave out ", beliefs or views" and insert "or opinions"

Member's explanatory statement

This amendment is consequential on the Minister's proposed new definition of "freedom of speech" (see the amendment to Clause 1, page 2, line 36 in the Minister's name).

Amendments 2 and 3 agreed.

Amendment 4

Moved by ***Baroness Fox of Buckley***

4: Clause 1, page 2, line 14, at end insert—

"(c) to express opinions about the registered higher education provider, including opinions concerning—

(i) the content of any curriculum adopted by the provider, and any decision taken by the provider regarding such content, and

(ii) any affiliation between the provider and a third-party organisation that concerns teaching and research at the provider, or questions of public interest,"

Member's explanatory statement

This amendment seeks to ensure that the Bill upholds international standards of academic freedom by protecting academics' freedom to express freely their opinion about the institution or system in which they work (UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel in 1997 and Russia v Kharlamov).

Baroness Fox of Buckley (Non-Afl): My Lords, the purpose of Amendment 4 in my name is that the law should recognise that one of the key chilling aspects of exercising academic freedom in contemporary times is when higher education institutions—via their HR departments, senior management or brand enhancement initiatives, or when they are advised by PR consultants—sign up to third-party organisations that set targets, codes and charters which, in effect, impose demands, often on the curriculum, research priorities and academic

[Baroness Fox of Buckley]

content of academic life, that are determined not by the demands of the discipline or scholarship but by fashionable external ideological diktat. In these instances, academics need to know that the law protects them if they challenge and/or defy such demands. This therefore requires us to recognise that academics can criticise their own institutions. This is about encouraging not gratuitous criticism but a defence of the autonomy of scholarship to define what is taught.

Since we have started deliberating the Bill, many have expressed reservations about this legislation as a threat to institutional autonomy by government interference. However, universities cannot be effective self-governing communities if they use institutional management power to silence internal criticism of their governance. Universities putting their own house in order is one thing, but, if they start adhering to external bodies and signing up to bureaucratic, top-down edicts, the academy as a self-governing community of scholars is threatened, as is scholarship itself.

What happens when highly contentious ideology begins to influence teaching and research and when the pressure of consensus and being on the right side makes dissent more difficult than usual? Academics dissenting from some of these ideological interventions, with legitimate concerns about their discipline being interfered in and even about the concept of what a university is for, should know that the law will protect them if they speak up and contribute to the debate.

When I was considering this issue, I recognised from my time in this place that noble Lords like nothing better than an international legal example to bolster their concerns. I have not usually relied on this, but I thought I would provide some international legal precedent. The Strasbourg court has consistently affirmed academic free expression as a fundamental right, and, in around eight Strasbourg cases concerning academic free expression, one principle has been particularly consistent: academics must be free to voice their opinion about their university. The 2016 Kharlamov v Russia case concerned a Russian physics professor who was sued for defamation by his university after criticising its leadership at an all-staff meeting to elect a new academic senate. The Strasbourg court found in his favour, saying:

"The principle of open discussion of issues of professional interest must … be construed as an element of a broader concept of academic autonomy which encompasses the academics' freedom to express their opinion about the institution or system in which they work."

All the cases brought to Strasbourg implement the influential 1997 UNESCO *Recommendation Concerning the Status of Higher-Education Teaching Personnel*, which was the subject of an amendment by the noble Lord, Lord Triesman, in Committee. The recommendation states:

"Higher-education teaching personnel are entitled to … freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship and freedom to participate in professional or representative academic bodies."

It goes on to make the key point:

"Higher-education teaching personnel should not be forced to instruct against their own best knowledge and conscience".

I will use a couple of examples to illustrate why I think this is an issue now, rather than just an abstract principle. The examples I will give relate to the popularity of critical race theory on university campuses. I do not want us to focus on what we think about CRT in particular, and I stress that the vast majority of lecturers have no truck with racism, even if they are critical of a particular brand of anti-racism, such as CRT. When higher education institutes sign up to organisations such as Advance HE's race charter, one of the new issues they face is that they have to adopt a particular and contested view of race. Advance HE states that

"universities are institutionally racist spaces that have had a historic role in producing the knowledge that racism is based on",

and, therefore, it demands that educational practice be "decolonised".

In fact, we have seen this happening recently. A diversity drive by the Welsh Government is putting pressure on universities to decolonise courses. The devolved Government want HE providers to achieve a "race equality charter mark", a score that grades organisations on their diversity and inclusion policies, as part of a plan for an anti-racist Wales. The Higher Education Funding Council for Wales has made £3 million of public money available to help universities pay companies and providers to score them on racial equality, as decided by Advanced HE, which urges a rethink on all subject matters and courses. I am worried that that puts pressure to review curriculums in line with Advanced HE's decolonisation guidance.

Meanwhile, the Quality Assurance Agency for Higher Education, which advises universities and monitors the quality of courses, now uses CRT recommendations to say that we should decolonise 25 fields of study—noble Lords will have read about this in the newspapers. I was particularly interested in psychology. Apparently, psychology courses are

"historically based on research and theory from homogenous white, educated, industrialised, rich and democratic countries and do not represent diverse voices and contributions to the discipline."

Some people I know who work in psychology and who argued against this were promptly recommended to go on an unconscious bias training scheme—so my concern is that there are consequences.

When the University of Oxford's Faculty of Music decolonised its curriculum in response to student pressure, the university itself sought to forbid criticism of the new curriculum. With this law, we have to ensure that academics are free to speak up in this ideological hothouse atmosphere to say that they disagree according to their own expertise and conscience; for example, if they want to say that decolonisation is misguided and malicious.

I will give one more example, which is about the Architects Registration Board, a statutory body that is mandated by the Government to respond to legal and regulatory changes for architects to become architects. It is perfectly right that it wanted to change the curriculum to fit in with fire safety regulation and building regulation that has been passed here. However, the Architects Registration Board got rather carried away with itself and decided that it would use this opportunity to tell all architecture departments that any undergraduate or postgraduate degree or professional diploma must, for example, show:

"The importance of advocating for sustainable or regenerative design solutions … The relationship between social sustainability, social justice and environmental sustainability … How to design … to integrate and enhance natural habitats which encourage biodiversity",

and so on. The point I am making is that you cannot become an architect now unless you sign up to that, so architects who are trying to assert their academic freedom come up against these third-party bodies which say that this is the only way that students will be allowed to graduate.

With Amendment 4, I simply want the Bill to recognise that there are new threats to academic freedom—quiet and silent threats, as it were—when it comes to academics being able to say that they disagree or agree with values that are imposed on them by institutions trying to make their name as doing the right thing. However well intentioned, I am afraid that it is a real threat to freedom. I therefore beg to move my amendment.

Lord Wallace of Saltaire (LD): In speaking to my Amendment 5, I shall comment briefly on the previous speech. In all my experience of universities, the problem has usually been getting academics to stop disagreeing with each other, rather than their agreeing with each other and being scared to differ. I do not recognise the picture the noble Baroness has painted. In the universities I keep in touch with, and certainly in the case of the London School of Economics, it has been rare for any department—except the economics department—to have a clear consensus that we were not allowed to dissent from. In that case, the consensus was not a left-wing one, and I am afraid it probably still is not.

4.30 pm

We are also very grateful to the Minister for the way she has handled discussions between Committee and Report; it is exactly what should happen. I read the front page of the *Telegraph* last Saturday, and I recognise that there are those who think that Ministers should under no circumstances give any attention to those who suggest that the Bill might be improved a little. I hope we are helping, in a constructive relationship with the Minister, to improve the Bill a little.

My amendment simply questions the workability of one part of the Bill. I read at the beginning of our deliberations the Policy Exchange papers on which the Bill is largely based. There were allegations of political bias in appointments and promotions, and it was argued that the Bill should therefore make some attempt to redress that alleged bias. I have taken part, as has my wife, in a great many promotion and appointment processes, and we cannot remember any occasion on which the political bias of members of the committee or those who were to be appointed to it came into question—or, indeed, any occasion when we knew the political bias of all the members of the committee. There are many things one disagrees on in the academic world, within one's own discipline and across disciplines, but the politics of it does not come into the case very much, and it would not be professional to allow that to happen.

I ask the Minister to ensure that the guidance is very cautious about providing encouragement to those who feel disgruntled at the idea that their particular view of the discipline may be affected by their political opinions, whatever they may be. That should not be allowed to lead to excessive litigation, complaints, et cetera—that is what we fear. I remind the Minister, as I said at Second Reading, that one of the founders of UKIP was a member of the Department of International History at the London School of Economics while I was there. I got on very well with him, and in his teaching, he was entirely professional, as academics should be—and, indeed, as most academics are.

I also remind those who listened carefully to the noble Baroness's speech that, when we talk about universities and departments, the majority are scientific departments. They are not concerned with sociology, which many would say has a structural left-wing bias, at least in origin. Of course, some extreme left-wing sociologists move hard to the right as they get older. Economics has in some ways a structurally right-wing bias, whereas international relations, my own profession, is all over the shop in terms of bias. But that is the social sciences; for the hard sciences, the politics hardly come into play at all. What I am asking for is that very careful guidance be given which does not encourage extraneous issues to come into these very professional processes of appointment and promotion.

Lastly, I remind the Minister that when we come to the later stages, she may well find herself arguing that the process of appointing the free speech champion is undisturbed by any outside considerations whatever, or any outside consultation on who should be involved in the appointing process. That seems to me to be in direct contradiction to the argument here.

Lord Moylan (Con): My Lords, I do not think I have said this before in your Lordships' House, but I stand in almost constant awe of the noble Lord, Lord Wallace of Saltaire, because many years ago when I left university and joined the Foreign and Commonwealth Office, his book, *The Foreign Policy Process in Britain*, was, if not quite mandatory for those of us joining, then certainly highly recommended. I read it with great attention and I hope I learned much from it, both theoretically and to practical effect. I have been here in your Lordships' House for over two years and I have never actually had the chance to say that I am slightly in awe of the fact that the very William Wallace who wrote that book is here and makes such a huge contribution to your Lordships' House and, indeed, to my life.

I have not risen to speak predominantly to the amendment standing in the noble Lord's name, but rather to the earlier amendment. However, I shall just say that the rosy picture he paints of academics happily getting on together, disagreeing on theoretical matters of physics and generally not hindering each other's promotion, advancement or job prospects in any way is, I am sure, in many ways an ideal and one we should fight for, but is difficult to recognise in an age when we have seen professors effectively forced out of their jobs because they have views that are not sufficiently pro-trans or whatever. It is hard to imagine, even in a science department, how somebody could question or advance research that challenged some of the bases of climate science. In saying that, I am not suggesting that I have any reason for bringing forward such science, or that there is such scientific evidence, but, theoretically,

[Lord Moylan]
were it to come forward, how would that affect somebody's job prospects or their chance of securing academic grants and so forth? It is those realities, and I do regard them as realities, that the amendment in the name of the noble Baroness, Lady Fox of Buckley, seeks to address.

The wording of the noble Baroness's amendment is, as I am sure noble Lords recognise, taken directly from various findings of case law of the European Court of Human Rights, the Strasbourg court. Case law in the Strasbourg court undoubtedly defends strongly the principle that, in a university, those who are employed by it, especially those in an academic role, have an absolute right to criticise the university, the university authorities, its conduct and its policies. So, the only objection, in my view, that can be raised to the noble Baroness's amendment is that it is otiose—we do not need it because the right is already there and can be appealed to, so why do we need it in the Bill? The argument for putting it in the Bill, in many ways, is really to demonstrate to university authorities that these rights must be taken seriously.

I have to say that the cases in which these rights have been enunciated and vindicated by the European Court have difficult, and in some cases almost barbarous names. They tend to come from parts of Europe and Turkey. They are cases such as Erdoğan, Sorguç, Aksu, Kula, Kharlamov, which the noble Baroness referred to, and Ayuso Torres. They are not names or cases that trip easily off the tongues of the lawyers engaged by the majority of British universities to advise them on how to conduct the issues of free speech. Whereas the Equality Act, the Prevent duty and the Public Order Act are pieces of legislation with which those lawyers are very familiar indeed, and much more accessible to them. So, in defending free speech, there is a natural bias—the tension, if you like, that was at the heart of the debate on the earlier group—among those giving legal advice to universities and those receiving that advice, to pay attention to the legislation that has a tendency to restrict freedom of speech, rather than the European convention case law that defends and vindicates it.

The argument for the amendment from the noble Baroness is that it is not otiose to include it; these rights exist already but they need to be referred to and universities need to be reminded of their importance. Therefore, the amendment should stand. It is hard to know what I want to hear from the Front Bench in response, but I very much hope that my noble friend can say that the rights expressed by the noble Baroness are crucial and will be defended, and that the Government intend to ensure that the Office for Students does so. However difficult of access they may be, they none the less form a proper basis for the conduct of universities, by contrast to and in tension with the legislation, which restricts free speech.

Baroness Royall of Blaisdon (Lab): My Lords, I remind noble Lords of my interests in the register. I celebrate the fact that the European convention and the Human Rights Act are being cited all over the Chamber today. That is wonderful.

I noted what the noble Baroness, Lady Fox, said about the music faculty at Oxford University. I do not recognise the aspersions that she was casting and will ensure that noble Lords are aware in due course of the situation as it stands. I certainly do not recognise that the university sought to stifle criticism of whatever the music faculty did. I will seek to clarify that with the Minister in due course.

Lord Patten of Barnes (Con): I will add to the comments of the noble Baroness, and declare an interest as the chancellor of a moderately well-known university.

A university does not need legal advice in this case to defend freedom of research or expression; all it has to do is stop its subscription to the QAA—the Quality Assurance Agency for Higher Education—which only recently produced advice on the curriculum which was like a parody of an article in the *Daily Mail*. Among other things, it included the decolonisation of not just music—I entirely endorse what the noble Baroness has just said—but the maths curriculum. Clearly, the people who wrote it had never heard of Arabs, Indians or the Mayan civilisation, which was doing advanced mathematics before Christopher Columbus arrived. All that any university has to do is what Oxford has done—withdraw its subscription to the QAA, which is now pretty well on its last legs anyway. I regard the QAA's advice to universities as in many respects the most dangerous assault in the last few years on freedom of expression and research at universities. It is crazy time—it is critical race theory canonised. Universities should denounce it with great enthusiasm.

Lord Hunt of Kings Heath (Lab): My Lords, the noble Lord raises a very important point, but is it not the case that many public institutions—including, I am afraid, this House in the past—have signed up to various highly controversial charters and indexes which require a standard of behaviour from the people covered by those institutions? At a national level, many of these bodies are cowed by aggressive minority interests into establishing and setting out these programmes.

For an individual employee working in those situations, it can be very intimidating to say, "I don't agree with the Stonewall equality index and don't see why my institution has signed up to it". I am glad to say that this House, after a lot of pressure and with weasel words, eventually decided not to continue its membership, but many other organisations vie to have a high rating from it. That leads to behaviour and conditions in which it can be very intimidating for individuals who do not agree with the view taken. This is what this issue is really about and why it is so important. I hope the Minister will be very forthright in response.

4.45 pm

Lord Collins of Highbury (Lab): I will be very brief. There is a danger of this debate widening out too far. In Committee, I advocated to the Minister the UNESCO definition of academic freedom. Of course, there is always that confusion between academic freedom and freedom of speech. I was assured by the Minister in Committee, so I was satisfied with what the Government were saying. I hear what the noble Lord says about quality, but standards of teaching and research are a very important element of our universities; we should not forget that. We should not promote one argument

and then undermine the very thing that our universities are very popular for globally. We do not support this amendment. We agreed with what the Minister said before and I look forward to his response today.

Earl Howe (Con): My Lords, as we have heard, the amendments in this group relate to the important issue of academic freedom. I turn first to Amendment 4, tabled by the noble Baroness, Lady Fox of Buckley, which seeks to amend the definition of academic freedom set out in new Section A1 to make it explicit that academics can voice opinions about the institutions where they work, without fear of adverse consequences.

In responding to a similar amendment tabled in Committee by my noble friend Lord Strathcarron, to which the noble Baroness also put her name, I clarified, as the noble Lord, Lord Collins, kindly mentioned, that the definition of academic freedom as currently drafted already covers the questioning and testing of received wisdom, and the putting forward of new ideas and controversial or unpopular opinions. This speech is not limited to particular subjects, so it would include speech concerning the institute at which an academic works. The Bill will therefore already protect the freedom of academics to put forward opinions about the curriculum content adopted by their provider or third-party organisations with which the provider is affiliated.

As the noble Baroness highlighted, there is a reference in the explanatory statement to the UNESCO recommendation. It may be helpful for me to put on record that the Bill as drafted protects academics in a number of the ways listed in that recommendation. Specifically, it protects the rights to freedom of teaching and discussion; freedom in carrying out research, and disseminating and publishing the results thereof; freedom to express freely their opinion about the institution or system in which they work, as I have already said; and freedom from institutional censorship. However, the Bill does not cover conduct which is not speech, such as the act of affiliating with or joining an organisation.

The noble Baroness also referred to the 2015 case of Kharlamov v Russia, and I can confirm the essential features of the case that she set out. Mr Kharlamov was a physics professor who said during a conference that he was unhappy with the nominations process for candidates to the academic senate. The university sued him for defamation. The European Court of Human Rights in due course found in his favour on the basis that the Russian courts failed to fairly balance the relevant interests and establish a pressing social need for protecting the university's reputation over the claimant's freedom of expression. I hope that, in the light of what I have said, noble Lords are reassured that this amendment is not in fact needed.

Amendment 5 tabled by the noble Lord, Lord Wallace of Saltaire, seeks to probe the workability, as he put it, of new Section A1(7)(b) in Clause 1. Taken at face value, it would amend the definition of academic freedom so that it would no longer specify that an academic should not be put at risk of a reduced likelihood of their securing promotion or different jobs at the provider. I realise that it is a probe. It is correct that this provision is not included in the existing legislative definition of academic freedom in the Higher Education and Research Act 2017 and the Education Reform Act 1988. However, we want to be clear in the Bill that academic staff should be protected in as expansive a way as possible—so not only from losing their job or privileges, but from being less likely to secure promotion or a different job at the provider. If we do not specify that these are also covered, there may be only partial protection. A person might not be fired but might be held back in their career, by not being promoted or given another role at the provider because of something they have said.

As I mentioned, the noble Lord wants to know how this provision will work in practice. An academic will of course need some evidence to support a complaint that they have been wrongly held back because of their views. They may have been told by a colleague the reason why they have not been promoted. There may be notes from an interview that suggest why this is the case. There may be an email which makes this clear. In the face of such evidence, the question will then be whether the provider has failed to comply with its duties under the Bill. I note the noble Lord's point about the OfS guidance and I will ensure that the OfS also does so. This is the way that evidence in employment law is often presented. It is not new, nor is the concept of protection from not being promoted, since that can be a matter leading to constructive dismissal, which has been a feature of employment law for some time.

I hope that this explanation reassures the noble Lord that this is an important aspect of academic freedom in the context of freedom of speech, and that he agrees that the provision will protect academic staff to the fullest extent.

Baroness Fox of Buckley (Non-Afl): I really appreciated the comments of noble Lords in this short debate. I want to stress a couple of things. This is not about the rights and wrongs of any particular examples I gave; it is perfectly legitimate if people want to support decolonisation or critical race theory, for example, but the point is that it is not imposed. I am also concerned about an ideological conformity that stifles the sort of professional exchanges that the noble Lord, Lord Wallace of Saltaire, was advocating.

I was bemused when the noble Lord suggested that I was almost stuck in some social science nightmare. As the noble Lord, Lord Patten, pointed out, it is precisely the fact that this has now been extended into the hard sciences that may wake up even the noble Lord, Lord Saltaire, to the problems, as perhaps he should look quite closely at the decolonisation of physics, computing or mathematics. The noble Lord, Lord Patten, was right when he said, "Why does everybody not just leave the QAA?" In many instances during the discussions in this House, people talk as though we all run colleges. The problem is, if you are an academic in a college where the college vice-chancellor or principal does not resign from the QAA but rather likes it or cites it, what do they do? I hope everybody tears up their QAA membership because of this, but what if they do not?

The noble Lord, Lord Hunt of Kings Heath, really explained what is at stake here. I was avoiding mentioning Stonewall but, in a way, that is what got me interested in this very thing. It has become compelled speech for

[Baroness Fox of Buckley]
individual academics who are told that because of the institutional values that the university has signed up to—for example, around the compulsory use of pronouns and/or a particular attitude to biological sex versus trans identity rights, and so on—if you do not agree, you are open to being accused of bigotry and sent on mandated courses. I was not joking; individual members who criticised the music decolonisation were indeed put under huge pressure by people at the university to go along with this. I said "the university" but I do not always understand the institutions and it is fair enough if the noble Baroness, Lady Royall, wants to correct me.

I will finish with this point. I mentioned the Architects Registration Board. We are in a situation whereby a statutory body that the Government are involved in says that all architecture academics must teach all levels of architecture the realities of the ecological crisis. That is a national curriculum by the back door. It is a difficulty that has to be recognised. I want to take the reassurance of the Minister, who said, "Don't worry, it's all taken care of", but, as the noble Lord, Lord Moylan, explained, references to and uses of these international examples can only strengthen the message, with which the Minister seems to agree, about the legal obligations on university management not to allow these kinds of things to get in the way of academic freedoms. It would be a great reassurance to individual academics to know that this is what the Bill wants to do and to see it spell it out. What harm could it do?

Although I will withdraw my amendment at this point, I do not want the Minister to become complacent. This is a really big, serious contemporary issue that must be taken on board by the Government—indeed, whoever is in government.

Amendment 4 withdrawn.

Amendment 5 not moved.

Amendment 6

Moved by ***Lord Collins of Highbury***

6: Clause 1, page 2, line 34, at end insert—

"(10A) In order to achieve the objective in subsection (2), the governing body of a registered higher education provider must secure that the provider does not enter into a non-disclosure agreement with a person referred to in that subsection in relation to a relevant complaint made to the provider by the person (and if such a non-disclosure agreement is entered into it is void).

(10B) In subsection (10A)—

"non-disclosure agreement" means an agreement which purports to any extent to preclude the person from—

(a) publishing information about the relevant complaint, or

(b) disclosing information about the relevant complaint to any one or more other persons;

"relevant complaint" means a complaint relating to misconduct or alleged misconduct by any person;

"misconduct" means—

(a) sexual abuse, sexual harassment or sexual misconduct, and

(b) bullying or harassment not falling within paragraph (a)."

Member's explanatory statement

This requires the governing body of a registered higher education provider to secure that the provider does not enter into certain non-disclosure agreements (and as a result of new section A4 of the Higher Education and Research Act 2017 inserted by section 2 of the Bill this will also apply to the governing body of constituent institutions).

Amendment 6 agreed.

Amendments 7 and 8

Moved by ***Earl Howe***

7: Clause 1, page 2, line 36, leave out from "speech" to end of line 38 and insert "are to the freedom to impart ideas, opinions or information (referred to in Article 10(1) of the Convention as it has effect for the purposes of the Human Rights Act 1998) by means of speech, writing or images (including in electronic form);"

Member's explanatory statement

This amendment proposes a new definition of "freedom of speech" referring to the European Convention on Human Rights, as it has effect for the purposes of the Human Rights Act 1998.

8: Clause 1, page 2, line 38, at end insert—

""the Convention" has the meaning given by section 21(1) of the Human Rights Act 1998;"

Member's explanatory statement

This amendment defines "the Convention" for the purposes of the Minister's proposed new definition of "freedom of speech" (see the amendment to Clause 1, page 2, line 36 in the Minister's name).

Amendments 7 and 8 agreed.

Amendment 9

Moved by ***Earl Howe***

9: Clause 1, page 2, line 38, at end insert—

""member", in relation to a registered higher education provider, does not include a person who is a member of the provider solely because of having been a student of the provider;"

Member's explanatory statement

This amendment excludes those who are members of the provider, solely due to having been a student of the provider, from being a "member" of the provider for the purposes of Part A1 of the Higher Education and Research Act 2017.

Earl Howe (Con): My Lords, government Amendments 9, 12 and 31 are officially classed as "minor and technical" although I would not want to downplay their significance. They will clarify that the term "members" in the Bill does not include a person who is a member solely because of having once been a student of a provider or constituent institution. The term "members" is intended to include those who are not technically staff but are closely involved in university life, in particular members of the governing councils of universities and retired academics who are emeritus professors.

However, the noble Lord, Lord Wallace of Saltaire, tabled amendments in Grand Committee with the intention of probing the meaning of "members" in the Bill; the noble Baroness, Lady Smith, spoke on his behalf. During the debate, several noble Lords expressed concern at the use of the term "without qualification", as some registered providers and colleges treat their students as members for life. After the debate, my

officials looked into the matter and confirmed that this is the position in the case of, for example, the University of Cambridge.

As a result, the Government have tabled these amendments to clarify that alumni of providers and colleges are not covered by the Bill. It is not our intention that providers and colleges should have duties that extend so widely, even to people who have no current relationship with them other than as ex-students. I should make it clear that, if a current student's freedom of speech is wrongly interfered with, they may still make a complaint even after they have left university. These amendments do not affect that. I am grateful to the noble Lord, Lord Wallace, and the noble Baroness, Lady Smith, for initiating in Grand Committee the discussion that brought this issue to light; I hope the House will agree that these amendments are necessary.

Amendment 24, as tabled by the Government, will distinguish between new functions imposed on the Office for Students by the Bill. It will amend the power in new Section 69A(2), in Clause 5, so that it refers to "how to support" freedom of speech and academic freedom, rather than "the promotion" of these values.

My noble friend Lord Willetts tabled some amendments to Section 69A in Grand Committee. When my officials considered these, it came to light that the wording of this provision might cause some confusion. This is because it refers to

"the promotion of freedom of speech and academic freedom".

That wording replicates Section 35 of the Higher Education and Research Act 2017, which provides that the OfS may

"identify good practice relating to the promotion of equality of opportunity, and … give advice about such practice to registered higher education providers".

5 pm

However, using the word "promotion" in this clause may have misled some people to think that the power relates to the new duty on providers and colleges to promote the importance of freedom of speech and academic freedom, which is in Section A3, in Clause 1 of the Bill. I can confirm that it does not. The OfS will have a duty under Section 75 of the Higher Education and Research Act to give guidance on how to comply with the duty under Section A3. There is no overlap with new Section 69A(2). Accordingly, new Section 69A(2) is different, providing the OfS with a general power to disseminate good practice and advice on how to support freedom of speech and academic freedom. In order to make this clear, we wish to amend the Bill to distinguish between the two functions.

I am grateful to my noble friend Lord Willetts for tabling his amendments that brought this issue to light. I believe that this minor change to the wording of the Bill will help to make it clearer to understand and to use in practice. I hope that the House will agree. I beg to move.

Lord Grabiner (CB): My Lords, I have just a very brief point. I welcome, in particular, the amendments brought by the Government in relation to the meaning of the word "member" in this context. That is an extremely sensible development in the drafting of the Bill. All that I would say is that, certainly in Cambridge, there is not simply an adoption of the assumption that alums are known as members, but that fact is frequently recorded in the statutes of the particular college. It may well be worth reflecting this amendment in the code of practice in due course, so that there can be absolute clarity that the Bill makes this important distinction between what the college statute may say and what the legislation says.

Earl Howe (Con): My Lords, I thank the noble Lord, Lord Grabiner. I think that is an extremely helpful suggestion which I will ensure is duly noted.

Amendment 9 agreed.

Amendment 10 not moved.

Amendment 11

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

11: Clause 1, page 3, line 13, after "activity," insert "including measures to be taken to ensure that a person is not prevented from speaking by attempts to drown out or silence a speaker,"

Member's explanatory statement

This amendment, which relates to the code of practice to be maintained by governing bodies, is designed to ensure that in their duty to take steps to secure freedom of speech the code of practice must cover measures to be taken to ensure that a person is not prevented from speaking by attempts to drown out or silence a speaker.

Lord Hunt of Kings Heath (Lab): My Lords, I will move Amendment 11 and speak to Amendments 15 and 25, alongside my noble friend Baroness Morris. I also want to speak in support of Amendment 16, being moved by my noble friend Lord Collins. We will shortly come to a very important debate on Clause 4. It seems to me, whatever the outcome of that debate, that at the end of the day and at the heart of the Bill, we are trying to encourage behaviour in our universities which will ensure the freedom of speech that noble Lords have spoken about. I think that it is the codes of practice that will have a pivotal role in ensuring that, backed up by whatever sanctions we eventually decide are necessary, whether we have Clause 4 or not.

I will focus on the codes of practice that each university—and each student union—has to agree to. The OfS is enabled to ensure that those codes of practice are acceptable within the terms of its overseeing of university registration and that they are appropriate to each student union as well. The OfS has a responsibility in the Bill—I think it is a very good responsibility—to publish good-practice advice. I see this as a wholly constructive approach, encouraging the best behaviour you can expect within those institutions.

The concern that my noble friend and I raised in Committee was the extent to which academics and speakers can expect protection in the face of action that is designed to intimidate them and prevent them speaking. We know from the experience of a number of academics—in particular women academics—that such intimidatory action can take the form of open letters demanding that an academic be sacked, vexatious complaints, petitions to publishers demanding that

[Lord Hunt of Kings Heath]
work be withdrawn, campaigns of defamation, smears, demands to prevent an academic being platformed, attempts to prevent events going ahead by threatening trouble if they do, and disrupting events that do go ahead. As I said, the targets of these tactics typically are women academics.

I say to the noble Lord, Lord Wallace of Saltaire, whom I respect enormously, "Where have you been?", when there has been such trouble for some academics on many of our campuses. We cannot sweep that under the carpet; it is a reality. Professor Kathleen Stock suffered horrific abuse and her university completely failed to defend her until almost the last moment. That was a graphic demonstration of why this legislation in the end is required.

I was very grateful to the noble Earl, Lord Howe, for meeting us to discuss this. What he essentially said, if I may paraphrase it, is that the Bill will protect the right of speakers to put forward controversial or unpopular ideas, and that it will also protect the right of those who do not agree with them to speak up. I absolutely agree with that. But it should not mean that higher education institutes should simply stand passively by while, for instance, hecklers attempt to disrupt planned events that are lawful.

I have seen it argued that such attempts to silence speakers are themselves a form of free speech. But I think that that confuses the right to protest with the right to silence others. Speech that is intended merely to silence the speech of others, far from contributing to knowledge and learning, surely narrows the scope of the educational sphere.

The amendments we have put forward try to make it explicit that the codes of practice of universities and student unions must cover the measures that must be taken to ensure that a person is not prevented from speaking by attempts to drown them out or silence them. They have become known as the "hecklers' amendments".

I would like some assurance from the noble Earl that the OfS in its responsibility for the continued registration of universities and in its oversight and monitoring of student unions will give its attention to this matter and that it understands that the issue will be very important to the success of the Bill. I beg to move.

Baroness Morris of Yardley (Lab): My Lords, I rise briefly to support this amendment, to which I have added my name. I will try not to repeat everything that my noble friend Lord Hunt said but will emphasise some of his points.

I too was grateful for the meeting with the Minister. It was very helpful, and I think there was a great understanding of our view and of the problems the Government are having with putting this into legislation. I completely accept that the law has to protect both those who wish to express a view and those who wish to express a contrary view. In some ways, as my noble friend said, this is a "hecklers' amendment", but we are old enough both to have done some heckling and to have been the subject of heckling in past years. However, most of the time I was heckling or being heckled, it was not with the intent of stopping somebody else being heard; that is the crucial point.

Universities should be places where there is freedom to put forward a view and freedom to oppose it. I would never want a law of silence, where somebody's view has to be listened to in silence. If there is an intention to make sure that the opposite point of view, which is legally held, is not heard, that is not the purpose of universities in this country. It never has been and it never should be. There are too many examples of that border being crossed.

Professor Stock has received a lot of publicity and rightly so—she felt obliged to lose her job. However, I have worked with academics who express an interest in sex and gender, and maintain the view that sex is a biological thing and that that should govern the law, and their lives have been made a misery. It is a long time since I have been to a university and talked to academics expressing that view when they have not told stories about it being miserable to be an academic because there is not the environment in which they can openly express their views. They are not people who want to impose an alternative point of view; the idea of putting forward a view is to engage in debate, not to make others say, "Yes, you're right. Let's move on." Engaging in debate is at threat.

I can see that it is difficult to put that into law. It would be impossible; we would be here all day. I hope that putting this into the code of practice gives a clear message to the leaders of our universities that they have to take action, because, quite frankly, some vice-chancellors have not been doing their job on this. They have hidden quietly for too long and not stood up to protect their academic colleagues when they should have done. If that message can go forward in the code of practice, we might begin to reverse this tide.

Lord Macdonald of River Glaven (CB): My Lords, I do not oppose this amendment at all. I can see why it might be possible for material relating to this issue to be included in codes of practice. However, it is worth observing that a lot of the behaviour described by the noble Lord, Lord Hunt of Kings Heath, is patently criminal. It is a great shame that universities, colleges and other authorities do not always appreciate that.

As I said in Committee, a group of masked men letting off flares and shouting threats and abuse about a professor of philosophy inside her workplace is conduct that, in my view, is properly characterised as criminal. It is a great shame that the University of Sussex or other relevant authorities did not see it that way.

Lord Lucas (Con): My Lords, I am thoroughly with the spirit of this amendment. I have a child currently at university and I know that it is about not just the speaker, but the effect this has on the students. It becomes impossible to discuss anything when you expect to be shouted down. That is far harder for a student at a university to take than it is for a visiting speaker. Universities have to get this right.

In my youth, the extreme right openly contended with Maoists in the junior common room. It was debate. They argued in debate. To shut that down now is to tell students that they are not allowed to express their own opinions. That makes a university pointless. Universities have really not stood up for the purpose of universities, in a way that I hoped they would.

Lord Grabiner (CB): My Lords, I agree with the comments and observations made by the noble Lord, Lord Hunt of Kings Heath, the noble Baroness, Lady Morris of Yardley, and others on this amendment. But I do not support it, simply because I think this is an extremely good example of something that needs to be dealt with carefully in the code of practice. A clear distinction should be made between what one might call a genuine heckle, as opposed to an attempt to drown out or silence a speaker.

I well remember that when I was an undergraduate at the LSE—donkeys' years ago now, I fear—the history society very unwisely invited the National Front to come to give a presentation. We filled the room out very fully before these people arrived. When the chairman of the National Front, with two or three hoods in close association with him, walked into the room, one heckler shouted out, without any intention to drown out what was about to happen, "Have you been circumcised?" It really brought the house down, and it destroyed the speaker. A good heckle is well worth preserving, but I think it should be dealt with in the code of practice and definitely not in primary legislation.

5.15 pm

Baroness Altmann (Con): My Lords, I rise briefly to echo the points made. I think the spirit of these amendments is important for the safety and success of our university system, but this should be dealt with in the codes of practice. It should not be beyond the abilities of the university authorities to distinguish between criminal activities, such as letting off flares or whatever, and the genuine heckling and expressing of strong opinions which is part of the free speech debate. It may be that the university authorities in some cases have not always succeeded in that, but even with primary legislation, if there were such failures, it is not clear that the legislation would prevent that. I think that robust codes of practice, making clear the difference between stifling free speech and merely expressing opinions, are very important.

Lord Triesman (Lab): My Lords, I want to make a brief point, because I know that everybody wants to make progress, but free speech is also important. I could well understand a code of practice of this kind, and I too am very grateful to the Minister for discussions on this. A code of practice can make a difference to the way in which societies that are part of a student union or student unions understand what their responsibilities are. I am not sure that they always understand what the criminal law does or does not say, and it is certainly the case that some of the institutions within universities that used to play significant role, including the union of which I had the privilege of being the general secretary, do not understand it any more and do not apply it any more in an appropriate way, and that itself is a significant problem. I am horrified by that.

However, I would like to know from the Minister that the codes of practice will also tell individuals what they are or are not expected to do. By and large, we construct our law—there are lawyers here who will tell me if I am wrong—so that individuals know what their responsibilities are and do not simply say that they are hiding behind some kind of collective. It is their responsibility. Academic freedom is based around individuals understanding their duties and responsibilities just as much as any of the groups. If we want this to work, it is vital that we do not lose that distinction.

Baroness Garden of Frognal (LD): My Lords, these amendments all refer to student unions. We have been concerned about the rather heavy-handed approach to student unions in the Bill. Amendment 16, to which my noble friend Lord Wallace has added his name, seeks to ensure that student unions are fully aware of the regulations with which they must comply. We are particularly concerned in connection with further education student unions, which are likely to be very small and have very few funds available. Presumably they are included in the Bill. The regulations are complex and students will obviously be transitory in post, so simplicity of guidance is essential if they are not to find themselves caught up in unwittingly breaching the rules, as the noble Lord, Lord Triesman, has just set out. This amendment would be a very straightforward way of helping students, and it would be very easy to adopt.

Like others, we support the intention of Amendments 11, 15 and 25 but we remain unsure about how they could be implemented. As the noble Lord, Lord Macdonald, said, some of these actions may well be criminal behaviour, in which case they do not need to be part of the Bill because they should be something else. I liked the tale told by the noble Lord, Lord Grabiner. There are other ways of dealing with hecklers, and ridicule is often one of the very best. We do not see that these amendments should be in the Bill, but some code of practice or regulation would probably be worth it. However, Amendment 16 is well worth government consideration.

Baroness Thornton (Lab): My Lords, we have had a thorough exploration of the issues that would face student unions as a result of the passage of the Bill. Amendment 16 in the names of my noble friends Lord Collins and Lord Blunkett and me, with the support of the noble Lord, Lord Wallace of Saltaire, is not intended to be patronising. It seeks to ask the Government whether they will ensure that the guidance to student unions gives young people all the help and support it can to carry out the duties and responsibilities that the Bill will impose on them. Some of them will be 17, 18 or 19 years old, and this will be something they are absolutely unfamiliar with. That is really all that one needs to say about Amendment 16.

I agree that Amendments 11, 15 and 25 are probably not appropriate for the Bill. As somebody who has been a moderately successful heckler myself, I think they certainly should not be in the Bill.

Baroness Barran (Con): My Lords, I will address this group of amendments relating to codes of practice and the guidance under the Bill. I thank all noble Lords for their thoughtful and considered remarks.

Amendments 11 and 15 tabled in the name of the noble Lord, Lord Hunt of Kings Heath, would require higher education providers, colleges and student unions to include in their codes of practice specific measures

"to ensure that a person is not prevented from speaking by attempts to drown out or silence a speaker".

[Baroness Barran]

Amendment 25 would require the Office for Students to include in any guidance it issues under new Section 69A, in Clause 5 of the Bill, guidance on such measures.

The purpose of the Bill is to protect freedom of speech within the law. As part of that freedom, individuals have the freedom to speak on topics of their choice, as well as to engage in peaceful protest against such speech, as the noble Lord clearly stated. These aspects of freedom of speech both need to be protected. The Bill does not give priority to one individual over another. This means that providers, colleges and student unions must take "reasonably practicable" steps to ensure that speakers who are speaking within the law, as well as those who wish to protest in disagreement with those views, are able to speak—and are not, in the noble Lord's words, forced to stand by passively.

I should be clear that the Bill means protest in the form of speech, writing or images, including in electronic form. It does not include, for example, tying oneself to a railing or blocking a street—activities that are not speech and therefore not covered by this legislation, but are clearly covered by other legislation.

I reassure your Lordships that we expect event organisers to plan for what to do in the event of disruptive protests. The duty to take "reasonably practicable" steps does not mean that such disruption has to be tolerated. In fact, the duty to take such steps, as regards the speaker at the event, means that action should be taken to deal with such disruption. That might mean that security should be provided or that a protest outside a venue should be set back sufficiently from the windows.

The codes of practice are already required under the Bill to set out "the conduct required" of staff and students in connection with any meeting or activity on the premises. I hope that addresses the question from the noble Lord, Lord Triesman, about whether this applies to individuals. These amendments are not necessary as the issue is already covered by the Bill.

Equally, we expect the OfS to consider these practical issues and to provide advice about how providers, colleges and student unions can fulfil their duties, as well as share best practice that they identify—again, a point raised by the noble Lord, Lord Hunt of Kings Heath.

I trust that your Lordships are reassured by what I have said about how the Bill will operate and will agree that these amendments are not needed.

Amendment 16 tabled by the noble Lord, Lord Collins of Highbury, seeks to ensure that clear guidance is issued by the Secretary of State within three months of the passing of the Bill to help student unions to comply with their new duties. The publication of guidance for student unions is already covered by the Bill. Section 75 of the Higher Education and Research Act 2017 is amended by paragraph 9 of the Schedule to the Bill. Section 75, as amended, will provide that the regulatory framework which the Office for Students is required to publish must in future include

"guidance for students' unions to which sections A5 and A6 apply on their duties under those sections".

This must include

"guidance for the purpose of helping to determine whether or not students' unions are complying with their duties under sections A5 and A6".

The guidance may in particular specify what the OfS considers that student unions need to do to comply with those duties under new Sections A5 and A6, and the factors which the OfS will take into account in determining whether a student union is complying with its duties. It is worth noting that Section 75 requires consultation on the regulatory framework before its publication, and it must therefore be laid before Parliament, giving proper transparency.

In the new regulatory regime that the Bill will establish, including under Section 75, it would be wrong for separate guidance to be published by the Secretary of State rather than the regulator—the OfS. It would also, in practical terms, be too tight a timescale to require publication within three months of Royal Assent. There will be a great deal of work to be done on implementation, including setting up a complaints scheme team, drafting the new complaint scheme rules, drafting guidance, consulting on the changes to the regulatory framework and making those regulations; as your Lordships know, that will take time.

I hope my explanation has satisfied the concerns of the noble Lord and that the House will agree that the Bill deals with these issues appropriately as it stands.

Lord Hunt of Kings Heath (Lab): My Lords, that has been a very helpful debate and I thank all noble Lords who have taken part. My noble friend Lady Morris suggested that some of us might have taken part in heckling in the past. I have to confess that I took part in one of the first university sit-ins at Leeds University in 1968, when—led by one Jack Straw, who was then president of the Leeds University union—we heckled Mr Patrick Wall, an MP at the time.

The noble Lord, Lord Grabiner, made a very important point about drawing the distinction between quite legitimate heckling and the kind of intimidatory action that we saw taking place in relation to a number of women academics. The noble Lord, Lord Macdonald, is absolutely right: I agree that there are elements of criminal behaviour. The problem is that universities were very weak. I really regret that the Bill has been necessary, but I am afraid that the lack of backbone shown by so many university leaders is why we are here today.

I agree with noble Lords that this is not a matter for primary legislation. Indeed, I am not quite sure how you would ever draft anything like it. We tried in Committee but I think one has to accept that it is not possible. The codes of practice and the oversight of OfS, though, are clearly crucial to the success of this legislation, so this has been a very good debate.

In relation to Amendment 16, I very much hope that the OfS will take note that any guidance it issues needs to be fully understandable by students within the student union. Having said that, I beg leave to withdraw my amendment.

Amendment 11 withdrawn.

Clause 2: Duties of constituent institutions

Amendment 12

Moved by ***Baroness Barran***

12: Clause 2, page 4, line 14, at end insert—

""member", in relation to a constituent institution of a registered higher education provider, does not include a person who is a member of the institution solely because of having been a student of the institution."

Member's explanatory statement

This amendment excludes those who are members of a constituent institution (eg a college), solely due to having been a student of the institution, from being a "member" of a constituent institution for the purposes of Part A1 of the Higher Education and Research Act 2017.

Amendment 12 agreed.

Clause 3: Duties of students' unions

Amendments 13 and 14

Moved by ***Earl Howe***

13: Clause 3, page 4, line 41, leave out ", beliefs or views" and insert "or opinions"

Member's explanatory statement

This amendment is consequential on the Minister's proposed new definition of "freedom of speech" (see the amendment to Clause 1, page 2, line 36 in the Minister's name).

14: Clause 3, page 4, line 43, leave out ", beliefs or views" and insert "or opinions"

Member's explanatory statement

This amendment is consequential on the Minister's proposed new definition of "freedom of speech" (see the amendment to Clause 1, page 2, line 36 in the Minister's name).

Amendments 13 and 14 agreed.

Amendments 15 and 16 not moved.

5.30 pm

Clause 4: Civil claims

Amendment 17

Moved by ***Earl Howe***

17: Clause 4, page 6, line 22, after "A1" insert "that causes the person to sustain loss"

Member's explanatory statement

This ensures that only persons who have sustained loss can bring civil proceedings under the new section A7 inserted into the Higher Education and Research Act 2017 by the Bill.

Earl Howe (Con): My Lords, the Government have tabled Amendments 17, 18 and 19 in response to an amendment tabled in Grand Committee by the noble and learned Lord, Lord Etherton. These amendments make clear on the face of the Bill what we have maintained is already the case: only a person who has suffered a loss as a result of a breach of the specified duties can bring a claim before the courts. This is not limited to pecuniary loss and could include damage to reputation, for example. I am happy that we can make that clear.

Amendment 20, tabled by the Government, provides that claimants must first have exhausted the complaint procedure of the OfS or the OIA before they can bring proceedings under new Section A7. Both Policy Exchange and the Russell Group have called for an amendment along these lines as a considered and proportionate response. This amendment will mean that a complaint on the same subject must have been made to either complaint scheme, and that a decision must have been made under the scheme on the extent to which the complaint was justified.

If a complaint fails because, for example, it is brought out of time under the rules of the complaint scheme, then the complainant will not be able to bring a civil claim. It is useful to note that the OIA has a deadline of 12 months, so the OfS may have something similar. We think that this outcome is right. Equally, if the OfS or OIA dismisses a complaint without considering its merits because it considers it frivolous or vexatious, as they are entitled to do, the complainant would also not be able to bring a civil claim under new Section A7.

However, I should be clear that, if the complainant is unhappy with a decision of the OfS or OIA which means that they would be unable to bring a claim under new Section A7, then judicial review will be available for them to challenge it. The purpose of Amendment 20 is to make clear what we have always said: the tort will operate as a backstop, since we did not anticipate that many complainants would pursue legal proceedings rather than the free-to-use complaint schemes.

I am therefore happy to make this clear in the Bill on the basis that it will alleviate concerns raised by several noble Lords that the statutory tort will burden universities with dealing with unmeritorious and costly claims, as well as potentially undermine the OfS as a regulator and operator of the new complaints scheme. This point has been made by the noble Lord, Lord Grabiner. On this latter point, I should say that the OfS will undoubtedly welcome case law from the courts, since it will help going forward on its decision-making and formulation of guidance.

I will say more when I sum up. I hope that noble Lords will see these amendments as helpful and as a useful response to the debates we had in Grand Committee. I beg to move.

Lord Grabiner (CB): My Lords, I thank the noble Earl the Minister and the Minister the noble Baroness, Lady Barran, for the explanations that they have provided in the House, in correspondence and at meetings that we have had. That said, I am afraid that I am still firmly against Clause 4 and believe that the Bill would be improved if it were deleted.

I will not repeat the points I made in Committee, but I summarise my concerns by reference to the Minister's closing remarks on day 3 in Committee on 14 November, in *Hansard* cols. 725-30, and the government amendment now before us. My starting position, unlike that of some noble Lords, is that I am in favour of the introduction of the new duties to be imposed on universities, colleges and student unions. The Minister has given many examples of absolutely unacceptable behaviours designed to undermine speech freedom. In short, I agree with the Government that, in light of the developing experience, it is now necessary—unhappily—to enshrine freedom of lawful speech in primary legislation.

We have two very experienced regulators in our higher education system: the Office for Students and the Office of the Independent Adjudicator—the OfS and the OIA. In my view, these new duties should be enforced only by the expert regulators. This would be

[Lord Grabiner]
a natural and logical extension of their regulatory powers and they would bring to bear their specialist expertise in this clearly defined area of educational activity. It is also the case that these regulators are subject to judicial review in the courts. Thus, if the decision-making regulator takes into account irrelevant matters, or fails to take account of relevant ones, or is plainly wrong in law, the complaining party can apply for judicial review. If it is necessary to have what the Minister calls a "backstop", the judicial review mechanism fits the bill precisely. Given the regulatory and higher education context, I do not believe it is necessary, still less is it desirable, to make express provision giving a civil law cause of action in tort which would enable the claimant to pursue a claim in court against the university, the college or the student union, as the case may be.

In the debates that we have had thus far, it seems to me that three issues have emerged which, taken together, strongly suggest that Clause 4 should be deleted from this Bill. First, I and other noble Lords believe that Clause 4 would be an open invitation to ill-motivated trouble-makers—if the social media is taken at face value, there are plenty of them out there. The trouble-makers would inevitably wish to use the very public platform provided by this new access to the courtroom to advance their own ideological stance.

Secondly, we know that universities and student unions are very poorly funded. We should not be subjecting them to the risk of unnecessary and expensive litigation. That is especially the case when we have an established regulatory structure in the sector.

Thirdly—this point has been made in particular by the noble Lord, Lord Macdonald of River Glaven, but also by other noble Lords—the fact that Clause 4 exists will have a chilling effect on the academic sector. Instead of our universities being places where debate and challenge should constantly thrive, decision-making, for example as to who should be invited to speak and on what subjects, will be inhibited. On the first day in Committee, the noble Earl the Minister pointed out, correctly in my view, that

"there is no right to a platform".—[*Official Report*, 31/10/22; col. GC 36.]

That is an important point. It is obvious that college authorities and student unions will bear it well in mind. They will inevitably err on the side of caution and rather anticipate and avoid any risk of Clause 4 litigation simply by not inviting speakers who are or may be perceived to be controversial.

This would produce the very opposite of what is intended by the Bill: lawful freedom of speech will have been denied and we will never know the details. I wonder how many universities, colleges or student unions would invite JK Rowling to speak if Clause 4 were in force. My guess is that they would not invite her. That is a shocking fact and is precisely the result we would wish to avoid.

Ministers have separately sought to justify Clause 4, and I will address the points that have been made on the new government amendment before us. It is said that, in practice, there is nothing in my first issue—the ill-motivated claims point. It is accepted that such claims will be made, but it is said that they will be thrown out peremptorily and that the costs incurred by the university or student union would be recovered from the vexatious claimant. This is pure assertion and speculation. It would not be difficult to formulate a plausible argument that the court would be reluctant to halt at the embryonic stage. Also, if you win, it is never easy to recover your costs: the claimant is likely to be elusive and probably penniless, and the process of seeking recovery is time-consuming and expensive. Why would the Government think it appropriate to subject our universities and student unions to any of this legalism?

Next—this is said to be a key point—the Minister repeatedly describes the new tort as a necessary "backstop measure". The new amendment takes account of some of the criticisms made in Committee on the Bill as originally drafted. If left as it is, there would concurrently be in place the regulatory procedures as well as the new civil law cause of action, without any rules as to priority or the relationship between the two. The new amendment requires that mediation at the college level and all regulatory procedures should be exhausted before a claimant can use Clause 4. I agree that that clarifies matters, but unfortunately it still leaves us with Clause 4.

The argument now relied on by the Government, off the back of the new amendment, is that the individual claimant should be able to claim damages in court for loss, which could not be done in judicial review proceedings—it is correct that an individual cannot recover damages in a judicial review case. This is interesting, but noble Lords should realise that this represents a significant change of tack by the Government, because the Bill as drafted made no reference at all to losses or compensation. The new amendment gives no definition of loss—it might encompass hurt feelings and financial loss, such as wasted travel expenses and matters of that kind—but it is obvious that we are talking about very small amounts of money.

How do you measure, in financial terms, the damage done to someone whose freedom of lawful speech has been undermined? A judge is not entitled to pick a figure out of the air; there must be a rational explanation for the amount of damages awarded. In my view, there is no substance in the argument that the complainant needs a damages remedy; he, she or it will not be able to prove any serious financial loss. In any event, I suspect that, in the mind of the complainant, damages would not be a top priority; it is more likely that the remedy of a declaration, perhaps coupled with an injunction, would be the aim.

Professor Kathleen Stock has been referred to in relation to other amendments, but I should mention her in this context, in case it is suggested that she is a good example of why Clause 4 is necessary. I have every sympathy for Professor Stock, and I am certain that everyone here also does. From what is publicly known of the case, it looks as though she was treated very badly indeed by her employer, the University of Sussex, and, it seems, by some academic colleagues who should have known better. That said, she could have sued her employers for breach of her employment contract, but, for whatever reason, she chose not to. In the circumstances, Clause 4 would not have improved Professor Stock's position.

My concern is that Clause 4 will be used by mischief-makers, whereas our real focus in this House should be the effectiveness of the regulatory function in ensuring that these new and important duties are understood, respected and properly enforced. In my view, the supposed financial protection of the individual claimant is a distraction and a sideshow. I believe the Bill would be greatly improved if Clause 4 were deleted.

5.45 pm

Lord Moylan (Con): My Lords, I rise to speak to Amendment 21, standing in my name. It dawned on me, as I said in Committee, that the purpose of some noble Lords was not to improve this legislation that has been passed by the Commons but to eviscerate it. The speech just given by the noble Lord, Lord Grabiner, seems to illustrate exactly that.

One of the few things on which I agreed with my noble friend Lord Willetts in Committee was when he said that there were two powerful elements in this Bill that made a real change, one of which was Clause 4. That is why it is a crying shame that the Government have conceded so much in relation to Clause 4; they have effectively turned it into a shrivelled sausage when it could have been something that actually made a real difference. But even with that concession from the Front Bench, it does not seem to be enough for my noble friend Lord Willetts or the noble Lord, Lord Grabiner, who are insisting that even that pathetic thing be removed and crushed altogether.

A principal argument in favour of Amendment 20, tabled by my noble friend on the Front Bench, is that the Government intend thereby to give the universities an opportunity to resolve the problem through mediation and a complaints system. The difficulty is that, in terms, university authorities have expressed repeatedly the fact that they do not consider that there is a problem: they consider it to be an invented problem, or a problem which, if it exists at all, is rare and egregious and can be handled by the universities. Plainly, there are those of us who feel that the universities have failed to handle it, and need to be brought to book.

If the universities genuinely want to give mediation a chance, Amendment 21, standing in my name, gives them the opportunity to demonstrate that. A similar amendment was tabled in Committee by my noble friend Lord Sandhurst, and it is retabled here—I am grateful to the noble Baroness, Lady Fox of Buckley, and my noble friend Lord Strathcarron for adding their names to it. Amendment 21 would retain the substance of Clause 4 as originally proposed by the Government and approved by the other place, but would give to universities the opportunity in each case to ask the court to stay proceedings so as to allow mediation to take place. It would be at the discretion of the court whether to agree to that. I am sure that, if the court thought that there was a prospect of success in the mediations, it would agree.

This is modelled on legal practice in certain other areas where I understand, for example, that the provision and possibility exist—although noble Lords know that I make no claim to be a legal expert on pensions entitlements and so on. So the principle is a workable one: the university can say, "Please will you stay the proceedings while we exercise mediation". It preserves the substance of the tort in Clause 4 and gives academics, in particular, an opportunity to make their representations in the way that the Government originally envisaged.

I will address the Government's proposal, because the proposal being advanced by my noble friend Lord Willetts—who I understand may speak shortly—and endorsed by the noble Lord, Lord Grabiner, is to delete the clause altogether. The Government's proposal would allow those administering the complaints system to indulge in indefinite delay. There is no time limit by which a decision has to be reached in this amendment. My noble friend Lord Howe said something vague about how he thought that 12 months might be something that already existed and might therefore be applied or extended to this activity, but there is actually no time limit by which a complaint has to be resolved which would allow the complainant to trigger the tort. It would remove the possibility of seeking urgent injunctive relief, which is something that could be obtained through the courts. It would push complainants back to a choice between a financially ruinous application for judicial review—because it is financially ruinous for the individual—or continuing with a possibly endless complaints process in which, as has been said by others in this context, the punishment is the process. You are an academic with a career to pursue and you are probably not even in a properly tenured post, but to vindicate your rights you have to undertake a process, extending potentially over many months, which comes to consume your life and, ultimately, to damage your career. It is an unenviable choice, and the tort gave people some other option to allow, potentially, for more rapid relief.

Most of all, the Government's amendment sends a signal to academics who feel oppressed, feel that they cannot express themselves and feel that they are required to conform to an ideology which they know in their heart they do not endorse that a Government who had said that they were on their side and were taking steps to protect them are no longer interested. That is a very bad signal indeed to be sending. I am sorry to say this, but I think that the Government are being feeble.

Baroness Thornton (Lab): That is true.

Lord Moylan (Con): Now that was a heckle of some value.

To conclude, it might be nice if the Front Bench, which has shown itself capable of endorsing enthusiastically the very laudable Amendment 6, tabled by the Labour Front Bench, could reciprocate by accepting one from its supportive Back-Benchers. If so, I strongly recommend Amendment 21 in my name.

Lord Willetts (Con): My Lords, I rise to speak to Amendment 22 in my name and those of other Members of this House. I begin by thanking Ministers for their engagement with the tricky issues around Clause 4 and, as we have heard, the wide range of views in this House about it.

I make it clear that I completely back the principle of the Bill, which is the need for the right to freedom of speech to be backed with clearer and more enforceable

[Lord Willetts]
rights than we currently enjoy. However, another point that the Minister has made on several occasions is that we should not overlook the protections that employment law already provides. It looks as though some of the most egregious cases, such as the terrible treatment of Professor Kathleen Stock, are in clear breach of employment law. It is quite a good principle that we should start by properly using the legal protections and rights that already exist.

As we have heard, there is also the framework of criminal law. Nevertheless, there really are problems in our universities, and most of us in this House are not denying it. I have been shouted down at universities, but I have also had a different type of experience, which reminds us of the good features of universities, which we should not forget. I remember a group of protesters with a megaphone denouncing my proposals on student fees. I went up to them to try to persuade them and they could not hear what I was saying, so they lent me their megaphone. I made my point and handed it back to them, and they got on with their megaphone, and we ended up—in the unpromising circumstances of a student demo outside a university—having a proper engagement and disagreement. We should remember that that still happens in our universities up and down the country.

Nevertheless, the framework of employment law and criminal law is not enough and the Government are, in this legislation, bringing forward a very significant further power for the regulator that already exists, the Office for Students, but giving it a clear responsibility in this area. One thing that surprises me about the sceptics—I have had debates with very concerned academics who back the Bill, and we have just heard from my noble friend Lord Moylan—is that they talk about a vague complaints procedure going on interminably, as if this is some kind of feeble option and we really need litigation as the guts of the Bill. In reality, the Office for Students, created in legislation steered through by my noble friend Lord Johnson of Marylebone, is a very powerful body and its powers are being increased in this legislation. It has considerable understanding of and expertise in universities and will gain extra powers in this legislation.

One of the arguments we heard in Committee about the need for litigation was that we need to have financial redress. It is clear that, within the Bill, there are powers for the OfS to require financial redress and to fine universities. These are very substantial provisions. What is very unusual about the Bill, unlike many other circumstances and many other policy debates I have been involved in over the years, is that the Government are not just empowering a regulator, they are, in parallel, adding a new proposal for a right of tort and civil litigation alongside. That is a very odd way of trying to tackle the problem. The Government should have confidence in the powers of their own regulator, reinforced by the proper enforcement of rights under employment law.

The Minister, whose engagement in this I respect and appreciate, said that we should not worry because, with the amendments he is bringing forward, civil litigation would be a backstop. I do not understand what a backstop is in these circumstances. We all know that a student union—and I worry about student unions at least as much as about university administrations—if one of these controversies flares up, will receive a lawyer's letter in the first 24 hours. The lawyers will not say, "Let's wait and see how the OfS proceeds, because we are the backstop"; the legal letters will arrive. When I think, therefore, about the real test of whether there should be this provision for tort, the real test that, surely, all of us in this House can share is: will the net effect of this provision be to increase and enhance freedom of speech in our universities, or will the effect of this power of tort be a further chilling, a further reduction in freedom of speech in our universities?

I think of people who try to organise events painstakingly to promote freedom of speech in their university. They try to find a neutral chair who will chair two highly controversial and disputing views. When one person turns up, they try to arrange for there to be an alternative. They try to find the right place for these meetings and sometimes they are already traduced in the media as if they are somehow part of the problem, when they are actually trying, very decently, to be part of the solution. Will the prospect of a legal challenge to what they are doing give them the confidence to carry on organising those events and promoting freedom of speech in our universities? I fear it will have the opposite effect. I think of a 19 year-old who sets up a student society in his or her university, thinking, "Will I find myself facing a legal letter if I get bogged down in trying to arrange an event?"

We already face a very worrying trend of a decline in the number of external speakers going to universities because people think it is just more trouble, too risky and too dangerous. The risk with these provisions is that they make that trend worse: more people will do exactly what we all fear. They shut up, they keep their heads down, they do not invite controversial speakers, they do not invite any speakers at all; they lie low and stay out of trouble. That would be terrible for freedom of speech in our universities and I fear that is the risk if people expect to face legal challenge for events they organise.

6 pm

Lord Blunkett (Lab): My Lords, encores are rarely worth the value of the extra time, but the noble Lords, Lord Grabiner and Lord Willetts, have shown that it can be done. I will be very brief, because they have said so much.

I draw attention to an interesting contribution from Professor Jo Phoenix, who was interviewed recently on Radio 4. She supported this clause on tort, on the grounds that the University of Essex had treated her appallingly—it clearly had; this was acknowledged—but she had not been able to obtain loss. She was not employed by the University of Essex, so the loss was some theoretical appreciation of whether she would be invited somewhere else because of what had happened at Essex.

I commend the noble Earl, Lord Howe, for attempting to meet the debate in Committee, but I think we have opened another can of worms. You go through the Office for Students and the adjudicator and you have the facility of judicial review and, as the noble Lord, Lord Willetts, said, employment law—which I used to teach—which could involve constructive dismissal if

you are employed. If you are not employed there but have been treated extremely badly—the right of free speech has been denied you and that has been acknowledged —you might believe that the acknowledgement itself may persuade others not to invite you and you would use the law under this tort to go to court to get redress.

What is the redress? Who will make a judgment on the financial value of what you might have done had you been invited to speak elsewhere, when you do not know whether you have not been or would have been invited? It is a bit like Donald Rumsfeld's known unknowns. If you go to court with known unknowns, you will be in a disaster area. The only people who will benefit—I say this with some humility to my good friend, the noble Lord, Lord Grabiner—are the lawyers.

The simple way around this is to do two things: approve the rest of this Bill and encourage civil society to be civil and people to stand up for each other, rather than always running to the courts, to deal with this small minority of intolerant, anti-democratic bigots—they are bigots, in terms of not being able to debate properly the rights of women. That is really what we are talking about in lots of these cases. We should not have a merry-go-round of trying to compensate somebody for something which you could never know and, if you did, probably would not have resulted in a loss of income in the first place. Let us get rid of Clause 4 and get back to common sense.

Baroness Shafik (CB): My Lords, I speak in support of Amendment 22, to which I have attached my name. I declare my interest as director of the London School of Economics and Political Science. It is a great pleasure to follow the noble Lord, Lord Willetts, whose remarks I very much agree with. I also thank the noble Baroness, Lady Barran, and the noble Earl, Lord Howe, for the constructive way in which they have engaged with all of us throughout the passage of this Bill.

It was made clear in Committee that Clause 4, as drafted, was not fit for purpose and that statutory tort would provide an avenue for vexatious, costly and damaging cases to be brought against universities by troublemakers far more concerned with self-promotion than free speech. The clause would have the perverse effect of limiting free debate and exchange of ideas on our campuses by creating exactly the kind of chilling effect that it aims to prevent. Student unions in particular would be frightened of inviting anyone at all, given this risk of lawsuits.

LSE hosts literally hundreds of events every year, which are all open to the public, and as its director, I have chaired hundreds of them. We work very hard to foster an environment where free speech and critical thinking are encouraged. I feel strongly that the solutions to the chilling effect, which I acknowledge exists, lie in education, dialogue and codes of practice, not the courts. Peers in the US, a far more litigious country than ours, are now petrified of inviting any speakers at all for fear of the consequences they may face. I fear that this legislation could take us to a similar position.

I was grateful that Ministers acknowledged that changes were needed and that significant revisions have been tabled on Report. Despite those positive moves, which are very welcome, I am still convinced that Clause 4 remains both unnecessary and potentially very harmful. I believe analysis and redress should be overseen by the regulator, as the noble Lord, Lord Willetts, has said. The existence of the tort system would call into question the working and judgment of that regulator, as well as universities' own procedures. It would open up our institutions to potentially long, drawn-out and unnecessary complaints brought by individuals with axes to grind, time on their hands and, potentially, the financial backing of those with an agenda. I do not believe that having to go through existing complaints procedures would deter those kinds of individuals.

The potential costs of time, effort and money in highly constrained circumstances are unduly high. Of course, we would have to ask about loss, as the noble Lord, Lord Grabiner, very eloquently noted. Who has sustained this loss? It is still very indeterminate and the legislation as drafted does not require that loss to be material. Is it monetary, reputational or temporal? Is there a minimum threshold for the loss? Could it be the price of hurt feelings or the unquantifiable effects of media attention? All those things are highly intangible. There is still far too much uncertainty and confusion, and too much potential for this tort to be misused or have the perverse effect of stifling freedom of speech, which would be contrary to the other, more meritorious, objectives of this legislation. I concur with the proposal to remove the tort, as I believe it will be counterproductive.

Lord Moore of Etchingham (Non-Afl): My Lords, I cannot call the noble Lord, Lord Willetts, my noble friend because I am non-affiliated, but outside this House, I call him my friend. He has been my friend for 45 years. I can testify that his well-known nickname is correct and that he does have double the cerebral capacity of the rest of us, so we should all listen very carefully to anything he has to say.

However, although he made many good points, I do disagree with his conclusion. We must not lose sight of the wider context, and I think there is a slight risk that we might do so in some areas of this House. There is a danger of us suffering from what economists call producer capture. By that, I mean that there are a great many people here who are very close to the top of universities. It is not very surprising that they all tend to think that universities are running themselves quite well and that it is all basically all right. However, I think there needs to be a little more power for the voice of the ordinary student and the ordinary, not-very-important academic who is having a rough time. I was very grateful for and impressed by some of the points made about that by the noble Lords, Lord Macdonald of River Glaven and Lord Hunt of Kings Heath, in particular, who really tried to bring home the reality of these difficulties.

Going back to why the Bill exists at all, it is to do with the fact that the traditional freedom of speech ethos in universities came under threat. In the past, threats to academic life came from without but now they are coming from within. That is the essence of the problem and why the Bill got going. Even though there have been some changes and alterations of behaviour—for example, the establishment in Cambridge University was defeated in its attempt to suppress free speech and real free speech won—there are still examples.

[Lord Moore of Etchingham]

In Cambridge quite recently, the master of Gonville and Caius College—I think she did not fully understand that the word "master" in the Cambridge or Oxford circumstances is a misnomer and you cannot issue orders at all; it is a very unmasterly position—said that the presence of Helen Joyce speaking in that college would be hateful and that, on those grounds, her talk should not take place. I believe that Helen Joyce would not have been allowed to speak had it not been for the fact that Professor Arif Ahmed, the great leader of free speech, was a don in that college and stood up for Helen Joyce, so the meeting finally took place.

There is a problem, and it has not been sufficiently acknowledged by everybody here. Therefore, it seems that there has to be in the Bill—as there was and to some extent still is—some form of deterrent. There has to be something that goes beyond the universities themselves to make them feel a little nervous about where they have got to. Since universities are currently failing in many cases to uphold the duty of free speech, we cannot just depend on people such as the expert regulators, to which the noble Lord, Lord Grabiner, referred.

The idea of a new tort is to change that. The law of tort offers remedy to private citizens when private duties are breached. This is as opposed to the upholding of more general aspirations, as might be achieved, for example, by judicial review. This difference has not been sufficiently acknowledged in some of the things that have been said. If an academic could bring timely action under a statutory tort, that would concentrate the mind of the university at which he or she worked. That university would face a real deterrent to impeding his or her free speech, because a county court could find against it, with legal, financial and reputational consequences. As the noble Baroness, Lady Shafik, said, I do not quite understand how the prospect of some suit about free speech would frighten people who were inviting people in the cause of free speech. If, however, free speech complaints must always be brought first to an internal complaints procedure, the university will be tempted to mark its own homework favourably or to spin out the process. Early complainants will then retire exhausted and later, prospective ones will not even bother to start.

I add that the Office for Students, on which much reliance is being placed, is not necessarily the best arbiter. As its name suggests, it is for students. The people at universities for whom the free speech stakes are highest are not undergraduates but career academics. The statutory tort, pursuant to which injunctive power could be exercised, would give them the strong protection they increasingly need. I therefore oppose the amendment in the name of my real friend, the noble Lord, Lord Willetts, and support the amendments in the name of the noble Lord, Lord Moylan.

Baroness Smith of Newnham (LD): My Lords, I do not want to detain the House too long because I realise that there will be a move to a vote relatively soon. I support Amendment 22 and will politely say a few words against the noble Lord, Lord Moore, if I may respectfully put it that way.

I am an academic at the University of Cambridge, I signed the amendments put forward by Professor Ahmed and I believe in free speech. However, I am concerned that the idea of a tort will do exactly the reverse of what the noble Lord, Lord Moore, just said. If we want to support the junior academics and students, the way to do that is not to have a legal procedure. As a noble Lord on the other Benches mentioned, the people who will benefit most are the lawyers; the people least likely to be able bring these legal cases are students and junior academics, particularly junior academics at an early stage in their careers. Therefore, the whole idea of a tort will do exactly the opposite of what the noble Lord just implied.

I absolutely agree that we need to listen not just to heads of Oxbridge colleges, chancellors and vice-chancellors of universities, and people like me. However, I hope I speak on behalf of students, members of the casualised part of university staff and other academics in saying that this legal provision will not benefit individuals because those who will have the resources to fight are the university bureaucracies, not individuals.

6.15 pm

Baroness Fox of Buckley (Non-Afl): My Lords, like the noble Lord, Lord Strathcarron, I have put my name to Amendment 21 in the name of the noble Lord, Lord Moylan.

Earlier, the noble Lord, Lord Wallace of Saltaire, suggested that the front page of the *Telegraph*, complaining about the Government backing down, was simply complaining about mere amendments to the Bill. My concern, though, is that the government amendments are in danger of gutting the Bill. I thought that the Bill's hope was to allow a shift in the balance of power in higher education institutions away from censoriousness and towards open-minded, tolerant free speech. However, it seems to me that so much turns on enforcement because one's rights are only as effective as the remedies available when they are violated.

Clause 4, as was, underpinned the duties designed to protect academic freedom through allowing a person to bring civil proceedings against a university or college in respect of a breach of those duties. That would mean hitting universities where it hurts: their pockets. An institution found guilty of violating academic freedom would have to fork out cash to an individual whose rights were infringed. As one academic—Julius Grower, an associate professor of law at the University of Oxford—points out,

"the threat of this alone should be enough to encourage university and college leaders to promote academic freedom."

Let us see what we are left with following the Government's new amendments; it is all a matter of national-level administrative procedures, where a person may now bring private proceedings only if they have previously

"brought a complaint relating to the same subject-matter … under a relevant complaints scheme"—

that is, via the Office for Students.

It is with relying on such complaints schemes that I have a problem. Anyone familiar with these schemes will know that they can be sclerotic and bureaucratic and can take months, sometimes years. What is more, they are vulnerable to political interference. A political

appointee will, after all, oversee the complaints procedure of the Office for Students, so a beleaguered academic whose freedom has been violated will have to wait and wait before being able to bring a meaningful claim against the university. The amendment in the name of the noble Lord, Lord Moylan, would avoid the threat of overly litigious responses, which has been mentioned, and give us a way out. No one is claiming that these remedies will suffice to keep campus cancel culture at bay, but it is important that they will give university authorities pause while encouraging intimidated staff and students to have the confidence to voice their dissenting views.

Most of the push-back against Clause 4 has been from university vice-chancellors and those who run colleges. I absolutely agree with the points made by the noble Lord, Lord Moore, on this issue. They are a powerful, privileged lobby group of people with an interest in this. I appreciate that, if you run a college, it is your worst nightmare to have a civil tort aimed at you. I understand that. However, it is precisely those who run universities who need to feel that the pressure of this legislation is more than words because, despite all the focus on ideological trouble-makers and mischief-makers that we have heard from noble Lords today, they are presented as the villains just waiting to pounce into the civil courts and throw litigation around. This is an incredible example of straw-manning.

The very driver of the Bill is that there are real-life, concrete trouble-makers, here and now, in universities, who are targeting closing down free speech and declaring that certain views are verboten. They are not imagined trouble-makers; this is really happening now. Yet the imagined villains that have been described are those who are somehow waiting to use this clause only to make money. The truth is that, despite what the noble Lord, Lord Grabiner, suggests, vice-chancellors are not, as yet, queuing up to invite JK Rowling to speak at their universities. The suggestion that she can speak is good. Invite her, all of you—why not? A challenge.

The villains of this piece are often posed as generation snowflake, or social justice warriors who are young. Goodness knows, I spend huge amounts of my time when I am not here going around talking to students at universities and to sixth-formers. Generation snowflake does exist—and wow, do they heckle; I know all about that. But I actually do not think that they are the problem. Often the problem is university senior management, which either spinelessly gives in to the loud demands of a minority of students or leads the charge with ideological silencing policies that are adding to a censorious climate. I talked about this in my earlier speech.

The University of Sussex has been named and shamed so often in this House in relation to Professor Kathleen Stock that I have got to the point where I am feeling sorry for it. The university's vice-chancellor is not some outlier; he is one of many. We just happen to know about Kathleen Stock because she went public. This is not some imaginary culture war. These are university managers who are hanging out to dry their own professors, academics and often students.

The noble Lord, Lord Blunkett, mentioned Professor Jo Phoenix. I have heard a variety of interviews with Professor Phoenix and have met her on many an occasion; she is battling away in an employment tribunal. It is true that it is difficult to sort out how she can get redress for her reputation having been traduced. She is taking action against the Open University and the way she was treated by the University of Essex. She said that she was shocked but not surprised that the Government had folded on Clause 4, and felt that she had been abandoned yet once more. There are many people like Jo Phoenix who are fighting on and on. Look, for example, at the files kept by the Free Speech Union, of which I am an advisory member. People think that my membership must mean something, and it does: it means I am committed to free speech. In those files there are hundreds of examples of students and academics who have been suspended by university authorities and gone through disciplinary procedures for mis-speaking and saying the wrong thing.

For me, I wanted this law to frighten university authorities—a little bit. I thought that the amendment of the noble Lord, Lord Moylan, had done a huge amount to ensure that the overchilling impact—which the noble Lord, Lord Willetts, talked about—of litigiousness everywhere could be kept at bay, while also ensuring that that tort exists. It will not solve all the problems; there is a much bigger cultural problem in relation to free speech in society. Those opposing Clause 4 are too often not loud enough to fight that culture either. They tell us that they do not need the Bill and that they do not need this clause, and that everyone here is a free speech warrior—I wish. We need this clause, and we need you all to become free speech warriors as well.

Lord Brown of Eaton-under-Heywood (CB): My Lords, after a lifetime in the law, I was thrilled beyond all else to hear what my noble friend Lord Moore said about the merits of the courts as he lauded the courts, independent justice and so forth. However, I profoundly disagreed with what he said in this debate, because one other thing I have learned over a lifetime in the law—actually it seems a good deal longer than a lifetime—is that any legal proceeding has real downsides to it.

Cost is the first and obvious one: all the problems outlined today about that are true in spades. Secondly, there is the delay in getting to the hearing of the action on the statutory tort, and the subsequent delay between the hearing and the result, with the uncertainty that these delays inevitably carry as to the exact position in law—assuming that there is any law in the case and that it is not just asking for a fresh, factual decision. There has been talk of delay under the statutory regulatory processes. This statutory tort has no special time limit: you can bring it for six years. And why would it end with a first-instance decision? It might wind up in the Supreme Court. Is that what you want?

The third downside during the whole process is the hassle and worry. It is a nightmare for the litigant who is dragged into the process. Therefore, unless there are the most compelling reasons, I say that it should be avoided at all possible costs.

Baroness Altmann (Con): My Lords, I support many of the comments that have been made. As a non-lawyer, I think it is impressive that two senior lawyers have urged the House not to accept this remedy that would be ideal for helping lawyers. I will listen very carefully

[Baroness Altmann]
to my noble friend on the Front Bench because I think that, at the moment, we have to be very careful about unintended consequences. This is a well-intentioned, well-meaning and good Bill, and I share the determination to attempt to stop the stifling of free speech that has been going on. But the fear is that, even if a case were taken and won, it might not provide a meaningful remedy in financial terms—of course winning is fine, but if you do not get the right remedy, it has not taken you very far—for the person who is under threat, and the risk that poses to universities themselves to me suggests that there is perhaps an overreliance here on the idea, in theory, that having the ability to sue will make a huge difference. The result in practice of having that remedy could be that it has the reverse impact of what is intended.

Lord Wallace of Saltaire (LD): My Lords, one of the Second Reading speeches that most impressed me was from the noble Viscount, Lord Eccles, whom I see in his place. He reminded us that Conservatives are in favour of limited government and limited intervention, and of autonomous institutions in civil society, and that universities are autonomous institutions and so the state needs to be very careful before it puts extra burdens on them.

At present, and in recent years, the state has added a number of extra burdens on universities, even while reducing its financial support. The National Security and Investment Act requires universities to report on a number of things. The National Security Bill, which had its Second Reading yesterday, has very substantial additional implications for universities, and we will discuss later this evening the overlap between its reporting requirements on overseas funding and the reporting requirements of this Bill on such funding.

As autonomous institutions, universities are led by responsible vice-chancellors and others, some of whom make mistakes. My first year as a university teacher was 1968. The vice-chancellor of my university, the University of Manchester, made some disastrous mistakes in dealing with the student revolts. The then director of the London School of Economics was just as bad. Most vice-chancellors learned from that.

6.30 pm

We have seen that again in this recent cycle. I am old enough to know vice-chancellors who were my students or with whom I worked when they were young academics. One of the vice-chancellors involved said to me, "William, we did not see this coming, and you don't manage a problem very well the first time it hits you." They have had to learn from their mistakes, as do all CEOs in new and unexpected circumstances. That does not necessarily mean that heavier state regulation is the answer. This Conservative Government are committed to reducing regulation as far as they can, in principle, but apparently not with universities.

The introduction of a tort to duplicate what the OIA or the OfS already does would be a major additional burden for universities and the courts, although a great financial advantage to lawyers. The point made enthusiastically by the noble Baroness, Lady Fox, is that this would hit universities in their pockets and make them suffer. This is unnecessary. A combination of the regulation we already have and instructive, capable and braver leadership by our vice-chancellors and universities is what we need. I therefore strongly support the amendment to remove Clause 4.

Lord Collins of Highbury (Lab): My Lords, I have a confession to make: when I spoke at Second Reading, I expressed the opinion that this Bill was not necessary. However, during the process of Committee and the dialogue and discussions that I have had with many noble Lords—by the way, I have no interest as a university leader to declare—I was persuaded that there is an issue to address.

My experience as a trade union official over many years is that, when you want to change behaviour and culture, you do not do it through the courts. You do it through the very mechanism that the Bill proposes: improved and strengthened regulation, and a strengthened code of practice. That is what the Bill attempts to do and I have been convinced that it is necessary from hearing the arguments and all the cases and evidence given. This is not a binary choice: I now accept that the Bill is necessary. However, in my opinion, keeping Clause 4 would undermine the very thing the Bill is seeking to achieve. If you support the Bill, get rid of Clause 4, because it would undermine the very thing we are seeking.

Our approach, throughout Committee and Report, has been not to make this a partisan or party-political issue. We have heard the debate and listened, and I have accepted the need for the Bill. That is why I signed the amendment of the noble Lord, Lord Willetts. I expect and hope to divide the House, because this clause needs to go.

Earl Howe (Con): My Lords, I begin by expressing my thanks to noble and noble and learned Lords from all Benches of the House for their thoughtful and helpful contributions to this debate, all of which I listened to with great attention. I think it would be helpful to the House if I begin my response by considering the tort in the round, before turning to the amendments tabled to this clause, bearing in mind the nature of the debate in Grand Committee and the subsequent, helpful discussions that my noble friend Lady Barran and I had with a number of noble and noble and learned Lords outside the Chamber.

The tort has undoubtedly been one of the most controversial measures in the Bill. A number of noble Lords have spoken today to express their opposition to its inclusion in the Bill. However, other noble Lords strongly support the inclusion of the clause. My noble friends Lord Moylan, Lord Frost, Lord Strathcarron, Lord Jackson of Peterborough and Lord Farmer, and the noble Lord, Lord Moore of Etchingham, have written to me setting out compelling arguments for retaining the tort, some of which we have heard today. Many of the arguments have been echoed by the Free Speech Union in a letter to the Secretary of State for Education signed by 49 leading academics, among them, incidentally, Professor Kathleen Stock. Perhaps I might say in that context that I reject the view expressed by my noble friend Lord Moylan that the government amendments, to which I spoke earlier,

somehow water down or weaken the tort provision. They address the concerns expressed about the perceived risk of the OfS's role as a regulator being undermined and of unmeritorious claims burdening universities with unnecessary costs. I am sorry that no noble Lord acknowledged that the government amendments would deal with those perceived risks, in my view, pretty comprehensively.

We are dealing here with a mixture of arguments. Part of the argument advanced for removing the tort is that it is unnecessary and that there are somehow other measures available to achieve the same thing. I think the best place for me to start would be to address that issue. The noble and learned Lord, Lord Hope of Craighead, suggested in Grand Committee that there would be a common-law tort available, even if the statutory tort was not in the Bill, and that view has been supported by other noble Lords. The Government have looked carefully at that proposition, but we are not convinced that that position is sufficiently legally certain, and for that reason it is not something on which we would wish to rely. I believe that opinion is divided even among noble and learned Lords on the issue.

The purpose of including the tort in the Bill at introduction was to make it 100% clear that a tort will be available, rather than leaving it to the courts to infer whether or not Parliament intended there to be a tort, which in certain cases, they may do. To leave the situation uncertain when we have the opportunity to be absolutely clear would be remiss of us.

The noble Lord, Lord Grabiner, made the point that the tort is not necessary because judicial review is available, whether of a decision by the higher education provider or a decision under the complaints scheme of the Office for Students or the Office of the Independent Adjudicator for Higher Education. However, judicial review is not available against decisions of a student union, and damages are generally not awarded in judicial review claims. I am afraid I do not accept his argument that damages would never be quantifiable in such cases. Of course, let us bear in mind—

Lord Grabiner (CB): I am grateful to the Minister for giving way. With respect, I did not say that they would not be quantifiable. My point was that there would be difficulty in quantifying the figure but in any event, in my view, for what is worth, the figure that you would arrive at would be peanuts, or not much more. That is why I could not really understand the significance of the argument that the reason for the tort was to protect the financial position of a complaining party.

Earl Howe (Con): I am grateful to the noble Lord. It is not the only reason for the tort, as I shall go on to explain. I was going to say that we need to bear in mind that under a judicial review the court would consider standard judicial review grounds, such as a failure to take relevant considerations into account, rather than the substantive issue of whether reasonably practicable steps were taken.

Equally, it has been argued that the tort is not necessary because a claimant could bring a claim for a breach of Article 10 of the European Convention on Human Rights. However, again, this would not be available in relation to student unions because they are not public authorities, and the test for whether damages may be awarded is not an easy one to satisfy. Again, the court would consider whether there had been a breach of Article 10, rather than of the duties under the Bill.

In Grand Committee the noble and learned Lord, Lord Etherton, suggested that we should specify in the Bill what remedies are available in a tort claim. I come back to the point made by the noble Lord, Lord Grabiner, a moment ago, which was a helpful intervention because it highlighted the potential role that court proceedings could have in particular cases. The Government's intention is that damages should be available to compensate the claimant for the loss they have suffered. We can argue about whether the damages are nugatory or more substantial.

There may be situations in which an injunction is appropriate, for example if a student is expelled from their course and so the court orders the provider to offer them a place on the course for the following year. Other remedies may be suitable in some cases, in addition to these—perhaps a declaration. Our view is that where a claimant does not believe that they have been fairly dealt with by the OfS or the OIA, we should leave it to the courts to determine what is appropriate in an individual case.

Various noble Lords have raised concerns that the tort will create a chilling effect, dissuading higher education providers, colleges and student unions from inviting controversial speakers to campus because of fear of litigation. My noble friend Lord Willetts raised this concern; I understand him to believe that the availability of the tort may cause students or academic staff to self-censor over fears of being labelled a controversial speaker or lecturer.

To say that the Government are not convinced by these arguments is an understatement. The stronger counterargument appears to us to be that the Bill as a totality, including the tort and codes of practice, will create a stronger regime that will encourage providers to make sure they are getting their decisions right and will encourage a change of culture across our campuses. That regime and change of culture will deter providers from the notion of simply not inviting controversial speakers and will give greater protection to academic staff to speak out.

The noble and learned Lord, Lord Brown of Eaton-under-Heywood, expressed a concern that has been raised with me in other contexts outside the Chamber—that the OfS complaints scheme will simply take too long to reach a decision. I am glad he raised that point, and I hope I can reassure noble Lords on that score. The OfS will consult on the scheme rules and will publish clear expectations on timetables. It will be held to account on its efficiency and the effectiveness of the scheme by its board and by the Government.

As a possible exemplar, the OIA says of its complaints scheme that it commits to normally sending a complaint outcome within 90 days of receiving all the necessary information. It also says that where a party needs a case to be reviewed particularly quickly, it can request that it be prioritised. Some cases may take six months

[Earl Howe]
to review overall, by the time all the information has been gathered, but others may take much less time, depending on the complexity. It is worth noting in this context that the limitation period for bringing a civil claim is six years, so there is little risk of missing that deadline if this approach is taken. I hope that explanation gives some comfort to those who are concerned that a complaint may go into some sort of black hole and not come out again for years and years.

I want to cover another issue that was raised in the context of government Amendment 20, so that it is understood. We do not consider that this amendment would prevent a person seeking an interim or emergency injunction in the courts. Such an injunction would be sought in a case where the claimant wants to prevent a future breach of the specified freedom of speech duties, rather than where a breach has actually occurred—in other words, where there is the threat of a breach. In that case, an individual would not be able to complain to the OfS or the OIA under either scheme, as there has been no breach yet. Accordingly, the requirement to have first exhausted a complaint scheme would not apply and the claimant could in principle go straight to the courts.

6.45 pm

Amendment 21, tabled by my noble friend Lord Moylan, operates in a similar area to that of the government amendment. An amendment in the same form was tabled by my noble friend Lord Sandhurst and debated during Grand Committee. The amendment would allow the defendant to a claim to apply for a stay of proceedings, which may be ordered if the court considers that there is no sufficient reason why the OfS complaint scheme should not be utilised, and the defendant will co-operate with that. This is, effectively, an alternative approach to the one set out in government Amendment 20, which obviously would not work if noble Lords supported our amendment and which I ask the House to do.

I have already set out the reasons why the Government consider our amendment appropriate. Suffice it to say that we do not really think the approach in Amendment 21 is the right one; one has only to think of how it would play out in practice. Its effect would be that the defendant would no doubt want to apply for a stay, to avoid legal proceedings, and seek to persuade the court to order a stay. In the vast majority of cases the court is likely to order one, for the simple reason that it will consider the specific scheme created by the Bill—and operated by the sector expert—to be the most appropriate way of resolving the complaint, without the need for further costly legal proceedings and the involvement of the courts. Let us remember that the OfS can make a recommendation to do anything, including to pay a specified sum in compensation, or to refrain from doing anything. The powers of the OfS are wide and we fully expect that providers will comply with its recommendations.

The amendment would mean that there would be substantial legal costs for the claimant in initiating a legal claim, both court fees and solicitors' fees, which would simply result in the OfS considering the complaint before it potentially returns to court for the stay to be lifted. I say in all earnestness to my noble friend that this approach does not seem preferable to the one proposed by the Government. It would be more costly and more complicated, as well as involving court time and resources, perhaps unnecessarily if the OfS decision in a given case were to satisfy the complainant. I hope that my noble friend will see the force of my arguments.

Amendment 22, tabled by my noble friend Lord Willetts, seeks to remove the tort from the Bill altogether. The noble Lord, Lord Grabiner, and other noble Lords made their identical views clear and effectively questioned what added value would accrue from the existence of the tort, given the powers that will rest with the regulators. I have already set out some of the reasons why there will be added value. We have debated this issue at length, during Grand Committee and today, and I think noble Lords understand the Government's clear view that the tort plays an important role in the Bill. We think it will operate very much as a backstop route for complainants to seek redress in the event that the OfS, or OIA, complaint scheme does not satisfy them. I reiterate that we do not want to water down the Bill. Keeping the tort in it, as amended by our amendments, will provide extra protection and genuine added value, and we do not want to get rid of that.

I am the first to recognise that the tort has been a matter of concern. I thank noble Lords once again for their thoughtful insights, which have been enormously helpful in understanding how the Government can seek to reassure the House at this stage of the Bill. I hope the government amendments provide that reassurance. I ask noble Lords who may be thinking of trying to strike out this clause to ask themselves, in the light of this debate, whether they believe it would be right to deny those who believe they have suffered genuine and unrecompensed loss a path to legal redress. I am clear and the Government are clear that Clause 4, amended as we propose, is the just and right way to go.

Amendment 17 agreed.

Amendments 18 to 20

Moved by ***Earl Howe***

18: Clause 4, page 6, line 25, after "A1" insert "that causes the person to sustain loss"

Member's explanatory statement

This ensures that only persons who have sustained loss can bring civil proceedings under the new section A7 inserted into the Higher Education and Research Act 2017 by the Bill.

19: Clause 4, page 6, line 27, after "A5" insert "that causes the person to sustain loss"

Member's explanatory statement

This ensures that only persons who have sustained loss can bring civil proceedings under the new section A7 inserted into the Higher Education and Research Act 2017 by the Bill.

20: Clause 4, page 6, line 27, at end insert—

"(2) A person may bring proceedings under subsection (1) only if—

(a) the person has brought a complaint relating to the same subject-matter as the proceedings under a relevant complaints scheme, and

(b) a decision has been made under that scheme as to the extent to which the complaint was justified.

(3) Each of the following is a "relevant complaints scheme"—

(a) the scheme provided by virtue of Schedule 6A (the free speech complaints scheme), and

(b) the scheme for the review of qualifying complaints (within the meaning of section 12 of the Higher Education Act 2004) that is provided by the designated operator (within the meaning of section 13(5)(b) of that Act)."

Member's explanatory statement

This provides that a person must first have recourse to a complaints scheme before bringing civil proceedings under the new section A7 inserted into the Higher Education and Research Act 2017 by the Bill.

Amendments 18 to 20 agreed.

Amendment 21 not moved.

Amendment 22

Moved by ***Lord Willetts***

22: Clause 4, leave out Clause 4

Lord Willetts (Con): I would like to seek the opinion of the House on this amendment. It has been a really valuable and important debate, and I recognise the enormous contribution the Minister has made to our deliberations. However, the OfS is a very powerful mechanism. It is not some patsy that is in the pockets of vice-chancellors; it is a very effective regulatory mechanism which is further strengthened in this Bill.

The people I most worry about are those young people wrestling with arranging events at their universities. It looks as if freedom of speech is some absolute and complete right—who could possibly challenge any freedom of speech? However, they are wrestling with practical questions. What if you discover that the invitation is for the same week as exam week, and a controversial speaker is coming just as the university is holding exams? What if the fundamentalist speaker, as part of his right to speak, is going to insist on gender segregation of the people attending the event? How do you judge those types of difficult questions?

It is hard enough at the moment for the young people who do it, some of whom, I suspect, may end up as Members of this House or another place. They do not need the threat of litigation hanging over them when they are reaching those decisions, so I beg to move my amendment.

6.52 pm

Division on Amendment 22

Contents 213; Not-Contents 172.

Amendment 22 agreed.

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The Tellers for the Contents reported 213 votes; the Clerks recorded 218 names.

The Tellers for the Not-Contents reported 172 votes; the Clerks recorded 175 names.

See col. 240 for explanation of mistake in voting figures.

7.03 pm

Amendment 23

Moved by ***Lord Sikka***

23: After Clause 4, insert the following new Clause—

"Research grant funding and academic integrity

After section A7 of the Higher Education and Research Act 2017 (inserted by section 4) insert—

"A8 Research grant funding and academic integrity

(1) The provision of grant funding for research shall not be used as a means of interfering with the freedom for academics—

(a) to publish and disseminate their research; or

(b) to decide on the final form and academic integrity of such research.

(2) Unless the conditions in subsection (3) apply, no contractual or other provision in a funding agreement that gives editing or publishing control to the funder shall be enforceable by law.

(3) The conditions referred to in subsection (2) are—

(a) that a court finds the full publication of the research would threaten national security, public safety, or health; or

(b) the contracting parties to a research funding arrangement agree confidentiality of results in advance.""

Member's explanatory statement

This amendment reduces the ability of public, private or philanthropic funders of academic research to infringe upon academic integrity and the freedom to publish results. Contractual attempts at interference with academic expression will be unenforceable, unless confidentiality of research was agreed in advance or where a court finds a national security, public safety or health justification for preventing publication.

Lord Sikka (Lab): My Lords, I am grateful to the noble Lord, Lord Moylan, the noble Earl, Lord Lytton, and the noble Baroness, Lady Bennett of Manor Castle, for their support for this amendment. I raised the subject of academic integrity and freedom to disseminate research findings at Second Reading and in Committee. Several important issues were raised, and this amendment has been extensively rewritten in light of that. I believe that it now complies with Article 10 of the ECHR.

The revised amendment prevents the gagging of academics by research funders who do not like the findings. However, the right to publish research is also constrained by my amendment's proposed new subsection (3), which basically states that, if the research findings would

"threaten national security, public safety, or health",

they need not be published. They also would not if

"the contracting parties to a research funding arrangement agree confidentiality of results in advance."

Major issues were raised during the last debate, and I will address them.

In Committee, I provided examples of how the Government themselves suppressed Covid-related research findings, for which we are yet to receive a full explanation. The research was funded by public money and did not threaten national security or public safety, but it was still suppressed. The publication of that research could have provided insights into the cost of Covid tests and of controlling the pandemic, and possibly have helped to frame more effective public policies.

I also cited examples of the tobacco and food industries censoring or preventing the dissemination of research. The unhindered publication of academic research would have created greater awareness of the dangers of smoking and the ill effects of processed food, and, again, this may well have enabled the development of more informed public policies.

Research showing that generic drugs are just as effective as branded drugs would have reduced the cost of medical treatments, as well as the cost to the NHS. In Committee, it was suggested that my amendment was somehow not appropriate for the Bill, and that transparency was a key issue. I will tackle that head on because I am happy to respond to these points. The amendment is about academic freedoms, and the clue is in the title of the Bill, which includes the words "Freedom of Speech". Advancing and protecting the academic freedom to publish uncensored research is directly relevant to it; there is no other Bill where these kinds of issues can go at the moment. The point about transparency is important, but the unhindered publication and dissemination of research is the best form of transparency.

Over the years, I have been on many academic journal editorial boards, so I am well aware of the politics of publishing and commissioning research and so on. All reputable peer-reviewed journals require authors to disclose sources of research funding and to make the relevant data, wherever possible, available to other scholars. However, that point can be reached only when a scholar submits a paper for publication. If research funders supress the findings, a submission to a journal does not take place, and the data cannot be provided easily to other scholars—you need not necessarily disclose who the funders are, because that point is not reached. If research findings are diluted by the funder, the researcher has the option whether to accept the diluted paper and proceed to publication or not. If the researcher chooses not to proceed to publication, there will be no transparency about funding at all. If the researcher succumbs to pressure from the funder and accepts the dilution of research outcomes, he or she is unlikely to be permitted to say that the funder rewrote or took out large chunks of the paper. So there is no transparency about the pressures which prevent the publication of the paper, which is what I am really concerned about.

Of course, there are numerous research registers which list the grants obtained by scholars, but a mere listing of the source does not amount to transparency because it does not tell us anything about the gagging of those researchers or prevention of their publication. Just naming the funders does not tell us about the contents of the research, research methods, research methodology, analysis, discussion or possible public implications.

Full transparency, which is what I am concerned with, covers all those things, and that can be provided only by publication of the research, not permitting funders to say that you cannot publish it because, somehow, they now feel that it would damage their reputation or reduce the revenues arising from the sale of tobacco-related products or processed food. Gagging comes in many guises; it is not simply somebody saying that they will not let you publish—they behave in all kinds of interesting or strange ways.

I shall give a personal example. For a long time, I have taken an interest in auditor regulation. Under the Companies Acts, a resigning auditor is required to issue a statement addressed to shareholders and creditors stating whether there are circumstances in connection with that resignation that shareholders and creditors need to be aware of, then to list them, or to say that there are no circumstances and leave it at that. What do the auditors actually do? I conducted the only piece of research on that over the past 100 years, and I looked into it. I learned that Companies House does not publish the data, but on inquiry it said that it could write a piece of software for me, interrogate its database and tell me which company auditors had resigned. This was in relation to public limited companies. In those days you had to buy microfiches, so I would have had to buy the microfiches and track down whether there was a letter of resignation from the auditor.

I got the data and approached the Institute of Chartered Accountants in England and Wales and asked whether it would help to fund the cost of writing the software and buying microfiches. I got the grant,

[Lord Sikka]
and I looked at all 800 auditor resignations relating to public limited companies. What did I find? Only 2.5% of the resigning auditors complied with the law. The other 97.5% were silent; they did not say anything. But roll forward a few months and I started looking—and what do I find? In many instances, the auditors got out quietly but there was a scandal, with major frauds and other kinds of corporate collapses, which suggested that the auditors had basically abdicated their duty. They did not want to say anything or get a bad name for being troublesome, which is not very helpful for getting new audits or consultancy work.

I submitted my report to the Institute of Chartered Accountants in England and Wales, which said that it would get back to me. That is what is required—you submit a report. Would it say that I could go ahead to publish or say that I could not? It said neither yes nor no, and meanwhile the research was getting stale, and I had to make a decision. Was it important enough for people to know what auditors were up to, or should I just be quiet? I decided that I would publish the research, and it was published as a research monograph. Needless to say, I never got a research grant from the ICAEW again. The public suffers.

That is just one example of how people are gagged. Not everybody wants to follow their conscience and just publish. What I am trying to do through this amendment is to empower academics so they can publish research that is vitally important. There is nothing in the Bill that prevents gagging of scholars through subtle or not so subtle forms of silencing. We all see the world by standing on the shoulders of intellectuals. The barriers to publication of research prevent us seeing things, and this amendment would lower those barriers. I beg to move.

Lord Moylan (Con): My Lords, I speak in support of Amendment 23 in the name of the noble Lord, Lord Sikka. I said at Second Reading that there was a lacuna in this Bill, in that it did not deal with finance and money. Finance, of course, is what makes the world go round, and the scope for using money to limit freedom of expression and academic freedom is obvious. It hardly needs to be explained. So why would a Bill that addressed academic freedom not deal with this question of money and its potential abuse?

Quite independently of the noble Lord, Lord Sikka, in Committee I tabled three amendments trying to cover such aspects as the use of donations, the use of research grants and a couple of other matters which I thought were worthy of debate. Independently, the noble Lord, Lord Sikka, tabled an amendment much along the lines of the one he has just spoken to. As we proceed to Report, I have dropped mine, but the noble Lord has refined the drafting of his amendment considerably, and it is now a very good amendment and one that I think deserves a response. Sadly, in Committee, I do not feel it had quite the response or the engagement from either Front Bench that this important topic deserves.

7.15 pm

I said at the outset that there was a lacuna in the Bill in relation to finance. That is not entirely true, because if it is overseas money, the Bill is not silent. Clause 9, which deals with overseas funding, inserts a new section that relates to many of the things that concerned me in Committee. For instance, new subsections (5)(a), (b), (c) and (d) list:

"by way of endowment, gift or donation … by way of research grant … pursuant to a research contract … or pursuant to an educational or commercial partnership".

These are all to be monitored now by the OfS, with a view to assessing the extent to which the funding presents a risk to the matters in new subsection (2), which are, in fact, freedom of speech and academic freedom. So the principle that money and the influence of money needs to be, and can workably be, monitored seems to me to be established in the Bill where it relates to overseas funding, but the lacuna remains in relation to those matters in respect of funding that might arise domestically.

I do not think the noble Lord intends to press his amendment to a vote—that is a matter for him, of course—but the Government should be able to say something more than has been said so far, because these are very important issues and I do not feel they have been properly addressed. I, for one, am grateful to the noble Lord for bringing them back to your Lordships' House for your attention on Report.

Baroness Bennett of Manor Castle (GP): My Lords, it is with pleasure that I support the noble Lord, Lord Sikka, in his Amendment 23. Noble Lords will note that, as has been the case with quite a number of amendments to the Bill, there is certainly a broad political range of support for this one. I think that is a demonstration of the fact that what we are looking at here is an issue that is recognised right across the political spectrum as a matter of grave concern. As the noble Lord, Lord Moylan, just said—I agree with him—it really was not adequately addressed by either Front Bench in Committee. This is my first contribution on Report, so I should declare that I now have the support of my second excellent intern from King's College London.

The noble Lord, Lord Sikka, set out in Committee, and tonight, a range of areas where this is likely to be an issue: defence, gambling, tobacco and medicine. I would add to that agrochemicals and plastics. Of course, we should not forget the issue of research into government policies, which is so obviously a crucial matter of public interest. The international case study—the most famous or infamous case—is that of Mincome, the Manitoba basic income experiment, which was launched in 1974 under a broadly progressive Canadian state Government and shut down in 1979 under a new conservative Administration. The data from that big, significant trial disappeared into the Winnipeg regional office of Canada's national library and archives. It was the initiative of one researcher, decades later, to dig out 1,800 dusty boxes packed with tables, surveys and assessment forms, and to digitise the lot. This revealed the positive impact that basic income had had. It was a really significant trial, but that knowledge was denied to the people of Canada, who had funded it, and to the world for decades afterwards.

The House may be pleased to hear that I will not test your Lordships' patience by telling my own academic tale of woe about research into abomasal bloat in goat

kids many decades ago. Suffice it to say that I am well aware of the often pernicious impact of commercial interests on academic research.

As the noble Lord, Lord Sikka, just outlined, in some ways he has watered down the amendment presented in Committee. I would definitely prefer this amendment without proposed new subsection (3)(b). A great deal of the research we are covering is conducted in public institutions by academics; it may be funded by a private interest or the Government, but its main support comes from public funds. Any research for which that is the case should be fully open and available to all. None the less, adding this amendment to the Bill would be a significant improvement.

The Green position overall remains that the Bill is unnecessary and more gesture politics than serious law. But if we are going to have it, this amendment could be a useful protection for academics seeking to add to the sum of human knowledge—and very often contribute to the public good—when they are in danger of being muzzled by private, commercial or government interests. That, combined with the impact of the casualisation of academia, inadequate pay, job insecurity and government policies seeking to narrow the scope of academic research, particularly research critical of the status quo, presents far greater issues for academic freedom than the alleged issues covered by most of the rest of the Bill.

Baroness Fox of Buckley (Non-Afl): My Lords, I thank the noble Lord, Lord Sikka, for tabling this amendment. It is such an important issue and I am glad that he has brought it back.

We all want multiple funders for research—this is not an attempt to argue against the funding of research—but we need to be wary of a tendency towards advocacy research, from any direction. We sometimes assume that this concerns mainly big bad corporates; we need to look carefully at business interests, which have every interest in having their interests represented by the apparently impartial academic sector, but this can also be true of the big charities sector. It is often assumed that their backing of research will always be on the right side, but we should remember that they are also lobbying organisations.

That is why I am so glad that the noble Lord, Lord Sikka, mentions all sectors, including philanthropy. His main point is basing our decisions on transparency. As he rightly says, transparency should go way beyond just listing them, because in that instance you can end up with a situation where people think, "This big corporate has sponsored that, so therefore it must be corrupt research," but also, "This big charity sponsored this, so it must be good research." You want to know exactly what influence any funder has on the research. The amendment is particularly important since the phrase "the research shows" is often used as a precursor to "so we don't need any debate", because research is treated as a holy grail of truth. We need to make sure that research is reliable.

Finally, there is another threat to the impartiality of research: the ideological capture of research organisations, sometimes associated with the Government. I mentioned in Committee that UKRI, a non-political organisation to distribute government largesse which is the largest funder of research that we associate with the Government, boasts in its new equality, diversity and inclusion strategy that it has been inspired by political advocacy groups and grass-roots movements. It advocates that UKRI-supported research is "delivered in inclusive ways", "uses levers" to make change, and so on. That calls into question impartiality in deciding the distribution of public research money.

Whatever the noble Lord, Lord Sikka, decides to do with this amendment, I hope that the Government and the Minister will take into account that this area cannot be neglected if the Bill is to be successful in protecting academic freedom.

Lord Wallace of Saltaire (LD): My Lords, I cannot agree with the noble Baroness that ideological capture takes place in as quite as many places as she has suggested over the course of today's debate. Of course, "ideological capture" is itself an ideological term. I think I know enough about UKRI to know that ideological disagreement and disagreement about evidence and priorities will continue to plague it, as all such organisations are likely to be plagued. I am sympathetic to this amendment, although I suspect that what it seeks to achieve is best provided by codes of practice and guidance.

I have had some experience in my career of having difficulty with getting research that I have done published. The first and hardest battle I had was with the Board of Trade, which had commissioned from Chatham House a study of the principles of trade policy. The economists who wrote it for us actually talked to a number of trade policy people and therefore produced something that was not entirely in line with the conventional wisdom of the economics profession. The economists at the Board of Trade therefore wanted to prevent us publishing it. We fought hard and they eventually gave in.

A more recent example was when I was asked by a think tank to contribute to a group of essays on the experience of outsourcing in the public services. I wrote something which was quite critical of outsourcing. I should have looked at its website, annual report and list of funders before I accepted the job. When I discovered that the largest outsourcing firms were among its largest funders, I realised why it had some hesitation about publishing what I had written. Again, after a small number of editorial changes, it finally accepted it.

I compliment that think tank for making as transparent as it did who its funders were. One of the briefing papers we have had for the Bill has pointed out the paradox that Policy Exchange, the fons et origo of much of the Bill, demands that student unions and others should be much more transparent about their funding but is itself entirely opaque about its funding. When I read the policy papers which led to the Bill, I was struck by the number of footnotes to American sources—much more than to any other international comparison. I wondered how much funding from various right-wing foundations in the United States had come into Policy Exchange. I do not know—perhaps there was none—but it should be a great deal more transparent about its funding. During the passage of the National Security Bill, I intend to push for more transparency from lobbying charities of that sort, to increase our sense of open debate.

[Lord Wallace of Saltaire]

I support the principles of this amendment, but I am not sure that we need to incorporate it in the Bill. I am sure that the Minister, in the spirit in which he has taken the whole Bill, will wish to make sure that the arguments are taken into account and that the principle of open research and publication is accepted and pursued, and not blocked by either civil servants and Ministers in government, or those outside government who commissioned the research.

Baroness Royall of Blaisdon (Lab): My Lords, the Faculty of Music at Oxford University does excellent research. Earlier on, the noble Baroness, Lady Fox, said:

"When the University of Oxford's Faculty of Music decolonised its curriculum in response to student pressure, the university itself sought to forbid criticism of the new curriculum."

I have checked with the head of humanities at Oxford University, Professor Dan Grimley. There were indeed some articles in the *Daily Telegraph* and the *Daily Mail* suggesting that that might have been the case, but I have it from the professor—from the horse's mouth, as it were—that the music curriculum at Oxford has not been decolonised and there has been absolutely no attempt to stifle debate.

Baroness Fox of Buckley (Non-Afl): Briefly, on the horse's mouth, I did not get my information from the *Telegraph*; I got it from music academics at Oxford University.

7.30 pm

Lord Collins of Highbury (Lab): My Lords, my noble friend Lord Sikka knows the Labour Front Bench's position on his amendment, because I wrote to him about it. He knows that we are very sympathetic to the issues and, like the noble Lord, Lord Wallace, believe that they need to be addressed. Certainly, over the years, all Governments have been focused on sufficient funding of research, through different mechanisms, such as the Medical Research Council and the Economic and Social Research Council—all these bodies through which we have attempted to ensure that research is open and transparent.

One of the problems that my noble friend is seeking to address is the sort of research when somebody decides to ask a question, hoping they know what the answer will be, and those tend to be funders, whether from business or industry. They are seeking a particular outcome and, if they invest in that research and the outcome is not the one they want, of course they will not publish. The noble Baroness, Lady Fox, focused on charities. I keep harping on about my own experience in the trade union movement, but I must admit that we certainly funded research in the hope that it would support our case for greater workers' rights and higher pay. It did not always come out the way we wanted and we were sometimes not particularly keen to publish it. We did not prevent the academic from expressing the view and certainly did not stop them from publishing it themselves, but we were not necessarily going to promote it.

The Bill is about freedom of speech—we have had a long debate about it. When it comes to academic freedom and research, there are much more complex questions that should not really be dealt with in the Bill. I am fully sympathetic to some of the arguments that my noble friend Lord Sikka made, but this is not the right Bill, and certainly these amendments are not the right ones.

Earl Howe (Con): My Lords, Amendment 23 tabled by the noble Lord, Lord Sikka, seeks to ensure that the provision of grant funding for research does not interfere with the academic's freedom to edit and publish their research. The only exceptions would be if there was a confidentiality agreement between those giving and receiving the grant made in advance or if a court finds that full publication would threaten national security, public safety or health.

The noble Lord is of course right to be concerned about the provision of grant funding for academic research and, as he acknowledged, we discussed this issue in Grand Committee, although perhaps not conclusively. The approach in the Bill is to place duties on registered higher education providers, their constituent colleges and student unions. I have to say that it goes too far to place duties on others, such as those who give grant funding, and I am also not at all comfortable with the idea of interfering in the private contractual arrangements between parties, which would be the effect of this amendment.

If an academic wishes to seek grant funding, it is for them to agree with the other party what contractual arrangements should apply. That is in fact reflected in proposed new subsection (3)(b) of the noble Lord's amendment and reflects the Haldane principle: that decisions on individual research proposals are best taken by researchers themselves through peer review—a principle enshrined in the Higher Education and Research Act 2017.

However, in my view it would go too far to require legal proceedings to determine whether full publication of research would threaten national security, public safety or health. First, those are extremely limited reasons, which I appreciate is the noble Lord's aim, but there may well be other legitimate reasons why the grantor would not want full publication. Secondly, this would potentially open the door to costly and time-consuming litigation. I fear that this may have a chilling effect on grant funding if it deters grantors, which is obviously not desirable; it may also affect the academic, as a potential party to the litigation, who is likely not to have the means to fund their part in it. It does not seem to me that the involvement of the courts in such a matter is appropriate.

Noble Lords have suggested that there is a lacuna as regards transparency in the domestic funding of higher education. I hope that I can allay that concern very simply. The Higher Education Statistics Agency collects data about research grants and contracts, which is publicly available. The OfS collects data that it needs to support its functions, including ensuring that providers are financially sustainable, and publishes this through annual reporting.

Given those points, I hope that noble Lords will agree that this amendment is not necessary.

Lord Sikka (Lab): I am grateful to the Minister and all the other participants in this debate for the vital points that they have made. This amendment is not

about sources of funding. It is about the ability to disseminate research findings when the funder decides that the outcomes are not what they were looking for but are of vital interest to other stakeholders. It is when those findings are suppressed that I am really concerned about. I gave an example from my personal experience but, if you met academics on the conference circuit, many of them would tell you similar kinds of stories. That issue remains, and I do not see anything in the Bill to address it.

I am grateful to the noble Lord, Lord Wallace of Saltaire, for his comments but I do not think that this is an issue of codes of practice. Codes of practice cannot bridge asymmetric power relationships. The more powerful are going to define the codes of ethics; they do not give anybody any enforcement rights. You cannot go to a court and say, "I want to enforce a code of conduct", because no law of any kind has been breached. There are issues around adjudication and enforcement. Before long, we will come back to the need for a legal framework.

I am also not convinced by the argument that it is up to the institutions. What can universities do? They are hungry for external money, and will persuade and pressurise academics to get it. Beyond that, they are not really interested in how the academic negotiates publication. They cannot deal with that. Then the academic is left on his or her own versus what the funder desires. Academics may well have spent a long time on their research but they will have nothing whatever to show in terms of any publications, dissemination or conference presentations. They are left on their own versus a very powerful provider of research. The Bill does not do much on this issue either.

The Minister said that this amendment could have a chilling effect on research grants. I do not see how. Let us say that two parties want to negotiate on some blue-sky thinking, develop some new technology to manufacture engines or whatever, and want to consult an academic. If it is agreed that this kind of research would be confidential, that is fine. Nobody is interfering with that. The point is about what your research findings show. For example, imagine somebody is looking at the effects of living in poor housing and suddenly discovers that a two year-old child is breathing mould and is therefore likely to be disabled for the rest of his life. What should they do? Should they be quiet? At the moment, they can be silenced by the landlord. I am giving people freedom. I am saying that they should have the freedom to communicate that living in those kinds of housing conditions is damaging and can kill people. However, the response I am getting from both Front Benches is, "We can't have that". That is unacceptable. People reading this debate will see that it is unreasonable. How will we eradicate the conditions that I have just described for people living in poor housing? I have not heard anything in this debate to offer me any comfort on this point.

Nevertheless, I am grateful to noble Lords. Since both Front Benches are opposed to my amendment, or at least do not fully support it, I have no choice but to withdraw for the time being. However, as and when an opportunity arises, I shall return on this issue.

Amendment 23 withdrawn.

The Deputy Speaker (Baroness Henig) (Lab): Before we continue, I must just correct the record on the recent vote on Amendment 22. There were some technical difficulties and the numbers were slightly different from the ones I announced previously: it was 218 Content, not 213, and 175 Not-Content, as against 172. For the record, the correct figures should be 218 Content, 175 Not-Content.

Clause 5: General functions

Amendment 24

Moved by ***Earl Howe***

24: Clause 5, page 7, line 12, leave out "the promotion of" and insert "how to support"

Member's explanatory statement

This clarifies that the new function conferred on the OfS enabling it to identify good practice in freedom of speech matters and to give advice about such practice is not directed at giving guidance to providers about how to discharge their new duty to promote the importance of freedom of speech.

Amendment 24 agreed.

Amendment 25 not moved.

Clause 9: Overseas funding

Amendment 26

Moved by ***Baroness Thornton***

26: Clause 9, page 12, line 41, after "provider" insert "or the governing body of a constituent institution"

Member's explanatory statement

This amendment would make provision for collegiate universities, making clear that a governing body of a college – rather than their overarching provider – should report information under Clause 9.

Baroness Thornton (Lab): My Lords, we have three amendments in this group, which have been proposed by my noble friend Lord Collins, with the support of my noble friends Baroness Royall and Lord Blunkett. They pick up some of the questions that were raised in Committee about transparency and proportionality with regards to overseas funding.

Amendment 26 would make provision for collegiate universities, making it clear that it is the governing body of a college, rather than its overarching provider, that should report information to the Office for Students under Clause 9.

Amendment 27 is intended to make the OfS power to gather information more proportionate, and to prevent commercially sensitive information being subject to a freedom of information request through the regulator having requested it. Several colleges and universities have contacted us about this matter, as I am sure is true for other noble Lords, so it is important that this be clarified at this stage.

Amendment 28 would prevent universities having to disclose sensitive commercial information to the OfS, and prevent independent trading entities—for example, the university press—being forced to violate

[Baroness Thornton]
commercial contracts not governed by UK law, because, of course, many of them have contracts with overseas organisations and institutions.

That is a summary of the amendments, and as my noble friend Lord Collins said at Second Reading or in Committee, the key to addressing these issues is transparency and ensuring that that transparency is proportionate. I could quote to the House many of the problems that have been outlined to us by others who are concerned about this, but because Clause 9 explicitly includes commercial partnerships, it is vital that the Government take on board these concerns and explain, on the record, how they will be dealt with, or provide clarification at the next stage of the Bill. I beg to move.

Baroness Royall of Blaisdon (Lab): My Lords, I support these Amendments. Amendment 26 is self-explanatory, and it would be great if the Government could clarify that the governing body of a college, rather than the overarching university, will be responsible for reporting information to the OfS. It would be very good if the Minister could put that on the record today in *Hansard*.

7.45 pm

With regard to proportionality and the fact that there should be reasonable grounds for suspecting a breach, it is important to have some articulation from the Front Bench that there will always be a sense of proportionality. However, the amendment that I will focus on, because I think it is extremely important, is Amendment 28, which would prevent universities having to disclose sensitive commercial information to the OfS. This is utterly critical, because it cannot be right that income generated by commercial partnerships and contracts for the receipt and delivery of goods and services, such as university presses, as mentioned by my noble friend, should be in scope of reporting to the OfS.

As noble Lords will be aware, reporting the details of such contracts to a regulator would mean that they were subject to FoI. That would be completely out of kilter and would compromise commercially sensitive information. As my noble friend said, it could also violate overseas data protection law and the confidentiality terms of contracts that are not governed by UK law.

It would be very interesting to know why the Government think it might be appropriate to require the disclosure of sensitive and confidential commercial information. We will listen to what the Front Bench says, but I would be very grateful if the Government could reflect further on that and, as my noble friend said, perhaps come back at Third Reading, because this is of extreme importance to some of our universities and presses.

Lord Patten of Barnes (Con): My Lords, I will speak in support of those observations. I speak at a university that is in receipt of an extraordinary stream of revenue from its academic press. I think it is true to say that it has the largest academic press in the world, which is hugely successful and is a very large international business. I am puzzled at the suggestion that the contracts it negotiates elsewhere are likely to have an effect on freedom of speech and the associated freedom of inquiry at the university itself.

One reason why the university press is covered is that it is part of the university—and it is part of the university precisely to stop that sort of thing happening. So I very much hope that we can have some clarity on this and get an assurance that there will not be any question of commercial fishing trips with university presses. It is incredibly important that they are allowed to go on firing on all cylinders and doing as well as they do at present. The Oxford University Press, for example, sells 2 million copies of the Oxford English/Chinese dictionary every year in China and has huge sales of academic books in Shanghai. Our China Centre has not been prevented from teaching people about what is happening in Xinjiang, Tibet or elsewhere. So I do think we need to be careful about how we address this issue and, at the very least, as the noble Baroness has just said, make it absolutely clear that fishing trips through FoI requests are out and that the Government would not seek to get involved in what could happen commercially unless there were some evidence that freedom of inquiry or speech had been compromised.

Lord Wallace of Saltaire (LD): My Lords, I hope that the Government will take this away, consider whether there is a way of adapting to some of the valid points made on these amendments and, if necessary, come back at Third Reading—when, I suspect, any further government amendments would be welcome.

I will briefly raise a question that I have already raised with the noble Baroness's private office, which is how Clause 9 on overseas funding relates to a substantial clause of the National Security Bill, which had its Second Reading yesterday. It seems in some respects to overlap or possibly duplicate it. We have to be very careful about the potential to ask universities to supply further information, answer reports and weigh down their central administration. We already have the National Security and Investment Act, which lays down a number of obligations on universities, which they are fulfilling—justified but additional burdens. This Bill and the National Security Bill will potentially add a further layer of detailed reporting by universities to government, which I am not sure government will be entirely capable of handling. I wish to mark that before those two Bills pass: we should be very clear that they are compatible with and complement, rather than contradict, each other.

Having said that, the question of funding and student unions wants looking at. I was not aware that there is significant overseas funding for student unions. I suppose it is possible that the Chinese, Saudi or even Russian Governments could decide that covert funding of student unions would be a way to influence the British debate, so perhaps there is a half-justification for this. But these Benches, having talked to a number of student unions, are concerned about these small, underfunded bodies, which have a very rapid turnover of officers—as is their nature—having burdens placed on them that are heavier than they can cope with and are not justified by the situation. I mark that as a caveat and hope that the Government take it back for further consideration.

Baroness Barran (Con): My Lords, I will address this group of amendments relating to overseas funding and the application of the reporting requirements to

the regulator. Amendment 26, tabled in the name of the noble Lord, Lord Collins of Highbury, seeks to ensure that it is the governing body of a constituent institution rather than their registered provider that must report information required under Clause 9 to the Office for Students. This is rather complex, in that the duty of the OfS in Clause 9 is to be exercised via the existing regulatory regime for registered higher education providers. The OfS already has the power to obtain information from providers.

New subsection (4), which is the subject of this amendment, refers to Section 8(1)(b) of the Higher Education and Research Act 2017. This requires that there is a condition of registration under which the governing body of a provider must supply the OfS with information for the purposes of the performance of the OfS's functions as the OfS may require. This is achieved by registration condition F3, as described in the OfS's regulatory framework, which applies to providers and not to constituent institutions.

The approach in proposed new Section 69D of the 2017 Act is that the OfS may require the governing body of a provider to supply information about relevant funding received by the provider or "a connected person". A connected person is defined in subsection (6) as including

"a constituent institution of the provider".

The noble Baroness, Lady Royall, asked for clarification and I hope that that is clear. If it is not now, it may appear clearer in *Hansard*.

Baroness Thornton (Lab): I think what the Minister said was quite clear, but the concern is whether that is a satisfactory way to proceed for collegiate universities.

Baroness Barran (Con): As I said, it builds on the existing approach to regulation of constituent colleges.

Amendments 27 and 28, also tabled by the noble Lord, Lord Collins of Highbury, seek to reduce the scope of Clause 9. Amendment 27 would allow the Office for Students to seek information only where the OfS considered that there were reasonable grounds to suspect a breach of the freedom of speech duties. Amendment 28 would remove overseas commercial partnerships from the definition of "relevant funding", meaning they would not be within scope of the clause.

New Section 69D(1) will require the OfS to monitor the overseas funding of registered higher education providers and their constituent institutions so that it can assess the risk which the funding may pose to freedom of speech and academic freedom in the provision of higher education. The only way that the OfS can monitor the funding is if it has the necessary information. The power to require such information is linked to the registration condition that already exists under Section 8(1)(b) of the Higher Education and Research Act 2017; that is, condition F3 as described in the regulatory framework that I have already mentioned. Clause 9 is not about the speculative investigation of individual contractual arrangements; it is about routine monitoring of relevant information, at a sufficient level of detail, but no more than that, to allow the OfS to monitor the risk to freedom of speech.

As I said before, Amendment 27 would limit the power to require information from providers to where the OfS considered that there were reasonable grounds to suspect a breach of the freedom of speech duties. That test sets a very high bar which could arguably never be met. The OfS would not be in a position where it could suspect a breach because it would not have evidence to support that. However, at the same time, the amendment would mean that it would not be able to require information that may provide such evidence, so this would be circular, resulting in the inability of the OfS to obtain information on overseas funding. That in turn would mean that the OfS would not be able to carry out its duty to monitor the risk to freedom of speech that overseas funding may pose. This would mean that new Section 69A would be ineffective and would subvert the whole point of the overseas funding clause.

I should add that the effect of the drafting of this amendment would not be to prevent commercially sensitive information becoming subject to freedom of information requests through the regulator having requested it, which I understand the intention of the amendment to be, noting that the amendment does not refer to that and focuses simply on suspicion of breach. In any event, approved fee cap providers are themselves subject to freedom of information requests, so disclosure of information to the regulator would not result in new exposure to that legislation, and, of course, the OfS already holds sensitive information about providers as part of its overall regulatory role—for example, financial information—so this will not be new.

As for Amendment 28 and the removal of commercial partnerships from the scope of new Section 69A, the Government are of the view that the funding received from such partnerships could pose a risk to freedom of speech and academic freedom. Accordingly, if we do not include commercial partnerships in new Section 69A, we would be leaving a large gap.

The OfS will decide on the level of detail that it will need as regards the information that it will require from providers, liaising with the sector as need be in order to determine that. The OfS will of course consider how to handle any sensitive commercial information that it requires to be provided, but, as I have said, it already holds sensitive information, so this would not be new.

I note that the noble Lord references in his explanatory statement that the clause may force a violation of commercial contracts not governed by UK law. My understanding is that commercial contracts are likely to contain a standard clause dealing with disclosure to regulators, so disclosure under the Bill would be covered by that.

As for the particular situation of a university press, which my noble friend Lord Patten of Barnes referred to, such a body will be in scope only if it is legally part of the provider. In that case, it would not be an independent trading entity. If it chooses to have as its legal status to be a department of a provider, as I am aware is the case for Cambridge University Press and Oxford University Press, it inevitably brings itself within scope of regulation as a part of that provider. I would be more than happy to follow up with my noble friend if he would like to progress that conversation or requires any further clarification on that point.

8 pm

With regard to the point by the noble Lord, Lord Wallace, about the National Security Bill, as we have heard from earlier amendments, the Government are keen that there is consistency across legislation. That applies in this case also. The noble Lord also hinted at the regulatory burden. He will be aware that the Office for Students is required, when performing its functions, to have regard to the need to protect the institutional autonomy of providers and to the principles of best regulatory practice, including that it should be transparent, accountable, proportionate and consistent.

Baroness Thornton (Lab): I am still not clear how the fishing expedition that the noble Lord, Lord Patten, mentioned would be avoided. That is the point here, is it not? There is a vulnerability and a risk. The Minister needs to explain that to the House—if not now, certainly before the next stage of the Bill—otherwise we will need to return to this. It is not at all clear to me how that risk is averted through the regulation that the Minister has explained.

Baroness Barran (Con): Given the hour, I am more than happy to set that out in detail in a letter to the noble Baroness. I hope that will allow us to explain to the satisfaction of the House how this provision will operate and that the amendments—

Baroness Royall of Blaisdon (Lab): My Lords, I am terribly sorry to interrupt the Minister's flow again. I am very grateful to her for suggesting that she should continue the conversation with the noble Lord, Lord Patten, and for saying that she will write to my noble friend. However, if we still have deep concerns about this—I think we are right to be deeply concerned—I suggest that we come back to it at Third Reading, notwithstanding what the letter may explain.

Baroness Barran (Con): I hear the noble Baroness's request. I hope my letter will be able to reassure your Lordships that these amendments are not necessary.

Baroness Thornton (Lab): My Lords, I think the Minister will understand that the House is still not satisfied that we are in a safe place with Clause 9. I hope we can achieve that before we get to the next stage of the Bill, but we may need to return to this at that stage. I beg leave to withdraw the amendment.

Amendment 26 withdrawn.

Amendments 27 and 28 not moved.

Clause 10: Director for Freedom of Speech and Academic Freedom

Amendment 29

Moved by ***Baroness Thornton***

29: Clause 10, page 15, line 11, at end insert—

"(1A) The appointment of the Free Speech Director is subject to a confirmatory resolution of the relevant Select Committee of the House of Commons.

(1B) The person appointed as the Free Speech Director must present a report to Parliament no later than 31 December 2023, and once a year thereafter.

(1C) The report must include an assessment of—

(a) the impact the role is having,

(b) the implementation of the Higher Education (Freedom of Speech) Act 2022, and

(c) the state of freedom of speech at the providers encompassed by that Act."

Baroness Thornton (Lab): Noble Lords will know that we have galloped around the director of free speech's appointment several times at Second Reading and in Committee. I thank the noble Baroness, Lady Bennett, and my noble friend Lord Blunkett for their support. The noble Lord, Lord Wallace, and I are obviously still at one in our concerns about this matter.

Amendment 29 would subject the appointment of the free speech director to confirmation by a Commons Select Committee and compel them to report to Parliament every year on the impact their role is having, the implementation of the Bill and the state of freedom of speech at the providers. This is important because if the Bill is to do what we want it to do—deliver protection and support for freedom of speech—then the director who is responsible for that, the regulator, should be accountable to Parliament. The fact that this person sits on the board of the Office for Students, and is therefore only the chair of the board accountable to Parliament for that work, is not satisfactory. This is too important to be delivered without having any accountability to Parliament for the director of freedom of speech, both on their appointment and the work that they do.

I am not going to repeat everything I said in Committee and earlier stages about this. I think this legislation was pre-empted by the appointment already being made—I am not absolutely certain it has happened yet, but I think that the interviews were taking place during the summer—and that is a shame, but we can rectify that to a certain extent by making this person accountable to Parliament. I beg to move.

Lord Wallace of Saltaire (LD): My Lords, my name is on Amendment 30, which is an alternative version, and I wish to add my concerns. The Minister will know that there has been a lot of controversy about the overall public appointments process. There has been criticism in the press and from people who have been involved in acting as independent advisers on public appointments, in general and in particular.

The appointment of the current chair of the Office for Students was particularly controversial. There was criticism that the balance of the appointing committee appeared to be much more political than expert, and that the person appointed appeared to have no previous qualifications or expertise for the job, beyond having been a Conservative MP who had lost his seat and managed Boris Johnson's campaign to be Prime Minister. That does not give us great confidence in the appointment of a freedom of speech champion; it also lessens confidence in the sector that the appointment process had been started so early. The Minister will be aware from the letter she had from a number of leading academics that this is one of their active concerns.

Given the particularly controversial nature of this appointment, if you want to achieve a degree of public confidence among those who will be affected by it in universities and elsewhere, it pays if it is seen to be a fair, open and reasonable process. That is not the case at present, and rumours of the sort of people who might be appointed—the names scattered around include those of one or two other Members of this House—would not at all assure the sector, so this is a particularly important process and appointment.

I ask the Minister to give us an assurance, as strongly as she can, that Universities UK, the Russell group and other stakeholders will be consulted about the process and the qualifications needed in such a person; that the appointing committee will be appropriate to the task to be undertaken; and that the Government will ensure, as far as possible, that the person appointed commands the confidence of those whom he or she will be regulating. That is not too much to ask but, against the context of what we have seen with public appointments in the past three or four years, it is a necessary ask. I hope she will be able to take us some way in that direction.

Baroness Bennett of Manor Castle (GP): My Lords, I have attached my name to Amendment 29 in the names of the noble Lord, Lord Collins, and the noble Lord, Lord Blunkett, which was so ably presented by the noble Baroness, Lady Thornton. Having heard those two speeches, I will be extremely brief because the case has been very powerfully made. At this stage these are probing amendments, but there is a need for a strong response from the Minister.

As the noble Lord, Lord Wallace, said, there is very grave concern about the nature of public appointments in many areas. If you combine that with the very grave concern that has been expressed from all sides of your Lordships' House about the Bill and its operation, it makes this a particularly crucial response from the Minister.

I also note that in Committee there was an amendment to put a sunset clause on the Bill. It was not my amendment, but I attached my name to it. It was not brought back so I have not pushed forward with it, but that would have been an alternative way of tackling this problem; in some ways it would possibly have been a stronger way. Given where we are now, at the end of Report, we need to hear some very strong reassurances.

Baroness Smith of Newnham (LD): My Lords, I support the thrust of both amendments, but I am rising to add to my declaration of interests earlier. I noted my role as an academic at Cambridge University. I am also a non-executive director of the Oxford International Education Group. I neglected that because the previous declaration linked to what I was saying. I was advised by the clerks to pop up at some point today. I declared it appropriately in Committee.

Baroness Barran (Con): My Lords, I will now address the group of amendments concerning the appointment of the new director for freedom of speech and academic freedom at the Office for Students. Amendment 29, tabled by the noble Lord, Lord Collins of Highbury, and very ably presented by the noble Baroness, Lady Thornton, seeks to impose extra requirements on the appointment of the director for freedom of speech and academic freedom and their role once in post. Amendment 30, tabled by noble Lord, Lord Wallace of Saltaire, similarly focuses on the appointment process.

As I said in Grand Committee, I want to be clear that

"the director for freedom of speech and academic freedom will be appointed in the same way as other members of the OfS board, by the Secretary of State under the Higher Education and Research Act 2017."—[*Official Report*, 14/11/22; col. GC 751.]

Although this is not officially a public appointment, it will be done in accordance with the public appointments process. This will ensure the independence of the process.

It is not necessary to include the additional requirement of confirmation of the appointment by the Education Select Committee. Such confirmation is not required for other members of the Office for Students board more generally, including the chief executive and the director for fair access and participation, who has a similar level of responsibility. The only role within the OfS which has involved prospective appointees appearing before the Select Committee is that of the chair. It would therefore be disproportionate and an unnecessary level of scrutiny that would set an unhelpful precedent for appointments to both the OfS and other public bodies, including those outside the higher education sector.

As for the involvement of the higher education sector in the appointment through formal consultation—I am afraid I cannot comfort the noble Lord, Lord Wallace—which is envisaged under his Amendment 30, this conversely would threaten the independence of the role.

I turn to the proposed additional reporting requirements to Parliament in Amendment 29. There are already several provisions in the Bill that provide for scrutiny of the operation of the Bill once enacted. Under Clause 5, the Secretary of State can ask the Office for Students to report on freedom of speech and academic freedom matters in its annual report or in a special report. This report must be laid before Parliament. This is based on the approach in Section 37 of the Higher Education and Research Act as regards equality of opportunity.

Under Clause 9, the annual report must include a summary of information on overseas funding and conclusions on patterns and trends of concern. This is based on Section 68 of the Higher Education and Research Act as regards financial sustainability.

8.15 pm

Under Clause 8, the Secretary of State may require the OfS to conduct a review of the complaints scheme or its operation and to report on the results of that.

Finally, Clause 10 provides that the new director will be responsible for reporting to the other members of the OfS on the performance of the OfS's free speech functions. This will ensure appropriate oversight within the OfS. This is based on Schedule 1 to the Higher Education and Research Act as regards the role of the Director for Fair Access and Participation.

[Baroness Barran]

Of course, members of the OfS board regularly appear before the Education Select Committee; for example, the chair and chief executive both appeared before it in May 2020 in relation to issues arising from the pandemic and, more recently, in September, the chief executive was a witness in relation to controversial research content and free speech.

Baroness Thornton (Lab): Can the Minister say whether the chief executive or chair could refuse to allow the director for freedom of speech to appear in front of a Select Committee? Could they say, "Sorry, there is no requirement for them to do that and we are not going to let them", even if that Select Committee has asked for them to do so?

Baroness Barran (Con): I am afraid that I do not strictly know the answer to the noble Baroness's question, but that would go absolutely against the spirit of the way in which our public bodies and arm's-length bodies engage with our Select Committees. I cannot imagine that would be the case, but I will clarify for her whether it is even a possibility and write to her on that point.

Lord Wallace of Saltaire (LD): The reason why we stress the importance of this appointment commanding confidence is that, when we began with the Bill—in particular with the think-tank paper that fed into it—there was a sense of "There is a problem here; the universities are desperately left-wing and we need to control them." Many of us start from the position, on the contrary, that our universities have a worldwide reputation and are among our country's greatest assets. If we are to maintain that reputation and the quality of those assets, we need to make sure that those who regulate them work with them, not against them. Finding some way of making sure that this key appointment starts on the right balance, with the right relationship with those it has to regulate, is therefore very sensitive and important. However the Government do this matters enormously.

Baroness Barran (Con): The noble Lord makes several important points, the first being the quality of our universities and the pride that we all take in that—the Government echo the sentiments he expressed about their quality and the global esteem in which they are held. We take this appointment extremely seriously, hence the fact that we are following the public appointments process.

The role of the regulator is very sensitive, as the noble Lord understands extremely well, and that is absolutely why there is the level of transparency and accountability to Parliament that I just set out. We take this extremely seriously, for some of the reasons the noble Lord expressed. The only point I might disagree on is that the driving force behind the Bill was a concern about freedom of speech within our universities, rather than a particular political angle, but we can perhaps discuss that outside the Chamber.

Most recently, the chief executive of the OfS went before the Education Committee as a witness in relation to controversial research content and free speech. If the focus of the appearance were to be on free speech in the future, the director for freedom of speech and academic freedom may well of course be involved with that.

Given what I have said, I hope that your Lordships agree that there are sufficient safeguards in the Bill as drafted to deal with these important points of concern. I hope that the noble Baroness opposite will withdraw her amendment.

Baroness Thornton (Lab): I thank the Minister for that extensive explanation. We are probably 50% happy and 50% still worried, and part of the reason for that is that time has passed in terms of the appointment and so on, and the concerns expressed by the noble Lord, Lord Wallace, about how this has been achieved and why people might be worried about what the director for free speech might get up to and how they would do their job. It must be in the Government's interest not to allow those concerns and worries to exist. I will of course withdraw the amendment, but I put on the record, as we have, that this is not where we would want to end up: we want more confidence in the system, rather than less. I beg leave to withdraw the amendment.

Amendment 29 withdrawn.

Amendment 30 not moved.

Schedule: Minor and consequential amendments

Amendment 31

Moved by ***Viscount Younger of Leckie***

31: The Schedule, page 19, line 40, at end insert—

"(ca) after the definition of "the institutional autonomy of English higher education providers" insert—

""member", in relation to a registered higher education provider or a constituent institution of such a provider, has the same meaning as in Part A1 (see sections A1(11) and A4(4));

"member", in relation to a students' union which is a representative body and not an association (see section 20(1)(b) of the Education Act 1994), means those whom it is the purpose of the union to represent, excluding any student who has signified that they do not wish to be represented by it;";"

Member's explanatory statement

This amendment ensures that "member" (of a registered higher education provider, of a constituent institution of such a provider and of a students' union) means the same in Part A1 and Part 1 of the Higher Education and Research Act 2017.

Amendment 31 agreed.

House adjourned at 8.22 pm.