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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

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

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House of Lords

Monday 10 June 2019

2.30 pm

Prayers—read by the Lord Bishop of Coventry.

Leave of Absence

2.36 pm

The Lord Speaker (Lord Fowler): My Lords, later this week I am due to travel to and speak at a special conference in Paris, where I will meet Speakers of second Chambers from across Europe and Africa. The theme of the conference is "Bicameralism: An Asset for Democracy", and accordingly I seek leave of absence from your Lordships' House on Friday 14 June.

National Health Service: Pensions

Question

2.37 pm

Asked by ***Lord Naseby***

To ask Her Majesty's Government what steps they are taking to review the tax rules relating to National Health Service pensions; and whether they intend to have a public consultation on the issue.

Lord Naseby (Con): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I declare an interest as a trustee of the Parliamentary Contributory Pension Fund.

Lord Young of Cookham (Con): My Lords, I am aware of concerns raised by NHS doctors about the impact of annual allowance tax charges. Although there are no plans to have a public consultation on the tax rules, on 3 June the Secretary of State for Health and Social Care announced his intention to consult on introducing a new pension flexibility for high-earning NHS clinicians affected by annual allowance tax charges.

Lord Naseby: The Answer that my noble friend has just given is most welcome, but it is perhaps a little tardy in the sense that this problem has existed for some time. The people who suffer are NHS patients, as consultants do not feel able to take on extra work. Is it not time that there was a total review of NHS pensions, as a whole lot of anomalies have developed over time? I now declare a second interest, as my wife is a retired GP. Prior to 1988, there was equality of contributions for men and women and equality for the beneficiaries, whether they were widows or widowers. However, for 24 years, despite having paid equal amounts, the future beneficiaries of female doctors—their husbands or partners—have had no benefit. Against that background—there are other examples—instead of a short-term review, is it not time that the NHS looked at all the anomalies that have arisen over time and tried to put them right?

Lord Young of Cookham: My Lords, in the interval between my noble friend tabling his Question and today, the Government made a significant announcement on 3 June aimed at addressing the very problem that he addresses in his Question, and no doubt he can claim some credit for that chain of events. On the point about the impact on patients, between 2018 and 2019 57% of GPs who retired took early retirement. Some consultants are unwilling to take on extra sessions because of the impact on their pensions, and that has an impact on the quality of service that we can provide. On his more detailed question, I understand the sense of injustice that he feels about the circumstances that he has described. I will see whether the consultation that begins at the end of the month can be stretched to include the broader review that he has just proposed.

Lord Davies of Oldham (Lab): My Lords, are not the Government being more than a little tardy in response to this situation? After all, they introduced the pension arrangements in 2015 and it is clear that they made a right mess of them in some respects. In addition to the range of people whom the noble Lord, Lord Naseby, spoke about a moment ago, both ends of the medical profession—younger doctors and consultants—are greatly aggrieved at the provision of pensions under the 2015 legislation. I just wonder why the Minister can say with equanimity that we are getting round to a consultation.

Lord Young of Cookham: It is important that noble Lords understand the background to the changes. One of the most expensive tax reliefs is pension tax relief. It costs £50 billion per year—roughly half the budget of the NHS. Two-thirds of that goes to additional, or higher-rate, taxpayers. The reforms introduced over the last two Parliaments were aimed at targeting the relief more effectively and saving £6 billion that could be redirected towards other priorities. Less than 1% of taxpayers will be affected by the taper of £40,000 that was introduced, and more than 95% of those approaching pension age will not be affected by the lifetime allowance.

Baroness Finlay of Llandaff (CB): My Lords, I declare an interest as a past president of the BMA, and as someone with an NHS pension whose husband does not stand to gain particularly by my death; so be it. Do the Government recognise the seriousness of the situation, given the open letter from the BMA to the Prime Minister published in the *Financial Times* today? The 50:50 suggestion that came from the Secretary of State is not the solution to the problem. Clinical services are already being severely jeopardised by consultants who drop their additional sessions; waiting lists are therefore already rising and those facing retirement have decided to carry on with leaving the NHS, thereby worsening our workforce problems.

Lord Young of Cookham: We join the noble Baroness's husband in wishing her a very long life. So far as the issue she raises is concerned, the BMA asked us to introduce this flexibility earlier this year. The chair of the BMA council said:

> "This is a step in the right direction".

[LORD YOUNG OF COOKHAM]
The Secretary of State is willing to discuss other models for pension flexibility; we very much hope that, if we make these changes, high-earning clinicians will be able to attend to more patients while saving for their retirements without incurring significant tax charges.

Baroness Kramer (LD): My Lords, senior officers in the armed services face the same problem. I raise this because I know that the Minister will follow up on it. One showed me his tax returns: a £5,000 increase in income led to an additional tax payment—in just the first year—of just under £17,000. This is driving away not only senior officers but especially the high-fliers who, with early promotion, get into this conundrum very early in their careers.

Lord Young of Cookham: My Lords, the Armed Forces Pension Scheme continues to be one of the best available defined-benefit occupational schemes. Service personnel on the AFPS are not required to contribute towards their pension throughout their career. However, we continue to monitor the differences between the various schemes to ensure that they are fair and provide appropriate support to the workforce.

Lord Forsyth of Drumlean (Con): My Lords, does my noble friend the Minister not recognise that this is not a problem confined to the NHS or indeed the armed services? It arises because the former Chancellor of the Exchequer, George Osborne, reduced the size of the pension pot from £1.8 million to £1 million over a short period of time. As a result, if people with final salary pension schemes reach the age of 55 and do not retire but continue, they are taxed at an outrageous 55%. The remedy lies in the Treasury undoing the mess that it created in the first place.

Lord Young of Cookham: There are a number of contenders for the leadership of our great party at the moment. If my noble friend feels this is a cause which will gain currency in my party, no doubt he will pursue it with one of those candidates. However, I return to what I said a few moments ago. The changes we made were progressive, to ensure there was not an inequity in the tax relief benefit.

Museums

Question

2.45 pm

Asked by ***Lord Lee of Trafford***

To ask Her Majesty's Government what assessment they have made of the challenges and opportunities facing national museums.

Lord Lee of Trafford (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper, and declare an interest as chairman of the Association of Leading Visitor Attractions.

Viscount Younger of Leckie (Con): My Lords, DCMS-sponsored museums operate independently, at arm's length from the Government. However, Ministers and officials routinely engage with them to discuss policy, finance and other matters. Our national museums' remarkable work is reflected in their enduring popularity, with four among the 10 most visited museums worldwide. The Government are committed to fostering an environment in which museums can flourish, seizing opportunities and surmounting occasional challenges while ensuring the whole nation shares in the extraordinary benefits museums confer.

Lord Lee of Trafford: I recently had the pleasure of visiting the impressive new V&A museum in Dundee. The council leader and tourism officials told me how the museum has brought a real sense of pride to the city and boosted visitor numbers at other attractions there. Thus, V&A Dundee joins the list of regional affiliates, such as the Imperial War Museum North, Tate Liverpool, Tate St Ives and others, which have stimulated regeneration and spread tourism. Should the Government now be doing much more, and being much more proactive, in encouraging and part-funding other national museums and galleries to similarly develop more regional affiliates? Loaning exhibits, worthwhile though that is, is surely not enough.

Viscount Younger of Leckie: I acknowledge the success of V&A Dundee, and setting up satellite museums under the same banner in other locations around the UK certainly sounds like a good idea on paper. However, it is down to the trustees and leadership of museums to decide how to deploy resources and display their artefacts and treasures. In 2018, the Government published a partnership framework to support and enable the national museums to act ever more strategically as a whole on how they work with the wider sector. Contrary to what the noble Lord said, experience has taught the sector that partnerships offer a successful approach for jointly curated exhibitions and galleries, exchanging skills, and so on. In 2016-17, the national museums loaned objects to 1,356 locations across the UK.

Lord Baker of Dorking (Con): My Lords, I hope the Minister recognises the importance of small museums. The most successful small museum in London is the Cartoon Museum, which has been running for 20 years. This week, it moves to new and enlarged premises in Wells Street, near Oxford Street. I hope he and other Members of this House will visit this museum—they might see themselves there. It is the only public building in London that aims to send people out happier than when they entered.

Viscount Younger of Leckie: All I can do is acknowledge what my noble friend said. We have heard an extremely good marketing campaign from him.

Baroness McIntosh of Hudnall (Lab): My Lords, in his initial remarks, the Minister referred to "occasional challenges" that the museum sector might face. What advice would he give to museums and other arts organisations, which are currently facing considerable challenges in securing private and corporate donations? A number of high-profile difficulties have been experienced recently, in a climate in which the Government have steadily reduced the real value of public funding to this sector. What advice does he have for the sector in these circumstances?

Viscount Younger of Leckie: We acknowledge and applaud the amount of private funding that goes to museums and we very much want that to continue. The noble Baroness alluded to certain high-profile issues, particularly one that was in the news this morning. The Government are very appreciative of BP's long-standing support for the arts; its preferred model of long-term partnerships is especially valuable to cultural institutions. To answer the question, the funding of museums has to be a collaboration, led, we hope, locally by local authorities and private funding.

Lord Singh of Wimbledon (CB): My Lords, our museums are treasure houses of artefacts from around the world. Does the Minister agree that it would enhance understanding and appreciation if the items were better labelled to show how they were—how can I put this kindly—acquired from around the world?

Viscount Younger of Leckie: The noble Lord is right. I think most museums have moved on from displaying items in glass cases, which perhaps are not especially helpful, particularly to schoolchildren. It is important for museums to optimise their visitor numbers by displaying items in the most interactive way and thinking about what they are doing in running their businesses.

Lord Cormack (Con): Does my noble friend agree that one of the defining characteristics of our great museums is the scholarship embodied in their staff? Does he also accept that the pay for these people is often derisory and, in consequence, many of our great national museums are short on highly qualified and expert staff? This is a problem that needs looking at. Does he agree?

Viscount Younger of Leckie: It is a problem that all museums would acknowledge, there is no question about that, but I say again that it is down to the trustees and museum leadership to decide how best to deploy their resources to maximise access to collections and programmes, and, indeed, employ staff. At the same time, I pay tribute to the tens of thousands of dedicated and passionate volunteers nationwide, whose vital work brings so much to visiting audiences to museums and galleries.

Lord Bassam of Brighton (Lab): My Lords, I declare an interest as trustee of the People's History Museum. Could the Minister explain to the House why our museum is listed on the DCMS website as being sponsored by the department, yet it removed its funding as far back as 2015-16? We are a national museum and all the other national museums attract government funding.

Viscount Younger of Leckie: I do not have sight of the website right now, but I will certainly look into that. I say again what I said in answer to a Question on a previous day: entry to the 15 national museums remains free. These 15 museums firmly come under the Government.

Lord McNally (LD): My Lords, a few months ago I visited Cardiff and went to the museum there, which was absolutely buzzing, particularly with young people, because Major Tim Peake's space capsule was on loan from the Science Museum. Although I understand my noble friend's comment about loans, an imaginative programme of loans—I understand that Dippy the dinosaur is again a major attraction—that uses such exhibits nationally has a marvellous educational role and lifts the profile of the local museum.

Viscount Younger of Leckie: Yes, the noble Lord makes a very good point. To be helpful to the noble Lord, Lord Lee, it may be that other V&As start up, but the noble Lord, Lord McNally, makes a very good point: it helps enormously to have tours such as those of Dippy the dinosaur and Tim Peake's capsule because it wakes up the museum and allows schools to take visitors there, which is beneficial for all, particularly for their education.

Nuclear Energy: Small Modular Reactors

Question

2.53 pm

Asked by ***Baroness Bloomfield of Hinton Waldrist***

To ask Her Majesty's Government what progress has been made in identifying a design for small modular nuclear reactors.

Baroness Bloomfield of Hinton Waldrist (Con): I beg leave to ask the Question standing in my name on the Order Paper and in so doing draw attention to my interests as set out in the register.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, there are many designs in development around the world for application in a diverse range of markets. The Government are assessing eight advanced modular reactors through the AMR R&D programme. We have received the feasibility studies and will announce any contracts for promising designs in the summer. We are also considering a proposal from the UK SMR consortium to the industrial strategy challenge fund. We will make a decision on this soon.

Baroness Bloomfield of Hinton Waldrist: I am grateful to my noble friend for his reply and pleased that the Government continue to encourage the development of this technology. Can he confirm that the Trawsfynydd site in north Wales is still being considered as a trial site to test a whole range of different designs for generation III and generation IV SMRs?

Lord Henley: My Lords, I can confirm to my noble friend that Trawsfynydd remains a potential site; it has been neither ruled in nor ruled out. We believe that small and advanced nuclear reactors have the potential to drive down costs through technology and production innovations.

Lord Wigley (PC): My Lords, may I add my support to the bid made in favour of Trawsfynydd? The old nuclear power station there is half decommissioned, but the lake is too small for a full new nuclear power station. Given that the Wylfa project is, to say the

[LORD WIGLEY]
least, in doubt, will he look positively at the Trawsfynydd option for SMRs in order to keep this technology alive in north-west Wales?

Lord Henley: The noble Lord speaks with great experience on this subject. He was involved in the building of Trawsfynydd, more years ago than he probably cares to remember. I note what he says; he is correct to say that the lake is on the small side for a full-scale nuclear reactor, which might make the small modular reactor more appropriate, but as I said, nothing has been ruled in or out.

Lord Fox (LD): My Lords, any decision on SMRs should be taken within the context of the best possible carbon-free energy system. Does the Minister share my view that nuclear is competing not with windmills and photovoltaics but with energy storage, because in future the baseload can be provided either by nuclear or by effective storage? The Minister paints a picture of activity within his ministry. Can he guarantee that the same amount of effort will go into developing effective methods of bulk energy storage as is going into nuclear power?

Lord Henley: I completely agree with the noble Lord. The advantage of nuclear is that it provides baseload but if, as he says, we make further progress on storage, the variables in renewables would have the same effect. Therefore, we will continue to provide equal priority to advances in technology for storing electricity.

Lord Patel (CB): My Lords, in their reports on small modular nuclear reactors, both the Parliamentary Office of Science and Technology and the House of Lords Science and Technology Committee made the point that the UK's ability to deliver on the development and implementation of small modular reactors depends on our skills base. We have a significant lack of skills. What are the Government doing to develop those skills in nuclear science?

Lord Henley: My Lords, I accept the points that the noble Lord makes and refer him back to the nuclear sector deal, which is a collaboration between the Government and the industry. In that, we accepted that there was a need to develop our skills base, which we will continue to do.

Lord Cunningham of Felling (Lab): My Lords, it is important to continue the research and development of small modular nuclear reactors. I compliment the Government on that, even though progress is slow. Can the Minister enlighten the House as to whether all the money originally allocated for that project has been taken up? It is not clear. In the meantime, as well as Trawsfynydd, Moorside in Cumbria has disappeared from the planning process. As the Minister rightly says, many existing nuclear reactors providing significant amounts of baseload will inevitably come to a conclusion before too long and we are apparently not in a position to replace them. While I recognise the importance of the point made about storage, it will not be there in time on that scale, capacity and ability.

Lord Henley: My Lords, the point I was making about storage was that it needs further research, because there are potentials there. I acknowledge the noble Lord's expertise from his former constituency interests, and his interest in Moorside. He knows that we were disappointed that Moorside fell through but the site is still there, and it too might be looked at for small modular reactors.

Lord Campbell-Savours (Lab): My Lords, following up on the question just asked, who would fund an SMR programme at Trawsfynydd?

Lord Henley: My Lords, that will depend on whatever proposal is put forward.

Lord Baker of Dorking (Con): My Lords, is the Minister aware that at Sellafield there is a university technical college for training 14 to 18 year-olds? Last July, 80% of its leavers became apprentices in the industry and 20% went on to study nuclear and STEM courses at university. We are providing the expert staff of the future for not only Sellafield but other sites.

Lord Henley: I am grateful to my noble friend for reminding the House of the success of UTCs and, in particular, the UTC in that area.

Asylum Seekers
Question

2.59 pm

Asked by ***Lord Scriven***

To ask Her Majesty's Government how they identify, support and track the applications of people seeking asylum on the grounds of gender identity or sexual orientation.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, while the Government do not specifically track applications from asylum seekers based on their gender identity or sexual orientation, we remain focused on supporting all asylum seekers, including LGBT people and those who are vulnerable.

Lord Scriven (LD): My Lords, as has just been said, the Home Office does not collate or collect central data on the journey of LGBT+ individuals seeking asylum on issues such as the accommodation they are granted, the length of time taken for each case or, if held in detention, how long they are there. So how can the Home Office, with any certainty or credibility, say that LGBT+ individuals seeking asylum do not suffer discrimination, either directly or indirectly, if it does not have the data to evidence that?

Baroness Williams of Trafford: My Lords, it is important to consider that, for all people claiming asylum, if that claim is not granted, they are sent back to their country of origin. I understand the vulnerabilities of LGBT people in some countries. For that reason, we provide support in this country when people return to their country of origin. We give them various types of support, including long-term accommodation, legal

and medical support, and family tracing, which is incredibly important for someone returning to their own country.

Lord Lexden (Con): Have the Government not committed to publishing annual data on the number of asylum claims based on sexual orientation? If they have, when will annual publication begin?

Baroness Williams of Trafford: The Government collate data of asylum claims based on sexual orientation. I understand that almost 6,000 asylum applications lodged between 2015 and 2017 stated sexual orientation as the basis of their claim, although my noble friend will be aware that sexual orientation might not be the first basis for a claim.

Baroness Hamwee (LD): My Lords, we have seen two very unhappy incidents of homophobia in this country in the last few days—at the theatre in Southampton and on the bus in Camden. Does the Minister agree that denying the dangers facing many asylum seekers, at best, displays a lack of understanding of minorities on the part of the Home Office and, at worst, amounts to real prejudice?

Baroness Williams of Trafford: My Lords, the Home Office understands the dangers faced by LGBT people, and our hate crime action plan, launched in 2016, acknowledged them. I know of the two cases that the noble Baroness is talking about, which are very disturbing indeed, so I reject any suggestion that we do not take vulnerabilities, particularly those related to hate crimes meted out on people because of their sexual orientation, very seriously.

Lord Rosser (Lab): It is my understanding—I am sure the Minister will correct me if I am wrong—that, in 2017, 1,900 applications were made on the grounds, in whole or in part, of sexual orientation. In that year, there were approximately 1,400 appeals, of which 487—nearly a third—were successful. The number of successful appeals was greater than the number of applications granted. I have two questions. First, of the 487 successful appeals involving sexual orientation, which were the top three countries, in terms of the number to which those who appealed successfully would have been returned had their appeals not been successful? Secondly, of those people whose asylum case applications, in whole or in part, on sexual orientation grounds, were declined in 2017 and were then returned to their relevant country, how many have subsequently been the subject of persecution or discrimination in their relevant country, because of their sexual orientation? I assume the Government have some idea of the answer to both questions because, if they do not know the answer to the second, how do they know that asylum application declinatures have proved correct?

Baroness Williams of Trafford: My Lords, when determining asylum claims, the Government will take information from a variety of sources, including the FCO. I cannot answer all the noble Lord's questions just now, but I can say that, of the top five countries for sexual orientation-based asylum claims by volume, the largest by far was Pakistan.

Lord Pannick (CB): Does the Minister agree that asylum claims on the grounds of gender identity or sexual orientation raise specific difficulties and sensitivities? Is there a special unit in the Home Office containing individuals with particular expertise who look at asylum claims on such grounds and, if not, why not?

Baroness Williams of Trafford: The answer to the noble Lord's question is: yes, absolutely, these claims are very sensitive, both when they are being determined and, if the individual in question finds themselves in detention, there are further sensitivities around the detention estate, particularly with those from certain countries. I acknowledge that. The training undergone by case workers both outside and inside the detention estate is specific to the issues mentioned by the noble Lord.

Lord Hayward (Con): My Lords, does my noble friend agree that a high proportion of the problems that arise from such asylum applications stem from the appalling human rights records of a number of members of the Commonwealth? Surely one solution to the problem—but only one—is for pressure to be brought to bear on those countries that fail to recognise any form of human rights. We must make progress not in the long run but in the short term.

Baroness Williams of Trafford: My noble friend raises an important point. Certainly during CHOGM last year, the Prime Minister and others raised issues of human rights. The churches have a big presence in the Commonwealth and can bring some pressure to bear. I understand that the Kenyan Government are now committed to reviewing the penal code to align it with the constitution and to adopting an anti-discrimination law which provides protection irrespective of a person's sexual orientation or gender identity.

Courts and Tribunals (Online Procedure) Bill [HL]

Committee

3.07 pm

Clause 1: Rules for an online procedure in courts and tribunals

Amendment 1

Moved by ***Lord Ponsonby of Shulbrede***

1: Clause 1, page 1, line 9, leave out "or require"

Lord Ponsonby of Shulbrede (Lab): My Lords, I shall speak also to Amendment 6, which is in the first grouping. On Amendment 1, HMCTS has acknowledged that its assisted digital programme will not be sufficient to support everybody to engage with online processes and has therefore made a commitment that digital services will not be mandated. In relation to the reform agenda, it has been stated that HMCTS will continue to make provision for litigants to continue to use paper documents in accessing family court proceedings. It is therefore concerning that Clause 1(1)(a) would allow the Online Procedure Rule Committee to make rules requiring certain proceedings to be initiated electronically, and that Clause 1(1)(c) would allow rules requiring parties to participate electronically.

[Lord Ponsonby of Shulbrede]

The purpose of this amendment is to make it crystal clear that people with particular vulnerabilities will not be required to participate in court proceedings, particularly family proceedings, in a digital way. I think the Government have been too optimistic when looking at the proportion of the population that is digitally excluded. The figure they have is that 18% of the population do not use computing equipment, but I would argue that that number is far too low. When one looks, for example, at the population using internet banking or similar sensitive issues, it is only 56%. I believe it would be helpful if it were clearly stated in the Bill that there will not be an expectation for parties to engage with any family court proceedings online and that paper channels will always be available to anyone who chooses to use them.

Amendment 6 is also part of this group. Clause 1(6) would allow the Online Procedure Rule Committee to set out circumstances under which proceedings should be transferred to a full court hearing, and therefore no longer come under the OPR. Although it may be useful to provide some clarity as to when cases can be transferred, I would be concerned if this resulted in any restriction of judicial discretion, and that any individual case could be transferred to a court hearing if it was required. The purpose of Amendment 6 is to make this point explicit in the Bill. I beg to move.

Lord Marks of Henley-on-Thames (LD): My Lords, Amendment 3 is in my name and in the names of my noble friend Lord Beith and the noble and learned Lord, Lord Judge. This amendment seeks to have the Bill offer a choice to parties between filing forms and other documents under the Online Procedure Rules by electronic means or submitting them on paper. At Second Reading, the Minister said that the Government recognised,

"that not all court and tribunal users will be able to engage online and so paper routes will continue to be available for those who need them".—[*Official Report*, 14/5/19; col. 1506.]

The noble and learned Lord has repeatedly said that litigants will have a choice between filing documents electronically and filing paper documents, the intention being that paper documents will be scanned into the online file and available thereafter to be accessed online if desired. That promises a perfectly acceptable arrangement, but I suggest that we need a guarantee that it is going to happen.

For many, this is a matter of considerable importance. While no doubt the electronically literate with access to computers and the internet will choose to produce and file documents online, Lord Justice Briggs, as he then was, recognised in his review the difficulties that would face litigants who are unable to use or access computers. Such difficulties are compounded by the facts that for many there are serious financial challenges in accessing online resources, and that in many areas of the country access to acceptably fast broadband is unavailable. In spite of some progress in this area, I interpose that our inability to guarantee fast broadband across the United Kingdom is shocking.

If the Government intend to ensure a choice for parties between online and paper documents, there can be no good reason for them failing to spell that out in this legislation. Whatever the Government's good intentions may be, there is no guarantee that a future Government will honour a commitment that is not on the face of the statute. This is not a matter where a statement of intent by the Minister will satisfactorily safeguard future litigants. There can be no downside to incorporating the choice in the Bill.

3.15 pm

My noble friend Lord Beith will introduce Amendment 4, in my name as well as his, which has the simple purpose of incorporating into the Bill an opportunity for parties to the litigation to opt by agreement to litigate by the conventional rules rather than the Online Procedure Rules. The Constitution Committee pointed out that the effect of Clause 3(1) would be that the Bill,

"thus supplies a legal basis for the displacement of conventional proceedings by online proceedings irrespective of the wishes of the parties to the claim".

Our Amendment 4 would alter that in cases where the parties agreed to proceed by way of conventional proceedings. In particular, the availability of such an option might have substantial significance in cases where both parties wanted an oral hearing but where the application of Online Procedure Rules might remove the opportunity to have one.

The noble Lord, Lord Ponsonby, has explained that his Amendment 6 would retain judicial discretion as to whether a conventional court hearing was necessary in individual cases. The amendment from the noble Lord, Lord Beecham, would go further and permit the court discretion in cases of disagreement between the parties to decide which set of rules should govern the proceedings. I support the principle that, where the parties are not in agreement, the court should decide. Where parties agree, though, I suggest that as a matter of principle their agreement should be honoured. That is particularly important on the necessity for a hearing because I take the clear view, as human rights lawyers always have, that the right to a hearing in cases of serious disputes, even affecting small sums of money, should be unfettered.

Lord Beith (LD): My Lords, I can easily follow my noble friend because he has said much of what needs to be said. With Amendment 4, I am trying to explore what the circumstances are in which it would be possible for people to revert to the traditional procedure rather than the online one. I am in favour of the Bill being introduced—I have called for it on many occasions and strongly support it—but the Constitution Committee has pointed out that it raises some issues that need to be clarified and sorted out, and this is one of them.

What are we trying to do here? Are we trying to create an online system that is advantageous, beneficial to the parties and much less cumbersome as well as saving time for the judicial system? Are we then going to encourage people to make use of it in the expectation that they will? The piloting of more limited projects in this area indicates that we have good reason to be optimistic. So is that what we are doing, or are we setting up a system in which it will be almost impossible to insist on conventional court proceedings even in circumstances where both parties think that is right?

The question then arises whether you could have circumstances where one party to a dispute could insist, even when it was to the detriment of the other, that the more cumbersome procedure was used. I would be interested in the Minister's comments on that question. Where both parties are quite clear that there are good reasons for a hearing in court, why should they be precluded from having one if our assumption is that this is a system that would be attractive to users and make the court system function more effectively, particularly in large numbers of money claims of relatively modest size?

One of the ambiguities that surrounds this Bill is what it is really for—whether it is the route to a very wide use of online systems or whether it will be confined in this way. Different statements at different stages of the Bill's progress have had both a narrow and a wide interpretation. Although Briggs referred to money claims, I think there are wider expectations that make these general issues rather important.

Lord Pannick (CB): My Lords, I support what has been said by the noble Lords, Lord Marks and Lord Beith. I declare an interest as a barrister practising in offline courts. That was the reason I did not participate at Second Reading.

The Briggs report has been referred to, which said at paragraph 6.13 that there are persons,

"living mainly in rural areas with no access to broadband, those who cannot afford a lap-top or desk-top computer, and those who for a variety of understandable reasons regard moving to computer after a life spent communicating on paper a step too far".

I agree with previous speakers that it is unacceptable that the Bill says nothing about such potential litigants. The Minister accepts that their interests must be accommodated—they need to be accommodated in the Bill.

That is the view of your Lordships' Constitution Committee, on which I served with the noble Lord, Lord Beith, and the noble and learned Lord, Lord Judge. Our report said at paragraph 16 that, against the background of what was said by Briggs,

"forcing people to choose between online proceedings or not pursuing legal claims at all risks excluding large numbers of people from the justice system".

For that reason, your Lordships' Constitution Committee has recommended that the Bill must place duties on the Lord Chancellor to ensure that adequate provision is made to enable access for the sorts of people I have mentioned.

Lord Beecham (Lab): My Lords, Amendment 10 in my name gives the right to respond, in addition to the person initiating the claim, to choose whether the new procedure applies. Amendment 11 then provides that, in the event of disagreement between the parties, the relevant court or tribunal will determine which course to follow—the matter just referred to by the noble Lord. Indeed, I concur with all the issues raised by the three Members of your Lordships' House who have spoken already in this debate.

I confess that my drafting is somewhat less than elegant, but this is an important issue, given the difficulty that many will have with an online process, stemming from unfamiliarity with the process or medical or mental health issues. The report of the Constitution Committee of 7 June, to which reference has just been made, raises serious concerns about the process that go beyond the matters referred to in these amendments but are most apposite to them.

The committee declares:

"It is unsatisfactory for legislation to be drafted in a way that fails to acknowledge the fundamental right to a fair hearing, both at common law and under the European Convention on Human Rights. While ministers may have no intention of using the powers provided by the Bill to undermine the right to an oral hearing, it is incumbent on Parliament to frame the powers it confers in a way that acknowledges and respects fundamental constitutional principles".

The committee expresses its concern that,

"the Bill confers broad powers on ministers to limit oral hearings in a much wider range of cases than is currently envisaged",

and suggests:

"One way to secure appropriate control over this power would be to require not just consultation with the Lord Chief Justice, or the Senior President of Tribunals where appropriate, but their concurrence",

in those proposals. In other words, consultation has to be taken seriously in these circumstances—perhaps more seriously than in most, given what is at stake here for the workings of our legal system.

Baroness Drake (Lab): My Lords, I support the intentions of Amendments 1 and 6 in the name of my noble friend Lord Ponsonby and Amendments 10 and 11 in the name of my noble friend Lord Beecham. In summary, they remove the potential requirement that people must choose between online proceedings and not pursuing legal claims, strengthen judicial discretion on the need for a full court hearing and protect the right of parties to proceedings to seek oral hearings.

It is right that courts and tribunals be modernised, but in utilising new technologies access to justice must not be undermined. The impact assessment notes that the conventional economic rationale for government intervention is based on efficiency or equity arguments. The rationale here is efficiency, referencing,

"outdated processes … costly for both the Government and court users".

A reliance on an efficiency rationale must not prejudice access to justice, but I fear that that is the Bill's potential impact. Clauses 1 to 3 give Ministers extremely broad powers to replace traditional proceedings with online ones, allowing for the possibility of online proceedings being the only option in the absence of Clause 3 regulation permitting a person to choose between online or conventional proceedings.

The Minister can give assurances as to the Government's intentions but they are not binding over time. The Government argue that additional safeguards are not needed, but the Online Procedure Rule Committee's powers will be far greater than those of any existing rule committees. Indeed, concerns about access to justice are heightened because the Bill confers powers to limit oral hearings in a wider range of cases than was envisaged by Lord Justice Briggs's recommendation to introduce an online court to resolve low-value civil money claims. I quote the noble and learned Lord, Lord Judge, at Second Reading:

"Effectively, this Bill covers all non-criminal proceedings … this is a serious, wide-ranging Bill with wide-ranging consequences".—[*Official Report*, 14/5/19; col. 1511.]

[Baroness Drake]

It may be argued that protecting access to justice is implicit in the Bill, but I believe that Parliament needs greater confidence; it should not rest on judicial intervention or ministerial assurance to address concerns about ministerial powers. I recall the Minister addressing this House on the draft Employment Tribunals and Employment Appeal Tribunal Fees Order 2013 in response to concerns that such fees would restrict access to justice. He asserted:

"We believe that the mitigations we have put in place will properly protect access to justice for those seeking to bring claims".—[*Official Report*, 8/7/13; col. 85.]

In July 2017, the Supreme Court unanimously held that, as the order prevented access to justice, tribunal fees were unlawful and must be quashed with immediate effect.

As many noble Lords have said, curtailing the use of oral hearings will have a particular impact on access to justice for vulnerable court users with limited digital means, digital literacy and general literacy skills. The Constitution Committee observed that,

"the Office for National Statistics concluded that … 5.3 million adults in the UK … could be characterised as 'internet non-users'".

However, the committee noted that this figure may understate the problem. It said:

"Such figures do not take into account those with limited digital skills, for whom basic browsing and messaging may be within their capabilities but the complexity of online legal forms may not".

People with limited general literacy skills will be disadvantaged by proceedings conducted solely in writing without access to oral hearings. As has been referred to, the charity Mind reports how people with mental health problems are disproportionately likely to experience digital exclusion, struggle with digital engagement and are nearly twice as likely to experience legal problems.

The Government's objective is to devise new rules that will focus on users being able to solve grievances and resolve their issues online at the earliest opportunity, as well as to encourage more people to resolve disputes before they reach the hearing stage. If the Government are right in their assumptions, which are still to be tested, many people will prefer to use online proceedings voluntarily and efficiencies will be gained. However, that is not compulsion; people should retain the right to seek access to an oral hearing. Ministerial powers with the potential to require people to choose between online proceedings or not pursuing legal claims carry the real risk of incompatibility with the principle of access to justice. Amendments 1, 6, 10 and 11 seek to address that risk.

3.30 pm

Lord Mackay of Clashfern (Con): My Lords, the Government's view was expressed at Second Reading, but Amendment 1 seems to strike at the heart of what is required. Clause 1 states,

"may authorise or require the parties".

to use electronic means at hearings. That suggests the possibility of compulsion that would not exclude any section of the community. The amendment I find slightly difficult is Amendment 3, which states,

"may be filed by electronic means or on paper or a combination of both at the choice of the party".

I would have thought that it should be one thing or the other. I imagine that it might cause confusion if you have an electronic bit and then a bit on paper stuck in, unless there is a clear way of showing in the electronic bit that there is another bit to follow. It is that part of the amendment that I find slightly difficult.

The Earl of Listowel (CB): My Lords, I am reminded that these provisions will apply to family law procedures. Of course, it may improve the resolution of family issues, which will benefit the children involved, but there is a concern that it may make resolution more difficult and thus adversely affect the children in those families. Has the family test been applied to the Bill? I do not see that in the accompanying notes and perhaps it is not appropriate to apply the family test to it. I would be grateful if the Minister could tell me whether the family test has been applied.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I will speak to Amendments 1, 3, 4, 6, 10 and 11, which relate to the operation of the online procedure and how we can ensure that people using it are not disadvantaged. I intend to turn first to Amendment 3, which covers whether a user can choose between digital and paper channels. Then I will move on to Amendments 1, 4, 6, 10 and 11, pertaining to the online procedure and the matter of choice.

Amendment 3 suggests that claimants and respondents should have the choice of whether to use paper or digital channels when engaged in the simplified online procedure. I can confirm that the Government agree with this point, and indeed there is provision for this already. Essentially, where the online procedure comes into place, it will be possible to access it either by way of the digital portal or by way of a written document of claim. Other written documents may also be used when employing the simplified online procedure. The intention, which already applies to some of the digital procedures we have in place for small debt, is that the document will be scanned into the system and will therefore be part of the process. The idea is to ensure that parties are not excluded from the simplified procedure that will be brought in under this online procedure simply because they feel unable to employ, or are incapable of employing, the digital process itself. However, there is a distinction between that and the situation in which, when dealing with debt claims of under £25,000 for example, a claimant or any other party would be allowed to opt either for the simplified procedure that will be promulgated under the online procedure or to have recourse to the existing Civil Procedure Rules and the more complex procedure that pertains there. It is not intended under the Bill that claimants should have an option between the simplified procedure and the more complex procedure. I shall come on to develop that a little more in a moment.

Perhaps I may take this opportunity to confirm that we have no plans to remove the availability of paper channels for citizens under the remit of the Online Procedure Rule Committee. Of course, it is our intention to create a digital service that will be easy to access and use—indeed, so easy to access and use that it becomes the default choice for the majority of users. We recognise, however, that not everyone will be able

to use it, or wish to proceed with that digital choice without support. For that reason, a paper route will remain open.

We want to be clear that users can expect an equity of service, regardless of whether they proceed with a digital approach or a written claim. Where different parties choose different channels, we will seamlessly join them together by means of a scanning and printing service, so users who want to send and receive papers will still have that choice—they will not need to resort to the online portal. To that extent, I offer my assurance that paper channels are still available and will be available under the Online Procedure Rules. The Bill will do nothing to remove them.

Lord Pannick: Does the Minister accept that nothing in the Bill guarantees that? He gives us an assurance, but surely it would be better to write that into the Bill.

Lord Keen of Elie: If every time we legislated we decided to guarantee everything from A to Z, we would end up with very long Bills. The position is this: there is the ability to proceed by way of the paper process. Nothing prohibits it, there is no inhibition on that process, and there is no intention to introduce such an inhibition.

Turning to Amendments 10 and 11—

Lord Mackay of Clashfern: Before my noble and learned friend leaves Amendment 3, I understood him to say he would accept it, so that it would go into the Bill—although without, I hope, the choice of the combination.

Lord Keen of Elie: No, I do not accept the amendment. What I say is that there are existing means by which we can assure people that they can proceed by way of a digital portal or by way of a written claim, which will be scanned and taken into the online procedure process once it is up and running.

Lord Pannick: I am very grateful to the Minister for giving way again, but I must press him. We are dealing here with fundamental issues of access to justice. Surely if the Minister recognises that paper procedures must always be available to litigants, it is absolutely vital that the Bill says so.

Lord Keen of Elie: I am afraid I cannot accept that. There is nothing in the Bill that would prohibit the employment of such a paper process once the online procedure is up and running. Indeed, the noble Lord will appreciate that, when it comes to the making of rules by the relevant committee, the process will involve the judiciary as well as the Executive.

We have heard reference already to the idea of consultation, and we will in due course look at amendments to the Bill that seek to shift the question of consultation to one of concurrence. Therefore, we will be in a position to rely on not only any decision-making on the part of the Executive but also the contribution of the judiciary to how it sees that these processes should best be applied in the interest of all litigants. I emphasise "all litigants" because, when we seek to simplify the court process and reduce its potential cost, we are doing so for the benefit of litigants in general. We will come to concurrence and consultation later.

We must bear in mind that this is not a case of Ministers dictating what the relevant rules will be. It is a case of the Executive setting out the machinery by which a rule committee can come into place and set out appropriate rules and regulations for the online procedure, in consultation with the judiciary and with its input, and potentially with its concurrence.

Lord Marks of Henley-on-Thames: I am sorry to press the point, but does the Minister accept that without the guarantee in the Bill of his intention, we could lose this procedure at some stage in the future, and that this House may well wish to see that guarantee entrenched in the Bill, so that primary legislation would be necessary to remove the procedure?

Lord Keen of Elie: I quite see that this House might wish to see it in primary legislation, but the position is this: a committee will be formed to put forward appropriate rules and regulations for the online procedure, under the essential supervision not only of the Executive but of the judiciary. There may come a point, at some unforeseeable time in the future, where the judiciary is of the view that it is no longer necessary to employ paper as a form of application or entry into the judicial process. I do not anticipate that happening—there is nothing here to suggest it will happen—and I do not see that there is a requirement for such a guarantee in the form of primary legislation. We intend to form an Online Procedure Rule Committee that will be well qualified to determine the appropriate routes into the online procedure for all parties concerned, including those perhaps not digitally competent or confident. That remains the position.

Lord Thomas of Cwmgiedd (CB): Perhaps I may press the Minister on one point. It is easy to see that there is a distinction between an online procedure and the way the court works. If it was made clear that the online procedure is largely geared to ensuring that the systems that lie behind it operate efficiently across the system but that, in using that procedure, if people did not want to go online the court would undertake to scan the documents in—if that distinction was made—would the Minister accept that what really is needed, because these amendments do not grapple with the problem, is a guarantee to the litigant that he can go to court, hand in a piece of paper and it will be scanned into the system? That is all.

If that is the effect of these amendments—and it is limited to that—would that not achieve everything and give an opportunity to increase access to justice? In the current system access to justice is a figment of the imagination, but the use of an online procedure would enable this to happen. Will the Minister look at this issue again in the light of my suggestion to him?

Lord Keen of Elie: I hear what the noble and learned Lord has said and I will take account of those observations in going forward to the next stage of the Bill. However, at present it is not my intention to accept any of the amendments so far laid in respect of

[Lord Keen of Elie]
this matter. If there is a way through by which we can underline the right of a party to make an application on paper to the relevant online procedure once it is up and running, that will essentially achieve the objective that we have and I believe the House has. However, I do not accept that it will be achieved by means of the present amendments.

Baroness Corston (Lab): The Minister will know that in a recent Constitution Committee meeting we discussed the Bill with him at length. If there is to be no indication in the Bill that there is a possibility of making a paper application to the court, what advice or direction will be given to this committee to make it plain that there will be that advice? We know that a significant proportion of the population of this country might be able to use email but cannot use an online form.

Lord Keen of Elie: We intend to appoint a committee of experts to formulate these rules, including judicial members. They will have regard to the need for access to justice. Certainly, we have confidence in the ability of such a committee to formulate rules that reflect the need for all members of the community to have access, not only those who are perhaps more digitally alert and astute than the minority. We lay our confidence in the fact that there will be such a committee, that it will make regulations and that it will do it under the aegis of not only the Executive but the judiciary, and the Lord Chief Justice in particular.

Baroness Drake: Does the Minister accept that Clause 7 gives the Minister powers to override or disallow the views of the Online Procedure Rule Committee? However meritorious its views, the Minister would have the power to override them.

Lord Keen of Elie: There are circumstances in which the Minister may give directions to the committee—I accept that—and that reflects the current position with regard to the other rule committees already in existence, including the tribunal rules, the civil rules and the criminal rules. It exists by way of an executive direction and is there for good reason as a fallback. I understand that the power has been used only once with regard to the existing committees, to address a potential anomaly in the existing rules. It is an exceptional power but it is there because it reflects the existing power in the provisions for the other rule committees.

Lord Woolf (CB): I apologise for not being at Second Reading but perhaps the Minister will indulge me by helping me with the purpose of Clause 1(1)(a), which states:

"For proceedings of a specified kind, there are to be procedural rules which … must require that kind of proceedings, or one or more aspects of that kind of proceedings, to be initiated by electronic means".

3.45 pm

Lord Keen of Elie: It is to ensure that where, for example, there are debt actions below a certain level—let us take a figure of £25,000—they must be initiated by way of the Online Procedure Rules, the simplified procedural rules, rather than by way of the existing Civil Procedure Rules. It is for that purpose that the paragraph is there. In other words, it will not be open to a party who wants to make a small debt claim to decide they want to use the more complex and potentially more expensive Civil Procedure Rules as distinct from the Online Procedure Rules and the simplified procedure that goes with them.

I shall address Amendments 10 and 11, tabled by the noble Lord, Lord Beecham, alongside Amendment 4, which I believe was tabled by the noble Lords, Lord Marks and Lord Beith, and the noble and learned Lord, Lord Judge, as well as Amendments 1 and 6, tabled by the noble Lord, Lord Ponsonby.

Amendments 1 and 6 concern the continued availability of physical proceedings rather than online proceedings. Amendment 4 seeks to allow the parties to proceedings to choose whether to engage with the online procedure or the current procedural rules. This is a point that I just sought to touch upon. Amendments 10 and 11 are intended to deal with those cases where one party wishes to leave the online procedure, but another does not.

This is not what the Bill is intended to achieve. The Bill provides the flexibility for a case to progress via the online rules, or via the traditional rules of the civil procedure if necessary. Where a case is so complex that the online procedure is clearly inappropriate, it will be for the judge to determine, and he will have the discretion to do so, whether a case should remain within the online procedure or should proceed by way of the traditional civil rules instead. Where both parties make a representation that the case should not proceed by way of the online procedure, then of course the court will hear those representations and take them into account, but ultimately it will be for the court to decide the appropriate procedure for the disposal of any claim. That is as it should be and is as it is with regard to our existing civil procedures. Ultimately, it is for the court to make these procedural decisions, not for the parties to dictate them, but of course their views will be taken into account. Equally, where parties, or one party, are of the view that an oral hearing will be required in circumstances where it might not ordinarily have been anticipated, it will be open to that party, or the parties if they are agreed, to make those representations to the court in order that the court can make the final decision about the appropriate procedure to be employed. Again, that is as it should be. It is ultimately for the court to decide the most appropriate process and procedure for the disposal of individual claims.

Under Amendment 4, users would in effect have the right to choose whether to use the Online Procedure Rules or the traditional rules. Similar points are made in the other amendments. We do not consider that that is the appropriate way to proceed. Users will have sufficient control over proceedings to ensure that they have access to justice, which will not be limited in any way, and certainly not in a way that would intrude upon any rights under Article 6 of the convention.

The online procedure system is simply designed to offer the ordinary user an easier way to access justice, while giving parties the choice to remain in a position to make paper applications to the online simplified procedure rather than engage with the digital portal.

I reassure noble Lords that we are not seeking to impinge in any way upon the parties' right of access to justice, but ultimately we must leave it to the court to determine procedural questions brought before it, albeit that it will make those decisions subject to the representations by or on behalf of the parties to the proceedings.

As I mentioned in passing and in response to the noble Lord, Lord Beith, where a physical hearing arises, it will be for the parties to make representations. Ultimately, it will be for the court to determine on the material before it whether such a physical, oral hearing is required for the disposal of a case. That, I suggest, is as it should be.

I hope that that also reassures the noble Lord, Lord Ponsonby, with regard to judicial discretion. That, ultimately, is paramount, and nothing in the Bill or that we would anticipate in the regulations to be made pursuant to the powers under the Bill would undermine that judicial discretion, which ultimately has be exercised in the interests of justice and for the benefit of the parties. With that, I hope that the noble Lord will consider whether at this stage it is appropriate to withdraw the amendment.

The Earl of Listowel: My Lords, before that happens, I express my apologies for not being able to take part at Second Reading. I thank the Minister for asking his office to contact me and I am sorry that I delayed replying until Friday. I just want to comment on the family test. This was introduced in 2014 to be applied to Bills and involved a number of questions such as, "What kind of impact might the policy have on family formation?" and "What kind of impact might it have on stability in the family?" Although the test is not mandatory, this seems an appropriate Bill to have had it applied to, and I simply express the wish that in the future it might be applied to Bills similar to this one.

Lord Mackay of Clashfern: My Lords, I have some difficulty with Amendment 1 and the answer that my noble and learned friend has given. As I understand it, the amendment deals with rules. It is not judicial discretion but rules that may require the parties to participate in the hearing by means of electronic devices. Therefore, it is not a question of the judge in charge of the case making that decision; the preliminary rules will require it, and the judge will be bound by that. He will say that he is sorry to whoever comes along with a bit of paper and explain that they are not able to do that because the rules dictate that it has to be done by electronic means, so they will have to get themselves a computer.

Lord Keen of Elie: With respect to my noble and learned friend, my understanding of the position is that the rules will require that certain forms of action—for example, small debt action—should be commenced under the simplified Online Procedure Rules by way of the digital portal, whether you go through electronically or, as I mentioned before, by way of a paper application. However, once that process is in train, there will be a retained judicial discretion to decide whether the case should remain under the simplified online procedure or whether it would be more appropriate for it to be removed from that procedure and to proceed under the ordinary Civil Procedure Rules to an oral hearing.

Lord Ponsonby of Shulbrede: My Lords, I thank all noble Lords who took part in this short debate, which has covered quite a wide area. I understand the point made by the Minister about these being civil actions for relatively small amounts of money, and not having the discretion as regards initiating proceedings on paper if that were the case. Although this is the main focus of the Bill now, it has wider connotations—a point made by the noble Earl, Lord Listowel. Some of us, including myself, are thinking about this from other perspectives such as the family jurisdiction.

When addressing Amendment 4, the noble Lord, Lord Marks, made an interesting point, asking what happens when both parties agree to proceed with online proceedings. I thought he intimated that there should be an expectation that they would indeed go ahead with online proceedings. Certainly, from the perspective of somebody who sits in the family jurisdiction, I would say that that would not be appropriate. Whether matters go ahead either online or otherwise should be retained as a judicial decision because it is not unusual for parties to agree to something that is inappropriate in the family courts; the court needs to take a separate view.

Having said that, I thank the Minister for addressing the points; I suspect we will return to them at a later stage. I beg leave to withdraw my amendment.

Amendment 1 withdrawn.

Amendment 2

Moved by ***Lord Ponsonby of Shulbrede***

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

"( ) Civil Procedure Rules, Family Procedure Rules, Tribunal Procedure Rules, employment tribunal procedure regulations and EAT procedure rules must determine for the relevant jurisdiction which proceedings can be governed by the Online Procedure Rules Committee."

Lord Ponsonby of Shulbrede: My Lords, Amendment 2 addresses Schedule 2 on the Online Procedure Rule Committee, how it relates to proceedings under the standard civil, family and tribunal procedures rules, and when these do not apply. Although I appreciate the importance of a clear process indicating which rules govern proceedings—and giving precedence to one committee does achieve that—I am concerned that the result will be the OPRC being able to make decisions about the appropriateness of online procedures for cases without input from the Family Procedure Rule Committee or other relevant jurisdictional committees. Amendment 2 could resolve this issue by clarifying under Clause 1 that the relevant jurisdictional rule committee must determine which proceedings can be governed by the Online Procedure Rule Committee.

On Amendment 8, Clause 1(1)(b) would allow the OPRC to designate any family proceedings to be dealt with online. While I appreciate that the aim of the legislation is to be permissive, with the details to be delegated to the OPRC, I am concerned that no limits are set out in the primary legislation in relation to the

[LORD PONSONBY OF SHULBREDE]
appropriateness of online processes within the family court. At Second Reading, I raised concerns about the appropriateness of full video hearings in the family court. The president of the Family Division has said that, in the vast majority of cases, face-to-face hearings would normally be required for contested cases involving oral evidence, multiparty cases concerning litigants in person, or any cases concerning children. It can be the case that not all participants have to be present in court. I know that is fairly common practice in other parts of the country, depending on the distance to be travelled, when turning to the family court. But the general expectation should be that anything to do with the family jurisdiction—any contested matter—should be held in person and not online.

I beg to move.

Lord Beecham: My Lords, I refer to Amendments 7 and 8 in this group. I suspect that the inclusion of a reference to criminal justice proceedings is otiose; I hope so. No doubt the Minister will confirm that, in which case I will not press the issue; it would be entirely unnecessary, as indeed it should be.

There is a concern about possession claims for homes. We in your Lordships' House are all aware of the great pressure on the housing sector and the vulnerability of a great many people in private rented accommodation in particular. It seems sensible that they should not be included in the general proposition of reverting to digital processes, because I suspect they are the least likely to be able to cope with that way of proceeding. I hope the noble and learned Lord will give that some further consideration, although he may not necessarily respond one way or the other today. Given the state of the housing market and the well-known difficulties experienced by so many tenants—and the difficulties they would have in proceeding under the provisions of the Bill, particularly in the absence of legal aid and advice in so many parts of the country—it would be wrong to include them in a system which would effectively give them no recourse to advice and support.

4 pm

Lord Pannick: My Lords, I share the concerns behind these amendments. There are plainly specific types of proceedings which it is wholly inappropriate to determine online. Perhaps the strongest example is any proceedings relating to the welfare of children. In my view, it is inconceivable that it would ever be appropriate for such matters to be so determined. Yet the powers under the Bill are quite sufficient to allow that to happen, because Clause 1(1)(b) allows for rules which may authorise or require proceedings,

"to be conducted, progressed or disposed of by electronic means".

This is just one of the many examples of the Bill, which is wholly desirable, failing to include sufficient limitations to preclude the use of these powers in ways that we would all accept are inappropriate.

It may be that the proper answer to this concern is for the Government to support the amendment we are coming to in the name of the noble and learned Lord, Lord Judge. That would ensure that these powers cannot be used without the concurrence of the Lord Chief Justice. I respectfully suggest that the Minister needs to recognise that there is a problem here. The Bill is so broadly drafted that it will allow the exercise of powers in ways that we would all accept are inappropriate.

Lord Thomas of Cwmgiedd: I have one question for the Minister. There is an outstanding consultation paper on the housing court, looking at whether we should bring together all the various complicated forms of housing legislation before one tribunal. How will taking out one of the parts of what would be a housing court matter affect it, when what we are dealing with is the procedural system to be applied rather than detailed means of service and hearings, which is what this is about? It would be helpful to have that explained.

We would be rash to assume that paper service of proceedings comes to people's attention more readily. Certainly, we have found that if you want to get people to attend jury service, or some other things, it is much better to send them a text rather than a brown envelope; they normally respond to texts. That is modern thinking. I think noble Lords will find that people more readily respond in that way. This is much more a detailed matter of procedure.

Lord Pannick: Does the noble and learned Lord accept that the powers in this Bill cover far more than process? As I have indicated, Clause 1(1)(b) is concerned with rules as to how proceedings are,

"conducted, progressed or disposed of".

Lord Thomas of Cwmgiedd: I accept that, but I think it is part of the terminology used. That is why, in the intervention I made earlier, I said that it is important to appreciate the difference between a simplified procedure and the way the court works. Unfortunately, despite everything the noble and learned Lord, Lord Woolf, did to try to simplify civil procedure, the *White Book* has grown from 2,000 to 3,000 pages.

We need to go back. It is an unfortunate tendency of lawyers to ossify everything. This is an attempt, using electronic means, to make access to justice easier and to simplify it, but we plainly need safeguards. I am sure the best safeguard of all is the concurrence of the Lord Chief Justice, which I am sure would solve most of these problems yet allow access to justice to use 21st-century methods to make it cheaper and—if I may, with some trepidation, say so in this House—to conduct litigation without the need to deploy expensive lawyers.

Lord Beith: My Lords, the weakness in this part of the Bill seems to be that there are no limitations on or barriers to the total extension of the online procedure to all civil, family and tribunal proceedings. Nobody is actually suggesting that, but the absence of any barriers means that we can stray into that territory before there has even been a serious debate about how we could use online procedures in some of these areas. It is fairly obvious for small money claims and promising in a number of other areas, but the Bill is so wide that its lack of any specified criteria or other limitations is worrying.

Lord Keen of Elie: My Lords, I begin by responding to the observations made by the noble Lord, Lord Beith, and the noble and learned Lord, Lord Thomas of Cwmgiedd. This is a piece of enabling legislation—a very welcome one, I suggest; it is not a case of us bringing in powers without limits or regulation. It will establish an expert committee, including judicial representatives, legal representatives and others, that will be able to call upon the expertise of others in particular areas as and when it comes to address them. I will come on to that in a moment in the context of family law. It will operate under the umbrella of not only the Lord Chancellor—or, in the case of employment tribunals, the Secretary of State for BEIS—but the Lord Chief Justice. It does not give free rein to some individual in the Executive to determine how court cases will be determined, but I emphasised that it is concerned only with civil procedure. As the noble Lord, Lord Beecham, acknowledged, the reference in his amendment to criminal procedure is otiose and unnecessary.

Over and above that, I seek to anticipate something that will arise repeatedly in the debate—the position of the Lord Chief Justice regarding the operation of this matter overall, a point we touched on at Second Reading. I am conscious of the desire in some quarters that certain of the Bill's provisions should provide not simply for consultation with the Lord Chief Justice, which, let us be clear, is a formidable requirement: if you consult with the Lord Chief Justice you consult with him, and if you do so you do not ignore his advice or opinion. Indeed, if you did, it would be open to him to make a report to Parliament under Section 5 of the Constitutional Reform Act 2005, which I think one of my officials referred to as the nuclear option. It is not one that anybody would want to encourage.

I am conscious of the suggestion that, in some areas, we should move from the idea of consultation with the Lord Chief Justice to one of concurrence. That, in a way, touches on many of the issues that arise in the Bill. I can go no further at this stage than say that I have that under active consideration and would anticipate returning to the point on Report. I do not give any unequivocal undertaking, but I indicate that I appreciate how and why certain aspects of the Bill, if moved from consultation to concurrence, would meet some of the concerns, particularly those expressed by the Constitution Committee, regarding this matter. I make that general observation at this stage, because it is a point that we may well return to with regard to certain further amendments.

As I set out at Second Reading, the intention is, as far as possible, to make online procedure the preferred procedure for the commencement and defending of cases that fall within its remit. Of course, our ambition is to develop services that are easier to access and to use, so that over time, digital channels become the default choice for at least the majority of users. I emphasise "majority of users", for the reasons which we have already touched upon.

As we have set out, our initial intention is that this procedure would consider civil money claims up to a value of £25,000 before widening its remit to cover other proceedings, so it is a question of taking it step by step to see how these procedures will work. It is not our intention that the OPRC would start to remake rules across other jurisdictions immediately. We want to complement and build upon the work of the existing committees in this area, to see whether this incremental approach to the extension of the OPRC's remit can be successful. But no proceedings will be brought into the Online Procedure Rules without the views of the judiciary, of the committee and, in particular, of the Lord Chief Justice being taken into account—whether by consultation or by way of his concurrence.

Amendment 2, moved by the noble Lord, Lord Ponsonby, appears to be intended to transfer the regulation-making power set out in the Bill from the Lord Chancellor to the existing procedure rules committees—or at least make it subject to that. In effect, it would be for those existing rules committees to decide when proceedings may be subject to the Online Procedure Rules. We consider that this would pose a number of serious practical difficulties.

First, it would place the legislation required to bring proceedings under the remit of the Online Procedure Rule Committee on an entirely different footing from that for the existing rules committees for civil, criminal and tribunal. It would be on the basis of a negative resolution statutory instrument developed by an independent rules committee, as opposed to an affirmative instrument laid by the Government, and that, in itself, would not allow for the appropriate degree of parliamentary scrutiny which should be applied here.

The second difficulty is, I am sure, entirely unintentional. Under the existing civil procedure rules committees, there is a means by which—for example, with regard to employment tribunals and employment appeal tribunals—the Secretary of State in the case of the employment tribunal, or the Lord Chancellor in the case of the employment appeal tribunal, can direct the making of regulations or rule-making powers. I do not believe that that would be a consequence one would seek in the present context.

Thirdly, the three existing rules committees cover three entirely independent jurisdictions, and it is unclear how they might decide among themselves which proceedings should be extended to the Online Procedure Rule Committee and which should not. We anticipate that in itself creating very real practical difficulties over the administration of the future Online Procedure Rule Committee. This is why we do not consider that this amendment would have an acceptable outcome.

The noble Lord, Lord Beecham, touched on housing. At present there is no intention to proceed with the simplified Online Procedure Rules in respect of housing cases. However, housing cases are governed by the Civil Procedure Act 1997, and are therefore subject to the Civil Procedure Rules, meaning that they would potentially be subject to the OPRC in the future. If and when that were to occur, it would be after consultation or concurrence with the Lord Chief Justice. It would occur because the committee had determined to proceed in that way—a committee which at that stage could be joined by suitable experts in housing law, and other related experts. Only at that stage would it be contemplated.

[Lord Keen of Elie]

I notice, however, that although that is not presently anticipated, it is currently possible to initiate some housing enforcement claims online, through the Possession Claim Online website. That has been operational for almost a decade. There have been no difficulties—certainly no reported difficulties—over access to justice because of the use of that Possession Claim Online website. So I accept the potential width of the Bill.

This brings me to Amendment 8, in the name of the noble Lord, Lord Ponsonby, the issue of family proceedings and the concern that has been expressed there. There may well be situations, such as those posited by the noble Lord, Lord Pannick, where one would never anticipate online procedure or digital process being appropriate for types of family law cases, such as those concerned with children and their welfare. Nobody is suggesting otherwise, but it is not necessary for us to list particular exclusions, because in doing so one is liable to overlook something. It is far better for us to ensure there are appropriate safeguards in place, such as by judicial input, whether by consultation or concurrence; by having an appropriately qualified committee with the ability to bring in experts, particularly on areas such as family law or child welfare; and by ensuring that we proceed incrementally only where the introduction of these simplified procedures is in the interest of litigants. There are circumstances in which it may be in the interest of litigants, in family law cases, to have access to a simple, inexpensive online procedure for the resolution of some types of dispute.

Lord Beith: To support that approach, perhaps the Government should be using different language from that used in the Explanatory Notes in paragraph 1, which says:

> "We expect the Committee to focus on the civil and family jurisdictions in the first instance".

That is pretty broad.

4.15 pm

Lord Keen of Elie: It is intentionally broad. Again, this is not going to proceed without the input of the judiciary, in particular the Lord Chief Justice, and without application to the formulation of rules of a committee with expertise in all these areas. I suggest it would be counterproductive to introduce at the outset statutory limitations on the operation of these simplified procedures. That is an unnecessary straitjacket, given the way the legislation is formulated and how the simplified Online Procedure Rules will be introduced, not only by the Executive but by the judiciary and relevant committee. In these circumstances, I invite the noble Lord to withdraw his amendment.

Lord Beecham: Did the Minister imply that it would be possible to bring forward provision to include housing, presumably by secondary legislation? Is that what he has in mind? If so, would it be an affirmative or negative resolution?

Lord Keen of Elie: To clarify, I believe I said that many housing issues are currently governed by the Civil Procedure Act 1997. They are therefore subject to civil procedural rules and could, in turn, be subject to rules introduced by the OPRC for digital access. There is no present intention to address that in the context of housing. I went on to add that, at present, there is an online procedure for some forms of housing claim, such as possession claims, which can be made through the relevant website. I emphasise that housing cases fall within the wide remit of this legislation, but there is no present intention to embrace them within the OPRC.

Lord Ponsonby of Shulbrede: My Lords, I thank noble Lords who have spoken in this short debate. I understand the central point made by the Minister: that he does not want any statutory limitations on the relationship between the various committees. My Amendment 2 gave one model of a relationship between the two committees. I shall withdraw the amendment, but there is no statutory relationship between any of the committees at the moment. That may have to be developed over time. It may not be for this Bill, but all the committees will have to have a close working relationship which will have to be developed one way or the other. Nevertheless, I beg leave to withdraw the amendment.

Amendment 2 withdrawn.

Amendments 3 and 4 not moved.

Amendment 5

Moved by ***Lord Marks of Henley-on-Thames***

5: Clause 1, page 1, line 22, at end insert—

> "( ) Online Procedure Rules must provide that a party or potential party to proceedings governed or to be governed by Online Procedure Rules is entitled to assistance, to be known as "Designated Assistance", with the conduct or progress of such proceedings, to be made available in accordance with section (Designated Assistance)."

Lord Marks of Henley-on-Thames: My Lords, Amendments 5 and 13 in this group are in my name and those of my noble friend Lord Beith, the noble and learned Lord, Lord Judge, and the noble Lord, Lord Pannick. Our amendments would incorporate in the Bill a requirement that the Government provide necessary assistance for parties or potential parties to online proceedings, both claimants and defendants, who need help navigating them.

At Second Reading, the Minister promised:

> "All our online services will be accompanied by appropriate and robust safeguards to protect and support users and to ensure that access to justice is maintained. In pursuing this approach, we recognise that there will be people who will need help accessing a new digital system".—[*Official Report*, 14/5/19; col. 1506.]

He promised that the Government would put in place a comprehensive programme of support, which he described as "assisted digital", which would include help for court users by telephone, online or by other electronic means, or face to face. I pointed out in that debate that the Briggs review had stressed the importance of ensuring that access to justice was not compromised by the introduction of Online Procedure Rules. The Briggs report described the success of the online court as "critically dependent" on providing digital assistance for those who could not cope with computerised procedures.

The Constitution Committee, under the section of its report headed "Access to Justice", argued eloquently that, with 5.3 million adults in the UK who could be characterised as "internet non-users" and with 29% of people over 65 having "zero digital skills", not including those with limited digital skills or limited access to computers or broadband, the Bill makes no provision to safeguard access to justice in the way promised by the Minister at Second Reading. The committee recommended that,

"the Bill places a duty on the Lord Chancellor to ensure that adequate provision is made to enable access to online proceedings for those with limited digital means, digital literacy, or general literacy".

We agree. At Second Reading, not only the noble and learned Lord, Lord Judge, but the noble and learned Lords, Lord Thomas and Lord Mackay of Clashfern, and the noble Lord, Lord Faulks, called for a statutory commitment to digital assistance.

Once again in this group of amendments, I reject the assurance that it is safe to rely on an extra statutory statement of intention by the Government. That is especially true on a matter of such importance to the success of this reform in terms both of access to justice and of the rule of law. This commitment could and should be clearly expressed in the Bill in a way that would make it much more difficult for future Governments to resile from it. I make no apology for putting forward a similar point in relation to designated assistance to that which I made in relation to filing documents on paper.

Our amendments are comprehensive but flexible. Amendment 5 would introduce the general duty to provide assistance to a party or potential party to proceedings under Online Procedure Rules in accordance with the detailed provisions set out in Amendment 13. That amendment would give the Government flexibility on who should provide assistance and how. Designated assistance could be provided either directly through HM Courts & Tribunals Service, under contract with outside organisations, or through the voluntary sector. It would be for the Minister to determine what assistance could be provided by telephone, what by electronic means and what in person or by other reasonable means.

Our amendments are concerned with outcomes rather than structure; different providers might provide assistance in different but complementary ways. However, in determining what assistance must be provided, and by what means, the appropriate Minister is to be subject to an overriding requirement that he or she should consider that assistance sufficient to enable the party receiving it to have a reasonable understanding of the nature of the proceedings, of the procedure under the Online Procedure Rules, and of how to access that procedure. The assistance will have to cover the completion of online forms—easy for lawyers and officials, perhaps, but often a nightmare for lay litigants. It will also have to cover the kinds of evidence that may be necessary to support or establish a claim or defence. Designated assistance should also be available about the requirements and meaning of the Online Procedure Rules. The requirement for assistance on the kinds of evidence required to establish a litigant's case is particularly important and will save parties, and ultimately the courts, considerable time and trouble. Far too often, proceedings fail or are delayed because litigants in person are unaware of the kinds of evidence they are likely to need to establish their cases. Assistance with this aspect at an early stage of online proceedings may do much to help reduce costs, delays and frustration.

Those who may say that this is a step too far in favour of the courts service providing legal advice are missing the point of these reforms. The days are over when the court office tells litigants to go and seek the advice of a solicitor on generic issues such as this, for precisely the reasons expressed by the noble and learned Lord, Lord Thomas, in relation to hiring expensive lawyers. If online proceedings are to work well and improve rather than stifle access to justice, they have to be targeted on enabling litigants without lawyers to use the courts successfully. Perhaps at this stage I should declare the same interest as the noble Lord, Lord Pannick, in relation to my being a lawyer in offline courts. That is the point of these reforms. It will be achieved only if parties are provided with the kind of help our amendments would require.

An important further point is that for litigants whose first language is not English and who have no familiarity with English, interpretation or translation should be available to enable them to understand proceedings in a language familiar to them. Far too often, the need for lawyers arises even in relatively simple cases where intelligent and capable litigants whose command of English is limited are obliged to instruct lawyers simply because they receive no help in understanding proceedings in their own languages. I beg to move.

The Earl of Listowel: My Lords, I support this amendment. I am a patron of the charity Best Beginnings, which has produced an application that can be downloaded from the NHS store for mothers around the births of their children. We are finding that it is tremendously effective in reaching black and minority-ethnic mothers in particular, and mothers on the lowest incomes. This has been developed with all the royal colleges, and it has taken time, money and a real strong effort from the charity over many years to develop such a good product that reaches out particularly to families for whom English is not the first language. One of the key selling points of this app is the videos attached to it. Mothers will see people like themselves talking about what it was like to experience depression or how to breastfeed and communicate with your infant. They can identify with those parents.

There is a tremendous opportunity here to make something which is really effective and helps litigants in person and people whose first language is not English to understand how to approach these matters. The noble Lord's amendments are very important to ensure that there is a commitment up front to producing the best possible means for families and others to engage with the digital technology available and to get the best outcomes for them and their families.

Of course, with a product such as this—I am not pushing this one specifically—there are back-end analytics through which one can tell in an anonymous way exactly how often it is used and who uses it, so there

[THE EARL OF LISTOWEL]
would be plenty of feedback on how well it is working. I hope that the Minister can give a reassuring answer to the noble Lord.

4.30 pm

Lord Mackay of Clashfern: My Lords, I am supportive of Amendments 5 and 13, which outline the sort of assistance that is very much required. For Amendment 13, my preference is that the particular agency should be in some way connected with the Courts & Tribunals Service so that judicial supervision is available in respect of it. One institution that strikes me as very useful in this connection is the law centres, which were recipients of legal aid in my time. They are an economic way of providing legal assistance—much more economic than the expensive lawyers to which the noble and learned Lord, Lord Thomas, referred. Of course, it is not very good to have recourse to inexpensive and cheap lawyers, because you are apt to spend more in the end. This is an excellent idea and requires the Minister to think quite hard about how it should be done.

This brings me to my Amendment 14, which is a slightly different matter. There are various skills available in electronic matters. You may have recourse to the internet and yet not be very sure what you have reached when you get there. There is a risk—it may not be large, but there is a risk—that if there is a court portal for certain things, you may find yourself on a website which is supposed to be the court portal but is actually run by people with a more private interest in litigation than the courts would have. I suggest Amendment 14 for consideration, which would require the Lord Chancellor to make arrangements to try to secure as far as possible that this does not happen to the rather inexpert people who may be using the internet, of which I regard myself as one.

Lord Beith: My Lords, the noble and learned Lord has reminded me that it is well known that the application system for the US ESTA visa waiver scheme has a number of such sites which exact charges, to which people are not liable because of the very modest charge on the official site itself. I will simply point out that HM Courts & Tribunals Service is already working on this sort of thing. There are 18 locations in which it is providing face-to-face digital support, or at least is said to be providing it. The Government have been working this up on the pilot schemes, so it seems to me another ideal opportunity, which the Minister should not neglect, to accept that the Government are actually on the right lines on this.

It would be rather more reassuring if the Bill contained some obligation to provide this kind of support. If it is not there, the Bill will be open to the charge from many people that it is creating a new system without ensuring that people can use it. The means are beginning to be developed by the Government, so I hope that they provide some statutory basis for them.

Lord Thomas of Cwmgiedd: I make two brief observations. First, I support the introduction of the amendment by the noble Lord, Lord Marks, and emphasise that HMCTS provides a lot of advice on various areas and, because it is now jointly accountable to the Lord Chief Justice as well as to the Minister, its independence ought to be seen. Secondly, if Amendment 13 is adopted, I would hope that due regard is paid to the provisions of the Welsh Language Act; subsection (5) does not do so properly at present.

Lord Garnier (Con): My Lords, before my noble and learned friend replies, I gently support the amendment and the way in which it was proposed by the noble Lord, Lord Marks. The policy behind the Bill is clear and sensible: it is to provide easier access, cheaper access and cheaper administration of litigation in certain types of cases. It seems from Clause 2 that the ambit of those cases is broad at the moment. For the reasons given by the noble Lord, Lord Marks, if we do not provide appropriate assistance—if not in the terms expressly set out in his and his supporters' amendments, at least in some form—I fear that the good intentions behind the policy and the Bill will lead to the unintended consequence, again spelled out by the noble Lord, of a breakdown of the smooth operation of the system because people either do not understand the system or, having got into it, do not understand the technicalities behind internet access. As others have mentioned, that will lead to delay, expense and frustration within the justice system, which the Bill is surely designed to do away with.

I, for one, am certainly not wedded to any particular wording—like the noble Lord, Lord Marks, I am much more interested in outcomes—but the Government need to apply their mind to providing cost-saving and effective forms of assistance. It is not just to the elderly or people with language difficulties, whom the noble Earl mentioned a moment ago, that we need to offer our help: we need to make the system work well and efficiently and be genuinely part of the justice system.

Lord Keen of Elie: My Lords, I begin by saying that I entirely agree with noble Lords that digital support for those who want to access online services will be paramount to the effectiveness of the proposed changes in civil procedure. We are of course conscious that not all court and tribunal users have the confidence or ability to use digital channels unaided.

On the point made by the noble and learned Lord, Lord Thomas of Cwmgiedd, HMCTS already has an assisted digital strategy in place quite independent of the Bill. For simple support needs, HMCTS staff will talk users through queries over the telephone. In cases of more complex needs, there is provision for face-to-face support, currently being piloted by the Good Things Foundation, which is a charity that specialises in digital inclusion. That means that people can be taken through a digital process step by step. As the noble Lord, Lord Beith, noted, that support is being piloted in 18 locations throughout England and Wales, and in fact will now be rolled out across the country, in order that there is general access to it. We have that digital assistance in place and want to see it developed. We understand the need to ensure that such assistance is available.

We are also seeking to simplify some online forms, essentially by way of a "save and return" process. One frustration encountered by some users of online forms

has been that, when they find themselves half way through a form, they decide to consult an appropriate oracle about how to complete the second half of the form but, by that time, the first half has disappeared. Simple steps like that can enable people to use these systems far more easily. We are entirely conscious of the need for such assistance.

I hear what noble Lords say about wanting to see some expression of willingness or intent in the Bill; I would be happy to discuss that further with them before Report. I cannot accept the proposed amendments in their present form—I will not seek to detail why at this stage—but we are willing to discuss an expression of intent that may appear in the Bill. I will leave the matter there at this stage.

Amendment 14, in the name of the noble and learned Lord, Lord Mackay of Clashfern, concerns fraudulent activity from persons perhaps pretending to act on behalf of the court. Of course, we take cybersecurity and online fraud extremely seriously across all government services. We have cybersecurity professionals involved in the development of all our systems, including new digital services. Those are assessed by the Government Digital Service before they are ever rolled out for public access, so we have a means of ensuring that these systems are fit for purpose. Of course, we understand the importance of building appropriate data security and privacy measures into all such technological systems. Indeed, our systems are subjected to regular checks to ensure that there is no improper access or misuse. HMCTS has developed a risk assessment framework aligned to Government Digital Service standards. My understanding is that, on the basis of the present offerings online, it is unaware of any fraudulent websites claiming to offer access to such sites. Of course, we will maintain vigilance in that regard.

There is perhaps a distinction to be drawn here between some scams and the sort of online scam where somebody claims to be from Her Majesty's Revenue & Customs and invites you to send them your bank account details so that you may be the happy recipient of a tax rebate, but you then discover that your bank has inadvertently been emptied rather than credited. In the context of the court process, we are vigilant against fraud but there is no scope there for that sort of fraud. As I said, we have not encountered fraudulent use, or attempts at fraudulent use, of the websites in so far as we already have certain online channels with HMCTS, so we would not consider it appropriate to accept the noble and learned Lord's amendment at this stage. That said, I would be happy to discuss further the other amendments in the group. In the meantime, I invite the noble Lord, Lord Marks, to withdraw his amendment.

Lord Marks of Henley-on-Thames: My Lords, I am very grateful to all noble Lords who have spoken in the debate. It appears that we are all committed to seeing a modernised and simple online procedure that enhances, rather than damages, access to justice. We regard it as essential that there should be a statutory commitment to designated assistance for the parties. For that reason, I am extremely gratified to hear the Minister say that he will discuss such a commitment in some form with myself and other noble Lords between now and Report. Of course, we welcome that invitation and will accept it.

I will just say one further thing in answer to the point made by the noble and learned Lord, Lord Mackay, about the providers of such assistance. As the Minister said and as the noble Earl, Lord Listowel, pointed out, we have in place not only the service provided currently by HM Courts & Tribunals Service but also that provided by such law centres as still exist and by charities such as the Good Things Foundation and the charity mentioned by the noble Earl. I am wary of being too dogmatic about the providers that could by agreement with HM Courts & Tribunals Service provide designated assistance in the future. I hope that, when the Bill leaves this House, we have an acceptable commitment to designated assistance to help litigants in the future. With that, I beg leave to withdraw the amendment.

Amendment 5 withdrawn.

Amendment 6 not moved.

Clause 1 agreed.

4.45 pm

Clause 2: "Specified kinds" of proceedings

Amendments 7 and 8 not moved.

Amendment 9

Moved by ***Lord Judge***

9: Clause 2, page 3, line 17, at end insert—

"( ) Regulations may only be made under this section with the concurrence of the Lord Chief Justice."

Lord Judge (CB): My Lords, since Second Reading, when I argued in support of these amendments, I have had a meeting with the Minister and, notwithstanding his customary courtesy, I was unable to persuade him of the good sense of these amendments. Listening to his response to today's debate, it is quite obvious that we cannot expect a Damascene conversion on his part, but did I detect the tiniest shining light—the dawning of a better understanding of why these amendments should be made? If I detected a light, it was only a faint one and I shall certainly not turn the lights off. If we are talking about dawns, nor shall I allow any clouds to obscure my meaning.

We have discussed the issues and I shall not go over those that have already been ventilated in our debate. Lord Justice Briggs's report is admirable and I continue to support it, but it was a report directed to a small feature of the system of litigation. The Bill, as has been said but is worth repeating, has the potential to cover every single aspect of the administration of civil justice, every single aspect of the administration of family justice and the entire tribunal system. It is difficult to exaggerate the level of interference with the administration of justice in all the areas that the Bill would give to the Lord Chancellor. As I say, the issues have been addressed and I shall not repeat them, but I have heard the Minister say on a number of occasions, "It's all right because there is the committee with a judicial involvement". Indeed, in answer to an earlier debate, he pointed out the happy differences between this committee and the Family Procedure Rule Committee,

[LORD JUDGE]
the Civil Procedure Rule Committee and so on. But there are two that he did not grasp and they are the ones that matter.

This is a committee on which the judiciary will be in a minority and it is the first such committee. It will be a committee of which the majority of the members will be appointed by the Lord Chancellor. Let us pause and think about that. The majority will be appointed by the Lord Chancellor and presumably it will be for him to dismiss them if he disagrees with them. That is consistent with the pernicious modern tendency, which I have gone on about before, of our being asked to vest greater powers in the Executive—in this case in one Minister. We have become inured to it and it is particularly incongruous in the context of the administration of justice, where, as a matter of constitutional necessity, everyone accepts that the powers should be separate.

Since the constitutional reforms made in the early 2000s, ultimate responsibility for the administration of justice is vested not in the Lord Chancellor or in any other Minister of the Crown, but in the office of the Lord Chief Justice, an office I had the privilege to hold. At the time, none of the judges was urging any such change; we did not want to get rid of the Lord Chancellor. The noble and learned Lord, Lord Mackay, was not the Lord Chancellor at that time, but we were very happy with who we had had and did have. It came as a complete surprise to the judiciary, therefore, but it has come, and the consequence is this: a reduction in the responsibilities of the Lord Chancellor for the administration of justice, and a significantly enhanced responsibility of the Lord Chief Justice. He is responsible for what happens in the court system, and that must be understood when we are contemplating this Bill.

With one important exception—important for a reason to which I shall come—under the Bill in its present form, in the discharge of his responsibility for the day-to-day running of the family courts, the civil courts and, to the extent that he has responsibility over the tribunal system, the tribunal courts, the Lord Chief Justice is granted what is pushed as a "privilege" to be consulted by the Lord Chancellor if the Lord Chancellor and his committee have any proposals for change. However much the noble and learned Lord, Lord Keen, may be frightened of what the Lord Chief Justice may say, a political Lord Chancellor disagreeing with the Lord Chief Justice can simply disregard whatever he may say. It would for years, no doubt, be done with appropriate courtesy—and I hope that, in years to come, it will always be done with appropriate courtesy—but there is no guarantee even of that. But pause here because, after these changes have been implemented, the responsibility if they fail to work will fall not on the Lord Chancellor but on the Lord Chief Justice—even if, when consulted, he or his predecessor argued against them. In those circumstances, limiting the role of the Lord Chief Justice to consultation is absurd.

The change in the relative responsibilities of the Lord Chancellor and the Lord Chief Justice has been understood and acknowledged in earlier arrangements. Thus, for example, when the question arises of whether court proceedings in England and Wales may be televised—and, if so, which part of such proceedings may be televised and what damage there may be, if any, to the administration of justice depending on what proceedings are televised, or how the administration of justice may be advanced if part of the proceedings are televised—that decision is not vested exclusively in the Minister, who may after all have political reasons for his decision; it requires the concurrence of the Lord Chief Justice. On disciplinary proceedings, if a judge has misbehaved or misconducted himself or herself, there is a requirement for concurrence between the holders of the two offices. What is more, the Bill itself, in Clause 6(2), recognises circumstances in which concurrence is appropriate. The amendments proposed to this and the remaining clauses are therefore entirely consistent with a provision in the Bill and with other provisions outside it.

Concurrence of the Lord Chief Justice, and where appropriate the Senior President of Tribunals, is necessary surely when an issue affects the administration of justice on a day-to-day basis. That is what the Bill is about: the administration of justice, day to day. Questions of how proceedings in whichever area of law may be conducted and how they may not; whether, and if so in what circumstances, they must be conducted digitally or on paper; whether and how the interests of litigants who are not proficient are upheld, as we discussed earlier—that is all part of the day-to-day requirement of what goes on in our courts. There is one final consideration, which always seems to me to matter hugely: whether the unsuccessful litigant leaves court satisfied, not of course with the result but with the idea and conviction that he or she has been heard and understood. "Even if the judge got it wrong, he listened to me", seems a very important part of the administration of justice. These are all questions for the day-to-day search for justice.

In the context of the Bill, which proposes at some stage along the line of history to give wide powers to a Minister, consultation alone is a meaningless handout from the Executive to the judiciary. More importantly, alone it offers no sufficient protection to the citizen against inappropriate Executive interference with the administration of justice. I beg to move.

Lord Garnier: My Lords, in agreeing with the noble and learned Lord, Lord Judge, given his anticipation of beneficial light emerging from the Front Bench, I caution him that, as so often happens in these matters—particularly when the Government are giving something away, such as consultation—the light at the end of the tunnel ends up being the light of the approaching train. I urge that we temper our enthusiasm for any blandishments from the Government—not that my noble and learned friend on the Front Bench would ever be guilty of offering anything as vulgar as a blandishment.

The noble and learned Lord, Lord Judge, has made all the points that need to be made and has made them better than I possibly could. However, if one strips away the words "the Lord Chancellor" and replaces them with the words "Secretary of State"—and Clause 6(2) condescends to do that, because clearly the Lord Chancellor cannot agree with himself and

has to agree with his schizophrenic self, the Secretary of State—and if one strips away the ancient legal title and office of Lord Chancellor, one finds that one is in fact dealing with a political Minister in a spending department at the Ministry of Justice and that he or she will be placed under all the pressures of both self-interest and Cabinet responsibility that go with being in a spending department. If it is inconvenient for the Chancellor of the Exchequer to allow the Secretary of State to agree with the Lord Chief Justice, he will disagree with the Lord Chief Justice. We should not be under any misunderstanding about that.

In the what must now be 20 years since the removal of the office of Lord Chancellor as head of the judiciary—and I am standing behind one of the finest exemplars of that office—with that position having now gone to the Lord Chief Justice, the metaphorical gap and indeed the actual distance between the law and Parliament has grown immeasurably. The understanding between the law and those who administer it and politicians has grown immeasurably. One only has to look at the record of some Secretaries of State for Justice who have succeeded my noble and learned friend and who do not have that intimate knowledge of the administration of justice to understand the difficulties and dangers that the noble and learned Lord, Lord Judge, anticipates—and have happened already.

While I support the sensible policy behind the Bill, all kinds of little niggles pop up from time to time which will destroy its purpose. They will make it less beneficial for the public good than it would otherwise be, were the suggestions made in the previous debate by the noble Lord, Lord Marks, and in this current debate by the noble and learned Lord, Lord Judge, taken into account. As a supporter of the Bill and the Government, I urge them not to allow themselves to be swept down the river of consultation when the river of agreement is a much safer journey to take.

Lord Beith: My Lords, the messages are getting more complicated and conflicting between approaching trains, rivers and nuclear options. Perhaps we should recognise that we are replaying debates in which some of us were involved when it was attempted to abolish the Lord Chancellor overnight and there emerged from that process the system we have now. It is very relevant to the noble Lord's amendment and to the powerful points he has made in support of it. The change in the role of Lord Chancellor, quite correctly emphasised by the noble and learned Lord, Lord Garnier, as Secretary of State for the Government as well as Lord Chancellor, stretches forward to influence what we ought to be doing in this legislation.

5 pm

The noble and learned Lord, Lord Judge, had no difficulty in persuading his fellow members of the Constitution Committee of the importance of this issue and of dealing with it properly so that it is quite clear that things cannot be done over the head, or contrary to the wishes of, the Lord Chief Justice. That would help to ameliorate some of the other concerns that we have been dealing with in other amendments to the Bill, such as the breadth of the Bill and the lack of various safeguards. We would all be more reassured if it was recognised that the Lord Chief Justice is not merely consulted but that his or her concurrence has to be obtained.

In earlier discussions, I recall the Minister indicating that he saw it as a significant, almost Rubicon moment—to bring in another analogy—to draw the Lord Chief Justice into a situation where his agreement was required for these things. Was this giving him executive power? Was it bringing him within the political sphere and causing him to make political decisions? My answer is no. The decisions we are talking about here are decisions about the administration of the court system and its fair and efficient operation. They are not the kind of political decisions which the Secretary of State for Justice, who is also the Lord Chancellor, makes.

Ever since that change, we have had to try to maintain the wall which keeps the Lord Chief Justice safe from being drawn into political decisions and, perhaps even more importantly, have had to try to keep the Lord Chancellor and Secretary of State for Justice on his or her side of it. There have been a number of instances—including, paradoxically, television in courts—which have shown that, to put it at its lightest, the system has not properly bedded down in the way that was intended so that decisions about the fair operation of the courts clearly cannot not be made without the concurrence of the Lord Chief Justice. The case which the noble and learned Lord, Lord Judge, has made is very powerful, and I hope the Minister will recognise that this is about not political decisions but the proper role of the Lord Chief Justice.

Lord Pannick: My Lords, like the noble Lord, Lord Beith, I have added my name to the amendment tabled by my noble and learned friend Lord Judge to ensure that the powers which are being conferred on the Lord Chancellor can be exercised only with the concurrence of the Lord Chief Justice. My reason for doing so is essentially the same as that of the noble Lord, Lord Beith, and my noble and learned friend Lord Judge: the powers conferred by the Bill are exceptionally broad and there need to be adequate controls.

The Minister's response before this afternoon essentially amounted to, "Don't worry—there are sufficient means through committees that will ensure that these powers are never used inappropriately, far less abused", but as my noble and learned friend Lord Judge mentioned, the Lord Chancellor has the power to appoint the majority of the committee. The most effective means of ensuring that these powers are used only in an appropriate manner is to ensure that they may be exercised only with the concurrence of the Lord Chief Justice. As the Minister indicated during one of our earlier debates this afternoon, to amend the Bill in this way would considerably help to resolve many of the other defects in it which we have been debating.

My noble and learned friend Lord Judge made a point that is so important that it needs to be repeated: there is nothing novel about legislation requiring the concurrence of the Lord Chief Justice and the Lord Chancellor. This very Bill, at Clause 6(2), states that the Lord Chancellor's powers to make regulations relating to the committee may be exercised only,

"with the concurrence of … the Lord Chief Justice and … the Senior President of Tribunals".

[Lord Pannick]

Therefore, I suggest to the Committee that the question is not whether in principle ministerial powers should ever be constrained by a need to obtain the concurrence of the Lord Chief Justice but whether that restriction is appropriate in relation to these powers. In my view, such is the breadth of the powers that we are conferring and so intimately do they address the fair administration of justice, which is after all the business of the Lord Chief Justice, that his or her agreement should be needed for their exercise.

Whether it was a blandishment or otherwise, I was very pleased earlier to hear the Minister give a commitment to consider this issue actively before Report. I very much hope that, on Report, the Minister will feel able to table an amendment or amendments to address this issue or, at the very least, to support amendments in the name of my noble and learned friend Lord Judge.

Lord Mackay of Clashfern: Having had the honour of holding the office of Lord Chancellor when the Lord Chancellor was the head of the judiciary, I think it is right for me to say a word or two about the present position.

It is very important to remember that our constitution recognises three arms: the legislature, the Executive and the judiciary. The judiciary is a distinct arm from the Executive. The Executive have responsibilities in relation to the judiciary, and of course the judiciary has responsibilities in relation to the people of this country in a way that is unique. If somebody else is entitled to say, without getting the ultimate agreement of the Lord Chief Justice, "We're going to alter your procedures in the court. We'll tell you about it and we'll consult you but, if you don't like it, we'll do it all the same", that seems to subvert the idea that the Lord Chief Justice is the head of the judiciary. The judiciary must act according to procedures and, if you alter the rules or procedures without his agreement, it seems to me that you subvert his position as the head of the judiciary as distinct from the Executive and the legislature.

Incidentally, I cannot help remarking at this stage that the judiciary has been silenced from having any part in the legislature. I regard that as an extraordinarily retrograde step. I hope that some day it will be put right by a responsible Government and that we will have the very great advantage of hearing in the House of Lords not just all past Lord Chief Justices but the present one as well.

The Lord Chief Justice's agreement seems to me absolutely essential. Indeed, I would like to feel that he would be the initiator of changes in procedure as a result of committee recommendations. His responsibilities will be encroached upon if these procedures do not work.

My only other remark is that the reference to the Secretary of State in Clause 6(2) is probably to the Secretary of State for Wales, the language of Wales being important in this connection.

Lord Woolf: My Lords, I hope it will not be inappropriate, in view of the elegant and powerful speeches already made, for me to say these few words. I was a party to the concordat, the importance of which was that it established the new relationship between the arms of government, to which the noble and learned Lord, Lord Mackay, referred, until the Constitutional Reform Act 2005. I hope it will suffice to say that everything said in support of this amendment seems four-square with what was said in the concordat, indicating when the consent of the Lord Chancellor or that of the Lord Chief Justice would be required. These were heavy burdens that my successors as Lord Chief Justice had to carry in consequence of, first, the concordat and then the Constitutional Reform Act. It would be so easy to allow legislation of this sort to undermine the spirit of the concordat and the provisions of that Act by creating a precedent, which could be pointed to subsequently, indicating that the clear distinctions of relevant situations where the consent of the Lord Chief Justice should be required are not as they were previously understood to be.

Lord Beecham: My Lords, I simply add that the crowded Benches behind me will support the amendment. We are entirely in sympathy with all that has been said.

Lord Keen of Elie: My Lords, I begin with a simple point of clarification, although it may be that confusion reigns only in my mind. Where the Bill refers to the Secretary of State, it refers to the Secretary of State for BEIS, because of his responsibilities with regard to employment tribunals. Where it refers to the Lord Chancellor, that reference includes of course the Lord Chancellor's appointment as Secretary of State for Justice. I say this lest there be any confusion about the two references in the Bill.

As I indicated at Second Reading, we have a number of concerns about the implications of these amendments. The Bill has been drafted precisely to ensure that the existing constitutional balance is protected. I will elaborate on that in light of some observations made by the noble and learned Lord, Lord Woolf, with reference to Amendment 28, which concerns the Minister's power to direct the committee to include provision in the online procedure rules to give effect to a specified purpose.

I stress that this is not a novel power, nor would it apply only to the Online Procedure Rule Committee. The same power already features in the legislation which underpins the committees for the Civil Procedure Rules, Family Procedure Rules and Tribunal Procedure Rules. That is because Clause 8 reflects similar provisions in Section 3A of the Civil Procedure Act 1997, Section 79A of the Courts Act 2003 and Part 3 of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007. That power was one agreed by the then Lord Chancellor and Lord Chief Justice under the concordat of 2004 and given effect in the Constitutional Reform Act 2005. The safety valve within the 2005 Act is Section 5, which confers upon the Lord Chief Justice the statutory right to make a report to Parliament if he is concerned about an issue relating to the administration of justice. I emphasise that this is not a novelty. The provisions of the Bill were drafted to reflect the existing statutory underpinning of the other civil rules committees with regard to civil jurisdiction, family jurisdiction and tribunal procedure.

In turn, Amendments 29 and 30 seek to ensure that the Lord Chief Justice concurs before the Lord Chancellor can make regulations under Clause 9. Clause 9 requires consultation with both the Lord Chief Justice and the Senior President of Tribunals, the latter in the context of tribunal procedure. Again, we suggest that this is as it should be. It is anticipated that, as in the past, these regulations would be used to make minor revisions to legislation; for example, to regularise and modernise terminology to match that in the new rules and ensure that the rules operate as intended. In other words, they will be used to make operability amendments. It is in these circumstances that consultation is considered to be the appropriate approach.

5.15 pm

Amendments 9 and 12 would require the Lord Chancellor or Secretary of State to seek the concurrence of the Lord Chief Justice when specifying proceedings which are to be subject to the Online Procedure Rules. I would go so far as to say that I am sympathetic to concerns from your Lordships about the nature of the proceedings which may become subject to the online procedure and the consequences that may have for the administration of justice. Therefore, I see there are grounds for distinguishing that case from those I have just mentioned. It is in these circumstances that, as I indicated earlier, I would be happy to discuss this matter further with noble Lords before Report. I appreciate the level of concern expressed about that point and wish to address it further with noble Lords with regard to the issue raised in the context of Amendments 9 and 12. However, I hope noble Lords will appreciate that I cannot go further on that matter at the Dispatch Box at this stage. In the present circumstances, I do not know whether that counts as a train, a nuclear explosion or a light at the end of the tunnel, but whatever analogy might be drawn, I invite noble Lords not to press their amendments at this stage.

Lord Judge: My Lords, I thank everyone who has taken part in this debate. It has been short, but it matters. Perhaps I may answer two points made by the Minister. First, the difference between this committee and the committees to which he referred is that there is a majority of judicial members on all of them, whereas this committee has a majority appointed by the Lord Chancellor. That is a huge difference.

Secondly, although Section 5 of the Constitutional Reform Act 2005 gives the Lord Chief Justice the right to send a letter to Parliament expressing his concerns, I am willing to tell the Committee that there were occasions when I felt like writing such a letter, but it seemed to me that the first thing such a letter would do was to enmesh the Lord Chief Justice in a political quarrel. If nothing else, I could have seen the Government looking after the Lord Chancellor's interests and therefore objecting to the Lord Chief Justice's letter. I could see some Oppositions trying to twist the Government's tail, thinking that they would support the Lord Chief Justice. The whole idea of that was a sop, because the reality is that if you use your nuclear option, you do not just blow up everybody else; you blow up yourself and your own case.

Subject to those two matters, and to further discussion with the Minister, for the time being I beg leave to withdraw the amendment.

Amendment 9 withdrawn.

Clause 2 agreed.

Clause 3: Provision supplementing section 1

Amendments 10 to 12 not moved.

Clause 3 agreed.

Amendments 13 and 14 not moved.

Clause 4: The Online Procedure Rule Committee

Amendment 15

Moved by ***Lord Beecham***

15: Clause 4, page 4, line 16, leave out paragraph (c) and insert—

"(c) one of each of the following—

(i) a barrister in England and Wales, and

(ii) a solicitor of the Senior Courts of England and Wales, and

(iii) a legal executive, and

(iv) a magistrate of England and Wales

appointed to the Committee by the Lord Chancellor."

Lord Beecham: My Lords, this amendment would extend somewhat the involvement in the committee that the Lord Chancellor will appoint across the relevant professions and service. It seems sensible to reflect the breadth of the legal service and the legal community. It would not be hugely burdensome in numbers. It seems to make sense. I hope the Minister will feel able, if not today then subsequently, to accept that this would be desirable.

I do not think I need to elaborate. The amendments are clear enough about the intention and the numbers to be involved. I hope the Minister will at least look at this again and recognise that it is in the interests of the changes that are about to be made to accept these suggestions. I beg to move.

Lord Judge: I will make just one small comment. If the appointments of these additional people are in the hands of the Lord Chancellor, he will end up with a majority of six to two on the committee. If the amendments are to be pursued, I respectfully ask that the concurrence of the Lord Chief Justice to the appointment should be required.

Lord Thomas of Cwmgiedd: With the utmost respect to my predecessor, it would be usual for a magistrate to be appointed by the Lord Chief Justice rather than the Lord Chancellor. That would slightly affect the majority, but otherwise I agree with the points made.

Lord Keen of Elie: My Lords, it appears that we might avoid both potential problems if we retain the present membership of the proposed committee. Before I turn to the detail of the amendments, it may be helpful if I make some general remarks about the committee's composition. We certainly support the need for a small, focused and agile committee responsible

[Lord Keen of Elie]
for making new court rules that are simple, tailored for the benefit of ordinary users and, therefore, understandable. In his final review of the civil justice system in 2016, Lord Justice Briggs as he then was anticipated—I accept—a very differently constituted committee of experts from across various disciplines reflecting users' needs. A smaller committee allows the standing members to increase and adapt their membership quite easily every time they consider a different topic. That therefore allows them access to a greater spread of expertise and to ensure the rules are made by those who have an understanding of how they are most suited to the user.

The purpose of Amendment 15 from the noble Lord, Lord Beecham, is to add legally qualified members, or members with legal experience, to the committee. As I have indicated, we consider that there is considerable benefit in beginning with a small committee, but one where the membership and expertise can be adapted over time. We consider that adopting the amendment would create issues about who is appointing the membership of the committee and whether there was a disproportionate power of appointment between the Lord Chancellor and the Lord Chief Justice.

I remind noble Lords that the intention is that the online procedure will apply in the first instance to civil money claims up to the value of £25,000, but over time we of course want to widen the procedure's scope so that it covers the civil procedures, potentially including family and tribunal proceedings. It would be difficult to see the value of insisting on an expanded legal membership at this stage without first gauging the overall value that could be addressed by bringing in specific experts in the area of specific proceedings being considered. In addition, as I said, Clause 6 would allow for the committee's composition to be changed to incorporate particular experts or disciplines and particular areas of expertise if or when the committee came to address such issues as tribunal jurisdictions or some forms of family jurisdiction.

For similar reasons, we are not persuaded of the need for Amendments 16 and 17, which seek to add an additional member with IT expertise. Again, the argument is the same. Under Clause 6, the committee will have the ability to bring in additional expertise as and when it requires it, and that flexibility is seen as a considerable benefit.

In Amendment 18, the noble Lord, Lord Beecham, seeks to ensure a gender balance on the committee. Of course we support the wider aim of ensuring greater diversity among all senior appointments to public bodies but, to be truly effective, public bodies must bring together a mix of people with different skills, experience and backgrounds. The obligation with regard to appointment is always guided by the code of practice of the Office of the Commissioner for Public Appointments, which sets out the design principles and procedures for appointments with diversity in mind, including gender diversity. It is by these means that we can preserve accountability for diversity. That process is monitored by the Commissioner for Public Appointments, and is subject to a published report each year. We are certainly not complacent about the idea of gender representation at all levels on all committees, but we think it better that it is seen through the wider lens of the Equality Act, which protects a broader range of groups, not just gender. At this stage, we are not inclined to accept that there should be an express provision on gender balance.

Amendments 20 and 21 deal with the number of committee members required to agree the rule changes. Amendment 21 from the noble Lord, Lord Beecham, would increase the number needed from three to five, and that would perhaps be a consequence of an extended membership. Amendment 20 from the noble Lord, Lord Ponsonby, would require a simple majority with regard to matters, rather than just the current number of three. I can see that there may be an advantage in having some flexibility here, if we look forward to the point where the committee decides to exercise the powers under Clause 6 and extend the numbers in the committee to embrace further areas of expertise. I would like to give further consideration to that point in light of that, because it seems that underlying this there is a point that we should address before Report. With that, I invite noble Lords not to press their amendments at this stage.

Lord Beecham: Does the Minister accept the possibility that if there is not a requirement to reflect gender balance, there should at least be a requirement to report on it periodically, as part of the provision of the Bill?

Lord Keen of Elie: Respectfully, it appears that there is already statutory provision for just such a report, because the appointments will be monitored by the Commissioner for Public Appointments, who will make an annual report for that very reason.

Amendment 15 withdrawn.

Amendments 16 to 18 not moved.

Clause 4 agreed.

Clause 5 agreed.

Clause 6: Power to change certain requirements relating to the Committee

Amendment 19

Moved by ***Lord Beecham***

19: Clause 6, page 7, line 17, leave out "negative" and insert "affirmative"

Lord Beecham: My Lords, this is a fairly simple amendment requiring there to be an affirmative resolution, rather than a negative one. We are perhaps overdone with negative procedures. I suggest that this is an important area which should be subject to the affirmative process instead of the negative one.

Lord Keen of Elie: My Lords, might I be permitted to respond with equal brevity to the noble Lord's proposed amendment? Our concern is that this should be a small committee which has the ability pursuant to Clause 6, for example, to extend its membership to other areas of expertise, and that it should be able to move relatively swiftly to do that. That is why, in this area and others covered by amendments including

Amendments 26 and 27, we embrace the negative procedure. We are concerned that, if we introduced the affirmative procedure, it would be necessary to take the matter through both Houses of Parliament, with the potential for significant delay from time to time. In fact, we simply want to effect new draft rules following consultation with the Lord Chief Justice. Regarding the consultation provisions as well, we suggest that the negative and not the affirmative procedure is appropriate here.

5.30 pm

I hope the noble Lord does not consider that, in responding briefly, I am not conscious of the importance of his point, but we feel that our answer is as short as his proposal—if I can put it in those terms. I invite him to withdraw his amendment.

Amendment 19 withdrawn.

Clause 6 agreed.

Clause 7: Making Online Procedure Rules

Amendment 20

Tabled by ***Lord Ponsonby of Shulbrede***

20: Clause 7, page 7, line 24, leave out "at least three" and insert "a majority of"

Lord Ponsonby of Shulbrede: My Lords, if I may say a word out of turn, I am grateful to the Minister for what he said about my Amendment 20 and for saying that he will consult about agreeing something along its lines. I also want to make a point about Amendment 15, which we have also passed, which is that magistrates are represented under statute, under the other rule-based committees.

Lord Keen of Elie: I will briefly clarify the position for the noble Lord, Lord Ponsonby. I was not undertaking to consult to agree, but to give further consideration to the matter before Report.

Amendment 20 not moved.

Amendment 21 not moved.

Amendment 22

Moved by ***Lord Beecham***

22: Clause 7, page 7, line 30, at end insert—

"(za) must be piloted by the Government in a period determined by the Online Procedure Rule Committee before they may be fully and permanently implemented,"

Lord Beecham: My Lords, there are two or three amendments in this group that look to the Government to pilot the processes embodied in the Bill. That seems a sensible way of dealing with these changes. Amendment 24 would require the Minister to publish a written statement on the progress and findings of the pilot scheme. These are major changes in our legal system, so it is necessary to look carefully at how they are working before deciding that they will remain part of the system. This is a major change, and it would help if the Government accepted the notion that progress will be reviewed and an opportunity given to consider how it is working. Further, the procedure should be an affirmative resolution.

Lord Marks of Henley-on-Thames: My Lords, our Amendments 31 to 33 in this group require a statutory review between three and four years from the date on which the Bill becomes law. They also require a report to Parliament from the appropriate Minister, prepared in consultation with the Lord Chief Justice and the Senior President of Tribunals, both of whom will be able to contribute independently to the report, should they wish to. The Minister's answer to these suggestions to date has been that the Government will carry out a post-legislative review, so there is no need to incorporate a requirement for such a review into the Bill. Once again, I regret that we do not agree. Non-statutory promises have a nasty habit of being fulfilled well outside the time limits promised. Indeed, such reviews often seem to have as many delays as Crossrail. Statutory time limits, while not fool-proof, at least concentrate the minds of Ministers and officials. Furthermore, without further primary legislation, they do not bind future Governments. In any case, the requirement to review and report guarantees a certain thoroughness to the review and resulting report that might not otherwise have existed.

We regard as particularly important the requirement for the Government to consult the Lord Chief Justice and the Senior President of Tribunals in preparing the report and to have the opportunity to report to Parliament. That will guarantee that a judicial perspective is brought to bear on the review and formal report to Parliament. In this case, we regard the combination of judicial and political input as very important. Reviewing the operation of the legislation makes that combination important, as with making the changes and decisions that we discussed in the group of the amendments of the noble and learned Lord, Lord Judge. We also support the amendments in this group on further piloting these online procedures. Careful piloting and a staged introduction could avoid costly mistakes and improve the procedures as they are developed. Both providers and users will be able to see and report on what works and does not.

Lord Keen of Elie: I first turn to Amendments 22 to 24, tabled by the noble Lord, Lord Beecham, and address the issue that the rules should be piloted by the Online Procedure Rule Committee before they come into effect. I will then come on to Amendments 31 to 33, spoken to by the noble Lord, Lord Marks, and supported by the noble Lords, Lord Beith and Lord Pannick, and the noble and learned Lord, Lord Judge.

I assure the noble Lord, Lord Beecham, that when services are introduced, they are already subject to ongoing testing. HMCTS is rapidly testing and adapting new online services, based on user feedback and service data. That is important because it ensures flexibility and improvements in practice and procedures that enhance access to justice. Piloted online services cannot be rolled out to the public more widely without such rigorous independent assessment carried out by the Government Digital Service, and then confirmation

[LORD KEEN OF ELIE]
that they are fit for purpose. In addition, some projects are also being more formally evaluated through their development by HMCTS itself.

Reference was made to a number of piloted measures in the existing digital portal for debt actions. The difficulty is that, if we accept measures of the kind proposed in these amendments, we will add a layer of bureaucracy to the rule-making process beyond current practice, thereby reducing the flexibility to respond to user needs and technological changes. The Bill permits the use of practice directions, which can support projects through development before formal rules are set out in statute, so one does not have to go to a formal set of rules immediately; one can simply have a practice direction that assists the piloting of particular projects.

I mentioned before the example of online civil money claims and the pilot that went live in March 2019, which is underpinned by practice directions that require the consent of the Master of the Rolls and the appropriate Minister. Such a project worked closely with the judicial sub-committee to develop the pilot. I emphasise that there is already a clear process in place through which such proposed rules are tested, piloted and reviewed. To that extent, we consider Amendment 22 unnecessary.

Amendment 23 would again limit the flexibility of the OPRC to make the small, minor changes required to respond quickly to changes in user needs or perhaps new technology. It would add time and consequently cost to the development of the online process. We do not consider it appropriate to go down that route.

Amendment 24 would require us to publish six-monthly reports. We regard that as simply unmanageable given the number of pilots across the services that we are in the course of transforming. Again, there is the issue of cost, so we are not persuaded of the need for such steps to be taken.

Amendments 31, 32 and 33 would place in the Bill a requirement for a formal review of the Act to which the Lord Chief Justice and Senior President of Tribunals were able to contribute independently. Clearly, reviewing legislation which has been passed by this House is of great importance. That is precisely why the Government already require departments to carry out post-legislative scrutiny of all Acts within three to five years after Royal Assent. We therefore consider this amendment unnecessary because post-legislative scrutiny of this legislation will be conducted—I emphasise, will be conducted—within that timescale.

Regarding the reference to the Lord Chief Justice and Senior President of Tribunals, of course, their views are incredibly important and are taken seriously. There would be no question of us laying a report on this or other courts legislation without taking account of their opinions. Again, we consider the amendments unnecessary, while understanding the importance of what underpins and has prompted them. I hope that, with these assurances, noble Lords will accept that the amendments are unnecessary and I invite them not to press them.

Lord Beecham: My Lords, having listened to the Minister, I am happy to withdraw the amendment.

Amendment 22 withdrawn.

Amendments 23 to 25 not moved.

Clause 7 agreed.

Clause 8: Power to require rules to be made

Amendments 26 to 28 not moved.

Clause 8 agreed.

Clause 9: Power to make amendments in relation to Online Procedure Rules

Amendments 29 and 30 not moved.

Clause 9 agreed.

Amendment 31 not moved.

Clauses 10 to 12 agreed.

Clause 13: Interpretation

Amendments 32 and 33 not moved.

Clause 13 agreed.

Clause 14 agreed.

Schedule 1 agreed.

Schedule 2: Amendments relating to the online procedure in courts and tribunals

Amendment 34

Moved by ***Lord Keen of Elie***

34: Schedule 2, page 18, line 41, leave out paragraph 5

Lord Keen of Elie: My Lords, I approach this amendment with some trepidation, but I shall explain it in this way. It removes paragraph 5 of Schedule 2 to the Bill, which itself provides for the omission of Clause 7(1); namely, the requirement for the Online Procedure Rule Committee to consult such persons as it considers appropriate and to hold meetings unless inexpedient to do so.

5.45 pm

The amendment was originally incorporated in the Prisons and Courts Bill and was intended to reflect a prospective amendment to the Civil Procedure Act 1997 made by the Courts Act 2003 in an attempt to regularise practice between committees across civil, family and tribunal jurisdictions and the Online Procedure Rule Committee. That measure has not been implemented so far and has no direct relevance to this Bill. In simple terms, the provision that we are removing does not add value to the current Bill and should be removed—as it says in my note—to avoid misunderstanding.

Lord Blunkett (Lab): Is the original ever intended to be implemented?

Lord Keen of Elie: That is not a question that I am able to answer now because I cannot foresee the future, but I shall take further instruction on the matter and write to the noble Lord on the current position. I beg to move.

Amendment 34 agreed.

Schedule 2, as amended, agreed.

House resumed.

Bill reported with an amendment.

5.47 pm

Sitting suspended.

Ford in Bridgend
Statement

6 pm

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, with the leave of the House, I will repeat a Statement made in the other place by my right honourable friend the Secretary of State for Wales. The Statement is as follows:

"With your permission, Mr Speaker, I would like to make a Statement about the future of Ford's engine plant in Bridgend, south Wales. On Thursday, Ford announced the start of a consultation with its unions concerning the potential closure of the Ford Bridgend engine plant in south Wales. I am not going to understate what a bitter blow this is to the 1,700 skilled and dedicated workers at Ford in Bridgend and their families, to the many more people and businesses who supply the plant and to the town of Bridgend and the wider community.

Our focus will be on working with Ford and the unions to understand the challenges and opportunities and gain the best outcomes. I have spoken to the company, unions and colleagues across the House. Colleagues at Jobcentre Plus are standing by to provide advice and support to those who require it in the local area, if required.

I live close by and absolutely understand the importance of this plant to the local community. The site has been worth over £3 billion to the local economy over the last 10 years. The town of Bridgend has proudly been home for 40 years to a world-class engine manufacturing facility. Ford has relied on Bridgend and Dagenham to supply fully one-third of its total engines worldwide, a fact of great pride.

We have known for some time that the production of the Sigma engine was coming to its natural end and that the Jaguar Land Rover contract would not be renewed, but the news that the Dragon engine may no longer be produced in the UK is disappointing. It is very disappointing that it could be taken out of UK—in fact, out of Europe—to be manufactured in Mexico. That underlines that this is not a decision about Brexit. This decision was about the challenging conditions faced right across the global automotive sector.

Bridgend has been particularly impacted by the downturn in Ford's share of the passenger vehicle market in Europe, with volumes for the new Dragon engine falling significantly below installed capacity. Ford is restructuring its business across Europe significantly to decrease structural costs and allow for investment in future electrification. To that end, it is optimising its European manufacturing footprint and reducing operations in France, Germany and Spain.

Bridgend is significantly underutilised, with projections for the number of engines that it will produce falling far below what would be commercially viable in a single plant. Bridgend also faces a significant cost disadvantage compared with other Ford facilities around the world building the same engine. I have spoken to my right honourable friend the Business Secretary, colleagues in the Welsh Government, the trade unions and representatives since Ford's announcement, and my honourable friend the Minister for Business and Industry and I have spoken to local Members of Parliament. Together, we will continue to engage with all stakeholders and elected representatives. While I know that the honourable Member for Bridgend cannot be in the Chamber today, I spoke with her on Friday.

We in the UK Government are committed to working with the Welsh Government and the local community to ensure that south Wales's justified reputation as a place of industrial excellence in manufacturing and technology is maintained and expanded. On Thursday the Welsh Government's Minister for Economy and Infrastructure announced the establishment of a task force to work with partners over the difficult weeks and months ahead to help find a sustainable long-term solution for the plant and its workforce. UK government departments and I will play a full and active part in that. This builds on an existing group that has been working jointly since it was confirmed that production of the Jaguar Land Rover engine would end in 2020, and it will be important that that also builds on the Honda task force, working together to support the automotive industry.

We are already looking at opportunities to attract new investment to the area. I remain optimistic that south Wales is an attractive proposition and place for industry to operate from. In fact, over the last two years I have been to Japan, China and the USA to promote the opportunities that Wales presents for the advanced manufacturing sector and our modern industrial strategy. Later this year Aston Martin will begin production of the DBX engine, which has created 750 jobs, and last September it announced a further £50 million that will make south Wales the home of its electric vehicle range.

I and many other colleagues across this House have worked hard over the last three years to make the case for investment in Britain to investors in this country and around the world. Despite the devastating news for south Wales operations, Ford's commitment to the UK will remain, as a major employer of some 10,000 people, with other significant operations in the country, including Ford's technical centre in Dunton, Essex, which is home to Ford's European market-leading commercial vehicle business; Ford's engine facility in Dagenham, east London, where it will continue to produce diesel engines; Ford's mobility innovation

[LORD BOURNE OF ABERYSTWYTH]
office in London, where it will develop future mobility solutions for Europe; and the Halewood transmission plant, a joint venture between Ford and Getrag producing transmissions for cars such as the Ford Fiesta.

It remains the case that Ford, as an American company with a century-long history of operating successfully in the United Kingdom, undoubtedly recognises our international reputation for being a place to do business, with skilled and motivated staff, with access to innovation and strong determination to make those strengths even greater during the years ahead. That is the Government's ambition, as is well-evidenced by the steps that we have most recently taken to build on the successes of our automotive sector deal. Our Advanced Propulsion Centre has awarded grants worth £800 million to more than 150 organisations across the United Kingdom. Just last month my honourable friend the Minister for Business and Industry announced a further £28 million of support to further enhance our UK Battery Industrialisation Centre in order to give an investment of over £100 million in a world-leading facility, enabling industry and academia to put the United Kingdom at the forefront of bringing battery technologies from the lab into the next generation of vehicles to drive our streets. Working with industry, £80 million of investment through our Driving the Electric Revolution programme will see support for innovation in electric motor technologies. We are determined to ensure that the United Kingdom continues to be one of the most competitive locations in the world for automotive and other advanced manufacturing.

While the announcement of this consultation by Ford is a disappointing blow, the Government's bold mission to put the United Kingdom at the forefront of the design and manufacturing of zero-emission vehicles presents significant new opportunities for the United Kingdom. This includes new industries and ventures that will be well suited to the skills and expertise of those dedicated workers at Ford and its suppliers. I remain committed to ensuring that Bridgend and other parts of Wales benefit from this work. In this way, we will continue to work with the Welsh Government and our very many partners across the industry as we seize the opportunities for Britain to provide great jobs and careers for hundreds of thousands of people across our country during the years ahead. I commend this Statement to the House".

My Lords, that concludes the Statement.

6.08 pm

Lord Griffiths of Burry Port (Lab): My Lords, we are grateful to the Minister for repeating what is by any standards a desultory Statement. It seemed odd from where I was sitting to hear those words coming from his mouth in particular; they seem so mealy-mouthed. After all, 1,700 people are without work and communities will be ravaged. For all the task forces, which are starting from scratch since this has all happened so suddenly, there will be a huge period of thinking and reflecting. Some of the initiatives announced in the Statement pertain to the whole of the UK, and there is little for us to rejoice about in their specific application to Wales.

This is indeed a dark day. Since the 1980s and 1990s, when traditional industries folded up—with such great consequence to Wales, as the Minister will know—it is what has been happening down the M4 corridor that in many ways has kept the economy buoyant, brought hope and replaced those traditional heavy industries that have now gone.

We must just express our deep sadness and perhaps scratch our heads a little. After all, Bridgend manufactured 620,000 engines in 2017—one every 30 seconds. The plant makes a total of five different engines to support the production of seven Ford models. These engines are exported to Germany, Spain, Russia, the USA, China, Taiwan, Vietnam, Thailand and Mexico. Bridgend also makes V6 and V8 engines for the Jaguar XJ, XF and XK. I must apologise to the House: the recent removal of cataracts from my eyes places the reading of a document at this distance in no man's land. With glasses I cannot see it, and without glasses I cannot see it. For all that, I want simply to say that the output from Bridgend has been considerable. Undertakings were given only recently that led people to suppose and hope that there would be better days ahead. All the activities that depend on the car industry will be similarly affected.

I think we will hear from all sides of the House some bewilderment at the blanket statement that this cannot be put down to Brexit. It seems to me that the uncertainty that has been created by this long and tedious process that Members all over the House have felt to be so damaging will bring sadness of its own kind. In *Securing Wales' Future*, a White Paper from the Welsh Government that appeared within a year of the referendum in collaboration with Plaid Cymru and the Labour Party in Cardiff, emphasis was placed on maintaining and preserving work opportunities and conditions, on setting ways of achieving all that and on the necessity of maintaining confidence in the jobs market.

The uncertainty has clearly had its part to play. Ford has blamed global challenges for its decision, but, as highlighted by numerous manufacturers, falling diesel sales and the impact of a potential hard Brexit are creating a perfect storm for the sector. Today's figures, we are told, are evidence of the vast cost and upheaval Brexit uncertainty has already wrought on UK automotive manufacturing businesses and workers—not just in Bridgend, but in other places, too. Prolonged instability has done untold damage. The Secretary of State for Wales has just recently endorsed the candidature of Boris Johnson for the leadership of the Conservative Party and our eventual new Prime Minister. No clearer exponent of a hard Brexit exists than he. Consequently, faced by the increasingly likely and to be feared hard Brexit, we will not see conditions improve or create what from this side of the House we have constantly asked for—better workers' rights, greater security in the field of work and support for communities centred on industries such as the car industry.

This is, as I began by saying, a desultory Statement about a very sad situation. We are not convinced that the Secretary of State or Her Majesty's Government have done all that they can, and we seek reassurances from the Minister that these task forces that have been

put in place and this commitment to the future will benefit Wales as much as any other part of the United Kingdom. We were sold the promise that we would lose nothing in our economy as a result of leaving Europe, that our economy would remain buoyant and that the support from Westminster to Cardiff would not see us lose a single penny. Here is the mood music created by this sad closure impending in Bridgend. We can only regret it and ask Her Majesty's Government to rise above the conflicts among their own numbers that currently mark this moment in their history and give greater attention to the needs of workers and communities in Wales and the United Kingdom at large.

Lord Fox (LD): My Lords, I draw attention to the interests in my name in the register and thank the Minister for repeating the Statement. I commend the noble Lord, Lord Griffiths, notwithstanding his optical challenges, for his very eloquent statement. I associate myself with almost everything he said; I will not attempt to repeat it, but the loss of the Ford Bridgend plant is huge. It is not just the 1,700 workers; it is the whole community—the subcontractors and the infrastructure that supports that factory. I agree with the GMB's assessment that this is a disaster, not just for that area but for the UK car industry.

Following on from the final point of the noble Lord, Lord Griffiths, could the Minister tell us what talks Her Majesty's Government had with Ford in the lead-up to this announcement? What help were they able to offer Ford, which in the end proved not to be enough? How far did the Government go to prevent this happening? They had fair warning. In April, Ford warned that it would reconsider its UK investments if MPs could not agree a Brexit deal that offers a smooth departure from the EU. This really points up that Brexit is absolutely a factor in this Statement, notwithstanding the point that the Secretary of State has made. It is also another dagger in the side of the industrial strategy.

For the avoidance of doubt, can the Minister update your Lordships' House on how the Government are getting on with negotiating the smooth exit strategy that Ford and the rest of the car industry need? How many meetings have been had in Brussels since the extension of the exit date? How many times has the Prime Minister met with anybody in Brussels to bring forward a new proposal to Parliament? Indeed, when might Parliament expect a new proposal to deliver the smooth exit that business says it needs as a minimum level? The Minister may plead that this is above his pay grade—modestly, I would suggest—but this, above all issues, is front and centre in all the decisions that his department, BEIS and all the other departments in this country and Wales are dominated by. It must be dominating his waking hours. I hope he has an answer to the question: how are you getting on with the negotiations?

I thought that the situation was bad last term, but that stasis is nothing compared to what we are seeing now. The PM, as we know, has stepped down and the Government have gone into a sabbatical of self-immolation—if you want to see what setting fire to yourself looks like, just look at what Michael Gove managed over the weekend—while Britain's advanced manufacturing is crying out for stability and direction. In the words of the SMMT's chief executive:

> "This ongoing uncertainty is corrosive, both on the operations … and on their reputation".

That is another reason why Brexit is causing this to happen. The reason Ford pulled out is that it is losing confidence in the UK trading environment.

Of course, it is not just automotive. A recent paper from the Royal Economic Society finds that the confusion following Brexit has caused an output loss—a cut in GDP—of 1.7% to 2.5% up to the end of 2018. Today's announcement of a drop in GDP of 0.4% in one month is a shocking reminder, but we should not be surprised. We were warned. In fact, the ERG's favourite economist, Patrick Minford, explained some time ago that a no-deal Brexit would see manufacturers go the same way as the coal industry. That prediction is now being priced into every industrial and commercial decision made today, and it is the workers of Bridgend who are falling foul of that today.

In the *FT*, the Business Secretary is quoted as saying in this context that there are "grounds for optimism". I am sure the Minister will agree with his colleague, because Ministers have to agree with Secretaries of State, so could he please answer just this one question, if none of the others. On this rainy day, what are the grounds for optimism for the workers of Ford Bridgend?

Lord Bourne of Aberystwyth: My Lords, first, I wish the noble Lord, Lord Griffiths, a speedy recovery from his cataract operation. It is very good to see him here at all, and he did an excellent job putting his case.

I shall try to answer the points made by the noble Lords, Lord Griffiths and Lord Fox, in the order in which they were made, if I may. First, there is a consultation here. I agree that this is serious—it is a devastating body blow, and there is no doubt of that—but we must appreciate that a consultation will be going on. Secondly, we know that the manufacture of the Dragon engine will continue until at least February next year, and the Jaguar Land Rover production still at the plant will continue until September next year. I am not making light of the issues, but it is important to get them in the proper context.

Both noble Lords touched on the task force. I think it is fair to say that the task force system was a creation of the Welsh Government. I was privileged to act as chairman of one in relation to a previous job problem—the closure of the Murco oil refinery in west Wales—and I can say with confidence that such task forces are very effective at bringing agencies together to talk about ways to mitigate problems. The first meeting of this task force will be within a week, and both Ken Skates from the Welsh Government and the Secretary of State, Alun Cairns, will be at that meeting, as will representatives of the unions. I understand that the consultation and discussions going on so far between the Secretary of State, the unions and Ken Skates have been very constructive.

It is very important that situations such as this do not become a political football. That is not to say that political points will not be made, but what is important

[Lord Bourne of Aberystwyth]
for the people in Bridgend is that we act responsibly to seek new jobs, to find out what we can do to ensure that the highly skilled workforce there—including some excellently paid jobs in that town and the surrounding area of Ogmore and the south-west Wales valleys—is properly served by the work we do. I think that is the intention of all those involved.

On the point about Brexit, it is very important that we do not misrepresent what this is. I am not saying that there is not a discussion to be had on Brexit, and I will come to that, but it is very clear from what was said by Ford and from the context of the Statement, with significant job losses in Germany—5,000 being talked about—Spain and France, that this is not simply about Brexit, or it would just have been about jobs being lost in Britain.

That said, I accept—and noble Lords would do well to reflect on this—that Ford, Honda, Nissan and the Society of Motor Manufacturers and Traders have all called for support for a deal. Indeed, they have all called for support for the deal that has been voted down: the Prime Minister's deal. I say to noble Lords that, yes, it is important that we get a deal, but there is a deal that these manufacturers have been urging support for which does not attract support from most Members of parties opposite. I make that point advisedly.

I accept that this is also an issue about the supply chain. That will be discussed in the context of the task force. The supply chain is also a factor with Honda. What has been offered in support for Honda's supply chain will also be offered here. It is worth noting that the automotive sector deal, which is a significant part of the business strategy, has expended £16 million on supply chain assistance.

Noble Lords also need to see that the context of this is the move from diesel and petrol to electrification. The support we are giving to electrification—low-emission vehicles and infrastructure—is significant here. Thoughts about how we can develop that would really help the Welsh workforce, and indeed the British workforce, going forward.

6.24 pm

Lord Morris of Aberavon (Lab): My Lords, 40 years ago, as the Welsh Secretary, encouraged by Jim Callaghan, I provided the incentives for Ford to come to Bridgend, including, unconventionally, selling it the freehold in order to clinch the deal. The balance sheet over the years has been good jobs and good, planned industrial relations. Very little notice to Governments has been given of this calamitous decision. Will the Minister confirm that the usual yardstick of a total 4:1 loss in jobs can be expected, as happens in other industries? Secondly, can he assure me that stricter labour regulation and redundancy legislation in other countries, such as applies in Valencia, if the plant is still flourishing—I visited it as a Back-Bench MP—and Mexico have not affected this decision? Despite current denials, Brexit has loomed large over recent decisions in the whole of the automotive industry.

Lord Bourne of Aberystwyth: My Lords, first, I acknowledge the massive role that the noble and learned Lord, Lord Morris, had in the establishment of the Bridgend plant, very close to his former constituency of Aberavon. I agree with him that the supply chain is important. I have no specific figures on that, but it is not just the supply chain; the broader economy suffers in a situation such as this. The unemployment rate in Bridgend is very close to the national average—I think it is marginally above—but this is clearly an important situation.

I have no specific knowledge of redundancy legislation in Spain and Mexico, but I will write to the noble and learned Lord, if I may. As for trade union relations with Ford, Ford's treatment of workers in previous job situations has been fair. I do not want to talk it up too much, but it has been fair. I know that that will be very much on the mind of the task force. I am also confident that the Secretary of State will want to talk to the noble and learned Lord about his experience of Ford, and I hope that he is available, as I am sure that that would be helpful going forward.

Lord Howell of Guildford (Con): My Lords, this is obviously a miserable affair. The Statement mentioned China. Is it not a fact that the entire worldwide motor industry is now in a state of turmoil with the rise of Asia? China has not yet even begun its impact on world car markets, but it will be massive when it comes. On top of that, there are the changes in technology, with the move to electric vehicles. The war on diesel clearly has not helped and nor, frankly, has Brexit. Otherwise, why would the motor industry have cut its output in the past month by 24%? That is a devastating impact.

One understands all that, but is not the time coming when we should have a strategic overview on all those problems? We have had Honda, JLR, the Nissan problem with Renault and the question of their future production here. Now, we have Ford. We are not just talking about motor manufacture but every conceivable component of a vast industry employing 822,000 people in all. Surely the time has come for a really strategic insight into how this kind of transport will develop here and how we fit into the world of rising China, America and Latin America, all of which will be in the motor manufacturing business and the transport business on a colossal scale. We have not seen anything yet.

Lord Bourne of Aberystwyth: My Lords, I am grateful to my noble friend for the benefit of his experience on this issue. I very much agree that we are dealing with a global situation; this is not simply about Europe or Brexit. I accept that there are Brexit issues relating to the economy, but the far more important issue here is the move away from diesel and petrol towards low-emission vehicles and the growth of markets in China and India in particular.

On strategic responses to this issue, we have the automotive sector deal and we committed £274 million to the Faraday challenge on battery storage, which is important. A couple of weeks ago, I had the great privilege of going round Northern Industrial Battery Services Ltd in Welshpool, which is significantly attached to what BEIS is doing and provides a useful glimpse into the future. We need to move towards battery storage and low-emission vehicles, which is a large part of why the automotive sector has seen this period

of turbulence. That turbulence has not been limited to this country, of course: as I indicated, this is going on pan-Europe. I take seriously what the noble Lord, Lord Howell, says, but I assure him that we are very much there.

I should add that we are investing in infrastructure in the low-emission and electric sectors. I am sure that, like me, noble Lords have noticed a greater prevalence of battery-charging in our cities now.

Lord Wigley (PC): My Lords, I really must challenge the Minister on the total non sequitur in the Statement that this decision is not about Brexit, as engines will come from Mexico. Is he not aware that, in January, a Ford executive—Bob Shanks—said that a no-deal Brexit would be,

"catastrophic for the UK auto industry and Ford's manufacturing operations in the country. We will take whatever action is necessary to preserve the competitiveness of our European business"?

Is the Minister not aware that Ford executives made it clear to Welsh Government Ministers that the danger of a no-deal Brexit was a contributory factor in their decision to close the Bridgend engine plant? What discussions have the Government had, or will they have, with the Welsh Government to create an aid package that will persuade Ford to suspend its decision until it is known whether we are to suffer a disastrous no-deal Brexit outcome?

Lord Bourne of Aberystwyth: My Lords, the noble Lord knows that I have immense respect for him but, on the move to Mexico, I rely not on the Statement but on what Ford has said. It made it quite clear that this decision would have been taken independently of Brexit. That is not to say that Brexit is not an important issue for the economy, but that debate is different from the one on this particular decision. We would do well to listen to Ford.

The noble Lord makes a significant and fair point about aid packages and assistance, which I am sure the task force will begin to look at next week in its first meeting. In the meantime, consultation is ongoing so there is time to look at this issue, although I accept that there is a degree of urgency. That will be one of the early things that Ken Skates, as the Welsh Government Minister, and the Secretary of State will want to look at with the unions and others when the task force meets.

Lord Steel of Aikwood (LD): My Lords, I draw attention to my interests in the register as the president of the Jaguar Drivers' Club in Britain. Ford is simply joining the queue after Jaguar Land Rover and Honda in closing plants. Although the Minister is absolutely right to emphasise that the transfer to electric technology is causing this issue—we do not deny that—the number of motor vehicles produced in this country has fallen by 45% in one year. That is horrific. Uncertainty over our future trading relationship with the rest of our big market in Europe is causing this issue. These companies are all internationally owned but no international investor will consider the major investment in new technologies that we need as long as this uncertainty exists. The Minister needs to take that message back to his colleagues.

Lord Bourne of Aberystwyth: My Lords, I can be led only by what the companies concerned are saying in relation to potential job losses, which is that this decision would have been taken regardless of Brexit. The noble Lord says that the economy in general is not benefiting from the Brexit uncertainty—indeed, that it is being harmed. He is absolutely right. I do not think that there is any doubt of that. As I said in answer to an earlier question, Ford, Nissan and Honda have all said that we need a deal; they have also said that people should support the deal that was put forward—a point I have already made. We must be realistic about this particular decision. The appropriate response to secure jobs should include investment, pushing the low-emissions sector in the automotive sector deal—as we are doing—and ensuring that we support battery storage and so on.

Lord Berkeley (Lab): My Lords, the noble Lord, Lord Wigley, quoted a senior Ford executive saying that Brexit was entirely to blame, but the Minister seemed to contradict that completely. Either one of two different Ford executives is lying or somebody has misunderstood something, because those statements are complete opposites. On closing Bridgend, which is a terribly sad occasion, has Ford indicated whether it will move electric car production there instead, or will that go to the rest of Europe, which Brexit is not affecting?

Lord Bourne of Aberystwyth: My Lords, I am not sure that the noble Lord was here to hear the Statement.

Lord Shipley (LD): My Lords, the Minister has made a number of comments about a no-deal Brexit. Is he aware of an Oxford University study published in April predicting that the UK car industry could shrink by almost half by the mid-2020s in a no-deal Brexit? If so, does he agree that the election of a Conservative leader and Prime Minister who promotes no deal is not in the interests of the British car industry?

Lord Bourne of Aberystwyth: My Lords, fascinated as I am by the ongoing leadership election, I do not have any role in it—not until it comes to the membership, at least—so I will not give any commentary on it. However, I agree with the noble Lord about the need for certainty in the economy; he is absolutely right about that. I also agree that a no-deal Brexit is not in the interests of the British economy. The vast majority of candidates accept that and are working towards a deal, which is desirable. If we are talking about the wider economy, however, we come back to the fundamental point on the delivery of Brexit: that there was a vote and that the vote cannot be ignored. To come back to the point about helping the highly qualified, highly skilled, well-paid workforce at Bridgend, we will do the best we can for them by seeking fresh investment and ensuring that the possibilities touched on by the noble Lord are there to service not just Europe but the rest of the world with electric vehicles.

Lord Roberts of Llandudno (LD): My Lords, the Minister will be aware of the anxiety over the future of Airbus. Of course, Airbus is based in north, not south, Wales but it could lose 7,000 employees and

[Lord Roberts of Llandudno]
400 apprentices could lose the opportunity of an occupation. The supply chain could also suffer. This is because the Government insist on going ahead with Brexit without a fair deal or any deal at all. Why on earth do the Government not realise that their actions could decimate the workforce in Wales again, not only in Airbus but in the agricultural industry? I hope that the Government will look at Bridgend and at least say, "Yes, Brexit is partly responsible. Let us now halt this insanity of withdrawing from Europe".

Lord Bourne of Aberystwyth: My Lords, I understand some Members' desire to make this about Brexit but it is important that we focus on the job in hand, as I said. The noble Lord knows that I have immense respect for him, but we do not want to be in the position of talking down the excellent production of and workforce at Airbus. There really is no call for that. We should focus on helping the workforce at Bridgend.

Lord Stoneham of Droxford (LD): My Lords, as someone who worked in the motor industry early in his career, I know that although the executives in the industry are cautious about what they say, they need Brexit like a hole in the head, whether it is with a deal or no deal. That is because there is a seven-year investment cycle in the industry. It is not about what is happening in the short term but about what is going to happen as each production line comes up for investment, as is now the case in Bridgend. The whole industry risks being destroyed by the uncertainty—not just on whether there is a deal in the next few months but over the next five years while we try to negotiate a deal going forward. That is the problem for the motor industry and surely that is why it is at risk.

Lord Bourne of Aberystwyth: My Lords, again it is important that we as politicians do not seek to interpret what executives in the car industry say. They are sufficiently strong to know their own minds and they are not backward about coming forward and telling Governments what they feel. If they say that this decision would have been made anyway and that it is not related to Brexit, we must take them at their word. It does not do any good at all to claim that this is about something that it is not. That is not to say, as I have now repeated many times, that uncertainty in the economy is a good thing; it is not and we all know that. That is why we need a Brexit deal and I hope that noble Lords will take that message back to their leaders so that we can come together and get a deal before the end of October.

Lord Wigley: My Lords, I hope that I can raise one more point. The Minister said that Brexit had played no part in this and that this position had been accepted by Welsh Government Ministers. Did he not hear Ken Skates AM yesterday morning on the radio making it perfectly clear that Ford had told him that a no-deal Brexit was a contributory factor in this decision?

Lord Bourne of Aberystwyth: My Lords, I have worked a great deal on the Welsh economy with Ken Skates. I did not have the privilege of hearing that interview but I did have the privilege of seeing what Ford had said in relation to the job losses. That is the point I was making.

Grenfell Response

Statement

6.42 pm

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, with the permission of the House, I shall repeat a Statement made in another place by the Secretary of State for Housing, Communities and Local Government. The Statement is as follows:

"Mr Speaker, I wish to make a Statement on the Government's response to the Grenfell Tower fire. I am also writing to the chair of the Select Committee to provide a formal report on progress, a copy of which will be placed in the Library of the House. But before I begin, I would like to take a moment to thank all those who responded to the serious fire in Barking, east London, yesterday afternoon. The London Borough of Barking and Dagenham provided emergency accommodation for those residents who needed it, and we will continue to work with the council to ensure that residents receive the support they need at this most difficult time. While the cause of the fire has yet to be confirmed, I have asked the Building Research Establishment to investigate the fire, working with the London Fire Brigade. I have also asked the independent expert panel on wider fire safety issues to provide urgent advice to the Government. We will take account of the findings of the investigation and the advice of the panel in our further work on reviewing the fire safety guidance. The local authority and the building owners are reviewing fire safety for the rest of the development, and I remain in close contact with the London Fire Brigade. I will also be visiting the community later today.

As we mark two years since the devastating events of 14 June 2017, I know the whole House will join me in remembrance and solidarity with the people of north Kensington. I want them to know that this House is behind them in honouring the loved ones they lost, in helping those left behind to heal and rebuild their lives, and in our determination to ensure that nothing like this can ever happen again.

This unprecedented disaster has been met with an unprecedented response across government, our public services, local government and the voluntary sector. I am hugely thankful to everyone involved, especially our emergency services and the public and voluntary sectors. In total, we have spent over £46 million of national government funds and committed a further £55 million to help meet rehousing costs, reimburse the Royal Borough of Kensington and Chelsea for Grenfell site management costs, deliver new health and well-being services, and deliver improvements to the Lancaster West Estate. More than £27.8 million of the nearly £29 million raised through the generosity of the British public has also now been distributed, thanks to the Charity Commission. Those affected are also getting vital support from the NHS, with a further £50 million committed over the next five years to

addressing long-term physical and mental health needs. To date, nearly 8,000 health screenings have been completed, including for more than 900 children, with over 2,700 individuals receiving or having received treatment for trauma, including over 600 children.

We are determined to make sure that those affected remain at the heart of the response to this tragedy. That is why my right honourable friend the Member for Ruislip, Northwood and Pinner continues to meet families regularly in his role as the Grenfell Victims' Minister. It is why the Prime Minister recently appointed two new panel members for phase 2 of the Grenfell Tower public inquiry, to make sure it has the necessary diversity of skills and experience. And it is why the community will be pivotal to decisions about the long-term future of the site as the Government take ownership of this to ensure sensitivities are respected, and they are fully engaged in additional environmental checks after concerns were raised.

Testing has started to assess any risks to health. We will ensure that all appropriate action is taken. One of our biggest priorities has been rehousing the 201 households who lost their homes, with the Royal Borough of Kensington and Chelsea acquiring over 300 homes to meet their needs and provide choice. I am pleased that all 201 households have accepted permanent or temporary homes, with 184 households in permanent accommodation and 14 in good-quality temporary homes. This represents significant progress since last year, but I am concerned that three households remain in emergency accommodation, including one in a hotel. I have asked the Independent Grenfell Recovery Taskforce, which was set up to ensure that the Royal Borough of Kensington and Chelsea better supports residents and rebuilds trust, to look into this. I have been assured that the council is taking an appropriate and sensitive approach, given the complex needs of these households, to find the right long-term solution for each of them.

A new home is undoubtedly an important step on the road to recovery, and it is vital that this is reinforced by long-term support such as the recovery services co-designed by the council in partnership with the community and local health partners. It is essential that we build on this collaboration, with the council listening and the community being heard. That is fundamental to laying the foundations for a new and stronger partnership between residents and those who serve them.

Central to this relationship, and indeed to so much of the work flowing from the fire, is the need to rebuild trust. Above all, this means ensuring that people are safe, and feel safe, in their homes. With that in mind, Members will be aware that we launched a consultation last week on proposals to implement meaningful reform to our building and fire safety regulatory systems following the independent review led by Dame Judith Hackitt. It will provide a clear focus on responsibility and accountability and give residents a stronger voice to achieve the enduring change that is needed. Alongside this, the Government have also launched a call for evidence on the fire safety order to determine what changes may be required to strengthen it. This follows the recent launch of a new fund to expedite remediation of buildings with unsafe ACM cladding in the private sector and protect leaseholders, adding up to a £600 million commitment from the Government to make buildings in both the private and social sectors safe.

This builds on other significant measures we have undertaken, such as a ban on combustible cladding, a review of the building regulations fire safety guidance—Approved Document B—and tests on non-ACM materials not only to keep people safe now but also to fundamentally transform the way we build in the future, through legislation, yes, but more crucially through a change in culture. But I know that we must continue to challenge on what more needs to be done.

People living in buildings like Grenfell Tower need to trust that there can be no repeat of what happened that night, to trust that the state understands their lives and is working for them. That is why the social housing Green Paper, published last year, and the new deal it sets out for people living in social housing matter so much. My thanks go to the many residents who engaged with us on this for their invaluable contribution. We are assessing the consultation responses and finalising our response. The deal it proposes aims to rebalance the relationship between residents and landlords, address stigma and ensure that homes are safe and decent. In addition to our drive, backed by billions, to boost the supply of social housing, it is a deal that promises to renew our commitment to people in social housing, ensuring that everyone, no matter where they live, has the security, dignity and opportunities they need to build a better life.

This, ultimately, is what we hope for for the bereaved and survivors and for the strong, proud people of north Kensington, who have shown us the power of community. They, and we, will never, ever forget those who died in the most horrific circumstances.

I know that the pain of that loss continues as they wait for answers and to see justice done as the police investigation and public inquiry continue their important work. But they should know that they are not alone. The Government, this House and, indeed, our whole country will always have a stake in the future of Grenfell. I have every faith that this remarkable community, working in partnership, will move forward, rebuild and emerge even stronger. I commend this Statement to the House".

6.50 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, I thank the noble Lord, Lord Bourne of Aberystwyth, for repeating the Statement given by his right honourable friend the Member for Old Bexley and Sidcup in the other place earlier today. I refer the House to my relevant interests as a vice-president of the Local Government Association.

I join the noble Lord in paying tribute to the London Fire Brigade, the other emergency services and the staff of the London Borough of Barking and Dagenham for the way they responded to yesterday's fire. They are true public servants, one and all, and we owe them our thanks and gratitude for the exemplary way they carry out their duties.

I welcome the reviews referred to in the Statement, but more needs to be done to ensure that the regulations in force are fit for purpose, and this needs to be done urgently. While progress has been made in many areas,

[LORD KENNEDY OF SOUTHWARK]
and is to be welcomed, things are generally moving too slowly. Perhaps the noble Lord could tell the House what he is doing to inject more speed into matters.

I join the noble Lord and others in remembering those who lost their lives on that terrible night two years ago, and I am thinking of those who were injured and their families and friends. I also pay tribute to all the emergency services, the local authority staff, civil servants, the faith communities and the community at large in north Kensington, who have done so much to get people back on their feet.

What have the Government learned over the past two years to ensure that the initial response from the local authority, which failed two years ago, will not happen again? Specifically, I am concerned about the department's thinking, as opposed to any recommendations that will come out of the public inquiry. That thinking will, I am sure, have played some role in how events last night in Barking and Dagenham were dealt with. It would be good if the noble Lord could update the House.

I was pleased to note that the right honourable Member for Ruislip, Northwood and Pinner meets regularly with the families. Can the noble Lord tell the House when was the last time the Secretary of State sat down with the families and others in the community for a formal discussion, as opposed to the event today in Speaker's House? When did the Secretary of State last meet both the leader of the council, Councillor Elizabeth Campbell, and the chief executive, Mr Barry Quirk?

Clearly progress has been made in finding people new accommodation, but we need to get the remaining households into permanent accommodation as quickly as possible. It is now two years since the fire, and a new permanent home is an important milestone on the road to recovery.

In respect of the consultation launched last week, does the noble Lord accept that there is some urgency here? Across the country, people living in blocks of flats want to see action. I have no doubt at all about the good intention but, as I said, it is the pace of change and reform that concerns me.

The Statement referred to the social housing Green Paper, and I was surprised to hear reference to the need to "address stigma". I grew up on a council estate and see no stigma about it whatever. Council estates are full of law-abiding, hard-working citizens. My parents always paid their taxes and their rent, and they worked hard. I do not see the stigma there. What worries me is that, if that is the Government's view, how is it impacting government policy? It would be good to hear the noble Lord's view on that.

I also want to make reference to the position of the blocks that are in private hands. We need to make urgent progress with the recladding programme. I was obviously pleased that the Government announced additional funding, but will we get to the point when, if progress is not sufficiently quick, we will name the owners of the blocks with dangerous cladding? Will we set a deadline for when the work needs to be done—say, September this year or some time early next year? Are the Government considering giving additional powers to local authorities under the Housing Act 2004 to include fines or other action if the owners of these blocks are not moving quickly enough? Where blocks are not being dealt with quickly enough, will the Government consider allowing local authorities to apply for that funding to actually do the work? We need to ensure that people are safe. It would be good to get a response from the noble Lord on those points.

What about other public buildings with dangerous cladding, such as schools and hospitals? What are we doing there?

I understand fully that the noble Lord may not be able to answer all my questions, but I am sure he will respond to me in writing, as he normally does.

Lord Stunell (LD): My Lords, I associate myself with the words of the noble Lord, Lord Kennedy, and with the sentiments of the Statement in what it has to say about both the Barking fire and the role of the voluntary and emergency services at Grenfell. I should perhaps remind the House that, during the coalition Government, I had some responsibility for building regulation policy. I welcome in particular the referral of the Barking fire to the independent expert panel. It seems to me that, if there are further lessons to learn, we need to learn them quickly and make sure that the appropriate action is put in place promptly.

We should very much recognise the fantastic work done by voluntary and community groups in the two years since the fire. It has been quite outstanding; they have brought the community together, and we should celebrate that amid all the tragedy of the fire itself.

I welcome the information in the Statement on rehousing residents. There is a little more to do, but it is good to know that progress is being made. I also welcome the progress on meeting the physical and mental health needs of residents, and carrying out proper testing of potential toxicity around the site.

I include in my congratulations the often maligned British public and their £29 million of charitable giving to relieve hardship, and the stout work done in distributing the funds appropriately in the area.

However, I have some questions for the Minister. Is he aware of the *Building* magazine survey of building contractors, published last week, which shows that very few firms have yet taken any serious steps to change their supervision and inspection regimes on projects, or their monitoring and recording procedures on the buildings they put up? The change of culture referred to in the Statement does not seem to be happening. The recommendations of Dame Judith Hackitt's inquiry, as far as they are applicable to the industry, seem to have made no practical difference, despite the urgency of action. It is not really surprising that Dame Judith herself has publicly expressed concern that her report has now gone into the "too difficult" box.

Given that, does last week's consultation have a proper timeline? Some might say that it is not really in accordance with the Minister's often expressed views that we should do things "at pace" in relation to this tragedy. We are now two years on, and the consultation and a somewhat minimalist pilot scheme have just been launched. Can the Minister give us some assurance on, or timeline for, when legislation and statutory instruments will be in front of Parliament to change

the regulations now in force and the culture of the construction industry? As I am sure the Minister is absolutely committed to do, that is all designed to ensure that we never have another Grenfell Tower tragedy.

Lord Bourne of Aberystwyth: My Lords, I thank the noble Lords, Lord Kennedy and Lord Stunell, for the very appropriate way in which they addressed these issues, their reasonable response and the support that they indicated for public servants, who really have committed to this work, not just on Grenfell but more recently in Barking. Too often, we do not underline how much we owe our public sector, particularly the emergency services. I also thank the noble Lord, Lord Stunell, for what he said about the generosity of the British public and the £29 million in donations. If you really want to understand a country, you look at its voluntary sector and how people are supporting it through charitable donations—it speaks volumes. Also, as the noble Lord, Lord Kennedy, said, more than anything else, the dignity and humility of the victims of Grenfell—the survivors—in how they have conducted themselves throughout what must have been an extremely difficult day in the anniversary week of Grenfell is certainly worth mentioning.

I shall try to cover the questions raised and, as the noble Lord, Lord Kennedy, kindly suggested, pick up any other points in a letter which I will copy to the Library. However, first, I will give an update on the position in De Pass Gardens in Barking. My right honourable friend the Secretary of State is there this afternoon to thank the emergency services, to see first-hand what happened and to understand it. Clearly, an investigation is going on and I thank the noble Lord, Lord Stunell, for what he said, based on his experience as a Minister, about the appropriate response of that investigation going on with expert assistance. Thank God no one was seriously injured. Two people suffered from smoke inhalation but there were no serious injuries.

The Borough of Barking and Dagenham has stepped forward to assist with accommodation. Clearly, people there have lost their property, their homes and their memories. It is a serious situation but everything is being done that may be done to assist there.

I pay tribute to the firefighters, the first of whom were on the scene in less than six minutes from the time the first 999 call was received. We should note that, and applaud and thank them for it. It clearly helped in an awful situation and we will no doubt come to that again.

The noble Lord, Lord Kennedy, asked about the Secretary of State engaging with families and specifically referred to Elizabeth Campbell and Barry Quirk. The last time he saw them in a formal setting was on 21 May at a ministerial recovery group, which happen fairly frequently. As the noble Lord rightly acknowledged, the Secretary of State met with Grenfell United earlier today at the reception and the Housing Minister, the honourable Member for North West Hampshire, met Grenfell United last Monday—he tends to engage more frequently than the Secretary of State—and the Victims Minister also holds regular casework surgeries as appropriate.

The noble Lord, Lord Kennedy, asked about speed. He knows that I tend to get as exasperated as he does, understandably, about what sometimes seems slow progress. It is perhaps like the fire engines getting there yesterday—I am sure that would have seemed much longer than six minutes to the people suffering on the ground in the fire. There is obviously a process to go through in relation to the Hackitt review.

We are making progress with document B independently of the consultation on the need for appropriate legislation. As I have always said, there is a need to proceed at pace. The Secretary of State is committed to appropriate legislation but we need consultation with people affected to see exactly what form the legislation should take. That is going forward. It is not in the "too difficult" box. I did not have the opportunity to see the survey of building contractors that the noble Lord, Lord Stunell, referred to, but it underlines the need to take action and the appropriate change to the law is going forward. We owe it to all the people affected by the dreadful event of two years ago to ensure that we get it right.

Any points I have missed, I will pick up by letter.

7.04 pm

Baroness Warwick of Undercliffe (Lab): My Lords, I attended the reception hosted by the Speaker in another place for Grenfell United this lunchtime. It was humbling to hear again the testimony of those affected by the disaster. I commend Grenfell United for the generosity of spirit it has shown in campaigning for building safety measures to ensure the safety of all residents, right across the country, now and in the future.

However, it was clearly frustrated and angry that, even after two years, thousands of people are still living in dangerous buildings and that not enough action has been taken to put things right. In the Statement, the Secretary of State acknowledged that there is a lot more to be done and, as chair of the National Housing Federation—which I declare—I know that housing associations are working hard to ensure that their buildings are as safe as possible. How does the Minister intend to engage with Grenfell United in responding to the range of issues in its campaign for safer buildings?

Lord Bourne of Aberystwyth: My Lords, I thank the noble Baroness for her comments, with which I associate myself. I too was at the Speaker's reception earlier, as I was last year, and it is humbling to see the dignity and humility of people who have lost so much and to appreciate that they are focused on learning the lessons and how we can seek to ensure that this should never happen again. We must do that and we must learn from that.

There was a great deal of literature at the meeting but I have not yet had the opportunity to look at it, but I will discuss it with the Minister of State and the Housing Minister and decide what we should do in relation to the valid points brought forward. It is a great opportunity to engage with Grenfell United on the basis of the suggestions it has put forward, on how we approach dangerous buildings and what we do in relation to them.

[LORD BOURNE OF ABERYSTWYTH]

The noble Baroness did not ask specifically about the removal of cladding but we are now in a position in the social sector where 87% of buildings have had work either begun or completed in relation to what is necessary for the removal of cladding; 13% have a plan in place but the work has not yet started. As to the 175 buildings in the private sector—I will correct the number if I have got it wrong—the £200 million we have committed has galvanised this. We are beginning to see success there, although it is slower. I will give the precise figures in a write-round letter so that everyone has them to look at.

The Lord Bishop of Coventry: My Lords, I echo the praise that has already been given to the emergency services following both Barking and the Grenfell disaster. I welcome the Statement's recognition of the power of community and its commitment to a new and stronger partnership between residents and those who serve them, for trust to be rebuilt and, in particular, for the council to listen and the community to be heard.

The Minister will be aware of the recent report of the Bishop of Kensington, one of the faith leaders alluded to by the noble Lord, Lord Kennedy. Will the Government encourage serious engagement with this thoughtful report arising out of his conversations with local residents, his identification of their sense of loss of agency and his inspiring call for a renewal of a properly local democratic culture? Does the Minister agree that this careful report shows how Grenfell has much to teach government and society as a whole about the reimagination of welfare, housing and community life—the kind of reimagination that will be necessary to effect the long-term social changes that Grenfell deserves as its legacy?

Lord Bourne of Aberystwyth: My Lords, I thank the right reverend Prelate for that contribution. I readily acknowledge the importance of faith institutions, both generally and specifically in relation to Grenfell, and the contribution of the Bishop of Kensington. I also reference the work done by Muslim Aid and the local mosque, which was also significant. Very often, faith institutions are the most trusted and the most responsive. They are there on the spot, they are local and they have been significant players, if I can use an inappropriate phrase, in relation to what is right about the response in Grenfell.

As the right reverend Prelate rightly said, the community is central to this and the planning to ensure that this kind of situation does not happen again has been greatly assisted by the faith organisations. We want to study what the Bishop of Kensington has put in his report and I know that the Minister for Housing and the Minister for Grenfell recovery will be engaged in that. He is right about the importance of democratic culture and community. It is a good way of putting it.

Baroness Pinnock (LD): I thank the Minister for repeating the Statement and associate myself with the remarks made about the community response and the emergency services, which did a wonderful job in supporting that community and saving lives. I draw the attention of the House to my interests in local government as set out in the register. The Minister will perhaps not be surprised if I share my utter frustration at the lack of speed with which action is being taken to put right the wrongs that led to that awful fire. In May 2018, Dame Judith Hackitt's report *Building a Safer Future* was published. The Government swiftly and rightly accepted its recommendations. That was excellent. At the end of 2018, the Government published their implementation plan for the Hackitt report, but sadly no timetable was attached to it. Dame Judith had written:

> "There is no reason to wait for legal change to start the process of behaviour change … A sense of urgency and commitment from everyone is needed".

Where is it? Why have changes not been made? Why can we not get going with what everyone accepts is the right thing to do, making changes to prevent future disasters of the sort that occurred at Grenfell and giving people confidence that they are living in secure and safe homes? Will the Minister give us a sense of urgency in his response?

Lord Bourne of Aberystwyth: My Lords, I thank the noble Baroness for her remarks. To reassure her, there are two points to be made. First, we are having a consultation on Dame Judith Hackitt's report and the framework changes that are necessary. I think that consultation is right before one proceeds with legislation in that situation. However, that has not stopped us doing things in relation to urgent action. As the noble Baroness knows, we have also banned combustible ACM cladding on buildings. The Secretary of State has acted decisively with progressing *Approved Document B*, which should be ready at the end of July. Behaviour change has been highlighted and has therefore started, but I accept that there is more to be done. I, too, sometimes get frustrated and wish that we could do it more quickly, but it would be wrong and inappropriate to suggest that we have not done some very important things. Indeed, we have ensured that ACM cladding is coming off social and private-sector blocks. That has meant the commitment of some considerable amount of public money, but it is the right thing to do.

Lord Whitty (Lab): I thank the Minister for repeating the Statement and I agree with many—all, I think—of the points that have been made, but two underlying issues do not seem to have been addressed. The first is the clear failure of the authorities in this instance—it appears also to be true of Barking—to listen to the concerns of residents. In Grenfell, there were anxieties about not only the cladding but the lack of containment between flats, which used to be a common feature of most council blocks, the removal of the piping in the ducts, the lack of a sprinkler system and the lack of an effective alarm system. All those things had been raised months and years before the tragedy happened by the people who lived there, and by and large they were ignored. From the instant reports from Barking, it sounds as though a very similar situation arose there. It is part of what is often a failure of the authorities to recognise the expertise of the people who live in these premises and understand the situation. Unless there is a more responsive attitude by the authorities, regrettably, we will see more of these tragedies. Whatever we do to change the law and the regulations,

effectively the best policers of the situations in those buildings will be the residents themselves, and we need to listen to them.

The second aspect, which would reinforce that, is resources. It is not just a question of the regulations. We know that in most local authorities, building regulation has become a Cinderella service, and quite frequently seriously understaffed. Unless we—from the Government through to local authorities—put more people into building regulation, planning departments and the Health and Safety Executive, the buildings we put up now will not be fit for purpose, in the same way that Grenfell eventually and tragically turned out to be not fit for purpose. Those two features also need to be addressed as part of the culture or agency for the people who live there, to whom the right reverend Prelate referred, as a comprehensive and holistic solution to these issues.

Finally, it is still not comprehensible to those who were living in Kensington and know the situation that there have been no prosecutions. Until that is remedied, this tragic episode cannot be truly finished.

Lord Bourne of Aberystwyth: My Lords, I thank the noble Lord, Lord Whitty, for that important contribution. I shall take his three points in the order he made them. The first was on the failure of the authorities. It is a very fair point, and something we are focused on. He will understand that I cannot comment on the situation in Barking; it is very early days and we have not yet analysed it sufficiently to be able to comment on it. However, I accept that something central to the messages that we are getting and to common sense is that the people who know their housing best are the people who live in it. That fundamental lesson needs to sink in and be taken forward.

I know that noble Lords and many others think the public inquiry is painfully slow, but 200,000 documents are being examined and will inform the response of the three commissioners. I very much welcome the additional two commissioners. They will be very helpful, but I agree with the point the noble Lord, Lord Whitty, is making. In relation to resources, the budget is important. Changes in regulations will no doubt feature in the spending review, but I would not disagree with that either.

In relation to prosecutions and the police situation, the noble Lord will know that the separation of powers is such that I cannot comment in any detail on what is happening. Indeed, I do not know in any detail what is happening, but interviews have been held under caution. In such a situation, one would expect there to be potential for ensuring that those who are to blame for aspects of this are brought to justice. While the matters that relate to the police are quite rightly not within the control of government on a daily basis, it seems that work is happening in that regard.

Lord Shipley (LD): My Lords, I remind the House of my interests as set out in the register. I want to raise two issues about tenants' rights, both of which have been proposed by Grenfell United. The first is that there should be a new, separate consumer protection regulator to protect tenants and change the culture of social housing across the country—in other words, not just leaving everything within the remit of the current system of regulation. That idea has merit, and I hope that the Government will be willing to look at it. The second relates to freedom of information. Grenfell United is—in my view, rightly—calling for an extension of the Freedom of Information Act to cover tenant management organisations and housing associations, to give tenants the right to see critical information about their homes. Have the Government done anything about that, as previously proposed? It seems to me that tenants, as occupiers of their dwellings, have a right to know what their landlord knows about their property.

Lord Bourne of Aberystwyth: My Lords, I thank the noble Lord, Lord Shipley, for the constructive way in which he approaches these issues, as always. I have not yet read the document that Grenfell United distributed today but I will no doubt have that opportunity, as will other Ministers. Obviously, in the context of the social housing Green Paper and the subsequent legislation, there will be an opportunity to look at some of these points. Certainly, the point that the noble Lord made about freedom of information seems a very sensible way forward. I do not want to commit us to anything at this stage, other than to say that we will look at this issue very seriously along with the other proposals that have been made. As I said, these people know the situation better than anybody else and we do right to consider what they say.

National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2019

Motion to Regret

7.21 pm

Moved by ***Baroness Thornton***

That this House regrets that the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2019, in the rate increase that the National Health Service pays to care homes to cover the costs of services, include an unrealistic "efficiency expectation" of 3.1 per cent that may lead to further shortfalls in social care funding; and further regrets that Her Majesty's Government still do not have a long-term funding package for social care, which is urgently needed to alleviate financial instability in the care home sector (SI 2019/789).

Relevant document: 47th Report from the Secondary Legislation Scrutiny Committee

Baroness Thornton (Lab): My Lords, first, I declare my interests as outlined in the register.

If ever a statutory instrument were crying out to be discussed on the Floor of the House, this one must rate pretty highly for a number of reasons, not least the instability in this sector and the lack of, and disgraceful delay in bringing forward, a long-term strategy for the social care sector. I might do the

[BARONESS THORNTON]
parliamentary equivalent of a scream if the Minister uses the words "soon" or "imminent" with regard to the strategy.

The somewhat dry words of a statutory instrument, particularly this one, conceal a reality—the lives and security of people for whom we have a responsibility as a society, as family members and in our communities, and this is the reason for my Motion to Regret. Each threat to a care home that houses the oldest and most vulnerable people in our community means, literally, that people will die. They will die when they are moved or they will become ill from the stress of not knowing what the future holds for them or where they might end up living. They wonder whether the people who look after them will be kind and caring.

At the beginning of Carers Week, this seems an appropriate debate. Carers care for their loved ones in their home, but there are also many carers who support their loved ones in residential care when caring at home becomes impossible and too demanding, particularly for older carers.

This instrument increases the rates that the NHS pays to care homes to cover the costs of services that must be carried out by a registered nurse, called the FNC rate. As noble Lords know, accommodation and social care costs are the responsibility of the local authority and/or the individual, subject to the outcome of a needs assessment and financial assessment.

The 4.7% increase this year is influenced by the outcome of a Supreme Court case on the Welsh FNC rate and by a subsequent review by LaingBuisson. Information about this is helpfully included in appendix 1 of the Secondary Legislation Scrutiny Committee report that goes with this statutory instrument. The rate that has been set includes a 3.1% "efficiency expectation" of nursing home providers. Given the recent reports in the press about financial instability in the care home sector, it begs the question of how realistic that assumption is. These changes took effect on 26 April 2019, rather than 1 April as is usual, and the Department of Health and Social Care published a statement on 5 April saying:

"The findings of the study were delayed, following requests to improve the robustness of the data collected and an increase to the sample size of surveyed nursing homes. With an overall budget of approximately £675m for NHS-funded Nursing Care in 2018-19, any changes to the NHS-funded Nursing Care rates have significant financial consequences for both the NHS and nursing home providers".

The background to the additional information that the Department of Health and Social Care has provided is that in August 2017, the Supreme Court ruled against the Welsh local health boards on how they had set the FNC rate in Wales. The administration and operation of the Welsh FNC rate is separate from the rate in England. However, the basis for FNC in legislation is very similar in Wales and England, and the judgment of the Supreme Court also impacts on how the Secretary of State for Health and Social Care must set the FNC rate in England.

The Supreme Court judgment set out an expanded definition of what constitutes nursing care by a registered nurse and stated that the FNC rate should pay for the costs of everything within that definition—that is, direct and indirect time on nursing care; paid breaks; time receiving supervision; stand-by time; and time spent on providing, planning, supervising or delegating the provision of other types of care which, in all circumstances, ought to be provided by a registered nurse because they are ancillary to, closely connected with, or part and parcel of the nursing care that the nurse has to provide.

That definition is being applied to the FNC rate in the context of the LaingBuisson study, which has shown that FNC costs have continued to increase at a sustained and above-inflation rate since the last full study of FNC in 2016. Since 2016, the pay component of the national tariff has been used to apply inflationary uplifts to the FNC rate, so it is believed to be appropriate to accompany this with an efficiency factor. I fail to see how that is justified.

I thank the department for that explanation. However, I looked in vain for a sign of any upgrading for the care staff who work in care homes. Of course, there is none. Why is that? When do the care staff who carry out such important and personal work get the pay, training and recognition that they deserve? When will the funding for residential care be resolved? How can the NHS long-term plan possibly be delivered if the funding of social care is not also resolved?

The truth is that the UK is running out of care home places and care home operators are collapsing. The *Guardian* published an article on 6 June detailing concerns about care homes collapsing under financial pressure and the impact that this is having on vulnerable people. The British Geriatrics Society has warned that,

"soon there will not be enough",

care homes,

"to look after the growing number of vulnerable older people needing specialist care".

More than 100 care home operators collapsed in 2018, taking the total over five years to more than 400 and sparking warnings that patients in homes that close down could be left with nowhere to go but hospitals, and we know what that means in terms of costs and bed blocking.

Three out of five MPs say that people in their constituencies are suffering because of cuts to social care, with three-quarters saying that there is a crisis in care in England. That is according to a recent poll by the NHS Confederation, which leads Health for Care, a coalition of 15 organisations. In other words, there is a rising demand for social care but the cost of care is rising far more quickly than the money that local authorities pay for it. In some cases that money is being cut and in many others it is not rising at all.

The Association of Directors of Adult Social Services has shown that councils had £700 million of social care cuts planned in 2018-19, despite growing demand. I do not see how that is consistent with the regulations before us today. Major operators to suffer financial difficulty include Four Seasons Health Care, which was put up for sale after rescue talks failed, seven years on from the high-profile collapse of Southern Cross Healthcare. It was reported that a care home which was part of Four Seasons Health Care had left a patient without medication for two days.

These are our most vulnerable members of society and we have a duty to care for and protect them. However, they are being let down by an underfunded sector that is under constant and growing strain. Care England has called for the Government to put more money into social care to avoid a shortage of beds in a sector that provides care and accommodation for more than 400,000 residents. The future of funding for the sector is due to be laid out this year in a much delayed government Green Paper intended to address a £3.5 billion shortfall expected by 2025.

So, with care homes already crumbling under the pressure of an underfunded sector, it becomes a greater concern that the increase in charges may exacerbate the existing situation. There is concern that these charges will lead to further shortfalls in social care funding. Furthermore, these regulations come at a time when there is a lack of clarity surrounding the long-term care plan, which is needed to alleviate financial instability in the care home sector. Can the Minister confirm the impacts that these regulations may have on an already struggling care home sector? How do the Government plan to keep people in appropriate care settings with the recent care home closures, and when will we see an appropriate care plan? I beg to move.

7.30 pm

Baroness Jolly (LD): My Lords, I share some of the concerns expressed by the noble Baroness, Lady Thornton—she has dug out a few that I have not mentioned or even thought of. Many of us here will have had friends or family in receipt of this funding. My mother received it towards the end of her life. By way of clarification, can the Minister confirm whether FNC is funded in the same way as end-of-life care? If so, is there the same sort of uplift?

It would be good to look at this in the context of a Green Paper. I know that that is a dig and something that we say frequently, but so much of this would be much easier to debate in your Lordships' House if we had a Green Paper to read and could try to understand the Government's intentions.

These changes will impact on CCG funding with effect from 26 April, so the increase is not within the CCGs' budget for this year. What will the extra cost be to CCGs? Is there likely to be an in-year top-up to cover it, however small?

The patients we are talking about will be resident in nursing homes. I wonder whether the sector was consulted about the changes. What was its reaction to LaingBuisson's estimate of a 3.1% efficiency uplift? What was LaingBuisson's rationale? If the Minister has that in her notes, I would be interested to know where the 3.1% came from. Why was it not 3%? I am sure that a lot of people would like to know that—not least the sector.

Lord Taylor of Goss Moor (LD): If my noble friend will allow me, I would like to ask a question. Is it not the case that the people who work in this sector are, by and large, extraordinarily low-paid while caring for some of the neediest people in this country? The collapse of so many providers in the sector suggests there is something fundamentally wrong, to which efficiency savings do not seem a realistic response.

Baroness Jolly: My noble friend makes a very good point. The majority of people who work in the sector are care workers on the basic minimum wage, or something related to that. What we are discussing this evening is nursing care which will be paid at a union rate; nevertheless, it is stretching the sector.

The Minister knows about the shortage of nurses, and the noble Baroness, Lady Thornton, spoke about the shortage of care workers. Why do we have restrictions on agency nurses' nursing hours of 10% of the total? Clearly, we cannot have agency nurses covering the whole thing; everyone across both health and social care frets about agency nursing and its expense over and above that of paying for directly employed people. But what is a nursing home to do if there are no salaried nurses available? Is the 10% smoothed over a month or a year? Is this realistic? How realistic is it for less than 10% of nursing hours to be delivered by the agency? This will be locally variable—relatively straightforward, perhaps, in city settings but where my noble friend and I live in Cornwall, people such as agency nurses are like hens' teeth. This is not straightforward, and I am not convinced that it is absolutely workable.

This measure looks hurried, but I suppose any increase is welcome. I await the Minister's response to some of the comments that I have made and those of the noble Baroness, Lady Thornton.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Baroness Blackwood of North Oxford) (Con): My Lords, I open with an apology for the state of my voice. I shall do my utmost to make myself heard and make it to the end of my speech. If I do not manage to answer all the points made, I shall write not only to the two noble Baronesses who have raised questions but to all those present in the debate, and will place a copy of that letter in the Library.

I would also like to identify myself with the points raised by the noble Baroness, Lady Thornton, regarding Carers Week, and to pay tribute to all those carers in this country who make tremendous sacrifices for those they care for. We should all thank them for the work they do. Our system would not cope without them; we should all be very grateful.

I turn to the questions that have been raised. NHS funded nursing care is of course an incredibly important part of the health and care system, supporting the provision of nursing care in nursing homes. The NHS funded nursing care rate plays the important role of ensuring that neither individuals nor local authorities have to pay for nursing care, which is the responsibility of the NHS. My department is seeking to ensure that nursing home providers are paid a fair rate for employing registered nurses, so that nursing care can be provided to all who need it. On the point that was just raised, it is helpful to know that the average pay for registered nurses in the independent sector has now risen from £23,400 to £29,400, so that is the benchmark we are talking about.

The noble Baroness, Lady Thornton, raised the issue of the nursing care rate for 2019-20, which my department set in regulations in April. This was done, as she said, following the LaingBuisson report into the costs of providing NHS funded nursing care to nursing

[BARONESS BLACKWOOD OF NORTH OXFORD]
home providers, after further consideration by my department. Following this work, the rate has increased by 4.7%, which is a significant increase above inflation, as has been recognised. The efficiency expectation, which is regretted in tonight's Motion, should be seen in the context not only of this above-inflation increase but in the context of the significant increase of 40% which came in 2016-17; that is part of the picture that the efficiency expectation was put in place to address.

It is only right at a time of continued and much-needed investment into nursing home providers—ensuring they are able to employ and retain registered nurses—that the Government and the NHS also expect those providers to deliver as efficient a service as possible and value for money to the taxpayer. The 4.7% increase in the nursing care rate for 2019-20 is a far larger increase than that being seen in the vast majority of prices across the wider public sector and NHS; this is because of the priority that we have set on that rate. For example, the NHS national tariff is increasing the majority of prices in the NHS by 2.7% for 2019-20. The national tariff has also asked most NHS providers to make efficiencies of 3.1% across 2018-19 and 2019-20, and the Government believe that while still getting an above-inflation increase, nursing home providers should be able to do the same.

The LaingBuisson report provided evidence showing that many nursing home providers are already delivering nursing care more efficiently than others, so there is variability in the system. The study shows wide variation in the cost of delivering nursing care, even when factors such as region or provider size are taken into account. Efficient providers surveyed were shown to deliver an hour of NHS funded nursing care for 18% less than others. Additionally, the study showed that nursing home providers are increasing their use of agency nurses, as has been discussed. An hour of agency nursing costs 47% more to providers, and so, obviously, to the NHS. We believe that providers can work to reduce the proportion of their workload covered by agency nurses, as we have required other parts of the NHS to do, in a sustainable way.

There is a need to ensure value for money in important NHS services and to maintain their sustainability. The Government believe that efficiencies can be made in relation to the rate this year—for example, in the use of agency nurses. However, this is still within the context of a significant and above-inflation increase to the nursing care rate. That is why we think that the rate set is achievable.

The noble Baroness, Lady Thornton, also raised the important issue of the need for a long-term funding settlement for social care and financial sustainability for the sector, as she has on more than one occasion in this Chamber. The Government have already given councils access to around £10 billion of additional dedicated funding for social care over this spending review period. This includes a £240 million adult social care winter fund for 2018-19, and again for 2019-20, to help local authorities. It is the biggest injection of funding for winter pressures that councils have ever received. As a result of the measures the Government have taken, funding available for adult social care is increasing by 8% in real terms from 2015-16 to 2019-20. Councils have responded by increasing their spending on social care, so the money has gone where it was supposed to, which is always encouraging.

Local authorities were also able to increase the average fees paid for older people's residential and nursing care by 6.4% in 2017-18, which we believe brought more stability to the market. When we look into the detail of the figures we see that, while there has been a reduction in the number of care homes, the overall number of social care beds has remained broadly constant over the last nine years, with an increase in nursing beds and care home agencies. As in any market, there will be inevitable entries and exits of care organisations, but we feel that there is some consistency. It is more reassuring than it may appear on the surface.

As we have also discussed, social care funding for future years will be settled in the spending review, where the overall approach to funding of local government will be considered in the round. We are also looking ahead to ensure that the social care system is sustainable in the longer term so that we can continue to deliver as our society ages. This is why the Government have committed to publishing a Green Paper at the earliest opportunity, setting out proposals for reform.

I hope I have answered the majority of the questions raised by the noble Baronesses. If I have failed to respond to anything, I hope they will allow me to write.

Baroness Thornton: I thank the Minister for that answer. I am not completely convinced about the stability of the care home sector. I think we have some major problems coming down the line. Of course, like the noble Baroness, Lady Jolly, I welcome an increase in payment for nursing staff, because that is absolutely essential. However, we have to take seriously the issue of social care staff who work in homes or a domiciliary setting. They do not get the attention or esteem they deserve, or the training they need, and they are certainly not paid sufficiently, yet we still expect them to deliver the best possible service. This statutory instrument is not the place where that can be solved, but it amplifies the challenges we face here.

On that basis, I thank the Minister for getting through that answer without completely losing her voice. We heard everything she had to say. I beg leave to withdraw the Motion.

Motion withdrawn.

House adjourned at 7.43 pm.

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