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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

No party affiliation is given for Members serving the House in a formal capacity, the Lords spiritual, Members on leave of absence or Members who are otherwise disqualified from sitting in the House.

House of Lords

Wednesday 9 June 2021

The House met in a hybrid proceeding.

Noon

Prayers—read by the Lord Bishop of Carlisle.

Arrangement of Business

Announcement

12.08 pm

The Lord Speaker (Lord McFall of Alcluith): My Lords, the Hybrid Sitting of the House will now begin. Some Members are here in the Chamber, others are participating remotely, but all Members will be treated equally. I ask all Members to respect social distancing and wear face coverings while in the Chamber, except when speaking. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

Oral Questions will now commence. Please can those asking supplementary questions keep them to no longer than 30 seconds and confined to two points. I ask that Ministers' answers are also brief.

Abolished Offences

Question

12.08 pm

Asked by ***Lord Lexden***

To ask Her Majesty's Government what plans they have to enable more people convicted under abolished offences relating to homosexual conduct to apply to have their convictions disregarded.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the Government are committed to enabling men with historical convictions for decriminalised homosexual conduct to apply to have their convictions disregarded. We are actively exploring whether further offences can be brought within the scope of the scheme to enable more people to benefit from it.

Lord Lexden (Con): My Lords, have the Government noted that exactly 10 years have passed since the disregard scheme was announced to "right an historic wrong", as it was described at the time, so that gay men convicted of or cautioned for offences that have been swept from the statute book—and indeed should never have been there in the first place—would no longer be stigmatised by having to declare such convictions and cautions? I thank my noble friend for her reply and pay tribute to all that she has done in connection with this issue, but is it not something of an affront to gay people that four and a half years have elapsed since she gave a commitment to extend the scheme—not least because the Home Office has long been in possession of draft regulations prepared by my friend Professor Paul Johnson at York University, who is the greatest expert in the country on the matter? Surely those regulations ought to have appealed strongly to a Government who resort so frequently to secondary legislation, particularly at a time when Scotland and Northern Ireland have wider disregard schemes than England and Wales.

Baroness Williams of Trafford (Con): My noble friend will know that I have noted what he said and that we remain committed to doing all we can to right this historic wrong. I pay tribute to my noble friend and others who have been so committed, and I pay particular tribute to Professor Paul Johnson for his expertise. It is important to note that any additional offences must meet the suitable legal criteria to be eligible to be disregarded.

Lord Collins of Highbury (Lab): My Lords, after the 1967 Act, remaining anti-gay laws were policed even more aggressively than before. In his research, Peter Tatchell estimated that 15,000-plus gay men were convicted in the decades that followed 1967. Lives were ruined for responding to the advances of an attractive policeman. Surely it is time for the Government to act. Why is the Home Office trailing behind Scotland and Northern Ireland, which have, as the noble Lord referenced, wider disregard schemes, leaving us behind? Why cannot we act now?

Baroness Williams of Trafford (Con): My Lords, I wish it were that simple. I want to acknowledge what the noble Lord has said: not only did men post-1967 face equal difficulties and persecutions for their sexuality but some of them have died—that is the tragic thing. This is complex work and we need to consider the challenging legal and practical issues in extending the scheme, but I do not want that to translate as our commitment being any less diminished.

Lord Paddick (LD) [V]: My Lords, not only do the Government appear to be dragging their feet on this issue but there appears to have been a policy shift since Liz Truss became Minister for Women and Equalities. When the noble Baroness was Minister for Equalities, did she ever feel that the UK was focused too heavily on so-called fashionable issues of race, sexuality and gender? Could this explain the Government's reluctance to take action on this important issue?

Baroness Williams of Trafford (Con): As I said to the noble Lord, Lord Collins of Highbury, our commitment to this has not diminished, despite the fact that it has taken time. When I was the Equalities Minister I was, and remain now, committed to equality, and the Government remain committed to equality. I am very proud of what the Conservative Government have brought forward to advance equality.

Lord Berkeley of Knighton (CB) [V]: My Lords, I am glad that the Government have chosen to celebrate the life and work of Alan Turing, for which we must all be grateful. But I think he would be disappointed to find the somewhat hypocritical stance that he is being celebrated while other people are still suffering from the stigma of this legislation. On a second point, I would prefer to see the word "disregard" changed to "quashed".

Baroness Williams of Trafford (Con): As a Mancunian, I have every praise and admiration for Alan Turing, who was one of many LGBT people to change the

[Baroness Williams of Trafford]
world. We do not want people being persecuted—that is precisely what we do not want—but we do not want unintended consequences from the laws that we make.

Lord Cashman (Non-Afl) [V]: My Lords, it has been four and a half years and the work has been done, and we must move forward on these issues which blight the lives of women and men. Professor Paul Johnson has sent my Private Member's Bill to the Home Office, which was not drawn in the ballot. It deals specifically and systematically with these pardons and disregards. I therefore urge the Minister, for whom I have the highest regard, to move on this issue and publish a timetable for the regulation. Otherwise, the Home Office could join the growing narrative from the Government which might be described as stoking a cultural war against the LGBT+ community, or, at best, a callous disregard for them.

Baroness Williams of Trafford (Con): I thank the noble Lord, for whom I also have the highest regard; we have worked very constructively over the years. I have his Bill in my pack and look forward to reading it. He is absolutely right to say that this is about women and men—it is equality before the law that is so important. On the timetable, I know that we are doing a review of the offence of soliciting and intend to publish the outcome during the summer. The noble Lord will also know that two Bills are coming up, and I am trying to gauge whether the timetable for those would be in line with the outcome of the review.

Lord Scriven (LD): My Lords, the Minister has from the Dispatch Box used the words that we require "suitable legal criteria", saying it is "complex" and not that "simple"—yet two parts of the United Kingdom have laws enacted on this issue on a wider disregard scheme, and in 2017, Professor Paul Johnson gave a full list of draft regulations, including legal definitions. Will the Minister please spell out in more detail what else the Home Office requires to get this Bill through, rather than, as it seems to many of us, dragging its feet?

Baroness Williams of Trafford (Con): My Lords, we are not dragging our feet. We are working with Paul Johnson and others to try to ensure that regulation provides for that equality before the law. We are going through offences which go back decades to see whether they are in line with the disregard and considering offences that people bring to us to see whether they are in scope as well.

The Lord Speaker (Lord McFall of Alcluith): My Lords, all supplementary questions have been asked and we now move to the second Oral Question.

Sudden Adult Death Syndrome

Question

12.18 pm

Asked by ***Baroness Bakewell***

To ask Her Majesty's Government what assessment they make of avoidable deaths from Sudden Adult Death Syndrome in the United Kingdom each year; and what steps they are taking to introduce screening to reduce such deaths, in particular for those involved in sporting activities.

Baroness Penn (Con): My Lords, in 2019, sudden adult death syndrome was a factor in 1,511 deaths. The UK National Screening Committee found insufficient evidence to support a national screening programme. However, where a family member has cardiac disease, relatives at risk are offered screening for potential causes of sudden adult death syndrome. In addition, the NHS is focusing on fast and effective action using automated external defibrillation to save the life of anyone suffering from cardiac arrest.

Baroness Bakewell (Lab) [V]: I thank the Minister for her Answer. As to the absence of evidence, there is a good deal of evidence from abroad that deaths could be reduced by screening. That has been building as a case for many years and parliamentarians have acknowledged it. There is an APPG on cardiac arrest; there have been debates, including an Adjournment debate; Andy Burnham has moved for this; and there is a general feeling that something must happen here to acknowledge the evidence that exists and reduce young people's deaths. Will the Minister set out a timetable for when this can move forward to further action, please?

Baroness Penn (Con): My Lords, I am aware of the evidence in the UK and abroad, and the noble Baroness may be referring to a study from Italy. Similar results have not been found in other countries, and the UK's assessment of the evidence is as I set out in my former Answer. More work is being done, in particular to improve access to screening for those family members where someone has suffered from sudden adult death syndrome or is otherwise shown to be at risk.

The Lord Bishop of Carlisle: My Lords, does the Minister concur with the Sudden Arrhythmia Death Syndromes Foundation that for the 50% of SADS deaths that show no prior warning signs, rapid access to automatic external defibrillators—AEDs—is the only way to prevent many tragedies occurring? If so, do Her Majesty's Government have any plans for expanding the number of AEDs available throughout the country, especially at sporting venues?

Baroness Penn (Con): My Lords, the Government do agree with that assessment and are putting in place, with partner organisations, a programme of work not just to expand the number available but to improve co-ordination, so that emergency services know where those locations are and can direct members of the public so that they can use that equipment where necessary.

Lord Vaizey of Didcot (Con): My Lords, as president of the small sudden deaths in epilepsy charity SUDEP Action, based in my former constituency, I know that sudden deaths from epilepsy have also risen during the pandemic. Part of the issue is how these deaths are reported and recorded. It is the second most common cause of preventable death and there is a lack of protocols for use by healthcare professionals, particularly

to help young people manage this condition. Will the Minister ensure that this issue is looked at and that we increase our attention on the tragedy of sudden death caused by epilepsy in young people?

Baroness Penn (Con): My Lords, the Government are committed to securing the best possible treatment and care for people with epilepsy, and to raising awareness of sudden deaths in epilepsy. Guidance has been made available from the National Institute for Health and Care Excellence that sets out recommendations for clinicians to this end, including referral to bereavement services for the families of those affected. NHSEI has also developed an epilepsy "right care" toolkit with leading charities in this area.

Baroness Finlay of Llandaff (CB): I declare that I am a patron of CRY and that my son is a cardiologist. Given that artificial intelligence automated screening could decrease the burden on screening, but must not dissuade participation in sport, and that sudden cardiac death can occur at any time and anywhere, how will the Government focus on the delivery and maintenance of defibrillators in sporting and all public venues, and ensure that CPR is taught to all athletes and coaches, all students in education, and all those working in public places? Will this be considered to be mandated?

Baroness Penn (Con): I reassure the noble Baroness that awareness of CPR is now part of the national curriculum in secondary schools for teenagers. Other work is also being done with partner organisations such as the British Heart Foundation and GoodSAM to improve the co-ordination of first responder activities and defibrillation skills for adults and passers-by who may need to respond in that kind of situation.

Baroness Thornton (Lab): My Lords, I found the websites of SADS UK, the British Heart Foundation and CRY useful in the information, advice and practical support they offer people about the various conditions which cause sudden adult death. Are these important organisations being supported by the NHS and the Government, and in what way? Secondly, can the Minister inform the House whether any research is being carried out into age, gender, race or other characteristics that will shed light on which groups are most vulnerable and carry the genetic disposition to SADS?

Baroness Penn (Con): Perhaps I may reassure the noble Baroness that the NHS engages with a number of charities involved in SAD, including the sudden arrhythmic death syndrome charity SADS UK. That organisation in particular is helping scientists and clinicians understand and combat a rare condition called "short QT syndrome", which is associated with an increased risk of sudden cardiac death. On other factors that may put people at an increased risk, gender is one that seems to increase the risk for men rather than women. However, I am sure that there is further work and research being done in this area.

Lord Addington (LD) [V]: My Lords, will the Government undertake that when all elite-level athletes go through routine medical checks, they are actually checked for this condition? That would not only improve the chances of survival for anybody who has this but would widen general public awareness.

Baroness Penn (Con): My Lords, that is not the current position of the Government. The effectiveness of pre-participation screening for athletes is not proven by clear-cut evidence; there is mixed evidence out there. Its potential to reduce deaths is likely to be low because of the poor detection rate. There is also the counterbalancing potential for psychological harm due to the potentially high number of false positives, which could be particularly debilitating for professional athletes and those whose lives are centred around sport and participation.

Lord Kirkhope of Harrogate (Con) [V]: Every time this syndrome strikes, it leaves a terrible situation for all those connected to the victims, including sometimes feelings of guilt that somehow in individual cases it could have been avoided. Does my noble friend think that sufficient research is being carried out, especially in the field of genetic causation, and what more could the Government do to support and enhance such work and research?

Baroness Penn (Con): My Lords, there is an opportunity now, with the implementation of the genomic laboratory hubs across England, to explore the systematic introduction of post-mortem genetic testing for SAD, which could vastly help us in this area. A programme was launched last year between NHSEI and the British Heart Foundation to do that, and seven sites are developing pathways to improve testing in this area.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, in Northern Ireland, following the unexpected deaths of several young people, an independent screening clinic was established at Ulster University and launched by CRY. What discussions and inter-exchange of ideas have taken place with CRY, and what efforts have been made through Whitehall and the devolved Administrations to have dedicated specialist clinics for this purpose? Maybe the Minister could outline the level of discussions.

Baroness Penn (Con): My Lords, as I have said, the NHS engages with a number of charities involved in SAD. It also looks very carefully at the issue of screening, and the last time that it was reviewed by the UK National Screening Committee was in 2019.

Baroness Bull (CB): My Lords, as the Minister noted, the statutory guidance for PHSE education now includes teaching secondary school students life-saving skills, including CPR. But can she say what support is provided to schools to ensure that it is taught accurately, especially when there is no school nurse or staff member qualified to do so? As it is guidance only, are the Government monitoring the number of schools that are actually teaching this content within PHSE?

Baroness Penn (Con): My Lords, I know that a range of resources is available to support schools in their teaching of PHSE, but I am happy to take away the detail of the noble Baroness's question and write to her in response.

The Lord Speaker (Lord McFall of Alcluith): My Lords, the time allowed for this Question has elapsed. We now move to the third Question and I call the noble Lord, Lord Beith.

Criminal Trials: Intercept Evidence

Question

12.28 pm

Asked by ***Lord Beith***

To ask Her Majesty's Government what plans they have, if any, to change the law or practice on the use of intercept evidence in criminal trials.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I first apologise to the Lord Speaker because I stood while he was standing—we are all grappling with masks and other things at the moment.

We continue to assess whether the conclusions of the comprehensive review of 2014, which of course the noble Lord, Lord Beith, oversaw, remain valid. It is not possible to find a practical way to allow the use of intercept evidence in court. The Government will keep this position under review.

Lord Beith (LD): My Lords, hundreds of arrests have been made because of the French police's hacking of the EncroChat system used by criminal gangs, and more as a result of criminal use of the ANOM communication system, which was secretly controlled by the FBI. A recent Court of Appeal judgment means that much of this material could be used in evidence in UK courts. Does that not make the conclusion of the review to which the Minister referred now seem a little dated? The context has significantly changed, some of the obstacles that we foresaw in being able to make the change have been overcome, and maybe it is time to look again at it.

Baroness Williams of Trafford (Con): My Lords, this is quite a complex area. The information was obtained using an equipment interference warrant rather than an intercept warrant, and there are checks and balances within the criminal justice system to ensure that one route is not used in order to facilitate another outcome. We remain of the view that the review undertaken by the noble Lord is still valid.

Lord Morris of Aberavon (Lab) [V]: My Lords, since intercept evidence is allowed in virtually every EU and common-law country, will the Government seek the advice of the Intelligence and Security Committee so that Parliament can decide, following the publication of its advice, the weight of the objections of the security services and inconsistencies where such evidence is allowed, in other countries, prisons and bugs?

Baroness Williams of Trafford (Con): We have done several reviews on this issue, including, obviously, that of the noble Lord, Lord Beith, back in 2014. We keep these matters under review, but for the time being we share the noble Lord's conclusion.

Lord Paddick (LD) [V]: My Lords, surely there must be some circumstances where intercept evidence could be used without compromising operational integrity, such as those mentioned by my noble friend Lord Beith. How many individuals could have been prosecuted if intercept evidence had been allowed instead of them being subjected to terrorism prevention and investigation measures, or TPIMs, at considerable additional cost—both financial and to the reputation of British justice?

Baroness Williams of Trafford (Con): My Lords, the question of how many individuals could have been prosecuted is very difficult to answer, given that the evidence was not used. I do not know if there are figures that I can give to the noble Lord. I want to make the point that we do not actually have an objection in principle to the use of intercept material as evidence, and we have tried to find a practical way to allow the use of intercept evidence in court. As I said, though, successive reviews have found that it is just not possible.

Lord Lilley (Con) [V]: My Lords, when I was Secretary of State for Trade and Industry, something that I proposed had the unexpected effect, unknown to me, of affecting the way in which the security services carried out surveillance. I was therefore given a briefing on the different ways in which they did these things, some of which were well-known to me and the public but others were not. Surely it would be possible to allow the security services to decide which methods they are going to reveal where they are using techniques that we do not want criminals to know about.

Baroness Williams of Trafford (Con): As I have said to other noble Lords, the costs and risks of using intercept as evidence are disproportionate to the potential benefits, and therefore we have not proceeded to intercept as an evidence model. However, we are not closed to the idea and will keep the position under review, and I totally acknowledge what my noble friend has said.

Baroness Wheatcroft (CB): My Lords, the extraordinary success of Operation Trojan Shield has netted thousands of criminals in a hundred different countries, but is the Minister convinced that this country will be able to get the same level of successful prosecution as a result of that operation? Can she tell us quite why it is that intercept evidence that is deemed to be stored should be acceptable whereas intercept evidence that is in transmission is not?

Baroness Williams of Trafford (Con): The noble Baroness asks a very interesting question, which I am sure we will have debates on in the months and years to come, about the difference between the two. Fundamentally, there is a huge amount of other evidence that one would need to consider for an intercept warrant that makes it prohibitively costly, and therefore we just do not use it.

Lord Marks of Henley-on-Thames (LD): My Lords, following the question from the noble Baroness, Lady Wheatcroft, in the EncroChat case the Court of Appeal analysed the distinction between intercept evidence where actual transmission has been intercepted and

evidence that has been stored and harvested following transmission. That distinction is arcane and inconsistent. Can the Minister explain the difference in principle? Since we agree on the need for a warrant system to authorise the use of intercept evidence, should we not legislate for one consistent requirement for warrants to intercept actual transmission and warrants to harvest intercept evidence post transmission?

Baroness Williams of Trafford (Con): We would need a few hours to have that discussion so, thankfully, given that the Lord Speaker's direction is to keep my answers brief, I will not go into that. As I have said, there are checks and balances within the criminal justice system, as the noble Lord well knows, that safeguard one route from being used in order to achieve another.

Baroness Jones of Moulsecoomb (GP): It has come to the attention of a few Members of this House that MI5 keeps files on them. If the police or security services chose to intercept our communications, would anyone in Parliament have the power to authorise or not authorise that?

Baroness Williams of Trafford (Con): I thank the noble Baroness for giving me notice of the fact that she was going to raise this issue; it is not really part of this Question, but that never stops her. As I said, we do not use intercept warrants as court evidence. In terms of who would authorise what, the Home Office would authorise its various agencies, the Foreign Office its agencies and the Northern Ireland Office its agencies, so it would be for those Secretaries of State to authorise those warrants.

Lord Mackenzie of Framwellgate (Non-Afl) [V]: My Lords, the interception of telephone calls or voicemails is normally an egregious breach of personal privacy, and some tabloids have paid the penalty for that. I declare an interest as a victim of hacking. However, that is different from law enforcement using intercept methods, properly regulated by the UK police and security authorities. Does the Minister agree that such techniques are essential to facilitate the gathering of essential evidence, as exemplified, as has been mentioned, by the FBI sting yesterday using the ANOM app, leading to over 800 arrests worldwide, and that, provided that it is used and regulated properly by the law, it is a legitimate tool protecting our citizens from organised and violent criminals?

Baroness Williams of Trafford (Con): That is a very good question to end on. The noble Lord raises the huge benefit of what the NCA has achieved through operations like Venetic. I will read out the figures: 746 individuals arrested and £54 million, 77 firearms and over 2 tonnes of drugs seized. That is an incredible achievement that goes towards keeping our citizens safe.

The Lord Speaker (Lord McFall of Alcluith): My Lords, all supplementary questions have been asked. We now come to the fourth Oral Question.

Passport and Visa Measures

Question

12.39 pm

Asked by ***Lord Hunt of Kings Heath***

To ask Her Majesty's Government what plans they have to review their decision not to exempt young people from European Union member states on school trips to the United Kingdom from the new passport and visa measures due to come into force on 1 October.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, EU, EEA and Swiss students are now subject to the same rules as students from the rest of the world. They may come under the visitor route or as a student, but from 1 October they will require a passport like everyone else and we do not plan to review this decision.

Lord Hunt of Kings Heath (Lab) [V]: My Lords, what a depressing advert for global Britain. Thousands of schoolchildren from Europe will not now be visiting our country since they will no longer be able to use an EU or EEA ID card. There is no doubt that the requirement for passports and, in some cases, visas, will put such trips beyond the capacity of many schools. It is short-sighted, petty and mean-spirited, and it means that, without these cultural exchanges with young people in Europe, we will not have the long-term economic and cultural links we have enjoyed for so long. The Minister says it will not be reconsidered; I ask her to reconsider this really outrageous decision.

Baroness Williams of Trafford (Con): I reiterate that we will not be reconsidering, but I do not agree with that assertion that thousands of children will not be visiting. What about the children from the rest of the world who visit this country? Are they in a different category? We are treating everybody in exactly the same way. Of course, there is always the option to get collective passports for groups of children issued under the 1961 Council of Europe treaty.

Lord Balfe (Con): My Lords, the United Kingdom is getting a bit of a reputation for doing everything to annoy Europe. The Minister speaks about other countries, but all the nearby countries are in the European Union. All we are doing is making people feel unwelcome. We are tearing up something which does not need to be torn up. The Minister says that she will not reconsider, so I will not ask her to, but I will ask her to reflect on the damage this is doing to Britain's reputation outside this country.

Baroness Williams of Trafford (Con): I have much respect for my noble friend, but one could flip that the other way and say of the long-standing issue of children outside the EU: have we made them feel unwelcome for years? I do not think we have.

Baroness Prashar (CB): My Lords, I raised this issue during the passage of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020. The Government then argued that this will be a security risk, which I think is rather far-fetched. I absolutely

[Baroness Prashar]
agree with the noble Lords, Lord Hunt and Lord Balfe, that this is going to dent our reputation and does not in any way promote global Britain. I argue that this is very short-sighted; I think that it will damage our economy and education institutions, and lead to an end of short-term school trips. I agree with the noble Lord, Lord Balfe, that the fact it affects the rest of the world is not important—it is the question of our relationship with Europe. It is important that we do not in any way dent our soft power.

Baroness Williams of Trafford (Con): My Lords, that issue of the UK annoying the EU could also be read both ways. But it is not a question of not welcoming people—it is putting everybody on an equal footing going forward from 1 July.

Lord Griffiths of Burry Port (Lab): My Lords, I am mystified. Will the Minister encourage her colleagues to look again—but not in the way that the noble Lord, Lord Hunt, asks—at making it so that children from all over the world conform to the arrangements currently in force for children in Europe? That is another way of solving the problem. I note that 750,000 children from Germany and France alone have come on an annual basis under the present arrangements. Is she convinced that she could persuade the entertainment, tourism, heritage and cultural institutions of this country looking for a post-Covid boost that the refusal to reconsider this is logical or legitimate?

Baroness Williams of Trafford (Con): I think what the noble Lord is proposing is to make the rest of the world in line with what we had in the EU—in other words, to have an open borders policy with no passports. The answer is no, I am afraid.

Baroness Ludford (LD) [V]: My Lords, this attempt to elide European school students with the rest of the world really will not wash because, as well as talking about being ambitious for global Britain, the other favourite slogan of the Brexiter Government, is "We may have left the EU but we haven't left Europe". This restrictive policy towards European school students is narrow-minded and bad for Britain. One of the advantages of the present system is that no child is left out, so those who cannot afford a passport or are non-EU citizens and would need a visa are included. Do this Government really want to penalise schoolchildren and damage our reputation and, indeed, our economy?

Baroness Williams of Trafford (Con): Again, I put it back to the noble Baroness: what about people who cannot afford a passport and do not live in the EU? Do they not matter?

Lord Coaker (Lab): I think that many in the House will be extremely disappointed with the responses the Minister has given. Last year, noble Lords raised this issue, warning of potential problems. Given that these have now arisen, can the Minister tell the House how many EU schoolchildren she estimates will be affected by the changes? Is she not concerned in the slightest that barriers to visiting and learning in the UK will give a negative impression of our country to those young people and their families—one that might, in time, be to the detriment not only of our economy but of our cultural and global reputation?

Baroness Williams of Trafford (Con): The noble Lord will not be surprised to know that I do not agree with him. In terms of numbers, it is very difficult to prove a negative: for example, how many children will not be able to visit because of the system we have. One might also about children who are currently outside of the EU. I mentioned collective passports, which are a route for groups of children to come to this country and are, I think, very affordable.

Lord Mann (Non-Afl): My Lords, it is not a level playing field; working- class kids from the poorest communities in the neighbouring countries which are the cheapest to get here will lose out. Middle-class and rich kids will get here whatever country they are from; that will continue. It will be the poorest kids from a variety of backgrounds, like the mining communities where I brought kids over from different countries to meet kids in our country. They are the ones who will lose out because the disproportionate increase in costs will not be borne by their parents. The poorer kids will lose from this policy, whether they are in Norway, which is not in the EU, or an EU country. The Government should think again.

Baroness Williams of Trafford (Con): My Lords, I know that many schools have arrangements. When my children were at school there were children whose parents could not afford to send them on school trips, of which there were many, or perhaps to another country. There are generally provisions within schools to help out in such situations.

Lord Blunkett (Lab): My Lords, this is not a matter of upsetting the European Union, but a matter of geography, history and educational connectivity and is about the reputation of our country. You can get into this country if you have £2 million whatever your circumstances, never mind whether we really want you or not, but you cannot come here under present arrangements from 1 July with a school party on the existing provisions if you come from those countries that historically we have welcomed. Surely the Minister, who is the conduit rather than the cause of our concerns, might back to the Home Secretary and say: "Yes, I know there's a policy, which is to prevent as many people as possible coming to the United Kingdom, but at some point, does this not have a major detrimental effect down the line when people who were forbidden to come under existing arrangements remember?"

Baroness Williams of Trafford (Con): It is not a question of forbidding people to come to this country, nor one of not welcoming children from all over the world, but it is a situation where the EU and the rest of the world are now all being treated the same way. Collective passports are in place and I am sure that there are arrangements within many schools to help children who cannot afford them, but we are not forbidding them. I just want to correct the noble Lord on that.

The Lord Speaker (Lord McFall of Alcluith): My Lords, the time allowed for this Question has elapsed.

Arrangement of Business

Announcement

12.49 pm

Lord Ashton of Hyde (Con): My Lords, with the leave of the House, I will say a few words about the Division which we could not run yesterday on the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021. We had originally hoped to run that Division today, but although the system was restored yesterday afternoon, the Parliamentary Digital Service is still investigating the root causes of yesterday's technical problems, so we have agreed to defer further the Division until tomorrow after Oral Questions, so that today's test Division, which appears to have been successful, can be thoroughly analysed. We will have the vote, or votes, tomorrow, after Oral Questions and any PNQ, at around 1 pm. It is already on the Order Paper for then.

Coroners (Determination of Suicide) Bill [HL]

First Reading

12.50 pm

A Bill to require the coroner or jury at an inquest to record an opinion as to gambling addiction and any other relevant factors in a case of death by suicide; and for connected purposes.

The Bill was introduced by the Bishop of St Albans, read a first time and ordered to be printed.

The Lord Bishop of St Albans: My Lords, I declare my interest as a vice-president of Peers for Gambling Reform.

Digital Economy Act 2017 (Commencement of Part 3) Bill [HL]

First Reading

12.51 pm

A Bill to bring into force the remaining sections of Part 3 of the Digital Economy Act 2017.

The Bill was introduced by Lord Morrow, read a first time and ordered to be printed.

12.52 pm

Sitting suspended.

Immigration (Collection, Use and Retention of Biometric Information and Related Amendments) Regulations 2021

Immigration and Nationality (Fees) (Amendment) Order 2021

British Nationality Act 1981 (Immigration Rules Appendix EU) (Amendment) Regulations 2021

Motions to Approve

1.01 pm

Moved by ***Baroness Williams of Trafford***

That the draft Order and Regulations laid before the House on 27 and 29 April be approved.

Relevant documents: 1st Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 7 June.

Motions agreed.

Ajax Programme

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Tuesday 8 June.

"The Ajax family of vehicles will transform the British Army's reconnaissance capability. As our first fully digitalised armoured fighting vehicle, Ajax will provide crews with access to vastly improved sensors, and better lethality and protection. Main gate l approval was granted in March 2010. Negotiations with the prime contractor to recast the contract were held between December 2018 and May 2019. The forecast initial operating capability, or IOC, was delayed by a year to 30 June 2021—later this month—at 50% confidence, with 90% confidence for September 2021.

Despite the ongoing impact of Covid, we have stuck by that IOC date, but of course, it remains subject to review. By the end of next week, we will have received the requisite number of vehicles to meet IOC. The necessary simulators have been delivered and training courses commenced. These delivered vehicles are all at capability drop 1 standard, designed for the experimentation, training and familiarisation of those crews that are first in line for the vehicles. Capability drop 3, applying the lessons of the demonstration phrase, is designed for operations.

We remain in the demonstration phase and, as with all such phases, issues with the vehicle have emerged that we need to resolve. We were concerned by reports of noise issues in the vehicle. All personnel who may have been exposed to excessive noise have been tested, and training was paused. It now continues with mitigations in place as we pursue resolution. We have also commissioned independent vibration trials from world-class specialists at Millbrook Proving Ground, which should conclude next month.

I assure the House that we will not accept a vehicle that falls short of our requirements, and we are working with General Dynamics, the prime contractor, to achieve IOC. Similarly, we are currently working with General Dynamics to ensure that we have a mutually agreed schedule for reaching full operating capability. That is subject to an independent review, which we have commissioned. This is an important project for the British Army, delivering impressive capabilities and employing thousands of skilled workers across the UK. We look forward to taking it into service."

1.01 pm

Lord Coaker (Lab): My Lords, this is my first time at the Dispatch Box as Labour's defence spokesperson, and I look forward to debating these important matters with the Minister.

Ajax was set to be delivered in 2017 but, despite £3.2 billion being paid out, only 14 vehicles have been delivered—light tanks that cannot fire while moving—and personnel have been made so sick that the testing has been paused. The Defence Committee called this

"another example of chronic mismanagement by the Ministry of Defence".

As the problem cannot be fixed before it has been identified, as we heard in the other place yesterday, when does the Minister expect to know exactly what is causing the problems of noise and vibration? How many personnel have been adversely affected? When will the reversing restrictions placed on Ajax be lifted? Given that the total fixed cost for the whole project is £5.5 billion and that £3.2 billion has already been spent, is the Minister confident that Ajax can and will be delivered to that total? If so, when?

Viscount Younger of Leckie (Con): I welcome the noble Lord to the House and his position on the Front Bench. I am pleased to answer the questions that he has posed. First, as he will know, in any complex acquisition, there are risks and challenges that must be mitigated against, and, in the case of Ajax, we face different challenges due to the nature of such capabilities. Delays can be for a range of reasons, including the technical challenges and programmatic issues.

On the matters that the noble Lord raised and those relating to speed restrictions—which have been publicly aired—the rear step and the question of firing on the move, I reassure the House that we are confident that these will be resolved very quickly. Those issues have been due to the restrictions that were deliberately put in place because we are in the demonstration phase of this project. On the question of noise, and vibration in particular, there is more work to be done. Although I cannot give a date on this, it is obviously an urgent matter and tests are under way at the moment to try to resolve it.

Finally, we have full confidence in the delivery of the whole project. As the noble Lord will know, full operating capability is not due until 2025. That is not to say that there is not a lot of work to be done before then, but we have full confidence in the main contractors, General Dynamics and GDUK, which were selected after a rigorous process and have 60 years' experience of developing these advanced armoured vehicles.

Baroness Smith of Newnham (LD) [V]: My Lords, I also welcome the noble Lord, Lord Coaker, to his place and apologise that I am not in the Chamber personally today. I will follow on from his questions and the Minister's initial response. The contractor may have 60 years' experience of delivering for the MoD, but this is supposed to be a modernisation programme. Will the tanks ever be fit for purpose? Is the Minister confident that mitigation can be put in place to ensure the safety of our service personnel and that, in the longer term, there will not be issues of deafness and other associated physical effects on them? If the project cannot be rectified, will it be stopped, rather than there being another £2.3 billion spent on something that may never be fit for purpose?

Viscount Younger of Leckie (Con): I reassure the noble Baroness that we are confident that delivery will take place. As I said earlier, this is a highly complex programme, and we are working through the issues that have arisen. On the injuries that were raised by the noble Lord, Lord Coaker, although I do not have the numbers, I say that, as is the norm for the demonstration stage of these highly complex projects, trials necessarily take place. We are confident that these issues will be resolved. I mentioned the vibration issue earlier, which is the most serious one that we need to address, and it is one of the reasons why we have withheld £434 million of payments that would otherwise have been paid until these matters are resolved.

Lord Lancaster of Kimbolton (Con): My Lords, I also welcome the noble Lord, Lord Coaker, to his place. I honestly do not think that Her Majesty's loyal Opposition could have picked a better defence spokesman, judging from our previous exchanges in the other place. I declare my interest as a serving member of the Army Reserve.

A bit of context is required here. Ajax is not just an updated armoured fighting vehicle; it represents a generational shift in capability that will be able to deliver precision strike at range and, crucially, a network capability that our adversaries simply do not have. Given that there are literally millions of lines of code, I am surprised that there have not been more challenges during the development phase. We have lost out in the past by not updating our armoured fighting vehicles on a regular basis, so can my noble friend the Minister simply reassure me that Ajax is being designed with open architecture so that we can update it on a regular basis?

Viscount Younger of Leckie (Con): My noble friend makes a very good point. Perhaps I can add to what he was saying: this project represents the biggest single order for a UK armoured vehicle for over 20 years. Incidentally, the project supports approximately 4,100 jobs across more than 230 UK suppliers. It is now in its production and support phases, with the Army having taken formal delivery of the first Ares capability drop 1 vehicles in July 2020. However, it is more than that, as my noble friend said. This is a new and larger vehicle. It is modular and, over a predicted 30-year lifespan, it will be capable of being built on. It will be the backbone of the future digitised modern force, with unparalleled protection levels, incorporating hard-won lessons from recent conflict in Afghanistan and Iraq. Perhaps that adds to the complexity of this matter. I reassure the House again that these outstanding issues need to be addressed.

Lord Berkeley (Lab) [V]: My Lords, I also welcome my noble friend Lord Coaker to the Front Bench. His initial question today indicates his enormous expertise.

I am surprised that we have got this far with this new development. We have seen the new report, apparently from the independent Infrastructure and Projects Authority, which says that this vehicle cannot reverse—

perhaps we do not need to any more—fire on the move or go more than 20 miles an hour, and that the soldiers are limited to an hour and a half inside it because of the noise. What use is that on a battlefield? Will they put up a white flag and change staff before they continue?

I remind the House that the IPA has said that the delivery of the project "appears to be unachievable". That is rather different from what the Minister has just told the House, which is that there are no plans to delay and that we will go on with it and, presumably, continue with the order of 580 tanks, which will all be deployed this year. Is it not time that we cancelled the whole thing and saved the Government, the taxpayer and ourselves several billion pounds of taxpayers' money?

Viscount Younger of Leckie (Con): I need to put the noble Lord right on a number of points. First, on the IPA report, I remind the House that this came out as a result of a leak, and a full inspection is going on as to how that leak came out. On the speed restriction, I reassure the noble Lord that Ajax is capable and will be capable of speeds of up to 70 kph, but an initial limitation of 30 kph was introduced as a control measure for newly qualified Household Cavalry Regiment crews. That is in line with what I said earlier about this being the demonstration phase of this enormous project. On the rear step, the vehicle is capable of reversing over a vertical 0.75-metre step. Following some initial issues, this was restricted, again for the same reasons. Similarly, on the noble Lord's point about firing on the move, the vehicle can and does fire on the move. The MoD has yet to certify the platform to perform this, which is also in line with what I said earlier. I reassure the House again that this major project is on track and will be delivered on time.

The Deputy Speaker (Lord Alderdice) (LD): My Lords, all the supplementary questions have been asked. We now come to questions on an Answer to an Urgent Question asked in the House of Commons on Tuesday 8 June on British Council closures. I call the noble Lord, Lord Collins of Highbury.

British Council

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Tuesday 8 June.

"The British Council is a crucial part of the UK's presence overseas and a key soft power asset. It works in more than 100 countries to promote UK education, arts and culture, and the English language. The Government remain committed to the British Council. As the integrated review made clear, we value the influence of the British Council. We agreed a 2021-22 spending review settlement totalling £189 million, which is a 26% increase in funding from 2020-21. The British Council has not been cut. Although we have had to make difficult decisions to cut in other areas, we have increased the money we are providing to the British Council. Not only have we increased funding; we have provided a rescue package during the Covid-19 pandemic. This includes a loan facility of up to £145 million, with a further £100 million loan being finalised to support restructuring. We have also provided a letter of comfort to ensure that the council can meet its financial obligations.

We found this funding for the council in the context of an extremely challenging financial environment. As a result of the pandemic, the UK is facing the worst economic contraction in over 300 years and a budget deficit of close to £400 billion. This package is necessarily accompanied by changes to the council's governance essential to modernise the council. These include measures to update the British Council's charitable objects, to focus the council on its core pillars, to streamline its governance structures and to agree new key performance indicators and targets to monitor council performance in key areas. The Foreign, Commonwealth and Development Office and British Council officials have worked together to ensure that the council will align even more closely with the Government's strategic priorities and can focus on doing what it does best.

Having worked closely with the British Council, we are reviewing physical council presence in-country as part of this modernisation process. These changes will be minimal, but it is a strategic mistake to judge the impact of the council in a digital age solely by the physical office in-country. Rather, it should be judged by its operational presence, by the digital services we are investing in and which have expanded rapidly as a result of Covid, and by its ability to operate through regional hubs and third parties. The Covid crisis has changed the way we all have to operate. We have also implemented a new evaluation mechanism, so that when Ministers travel, they can assess the value for money and the impact provided by the British Council on soft power. This is a strong rescue and reform package. The council will also shortly have a new chief executive officer, so it will have strong leadership and a governance structure to make it viable and to reinforce its role as a force for good."

1.12 pm

Lord Collins of Highbury (Lab): My Lords, Nigel Adams yesterday acknowledged that the Covid pandemic had hit the British Council's commercial activities incredibly hard. He was very sympathetic but failed to respond to Tom Tugendhat's hope that the closure of five sites be reversed soon. As the Government host the G7 summit, does the Minister accept that to allow the closure of British Council overseas offices will be further evidence that the Government are not prepared to put the words of the integrated review into action?

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, on the noble Lord's substantive points, I assure him that we have demonstrated our integrated review priorities and our support for the British Council by the large-scale package of funding we have provided to the British Council during the pandemic. The formal announcement is yet to be made on the reversal of any office closures. We are working through the implications with the leadership of the British Council. If there was one silver lining to the terribly grey cloud that is the pandemic, it has been the ability to see how we can avail of technology delivery, including in the work the British Council does across the world.

Baroness Northover (LD): The strategic review rightly extols the soft power of the British Council, but its finances have, as we have heard, been savaged by the pandemic. I fought hard to get the council back into Angola, for example. It is vital there and elsewhere for future trading relationships with the UK. It is vital also for our higher education system to have the British Council in country, training those who want to learn English. Will the Government think again about the council's £10 million shortfall?

Lord Ahmad of Wimbledon (Con): My Lords, I acknowledge the noble Baroness's work in Angola. I know that she is involved with the British Council APPG. I have seen directly in my travels as a Foreign Office Minister, then as a joint Minister and now as a Minister at the merged FCDO the important work that the British Council does, including on English language training. I reassure the noble Baroness that we have provided support. The overall package is around £609 million over the past year, which includes emergency funding in March 2020 in line with the pandemic. We are working through the issue of any underlying shortfall with the British Council leadership. If the noble Baroness goes into the figures quite specifically, she will see that this is a very generous settlement for the British Council.

Lord Mackay of Clashfern (Con) [V]: My Lords, I wonder whether my noble friend can say what has been accomplished over the last three years by the offices threatened with closure? Is it wise to close offices when the British Council is crucial to widen the influence of the United Kingdom in the world at this critical time in our national history?

Lord Ahmad of Wimbledon (Con): My noble and learned friend again draws attention to the proposed closure of certain offices. I assure him that we are looking at and working through the implications for the services within each country but, equally, ensuring that we can plug the gap through an innovator model, including a hub-and-spoke model for a particular country, or through technology enablement.

The Deputy Speaker (Lord Alderdice) (LD): The noble Baroness, Lady Blackstone, has withdrawn, so I call the noble Baroness, Lady Coussins.

Baroness Coussins (CB): My Lords, I declare my interest as co-chair of the APPG on Modern Languages. This is supported by the British Council, which last year used £30 million of its income from English language schools to supplement its grant in aid. Covid has wiped out this commercial income. Between five and 20 country programmes are at risk for the sake of £10 million, including the Five Eyes countries, risking trade and cultural benefits, and Afghanistan, which could see the end of valuable work with women and girls that would be hard to digitalise. How is this compatible with global Britain?

Lord Ahmad of Wimbledon (Con): My Lords, I acknowledge the important work that the British Council does on the English language. I assure the noble Baroness that the Government recognise that the British Council is a leading provider of English language training and examinations and reaches more than 100 million learners across 100 countries. We will continue to remain focused, and in countries where we need to take a step back or there are office closures, we will look at how best we can provide such services there.

Lord Balfe (Con): My Lords, the two things about Britain that radiate around the world are the World Service and the British Council. They are the main thrust of our soft power, as was represented in the integrated review. I urge the Minister that, far from cutting back, we should seek to expand the role of the British Council as well as the World Service, particularly into areas such as Russia where we have been forced to withdraw. We should back the British Council by expanding its budget, not cutting it as we are at the moment.

Lord Ahmad of Wimbledon (Con): My Lords, I totally agree with my noble friend inasmuch as the British Council is an important part of the UK's soft power. Indeed, I would argue with substance that the UK is a soft power superpower. I assure my noble friend that the FCDO is supporting specific programmes with the British Council through the package that I have already outlined, and indeed through the BBC's World 2020 programme, and there are other examples of our soft power, including the Chevening, Marshall and Commonwealth scholarships, which provide further examples of our continued support, notwithstanding the pandemic.

Lord Bach (Lab) [V]: My Lords, I declare an interest as an ex-chair of the British Council All-Party Parliamentary Group, and as someone whose father was a career senior officer in the council. As chair, I was privileged to work closely with the council at home, but I also visited Lebanon and Nigeria and saw the superb work being done on Britain's behalf. Why on earth are Her Majesty's Government effectively going to force the British Council out of a number of countries when they, the Government, constantly claim that they are in favour of a global Britain policy? The two concepts are surely in direct conflict with each other. As the Defence Secretary recently said,

"there is not enough of it"—

meaning the British Council—

"around the world".—[*Official Report*, Commons, 1/2/2021; col. 674.]

He was correct, was he not?

Lord Ahmad of Wimbledon (Con): I am sure that I will always agree with my right honourable friend the Defence Secretary, and I agree with him about the important role of the British Council. Where I disagree with the noble Lord is in his assessment. We are a major power when it comes to soft power, and the British Council is part and parcel of Britain's continuing presence in that area across the world.

Viscount Waverley (CB): My Lords, following the theme of everyone else this afternoon, how can this country be a global Britain with an insular approach? How secure is the Minister that the Treasury fully understands the strategic contribution of the British

Council in establishing networks and information gathering, the cultivation of future leaders around the world, and the creating of links for trade and export promotion, thus offsetting the demoralised Foreign, Commonwealth and Development Office?

Lord Ahmad of Wimbledon (Con): My Lords, again, I am a Minister in Her Majesty's Government and I would argue that we remain very strong in the area of soft power, including through our work in the British Council. I would draw the noble Lord's attention to the fact that the UK ranks consistently well ahead of many other leading countries when it comes to soft power assessments; indeed, we are second in the Portland Soft Power 30 index, second in the Anholt Ipsos Nation Brands Index and third in the Brand Finance Global Soft Power Index. These are assessments of our capacity in soft power around the world.

Baroness Andrews (Lab) [V]: My Lords, I am sure the Minister understands that it is difficult to believe in the Government's commitment to being a soft power superpower while we are committing these cuts to development aid and the British Council. He may have to write to me, and I accept that, but can he assure me that the unique work that the British Council is doing through the cultural protection fund to repair the heritage of countries that have been so devastated by war will be placed on a sustainable footing? Does he agree with me that this is an absolutely critical and highly innovative way in which to maintain soft power where it really counts?

Lord Ahmad of Wimbledon (Con): The British Council's specific budgets will be finalised, but of course I will write to the noble Baroness in that respect. It also plays an important role with other organisations, such as UNESCO, with regard to protecting world heritage sites, and it will continue to co-ordinate in that way.

Baroness Bennett of Manor Castle (GP): My Lords, I should perhaps declare an interest as someone who once did an exam in the British Council office in Bangkok. That is of relevance to the question that I wish to ask the Minister. For the 5.5 million Britons who live abroad, in many ways British Council offices and services are for them a link back that they rely on. More than that, I did that exam as part of a master's degree through the University of Leicester; this is a hugely valuable export for the UK, and many educational institutions, as well as other institutions and businesses, rely on that British Council link. Will we not damage all those links for Britons abroad and for British businesses making links abroad?

Lord Ahmad of Wimbledon (Con): First, I hope that the noble Baroness passed her exam—as I am sure that she did, based on her very able and notable contributions in your Lordships' House. On supporting the British Council, I share what she outlined: the importance of the relationships that the British Council has, and the nature of our partnerships with key universities. She mentioned the University of Leicester. I have already alluded to the scholarship programmes, in addition to the work that we do with the British Council, which underline our commitment to education.

Just for clarity, I mentioned the £609 million over the past year that we have secured to ensure the British Council's future. We have provided £26 million of emergency funding and loan provision facilities to the British Council of another £145 million, and we are currently finalising another £100 million loan facility. So far, the British Council has, I believe, drawn down £50-odd million of that loan facility. Overall, in addition to those loans, we are providing £189 million of grant in aid funding to the council for 2021-22, of which £150 million is ODA.

I hope that that gives a degree of reassurance—although not to the total satisfaction of all noble Lords, I am sure—that we are committed to the British Council. We support it, notwithstanding challenging times and notwithstanding the pandemic. We have stood by the British Council and will continue to do so.

The Deputy Speaker (Lord Alderdice): I am grateful to the Minister and Members that, through their being concise, all supplementary questions, of which there were nine, were able to be asked and answered.

1.25 pm

Sitting suspended.

Professional Qualifications Bill [HL]

Committee (1st Day)

1.30 pm

Relevant documents: 2nd and 3rd Reports from the Delegated Powers Committee

The Deputy Chairman of Committees (Lord Alderdice) (LD): My Lords, the Hybrid Sitting of the House will now resume. I ask all Members to respect social distancing. I will call Members to speak in the order listed. During the debate on each group, I invite Members, including Members in the Chamber, to email the clerk if they wish to speak after the Minister. I will call Members to speak in order of request. The groupings are binding. A participant who wishes to press an amendment other than the lead amendment in a group to a Division must give notice in debate or by emailing the clerk. Leave should be given to withdraw amendments. In putting the question, I will collect voices in the Chamber only. If a Member taking part remotely wishes their voice to be accounted for if the question is put, they must make this clear when speaking on the group.

Amendment 1

Moved by ***Lord Fox***

1: Before Clause 1, insert the following new Clause—

"Purpose of this Act

(1) The purpose of this Act is to give regulators the necessary powers to ensure demand for professions can be met in the United Kingdom.

(2) Nothing in this Act affects the independent process of defining the accreditation processes of the regulators."

Member's explanatory statement

This amendment underpins the principle that the process of defining the accreditation processes rests with the regulators.

Lord Fox (LD): My Lords, this amendment, I should emphasise to the Minister, is offered very much in the spirit of helpfulness. At Second Reading, the Minister said:

"The Bill will allow action to be taken in the public interest if it is judged that a shortage of professionals has arisen in a profession, but that action in no way restricts regulators' ability to take decisions about individual applicants; it merely requires them to set up a route through which people can seek entry to a profession."—[*Official Report*, 25/5/21; col. 971.]

In other parts of his speech, the Minister reiterated the view that it was not the Government's intention to interfere with regulators' roles and responsibilities. Yet he also said:

"I emphasise that we want this new framework for recognition of professional qualifications to complement regulators' existing practices."—[*Official Report*, 25/5/21; col. 909.]

It is because of the need to clarify how the Bill complements the regulators that I am putting forward this amendment with the support of my noble friend Lord Purvis of Tweed.

This Bill is backed up by secondary legislation that we have yet to see and which will define the true nature of this Bill. There are genuine concerns that the Bill creates potential for central government to intervene in a manner that cuts across the Minister's assurances. This amendment seeks to clarify and delineate the purpose of this Bill. It does no more than the Minister has repeated in meetings and on the Floor of the House.

I make no apology for repeating that the overwhelming proportion of the reach of this Bill is yet to be seen. All we have is the skeleton. We know from the Minister that we should expect a deluge of secondary legislation, and it is in that where we will see reflected the true purpose of the Bill. I would add that, unfortunately, level of scrutiny of such secondary legislation sometimes falls below the level of the scrutiny by your Lordships of primary legislation, which is another danger.

Why should we be suspicious and, indeed, are those suspicions restricted just to these Benches? For the first time, but not the last, I refer your Lordships to the report of the DPRRC, published on 27 May, which addressed this Bill. In that report, the issue is clear. At the outset, the committee categorises Clause 1 as

"a Henry VIII power, as it includes power to amend primary legislation and retained direct principal EU legislation"

and goes on to say:

"The power can be used to make provision about a wide range of matters relating to applications to practise a profession, including 'detail on the approach to be taken in assessing … qualifications', requirements for regulators to have regard to guidance when determining applications to practise, the information to be included in such applications, fees to be paid and appeals."

We have yet to see this potentially very far-reaching legislation. This takes this Bill to a place that is somewhat beyond what the Minister has outlined its role to be. Of course, those Henry VIII powers are qualified, but the scope of those qualifications is broad and will be discussed later.

As well as the mutability of Clause 1, the nature of Clause 3 has confirmed the need for this amendment. I was grateful that the Minister met me and colleagues this week. During that discussion, he confirmed that in relation to the purpose of the Bill, Clause 3 is explicitly needed in order to implement trade agreements where mutual recognition of qualifications is included. In fact, the Minister considers it vital for the Government to use this clause to make sure that the regulatory authorities enact the terms of a future free trade agreement. Of course, it is not needed for that. The Government could bring each trade deal to Parliament for approval, which would be a way of getting primary approval of such clauses within a free trade agreement. In that case, Clause 3 would not be required, and we can have that debate later. This is all about the creeping remit of the Bill, which is why I refer to it in this amendment.

The amendment clearly upholds the aim of giving all regulators the powers to regulate international professionals. Importantly, it also underpins the independence of the regulators—independence that the Minister so obviously treasures, but which this Bill, as drafted, so obviously threatens. In the Minister's own words at Second Reading,

"the regulators are the experts in their respective fields and they ensure that high professional standards are maintained. Regulators must continue to have the ability to act in the public interest, including in the best interests of their professions and the consumers of professional services."—[*Official Report*, 25/5/21; col. 971.]

We say prove that by accepting Amendment 1 and putting it in the Bill. I expect the Minister to say that he agrees with the text, but disagrees with putting it in the Bill. If indeed that is the Minister's response, I would appreciate him explaining why he disagrees with putting it in the Bill. What is wrong with putting it in if that is the purpose of this Bill?

This is a skeleton Bill—another skeleton Bill—and this amendment tries to make clearer what this Bill is for, explicitly guiding what the Bill will do when the body of secondary legislation is added. I beg to move.

The Deputy Chairman of Committees (Lord Alderdice) (LD): I call the noble Baroness, Lady Noakes.

Baroness Noakes (Con): My Lords, the noble Lord is looking at an out-of-date list of speakers.

The Deputy Chairman of Committees (Lord Alderdice) (LD): I call the noble Lord, Lord Palmer of Childs Hill.

Lord Palmer of Childs Hill (LD): My Lords, I am rising rather surprised. We have heard my noble friend Lord Fox elegantly put the reasons why the Bill needs to be slightly tidied up, if nothing else. The amendments in this group do all they can to allow overseas qualifications to be treated as acceptable in the UK. The amendment in my name seeks to deal with a situation where the qualifications and experience are held to fall short; the Bill does not talk about what happens then. In many spheres, what happens is that there is some bridging measure to bring the applicant up to the required standard.

Amendment 12 in my name seeks to give the regulator relief from bringing the applicant up to the required standard if this would involve unreasonable cost, time and be a resource burden on the regulator. My noble friend Lord Fox said that the regulator will be independent. We must not add the cost of providing bridging training if people do not come up to standard.

As has been said, this is a skeleton Bill. We need to make it clear on whom the duty falls to provide the additional training or experience to bring it up to standard. The Bill does not say, but it must not be down to the independent regulator.

The Deputy Chairman of Committees (Lord Alderdice) (LD): I now invite the noble Baroness, Lady Noakes, to make her intervention.

Baroness Noakes (Con): My Lords, I asked the Government Whips' Office to order the speakers as is normal in the Chamber when we do not have lists—that is to say, those who have tabled amendments are allowed to speak before those who simply wish to comment on them. I was advised that the list was issued late this morning.

The noble Lord, Lord Fox, may recall that I do not like purpose clauses. I believe that a Bill should be written in clear language and that its scope and impact should be readily understandable on its own terms. This Bill fails to meet that test, but I do not think that a purpose clause is the answer. Instead, we should focus on making sure that the Bill itself is fit for purpose. We have tabled a number of amendments aimed at doing this.

I also have a minor quibble with the drafting of Amendment 1. Subsection (2) refers to

"the independent process of defining the accreditation processes of the regulators."

I believe that the independent processes which this Bill should protect go beyond mere definition of accreditation processes. We do not want any form of interference in the independent processes of regulators. This should be an enabling Bill which should unblock legal impediments to the recognition of overseas qualifications. It must steer clear of all the processes operated by regulators, not just of those defining accreditation.

I put my name down to speak because I recognised the Institute of Chartered Accountants' provenance of Amendment 12 in the name of the noble Lord, Lord Palmer of Childs Hill. That is why I was keen for him to speak first. Amendment 9 in my name, in a later group, is slightly simpler, but on the same basic point. I realised a little too late that perhaps I should have asked to add my amendment to this group. The essence of Amendment 12 is to ensure that inappropriate burdens are not placed on regulators, as the noble Lord, Lord Palmer, has explained. I will not repeat those arguments. I will explain my own amendment when we reach it later.

This is a very real issue. The Government need to look at it again to ensure that their approach is reasonable in the context of what regulators could be compelled to do by the provisions of this Bill. As far as we can, we should seek to avoid any possibility that they could be compelled to do anything unreasonable, burdensome or otherwise inappropriate to their profession.

Lord Thomas of Cwmgiedd (CB) [V]: My Lords, I shall speak briefly in support of Amendment 1. Subject to the clear statement of the noble Baroness, Lady Noakes, it would be desirable to try to focus much more of this wide-ranging Bill. If that is not done, a provision to make clear that the independence of regulators is not in any way affected is of vital concern. The regulation of professions should be set by the structure ordained by Parliament—not by the Executive and then left to the regulators. If more precise provisions cannot be incorporated, Amendment 1 would have this vital effect of making clear the independence of the regulators.

In the case of the legal profession, it is convenient at this stage to raise two points about independence. First, the independence of the courts depends on the independence of lawyers, with their ability to challenge the powerful, particularly the Government. This can only be safeguarded by independent regulation within a structure set by Parliament. Given the position of the Executive in relation to the courts and the legal profession, it should not be the Lord Chancellor's role to be involved in this in any shape or form. It is difficult to see, given the scope of the Legal Services Act, why these wide-ranging powers need to be given to the Lord Chancellor.

1.45 pm

The second point concerns the UK legal services market. As this House knows well, this is very valuable to the UK economy, particularly because of the international work it services, both in the UK and by those qualified as English lawyers in overseas countries. It is often important for people to be qualified as English lawyers, given the prevalence of English law in international agreements and standard form contracts. Thus the position of the legal profession, particularly under the Legal Services Act, gives the regulators wide and extensive powers, leaving them to balance the necessary interest involved, particularly the consideration of reciprocal arrangements. It is important that none of these powers is constrained. Can the Minister clarify why recognition of overseas legal qualifications cannot be left to the regulators without the need for the extensive powers in this Bill? If they are needed, they should be very narrowly confined by primary legislation and not left to these sweeping Henry VIII powers.

Lord Hunt of Kings Heath (Lab) [V]: My Lords, as we are at the start of the Committee stage, I declare my interest as a board member of the GMC, although I am speaking on the Bill in a personal capacity.

I support Amendment 1. We have a real problem with the skeletal nature of the Bill and the extensive use of Henry VIII clauses. It is a great pleasure to follow the noble and learned Lord, Lord Thomas of Cwmgiedd, whose powerful intervention illustrated some of the problems. The power in Clause 1 could be used to make provision about a huge range of matters relating to applications to practise a profession. Extensive powers are delegated to Ministers. As the Delegated Powers and Regulatory Reform Committee has pointed out, neither the Explanatory Memorandum nor the Explanatory Note gives adequate reasons for the extensive use of Executive power. I will come back to this during Committee, but the Minister should at least have a shot at explaining why Executive powers are needed to this extent. So far, we have not heard a reason.

The Delegated Powers Committee illustrated the example of the dentistry profession. Dentistry is one of the professions for which regulation is provided in primary legislation. The Dentists Act 1984 includes a

[Lord Hunt of Kings Heath]
provision to recognise overseas qualifications. Holders of overseas qualifications who wish to qualify for registration as dentists in the UK must not only have a recognised overseas diploma but, as a starting point, they must sit an examination to satisfy the regulator that they have the requisite knowledge and skill. They must also satisfy the regulator as to their identity, good character, good health and knowledge of English. The committee says that Clause 1 appears to allow such requirements and other comparable requirements in primary legislation relating to other professions to be watered down by statutory instrument, if Ministers considered this necessary to enable demand for the service of the profession in question to be met without unreasonable delay. I do not need to remind the Minister that the dentistry profession is under acute pressure.

My reading of the Minister's amendments in Clause 1, which are welcome, is that some protection is provided, because regulations can specify additional conditions for a professional's overseas qualifications to be met. But, of course, that depends on the Minister taking the necessary action. It also appears that Clause 3 could be used to implement an international agreement that encompassed an override in respect of the actions of a regulator. The noble Lord, Lord Fox, referred to this, and, again, we will come back to Clause 3 later today.

So there is a need to safeguard and protect the integrity of the regulators and uphold the public interest in high standards among the professions covered by the Bill. The noble Lord, Lord Fox, has attempted to draft such protection, and I hope that the Minister will be sympathetic. If not, he needs to realise that the current construct of the Bill will simply not do, and the House would be right to insist on further protections.

Lord Purvis of Tweed (LD): My Lords, the noble Baroness, Lady Noakes, raised her consistent point, for which I give her respect, about declaratory statements within legislation. My noble friend Lord Fox, in bringing forward his amendment, which I had the pleasure to cosign, is justified in this instance, given what other noble Lords have said within this group. The Government have not provided the level of detail about the potential use of the extensive Henry VIII powers under this legislation in particular. Therefore, a statement that these powers should not be used to impact upon the independence of our regulators is of great importance.

That has been not endorsed but reflected in the Delegated Powers and Regulatory Reform Committee's report. As has been my wont over many years in this place, I have taken great joy in reading Delegated Powers and Regulatory Reform Committee reports—I did not have grey hair when I came into this place. It is rare that a committee report such as this can be so clear. On the Trade Bill, the Minister was given great credit when the committee cited support of the Government and raised no issues, but in this area, it could not be clearer. So the calls of the noble Lord, Lord Hunt, and my noble friend Lord Fox for greater clarity are important.

The committee, in paragraph 8, said of the fact that no adequate explanation was given:

> "This is particularly disappointing given that … as the Government have acknowledged, most of the substantive changes to the law envisaged by this Bill are to be made through delegated powers rather than the Bill itself."

Therefore, a statement such as this amendment is clearer. So we agree with the committee that a much fuller explanation of the provision to be made in regulations under Clause 1, and the justification for that provision, is required.

The Government did not need to go down this route, as their own impact assessment indicated. The impact assessment started, under the Minister's signature on the opening page, by giving reasons for the alternative approaches, and included:

> "For recognition of overseas qualifications: a fixed (one size fits all) approach; and a risk/benefit system."

I think there would be common ground between most of us on these Benches and the Minister on risk/benefit systems usually being best. But no, the Government have opted for "one size fits all".

The impact assessment goes on:

> "For regulators and international recognition agreements: arrangements for specific regulators."

As we will no doubt hear in other groups, specific regulators have specific legislative underpinning for their own purpose and require scrutiny on a case by case basis. But the Government rejected it. And they rejected for information transparency a non-legislative guidance-based approach. So it is the Government's choice to go down this route, which opens up a lot of areas where they should be much clearer in indicating the intent behind the regulation-making powers they want.

The Minister said on Second Reading that this Bill, while a framework, was the result of a considered view from reflecting and consulting with regulators as well as more widely with stakeholders. So I was frankly amazed to read that there is currently, for the healthcare professions, a live consultation on regulatory reform. It started on 24 March and closes a week today; it has not even closed yet. That consultation, *Regulating Healthcare Professionals, Protecting the Public*, touches on governance, the operating framework, fees, education and training, registration and fitness to practise. At paragraph 10, on the governance and operation framework, it says that the Government are

> "proposing to devolve many of the decisions about day to day procedures to the regulators themselves, whilst ensuring that they continue to meet their overarching objective to protect the public."

But this Bill provides the Government with Henry VIII powers to do exactly the opposite when they choose. So I ask the Minister: which is the Government's intent—the one in the Bill we are scrutinising at the moment or the consultation that has not yet closed?

Paragraph 17 says that the regulators

> "are accountable to the Privy Council … and the PSA provides oversight of how they carry out their regulatory functions. The Privy Council has default powers to direct most of the regulators if they fail to deliver their objectives. However, this does not apply to the GDC and GPhC. We propose that the GDC and GPhC are included within the Privy Council's remit."

So the Government, in their consultation, are seeking to expand the role of the Privy Council with its default powers, while this Bill is going in the opposite direction. So could the Minister explain what the relationship

will be between the regulation-making powers in this Bill and the Professional Standards Authority? Can these powers be made to change the Professional Standards Authority's legislative standing and how it provides oversight to the regulatory bodies it provides for? And what is this Bill's relationship with the Privy Council? The Privy Council, as the Government say in their own live consultation at the moment, is the body these regulators are accountable to.

Paragraph 23 says:

"The proposals set out in this document aim to give regulators greater flexibility to determine how they set standards for, and quality assure, education and training."

But the powers under this Bill will provide—in a way the Government have not yet provided information on—Henry VIII powers to completely determine what they are for the set purposes. So restrictions on the Government's ability to use those powers which will impact upon this legislation are necessary.

The element of the consultation I thought was quite extraordinary is that the Government themselves say that when it comes to regulation of the medical professions they will go down a different route to change the legislation. The Government's consultation says:

"We intend to implement … changes for each of the healthcare professional regulators through secondary legislation made under Section 60 of the Health Act 1999."

There is no reference to any mechanisms under the Professional Qualifications Bill, so what is the Government's intent for the Henry VIII powers under this Bill, with their already publicly stated intent to use the Health Act for medical?

Finally, the Government's consultation closes with this:

"While we are required to hold a public consultation on all draft secondary legislation made using the Section 60 powers, we are taking this opportunity to seek views on the proposals that will, in due course, apply to all the professional regulators and all regulated healthcare professionals."

On Second Reading, the noble Baroness, Lady Hayter, made a very valid request of the Minister, which was to see some draft regulations about the intent before we conclude our scrutiny of this Bill in this House. The Minister refused her.

The Government's consultation says that they are

"required to hold a public consultation on all draft secondary legislation"

when they change the regulation of health professionals, so what is the Government's position on this? The Government say, in paragraph 407 of that document:

"We also intend to commission a review of the professions that are currently regulated in the UK, to consider whether statutory regulation remains appropriate for these professions."

Clearly that is not the case, because the Government have decided so, as I said at the start of my contribution. Can the Minister tell us what the status of this consultation is, if so many issues have been pre-decided by the Bill?

2 pm

Baroness Hayter of Kentish Town (Lab): My Lords, I slightly have the feeling that the back of an envelope was used for the drafting of the Bill. I could be quite wrong, but it has that feel about it.

I actually really welcome the "purpose" framing of the Bill—and here, unusually on this Bill, I disagree with the noble Baroness, Lady Noakes—because I think that such framing is extraordinarily useful when one later comes either to court cases, which have in the past occasionally been involved in determining what the purpose of a Bill was or what it meant, or to looking at statutory instruments. I like the idea of setting out what a Bill is for and what it is trying to achieve. Therefore, I welcome Amendment 1, although I have a question about one part of it.

What seems to me really important about Amendment 1 is the second part:

"Nothing in this Act affects the independent process of defining the accreditation processes of the regulators."

As the noble Lord, Lord Purvis, said, this statement is of great importance. It clearly underlines many of the concerns raised with us—and, I am sure, with others around the House—by regulators, that somehow the Government will tell them how or when to accept the qualifications or experience gained under other jurisdictions so as to allow an individual to practice here. Indeed, this concern is reflected in Amendment 12, spoken to by the noble Lord, Lord Palmer, which emphasises that regulators should be able to rule on whether someone meets their standards.

As I said at Second Reading, regulation is all about protecting the public and the consumer or user interest. It is why we restrict when someone can call themselves a lawyer or a doctor. The comfort that gives to a client or a patient is obvious: it is shorthand for saying that someone has trained them up, someone has tested them, and someone knows they are fit to practice. For consumers, that is a really important purpose of regulation. It is why we have set up, in law, independent regulators to be able to decide whether somebody meets the recognised standards. They do of course do more than that—they look at CPD, at discipline and at various other issues—but for the purpose of this, it is about setting a standard and ensuring that someone can meet that standard before they practice, to protect users of the service. That part of Amendment 1 is really important.

What I am querying is the other bit, which says that the purpose of the Act—and as I said, I like the idea of a purpose of an Act—is to

"give regulators the necessary powers to ensure demand for professions can be met in the United Kingdom."

Of course, that does not describe the Bill as it is at the moment; that is only one arm of the Bill. Indeed, the regulators who have been in touch with us say about the part I have just quoted that they can do it anyway, and ask why we are passing a Bill to give them powers that they already have. None of the regulators has been clamouring for these powers. Nobody, while we were in the EU, came to us and said, "Look, outside the EU we would love to have lawyers, doctors, vets"—I forget who is on the long list now—"from another country, but we are not able, because of our statutes, to have a process to take them in". So this has got nothing to do with leaving the EU; either they had those powers before and they were not used, or they did not have them before and never felt the need of them. Nobody is asking for these powers. It is quite

[Baroness Hayter of Kentish Town]
extraordinary that the back-of-an-envelope drafting managed to drop that bit in. Basically, that is what the regulators have been telling us.

We have also had the noble Lord, Lord Trees, telling us, from the veterinary surgeons' point of view, that they have been able to do this. The noble Baroness, Lady Finlay, knows that the GMC has been able to recognise doctors' qualifications and experience from around the world. None of the regulators needs this, so it is very hard to understand why it is being dropped in.

Of course, partly it is being dropped in because the purpose of the Bill is not simply to look at where there may not be sufficient professionals here. The Government say that they want to do trade deals, and, as part of those, want to be able to sell—or is it offer or swap?—the rights of professionals from other jurisdictions to come here. Actually, I think that that is what the Bill is about. Perhaps the noble Lord, Lord Fox, deliberately did not put it in the purpose of the Bill as he knows we are coming later to try to delete Clause 3 because we have our doubts about it.

It seems to me that we need to be clear whether we need the first bit. I will ask the Minister later—I have given him notice—which of the 160 regulators in the letter to the noble Baroness, Lady Noakes, do not already have the powers. If there are three of them, are we really passing a Bill for three regulators that cannot do it and probably do not want to do it anyway? I think that broad question needs to be asked. We will come on to that.

There is a big issue around whether the Government should be asking a regulator to do something it does not want to do. If a regulator wants to put in a process for recognising qualifications from another country, it has probably already done so anyway. We are therefore looking only at situations where it does not want to do it, and the Government are saying, "Nevertheless, we want you to". We are going to come back to ask whether it is right that that should happen.

Going back to the second part of Amendment 1, the Minister has said in a letter to me—and to others too, I am sure; I do not think I get special words from him—that he

"fully recognises that the autonomy of regulators in assessing standards is key to protecting consumers and public safety and … in all negotiations a key concern for the government is ensuring the autonomy of UK regulators and protecting UK standards".

If he is willing to put that in a letter to me, I see no reason why he should not put it in the Bill, so I hope he will at least accept the second part of Amendment 1.

The Minister of State, Department for Business, Energy and Industrial Strategy and Department for International Trade (Lord Grimstone of Boscobel) (Con): My Lords, I thank the noble Lords, Lord Fox, Lord Purvis of Tweed and Lord Palmer of Childs Hill, for their proposed Amendments 1 and 12. These amendments would enshrine a purpose for the Bill and seek to avoid unreasonable burdens on regulators. I think we all recognise that, although this is a short Bill, it is a very complex one, as any Bill dealing with a landscape composed of more than 50 regulators and more than 160 professions was bound to be.

Many of the points raised in the debate, which I listened to very carefully, relate to the detail of subsequent clauses. So I propose, and I hope this is acceptable, to deal with these points later, in the order in which they come up in the Bill, rather than attempt to deal with all the points now. I have to say that I am very optimistic that, when I come to these points later, I will be able to deal with and assuage the anxieties expressed by noble Lords.

Coming back to the amendments in this group, I start with Amendment 1, tabled by the noble Lords, Lord Fox and Lord Purvis of Tweed. I accept that the noble Lord, Lord Fox, was trying to be helpful, as he always is, in tabling his amendment. The proposed new clause contains two provisions, and I will take them in turn.

First, the amendment states that

"The purpose of this Act is to give regulators the necessary powers to ensure demand for professions can be met in the United Kingdom".

I am in firm agreement with the noble Lords' intent. Indeed, one of the core purposes of the Bill is to give regulators the powers they need to enable demand for the services of professions in the UK, or part of it, to be met without unreasonable cost or delay. In essence, that is the purpose of Clauses 1 and 2. It is unnecessary to state one of the core purposes of the Bill separately, as it is already contained in Clause 2.

The Bill's objectives, however—I think that this is clear to all of us—are wider than the purpose expressed in this proposed new clause alone. Do the noble Lords intend to limit the Bill only to responding to demand for services? That would be an opportunity missed. I will outline other important objectives of the Bill. It gives UK government Ministers and devolved Administrations powers to implement the professional qualification provisions of international agreements, and to empower regulators to enter into their own recognition agreements. These support the UK's trade agenda. Having these powers has the knock-on benefit of helping to address demand for professions. Taken alone, however, these clauses are about international agreements and not demand for professions.

The Bill also has an important objective in relation to targeted steps for good regulatory practice. The clauses on transparency and information-sharing will support regulators in operating efficiently and individuals in entering professions. They are not necessarily about the demand for professions. I hope that the noble Lords recognise that these are also worthy purposes of the Bill.

The second provision in the proposed new clause outlines that nothing in the Bill affects the independent process of defining the accreditation process of regulators. As we all know, that process is important in maintaining professional standards in the UK. Once again, I find myself in firm agreement with the noble Lords' intent. The Government are committed to upholding the autonomy of our regulators.

The noble and learned Lord, Lord Thomas of Cwmgiedd, spoke with great knowledge of this in the context of the legal profession, and I completely agree with his views about the need for the independence of the profession to be maintained. Let me say at the outset—I am sure that this is common ground across

the Committee—that our regulators are the experts in their fields. They make sure that high professional standards are maintained. The core of the Bill supports the autonomy of regulators and their freedom to determine whether an individual with overseas professional qualifications is fit to practise in the UK.

Furthermore, and importantly, I am pleased to say that the regulators I have spoken to—I have spoken to a great number of them—agree that the Government are not interfering with their independence in the Bill. I add that I agree with my noble friend Lady Noakes about purpose clauses, especially when, as in the Bill, they serve no useful purpose. I am not therefore convinced of the need to set out the importance of the independence of regulators' processes in an additional clause in the Bill, when the autonomy is manifest already. That autonomy, I beg to suggest, runs like a golden thread throughout the whole Bill.

I know we will come back to delegated powers when we debate individual clauses, but I appreciate the point raised by noble Lords that, with many powers contained in the Bill, a statement enshrining the purpose of the Bill would offer reassurance. I repeat, however, that those principles are delivered through the substance of the Bill, and I will offer arguments on the necessity of the powers later in the debate. I hope that they will assuage the fears of the noble Lords, Lord Hunt of Kings Heath and Lord Purvis of Tweed, and others.

2.15 pm

I listened carefully to the points made about Amendment 12 by the noble Lord, Lord Palmer of Childs Hill. It seeks to ensure that regulators are not required to offer bridging measures to applicants that would lead to unreasonable burdens for the regulator. Nothing in the Bill obliges the regulators themselves to offer any necessary bridging measures. They may, for example, simply identify a course provided by another body or institution which the individual must pass before they can practise. To put it simply, if an applicant's English skills are not good enough, it is not the regulator that will provide classes for him or her to improve their language skills.

We will come back to many of these points during Committee. I conclude by thanking the noble Lords for their amendments and I hope that they have found my response helpful and reassuring. I therefore ask the noble Lords not to press their amendments.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, I have requests to speak after the Minister from the noble Lords, Lord Lansley and Lord Purvis of Tweed. I call the noble Lord, Lord Lansley.

Lord Lansley (Con): My Lords, not having participated in this group, I am prompted by the remarks of the noble Lord, Lord Purvis of Tweed, on the regulation of healthcare professionals, to which I do not think my noble friend responded. I have here the Law Commission report of April 2014—my noble friend will be aware of it—on the issues referred to by the noble Lord, which included the recommendation that Section 60 of the Health Act 1999, and indeed the powers of the Privy Council, should be substantially removed from the regulation of healthcare professions. What is the Government's intention on the regulation of healthcare professionals? Do they intend to implement the Law Commission report seven years later, or do they now intend to proceed without any reference to it?

Lord Grimstone of Boscobel (Con): My Lords, if I may, because it is a point of some detail, I will write to my noble friend and place a copy of my letter in the Library.

Lord Purvis of Tweed (LD): I say to the Minister respectfully: he did not assuage my fears, because he did not address them. Can he reassure me now, from the Dispatch Box, that none of the Henry VIII powers in the Bill will be used to impact the accountability of the medical professions vis-à-vis the Privy Council, or—whether in response to demand or otherwise—to impact any of the powers or the relationship between the professional standards authority and any of the regulators that it has responsibility for?

Lord Grimstone of Boscobel (Con): I did not believe that my comments on this group would assuage the noble Lord's fears, but I am sure that as we progress through the Bill my comments on this matter in later clauses will do so.

Lord Fox (LD): My Lords, this has already been a more interesting debate than I had anticipated. The response of the noble Baroness, Lady Noakes, on the subject of such clauses was not unexpected, but I emphasise that—as the noble and learned Lord, Lord Thomas, noted—this is a twin-track approach.

We would like at the end of this to have a Bill such that, in the Minister's words, we all exit the Chamber assuaged. In the event that we do not, however, something along these lines is needed as a safeguard. I am not parti pris about the wording on this—I will take full advantage of the wisdom of others in the Committee, not least that of the Minister himself, if his department chose to engage to offer reassurance. He admits that such a clause would offer reassurance, and then says that the Government do not want to offer reassurance. The opposite of reassurance is something that I would not have thought the Government wanted to be spreading around, but clearly I am wrong.

On the chances of our being assuaged, there are two clear problems. First, while there has been some engagement with the medical profession, we have already had accountants, dentists and lawyers paraded as professions that have issues. I suspect that if there were experts in your Lordships' House on many of the other professions, they too would express problems. So, while there has been consultation, it seems to me that more of that could be done.

That takes us to the other point, which is the back-of-the-envelope comment that the noble Baroness, Lady Hayter, made. I knew what my noble friend Lord Purvis was going to say, and I was still shocked when I heard him say it. There has been no reference by Her Majesty's Government to this parallel exercise, and there would have been no reference to it had the diligence of my noble colleague not come to bear. It seems unthinkable that Her Majesty's Government

[LORD FOX]
would bring a Bill such as this—a complex Bill, in the words of the Minister—without acknowledging a parallel exercise that is going on. The Minister does not seem to be prepared to answer the direct questions, but perhaps he could tell your Lordships' House if Her Majesty's Government are aware of any other parallel exercises going on in other departments at the moment. It would be helpful if they were all brought to light at this point rather than surfacing later.

It seems that assuaging us is going to take an awful lot of application from the Front Bench opposite. That said, we will wait and see how the debate goes today and on other days. On that basis, I beg leave to withdraw Amendment 1.

Amendment 1 withdrawn.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): We now come to the group beginning with Amendment 2. Anyone wishing to press this or anything else in this group to a Division must make that clear in debate.

Clause 1: Power to provide for individuals to be treated as having UK qualifications

Amendment 2

Moved by ***Lord Grimstone of Boscobel***

2: Clause 1, page 1, line 4, after "or (3)" insert "and any other specified condition"

Member's explanatory statement

This amendment would enable regulations to specify additional conditions that must be met by an individual in order to be treated as if they have a specified UK qualification or specified UK experience.

Lord Grimstone of Boscobel (Con): My Lords, I rise to move Amendment 2 and to speak to Amendments 3, 6 and 10 in this group.

I have set out the need for a framework for the recognition of individuals with overseas qualifications and experience that focuses on addressing unmet demand for professional services in the UK. Clause 1 brings in an important part of that framework. It means that regulations can be made which require regulators to have a route in place to determine whether to recognise overseas-qualified professionals from around the world. Where such regulations are made under this clause as amended, they would require a regulator to make a determination as to whether an individual has substantially the same knowledge and skills to substantially the same standard as the UK qualification or experience. These regulations would not and cannot alter the standards required to practise professions in the UK, and UK regulators would still decide who can practise here. Regulations would be made by an appropriate national authority, meaning the Secretary of State, the Lord Chancellor, or the devolved Administrations where within devolved competence. I reassure noble Lords that, where Clause 1 is not exercised—it can be exercised only when particular conditions are met—regulators will be free to continue recognising qualifications from overseas in line with their existing powers and any reciprocal agreements in place.

On Second Reading, several noble Lords spoke to the concerns of healthcare regulators. They highlighted that Clause 1, as it appears in the Bill, could limit the ability of regulators to assess knowledge and skills as they see fit. I committed at Second Reading to table an amendment to Clause 1 to ensure that regulators can assess knowledge and skills as they consider most appropriate. I assure noble Lords that the Government take the views of regulators very seriously. This brings me to the detail of Amendments 2, 3, 6 and 10 in my name.

First, the amendments recognise that, where Clause 1 regulations are used in relation to a given profession, additional criteria may need to be satisfied before an individual may become eligible to practise—for example, criminal record checks to ensure public protection. As raised by a number of noble Lords at Second Reading, this could also be used to ensure overseas-qualified professionals have suitable levels of English language proficiency in appropriate cases—something that, where appropriate, could also be addressed as a compensatory measure under Clause 1(3)(b)(ii). The amendment to Clause 1(1) and the addition of new subsection (3A) would allow these additional regulatory criteria to be specified in regulations made under Clause 1. These criteria would need to be met before an individual with an overseas qualification or experience is treated as having a UK qualification or experience.

Secondly, there are of course a variety of ways that regulators may wish to assess the knowledge and skills of an overseas-qualified applicant. These might include an assessment of their qualifications or a test of competence. The amendments to subsections (2) and (3) of Clause 1 and the addition of new subsection (3A) provide reassurance that, when the power in Clause 1 is used, regulators can assess an applicant's knowledge and skills in whatever way they consider appropriate. I hope, in my first step in assuaging the concerns of noble Lords, that that is the start of the practice.

I have been clear since introducing the Bill that we must protect regulators' autonomy. This includes autonomy over decisions about who practises a profession and flexibility in assessment practices, in line with regulators' own rigorous standards. The methods used to determine whether a professional qualified overseas is similarly qualified to work in the UK should rightly be identified and implemented by regulators. Through these amendments, the Government want to ensure that regulators can use a full range of approaches to make this determination. This could include making judgments only on the basis of qualifications or experience, or on such other bases as a regulator considers appropriate.

I have discussed my amendments with the General Medical Council and Nursing and Midwifery Council, who raised this issue directly with me. I am pleased to say that, in a very good discussion we had yesterday, both the GMC and the NMC welcomed these amendments to the Bill.

At this juncture, it is right to address a point I have discussed with several noble Lords and which touches on the point of the noble Lord, Lord Purvis, about the interaction of the Bill with other matters—in particular, the interaction between this Bill and the Department of Health and Social Care's consultation on regulating healthcare professionals, which also touches on

international recognition of professionals. I reassure noble Lords that there is no reason whatsoever why any proposals resulting from the ongoing consultation and requiring legislative changes could not be implemented through legislation led by the Secretary of State for Health and Social Care and his Ministers. I have no doubt that that legislation would be the appropriate vehicle for upgrades to UK healthcare regulators' legislative frameworks. This is my second point of assuagement.

To conclude on this point, I hope that noble Lords will agree that the amendments address the challenges raised at Second Reading. The amendments will ensure that flexibility and autonomy for regulators is preserved in the event that the power in Clause 1 is used. I beg to move Amendment 2.

2.30 pm

Lord Lansley (Con): My Lords, I apologise that I was not able to be present at Second Reading, so I will not detain noble Lords with my views about the Bill in general terms. However, I hope that I will be forgiven if I have not been able to say those things previously.

Amendment 11 in my name seeks to amend government Amendment 10. My noble friend the Minister has explained helpfully and clearly how the Government have brought forward amendments even before the Committee stage to points made at Second Reading and by the regulators. That is extremely helpful, and I agree with them. There was always a risk that if there was a generic recognition of overseas qualifications or experience, an individual would be deemed to have met the required standard in the United Kingdom, but not necessarily by that individual's experience, qualifications or other factors. My noble friend referred to things such as language assessment. When I was Secretary of State for Health, we were closely engaged in our dealings on this with other countries in the European Union. It is simply not the case that because someone undertakes qualifications that are deemed to be the equivalent of those in the United Kingdom, people are able to practise here in a way that is not impaired. We set about trying to remedy that and we need to make sure that we do not introduce legislation which would reintroduce the same kind of problem.

I encourage noble Lords to look at government Amendment 10. I understand what is intended, but I think that there is a drafting problem. The determinations set out in proposed subsections (3A) (b) (i) and (ii) state that the qualifications and experience are substantially the same or may fall short. Those determinations are to be made

"(i) only on the basis of the overseas qualifications or overseas experience concerned, or (ii) on such other basis".

The inclusion of the word "only" means either qualifications and experience on the one hand or on another basis on the other hand, but it cannot be both. I do not see why that is the case. To me, it is transparent that we may be looking for an individual to have overseas qualifications and experience, but the regulator should have the flexibility to look at other assessments or experience. For example, I can think of someone I met while I was in hospital not so long ago who looked after me. He was a medically qualified practitioner from overseas, but he was working as a technician in the NHS because his qualification was not recognised for our purposes. However, his experience here in the United Kingdom treating patients should have been taken into account in assessing, for example, his linguistic competence and other experience.

If, for example, a regulator wanted to look at overseas qualifications and experience, as well as UK experience, why should it not be able to do that? The inclusion of the word "only" precludes such a combination on its plain meaning. That may not be the Government's intention, and obviously I will not press this amendment, but I hope that, at the very least, my noble friend will undertake to look at this and say that leaving out the word "only" might enable this amendment to the Bill to do what he wishes it to do.

Baroness Garden of Frognal (LD): My Lords, I thank the Minister for the government amendments in this group. I want to speak in particular to Amendments 2 and 3, but having just listened to the noble Lord, Lord Lansley, I can see that Amendment 11 has an awful lot to commend it.

At Second Reading, I expressed concern that proficiency in English was not a prerequisite for individuals to be treated as having UK qualifications. I was prepared to put down an amendment to that effect, but I readily acknowledge that this is a matter much better left to the regulators than put in the Bill. The addition of the words "any other specified condition" leaves this in the hands of the regulators. It is hoped that many of them will recognise the importance that anyone working in the UK should speak and understand English. It is important not only for professional but for social reasons. We are still, alas, a hopelessly monolingual country, and any overseas worker who can speak only their language will have a difficult time both with their fellow workers and with sorting out their everyday life, however brilliantly they are qualified and however much experience they have.

Clause 1 concerns qualifications and experience, but leaves it with the regulator to consider whether experience makes up for any lack of appropriate qualifications. These amendments put the onus exactly where it should be—on the regulator. We on these Benches support the amendments.

Baroness McIntosh of Pickering (Con): My Lords, I am delighted to speak to this group of amendments. My question for the Minister is why we need these amendments. I understand that he has brought them forward in part to satisfy concerns raised by the General Medical Council and those expressed in the report of the Delegated Powers Committee. My noble friend has had an opportunity to speak to other regulators—here I declare an interest as a non-practising member of the Faculty of Advocates—but what he is proposing in these amendments could appear to be micromanaging criteria that would best be left to the regulators.

Concern that has been expressed by the Bar Council for England and Wales that the Government are conflating two different aspects. The first is the right of the Government or the state to set out which person should have the right to enter and remain here. The second is what I believe is the right and the duty of the regulator, which is whether an individual has the right

[Baroness McIntosh of Pickering]
to practise a particular profession or to establish services in this country. In seeking to amend the Bill in the way the Government are doing, we are moving away from the mutual recognition basis which has served this country so well, and I do not agree with that premise. Perhaps I may repeat that I had the opportunity to practise in Brussels on European Community law on two separate occasions, so I think that the Bill before us and the regulations to which my noble friend has referred will make it much more difficult to achieve that in the future.

I refer also to a letter from my noble friend which he sent to the Delegated Powers Committee. He talks about a "generous agreement" that was sought with the European Union on professional qualifications. He goes on to state on page 12 in the third paragraph:

"However, for other trade partners, we are more likely to consider Mutual Recognition Agreement (MRA) frameworks, a more common precedent in international trade agreements."

I confess to being slightly confused, because if we are moving away from mutual recognition of qualifications with the European Union, why are we seeking to establish them in international trade agreements? I look forward to my noble friend being able to clarify those concerns.

Lord Patel (CB) [V]: My Lords, I am grateful to the Minister for these amendments, as I have spoken at length about the problems that would have been created for the General Medical Council otherwise. I am also grateful that he had extensive consultation with his officials and the General Medical Council. As he said, the General Medical Council is grateful to him for bringing forward these amendments.

Having said that, I would like the Minister to confirm on the record that any determination made by a regulator on whether a professional is able to join a register can be based on an assessment of the individual's knowledge, skills and experience rather than solely on qualifications. Can he further confirm that the regulator would be able to make such an assessment using whichever method they found appropriate, including existing tests of competence and any other test they might develop in the future when it is found necessary?

I also support the probing amendment from the noble Lord, Lord Lansley. When the General Medical Council considers qualifications and experience, it takes into account the experience that the individual may have gained in his or her own country, but it also has the power to look at the experience that the individual may have gained subsequently outside their country. The amendment sought by the noble Lord, Lord Lansley, seems appropriate and I would be interested in the Minister's response, but, at this juncture, I thank him for his amendments, and I support them.

Lord Hunt of Kings Heath (Lab) [V]: My Lords, I refer to my interest as a member of the GMC board for the sake of this group of amendments. Like the noble Lord, Lord Patel, I welcome the government amendments and thank the Minister for his discussions with the regulator. I listened with great interest to the comments and queries of the noble Baroness, Lady McIntosh, about the amendments. In a sense, they reflect the generic and skeletal nature of this Bill, which means that each clause has to relate to many different professions. Frankly, I think it argues for a more detailed Bill, which would meet her issues as well as mine.

The argument that the GMC and others have put is very simple. Clause 1 currently gives power to the appropriate national authority—in the case of health regulators, the Secretary of State for Health and Social Care—to draft regulations to introduce a process that will require them to assess whether someone has a particular overseas qualification that is substantially the same as a UK qualification. In the case of the GMC, a person so deemed would then be eligible to practise as a doctor in the UK. That is because the GMC does not require those with UK qualifications to do anything further to demonstrate that they have the necessary knowledge and skills for registration. This could give an automatic entitlement to practise, under the current provision of Clause 1, for international medical graduates on the same basis as UK graduates. Currently, GMC has a very rigorous process for assessing whether the international medical graduate is safe and fit to practise. Without these amendments, it would be almost impossible for the GMC to manage operationally, with 10,000 international medical graduates applying for registration each year. It would be virtually impossible to assess this number of qualifications from countries as diverse as India, Pakistan, Nigeria, UAE and many others, with hundreds of different medical schools. The concern was that the Bill as drafted could force health profession regulators to accept professionals into UK practice in a way that compromised patient safety.

The Minister was sympathetic, and I am very grateful to him. However, there remains the issue of the relationship of Clause 3 to Clause 1, which we will come on to debate. In relation to the amendment from the noble Lord, Lord Lansley, he clearly has a point. I hope the Minister might take this away and give it further thought.

2.45 pm

Baroness Finlay of Llandaff (CB): My Lords, I declare that I am registered with the General Medical Council and I am president of the Chartered Society of Physiotherapy. Like others, I know that the GMC has welcomed these amendments from the Government. Indeed, they address many of the concerns that we raised at Second Reading. I have had some discussions too with the Health & Care Professions Council. It still has some concerns that I hope the Minister will be able to address.

Government Amendment 6 leaves in the phrase "substantially the same" at Clause 1(3)(b)(i), in respect of knowledge, experience and standards. Currently, the processes demand that registrants meet certain standards in order to practise. There is a concern that the phrase "substantially the same" in the legislation risks lowering this standard, potentially creating a two-tier system in which applicants from overseas would need to meet a lower standard than their UK counterparts.

It is, of course, most welcome that the Government have recognised that regulators currently make a holistic assessment: they look at education, training, commitment to CPD and, importantly, the level of experience of

each applicant rather than just at something on paper from the institution from which they received a qualification at some time in the past. This focus on the situation of the individual, whether it is an overseas qualification or experience demonstrating an equivalent level of knowledge and skills, is crucial.

Our current workforce shortage is acute. We have a lot of vacancies across the UK and there seems no longer to be the incoming workforce that there used to be. We have people leaving as well, so the vacancy factor is becoming more acute with a workforce that is already feeling the strain and burnout following all the pressures of Covid. I hope that there will be a clear assurance from the Minister that there will be no dropping of standards in a rush to try to fill vacancies and that there will be a concerted effort to provide the education and training needed to make sure that we have the appropriate number of properly skilled people in our workforce.

The amendment proposed by the noble Lord, Lord Lansley, as discussed, seems to raise an important point. I think that the general tenor of the debate so far has been that we hope the Government will take their own amendment away and have another look at it, rather than expecting it to be put into the Bill today. It could come in on Report when it had been appropriately amended if necessary. It certainly would seem to need some more thought.

I am well aware from my own discipline of medicine that many drugs and conditions have remarkably similar names. It is extremely easy for people to become confused over which is which; that is how errors occur. Even if someone passes an English language test, it is actually their command of the language in the relevant discipline that becomes so important.

The other thing I want to ask the Minister before I sit down relates to those disciplines that are not yet on a professional register but will need to be. They include physician associates, anaesthesia associates and nursing associates in particular. I know that the General Medical Council will take on the registration of physician associates and anaesthesia associates, but I would welcome from the Minister confirmation that the same criteria will apply to them as will apply to those in professions that are already regulated by regulators to whom this Bill currently applies.

There is also a question about what will happen in future to some other groups that are not regulated, such as some of the psychological therapies that we discussed at length during the passage of previous pieces of legislation—for example, the Domestic Abuse Bill—when many Peers across the House expressed serious concerns about some of the standards of practice. We know that some of the schools of psychology have evolved in different countries around the world. It is important that we do not inadvertently create another problem by allowing people to come here and practise in an unregulated way.

That brings me to my last point, which is on cosmetic interventions. Currently, they are unregulated. I hope that we will see them regulated, but I request from the Minister confirmation that the same ability for a regulator to determine criteria will apply and that it will not be separate if it concerns a group coming into regulation that was not regulated previously. We know very well the number of damage cases that there are, particularly from inappropriate cosmetic procedures.

At this point, I seek those assurances from the Minister but reiterate that the government amendments are most welcome. They have demonstrated that they have listened to the representation, particularly from the General Medical Council but also from others.

Baroness Noakes (Con): My Lords, I will be brief. I support the Government's amendments in this group and the amendment in the name of my noble friend Lord Lansley. Initially, I thought that his amendment was attached to the word "only", which is often misused in the English language—most often as an inappropriate or misplaced modifier. Initially I thought my noble friend was going to say that it was a misplaced modifier. However, I listened to what he said, and he raised a very substantive concern about the drafting of the clause. Like other noble Lords, I hope that my noble friend the Minister will agree to take this away and look at it and, if necessary, bring an amendment back on Report to make proper sense of his new amendments.

Of course, there is a slight problem: once we have amended a Bill, we are not supposed to go back and amend it again at later stages. However, I think that if my noble friend were clear enough from the Dispatch Box today that he will look at this, it would not cause a problem.

My noble friend Lord Lansley may well have noted that, in our Conservative notes on the amendments that we are considering today, his Amendment 11 was described as an opposition amendment. I know that my noble friend has not always toed the party line—he is not alone in that—but I have never regarded him as the Opposition. I share this with the Committee in the hope that it will improve my noble friend's street cred.

Lord Fox (LD): My Lords, I join noble Lords in congratulating the Minister on moving quickly on this. I also congratulate the GMC and the Nursing and Midwifery Council on moving quickly in terms of raising this issue with Her Majesty's Government. Reflecting back on some of the things we heard in the debate on the first group of amendments, it seems that there are other professional groups in regulated professions that still have outstanding issues. I hope that the Minister can confirm that his door is just as widely open for them to bring their issues forward, albeit somewhat later, so that we can clear them up.

The Minister talked about whether we were assuaged and then stated that the Secretary of State for Health could bring forward statutory instruments concerning the health profession. We knew that. What we do not know, and what has not yet been answered, is how conditions set and laws made by this Bill that reflect on the consultation—as the noble Lord, Lord Purvis, set out frankly, this Bill and the DHSC consultation are travelling in highly contradictory directions—will affect the consultation and the health professions. It is that direction that we are more interested in, rather than the opposite.

I associate myself with the comments made by my noble friend Lady Garden of Frognal. These amendments are welcome. I note that, along with the noble Baroness,

[Lord Fox]

Lady Finlay of Llandaff, we expect to debate the word "substantially" later because we have some concerns around that. I also note her point about future regulators, so to speak. My assumption is that those regulators will be established by a different process somewhere else but, in order to add those additional regulators to this Bill, we will be seeing some more of the Minister's statutory instruments in future. Perhaps the Minister can be clear about how future new regulators will be added to the terms of this Bill.

The noble Baroness, Lady Noakes, does not regard the noble Lord, Lord Lansley, as the Opposition, and I kind of do not, either. In this respect, I think the Minister would do well to listen to his very wise advice.

Baroness Hayter of Kentish Town (Lab): My Lords, as has been said, the changes made are welcome. However, we should reflect that there are still concerns over the powers. On 7 June, the Delegated Powers Committee produced a report on the changes. It said that the Government had still failed

"to explain what such 'additional requirements' or 'conditions' might be"

and—this is the important bit—had failed

"to explain why the amendment would leave it to Ministers to determine … whether there are to be any such conditions and, if so, what those conditions are to be."

The committee also said that the Government had failed

"to explain why all such conditions should be a matter for secondary legislation"

rather than primary legislation—a theme to which we will continue to return.

As the noble Lord, Lord Patel, said, the GMC welcomes the changes but has asked for a couple of things to be put on the record by the Minister today. For example, can the decision on whether a particular professional is able to join a register be based on an assessment of that individual's knowledge, skills and experience, rather than on just their qualification? Also, will the regulators make that assessment? As the noble Lord said, the GMC has asked for that, but I must say, as a potential patient, that I too would like an absolute assurance that it will be the regulator who says that someone is fit to start cutting me open, or whatever else anyone would do.

On the little secret we heard about in the briefing from the other side of the House, perhaps the mistake next time could be calling my amendment a government amendment, because that way we might be able to get it through without anyone noticing. I live in hope.

The issue raised by the noble Lord, Lord Lansley, is a good one. I also wonder whether the Bill needs an "and/or". That seems to go to the strength of putting this amendment to one side and putting it in on Report. The Minister should not think that there is any egg on his face or anything if we ask for a pause. As I am sure he will know, it is very normal for government amendments to be put in on Report; otherwise, they have to be brought back, slightly clunkily, at Third Reading, by which time we are normally rather tired and want to leave early. So if the noble Lord could not push his amendment today so that we can deal with it on Report, that might be the best way forward.

3 pm

Lord Grimstone of Boscobel (Con): My Lords, I thank all noble Lords who have given their careful consideration to the amendments in this group. It was an unusual experience for me standing at the Dispatch Box almost to feel a warm glow as noble Lords welcomed my amendments. The lesson that I learn from that is that the quicker one can amend one's own Bills, the better, probably, in your Lordships' House.

As noble Lords will appreciate, the Government have not brought these amendments lightly. As we have heard, they have been informed rightly and properly by careful engagement with healthcare regulators. I thank a number of noble Lords; perhaps I can single out the noble Baroness, Lady Garden of Frognal, for her support and the noble Lord, Lord Fox, for his comments. Without reservation, of course, my door is open to other regulators who wish to speak to me as this Bill continues its passage.

We heard again from the noble Lord, Lord Fox, on his point about consultation with the HSC. I think that group 7, which is about consultation, will be a good place to return to that and I will try to address in detail the points the noble Lords, Lord Fox and Lord Purvis, have made.

My noble friend Lady McIntosh referred back to what, in her view, was clearly the golden age of mutual recognition with the European Union. As I said previously, we would have liked to have maintained that mutual recognition. The phrase I used at Second Reading was:

"We took the horse to water but it refused to drink."—[*Official Report*, 25/5/21; col. 975.]

I hope that noble Lords will support my amendments. I believe that they protect the public interest, maintain standards and ensure that regulators have the necessary flexibility and autonomy to regulate appropriately. I thank the noble Lord, Lord Patel, for his comments, echoed by the noble Baroness, Lady Hayter, and I am happy to give a complete reassurance standing at the Dispatch Box on the important points that were made.

In relation to the points made by the noble Baroness, Lady Finlay of Llandaff, about the use of the word "substantially", we have a later group which is almost entirely devoted to discussing that word. If I may, I will leave comments on that until we get there and, again, I hope to assuage noble Lords' fears when we reach that point.

On what happens if other regulators pop up in this field, the way the Bill is drafted and, frankly, one of the reasons why we have not included a list of professions—I am sure we will come back to that later as well—is because it is a moving target. Of course, any new profession that ends up being regulated by law will automatically fall within the purview of the Bill by being so regulated, and if it falls within the purview of the Bill, the standards of the Bill and the methods that we have been discussing today in relation to my amendments will also apply to those new professions.

I come to Amendment 11 in the name my noble friend Lord Lansley, who made some interesting points during the discussion which were reinforced by my noble friend Lady Noakes. I always admire my noble friend Lord Lansley's forensic attention to the detail of the legislation before our House. I think all Front-Bench

spokesmen from this side always listen carefully to the points that he makes. I will look at this again, but I hope that he appreciates that the wording of Amendment 10 is intended to provide more flexibility about how regulators make their determination. We believe that they need this flexibility and will find it helpful.

Some regulators—and this is, of course, completely a decision for the regulators—may consider it appropriate to look solely at what is demonstrated by a qualification obtained overseas, others may require an applicant to pass a separate test of knowledge and skills, while others may choose to combine the two. Regulators should have this broad discretion available to them. I believe, and I am advised, that the proposed removal of the word "only" from Amendment 10 could cast doubt on whether the first of those options is available. I will have another look at this to make sure that that is the right reading. Meanwhile, I ask my noble friend not to move his amendment.

I commend Amendments 3, 6 and 10 to the Committee and beg to move Amendment 2.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): I call the noble Lord, Lansley, and then I shall call the noble Lord, Lord Purvis, who has requested to speak after the Minister.

Lord Lansley (Con): My Lords, I am grateful to all noble Lords who have kindly approved of the argument made in Amendment 11 and to my noble friend for saying that he and colleagues will look at it again. I think that what they suggest is not the case. As it stands, Amendment 10 allows regulators to make a determination based on overseas qualifications and experience alone, but it runs the risk, which is a different risk, of preventing them combining that with other factors and assessments and bringing them together in the determination. That is the point. The removal of the word "only" would not, in my view, prevent a regulator making a determination based solely on overseas qualifications and experience.

I am grateful to the noble Baroness, Lady Hayter. If the Minister is willing not to move Amendment 10 today and to look at it again and bring it back on Report, I think that would be the best way to proceed. I think we all know what we want to achieve, which is to give the regulators flexibility. It is purely a drafting issue, and I am sure we will not need to be detained at length on Report if the draftsman, is, in the event, clear that the effect is as the Minister wishes it to be. He has not moved Amendment 10 yet, and I hope he will not move it when we reach it.

Lord Grimstone of Boscobel (Con): I think I have in fact moved Amendment 10. I commended amendments to the House and begged to move.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): May I explain to the Minister that we are debating Amendment 2, with which other amendments are grouped? The debate that is taking place currently is on Amendment 2 only.

Lord Grimstone of Boscobel (Con): My Lords, I am grateful for that clarification. May I consider that point and come back to the House shortly on it?

Lord Purvis of Tweed (LD): If I make a slightly longer intervention than I planned, it might allow the Minister to consult the Whips in order to respond to the noble Lord, Lord Lansley, in a constructive manner. Certainly, these Benches would appreciate it if the Minister was able not to move his amendment at this stage. Like my noble friend Lady Garden, I do not think that there is a large area of difference. I cannot speak for the Cross Benches—I see the noble Baroness, Lady Finlay—I am giving the Whip plenty of time here, I hope.

The Whip should not indicate to my noble friend Lord Fox for me to carry on speaking, because normally that is quite the reverse of what my noble friend asks me to do, which is to shut up. However, that said, I hope that the Minister will reflect on it. If he is able to respond positively with a nod, I will defer my actual comment until later on in the Bill—he is nodding enthusiastically to try to do that.

Lord Grimstone of Boscobel (Con): My Lords, I apologise for the confusion. I am happy to have another look at Amendment 10 in the light of these comments. I commend Amendments 2, 3 and 6 to the Committee.

Amendment 2 agreed.

Amendment 3

Moved by ***Lord Grimstone of Boscobel***

3: Clause 1, page 1, line 11, leave out "overseas qualifications or overseas experience demonstrate" and insert "individual has"

Member's explanatory statement

This amendment alters the determination that must be made by a regulator in order for an individual to meet the condition in subsection (2) of the Clause so that the determination relates to the knowledge and skills of the individual.

Amendment 3 agreed.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): We now come to the group beginning with Amendment 4. Anyone wishing to press this or anything else in this group to a Division should make that clear in debate.

Amendment 4

Moved by ***Baroness Garden of Frognal***

4: Clause 1, page 1, line 12, leave out "substantially"

Baroness Garden of Frognal (LD): My Lords, I wondered if I had drawn the short straw for this set of amendments. It always feels slightly lonely when yours is the only name on an amendment, but I assure noble Lords that I have the support of all my Lib Dem colleagues. I beg to move Amendment 4 and speak to Amendments 5, 7, 8 and 33—there may be more to come later; I hope that this is not a spoiler alert—to remove "substantially" from the relevant clauses. It appears so often that it is obviously a favourite word of the Bill drafters, but it expresses a qualification, uncertainty and lack of conviction which we wish to challenge, and it surely threatens to undermine the authority of the regulators. If I were having an operation,

[Baroness Garden of Frognal]
or water were flooding through my roof, I am not sure that I would be reassured to know that the surgeon or the plumber had substantially the same knowledge and skills as those required by a UK surgeon or plumber, or substantially corresponded to the practice of a profession. Surely in legislation we need to be more assured. If we are genuinely looking at a level playing field between UK and overseas professionals, let us have the courage of our convictions and assure our citizens that they are in safe hands because the regulators have done their professional job and checked that qualifications and experience match across the countries, not just substantially but in their entirety.

Baroness Randerson (LD): My Lords, I support these amendments. As my noble friend has excellently explained, we are probing the use of "substantially" and highlighting what we see as its inadequacy. The Minister's own amendments start to tackle this problem. Both the British Dental Association and the British Medical Association have concerns that the proposals focus too heavily on simple qualifications and do not adequately recognise the importance of skills and experience, as well as the vital requirement to be of good character and to put patient safety first. This is fundamental in healthcare and being of good character is of course important in teaching-related professions.

The noble Baroness, Lady Finlay, earlier outlined the concerns of the Health and Care Professions Council. The Minister may argue that the BMA, the BDA and so on are not regulators, but they represent their profession. They have a stake in the respect in which that profession is held, and they pay substantial annual fees for the recognition of their qualifications. The impact assessment makes it clear that the proposals in the Bill will be likely to increase those fees.

In some measure, the amendment encapsulates the fundamental problem with the Bill. It tries to impose a simplistic solution on an endlessly complex and dynamic situation. The Government have grossly underestimated how long it will take to replace the current structure with an adequate and comprehensive alternative. The interim recognition of qualifications is swept away on enactment of the Bill, on the grounds that it gives preference to EEA and Swiss nationals before a replacement is necessarily ready. What will it be replaced with? Another set of recognition for qualifications from countries which will then be given preference as a result of international trade arrangements.

3.15 pm

The impact assessment goes into pages of tortuous argument about the considerable costs and lengthy processes by which the current structure will be replaced by individual regulators, including the potential reinstatement, either for individual EU countries or for the block of 27 countries as a whole. I confess that I felt an element of farce creep in when I read that. Given that background, I can be forgiven for thinking that there will be interruptions in the market and therefore a temptation to cut corners, and thus "substantially" is not an adequate insurance. A medical qualification obtained abroad may be substantially the same as the one in the UK, but if the small variation was that students were not given the same understanding of the meaning of the Hippocratic oath, that would be a fundamental problem, hence the importance of incorporating both skills and experience, and, for healthcare professions generally, of recognising patient protection as an overarching guideline.

I would have greater faith in all this if there were any reference to universities. I declare an interest as chancellor of Cardiff University. There is no reference in the Bill to universities, other higher education institutions or other training providers. They are not even listed in the impact assessment as stakeholders, so presumably they have not been consulted. In practice, the quality of all these qualifications depends on the education and training that these organisations provide, and regulators are to a large extent simply relying on the outcome of their work. Two students coming out of two different universities with degrees in biology may have studied a different range of knowledge or may have studied it to a different level of detail, so regulators have to work closely with HEIs to ensure that both scope and depth of knowledge are maintained in whatever field they need, so they need a mention in the Bill.

It is possible to imagine that, as a result of a trade deal, a UK regulator may seek an agreement with a regulator in another country where not all educational institutions or qualifications are fully accredited by that regulator. Therefore, it is essential that recognition of qualifications is only ever agreed with the regulator in each country, and the Bill must specify this too. I will take a different example: the teaching regulators. Teachers qualified and registered to teach in England are not recognised as qualified to teach in Wales. One could argue that the learning and knowledge involved is substantially the same, but the requirements on skills and experience are somewhat higher and different in Wales.

This is all so much more complex than "substantially", and the Bill needs a significant amendment to reflect this.

Baroness Hayter of Kentish Town (Lab): My Lords, the requirement to speak Welsh in Wales is rather important.

I have some sympathy with the Minister. Later, we will get to our proposed new schedule—it is on pages 18 and 19 of the Marshalled List—to specify the regulators, again referring to the letter sent to the noble Baroness, Lady Noakes. The range of regulators covered by the Bill—and if they are covered they should be in the Bill—includes farriers, who may never have gone to university and for whom none of this might apply.

One has to be careful. Part of the problem is that we are trying to write a Bill for an enormous range of professionals. It does not include the Church—the right reverend Prelate will be very pleased—and their qualifications are probably recognised across different jurisdictions, but it includes all sorts of others, such as driving instructors. I used to call their body the DVLC, but I think it is now called the DVSA. It may well be that, in order to be able to instruct people, a driving instructor has to have five years post their own driving licence in one country but six in another. There may

well be bits that are substantially the same, but I understand why we would want to include them. We are not just talking about the health service. I see the problems with that, but as a patient I would want the qualifications to be the same if not higher if we are recognising someone here.

Part of the problem is that, in writing what looks like a simple piece of law to cover the Security Industry Authority, the Royal Society of Chemistry and the Highways Agency—presumably the people who check that the roads are safe; I do not know what they do but they are in here—we have ended up with a Bill that tries to ensure that both doctors and farriers, for whatever reason the latter are regulated, are of high quality. I have some sympathy, but nevertheless I see a substantial problem in allowing too much flexibility, which would not be in the interests of patients in particular and maybe of other clients in sensitive areas. I look forward, as they say, to the Minister's response.

Lord Grimstone of Boscobel (Con): My Lords, I thank the noble Baroness, Lady Garden of Frognal, for tabling Amendments 4, 5, 7, 8 and 33, which probe the use of the word "substantially" in Clauses 1 and 4, and I thank the noble Baroness, Lady Randerson, for her comments. The point is that, in the end, it is the individual who must be fit to practise, and the assessments that we make must relate to the individual. It is here where the important matter of regulator autonomy comes in, and why it is that the only people who can safely work out what is the appropriate route for a particular profession and the right mix between the individual, the skills and the qualifications seems quite properly to be the regulator. That is the key safeguard that we want to achieve under the Bill.

I turn to the amendments. As we know, Clause 1 is the "Power to provide for individuals to be treated as having UK qualifications". If amended as the Government suggest, under Clause 1 an individual would be treated as having UK qualifications if the regulator determined that the individual had substantially the same knowledge and skills to substantially the same standard as are demonstrated by the specified UK qualification or experience. The noble Baroness asked some interesting questions about this approach and whether it undermines the freedom of UK regulators. I reassure noble Lords that the issue has been very carefully considered.

If we removed the word "substantially" from Clause 1, that would change the requirement such that individuals would need the same knowledge and skills to the same standard as demonstrated by the specified UK qualification or experience. That suggests an assumption that it is often the case that skills and knowledge gained in one country for a profession exactly match those gained in another country for that profession. It also suggests an assumption that it is often the case that a profession in one country covers exactly the same set of activities as the equivalent profession in another country. Of course, these assumptions are not necessarily valid. So while it might make it easier for UK regulators to decline applications, removing "substantially" would remove regulators' flexibility in considering how skills and knowledge developed overseas translate into the UK profession.

In the event that regulations were made under Clause 1 as drafted, regulators would have the discretion—and I believe that is where the discretion should sit—to make appropriate judgments about whether overseas skills and experiences meet their expectations to an acceptable degree. That drives us back to the consideration of whether the individual is fit to practise in substantially the same way as a UK individual would. This does not water down expectations and is not a compromise on quality, because if a regulator felt that the quality had not been maintained then they would not want to approve that person. The individual's knowledge and skills must be substantially the same.

Lastly, including "substantially" does not restrict the freedom of regulators to make determinations of equivalence in ways that they deem fit. We come back to a point that we discuss regularly in this debate: the importance of regulators' autonomy in deciding exactly the right approach to take.

On the question of English language proficiency, at Second Reading the noble Baroness raised the need in certain professions for demonstrable English language proficiency in order for an individual to deliver professional services to the standards required in the UK, and for regulators to be able to consider this. The Bill allows regulators to take into account language requirements as part of an assessment of knowledge and skills. Alternatively, under Amendments 2 and 10, regulations could provide that passing a language test was an additional condition in itself.

Amendment 33 examines the definition of "corresponding profession" in relation to authorisation that can be given by the appropriate national authority to enable regulators to enter into regulator recognition agreements. The amendment would change the permitted scope of regulator recognition agreements from those with overseas professions whose activities are

"the same as or substantially correspond to"

the UK profession to those with overseas professions that are "the same as or correspond to" the UK profession. As I have explained, there are differences between professions in different countries, and differences between how they are regulated between jurisdictions. Even under the EU's prescriptive mutual recognition of professional qualifications directive, there were differences in the qualification requirements between different EU member states. The clause as drafted reflects the reality that professions do not exactly align across different countries' regulatory systems and standards. Some countries do not make the same distinctions as us in how they define professions—for example, England and Wales distinguish between barristers and solicitors, but that is not the case in many other countries.

The amendment would narrow the circumstances in which a recognition agreement could be made, potentially preventing recognition agreements from being made at all if professions did not directly align with one another. The Government believe this would limit the autonomy of regulators to make decisions about how similar professions are in different countries. Regulators should be free to determine for themselves where it is appropriate to enter into regulator recognition agreements with their counterparts overseas.

[Lord Grimstone of Boscobel]

Many noble Lords have spoken passionately about the need to ensure that regulators can make decisions that are appropriate to their professions. I hope I have explained why the word "substantially" is an important qualifier that allows for more regulatory autonomy in these clauses, and indeed in the other clauses where it is used, and that, on that basis, the noble Baroness is able to withdraw her amendment.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): I call the noble Lord, Lord Fox, who has asked to speak after the Minister.

3.30 pm

Lord Fox (LD): I thank the Minister, who has used words to set out why the Government want to put "substantially" in there but in no sense explained it. Again, the Minister stated the importance of regulatory autonomy for the regulators, which of course is why I proposed Amendment 1—to put it at the very beginning of the Bill, rather than in words such as "substantially", which mean several things to different people, in the body of the legislation. I have one specific question. Can the Minister tell us what the legal judgment is on including "substantially" and opening up regulators to legal challenge? In other words, if the law says "substantially", who determines that, and is there legal recourse for an individual who has been turned down by a regulator to use that word to make a legal case? If the Minister does not have that legal writing to hand, perhaps he could furnish it before the next day in Committee.

Lord Grimstone of Boscobel (Con): I thank the noble Lord, Lord Fox, for that point. Much as noble Lords know, I love giving my opinion on everything, but I hope it might be safer if I write to him about that legal point afterwards.

Baroness Garden of Frognal (LD): I thank everybody who has spoken on this debate, which turned out to be rather more interesting than I was expecting. I can see the two uses of "substantially" and

"the same knowledge and skills".

Perhaps "the same range of knowledge and skills" would be right, but I cannot understand why "substantially the same standard" is right, because surely we should be looking for "the same standard" throughout. I might amend some of the amendments on this point but I am not assuaged, I am afraid, by the Minister. He also did not really address the important points made by my noble friend Lady Randerson about why higher education institutions and others were not involved.

The noble Baroness, Lady Hayter, mentioned the farriers. I believe the farriers are regulated by a livery company, are they not? I declare my interest with City & Guilds; they are likely to have City & Guilds qualifications rather than degrees in farriering. I could be wrong on that but, from memory, that is what happens. But she is quite right that the range of these professions is extremely wide. Many of them are almost crafts and trades, rather than professions, but perhaps everything is a profession these days.

On that basis, this has been a very important debate and we may need to return to it at the next tranche. And we have another load of the word "substantially" in the next half of the Bill to have fun with. Meanwhile, I beg leave to withdraw this amendment.

Amendment 4 withdrawn.

Amendment 5 not moved.

Amendment 6

Moved by ***Lord Grimstone of Boscobel***

6: Clause 1, page 1, line 19, leave out "overseas qualifications or overseas experience fall short of demonstrating" and insert "individual does not have"

Member's explanatory statement

This amendment alters the determination that must be made by a regulator in order for an individual to meet the condition in subsection (3) of the Clause so that the determination relates to the knowledge and skills of the individual.

Amendment 6 agreed.

Amendments 7 and 8 not moved.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): We now come to the group beginning with Amendment 9. Anyone wishing to press this or anything else in the group to a Division must make that clear in the debate.

Amendment 9

Moved by ***Baroness Noakes***

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

"(iii) that the conditions mentioned in sub-paragraph (ii) can be met without imposing unreasonable costs or other burdens on the specified regulator or on individuals who are already qualified to practise the specified regulated profession, and"

Member's explanatory statement

The amendment adds an additional determination requirement related to the costs and other burdens involved in dealing with overseas professional qualifications which fall short of the standards of the relevant UK qualifications.

Baroness Noakes (Con): My Lords, the noble Lord, Lord Palmer of Childs Hill, who is no longer in his place, explained the concerns which underpinned his Amendment 12, debated earlier this afternoon: namely that regulations could impose unreasonable burdens on a regulated profession to remedy a lack of appropriate qualification or experience in overseas professionals. My amendment has the same core concern. It was drafted after reading similar concerns expressed by the British Dental Association, which highlighted the burdens that could be imposed on regulators if they are required to assess professionals or overseas qualifications, or to develop new recognition agreements, to comply with regulations under Clause 1.

Even if regulators have autonomy over individuals who can practice, the regulations under Clause 1 could well impose burdens and costs in making the regulators set up operating processes to carry out the assessments to make the decisions, including having to assess the suitability of overseas awarding institutions, as well as the nature of practical experience that comes with individuals who wish to practice. In addition, it was

noted that the costs which were incurred in any such new activity are likely to end up being borne by existing members. Regulators get the majority of their income from membership fees, and asking existing members to shoulder the costs of funding a problem of having too few professionals—which is what Clause 1 is said to be for—is, at the very least, unfair. That is why my amendment refers to the impact on existing members of the profession.

Amendment 9 would add a new determination that the regulated profession must make: that the additional processes of making good any deficiency in an overseas qualification

"can be met without … unreasonable costs or other burdens on"

the regulated profession or the existing members of that profession. I have expressed this in terms of costs or burdens because a regulated profession might, for example, have a shortage of suitable individuals who could carry out the processes and who therefore could not be obtained at any cost. It would actually be imposing an unreasonable burden for the regulated profession to bear. Importantly, my amendment places the judgment in the hands of the regulated profession.

Clause 2 refers to "unreasonable delays or charges". These are words that my noble friend Lord Lansley wishes to delete with his Amendment 18, which is also in this group. But from my perspective, it should always be the regulated profession, and not the Secretary of State or other national authority, who should make that judgment. I look forward to hearing what my noble friend has to say about his Amendment 18, but I see the place for assessing burdens and costs, and that that assessment should be made by the regulated profession. I beg to move.

Lord Lansley (Con): My Lords, I am very glad to speak to my Amendment 18 in this group.

In relation to Amendment 9, moved by my noble friend Lady Noakes, I think she has a point. Somewhere, we should be taking account of the costs that are imposed on regulators, and by extension as they are imposed on the professionals who are themselves regulated. In the previous group, the noble Baroness, Lady Randerson, referred to the material in the impact assessment on that point. Personally, I do not think Amendment 9 puts it in the right place, with great respect to my noble friend. There is a good point for putting it perhaps slightly later in Clause 1, and we may come back to this on Report. It seems that it certainly should be taken into account in the making of regulations under Clause 1; it just is not, at the moment. For example, there are things as to fees being paid in connection with an application but nothing to do with the regulations taking account of the costs on those regulated, including those who are currently regulated in that profession.

Why have I brought forward Amendment 18? The reason is that it relates to the inclusion of

"without unreasonable delays or charges"

at the end of Clause 2(2). What does that do? It is trying to define the circumstances where demand for a professional service is not being met. My fundamental problem with it is that it illustrates this by reference to unreasonable delays or charges. The implication is that this is the criterion by which one measures whether professional services are in sufficient supply.

For example, in relation to the health service, it is very hard to measure why there are delays for treatment. Sometimes they occur because of lack of workforce and sometimes for completely different reasons. It may be incredibly difficult to ascribe delays to simply having insufficient overseas applicants for a particular profession in the health service. Charges will be even more difficult since we do not charge. It may be possible to do this for dentistry but not for most other healthcare professions, since we do not charge consumers for access to services.

Interestingly, my noble friend Lord Grimstone wrote a letter to the Delegated Powers Committee—I think last Thursday—which is in its latest report, published on Monday. There is a paragraph which comes exactly to this point, in which he says:

"The Committee sought further clarification on the point that this demand needs to be met without unreasonable delays or charges. Those words make it clear that regulations can be made where the demand for the services of the profession is, strictly speaking, being met but the consumers of those services are experiencing unreasonable delays or having to pay high charges."

Demand for those services under those circumstances is not, "strictly speaking, being met"; it is not being met. We do not need to write "unreasonable delays or charges" into the Bill for it to be evident that, in circumstances where insufficient members of a profession are providing services, there are delays in accessing those services; that is plainly the case.

As the end of the same paragraph, the Minister says, rather tellingly, that unreasonable charges and delays

"are illustrative of the considerations that the appropriate national authority would make in relation to this condition."

"Illustrative" is not what the Bill says. It does not say "for example", which it might well say. It says

"met without unreasonable delays or charges."

It specifies those factors, so I think we should take them out. If unreasonable delays or high charges to consumers result from a lack of professional supply and that can be remedied by overseas applications, the appropriate national authority can make such a determination. It does not need the Bill to reference "unreasonable delays or charges" for that to happen.

I hope my noble friend will recognise that, in this respect, I am not trying to argue that delays or extra charges are not important; they are very important and may well be the principle determination one looks for in some professions. In others, one looks for other things. We should simply take those words out when the time comes—I hope we will—and the appropriate national authority will, if necessary, properly consult on what the demand for a professional service may be and the circumstances in which it is not being met.

Lord Bhatia (Non-Afl) [V]: My Lords, the Explanatory Notes state about Clause 9 that

"a regulator in one part of the UK could ask an equivalent regulator in another part of the UK for information relating to an individual's fitness to practise and, where applicable, any instances of professional sanctions. This provision ensures that regulators in all parts of the UK have access to information that helps them fulfil their obligations."

[LORD BHATIA]
Does the Minister agree that, in view of the duty of all regulators to co-operate with each other, it should be mandatory for all four nations to allow any professions to practise in all four nations without any hindrance?

3.45 pm

Lord Purvis of Tweed (LD): I am grateful to the noble Baroness for bringing forward these amendments. She is very modest and did not tell the Committee whether they are considered opposition amendments, but, if it is not too unhelpful for her, I will say that I am very sympathetic to them. We have been considering them very carefully.

The noble Lord, Lord Lansley, quoted the interesting response from the noble Lord, Lord Grimstone. I think it was fairly clear that the Government intend to have these powers to, if they so choose, change the ability of the regulators to set fees for applicants. The Government will take those on board and then, for international trade purposes, set the fees for applicants. That changes the responsibility of the regulator quite dramatically, especially since many regulators, under law, have to seek approval from the Privy Council or the Scottish Parliament to do so.

I ask the noble Baroness, Lady Bloomfield, whether she might respond to the two times I asked the noble Lord, Lord Grimstone, about whether any of the regulations under this Bill will impact the oversight and accountability of the Privy Council regarding the setting of fees and the professional standards authority regarding its oversight. If the Government cannot, in Committee, offer reassurance on that point, then we are in a separate situation of considering the relationship of the Privy Council and Scottish Parliament.

If the Government intend to have the new powers now under the provisions of Clause 1(5)(e), which makes

"provision for fees to be paid in connection with an application",

we have to look very closely at the impact assessment with regard to the impact of the Bill on fees. In their impact assessment, the Government have said that there is a high cost of this Bill of £42.82 million and a best estimate of £18.16 million. Let me be fair to the Government and take their best estimate of £18 million. The impact assessment says:

"These costs could be passed through in fee increases to professionals".

I raised the staggering costs of this to professionals—the applicants—at Second Reading. The Minister responded that I should not be too concerned because this was not cost to the Government. It is not—it is to the applicants. I think the noble Baroness, Lady Noakes, and I agree; the Government do not have money—it is taxpayers' money, as we are always told from that side of the House. The people who will be paying £18 million for this are the applicants. The Government say they want these new powers to reduce fees, but by implementing these powers the fees are going up. What is their plan, given that one completely contradicts the other?

The Minister may be able to help me out here as I do not know, but it may be that the Government are using the Home Office forecast of a 70% reduction in applicants from the EEA and Switzerland as a result of leaving the mutual recognition arrangements with the EU. Paragraph 90 of the Government's impact assessment says that this

"may save resources by no longer assessing applications. It should be noted however that these regulators will also no longer receive the fee revenue attached to these applications."

We could see a 70% reduction in the foreign fee applications, with an £18 million increase in this bureaucracy, which the Government say is going to be paid by British applicants.

I hope that the Committee is following me. If it is, I will refer back to the Department of Health and Social Care's live consultation on the medical professions, which says in paragraphs 71 and 72:

"Four regulators (the GMC, GDC, GOC and the GPhC) can set registrant fees without any Parliamentary oversight. The remaining regulators can only implement fee changes with the approval of the Privy Council and, in some cases, of the Scottish Parliament ... We propose that all regulators should be able to set their fees in rules without Parliamentary oversight. This will make regulators directly accountable to registrants for the fees that they charge."

However, this Bill will not do that; in fact, it is completely contrary to the proposals in the consultation for the medical professions to remove parliamentary oversight. The Bill is putting it in.

If that were not bad enough, the current situation for regulators setting their fees, as paragraph 73 says, is:

"Any fee changes, including those to put in place a longer-term approach, would require consultation."

The Government are proposing—this relates to the point made by the noble Lord, Lord Lansley, about where the amendment of the noble Baroness, Lady Noakes, could fit—to put these regulations in place, with these provisions on fees and extra costs, through the negative procedure without any consultation. The Government are not only contradicting what they are saying to the medical regulators at the moment but weakening the ability of—or the requirement for—regulators to consult on who would pay these fees in the first place.

I would be grateful if the Minister could neatly wrap all this up for me because I am really struggling to work out whether BEIS or the Department of Health and Social Care is in charge of this situation. The impression I get at the moment is that no one is.

Baroness Hayter of Kentish Town (Lab): My Lords, I will dwell on Amendment 18 in the name of the noble Lord, Lord Lansley. As he said, delays to services may not have anything to do with the workforce, although they may. I put my hands up: I live in a cladded building at the moment, and we feel strongly the lack of specialist fire surveyors to get things going. Therefore, one may have unmet demand for all sorts of reasons. Another one—save I would not want to say it to the ex-Secretary of State for Health—might be that the Government just do not spend enough money on the health service.

The issue that I really wanted to raise is not that one—I just cannot help teasing from time to time, as the Minister will well know—but the other point that the noble Lord, Lord Lansley, raised. In that letter sent by the noble Lord, Lord Grimstone, on 3 June to the Delegated Powers and Regulatory Reform Committee, which is in its report of Monday, the Minister said—it has already been quoted—that, in ascertaining whether

there is an unmet demand for a particular profession, "delay" could be a factor. More surprising to me to hear from a Minister on that side of the House was his reference to "high charges" charged by the profession. Normally, that side of the House in particular would stray away from any government intervention in the setting of fees by professions or indeed any other service. As a consumer representative, I have often gone to the CMA or other regulators, saying, "We're being ripped off", and they say, "No; as long as the consumer knows what they're paying beforehand and has the chance to take themselves out of the contract, we or the Government do not get involved in the fees charged to consumers". As such, I find this unusual because it sounds like the Government are saying that if they felt that lawyers or surveyors, for example, were charging "high" fees—that was the word that the Minister used in the letter, not "excessive"—they could bring in regulation to open up the profession to outsiders. I hope that I have got that wrong, but it looks to me as if that is what this says, or it could be a way of defining it.

In a later group, we will come back to how we deal with skills shortages, and we will make comments at that point about the Government's responsibility to fill any such shortages. However, at the moment, I ask for some explanation about whether it really is possible for the Government to put themselves in a position of defining whether a professional is charging excessive fees and, if so, being more sympathetic to bringing in overseas providers. Some clarity on that would be appreciated.

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, I thank my noble friends Lady Noakes and Lord Lansley for Amendments 9 and 18, which bring together two elements of the recognition framework proposed under the Bill. Noble Lords have raised some interesting points about the Bill's potential impact on professionals and consumers of their services.

I turn first to Amendment 9, tabled by my noble friend Lady Noakes, which seeks to ensure that any cost or burden on UK regulators in helping individuals with overseas qualifications or experience to make up deficiencies in their knowledge or skills is reasonable. The amendment proposes that particular means of addressing these deficiencies should not be available if the costs or other burdens on UK regulators and existing UK professionals, including those who fund professional bodies, are not reasonable.

By way of background, I note that Clause 1 allows the regulator to specify a means for an individual with overseas qualifications or experience to make up for a shortfall in their knowledge and skills, compared to UK requirements. This is typically known as a compensatory measure, which could include aptitude tests, completion of an academic course or further experience. If Ministers in the UK Government or the devolved Administrations make regulations under Clause 1, the regulator will decide the means by which it assesses individuals with overseas qualifications and experience. It is for the regulator to specify any appropriate compensatory measures.

I agree with my noble friend that any compensatory measures to demonstrate that the professional has met this standard should not be unreasonable or burdensome on the regulator or the qualified professionals whom they regulate. This is why there is no requirement for the regulator to have to specify a means to make up shortfalls where it is not appropriate or not available. There is no requirement for the regulator itself to provide particular courses or experience to an individual to help them make up shortfalls.

In some cases, a regulator may, for example, simply specify that the individual must complete certain academic courses or obtain a certain amount of additional work experience. This would not place unreasonable costs on the regulator. I should add that compensatory measures are a commonly used approach in professional qualification recognition; it is not a new concept or practice for many regulators.

For example, if English language proficiency were required in order properly and safely to practise a profession, it would be reasonable for a regulator to require an individual with poor English to take a course and pass exams to show that their English had improved. It would not be necessary for the regulator itself to deliver that course. In conclusion, I hope that regulators would not consider that compensatory measures place unreasonable costs or burdens on them.

Amendment 18, tabled by my noble friend Lord Lansley, who speaks with some authority in this field, seeks to remove "unreasonable delays or charges" to consumers being taken into account under the condition in Clause 2 for making regulations under Clause 1. Instead, the condition would focus solely on whether regulations would enable demand for professional services to be met.

Clause 2 limits the scope of the power in Clause 1 to a specific set of circumstances where the appropriate national authority deems it necessary to enable the demand for services provided by that profession to be met without unreasonable delays or charges. By this, I mean that the consumers of those services in the UK are experiencing unreasonable delays or having to pay high charges. An illustrative example of an unreasonable charge might be where consumers or businesses face unreasonably high fees caused by a shortage of professionals. For example, this could be the NHS—a consumer of professional services—or the general public's consumption of them, direct from a professional. An unreasonable delay might, for example, occur if a profession was unable to deliver its services quickly enough without more professionals in the workforce. This could include, for example, waiting times for social worker support—so unreasonable delay or cost can be made distinct from demand or shortage. Without this wording, the levers that we have to take action where there is a need are narrowed.

4 pm

The practical effect of this Clause 2 condition is that the requirement imposed by the Clause 1 power is targeted where the UK, and the nations in the UK, can benefit most. As I have said, our overarching approach is to respect regulators' autonomy and leave it to them to make arrangements to meet the demand for professional services in the UK. The Clause 2 condition is something of a safeguard that the Government will act using Clause 1 only where necessary. Modifying the Clause 2

[Baroness Bloomfield of Hinton Waldrist]
condition in the way proposed would remove these valid considerations of the impact of unmet demand from any determination made under Clause 2.

I know that the noble Lord, Lord Oates, brought up the question of fees and the cost of this at Second Reading. I shall try to allay his fears by saying that the Government would, obviously, undertake any impact assessment for fees in line with the Government's better regulation framework. Given that, we just do not see any reason to have an obligation to do so in the Bill. All regulators can increase fees without parliamentary oversight but with consultation.

Lastly, the noble Lord, Lord Bhatia, asked about the four nations, their abilities and their powers in relation to the regulation of professions. We will cover all matters to do with the devolved Administrations at a later stage in the Bill. With the reassurances that I hope that I have been able to provide, I hope that my noble friend will withdraw her amendment.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): I have received a request to speak after the Minister from the noble Baroness, Lady Hayter of Kentish Town.

Baroness Hayter of Kentish Town (Lab): The Minister has not answered my question. She seems to have continued to say that a national authority—that is, the Government or one of the devolved Governments—can decide when a professional is charging high fees. Can she be absolutely clear that she is saying that? I would like to know on what basis that would be and whether they would go to the CMA for advice. Whether it is a farrier or anything else—or an accountant, although I think they are not covered—on what basis is a Minister going to decide that a professional is charging a high fee? Will that be challengeable in court or via the CMA? What would be the mechanism for that decision?

Baroness Bloomfield of Hinton Waldrist (Con): I am sorry that I gave that impression, but I do not believe that I did give the impression that the Government would set the fees. There would be a mechanism for oversight, which would be the impact assessment route that I mentioned in my speech.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): I have had a request to speak from the noble Lord, Lord Purvis of Tweed.

Lord Purvis of Tweed (LD): Could the Minister repeat what she said at the Dispatch Box? She said that the regulators do not have parliamentary oversight in setting their fees. The Health Department's consultation at the moment says that four do not but the remaining ones do. They have to secure the approval of the Privy Council and, in some cases, the Scottish Parliament. So which is it, and will any of these regulations have any impact on the relationship with the Privy Council and the Scottish Parliament when it comes to the fact that they have to approve changes of fees?

Baroness Bloomfield of Hinton Waldrist (Con): Perhaps I can clarify what I said earlier. The Privy Council is the intermediary between independent regulators and the Government; it is essential to maintaining regulators' independence, such that regulators are able to deliver their duties impartially. There is no relationship between the council and the Bill.

Baroness Noakes (Con): My Lords, I thank all noble Lords who have taken part in this debate for their contributions, an awful lot of which were on my amendment. Some important issues were raised by the noble Lord, Lord Purvis of Tweed, and the noble Baroness, Lady Hayter, none of which have been very satisfactorily dealt with by the Minister.

I turn to my amendment. I thank my noble friend Lord Lansley for his support and accept his challenge to look at the positioning of my amendment if I decide to take it forward at a later stage. The Minister talked as if compensatory measures were just sitting in every regulator's toolbox to deal with every situation that could possibly arise, but the truth is that compensatory measures will have been designed for the sort of applicants who have already been coming to the UK for assessment, and they are not going to cause any problem. We do not even need this Bill for those applicants.

We are most likely to encounter problems when other forms of overseas applicant arise, with less traditional professional qualifications and/or experience. It is that which is likely to cause the burdens on the individual regulated professions to cope with things that they are not already coping with. The question posed by my amendment was about how we avoid unreasonable burdens being placed on those regulators and, in particular, on existing members of those professional bodies who fund the regulators.

To be honest, I do not think that the Minister answered that question at all. There is a very real problem there. I can see that we are not going to progress it any further today, but I recommend to my Front Bench that all the issues raised in this debate are looked at again before we get to Report because there are some big unanswered questions arising from this debate.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): Before inviting the Committee to consider the withdrawal of the amendment, I call the noble Lord, Lord Lansley, who was attempting to come in after the Minister.

Lord Lansley (Con): I am grateful. I just wanted to make a point after the Minister because I think she made a fundamental error in suggesting that if we were to take out the words

"without unreasonable delays or charges"

from this subsection unreasonable delays or high charges would not be able to be considered as factors in determining whether demand is met. On the contrary, they will be considered with other factors. They would not be excluded.

We will clearly come back to this again on Report because the reply to the debate was not satisfactory, and we will have to write these things out in more detail. Will my noble friend at least just agree that removing those words does not mean that those factors are not taken into account?

Baroness Bloomfield of Hinton Waldrist (Con): The firm advice that I had from my officials was that it would.

Amendment 9 withdrawn.

Amendment 10 not moved.

Amendment 11, as an amendment to Amendment 10, not moved.

Amendment 12 not moved.

Amendment 13

Moved by ***Baroness McIntosh of Pickering***

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

"(4A) Before regulations under subsection (4) may be laid before Parliament, Senedd Cymru, the Scottish Parliament or the Northern Ireland Assembly, the appropriate national authority must undertake a formal consultation with the devolved administrations, regulators and the Lord President of the Court of Session."

Baroness McIntosh of Pickering (Con): I am delighted to move Amendment 13 and to speak to Amendments 24, 35 and 40. I thank the noble and learned Lord, Lord Hope of Craighead, for his support of these amendments. I shall speak also in support of Amendment 41, and look forward to hearing more detail and the thinking behind Amendment 42, in the name of the noble Baroness, Lady Randerson, Amendment 49, in the name of the noble Baroness, Lady Hayter, and Amendment 57, in the name of the noble Lord, Lord Purvis.

On the background to Amendments 13, 24, 35 and 40, the case was made at Second Reading, and I have now followed that up more firmly with these amendments. It is really about having regard to two distinct concepts. I come from the background of the Faculty of Advocates, albeit now as a non-practising member. There are separate jurisdictions of law in the UK, and there are sufficient differences between these legal systems to warrant an exclusion from the provisions that create greater regulatory integration of other professions between the UK's composite parts throughout the Bill.

Secondly, as I said at the outset, it is a process of not just recognising that the distinct nature of legal services needs to be recognised and respected but also that the regulation of the legal profession, certainly as regards solicitors and advocates, is devolved. What I propose to do, and I hope that the House will support me in this regard, is to ensure that there will be a formal consultation with the relevant devolved Assemblies before any regulations are made under the provisions of the Bill as passed.

Amendment 13 relates to Clause 1, but the wording that I have used is similar in relation to Clauses 1, 3 and 5—Clause 3 relates to the "Implementation of international recognition agreements", and Clause 5 relates to the "Revocation of general EU system of recognition of overseas qualifications". A slightly different wording is used in Amendment 40 to reflect the fact that this relates to the setting up of an "Assistance centre". As regards Amendment 40, I would go so far as to say that there should be a formal consultation with the devolved Administrations and regulators. I think the noble Lord, Lord Foulkes of Cumnock, and I have both been greatly assisted by the Law Society of Scotland in our preparation for this afternoon, and I thank the society most warmly for that.

The noble Lord, Lord Foulkes, goes further and goes to the question of consent—that consent be specifically given. In that regard, if that consent is not given then the understanding is that the arrangements would not proceed. I think it is extremely important, again underlining the fact that the purport of these regulations —also as regards to the assistance centre—must have regard to the nature of the devolved Administrations and regulators.

Amendment 49 in the name of the noble Baroness, Lady Hayter, and supported by the noble Baroness, Lady Randerson, looks to the common framework agreement. I have just one little question here. Is that what we understand by the common frameworks? I am following this as closely as I can, albeit living in England. Is the noble Baroness referring to the existing common frameworks, or is she proposing a separate one in that regard?

I believe that it really is essential that we adopt either Amendments 13, 24, 35 and 40 or something equivalent to them. I hope that my noble friend the Minister will look kindly on these amendments and go some way to assuaging my concerns that, without these amendments, we are not going to have a full consultation in advance of these regulations being laid.

With those few opening remarks, I look forward to hearing the rest of the debate on these amendments. I am grateful for the support of the noble and learned Lord, Lord Hope of Craighead. I have taken the precaution in Amendments 13, 24 and 35 to acknowledge the fact that the Lord President of the Court of Session has a specific role to play in regulating the legal profession in Scotland.

4.15 pm

Lord Foulkes of Cumnock (Lab Co-op): My Lords, like the noble Lord, Lord Lansley—who, following the revelations from the noble Baroness, Lady Noakes, I suppose I should now call my noble friend Lord Lansley—I did not participate in the Second Reading debate, as I was not able to be here, unfortunately. I agree with many people who said on that occasion that, although this is not a contentious Bill, it is a very important one. When you think of the number of professional bodies and areas of employment that are being regulated—more than 160—it is really a very important issue. I will come back to that.

However, I have sat through now two and three-quarter hours of what purports to be a Committee stage of the Bill. I must say that it is really a very disappointing and inadequate way of dealing with a Bill. It is not proper consideration when we cannot intervene properly and ask questions when the Minister is speaking and cannot intervene on each other. I would have liked to have intervened on the noble Lord, Lord Purvis. We could have had a dialogue about the Privy Council, of which I am a member. I know nothing about any of these matters because it is all delegated to various committees of the Privy Council. We could have maybe explored that.

[Lord Foulkes of Cumnock]

There are other issues. The noble Lord's predecessor in the Chair, the noble Lord, Lord Faulkner of Worcester, was very good and allowed the noble Lord, Lord Lansley, to come in without having to go through the process of emailing the Clerk. I think the noble Lord, Lord Purvis, managed to whisper in the Clerk's ear. It is excellent that there is some flexibility, but it ought to be more flexible. We ought to have a proper Committee stage. The interesting thing is that most of the people participating have been here in person. There are relatively few today in this Committee stage on the screens. That is why I think that the Procedure Committee and the usual channels need to carefully consider changing the arrangements for Committee and Report stages, which are so important in dealing with aspects of Bills.

It was a fascinating exchange earlier between the noble Baroness, Lady Noakes, and the Minister. Under normal circumstances, there would have been a different kind of dynamic arising from that exchange. It could have been much more helpful in dealing with this Bill. At the moment, because everyone has to be dealt with equally—whether they are at home, as I was on a number of occasions, or here—we cannot have a proper Committee stage. One of my colleagues, the noble Lord, Lord Campbell-Savours, has suggested that we do away with that equality and the Procedure Committee should say that, for Committee and Report stages, certainly, those who are present should be able to operate normally as we used to do and that people at home should accept that and understand that. If they want to participate, they should be able to come here in one way or another. I really think that, in terms of considering our legislation properly, we need to look at that. That is nothing to do with the amendment, by the way, but it is very important.

Can I also say another thing that I would have said in Committee? As my noble friend Lady Hayter said earlier, there has been a lack of investment in training of doctors and nurses—over the last 10 years, in particular—so that we do not have home-trained doctors and nurses. I worry that some of the motivation of some people in the Government behind this—not everyone—is to bring in doctors and nurses from overseas as quickly as possible to make up for the fact that they have not been training enough doctors and nurses. As someone who has been involved in overseas development for years now—I used to be Minister in that department and now we are suffering that huge cut in our overseas development assistance—I think it would be wrong for us to drag in too many people and to see this as a way of bringing in too many doctors and nurses from overseas from countries that need them equally as much as, if not more than, we do, and which need their health infrastructure strengthened. That is nothing to do with amendment either, but it gets it off my chest.

The amendment would require the Secretary of State to seek the consent of the devolved Administrations—but with qualifications, I say to the noble Baroness, Lady McIntosh of Pickering—prior to making arrangements for the assistance centre. We welcome the provisions regarding the assistance centre; I speak on my own behalf, but I know, as does the noble Baroness, that the Law Society of Scotland welcomes it. Like her, I am grateful to Michael Clancy and his colleagues from the Law Society of Scotland for their help on these amendments.

The centre will provide advice and assistance regarding entry requirements—we will come to other aspects of it later—to those seeking to practise a profession in the United Kingdom or to those with UK qualifications seeking to practise overseas. We note the obligation on regulators, contained in Clause 7(2), to provide the designated assistance centre with any information it may need to carry out its functions. That seems entirely appropriate in the circumstances.

The obligation to make arrangements for the assistance centre lies on the Secretary of State. However, the centre will provide advice and assistance covering the whole of the United Kingdom, not just England. Accordingly, we consider that it would be important, and reflect the acknowledgement of the role of the devolved Administrations in earlier clauses of the Bill, for the devolved Administrations to be rather more than consulted on the arrangements for the creation of the assistance centre.

What I suggest in the amendment, as the noble Baroness, Lady McIntosh, generously said, goes further and is more radical than the amendment she has proposed. However, it would not give the devolved Administrations a veto; it says that the Secretary of State—should first "seek the consent" of the Scottish and Welsh Ministers and department in Northern Ireland; that is where I go further. If the Government do not get that consent within a month—it gives the devolved Administrations a veto or delaying power of a month—they can still go ahead. But if they do, notwithstanding the fact that they have not got approval from the devolved Administrations, they then have to publish a statement explaining why the Secretary of State decided to make the arrangements without the consent of the authority or authorities concerned. They have to explain why they have not taken account of representations before going ahead.

I say to my friend, the noble and learned Lord, Lord Hope, who knows more about the United Kingdom Internal Market Act than anyone around today, that this replicates the compromise that was agreed in that Act when we discussed it as a Bill in relation to, for example, the CMA and other aspects. Does the Minister consider that my amendment would have the same effect as the Government have already agreed in relation to the internal market Act? It is not revolutionary; it is more radical than the amendment of the noble Baroness, Lady McIntosh, but it is something that the Government have already agreed to in terms of the internal market Act. I therefore hope that it will be considered sympathetically by the Government.

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): Just for clarification, if a Member wishes to speak after the Minister and is in the Chamber, they can message the clerk; if they are online, they can email the clerk. But all requests must come through the clerk to the Chair. I call the noble Baroness, Lady Randerson.

Baroness Randerson (LD): My Lords, I wish to speak specifically to Amendments 42, 49 and 57, which I have co-signed. They all address issues related to the

interaction of UK Government powers with those of the devolved Administrations and each of the three relates to different aspects of that issue.

Amendment 42 relates to the national assistance centre. The impact assessment makes it clear that this will be a centralised facility under the control of the Secretary of State, but it will also provide information and assistance in relation to devolved regulators and where the professional qualifications are different in the devolved nations. In preparation for this debate, I went online and explored the websites of a range of regulators. They all seem to provide comprehensive advice and information services, so I am puzzled as to what the problem is. Why is it necessary for the Government to overlay the well-established structure of regulators with this additional bureaucracy with—of course—its accompanying additional cost?

Because I am of a suspicious nature, I feel that the real purpose of the assistance centre is to enable to the UK Government to override the differences between the nations of the UK and, when making trade agreements, to take the opportunity to iron out those annoying differences in qualifications in one part of the UK and another. Hence my amendment, which simply requires consultation with the devolved Administrations on the function and operation of the assistance centre before it is established.

It should not be necessary to state this basic constitutional principle in terms of an amendment to a Bill, but the Government's approach to this Bill has been woeful so far. It has been developed at speed—the noble Baroness, Lady Hayter, suggested it was on the back of an envelope—at a time when elections meant that there have been none of the usual opportunities to consult the devolved Administrations. In Wales, officials did not even see a draft of the Bill until the week before its introduction. They did not see the final version until we all saw it, when it was laid.

As drafted, this Bill confers a suite of regulation-making powers on the appropriate national authority. In Wales, the Welsh Ministers are that authority for the devolved areas, but the powers conferred on them are exercisable concurrently with the Secretary of State and the Lord Chancellor—hence the Secretary of State and Lord Chancellor could legislate in devolved areas and would not need to obtain Welsh Ministers' consent.

As things stand, all the devolved Administrations appear to be opposed to this Bill in its current form. In Amendment 42, I offer just a modest solution to a very small part of the problem that the Government face. I would be grateful if the Minister could explain exactly how he sees the assistance centre working, how large it will be, what it will actually do and the estimated cost.

Amendment 49 relates to the interaction of this Bill with common frameworks, an issue that was raised by the noble Baroness, Lady McIntosh. Several noble Lords can boast that they have the T-shirt in relation to common frameworks and their interaction with government attempts to regain devolved powers. We fought several rounds with the Government on this issue during the passage of the internal market Bill. It is not at all clear how this Professional Qualifications Bill interacts with the well-established common frameworks programme.

There is a recognition of professional qualifications framework in preparation by BEIS, but it seems to have been delayed and there has been no explanation for that delay. Is this Bill designed to replace that common framework? If so, the Government need to tell the devolved Administrations, because they would much rather go ahead on the basis of a framework that involves non-legislative co-operation and a lot of working by consensus. This amendment is designed to ensure that the common framework on professional qualifications is not undermined or overtaken by any provisions in this Bill.

4.30 pm

The noble and learned Lords, Lord Hope and Lord Thomas of Cwmgiedd, the noble Lord, Lord Foulkes, and I are all members of the Common Frameworks Scrutiny Committee. This week we took evidence from the noble Lord, Lord Dunlop, and discussed his report on the future of the union. The emphasis in that discussion was on the need to develop the strengths of working together co-operatively. There was a consensus that common frameworks are a key part of this development.

Amendment 57 would mean that the Secretary of State would make regulations under this Act, when passed, only if they related to England or to the whole of the UK, or were outside the legislative competencies of the devolved Administrations. There are an awful lot of regulatory powers in this Bill, including powers to amend primary legislation via statutory instruments. Paragraph 23 of the Delegated Powers and Regulatory Reform Committee's report remarks that not only does the Bill allow requirements based on statute to be watered down by secondary legislation, but there is not even a requirement to consult the devolved Administrations. This is just not good enough.

Amendment 57 is long and complex. It may need some tightening up on Report. I am pleased that the noble and learned Lord, Lord Thomas of Cwmgiedd, is following me. He might well be able to explain in further detail how he thinks it could be improved. There are other issues to be discussed because the Senedd's legislative competence does not always coincide with the executive powers of Ministers, which are sometimes wider. Importantly, if the Secretary of State is legislating on a UK-wide basis on an issue that involves devolved competence, there should be provision in the Bill for a requirement to obtain the consent of the devolved Administrations first. I hope that the Minister will agree that there needs to be discussion across the House and with the devolved Administrations to make substantial improvements on these issues before Report.

Lord Thomas of Cwmgiedd (CB) [V]: My Lords, I shall speak to all the amendments in this group. I do not wish to say anything further about the amendments proposed by the noble Baroness, Lady McIntosh of Pickering, and the noble and learned Lord, Lord Hope of Craighead, save to say that I warmly support them, as I do the amendment in the name of the noble Lord, Lord Foulkes.

I come to the principal issue on which I wish to speak. Amendment 57 and Clause 14 demonstrate that there are two significant issues before this Parliament.

[LORD THOMAS OF CWMGIEDD]
The first is the extent to which we have framework legislation with Henry VIII powers—and with a vague statement that these are needed—while knowing that there is no opportunity for proper scrutiny and amendment of the powers that will be exercised in subsequent regulation. The second problem is what I would describe as the chipping away—because this is what it is becoming—of the devolution arrangements. This is being done without the consent of the devolved Governments and without putting in place a proper framework for joint agreement on how to move forward where there is a necessity for a UK solution. I fear that these issues will bedevil this Session of Parliament. They come to a head in Clause 14.

Clause 14 gives the Lord Chancellor and the Secretary of State power to make regulations in devolved areas. It is immensely concerning that Henry VIII powers are being used without any indication as to precisely how this is to be done and no real argument as to why they are necessary. It is difficult to understand why this area needs to be chipped away. What is the benefit for the future of the union? It would be useful if the Minister could say what he sees as the benefits and acknowledge the costs of the damage to the union.

I warmly support Amendment 57, subject to one matter I shall mention later. It is difficult to see why this problem cannot be dealt with by Amendment 57. This would leave the devolved Ministers to make decisions within their areas of devolved competence. Something like a common framework or some structure for common policy-making could then be used to resolve the differences. Using the twin devices of framework legislation and Henry VIII powers is quite the wrong way to go about our constitutional arrangements. I hope the Minister will be prepared to discuss these issues in much greater detail.

The noble Baroness, Lady Randerson, has already touched on the point I wish to make about Amendment 57. Its proposed new subsection (5) is taken from Clause 14 of the Bill as it stands, and seems a wholly unnecessary irritant. It is not constitutionally necessary. I do not understand why this Government wish to irritate people by further constraining the powers of the Welsh Ministers in a way that is wholly unnecessary. Again, a cost-benefit analysis, thinking what we are doing this for, would be a great step forward.

I hope that the difficulties inherent in the combination of the Henry VIII powers and the chipping away of devolution can be seriously discussed between those in the devolved Administrations, together with this House and the Government. I would welcome such discussions before Report to avoid what it seems is a further significant strengthening of those who wish to oppose the union for very little benefit in return.

Lord Bruce of Bennachie (LD) [V]: My Lords, I support all the amendments in this group, particularly Amendments 13, 41, 42 and 57, which look to formal consultation with the devolved Administrations and, in the case of Amendment 41, the consent—under certain conditions—of the devolved Administrations to any regulations made under this section.

As all speakers on this group and in the debates on previous amendments have said, the Bill involves wide-ranging powers and Henry VIII clauses. These are apparently justified on the grounds that what may be required cannot be anticipated, and therefore cannot be legislated for in advance. This seems a dangerous and spurious catch-all which, of itself, is sufficient justification for requiring formal consultation with the devolved Administrations.

This all relates to trade deals yet to be negotiated. It will hinge on areas of skills shortages across and within the UK, as well as the opportunity for UK professionals to practise abroad. Professional regulation must surely be founded on ensuring that any professional is safely and properly qualified and experienced to practise in all or part of the UK. Yet this Bill and the powers within it are specifically linked to trade deals, and there is a risk that deals involving reciprocity could lead to standards being compromised. This concern has been identified by the report of the Delegated Powers and Regulatory Reform Committee of this House.

Also, given that skills shortages vary across the UK, and by time and sector, if a devolved Administration identify a skill shortage, will the Immigration Rules also be taken into account, not just the professional qualifications regulations? Clearly, that will be necessary.

The Government have stated that they would,

"not normally make regulations under these powers in devolved areas without the agreement of the relevant devolved authority".

Right from the very beginning of the Brexit debate, however, we have debated what "normally" means. As the noble and learned Lord, Lord Thomas, has pointed out, it looks like a shifting definition, and one that is not to the benefit of the devolved Administrations—or indeed to the professions in the devolved areas.

In this context we should also consider the role of the assistance centre, whose staff should surely all be thoroughly conversant with all regulators, including in the devolved Administrations. The amendment from the noble Baroness, Lady Randerson, would be a helpful contribution to that, because the assistance centre is a welcome recommendation, but only if it is properly qualified and its staff fully appreciate what goes on across all aspects of the UK. In areas as complex and specific as professional qualifications, that is a big ask, which must be answered. The scale and diversity of the professions that we are discussing, and the regulators that engage with them, absolutely require that any changes should be carried out only after consultation and, wherever possible, consent.

As an example of this, Scotland has long had an all-graduate teaching profession. It is sad that Scotland's education performance has fallen down the international scale; however, that is not the fault of the teaching profession but of a curriculum and examinations set-up that is simply not fit for purpose, yet whose reform is not being tackled. We are not short of qualified teachers. Many are unable to find permanent employment, which in itself is a scandal. We certainly need to tackle education reform in Scotland. In that context there may be a role for teachers from other countries to make a contribution, but it would be regrettable if standards were compromised in a trade deal, and if

those teachers were recruited while well-qualified teachers in Scotland were unable to get employment in the profession, which is where we are currently.

The UK Government say that they are working with the devolved authorities on a number of common frameworks. I also have the T-shirt as a member of the Common Frameworks Scrutiny Committee, as do five noble Lords contributing to this group of amendments. The Government say that they are working on common frameworks to help co-ordinate policy development between UK nations where powers have returned from the EU and intersect with devolved competencies. This includes the mutual recognition of professional qualifications: the MRPQ framework.

In an update covering 26 September to December 2020, the Cabinet Office said that discussions on the framework made progress during that period but that development timelines should be extended. It went on:

"Agreement was reached between the UK Government and the devolved administrations that both MRPQ and Services should be developed over extended timelines to allow for more work to be done. All administrations remain committed to working to develop and agree these frameworks."

That is all welcome, but I hope the Minister will agree that, as I have pointed out, the range and complexity of the regulation of professional qualifications, and uncertainty over the changes that may be needed, require formal consultation to be carried out and consent secured. How will this happen if we are operating on different timelines? The Government may be out there desperately trying to negotiate trade deals while all these procedures are in the process of a long, drawn-out common frameworks negotiation. As we know, the common frameworks are well behind the schedule originally hoped for and planned.

They have clearly set out the mechanism and an arrangement—which those of us on the committee feel has much to commend it—that seeks the maximum amount of co-operation and consent, looks to have fair and balanced dispute resolution mechanisms and ought to be the model for how the interconnection and co-operation between the UK Government and the devolved Administrations is carried through going forward. It would be good if Ministers acknowledged that so much has been learned in this process that it should be applied not just to those areas that were historically part of the transition out of the EU but to all future ways of working, and the principles on which the common frameworks have been founded and developed.

4.45 pm

This would be required not only for decisions by the UK Government but decisions by devolved Ministers, and also situations where concurrent powers have been called into play, because from the professional point of view it does not matter whether the regulations that are being changed by this Bill are coming from the UK, from the devolved Administrations or from them operating together. As professionals they would still want to be consulted and to ensure that any changes were justified and appropriate and did not compromise the professional standards that the regulators have spent their time establishing over many years—indeed, since well before the UK joined the EU. Those standards should not be set aside because we are now leaving it.

I hope the Minister recognises that very serious issues are at stake here. This Bill is very broadly drawn. It applies to a huge area of really important professional standards and qualifications and absolutely requires a framework of consultation and consent to ensure that it actually works.

Baroness Bennett of Manor Castle (GP): My Lords, I put my name down to speak to this group of amendments—the first time I have participated in this Committee—because, as the noble Baroness, Lady Randerson, said, they collectively address a basic constitutional principle.

I find myself in the slightly unusual position of standing up to speak in favour of preserving current constitutional arrangements. However, I pick up on the words of the noble and learned Lord, Lord Thomas, that what is happening here is a chipping away of devolved powers. I put it to those who wish to see the union continue that squeezing more tightly—squeezing away powers—is the way to ensure that people choose to slip out of its grasp.

I suspect that we might hear the Minister, as we have heard from Ministers in so many other debates on so many different subjects, say: "Don't worry, we don't mean any ill, this Government do not mean the wrong thing". This morning, I was talking about the situation and debate around the potential Australian trade deal—about hormone-laced beef and animal welfare standards—and we said in that context, as in so many others, that words are just words. We need guarantees in a Bill.

All these amendments head in the direction that I would like to see, but I highlight in particular Amendments 41, 42 and 57. The noble Lord, Lord Foulkes, said that his amendment was not absolutely revolutionary, although, as you might expect to hear from me, I rather tend towards the total peaceful revolution. The amendment says that there would have to be a delay before a devolved Administration could be overruled. I question whether there would be any circumstances in which it would be reasonable for a devolved Administration to be overruled. I therefore repeat a question I put at Second Reading, to which I did not get an answer: can the Minister give examples of circumstances in which the Government might feel it right and justified to overrule a ruling from a devolved Administration, where that Administration say "No, these regulations on professional qualifications you are trying to impose are not good enough for us and do not meet our needs"?

In looking at why there might be different rules in different places, the noble Baroness, Lady McIntosh, pointed to the differences in legal systems, which is one very obvious area—a long-running historic circumstance. But there are also practical differences.

Somebody mentioned driving instructors. Driving in the highlands of Scotland may be very different from driving in most parts of England and there may be good, practical reasons why qualifications may be different in different nations, for obvious reasons, but also, of course, we are very much talking about politics. In something of an aside, the noble Baroness, Lady Hayter, referred to Welsh language qualifications for teachers in Wales. These are issues of intense political debate

[Baroness Bennett of Manor Castle]
and discussion; they are not merely small, technical issues that can be ironed out by dealing with a few technical measures. These are political decisions that have been made by devolved Administrations who have been given constitutional powers that are supposed to be guaranteed. So it is very clear that we need to see change to what we have currently in the Bill.

The noble Baroness, Lady Randerson, highlighted something I have been puzzling over. At Second Reading, a lot of people questioned the whole issue of the assistance centre, and it is very hard to see how this all fits together for something so complex and difficult. As many noble Lords have said thus far in Committee, this really feels like a severely undercooked Bill; a great deal of work is needed. This is one area where I really believe we have to see change, and if we do not see change from the Government when we get to Report, we will be coming back to this and very much consulting with the devolved nations. We need to see that kind of consultation and involvement, and the first place where we really should be seeing consent from the nations is in their acceptance of the form that the Bill takes.

Baroness Finlay of Llandaff (CB): My Lords, like others who have spoken, I strongly support these amendments. I am most grateful for the most comprehensive speech by the noble Baroness, Lady Randerson, who laid out clearly what the issues are, both in terms of the constitutional conflict that is in the Bill at the moment, and the consequences of it, and also the consequences for services within Wales. I think these also apply to Scotland, but I should declare an interest as someone who lives and works in Wales—that is the area of my own experience. I ask the Minister to explain quite clearly why the draft of the Bill was given to the Welsh Government only a week before it was published, and why the final version was not seen before it was laid on 12 May. To me, that does not feel like consultation or like any attempt to find a consensus agreement with devolved Administrations at all.

There is a concern that the skills shortages are being linked to the trade policy agenda, and how the new obligations on regulators could be moved and adjusted because they are driven by some trade policy, rather than by the need to ensure that we have safe and effective high-standard services for people within our nation. Although Clause 14 confers regulation-making powers on the appropriate national authority, these are exercisable only concurrently with the Secretary of State and Lord Chancellor. That seems to make it possible that the Secretary of State or Lord Chancellor could legislate in devolved areas and would not be required to obtain the Minister's consent to those regulations. I understand that the Minister stated in a letter that these powers would not normally be used, but the problem is that once this is in legislation, such assurances do not carry any weight at all, and they are not binding on this or any subsequent UK Government. So it would seem that there are really serious risks, as the noble Lord, Lord Bruce of Bennachie, outlined.

In the event that there needs to be regulatory compromise in the interests of trade—I cannot think of a specific example, but I see the confusion and conflict between these two areas—will the Minister confirm that any such regulatory compromise will be notified to Parliament, to ensure that there is parliamentary accountability for any pressure put on to compromise any standards? We have heard in this debate already about the importance of common frameworks, but I will finish by advocating that the Government look very carefully at these amendments and make sure that they do not drive a further wedge between the four nations, because the consequences really do not bear thinking about. I certainly agree with those who say that they create an additional threat to the cohesiveness of the union.

Lord Hope of Craighead (CB): My Lords, the Minister assured the House earlier this afternoon that the autonomy of the regulators would be respected. I am sure we all take the Minister's assurance at face value and fully understand what he is getting at, but one of the many problems that lurks within the Bill and the wide regulation-making power it creates is the risk of causing collateral damage by careless or inadvertent wording or insufficient research before the power is exercised. As I said at Second Reading, the centralised systems that the Bill seeks to create will work only if the diversity that exists across the United Kingdom is fully respected. That is especially true where the devolved Administrations are concerned.

My own experience is confined to the systems for regulation of the legal profession in Scotland, but it is a guide to how the regulatory systems among the professions may differ from each other. In my cases, they involve not just one but two regulators working together, and there are different systems for the two branches of the legal profession in Scotland. For the Law Society of Scotland, which regulates solicitors, it is the society itself, working together with the Lord President of the Court of Session. For the Faculty of Advocates, it is the Court of Session itself, whose functions are then delegated to the Lord President of the faculty. The message that these two examples conveys is that it cannot be assumed that the regulatory systems that currently exist are alike in all cases, or even in most, so great care is needed to ensure that what is being done fits the requirements and practices of the profession that is being regulated.

This brings me to Amendments 13, 24, 35 and 40, in the name of the noble Baroness, Lady McIntosh, to which I have added my name. The point that each of these amendments is making is that prior consultation with the devolved Administrations and the regulators is essential before the regulation-making powers in Clauses 1(4), 3(3) and 5(2) are exercised. I shall say a little more about each of these subsections.

Clause 1(4), which is about providing for individuals with overseas experience and qualifications to be treated as having UK qualifications, really has to be read with Clause 1(5), which sets out a list of the many provisions that may be made in the exercise of the Clause 1 power. They are very wide-ranging. Paragraphs (f) and (g) in the list are of particular concern, as they are so wide in their scope. The words "guidance" in (f) and "other duties" in (g), which are not otherwise qualified, leave a huge amount to the discretion of the national authority.

5 pm

Clause 3(3) is designed to ensure that the national authority does not require anything which would contravene data protection legislation to be done when implementing any international recognition agreement. That really must be read with Clause 3(1), which is the principal regulation-making power in this clause. Perhaps it is to that provision, not Clause 3(3), that this amendment should be directed, but the regulation-making power is very wide here too. The only controls that appear are that which Clause 3(3) itself sets out and the content of the international recognition agreement, which is unlikely to be tailor-made to the systems for regulating the professions to which the exercise of this power is directed. Clause 5(2), which gives power to modify legislation in consequence of the revocation of the EU system, is also very widely expressed.

I support the points made by the noble Baroness, Lady McIntosh, about these amendments. Whether the Lord President of the Court of Session, who is mentioned in each of them, really needs to be consulted in every case is perhaps open to question. This could be confined to cases where the appropriate national authority is the Scottish Parliament and those where the regulations proposed relate to the legal profession in Scotland—although that is a point of detail which should not detract from the key points that the noble Baroness has made.

I add my support to Amendment 40, which relates to making arrangements for the publication by the assistance centre, under Clause 7, of advice and information relating to the entry requirements for regulated professions and overseas professions. Clause 7 gives rise to concern for various reasons that noble Lords have already mentioned, but I am concerned particularly with "must" in the first line of the clause. This is a duty to be placed on the Secretary of State to be exercised right across the board in every case, not just to fill in gaps that the professions themselves may have created in the information they provide. As it happens, the two professions for whose regulations I was responsible went to great lengths to provide that information in their own way and adapted to their own ways of working when they were working with the EU system that is now being revoked. I am sure that they will be as anxious to do the same as speedily as they can under the new system. It is hard to see how what they will produce could be improved upon by what this clause provides for, which begs the question of whether Clause 7 is really necessary. The giving of such advice and information by the assistance centre under a duty that is imposed by the word "must" could cause confusion too, unless all that the assistance centre does is simply to direct the interested party to the regulating system for the particular profession, where that advice and information is to be found. Here, too, consultation is the key to avoiding consultation. I hope the Minister will recognise the importance of that point.

I did not add my name to the other amendments in this very interesting group, but I will say a word in support of Amendment 41 in the name of the noble Lord, Lord Foulkes, and Amendment 49 in the name of the noble Baroness, Lady Randerson. The insistence on "consent" by the noble Lord, Lord Foulkes, in his Amendment 41 is very well taken. I have tried on many occasions in this House, on a variety of Bills, to insist that the word "consent" is a necessary step where the devolved Administrations are concerned. I see no harm whatever in pointing out that requirement again in the context of this Bill, for the reasons the noble Lord mentioned.

As for Amendment 49 in the name of the noble Baroness, Lady Randerson, it is very interesting that five members of the Common Frameworks Scrutiny Committee are participating in this debate: the noble Lords, Lord Foulkes and Lord Bruce of Bennachie—who made a very important contribution to our discussion—the noble Baroness, Lady Randerson, the noble and learned Lord, Lord Thomas, and myself. The common frameworks system is not yet all that well understood in government, but the noble Lord, Lord Bruce, described it very well when he referred to it as a mechanism for co-operation and consent. It is now becoming a well-established system for involving all four parts of the United Kingdom to achieve a system—without going through the statutory routes which the noble and learned Lord, Lord Thomas, so rightly criticised—through discussion and co-operation, and ultimately with consent, which will be respected. Whether the system will be used widely across the professions with which the Bill is concerned is a matter for speculation, but it is very important that, should that system be recognised, the common frameworks should be respected and protected, as is provided for in the internal market Act as a result of amendments made in this House. There is great force in those additional amendments, and I offer my support for them and for the amendments which the noble Baroness, Lady McIntosh, has tabled.

Lord Purvis of Tweed (LD): My Lords, it is a pleasure to follow the noble and learned Lord. To start where he left off, it is a disappointment that the Government chose not to have this Bill as a creature of the frameworks agreement, especially given the fact that recognition of professional qualifications was an area where there had been outstanding differences between the devolved Administrations. Indeed, many lengthy debates during the passage of the internal market Act led to some progress on the recognition of the frameworks, as the noble and learned Lord indicated.

My concern is added to by the fact that we persuaded the Government to have further exclusions—through government amendments—on the education and legal professions, with the exemptions in the internal market Act. However, it is not categorically stated within this legislation that we will not effectively see a back door. Because they are Henry VIII powers, the regulations that could be made under this Bill could be used—as the noble Baronesses, Lady Hayter and Lady Finlay of Llandaff, indicated—to implement a trade agreement which can effectively trump the internal market Act by including education and legal professions under MRA elements of trade agreements, which are excluded in the operation of the internal market Act. I would be grateful if the Minister could confirm that that will not be the case and confirm the principles established in the internal market Act for those professions which are considered very strong for public service. I understand

[Lord Purvis of Tweed]
that there are carve-outs for certain professions—which the Canadians in particular have had—in our Canada agreement. I would be very interested to know if that is the Government's position.

The reason why I was slightly alarmed by the Minister's response to the point I made in the previous group is that there are existing mechanisms—as she heard me say—under Section 60 of the Health Act for England and, as the noble and learned Lord indicated, there are certain areas where regulators have a statutory responsibility to seek approval from the Scottish Parliament for certain changes, including fees. Those mechanisms, certainly for Section 60, require public consultation and parliamentary procedures—approvals—in the Scottish Parliament, but the Minister said that there was no need for any consultation on an SI because the Government would publish an impact assessment on it. That is quite alarming, and not only because these provisions can apply across the UK. If the Government are not even committed to consulting the devolved Administrations, in addition to stakeholders, on some of these regulations, that would be contrary to many elements of what we have been told by the Government up until now about working closely with the devolved Administrations. It would be helpful if the Minister could confirm that that would never be the case—that regulations would never be brought forward that would impact upon the devolved Administrations without consultation. How that could apply more easily under this legislation than previous legislation was outlined clearly by my noble friend Lady Randerson and the noble Baroness, Lady Finlay.

Because of the concurrent nature of the powers under this legislation, in effect, the Government seem to suggest that the Secretary of State, the Lord Chancellor, the Welsh Ministers, the Scottish Ministers and the Northern Ireland department are all acting equally. That is not the case when it comes to UK Ministers' determinations with regard to the impact on the other regulators. The Scottish Parliament cannot bring forward any regulations if it believes that a demand for professions could be met from other parts of the UK or abroad. The Scottish Parliament cannot bring forward regulations to make it easier to apply from other parts of the UK to Scottish regulators. But the UK Government can do that for Scotland if it was regarding England. I do not know why that is the case, because it is not reasonable. If the powers of determining demand rest with the UK Government, they should also, as the UK Government say, rest with the devolved Administrations. But of course they do not. The Secretary of State retains the power to activate this if the Welsh, Scottish or Northern Irish Ministers do not. So a concurrent power, in my mind, is always a kind of "If you don't, we will" power, and I think it is best removed.

I speak now in support of my noble friend Lady Randerson's amendment on the assistance centre. She and I both had difficulty finding information about the centre in the impact assessment, which goes back to the comments I made about the viability of impact assessments on consultation. But it turns out it was not there; it is in a different document, the policy paper *Recognition of Professional Qualifications and Regulation of Professions: Policy Statement*, coincidentally published on the same day as the Bill. The policy statement indicated a direction of travel at exactly the same time as the destination was highlighted. So we are back in the situation of there being two parallel processes.

That policy paper stated that the decision had already been made about the assistance centre, as a contract had been issued. That had not been mentioned by the Minister in his Second Reading speech, and it is not in the impact assessment. The UK Centre for Professional Qualifications, run by Ecctis Ltd, has been given the contract. I see the Minister shaking his head, but I will quote from the policy paper, if he does not mind:

"The UK has an existing contract with the UK Centre for Professional Qualifications to be the designated assistance centre."

That is in the policy paper. If he can confirm that is not the case in his response, I would be grateful. Either the policy paper is wrong or there is not a contract. But if there is, he can make clear how much that has been issued for and provide information about that. I see the Minister nodding, so that is going to be helpful.

The final element I would like to raise—a separate concern about the necessity for consultation—is that on the medical professions consultation paper there is a clear list of 13 offences against fitness to practise. There are five Scottish offences and two Northern Irish offences and, if someone has committed or is committing one of them, they are no longer fit to practise. Because this list has the Scottish offences, but there is no reference in any of the provisions in the regulation-making powers under this Bill, I simply do not know what the interaction would be with regard to the fitness to practise offences. For example, because the Government have not made any comment about this so far, when it comes to bringing forward elements to ease applications from abroad, how do our regulators know that the applicant has not committed an equivalent offence in their jurisdiction, especially if in certain areas there are separate Scottish offences from those listed in England, Wales and Northern Ireland? I hope the Minister can give reassurance that no regulations could be made to change this that would make it harder for our regulators to find out whether those who are applying will have committed an equivalent of the listed offence. If the Minister can offer reassurance on these points, I would be grateful.

5.15 pm

Baroness Hayter of Kentish Town (Lab): My Lords, I am going to leave the question of an assistance centre to one side. I think I have an amendment later on to delete it from the Bill. I have yet to understand why we need a statutory body and why this cannot just happen. We were told that all this is being done at the moment, perhaps by BEIS, so I really do not understand why it has to be in here. But we will come to that elsewhere.

Colleagues know we are on somewhat delicate ground with these issues, with the devolved authorities having been excluded too many times, going right back to the Brexit negotiations and then the Internal Market Bill, with UK powers imposed over devolved competencies. Since then, we have seen the Government wanting to spend the levelling up fund and the shared prosperity

fund on projects in the devolved areas but also in areas where the devolved Governments would normally spend money—and where, frankly, the devolved Governments know best how expenditure should be part of their strategy. That is the background to how we are looking at this. So the Bill—as the noble Baronesses, Lady Finlay and Lady Randerson, said—being seen a week before it was introduced is just more of the same: them as an afterthought.

I am not going to repeat here in public what the Minister told me in private was the reason for this, although he might like to spread that a bit further if he thought others would be interested. But the second reason given was that the other Governments had been in purdah and therefore this was not possible. While that may well be the reason it could not be shown straight away, it does not explain why the Bill had to be suddenly published and rushed into this House without taking a breath. There is no reason to think that suddenly we need more doctors, nurses, vets, furriers and everything else—a sudden shortage of skilled people—and that is why we need the Bill to give powers to regulators if, as I said earlier, there are any that do not have them at the moment.

Therefore, of course, the feeling is this is being rushed through because there is some trade deal in the offing that needs this urgently. If that is the case, I think we should be told. In one of his answering letters, I think the Minister said he could not comment on current negotiations. This seems too important. If it was not shown to the devolved authorities because they were having elections but then has to be rushed into this House, it feels to me either that the Government forgot about the devolved Administrations or that there is something else going on.

The problem, therefore—and the reason why the environment in which this is taking place is important—is that this Bill replays exactly the same problems as we had with the internal market Act. At first glance, the use of concurrent powers looks like a rather deliberate, perhaps subtle, undermining of devolution because it allows the Secretary of State to amend or repeal Welsh primary and secondary legislation and regulations even in areas of devolved competence, as we have heard. Also, in the case of Wales—like the noble Baroness, Lady Finlay, I come from there, so I am always much more aware of the differences there—it would apply to devolved regulators such as the Education Workforce Council and Social Care Wales.

The Minister has said that these powers will not "normally" be used but, as the noble Baroness, Lady Finlay, said, that does not offer a lot of comfort. Nice man though the Minister is, his words are not law and are not binding on the UK Government. We very much hope that the Government will accept Amendment 41, tabled by my noble friend Lord Foulkes, which seems to strike a really good balance. As in the internal market Bill, it would oblige the Minister to seek the consent of the devolved authorities but would allow them to proceed, albeit with a published explanation, if no consent is received within a month. So it is not an absolute veto, but it starts on the assumption of working towards consent, which is really important. I am absolutely confident that my noble friend will bring that back on Report.

Lord Foulkes of Cumnock (Lab Co-op): Yes.

Baroness Hayter of Kentish Town (Lab): I thought he might. I think he can probably expect us to support him in that.

Amendment 49, which is in my name and that of the noble Baroness, Lady Randerson, would specifically allow the common framework approach, which we have been discussing, to trump the use of these powers in instances where the common framework procedure is developing a mutual recognition of professional qualifications framework. As we have heard, in its update covering the fourth quarter of last year, the Cabinet Office reported that discussions on the MRPQ framework had made progress, though the development timelines have had to be extended. As the Government and the devolved Administrations want the MRPQ framework to be completed, we want nothing from this Bill to be done outside of its remit.

The significance of how the devolved authorities are treated in this Bill has ramifications beyond the issue with which we are concerned today, which is the regulation of professional qualifications. I urge the Minister to engage with the relevant Ministers in the devolved Governments and do everything in his power at least to shore up, and hopefully strengthen, devolution rather than undermine it.

The noble and learned Lord, Lord Thomas of Cwmgiedd, said that the Government are chipping away at the devolution settlement; I think that that is what the noble and learned Lord, Lord Hope, was referring to when he talked about collateral damage. Something that happens in this Bill is chipping away at a really important part of the devolution settlement. I must ask the Minister whether he understands that. Does he understand those feelings? If so, does he feel an obligation, for the sake of the union, to amend the Bill to alleviate these concerns? I hope that we will hear a thoughtful and positive response from him on this.

Lord Grimstone of Boscobel (Con): My Lords, these amendments have brought about a fulsome and entirely appropriate debate about respecting the devolution settlements for Scotland, Wales and Northern Ireland as the Bill continues its passage through the House.

Let me start by saying, in a direct answer to the noble Baroness, Lady Hayter, that I, too, find her a very nice person, although I must say that I think she has a suspicious mind in relation to this Bill. I assure her and other noble Lords that there is nothing going on about the timing of FTAs which is driving this Bill.

On a point of fact, the Bill was seen by the Administrations of Wales, Scotland and Northern Ireland on 22 April. This was just eight days after I first saw it, so it was not hidden or kept in a drawer away from the DAs until the last possible moment. It was seen by them pretty much as soon as I saw it after it had been prepared.

I assure noble Lords at the outset that the Government fully respect the devolution settlements. Devolved matters should of course be, except in the most exceptional circumstances, for the devolved Administrations to legislate on. The Government have no desire for this

[Lord Grimstone of Boscobel]
Bill to chip away at that in any way. I can confirm that we will seek legislative consent for the Bill in line with the Sewel convention, and we do not in any way intend to use this Bill to chip away at the devolution settlements.

I can confirm for the noble Baroness, Lady Finlay of Llandaff, that it is not part of our trade policy to compromise our standards. We have had many debates about that in this House. Free trade agreements will not compromise our standards or those of regulators. No free trade agreement will have the power to do that.

I thank the noble Lord, Lord Purvis of Tweed, for tabling Amendment 57 concerning the authority by whom regulations may be made and concurrent powers. I suggest that it is entirely fitting that the current definition of "appropriate national authority" in Clause 14 means that Scottish and Welsh Ministers and Northern Ireland departments are the appropriate national authorities and may make regulations, provided, of course, that they fall within the competence of the relevant devolved legislature. In direct answer to the noble and learned Lord, Lord Thomas of Cwmgiedd, let me say that the Government do not intend to disturb this in any way.

The issue is that this is a very complex landscape. As I have said before, it involves 160 professions and 50 regulators. Regulation varies between professions. Some professions are regulated on a UK-wide basis despite being within devolved competence. Some professions are also regulated across Great Britain. So the complexity of the regulatory landscape makes the use of concurrent powers important to the Bill's operation in a purely practical sense. They are meant to be entirely practical and are not intended to undermine the authority of the devolved Administrations in any way. They make sure that professions that fall within devolved competence could have regulations brought forward across several parts of the UK by the relevant national authority. This will provide those professions with certainty and continuity.

Amendment 49, in the name of the noble Baroness, Lady Hayter of Kentish Town, aims to ensure that Clause 9 does not affect the establishment or operation of a common framework. The noble Baroness, Lady Randerson, also made this point. I am a huge enthusiast for common frameworks to make our systems work as efficiently as possible.

As noble Lords know, the common framework on the regulation of professional qualifications is under development between the UK Government, the Scottish Government, the Welsh Government and the Northern Ireland Executive to ensure a common approach on powers that have returned following our exit from the European Union and which intersect with devolved competence. Although this amendment relates specifically to Clause 9, let me assure noble Lords that we are committed to ensuring that the provisions in this Bill work alongside the common frameworks programme. We absolutely will consider this as we develop the framework further. The Bill does not constrain that.

There was a hiatus in the development of this framework, while work paused during the election period in Wales and Scotland. We are very keen now to resume discussions to seek collective agreement on the timeline for delivery of the framework, including concentration on interactions with this Bill.

5.30 pm

I now turn to Amendments 13, 24 and 35, tabled by my noble friend Lady McIntosh of Pickering, that relate to consultation with the devolved Administrations and other interested parties. I fully agree that it is important for the relevant national authority to engage with a range of stakeholders before making regulations. Because of the complexity of these matters, it would be the height of foolishness not to do that.

Starting with Amendment 13, we have already spent considerable time debating the purpose and mechanics of Clause 1. In determining which professions meet the conditions set out in Clause 2, and before making any regulations under Clause 1, there would, of course, be close engagement with interested parties, including the devolved Administrations.

Amendment 24 seeks to introduce a similar requirement to consult before regulations are laid to implement international agreements under Clause 3. In all international negotiations relating to professional qualifications, a key concern for the Government has been ensuring the autonomy of regulators and protecting UK standards, as I said earlier. In light of the Government's concern, and the importance that we attach to this point, there are already extensive engagement mechanisms for consulting before and during these negotiations. As noble Lords have perhaps heard me say before, the Department for International Trade already engages with a range of parties, including regulators and devolved Administrations, to understand their priorities and inform the UK's approach to trade agreements with future trade partners. Under these amendments, the appropriate national authority would be required to consult before laying regulations to implement these agreements. I hope my noble friend is reassured that the Government, of necessity, would have concluded extensive engagement ahead of this point in order to actually create the free trade agreement in the first place.

Turning to my noble friend's amendment to Clause 5, which introduces a requirement to consult before laying regulations that make consequential amendments following the revocation of the existing EU-derived recognition system, I envisage that these enactments would be very limited in scope. They are necessary purely to tidy up the statute book after revoking the existing EU-derived system, for example by removing cross-references to the current system in other regulations. Given that these are primarily small fixes, it would be disproportionate to consult on them. The Government will, of course, work closely with interested parties to ensure that there are no unintended impacts of bringing forward these consequential amendments.

I now turn to the assistance centre, to clarify some of the misconceptions that perhaps exist about this. I would like to thank my noble friend Lady McIntosh of Pickering, the noble Lord, Lord Foulkes of Cumnock, and the noble Baroness, Lady Randerson, for their amendments. For their comments made during the debate, I thank the noble Baroness, Lady Bennett, the noble Lord, Lord Bruce of Bennachie, and others.

I think where the confusion arises is that the assistance centre is already in operation, and the contract that the noble Lord, Lord Purvis, referred to is already in existence. The assistance centre is in operation because that was a consequence of the EU legislation. When the EU legislation is no longer in operation in relation to this area, if we are to continue with an assistance centre, we need new legislative cover to do it.

Perhaps I can correct a misconception about the size and nature of this centre. It is basically a focal point —a signposting mechanism that tells people where to go to get more information about professions. I think it employs either two or three people. So I hope I can assure the noble and learned Lord, Lord Hope of Craighead, that this centre is de minimis and meant to be very helpful, as shown by how it is used. I looked up some statistics: it received 1,600 queries between June 2020 and May 2021. These queries can be as simple as saying, "What is the address of the place I have to write to, to find out how I become a nurse in Great Britain?" Its website received 2,000 hits in May 2021. So it is a signposting service, as opposed to the more grandiose service that I suspect some noble Lords suspect it is.

Of course, we support the aims of close collaboration with the devolved Administrations that underpin these amendments. However, we believe that, given the nature of this assistance centre, the duties as set out in the amendments introduce unnecessary, disproportionate burdens. The existing contract for the assistance centre comes to an end in 2022—this is the contract that the noble Lord, Lord Purvis, referred to. Commercial confidentiality means that I cannot give the value of the contract, but I can tell noble Lords that it is a surprisingly small sum, given the extent of the work that the assistance centre does.

I can absolutely reassure noble Lords, and give a commitment to this effect, that my officials will work closely with their counterparts in the devolved Administrations as we consider the future of this service. No new contract will be entered into without officials consulting their counterparts in the devolved Administrations. So I hope noble Lords will accept that there is no need to place this requirement in legislation, given the scale and scope of this assistance centre. Of course, my officials already engage with the devolved Administrations on this matter. They need to get contact points, to know where to refer people to who are coming to the assistance centre. Naturally, the consult with the devolved Administrations and the devolved regulators about that.

Finally, I would like to reassure the House that, as well as working closely with the devolved Administrations, the Government have engaged with regulators and professional bodies that fall within devolved competence, such as legal and education sectors, as we developed the proposals in the Bill, and we will continue to do so.

Before I conclude, I turn quickly to the question that the noble Lord, Lord Purvis, asked about the interaction between the United Kingdom Internal Market Act 2020 and this Bill. I hope I can reassure noble Lords by saying that there is no direct interaction between the framework for recognising overseas qualifications in this Bill and the United Kingdom Internal Market Act. This is because the recognition framework in this Bill, as and when applied, would be limited to the recognition of professional qualifications and experience gained overseas. The principles and processes, under the United Kingdom Internal Market Act, are limited to the recognition of professional qualifications held by UK residents, and experience obtained mainly in the UK.

The question of fees was raised again by the noble Lord, Lord Purvis, on this group. I think it might be helpful to noble Lords if I was to write to the noble Lord, and place a copy in the Library, setting out exactly and clarifying the policy on fees, and how the various bits about fees interrelate in this Bill, so that, frankly, everybody knows what we are arguing about, as and when we argue about that.

That brings to an end my points on this group. I hope that I have managed at least in part—although I am well aware that my assurances from the Dispatch Box are not always taken with the weight that I would wish them to be—to reassure noble Lords about our approach with regard to engagement with the devolved Administrations, as well as the use of concurrent powers. I would also like to reassure once again the noble Baroness, Lady Hayter, that there is nothing funny going on in relation to this.

I will of course be happy to discuss these matters further. Anyone who has listened to our debate could not help but be struck by the conviction of those who have spoken about these matters. I am happy to discuss them further with noble Lords, but I hope that my noble friend will feel able to withdraw her amendment at this stage.

The Deputy Chairman of Committees (Baroness Fookes) (Con): My Lords, I have received requests to speak after the Minister from the noble Baroness, Lady Randerson, and the noble Lords, Lord Foulkes of Cumnock and Lord Purvis of Tweed. We will start with the noble Baroness.

Baroness Randerson (LD): I thank the Minister for his response to several of the issues that I have raised. I welcome his assurances on the common framework on this issue and I look forward, along with colleagues across the Committee, to scrutinising it in due course. I also welcome the information that he has provided on the assistance centre. That is helpful, but it would have been even more helpful if it had been included in the impact assessment so that we would not have had to waste time today seeking that information.

Finally, I want to make an important point. To me, it sounds as if the Minister has been really surprised by this Bill and therefore it should not be unexpected that the devolved Administrations have been surprised by it too. Since the vast majority of the Bill touches on devolved powers, why were not the officials of the devolved Administrations, if not the Ministers, involved at an earlier stage in the development of this policy? That would have improved trust if that had happened. Perhaps I may urge the Minister to make up for lost time by having some fairly intensive discussions with the devolved Administrations over the coming days.

Lord Grimstone of Boscobel (Con): My Lords, I accept the point made by the noble Baroness about the assistance centre. In response to her other points, many things have surprised me since I became a Minister, so I am no longer surprised by them.

I should add that my officials have been in very regular contact about this with officials in the devolved Administrations. I have pulled out the Bill date as a specific one, but of course officials have been working hard on this for some time, right back to the call for evidence that was asked for last year. A lot of consultation has been going on, but again it is the complexity of this Bill that has led to perhaps there still being some rough edges, which I think the debates in our House are helping to iron out.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, like the noble Baroness, Lady Randerson, I am interested in the revelation that the Minister saw the Bill only eight days before the devolved Administrations, Can the Minister tell us which Minister supervised the drafting of the Bill?

Lord Grimstone of Boscobel (Con): My Lords, I am the Minister responsible for the Bill and the policy; I am not just the Lords spokesman on the Bill. Of course, the work that goes on before a Bill appears on one's desk is enormous: instructions to parliamentary counsel, development of the policy and so on. I am the policy Minister in relation to this Bill as well as the Minister who has the pleasure of addressing your Lordships' House on the matter.

5.45 pm

Lord Purvis of Tweed (LD): My Lords, I thank the Minister for his response to the points raised by my noble friend and myself about the assistance centre. I thought he might reply along those lines, which is why I have the EU directive with me. The directive has never stipulated that a member state has had to have one centre. I shall quote from recital (33):

"In particular, it does not prevent the designation at national level of several offices, the contact point designated within the aforementioned network being in charge of coordinating with the other offices and informing the citizen, where necessary, of the details of the relevant competent office."

There has never been a requirement under EU law for there to be a single member state office, but I welcome the fact that the Government recognise that the small, efficient European office that he claims was in place has to be put, as the very first thing the Government are doing, on a statutory basis in the post-Brexit world. I think that it is worth saying to the Minister that there was never that requirement, so I look forward to further debates about why the Government are insisting that there should now be a statutory office as the single point of contact.

My question to the Minister is this: he did not quite give a reassurance about the professions within Scotland that have been excluded from the internal market. However, I heard what he said about the interaction with the internal market Bill. I welcome the fact that he will be writing to me, so perhaps he might add that element about the legal and education professions. Regardless of the reassurance, my reading of the Bill is that it could potentially bring into scope those professions which have been excluded from the internal market Bill.

Lord Grimstone of Boscobel (Con): I thank the noble Lord for his question. As he spoke, I was reminded that I had not fully answered it and I will certainly write to him on it. I hope that he and other noble Lords will agree that having four statutory assistance centres would probably be to overegg the pudding.

The Deputy Chairman of Committees (Baroness Fookes) (Con): I have received a further request to speak from the noble Baroness, Lady Bennett of Manor Castle, so I will call the noble Baroness now.

Baroness Bennett of Manor Castle (GP): My Lords, I return to the question that I raised both at Second Reading and in my comments today. As the amendment seeks to address, it would appear that there is the possibility of the Government here in Westminster overruling on this. There are currently no requirements to consult or to interact with the devolved Administrations, but as I say, there is a possibility that the Government could overrule—and that indeed is referred to in the guidance for this legislation. I will ask the Minister again: under what circumstances would he imagine that the Government would overrule a devolved Administration if it objected to arrangements?

Lord Grimstone of Boscobel (Con): I thank the noble Baroness for that point. Frankly, I can conceive of no circumstances in the area of professional regulation and the mutual recognition of professional qualifications where the Government would wish to overrule any devolved Administration.

Baroness McIntosh of Pickering (Con): My Lords, this has been an excellent debate, and I thank all noble Lords who have contributed to it, in particular the noble Lord, Lord Foulkes, and the noble and learned Lord, Lord Hope of Craighead.

I regret to say that I am not completely assuaged by the replies of my noble friend. I will take as an example the wording of Amendment 13, which seeks to ensure that there is

"a formal consultation with the devolved administrations, regulators and the Lord President of the Court of Session."

I take the point made by the noble and learned Lord, Lord Hope, that I do not expect the Lord President to be involved in every case, but I listened carefully to what he said at Second Reading and that is why this is included.

At Second Reading, the noble and learned Lord, Lord Hope, also highlighted the fact that while consultation with professionals is essential, as I think we would all agree, there is no mention of that either in the Bill or in the Explanatory Notes. I therefore remain discontent and dissatisfied. While in his summing up, my noble friend the Minister said that a lot of consultation had taken place, he did not say what form that consultation would take.

I have a further cause for concern, referring back to what the noble Lord said yesterday. I had hoped to intervene in the debate on the trade deal with Australia, but I was told that it was heavily oversubscribed.

He made the point that the Trade and Agriculture Commission will only look at future trade deals literally just before they are to be signed. As we have heard in the debate on this group of amendments—and as the practice seems to have been—any consultation seems to be left to absolutely the last minute. It concerns me greatly that that is not doing justice to the complexity of this. I will look carefully at the Minister's response before the next stage of proceedings. For the moment, I beg leave to withdraw the amendment.

Amendment 13 withdrawn.

The Deputy Chairman of Committees (Baroness Fookes) (Con): We now come to the group beginning with Amendment 14. Anyone wishing to press this, or anything else in this group, to a Division must make that clear in debate.

Amendment 14

Moved by ***Lord Foulkes of Cumnock***

14: Clause 1, page 2, line 23, at end insert—

"(5A) The appropriate national authority must consult such persons as it considers appropriate when preparing regulations under subsection (1)."

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I am very pleased to move Amendment 14, which would require the Secretary of State, the Scottish and Welsh Ministers, and the Northern Ireland department to consult when preparing regulations under Clause 1. A number of noble Lords have said that it is important that the UK Government consult the devolved Administrations. It is equally important that the devolved Administrations themselves consult the bodies affected. Sometimes they are quite good at that; sometimes not. It is therefore important that we make it clear that this is a requirement. At Second Reading, the noble and learned Lord, Lord Hope, pointed out the need for consultation by the appropriate national authorities when preparing regulations. Both the Law Society and I agree strongly with those comments, and on the need for consultation on draft regulations under the Bill. As colleagues have said on a number of other occasions, this is a very important and wide-ranging measure which affects a considerable number of professions—160 as stated in the Explanatory Notes and as other noble Lords have said earlier.

Government across the UK does not possess the in-depth knowledge that would enable it to legislate unless it has such pre-legislative consultation. The Minister said that he would

"anticipate that determining whether professions meet this condition would require extensive close working".—[*Official Report*, 25/5/21; col. 974.]

BEIS has made it clear in its engagement with stakeholders such as the Law Society of Scotland that it agrees that it is important for the Government to engage extensively with a range of interested parties before legislating. BEIS may argue that it is already well established that Governments need to consult before making secondary legislation, including through the government consultation principles of 2018, so there is no need to legislate for this. That may be so, but I am not so sure. In a number of recent Acts, the Government have nevertheless expressly legislated for consultation duties such as these.

We certainly agree that aspects of the Bill will require close working between the Government and a range of interested parties, including the professions. However, "close working" does not necessarily include statutory consultation. We also know that legislation has a particular way of concentrating Ministers' minds in a way which published guidelines do not. That may be why legislation as diverse as the Fire and Rescue Services Act 2004 and the United Kingdom Internal Market Act 2020 have provisions which oblige the Secretary of State to consult before making orders or regulations. That statutory duty to consult is vital; it puts pressure on Ministers much more effectively than any guidelines. I therefore hope that the Government will seriously consider this amendment. I beg to move.

Lord Palmer of Childs Hill (LD): My Lords, I apologise that what I am going to say has nothing to do with devolved Administrations, because the Bill obviously affects them greatly. The Bill is a law of unintended consequences. It has been described as having been written on the back of an envelope; that envelope has got a lot of writing all over it by now. Amendment 52, to which I have attached my name, is about how many organisations have not realised, and still do not realise, the impact of the Bill. They think: "Professional qualifications; that does not really worry us". Many noble Lords have had consultations with large organisations, chartered organisations and the like, all of which have given us their opinion. Some have given us their opinion twice because they have changed it. However, small and medium-sized enterprises have not been consulted at all. They have probably not even known that this Bill exists and how it is going to affect them—how it is going to impact on the qualifications of their workforce and whether they are going to have problems with their workforce. When I talk about small and medium-sized enterprises, I mean those with one to 50 employees. If they have problems recruiting now, how will it be afterwards?

As the Bill seems to have been created on the hop, without thinking too much about some of the detail, we now come to trying to mop up a Bill which has not been terribly well thought out in the beginning. We have to look at how to rectify that after the Bill becomes an Act. My Amendment 52 is about the Government committing to there being a report back within 12 months of the Act being passed, particularly in relation to small and medium-sized enterprises. By then, they will have realised the impact of the Bill on the staff they have, do not have, and might have. They might then feel that they can contribute. At that stage, one year hence, perhaps we can put the then Act into a better format. At the moment, it certainly does not seem to have been thought out properly from beginning to end.

Baroness Bennett of Manor Castle (GP): My Lords, it is a pleasure to follow the noble Lord, Lord Palmer, who has tabled a very useful amendment, Amendment 52, to which I was pleased to attach my name. I will speak chiefly to Amendment 55 in my name, but I will also

[Baroness Bennett of Manor Castle]
look at the whole range of Amendments 52 to 55, which are all on variations of forms of reports. It might be useful for us to consider whether we can bring this together for Report. There is clearly a desire, coming from a number of different directions, to see a reporting and scrutiny mechanism for the Bill.

I will, however, briefly comment on and commend Amendment 19 in the name of the noble Baroness, Lady Hayter, which refers to consulting consumer interests. That is particularly interesting when we look back to the comments of the noble Lord, Lord Sikka, at Second Reading, and the concerns about the way in which many of our professional services are failing to meet the needs both of those using them and of broader society. There is something useful in the suggestion from the noble Baroness that would be interesting to take forward.

I will now address Amendments 52 to 55, on the issue of reporting back. There has been great discussion in this Committee about the complexity of the Bill, the difficulty of fully understanding its impacts and, indeed, the fact that, with its range of Henry VIII powers, much of the detail will come in later regulation of which we have very limited or no democratic oversight.

6 pm

There is a real argument for saying that we need an assessment point, whether it is one or two years or whatever, at which this House and the other place have a chance to assess the impact of the Bill, see where problems might have arisen and how they might be dealt with them. There is an underlying issue here that addresses much more broadly the functioning of the whole UK Government. I often hear from NGOs and businesses that the Government do things and never assess the impact of what they have done or whether what they are doing should be changed. A similar complaint that we often hear is that the Government or our structures fund pilot projects and sometimes we get assessments of them but even when those assessments are brilliant, they never get rolled out. We have some real structural problems with the way in which the Government work. At least if we built into the Bill an modest assessment and reporting-back process, we could perhaps set a model—a standard, even; let us think big—that could apply to future Bills and operations of the Government.

I come to the precise details of Amendment 55 on which I shall mostly focus and shall set out why it contains the reporting provisions proposed. Before doing so, I have to offer my thanks to the Public Bill Office, which offered its expert assistance in putting this amendment together. I should say that what is listed is not by any means exactly right but I hope that it is a starting point for discussion of some broader issues.

Amendment 55 calls for a report to be made within two years and at five-year intervals thereafter. It seeks to put the Bill in the context of how professional services are provided. We heard from the Minister when he outlined the Bill that addressing skills shortages is an important part of its aims. Proposed new paragraph (1)(a) is saying, "Let's check to see how the Bill is actually doing". I have set out the

"medical, construction and food production sectors."

We can argue about them. The reasons for including the medical sector have been well canvassed and discussed by other noble Lords. We are in a situation in which there are nearly 35,000 unfilled nursing vacancies. In Sheffield, we are about to lose a much-loved GP surgery because it is simply impossible to find another GP partner for it. So including the medical sector is obvious.

I should also point out that the construction industry is included, which addresses the amendment tabled by the noble Lord, Lord Palmer. I spent a great deal of time recently talking to the Federation of Master Builders, particularly in the context of the hope that we will eventually have a workable retrofitting policy greatly to speed up the work of making our housing stock fit for the 21st century and the climate emergency. That will require an enormous number of skills, and we severely lack highly skilled people. Continental Europe, where there are passive house standards, high levels of building stock and retrofitting has been happening place for decades, is where the skills often exist. The Federation of Master Builders represents many small and medium-sized builders. How will they be able to get those skilled people in? What blocks or speed-in might the Bill offer?

Proposed new paragraph (1)(b) addresses a point that I raised at Second Reading. The Bill addresses only one side of the story on professional qualifications. We find that people are qualified to work in the UK but will we let them in, even if they have jumped through the hoops to find themselves qualified? I think here of the cases that we saw, particularly before the pandemic, although some of the issues have been dealt with in the short term in the light of the pandemic. We found that physiotherapists and nurses in particular were not earning enough money to earn the right to remain in the UK, even after working here for a number of years. They were facing being forced to leave the UK, while the NHS trusts that employed them were flying people around the world to recruit more people to fill the very posts from which we were throwing people out. We were seeing a situation in which the costs of recruitment were significant, particularly international recruitment, while we were losing the skills of people who had been here for a number of years and had acquired knowledge and understanding of the roles that they were being asked to fill during that time. It is therefore important that we look at the interaction between immigration and the professional qualification rules.

Paragraph (1)(c) of the proposed new clause looks at a broader issue and questions an aspect of Government policy. We have heard often from the Government that "We want to attract the best and brightest from around the world to the UK." We are talking about something that has been going on for decades. Thinking particularly about medical professionals, we are taking people from the global south, who have been very expensively trained in countries that are grossly short of professionals themselves. The noble Lord, Lord Foulkes, referred to this in an earlier group. We are taking people and bringing them here, and not training enough people ourselves. There are two sides to this and proposed new paragraph (1)(d) addresses whether the demand

for doctors, nurses and associated health professionals is being met by training in the UK. There is a very important figure there to be looked at and considered.

As a gesture of good will, I am not going to make any reference to any ongoing debates anywhere else. I am simply going to say that we surely have a responsibility, given how much we have drawn on the resources of the global south in the past, to support the training of professionals in the global south, the professionals that are urgently needed there, and some of whom we will undoubtedly continue to see working in the UK. One of the things I stress is that we need to acknowledge that professionals will want to move around the world for personal and personal development reasons. We need to train more than we need because some of the people we train will go elsewhere. Some people from elsewhere will come here. We need to make sure that enough people are being trained around the world.

In the context of this Bill, there is a question about what we are doing to support professional bodies around the world. If we think about how the Bill is going to work, if someone is registered as a professional with a professional body in another country and that body is strong, well-resourced and has good record-keeping, the process of us recognising that person here should be very simple. We could simply say to the people in that country, "What have you got registered?" If that professional body is well-resourced, has the right data and all the information we need about their qualifications, that could be a very simple process of agreement between two professional bodies.

I have outlined how I see this amendment. I am not saying it is the perfect solution. I obviously will not be moving it now, but I think a lot more discussion is needed around reporting. However, I want to raise a final point that addresses this and other debates. The Minister has often said that the Government need the flexibility of Henry VIII clauses because it is a fast-changing world. I have been thinking about the debate thus far. We have been thinking a lot—I have myself—about people moving to the UK to provide professional services. I was drawn to a case study that emerged a month or so back about what has been happening with the national tutoring programme. It emerged that tutors as young as 17, earning as little as £1.57 an hour, with an average of £3.07 an hour, were, through that national programme, providing tutoring in maths for disadvantaged primary school pupils.

We think about what has been happening in our medical services through necessity throughout the pandemic. A great deal of medical consultations are now being conducted online. There is no requirement for the person doing that; they can be literally anywhere in the world. If we start to think about what has happened to so many professionals in the UK who have seen their employment conditions subjected to casualisation and zero hours contracts—I am thinking here of a lot of university lecturers—we see that how professionals are employed has changed enormously. I suggest to your Lordships that we need to think about how that is going to play out differently in the context of this Bill.

Lord Lansley (Con): My Lords, I am glad to have the opportunity to follow the noble Baroness, Lady Bennett of Manor Castle. She was right to say that we will probably need to think a little further about the subsequent scrutiny arrangements for the operation of this legislation. I fear that the amendments we have at the moment probably do not do it.

Perhaps with the exception of Amendment 54, they all suffer from the difficulty of proposing subsequent scrutiny of the impact of this legislation on issues which will themselves be impacted by a wide range of other legislation, administration and circumstances. It is difficult to isolate the impact of this legislation in particular. When we re-examine it we should, if not legislating, certainly be looking to Ministers to say that we should focus on understanding how it is working after a suitable period. One of the conventional processes would be five-year, post-legislative scrutiny. That would probably be the appropriate route down which to go.

I want to say a word about the issue of consultation, which came up under the previous group. There are a number of amendments in this group, but I am pretty sure that the proposers of Amendments 25 and 29 will recognise that they do not provide appropriate consultation opportunities. If there is a mutual recognition agreement in an international agreement with another country, it will have been subject to its own consultation arrangements. To have another consultation on the regulations to implement it would be inappropriate. It is also inappropriate and unnecessary to consult on regulations simply to get rid of the existing EU directives or retained EU legislation.

Turning to Amendments 14 and 19, in both instances there is a good case for consultation. I am not sure whether it needs to be legislated for in statute, but we too often assume that there is a public law duty to consult when there is not. It may be better to have a statutory duty to consult even if it is framed, pretty much as these provisions are, in broad and general terms, just to ensure that Ministers go through the appropriate processes at the right time. I am quite supportive of Amendments 14 and 19 for these purposes, particularly Amendment 19.

We had a previous discussion about demand. You cannot look at demand for professional services without actually asking consumers, so making sure that consumers are consulted in the process would be a good approach. I hope that Ministers will at least look at whether there is a place for a statutory duty to consult on regulations under Clause 1, and on the question of demand for professional services being met.

Lord Patel (CB) [V]: My Lords, I will speak mainly to Amendment 53 in the name of the noble Lord, Lord Fox. I had hoped that he would speak before me, so I could hear his views on the amendment, but I support its intent. I might have some reservations regarding whether a report should be made within 12 months or a longer period, as others have mentioned. I also agree with the noble Lord, Lord Lansley, that it is not a question of the impact on innovations of this Bill alone, but the cumulative impact of other Bills, to which this one might add. That is the issue I wish to explore.

The United Kingdom has a big ambition to be a science superpower, as has been said many times by our Prime Minister. In fact, he is the second Prime

[Lord Patel]
Minister, including Harold Wilson, to have mentioned science as a driving force for the United Kingdom and the UK's leading in science. So, we have a great ambition: we are going to invest 2.4% of GDP by 2027 and, depending on the spending settlement to be announced shortly, it looks as though there will be £22 billion for R&D leading up to 2024. A significant amount of resources is being put in. So, what drives innovation? The drivers of innovation are research infrastructure; funding; importantly, career development opportunities for early-career researchers—I emphasise early-career; and collaboration and knowledge exchange through institutions in different countries working together.

6.15 pm

I declare an interest as a member of the UK-Israel Science Council, which identifies areas of collaboration in science research, exchange opportunities for middle-level and top-level scientists, and opportunities for visits by lower-level training scientists. Currently it is looking at science research related to ageing. Collaboration programmes such as these offer innovative training opportunities for PhD and Masters students. Regulations that recognise training in technology are therefore important, as are opportunities for PhD students to work not just in one country but sometimes in several.

It is our ambition to attract world-class research and innovators to the United Kingdom in order to maintain the UK's status as the best place for science. We have hitherto had free movement from the EU, while people from other countries came under the Immigration Rules. With our new immigration rules, the impact of this Bill may in fact be negative in terms of recruiting people at lower grades for innovation. The UK economy needs a productivity boost from innovation and the diffusion of new frontier technologies to support growth. How are we going to achieve that? Will Bills such as this have a negative impact? Despite Brexit, 54% of our PhD students come from overseas. That is good news and we need to maintain it, but there is a risk that the cumulative effect of various legislation, including this, will have a negative impact on innovation in this country.

Baroness Noakes (Con): My Lords, I put my name down in this group in order to speak to Amendments 19 and 29, but I shall say a few words first on Amendments 52 to 55. Normally, I do not support Report amendments, which are a slightly lazy way of trying to open up a debate on wider issues, but in this case I think they have a point.

The Government's impact assessment is, to use a tactful term, pretty light. It certainly does not analyse very much impact, probably because the Government do not have a clear idea of what they are going to do with the powers in the Bill. If that is not clear from the Bill itself, it is certainly clear from the report of the Delegated Powers and Regulatory Reform Committee. Poor impact statements are a widespread problem and we will not solve that for this Bill, but it is incumbent on the Government to be transparent about the impact of a Bill once it becomes law.

I shall therefore be listening carefully to what the Minister says, because it may well be that some or all of Amendments 52 to 55 will need to be considered again on Report. Alternatively, as my noble friend Lord Lansley suggested, we could legislate for post-legislative scrutiny; after five years might be an appropriate time for a report. However, it is very important that we monitor the Bill's impact.

If the noble Baroness, Lady Hayter, has one defining characteristic, it is her determination to get the consumer interest felt, and she frequently finds all kinds of surprising ways to do that in Bills, but I want to explain why in this instance she is wrong to try to get the Bill amended with her Amendments 19 and 29. I was particularly struck by a briefing from the British Dental Association that commented that this Bill appears to focus on services, consumers and trade. Those are inappropriate concepts to describe the healthcare professions, which are certainly one of the major reasons given for this Bill being enacted and are cited as the professions likely to be covered by the regulations under Clause 1.

Those terms may well be appropriate for other professions which qualify and oversee professionals who trade their services, though I am not sure that "consumers" is always the right description for those other professions. For example, I do not really know who the consumer is in relation to regulated auditors, who are covered by this Bill via the Financial Reporting Council. The healthcare professions are focused on safety rather than on what consumers want or need from the profession, and we should never lose sight of that.

I do not think that either the consultation requirement in Amendment 19 or the board membership requirement in Amendment 29 fit well within this Bill, given the focus on the healthcare professions that is likely to follow once the Bill becomes law. I completely get that regulated professions and their regulators must not be focused on their own narrow interests but bear the public interest in mind. But that is usually achieved through regulators being independent of the professionals they regulate, and they often have independent members comprising some or the majority of their boards. If they are not on their boards, they are certainly well entrenched in their disciplinary processes. That aspect, the independent characteristic of the regulators, is what we should focus on in this instance, rather than the consumer interests.

Lord Sikka (Lab) [V]: My Lords, it is a great pleasure to speak in this debate, especially after the noble Baroness, Lady Noakes. I support Amendment 55 in the name of the noble Baroness, Lady Bennett of Manor Castle.

This amendment takes a broader view about the nature of skills shortages and human consequences from the recognition of professional qualifications. There are many reasons for this Bill, and one is the failure of the United Kingdom to produce skilled labour, and the relative absence of any coherent government strategy to produce the desired skilled labour force. The problems have been well documented. For example, in 2000 a report published by the National Skills Task Force said that there were

"*external skill shortages*, that is, recruitment difficulties due to an excess of demand over supply of required skills in the external labour market".

Examples included

"highly-paid occupations requiring specific technical qualifications such as engineers and technologists and health and related occupations … and craft and technician vacancies in the engineering industry".

It also referred to internal skills shortages—that is,

"skill deficiencies among *existing* employees".

Similar skills gaps were identified in the 2019 report by the Industrial Strategy Council, which said that about 21 million workers—two-thirds of the workforce—might

"lack the basic digital skills"

that employers will need in 2030.

Some businesses have responded to skills shortages by renting talent from external partners—for example, through outsourcing partnerships. Of course, that creates its own logistical and organisational problems. Nevertheless, in the absence of a coherent strategy, neither the Government, the industry nor universities have been able to address the perennial problem of skills shortages.

Finding appropriate PhD students, as the noble Lord, Lord Patel, mentioned, is also highly problematical. It is simply too costly for many individuals to undertake a PhD in the UK. In supervising PhD students for nearly 30 years, I can only recall about one or two indigenous British students who came to do a doctorate in accounting, business or finance. It is so rare.

At the moment, the Government and industry are not even connecting the dots. The spate of hiring and rehiring workers on inferior pay and working conditions will not address skills shortages and will have a negative effect on attracting new local talent to crucial industries. After all, if the wages and working conditions are poorer, why would somebody want to go into that industry?

The Government's strategy so far has been to enrol and recruit foreign workers to fill the gaps. That is especially evident in the National Health Service. Brexit has added new dimensions because it has alienated many EU workers residing in the UK. Their departure and the unwillingness of many other EU citizens to work in the UK have deepened and widened the skills shortages.

The Government are now looking to recognise foreign qualifications to address the local skills shortages. The aim, as always, is to poach skilled persons from abroad. The traffic will predominantly be one way from developing countries to the UK. I doubt that many Brits will actually want to go and work in countries such as Ghana, Zimbabwe or Nigeria, where the wages may be lower and the working conditions may not be comparable.

This ability to poach workers from other places will inevitably dilute the pressure on the UK to develop its own institutional structures to address the skills shortages. That development is highly necessary, and we need a government strategy. Therefore, it is absolutely right that Parliament must monitor the impact of this Bill on the management of strategies for addressing skills shortages, as has been extremely well articulated by the noble Baroness, Lady Bennett of Manor Castle.

To be clear, I am not against mutual recognition of qualifications, as this increases opportunities for individuals, but I am very concerned about the negative consequences for developing countries. They spend millions of pounds to educate and train engineers, doctors, surgeons and other skilled persons, but will never see the full benefit of their social investment. It can take more than a decade to train a skilled doctor or surgeon and, at the end, having developed those individuals, the developing countries will be unable to receive the benefits. There are also other consequences. To put it another way, if the UK started to see its highly educated citizens leave on a scale already observed in many developing countries, it would find itself with a smaller and less educated workforce. Such changes would coincide with a more rapidly ageing population due to the fact that emigrants tend to be younger adults.

For a long time, the UK has taken the cream of the skills from developing countries with absolutely no compensation. This brain drain retards the development of local economies and social infrastructure. It results in a huge transfer of wealth from poorer countries to the UK, while they suffer from a lack of sufficiently skilled personnel in both the public and private sectors. With a loss of skilled labour, poorer countries cannot offer universal healthcare to their citizens. That is just one example. The only appropriate redress is a bilaterally managed scheme of direct reimbursement of the value lost to each of the countries affected by migration of skilled labour. I sincerely hope that the Minister will give such an undertaking and, in due course, bring legislation to provide further details and make the compensation to developing countries a reality.

6.30 pm

Baroness McIntosh of Pickering (Con): I am delighted to support many of the amendments in this group. Those in the name of the noble Lord, Lord Foulkes, are very similar to those in my name. I notice that Amendment 38 extends the proposed consultation to Clause 6. I will limit my remarks to the amendments in the name of the noble Baroness, Lady Hayter, and Amendment 52 in the name of the noble Lord, Lord Palmer of Childs Hill.

The noble Baroness, Lady Hayter, has cleverly married the concept of consultation with specifying the number of bodies that are to be consulted upon. When she comes to move Amendment 27, I would be interested to learn why she picked those specific ones. I am also interested to learn from the Minister why there is no reference in the Bill to any specific professional bodies. What was the thinking behind that?

On Amendment 52 in the name of the noble Lord, Lord Palmer of Childs Hill, obviously, a number of professional people co-operate together in partnership, but many may consider them a small firm, if you like. I see some merit to Amendment 52 in relation to what the Bill's impact will be on small and medium-sized companies. I look forward to hearing my noble friend's response to that request.

Lord Fox (LD): My Lords, this group is perhaps the inevitable consequence of trying to reduce a highly complex system and situation, as the Minister has highlighted, into a small one-size-fits-all Bill. In other words, we have a mixed bag of amendments in this group.

[Lord Fox]

I will speak initially to Amendments 53 and 54 in my name and to Amendment 52 in the name of my noble friend Lord Palmer of Childs Hill.

I thank the noble Lord, Lord Patel, for his support of Amendment 53. He said that he was disappointed to be speaking before me. I have to say that I am not disappointed to be speaking after him because he gave a much better speech than I could possibly have managed myself. The noble Lord, Lord Lansley, is right, in that the innovation issue is hard to measure, but I think that the point made by the noble Lord, Lord Patel, that this is part of a cumulative effect on innovation is important.

I was hoping to probe the Minister on how the Government have joined the dots between the intention of the Bill and how it will drive the future nature of our economy. To some extent, the criticism of the noble Baroness, Lady Noakes, of these kinds of amendments as a way of trying to shoehorn in something else is true; I make no apology for that.

At the heart of the Bill, there is a central conceit. At Second Reading, the Minister said:

"The Bill will allow action to be taken in the public interest if it is judged that a shortage of professionals has arisen in a profession."—[*Official Report*, 25/5/21; col. 908.]

What is a "shortage of professionals", and what level of omniscience is required from the department in order to identify that particular need in the market for professionals?

Is there a danger that the Bill is in fact solving yesterday's problems? That is the innovation question—because we need people to create the businesses of the future. Yet we have a Home Office that lets in only people who already have a job, and BEIS, which will measure the current need for people. The noble Lord, Lord Patel, was closer to the mark when he talked about early career researchers—I would add research technicians. Both find it extremely difficult to get Home Office visas because they are paid less than the limit for them to come in.

We are going to have a debate about the availability of people, in the group starting with Amendment 17, and I do not want to pre-empt that, but I want to hear the Minister's playback on how the department and those drawing up the Bill drew the dots between the Bill and innovation. That is one of my objectives with this amendment.

Amendment 54 looks at a different kind of impact. In fact, in retrospect it should have been grouped with the amendment of the noble Baroness, Lady Noakes, Amendment 9, because in a sense it measures the effect that she has highlighted there. As happenstance will have it, she did not get an answer to her questions the first time around, so this gives us a chance to run through them again.

Minister, there is a strong belief that the regulators will come under great influence from the Government on the level of fees. That will either reduce their income or maintain their income at the expense of those registering. This amendment seeks to give transparency to that problem. If indeed it is not a problem, we will see that clearly. The noble Lord, Lord Lansley, gave it something of a thumbs-up, in that it is measurable—and I assume that it is data that BEIS is already collecting because, of course, it is going to create a model of the entire professional market in order to manage it on behalf of the national economy. I assume that the data is already available. Therefore, publishing it would be very helpful and perhaps give a lie to the fears or expose them, so that the Government can change things to stop them becoming an issue.

Very simply, the point from the noble Baroness, Lady Bennett, about some joined-up reporting is well made. Whether it is the whole hog or just a few key elements—and I would probably prefer the latter to the former—I think that the global south issue can be solved by having a geographic split on where people are coming from, for example, to highlight those issues.

My noble friend Lord Palmer spoke on Amendment 52 about the need for there to be a realisation within organisations of the impact of the Bill, particularly on SMEs. In the past, many SMEs have picked up employees from the European Union without having to give a moment's thought to the accreditation of their skills. That is now changing, and I absolutely agree with my noble friend that there has been no dawning on the vast majority of Britain's businesses of that change. I think he has a great point.

The noble Lord, Lord Foulkes, spoke strongly, as usual. I agree with him—I would like the opportunity to intervene and interrupt the noble Lord, although of course I would exercise it with great care. But in the main, I would like the Minister to push back on Amendments 53 and 54 and say how this affects innovation and whether we can see the numbers when it comes to costs and the financial effect on the regulators.

Baroness Hayter of Kentish Town (Lab): I start by saying that I may have misheard what the noble Baroness, Lady McIntosh, said. I think she was asking about Amendment 27, which is in the next group.

I will speak to Amendments 19 and 29 in my name, but also thoroughly endorse all the pleas that we have heard for a very thorough—and, indeed, statutory—requirement on consultations with all the relevant parties. The impact of this will be felt; it could be felt on professionals and on service providers or users of those services. This is not a technical thing, so it is important that the consultation takes place.

Amendment 19 simply specifies that it is crucial that consumers are consulted. Consumers may be users, patients, clients—in the case of lawyers—or customers. When I was involved with the regulation and standard setting for actuaries, which I guess comes under the FRC in this, noble Lords will not be surprised that I chaired the user committee and was on the board. We had pension administrators, pension trustees and other people who used actuarial services, so that we were able to get their input as we were setting standards for actuaries.

The word "consumer" is a broad one and it is always difficult to say what it means, but it seems to me that if one were setting standards or one wanted more actuaries in the country, and the same could be true of other regulated areas, talking to the people who use those services would be highly appropriate. So, despite what the noble Baroness, Lady Noakes, says about the use of that word, it seems to me that the

people who use the services of the professions covered in the Bill really should be consulted if there is going to be a different way of recognising and approving people to carry out that profession.

As I said earlier, regulation was always set up to protect the consumers or end-users, however they are defined, and therefore, in changing the procedure of how a regulator works in accepting professionals, it should be automatic that users of those services that the regulator was set up to protect should be involved. It certainly should not be just between the Government and the service provider—in other words, the professionals involved—because those affected by the decisions should surely not be excluded. Government always needs reminding that the end-user is what regulation is all about. I thank the noble Lord, Lord Lansley, for his support on this. It ought to be automatic; we should not have to think about putting it in a Bill, but so often it does not happen.

I was reading earlier in one of the government documents—sorry, I have had lots of letters from the Minister—about the call for comments in a consultation that was put on the BEIS website, I think. I have to say that most people would not think that a call for consultation on the regulation of professional qualifications would affect them as, say, a pension trustee, not realising that it will affect the professionals that they depend on in decisions they take, whether it is about pension holidays or, more likely, making up for deficiencies in a pension. One has to be on the front foot and go out looking for the input of users or consumers of professional services; they will not automatically happen to be watching the BEIS website to see that there is a consultation taking place.

Amendment 29 may be slightly cheeky, but it is really a nudge to the Government. It says that a regulator set up either to create or to maintain standards in the interest of consumers or users really ought to have those end-users or consumers on its board, its council or its executive. Therefore, when we are talking about regulators, we should require them to have this. I think this is possibly pushing the boundaries of the Bill a little far, but if the Minister will accept Amendment 19, I will go quiet on Amendment 29.

6.45 pm

Lord Grimstone of Boscobel (Con): My Lords, before I address the important amendments in this group, may I clarify something in relation to the previous group, about consultations with the officials of the devolved Administrations? I am informed that a working group of officials across all devolved Administrations was set up as long ago as last August. I would not like the House to think that my comments about the timing of when I saw the Bill meant in any way that there had not been massive consultations before that, so I am pleased to have clarified that point.

On the amendments before us, noble Lords have spoken eloquently about engaging with a range of interested parties before making regulations, and said that the Government should continue to consider the impact of the Bill after it comes into force. I agree that these are important considerations. However, with the utmost respect, I believe it is unnecessary to add those specific requirements to the Bill.

Amendments 14, 25, 36 and 38, tabled by the noble Lord, Lord Foulkes of Cumnock, would introduce duties on the appropriate national authority to consult people it deemed appropriate before introducing regulations under Clauses 1, 3, 5 and 6. The Government are absolutely committed to working in partnership with regulators, devolved Administrations and other interested parties when regulations are made under the Bill, and of course, consultations are bound to form part of that.

Amendments 19 and 29, tabled by the noble Baroness, Lady Hayter of Kentish Town, focus on consultation with consumer representatives. Few would disagree that regulators must have the interests of consumers of services—be they customers, patients, or students—at the heart of their approach to regulating professions. That is an incredibly important point. I appreciate the intention of her amendment to Clause 4, but I can reassure the noble Baroness that any recognition agreement would still have to meet the regulator's existing standards and duties around public protection—that would not be diluted in any way. Regulators rightly guard their autonomy to decide who is fit to practise a profession, to ensure that only the best candidates can do so. So I think we can expect that regulators will continue to ensure high standards to protect consumers.

Amendments 52, 53, 54 and 55 require the Government to report to Parliament on the impact of the Bill in a range of areas. The noble Lord, Lord Fox, proposes two reports. The first would be on the costs to regulators and applicants. Many regulators already operate in line with the framework set out in the Bill. Therefore, we believe that the anticipated costs to regulators and applicants will be modest. The second report would be on innovation. Innovation is an important feature in the Government's wider ambitions, and I have carefully noted the sensible points made by the noble Lords, Lord Fox and Lord Patel, about this. However, because the Bill is not about immigration, I am not entirely sure about its relevance to the recognition of professional qualifications. However, I will of course consider it carefully.

We should note that a primary objective of the Bill is to allow an appropriate national authority to take action to help enable a profession to meet demand by ensuring that there is a route to recognition for individuals with overseas qualifications and experience. This should help to attract the talent needed from around the world to provide services in the UK—and, on a reciprocal basis, allow our professionals, who provide such a valuable export service to the UK, to practise overseas. I have no doubt that an indirect result of this would be to add to the pool of skills and experience in a profession, which in itself may help to drive forward innovation. However, the primary purpose of the Bill is to help enable service provision.

The noble Lord, Lord Palmer of Childs Hill, made a very good point on the impact on SMEs. Through my work chairing the Professional and Business Services Council and my regular engagement with this sector, I am well aware of the importance of professional qualifications for services exports.

The noble Baroness, Lady Bennett of Manor Castle, tabled an amendment that proposes a report to consider the Bill's impact on skills shortages, how the Bill

[Lord Grimstone of Boscobel]
relates to immigration, overseas development and skills training, and skills demand in the health professions. Of course, these are all very important points, but I humbly suggest that this would speak to several policy areas beyond the Bill. The Government's skills strategy, visas and immigration, international development, and how demand for skills is being met in health and social care are, I would say, outside the scope of this Bill. Publishing reports in each of these areas is not a necessary component to assessing the impact of the Bill.

A number of noble Lords were concerned about the impact of regulations brought forward under the powers in the Bill. This will also be considered in line with the Government's better regulation framework.

I trust that this gives reassurance on the checks and balances that we have carefully built into the Bill. I hope it demonstrates that there is no need to specifically provide for further measures. I therefore ask the noble Lord to withdraw his amendment.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, it appears that the noble Lord, Lord Fox, wishes to speak after the Minister.

Lord Fox (LD): Thank you. I did send an email—it is probably lurking in the system. Coming back to the Minister's assessment that the costs would be low, I am again looking at one of my noble friend's favourite documents—the impact assessment. It is limited in scope but does have estimates of costs. The Government's best estimate—this has the Minister's signature on the front, so I assume that he agrees—is £18.2 million, the majority of which will be absorbed somewhere in the regulatory system. I suggest that that is not a small amount of money for the regulatory sector. Can the Minister calibrate what he just told us or explain how these two numbers meet up?

Lord Grimstone of Boscobel (Con): My Lords, I thank the noble Lord, Lord Fox, for that question. I do not think that I can really add to what is in the impact assessment. Those costs are incurred over a number of years, but I think the impact assessment was carefully prepared and that those are the costs.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, as the noble Lord, Lord Fox, said, in one of his better interventions earlier, this is a mixed bag of amendments and probably represents skilful grouping by the Government Whips' Office. As a result, we have had a very wide-ranging debate.

I say to the noble Lord, Lord Palmer of Childs Hill—an area I know very well, by the way, but that is another story—that I agree with him. Although he did not deal with the devolved Administrations, he made some very good and useful points. The noble Baroness, Lady Bennett, mentioned all the reports and very sensibly suggested that they might be looked at and consolidated or reorganised in some way on Report. I hope that that will be considered.

I also thank my noble friend Lord Lansley—he is getting more on my side every day—for his support on a statutory duty to consult. As I said in my introductory remarks, it is important to make it a statutory responsibility, otherwise it is so very easy for Governments—of all shades—to forget that they have a responsibility to consult widely.

Having said all that, in light of the helpful reply from the Minister, I beg leave to withdraw my amendment.

Amendment 14 withdrawn.

6.55 pm

Sitting suspended.

7.16 pm

The Deputy Chairman of Committees (Baroness Henig) (Lab): My Lords, we come to the group beginning with Amendment 15. Anyone wishing to press this or anything else in this group to a Division must make that clear in debate.

Amendment 15

Moved by ***Baroness Hayter of Kentish Town***

15: Clause 1, page 2, line 23, at end insert—

"(5A) Regulations under this section relating to priority professions may not be made unless—

(a) they have been published in draft form, and

(b) the relevant regulators have been consulted on them for a period of three months beginning with the day on which they are published.

(5B) In this section "priority professions" means—

(a) healthcare professionals,

(b) social workers,

(c) teachers, and

(d) veterinary surgeons and veterinary nurses.

(5C) In this section, the relevant regulators are—

(a) Nursing and Midwifery Council,

(b) General Medical Council,

(c) General Pharmaceutical Council,

(d) Health and Care Professions Council,

(e) General Optical Council,

(f) General Dental Council,

(g) Pharmaceutical Society of Northern Ireland,

(h) General Osteopathic Council,

(i) General Chiropractic Council,

(j) Social Work England,

(k) Scottish Social Services Council,

(l) Social Care Wales,

(m) Northern Ireland Social Care Council,

(n) Teaching Regulation Agency,

(o) General Teaching Council for Scotland,

(p) Education Workforce Council,

(q) General Teaching Council for Northern Ireland, and

(r) Royal College of Veterinary Surgeons."

Baroness Hayter of Kentish Town (Lab): My Lords, in moving Amendment 15 I will speak to Amendment 27, both of which are in my name and those of the noble Lord, Lord Patel, my noble friend Lord Hunt and the noble and learned Lord, Lord Hope.

These amendments are here for two reasons. One is that the regulators listed already have the power to recognise professionals from other jurisdictions, so they are somewhat at a loss as to why they should need to be covered at all. The other is that the maintenance of their standards is particularly crucial to the lives of patients—be they human or animal—pupils and clients. If there is any chance that they will be mandated to open up their approval system further than it is already—because they already have one—at the behest of the Government, then there must be the most thorough consultation and agreement. This really is too important to leave to chance. We need a legal commitment to consult in the Bill for the priority professions listed in the amendment.

In answer to the question posed by the noble Baroness, Lady McIntosh, during our debate on an earlier amendment, the Government had a list—the Minister sent it in a letter to the noble Baroness, Lady Noakes—of all the regulators covered, but this group of healthcare and personal care professionals already have the ability within their statutes to do the necessary for international. So there is this two-way reason why we put them in the amendment: their clients or patients are particularly vulnerable if standards fall, and they already seem to have this power. Therefore, for the Government to take a power to ask them to do something outwith what they want to do seems to require a particularly high level of consultation. I beg to move.

Baroness Noakes (Con): My Lords, I will be brief. The requirement in these amendments for regulations to be published in draft form and consulted on is sensible, for the reasons that the noble Baroness has given. I just do not see why they are confined to this so-called priority list, because any profession that could be brought within the ambit of Clause 1 or Clause 3 should be treated in the same way. While we can sympathise with the medical professions and vets being priority groups over such mundane things as auditors and farriers, in practice any profession that might be impacted by these sorts of regulations, and could therefore have its standards impacted, ought to be covered in a consultation process.

I do not think the consultation process, as drafted in these amendments, should be confined to the regulators, because it is not just the regulators themselves that would be impacted by any regulations made under these clauses; so would the professionals operating in those regulated professions and all the other groups affected by them. I support consultation being in the Bill because of the unusual nature of the powers the Bill is taking, but I do not think it should be confined to the so-called priority groups.

Lord Hope of Craighead (CB): My Lords, I have added my name to Amendment 27, which is principally in the name of the noble Baroness, Lady Hayter of Kentish Town. There is a lot to be said in this particularly obscure Bill for the publication of regulations in advance of their being made, so that people can see them in draft and consider them before they take effect. Regulators themselves would of course be consulted if this amendment is passed, but publication gives the opportunity for the wider public to scrutinise them, and no doubt inform this House and the other place, before the crucial point comes when the regulations are made. So I support this particular amendment.

There is a lot of force in the point just made by the noble Baroness, Lady Noakes, that to confine this provision to the priority professions perhaps misses the point. Perhaps there should be a requirement across the board. There are other important professions that are not in this list. I am not claiming this particularly for the legal profession, as there are certainly other professions that are absent from this list, given the enormously long list of people who are within the purview of this Bill. The amendment may be a starting point but, for what it is worth, I support it.

Lord Hunt of Kings Heath (Lab) [V]: My Lords, it is a pleasure to follow the noble and learned Lord. I put my name to these amendments because I regard full and transparent consultation as very important. At its heart, the integrity and independence of our regulators is at stake. The problem is that the Bill gives far too many powers to Ministers. In the previous debate the Minister said that future trade agreements will not compromise standards. I wonder what our farmers and fishers think of that. We know that the Government are desperate for trade deals and that they have a track record of carelessness about their details. Clause 3 gives Ministers a completely free hand when it comes to trade agreements.

This debate is also set in the context of the independence of health regulators and fears that it may be compromised. Earlier, the noble Lord, Lord Purvis, made a cogent analysis of the interrelationship, or lack of it, between this Bill and the current extensive consultation by the Department of Health and Social Care on the reform of the health regulatory bodies. Those proposals are extensive and, as suggested by the noble Lord, Lord Purvis, give extensive powers to each regulator to streamline its own processes. I support that, because the public will benefit from more streamlined approaches to fitness to practise, which will deal with issues more quickly.

However, alongside this, it is widely expected that the forthcoming NHS Bill announced in the Queen's Speech will contain extensive provisions on the very same regulatory bodies in health that we are talking about today. One provision will be to allow Ministers, by regulation, to abolish a regulator and establish others. I have huge reservations about this, because surely it puts their independence at risk if, on a whim, a Minister can get rid of a regulator that they do not like. When you put that prospect together with this Bill, alarm bells start to ring. Consultation is not everything, but it is a safeguard. My noble friend's amendment would provide one such safeguard that I believe we need.

Baroness McIntosh of Pickering (Con): My Lords, I am delighted to speak in the right place in the right order on these two amendments and I apologise for what happened earlier. I congratulate the noble Baroness, Lady Hayter, on bringing forward these two amendments. I echo the concerns expressed by my noble friend Lady Noakes as to why they are limited to certain professions and not others. I am not entirely sure that

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all medical professions are represented here—the noble Baroness, Lady Hayter, can confirm whether this is the case.

The noble Baroness will know that I am wedded to statutory consultation, and she has clearly set out what the specific forms of the consultation would be. With that support, I look forward to hearing my noble friend the Minister say whether he can see merit in these or whether they should be extended to other professions as well.

The Deputy Chairman of Committees (Baroness Henig) (Lab): The noble Baroness, Lady Finlay, has withdrawn, so I call the noble Lord, Lord Patel.

Lord Patel (CB) [V]: My Lords, I agree with the comments of the noble Baroness, Lady Noakes, and my noble and learned friend Lord Hope of Craighead. The amendment could be extended to include all professions rather than just the health profession, but I will concentrate my comments on the health profession.

I support the amendment in the name of the noble Baroness, Lady Hayter of Kentish Town. Currently, the General Medical Council, as the regulator of doctors, has powers to regulate the training of doctors; to regulate clinical training following a degree course at university and the foundation years; and to regulate and approve specialist training conducted by the Royal Colleges. The curriculum is provided by the Royal Colleges but the General Medical Council approves it. The council then maintains a register of generalists and of specialists. In my case, it would be the specialism of obstetrics and gynaecology; I therefore could not practise cardiac surgery unless I was trained and approved by the regulator to be put on a specialist list of cardiac surgeons. The risk about not having consultation and producing regulation is that the regulator cannot then change the rules.

Amendment 27 is more to do with international agreements. There have been occasions when hospitals overseas have tried to open a branch for provision of specialist medical services with a view to their own people—their own doctors—delivering the care, until it was pointed out that that cannot be done.

It is possible—I have done it myself—to go to the United States and practise in a given hospital with a visa that allows you to do so, without having to go through any regulatory registering process or have experience and qualification approved. What we do not have, and quite rightly so, is a similar arrangement in the United Kingdom. It would therefore be wrong for any trade agreement to allow for that provision. Having the ability to guard, through consultation, against that is extremely important. Hence, I support Amendments 15 and 27.

7.30 pm

Baroness Randerson (LD): My Lords, I am very pleased to have the opportunity to speak on this group of amendments, and to reflect on the comments of the noble Lord, Lord Patel. He has reminded us of the complexity and sensitivity of these issues, with his example of medical practice in America. It is a country—the richest in the world— with the very highest medical standards, but it does not have the guarantees of high standards, perhaps, that we rightly want to take for granted in this country. I think he has pinpointed an important sensitivity on this issue.

I welcome these amendments, especially the emphasis on consultation, since I am very worried about the lack of awareness of this Bill beyond this Chamber. I think it is right to say that some of us in this Chamber have woken up only gradually to the huge complexity of the Bill. The Minister himself expressed some surprise at it, and the more that can be done to raise awareness among regulators and among the professions affected the better.

I have one very specific comment: I was struck, on reading the impact assessment, on how narrow the Government's consultations with regulators were prior to the laying of this Bill. Out of 150 professions and 60 regulators, only a dozen were involved in some of the consultation. They were asked questions about the costs and, in one case, there were replies from only three of them. The costings we have been given on an expensive new policy are based, in some aspects, on replies from three regulators, and they could hardly be regarded as a representative cross-section. There is a real worry for us about a lack of understanding of the complexity of the Government's policy.

Lord Grimstone of Boscobel (Con): My Lords, I thank the noble Baroness, Lady Hayter of Kentish Town, for her amendments and I note that the noble Lords, Lord Patel and Lord Hunt of Kings Heath, and the noble and learned Lord, Lord Hope of Craighead, are supporting them. These amendments introduce a duty to publish, in draft form, any proposed regulations where they relate to the professions listed, and to consult on these regulations before they can be made under Clauses 1 and 3—the powers to provide for individuals to be treated as having UK qualifications and the implementation of international agreements respectively. I have spoken at some length about the commitment to engagement on both clauses but let me provide some further reassurance specific to these amendments.

First, and perhaps most importantly, the Government, through this Bill, will not and cannot bring forward regulations that affect the autonomy of regulators or the standards that they set. With the greatest of respect to noble Lords, I sometimes feel that they think there is more to this Bill than meets the eye. There is not. This is a Bill which, at its heart, is about the mutual recognition of professional qualifications. It is not, and could not be, a Trojan horse for the Government to somehow choose to undermine the autonomy or the standards of regulators. It would be the height of foolishness for any Government, not just mine, to do so. I suggest that a little injection of reality about what this Bill is about should creep into some of our debates, and I say that with the greatest respect to noble Lords.

I turn first to Amendment 15 to Clause 1, which would mean that, if one of the listed professions were deemed to meet the demand condition in Clause 2, and regulations under Clause 1 were justified, there would be a three-month period of consultation with their regulators before regulations relating to those professions could be made.

I recognise that the professions and regulators specified by the noble Baroness are primarily those supporting our important public services. It is of course essential that any regulations made under the Bill support the delivery of public services and complement regulators' existing practices. However, there seems little merit in listing, in primary legislation, a set of priority professions —my noble friend Lady Noakes put this very succinctly —which would be subject to change as demand changed. To do so could unduly restrict the ability of the Government, or the other national authorities, to respond quickly and efficiently to the needs of the professions on the list when they were deemed to have unmet demand.

Moreover, let us remind ourselves of what Clause 1 does. It requires regulators to have a route to consider applications from these people. It does not tell them that they have to accept these people or that there has to be a diminution of standards in relation to them; it requires regulators to have a route to consider them. This in no way undermines the carefully constructed architecture that our regulators have put in place to protect patients, consumers and other users of regulated services. Decisions under the Bill will be informed by careful engagement with professions and their regulators, and not introduced without warning. I agree that regulators will need to be involved from the outset, and have time to prepare for changes.

Amendment 27, which relates to Clause 3, seeks to make a similar requirement to publish and consult on draft regulations, with the same regulators and professions, in relation to implementing parts of international agreements on the recognition of professional qualifications. As I have explained previously—and will no doubt have to continue to do—a key concern for the Government in all negotiations is ensuring that the autonomy of regulators within these trade agreements protects UK standards. That applies to all regulators and professional bodies which may be within the scope of an international agreement, not just the ones specified in this amendment.

Through the Department for International Trade the Government engage with a range of stakeholders, including regulators, to understand their priorities and inform the UK's approach to trade with future trade agreement partners. We have several forums to inform these negotiations, including the trade advisory groups, which hold strategic discussions to help shape our future trade policy and secure opportunities in every corner of the UK. We also hold many ad hoc consultations with interested parties. BEIS also organises regulator forums that provide updates on the negotiations and the terms of trade deals.

In addition, to consult before making regulations at the point at which the international agreement being implemented has already concluded would, frankly, be too late to meaningfully impact the substance of the agreement. That is why in May this year we launched a public call for input as we prepared for trade negotiations with India, Canada and Mexico. I encourage all those with an interest, and of course that includes all regulators and professions, to respond. Why would we not want to know what people think before we embark on the negotiations? To think that we should consult them after the agreement has been effectively finalised, when it is being prepared for parliamentary scrutiny, seems, with great respect, to be shutting the stable door after the horse has bolted.

On Clause 3, it is important for the UK Government to be able to meet our international obligations on professional qualifications, to support UK professionals and trade in professional services, and to do so in a timely fashion. I know that on a later group of amendments we will come back to further examination of this clause.

I trust that this gives reassurance to noble Lords on the engagement of professions, including the professions cited in the amendments but of course all others, before any changes are enacted through regulations through Clauses 1 and 3. I ask that the amendment be withdrawn.

Baroness Hayter of Kentish Town (Lab): My Lords, there is a problem in what the Minister said. He talked about consultation and a call for input, but that is very passive. As I mentioned on an earlier group, unless you know that the Government are going to be looking at your profession, who would think to input at the beginning? On a later group we will come to the need to have a negotiating mandate, because at that stage that might stimulate people to think, "Oh gosh, that's my profession." If the Government would like architects, surveyors or whatever to be covered then they may start talking about it, but just putting out a call does not actually tickle the trout; people do not know that they should be involved. What the noble Baroness, Lady Randerson, said was interesting: people do not even know that the Bill exists, so the idea that they are following the situation and will keep looking at websites just in case their profession is affected is not going to happen.

There is an issue, not just about the Bill but about all sorts of measures, of the Government's consultations consisting of, "We hope you'll hear what we're doing and will come and tell us about it." The Minister has talked about the trade advisory groups. I am sorry to go on about this again, but there are no consumers on any of those groups. Again, the users of those professional services, be they clients of City lawyers or whoever, will not actually sit on those trade advisory groups so are not part of that inner circle that is kept close.

The Minister has basically said, "You can trust us. The Government wouldn't bring forward regulations that affected the independence of regulators. We would never think to abolish a regulator." The problem is that he was not in this House—quite a few of us who are here today were, including my noble friends Lord McAvoy and Lord Foulkes—when we had the Public Bodies Act. Do noble Lords remember that? It abolished 32 public bodies with a skeleton Bill and then by statutory instrument. The poor noble Baroness, Lady Noakes, has to put up with me all the time because the National Consumer Council was abolished under that Bill; had it not been, I probably would not have had so much cause to be here because there would have been a statutory body on the formal list that the Government have to consult, and a lot of the stuff that I come in on at a very late date probably would have been dealt with before. So we have previously had a Bill on the basis of "Trust us, we won't go round

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abolishing things", and now here we are: we have no National Consumer Council any more. There is history here that predates the Minister, and that is why we would like a little more evidence in the Bill.

7.45 pm

These principles have had clear support from everyone who has spoken. It is interesting to be accused by the noble Baroness, Lady Noakes, and other noble Lords, of being too modest and to be told that I should have gone further than just this group. But take it from me, the amendment that we will bring back on Report will be much broader and will require prior publication of the draft regulations in good time.

I am slightly worried when things have to be hurried through. The noble Lord talked about setting up a process. If you had asked the regulator to set up a process, they would probably have done it, so you would not need the regulation. Where the regulator does not want to do this and a regulation has to be brought in in order to get them to do it, it is absolutely essential that there is plenty of time for consultation.

So I thank noble Lords for supporting the amendment. Obviously I give notice that it will be in broader form on Report. It might be better, however, if we could come to an arrangement so that there is a form of words that the Government can live with. If there is going to be consultation, there is no harm in having that in the Bill. It would be good if we could work together to make that happen, so that we do not have to divide the House. For the moment, I beg leave to withdraw the amendment.

Amendment 15 withdrawn.

The Deputy Chairman of Committees (Baroness Henig) (Lab): We now come to the group beginning with Amendment 16. Anyone wishing to press this or anything else in this group to a Division must make that clear in debate.

Amendment 16

Moved by ***Baroness McIntosh of Pickering***

16: Clause 1, page 2, line 28, at end insert—

"(7) The appropriate national authority must seek reciprocal arrangements with other jurisdictions, including individual Member States of the European Union, for those with UK qualifications; as well as in the context of future Trade Agreements and continuing negotiations with the European Union in the context of the UK-EU Trade and Cooperation Agreement."

Baroness McIntosh of Pickering (Con): My Lords, before I speak to Amendment 16, I commend and endorse Amendments 23 and 47 in the name of the noble Lord, Lord Foulkes, supported so ably by the noble and learned Lord, Lord Hope. I shall leave them to speak to these amendments. I thank the noble and learned Lord, Lord Hope of Craighead, for lending his support and for cosigning my amendment.

I have sought to highlight that it is up to the appropriate national authority to

"seek reciprocal arrangements with other jurisdictions, including"—

as I specify—

"individual member states of the European Union, for those with UK qualifications, as well as in the context of future trade agreements and continuing negotiations with the European Union in the context of the UK-EU Trade and Co-operation Agreement."

In his response at Second Reading, the Minister mentioned that the Government had been willing to negotiate mutual recognition of professional qualifications with our erstwhile partners in the European Union, but that they would not play ball. So will he take this opportunity to update us on the negotiations with our erstwhile partners? Is it still a matter of dialogue with them?

I understand that a specialised committee is also being set up within the context of the trade and co-operation agreement. It is a matter of great concern to those of us in this place, not least the noble Earl, Lord Kinnoull, who chairs the European Committee. There seems to be no sense of urgency. I am sure my noble friend will blame the European Union, but I would like to hear that it is a priority for this Government to set up all these specialised committees in the context of the TCA—but in particular this one.

What grieved me at the time was that when a statutory instrument was moved by our then Minister, my noble and learned friend Lord Keen of Elie, he stated that we were going to accept all those coming from the European Union and EEA countries to work here but we had not negotiated the reciprocal right for our, dare I say, lawyers—the issue of most concern to me—and practitioners in other professions. That seemed to me a very regrettable way of proceeding.

In the briefing that I received today, the Bar Council of England pointed out also that Clause 3 on international agreements has a part to play in the amendment. The council's concern is that the clause is

"useful but limited to international agreements—that is, treaties to which the UK state is a party. The power would not be available to make or amend legislation to give effect to a mutual recognition agreement negotiated autonomously at the level of professional regulators. This is a further deficiency in the Bill."

So I ask my noble friend to explain, where a professional body such as, for example, the Faculty of Advocates, the Bar Council or the Law Society of Scotland, has negotiated some mutual recognition, to what extent the Government would be able to support that and what the mechanism would be to do so.

My noble friend the Minister, in his letter to which I referred earlier, replied to the concerns raised by the Delegated Powers and Regulatory Reform Committee in its third report of this Session published on 7 June, in appendix 1, at the foot of page 12, where there seems to be something of a contradiction. He stated:

"The Trade Act 2021 provides for the implementation of provisions on the recognition of professional qualifications that are included in UK trade agreements with countries with which the EU had signed trade agreements as at 31 January 2020."

At the end of the paragraph, he then stated:

"Finally, the powers provided in the Trade Act 2021 expire after five years, whereas it is anticipated that, for example, MRAs"—

mutual recognition agreements—

"formed as part of trade agreements will need to be implemented well beyond this limited period—especially in light of the lengthy timeframes MRAs typically take to finalise."

I should be interested to know how that contradiction is going to be resolved in the context of the Bill. Are we really leaving it to regulations to resolve that timeframe? Are we going to be invited to look at these mutual recognition agreements as part of the trade agreements, because I understood my noble friend to say that we would not be going into that level of detail when we discussed other trade agreements hitherto.

So I commend this amendment to the Committee. It is appropriate that we seek reciprocal arrangements with other jurisdictions. That has served us extremely well in the past and made England, particularly London, the second centre in the world, after New York, for legal practice. We have done extremely well out of the arrangements and it is important that we continue to negotiate this, not just in future trade agreements but through the trade and co-operation agreement. In commending and moving the amendment, I hope that my noble friend will look favourably upon it and bring us up to date as to where we are.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, Amendment 23 in my name deletes Clause 3(2)(c), which provides regulations under this clause and relates to the charging of fees. That is at odds with the terms of Section 31(4) of the European Union (Future Relationship) Act 2020, which provides that no fees should be charged. That Act does not allow for the imposition of fees in regulations designed to implement the trade and co-operation agreement. So this is a probing amendment that gives the Government the opportunity to explain why they have a completely different approach in the Professional Qualifications Bill from that in the future relationship Act. I look forward to hearing how the Minister can explain that away.

Amendment 47 has also been signed by the noble and learned Lord, Lord Hope, who will be much better at explaining it than I could ever be.

Lord Hope of Craighead (CB): I am very grateful for that invitation but before I get to the amendment tabled by the noble Lord, Lord Foulkes, I support what the noble Baroness, Lady McIntosh, has said in support of Amendment 16 about the need for

"reciprocal arrangements with other jurisdictions, including individual Member States of the European Union, for those with UK qualifications".

This amendment is of particular interest to the legal professions in this country, in view of the achievements that were made right across the board in all three jurisdictions—Northern Ireland, Scotland and England and Wales—in that respect while we were in the EU.

I am quite sure that the professions do not want to lose the benefit which those arrangements were able to achieve. There is a gap here that the trade and co-operation agreement with the EU has left unfilled. Amendment 16 goes some way to addressing and filling the gap in the interests of those who would like to benefit from the kind of arrangements we previously had under the European Union.

Coming to Amendment 47 in the name of noble Lord, Lord Foulkes, it seeks to clarify the provision in Clause 9(4) about the risk that the duty of a regulator to provide information may contravene the data protection legislation. The same point arises in Clause 10(7), which is the subject of another amendment by the noble Lord, Amendment 50. Unfortunately, it is not in this group but will arise later on. Perhaps one is addressing the same point this evening. It also arises in regard to Clause 7(5), which raises exactly the same point. The Minister will appreciate that one is dealing here with a duty to disclose information. It begs the questions: first, does it breach any restriction under rules or contract, for example, or, secondly, does it breach the data protection legislation?

Concentrating on Clause 9, its structure is really quite interesting because it provides the duty in its subsection (2). It is a duty to provide

"any information … that is held by the first regulator … that relates to the individual"

and

"that … is requested by the second regulator."

Then we come to its subsection (3), which says:

"A disclosure of information under this section does not breach … any obligation of confidence owed by the first regulator, or … any other restriction on the disclosure of information (however imposed)."

Those words are perfectly clear. They provide a complete answer—a complete defence—to a claim for breach of contract or a claim that the rules have been breached. For example, if I objected to the information being released by the first regulator that related to me on the ground that I had entered into a contract preventing the release of that information, I would simply be deprived of my contractual right to complain, because that is exactly what subsection (3) says.

The problem is subsection (4) which says:

"Nothing in this section requires the making of a disclosure which contravenes the data protection legislation".

If that subsection had said that no disclosure which contravenes the data protection legislation shall be made, or words to the same effect, it would mean that, despite the firm duty in the earlier part of the clause, one was simply not required to disclose anything which would breach the data protection legislation. However, it does not say that; it just says that nothing requires you to do it.

8 pm

Then goes on, in the part in brackets, to say that

"(save that the duty imposed by this section"—

note "duty"—

"is to be taken into account in determining whether any disclosure contravenes that legislation.)"

I do not understand what the part in parentheses really means. When it says "taken into account", does it mean that it will provide me with a defence to a prosecution under the Data Protection Act, or is it to be taken into account in assessing the penalty which would follow if I was to be convicted of having breached data protection legislation? The wording does not make that point clear. It is very important that it is clear because we are dealing with a provision which could lead to a prosecution, and everybody needs to know the meaning of this subsection.

[Lord Hope of Craighead]

The words "taken into account" are often used by judges when they impose a sentence after a conviction. They say that they take into account various factors which may either mitigate a sentence or increase it because it enhances the severity of the crime. So, prima facie, "taken into account" is dealing with the penalty aspect of a breach of the data protection legislation, but I am not sure that is really what the Government are saying. Are they really saying that you have a complete answer to this if a duty led to the breach? In other words, it does not require you to do that, but it may nevertheless have that effect, and if it does have that effect, then you have an answer, just as you do for a breach of contract. I think that is what the amendment designed by the noble Lord, Lord Foulkes, is seeking to do, and I am grateful to him for doing that.

I hope the Minister will think again about this and clarify the provision because it is extremely important in dealing with matters that may lead to criminal penalties to know exactly where one stands. The rule of law requires clarity, and the lack of clarity is the subject of the amendment in the name of the noble Lord, Lord Foulkes, which I support.

Lord Lansley (Con): My Lords, I am glad to have the opportunity to contribute to this short debate on these amendments. I will say a quick word on each, if I may.

First, on Amendment 16, I entirely support my noble friend's wish for us to enter into mutual recognition of professional qualifications with the European Union but, as they say, it takes two to tango. We wanted to do it and our policy intention was to do it, but it was not the European Union's intention to agree to it. I do not doubt that it would remain the Government's intention to enter into such an agreement if it were possible to do so. I regret that putting this into the Bill does not change any of those circumstances. As it happens, I would not put it into the Bill at this place either. It is essentially contingent upon Clause 3 and our ability to negotiate an international recognition agreement with European Union countries in any case. It may be we have to do it with European Union countries individually, but I agree with the objective. It seems to me that Clause 4 allows regulators to enter into recognition agreements, and that is the mechanism. If the Law Society or anybody else wants to do it, they should seek approval from the Government to enter into such an agreement in that way.

I do not understand why we need Amendment 23 in the name of the noble Lord, Lord Foulkes. This is about international recognition agreements. It is not specifically about the European Union and it may not apply to European Union member states. It is not required to be consistent with the future relationship with the European Union. All it means is that when we allow the recognition of overseas applicants to our professions, the professional regulators may charge them fees in the way that they charge fees to UK applicants. I think that is perfectly reasonable, so I would not accept that amendment.

On Amendment 47, the noble and learned Lord, Lord Hope of Craighead, was probably not here when we discussed the Trade (Disclosure of Information) Act 2020, nor when we dealt with similar provisions in the Trade Act 2021. My noble friend on the Front Bench, the noble Lord, Lord Purvis, and I remember those discussions very well.

Supreme Court judgments have determined that where, for example, data protection legislation requires the protection of legislation—and there are specific duties relating to that—if there are other statutory gateways that might create a statutory provision permitting the disclosure of information which could contravene the data protection legislation, the position the court arrived at was that the decision-makers should end up being able to balance the statutory gateway in the additional statute with the originating data protection legislation. That is where it ended up, and that is why "taken into account" is the appropriate language. It would not be "considered a defence", because that would conclude that it had not been weighed properly in the way that the court expected. It expected these two things to be considered alongside one another. That is where we ended up on the Trade (Disclosure of Information) Act, for reasons I understood then, and as far as I can see, this drafting is absolutely consistent with those pieces of legislation.

Baroness Bennett of Manor Castle (GP): My Lords, I am glad of the opportunity to contribute to this short debate, but I will be brief and forbear commenting on Amendments 23 and 47, as noble Lords have already covered them and I cannot really add anything. I want to speak specifically to Amendment 16 and I thank the noble Baroness, Lady McIntosh of Pickering, for tabling it.

I think there should be pressure on the appropriate national authorities in the Bill to seek reciprocal agreements. It is something that certainly needs to be discussed and pushed. Other noble Lords have spoken about the situation of established professionals and the professional bodies. I want to take a moment to think about young people recently qualified, and those young people who have been through such difficult times and who will qualify in the next year or two, for whom there should be the opportunity, as a young professional, to go out and to travel—the European Union countries being the obvious place, being relatively close to home, relatively cheap, et cetera. It is crucial to those young people to have opportunities to stretch their wings, to learn new things and to develop professionally.

We have seen a lot of problems arising as a result of Covid. Covid is being blamed for lack of progress in a great many things, but it has also suppressed demand, and we are going to see a real explosion of demand as it becomes more possible to travel and to move. I will not get started on the great loss of free movement for the people of the UK, but given that we have so curtailed the opportunities for our young people, it is crucial that we do everything possible to open up, or reopen, professional opportunities for people to grow, to develop, to travel. Of course, if the Government do not want to consider this from any other angle, it is obviously of considerable importance if those people return to the UK and work here with those skills or, indeed, if they remain overseas but keep their UK contacts, which will be very important for UK business and professionals.

Lord Purvis of Tweed (LD): My Lords, we are indebted to the noble and learned Lord for bringing Amendment 47 to us and to the noble Lord, Lord Foulkes, for his comments, and I have two questions for the Minister in regard to those. The first relates to a document which I am sure that the department for business Bill team is studying closely, which is the Department of Health and Social Care's consultation on regulatory reform for the medical professions. Paragraph 156 has a set number of criteria of the data which the medical professions will now be required to have, which is not the same as the data within the Bill. In some areas, it includes, for example, registrants' geographical locations and measures relating to fitness to practise, which includes former criminal records and other information that is held. Therefore, on the requirement for the information to be provided to the regulators in other parts of the UK, I am curious as to how the Bill will interact with what the Government's intentions are for the other information which is now being proposed by the consultation on the medical professions.

It will be of importance, given that those entering the labour market who had previously been recognised—I am thinking of EEA citizens who now have settled status—are likely to be the biggest call upon this duty regarding transferring of data, because the estimates are that potentially up to 1 million people will be settled in the UK with a professional qualification recognised to carry out their work. However, because the Home Office chose not to verify their previous information in order to give them settled status, there is currently no formal record of their continued fitness to practise.

This leads to my second point. Can the Minister confirm the Government's estimate of how many EEA professionals, who have in the past had their qualifications recognised to carry out work, as guaranteed under the withdrawal agreement, have their withdrawal agreement rights recognised? Certainly, if those who have settled status wish to move throughout the UK, that will presumably be the first call upon the Clause 9 duty, and the Home Office is not at the moment maintaining that information, as far as I understand, so it would be helpful to know this.

I also want clarification of the Government's intentions regarding Amendment 16 and our position with the European Union. I congratulate the noble Lord, Lord Lansley, on re-entering the Government Benches, for being a loyalist now. He is not listening. Oh, he is listening. I congratulate him on being very loyal to the Government's position regarding their intent. Clearly, he is of the view, as the Minister told us at Second Reading, that it was the Government's intention to seek a mutual recognition agreement with the European Union covering all the countries together, and this was rejected by the European Union.

I was interested in that slightly revisionist bit of history from the Minister, so I read chapter 13 of the draft UK negotiating document, on mutual recognition of professional qualifications. I thought that I had better compare it with the European Commission negotiating mandate too, just to double-check that what we have been told is the case. It is certainly the case that the Theresa May Administration—which was before the Minister's appointment, so I do not blame him for the situation—sought a level playing field for services, which included a reciprocal agreement between the UK regulatory bodies and the Union's regulatory bodies with supervisory autonomy. The Boris Johnson Administration chose not to pursue that. Instead, they sought a Canada-style agreement, which we now have, because our arrangements in the TCA are the same as Canada's.

However, the UK negotiating document, which the Minister says was a comprehensive offer that was rejected by the European Union, called for, under "Objectives and scope" in chapter 13,

"a framework to facilitate a fair, transparent and consistent regime … where … a service provider with a professional qualification obtained in the United Kingdom makes an application to a relevant authority in the Union".

What did "relevant authority" mean? Well, the Government was very helpful in clarifying that. It meant that it was a body that authorised and recognised qualifications of a profession in a jurisdiction—that is, in each member state. The Government simply wanted a negotiated framework to facilitate an agreement in each jurisdiction. Paragraph 43 of the Commission's negotiation mandate states that:

"The envisaged partnership should also include a framework for negotiations on the conditions for the competent domestic authorities to recognise professional qualifications".

There is not really much difference between the two. I do not think that one is a comprehensive offer, and I do not think that the other is a rejection.

8.15 pm

I am keen to know, as the noble Baroness asked, whether it is the Government's intention to use the committee and the mechanism agreed in the TCA to ask for a Union-wide agreement? What is the Government's current position? Paragraph 92 of the impact assessment for the Bill states:

"By ending unilateral recognition for certain professions, UK regulators may be in a better position to negotiate mutually beneficial and reciprocal recognition arrangements with our EU counterparts."

Paragraph 93 says:

"A reduction in the recruitment of EEA and Swiss-qualified professionals could reduce competition in the market for services, to the benefit of UK-qualified professionals in the UK. EEA firms may be less able to provide services involving regulated professions to UK customers, which may benefit UK businesses."

I do not know what the Government's view is. Is it to have a European-wide system of agreements or is it, as this Bill says, to have economic value from not having that? Which is it?

The Deputy Chairman of Committees (Lord Russell of Liverpool) (CB): The noble Baroness, Lady Hayter, has withdrawn from this group of amendments, so I call the Minister, the noble Lord, Lord Grimstone.

Lord Grimstone of Boscobel (Con): My Lords, I thank my noble friend Lady McIntosh of Pickering, the noble and learned Lord, Lord Hope of Craighead, and the noble Lord, Lord Foulkes of Cumnock, for their proposed amendments. They cover reciprocal recognition arrangements, the charging of fees and information sharing between UK regulators respectively. I will discuss each amendment in turn.

[LORD GRIMSTONE OF BOSCOBEL]

The noble Lord, Lord Purvis, again raised the DHSC consultation on medical professions, and I admire his deep knowledge of this. I would like to be able to respond fully to the points he has raised, so, if I may, I will write to him and put a copy of my reply in the Library. I also noted his point about EEA citizens' withdrawal agreement rights. I will try to obtain the number and include that in the same letter.

Let me start with the amendment to Clause 1 from my noble friend Lady McIntosh of Pickering and the noble and learned Lord, Lord Hope of Craighead. I fully recognise the benefit of reciprocal arrangements for the recognition of professional qualifications. I completely understand why my noble friend Lady McIntosh and the noble Baroness, Lady Bennett of Manor Castle, seek this. I do not think I can put it better than my noble friend Lord Lansley succinctly did, in that it takes two to tango.

We have had the benefit of the great knowledge of the noble Lord, Lord Purvis of Tweed, on the negotiating stances within the EU agreement. I was not a member of the Government at that time so I cannot comment on the detail of that. I think it is now, frankly, a matter of history. The noble Lords may frown, but I think it is a matter of history and we have gone past that. I will see if I can glean any useful information to send to the noble Lord, Lord Purvis, but I am not entirely confident I will able to.

As the Committee will know, reciprocal recognition agreements can be secured through international agreements and through agreements between regulators. The EU-UK Trade and Cooperation Agreement includes a mechanism for agreeing UK and EU-wide recognition arrangements. I say in reply to my noble friend Lady McIntosh of Pickering that the first meeting of the partnership council is taking place this very day. I believe that a number of committees will start to meet after that. My information is that one of those committees will include services within its remit.

Regulators have the option to use this process if they wish. Some have indicated they might find it rather cumbersome and so may prefer to conclude arrangements outside this framework. Clause 4 of the Bill will support that. As we know, it provides powers to enable regulators to enter recognition arrangements with their counterparts in other countries. Of course, in reply to my noble friend Lady McIntosh, I say that some already have this power and have used it, and I thoroughly welcome that. Sadly or unfortunately, others do not have the power at present or have doubts about whether they do. One reason why we are bringing forward Clause 4 is to be able to give the power to all regulators that wish to have it. If they then use that power, nobody would be happier than me.

To help them to pursue this route, we are taking action to support regulators in securing such arrangements. For example, the Government recently published guidance to support regulators in agreeing recognition arrangements, including mutual recognition agreements with their counterparts in other countries. However, these arrangements are of course completely distinct from the purposes of Clause 1. As noble Lords have heard, Clause 1 concerns enabling the demand for the services of professions in the UK to be met without undue delay or charges. Clause 1 does not relate to mutual recognition arrangements. However, there is of course nothing in Clause 1 that would act to inhibit reciprocal recognition agreements being agreed where regulators wished to do so. Moreover, recognition agreements are, frankly, demand-led processes, and it is for regulators themselves to decide whether to enter into one and to decide the terms between themselves. That is a feature of the regulators having autonomy. Requiring national authorities to seek out reciprocal arrangements for certain professions would, I suggest with the deepest respect, reduce regulators' autonomy. I know the importance that noble Lords attach to not doing that. I agree that it is appropriate for the Bill to support regulators' ability to enter into such recognition agreements, and I hope that noble Lords will agree this is adequately addressed elsewhere in it. No doubt we will come back to this later.

I turn to the amendment to Clause 3 tabled by the noble Lord, Lord Foulkes of Cumnock. The current provision on the charging of fees makes sure that regulators can be enabled to cover any additional cost burden from administering any systems established under international recognition agreements. Of course, this may also be necessary if an agreement references fees. This will help to make sure that regulators are no worse off due to the UK implementing international recognition arrangements. It allows them to cover costs that will arise from implementing and operating processes to recognise professional qualifications from a trade partner's territory. Some international agreements include commitments about the charging of fees. For example, in typical language, this would be that they are reasonable or proportionate. This power is necessary to implement such measures.

On the specific question of the noble Lord, Lord Foulkes, about why Clause 3 departs from precedent on the charging of fees, I noted the Law Society briefing on this point and understand its interest in hearing us place on record the reasons for the difference between the approach taken in this Bill and that in the 2020 future relationship Act. Clause 3 is a power created with the future needs of international agreements on the recognition of professional qualifications in mind. The requirements and concerns to be considered for this clause are distinct from more general implementation powers that deal with entire free trade agreements and all their different chapters, as is the case with the powers under the future relationship Act.

Clause 3 is also designed to be flexible and to ensure that the UK Government can implement the UK's precedent-setting policy on professional qualifications, as well as more traditional mutual recognition agreement frameworks and other provisions. If the noble Lord would find it helpful to have a further discussion with me about that, of course I would be delighted. The debate that we come to later will turn to the detail of Clauses 3 and 4 and reciprocal arrangements, so with noble Lords' permission I shall not go further into the detail of those clauses here.

I now turn to Amendment 47, which concerns Clause 9. I thank the noble Lord, Lord Foulkes of Cumnock, and the noble and learned Lord, Lord Hope

of Craighead, for their amendment. Clause 9 relates to information sharing between UK regulators. The amendment seeks to create a defence if a disclosure made under the duty in Clause 9 contravenes data protection legislation. This clause places a duty on UK regulators, where requested, to provide information to another regulator in the UK relating to individuals who are, or have been, entitled to practise the relevant profession in another part of the UK. It ensures that regulators have the information, when an individual applies for entitlement to practise, necessary to assess that individual's entitlement to practise the profession in that part of the UK. This necessary information is limited to information held by the UK regulator about the individual.

Clause 9 also specifies how the provision interacts with the data protection legislation. Where the new duty relating to the processing of personal data applies, it does not require the making of any disclosure which would contravene data protection legislation. This approach—I think that my noble friend Lord Lansley recognised this—and similar wording has been adopted in other recent Bills, some of which are now Acts, such as the Pensions Schemes Act 2021 and the Agriculture Act 2020.

Let me provide reassurance on the concern which appears to underpin this amendment that regulators may face legal challenges in complying with Clause 9. The clause specifically requires disclosure only when it does not contravene data protection legislation. There is therefore no defence needed. I hope that that reassures the noble and learned Lord, Lord Hope of Craighead, and the noble Lord, Lord Foulkes of Cumnock. The clause is also clear that the duty to share information can be taken into account in determining whether improper disclosure has occurred.

We will return to the important issue of data protection in our wider debate, and I look forward to continuing this discussion. I thank noble Lords for their contributions and amendments. I hope my explanation of the Government's objectives in relation to reciprocal arrangements, my agreement to write to noble Lords and the rationale for including provisions to charge fees and consideration of how the Bill requirements interact with data protection have been helpful, and that on that basis my noble friend will withdraw her amendment.

Baroness McIntosh of Pickering (Con): My Lords, I am grateful to all who have spoken in this little debate. I hate to disappoint my noble friend Lord Lansley, but this amendment was entirely my own work—it was not from the Law Society of Scotland. I am grateful to the noble Lord, Lord Purvis, for the work that he put in to prepare for this group of amendments. To add to his comments on paragraphs 92 and 93 of the impact assessment, they do not record the loss of reciprocal rights for those lawyers who might otherwise have gone from this country, along with other professions such as dentists and doctors, to work in other European and EEA countries.

I am grateful to my noble friend the Minister for his full reply—especially the acknowledgement that the partnership council met for the first time today. For the first time, we hear that it is hoped that the committees will meet shortly after that. I believe that we should make this a priority, so that all professionals have reciprocal arrangements. I am grateful to my noble friend for spelling out the implications of Clause 4 in this regard, as well as Clause 3. I shall follow that extremely closely. I am grateful to have had the opportunity to probe this matter, and I shall continue to monitor it during the progress of the Bill. For the moment, however, I beg leave to withdraw the amendment.

Amendment 16 withdrawn.

8.30 pm

Debate on whether Clause 1, as amended, should stand part of the Bill.

Lord Hunt of Kings Heath (Lab) [V]: My Lords, I am using the stand part debate on Clause 1 to raise my general concern about the extensive power given to Ministers without adequate justification or explanation.

On Second Reading I referred the Minister to the recent report of the Secondary Legislation Scrutiny Committee, which during the course of the year has

"become increasingly concerned about the growing tendency for the Government to introduce skeleton bills, in which broad delegated powers are sought in lieu of policy detail".

The committee went on to say that

"we urge the Government 'to bring forward bills that contain clear policy intention instead of broad delegated powers' and to ensure that 'Departments do not use the exceptional powers given to them by Parliament as an expedient in the context of the pandemic as a cloak for effecting longer term, post-pandemic changes which would more properly be included in primary legislation'".

Unfortunately, the Minister and the rest of the Government have chosen to totally ignore that in bringing this Bill before us. Not surprisingly, that has drawn a critical response from the Delegated Powers and Regulatory Reform Committee. A number of noble Lords have quoted extracts from the committee's report today. It drew three powers to the attention of the House, and in relation to each it noted

"a failure to provide adequate explanation in the Memorandum. This is particularly disappointing given that (a) as the Government have acknowledged, most of the substantive changes to the law envisaged by this Bill are to be made through delegated powers rather than the Bill itself, and (b) these are Henry VIII powers".

On Clause 1, the committee commented:

"It is a Henry VIII power, as it includes power to amend primary legislation and retained direct principal EU legislation … The power can be used to make provision about a wide range of matters"—

which we have discussed comprehensively today. As the committee says, the Explanatory Memorandum

"provides two justifications for the delegation of power. The first is that the use of the power 'is to be demand-led' and 'demand will naturally change over time and so it is not possible to achieve the policy through provisions on the face of the Bill that apply to a fixed set of professions'".

If we accepted that argument, we could justify dealing with almost every piece of legislation in that way. As the committee said,

"that does not explain why all of the changes within the scope of the power—across so many professions and including changes to primary legislation—should be a matter for secondary rather than primary legislation".

[Lord Hunt of Kings Heath]

Nor did the Government respond to concerns that Clause 1

"could allow such requirements—and other comparable requirements in primary legislation relating to other professions—to be watered down by statutory instrument if Ministers considered this to be necessary to enable demand for the services of the profession in question to be met without 'unreasonable delays'".

The committee continued:

"The second justification given for the delegation relates to the existing legislative provision covering a wide range of different professions and regulators: 'the professions that are in scope of this power have pre-existing legislative frameworks governing how each is regulated. It is not feasible to provide, on the face of the Bill, for an approach that would interface with each of these various frameworks and their different approaches to the recognition of professional qualifications, or to address them individually'".

Well, as the committee expressed itself:

"We are surprised and disappointed that neither the Memorandum nor the Explanatory Notes … give any examples of circumstances in which the power might be exercised and changes that could be made in such circumstances; or … explain why Ministers will have no duty to consult before making regulations."

We have discussed that in some detail. This

"makes it difficult to understand how significant the changes that could be made in exercise of this power could be, particularly given the proliferation of existing legislative schemes that could be amended; and gives rise to uncertainty as to whether there may be aspects of the law relating to recognition of overseas qualifications that the Bill would allow to be provided for in regulations … but which should instead be subjected to the much greater Parliamentary scrutiny afforded to primary legislation."

I hope the Minister will explain why the Explanatory Memorandum is so scanty on such an important matter. Will he justify the extraordinary powers he and his colleagues are taking to themselves? Does he accept that some of the mistrust he complained about two groups ago on the part of Members towards the Government perhaps rests on the cavalier approach the Government themselves have taken to this House and Parliament by the unsatisfactory nature of the drafting of this Bill? I beg to move.

Baroness Noakes (Con): My Lords, on the face of it, Clause 1 does seem innocuous, but at its heart there is a power for the Government to interfere in the way that regulated professions recognise people who have qualified abroad. I am far from clear that a case has been made for government intervention. I have not seen any evidence of the regulated professions dragging their feet when it comes to recognising overseas professionals. I recognise that our country has a demand for some professionals, notably those related to healthcare, which may well outstrip the numbers who qualify here, but there is still a big step before saying our UK professions need the Government to tell them what to do.

I have no problem with giving the regulators additional powers if their current rules make it difficult to accommodate the recognition of overseas professionals and they need legislation to change that—but that is not what this clause is about. The clause covers many regulated professions that already have effective provisions for the recognition of overseas applicants, but the Government have not excluded them from the scope of Clause 1. I believe the clause would be better expressed in terms of a power to be exercised by the Government at the request of regulated professions or with their consent. The Government do not know best when it comes to the professions, but the Bill does seem to be predicated on that belief. I hope it is not too late to reshape how this Bill interacts with regulated professions.

The Deputy Chairman of Committees (Lord Russell of Liverpool) (CB): The noble Baroness, Lady Bennett of Manor Castle, has withdrawn from this group, so I call the noble Lord, Lord Fox.

Lord Fox (LD): My Lords, I thank the noble Lord, Lord Hunt, for putting this amendment forward, and I commend him on the forcefulness of his speech. I am not going to repeat things he said, but I agree with his points. During the opening group, I touched on this issue and outlined the powers that are being taken into this clause, to which the noble Baroness, Lady Noakes, referred just now. I am still trying to understand what the Government think they are going to improve by doing this.

In essence, because of Brexit, the simple reality is that we are losing access to a considerable source of professionals. That is a problem, or potentially a problem. There is absolutely no certainty that we can replace them in another way, but there is also no certainty—indeed, possibly the opposite—that these clauses are going to help that to happen. So the idea that "We are from the Government and we are here to help you recruit people" seems to be unfounded.

There are two problems with Clause 1. One is that it seems to be a misguided effort. The other, which was front and centre of the points the noble Lord, Lord Hunt, made, is that this is the Government overstretching themselves in taking powers upon themselves and grabbing secondary legislation opportunities. We know that there is virtually no chance to amend—there have been very few examples in my lifetime where secondary legislation has actually been turned down. So it is with that that we on these Benches are supporting this amendment, and, of course, similar arguments will be put forward later on in the evening.

Baroness Hayter of Kentish Town (Lab): My Lords, Clause 1 enables regulations to be made—as we have heard, they are never overturned—to require a specific regulator to put in place a procedure for assessing whether to treat overseas qualifications as if they were UK ones. However, we still do not know how many of the 60 actually lack such a power. The Minister wants this Bill; he says that it is necessary. Could he please list those regulators which, if circumstances required extra skilled professionals, could find that their statutes were insufficient and thus that they would need to be mandated, by law, to introduce a new process? Because, frankly, if there are no regulators that need this power, we do not need a law to give it to them.

If the regulator wanted to introduce such a process, and had the statute, why would it have to be mandated to do it? If the regulator does not want to introduce such a process, how autonomous is a regulator if it can then be told by a Government that it must do so with the force of law? It may, as the Minister has said, be just a process that they have to introduce, but we are, nevertheless, talking about the Government mandating a regulator to do something that it does not want to do—because if it does want to do it, it will just do it.

So the Minister needs to list the regulators who do not already have the power to adopt such a process. I understand that there may well be some, but it would be nice to know which ones they are. If the regulator has such a power, but does not want to introduce a process to assess whether somebody's qualifications should be agreed, how does he justify mandating the regulator by law to do that?

Lord Grimstone of Boscobel (Con): My Lords, I have previously set out the need for a framework for the recognition of overseas professional qualifications. The Government are proposing one that focuses on addressing unmet demand for professional services in the UK. The intention of Clause 1 is to bring in that framework. It means that regulations can be made which require regulators to have a route in place to determine whether or not to recognise overseas qualified professionals from around the world. The framework that the Bill introduces will replace the interim system for the recognition of professional qualifications that was put in place as the UK left the EU.

Clause 1 sets out the substance of the new recognition framework. I stress that these conditions cannot be amended by regulations under the Bill. Where regulations are made under this clause, they would require a regulator to make a determination as to whether an individual with overseas qualifications or experience has substantially the same knowledge and skills, to substantially the same standard, as the UK qualification or experience. As I have said previously, these regulations would not alter the standards required to practise professions in the UK. They could not alter such standards, and regulators would still decide who can practise. No regulator would be forced or pressured into accepting qualifications that did not reach UK standards. Any other appropriate regulatory criteria, such as language proficiency or criminal records checks, must also continue to be met before a regulator may give access to a profession.

8.45 pm

I have been clear since introducing the Bill that we must protect the autonomy of regulators. This includes autonomy over decisions about who practises a profession and flexibility in assessment practices, in line with regulators' rigorous standards.

Noble Lords have made some interesting points about the use of delegated powers under this clause. I am grateful for the scrutiny of the Bill by the Delegated Powers and Regulatory Reform Committee, which has now produced two reports on it. I have of course carefully considered the committee's recommendations.

Regulations under Clause 1 would be made by an appropriate national authority—the Secretary of State, the Lord Chancellor, or the devolved Administrations where the matter is within devolved competence. I reassure noble Lords that where Clause 1 is not exercised, regulators will be free to continue recognising qualifications from overseas in line with their existing powers and any reciprocal agreements that are in place.

In reply to my noble friend Lady Noakes, I say: why would we want to give regulators these powers if they already have them and routes are in place? The noble Baroness, Lady Hayter, asked a completely reasonable question as to whether it is possible to quantify this. I will take that away and do what I can to answer it. My argument is that Clause 1 is needed because not all regulators currently have these powers. I completely understand that it would be helpful for my argument if I could demonstrate that to the Committee. Our analysis shows that a number of professions would be at relative risk of unmet demand for professional services if the Government did not introduce this new recognition framework, and the onus is on me to demonstrate that to the Committee.

Clause 1 provides the appropriate means to ensure that regulators are able to recognise, where required, qualifications and experience from around the world. The Bill has provisions in place to ensure that Clause 1 is not misused. Clause 2—it is important to read the two clauses together—limits the use of the power to make regulations in Clause 1 to where it is necessary to enable the demand for the service of a profession to be met without unreasonable delay or charges to the consumers of those services. There are therefore only certain circumstances that meet the condition under which a Secretary of State, the Lord Chancellor or a devolved Administration would be able to make regulations under Clause 1. We are not giving them a free gift. Action can be taken only when there is a clear public interest to do so, in this case a demand for services.

The Bill also sets out that any such resulting regulations would be secondary legislation, tailored to the profession. They would therefore be subject to appropriate parliamentary scrutiny. Where those regulations amended primary legislation, they would be subject to the affirmative procedure.

I hope my explanation has provided noble Lords with further clarity as to why this approach is necessary and proportionate. I live in hope that I will be able to convince the House of this as we move forward. Of course I will be happy to follow up on any additional points. I commend this clause, as amended in my name, to stand part of the Bill.

Lord Hunt of Kings Heath (Lab) [V]: My Lords, this has been an interesting debate and I am grateful to the Minister. At heart, he is saying that the Bill is proportionate, but the speeches from the noble Baroness, Lady Noakes, the noble Lord, Lord Fox, and my noble friend Lady Hayter have undermined that point. It is clear that many of the current regulators already have the necessary powers, so the question must be: if the powers are required only for a limited number of regulators, why has a catch-all approach in the legislation been chosen by the Government? This gives us a clue to the kind of amendments that we will need to push on Report.

The Minister is grateful for the scrutiny the Bill has been given by the Delegated Powers Committee. I must say that, in my ministerial experience, it is not a committee whose recommendations are to be dismissed lightly. He has dismissed all of them in respect of the use of Henry VIII clauses and has given no explanation of why the Explanatory Memorandum is so inadequate. As for the offer of affirmative regulations in relation to the use of Henry VIII clauses, fewer than 10 defeats

[Lord Hunt of Kings Heath]
of secondary legislation have ever taken place in your Lordships' House, as the noble Lord, Lord Fox, said. It makes not a jot of difference whether the procedure is affirmative or negative, because we can debate every negative SI. This is an alarming use of Henry VIII clauses.

I hope firmly that, on Report, we will amend the Bill to make it proportionate in the way that it needs to be. I am grateful to all noble Lords.

Clause 1, as amended, agreed.

The Deputy Chairman of Committees (Lord Russell of Liverpool) (CB): My Lords, we now come to the group beginning with Amendment 17. Anyone who wishes to press this or anything else in the group to a Division must make that clear in the debate.

Clause 2: Power conferred by section 1 exercisable only if necessary to meet demand

Amendment 17

Moved by ***Baroness Hayter of Kentish Town***

17: Clause 2, page 2, leave out line 34 and insert "fulfilling a domestic skills shortage in the profession or implementing any international recognition agreement,"

Baroness Hayter of Kentish Town (Lab): My Lords, in moving Amendment 17, I shall speak to the other amendments in the group. They make up two distinct elements which, as we have heard, lie at the heart of the Bill. The purpose of the Bill is to authorise statutory regulators, where their powers are not available, to be able to put in place a process that would recognise overseas professionals either to fill a skills shortage or to assist in implementing a new trade agreement where the agreement includes a professional skills recognition clause.

However, because of the two possibilities, as we have heard, a third issue arises, which is that of the absolute guarantee of the independence of regulators and the need to ensure that they are never mandated to recognise particular qualifications or experience. This third issue of independence is covered in Amendment 26 in my name and in Amendment 28 tabled by the noble Baroness, Lady Noakes, to which I have added my name. The amendments say quite simply that no regulation under a trade agreement provision can undermine the independence and autonomy of a regulator, and that any such regulation may permit but not require a regulator to recognise an overseas qualification in allowing someone to practise here. These are the very least that must be guaranteed in the Bill and I am sure that it is something we will want to return to on Report.

I turn to the first issue of a skills shortage. It is not clear whether this means that the whole of a profession such as medicine, or only one specialism such as geriatric care or trauma surgery, would be dealt with in a regulation to require a process to be in place. It may well be that we need one, but not the other. My guess is that trauma surgery is quite popular and geriatric medicine perhaps less so. It would be interesting to know how granular the regulations would be when we ask a regulator to put a particular process in place. More than this, of course, is how the relevant Government, be they the UK Government or a devolved one, would decide that there is such a skills shortage. What role will service providers or the relevant regulator play in that decision?

Amendments 20 and 21 in my name and those of my noble friend Lord Hunt and the noble Baronesses, Lady Finlay and Lady Bennett, would therefore require sufficient consultation with the regulator. The Government must also produce a report, not only on the findings of their consultation but on the data and the modelling used to come to the conclusion that there is a skills shortage. This is crucial to what was said earlier by my noble friend Lord Sikka and, I think, by the noble Baroness, Lady Bennett: the Government must also indicate what they have meanwhile been doing to fill the skills shortage, by way of training our own workforce rather than pinching from other—sometimes very much worse off and more needy—countries, and what they are doing to retain the workforce that we have.

I hear from my consultant stepson that retaining existing medical staff is one of the biggest challenges. It is no good keeping on bringing people over and recruiting them to the health service—or indeed anywhere else—if our retention is so low that we are losing people elsewhere. Continuing to hire in when we cannot keep those whom we have does not sound like brilliant workforce planning. Indeed, the Minister might like to explain how, after a decade of Conservative Government, we still lack over 100,000 social workers, 3,000 teachers and 84,000 NHS staff in England. The Royal College of Nursing estimated that, before the pandemic, we were 50,000 nurses short, and the Royal College of Psychiatrists has described lack of staff as one of the biggest causes of workforce burnout in mental health. If he has a moment, he might just reflect on how 10 years of Conservative Government has left us in the position where he now tells us that we need the Bill to fill gaps in our skill base.

I should add that the Bar Council is concerned about the restriction in Clause 2 of the Clause 1 power to situations of unmet need for particular professional services. The Bar Council feels that the Government have offered insufficient justification for this measure which could, it says, negatively affect professional autonomy through an unintended effect of the scope of pre-existing regulatory powers to recognise overseas qualifications. It sounds as if the consultation that we heard has taken place was perhaps not all that thorough. Rather than respond to that today, could the Minister undertake to meet the Bar Council before Report to see whether he can better understand and meet its concerns or find some arrangements to allay its fears? Given how much consultation we have heard has happened, that last-minute plea—it arrived in my in-tray today—suggests that the consultation has perhaps not been all that deep.

I turn to the second arm of the Bill: its potential power to require a regulator to set up a process for foreign accreditation. We again ask, as before—the Minister agreed to it—that he let us know which regulators lack that power. If there are such regulators, Amendment 26 in my name and that of the noble Lord, Lord Trees,

again demands that any such regulation to implement an international recognition agreement does not undermine the independence and autonomy of a regulator. The noble Lord is unfortunately unable to speak because his name is not on the speakers' list, but he obviously knows the Royal College of Veterinary Surgeons very well. It already has all these powers and frequently recognises professionals from other non-EU countries.

9 pm

Crucially, we worry that the Government, in their haste—for political or even economic reasons—to sign a new trade agreement, might throw in a promise to encourage or facilitate professional recognition, where this is not the desire of the regulated profession nor perhaps in the interest of its clients, users or consumers. Amendment 22, also in my name and that of the noble Lord, Lord Trees, calls on the Government to discuss their negotiating mandate—I touched on this earlier—with the regulator of any profession concerned, and publish the negotiation mandate, so anyone else can know they may be caught by it, and to continue to consult the regulator throughout the negotiations. There will be many professionals who are very excited about the possibility of mutual recognition of qualifications. The Minister may have heard today of others that may have concerns, but there are undoubtedly some that will be eager to see this in a deal, albeit with standards well protected. However, there may be others with greater concerns, whose responsibility for standards and the public interest must not be traded for some other exports of unrelated goods. Transparency and consultation are vital, and, sadly, we cannot trust the Government until it is written into the Bill that this consultation will take place.

I will give an example, which will be very familiar to the Minister. Time and again, the Minister said that the new Trade and Agriculture Commission would be able to assess the impact of our new trade deals on our farming industry. However, we learnt, I think just yesterday, that actually the new Trade and Agriculture Commission is only going to look at the text of an FTA to see whether the bits about trade in agriculture have implications for maintaining our protections of

"animal and plant health, animal welfare and the environment."

It is very welcome that the commission should look at that, but that is not what was promised earlier. It was promised that it would look at the impact of a trade deal on our own farming industry in this country. We welcome the fact that the commission will be able to look at standards, but it is not going to be able to look at what imports might do to our domestic agricultural industry. We know of the concern of farmers about that.

That is why warm words in Committee or on Report will not cut the mustard; we need guarantees on the face of the Bill. Amendment 22 ensures consultation with regulators, throughout the stages of the process of what I understand is called the "Grimstone rule". Apparently, the Grimstone rule became very famous when the Trade Bill was going through here. I think the Minister will recognise it as the process by which free trade agreements are negotiated and laid under CRaG. I am led to believe—it was confirmed by the Minister himself during the passage of the Trade Bill—that all those consultations would happen during negotiation. This is why it is aptly called the Grimstone rule. That is what we want here. If access to our professional regulators will be included in a trade deal, then those regulators must be involved throughout the negotiations. I beg to move.

Baroness Finlay of Llandaff (CB): My Lords, this is a very interesting group of amendments because, as far as I can see, it is about addressing the domestic skills shortage. I do not think anyone should be under any illusion about the extent to which there now is a skills shortage. I am going to address this purely across health and social care, which is the area that I know about. I am not going to touch on law and so on.

There is a skills shortage now, particularly among clinical scientists. These are not qualified doctors; they are scientists who are now working in the clinical arena, often carrying a great deal of clinical responsibility. As medicine progresses, and as clinical sciences progress, there will be more of these people coming forward who have very narrow but highly specialised skills. I have already mentioned the physician assistants and anaesthesia assistants. Anaesthesia—and I say this having trained for a time in anaesthetics myself—is not a straightforward discipline. Things can go wrong very rapidly, and the responsibility carried by somebody with this skill set is enormous, because somebody's life depends on it. They need to know what they are doing all the time. Currently, this group of assistants are not registered. I use that as an example because there will be others, including people working in fields such as cardiology and radiology—in all kinds of interventional areas. Then there are those working in the diagnostic fields who are clinical scientists. If they get something wrong, the diagnostic label attached to a patient will be wrong, the treatment will be wrong, and that patient's life may be not only damaged but lost. If that original diagnostic test is not properly conducted, the mistake is repeated all down the line. I have a major concern, therefore, about the domestic shortage of clinical scientists. We used to have a good supply of people who wanted to come here from Europe. Now, those from Europe have been returning to Europe, but people from Europe no longer want to apply to come to the UK. That is aggravating the existing gaps in the service.

I have added my name to Amendments 20 and 21, and I fully support the requirement for others to be consulted. In all these fields, there is increasing interdisciplinary working. Although the registration of doctors is held separately to that of nurses, midwives, physios and so on, they must in fact work as a team and there must be cross-fertilisation of skills and competencies. We need to invest in UK training to upskill our own professionals—hence Amendment 21. Amendment 21 may lead the way to credentialling, which has been suggested as a way forward across the different healthcare disciplines, whereby people develop highly specialised skills and are credentialled in one particular area, rather than having to go back to their baseline qualification to apply for a post. I also wonder whether the Bill itself has been drafted as it has to push forward credentialling. I would be grateful if the Minister was able to clarify whether that has been behind some of the drafting, particularly in Clause 2.

[Baroness Finlay of Llandaff]

Amendment 26 stresses the autonomy of the regulator. I would have thought, from the comments we have heard about the Government's respect for the autonomy of the regulator, that they would wish to accept that amendment, although I do not have my name on it—it is in the name of other noble Lords.

On Amendment 28, again I would hope that the reciprocal arrangements between regulators would be in the Bill itself, to ensure that there is cross-disciplinary working and an interchange of standards. It would be a real mistake to have standards for a certain procedure, or way of doing things, that vary depending on the background—the initial qualification, possibly decades old—of that professional. That would mean that, if they came up through a nursing background they would somehow be expected to operate at a lower standard when they are, as a sole operator, doing a diagnostic procedure such as a gastrostomy, and that the skills and competencies required of them to do that procedure would be different from those required of someone with a medical degree. They should not be: there should be one standard for the procedure—for the patient—and, if it is complicated, it may well be that it gets handed on to the person with the medical degree.

This is, therefore, a very important set of amendments, and I am most interested to hear the Government's response to them.

Baroness Randerson (LD): My Lords, the Minister emphasised that the UK wanted to retain mutual recognition of EEA qualifications, and my noble friend Lord Purvis disputed some of that. Whatever led us to the current situation, shortages are a real problem. As the noble Baroness, Lady Finlay, just mentioned, the impact of the lack of recognition is very serious in some professions.

I shall give noble Lords an example: there are around 22,000 EEA-qualified doctors licensed to practise in the UK, although a significant number of them will have returned home, or at least left the UK, in recent months and years. Nurses, in particular, have gone home in large numbers. In contrast to those 22,000 doctors, only about 2,000 UK doctors are licensed to practise in the EEA, so the impact of that decision not to have mutual recognition falls much more heavily on the UK than on the EEA. We are one country with an impact of 22,000, versus 28 countries with an impact of only 2,000 UK-trained doctors.

However, I am pleased to have the opportunity as a result of these amendments to emphasise that the Government have to get a grip on workforce planning generally. There are amendments in this group that refer to the importance of working far beyond reliance on foreign-trained doctors and professionals generally. The Government have to fund an expansion of university and medical school places and increase the number of places on training courses in a wide range of professions where there are shortages.

Judging by statements in the impact assessment, the Government's purposes seem to waiver. They seem not to have made up their mind about whether regulators can continue to operate independently and autonomously or should be part of a co-operative effort to address skills shortages. This will partly be addressed by international trade agreements. This group of amendments incorporates some ideas that offer the opportunity for greater clarity. Amendment 20, which I support, ensures consultation with regulators, so that it is not the job of the Government alone to decide whether there is a shortage.

One example is from the information that I received in preparation for these debates. The British Dental Association makes the point that in healthcare professions, patient protection must remain the overarching aim. It points out that the current barriers to work in the UK for overseas-qualified dentists include the need, once they are registered, to undertake up to one year of additional training in dental practices. I know this, in part, from my experience of regularly going to the trainee doing one year's practice at my local dental practice. These opportunities are apparently very rare and difficult to obtain because they involve costs to the practice hosting the training dentist and costs to the new dentists themselves, so any supposed shortage of new dentists in this country would not be resolved by the simple measure of encouraging more registrants. That is the point of the BDA's comments.

9.15 pm

Amendment 26 would mean that regulations made under Clause 3 could not implement any internationally recognised agreement that undermined the independence and autonomy of a regulator. This would provide a very welcome additional reassurance of the independent status of regulators, which the Minister assures us is the Government's intention. However, I draw attention to paragraph 32 of the report by the DPRRC, which makes the point that a basic principle of the UK constitution is that international agreements that impact on UK law require an Act of Parliament, and in the committee's view Clause 3 of the Bill departs from that basic principle. I would welcome the Minister's response to that particular point.

Baroness Noakes (Con): My Lords, I have Amendment 28 in this group, to which the noble Baroness, Lady Hayter, has added her name. I have sympathy with many of the other amendments in this group, particularly those that affect Clause 3. I think that, in one way or another, we are all struggling with how to make sense of this rather dirigiste Bill and trying to turn it into something that is oriented around the regulated professions rather than around what the Government want the professions to do.

Specifically, Amendment 28 would make it clear that Clause 3 could not be used to force a profession or its regulator to recognise overseas professionals. The power created by Clause 3(1) is very broad. The national authority can make whatever changes it likes in order to implement an international recognition agreement. I recognise that the Government have said they do not intend to use trade agreements to recognise professions directly but will work through mutual recognition processes. However, the fact remains that they could do so because, if Clause 3 becomes law, it will give them that power and nothing else in that clause or anywhere else in the Bill stops them. For example, they could agree to Indian chartered accountants

being recognised as auditors in the UK even though existing recognition processes have thus far not determined that those qualifications are sufficient either for the purposes of chartered accountancy in general or for the specific purposes of the regulated audit profession. That is just not acceptable.

I said at Second Reading that this measure could drive a coach and horses through the ability of professions to guard their standards and quality. My noble friend the Minister said in response that the Government have not forced the professions to accept anything in treaty negotiations to date and that basically we could rely on the Government to do the right thing. However, giving a Government powers to do things on the basis that they will not actually use those powers is a dangerous approach to legislation, and one that the House should rightly reject.

I believe that recognition of regulator autonomy on the face of this Bill is essential, and no amount of Dispatch Box reassurance can make good the problem of giving the Government too much power.

Lord Hunt of Kings Heath [V]: My Lords, I am glad to follow the noble Baroness, Lady Noakes—I so agree with her. At the moment, Clause 3 gives Ministers a blank sheet to do whatever they wish, and I am afraid that ministerial assurances are not sufficient. One way or another, we need to amend Clause 3.

My principal reason for speaking is to support my noble friend in her Amendments 20 and 21 on skills shortages. It is surely important that any regulatory change is only considered before consultation with the relevant regulators, in the context of how the national body is undertaking work and investment in the domestic sector in order to help alleviate those shortages.

I am particularly interested in workforce issues in the health service and social care. I remind the Minister of a report by the King's Fund in February this year which said that NHS hospitals, mental health services and community providers were reporting a shortage of nearly 84,000 full-time equivalent staff. Key groups, such as nurses, midwives and health visitors were severely affected. General practice was under strain, with a shortage of 2,500 full-time equivalents, with projections suggesting that this could rise to 7,000 during the next five years if current trends continue.

The regulator for health and social care, the Care Quality Commission, has highlighted workforce shortages as having a direct impact on the quality of care. NHS waiting time standards have been routinely missed for a number of years, which the consequences of Covid will exacerbate.

The Health Foundation, another respected independent institute, says that the UK ranks below the average of high-income OECD countries for the number of practising nurses and the annual number of new nurse graduates relative to its population. Further, about 15% of registered nurses in the UK are trained outside the country—more than double the OECD average.

Workforce shortages are not new in the NHS. They have been a recurring and enduring feature during its 70 years or so. The reasons are complex. A historical reliance on international recruitment may be part of the story. A bias in the UK towards focusing on the Exchequer cost of training doctors and nurses—which is expensive—but not on the cost associated with the failure to train enough staff is another factor. More broadly, workforce shortages are totemic of the short-termism that dominates national policy-making under this Government.

The noble Lord, Lord Patel, will speak at the end of this debate. I hope he mentions his House of Lords committee report from 2017. It argued that the absence of any comprehensive, national, long-term strategy to secure the appropriate skilled, well-trained and committed workforce that the health and care system will need during the next 10 to 15 years represented

"the biggest internal threat to the sustainability of the NHS."

Amendments 20 and 21 post the way for a national authority to be required to publish a report on how skill shortages are being met and how we are investing domestically to address this shortage and upskill existing staff. I hope the Minister will be sympathetic.

Baroness Bennett of Manor Castle (GP): My Lords, I shall speak chiefly to Amendments 20 and 21 in the name of the noble Baroness, Lady Hayter, to which I have attached my name. These amendments are also supported by the noble Lord, Lord Hunt, and the noble Baroness, Lady Finlay, which gives them both cross-party and non-party backing. I have mentioned that all noble Lords received a letter yesterday from the noble Lord, Lord Grimstone, and the noble Baroness, Lady Berridge, with her Department for Education hat on, about the Bill and the skills strategy. Its second paragraph says:

"Let me reassure you the Bill is not a short cut to addressing skills development for the UK."

We can see that the Government have really understood some of the deep concerns that have been expressed by your Lordships' House about this Bill.

The letter makes reference to the Skills and Post-16 Education Bill. I am not going to start its Second Reading now, although we have to look at whether ladening people with more debt is the answer to our skills shortage.

Another sentence in the second last substantive paragraph of this letter says:

"To meet demand across certain regulated professions, we need appropriately qualified professionals from both domestic and overseas sources."

In relation to Amendments 20 and 21 and my earlier Amendment 25, do the Government accept that, particularly for certain key—basic, you might say—professions central to our health and well-being, such as nurses and doctors as a general category, we should be training at least enough medical professionals to meet our needs? That sentence would suggest that that is not something that the Government accept.

I come briefly to a couple of details about these amendments, particularly Amendment 21, which is quite valuable and perhaps adds more than my Amendment 51. They highlight important issues, one of which is in subsection (d), which asks for a report on the number of the professionals in the group being considered who are female and male. It is important that we highlight gender disparities. There has been a lot of discussion about medical professions, but I have interest in both

[Baroness Bennett of Manor Castle]
the farming and the building and engineering areas, where we have huge skills shortages and there are very serious gender disparities in recruitment.

As I listened to the noble Baroness, Lady Finlay, talking about the complexities of modern medical approaches, I was thinking of some of the engineers I have been speaking to recently about the complexity of building ventilation, something that Covid-19 has very much brought into focus and which we clearly need to be thinking a great deal more about. There is a high level of complexity and a high level of skill is required; you have to understand each individual room and each individual climatic environment. It is a very complex area and requires very high levels of skills and training. I think also that when we are thinking about agriculture—we will be talking about this in the Environment Bill and in the agriculture Bill—we are talking about agri-ecological approaches and agriforestry approaches, not just one field of monoculture that you whack the plough over and you whack the sprayer over, but very complex management of ecosystems that requires a very high degree of skills that we simply do not have now. It requires training and may require people being brought in.

I also want to highlight, as the noble Baroness, Lady Hayter, did, retention rates. Of course, nursing is the obvious area, but there is also a big issue in medicine that needs to much more attention. This is a really important amendment. The support for it demonstrates that, as does the Government reaction, but I think we need a much clearer picture of what the Government's overall approach is. Are they determined to meet the challenge of training enough people for our needs?

Lord Lansley (Con): My Lords, I am pleased to follow the noble Baroness, Lady Bennett of Manor Castle, again, and to follow up the points she made about skills shortages. We spoke in an earlier debate about the formula in Clause 2 relating to the condition that there is, in effect, unmet demand. I think that at the time I expressed the view that it was unsatisfactory to define that by reference to unreasonable delay and higher charges. This gives us another opportunity to look at that. I think there is merit in the formula in Amendment 21; I just think we may need to develop it a little and make it very clear that in Clause 2—Section 2, as it will be—where a Minister or the appropriate national authority is considering regulations, the condition is that there is unmet demand in that profession. What is meant by that?

The letter that the Minister sent to the Delegated Powers Committee last week said:

"The Government plans to consider various factors in determining 'unmet demand', and further detail on our approach is provided in the Government's policy statement that accompanies the Bill."

Well, the policy statement, in a very curious paragraph, says:

"Our proposed framework is intended to enable professions to meet the demands placed on them in all parts of the UK without undue cost or delay."

In that particular context, the cost and delay appear to relate to the cost and delay of the regulators. It is rather strange.

The policy statement goes on to say that where they make these determinations, "Considerations for" what they refer to as "priority professions"—in other words, where there is demand for skills from overseas—

"will include: whether the profession is on the shortage occupation list; vacancy levels; workforce modelling and skills forecasting; and whether there are other ways that professions might address shortages … We will allow for these determinations to evolve".

Well, some of those factors are indeed those that the noble Baroness has included in Amendment 21—not completely, but I think we are getting there. So I suggest that the route down which we should go on Report is to amend Clause 2 to say "These are the various factors that appropriate national authorities should consider". It would not be an exhaustive list but of course, in doing so, they should also consult the regulators and the professions in relation to this.

9.30 pm

I say in passing that I wish my late father had been able to listen to the noble Baroness, Lady Finlay of Llandaff, discussing the benefits of the mutual recognition of qualifications for clinical scientists in the European Union, because when he was chairman of the Institute of Medical Laboratory Sciences back in the early 1970s, he spent about three years negotiating mutual recognition of qualifications for laboratory and clinical science between ourselves and the other then European Community member states. I know he would have been very unhappy that we have forgone that benefit.

Where skills shortages are concerned, we are finding our way to a solution. In my experience, the Minister is always receptive to the developing argument. In this instance an amendment on Report, when we get to it, should be one that would give Ministers the flexibility they need when determining what is a shortage profession. They certainly will not define it solely by reference to delay and cost. They will take other factors into account—and should do—including the shortage occupation list, which is of course of their own devising.

I also wanted to speak to Amendment 22, which also has some merit. As the noble Baroness, Lady Hayter, said, we have the benefit of the Grimstone rule, which applies to negotiating objectives. Since the passage of the Trade Bill through this House, that was further reinforced by the Secretary of State for International Trade reiterating and extending it to the International Trade Committee in the other place—so it is firmly entrenched. In so far as international recognition agreements have negotiating objectives, it will clearly apply in the same way.

I want to focus now on what is in subsection (5) of the proposed new clause about publishing an impact assessment on "regulatory independence". Perhaps I might suggest that all this should form part of the Explanatory Memorandum which accompanies any international agreement laid under the Constitutional Reform and Governance Act. I hope the Minister might confirm that that issue will be included in the Explanatory Memorandum when we get to it. I would also emphasise that the Explanatory Memorandum should be very clear about how the international recognition agreements are to be implemented in legislation.

In his letter last week to the Delegated Powers Committee, my noble friend the Minister said that

"all treaties agreed by the UK will be subject to the procedure set out"

in CRaG. He continued:

"It is only after that procedure, and the requisite parliamentary processes have been completed, that this power would be used".

Now once an international recognition agreement has been laid under CRaG, it will be reported to this House, or the other place, and it may be the subject of debate in these Houses.

At that point, it seems really important that in the report of an international recognition agreement it is clear how it is to be implemented in legislation, even if the necessary statutory instruments have not yet been drafted. We need to be very clear about how it is going to work. If it requires primary legislation—or changes to primary legislation—that should be set out very clearly, because it is at that point that the House should take a view as to whether the treaty, or the international recognition agreement, is something that the House would support.

If the House is not going to support it in legislation, it should not agree that it should be ratified. We cannot stop ratification—the other place can—but, certainly, at that stage, Ministers should not proceed with ratification in anticipation of the legislation being enacted if there are likely to be any subsequent parliamentary objections to that. This sequencing is rather important, and I hope that my noble friend will agree that it should mean that CRaG should be very clear about the implementation of legislation, which should proceed after CRaG scrutiny but before ratification. I am sure that we will come back to that at a later stage. Subject to that, I think that there is merit in Amendments 21 and 22.

The Deputy Chairman of Committees (Lord Lexden) (Con): The noble Baroness, Lady Garden of Frognal, whose name is next on the list, has withdrawn from the debate, so I call the noble Lord, Lord Patel.

Lord Patel (CB) [V]: My Lords, I will try to be very brief; I know that the hour is getting late. I will speak only to Amendments 20 and 28, both of which were brilliantly introduced by the noble Baronesses, Lady Hayter of Kentish Town and Lady Noakes.

I will address what the noble Lord, Lord Hunt of Kings Heath, raised about the report of the House of Lords inquiry that I chaired on the long-term sustainability of the NHS. He is right: the key threats to this were the strategy for long-term workforce planning and social care. Neither has been addressed yet.

On Amendment 20, the regulator has no role in terms of workforce planning. As the Minister said, the Government also do not have any role in imposing any regulations on the regulator when it comes to recognising overseas qualifications. The regulator also does not have a role in terms of recruiting professionals from overseas; that is the business of the service. However, as we all agree, the regulations that the regulator makes for assessing qualifications, experience and any other measures of competence cannot be diluted.

I support Amendment 28, tabled by the noble Baroness, Lady Noakes. If the Government were to take powers in relation to any regulations through any treaty, including trade treaties, that might dilute the regulator's role in assessing overseas qualifications, experience and tests of competence, that would be unacceptable. That is the only time that regulators will have a role, in terms of being consulted in relation to workforce shortages.

Lord Purvis of Tweed (LD): My Lords, I first endorse the remarks of the noble Baroness, Lady Noakes, whose comments in this area are very important.

I know that it is not in order in these proceedings to intervene on other Members, but I was itching to intervene on the noble Lord, Lord Lansley, because no one in this Chamber, notwithstanding the Grimstone rule holder, understands the CRaG process more. My question, which I will leave hanging—or convert into a question to the Minister—is as follows. My reading of the Bill is that it does not necessarily mean that an international recognition agreement will be considered a treaty under CRaG. A CRaG definition of "treaty" is any international agreement between member states or an international organisation. It does not include any agreement under an existing treaty—so, if we have a treaty with a country with which a mutual recognition agreement is subsequently signed, that does not necessarily need to go through the CRaG process. The international recognition agreement under this legislation does not necessarily state that that will be the case. My question was going to be on that, but the Minister can get back to me in writing at some stage; the hour is getting late, so he does need to reply today.

This may be of significance when it comes to scrutiny. To take the example of Canada, let us say that a subsequent agreement under the aegis of the Canada agreement expanding the mutual recognition elements would not be considered under CRaG but would trigger the regulation-making power in this area, which means we would still need to consider scrutiny. That is important because, when I looked at what the international recognition agreement stipulates on the activation of these powers, Clause 3(4) refers to

"the recognition of overseas qualifications or overseas experience",

and that is it. It does not include fitness to practise and all the other areas the noble Baroness, Lady Finlay, alluded to, which are currently covered under the statutory protection for regulators to consider the fitness of someone who is applying, including their past record.

I was pleased that my noble friend Lady Randerson and the noble Baroness, Lady Finlay, raised this, because my document of choice for the day—the Department of Health's consultation document—is quite clear on the Government's intention to expand the role of regulators to have wider remit in considering the setting of standards and outcomes for quality assuring education and training, both pre and post-application. Indeed, the regulators would be able to have a view not just on the qualification of an applicant but on the appropriate education and training standards that the person went through to reach that qualification. In my view, that is important for the very point the noble Baroness, Lady Noakes, indicated.

[Lord Purvis of Tweed]

Simply recognising an overseas qualification under an international agreement is way below what our current regulators look at when they take into consideration the standards of the education that led to that qualification. We have had scandals in this country, with Oxford colleges and others, which required the Government to go beyond the previous scandals that simply accepted a qualification. Now we look at the underlying quality assurance of the courses, the programmes of training and the education and training providers. Indeed, the Government say:

"We propose that all regulators should have the power to approve, refuse, re-approve, withdraw approval, monitor and quality assure courses, programmes of training, qualifications and education and training providers. Where relevant, these powers should also apply to post-registration courses, programmes of training, qualifications and post-registration education".

If an international agreement with a country was simply about the recognition of the qualification, that is a diminution rather than a maintenance or enhancement. I think the points have been very well made, and I hope the Minister will be able to respond.

I think that the Minister said "never". I have been in this House for seven years, and Ministers rarely use the word "never". In fact, they never use that word, not least because they cannot bind their successor Governments. I have found that they rarely bind their successors as Ministers—but the Minister did do that. He said that it would never impact on what Governments would tell regulators about how they handled applications; they would never change the wider duties on regulators for the decisions made in an application; and they would not impact on the powers in connection with an application. If that is the case, why are those three specific provisions in Clause 1? Subsection (5)(f) means that the powers will be about a specific person, and that a regulator would

"have regard to guidance issued from time to time by a specified person"—

as in the Minister—

"when determining an application".

Subsection (5)(g) refers to a

"provision as to the other duties of a specified regulator in connection with an application".

Subsection (5)(h) likewise refers to a

"provision as to the powers of a specified regulator".

So if the Minister is right that these regulations would never be used to do it, why are they in the Bill? I think that, as we heard under the previous group of amendments, they should be taken out.

9.45 pm

I wanted to raise something with regard to the points raised by the noble Baroness, Lady Hayter. She made the case very well with regard to the Government really now needing to provide the list of the regulators that the powers will be used for for the restrictions. The Government either know and are not telling us or, if they do not know, how are they planning to meet the demand that they say is there?

At Second Reading, my noble friend quoted a former US Defence Secretary saying that there are known knowns and known unknowns. But through the Government's scheme we have the shortage of occupations list, and we have the Government indicating in their policy statement how they are going to move towards defining need. Page 9 of the policy statement, in the section "Meeting skills demands"—and in my mind this is a bit of a giveaway—says:

"There are several professions which have high demand for labour supply, and which require professionals from overseas to deliver important domestic services."

That is the reality of what the Government are wanting to use this for and, therefore, this is in their policy statement. We know that in the impact assessment the Government are forecasting through the Home Office—because it is from the Government—a 70% reduction in EEA applications. That is through the new skilled worker visa system from the Home Office. So it is not just the case, as my noble friend indicated, that we are likely to see a reduction in those existing workers carrying on working; the Government themselves have deliberately got a new system to reduce those applications coming in. As we know, that will create a very considerable problem.

But it is even worse than that, because the impact assessment says:

"There are over 90 regulators which regulate over 140 professions not likely to be included in the new framework".

So we have the entire list of the shortage and the expanded use of defining what the demand is going to be but, as the Government say, there are 90 regulators of 140 professions that will not be covered in the framework. I do not know how the Government intend to meet the demand in those areas. If you add the combination of the new restrictive measures of the Home Office for EEA staff, plus the fact that 90 of those are not going to be in the framework, can the Minister confirm how we are going to meet the demand?

Lord Grimstone of Boscobel (Con): My Lords, I start by thanking the noble Baronesses, Lady Hayter of Kentish Town and Lady Finlay of Llandaff, the noble Lord, Lord Hunt of Kings Heath, the noble Baroness, Lady Bennett of Manor Castle, and others—and my noble friend Lady Noakes, of course, for tabling these amendments.

I am very conscious that noble Lords have dug very deep in this debate and that my answers, particularly at this time of the evening, will not necessarily do justice to the questions that they have asked. Where that is the case, I shall be writing to noble Lords as soon as possible after this debate.

I particularly thank the noble Lord, Lord Purvis, for reminding me that "never" should never be used by a Minister. I have learnt in my time in your Lordships' House that it is always wise to take the advice of the noble Lord—so I will do so and, with permission, substitute "hardly ever" for "never" in that instance. I am particularly indebted to him for having invented the "Grimstone rule" in our many debates on the Trade Bill.

Amendment 17 seeks to change the condition set out by Clause 2. Noble Lords do not need me to repeat yet again the purpose of the clause. Demand for the services of a profession includes, but is not necessarily synonymous with, a skill shortage. For example, it could allow consideration of whether consumers can

access a service without a long wait or having to pay unreasonably high fees. I completely and utterly endorse the idea that the Bill is not a shortcut to addressing skills development for the UK and does not replace work to boost domestic skills. I endorse the importance that the noble Baroness, Lady Bennett of Manor Castle, attaches to that. The Government have published a *Skills for Jobs* White Paper and introduced the Skills and Post-16 Education Bill to provide the legislative underpinning to those reforms. Alongside those reforms, it is appropriate that Clause 2 uses a broader condition. The amendment also relates to the implementation of international agreements. However, those powers are already provided by Clause 3. I fear that a reference to them in Clause 2 risks conflating two different issues: trade and skills shortages.

The noble Baroness, Lady Hayter of Kentish Town, has set out the purpose of the report proposed in Amendment 21. In determining whether Clause 2's condition is met, decisions will be informed by much of the information suggested in that amendment, where available. There is a requirement in Clause 8 of the Bill for regulators to publish information, including the number of individuals who have become entitled to practise the profession. I hope that this satisfies the need to have such information on record. While I value the outcomes that these amendments seek to deliver, they are not necessary. Therefore, I would ask that they be withdrawn or not moved.

I turn to Amendment 20, which the noble Baroness, Lady Hayter of Kentish Town, has explained fully, and I will not repeat that here for brevity. As I have said in relation to earlier questions from noble Lords, I am committed to ensuring that regulators and other interested parties are fully engaged on any regulations brought forward as a consequence of the Bill. I recognise and support the objectives of the amendment. However, there is already engagement planned in determining which professions meet the condition set out in Clause 2. In answer to the specific question the noble Baroness asked, I have already met the Bar Council once, but I am happy to do so again following this debate. I can also confirm to her that the shortage test is granular and is therefore at the level of the speciality, as opposed to some kind of overall definition of medical professions.

Amendment 22, tabled by the noble Baroness, Lady Hayter of Kentish Town, would place requirements on the Government around consultation on international agreements that involve provisions on professional qualifications. These include publishing negotiating objectives, consulting regulators, and reporting and producing impact statements on the professional qualifications provisions and their effects at certain stages. In all negotiations, a key concern for the Government is ensuring the autonomy of regulators within those international agreements and protecting UK standards. I have already spoken about my commitment to engagement, so let me put on record some examples. The Government have recently launched public calls for input on trade negotiations with India, Canada and Mexico; and they engage widely through the trade advisory groups and the BEIS-organised regulator forums.

The Government are committed to a transparent and inclusive trade policy. This includes through consultations on proposed new FTAs. Before negotiations commence, the Government publish economic scoping assessments on the impacts of FTAs. Indeed, we recently published pre-negotiation information notes on India, Mexico and Canada. Before any final deal, impact assessments considering the impact on different sectors and bodies will be published and laid before Parliament prior to ratification, as with the UK-Japan agreement.

In answer to the noble Baroness, Lady Randerson, I say that the Trade Act 2021 provides for the implementation of provisions for the recognition of professional qualifications included in UK trade agreements with countries with which the UK signed agreements as of 31 January 2020. However, it provides for the ability to amend primary legislation in respect of these agreements only if it is retained EU law. Additionally, those powers may expire after five years, whereas it is anticipated that, for example, MRAs formed as part of trade agreements may need to be implemented well beyond this limited period—especially in light of the lengthy timeframes that MRAs typically take to finalise.

In response to my noble friend Lord Lansley's point about how scrutiny processes should work in relation to these agreements, I have to say that he and I generally see eye to eye on the sequences of these scrutiny arrangements and how they should operate. I understand the interesting point that the noble Lord, Lord Purvis, makes about CRaG coverage. I will look into that and write to him. I believe that the additional requirements set out in this amendment are disproportionate, as their objectives are being delivered already. I therefore hope that the noble Baroness will not press her amendment.

Finally, I turn to Amendments 26 and 28 tabled by the noble Baroness, Lady Hayter of Kentish Town, and my noble friend Lady Noakes. As I have mentioned previously, I strongly support regulator autonomy. However, ensuring the preservation of that regulator autonomy to determine who should practise is best achieved through the agreements themselves. Clause 3 will simply implement those agreements. The limit of the Government's ambitions on professional qualifications is well illustrated in the recent agreement with the EEA EFTA states. Although ambitious, it respects the key priority of regulatory autonomy to assess applicants and determine who should practise. Under that agreement, the autonomy of regulators and national authorities to set standards and reject applicants who do not meet them is maintained.

For most trade partners, we are more likely to agree mutual recognition agreement frameworks. I am concerned that these amendments could create issues if a regulator wishes to enter into a binding recognition agreement that, for example, required the contracting regulators to recognise specified qualifications. In this circumstance, the amendment tabled by my noble friend Lady Noakes, although no doubt well intentioned, would render implementation through regulations made under Clause 3 impossible. Meanwhile, the amendment tabled by the noble Baroness, Lady Hayter, would result in uncertainty on this point, depending on whether this was construed

[Lord Grimstone of Boscobel]
as undermining regulator independence or autonomy. These amendments could therefore undermine regulator autonomy, rather than preserve it, by restricting what agreements reached by regulators could be implemented under Clause 3. On that basis, and in conclusion, I ask the noble Baronesses not to press their amendments.

The Deputy Chairman of Committees (Lord Lexden) (Con): I have received one request to speak after the Minister. I call the noble Lord, Lord Fox.

Lord Fox (LD): I will be very brief. In his response, the Minister said that the calculation for shortages would be granular. Whether it is because it is late or because I am stupid, I do not really understand what that means. Perhaps he can add it to his correspondence list. In that regard, it will help greatly if the letters that the Minister has promised can come before the next day in Committee, where possible, because it will certainly lubricate the process.

10 pm

Lord Grimstone of Boscobel (Con): I thank the noble Lord for that point. I think that I can answer the first point immediately because it comes back to the question asked by the noble Baroness, Lady Hayter. She wondered whether it would be at the level of, say, the medical profession rather than at the level of a specialty within that profession, such as anaesthesia. On letters, we will do our best to get them out quickly. It is slightly irritating that we have our next day in Committee as quickly as next Monday, but we will certainly do our best.

Baroness Hayter of Kentish Town (Lab): I thank the Minister for that. On letters, I know that he is backed by many civil servants and colleagues. He is looking at the whole of my office at the moment—me—so could he not expect us to go to the Library and find things? When he is writing to one person who has asked a question, can he automatically circulate the letter to us because I am afraid otherwise we have no way of seeing it? That would be very kind.

I thank everyone who has contributed to this debate, which I have found really useful. The Minister is not going to like what I say, but there you are. The comments made by the noble Lord, Lord Lansley, and the noble Baroness, Lady Noakes, will help in the redrafting, but I think it is only fair to say to the Minister, nice try, but he can be fairly sure that three groups will be brought back on Report. One will be about the autonomy of regulators. They should not be forced to something. It has to be said somewhere that no trade agreement can underpin them. We can take advice on where it goes.

On the second one on skills, we will want some assurances that other things are going to be done and this will not be the immediate device for filling skills. I think that is in Amendments 20 and 21. We definitely want to look at this again. On skills, I very much welcome the clarification about granular. If I understood what the noble Lord, Lord Patel, said earlier, specialists —be they specialist registrars or consultants or members or fellows of the royal colleges—are awarded the specialisms by the medical royal colleges. I get a nod from across the Committee. The colleges are not the regulator, that is the GMC. I am going to keep out of that and leave it for the specialists. I am sure the Minister will need to discuss that with the medics. It is welcome that he says it will be granular, but then it will not be a regulator which is able to do that because, I think I am right in saying, the medical royal colleges are not regulators in this sense.

The third element was international agreement, which was covered by Amendment 22. Although we may want to look at the detail of that, I think that putting the Grimstone rules into this piece of legislation will be important. For the moment though, having said thank you for the answers but we will be still back, I beg leave to withdraw the amendment.

Amendment 17 withdrawn.

Amendments 18 to 21 not moved.

Clause 2 agreed.

Amendment 22 not moved.

Clause 3: Implementation of international recognition agreements

Amendments 23 to 28 not moved.

House resumed.

House adjourned at 10.04 pm.

Grand Committee

Wednesday 9 June 2021

2.30 pm

Arrangement of Business

Announcement

2.30 pm

The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab): My Lords, the hybrid Grand Committee will now begin. Some Members are here in person, respecting social distancing, others are participating remotely, but all Members will be treated equally. I must ask Members in the Room to wear a face covering, except when seated at their desk, to speak sitting down and to wipe down their desk, chair and any other touch points before and after use. If the capacity of the Committee Room is exceeded or other safety requirements are breached, I will immediately adjourn the Committee. If there is a Division in the House, the Committee will adjourn for five minutes.

I will call Members to speak in the order listed. During the debate on each group, I invite Members, including Members in the Grand Committee Room, to email the clerk if they wish to speak after the Minister, using the Grand Committee address. I will call Members to speak in order of request. The groupings are binding. Leave should be given to withdraw amendments. When putting the Question, I will collect voices in the Grand Committee Room only. I remind Members that Divisions cannot take place in Grand Committee. It takes unanimity to amend the Bill, so if a single voice says "Not Content" an amendment is negatived, and if a single voice says "Content" a clause stands part. If a Member taking part remotely wants their voice accounted for if the Question is put, they must make this clear when speaking on the group.

Leasehold Reform (Ground Rent) Bill [HL]

Committee (1st Day)

2.31 pm

Clause 1: Regulated leases

Amendment 1

Moved by ***Lord Blencathra***

1: Clause 1, page 1, line 6, leave out paragraph (b)

Lord Blencathra (Con) [V]: My Lords, I will, for a change, be very brief, not least because there are a number of amendments in this group in the name of my noble friend Lord Young of Cookham which give a practical way forward and are far superior to mine. I declare a personal interest as someone who pays £602 ground rent per annum on my London flat. While that is a disgraceful rip-off, for no services given, it pales into insignificance compared to the horror stories I heard at Second Reading about leaseholders hit with escalating ground rents running to tens of thousands of pounds.

At Second Reading, I attempted to use mockery to draw attention to the fact that the English leasehold and ground rent laws are an absolutely prehistoric abomination which should not exist in a top G7 country these days. I also said that I fully support this Bill and will do nothing to hold up its becoming law. The only problem is that it does not go far enough and does not deal with the injustices for all those caught up in the current ground rent racket. The peppercorn rent solution, ridiculous though that term now is, does in fact give justice to all future leaseholders, and I welcome that. Amendments 1, 2 and 11 simply apply that same just principle to the current racket. If it is right and just that all future leaseholders, who have not lost a penny, are protected from this evil racketeering, then surely it is far more important to deliver justice to all those who are being ripped off at present, some for extortionate sums, as the House heard at Second Reading. Amendments 1 and 2 simply say that all current ground rents will become peppercorn rents, just as the Bill does for future rents. Amendment 11 offers an alternative, setting a ceiling on the amount which may be demanded in ground rent per annum and giving a refund to leaseholders who are being ripped off by ground rents above £1,000 per annum.

I suspect that my noble friend the Minister will say that this is a very complicated subject, that the Government are working on solutions and that we will see the full details next year in the leaseholders Bill. I accept that my amendments take an absolutist, purist approach, but I do like the detailed, sensible amendments tabled by my noble friend Lord Young of Cookham, which may offer a compromise—letting leaseholders buy their freedom. As my noble and learned friend Lord Mackay of Clashfern will confirm, since he is a far better scholar of ancient Roman law than I ever was, in ancient Roman times slaves could buy their freedom, but very few could afford to buy their manumission. Most were freed by testamentary manumission—that is, in the will of their master—and Caesar Augustus regulated the system. So I call on my noble friend the Minister to become the new Caesar Augustus and set free the millions of leaseholders still paying their salarium.

If the Minister cannot accept my amendments, I would like to hear exactly what is wrong with Amendments 7, 8, 12, 17 and 18, proposed by my noble friend Lord Young of Cookham and Amendment 5 in another group, in the name of my noble and learned friend Lord Mackay of Clashfern. They seem to me to be an excellent way to remove this 800-year-old injustice, bring justice to leaseholders and not deprive freeholders of some of their entitlements. I beg to move.

Lord Young of Cookham (Con): My Lords, I will speak to Amendment 12 and its consequential Amendments 7, 8, 17, 22 and 23. Their effect is broadly the same as Amendments 1 and 2, in the name of my noble friend Lord Blencathra, whose speech I commend. Whereas he was able to express himself in four lines, I am afraid that my amendments have taken up four pages. The amendments also achieve the same as Amendment 5, which we will come to later, in the name of my noble and learned friend Lord Mackay. However, his amendment reserves all the detail set out

[Lord Young of Cookham]
in mine to the discretion of the Secretary of State, in regulations, and is time-limited. The amendments standing in my name, if accepted, would give a right to buy out ground rents for ever, beginning on 1 January 2023.

As my noble friend Lord Blencathra has just said, the Bill as drafted applies only to future leases, coming into force on such a day as the Secretary of State may appoint by regulations. It does nothing to help existing leaseholders or anyone who buys a lease with a ground rent before the commencement date, but it is government policy that existing leaseholders should have the right to buy out their ground rents. I refer to the Written Statement by the Secretary of State on 11 January this year:

"I am confirming that the Government will give leaseholders of all types of property the same right to extend their lease as often as they wish, at zero ground rent, for a term of 990 years."

Later comes the crucial commitment:

"We will also enable leaseholders, where they already have a long lease, to buy out the ground rent without the need to extend the term of the lease."

The obvious question for the Minister, raised by these amendments, is why the Leasehold Reform (Ground Rent) Bill does not deliver government policy on ground rents. Why should we have to wait for the next piece of legislation to honour the commitment? On waiting for promised legislation, I am once bitten, twice shy. As Opposition spokesman in another place, when the hereditary Peers were removed, I was assured by the then leader of the House that stage two of House of Lords reform would be in place for the first round of elections to your Lordships' House, by 2001. Twenty years on, I am still waiting.

There is still no firm commitment from the Government on when the Bill will come into force and, the longer the Government leave setting a date, the greater the risk that new monetary ground rents will continue to be created. The Government could stop this by indicating even a provisional date for this legislation to come into force, which would shift the bargaining power in favour of prospective purchasers of leasehold properties. That is why Amendment 22, in my name, prescribes a date of 1 January 2023 for this right to buy out ground rents to come into force.

The case for giving existing leaseholders this right was well made by the Law Commission. They took head on the counterargument that this right is unnecessary because leaseholders can extinguish the ground rent by extending their lease. I quote from Law Commission paper 387, entitled *Leasehold Home Ownership: Buying your Freehold or Extending your Lease*. Paragraph 3.63 of the consultation paper states:

"we explained that the 1993 Act right to a lease extension has been criticised for requiring leaseholders simultaneously to extend the term of their lease (and therefore pay the landlord for the deferral of the reversion) and to extinguish the ground rent (and therefore pay the landlord the value of the remainder of the original term). We noted suggestions that leaseholders should be able to choose between extending their lease, extinguishing their ground rent, or both, in order to reduce the premium payable on the lease extension."

The paper continued:

"Support for the introduction of a right to extinguish the ground rent under a lease without extending the lease (whether alone, or together with the right discussed immediately above) was widespread. Consultees who supported this option included various professional bodies, the majority of commercial freeholders, a majority of firms and individual professionals, and a significant majority of leaseholders and other individuals."

I continue to quote from the report, which states:

"Generally, consultees' reasoning for supporting a right to extinguish the ground rent without extending the lease focussed on the predicament of leaseholders who are subject to onerous or doubling ground rents in long or very long leases. Both professionals and leaseholders explained that these leaseholders have no need to extend their lease term (which may be as long as 999 years), but wish to buy out their ground rent before it becomes onerous, and/or to make their property saleable. It was said to be 'pointless' to require them to claim an extended lease term purely to solve this problem."

The report goes on to say:

"Several consultees considered that, given the forthcoming ban on ground rents in the majority of new leases, the right to extinguish ground rent in an existing lease (which is very long and does not require extending) would help to avoid the creation of a 'two-tier' market, consisting of leases with ground rent and those without. This argument was most persuasively made by a number of leaseholders from 1 West India Quay Residents' Association. Pointing out that media coverage of the ground rent scandal has led prospective buyers to scrutinise ground rent obligations much more closely, Antonio De Gouveia wrote: 'If Government is to cap or eliminate ground rents on new leases (which we think they will do), then there is even more reason for new legislation from the Law Commission to enable all leaseholders in our building to buy out their ground rent (onerous or not)'."

I note in passing that the point about a two-tier market was made in the helpful briefing for the Bill from the Law Society. This all led the commission to its conclusion in paragraph 3.108:

"We recommend that leaseholders who already have very long leases should be entitled to extinguish the ground rent payable under their lease without also extending the term of the lease."

My amendments deliver that. They have been drafted so that costs are kept to a minimum. No valuation is required because proposed subsection (6) of Amendment 12 sets out the terms, based on Law Commission examples. There is no prejudice to enfranchisement rights and timescales are set out to prevent any delay by the freeholder.

My amendment also addresses a different complaint raised by the Law Commission, namely that the current process for statutory leasehold extensions is too long and cumbersome. Landlords have options to game the system to make it as difficult as possible for leaseholders to exercise their rights. Look at paragraph 2.23 of Law Commission report 392.

My Amendment 12 therefore seeks to give effect to the Law Commission's recommendations for simplification by proposing a straightforward way in which to buy out monetary ground rents without the need for notice and counter-notice, as exists under the current legislation. There will be nowhere for unscrupulous landlords to hide if the approach suggested in this group of amendments is adopted.

My Amendment 17 provides for the First-tier Tribunal to have jurisdiction in dealing with any issues arising from the exercise of the rights given by Amendment 12 and mirrors the provisions in Clauses 13 and 15. Amendment 12 goes further, in that it would also permit the tribunal at its discretion to award damages to a tenant denied rights to buy out a monetary ground rent, which is intended to serve as a deterrent to landlords denying such rights. Amendment 22 brings

in the commencement date of 1 January 2023, giving those involved time to make the necessary preparations. Amendment 23 is consequential.

Why not use the Bill to give an option to millions of existing leaseholders, rather than wait for another Bill that deals with ground rents? There is no disagreement on policy, and here we have the vehicle. I await the response from my noble friend the Minister and hope that he will set the tone for this Committee by looking favourably on this first group of amendments.

2.45 pm

Lord Stunell (LD) [V]: My Lords, I shall speak in particular about Amendment 1, and the consequential amendments tabled by the noble Lord, Lord Blencathra. It was great fun to listen to him on Second Reading, with his eloquent flow sweeping away the whole caboodle of leasehold legislation and starting again from square one. That was spoken like a true reformer and radical, which, in his heart, I know he is.

Today the noble Lord was a bit more circumspect, but no less radical, with amendments that would not just reform the system but abolish it completely, starting on day one. That is an attractive proposal, especially to leaseholders—but even more so to lawyers. If implemented as drafted, it would leave a trail of wreckage that should keep lawyers employed for many a long year.

However, I suspect that, as befits a former Chief Whip in the other place, the noble Lord has carefully done his homework behind the scenes. No doubt he has had a word with the Minister and secured a commitment to bring back a government-led amendment on Report to comprehensively reform the entire leasehold regime and implement the recommendations of the Law Commission, and in the meantime to freeze the granting of lease extensions on grossly inequitable terms. If that is so, my noble friends and I will be ready add our names to that amendment, when it comes along.

However, perhaps the noble Lord's quiet chat with the Minister did not go quite as well as he had hoped, and no such agreement was forthcoming—which may be why today he deferred to the amendments tabled by the noble Lord, Lord Young. Among those, Amendment 12, in particular, sets out in impressive detail a somewhat equivalent plan, as the noble Lord, Lord Young, has just spelt out. At first reading, that amendment would seem to provide less of a free lunch for lawyers than Amendment 1 would, and it is sensible, measured and proportionate, as one would expect from the noble Lord.

In his explanatory statement, the noble Lord describes Amendment 12 as a probing amendment. We certainly welcome that probing of the Government's position and intentions. We too are concerned by the slow pace of reform, and the fact that the current Bill does nothing for existing leaseholders. Instead, the Government are offering jam tomorrow—or possibly the day after tomorrow—for current leaseholders. At least the noble Lord's amendments offer us a sniff of jam today. I would encourage the Minister, in his reply, to explain fully to us exactly when he will come back with clear plans to achieve the reforms that the noble Lord has already drafted for him. I thoroughly endorse the noble Lord's concerns about the gaps that could open up.

We should remember that leaseholders' organisations desperately want this Bill in place, and the Liberal Democrats support their intentions. There should be no delay in its passage. But the Minister owes it to those leaseholders to commit to delivering a comprehensive reform in the shortest possible time. That is not only the right and equitable course of action, but the best way of avoiding disruption to the market.

The noble Lord, Lord Young, referred to the Law Society's briefing on the Bill. I draw noble Lords' attention to the Law Society's belief that leasehold purchasers and their mortgage providers will, understandably, steer clear of taking out leases under the existing legal framework if they can find a much more favourable lease elsewhere in the market, under the new terms in the Bill. That means that existing leaseholders who are trying to sell will be put at a double disadvantage—not only having to pay outlandish charges but having more difficulty in selling their homes than if they had benefited from the new terms.

That risk to a stable market gets worse the longer the second stage of the reform is delayed. Perhaps the fact that that the noble Lord, Lord Young, referred to hereditary Peers' legislation speaks to that foreseeable risk of endless delay. Two experienced senior members of previous Conservative Governments have tabled amendments in very similar terms to try to pre-empt that delay—which may be some kind of hint that they lack trust in the Government's commitment to deliver on the second stage. In the Minister's reply we need to hear exactly when he, as the responsible Minister, and the Government he represents, will bring forward that follow-up legislation, which we believe is now a pressing priority.

Lord Naseby (Con) [V]: My Lords, I apologise that I was not able to take part at Second Reading. Some of your Lordships know that my wife was taken very ill with Covid—in fact, we nearly lost her—and I decided to take her away for a rest. I am pleased to say that she is now pretty well.

There are a couple of interests that I ought to declare. I am a vice-chairman of the Shared Ownership Housing APPG. I have taken a particular interest in care homes, so I will be addressing the Committee on Amendment 4. My friends know that I was chairman of the housing committee in the London Borough of Islington from 1968 to 1971, when there was a fair number of lease challenges. Finally, I say to my noble friend on the Front Bench that I welcome the principle behind the Bill and thank Her Majesty's Government for actually moving things forward.

I do not want to speak for very long on any of the amendments. I understand my roommate's enthusiasm, which he has for everything in life, and he does cut through the rubbish, usually. It is nice to see someone cut through, bearing in mind that this is a pretty revolutionary Bill to start with. That is one end of the spectrum, and that covers Amendments 1 and 2. The noble Lord, Lord Young of Cookham, went into it in great detail. I read with great care what he said at Second Reading and the Government would do well

[Lord Naseby]
to do the same—I am sure they must have done. He covered what might well be in the next Bill. It should be looked at extremely seriously.

I am concerned—I wrote it down before the noble Lord spoke this afternoon—about the position of existing leaseholders when they come to sell. I think that is a fair question, which the Labour Front Bench raised. That problem will be there unless some action is taken. It certainly cannot wait until the second half of this problem is dealt with in another Bill.

One other area concerns me: the situation, which is not uncommon, particularly in the provinces—I am speaking today from Sandy in Bedfordshire—where a landlord offers a 25-year lease on a residential property at a market or rack rent. That is pretty common in mixed-use scenarios; for example, a shop with a flat above, where the owner wants the commercial and residential parts to be leased out concurrently. In those sorts of circumstances, it seems—some would say absurd but that might be going too far—unusual and strange to expect just a peppercorn rent when a lessee is getting the benefit of living in or renting out the property.

The amendments in this group are absolutely crucial and I too look forward to the Minister's response.

The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab): I call the next speaker, the noble and learned Lord, Lord Mackay of Clashfern. Lord Mackay, could you unmute, please? I will move on to the next speaker, the noble Baroness, Lady Grender.

Baroness Grender (LD): My Lords, the debate so far has underlined the urgent need for reform across the entire leasehold sector and has reflected some of the strongly made arguments at Second Reading. In particular, many of the amendments are about the 4.5 million current leaseholders who are still captured by this unfair legacy and the failure to shift to commonhold, initiated in the 2002 Act.

I start by taking this opportunity to thank the Minister for discussions in advance of Committee and to stress our strong support for the Bill's intentions. Its primary purpose is to chop off the head of the snake: the continuing supply of investment opportunities for freeholders on which they can base their borrowing for the next batch of unsuspecting leaseholders. I therefore hope that it goes through the parliamentary process with considerable speed. That said, what we cannot afford is any loopholes that enable this "something for nothing" industry to continue. When we debate later clauses, noble Lords will see that I believe there is a significant loophole that will be exploited: informal extensions, more ON which later.

As the relevant Committee, it is vital that we continue to remind ourselves of the shocking unfairness out there for many leaseholders. Last month, the *Daily Mail* featured a story about Carole Patterson, aged 44, an administrator in human resources whose ground rent on her flat in south London doubles every five years, rising to £1 million a year in 50 years' time. The freeholder, MEA Real Estate Ltd, is prepared to waive the ground rent for a one-off payment of a whopping £100,000, described as

"a quarter of the value of the property".

Given the value of that property, it is now almost impossible for her to sell on. Currently, leaseholders exist in a climate that was probably signed off by a solicitor, supposedly on their behalf. For all the Caroles, it is critical that this reform begin, and soon.

I therefore thank the noble Lords, Lord Kennedy and Lord Lennie, for Amendment 18, which I have also put my name to. It addresses the critical need for a swift resolution to the problem of existing leaseholders, and therefore asks for the next Bill to be delivered in draft form as quickly as possible. We recognise that the Law Commission has suggested a longer period, but the Government do not always do what it recommends. At present, a third of Law Commission recommendations are not implemented, some due to timing, but others because the Government have decided not to implement them. At certain points, politicians need to decide and act. With chronic unfairness built into the system for 4.5 million leaseholders, this is one of those moments.

Regarding the readiness for this change on the part of the freehold investment sector and the ongoing oligopoly of housebuilders, it is possible to argue that, since the leasehold reforms of 2002 or perhaps earlier, they have been forewarned that the clear intention over time of various Governments, of all parties, has been to move out of the leasehold system. If they are not prepared for that scenario, the problem belongs fully with them and not with the Government.

As my noble friend Lord Stunell—also a member of the former Chief Whips club in our own party—said, we of course support the intention of Amendments 1 and 2, in the name of the noble Lord, Lord Blencathra, to move more swiftly to cover all leaseholds. We also support his Amendment 11, which would limit ground rents with a relevant cap of £250 and provide for reimbursement. It is an interesting approach, given that, as I understand it, a property in London with a ground rent of more than £1,000 a year, or of over £250 per annum in the rest of the country, now falls into the definition bracket of an assured shorthold tenancy. That means that for some aspects of leasehold obligations, the courts do not have jurisdiction, especially regarding forfeiture, which was much discussed at Second Reading. I therefore look forward with interest to the Minister's response to this issue.

3 pm

As my noble friend Lord Stunell and other noble Lords said, we also strongly support the elegant solution of the noble Lord, Lord Young of Cookham, in Amendments 7, 8, 12, 17 and consequential Amendments 22 and 23 to achieve the right to buy out ground rent, and we hope that the Minister will give it fair wind. As the noble Lords, Lord Young and Lord Naseby, and my noble friend Lord Stunell all explained, the dangers of the Bill creating a two-tier market and the dangers that that will impose on already struggling leaseholders are significant. Therefore, we see this amendment as an extremely useful contribution to the Bill. For Carole Patterson, who I have already mentioned, and thousands like her, these are significant amendments and we are very happy to support them.

The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab): Before I call the noble Lord, Lord Lennie, I will return to the noble and learned Lord, Lord Mackay of Clashfern.

Lord Mackay of Clashfern (Con) [V]: I am glad to say that I have managed to unmute with the help of the host.

I very much support the principles behind these amendments in this group. If it is wrong to have a new lease with ground rent of the kind that we are concerned with, why is it not wrong to have it in existing rents? That is what we need to address, and now, if at all possible, although I am equally strongly in favour of getting the Bill on the statute book as soon as possible and I would not like any delay to result from the other considerations. Nevertheless, these other considerations are very strong and I cannot see why it would not be possible to incorporate dealing with them in the Bill as well as preventing another wave of the problem.

I am very much in favour of my noble friend Lord Young of Cookham's Amendment 12 and all the complementary ones around it. I had the responsibility a long time ago of looking at this question of leasehold and I confirm what has just been said—that it was certainly my idea to try to get rid of it altogether. I was brought up under the Scottish system, where Scottish tenement property is capable of being owned outright without the necessity of a lease. I also had the experience of later seeing the feu, or feudal, system abolished. It had a rent, called a feu duty, which was part of the basic responsibility of the title, and the Government of the day decided to get rid of it altogether. Of course, that meant that something had to happen to the feu duty. It was capitalised by a very simple formula that the feuer had to pay, and so the whole thing finished. I would love to see something like that happen to the leasehold system but I realise that that is a hope beyond immediate realisation. Therefore, my stance is the same as that of my noble friend Lord Young of Cookham—I think I am right in saying that I participated in the Bill when he was concerned with these matters a considerable time ago. I have suggested a small alteration to his way of dealing with the matter which I will explain briefly later.

Lord Lennie (Lab) [V]: My Lords, it was certainly worth waiting for the speech of the noble and learned Lord, Lord Mackay, because we now know we are all batting on the same wicket. As we have heard, Amendment 18, tabled by my noble friend Lord Kennedy and me, in addition to amendments tabled by the noble Lords, Lord Young and Lord Blencathra, introduces the issue of existing leaseholders and brings into question why the Government are not legislating to protect them. To us there seems to be no rhyme nor reason why they are not.

Although the provisions of the Bill are welcome and the Government are right to set future ground rents to zero, they are offering nothing for those tied into existing leaseholds. In 2019, the Ministry for Housing, Communities and Local Government estimated that one in five homes in England were leasehold dwellings. That equates to approximately 4.5 million properties, and the number will have grown since. Many of those households, tied into leasehold arrangements, are subjected to ground rent arrangements overwhelmingly balanced to benefit landlords—what the noble Lord, Lord Blencathra, called legal racketeering. Some leaseholders are being charged extortionate amounts and others have seen their payments rise exponentially.

In fact, the Competition and Markets Authority is currently taking action against both Countryside and Taylor Wimpey, which are doubling some ground rents every 10 to 15 years. There is one factor that every household paying ground rent has in common: they receive little to no benefit from paying that sum. The Government should take action for those already stuck in leaseholds and paying extortionate ground rent charges. Amendment 18, tabled by my noble friend Lord Kennedy and me, seeks to address this by ensuring that the Government bring forward further legislation. Can the Minister confirm whether any further legislation is anticipated or planned on this theme and, if so, when?

The purpose of Amendment 9 is to raise the question of remedial costs for leaseholders. The crux of this matter is that the Government have failed to introduce legislation to deal with the fact that building owners are attempting to pass on the cost of remedial work to leaseholders. Despite promises from Government Ministers that leaseholders would not be forced to pay to fix fire safety problems that were not their fault, the issue is still ongoing. I have a nephew who is a leaseholder in a block of flats in Hackney. The freeholder, Southern Housing, has simply failed to engage with the Government. It has not applied for any grant aid to assist to fix the fire safety problems, leaving the leaseholders potentially to bear the cost. We are talking here about tens of thousands of pounds per household. Can the Minister confirm when legislation will be introduced to prevent leaseholders facing those extraordinary costs?

Amendment 10, meanwhile, raises the issue of service charges in shared ownership properties. The purpose of the amendment is to highlight the sky-high fees that many residents in those properties are being charged, often with little return. Will the Minister use this opportunity to explain what steps the Government will take to help those in shared ownership agreements who are facing extortionate service charges?

Amendment 11 raises the important point of informal arrangements, which can be used to bypass the central provisions of the Bill. I look forward to clarification from the Minister in this area, and on the questions raised by Amendments 22 and 23, tabled by the noble Lord, Lord Young. I understand that the purpose of the amendments is to give time to prepare for all involved parties, but we should consider that the Bill's proposals have been discussed for some time already. None the less, I trust the Minister will respond to the points made by the noble Lord.

The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con): My Lords, we have heard a great deal today about the difficulties facing some existing leaseholders, particularly in relation to ground rent—poignantly in the speech by my noble friend Lord Blencathra and, with some powerful examples, from the noble Baroness, Lady Grender.

[Lord Greenhalgh]

We are very concerned about leases with high and increasing ground rents. We are aware that such onerous conditions affect not only the affordability of living costs for affected leaseholders but their ability to sell or even re-mortgage their properties. That is why we asked the Competition and Markets Authority to conduct an investigation into potential mis-selling and unfair terms in the leasehold sector. This included the issue of onerous ground rent. Following a detailed investigation, in February last year the CMA published its report, which estimated that the issue of doubling ground rent has affected more than 18,000 leaseholders. In March this year, it informed developers that they may be in breach of the law. Noble Lords will agree that this is very serious indeed, and the Government welcome the CMA's continued efforts to bring justice to home owners affected by unfair practices.

Our commitment to existing leaseholders certainly does not end there. As I made clear at Second Reading, this is just the first of a two-part legislative reform programme that will improve the leasehold system. Further legislation later in this Parliament will address a range of issues facing existing leaseholders. In answer to the noble Lords, Lord Stunell and Lord Lennie, the aim is to have that next stage in the third Session.

On 7 January the Secretary of State announced a package of leasehold reforms covering enfranchisement valuation and 990-year leases. This is the first part of our response to the Law Commission's reports on leasehold and commonhold. We will respond to the remaining recommendations in due course. We are absolutely committed to a comprehensive and ambitious programme of reform to create a fairer and more transparent leasehold market, but we need to make sure we get it right. That takes time, which is why we have started with this ground rent Bill, focused tightly on ground rents on new residential long leases.

I turn to the specific amendments before us today that deal with existing leaseholders. My noble friend Lord Blencathra has tabled Amendments 1 and 2. The whole House will have been left in no doubt as to his views of ground rents and the leasehold system following his barnstorming speech at Second Reading. His two amendments both aim to extend this Bill so as to reduce ground rent for existing leaseholders, and we can all understand his reasons for laying them.

I am grateful to colleagues from across the House for their close examination of the issues facing existing leaseholders. However, the decision to focus this legislation tightly on new leases was a very deliberate one. We are working to make the leasehold system fairer and more transparent for leaseholders, but we also need to ensure that we are fair to freeholders. Setting existing leases to a peppercorn raises complex issues and could have negative consequences that may extend beyond the leasehold sector. As just one example of these consequences, your Lordships will be aware that there are pension providers who hold existing investments dependent on ground rent income that were entered into some years ago. These are long-term financial commitments that service the needs of many of our elderly citizens.

I note again that we are in the throes of planning to bring forward further legislation on leasehold reform, and the changes to the valuation process will make a real difference for many existing leaseholders, especially those with fewer than 80 years remaining on their lease.

I come to the six amendments tabled by my noble friend Lord Young of Cookham regarding the right to buy out ground rent in pre-commencement leases, Amendments 7, 8, 12, 17, 22 and 23. As noble Lords will know, there is already statutory provision for leaseholders of flats to reduce the ground rent they pay to a peppercorn on payment of a premium when they extend their lease, and leaseholders of houses can buy their freehold and so extinguish ground rent liability that way under existing legislation. The Government are aware that for some leaseholders this may be prohibitively expensive. This is why we have announced forthcoming changes to the valuation process that will cap how ground rent is treated, reducing the premium to be paid for leaseholders with onerous ground rents.

In addition, the Law Commission has recommended that leaseholders should be able to choose to pay to extinguish their ground rent without extending their lease, as my noble friend Lord Young mentioned. I can confirm that the reforms we will bring forward in future leasehold legislation will enable leaseholders, where they already have a long lease, to buy out the ground rent without the need to extend the term of the lease. We are considering the remainder of the Law Commission's recommendations and will respond in due course.

I know that my noble friend Lord Blencathra has asked me to be a latter-day Caesar Augustus, but I point out that we have not addressed this in this legislation because reform of enfranchisement and historical ground rents is complex and interlinked. It is important to address these issues together in the forthcoming legislation. The cost of enfranchisement is directly related to ground rents and other components, such as the length of the lease. That is why we are looking to do that in a second tranche of reforms in the third Session of this Parliament. That is the plan.

These planned changes will directly address the issue underpinning the amendments from my noble friends Lord Blencathra and Lord Young. Future leasehold reforms will allow existing leaseholders to pay a more affordable premium and buy out their ground rent when they extend their lease or purchase their freehold. This will be less costly for leaseholders than under the current approach to enfranchisement valuation. I hope that noble Lords will agree that these changes mean that the amendments are not needed, as their effect is being achieved through work beyond the Bill.

3.15 pm

Amendments 9 and 10, proposed by the noble Lords, Lord Kennedy and Lord Lennie, seek to reduce the payment of rent on shared ownership properties in certain circumstances. Shared owners are leaseholders of their property. Most shared ownership properties fall within the terms of the Government's shared ownership scheme and the provider is registered with the Regulator of Social Housing. In the Government's shared ownership scheme, owners have a full repairing

lease and are financially responsible for all maintenance charges and outgoings, in the same way as any other home owner, but also pay a rent on the share retained by the landlord.

As with all house purchases, prospective shared ownership home owners are expected to seek independent legal and financial advice before entering a purchase to ensure that they are fully aware of the responsibilities and financial implications of home ownership. The terms, conditions and respective responsibilities of shared ownership are set out and agreed in the lease. This is a legal contract between the leaseholder and the landlord.

On 1 April, the Government confirmed the new model for shared ownership. This introduces a 10-year period during which the landlord will support the cost of repairs on new-build homes. The law is clear that service charges must be reasonable and, where costs relate to work or services, the work or services must be of a reasonable standard. Under the shared ownership model, landlords can collect rent on their share of the property, and I must reiterate that the Bill will allow them to continue to do so. The effect of these amendments would be to remove the ability of a landlord to receive the rent that they are rightly due on the share of the property that the leaseholder rents. Doing so would be unfair to landlords and undermine confidence in the sector. I therefore ask the noble Lords not to move their amendments.

Amendment 11, raised by my noble friend Lord Blencathra, is clearly a response to the issue of onerous ground rent. As I mentioned, we support the CMA in its important work to get justice for those affected. That is the right and proper process.

Finally, Amendment 18 from the noble Baroness, Lady Grender, and the noble Lords, Lord Kennedy and Lord Lennie, would require the Government to produce draft legislation within 30 days of Clause 3 coming into force for any kind of lease to reduce ground rent to a peppercorn in existing leases. I believe I dealt with that matter when speaking to my noble friend Lord Blencathra's amendments. It is important to state again that leasehold law is extremely complex and we need time to get these reforms right. Although I fully understand the desire for urgency—indeed, I have made this plain in my engagement meetings with the noble Baroness, Lady Grender—with respect, I do not think that seemingly arbitrary deadlines are useful in this context. Indeed, rushing these reforms could be very damaging and counterproductive. Noble Lords can rest assured, though, that reforming the leasehold system is a high priority for this Government.

In response to the noble Lord, Lord Lennie, on fire safety costs, it is quite clear that we need to deal with the issue of strengthening redress mechanisms. That is something we will take forward in the building safety Bill, but the Government's interventions with regard to supporting leaseholders do not require further statutory means. We do not need to put the financing scheme in statute or provide an additional grant; these matters can be done without further legislation.

In order to move on to further legislative action on leasehold reform, we need to get this Bill through as speedily as possible. This is part of the reason why this legislation has been drafted with such a narrow scope. Broadening the scope risks causing significant delay to this important programme of leasehold reform more generally.

The noble Baroness, Lady Grender, raised the issue of the level of ground rent and forfeiture. We have committed to legislating in future to ensure that leaseholders will not be subject to mandatory possession orders for arrears on the ground rent.

I therefore ask noble Lords not to press their amendments.

The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab): I have received a request to speak after the Minister from the noble Lord, Lord Young of Cookham.

Lord Young of Cookham (Con): I am very grateful to the Minister for his reply. I press him on what he said right at the end about the importance of getting the Bill through "as speedily as possible". I accept that, but if it is important that Parliament processes this legislation speedily, is it not then incumbent on the Government to announce an early date for the implementation of the Bill?

Lord Greenhalgh (Con): My Lords, we want to move as speedily as possible but, as I stated in my reply, we do not want to set a deadline for things. We want to get this on the statute book very speedily in this Session; that is why it is so early in this Session. That is my answer.

Lord Blencathra (Con) [V]: My Lords, I am grateful to all noble Lords who have participated in this debate. I feel rather guilty that I am responding when it really should be my noble friend Lord Young of Cookham, who put forward an impeccable case today for the reforms he has suggested.

The one thing that has come through loud and clear to the Minister from all noble Lords is that the current system is totally unsustainable. My amendments are probably not appropriate; I believe the amendments of my noble friend Lord Young of Cookham are. If they cannot be accepted into this Bill, it is desperately important that we get them in the full leasehold reform Bill which we expect next year. If my noble friend wishes to put down his amendments on Report, I will support him; he may not wish to push them to a vote, but perhaps the Government need to see on Report that we are serious about talking about the injustice of the current leasehold system.

My noble friend the Minister has said that this is a difficult area and that he is committed to giving leasehold reform "high priority". If I may say so, the Law Commission is a worthy body, but its problem is that it is full of lawyers; they see leasehold reform as a matter of dotting some "i"s, crossing some "t"s and tweaking an 800 year-old system a bit here and there to make it work better. As politicians—and as politicians in the Commons would say—we find the whole system iniquitous. It is wrong. Perhaps it is those of us from a Scottish background who cannot believe that you buy a property and do not fully own it; it is an extraordinary,

[Lord Blencathra]
wrong system. When the Bill comes next year, we do not want leasehold reform tweaked; we want it stopped for all new contracts.

The wonderful innovation of commonhold failed because we gave developers and other money-grubbing people the choice of continuing with leasehold or commonhold. We thought they would implement common decency and common sense, but they operated a system which made the most money—well, we cannot criticise that; it is inevitable. When the new Bill comes, let there be no choice. Let it be clear that commonhold will be the only system acceptable for all new purchase contracts in future.

That still leaves the problem of current leaseholders. I am very certain that, with Amendment 5 from my noble and learned friend Lord Mackay, the amendments from my noble friend Lord Young of Cookham on a buy-out scheme must be the right direction to go in, because it affords justice to leaseholders who can get out of this wicked system and gives some compensation—too much in my opinion, but who am I to say?—to current freeholders who would demand the right not to be stripped of all their benefits.

On early implementation, I refer my noble friend Lord Young of Cookham to Amendment 26, where I suggest that the Bill should be implemented on Royal Assent. I appreciate that we may need to make exceptions for property for old folks' homes—I am not sure what the current term is for an old folks' home, but I believe that is to be exempted for a couple of years for us to figure out how to do it. The rest of this Bill should be implemented as soon as possible after Royal Assent.

With those words—and my apologies; my camera was off a lot of the time so that my machine did not run down, but I heard all the debate—I am grateful to all noble Lords who have taken part and, in conclusion, emphasise to my noble friend once again that the Government might get away with not sorting out leasehold and ground rents in this Bill, but they will not get away with it next year when the big Bill comes. I beg leave to withdraw my amendment.

Amendment 1 withdrawn.

Amendment 2 not moved.

Clause 1 agreed.

Clause 2: Excepted leases

Amendment 3

Moved by ***Lord Young of Cookham***

3: Clause 2, page 1, line 22, leave out paragraph (b)

Member's explanatory statement

This amendment is to probe the application of the Bill where premises are part business and part residential.

Lord Young of Cookham (Con): My Lords, Amendment 3 in my name is designed to shed light on what the Government mean by premises that significantly contribute to "business purposes". We may move into less turbulent territory in this group.

I begin by asking the Minister a fairly basic question: if ground rents are, as I believe, a feudal anachronism or, in the words of my noble friend Lord Blencathra, "legal racketeering"—a payment for which one gets nothing in return—why are they being banned only for future dwellings and not for all premises? Surely a combination of a lease and a conventional rent would suffice for the commercial sector and we could simply strip Clause 2 out of the Bill entirely. This may go beyond my noble friend's negotiating brief but, if we are to have this distinction, we need some clarity.

By way of background, when I put the Leasehold Reform, Housing and Urban Development Act on the statute book, one of the most contentious issues was the exemption from enfranchisement of mixed-use buildings, with shops on the ground floor and flats above. After a healthy dialogue between the two Houses, when your Lordships' House still had a healthy representation of the country's freeholders and the other place was concerned more with leaseholders who actually had votes, we ended up exempting properties where the commercial use was 25% or more of the total space. That Act was about the collective enfranchisement of a building, whereas this Bill is about individual leases within a building, so the same definition may not work. There is, none the less, the same need for clarity and, with the current definition, I can see scope for argument and the possibility for a freeholder to introduce a ground rent by arguing that the leases in his building qualify for Clause 2 exemption.

Suppose, for example, a new block of flats is specifically designed so occupants can work from home. The developer not only builds in all the relevant infrastructure in each flat but has a communal space on the ground floor that can be hired as a conference room to get around Clause 2(3). Could he then claim exemption and include ground rents in all the leases in the flats?

I was grateful to my noble friend for the time he spent with me on Monday, when he explained that the object of exemption was where a ground-floor shop had a flat above it and it was essential, for the efficient operation of the shop, for the shopkeeper to live above it. Perhaps the parliamentary draftsmen had in mind publicans, who often live above licensed premises. My concern remains that the wording is too loose, so it can provide loopholes and give rise to litigation. I wonder whether, between now and Report, my noble friend could consider an alternative and tighter wording. I beg to move.

The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab): I call the next speaker, the noble and learned Lord, Lord Mackay of Clashfern. Lord Mackay, could you unmute, please? Lord Mackay? Perhaps I can return to him. In the meantime, I shall call the next speaker, the noble Lord, Lord Stunell.

Lord Mackay of Clashfern (Con) [V]: My Lords, I am of the same view as my noble friend Lord Young of Cookham about the difficulty of understanding exactly why business premises of any sort are exempt from this. No doubt there is an explanation. If so, it is necessary to ensure that the precise reason for business premises being exempt should be the basis of their definition. This is my point. I am sorry; I seem to have difficulty in unmuting without help, for some reason that I have not understood so far. Maybe I will gradually learn as the day goes on.

3.30 pm

Lord Stunell (LD) [V]: My Lords, I will simply support the carefully presented argument from the noble Lord, Lord Young, with a case study which also shows a way in which the system might be exploited. On a new housing development outside Leicester, homes have been sold on leases with index-linked ground rents. So too have the parking spaces that go with them; the leases of the parking spaces are separate and also index-linked. There have been endless and, so far, fruitless battles to sort out the situation. Indeed, some leaseholders, facing rising charges and challenging their validity, have been presented with agreements signed with what they claim are forged signatures. Needless to say, they employed, of necessity, the developer's nominated solicitor to advise them when they first purchased. The allegation is that he was a party to the alleged forgery.

Should the Bill—or, rather the next one because, as we have all fully understood, this Bill will not help anybody with an existing lease in Leicester—provide these residents with some relief? The Committee has heard from the Minister that it will, in due course, but how will they stand in relation to separate leases that they hold for their parking spaces? Is it open to a legally hawk-eyed owner of the lease to designate them as commercial? If they come as part of a car park that is also occupied by visitors to local shops, is the car park a commercial one, or does there exist some way of exempting the parking places of residents—not necessarily those living over shops, but those adjacent to commercial premises? Will they be entitled to redeem those leases on the car parking places under the terms of this Bill or its successor, or, in that case, will the evidently unscrupulous developers be able to claim that it is a commercial, not a residential, lease and therefore exempt, and that the accelerating payments can continue?

If the Minister says, "It is a matter of common sense", then I would say that in Leicester it is not. If it will not be the amendment in the name of the noble Lord, Lord Young of Cookham, it certainly needs to be something more than is in the Bill as it is now, setting out clearly that leases ancillary to the proper use of the home will be included in the legislation and there will be no loopholes left for exclusion. It would be good to hear the Minister say that he agrees and will bring a suitable amendment back on Report.

Lord Lennie (Lab) [V]: The purpose of the amendment is to probe the application of the Bill where premises are part business and part residential. High streets across the four nations of the UK include properties that fit this description, and I hope that the Government have drafted the Bill with these in mind. I look forward to hearing the Minister's confirmation of how the Government intend the Bill to apply to premises that are part business and part residential.

I have two questions. I would appreciate it if the Minister could confirm whether the Government have an estimate of how many part-business, part-residential properties could be impacted by the Bill. Will he also confirm what engagement the Government have had with the owners of such buildings as part of the drafting of the Bill?

Lord Greenhalgh (Con): My Lords, I thank all noble Lords for their time on this issue, particularly the noble Lord, Lord Young of Cookham. I am happy to engage with noble Lords further on whether we can make the business exemption as clear as possible.

The Government consulted carefully on the detail that has informed the Bill. During that consultation a small number of areas were identified where there was a justification for the charging of a rent or ground rent for a property. The Bill exempts business leases from the peppercorn rent requirement, and we have always been clear that this Bill is aimed at residential properties. Clause 2(1)(b) addresses the very small number of leases that fall between these; that is, mixed-use leases, where a single lease comprises both business and residential purposes.

For the avoidance of doubt, this does not relate to mixed-use developments, which may comprise a range of property types, including both business and residential, but each on a separate lease. In such cases, provided that no other exceptions apply, the residential premises in such a development would be subject to a peppercorn rent, and a rent may be charged for commercial properties.

In response to the noble Lord, Lord Stunell, the exemption applies only where flat and commercial premises are on the same lease. The Bill is clear that home businesses and other ancillary leases are not included in the definition of "business lease".

The types of premises that Clause 2(1)(b) is intended to address are likely to be small in number. They could include, as mentioned by the noble Lord, Lord Young, a flat above a shop where the occupant of the flat is a shop worker living above the business where they are required to have the shop open at certain times. The noble Lord mentioned a publican living above a pub.

We have taken care to ensure that this exception does not provide a loophole whereby a ground rent is charged on a premises that is to all intents and purposes a residential one. To prevent such a loophole, there must be a close link between the business purpose and the need for the associated residential use. That is brought about by the requirement in Clause 2(1)(b) that the use as a dwelling

"significantly contributes to the business purposes".

There is a further protection for both leaseholders and landlords in Clause 2(1)(c). This requires that, at or before the point the lease is granted, both the landlord and leaseholder provide written notices that they intend the premises covered by the lease in question to be used for the business purposes set out in the lease. The purpose of Clause 2(1)(c) is to make sure that there is no doubt for either party that the lease is intended to be used, and continues to be used, for business purposes.

The business lease exception is carefully drafted to enable a rent to be charged where it is justified, and to include sufficient protection against abuse of this exception. I restate to the noble Lord, Lord Stunell, that the Bill defines "dwelling" as including gardens or appurtenances, which should include parking spaces, but I will be happy to clarify that specific point before Report. I therefore ask the noble Lord, Lord Young, to withdraw his amendment.

Lord Young of Cookham (Con): My Lords, I am grateful to all those who have taken part in this short debate. I welcome what the Minister said in his reply, that he would undertake to reflect on it between now and Report to see whether there is a better definition. I am not sure whether we have dealt adequately with the case raised by the noble Lord, Lord Stunell, where, as I understand it, because a parking space is not a dwelling, it is not covered by the Bill. The Minister said he was going to reflect on whether that represented a loophole in that a developer could let a property separately from a parking space. The noble Lord also raised the issue of where you have a communal parking space that can be used by both the residents living nearby and the visitors to the shops, and whether the developer of the parking area could charge both the residents and the shops a ground rent for the use of the communal parking space.

The only other point I wanted to raise was whether my noble friend the Minister could give me an assurance on the specific example I gave, where a developer included in the block of flats a conference facility on the ground floor, and whether he could then argue that the nature of the business purposes permitted by the lease significantly contributed to the business purposes, and whether he could argue to everybody who bought a flat in that development that because they could access the conference room and whatever other facilities might be on the ground floor, therefore all the flats could be exposed to a ground rent. I do not expect my noble friend to give me a reply off the cuff but I would be quite interested in a response to that specific example if he could give it between now and Report.

On that basis I beg leave to withdraw my amendment.

Amendment 3 withdrawn.

Amendment 4

Moved by ***Lord Best***

4: Clause 2, page 3, line 7, at end insert—

"Retirement homes where development has begun prior to commencement

(12) A lease is an excepted lease if it is a lease of a retirement home, and—

(a) a contract to purchase the land to develop retirement homes was agreed before 1 April 2021, and

(b) development of the homes began before the relevant commencement day under section 25(4).

(13) A lease is a lease of a retirement home if—

(a) it is a term of the lease that the premises demised by the lease may be occupied only by persons who have attained a minimum age, and

(b) that minimum age is not less than 55."

Lord Best (CB) [V]: My Lords, I thank the Homes for Later Living group for its briefing on the issues that I shall raise. I greatly welcome the Bill, and congratulate the Government on taking the bold step of getting rid of ground rents. I know there is more to come in this space, and I look forward to further legislation to assist existing leaseholders in the future.

This amendment is intended to tidy up an anomaly in the Bill relating to the provision of retirement housing. I declare my interest as co-chair of the APPG on Housing and Care for Older People, and chair of the five inquiries flowing from the so-called HAPPI initiative—Housing our Ageing Population Panel for Innovation.

I shall set the amendment in context. Retirement housing is an important but very small part of the housing scene. It seeks to meet the needs of older people who want to "rightsize", usually from a family house and garden to somewhere easy to manage and inexpensive to heat, with space and light and without stairs and obstacles, where care can be delivered if need be—and, importantly, with the opportunity for company and companionship, in these times when loneliness is a problem for so many.

By moving in later life, older people not only avoid the struggle and cost of maintaining a large property, and prevent the need for an expensive and unpopular move into residential care, but bring a much-needed family home on to the market. The house buying and selling chain that follows means that a young family, too, can access the home they need. The nation gets two for one. Yet in the last year before Covid, of around 200,000 homes built, only about 7,000 were tailor-made for later living—down from 28,000 in the recent past. That output is far short of the numbers needed, with surveys indicating that nearly 4 million people over pension age would be interested in downsizing—or rightsizing—if the opportunity were there.

I have been anxious to see whether the Bill assists or undermines the already very low level of new home building for older people. As it stands, there is a danger that it will have a negative effect on that sector, because ground rents currently play a special and different role in such schemes. The specialist developers of retirement housing have had a tough time competing with the volume housebuilders, which make bigger profits, and so pay more for sites, by concentrating on younger buyers who are less discerning and often desperate to move.

Retirement housing cannot take advantage of Help to Buy subsidies, or the ongoing stamp duty relief for first-time buyers. Importantly, retirement accommodation must include extra space for communal facilities—a clubroom, a garden area and a range of other facilities in assisted living and extra care schemes, such as a restaurant, a treatment room, accommodation for care staff and a guest room. Space for those items can add up to 30% of the total cost of a residential development.

The cost for a scheme of 40 apartments is likely to be between £1 million and £2 million. This is where ground rents come in. They have not been, as they are in other housing schemes, payments of "something for nothing". When capitalised and sold to investors, they have been the means of funding the extra capital costs of the communal spaces inside and out. As I said at Second Reading, they have been "something for something", and have represented an alternative to a higher purchase price, which would be entirely justified, but which can put off buyers in this sensitive marketplace and debar those unable to afford the extra cost.

Why, you may ask, cannot service charges cover the capital costs in retirement housing, instead of using ground rents? The existing rules on what goes into a service charge—which can, of course, cover the ongoing

revenue costs of communal facilities—mean that it is impossible to use a service charge to pay for these extra capital costs. This is as it should be.

3.45 pm

Having chaired the Property Ombudsman and the Government's working group on regulation of property agents, RoPA, I would not welcome any relaxation in the conditions applied to service charges for fear, frankly, that less scrupulous managers could take advantage of any change. Indeed, all leaseholders deserve greater clarity and transparency from managing agents, not only in respect of service charges. I hope it will not be long before the Government bring forward legislation for the regulation of property agents, not least those managing retirement housing. I record my appreciation to the Minister for a recent helpful meeting on this.

Regarding this amendment, service charges cannot replace the use of ground rents to cover the special extra capital costs of retirement schemes. There is a case for simply excluding this kind of housing, in a carefully defined way, from the ban. The Government indicated when they announced the ban that retirement housing would be exempted, but they subsequently rejected this option. I think that the Government's position is right. It means that the Bill will achieve an end to ground rents for all leaseholders, including those in retirement housing. It would have been distinctly odd to announce a new deal for all future purchasers of leases except older people, some of whom might be the most vulnerable to scams and exploitation arising from any exemption from the ground rents ban.

Nevertheless, despite the Government doing the right thing, this disadvantages the retirement housing providers, which will have to seek a higher purchase price in a price-conscious marketplace. This makes a somewhat fragile sector less viable. I sincerely hope that it does not mean cutting out or reducing the extra facilities that are a hallmark of these developments. It also disadvantages those older buyers who would prefer a ground rent of, say, £400 per annum instead of having to pay in addition to the purchase price perhaps £15,000 or more—an extra amount they may not have.

For the longer term, those of us keen to see a growth in downsizer accommodation will have to campaign for other ways of redressing the disadvantages in this sector compared with the incentives for building new homes for younger people. To me, this strengthens the case for stamp duty relief for those over pension age, as made by our APPG, but this is a matter for another day. The immediate issue is to help the retirement housing sector through the transition to an era with no ground rents. The Government have had a go at helping with this, and I pay tribute to the willingness of the Minister and his colleagues to include in the Bill provision intended to help this sector.

The Government have incorporated in Clause 25 a date for introducing the ban of no earlier than 1 April 2023. While I appreciate the special treatment for retirement housing, I fear it does not quite do the job. Because retirement housing providers believed until January this year that their schemes were to be excluded, they carried on with developments dependent on ground rents. Some providers are now in a difficult position. This will hold back the growth of the sector accordingly. It is not that retirement housing developers want to start on new schemes now and still use ground rents for another few months. The problem is that they have already begun building some developments where ground rents are an important part of the package, and they might well be unable to sell all the apartments in these projects before April 2023.

April 2023 is too soon to have finished and sold all the homes in schemes already under way. This is simply because it takes time to sell to this client group—more time than to sell to younger households. As I noted at Second Reading, older people will not commit themselves after one visit to a show flat. Quite properly, they will wait until the scheme is finished and they can visit their prospective home, often several times, before committing themselves to a purchase. It is common for the final decision to be postponed even until the elderly buyer has had a chance to meet the scheme's manager to make sure that they will get on well with them. Along with the seemingly inevitable delays in movers selling their existing properties, this often means a lengthy time lag before all the apartments in a retirement scheme are sold. I have witnessed the process as chair of the retirement housing association Hanover, now Anchor Hanover, which has developed mixed tenure schemes for rent and sale. The whole development must be finished before potential visitors will inspect their intended homes. Sales off-plan before completion are very unlikely. Older buyers will bring a series of family members and they cannot be rushed.

This is why, although a development is on site today with construction under way, not all the apartments may be sold by April 2023. Building works may not be concluded this year, and a further two years is needed for the subsequent sales. If some flats have not been sold by the cut-off date, there will be the anomaly of some residents who pay ground rents and some who do not—including perhaps some canny buyers who delay a purchase to avoid the ground rent.

Using the ground rents for the whole scheme to pay for the extra amenities will not be possible if it is uncertain how many homes will be covered and how many will fall outside the ground rent system. Moreover, the management problem of having two categories of occupier will remain for however long the lease lasts, in many cases 999 years, so coping with the anomaly is not a short-term problem.

This amendment therefore exempts from the ban those retirement schemes and homes for later living that are in the pipeline today, for which land has been purchased and construction has started. It does not encourage any delay in building out new schemes, since it affects only cases where the building works are already under way. This amendment covers very few homes. The Homes for Later Living group knows of 180 developments affected, comprising 4,200 homes, and of course no new schemes can be added.

By disadvantaging these specialist providers, with the competition from other developers so fierce and older purchasers sensibly proving so discerning, the future health and confidence of the retirement housing sector depends on not damaging its prospects now. I hope the Minister will accept that, while this may seem

[LORD BEST]
a very minor exemption from the ground rents ban, it is important in not deterring the growth of what is still a fledgling industry that the nation badly needs to grow and flourish. I beg to move.

Lord Mackay of Clashfern (Con) [V]: My Lords, I very much admire the detailed knowledge that the noble Lord, Lord Best, has of this and many other areas of importance. I heartily agree with him. Your Lordships will appreciate that I may have a special interest in this area, in view of my years.

As a matter of interest, I wonder how the age of 55 was chosen. I hope he may be able to give me a short explanation of that, because it is of interest to me.

Lord Naseby (Con) [V]: My Lords, I too pay tribute to the noble Lord, Lord Best. I am in my 80s and, from talking among friends, I am aware of at least two couples who are beginning to think about retirement homes. The noble Lord, Lord Best, is quite right. We discussed this issue before I even knew it was coming up in the Bill.

This sector of the market is, first, growing—that in itself is very encouraging—and as a country we have been a bit slow in this area compared with other countries. Secondly, it is growing in the sense that it was clear, back in my days as an MP, that there was a scepticism about retirement homes with all these extra facilities, but now it is taken as the norm and people are particularly fussy. If, as the noble Lord, Lord Best, says, a number are caught by this time dimension, it seems sensible that any business that started by the dates he puts in his amendment should be exempt.

I do not understand why 55 was chosen. The retirement age is still going up, so 55 seems a bit generous, frankly. Another 10 on top of it would not have gone amiss, but that is a minor issue. I hope Her Majesty's Government take the points made by the noble Lord, Lord Best, very seriously; they need addressing.

Baroness Grender (LD): My Lords, developing adequate housing stock for an ageing population is a significant challenge for this and future Governments. The work of the noble Lord, Lord Best, and the publications by his APPG for Housing and Care for Older People have been essential reading in this area. While we recognise that what is now in the Bill is a compromise achieved following a total exemption for retirement homes in the original consultation, and in spite of the arguments of the noble Lord, Lord Best—whose expertise in this area is significant—when the Minister responds, I still want to understand where the essential difference lies between retirement and other leaseholders, in his or the Government's opinion. If the straight answer is money required to be spent on common parts, surely a more honest and transparent way to do that is in either the original price or the service charges. However, I hear what the noble Lord, Lord Best, has said today and will study his explanation.

Given that ground rents appear to serve no purpose, as we have already discussed several times and at Second Reading, other than profit for the freeholder or security to borrow to develop more properties, why is this different when applied to retirement homes? I am sure that noble Lords are familiar with the *Times* investigation into this in November 2019, but it bears revisiting. It uses the example of one retirement property bought for £197,000, in 2009, from the FTSE 250 development company McCarthy & Stone, which was sold for only £26,000 six years later. By the time the flat owner died, she was paying the management company almost £8,000 a year.

The *Times* went on to say:

> "Housebuilders such as McCarthy & Stone argue that without the money they make selling the freehold to management companies they could not afford to provide communal areas for their properties. Yet this is a poor excuse when there are far more transparent ways to raise revenue, such as simply selling their properties for a higher price."

They often cover that in the service charge. The article continued:

> "They insist, moreover, that the majority of their homes have increased in value."

However, the *Times* then went on to find that

> "one McCarthy & Stone property had lost £45,000 between 2015, when it was bought,"

and 2019. The same investigation found that, as with other leaseholders, elderly relatives are persuaded to use a solicitor who the developer has recommended, who turns out to be the very opposite of an advocate on behalf of the retiree. As the noble Lord, Lord Best, has explained, this group can often be exploited and manipulated.

For those reasons, we are minded to support the amendments in the names of the noble Lords, Lord Kennedy and Lord Lennie, but look forward to hearing the arguments in the closing stages of this debate.

Lord Lennie (Lab) [V]: My Lords, the welcome provisions of this Bill will not apply to retirement properties until at least April 2023, despite previous suggestions by the Government that these properties would be included. This is echoed by the contribution of the noble Baroness, Lady Grender. It represents a clear U-turn, without any explanation, and for this reason I have tabled Amendment 25 with my noble friend Lord Kennedy, intended to bring retirement properties in line with all other homes.

If the Government had placed the April 2023 date in the hope of creating a transition period, the Minister should explain to the Committee exactly why this is needed, when it has been accepted that no period is necessary for other properties, as part of this. Given that over 50,000 people in the UK live in retirement community units, I hope the Minister can explain what consultation has taken place with groups representing those residents and their families.

I am pleased that the noble Lord, Lord Best, who is deeply knowledgeable, has tabled an amendment to consider the application of this legislation to retirement homes where development has begun prior to commencement. I hope the Minister will offer an explanation of what steps the Government will take to support residents, which this clause relates to.

4 pm

Lord Greenhalgh (Con): My Lords, I start by addressing the point about age. It is great to hear from my noble friend Lord Naseby and my noble and learned friend Lord Mackay of Clashfern on why we are considering

people aged a mere 55 for this. I do not have to declare an interest as I have not quite made that age threshold yet. However, it is fair to say that that sector broadly starts providing retirement housing for those aged 55 and above. Some people in that age group choose to move to those properties. In fact, one can access lump sums from one's pension from the age of 55 but I know that people at a greater age look at that and ask, "How can you even contemplate retirement at such a young age?"

As noble Lords know, it is our intention to protect leaseholders from unfair practices through the Bill by ensuring that future regulated leases are restricted to a peppercorn rent, unless exempted. While we would like the provisions of the Bill to come into effect as soon as possible, we have decided to give the retirement sector additional time to prepare for these changes, as was mentioned by the noble Lord, Lord Best.

The noble Lords, Lord Kennedy and Lord Lennie, have tabled Amendment 25 to remove the provision that provides that the Bill will not come into force in regard to retirement homes prior to 1 April 2023. I thank them for their consideration of this matter.

I will explain to your Lordships the reasoning for including a transitional period for retirement properties and why it is the right thing to do. The detail of the peppercorn ground rent was announced in 2019, following the Government's consultation *Implementing Reforms to the Leasehold System.* At the time of the announcement, retirement properties were to be exempt from the restrictions on ground rent in the Bill. Having reviewed this in further detail, the Government decided in January 2021 to widen the protections granted under the Bill and to remove the retirement exemption.

All other parts of the development industry have had time since the Government's announcement in 2019 to adapt and review their business models and will have had sufficient time by the commencement of the Bill to adapt. However, given that the retirement sector has had less time to prepare, we have carefully considered the impact on developers and weighed this against our ambition to protect leaseholders. It is our firm belief that given these circumstances, the retirement sector should be given additional time to make adequate preparations to transition to peppercorn rents, as was carefully argued by the noble Lord, Lord Best.

The noble Lord's Amendment 4 would have the effect of extending the transition period for retirement properties that are under development, potentially for an additional two years, or even longer where sites are slower to build out and sell. I am grateful to noble Lords for looking closely at this, and to stakeholders in the retirement housing sector who have provided information on this issue. We have carefully considered this matter to ensure that we are striking the right balance, thereby giving the retirement sector time to transition and ensuring that protection for leaseholders comes as quickly as possible.

I am sure that noble Lords will agree that the transitional arrangements that we have set out in the Bill will make it fair for all parties, both developers and leaseholders, and that it is the right thing to do. I therefore ask that the noble Lord withdraws his amendment.

Lord Best (CB) [V]: My Lords, I am grateful for all the contributions to the debate on the amendment. Perhaps I may respond to them all.

The noble and learned Lord, Lord Mackay, and the noble Lord, Lord Naseby, asked whether an age limit of 55 is sensible. It was chosen by the Government and is the age chosen by a number of retirement housing schemes. I agree entirely with the sentiments expressed by the noble Lords on that. Having had some responsibility for developing such schemes, I know that people actually move in in their 70s, not their 50s. The sometimes vain hope is that the scheme will attract a few younger people in order to get a mix of ages throughout. Indeed, sometimes people with disabilities who are in their late 50s are ideal people to move in. But the reality is that despite an age restriction of 55, people will only actually move in in their 70s. However, the flexibility has worked quite well also.

Other noble Lords were more sceptical. I hope that perhaps if they have a good look at *Hansard*, they might be convinced that there is a "something for nothing" versus a "something for something" debate here and that this particular kind of housing has achieved something for something with ground rents in the past and the transition to a future in which it has to do without that will present some problems.

As the noble Lord, Lord Lennie, and the noble Baroness, Lady Grender, said, it is probably the case that, in the longer term, there will be more transparency in a higher purchase price. It means that people will have to fork out more at the beginning—they cannot spread it over a period of years with a ground rent—but it will be more transparent. If some people cannot afford it, that is a casualty along the way, which I am sorry about, but it will lead to greater transparency in the longer term.

In the meantime, there are developments in the pipeline that are a cause of actual concern and difficulty. I am grateful to the Minister for his comments. He made it clear that this sector was given quite a clear steer back in 2019 that it could carry on as it was with new developments because this ban on ground rents would not affect it and it would be exempted. I agree with the change of mind that followed. It is right that all people are dealt with the same, younger and older alike, and that there will be no ground rents in the future.

I am happy with that, but it does leave the providers of later living housing rather high and dry. Although they have been given until April 2023—a similar period to that for housebuilders building for younger households—it is a fact that they need a bit more time. The buyers in this particular marketplace are right to be discerning, but it does take longer and there will be a problem for the relatively small number of 180-odd developments and about 4,200 homes affected, for which the transition is just not long enough. We will have weird situations where there are two kinds of occupier in the same development, some paying ground rents and some not, and the producer of the scheme having some financial and management difficulties accordingly. It would be quite simple to help them on their way and encourage this sector to develop, rather than discourage it, which I fear is the outcome at the

[Lord Best]
moment. However, I am happy to withdraw the amendment at this stage and thank all noble Lords who participated in the debate.

Amendment 4 withdrawn.

Clause 2 agreed.

Amendment 5

Moved by ***Lord Mackay of Clashfern***

5: After Clause 2, insert the following new Clause—

"Leases with an option of redemption

(1) In this Act a lease with an option of redemption means a lease which meets the following conditions—

(a) it is a long lease of a dwelling,

(b) it is in force on the "relevant transition date", and

(c) it is not an excepted lease.

(2) The "relevant transition date" is the day on which this section and the other relevant provisions of this Act come into force in relation to leases of that kind.

(3) After the relevant transition date the tenant has an option to pay a capital sum to the landlord, on payment of which the rent payable under the lease shall be a peppercorn rent.

(4) The capital sum in subsection (3) shall be calculated in accordance with a formula specified by regulations made by the Secretary of State.

(5) The option to pay a capital sum to the landlord set out in subsection (3) may only be exercised within two years of the relevant transition date."

Lord Mackay of Clashfern (Con) [V]: My Lords, this is an amendment on the principles that my noble friend Lord Young of Cookham explained when speaking to his amendment. The only reason why I thought of doing it this way was to make it part of the legislation now, if that was acceptable, with a degree of flexibility in the Secretary of State's powers to fix the way payment would be adjusted or assessed. I thought it might help to deal with this situation now rather than later. As I said, this is based to an extent on the way feu duty was dealt with in Scotland when it was made compulsory to stop it altogether as we departed from the feudal system. My suggestion may be attractive in the sense that it avoids dealing with a lot of detail now. On the other hand, it may not be very wise to leave it so doubtful, especially when there are other concerns associated with the payment of ground rent, such as the maintenance of insurance policies and so on. I beg to move.

Baroness Grender (LD): As in the earlier group, we support the principle of this amendment. I reiterate that the elegant drafting by the noble Lord, Lord Young of Cookham, in the earlier group is the drafting that we would prefer—and very much look forward to seeing on Report.

On Amendment 5, our concern would be about any kind of delay in this process, which would be driven by having to produce subsequent drafting of regulations for how the amounts would be calculated. Therefore, we would prefer the wording used by the noble Lord, Lord Young of Cookham.

I also take this opportunity, given that the Minister, in his summing up of the first group of amendments on trying to extend to existing leaseholders, made an argument about the proportion and percentage of pension funds that are currently invested in freehold property and the disruption that this might cause to pension funds, to ask him to elaborate on what kind of proportion that might affect, and what the balance is between the 4.5 million leaseholders who currently experience quite a significant negative impact in terms of ground rent in particular in the abuse of this system, and the pension fund system.

Lord Lennie (Lab) [V]: My Lords, this amendment returns the debate to the question of existing leaseholders and appears to allow existing leaseholders to pay a fee to exempt them from ground rent. As I said in the earlier group, ground rent arrangements are overwhelmingly balanced to benefit landlords and the system needs urgent reform for all involved.

I am grateful to the noble and learned Lord, Lord Mackay, for explaining that this was based on the Scots departing from the previous feudal system, but I am concerned that his amendment, if applied literally, could lead to landlords charging extortionate termination fees. None the less, I appreciate that he sees the need for reforming the system and I look forward to the Minister's response.

Lord Greenhalgh (Con): My Lords, I spoke earlier about the Competition and Markets Authority investigation into potential mis-selling and unfair terms in the leasehold sector. This included the issue of onerous ground rent. Our commitment to existing leaseholders does not end with the CMA investigation. As I have mentioned several times, this Bill is just the first of two-part legislation to reform and improve the leasehold system. As noble Lords will know by now, further legislation later in this Parliament will address a range of issues facing existing leaseholders.

My noble and learned friend Lord Mackay of Clashfern's Amendment 5 would give an option of redemption on existing leases, allowing leaseholders to pay a capital sum to reduce their ground rent to a peppercorn. The broad aim of such an amendment to allow existing leaseholders to buy out their ground rent has been discussed previously, so I will avoid repeating the detail at length.

As noble Lords will recall, existing legislation already allows for the leaseholders of flats to reduce their ground rent to a peppercorn when they extend their lease, while leaseholders of houses can eliminate ground rent completely by buying the freehold of their property.

In January the Government responded in part to the Law Commission's reports on leasehold and commonhold reform. This included a commitment to allow leaseholders who already have a long lease to buy out the ground rent, without the need to extend the term of their lease. We will respond to the remaining Law Commission recommendations in due course.

I hope that noble Lords will agree that the work currently being undertaken beyond the Bill means that this amendment is not needed. Noble Lords can rest assured that this Government have a desire to reform the leasehold system at the earliest opportunity and the ground rent Bill represents the first stage in a two-step legislative programme.

I point out—as was raised just now by the noble Baroness, Lady Grender—that there are pension fund investments and we need to take that into account. That is why the Government believe it is right not to take a big bang approach to the abolition of existing ground rents but to make it easier to enfranchise and to offer that in the most leaseholder-friendly way. That is why we have made a number of commitments where people will be able to buy out ground rents without the need to extend their lease, as well as making enfranchisement as easy as possible, along the lines of the recommendations of the Law Commission. That is the balance that we want to strike to ensuring that existing leaseholders will have the mechanism and the ability to remove ground rents. I therefore ask that my noble and learned friend withdraws the amendment.

4.15 pm

The Deputy Chairman of Committees (Lord Russell of Liverpool) (CB): I have received one request to speak after the Minister from the noble Baroness, Lady Grender.

Baroness Grender (LD): I should just like to ask the Minister to perhaps write to all Members involved in this debate to give a bit more detail about what proportion of pension funds are impacted, given that my understanding is that the pension funds are fully aware of the intention to abolish ground rents and extend that to existing leaseholders. I should still like to understand the balance of impact between the 4.5 million leaseholders and the pension funds, if that is to be deployed as a significant argument in this issue. I am very happy for the Minister to write to us later about this.

Lord Greenhalgh (Con): My Lords, I shall try a second time, because obviously I did not manage it the first time. We have not made a commitment to abolish by fiat existing ground rents. We have committed to make it as easy as possible for leaseholders to enfranchise or to buy themselves out of the ground rent obligation. That of course then becomes a phased approach to the 4.5 million people who are paying ground rents. Of course, we are looking to the Competition and Markets Authority to deal with the issue of onerous ground rents. That is the policy position; the noble Baroness is implying something that we have not committed to.

Lord Mackay of Clashfern (Con) [V]: My Lords, I am grateful to all who have taken part in this short debate. It is quite important to have in mind the possibility of a variable way to buy off the ground rent, and that such a way of fixing that by a Minister in a regulation is flexible and could be of use in that regard. In the meantime, I am happy to withdraw my amendment.

Amendment 5 withdrawn.

Amendment 6

Moved by ***Baroness Grender***

6: After Clause 2, insert the following new Clause—

"Existing leases: transparency requirement

(1) In this Act an "existing lease" means a lease which meets the following conditions—

(a) it is a long lease of a dwelling,

(b) it is not an excepted lease, and

(c) it was granted before the relevant commencement day of any section of this Act that would make it a regulated lease.

(2) Before requiring a payment of rent under an existing lease the landlord must provide the tenant in writing with a justification for the cost of the rent, and an explanation of what the payment will be used for.

(3) Section 83 of the Consumer Rights Act 2015 (duty of letting agents to publicise fees etc) is amended in accordance with subsection (4).

(4) After subsection (7) insert—

"(7A) This section also applies in relation to a payment of ground rent.""

Member's explanatory statement

This amendment would require landlords charging ground rent on leases granted before this Act came into force to explain what the rent is for. It would also require lettings agents to make details of any ground rents available to prospective leaseholders.

Baroness Grender (LD): My Lords, this is a fairly small amendment but may make a big difference for leaseholders. In a way, it is about replicating what I thought was a very successful late-stage amendment to the Tenant Fees Act. We are trying to introduce a greater level of transparency for leaseholders.

Before being required to pay a rent under an existing lease, the landlord must provide the tenant in writing with the justification for the cost of the rent and an explanation of what the payment will be used for. I fully understand and recognise, given the arguments made at Second Reading and those made so far today, that in reality, a lot of us would say that the ground rent is used for absolutely nothing—except buying a new Porsche for a very wealthy freeholder, for instance. However, I still believe that there should be an explanation and accountability and that we should use the opportunity of the Bill to ensure greater accountability. A lot of people who campaign in the area of leasehold reform want to see a display of comprehensive, accurate data on properties. They want to see how long the lease is, what the ground rent is and what the nature of the ground rent is. We already heard in the debate at Second Reading that some people are charged a ground rent without any notification; suddenly they are asked for a particular sum and they may then get into dangerous grounds of forfeiture if they cannot pay it.

The sentiment I am particularly trying to push for—I will be very happy if the Minister says that the wording is not quite right, but that he understands and recognises the sentiment and will come back with further drafting on Report—is that people who currently have to pay freeholders ground rent should get some sense of accountability regarding the amount, the future amount and what it goes towards.

I also take this opportunity to point out that ground rent demands already have to be accompanied by a statement of leaseholder rights, so there is absolutely no reason why the Government cannot prescribe a standard form of information to be given to leaseholders in this area.

Also, could the Minister in summing up answer a question I asked on Second Reading about the CMA's action against Countryside and Taylor Wimpey? I asked whether, if the process the CMA is currently

[Baroness Grender]
undergoing fails and it has to go to court, the Minister would consider putting more emphasis in the Bill on consumer protection law. With that I mind, I beg to move.

Lord Mackay of Clashfern (Con) [V]: My Lords, I support this. It is highly important that a person buying a property which is subject to this kind of rental arrangement should know precisely what its details are, as a necessary condition of the purchase. It seems essential to me to point out the whole nature of the responsibility for ground rent and what can happen, not only next year but in years to come. A person buying a property is entitled to know all the burdens on it at the time of purchase.

Lord Stunell (LD) [V]: My Lords, I am happy to speak in support of this amendment and am delighted to have the support of the noble and learned Lord, Lord Mackay of Clashfern, for the words of my noble friend Lady Grender in advocating for this change. It can hardly be a radical call to ask for accurate data to be available before a transaction is completed; yet, as the example I drew from Leicester in an earlier debate shows, that accuracy is often not present and the transparency is sometimes deliberately disguised. There is absolutely no particular obligation on those taking part in that transaction to make sure that the consumer is aware. It is very much caveat emptor, and one is in the hands of the legal representation one has—if any—in conducting it.

The Bill should state that there must be a clear explanation of the length and terms of the ground rent—the minefield that lies ahead of escalation charges and the development of the terms, some of which are not perhaps deliberately concealed but are well hidden in the small print. Reference has been made even to requiring release letters to cover pets, never mind alterations to the premises. Many issues have been used deliberately or have perhaps inadvertently fallen in such a way as to put leaseholders at a serious disadvantage. Of course, the hand they hold at that point is extremely weak, because if they decide to contest the payment, they have to consider not only the legal costs and the associated trouble and stress but the risk of forfeiture if they fail to pay. Paying and arguing afterwards is not a very successful basis for performance, either.

There are grounds for accuracy, transparency and accountability. We know that the CMA is actively looking at this area. If the Minister can give us some assurances about how he intends to proceed if the CMA does not do the business, I would find it a very helpful way forward.

I press the Minister to say that this is a sensible amendment that protects leaseholders and that any good landlord should be happy to comply with it. Therefore, I hope he will feel able to accept it.

Lord Lennie (Lab) [V]: My Lords, this amendment would ensure that landlords with existing leases explain why they are charging ground rent and that agents publicise the details of any such ground rent. Both of these points are pertinent and I am pleased that the noble Baroness, Lady Grender, tabled the amendment.

The first issue of ensuring that landlords explain why they are charging ground rent is so important precisely because there is often no reason to charge ground rent. Residents get no material benefit from paying these sizeable fees, yet the landlords often increase the charges exponentially. If the Minister is reluctant to accept the amendment, could he estimate how many landlords currently offer explanations for the ground rent they charge?

On the second issue of ensuring that estate agents publicise the details of any ground rent, I understand that Rightmove has recently changed its policy to encourage agents to do exactly this. Can the Minister confirm whether the Government have any plan of their own to follow this and encourage it further?

Lord Greenhalgh (Con): My Lords, to respond directly to the noble Baroness, Lady Grender, I appreciated the point about the importance of seeing where the CMA's investigation ends up and the potential need to look at consumer protection should that not succeed. I do not want to pre-empt the investigation at this stage, but it is an important point, because one of the fundamental purposes of the Bill is to increase transparency and clarity for home owners. I listened carefully to the noble Baroness, Lady Grender, and the noble Lord, Lord Stunell, and I thank them for putting forward these amendments, which look at the issue of transparency and seek to add to that agenda.

I shall start by addressing Amendment 6, which would put a requirement on landlords to write to their leaseholders setting out why they are charging rent and what it is being used for. As noble Lords know, and I have mentioned previously today, it is our intention that no rent can be charged beyond that of a peppercorn for regulated leases once the Bill comes into effect, admittedly for new leases, unless special rules applicable to shared ownership leases or leases replacing pre-commencement leases apply.

In the Bill, "rent" has been defined in a way that will preclude landlords sneaking prohibited rents into leases under another name. This will ensure that there is clear transparency in the lease as to what is charged as "rent"—which is to say, generally, a peppercorn—and what is charged in return for a "service". It is also important for your Lordships to note that, where a leaseholder may be dissatisfied with service charges, there are statutory processes they can use to seek redress. I am sure that noble Lords will agree that while this amendment is a welcome attempt to increase transparency, the Bill as drafted delivers the important changes that we want to see in the system.

I turn to Amendment 13, which would require a landlord to inform leaseholders of their rights under housing law in England and Wales and in relation to the Bill before entering formal and/or informal renegotiations or extensions to an existing lease. I note the concerns of the noble Baroness, Lady Grender, and the noble Lord, Lord Stunell, that without such an amendment there may be a rush for landlords to incentivise leaseholders to extend their leases before the changes in this Bill come into force. The effect of this, in their view, would be to ensure that ground rent on these leases could continue to be collected, thus trapping more people in a situation of ground rent payments in the system we are trying to stop.

Unfortunately, as drafted, the amendment would not come into effect until after the Bill commences, and it would not have the desired impact that the noble Lords seek. However, I assure noble Lords that we are working closely with a wide range of stakeholders who are committed, as the Government are, to ensuring that leaseholders are aware of their rights and what routes of redress they can take. I also invite the noble Lords to join me in these efforts to ensure that these important messages reach as far as possible. Communication of these important points is key. I therefore ask the noble Lords not to press the amendments.

4.30 pm

Baroness Grender (LD): I thank the Minister and all noble Lords who spoke in the debate. We have not got to Amendment 13 yet, so I hope we can have a bit more discussion about it in the next group. I thank the Minister, in particular for his point about the CMA. I fully understand what he said. I hope that Ministers feel able to state an intent if the CMA court action is unsuccessful, simply to underline the need for particular developers who are currently on the naughty step to change their ways. I should very much like to revisit that, potentially on Report.

I thank the noble and learned Lord, Lord Mackay of Clashfern, for his support and my noble friend Lord Stunell for his example in Leicester, which I think still holds true in this discussion. I hope to take another look, read the Minister's words and revisit this on Report. I want to ensure as much transparency as possible for leaseholders. I think we all agree that leaseholders are not given full transparency or provided with full information. That is why so many leaseholders are so aggrieved, particularly the 4.5 million current leaseholders, as opposed to future leaseholders. With all that in mind, I beg leave to withdraw the amendment.

Amendment 6 withdrawn.

Clause 3: Prohibited rent

Amendments 7 and 8 not moved.

Clause 3 agreed.

Clause 4 agreed.

Clause 5: Permitted rent: shared ownership leases

Amendments 9 to 10 not moved.

Clause 5 agreed.

Debate on whether Clause 6 should stand part of the Bill.

Member's explanatory statement

This probing amendment is to see if the Government can better protect leaseholders who enter into informal lease extensions after the Bill is passed. This is to avoid landlords pressurising tenants to enter into informal extensions to preserve monetary ground rents.

Baroness Grender: This group has two purposes. The first would be to remove Clause 6 altogether to ensure that informal extensions come under the regulations proposed in the Bill; the second, less dramatic amendment would increase transparency in both formal and informal renegotiations or extensions of the existing lease. I shall deal with Clause 6 stand part first.

We see informal leasehold extensions as a significant potential loophole and the next obvious area to exploit for the "something for nothing" industry in this area. Therefore, we wish to ensure that informal leasehold extensions are regulated in the same way. I appreciate that there may be extenuating circumstances where there is a need for an informal extension—for example, if someone inherits a home and needs to make a relatively quick sale on a very short lease—but those circumstances should be the exception, not the rule. I fear that this will become standard practice unless the Government find a comprehensive way to restrict its use. If noble Lords who speak after me in this debate have concerns and examples of the advantages that an informal leasehold extension provides, I am more than happy to hear suggestions of better solutions than this, but the key question for this debate is how to prevent informal extensions being used, as they currently are, to exploit leaseholders and how that can be reflected in the Bill.

I will be using, in particular, specific examples provided in a detailed blog on this issue by Louie Burns. Sadly, he died a year ago. He was a trustee of the Leasehold Knowledge Partnership and an expert practitioner in the area of leasehold extensions. I have taken the liberty of sharing the link to his blog with noble Lords participating in the debate on this group of amendments.

Louie Burns called such offers "Trojan horse offers". He described an offer from a real case he dealt with, made by a large London-based freeholder, on a property valued at £230,000 with a ground rent of £75 a year, doubling every 33 years, and a current lease of 75 years. The cost of extending the lease using statutory legal rights would be a total of £13,250, securing a lease of 165 years with zero ground rent.

Often, the freeholders in this scenario are professional money makers. They make money from licensing fees hidden in the lease, through claiming a finder fee for the building insurance, when people have no choice as to who building insurance is provided by, through service charges and ground rent—and, of course, through money paid to extend the lease.

The freeholder writes to the leaseholder offering to extend the lease back up to 99 years—which means that, 17 years later, the lease will need extending again —for £10,200, plus VAT of £1,000, with ground rent at £250 doubling every 10 years, with a short deadline of 30 days to make a decision offered by the freeholder. In the small print, of course, the leasehold is extended only to 99 years—or the freeholder may offer 125 years, without explaining that the extension is from the date that the lease was originally granted, not the date of the extension offered.

Louie Burns went on to explain how the costs described, over a 24-year period, added up to more than £100,000, which will go to the freeholder. Please remember

[BARONESS GRENDER]
that this is a specific real case, which he provided as an example. When compared, unfavourably, with the statutory route, costing about £13,000, with zero future ground rent, that is beyond shocking. We need to bring this sharp practice under some form of regulation.

The other option is to accept Amendment 13, which would impose an obligation to explain. If leaseholders had the full picture and knew both their statutory rights and the full costs over 24 years, say, they would have much greater control. The alternative is an informal extension to 99 years—which, as I said, would have to be renewed 17 years later, and then in turn makes the flat impossible to sell, and prohibitively expensive to maintain, with the ground rent alone.

An informal extension of a lease also means that the leaseholder is not protected by the law, and the freeholder can make changes by saying things such as:

"We are not looking to amend your lease in any way, we will only modernise the terms of your lease."

Louie Burns, in his blog, told people to beware of the term "modernise" as used here, because it means "amend". An informal leasehold extension is a quick route for a freeholder to add additional payment. It is also a quick route for a solicitor to receive a fee—which may explain why, often, solicitors do not give a warning.

The statutory route is slower. With banks and building societies now showing reluctance to lend for such leasehold arrangements, yet again, the person who suffers the most, and is caught between freeholder and lender, and cannot sell, is the leaseholder, who has received minimal information. Sometimes Ministers like to solve such transparency issues through guidance. But if the aim is to ensure that the freeholder complies with the law, I suggest that the transparency approach should be in the Bill. I beg to move.

Lord Naseby (Con) [V]: My Lords, the noble Baroness has done us a great service. We have all read about these situations. I am not aware of the details of any of them, but there has been enough coverage in the responsible media for me to see that this is a problem. I hope my noble friend on the Front Bench will be able to address it.

I assume that in this group we are also dealing with my noble friend Lord Young's Amendment 12, although I notice that it is not listed. It says "After Clause 6". Is that after this debate?

The Deputy Chairman of Committees (Lord Russell of Liverpool) (CB): It was in the first group.

Lord Naseby (Con) [V]: We have dealt with that one, have we?

The Deputy Chairman of Committees (Lord Russell of Liverpool) (CB): Yes, we have.

Lord Naseby (Con) [V]: I apologise. I very much support what the noble Baroness said. I need do no more than ask my noble friend on the Front Bench to take it really seriously.

Lord Mackay of Clashfern (Con) [V]: My Lords, Clause 6 is inconsistent with the spirit of the amendments in the first group, which were heartily supported. In a sense Clause 6 stands against them, and for that reason I suppose it is logical to say that it should not stand part.

I am also very impressed by Amendment 13. There is a need to deal with this situation, in which people find themselves unconsciously in a very difficult position. I hope my noble friend will find it possible to deal with this in a satisfactory way.

Lord Stunell (LD) [V]: My Lords, I thank all those who have spoken. I particularly thank the noble and learned Lord, Lord Mackay of Clashfern, whose legal background and desire to make sure that the consumer gets the right result are very much assisting our argument on this occasion.

My noble friend Lady Grender set out our case very clearly. I want to make it clear that informal leasehold extensions can be as bad an evil, if not a worse, as some of the other abuses that have been talked about. They are the worst for being concealed. If you are offered what appears to be a new lamp for old, and the only difficulty you might face is that somebody may modernise the terms of your lease, it is very likely that what modernising the terms of your lease consists of will escape your eagle eye.

It is like all those "Change my settings?" messages that one gets on websites. One wants to get on with the business. You click and carry on; you certainly do not read paragraph 123 on page 17, where you find that bedded in it there is a hidden charge, which you never find out until the moment it matters most. At the low-entry bar, I hope the Minister will say that he will come back and show us how we can incorporate into the Bill the claim for transparency we make in Amendment 13.

By saying that the clause should not stand part, we are following the logic of what the noble and learned Lord, Lord Mackay of Clashfern, pointed out: it is absolutely contrary to the spirit and direction in which the Minister claims this legislation is intended to go. It is a major loophole, because it means that existing leaseholders who might find a way of using this new legislation to have a new lease find themselves drawn on an escalator—an escalator of continuing and repeated higher charges over the lifetime of that lease. That may well be the nuclear weapon amendment, but I hope it emphasises to the Minister the significance of Clause 6 and the damage it can do, and no doubt will do, in many cases that have already been spelt out.

I very much hope that I shall hear from the Minister a positive reaction to this and that we can move forward on Report with a proposal, coming from his side of the Chamber, that will help to remedy this major deficiency in the legislation we have in front of us today.

4.45 pm

Lord Lennie (Lab) [V]: My Lords, the Motion moved by the noble Baroness, Lady Grender, on Clause 6 exposes the extortionate legal racketeering that goes on in this sector. We are right to seek clarification.

We cannot allow a situation to develop whereby landlords are pressuring tenants to agree informal extensions as a means to continue their ground rent arrangements. The fact remains that leaseholders need greater legislative protection. While the Bill will, I hope, set the foundations for that, there is much more that needs to be done. I hope that the Minister explains the intention behind Clause 6 and considers whether further provisions are necessary to prevent any exploitation.

Amendment 13 would require landlords to inform tenants of any ground rent extensions. This raises the question of whether lease extensions will be agreed before the changes in the Bill are implemented. Can the Minister estimate the legislative timetable for this Bill and when it might receive Royal Assent? Can he also confirm whether the ministry has received any reports of lease extensions being rushed through before these changes have been brought into force?

Lord Greenhalgh (Con): My Lords, I have just spoken of this Government's efforts, including working with our key stakeholders, to strengthen leaseholders' awareness of their rights and what entering into a lease might mean for them. The noble Baroness, Lady Grender, and the noble Lord, Lord Stunell, have tabled a Motion to oppose Clause 6 standing part of the Bill. I acknowledge the concerns that have been raised, but I point out that we have made a conscious decision that the Bill should not create barriers to non-statutory leasehold agreements. Part of the reason is that more flexible processes outside the statutory route can, in some cases, be more cost-effective and quicker for both the leaseholder and freeholder, so we want to allow this option and choice to remain.

I reassure your Lordships that we do not want leaseholders to be taken advantage of in this situation, so we are working to ensure that better information, advice and support are offered to them, and we will consider where we can strengthen this where appropriate. By making the system more transparent and exposing inappropriate practices, as described by the noble Baroness, Lady Grender, and others, we can protect leaseholders.

It is important that your Lordships note that the Government are considering the Law Commission's recommendations on enfranchisement. They include recommendations on voluntary informal lease extensions. When the time comes, I will be more than happy to engage with noble Lords on this, as we have done on this Bill.

Our overall approach to increasing awareness and making things fairer and more affordable will help protect more leaseholders, whichever route they choose. I therefore ask the noble Baroness to withdraw the Motion.

Baroness Grender (LD): I thank the noble Lord and all Ministers for participating in this part of the discussion. I fully recognise the need for some level of flexibility and that there is a case for informal extensions. As I said in my opening remarks, I still think there is a danger of this being a loophole through which the industry, which we know is not very responsible or kind to leaseholders, will travel. It will exploit any and every available gap in the law in order to perpetuate itself. For example, when the Government said they were going to ban leasehold houses, the industry rapidly moved to deploy estate rentcharge schemes attached to freehold houses. This ensured that there were still two profits on the sale of every plot and that investors could still access a certain income stream, albeit by a different name. As a result, the consumer—the leaseholder—continues to suffer.

I very much appreciate the Minister's intention and hope that we continue discussions about how this significant loophole can be closed. I particularly thank the noble Lords, Lord Naseby and Lord Lennie, and the noble and learned Lord, Lord Mackay of Clashfern, for their support for these amendments. Like my noble friend Lord Stunell, I hope that we move to a pragmatic remedy. There is potential for compromise and, with that in mind and an optimistic sense that there will be some compromise on Report, I beg leave to withdraw the Motion that Clause 6 do not stand part of the Bill.

Clause 6 agreed.

Amendments 11 and 12 not moved.

Clause 7: Term reserving prohibited rent treated as reserving permitted rent

Clause 7 agreed.

Amendment 13 not moved.

Clause 8: Enforcement authorities

Clause 8 agreed.

The Deputy Chairman of Committees (Lord Russell of Liverpool) (CB): That concludes the work of the Committee this afternoon. I remind Members to sanitise their desks and chairs before leaving the Room.

Committee adjourned at 4.51 pm.