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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

Monday 14 June 2021

The House met in a hybrid proceeding.

1 pm

Prayers—read by the Lord Bishop of Leeds.

Arrangement of Business

Announcement

1.08 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.

Covid-19: Proof of Vaccination

Question

1.08 pm

Asked by ***Lord Blunkett***

To ask Her Majesty's Government what facility they will make available as proof of vaccination for those wishing to travel who do not have a smart phone and access to the verification app.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, since May, individuals in England who have had two doses of an approved Covid-19 vaccine have been able to demonstrate their vaccine status for international travel. The services can be accessed through digital and non-digital routes, via the NHS app and the NHS website or by calling 111 to request a letter. The devolved Administrations are making available similar letters for use in travelling overseas. Over 63,000 people have requested a letter since the service was launched.

Lord Blunkett (Lab) [V]: I am very grateful to the Minister for his positive answer. Can he tell the House exactly how long it takes to get a printed letter as opposed to downloading the app, and how this will relate to the new electronic travel authorisation, which hopefully will coincide with lifting restrictions on British travellers here and abroad?

Lord Bethell (Con): My Lords, 57,000 people have received their letters so far. I am not aware of any delays. Those who wish to can use a pharmacy for the delivery of their letters. It is encouraging news and we have gone to considerable lengths to meet the suggestions of charities which we engaged with on the letters. They are available in different languages and in Braille.

Lord Harris of Haringey (Lab): My Lords, I refer to my interests in the register. It sounds as though what you really need is a secure card that proves your identity and has important information uploaded to it, such as your vaccination status—something my noble friend was introducing, only to have it scrapped by an incoming Conservative Government. We have had 10 wasted years. If there is to be a vaccination app or some other certification, can we be assured that it will not contain data that purports to show that holders are safe to travel because they have had a negative test under the absurd test and trace scheme? The *BMJ* has reported that the level of false negatives is of the order of 30%. Such negative tests have no probative value, despite the Government, according to the Public Accounts Committee, wasting £37 billion on them.

Lord Bethell (Con): My Lords, that is not our approach. Our approach is to try to use whatever technologies work in order to open up our borders. The idea that 30% of tests are not correct is an unhelpful suggestion by the noble Lord. We will be using testing in the validation app.

Baroness Browning (Con) [V]: My Lords, I declare my interest as a vice-president of the National Autistic Society. My noble friend will be only too well aware that many on the autism spectrum are very IT-savvy. However, can he help those who would find it quite a challenge to phone 111? Is there any way the Government can communicate with the autism community, perhaps through the charitable sector and others, to make alternative arrangements other than just a phone call?

Lord Bethell (Con): My Lords, we have engaged considerably with the sector on exactly these kinds of matters. GPs and pharmacies are briefed to help those with difficulties get this material. We are also conscious that some with autism may struggle to take a test and find the process of swabbing intimidating, so we are looking into workarounds for that.

Lord Scriven (LD): My Lords, regardless of whether you hold a paper or digital record, personal health and data will be held on a central database. Can the Minister therefore inform us which government departments and private sector organisations will have access to the data on the central database?

Lord Bethell (Con): My Lords, vaccine data is held in the vaccine database and in the patient's record. We abide by the principle that the data is owned by the patient.

Lord Flight (Con): My Lords, the Minister has really answered this question already, but may I add that it surely would be possible for vaccination units to have supplies of certificates that they could issue to people when they come to get their first or second vaccination?

Lord Bethell (Con): My noble friend alludes to having pre-printed certificates. In fact, each vaccine certificate has a tailored two-dimensional QR code that is designed for each person. Therefore, it is necessary to print the certificate for the person because it has their specific details on it.

The Earl of Clancarty (CB): My Lords, I am a little confused by what the Minister is saying. Is he saying that we are not going to get a proper Covid passport, as the EU will be offering from 1 July and Ireland from 19 July in both digital and physical options? Could he answer that in detail?

Lord Bethell (Con): My Lords, I apologise for not being clearer; I will be crystal clear right now. Today, you can have a digital certificate on your iPhone, you can have a digital certificate that is printed out from your computer or you can call a number and have a paper certificate sent to you in the post immediately. All of those options are live today.

Baroness Thornton (Lab): Disability campaigners are deeply concerned about the integration of health data into cultural participation and worry that the Government's plans to set up the vaccine passport scheme could undermine the rights of disabled workers and audiences who cannot have the vaccine because of a health condition. What steps are the Government taking to ensure that any scheme that is introduced obeys the seven key inclusive principles, including complying with the Equality Act in making reasonable adjustments to ensure that disabled people do not face discrimination?

Lord Bethell (Con): My Lords, I am very alive to the concerns of the disabled. We have to balance the need to limit the spread of this virus to save lives, but in a way that is fair and just to all people. We are very much engaged with disability and other charities to ensure that that works. The noble Baroness is right that there will be some people for whom the vaccine does not work and who could yet catch the disease. We need to make provision for those people, and we are working on that.

Baroness Tyler of Enfield (LD) [V]: My Lords, I am concerned for the significant numbers of people with existing mental health problems who often do not feel comfortable with smartphone devices, as the information overload such phones can provide can exacerbate their feelings of stress and anxiety. I am pleased to hear the Minister say that other channels will be available to these people, but what arrangements are the Government putting in place to ensure that they are aware that options other than smartphones exist that they will be able to use?

Lord Bethell (Con): My Lords, all the promotions for vaccine certificates through travel agents and GPs make very substantial reference to the availability of paper letters and the channel of being able to call 119 to receive them. I completely sympathise with those who do not want to use their mobile phones for everything, and some will prefer a letter in the pocket to an app on their phone.

Baroness Rawlings [V] (Con): My Lords, I thank the Minister for his clarity, but proof of vaccination is irrelevant if we are prohibited from travelling. The Prime Minister is rumoured to have discussed travel to and from the United States with President Biden at the G7, but what are the predictions regarding UK citizens travelling to Europe, apart from Albania, which seems to be okay?

Lord Bethell (Con): I do not know about Albania specifically, but the freedom to travel in Europe is, of course, in part defined by Europeans themselves. We are in conversation with all European countries at the moment as to how our vaccine certificate scheme can be aligned with theirs. Indications from Europe are that they are interested in having a two-vaccination programme for entry as well, but we are trying to understand that more thoroughly.

Baroness Hoey (Non-Afl): My Lords, I welcome the choice that people are being given in how to prove that they have been vaccinated. However, as the Government further the digital economy, will they make it clear that no one will be left behind, so that those who do not wish to go online and to always communicate in that way will never be prevented from using the telephone or corresponding by letter to access any government service?

Lord Bethell (Con): Yes, I completely endorse that sentiment. I pay tribute to 111 and 119, two facilities that have been used to an incredible extent during this pandemic. A lot of people would much prefer to hear someone at the end of a telephone, to have that reassurance and that personal touch. That is why we have substantially invested in both those resources and will continue to do so.

Lord Vaizey of Didcot (Con): My Lords, I love the NHS app—in fact, I used it yesterday to gain entry to Wembley stadium to watch England's great victory over Croatia. Will the Minister consider making sure that additional vaccinations can be loaded on to it, such as the flu vaccination, and starting a major advertising campaign to increase the numbers from 6 million to who knows what?

Lord Bethell (Con): My Lords, I pay tribute to the England football team, who did extremely well; I am glad that my noble friend was able to attend. He is entirely right: this is an incredibly valuable resource. We have a very strong preventive agenda in our healthcare strategy. The vaccine has demonstrated how we can use modern medical technology to prevent the spread of disease, and it is by using thoughtful technology like this app that we can popularise and make useful a vaccine approach that could reach out to other diseases.

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

Constitution Inquiry

Question

1.19 pm

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

To ask Her Majesty's Government what is their response to the suggestion by the former prime minister Rt Hon Gordon Brown of establishing an inquiry on the constitution.

The Minister of State, Cabinet Office (Lord True): My Lords, the UK Government believe strongly in upholding the constitutional integrity of the United Kingdom. The United Kingdom is the most successful political and economic union in history. Together we are safer, stronger and more prosperous. The Government have no plans to establish an inquiry into the constitution.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, that is a typically complacent Whitehall response. Surely the Minister, who is more politically astute than people in Whitehall, must realise that there is a growing demand for decentralisation in England as well as in the rest of the United Kingdom. It is not just Gordon Brown asking for a comprehensive review; people on the Minister's own side, notably Lord Salisbury, and many others want such a review. Does he not realise that the future of the union is in peril if Government Ministers keep burying their heads in the sand like ostriches?

Lord True (Con): My Lords, I try to avoid sand, whether putting my head in it or not. I do not think this Government are complacent. I think there are difficulties with the kind of federal approach that the noble Lord describes because of the nature of the United Kingdom, but I assure him that the Government listen with respect to all those who express views, including former Prime Ministers.

The Lord Bishop of Leeds: My Lords, I am not sure whether I heard reference to federalism there. Does the Minister agree that, because of the nature of the debate and the threats to the union, we need to get ahead of the game in relation to the union and its associated constitutional arrangements, and that this is urgent? Will the Government ensure that such discussions are cross-party and cross-society when they do take place?

Lord True (Con): My Lords, all those kinds of discussions certainly benefit from the widest range of opinions. The noble Lord, Lord Foulkes, did raise the issue of a federal approach, and I responded to that. I assure the right reverend Prelate that the Government's ears are always open.

Lord Howell of Guildford (Con) [V]: My Lords, I fully understand that the idea of a single constitutional commission or inquiry has now been abandoned and replaced by a number of inquiries that are taking place or have taken place into different aspects and branches of our constitutional arrangements, which always need attention. But if we are to offer a better union, could my noble friend explain which body will look into the obvious and fundamental incompatibility between the evident wish of Scotland's ruling party not just for improved devolution but for the actual sharing or taking of sovereignty and the central constitutional tenet, which we all hold, of the absolute sovereignty of our union Parliament here at Westminster? There is a problem, is there not?

Lord True (Con): My Lords, many bodies make an input into this debate—I would single out the great work of your Lordships' Constitution Committee, among others—but I repeat that the Government believe in a strong UK Parliament for a strong United Kingdom. The UK Parliament, which represents the whole of the United Kingdom, is sovereign, and the sharing of sovereignty would run counter to this core element of the UK constitution. The Government are committed to strengthening the union, and there is an earnest of that in the recent summit summoned by my right honourable friend the Prime Minister.

Lord Singh of Wimbledon (CB) [V]: [*Inaudible*]—arrogant patriotism was an infantile disease like measles. In its new virulent form, it has led to Brexit and now threatens the union with Scotland. Does the Minister agree that former Prime Minister Gordon Brown is right when he says that we should drop divisive talk of "us and them" and look to commonalities of interest to make for a more equal and stronger union?

Lord True (Con): My Lords, I certainly agree that striving for commonalities is wise advice to us all.

Lord Grocott (Lab): My Lords, on constitutional reform, can the Minister confirm that, following the retirement of the Countess of Mar, all Peers among the 92 places reserved for hereditaries are men; that all 21 candidates in today's by-election for three Conservative hereditaries are men; and that all 10 candidates for the Cross-Bench vacancy are men? Is this not utterly unacceptable? What are the Government going to do about it?

Lord True (Con): My Lords, the Government will continue to apply the law of the land until the law of the land is changed.

Lord Wallace of Saltaire (LD): My Lords, the commitment to constitutional integrity and the absolute sovereignty of the UK Parliament comprise a piece of legal purism which I think the Government would criticise if the European Commission displayed such a tendency. Does the Minister recognise that the commitment to absolute UK sovereignty was what led to the division of Ireland? Does he not accept that insistence on it with regard to Northern Ireland and Scotland now is likely to lead to further division?

Lord True (Con): No, my Lords, I do not agree. We currently have a constitutional settlement in which there are reserved and devolved matters. I think we all believe that devolution has benefited the United Kingdom, and the Government's priority—as the priority of all of us should be—is to make that work in amity and with commonality, as we were reminded earlier.

Lord Young of Cookham (Con): As my noble friend Lord Howell just reminded us, the Government have abandoned their manifesto commitment to set up a constitution, democracy and rights commission in the first year of this Parliament. They have instead announced that they are going to have a range of independent workstreams, to be announced in due course. Can my noble friend shed any light on what these workstreams might comprise, and whether any might involve the working of your Lordships' House?

Lord True (Con): My Lords, I will not anticipate the answer that may or may not come to that question. Given the broad nature of the constitution, we are taking forward the work via a range of workstreams, as my noble friend said. So far as your Lordships' House is concerned, I have the greatest reverence for this House, and I believe that any institution that does its work well and sticks to its last will gain respect.

Baroness Hayter of Kentish Town (Lab): I do not know whether the Minister has read the Haggard and Kaufman book, *Backsliding: Democratic Regress in the Contemporary World*, but I wonder whether he shares its concern that without care and protection, our democratic strengths and constitution can be undermined by the lack of parliamentary, legal and press scrutiny. If he agrees, does he therefore think that a serious look at how government decisions are taken, in order to increase transparency and accountability, is now well overdue?

Lord True (Con): My Lords, within that question there are absolutes and particulars. Having had the honour to be elected by my fellow citizens many times in elections, my own view is that accountability to the people is fundamental, and I also believe that transparency and openness are extraordinarily important. In that respect, I agree with the noble Baroness.

Lord Norton of Louth (Con) [V]: Given the disparate and major changes to the constitution that have taken place in recent decades, does my noble friend agree that were any body set up to examine the constitution, it should engage in a take-stock exercise, making sense of where we are now rather than embarking on proposals for further change? Furthermore, does he agree that we should look at the union within the context of the constitution as a whole?

Lord True (Con): My Lords, I agree with my noble friend that there is an element of taking stock as well as of seeking change. The glory of our constitution is that it is flexible and has evolved, and I am sure it will continue with that strength in the future.

Lord Roberts of Llandudno (LD) [V]: My Lords, the pandemic has shown us how we need one another; different countries all depend on each other. So, any future discussion or referendum should not be about just separation, division or—often reluctant—centralisation; there is a federal solution that should certainly be top of the agenda when people come to discuss future constitutional arrangements.

Lord True (Con): I am not sure whether the noble Lord has finished; I hope he has. I made some comments on the federal approach. My view, and the Government's view, is that we should bend every sinew to make the constitutional arrangements that we have now work; that is what this Government have sought to demonstrate.

Lord Caine (Con): My Lords, does my noble friend share my scepticism at the idea that the union will be saved by the kind of constitutional upheaval and tinkering currently put forward by Gordon Brown and others, which many people in this country will see as a huge distraction from the priorities of the British people? Rather, what is needed is a relentless focus from the Government on sharing prosperity, opportunity and security throughout this United Kingdom, as well as a constructive and positive unionist narrative that puts at its heart our common values and shared future as one nation.

Lord True (Con): I agree with my noble friend. The Government have ensured that citizens and businesses across Scotland, Wales and Northern Ireland benefit from a £350 billion package of UK-wide support during the pandemic, protecting 1.7 million jobs in those countries and providing access to tests, key medicines and vaccines. The recent Budget further demonstrated our commitment to strengthening the union, with UK-wide policies including the extension of furlough and the self-employed scheme.

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

Covid-19: Vaccines and Pregnancy

Question

1.31 pm

Asked by ***Baroness Cumberlege***

To ask Her Majesty's Government when they will (1) analyse, and (2) regularly share, data relating to the safety of the use of COVID-19 vaccines in pregnant women with the Royal Colleges and other relevant parties.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, it is vital that we know what treatment is appropriate and safe for pregnant women, so it is imperative that clinical trials are inclusive of this group where possible. The current advice to vaccinate pregnant women is based on a US real-world study of more than 125,000 people. Recruitment to the first Covid vaccine study in the UK involving pregnant women was launched on 17 May. In addition, adverse reaction reports on Covid-19 vaccines in pregnant women are collected by the MHRA, carefully assessed and reviewed.

Baroness Cumberlege (Con): My Lords, I thank my noble friend for that Answer. I must say, though, that there is a lot of concern among the Royal College of Obstetricians and Gynaecologists and the Royal College of Midwives that the take-up of the vaccination among pregnant women is not routinely published. I would like to know from my noble friend what the real commitment to doing this is, what proportion of pregnant women have been offered a vaccine, what proportion of those women have accepted it and what proportion of them have had two doses. What is the mechanism for linking this data with follow-up in relation to the outcomes for women and their babies?

Lord Bethell (Con): My Lords, my noble friend made a clear case for the importance of improving the way in which patient data is collected and analysed in this country. It is something that we are working on at the moment. She highlights a very difficult situation. A third of women do not know that they are pregnant, of course, and, when they are pregnant, their data is first caught at the hospital where they decide to have their birth. Those databases are not easily linked. We do not have a countersignal for pregnancy at the moment; it is therefore not an acute priority. However, I take my noble friend's point and will look into it further.

Baroness Blackstone (Ind Lab): My Lords, I declare an interest as chair of the trustees of the Royal College of Obstetricians and Gynaecologists. The RCOG survey found that more than half of those who declined the vaccine did so because they were waiting for more information about the safety of the Covid-19 vaccination during pregnancy. Will the Government, as a matter of urgency, issue guidance to all pregnant mothers explaining that the vaccination will not harm their unborn babies? Will they also provide facilities for pregnant women to be vaccinated at antenatal clinics as a mechanism to increase the take-up of vaccinations by pregnant women?

Lord Bethell (Con): I am extremely grateful for those constructive suggestions from the noble Baroness. We have a very large amount of materials specifically for pregnant women, including guidance for pregnant women and a guide for women who are of childbearing age, pregnant or breastfeeding; those are widely distributed by GPs. However, as I said, a lot of pregnant women do not know that they are pregnant, so it is not possible to reach all of them all the time. At the moment, our priority is to ensure that those aged over 50 take their second jab. We will sweep up other demographics, and we will make that a priority when we reach it.

Baroness Brinton (LD) [V]: A close family member rang her surgery to ask for advice about being called for vaccination while breastfeeding. They said that it was nothing to do with them and told her to ring the main vaccine booking line. That person said, "Just ask the person who vaccinates you", who said, "Oh, I don't know. I'll have to check". Last week, Channel 4 reported that this is a widespread problem for pregnant and breastfeeding mums. It is evident that there is no clear guidance for front-line staff on what to tell mums. Can this be remedied as a matter of urgency?

Lord Bethell (Con): The noble Baroness alluded to a problem that is, I am afraid, commonplace in the healthcare system: an acute sensitivity about giving advice to those who are pregnant because people are very concerned about giving the wrong advice, which sometimes leads to no advice being given. We are aware of this problem but I assure the noble Baroness that material is given to those on the front line—I have mentioned some of the materials that we have published—and GPs have all that material at their disposal. We have recognised this problem, we have moved on it and we are making as much material as possible available to the right people.

Baroness Gardner of Parkes (Con) [V]: My Lords, I hope that noble Lords can see me because I do not seem to be being picked up very well. Can the Minister comment on what additional steps are being taken to publicise the up-to-date position to women who are either trying for a baby or are pregnant? Is this information being shared with the organisations in this field, such as the National Childbirth Trust and Mumsnet, to share with their communities?

Lord Bethell (Con): My Lords, the up-to-date advice is this: get the vaccine. That is absolutely being promoted very widely.

Baroness Wheatcroft (CB): My Lords, if the up-to-date advice is "Get the vaccine", which is exactly what it should be, what work is being done to assess the effect on women of having Covid during their pregnancy? What is the effect on the child? Is there any research on that?

Lord Bethell (Con): My Lords, the noble Baroness points to one of the challenges of longitudinal research: the babies have not been born for very long, of course. We need to do long-term studies to understand the effect. There is no evidence at all of a negative outcome but we will need to monitor that; research resources will be dedicated to looking at it.

Baroness Merron (Lab): To tackle the risk of stillbirths and emergency Caesareans among mothers who are giving birth and have contracted Covid-19, as we see the vaccination programme extend further—particularly into the younger age groups—will the Minister look at prioritising pregnant women for vaccinations? I refer particularly to women in the later stages of pregnancy.

Lord Bethell (Con): My Lords, the JCVI has a clear set of prioritisation protocols, which we are sticking to. The fact of being pregnant does not seem to have a direct impact in terms of severe disease or death, so there is no clear evidence at the moment for putting in or changing the prioritisation of pregnant women. However, we constantly review that and we are naturally concerned to protect both the mother and the child.

Baroness Barker (LD): The Minister referred to women who do not know that they are pregnant. The place where women go to find out whether they might be is a pharmacy. What are the Government doing to make sure that pharmacies are places where women can access accurate information and guidance?

Lord Bethell (Con): The noble Baroness is entirely right. Pharmacies have played an absolutely critical role in the vaccine rollout, and we owe them huge thanks for their contribution. Pharmacists have undertaken a huge amount of training in both the delivery and explanation of the vaccine. I attribute some of the success of the vaccine programme to the extremely effective communication from pharmacists on all aspects of the vaccine, including relating to pregnancy.

Lord Hunt of Kings Heath (Lab): My Lords, would it not be a good idea if the Chief Nursing Officer and the Chief Midwifery Officer gave a conference from Downing Street to reinforce the message that the Minister has given today about the safety of the vaccine? Can he tell me what the Government are doing specifically about the conspiracy theories going round in relation to safety risks to mothers and babies?

Lord Bethell (Con): My Lords, when it comes to conspiracy theories, we have found that the best people to communicate on that are those who women and mothers trust and are dealing with during their pregnancy, typically their nurses and doctors. We have ensured that all the right materials are there, so that difficult questions can be answered in a collaborative dialogue. That is the most effective way of dealing with this.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, can the Minister comment on or indicate the extent of the level of co-operation between the UK Government and the devolved Administrations regarding vaccination take-up and pregnant women?

Lord Bethell (Con): My Lords, the vaccine programme has worked extremely well across all the nations of the UK, and there is a huge amount of collaboration, particularly between the CMOs. Material is routinely shared between all the countries, and I am not aware of any differential outcomes in any particular part of the UK.

The Lord Speaker (Lord McFall of Alcluith): My Lords, all supplementary questions have been asked.

Libel and Defamation Cases: Cost to Public Funds

Question

1.41 pm

Asked by ***Lord Rooker***

To ask Her Majesty's Government what is the estimated cost to public funds of people based outside the United Kingdom using UK courts to mount libel and defamation cases against (1) people, and (2) publications, based in the United Kingdom.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Wolfson of Tredegar) (Con): My Lords, court fees are set to achieve full cost recovery, and thus the cost to public funds of libel claims brought by people from outside the United Kingdom in England and Wales is negligible.

Lord Rooker (Lab): Is the Minister aware that five Russian billionaires are involved in a strategic lawsuit in London against the journalist Catherine Belton as a result of her book, *Putin's People*? Why should Igor Sechin, Roman Abramovich, Mikhail Fridman, Petr Aven and Shalva Chigirinsky be using London lawyers Carter-Ruck, CMS, Harbottle and Lewis and Taylor Wessing to silence a journalist? These grubby law firms should be struck off and the barristers whom they are paying to do this work should be disbarred. Our courts are being abused by these people, and as Nick Cohen said in the *Observer*, they are making London

"the censorship capital of the world."

What are the Government doing about the co-ordinated, shameful abuse of our courts, which must have started life in the Kremlin?

Lord Wolfson of Tredegar (Con): My Lords, it is not what the Government are doing but what the Government have done. Section 9 of the Defamation Act 2013 provides that if a defendant is domiciled out of the jurisdiction then London can hear the case only if the judge is clear that this is the appropriate forum. That Act also contains defences of truth, honest opinion and public interest.

Baroness Helic (Con) [V]: My Lords, strategic lawsuits against public participation—SLAPPs—are lawsuits brought by powerful individuals or bodies to silence anyone who investigates or criticises them. Before her assassination, the late Daphne Anne Caruana Galizia faced 47 different legal actions trying to prevent her reporting on corruption, and countless legal threats, including some launched by English lawyers with the threat of action in English courts. Other countries, such as Australia, parts of the US and Canada, have passed legislation to prevent SLAPPs, including mechanisms to quickly dismiss them, and sanctions for those who abuse the courts in this way. Can Her Majesty's Government follow suit?

Lord Wolfson of Tredegar (Con): My Lords, the Government always take action to protect freedom of expression to safeguard the work of journalists. The forthcoming online safety legislation will enshrine in law protections for journalistic content and free debate. We will, however. also keep a very close eye on what is called the SLAPP jurisdiction. My noble friend mentions Australia and Canada; she may also wish to read a recent judgment from the Western Cape High Court, the case of Mineral Sands Resources (Pty) Ltd, in which Deputy Judge President Patricia Goliath set out in very clear terms the advantages of a SLAPP jurisdiction. This may be the first occasion of a David praising the work of a Goliath.

Lord Pannick (CB): My Lords, the Written Question tabled by the noble Lord, Lord Rooker, focused on the cost to public funds, which the Minister fully answered. The Oral Question contains an attack on barristers and solicitors for representing clients. Does the Minister agree that any litigant, whoever they may be and wherever they may come from, is entitled to legal advice and representation, and that it is the job of the judge to decide what the legal rights and wrongs are?

Lord Rooker (Lab): They have vested interests.

Lord Wolfson of Tredegar (Con): My Lords, that is absolutely right. With respect to the comment of the noble Lord, Lord Rooker, from a sedentary position, it is not a vested interest point, it is a fundamental principle of the rule of law. A lawyer should not be identified with their client, and perhaps I may say that I would not want to be identified with all my former clients. But they are all entitled to representation in free and fair courts, which is what this country provides.

Lord Browne of Ladyton (Lab) [V]: My Lords, as well as concern that English law is still being abused by threats and court action from powerful individuals against journalists and authors reporting on financial crime and corruption, there is credible evidence of women who have alleged abuse facing libel threats and actions from wealthy men as it has proved an effective way to shut women up. Does not the defence of legitimate debate, freedom of expression, safety of journalists, exposure of corruption and encouragement of women to report violence and abuse demand at least a review and reassessment of the measures that can be taken to prevent such actions by corrupt, violent and wealthy figures?

Lord Wolfson of Tredegar (Con): My Lords, the noble Lord makes a very important point. There are, of course, the defences of truth and, in relation to what is said in court, there is of course absolute privilege. As the Minister who played a significant part in taking the Domestic Abuse Act through this House, I will certainly want to ensure that the protections it gave to women are not undermined by people exploiting the law of defamation.

Lord Marks of Henley-on-Thames (LD): My Lords, the Defamation Act 2013 was an important coalition achievement. The pre-legislative committee on which I served was unanimous, so we now have the serious harm threshold, the serious financial loss requirement for companies and the defences of honest opinion and publication in the public interest. To curb libel tourism, as the Minister has just said, Section 9 requires any claimant outside the UK to show that

"England and Wales is clearly the most appropriate place"

for defamation action. It was a test applied strictly by the Court of Appeal last year in Wright v Ver. While we should certainly keep the Act under review, is not the law now restrictive enough?

Lord Wolfson of Tredegar (Con): My Lords, I agree with the noble Lord that the law is well balanced. We think that the Defamation Act 2013 is working well. I thought I heard the noble Lord say that Section 9 applies where a claimant is domiciled outside the UK, but I think that it is actually where the defendant is so domiciled. With that small correction, I agree with the noble Lord.

Lord Ponsonby of Shulbrede (Lab): My Lords, in October 2019, the MoJ published its post-legislative memorandum regarding the operation of the Defamation Act 2013 since it came into force. It concluded:

"There has not been any body of opinion calling for a review … of the Act. That may be because … it is still too early to feel their full impact—

that is, of its provisions—

"given the length of civil litigation."

Following the concerns raised in November last year in an article in the *Guardian*, we have now heard further concerns from my noble friends Lord Rooker and Lord Browne, who mentioned how women who allege abuse may face libel threats from wealthy former partners. In the Minister's view, does this not all add up to a re-review of the operation of the 2013 Act?

Lord Wolfson of Tredegar (Con): My Lords, as I have said, the 2013 Act is regarded as working well and there are no current plans to reform or revise it. However, we will always consider a review if significant problems are demonstrated. Indeed, the 2013 Act itself was a response to such concerns and problems. Obviously, it is inevitable that libel cases will still be brought, but we consider that the Act gives the courts a proper basis on which to determine them by setting out the correct legal framework. The decisions of the courts in interpreting the 2013 Act have helped to reinforce the intention and policy underlying that Act.

Lord Wallace of Saltaire (LD): My Lords, in answer to a Written Question that I received two weeks ago, the Foreign Office stated:

"Persons or entities designated under the Sanctions and Anti-Money Laundering Act 2018 are not banned from initiating action in UK courts."

Does that incidentally mean that if costs were awarded against such people or entities, they would be forbidden to reimburse them? Does the Minister not regard this as a fundamental abuse of British sovereignty?

Lord Wolfson of Tredegar (Con): My Lords, the response from the Foreign Office was absolutely right. Legislation imposes proportionate sanctions where warranted, but restricting access to justice is something else. When it comes to payment of costs awarded against such people, I can say to the noble Lord from experience that there are ways in which such costs can be ordered and paid, but one has to be very careful in such circumstances not inadvertently to breach the sanctions regime.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, does the Minister agree that part of the problem raised by this Question is the absence of an appropriate, independent alternative dispute resolution mechanism for those unfairly treated by the press? Do the Government have any plans to consider this?

Lord Wolfson of Tredegar (Con): My Lords, the short answer is yes. I would disagree with noble Lord in only one respect; that is, when he calls it alternative dispute resolution. We should not see these forms of dispute resolution as being alternative in the sense of being somewhat outré or unusual. They should be absolutely at the forefront of our civil justice system, and indeed, we are making changes throughout our civil justice system to make sure that only cases that really cannot be resolved outside of court end up in court.

The Lord Speaker (Lord McFall of Alcluith): My Lords, all supplementary questions have been asked and we now come to two First Readings.

Cigarette Stick Health Warnings Bill [HL]

First Reading

1.51 pm

A Bill to require tobacco manufacturers to print health warnings on individual cigarette sticks and cigarette rolling papers.

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

Office for Demographic Change Bill [HL]

First Reading

1.52 pm

A Bill to establish the Office for Demographic Change with the duty of collecting evidence about and analysing the impact of population change, and considering future changes in the population of the United Kingdom and their consequences; and for connected purposes.

The Bill was introduced by Lord Hodgson of Astley Abbotts, read a first time and ordered to be printed.

1.52 pm

Sitting suspended.

Hillsborough: Collapse of Trials

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Thursday 10 June.

"I am sure that the whole House would want to join me in paying tribute to the immense courage, determination and patience of the families of the 96 people who died in the Hillsborough disaster, and of those injured who, 32 years on, continue to grieve about the events of that truly terrible day.

The collapse of the case concerning two former police officers and a solicitor who are charged with perverting the course of justice for allegedly having altered statements to be provided to the 1990 Taylor inquiry was the final opportunity for the families seeking justice for what happened at Hillsborough. As the House will have seen, the trial judge in that case ruled that the offence of perverting the course of justice could not have been committed because the inquiry was carrying out an administrative function for the Home Secretary and was not a process of public justice. As such, the prosecution was not able to establish a key element of the offence of perverting the course of justice and the case was unable to proceed any further. Of course, as Lord Chancellor, it is my duty to respect that decision.

Since the Taylor inquiry, the Inquiries Act 2005 was introduced, which allows inquiries to take evidence on oath and to compel witnesses to give evidence and to produce documentary evidence. Section 35 of that Act also makes it an offence to commit acts that intend to have the effect of distorting, altering or preventing evidence from being given to the statutory inquiry. It is also an offence intentionally to suppress or to conceal a relevant document or to destroy such a document.

Members will be rightly concerned as to what, if any, effect this may have on current public inquiries, such as the Grenfell inquiry, the Undercover Policing Inquiry and the Independent Inquiry into Child Sexual Abuse.

Each of those are statutory inquiries and each has been set up under the aegis of the 2005 Act, which means that, should someone seek to distort, destroy, conceal or suppress evidence in any of those inquiries, that Act provides that those actions will constitute a specific criminal offence. Indeed, the common-law offence of perverting the course of justice may also be an appropriate offence to charge if the elements of that offence are made out.

We recognise the need for those in public office to act responsibly and to discharge their duties with both honesty and integrity. As we continue to consider the judgment in the latest Hillsborough trial and its implications, we will of course always consider opportunities to review the law and how it operates. I want the families to know that there will be no exception in this case. We are carefully considering the points made by former Bishop of Liverpool James Jones in his 2017 report on the experiences of the Hillsborough families, including in relation to the proposed duty of candour. Our focus now, after the trial's conclusion, will be on publishing the Government's overarching response to that report, after having further consulted all the families.

Irrespective of the outcome of this case, the Government continue to be committed to engaging with the survivors and the bereaved families. It is critical that the lessons of the Hillsborough tragedy—the Hillsborough disaster—are not only learned but consistently applied so that something similar can never be allowed to happen again. The Government are absolutely determined to do just that."

2.01 pm

Lord Ponsonby of Shulbrede (Lab): My Lords, following the collapse of the trials relating to the Hillsborough disaster, on 10 June in response to the UQ in the Commons the Lord Chancellor said that he would very carefully consider

"the points made by the … Bishop of Liverpool …. in his 2017 report"

and the conclusion of the trials, and publish an

"overarching response … having further consulted … the families."—[*Official Report*, Commons, 10/6/21; cols. 1128-29.]

In addition to this, the Government have undertaken to respond to the Justice Committee's report on the coroners service by the end of July this year, specifically to its recommendation that bereaved families should be legally aided at inquests where public authorities are legally represented. Does the Minister accept that, in these two responses, the overriding concern should be that bereaved families and victims feel that their interests come first, and that no public authority or individual working for that public authority is above the law?

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Wolfson of Tredegar) (Con): My Lords, on a personal note, I was still living in Liverpool at the time of the Hillsborough disaster. I remember listening to Radio Merseyside that fateful Saturday evening as the news of the deaths came in and the figure mounted higher and higher. I have nothing but admiration for the families and their supporters who sought justice for the 96 over so many years and in the face of so many obstacles. In response directly to the noble Lord's question: yes, the overriding concern must be that bereaved victims and families feel their interests come first. We want to place them at the centre of our response to the inquiry under the former Bishop of Liverpool. Certainly, I agree that no public authority or individual working for that public authority is above the law.

Lord Marks of Henley-on-Thames (LD): My Lords, Mr Justice Davis held that the offence of perverting the course of justice did not apply to a public inquiry, because it is an administrative function of the Government rather than a process of public justice. If that is the current state of the law, even given the specific offence under the 2005 Act mentioned by the Lord Chancellor, will that not undermine the whole point of public inquiries and destroy public confidence in them? Will the Government urgently amend the Inquiries Act to reverse this decision, particularly in view of the impending inquiry into the handling of the pandemic, where we know there will be significant conflicts of evidence?

Lord Wolfson of Tredegar (Con): My Lords, we will of course keep this point of law under consideration but not for the reasons the noble Lord gives, if I may say so respectfully. The Prime Minister has already confirmed that the Covid inquiry—if I can call it that—will be established on a statutory basis with full formal powers. That means that Section 35 of the Inquiries Act 2005 will apply. That makes it an offence to commit acts that tend

"to have the effect of … distorting … altering … or preventing … evidence"

from being given to a statutory inquiry.

Lord Carlile of Berriew (CB) [V]: Will the Minister confirm that the DPP himself advised on charges brought in the trial and on the surprising decision not to appeal the trial judge's terminating ruling? Will the DPP follow the practice of publishing his advice in important cases? Will the Minister explain why alternative charges of misconduct in public office were not brought against all three defendants, as they could have been?

Lord Wolfson of Tredegar (Con): My Lords, the CPS sought advice from senior Treasury counsel pre-charge. Decisions on appropriate charges were made after consideration of that advice. Those decisions were taken in 2017, predating the current director's term of office. As far as misconduct in public office is concerned, that charge was not available for Mr Metcalf, the solicitor for South Yorkshire Police's insurers. The allegations against the two officers were related closely to his conduct. Therefore, it was considered that the same charge against each was appropriate. The CPS did not appeal the decision because, having carefully considered it, it concluded there was not a proper basis to appeal to the Court of Appeal. As for the point about the director publishing advice, he does not sit under the Ministry of Justice, as the noble Lord will be aware, but I will pass that point on to the director, whom I note is appearing before the Justice Select Committee tomorrow.

Lord Moynihan (Con): My Lords, having flown up to the ground on the day of the tragedy as Minister for Sport, I spent time in the gymnasium that was divided into three: principally, an area for the dead; an area for families and friends to identify their lost ones through photographs; and an area for counselling and statements. I have rarely spoken about the appalling tragedy and the lasting effect it had on all of us involved, but does my noble friend the Minister agree that for all the criticisms levelled and questions about the decisions made by those in charge, the support given in tragic times to the bereaved, and the respect for those who had died—lying there in the gymnasium—has rarely been recognised? Does he accept that everyone I met that day, many in a state of profound shock, including many young police officers, did their level best to assist in harrowing circumstances?

Lord Wolfson of Tredegar (Con): My Lords, in cases like this, it is important to distinguish between the institutional response—which in many cases was either lacking or appalling—and the individual response of individual police officers, emergency service workers and others who went out of their way to assist in the most distressing of circumstances.

The Lord Bishop of Leeds: My Lords, what have the Government learned about the process of justice and public confidence in law, when a trial can collapse one day and a defence counsel stands in the street outside the court and maintains unequivocally that this proves that there has not been a cover-up, yet almost the next day the police admit such cover-ups and compensation is duly paid?

Lord Wolfson of Tredegar (Con): My Lords, as Prime Minister David Cameron said when he made the apology in the other place, the families

"suffered a double injustice: the injustice of the … events"

themselves,

"the failure of the state to protect"

them

"and the indefensible wait to get to the truth;"

and also the offence of

"the denigration of the deceased."—[*Official Report*, Commons, 12/9/12; cols. 285-86.]

When I was at the Bar, it was generally regarded as unwise or sometimes improper to comment publicly about your cases. I certainly commend that approach to anybody who says anything about the acts of the Liverpool fans. The *Sun* itself had to provide a full apology. It well behoves everybody else to read the Bishop Jones inquiry if they want to find out what the truth actually is.

Lord Wills (Lab) [V]: My Lords, those of us who have been campaigning in support of the Hillsborough families for many years welcomed the positive and sympathetic response of the Lord Chancellor in the other place, and it has been echoed today by the Minister. Does he agree that it is time to meet the demand of the Hillsborough families—that no one similarly bereaved in a public disaster in the future will have to suffer what they suffered for so long? Does he also agree that the Public Advocate Bill, as first set out in the 2017 Queen's Speech, will meet that demand by giving the bereaved real agency in the aftermath of such disasters and the ability to set up a Hillsborough-type panel to ensure that the truth is never again covered up?

Lord Wolfson of Tredegar (Con): My Lords, the Government fundamentally recognise the importance of placing the bereaved at the heart of any investigation that follows a public disaster. The noble Lord has worked in this area for a number of years and a Bill on this has been proposed. There was a government

[Lord Wolfson of Tredegar]
consultation in 2018, the responses to which were somewhat varied. As the Lord Chancellor confirmed in the other place last week, we will work at pace to ensure that we have a proper, full consultation on this important topic. He also reiterated that we will work on this on a cross-party basis. It is important that the independent public advocate does three things: first, it has to be independent; secondly, it must have the confidence of those who use it; and thirdly, and most importantly, it has to make a practical difference.

Lord Alton of Liverpool (CB): My Lords, even before the Hillsborough disaster of 15 April 1989, I had written to the Government questioning the safety of the ground. With the deaths of Liverpool constituents, including a child, and permanent brain damage to another constituent, I have waited patiently, along with the families, to see justice. This is justice delayed and justice denied. Reverting to the question asked by my noble friend Lord Carlile, presumably the Director of Public Prosecutions thought the perverting charge sustainable in law. Did he review the case himself, given its huge public importance, and will the CPS now consider prosecution for misconduct in public office for at least some of the three acquitted men? Does the Minister agree that the possibility of a private prosecution for other offences remains?

Lord Wolfson of Tredegar (Con): My Lords, at the time of these events, I was living in the constituency next door to the noble Lord's and I remember his significant leadership in the city then. Respectfully, I shall pass the question on the director to the director for him to respond to the noble Lord. CPS charging decisions must be a responsibility of the CPS and totally independent of government. It would be unwise for a government Minister to provide legal advice from the Dispatch Box on the sensitive topic of private prosecutions.

The Deputy Speaker (Lord Haskel) (Lab): My Lords, the time allowed for this Question has elapsed.

Napier Barracks Asylum Accommodation

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Thursday 10 June.

"I am answering this question on behalf of the Under-Secretary of State for the Home Department, my honourable friend the Member for Torbay, Kevin Foster, who has sadly suffered a family bereavement and therefore cannot be here this morning.

Covid-19 has had a major and unprecedented impact on the asylum system. We make absolutely no apologies for doing everything in our power to provide shelter to those in need during these exceptional times.

Between March and October last year, nearly 12,000 extra people needed to be housed as a result of the pandemic, nearly 10,000 of whom ended up in hotels, at huge public expense. Every accommodation option had to be considered.

Those accommodated at Napier barracks are catered with three nutritious meals per day, with options for special dietary or religious requirements. There is a recreational building with a library. Prayer rooms are available and scheduled activities now include yoga, English conversation and art. There is a nurse on site and access to a GP. All asylum seekers housed at Napier have access to a 24/7 advice service, provided for the Home Office by Migrant Help.

Napier barracks has been happily used for many years by Army and police personnel. The Army itself has continued to use barrack accommodation around the country during the pandemic, when needed. While we are disappointed by some of the judgment, the High Court found in the Home Office's favour in a number of areas. It rejected the claim that conditions at Napier amounted to 'inhuman or degrading treatment.' The judge declined to rule that dormitories or barrack accommodation could never provide 'adequate accommodation' for asylum seekers, and the judge rejected the claim that the expectation that residents would be back on site by 10 pm amounted to a curfew or unlawful imprisonment.

Furthermore, the judgment was based on conditions in the past, before several significant improvements. These include a stronger cleaning regime, reopening of communal areas with staggered access times, limiting the period of residency and using lateral flow tests three times a week. The overall capacity of the site has also been reduced. At all stages, the Home Office believed it was taking reasonable steps to respond to Public Health England suggestions on public health, where possible.

We have published the suitability criteria that we use for assessing who is suitable to be accommodated at Napier. If it becomes apparent that someone is resident but unsuitable, a transfer is then arranged.

Through our new plans for immigration and the upcoming sovereign borders Bill, this Government are taking action to increase the fairness and efficiency of our asylum system but also to fight illegal and unnecessary migration, such as that by small boats coming across the English Channel. I hope Members will support that Bill when it comes forward, as it is sorely needed to support reform of the system."

2.12 pm

Lord Rosser (Lab) [V]: The judgment found that the Napier Covid arrangements were

"contrary to the advice of PHE",

with precautions being

"completely inadequate to prevent the spread of Covid-19",

with people in dormitory blocks having shared facilities for up to 28 people. PHE advice was that

"dormitories are not suitable"

but that, if the Home Office proceeded, the number of beds should be limited to six with people kept in bubbles. Even that did not apply at Napier, where 200 people got Covid.

The Home Secretary told the Commons Home Affairs Committee in February that

"the use of the accommodation was all based on Public Health England advice"

and that

"we have been following guidance in every single way."

That claim was demolished by the judgment and by the Commons Minister last Thursday, who said that

"Where possible we have followed"—[*Official Report*, Commons, 10/6/21; col. 1118.]

PHE guidelines, with "where possible" determined by the Home Secretary. Why did the Home Secretary tell the Home Affairs Committee that PHE guidance had been followed "in every single way", when that was not the case?

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, we believed we were taking reasonable steps to give effect to the PHE advice on the steps to be taken to make dormitory accommodation as safe as possible. It was on that basis that the Home Secretary and the Permanent Secretary appeared before the committee. We acknowledge the court's findings that the measures were not adequate and are considering our next steps. Throughout the set-up and operation of the site, the Home Office has engaged with health officials in various organisations to ensure that it is aware of up-to-date advice. While the advice to officials from PHE was that dormitory-style accommodation was not suitable, it also set out how congregate residential settings should be used if other accommodation was not available. We have been working very constructively with PHE for more than a year now.

Lord Paddick (LD) [V]: My Lords, the Minister just said "we believed we were taking reasonable steps", but the Home Secretary told the Home Affairs Committee, in answer to question 120, that

"we have been following guidance in every single way."

Does the Minister agree that there is a significant difference between what she has just said and what the Home Secretary said to the Select Committee? Who is telling the truth?

Baroness Williams of Trafford (Con): As I said to the noble Lord, Lord Rosser, we believed that we were taking reasonable steps to give effect to the PHE advice on the steps to make accommodation as safe as possible. The advice that PHE set out was that self-contained accommodation should be used where available but, if not, how non-self-contained accommodation should be used. I have to say that we acted in an unprecedented health pandemic to ensure that asylum seekers were not left destitute. We took steps, in response to advice from health authorities, and have continued to make improvements throughout. In its letter to the chair of the Home Affairs Select Committee, the PHE set out that we have been working with it on Covid matters since spring last year.

Lord Davies of Gower (Con): My Lords, we have heard that the High Court found in the Home Office's favour in a number of areas, not least in rejecting the claim that conditions at Napier amounted to inhuman or degrading treatment. Surely Napier barracks is nothing less than a distraction from the real issue of the French authorities failing dismally in their duty to protect seaborne migrants by preventing them leaving the safety of French shores. Given the enormous contribution that the British taxpayer is making towards this effort in France, can the Minister give an explanation that I can take back to the many people who are, frankly, baffled by the inadequacies of French law enforcement in preventing migrants crossing the channel?

Baroness Williams of Trafford (Con): I fully concur with my noble friend that any journey across the channel is perilous and, as we have seen on many occasions, leads to people who take those journeys dying or ending up in the sea. The only people who benefit from those journeys are the criminals who facilitate them. We continue to work with the French to ensure that people do not take those journeys from the French coast. To that extent, we hope that things will improve.

Lord Kerr of Kinlochard (CB) [V]: I declare my interest as a trustee of the Refugee Council. Asylum seekers in Napier barracks, who came via continental Europe, are now being told by the Home Office that before their cases can even be considered, they must spend six months in limbo—six months before they join the queue, lengthening steadily since 2015 and, by March, a record and scandalous 40,000 strong, of those awaiting an initial decision on their claim, not allowed to work and subsisting on £5 a day. Will the Minister answer two questions? First, will she explain how the new limbo is consistent with our refugee convention obligations, given that there is no convention rule requiring applications in a safe transit country? Secondly, will she tell us how sending these people back to continental Europe could be contrived, given that we have left the Dublin convention and have no replacement bilateral agreements in place?

Baroness Williams of Trafford (Con): The key phrase used by the noble Lord is "continental Europe". These people are coming from safe countries; Europe is a safe set of states. We believe that the inadmissibility rules are consistent with the refugee convention. They have not been dreamt up by us recently, but are long standing. We are currently in discussions with other countries on sending people back who should not have applied for asylum, coming from a safe country.

Baroness Armstrong of Hill Top (Lab): My Lords, this has been a sorry tale, which, more than anything else, has exposed that the Government either did not know or were avoiding telling Parliament what was happening. Part of the next phase is the opening of a detention centre—I think that is what it is being called—in Medomsley, County Durham. The site is beautiful, but has a very sorry history from when it was a detention centre and then the Hassockfield youth offending facility. There are still outstanding cases of alleged abuse relating to Medomsley. It is a very strange place to put people from very different cultures with probably very different language needs from those in the local community. How will the Government ensure that the system, which already looks fairly broken, does not become even more broken by there being insufficient people with language or cultural knowledge to work there, and ensure that we fulfil our international obligations, as we ought to?

Baroness Williams of Trafford (Con): My Lords, any accommodation, be it detention or reception accommodation, will be scoped and checked to make

[Baroness Williams of Trafford]
sure that it meets service standards. I understand the point that the noble Baroness makes about that particular detention centre because the right reverend Prelate the Bishop of Durham brought it to my attention. We are currently scoping through various options for detention, but if someone has no legal right to be here and we cannot effect their removal, we unfortunately have to place them in detention, but the detention estate has declined somewhat over the last few years.

Viscount Trenchard (Con) [V]: My Lords, if the High Court considers that Napier barracks cannot provide acceptable accommodation for asylum seekers under current conditions, does my noble friend agree that the court's judgment is considered extraordinary and absurd by a large majority of the public? Does she not further agree that the judgment strengthens the case to identify suitable offshore centres to house asylum seekers, which might eventually damage the illusion of nirvana—as the people smugglers portray life after illegal entry into the UK?

Baroness Williams of Trafford (Con): The judgment found explicitly that the conditions of the barracks were not inhumane or degrading, as has been reported, but I concur with my noble friend that anyone who has no right to be here, whether through criminality or a failed asylum judgment, should be removed from this country. The Government are looking at various ways in which that can be effected.

The Deputy Speaker (Lord Haskel) (Lab): My Lords, the time allowed for this Question has elapsed.

Environment Bill

Order of Consideration Motion

2.23 pm

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

That it be an instruction to the Committee of the Whole House to which the Environment Bill has been committed that they consider the Bill in the following order:

Clauses 1 to 21, Schedule 1, Clauses 22 to 47, Schedule 2, Clause 48, Schedule 3, Clause 49, Schedule 4, Clause 50, Schedule 5, Clause 51, Schedule 6, Clause 52, Schedule 7, Clause 53, Schedule 8, Clause 54, Schedule 9, Clauses 55 to 65, Schedule 10, Clauses 66 to 71, Schedule 11, Clause 72, Schedule 12, Clauses 73 to 80, Schedule 13, Clauses 81 to 92, Schedule 14, Clauses 93 to 107, Schedule 15, Clauses 108 and 109, Schedule 16, Clauses 110 to 123, Schedule 17, Clauses 124 to 130, Schedule 18, Clauses 131 and 132, Schedule 19, Clause 133, Schedule 20, Clauses 134 to 141, Title.

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, on behalf of my noble friend Lord Goldsmith of Richmond Park, I beg to move the Motion standing in his name on the Order Paper.

Motion agreed.

2.24 pm

Sitting suspended.

Professional Qualifications Bill [HL]

Committee (2nd Day)

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

2.30 pm

The Deputy Chairman of Committees (Lord Haskel) (Lab): 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 might wish 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. When putting the Question, I will collect voices in the Chamber only. 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. We will now begin.

Clause 3: Implementation of international recognition agreements

Debate on whether Clause 3 should stand part of the Bill.

Lord Fox (LD): My Lords, I rise to oppose Clause 3 standing part of the Bill. Judging from the range of people who have co-signed this amendment and those who would have signed it had there been space, this issue is not confined to one set of Benches. I thank the noble Lords, Lord Trees and Lord Hunt of Kings Heath, and the noble Baroness, Lady Noakes, for signing it. I also acknowledge the craft of the noble Lord, Lord Lansley, in drafting Amendment 56; I will obviously allow him to speak for himself, but it may well be another way of thinking about the clause. We have already heard about some of the issues in Clause 3, as your Lordships have sought to make amendments. Of course, we are in Henry VIII territory again, but there are particular concerns about this clause, which I will highlight.

The Minister told us at Second Reading:

"Clause 3 will enable UK Ministers and devolved Administrations to implement the recognition of professional qualifications elements of international agreements."

He said:

"To be frank, we acknowledge that these powers are broad".—[*Official Report*, 25/5/21; col. 910.]

Broad is a good word. In one of his many letters—for which I thank the Minister, as they arrived at five o'clock yesterday evening—he again confirms the importance of the autonomy of regulators, which he has returned to on many occasions.

However, this clause essentially gives the Government of the day the ability to make whatever provision is required to implement any international recognition

agreement to which the UK becomes a party. It includes the power to amend primary legislation and retained EU legislation. If regulators were indeed autonomous, what exactly would this clause be implementing? To date, I am aware of no indications from the Minister or his department as to the nature of what changes might be necessary to implement such international agreements. Perhaps he can give us some examples but, in the meantime, we have to assume that nothing is off the table and that the autonomy of the regulators would not be protected in any way if this Bill were passed with this clause in it.

When I first read the Bill, I was already more than somewhat disquieted by this clause but when I read the Delegated Powers Committee report my fears were amplified. I cannot match its authority, but its damning condemnation of the scale of the powers in this clause are really quite important and should be taken into consideration. As the committee said:

"Implementation of such agreements in UK domestic law could raise matters of considerable public interest (for example, were such agreements to give preference to professional qualifications issued in particular countries—perhaps linked to trade deals)."

In the letter to the noble Lord, Lord Lansley, the Minister confirms that the clause will ensure that the Government can meet their international commitments. Would I be right in assuming that this would include mobility frameworks in free trade agreements?

The DPRRC report goes on to highlight the lack of clarity in changes that secondary legislation would make in domestic law, or the scale of change this law might exert on the 160 or so professions in question by international regulation agreements that the committee implicitly linked to trade deals. It then explains that the justification for this delegation is the fact that the nature of future international agreements cannot be known, which we will come back to. Additionally, the DPRRC notes that the Government fail to try to explain why these

"'necessary changes' should …be made by Ministerial regulations rather than by Act of Parliament."

I expect the Minister to respond to this debate by saying that this clause is vital to Her Majesty's Government's plans to implement international trade agreements. But this is true only if the Government refuse to bring these agreements to Parliament for approval. How does he justify the taking of power for the Minister and not leaving it to a future Act of Parliament? How does he respond to the DPRRC's telling conclusion that

"clause 3 represents an inappropriate delegation of power and should be removed from the Bill"?

Lord Lansley (Con): My Lords, I am very glad to follow the noble Lord, Lord Fox. Like him, I was moved to draft Amendment 56 not least by the report of the Delegated Powers and Regulatory Reform Committee, which at the end of its consideration of Clause 3 said that it

"represents an inappropriate delegation of power and should be removed from the Bill."

The noble Lord was not proceeding entirely on his own initiative, and I entirely recognise where he is coming from.

I am coming from this as a Member of the International Agreements Committee. We are looking at many of the negotiations taking place between ourselves—now as an independent trading state—and other countries in creating international agreements. I do not personally see the world as divided into trade agreements and other agreements. We are increasingly entering into economic partnership agreements where, to be frank, the issue of services and the mobility of professionals should rightly play an increasing part in the economic partnerships that we forge with other countries. I want to see us enter into frameworks with other countries whereby our professionals can work there, and their professionals can work here. That will be, as trade often is, to the benefit of all parties.

On that basis, I considered whether this may be like the Trade Bill, in which we effectively gave Ministers the regulatory power to amend legislation and bring it in line with the continuity agreements we enter into. The conclusion I reached is that it is not like that; these are new agreements, not continuations of old ones. From our point of view, as a committee charged under CRaG with the scrutiny of new agreements, we are only too aware that this House has no capacity to block such a treaty, and no capacity to amend it.

Where secondary legislation is concerned, the House may have the power to stop statutory instruments, but in this territory, frankly, we would enter very difficult terrain. We would end up with our Government having signed an agreement with another country, intending to be bound by it under international law—indeed, it may have come into force—and, at that point, this House would have to consider its implementation in legislation. It seems to me, therefore, that the remedy of deleting Clause 3—and so requiring that every time Ministers want to implement an international recognition agreement in legislation, they have to do it in new primary legislation—is asking too much. As time goes on, there will clearly be framework international recognition agreements under which Ministers will regularly, or maybe frequently, need to change the secondary legislation affecting a range of professions and regulators.

My thinking was that we should—as we often do—allow Ministers the power to change the statutory instruments and secondary legislation relating to new international recognition agreements, but not the power to change primary legislation. That is why, instead of changing Clause 3 itself, Amendment 56 amends the regulation clause at the end, Clause 13, and would provide that the power in Clause 3 to implement international recognition agreements is a power to modify subordinate legislation but not primary legislation; that would be the effect of Amendment 56. Noble Lords may support the noble Lord, Lord Fox, and others in opposing Clause 3, but—if they share my belief that we will often be in this this territory, with Ministers having to change secondary legislation and much less frequently primary legislation, and that, when they do, they should secure the consent of the House, with our ability, as ever, to insert amendments, conditions and caveats, as well as sunshine clauses and so on—then they should in due course consider an

[Lord Lansley]
amendment on the lines of Amendment 56 to strike a better balance, giving Ministers power but not a Henry VIII power.

Lord Patel (CB) [V]: My Lords, to start, I do not agree with the amendment tabled by the noble Lord, Lord Lansley. I clearly understand the point that he is trying to make; in fact, I have my name down with others to strike Clause 13 from the Bill, but we will come to that.

I will say in a minute why I do not agree with the noble Lord's proposition but I do agree with that of the noble Lord, Lord Fox, and, absolutely, with his argument. It was clear from the comments of the Delegated Powers Committee that it considered this clause unnecessary. I personally think this is the key clause of the whole Bill; all the other clauses revolve around it.

2.45 pm

As I have said, for some professions, such as those in healthcare and, in particular, medicine, the whole Bill is irrelevant because the powers that it gives the Government are already there for the regulator. Including Clause 3 would allow the Government, when making agreements—trade or otherwise—to recognise, for instance, medical qualifications from around the world, without the regulator having any say. I have heard the Minister say many times—and I believe him—that the Government have no intention of going down that path without consulting the regulator. However, one cannot tell from the Bill what form that consultation will take, or whether the Government are obliged to accept what the regulator may say.

In medicine, the regulator currently has power to check the validity of the certification from the university that awarded a doctor's primary qualification. When I was chairman of the specialist training authority, we found many times that such documents were forged and we had to go to great lengths to make sure that they were authentic. Experience, too, is often found not be correct, so the regulator has to go through lengthy processes. I hope it will not be acceptable just to recognise professional qualifications through an agreement, whether a trade agreement or otherwise, without the regulator having the full powers. For no other reason than that, I support the amendment from the noble Lord, Lord Fox.

The amendment of the noble Lord, Lord Lansley, suggests that we give Ministers the powers through this clause but reserve the removal of Clause 13 so as not to change the primary legislation. I think the two things are quite separate and, therefore, I do not support his proposal. I conclude by respectfully saying to the Minister or his officials that, for some reason, I do not receive any of his communications; I would be grateful to do so.

Lord Davies of Brixton (Lab): My Lords, I declare an interest as a member of a professional organisation. We have before us the international agreements clause, as we could call it. In their response to the Delegated Powers and Regulatory Reform Committee, the Government said:

> "Clause 3 is necessary to ensure that the provisions of international agreements can be implemented domestically and be given effect to by particular regulators."

I am not sure about the use of "necessary" but that is how they have chosen to phrase it and, taken at face value, it is all well and good. It is established practice for trade agreements to cover a range of issues, including the recognition of professional qualifications—or rather, it would be acceptable if we could trust the Government. The problem, of course, is that we cannot trust this Government, particularly when they seek to assume such wide-ranging powers.

There are two levels of concern. First, and crucially, the driving principle should be the maintenance of the quality of professional standards and the service provided, not any wider considerations of economic benefit. For example, as stated by the General Medical Council:

> "Patient safety is, and must remain, the principle consideration when considering whether to facilitate access to the medical register as part of an economic trade agreement."

In other words, there must be no room for any trade-off of potential broader economic advantages at the price of weakening professional standards. One way of ensuring that the correct professional standards are maintained is the fullest, earliest possible involvement of the relevant UK regulators in the discussions that take place on the trade agreement; that is, before and during the trade discussions. The Minister has protested that it is no part of the Government's trade policy to compromise our professional standards. It is possible that I have—again, in the Minister's words—"a suspicious mind", but the Government's record suggests otherwise. This is a general issue where some reassurance would be appropriate, whoever is in government.

The second level of concern is that this is not a normal Government. The evidence we have so far is that this Government are desperate and will do almost anything to justify their decision to change our international trade arrangements to get Brexit done. More store is being placed on obtaining trading agreements for their own sake, however bad or vague they might be. The Government are desperate to present the public with so-called achievements of favourable trade agreements.

For example, we are led to believe that a trade deal with Australia will shortly be announced. It will be the first big post-Brexit trade deal that is not simply a rollover of arrangements that the UK enjoyed as an EU member. In practice, Australia is a relatively small export destination for UK goods and services, but that does not matter because it is all about the politics. There is also an ambitious Secretary of State.

How can our professional services depend on their interests being defended in any future trade deal under the terms of this legislation, any more than, for example, the hill farmers of Wales will be defended under the putative agreement with Australia? It is obvious that, whatever the terms, getting the deal is the only thing that matters to the Government.

In addressing this issue, the Government have to be honest that trade agreements are almost invariably about more than trade. It is innocent to believe otherwise. For example, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership is much more about achieving the UK's Indo-Pacific tilt for foreign

policy than an economic project. However, the UK has to accept all the CPTPP rules to become a member if it wants to achieve that strategy.

There are real concerns, which I hope the Minister will address, that professional standards risk being the sacrificial lamb, slaughtered on the altar of political ambition.

Lord Trees (CB) [V]: My Lords, since this is my first contribution to this Committee stage, I thank the Minister for his personal letter to me after Second Reading addressing my concerns about the Bill. He is always courteous and meticulous in responding and I sincerely appreciate that.

However, I still have certain concerns. At Second Reading, I asked two main questions. One was whether the Bill would debar relevant regulators from requiring certain applicants—where no regulator recognition agreement has been set—to sit the UK regulators' own examination or assessment procedures. I commend the Government and thank the Minister that the Government's own amendments, brought in with regard to Clause 1, have made it clear that this is not the case.

However, the other question and my concern relating to Clause 3 remain. Why is there a need for a clause in the Bill connecting professional recognition to trade agreements? It leads to a genuine concern that Clause 3 will pressurise regulators into relaxing standards. That concern remains, so I will consider it in some detail

A major purpose of the Bill is to give regulators powers to reach mutual recognition agreements or other methods to enable overseas professionals to register and practise in the UK. The Royal College of Veterinary Surgeons—and I declare my interest as a fellow and former president—and the healthcare professions, particularly the General Medical Council, as my noble friend Lord Patel has mentioned, already have these powers, and one wonders how many of the 50 or so other regulators in the UK do not have them. A question I raised at Second Reading still stands: why not give such regulators the powers they currently lack and leave it at that? Why link regulatory recognition to international agreements?

If we look at the precise wording of Clause 3—and I have not added any words, just subtracted some—Clause 3(1) states:

"The appropriate national authority may by regulations make … provision … for … implementing any international recognition agreement to which the United Kingdom is a party."

Clause 3(4) continues:

"An 'international recognition agreement' means so much of any international agreement … for … the recognition of overseas qualifications or overseas experience for … determining whether individuals are entitled to practise in the United Kingdom".

I am not a lawyer, but this translates to me as meaning that the Government can implement an agreement to recognise whether individuals can practise in the UK. There is no mention in Clause 3 of involvement or consultation, let alone agreement, with the relevant regulatory authority in the UK. That is my amateur interpretation but the noble Baroness, Lady Noakes—I hope I am not pre-empting her—put it more bluntly at Second Reading:

"The dodgy bit of the Bill is Clause 3, which allows the Government to override existing approaches and procedures for the recognition of non-UK qualifications if they have been covered in a trade treaty."—[*Official Report*, 25/5/21; col. 931.]

However, as we have heard already from the noble Lord, Lord Fox, and others, that is not all. The Delegated Powers and Regulatory Reform Committee, in its report on the Bill, had plenty to say about Clause 3. The committee's concerns are different from mine but are none the less serious and pertinent. Its report notes that Clause 3 gives Ministers broad powers by regulations, including Henry VIII powers to amend primary legislation, without conditions. The report considers and rejects the justifications for this in the Explanatory Memorandum of the Bill and concludes that

"clause 3 represents an inappropriate delegation of power and should be removed from the Bill."

It seems to me that Clause 3 adds nothing to the reasonable and positive elements of the Bill to enable regulators to have greater ability to recognise, by the means they so determine, overseas applicants for registration to practise in the UK or to ensure that the regulators have such processes and that they communicate them publicly to facilitate overseas applications.

There are serious concerns about the potential that Clause 3 gives the Government to determine or influence the process of professional recognition in the UK and serious concerns from the DPRR Committee about the powers this clause gives the Government to amend primary legislation. I argue that, collectively, these facts support the view that Clause 3 should not stand part of the Bill, which I support.

Baroness Bennett of Manor Castle (GP): My Lords, I want to put myself on the record as one of those who would have signed the noble Lord's amendment, had there been space. I again draw attention to the way in which our systems, with the limit of four signatures, no longer allow a full representation of the range of views in your Lordships' House. I say to the noble Lord, Lord Fox, that should we get to a vote at a later stage, he has the support of the Green group in this matter of Clause 3.

This morning, in my continuing efforts to spread news about what happens in your Lordships' House to the general public, I wrote what I believe is the first non-specialist press article on the Professional Qualifications Bill, in the *Yorkshire Bylines*. In it, I described the Bill collectively as a "massive power grab" by the Government, and I believe that Clause 3 is the key part of that power grab, as a number of noble Lords have already indicated.

3 pm

It is interesting that a number of noble Lords speaking before me have declared their professional affiliations, coming from a wide range of professional areas. They were mostly addressing Clause 3(2)(a), which is about provisions

"conferring functions on any person".

I will look at Clause 3(2)(c) in particular—the

"provision for the charging of fees."

There is also real potential for great mischief and great impacts in this element.

I will refer specifically to an ongoing issue around UK visa fees for citizens of 26 European countries. This relates back to when the UK signed the 1961 European Social Charter, as part of our membership

[Baroness Bennett of Manor Castle]
of the Council of Europe—so this is not EU or Brexit-related. This arrangement sees a £55 reduction in the cost of UK work visas for people from 22 EU states and Iceland, North Macedonia, Norway and Turkey. This, for example, reduces a seasonal worker visa charge from £244 to £189. That perhaps does not sound like a lot of money to your Lordships, but I point out that we are talking about people who also face an immigration health surcharge of £624.

We are talking about playing around with people's lives and possibilities. We are not just talking about people coming to the UK because, in many cases, we are talking about something reciprocal. We are playing around with people's possibilities and freedoms and what is available to them. In the context of Brexit, that is the practical reality: lots of people are seeing their lives disrupted and possibilities previously available to them not being available in the future. However, there should at least be democratic scrutiny and oversight of how that is done through the parliamentary process.

I will pick up on what the noble Lord, Lord Davies of Brixton, said about this being an issue of trust, and how it seems clear that so many of the Government's decisions are about the politics rather the economics or the impacts on people's lives. Coming back to Clause 3(2)(a), let us imagine that the Government are negotiating an international recognition agreement and they really want to get the City of London very lucrative access to a national market. There are some nations in the world that train more medical personnel, say, and essentially regard them as an export. They might say, "We want you to reduce the rules to allow our medical professionals into your market, your working environment, and the trade-off is that your City can make a lot of money". Just think about what that picture looks like and is. That is the practical reality of what I and many others have identified as a massive power grab by the Government.

We are talking about people's lives and safety and the quality of our professional services, and I urge your Lordships' House to back the call that Clause 3 not stand part of the Bill.

Baroness Noakes (Con): My Lords, in last week's Committee, we emphasised the need for the Bill, and not just the Government's fine words, to recognise the autonomy of the regulated professions. If the Government really do intend to respect the independence of the regulated professions, it is quite difficult to see why Clause 3 is required.

If the Government sign a trade treaty that includes the recognition of qualifications, and if they do respect the autonomy of the professions, it is difficult to see why we need Clause 3 in addition to Clause 4. Many regulators already have powers to enter into recognition agreements for overseas regulated professions, and if they do not have them, Clause 4 is there to empower them to do so. As such, they either have the powers already or can acquire them by using an order under Clause 4, which seems to me to make Clause 3 redundant if—and only if—the Government do actually mean what they have been trying to tell us: that they respect the autonomy of the professions.

Put another way, there is no evidence before the House that Clause 3 is needed. When faced with an unnecessary clause, the right thing to do is remove it. The Delegated Powers and Regulatory Reform Committee, which other noble Lords have referred to, was highly critical of the Government's taking of Henry VIII powers in the Bill, particularly in relation to Clause 3. There is very good reason for the Committee to agree with the DPRRC that Clause 3 should not stand part of the Bill.

I looked very carefully at my noble friend Lord Lansley's Amendment 56 in this group, but I am not convinced that the existing distinction between what is in primary and what is in secondary legislation is sound. It means accepting that the EU's use of regulations versus directives, and the use of statutory instruments to implement the EU law coming into our law as we left the EU, is a good basis going forward for determining the degree of parliamentary scrutiny that is required for any changes. Because of this, I cannot support my noble friend's amendment.

Lord Hunt of Kings Heath (Lab): As we are starting the second day of Committee, I declare my interest again as a member of the GMC board, although clearly, I am not speaking on its behalf.

I put my name to the noble Lord's clause stand part Motion, and I was happy to do so, although I acknowledge that the noble Lord, Lord Lansley, has given a different and interesting perspective. Equally, I remind noble Lords that I have a sunset clause that we will debate next week. All of us are trying to get to grips with the same problem. The Minister brought some very welcome amendments last week and made some very welcome remarks about the Government's wish to protect the autonomy of regulators. The issue is that, on any reading of the Bill, Clause 3 would seem to be able to override those protections. This is where we get to the heart of the Bill.

My noble friend Lord Davies was absolutely right: we have seen how the farmers are being dealt with over trade agreements, and it is pretty clear that the Government are willing to ditch a great deal in order to get a trade agreement. That is why it is no good having legislation that does not protect the professional autonomy of regulators. Does the Minister accept that, notwithstanding the warm words he has used, in the event of a trade agreement it will be perfectly possible to use this clause to override any of the protections in Clause 1?

If, as I think the Minister has to say, it will be possible, the question posed by noble Lords and the noble Baroness, Lady Noakes, then comes back: why do we have to have this clause at all? If we do have to have it, why is there not some protection within it that says that, notwithstanding the trade agreement, it cannot override the protection given in Clause 1? One way or another, before the Bill leaves your Lordships' House, we have to tackle this head on.

Baroness Fraser of Craigmaddie (Con): My Lords, I come to this with a slightly different perspective. Many Members of this House have contributed to the Committee stage of the debate from a ministerial,

government or legislative perspective, but I would like to look at it from what my noble friend Lady Noakes might say is the consumer or regulator perspective.

In the debates on the Bill, many noble Lords have acknowledged that we are dealing with a particularly complex landscape. We have had contributions from specialist clinicians, accountants and others, but we have not heard from airline pilots, driving instructors, slaughterers or pig farmers, who are included in this legislation. The list of professions is a given. As the noble Lord, Lord Fox, acknowledged, Clause 3 deals with hypotheticals—with future agreements about which we do not yet know, and on the terms of which we can only hypothesise. My noble friend Lord Lansley pointed out how important the mobility of professionals is and will increasingly become in this complex landscape. Many of the regulators of these numerous and diverse professions are governed by pre-existing legislative frameworks. I cannot see how it would be possible to deliver in the Bill the necessary future changes which all these individual professions might desire.

At every opportunity, my noble friend the Minister has rightly stressed the autonomy and independence of the regulators. Indeed, he has described this as running,

"like a golden thread throughout the whole Bill."—[*Official Report*, 9/6/21; col. 1453.]

I do not believe that Clause 3 alters this in any way. Many regulators already have robust processes for overseas applicants who wish to join the UK register. They are able to judge the equivalence of qualifications and have already built up considerable experience and relationships with overseas regulators. These regulators would be in an excellent position to advise the Government if and when they felt it necessary to bring forward further secondary legislation. I have spoken to the Health and Care Professions Council, which feels that it is one that could help the Government to shape and hone this secondary legislation to ensure that it met its intended purpose and did not conflict with existing standards, but enhanced, protected and maintained patient safety priorities. It would be reassuring if the Minister could set out how he envisages that a formal process of consultation and engagement would work.

Last week, when he was talking about powers under Clause 3, the Minister referenced European trade forums and ad hoc consultations with interested parties. BEIS also organises regulator forums which provide updates on the negotiations and terms of trade deals. Some regulators—the Health and Care Professions Council is one, and there may be others; I am afraid that I do not know—are not members of either the ETAG or the BEIS regulator forum. There may be others of which I am not aware. Can the Minister give regulators such as these some confidence as to how these powers could be used in future by successive Governments?

Specifically, I understand that the power in Clause 3 is limited to the professional qualification elements of international agreements. In his response to the Delegated Powers and Regulatory Reform Committee's third report, the Minister gave the example of the UK's original offer to the EU as the furthest the Government would or could go to require regulators

"to put in place processes to consider applications … from professionals in the EU."

This is key. Clause 3 ensures that processes are put in place. There should be a clearly outlined route to registration. I cannot find any obligation for a regulator to recognise overseas professionals if they are not satisfied that all their own independently set and required standards have been met. However, as I have already said, experts and regulators are keen to help and work with the Government to provide the necessary expertise and to advise on all aspects of professional regulation equivalence of overseas qualifications which may be required in preparation for and during trade negotiations.

Some have therefore expressed concerns—which have been shared by other Members of this House—that Clause 3 could lead to a situation in which this expertise would be bypassed. Can the Minister enable us to understand further the impact which the provisions in Clause 3 are likely to have? Can he offer any further reassurances as to the context in which these Clause 3 provisions would be used and how the Government intend to work with regulators to inform these trade negotiations on recognition of qualifications?

3.15 pm

I appreciate the views of many noble Lords who have expressed concerns about the wide-ranging powers and Henry VIII clauses in this Bill. I am on a steep learning curve where these are concerned. I also noted last week that the noble Lord, Lord Bruce of Bennachie, raised a concern about how the Government would ensure that the devolved Administrations would properly and sufficiently be consulted. I hope that in the implementation of Clause 3 in relation to international agreements, for example, the Minister might give some comfort and say how he envisages that this might work practically in this context, as it will hinge on areas of skills shortages all across the UK.

Finally, I am a great believer in proportionality, particularly in the proportional use of powers. Bespoke primary legislation in response to a diverse shifting skills and trade landscape may be not only disproportionate but unbelievably burdensome. As my noble friend Lord Lansley said, it would perhaps be asking too much—and not only of your Lordships' House as legislators; in my short time here, I have already seen how hard you work, and your time is important. But it would also place a burden on regulators, for which a flexible framework approach would enable them to be nimble as to who they assess as overseas applicants and how they assess them. As we consider the skills shortages in so many of our professions, this is surely the preferable route to take.

Baroness McIntosh of Pickering (Con): My Lords, I commend the noble Lord, Lord Fox, on securing this Clause 3 stand part debate. I associate myself with everything that he, my noble friend Lady Noakes and the noble Lords, Lord Davies of Brixton and Lord Hunt, said.

I repeat that I am a non-practising member of the Faculty of Advocates, and I should probably state that I am an associate fellow of the British Veterinary Association.

[Baroness McIntosh of Pickering]

Many believe that, while Clause 3 is useful, it is limited to international agreements—treaties to which the UK state is a party. If this is the case, when he sums up the debate, can my noble friend confirm that 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? In the view of the British Bar Council, this is a deficiency in the Bill and another reason why Clause 3 might not fit in here.

I particularly associate myself with the comments made by the noble Lord, Lord Hunt, and others, about farmers. As my noble friend will be only too aware, I have mentioned this just about every time we have debated either the Trade Act—as it now is—or individual trade agreements: there is no parity of approach between, for example, our farmers and what they might expect to get from the Australian deal, and the Australian farmers and wine producers and what they might expect. I should be delighted if the doors to Scotch whisky were to be opened in a reciprocal arrangement, but I will not hold my breath.

Where is the symmetry in the approach adopted under Clause 3? In our approach to regulations under this recognition of professional qualifications and in individual trade deals to which I have just referred, we seem to be rushing to accommodate members of those professions who wish to come here. As others, notably the Bar Council and the Law Society of England and Wales and the Law Society of Scotland have pointed out, there does not seem to be any support for our professionals who go over there. My noble friend was very clear that there was no reciprocity of agreement with the European Union. Am I being completely ignorant? Does the agreement with the EU also cover the agreement with the EEA and Switzerland? I am at a loss to understand why we are not seeking to reach an agreement on the basis of reciprocity of professional qualifications, not just with the EU but with the EEA and Switzerland.

I would like to press my noble friend the Minister further, and more specifically for a response to the amendments I tabled on day one of this Bill. I asked specifically for provision for consultation with the devolved Administrations and the individual regulators in them. My noble friend said—I am paraphrasing—"There will be many consultations", so what form will those consultations take? What is the specific mechanism and at what stage will they take place? I do not think it is fair that the devolved Administrations should be presented with a fait accompli; they should be consulted at the earliest possible stage. The noble Lord, Lord Foulkes, tabled an amendment that went further, saying that the consent of the devolved Administrations should be sought. That is a moot point, to which I am sure we can return at later stages.

I conclude by saying that my greatest difficulty with Clause 3 is understanding the policy that lies behind it. Doing my homework, preparing for the Bill this afternoon, I found that, for once, the Government have produced an impact assessment. I know that will please my noble friends Lady Noakes and Lady Neville-Rolfe, who is not here today, as we always look to the impact assessment. That is commendable. It is something to which we should refer frequently and in great depth.

In paragraph 36, on page 11, the impact assessment refers to:

> "The preferred option, 'Provide powers in the Bill to enable the government to implement the RPQ provisions of international agreements and support regulators in making agreements with their international counterparts on the recognition of professional qualifications,' … These powers will enable the UK government to make regulations to achieve its policy aims, including the amendment of primary legislation where necessary."

Slightly before that, on page 8, the policy objectives are set out. I will not read them all out, but one is to

> "end the interim system which gives preference to EEA and Swiss professional qualifications."

I hope my noble friend will put my mind at rest, but in the following policy objectives, I do not see anything about what the benefits to our professionals will be, whether they are pig farmers or advocates, when trying to ply their profession or establish their professional service in another jurisdiction. That is another reason it is extremely difficult to understand what the policy is behind Clause 3 and what reciprocal arrangements the Government are seeking. I hope my noble friend will set these out when he sums up this little debate.

Lord Purvis of Tweed (LD) [V]: My Lords, I am grateful to my noble friend Lord Fox for bringing this debate forward in such a cross-party manner. I was struck by the comments of the noble Baroness, Lady Noakes, who has been consistent in this area. Her argument and that of my noble friend Lord Fox has been supported by the Delegated Powers and Regulatory Reform Committee report. In paragraph 32, the committee cites the Constitution Committee, saying that both are of the view that the Government's previous attempt at legislation in the Private International Law (Implementation of Agreements) Bill,

> "which allowed Ministers to implement a category of international agreements by way of statutory instrument, represented an inappropriate delegation of power."

I agree. In that Bill, we attempted to make the Government see sense. To some extent, they did, because the powers under it, which are drafted almost exactly like those in this Bill, had an additional clause, with a sunset. The powers under that Bill for international agreements can last for only five years after their signing. Perhaps this is the point the noble Lord, Lord Lansley, made: in recognition of that, if changes mean that agreements need to be updated or go beyond the scope of that Bill, new legislation should be brought forward. I would be interested to know from the Minister why the previous mechanisms for implementing a trade agreement on certain aspects include a sunset clause and this one does not.

Fundamentally, this is about trust. Because of the concerns of other committees and the debates we had on the Trade Bill, we consistently and repeatedly raised concerns about the use of Henry VIII powers especially but also about secondary legislation for implementing trade agreements or parts of them. The Minister and his predecessor, the noble Baroness, Lady Fairhead, tried to reassure us by repeating the statement that Liam Fox, when he was the Secretary of State for

International Trade, gave in the House of Commons on 16 July 2018. When it came to scrutiny of trade agreements, he said that

"the Government will bring forward a bespoke piece of primary legislation when required for each new future trade agreement that requires changes to legislation and where there are no existing powers."—[O*fficial Report*, Commons, 16/7/18; col. 42.]

Clause 3 and the Henry VIII powers in Clause 15 are a direct contradiction of that. This Bill seeks to use broad Henry VIII powers where regulations

"contain provision amending, repealing or revoking primary legislation"

when it comes to implementing a trade agreement. I think I can say collectively that we respect the Minister and take his word at the Dispatch Box, but why are the Government now contradicting the commitment that Dr Fox gave as Secretary of State in 2018?

I share some of the concerns of the noble Baroness, Lady Noakes, about Clause 3. It provides even broader powers than those in Clause 1. Clause 3 does not limit itself to Henry VIII powers in legislation connected with regulators. It relates to any regulations under the Henry VIII power concerning individuals

"entitled to practise a regulated profession."

These regulations are not limited to the regulators themselves. The breadth of the powers in Clause 3 is breathtaking. In the letter the Minister sent to the noble Lord, Lord Lansley, he simply said that he would consider the need for impact assessment on regulatory independence when implementing an international recognition agreement. That is not good enough. This should be the default, and it should be the default that if there are requirements to revoke, amend or repeal legislation, it should be done in primary legislation.

I was grateful for the Minister's letter and, like my noble friend Lord Fox, grateful for the letters he sent to us yesterday. I was grateful to the Minister for confirming what I said in the previous day of Committee—that CRaG would not necessarily be a default process for these agreements. Given that the implementing of what could be sub-agreements would not go through CRaG, this is of even more concern. The Minister said in his letter—and mentioned briefly at Second Reading—that if a mutual recognition agreement was not a treaty in its own right and did not amend the original treaty, there would be no need to go through the CRaG process. He said that this was the appropriate result, because Parliament would have had the opportunity to scrutinise the original treaty and the regulations made to implement the MRA.

The point is that these new aspects are potentially extremely wide and could impact massively on who is fit to practise in the UK. If Parliament would have no ability to extend scrutiny of the Henry VIII powers, even under the affirmative aspect—on which the noble Baroness, Lady Bloomfield, said it was not the Government's intention to bring forward consultation, when she spoke to the noble Baroness, Lady Hayter—or have the same level of scrutiny on either an affirmative or a negative instrument, as it would under CRaG, this would not be sufficient.

3.30 pm

Part of the argument which the noble Lord, Lord Lansley made—and normally I would by default agree with some of his amendments on trade Bills and other legislation—convinces me less. Where there is no legislation requiring implementing legislation, rather than amending it, the default position should not be to use Henry VIII powers. It should be new primary legislation. If we are seeing regulations which could amend regulators' processes, we must ask what purpose that primary legislation served for those regulators. It is essentially there to provide statutory underpinning for the regulator's functions for public safety—the safety of those who are licensed and who would be considered fit to practice in the UK. There is no limit on the regulatory powers under Clause 3, and there is no link to fitness to practise or standards. There is purely a secondary Henry VIII route through which a Government could drastically change the existing statutory underpinning for public safety.

I wonder why the noble Lord, Lord Lansley, feels that amending secondary legislation is necessary. If there is no existing statutory legislation that is the parent Act of the subordinate legislation for these regulators, then we should not be creating that legislation by secondary legislation. We should look at the original Act, and not simply support regulation-amending provisions. Fundamentally, while we can have many concerns about the operation of these regulations, their breadth, the impact they could have on the regulators and those who are applying to them, this is about honouring a commitment given by this Government during the passage of the Trade Bill. It is stated on the record in *Hansard*, and I hope the Minister will reaffirm that, and have discussions about removing this clause.

Baroness Hayter of Kentish Town (Lab): My Lords, as we have heard, Clause 3 gives powers to Ministers to do all sorts of things, but particularly over professional regulators to implement what the Government have negotiated with a third country as part of a trade deal. We are not talking about participation in negotiations on a trade deal, but when a trade deal is done, Clause 3 would give Ministers powers to make such provision as they think necessary to implement any international recognition agreement.

Basically, it states that, where the Government have agreed that opening up a particular UK profession to people qualified in that third country, Ministers can tell a supposedly independent regulator—if I understood what the Minister said earlier—simply to put in place a process for assessing any applicants. However, it goes much further than that, as the noble Lord, Lord Purvis, and others have said. It could even be to accept such applications, not simply to have process by which they would consider applications. Why is this power needed? Either the regulator already has the power to have such a process to consider applications so that it can judge the qualifications, experience, fitness to practice and general bone fides of applicants, in which case this power is not needed, or it lacks the power and does not want it because if it wanted such a process, it would have put it in place.

[Baroness Hayter of Kentish Town]

Not everyone opened their emails at 5 pm yesterday, but I did, and I had a letter from the Minister. One of the questions we have been asking—and which he helpfully promised to answer—was how many regulators are we discussing anyway, under the 60 regulators who do not already have the powers to accept or consider applicants from third countries to practice here. He named three, meaning that we may be doing this for just three regulators. One is the Health and Safety Executive, another the Teaching Regulation Authority, and the third is the Security Industry Authority, which I think regulates bouncers. Someone who knows about this can tell me if I got that right—I see that the Minister confirms it. So this Bill will enable a regulator which regulates our bouncers to take applicants from third countries with which we have done a trade deal, so that their bouncers can come and operate at our nightclubs, which are closed at the moment because of Covid. I thought I should share with colleagues that we are possibly talking about three regulators who do not have the power, and that one probably does not want it anyway. If they can already consider applicants, then this seems to go further than saying that you need a process in place, and seems possibly to say, "You will accept these applicants," whom I am sure were already regulated in their own countries. Nevertheless, it seems to require regulators to accept them, not just to put a process in place.

My noble friend Lord Hunt asked why should a Minister be able to override what a statutory regulator—a supposedly autonomous regulator set up in law to protect the public and maintain standards—and establish a new route against its wishes? If the regulator is happy, everything is hunky-dory, and we do not need this power anyway. The Government have said that Clause 3 is a more proportionate method to implement mutual recognition agreements, but they have failed to tell us which trade deals being considered will have a mutual recognition agreement and why regulator-to-regulator side agreements are not satisfactory. The Minister's letter—for those of your Lordships who did not open their emails at 5 pm yesterday, and incidentally I am impressed that the Minister was there to press send at that time—to the noble Baroness, Lady Randerson, says that if an MRA is agreed and approved by the trade agreement,

"it may need to be implemented in law".

However, the Minister in that letter gave no example of why it would need to be implemented in law, or what type of MRA that is. Perhaps he can now spell out the circumstances in which an MRA would need to be implemented in law in the way envisaged in Clause 3.

I am anyway still bemused about why—given that the Government have said that, in their negotiations with other countries, it is for the autonomous regulator to determine who practises a profession—a Minister might need to instruct a regulator in law to set up a route for negotiations and recognition.

As the noble Baroness, Lady Noakes, and others said, and as the Delegated Powers Committee wrote, the Government have failed to satisfy us that Clause 3 is needed at all, and—as Amendment 56 tabled by the noble Lord, Lord Lansley, emphasises—have failed to explain why, should something along these lines even be needed, it should enable primary legislation to be implemented by statutory instrument. Clause 3 states that the Government—or any of the devolved Governments—can use regulations to implement any international recognition agreement, which means that they could use it, as others have said, to authorise Brazilian vets, Japanese bouncers or Australian teachers to work here without our regulators being the ones to decide that. It certainly seems to go beyond simply having a process in place, which is the point on which I wish to press the Minister. Earlier he said that it was all about making sure there is a process in place. If I have not understood correctly, I am looking forward to the Minister's explanation of why this is needed.

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 my noble friend Lord Lansley for his amendment to Clause 13, which limits the regulation-making power of Clause 3, and I note that the noble Lord, Lord Hunt of Kings Heath, intends to oppose Clause 13 standing part of the Bill and that the noble Lords, Lord Fox, Lord Trees and Lord Hunt of Kings Heath, and my noble friend Lady Noakes intend to oppose that Clause 3 stand part of the Bill. I hope to provide noble Lords with the assurances they are seeking, but I have listened carefully to the points made during the debate and know that I may have an uphill task ahead of me on some of these matters. I will of course be reflecting on that after this debate.

Before I turn to my noble friend Lord Lansley's amendments to Clause 13, it would be helpful to consider them in the context of Clause 3. I will therefore outline the rationale for Clause 3. Before I do that, I apologise to the noble Lord, Lord Patel, if letters to him have been misdirected—although he may be grateful not to have received them at 5 o'clock yesterday afternoon—and I will of course ensure that that does not happen again. In answer to the noble Lord, Lord Purvis of Tweed, I will of course research what previous Trade Secretaries have said on matters germane to the Bill.

Let me again outline the rationale for Clause 3. I think it is common ground that international agreements on professional qualifications can be beneficial in reducing non-tariff barriers to trade by supporting UK trade in services and helping professionals to provide services abroad. I still believe that Clause 3 is important to ensure that the UK can meet its international obligations by allowing national authorities to implement those parts of international agreements that relate to professional qualifications.

As I have described before, what is implemented under this power will be subject to the outcome of negotiations. It is the case that for many trade partners, we are likely to agree the standard model of recognition of professional qualifications: a mutual recognition agreement framework. Perhaps in answer to my noble friend Lady McIntosh's fears about reciprocity, I think the clue is in the name: these are mutual recognition agreements. Under these frameworks, the parties to the deal encourage their regulators to negotiate and agree recognition arrangements, but—and this is the

key point—with no obligation that they do. It is up to the regulators to decide whether to agree a recognition agreement and to propose its terms. This takes time. Sometimes, once a mutual recognition agreement is agreed and approved under the FTA's governance processes, it can be annexed to the FTA itself, and then it may require implementation by the Government, often—this is the reality—years after the FTA was actually agreed. That is one of the answers to the noble Lord, Lord Purvis of Tweed, as to why sunset clauses do not really work in those circumstances.

With other select trade partners, the Government may look to agree more ambitious provisions for the recognition of professional qualifications. An example of this is the excellent deal recently agreed with the EEA EFTA states, Norway, Iceland and Liechtenstein, and I am happy to use it as an example, as requested the noble Lord, Lord Fox. This agreement includes a framework that ensures that there will be a route to recognition for UK professional qualifications in the EEA EFTA states and vice versa, but, as I have stressed previously, this is a route to recognition, it is not an obligation to recognise and it does not affect the ability of national authorities or regulators to set and maintain professional standards.

3.45 pm

Without Clause 3 or bringing in primary legislation—I hope noble Lords will appreciate that it is not always satisfactory to bring in primary legislation: parliamentary time may not be available, et cetera—we risk limiting our ability to implement ambitious deals on professional qualifications such as the EEA EFTA agreement. I have to say that I have heard no noble Lord speak out against such agreements, or against that agreement in particular. We would also limit our ability to make future international agreements that concern only the recognition of professional qualifications. For example, in the December 2020 services mobility agreement, the UK committed to future negotiation with Switzerland on a comprehensive agreement on the recognition of professional qualifications, and we may well need Clause 3 to implement that agreement and, over time, others.

Before and during such negotiations, I can assure noble Lords that intense engagement would take place with regulators and other interested parties. Given that we always intend to do that, and in response to the real concerns expressed by my noble friends Lady McIntosh and Lady Fraser and the noble Lords, Lord Trees and Lord Davies of Brixton, I will consider whether I can give further assurances on this, because we will be consulting regulators. Again, it is one of these matters of trust, in respect of which I do not think I have yet quite been able to convince your Lordships.

I would say the same thing, perhaps, about my statement that regulator autonomy has always been a red line for us and always will be. This point is so important because it strikes at the heart not just of the trust of this House in the Bill but the trust of professionals and others in it. It concerns me that this has become a matter of trust for noble Lords. I will reflect on that and your Lordships' seeming inability to take my words at face value.

In summary, international agreements on the recognition of professional qualifications can be part of FTAs, they can be agreed as frameworks in FTAs but then in detail for specific professions much later, or completely stand alone. Clause 3 is broad because we need it to account for those many permutations. It is that complexity of the landscape which has driven this Bill to being a framework piece of legislation. I hope that noble Lords agree, having listened to what I have said, on the importance of international agreements on professional qualifications and will in due course support this clause standing part of the Bill.

I now turn to my noble friend Lord Lansley's amendment. This amendment to Clause 13 would limit the regulation-making power in Clause 3 so that regulations made under it could amend only secondary legislation. However, many professions in the UK are subject to existing legislative frameworks that include both primary and secondary legislation. I understand the points made by my noble friend and the distinction he has drawn between primary and secondary legislation. The challenge is that there is often no rhyme or reason, when you survey the landscape of 50 regulators and 160 professions, as to what is in primary and what is in secondary legislation. With all due respect to canine animals, it is a dog's breakfast, so being able to bring these agreements into effect may require amendments to primary or secondary legislation.

We have set up the framework so that we can reflect the terms of international agreements on professional qualifications, or adaptation, so that they function correctly alongside any international obligations. There is no reason more or less than that as to why this is a framework Bill. The fact is that existing powers may not provide for the full implementation of international agreements on professional qualifications, especially where primary legislation needs to be amended. This is why Clause 3 is so important.

I am grateful to the noble Baroness, Lady Hayter, for letting the Committee know the three professions we have identified so far; I think there are many others, and we will carry on researching this to find out where regulators themselves—this is not coming from us—either do not have the powers or have indicated they do not believe their powers are sufficient for the job in hand.

As I have mentioned previously, 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 of 31 January 2020. However, the primary legislation can be amended under it only if it is retained EU law. Those powers may expire after five years—another weakness of the sunset clause.

Therefore, even where the UK has mutual recognition agreement frameworks in place with other countries, such as Canada, by virtue of their inclusion in rolled-over EU trade deals, we might not be able to implement MRAs under them beyond this limited period if primary legislation cannot be amended by Clause 3. Further, even within this five-year window, the power in Clause 3 will be necessary in circumstances where the primary legislation that needs to be amended is not retained EU law.

[Lord Grimstone of Boscobel]

I suggest, with all humility, that to potentially introduce bespoke primary legislation for individual MRAs agreed under these FTAs would be disproportionate and burdensome. It could also undermine the ability of our regulators to reach such agreements in the first place, given the preciousness of parliamentary time, and, frankly, our negotiators could well lack credibility. The rationale for Clause 3 is that it provides a more proportionate means to implement such agreements.

Of course, we all recognise that all treaties agreed by the UK will be subject to the procedure set out in the CRaG Act. Furthermore, any amendments to primary legislation using regulations made under Clause 3 will be subject to the affirmative procedure, ensuring appropriate parliamentary scrutiny at that point. A number of the arrangements requiring Clause 3 might have been instigated by the regulators in the first place, and they should know what they are talking about.

I ask my noble friend Lord Lansley to withdraw his amendment to Clause 13, and I commend that Clause 3 stand part of the Bill.

The Deputy Chairman of Committees (Lord Lexden) (Con): My Lords, I have received requests to speak after the Minister from the noble Baroness, Lady Noakes, and the noble Lords, Lord Hunt of Kings Heath, Lord Purvis of Tweed and Lord Lansley.

Baroness Noakes (Con): I will raise just two topics. The first is trust; the Minister regretted that the Committee did not trust the Government on this. We have to remember that when very wide legislation is placed on the statute book, it can be used by a later Government to its full extent, whatever the current Government intend—in this instance, in relation to regulator autonomy. We have plenty of examples of that; the most glaring at the moment is the legislation being used to cover the hundreds of statutory instruments on coronavirus restrictions. Very clear statements were made to both Houses of Parliament when that legislation went through about the circumstances in which it would be used. That has been completely ignored to cover the biggest deprivation of civil liberties in peacetime, for circumstances that the legislation was never intended to be used. The Committee is entitled to be entirely sceptical about very broad expressions in statute.

My second point relates to letters. I received one letter, yesterday at 5 pm, so I have not seen many of the letters which have been referred to. It is extremely difficult, when letters come out at 5 pm on a Sunday and we start the next Committee day the following working day, to have any chance of tracking down whether any letters have been issued. As far as I understand it, the Library does not operate in real time and there is no real-time way to interrogate how things are laid there—even if these letters were laid in the Library, which I have no idea about.

The reason Ministers write letters in Committee is that they have failed adequately to deal with an issue at that stage. When the Minister handled the last group of amendments last Wednesday, he said that he would answer it very briefly, as it was getting late, and would write. Whomever he addresses the letter to, when he writes, he is writing to the whole Committee, and it is only right and proper—and this always used to be the case—that all other Members taking part in the Committee get a copy of it. It is additionally laid in the Library so that the rest of the House has access to it.

We have lost sight of how to conduct our business properly—partly because hybrid proceedings make it more difficult for us to run things down completely in Committee, but there are always cases where you cannot run things down in Committee and have to rely on subsequent correspondence. The way the Minister's civil servants are operating this letter-writing procedure is depriving the Committee of its ability to operate effectively.

Lord Grimstone of Boscobel (Con): I thank my noble friend for those two comments and the spirit in which they are offered. I realise that my point about trust is not a personal matter in relation to me but the more general point my noble friend makes. On letters—I will not dwell on this too long—I think the short gap between the two stages of this Committee, and this Committee being on a Monday, was a particularly difficult practical point. The officials have literally been working day and night on this; that is why not all the letters were available until the end of Sunday. We copied all of them to Front-Bench spokesmen, but I take my noble friend's point that in future, as well as putting them in the Library, it would be convenient for noble Lords if letters were copied to them—albeit sometimes, when there is such a restricted period between the two days of Committee, they may arrive later than any of us would wish.

Lord Hunt of Kings Heath (Lab): My Lords, I am grateful to the Minister for his response. He said he would consider this between now and Report, which I am very grateful for. He then referred to Clause 4, making the point that it will be useful in encouraging regulators to make mutual recognition agreements, but that there will be no obligation and it will be up to the regulators to agree. However, we are debating Clause 3, and our problem is its open-ended nature, which on my reading means that Ministers can simply, through regulations, tell regulators what to do. I will not go into the issue of trust again, but does the Minister recognise that there is a problem with Clause 3? Is he prepared to look at its wording to make it clear that it cannot be used to override the protections he has already put into the Bill through Clause 1?

Lord Grimstone of Boscobel (Con): I thank the noble Lord for that point. Of course, anyone who listened to this debate could not but hear what noble Lords have said on this. As I said, I will reflect on this matter.

Lord Purvis of Tweed (LD) [V]: My Lords, I am grateful for the Minister's reply to the noble Lord, Lord Hunt, which I will come to in a moment. He was extremely dismissive of legislative powers to implement international trade agreements having sunset clauses. He has just taken through the Trade Act, which has exactly those clauses in it. The power there is a five-year sunset, and a regulation can extend it to no more than a further five years. This is to protect exactly that kind

of scrutiny of these changing agreements, so that Parliament, if there are changes in that period, has an opportunity to scrutinise them again. All I was asking for was some form of comparable treatment in this Bill, which he is taking through, to the one he has just taken through on the rollover agreements. I cannot for the life of me think why he championed them in the latter and now dismisses them in the former.

4 pm

On the breadth of the Clause 3 powers, on my reading and having listened to the Minister's speech, I would be grateful if he could indicate whether I am wrong that, while 50 regulators and 160 professions regulated by law are covered by Clause 1, the other 90 regulators of the 140 professions cited under the impact assessment—not the legal framework—could now be within the scope of powers of duties imposed on them by Clause 3. Without there being any restrictions in Clause 3 on the duties of or obligations on all regulated professions, statutory or otherwise—these could include new duties on current non-legislative regulators—and without there being protections regarding their independence in Clause 3, are they all now potentially within the scope of these powers?

Lord Grimstone of Boscobel (Con): I thank the noble Lord for that comment. My belief is that this Bill applies only to our famous 50 regulators and the 160 professions, and that it is those regulators that are governed by law, but I will write to the noble Lord and send a copy to all Members of the Committee to confirm this.

On the point about sunset clauses, the trade agreements covered in the Trade Act were all rollover agreements, many of which will be replaced in due course by other agreements. The noble Lord will know that some of that process has started already and that what we are talking about here is mutual recognition agreements rather than rollover agreements in their entirety.

Lord Lansley (Con): My Lords, I am grateful to my noble friend the Minister for his response to my Amendment 56. If I understand it correctly, he attributes to the professions legislation considerable complexity; for example, the supplementary delegated powers memorandum that the department submitted referenced the Dentists Act—a mix of primary legislation and secondary legislation. If this House accepted that there are practical reasons for providing a power of this kind to enable the amendment of both primary and secondary legislation, will my noble friend say that the Government will not use it as a precedent in relation to future legislation or future arrangements for the approval of trade agreements and other international agreements? There is a principle here: in future, as these trade agreements come through, where they impact on primary legislation, they should be implemented through primary legislation. Does my noble friend accept that this will not be cited as a precedent?

Lord Grimstone of Boscobel (Con): That is certainly a helpful suggestion put forward by my noble friend. I will reflect on it.

Lord Fox (LD): My Lords, this has been a very good debate—the Minister has clearly listened and responded strongly. We have certainly listened to his response.

First, I take issue with the noble Baroness, Lady Hayter, who appears to have redefined the phrase "being bounced by the Government". She was looking at me when she referred to door security, at which I take umbrage.

On the subject of letters—we already have more in the post—I point out that the timetable is the Government's timetable. If it is short, it is clearly the Whips with whom the Minister needs to have a word rather than us suffering. I support the point made by the noble Baroness, Lady Noakes, about making this available to all of us.

The notion that we all want to see people able to work in different territories as a result of this is absolutely true. The Minister will know that I have spent a great deal of my time proposing amendments to various Bills in order to put back mobility frameworks that were being removed in another way, so my support is there. What we have heard in this debate is a compelling argument about Clause 3. The noble Lord, Lord Patel, was right that this is the key clause of the Bill.

The noble Lord, Lord Trees, asked the right question: why is there a need for Clause 3? The Minister attempted to answer that and, in doing so, used the example of the EFTA agreement. In that agreement, as he said, it is agreed to have a route to recognition. This confirms the suspicion of the noble Baroness, Lady Fraser, whom I congratulate on making the only case for supporting the Government that we have heard so far—although even that contained some pretty hard questions, which I hope the Minister will be able to answer, probably in another letter.

The point is that the powers in Clause 3 are constrained by the wording of the FTA. We do not know what the next FTA or the FTA after that will say, but the only constraint comes from the words in that FTA. The powers in the clause are in effect unlimited, as the noble Lord, Lord Hunt, pointed out. That is the concern. Before we talk about Amendment 56 and the like, we must establish the answer to the question asked by the noble Lord, Lord Trees: why do we need this clause. What is it that we need? Frankly, it is a nice-to-have power for this Government but, as the noble Baroness, Lady Noakes, pointed out, it could very well become a nasty-to-have power in future when other people may take it and use it in different ways.

The Minister is right to identify that there is more work to be done. He reflected that it is an uphill task. Well, there is often more than one way to get to the summit. Straight up, rather than taking a more considered and circuitous path, may be the best way to get the elements of Clause 3 that the Minister considers essential there. At the moment, the sledgehammer of this clause, as we have seen, will not be acceptable.

Clause 3 agreed.

Clause 4: Authorisation to enter into regulator recognition agreements

Amendment 29 not moved.

The Deputy Chairman of Committees (Lord Haskel) (Lab): My Lords, we now come to the group consisting of Amendment 30. Anyone wishing to press this amendment to a Division must make that clear in debate.

Amendment 30

Moved by ***Baroness Noakes***

30: Clause 4, page 3, line 25, at end insert—

"(1A) Regulations made under subsection (1) may not require a regulator of a regulated profession to enter into a regulator recognition agreement."

Member's explanatory statement

This is a probing amendment in connection with the extent of the rule making power.

Baroness Noakes (Con): My Lords, Amendment 30 is a probing amendment on the abiding theme in our debates on this Bill, namely regulator autonomy.

Clause 4(1) says that regulations can be made

"for the purpose of, or in connection with, authorising a regulator … to enter into regulator recognition agreements."

That seems pretty straightforward. Authorising a regulator to enter into a recognition agreement should not involve any element of compulsion, but I have learned to be wary of wide regulation-making powers.

My Amendment 30 seeks to make it clear that Clause 4 cannot be used to compel regulators to enter into recognition agreements. With this probing amendment, I am asking one simple question: are there any circumstances in which the power in Clause 4 could be used to force a regulator to enter into any recognition agreements?

Since tabling my amendment, I have seen the Government's response of 3 June to the Delegated Powers and Regulatory Reform Committee, where they state that the power cannot

"be used to provide regulators with the ability to enter into regulator recognition agreements where they lack sufficient abilities".

If my noble friend the Minister confirms today from the Dispatch Box that nothing in Clause 4 could compel a regulator to do anything it does not want to do, we will be able to dispense with my amendment fairly straightforwardly.

Baroness Randerson (LD): My Lords, I am very pleased to speak in support of this amendment in the name of the noble Baroness, Lady Noakes. This issue is the crux of the independence of regulators. The situation is that not all regulators are equal: they do not all have the same legal powers; they do not all have the same clout; they do not all have the same capacity. For example, in the years between 2007 and 2016, the Nursing and Midwifery Council issued 46,257 decisions on international regulation, whereas the General Chiropractic Council issued 29. We are obviously not talking about a group of organisations that are equal in terms of their ability to withstand not just the letter of the law, but the thrust of government policy. Pressure from the Government can be a very powerful thing for an organisation. We also have to take into account the fact that some of the countries with which these international trade agreements will be signed will have regulators that are only now properly developing. Not only are all our regulators not equal, but in other countries, not all regulators are equal.

I draw the Minister's attention to a set of statements in the impact assessment. He has often emphasised the independence of regulators, so can he therefore explain the contrast between two of its paragraphs? Paragraph 111 of the impact assessment says:

"The Bill contains a power to enable regulators to negotiate and agree Recognition Arrangements (RAs) with their overseas counterparts. The Bill does not require the negotiation of RAs".

In paragraph 118, however, it says:

"The Bill contains a power to make regulations to implement the recognition of professional qualifications (RPQ) components of international agreements. These regulations could include the ability to bind regulators to implement the RPQ chapters of IAs as appropriate."

Paragraph 111 says that they cannot be bound, whereas Paragraph 118 says, just as the noble Baroness, Lady Noakes, suggested, that regulations might trespass on the independence of regulators. I simply ask the Minister for clarification.

In his letter to me this weekend which, in the spirit of proceedings here, I read just after midnight, the Minister said that MRAs

"would not place obligations on regulators and instead encourage them to develop MRAs."

Which is it? Are regulators to be truly and, in a wholesale way, independent and not subject to pressure, either direct or indirect, or are they to have their wings clipped potentially by regulations?

This amendment clarifies beyond doubt what I believe, from the Minister's previous statements, is his favoured interpretation: that regulators would always be independent.

4.15 pm

Lord Davies of Brixton (Lab): My Lords, I crave the indulgence of the House; I hide behind the excuse of being a beginner. I put my name down to this amendment because it is one of those probing amendments about which you think, "Why not? What is the possible objection?" I really have no more to add to what the noble Baroness, Lady Noakes, said in moving the amendment. There is a certain amount of pleasure in this: I suspect that I will rarely agree with the noble Baroness, but on this occasion I do, so I am more than happy to reinforce the points she made.

Lord Purvis of Tweed (LD) [V]: My Lords, in the Minister's letter to the noble Baroness, Lady Hayter, yesterday—which I hope has been circulated to all those who have been participating in the Committee, as the noble Baroness, Lady Noakes, indicated—the Minister cited the reason for moving away from what he termed the "prescriptive and unpopular" EU-derived system of mutual recognition across members. The next sentence says:

"But it did at least give all regulators [*Inaudible*] a means to establish international recognition routes with EU member states."

The Government say that it was "prescriptive and unpopular", so they want to do exactly the same. However, there is not the same kind of protections on

the regulators at the moment for their operational independence if they decide not to enter into an agreement. There will be substantially good reasons why they may not want to, and they were outlined by the GMC on its response to the Government's consultation on the CPTPP.

The GMC has indicated that the approach of the UK regulators in many areas has gone beyond simply looking at the areas listed by the Government in this Bill, which we debated at our first Committee sitting. The regulators on health and certain other areas look at the broad fitness to practise, the background education and the ability to verify the educational standards in country of that applicant. Unless they are satisfied with that broad range of all the other areas, they do not wish to have mutual recognition. However, this is where the problem arises: in the future, it might be desirable that we have mutual recognition in professions with applicants from a certain country, but not yet. It should be up to the regulator and there should be independence when making the decision that a country's standards on the education and training route for that applicant were not sufficient to meet UK standards.

At the moment, there is insufficient protection in Clause 4, because, as the Minister keeps reminding us, it is purely enabling, and could be completely undermined by Clause 3. The powers in Clause 3 can, in effect, force the regulator to move. It is not simply the slightly benign word that the Minister used in his letter— to "encourage". Perhaps I am alone in being slightly cynical, but whenever I hear the Government say that they want to encourage someone, then that someone should be worried. It is not simply about encouragement, however. Clause 3 allows for that regulator to move to start the process of a mutual recognition agreement.

There is another reason why I think this probing amendment is justified, and I hope that the Minister can offer the reassurance that the noble Baroness seeks. The Government do not seem to know what the problem is in regard to many of the regulators yet, but they want an answer to them all under this. This comes at a great cost, because this Bill, as the impact assessment indicated, may well cost up to £42 million. These costs are passed on to the applicants. The Alice in Wonderland nature of it is that the Bill's stated purpose is to reduce the fees for those applicants. However, it is the regulators who want to avoid a situation where they are forced through an MRA agreement to have a fee system imposed on them by the Government. That is why the justification for the voluntary nature of it is very strong. If the Minister were able to say that he would consider adding to Clause 4, which offers the kind of reassurance in statute that would be required, we would be more amenable to be assuaged.

Baroness Hayter of Kentish Town (Lab): My Lords, I seek the Committee's indulgence—I did not want to keep popping up in the last group—because there were some unanswered questions which I had posed. I am sure that more letters will come, but I asked the Minister to make it absolutely clear that Clause 3 was talking about more than just a regulator setting up a process and possibly accepting applicants. Perhaps he could write about that, because he went on to say that nobody objected to the new EFTA agreement, but that is only about a process. There is a big difference between asking a regulator to put a process in place and telling them what the outcome has to be.

Regarding this amendment, as the noble Lord, Lord Fox, said on the last group, mutual recognition agreements between willing partners are to be welcomed. They work and we like them. It is about professional movement and all the things that we are in favour of. Clearly, if they require a legal basis, then it is helpful for that basis to exist. However, I need some examples, even if no one else does, of what legal basis would be needed for a mutual recognition agreement. I quoted in the earlier group the letter to the noble Baroness, Lady Randerson, which said that an MRI may need to be implemented in law, yet we have had no examples of what type of issues would need to be so implemented; that is, going beyond what a regulator can do at the moment. Perhaps either now or in correspondence, we could have some examples of that.

Amendment 30 must be right, because surely it is not for a Minister to require in law—it goes much further than encouragement, as the noble Lord, Lord Purvis, said—for a regulator to enter negotiations with another overseas regulator against its will. We are not talking about when it wants to do it. We are telling it when it does not want to do it that it must. This needs some justification by the Minister.

Lord Grimstone of Boscobel (Con): My Lords, I thank my noble friend Lady Noakes for this amendment to Clause 4. It is worth reminding ourselves of the essential difference between Clause 3 and Clause 4. Clause 3 provides a power for the Government to implement international agreements, including the professional qualification elements of free trade agreements and bespoke agreements on professional qualifications. These are agreed between the UK Government and international trade partners. Clause 4 provides a power for national authorities to authorise regulators to enter regulator recognition agreements. These are often bilateral agreements between UK regulators and their counterparts in other countries on professional qualifications that make it easier for professionals to obtain recognition in their respective jurisdictions. I think the comments made by the noble Baroness, Lady Randerson, referred mainly to Clause 3, when she looked at the impact assessment, rather than Clause 4, which of course is the subject of this amendment. Also, it is always a pleasure to hear from the noble Lord, Lord Davies. I welcome his comments.

I agree with the sentiment behind my noble friend's amendment. Regulators must continue to have the ability to act in the best interests of their professions and the consumers of professional services. Clause 4 as introduced—I say this categorically—cannot be used to compel regulators to enter into reciprocal recognition agreements. It can only authorise them to do so, not oblige or compel. No circumstances can change this. I hope that reassures the noble Lord, Lord Purvis of Tweed, and others. It is not the Government's policy to force regulators to enter into regulator recognition agreements. The decision to enter such an agreement must sit squarely with the regulators themselves. They are best placed to determine which

[Lord Grimstone of Boscobel]
recognition agreements would be most beneficial and to decide the terms of any agreements which they may enter.

I am sure that your Lordships recognise the value of recognition agreements and the importance of their creation being demand-led, regulator-led processes. Therefore, while I agree with the sentiment behind the amendment tabled by my noble friend Lady Noakes, I believe that the clause as drafted meets the objectives of it. With this reassurance, I hope that my noble friend feels able to withdraw her amendment.

Baroness Noakes (Con): My Lords, I thank all noble Lords who have spoken on this amendment. I heard the noble Baroness, Lady Randerson, say that not all regulators were equal. That clearly is true, particularly in relation to overseas regulators. She highlighted that some were less well developed. There are some which simply come nowhere close to the standard which would induce a UK regulator to enter a mutual recognition agreement, and that is what we really need to protect. I also thank the noble Lord, Lord Davies of Brixton, for his support on this occasion. I hope that we may find lots of other opportunities in future to agree.

I think that my noble friend the Minister has given an unequivocal statement that this clause cannot be used to compel a regulator. That is what I was seeking to establish. I thank him for that and beg leave to withdraw my amendment.

Amendment 30 withdrawn.

The Deputy Chairman of Committees (Lord Haskel) (Lab): We now come to the group beginning with Amendment 31. Anyone wishing to press this or anything else in this group to a Division must make that clear in the debate.

Amendment 31

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

31: Clause 4, page 3, line 36, after "qualifications" insert "approved by the regulator of the regulated profession"

Baroness Hayter of Kentish Town (Lab): My Lords, Amendment 31 in a way continues what the noble Baroness, Lady Noakes, and others, have just touched on. It seeks to answer a concern raised particularly by the British Dental Association and mentioned by others.

The amendment, along with Amendment 32 in the name of the noble Baroness, is to strengthen Clause 4 to make it absolutely certain that where a domestic—UK—regulator is looking to recognise professional qualifications, experience or whatever, this would apply only to qualifications which had been approved by the regulator of that third country. This is important because in some countries not all educational institutions or award-giving bodies may be fully accredited by the national regulator, although they may look good on paper. There may be institutions giving out qualifications, but those qualifications are not recognised by the national regulator. It is vital that qualifications issued by an unaccredited institution abroad are not expected to be accepted here.

Amendments 31 and 32 would ensure that a qualification which had been approved by the appropriate regulator in the other country, rather than just having been awarded within its territory, is what would be considered by our regulators here. Without this amendment, a qualification from an awarding organisation outwith the remit of the parity regulator might be thought acceptable in the mutual recognition agreement. I beg to move.

4.30 pm

Baroness Noakes (Con): My Lords, I am glad to have heard the noble Baroness, Lady Hayter, introduce her amendment. We both tabled our amendments in light of the British Dental Association's comments, but we ended up drafting them rather differently. I thought that the noble Baroness, Lady Hayter, was drafting hers so that it would have to be approved by the UK regulator, rather than by the overseas regulator. I think that we are on the same page, and that my drafting is probably slightly more accurate, but let us not go there. It so confused those in the Public Bill Office that they tried to claim that there was a conflict between our amendments, and that we had to invoke something in the Standing Orders. I said that no, they were not in conflict, and could exist side by side perfectly well, but I now see that they are trying to address exactly the same issue.

The noble Baroness is right that a number of countries have a multitude of individual qualifications, some of which are good for the purposes of the regulated profession, and some which are not. There is a good example in this country: lots of bodies recognise accountants, but not all of them can be recognised as registered auditors; and there will be lots of examples beyond that. It is that point which we are trying to ensure is properly identified when dealing with Clause 4 and the position of the overseas regulation in relation to particular qualifications, and I hope that my noble friend the Minister will look on one or both of these amendments favourably.

Baroness Randerson (LD): My Lords, Amendment 32A, in my name and that of my noble friend Lady Garden, would require the appropriate national authority to consult with higher education institutions and other training providers before making regulations under this clause. I declare an interest as chancellor of Cardiff University.

I asked a Written Question, answered by the noble Lord, Lord Callanan, in which I asked Her Majesty's Government

"why higher education institutions and other providers of training for professional qualifications are not listed as stakeholders affected in the impact assessment for the Professional Qualifications Bill; whether higher education institutions or others …were consulted on the proposals in that Bill, and … what plans they have to consult such providers in the future."

The Answer stated:

"The proposals in the Bill do not affect the UK qualifications or experience required to practise a profession. The Government ran a Call for Evidence on the recognition of professional qualifications

… between August 2020 and October 2020, which was open to anyone with an interest in professional qualifications",

and that there were, among others,

"26 responses from educators who provide training and higher education institutions."

The Answer continued:

"Officials have met representatives from Universities UK to discuss proposals in the Professional Qualifications Bill and will continue to pursue an active programme of stakeholder engagement."

So, having told me in the Answer that this Bill has no impact on HEIs and other trainers, the Government went on to say that the HEIs and trainers identified themselves in the public consultation as being concerned by, or interested in, this Bill. Following that, the Government have been in discussion with Universities UK at least. Will the Minister clarify whether the Government have also spoken to other training providers, not just the representatives of universities?

I have had correspondence from Universities UK, which says that, although its contact with the Government has been fairly constructive so far, it would be helpful to require the Government to consult with higher education providers as they strike regulator recognition agreements, given the importance of these agreements to certain sections of higher education. The potential impact on onshore recruitment of EU students on relevant courses should be monitored. Clearly, that is of importance because if you are doing away with the EU-established system, there will be an impact on the number of EU students coming to this country, potentially some of them afresh as they will want to get their qualifications here, but also on the top-up courses that our HEIs provide. It also says that it would be helpful to have frequent consultation and analysis-sharing between the Government and higher education providers to help ensure that the Bill benefits the range of bilateral agreements that could increase recruitment to higher education, rather than have a detrimental effect.

It is not the case that this Bill does not affect HEIs. It affects the number of foreign students applying to the UK on top-up courses, and, crucially, what the HEIs and other training providers teach. Depending on what they teach, it affects who they employ and how many of them they employ, so this has a deep impact on them. I urge the Minister to consider this very reasonable amendment. The Government have recognised the legitimate role of higher education—I hope they have consulted other trainers as well—so what reason could they have for rejecting such a sensible and modest amendment?

Lord Moylan (Con): My Lords, Amendment 55A is in my name. There are many excellent provisions in the Bill requiring regulators to share information. They are required to share information with regulators at home and abroad, and with people who wish to be qualified to practise in this country. However, there is nothing in the Bill which requires the sharing of information with people who are already practising the profession in this country. Indeed, there is nothing in the amendment spoken to by the noble Baroness, Lady Randerson, which touches on my point, although it would expand the requirement for information sharing.

It might be thought otiose to have such a requirement where a regulator is also a membership body, as it could be assumed that naturally it would communicate with its members, but a regulator is not always a membership body. I remind noble Lords that I said at Second Reading that I was an honorary fellow of the Royal Institute of British Architects, and I am grateful to RIBA for discussions about this topic. RIBA is a membership organisation representing its profession, but it does not regulate the architectural profession. As noble Lords will know from other parts of the Bill, that is a function reserved by statute to the Architects Registration Board. Experience is that stand-alone statutory regulators do what is required of them by statute, and very little else. That is why a nudge is needed, and this amendment would achieve that.

This clause would allow professional practitioners to know what agreements regulators were pursuing, what mutual recognition agreements were in the pipeline, what progress had been made and the timeline for the agreement. It would also provide a clear path for professional practitioners to have their views on how agreements should be prioritised made known to the regulator. Remarkably, without this amendment, there is no statutory obligation on a regulator to have any communication with regulated professionals at all.

Why does it matter? To take the example of architects, British architects are known to lead the world. They work on major projects throughout the world, and they often work with our world-beating civil engineers on transport, infrastructure and other major projects. They earn a great deal of export earnings for us as a country, too. When they are doing this, they need to be able to send architects to work in other parts of the world. On occasion, they also need to be able to employ in this country architects who are from countries where a pipeline of work might be developing and have specialist knowledge of regulations—be they on planning or whatever—that apply in the country where the project is being delivered. They are very commercial architects—they have to be, because they operate in a harsh commercial world—so they look ahead. They see a pipeline of activity in a particular country that might be coming forward with new projects—airports, infrastructure, or whatever it might be. They want to be able to have some influence on their regulator about how mutual recognition agreements might be prioritised to facilitate capturing that work.

I have used architects as an example, but there are other professions that might find themselves in a similar situation, which would want to have that two-way flow with their regulator and which, not being a membership organisation, would need, in my view, the help of statute to ensure that that communication took place. This is so modest and commonsensical a suggestion that I hope my noble friend will be able to rise and simply say that he accepts it.

Baroness Finlay of Llandaff (CB): My Lords, I speak particularly to Amendments 31 and 32, and I commend Amendment 32, tabled by the noble Baroness, Lady Noakes, to the House. I remind the Committee that the British Dental Association said:

[Baroness Finlay of Llandaff]

"We would strongly advise that any body issuing qualifications which might be recognised in the UK must be a recognised body for the purpose of issuing professional qualifications by the regulator in a given country. This is crucial to avoid situations in which a UK regulator might be asked to enter into recognition agreements with another regulator in a country where not all educational institutions might be fully accredited by that regulator."

Unfortunately, I was too late to add my name to Amendment 32. I strongly support it and hope that the Government will take it on board. I have wondered whether it would benefit from "relevant" being inserted before "overseas", but that would come later on. We certainly need something of that nature in the Bill.

I also speak briefly to Amendment 32A because, as the noble Baroness, Lady Randerson, outlined, it is essential that there is a degree of stability in the higher education system and with training providers. In some subject areas, there is a need for simulation suites and quite complex teaching that requires long-term investment, and, as the noble Baroness said, staff may need to be taken on. You cannot just shed staff; you cannot ask staff to start teaching something they are unfamiliar with without due warning. I am concerned that there is a danger that the Bill could inadvertently destabilise some of our own systems.

Baroness Fraser of Craigmaddie (Con): My Lords, like the noble Lord, Lord Davies, I am also new to this House—in fact, I am even newer than the noble Lord. Like him, I support my noble friend Lady Noakes' points on Amendment 32, but I actually wish to speak to Amendment 32A in the names of the noble Baronesses, Lady Randerson and Lady Garden.

4.45 pm

I absolutely support wider consultation. I made that clear in discussions on the earlier groups where, despite being the only person to support the Government, I think I was the only one not to receive any letter from the Minister at five o'clock or any other time this weekend. I trust that that will be sorted out for the future.

As I say, I absolutely support wider consultation, but I am not sure that this is the right context for including it. Many regulators already regularly consult higher education institutions, training providers and professional bodies. In some cases, this includes programme approval and monitoring, and in others it is about promoting and discussing latest practice developments. Certainly in healthcare, each of the professions regulated has at least one professional body or association, and these organisations are often closer to the ground in understanding emerging issues or delivering post-registration training or CPD. I would prefer an emphasis on consultation with these professional bodies compared with listing higher education institutions at the top. As I have said, I accept that there is a role for regulators in consulting all appropriate bodies, but I am not sure why it should be specifically inserted only here.

I want to sound a note of caution regarding what actual use the information from any consultation would achieve in practice. To give a specific example, occupational therapists have highlighted to me an issue with American and Canadian students accessing our pre-registration master's programmes, which I understand are rather lucrative for the universities involved. Our various services then offer practical placements to these students. Once completed, they return home, so there is no benefit to the local services that have supported these courses and students.

The Royal College of Speech and Language Therapists has also highlighted that much workforce modelling for this profession, particularly in England, tends to focus only on healthcare settings employed by the NHS, whereas many of the professionals in this sector are employed in non-health settings—such as education, justice and social care—or are employed by voluntary and community organisations or in independent practice. The risk of not taking into account these wider workplaces in any consultation is that there could potentially not be enough professionals to cover all the areas they work in, therefore exacerbating and not relieving the vacancy issues within the NHS.

Additionally, regulators will regularly review standards to ensure that they are keeping pace with the realities of services. For example, in my area of health and social care, Covid-19 has been an absolute catalyst for significant innovation, such as the rapid adoption of digital provision or the development of multidisciplinary teams and advanced practice roles. These are examples of the ever-changing landscape and of looking at what will be required into the future. Therefore, I remain wary of insisting that regulators, or anybody else, do something or publish information based on today's consultations, which many are doing already. I cannot see that it will produce the desired practical results.

Baroness Garden of Frognal (LD): My Lords, I start by apologising to the Committee for the discourtesy of not being here last time for a later amendment. I spoke on the first two groups, and I completely failed to notice that I was down to speak on another one, so I went home. It was not until I got frantic texts and emails from my colleagues asking where the devil I was that I looked at the list again and realised, to my horror, that I was down. I am sorry; I have been in this House for 14 years and I really should know better. I apologise.

I have added my name to my noble friend Lady Randerson's amendment, and she has explained coherently the reasons for it. The Bill seems to have ignored the very significant part played in professional qualifications by higher education training providers, awarding organisations and, indeed, many other bodies. I declare an interest in that for many years I worked for City & Guilds developing and promoting professional qualifications. Of course, many of the awarding organisations do much of their own regulation, sometimes through exchanges with other organisations to ensure that standards are being maintained. We all know that universities have a practice of having visiting academics to check their standards. Sometimes that is done with the support of expert committees; certainly, at City & Guilds we had tremendous expert committees to guide us and, of course, we were in constant dialogue with the recognised professional bodies.

Our universities tend to be their own hardest taskmasters because they are fully aware of their reputation if they are to attract students and to keep

their place in whatever league table they deem appropriate. Universities, training providers and awarding organisations know that they stay in business because of the respect for, and quality and relevance of, their standards. I am as bemused as my noble friend about why these bodies do not appear to have been consulted in the drafting of the Bill given that so many of its clauses concern qualifications with no mention of who actually awards them. This amendment seeks to rectify the omission.

I look forward to the Minister's reply and hope that he will see the sense of having something in the Bill that recognises the organisations which award the qualifications that we are all talking about.

Lord Grimstone of Boscobel (Con): My Lords, I thank the noble Baronesses, Lady Hayter of Kentish Town and Lady Randerson, and my noble friends Lady Noakes and Lord Moylan for these amendments. I shall begin by addressing Amendments 31 and 32.

The amendment tabled by my noble friend Lady Noakes would limit qualifications recognised in recognition agreements to qualifications approved by the overseas regulator, while the amendment proposed by the noble Baroness, Lady Hayter of Kentish Town, would limit the qualifications involved in recognition agreements to those approved by the UK regulator. On the face of it, these amendments seem reasonable. However, they would have no practical effect. Regulations under Clause 4 would authorise the regulator to enter into an agreement with an overseas regulator of a corresponding profession which carries out functions relating to regulating a profession. Logically, a regulator would enter into only an agreement which concerned those professionals whose qualifications and experience had been recognised by that overseas regulator. It is also true that the UK regulator would agree, as part of a recognition agreement, to recognise only those qualifications which meet UK standards. Given that, I humbly suggest that these amendments are unnecessary. They simply reflect what would happen in practice, and indeed what happens now, for regulators that can already enter into such agreements. I therefore ask the noble Baronesses to withdraw or not move their amendments.

The amendment in the name of the noble Baroness, Lady Randerson, would require the Government and the devolved Administrations to consult higher education institutions, training providers and other bodies before regulations are laid under Clause 4. I have already spoken about engagement, including in response to previous amendments tabled by the noble Baroness, so I will not rehearse those points again in full. However, I reassure her that my officials are working closely with the Department for Education to engage with a range of training providers.

The key point in relation to this amendment is that the regulator recognition agreements envisaged by Clause 4 will be regulator-led. The decisions will be for them; Clause 4 merely authorises them to enter into agreements. Of course, in considering and progressing recognition agreements, regulators will naturally want to engage with education providers and many others. I think, therefore, that the answer to the noble Baronesses, Lady Randerson and Lady Finlay of Llandaff, is that the Government do not need to get between the regulators and education providers in this matter. Indeed, if the Government did get between those two sides, they would risk being seen as seeking to limit regulators' autonomy, to which I know we have all been paying so much attention.

Regulators will also want to work with national authorities, which themselves already work closely with a wide range of education and training providers, so I think that the amendment is unnecessary. Further, as my noble friend Lady Fraser of Craigmaddie has helpfully confirmed, this engagement already happens naturally, as one would expect it to. I hope that this reassures the noble Baroness, Lady Randerson, and I ask her not to move her amendment.

I thank my noble friend Lord Moylan for his support of Clause 4 at Second Reading and I appreciate his interest in regulator recognition agreements. His amendment seeks to require regulators to report annually on the status of recognition agreement negotiations, to publish criteria for the initiation of negotiations, and to establish a process to allow for consultation within their sector. I appreciate the intention behind my noble friend's amendment and I too am keen to support the development of recognition arrangements wherever I can. However, I think that placing these legal obligations on regulators is unnecessary.

First, regulators are a varied group and not all of them may wish to enter into recognition agreements, so requiring them all to publish criteria for the initiation of negotiations and to establish a process to allow for consultation within their sector seems burdensome. Secondly, it is our experience that the regulators one might expect to be active in international discussions already provide updates on recognition agreements and consult routinely on opportunities with their professions and other interested parties. Legislation to enforce this seems unnecessary.

We have spoken at length about regulator autonomy. I hope I have been clear throughout that we must trust regulators to act in the interests of their profession and to determine which recognition agreements are beneficial. I therefore ask my noble friend not to move his amendment.

Baroness Hayter of Kentish Town (Lab): My Lords, my noble friend Lord Davies of Brixton merely agrees with the noble Baroness, Lady Noakes, but I am actually going to defer to her. It is clear that her amendment is superior to mine. I did not use the term "UK" in mine and I understand the implication of that. It was drafted slightly sloppily, and for that I apologise.

The Minister says that the amendment is not necessary because Clause 4(2) states that it is for regulators to regulate agreements between regulators, as well as dealing with the recognition of qualifications. In a sense, therefore, you have go in through one to get to the other. The issue raised in the amendment in the name of the noble Baroness, Lady Noakes, perhaps goes back more to Clause 3, which covered whether anything is ever going to be asked of a regulator, not just in a regulator-to-regulator agreement but when the Government ask it to do that as part of a trade deal, where we may still actually need it. I think that

[Baroness Hayter of Kentish Town]
the implication—the real meat of it—is still needed. I know that her drafting is brilliant, but perhaps we need it in Clause 3. However, we can look at that.

I want to make one more comment arising out of the interesting issue raised by the noble Baroness, Lady Fraser. She mentioned that some of the overseas training is valuable; one might say almost that it is too valuable to some of our education establishments because it is keeping them going. But what comes out at the end does not stay with us and is not filling the skills gap. The noble Lord, Lord Trees, who is not here, has told me that it is much the same for vets. We are training an awful lot of overseas vets, and I think he said that something like 40% of them then leave because they get very high-quality training, but unfortunately do not stay to be vets here. I know that that is more about the earlier issue on skills, but it is one to bear in mind.

For the moment, and again with apologies for my rather poor drafting, I beg leave to withdraw the amendment.

Amendment 31 withdrawn.

Amendments 32 and 33 not moved.

5 pm

The Deputy Chairman of Committees (Baroness Barker) (LD): We now come to the group consisting of the question of whether Clause 4 should stand part of the Bill. Anyone wishing to press this to a Division should make that clear in debate.

Debate on whether Clause 4 should stand part of the Bill.

Lord Hunt of Kings Heath (Lab): My Lords, I am saying that Clause 4 should not stand part of the Bill. We have now discussed Clause 4 extensively in the last three debates. I do not intend to go over the ground because that would be unnecessary. Coming to the crunch, the Minister has said that Clause 4 would be used by national authorities to encourage regulators to make mutual recognition agreements, but that they will be under no obligation to do so. Today, the noble Lord, Lord Purvis, said that he was not quite sure what "encourage" means. In a sense, one Government's encouragement may become another's diktat, particularly when Clause 3 is part of their armoury.

Something else the noble Lord, Lord Purvis, said, on the first day in Committee, was about the interrelationship between the Bill and what is happening with health regulators. At the moment, there is an extensive consultation on the use of Section 60 orders in relation to a whole host of health regulators. What is interesting is that in that consultation no reference is made by the Government to them upholding the independence of those regulators—something the GMC noted, I think, in its response. Put that alongside the Government's intention to bring an NHS Bill to Parliament very shortly—it was mentioned in the Queen's Speech, but has not yet been published, I suspect because extra clauses are being added day after day. Part of that intention is to add clauses on regulations that will give the Government the power to abolish a regulator through an order-making power and set up new regulators through an order-making power. Regrettably, that came out of a Law Commission recommendation quite some years ago. When you put this together, you have to worry about the future independence of the health regulators. It is pretty clear that, with the legislative changes, they would potentially come under more direct control from the Department of Health. One has to say, many of those regulators enjoy considerable oversight by the department already—hence, a little scepticism about the Minister saying that it is entirely up to the regulators what they do.

My principal reason for raising Clause 4 was to refer to the Delegated Powers Committee, which refers to this being a Henry VIII clause. It refers to the memorandum and accepts that it says that it is a narrow power and cannot be used to change regulators' abilities to recognise overseas qualifications, but, as the committee says, the memorandum fails to explain this or say what effect regulations under Clause 4 should have. I wanted to raise this because the report of the Delegated Powers Committee is critical throughout of the Minister's department, the Explanatory Memorandum it has produced and its failure to provide sufficient explanation. I put it to the Minister that when I was a Minister, we worried about the Delegated Powers Committee and, frankly, always accepted its recommendations. We seem to be developing a new convention, where Minister think this is just any old committee and can be ignored. It cannot be; it has to be taken seriously. I urge the Minister to recognise that when the Delegated Powers Committee says that there is not enough explanation, something needs to be done about it. When it says that Clause 3 will not do, it is not something you can simply ignore; you have to come back with some proposals to deal with it. That is how legislation works in your Lordships' House. I do not really expect the Minister now to go through what Clause 4 says, because he has done it; I just wanted to draw attention to the Delegated Powers Committee's report.

Baroness McIntosh of Pickering (Con): I have two brief points. I would like to speak in support of Clause 4 standing part of the Bill, but I welcome my noble friend explaining, in response to earlier amendments, that this will be regulator-led and is permissive, not prescriptive.

First, I am slightly concerned by subsection (1), as explained in paragraph 39 of the Explanatory Notes, which then go on to say that it seems quite prescriptive. I do not know if that takes away from the permissive nature of the rest of the clause.

Secondly—and, to be honest with my noble friend and the Committee, I could not think of where else to raise this—I accept that they are not regulated bodies, but I understand that the professional drivers and attendants of pig farmers, chicken producers and livestock transporters are covered by the remit of the Bill. It is interesting to see, but I cannot understand why beef and lamb producers are not covered, because it strikes me that they might like the opportunity to make common ground with countries with which we are seeking to do deals. It may be that they are allowed to do so, but if they are, I wonder why they are excluded from the remit of the Bill.

Finally, I assume that the costs will be minor. I would like to place on record the fact that most of the bodies that have contacted me welcome the powers set out in Clause 4. I do not know whether paragraph 66 on page 18 of the impact assessment is relevant here. That refers to frameworks but I presume that also covers regulator recognition agreements. It comes up with a figure, giving a mean of £350,000 as a best estimate. On what basis has that figure been reached?

Lord Fox (LD): My Lords, we are indebted to the noble Lord, Lord Hunt, for opposing that this clause stand part. The way in which he set out the issues around delegated powers was excellent. I have nothing to add, but I would like to associate myself with what he said. His point about the severity of the sanction of a DPRRC report is very well made. I have tried to make in different ways. I think we will all be waiting to see how the Government react in legislative terms.

The term "encouragement" has come up and, clearly, Clause 4 is the encouraging end of a continuum that goes through "recommendation" and ends up in "compulsion". Here, I come back to the question that my noble friend Lord Purvis asked when we were debating Amendment 30. The Minister confirmed that Clause 4 is voluntary, which we were all grateful for, but omitted to respond to my noble friend's question about whether Clause 3 has the power to override Clause 4 and move that encouragement further down the continuum towards compulsion. Rather than ask it that way around, let us ask it the other way around. Are there any circumstances in which Clause 3 can be used? In other words, would the Minister rule out that Clause 3 can ever be used to compel regulators to do things as a result of Clause 4?

Baroness Hayter of Kentish Town (Lab): My Lords, the Government need to justify why this clause is in the Bill. What would happen if it were not? What would we lose? What is the worse that could happen if it were not in the Bill?

UK regulators are free to enter into negotiations with other national regulators at the moment, so why is this clause needed? Could the Minister just answer that, how it would be used and why we need to give Ministers this power? It does not use the words "encourage" or "encouragement"; it says that the Government can authorise a regulator to enter into negotiations, but it is hard to understand when that would ever be needed. Can the Minister answer the question: what would happen if this were not there and why, if a regulator did not do it of its own free will, the Government would need this power to authorise it to do it?

Lord Grimstone of Boscobel (Con): My Lords, I note that the noble Lord, Lord Hunt of Kings Heath, set out his intention to oppose Clause 4 standing part of the Bill. I hope that the arguments I have previously set out in favour of Clause 4 have gone some way to assuaging the noble Lord's concerns.

First, I will directly answer the question just posed by the noble Baroness, Lady Hayter. The fact is that there are regulators that would like to enter into regulator recognition agreements that do not have, or are not sure whether they have, the powers to do so. My noble friend Lady McIntosh of Pickering referred to regulators that have contacted her welcoming this clause. If regulators want this power in this Bill, and all of us are agreed that it is helpful for them to have it, even if the numbers are small, why would we not want to give it to them? Why are noble Lords saying that it is okay for regulators that already have this power to enter into recognition agreements but, for some reason that I find inexplicable—with due respect—regulators that do not have this power or are not sure whether their power is appropriate should not be allowed to have it? That seems to go against the spirit of regulatory autonomy and recognising that regulators know what they are talking about, in this area.

Before I start, I say to the noble Lord, Lord Hunt of Kings Heath, that of course I have taken the comments made by the Delegated Powers and Regulatory Reform Committee seriously. I read its memorandum very carefully, and think that the supplementary memorandum that I submitted afterwards met some of its concerns. I will continue to reflect on its two responses to me, as we attempt to move this Bill forward.

In answer to what my noble friend Lady McIntosh said about the coverage of the Bill, it looks weird when noble Lords start quoting individual examples of regulators that are covered or not. It is simply because the class of regulators that are covered by the Bill is that class of regulators that are governed by law. Off the cuff, I could not answer why the regulators of people who deal with pigs can and the regulators of those who deal with another animal may not. One would have to go back to the original legislation to do that, but this Bill does not make a value judgment on these regulators; it merely uses the legal definition of which regulators are covered by law to be its class of regulators for the purpose of the Bill.

I take this opportunity to emphasise the importance of regulator recognition agreements for enabling professionals who have qualified in one jurisdiction to work in another. They are important for trade: they help sought-after UK professionals to provide services into overseas markets and help overseas-qualified professionals to have their qualifications recognised in the UK, where a regulator determines that they meet our rigorous standards.

In some territories, or for some professions, there can be barriers to UK professionals practising overseas. Reciprocal agreements put in place by regulators can reduce these barriers. I come back to the point made by the noble Baroness, Lady Hayter: why would we not want regulators to do this, if that is what they want to do? For example, regulator recognition agreements can set out streamlined processes for two regulators to recognise each other's professionals on the basis of similar standards. They can also include provisions that set out how applications for recognition will be treated; for example, through agreement on standard application or evidence requirements.

5.15 pm

As we heard from the noble Lord, Lord Trees, at Second Reading, with reference to the Royal College of Veterinary Surgeons, some regulators already have these powers; they enter into recognition agreements

[Lord Grimstone of Boscobel]
and seize these opportunities. The RCVS, for example, has made use of this ability to enter into, among other agreements, an MoU with the Veterinary Council of Ireland to facilitate recognition of each other's accredited veterinary degrees. This demonstrates how recognition agreements are demand-led processes, and it is for regulators themselves to decide whether or not to enter into one. The Government are not nudging them in one direction or another; we are giving them an enabling power to enter into such agreements if they wish to.

As I have said, we should trust regulators to decide which recognition agreements are beneficial. This is a quite separate category of agreements from those that we addressed previously in Clause 3. I hope that noble Lords who have an antipathy to Clause 3 do not allow its proximity to spread that antipathy to Clause 4, as well, because they serve two quite different purposes.

Where regulators already have this power, no further action needs to be taken. Just to repeat myself, we know that, for some regulators, entering into regulator recognition agreements is a new process as the UK moves away from the EU-derived system for the recognition of professional qualifications. They did not have to think about that under the previous EU system; it was there. Now, they have to do this and take individual decisions. This has brought to the surface how some of them do not have the necessary powers.

To enable them to take full advantage of international opportunities, we need to provide them with this ability. Regulators in this position, as the noble Baroness, Lady Hayter, knows—and again I fall into the mistake of giving specific examples—include the Architects Registration Board and the Intellectual Property Regulation Board. There is no rhyme nor reason for why those boards do not have those powers at the moment. Their underlying legislation just happens not to give them these powers.

Noble Lords may reasonably ask why the Bill does not provide only these named regulators this ability. Frankly, it is because we are not entirely sure which they are, because some of the powers are obscure and, as we know, we are dealing with a long list of professions and regulators. We do not see it as a harmful power, so it seems perfectly right to allow the decision on whether to do this to rest with the regulators.

As this is a demand-led process that is new for many regulators, the Government believe that it is prudent not to limit this power to those regulators that have already identified a gap in their powers. This approach supports the UK Government and devolved Administrations in authorising regulators to pursue regulator recognition agreements as they need them. The circumstance where this power might most often be used is following the direct request of a regulator.

I also reassure noble Lords that this is about empowering regulators. It ensures regulators' autonomy in the exercise of their decision-making power to enter recognition agreements. It does not interfere with the ability to set professional standards and decide who should be recognised to practise; that responsibility lies with the national authority or the regulator. The authorisation that this power provides is limited and intended to complement regulators' existing powers. It cannot be used to change a regulator's ability to recognise overseas qualifications or to reduce the standards of professionals practising in the UK. Regulators must implement recognition agreements through their existing powers to recognise and assess overseas qualifications, so nothing about that—the actual assessing of the qualifications or the individuals—is changed by this power.

It is only right that we support our regulators in making agreements to provide opportunities for professionals to use their qualifications overseas and for those qualified overseas to practise in the UK, where they meet our high standards. This clause will do just that. I can see no harmful implications from it at all, and I commend this clause to stand part of the Bill.

Baroness Hayter of Kentish Town (Lab): The Minister has to understand that we are wholly supportive of regulator-to-regulator agreements; it is the best way, it is good for our professionals, very good for the City and for all sorts of things. The problem here is that the Minister does not even know how many regulators might need this. In his letter to me he named three: the Security Industry Authority, which I very much doubt wants an international agreement on this; a teaching register; and the Health and Safety Executive, which again is very unlikely to want this. He has now thrown into the mix the Intellectual Property Regulation Board, so we are possibly talking about having a whole Bill for four regulators. We would understand it if the Bill, in the case of statutory regulators which do not at the moment have the power to enter into a regulator recognition agreement, said that the Minister could by regulation make that happen. The problem is that it goes much further than that. We might have only three or four regulators but we have a whole clause which sounds more than the Minister suggests. Perhaps he could agree to a preamble to this clause that would spell out, where the regulator does not under its own statute have the necessary authority, that the Minister could do it. Is he willing to look at that?

Lord Grimstone of Boscobel (Con): As always, I will consider carefully the suggestions made by the noble Baroness but, without wanting to repeat myself, I really do not understand this antipathy to giving power to those regulators that do not have this power.

Lord Fox (LD): I assure the Minister that I have managed to work out that if two things are standing next to each other I can feel differently about one from the other. Everything that I have said has recognised the benign nature of Clause 4, but what I asked and did not hear an explicit answer to was whether that benign nature could be modified by the very close Clause 3—and never mind how close it is; it could be anywhere in the Bill. The Minister did not answer that question, and because of that I assume that I and my noble friend Lord Purvis, the noble Baroness, Lady Noakes, the noble Lord, Lord Hunt, and others, are correct that Clause 3 can modify Clause 4, and benign, beneficial and voluntary elements of Clause 4 can be made compulsory by Clause 3. Unless the

Minister is prepared to say that that is not and can never be the case, I am afraid I will leave this Chamber clear that what I have just said is correct.

Lord Grimstone of Boscobel (Con): The noble Lord's colleague the noble Lord, Lord Purvis, cautioned me on the previous day of Committee never to use "never" at the Dispatch Box, and I am trying to remember his strictures on that. The reason I did not answer the question directly is that I am not going to do so unless I am completely sure of my facts on this. I do not believe that it is possible for Clause 3 to creep its way into Clause 4 but, so that I can give the noble Lord, Lord Fox, a completely definitive answer, I will write to him, and I will copy that letter to all other noble Lords. Indeed, I will hand deliver it to noble Lords who wish to get it particularly expeditiously.

Lord Hunt of Kings Heath (Lab): I suspect that we should be wary of what we wish for, and that the Minister is now going to take his revenge in the number of letters that we will receive over what I hope will be a very pleasant weekend. I do not think we can take this any further because he has said that he will respond to the noble Lord, Lord Fox, whose question, alongside that of the noble Baroness, Lady Hayter, seems to me the core of the argument. The only other question is about pig farmers as opposed to beef farmers; the Minister said that at some point pig farmers were covered by the legislation but beef farmers were not. I suggest to the noble Baroness that we leave as an eternal mystery why that should be.

Clause 4 agreed.

The Deputy Chairman of Committees (Baroness Barker) (LD): We now come to the group consisting of Amendment 34. Anyone wishing to press this amendment to a Division must make that clear in debate.

Amendment 34

Moved by ***Baroness Blake of Leeds***

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

"Recognition of foreign auditors and foreign audit qualifications

(1) Section 1221 of the Companies Act 2006 (approval of overseas qualifications) is amended as follows.

(2) In subsection (1A)(a), for "covers all" substitute "sufficiently covers".

(3) In subsection (91A)(b), for "covers all" substitute "sufficiently covers".

(4) In subsection (1B), for "is" substitute "may be".

(5) In subsection (3), for "equivalent" substitute "sufficiently comparable".

(6) In subsection (5), after "qualifications" insert "or experience".

(7) In subsection (7A)(a)(ii), after "not" insert "sufficiently"."

Member's explanatory statement

This new Clause amends the Companies Act 2006 such that the Financial Reporting Council, the statutory regulator for audit, would gain greater discretion over which foreign auditors and foreign audit qualifications could be accepted in the UK.

Baroness Blake of Leeds (Lab): Amendment 34 is in the name of my noble friend Lady Hayter, and I thank the noble Lord, Lord Palmer of Childs Hill, for signing it. The amendment would make changes to the Companies Act 2006 to allow the Financial Reporting Council—the current statutory regulator for audit—greater control and discretion over the acceptance of foreign auditors and foreign audit qualifications in the UK. The Institute of Chartered Accountants in England and Wales has said that these changes would fix a historic problem, as comparing and recognising qualifications between countries has been very difficult for the FRC. This is due to Section 1221 of the Companies Act 2006, which is highly prescriptive in terms of the degree of identity required between the UK standard and the foreign one. The ICAEW states that, in the last 30 years, the UK has recognised only two non-EU qualifications for audit and, post mergers in those countries, neither is the current version any more. Does the Minister think that this needs to change? Can she explain, without the amendment, exactly what changes the Government will propose?

Can the Minister also update the House on audit reform? In March the Government recommitted to a new authority and stated that

"legislation is needed in many areas to complete the task of remodelling the regulator and to establish the FRC's successor body, the Audit, Reporting and Governance Authority (ARGA)."

However, this legislation was not mentioned in the Queen's Speech and we are wondering why. When will it be brought forward? Will the changes suggested in Amendment 34 form part of the new Bill? I beg to move.

Baroness Noakes (Con): My Lords, I support the thrust of Amendment 34 and it is good to see the Benches opposite getting involved in the exciting world of chartered accountancy and auditing. I remind the House that I am a member and former president of the ICAEW.

The wording of Section 1221 of the Companies Act 2006 is rather black and white. I understand that the Act is still the longest Bill that your Lordships' House has ever considered, and I bear the scars of weeks and weeks in Grand Committee considering hundreds, if not thousands, of amendments. Despite all that effort, from memory I think that we did not focus on the wording of Section 1221, which is clearly a major failure of your Lordships' legislative scrutiny.

I turn to the amendment. Section 1221 gives little scope for judgment where an overseas qualification is largely the same as a UK one for audit purposes but is not exactly the same. We heard that that has led to relatively few uses of that power. That contrasts with this Bill, where the formulation in relation to overseas qualification is "substantially the same". I know that the noble Baroness, Lady Garden of Frognal, who is not in her place, queried the use of "substantially" on our first Committee day, but it seems to me that it gives an important element of flexibility to the Bill. Something like that would probably give an element of flexibility in the context of Section 1221 of the Companies Act 2006; indeed, I wonder whether a better formulation for that would be to use "substantially"—that is, to mirror the kind of wording that is used in respect of recognition of overseas qualifications in this Bill. The noble Baroness may like to consider that if she chooses to bring forward this amendment again on Report.

5.30 pm

Lord Palmer of Childs Hill (LD): My Lords, I am a co-signatory to Amendment 34. In fact, I put the same one in because its source is the Institute of Chartered Accountants in England and Wales, of which I have been a fellow for 50-odd years. I view that as an interest, I suppose.

As has been stated by noble Lords, the amendment gives greater discretion over which foreign auditors and foreign audit qualifications are accepted in the UK. The noble Baroness, Lady Blake, explained why this was and why it was needed. It allows the regulator to apply its professional judgment; this amendment states that clearly.

In 2020, the big four UK accountancy firms performed the audits of 96 of the 100 companies in the FTSE index—this is very much a closed shop. The dominance of the big four audit firms has long been a matter of concern, and their record on big company failures has not been impressive. Various professional bodies have been looking at this matter for some time in relation to companies such as Carillion, Thomas Cook and BHS—one could go on about this.

As mentioned by the noble Baroness, Lady Blake, in March this year the Business Secretary launched a major overhaul of audit. We did not hear too much about it after its launch. The amendment that we put forward today is to allow the regulator greater discretion, if it is needed, as a step to unleash competition in the audit market. As I said, when the big firms' audits are controlled by the big four accountancy firms, something really needs to happen.

We are promised a new audit profession, overseen by a new regulator, with the aim of driving up standards and quality—this was referred to by previous speakers. This amendment will assist in the aim of requiring large companies to use smaller challenger firms to conduct part of the audit. In the debate on the previous amendment, the Minister spoke about giving empowerment to regulators. This amendment attempts to give those regulators that empowerment to do what they think is right rather than something that is written down in black and white.

The noble Baroness, Lady Noakes, talked about flexibility, which is relevant to this very technical amendment—there was a laugh in relation to this being accountants talking about more accountants. But this is important, because the proper audits of companies are how this country runs, and it has not been running too well on the big companies side. I spent the first seven years of my career at a firm called Peat Marwick Mitchell, which is now KPMG, and audit has changed radically since then. There is too much looking at systems and not at whether those accounts and balance sheets—snapshots of a company's position on a particular date—are true. Clearly, in companies such as the ones that I have mentioned, this is not the case.

This is a very technical amendment that had its genesis in the largest professional accountancy body in the UK. I hope the Minister will consider accepting it.

Baroness Bloomfield of Hinton Waldrist (Con): I thank all noble Lords for participating in this short debate, and I thank the noble Baroness, Lady Hayter, for the amendment and the noble Baroness, Lady Blake, for presenting it so ably. I welcome the opportunity to consider the important issue of mutual recognition of statutory audit qualifications in the UK and the audit qualifications in other jurisdictions.

The Companies Act 2006 provides that these may be agreed on a reciprocal basis by the Financial Reporting Council—FRC—on behalf of the UK Secretary of State, with the competent authority of an overseas jurisdiction. Amendment 34 would give the FRC the discretion to relax the standards of compliance that overseas qualifications must meet before they can be recognised in the UK. It would not compel the FRC to relax those standards but would enable it to do so where it considers this appropriate as part of a reciprocal agreement.

The UK's audit sector is highly respected and valued both domestically and across the world. The Government are currently consulting on the White Paper *Restoring Trust in Audit and Corporate Governance*. These reforms are needed because there have been a number of examples of poor practice and poor standards in UK corporate audit that have risked the UK's reputation as a safe and trusted place to do business—a number of noble Lords, including the noble Lord, Lord Palmer, have just mentioned this. We therefore need to be careful when considering the framework to allow individuals to undertake statutory audit in the UK to ensure that it is robust and maintains the UK's high standards and reputation.

While this amendment would only provide the ability for the regulator to apply looser requirements to recognising other nations' qualifications, it would open the door to concerns of loosening standards and reduced oversight. It would also expose the regulator to pressures to use the flexibilities provided in cases where this might not be in the best interest of the UK profession or its clients. The statutory audit profession in the UK has a comparatively strong reputation internationally for the standards that it maintains. The Government are working hard to maintain this reputation, and we would not wish either the UK's standards or its reputation to be devalued.

The Government acknowledge that an essential part of maintaining our standards and reputation internationally is to seek to influence developments in corporate reporting and audit by building links to other regulators that are prepared to uphold comparable standards. The ability for UK auditors and those with comparable qualifications overseas to exchange and transfer experience is an important part of this.

The noble Baroness, Lady Blake, asked why the audit reform was not included in the Queen's Speech. The reform of audit and corporate governance is a priority for Ministers. We have promised to legislate on an appropriate timetable, and the Government do not intend to add new requirements at a time when they would hold back businesses' recovery from the pandemic. By the time of presenting proposals to Parliament, the Government want to be confident that they are effective and command broad support.

Consultation on the Government's White Paper is open until 8 July, and Ministers look forward to contributing to the BEIS Select Committee's inquiry into the delivery of audit reform.

I believe that the regulator can already make agreements with international counterparts to this end, so I ask the noble Baroness to withdraw her amendment.

The Deputy Chairman of Committees (Baroness Barker) (LD): I have received a message from the noble Baroness, Lady Noakes, who wishes to speak.

Baroness Noakes (Con): Could my noble friend the Minister explain why, in Clause 1, which we know will be applied largely to the medical professions—we are therefore dealing with patient safety—it is adequate for medical professions if

"a specified regulator of the specified regulated profession has made a determination that the overseas qualifications … demonstrate substantially the same knowledge and skills",

but, somehow, a different standard is implied when the much more mundane activity of auditing is involved? I do not quite understand how the Minister can have one view of the medical professions and another of what happens in the accounting profession. Can she explain that contradiction?

Baroness Bloomfield of Hinton Waldrist (Con): I do not agree that that is a contradiction. This would have the effect of weakening the standards in audit reform, which we are keen to prevent—so I do not agree with the premise of my noble friend's question.

Baroness Blake of Leeds (Lab): I thank the Minister for her full response. I particularly thank the noble Baroness, Lady Noakes, for reminding me of the many hours of excitement that I have ahead of me in this place and thank her for her suggested wording. I also welcome the reminder from the noble Lord, Lord Palmer, of the shortcomings in this particular area.

We keep mentioning the word "assuage", which I do not think I have ever come across quite so much in my life before. I looked up "assuage" and it referred to the easing of grief. I am not sure that my particular grief in this area has been eased by this. There is a great deal in the answers that we will look at. I am sure we will revisit this very important, if technical, area in the meetings ahead, and I beg leave to withdraw the amendment.

Amendment 34 withdrawn.

The Deputy Chairman of Committees (Baroness Barker) (LD): We now come to the group beginning with Amendment 34A. Anybody wishing to press this or anything else in this group to a Division must make that clear in debate.

Amendment 34A

Moved by ***Lord Lansley***

34A: After Clause 4, insert the following new Clause—

"Indemnity and insurance

In exercising functions under section 1 or 4, or under any regulations made under section 3, a regulator of a regulated profession must ensure that an individual is properly indemnified or insured against liabilities that may be incurred in the course of practising the profession."

Lord Lansley (Con): My Lords, this group has three amendments in it, two of which are in my name. The other amendment, in the name of the noble Baroness, Lady Garden of Frognal, strictly speaking, is not really related. Her amendment makes a perfectly good point, it seems to me; I will not dwell on it, as I am sure she will introduce it very effectively. It simply asks for language requirements to be something that the assistance centre provides information and assistance on, so it sounds perfectly reasonable.

Amendment 34A in my name is somewhat prompted by the Government's amendments to Clause 1 that we debated last Wednesday. If noble Lords will recall, those looked at the risk that the Government acknowledged in their supplementary memorandum to the Delegated Powers and Regulatory Reform Committee. In paragraph 6, they said their amendments were

"to avoid the risk that clause 1 could allow an overseas-qualified individual to circumvent additional requirements that other legislation imposes, or allows a regulator to impose, on overseas-qualified individuals."

That is, indeed, exactly the risk that was referred to, quite properly, at Second Reading and to which the Government responded.

What was added into Clause 1 was "and any other specified condition". In its response to the supplementary memorandum, the Delegated Powers and Regulatory Reform said that, while it welcomed the amendment since it was intended to mitigate that risk, the appropriate conditions that were going to be added in were not specified. In part, Amendment 34A is part of a process of trying to tease out from my noble friend what is going to be in those conditions under Clause 1 that are in addition to the requirement for an overseas qualification or overseas experience to be substantially the same as UK qualifications and experience.

One of the things that I felt it was helpful to illustrate that is the question of indemnity insurance. That is what Amendment 34A relates to. For a number of regulators—especially of course, those that I am aware of, in the medical professions—there is a requirement on practitioners as part of their professional standards to have professional indemnity. Would this, for example, be one of the conditions that my noble friend would anticipate would be specified under Clause 1? That is by way of probing that situation.

Amendment 60A, however, is both to probe this issue rather more but also perhaps to make a suggestion to my noble friend when they are considering what might give further reassurance. Given the debates we have had last week and today, time and again noble Lords are saying that they remain concerned, notwithstanding the Government's intentions and statements, that regulators will find that a consequence of the regulations under Clause 1 or as a consequence of Clause 3, which we have just been talking about, will be that they cannot impose or exercise the same control on overseas applicants to practise in the United Kingdom as would be the case for a UK applicant.

5.45 pm

Why is that the case? First, it is because there is a risk that, where there is an Act which deems somebody to have an overseas qualification which is the equivalent

[LORD LANSLEY]
of a UK qualification and the UK qualification is the basis upon which they are entered in a register, there may be scope for legal challenge to any decision by a regulator that seeks to frustrate their ability to practise in this country. There may be individual actions or indeed class actions of people saying, "If we have qualifications and experience, your legislation says that we are deemed to have the same qualifications as in the UK." Subsection (1) of my intended new clause says that that should not be case. The determination cannot be pre-empted by any regulations under this Act.

Secondly, the amendment looks at whether people should have an entitlement to practise. Clearly, I am thinking particularly here of medical and healthcare professions. Let us consider the circumstances where somebody is on the register for a profession but there are limitations on their practice. Say, for example, there are UK registrants in healthcare professions who very often engage in independent prescribing. Because they have independent prescribing rights in the UK, based on their UK qualifications and experience, this should not and does not mean that the qualifications and experience which might, on the face of it, look equivalent actually should be the basis on which they prescribe independently. That should be the subject of an assessment by the regulator. This is exactly the point in addition to what the Health and Care Professions Council has been saying. The GMC says the same thing. Fitness to practise is not a matter simply of qualifications or even of experience. It is a matter of a holistic assessment of a person's knowledge, skills and experience. Indeed, as the HCPC quite rightly highlights, it has a responsibility to assess the character and health of an applicant.

This brings me to subsection (3) of my proposed new clause. I was thinking of this in relation to the question of assessing the character and health of an applicant. An overseas applicant may well have qualifications and evidence of experience, but they will need to provide the regulator with evidence of their character and health. This might also be, I might say, an area where the question of the disclosure and barring scheme is relevant, although I have not mentioned it. The ability to demonstrate to a regulator that one has not just the qualifications but all the characteristics and the health and experience that is necessary to be fit to practise is much wider than simply qualifications or even experience. Subsection (3) would be to make it very clear that, where there is a lack of evidence of fitness to practise on the part of an applicant from overseas, the regulator is under no obligation by virtue of the equivalence of the qualifications and experience to treat that person as fit to practise. I clearly do not intend to press this amendment, but I think that when we come back on Report something of this character would enable Ministers to put in the Bill the reassurances that they keep telling us from the Dispatch Box.

It is a saving provision, which could be phrased differently, to say that nothing in this Bill stops a regulator from determining whether somebody is fit to practise and taking into account all of these factors. It might also be helpful to work through the range of these contributing factors to an assessment of fitness to practise. It is very difficult to list them all in a Bill, but certainly necessary somewhere in this legislation to make it very clear—more than is implied by "any other specified condition"—that, whether it is under the Clause 3 power or the Clause 1 power, this is not designed to give people an entitlement to practise in the UK whether or not their qualifications and experience put them on the register: fitness to practice is a wider assessment for which regulators are responsible, and they must be able to do this for an overseas applicant in the same way as they would do it for a United Kingdom applicant, and nothing in this legislation should pre-empt, override or undermine their ability to do that. That is what Amendment 60A was attempting to do. So I hope my noble friend will be able to at least look kindly upon it, and think positively about whether this is something we can further add to on Report. I beg to move Amendment 34A.

Baroness Garden of Frognal (LD): Well, my Lords, we could all do with a little kindly looking on our amendments. I will speak to Amendment 42A in this group and, like the noble Lord, Lord Lansley, I cannot quite see how it relates to his amendment. Nevertheless, I shall plough on.

This amendment seeks to clarify the language requirements for UK workers wishing to work in another country where English is not the main language and quite possibly not even spoken. We cannot assume that English will be understood by everyone, and those working abroad should have a working knowledge of the professional terms, as well as an ability to speak socially to those with whom they work. I have mentioned before the European Union project LangCred in which I was involved, where we were attempting to create a directory of all work-based qualifications so that people could move seamlessly across the EU. We kept coming against the fact that, however professionally or vocationally qualified they were, if they could not speak the language of the country, they were going to have problems. We can no longer assume that a bunch of Geordie construction workers could make a good living in Germany while speaking only Geordie. I was never sure in the days of "Auf Wiedersehen, Pet" whether that situation was entirely realistic, but I really do not think that it would work today. I rather suspect German law would not allow it.

Years ago, I got a job as a French and English teacher in a German gymnasium—a grammar school equivalent—while speaking only French and Spanish. Herr Direktor loved French and always spoke to me in French very happily, but after a few months he called me in to tell me that Düsseldorf had dictated that they could no longer employ me unless I spoke German. My RAF husband was too young to be officially married, and we were not allowed to live in married quarters, so were living in a German flat. I was surrounded by Germans and German shops, and as a linguist of course I had picked up quite a lot of German at that stage—none of which Herr Direktor had ever heard me speak, but he assured me, in French of course, that he had told them that I was fully competent in German, so I continued in my job. He quite liked me, but I rather suspect that he could not be bothered to recruit another teacher. But these days I certainly would not have been employed.

So it is important that those wishing to work abroad are fully informed that they need to speak Portuguese, Polish, Japanese or Mandarin before they embark on a job for which they may be fully professionally qualified in Portugal, Poland, Japan or China. Our teaching and learning of modern foreign languages have declined woefully in recent years; it really is a cultural deficit in this country that our language speaking is so very poor. Perhaps there might be more enthusiasm and incentive if young people were fully informed of their inability to work abroad unless they had mastery of more languages than English, and this amendment ensures that the advice includes a language component.

Baroness McIntosh of Pickering (Con): I will speak to two of the amendments in this group in the name of my noble friend Lord Lansley. My understanding is that the first, Amendment 34A, is already covered by most of the professions, which require people to take out professional indemnity and insurance before allowing them to practise. So I wonder why this amendment is required—although I understand it is a probing amendment. But there we are—I look forward to hearing what my noble friend has to say.

I have some sympathy with the amendment in the name of the noble Baroness, Lady Garden of Frognal. My understanding is that many practitioners, particularly legal practitioners, who work outside UK jurisdictions actually relate to English language clients, so the problem does not arise—but again, I look forward to hearing what my noble friend says in summing up.

My greatest concerns relate to Amendment 60A in the name of my noble friend Lord Lansley, and an incident which many in the Chamber may recall took place in the 1980s and 1990s, in which a gynaecologist, Richard Neale, was allowed to practise in this country, first in the Friarage Hospital, Northallerton, and then in other hospitals as well, even though he had been struck off the register in Canada, where his last known employment was. I took up the case with the GMC at the time and was assured that this would never happen again. But, as we have the Bill before us this afternoon, and as we have Amendment 60A as a probing amendment, I will ask the Minister: does he accept the assurance given by the GMC at that time? Can he put my mind at rest that this case could not happen again? I found it extraordinary that a gynaecologist—or indeed any medical professional—could be recruited without even a cursory phone call, ideally, or email to the last known place of work, which I think any diligent employer would undertake as minimum due diligence. Can my noble friend reassure me that there are provisions—if not in the Bill, then elsewhere—to ensure that this situation simply could not arise again?

Baroness Noakes (Con): My Lords, my noble friend Lord Lansley has hit upon some important issues with his Amendments 34A and 60A. I am not 100% convinced by the drafting of either amendment, but the underlying issues are very important. On Amendment 34A, many regulated professions require indemnity insurance to be held by a professional, but I am not sure whether all regulated professions must have indemnity insurance. For example, I am not certain that farriers are required to have insurance. It is clearly sensible for any professional offering their services to have indemnity insurance, but it may not actually be required. My noble friend's amendment rather implies that every single regulated professional has to have indemnity insurance.

Fitness to practise is rather different: it is a cornerstone of professions, in that only those of good standing are allowed to practise. Fitness to practise can be determined by a number of factors—some straightforwardly, such as criminal convictions, to which my noble friend referred in connection with the Disclosure and Barring Service. Others crucially depend on often quite subtle judgments within the context of particular professions: for example, whether an individual has the right degree of scepticism or can demonstrate that they exercise the right degree of professional care when undertaking their profession. These are really quite difficult areas of judgment. I could not see exactly how that fitted naturally into the scheme of this Bill. It would be difficult to say that there should be a condition relating to the judgment around fitness to practise. But I shall be interested in what the Minister has to say in response to these amendments.

6 pm

Lord Purvis of Tweed (LD) [V]: My Lords, I shall refer initially to insurance and then to the wider issue of fitness to practise. Like the noble Baroness, Lady Noakes, I am slightly scratching my head about the overall requirement on indemnity, but I understand the point. I also understand that there is a mix among professions on the need for indemnity insurance. My grandfather, who was a farrier, had it; he would have been unlikely to have clients unless he was insured but it was not a requirement, and that is often the case for sole traders. There is a second category where you cannot be registered with a professional or trade body unless you are part of a wider indemnity programme or scheme. There will be others, such as social work, where indemnity is a requirement for practising.

Where this requirement exists, especially in medical professions and social work, for example, the noble Lord, Lord Lansley, may have a point but, more widely, it comes down to the Minister's case that there is complexity all around. However, there are very good reasons why there are certain requirements in certain professions, some set out in regulations and others within the statutory provision. In one of his letters in response to questions that I raised as to why it seemed that health professions' regulations were being contradicted here, the Minister said that the Government's approach would be bespoke for the medical professions. That is our point: elements of this will require certain types of response in certain statutory provisions that are linked directly to the specific needs of the profession, or groups of professions, in that field—especially in the case of medical professions where public safety, not trade or economic benefit, is paramount. However, we know that the Government's imperative in this Bill is an economic one—it is demand-led and shortage-led.

In his letter to the noble Lord, Lord Lansley, and in his response, the Minister has been quite clear: if the Government consider that people are paying too much for UK professions, they want to obligate regulators to open the tap to new, foreign applicants. That is the intent and, therefore, the links with standards and public safety are tricky. The Minister knows me well

[Lord Purvis of Tweed]
enough not just to take my word for it, so let me quote from the Government's document, the Delegated Powers and Regulatory Reform Committee memorandum. In paragraph 16 regarding the powers in Clause 1, the initial memorandum—not the second one referred to by the noble Lord, Lord Lansley—says:

"Where the power is used in relation to a profession, the specified regulator will be obligated to consider applications for recognition from individuals with qualifications and experience, from every country in the world, and to provide a decision in line with the conditions set out in 001, and any other further requirements in the relevant regulations."

The autonomy that we often hear about from the Minister is not apparent in the Government's own document because the specified regulator will be "obligated to consider applications".

When it comes to the application itself and the decision on it, the other provisions in Clause 1 could be forced on the regulator. This brings me to the wider point on which I agree with the noble Lord. There is no consideration of fitness to practise. It is essential that fitness to practise is consistent for the GMC, the medical professions and others that fall into the category where the Minister does not know if they are "in or oot" of the Bill, as we would say in the borders. If you are not in a statutory regulatory profession such as plumbing, and you wish to make sure that everybody's gas boilers are safe in this country, which is essential, then you have to be registered with Gas Safe; it used to be the Corgi mechanism.

Qualifications are one thing, and fitness to practise is also considered there, but it is now a core element within the medical professions. On the first day in Committee, I asked a question of the Minister to which I have not yet had a reply, about where in the requirements on regulators the Government would insist that they have to take fitness to practise into consideration when it comes to criminal records. There are certain offences in the UK where, if someone has a conviction, they cannot apply for recognition of their qualification to practise; if they commit that offence while on the register, they are struck off it.

Nothing in the Bill would have UK regulators asking an equivalent requirement of a foreign applicant, so we would have a bizarre situation. We have left the EU, where this requirement was under the EU directive, and where we were able to seamlessly access the EU's criminal data; this is now lost. We now have a very odd situation where the Government seem to suggest that, if there is a shortage of a profession, and there is demand, a UK applicant's fitness to practise—including the requirement to look at a criminal record and judge them on that—stays, but for a foreign applicant, from any other country in the world, the regulator is obligated to consider their application without doing a fitness to practise check.

That is, I believe, untenable. The Government will have to reflect on this and bring forward their own amendments to ensure fitness to practise. Indemnity is not just for insurance but contributes to ensuring that those working for our medical professions and public services are safe to do so, for the sake of the public. I hope that the Government will consider this very carefully.

Baroness Hayter of Kentish Town (Lab): My Lords, I too want to concentrate on Amendment 60A, the new clause proposed by the noble Lord, Lord Lansley, which, as the noble Lord, Lord Purvis, has said, is absolutely crucial, particularly on fitness to practise.

We have in this country high standards not just of professional capability but of probity, which, indeed, go further and wider than the professions covered in this Bill. I well remember on almost my first day as a magistrate, many decades ago, seeing a man lose his licence to be a bus conductor in London because of a very minor and quite unrelated traffic offence; it was because of the standards we demand of those in public sector.

Our doctors, nurses, social workers, lawyers and teachers are not just good with their hands and brains; they are also not wife-beaters, drunken drivers, shoplifters or fraudsters. Fitness to practise means obedience to ethical codes, and never carrying out tasks outwith the abilities and competence of the particular profession. It includes in many professions the reporting of errors, maintaining skill levels, undertaking CPD and other aspects of what being a professional means. As the amendment tabled by the noble Lord, Lord Lansley, allows, it is important that if we are either to encourage—a word we have used—or even mandate regulators to have processes in place to recognise those qualified in other jurisdictions, then checking up on these wider aspects really must be permitted as part of the process. I hope that, in one way or another, the Minister will agree to bring something back in the Government's own words on Report.

Lord Grimstone of Boscobel (Con): My Lords, I thank my noble friend Lord Lansley for tabling Amendments 34A and 60A, and I thank the noble Baroness, Lady Garden of Frognal, for tabling Amendment 42A.

Amendment 34A seeks to require that a regulator of a profession ensures that an individual is suitably indemnified or insured before they may practise a profession, if that regulator sets up recognition routes as a result of regulations made under Clauses 1, 3 or 4. Amendment 60A intends to ensure that the recognition of an individual with overseas professional qualifications or experience should not be sufficient in itself to confer an entitlement for that individual to practise that profession in the UK or a part of the UK. It seeks to ensure that the regulator can require that an individual has demonstrated their fitness to practise and produced evidence of their overseas experience.

I am in complete agreement with my noble friend's intent in bringing forward these two new clauses. Under Clause 1, as amended in my name, regulations creating recognition routes can specify additional conditions which must be satisfied before a regulator makes a determination that recognition is given. This means that any other appropriate regulatory criteria, such as language proficiency, appropriate indemnity or insurance arrangements or criminal record checks, must also continue to be met before a regulator may give access to a profession. All these conditions could be imposed by a regulator under Clause 1, as amended. In answer to the noble Lord, Lord Purvis, determining fitness to practise sits absolutely within the autonomy of the regulator. Nothing in the Bill disturbs that.

The amendments are also relevant to Clause 3, relating to the implementation of international agreements. As I set out earlier, Clause 3 does not affect the ability of national authorities or regulators to set and maintain professional standards. This includes the requirements to practise that profession, including being fit to practise and any requirements to have insurance.

Clause 4 allows the appropriate national authority to authorise a regulator to enter into regulator recognition agreements. The decision to enter into such an agreement and its terms are for the relevant regulator. This goes to the heart of the principle of regulator autonomy. It should be for the regulators concerned to decide whether to place requirements relating to professional indemnity insurance. It is highly unlikely that a regulator would agree terms which would provide access to a profession to individuals unfit to practise it. Language proficiency, indemnity arrangements and criminal record checks are prevalent examples of criteria that our professional regulators use now to assess and determine an individual's fitness to practise. Nothing in the Bill disturbs this and, again, the regulator is free to determine how to go about it. I have been clear that we must protect regulators' autonomy, including deciding who practises a profession and how to make assessments on issues such as information relating to overseas experience.

I have discussed this Bill with regulators such as the GMC, the GNC and the Nursing and Midwifery Council. Let me be crystal clear, the amendments in my name allow them to determine who is fit to practise their profession here, beyond recognition alone. They have welcomed this. The amendments to Clauses 3 and 4 are unnecessary as they do not cut across regulators' ability to set and maintain standards.

6.15 pm

I turn to the amendment in the name of the noble Baroness, Lady Garden of Frognal. It states that when the Secretary of State makes arrangements with the assistance centre, those arrangements may include information on language requirements in the UK or in another country. Clause 7 states that the assistance centre has to provide advice and assistance about entry requirements, which is defined as,

"the requirements as to qualifications, experience or otherwise that must be met by an individual to become entitled to practise the profession"

This definition, therefore, already encompasses language requirements, where appropriate. It would also encompass where there is an entry requirement for a profession overseas, provided that information is available. Furthermore, Clause 8 sets out the

"Duty of regulator to publish information on requirements to practise"

the profession in the UK or part of the UK. This would include details of language proficiency requirements. Adding this amendment is unnecessary as its effect is already achieved by the Bill as drafted. The situation described by my noble friend Lady McIntosh of Pickering sits squarely with the regulator who assesses competence.

With the reassurances that I have been able to provide, I hope that my noble friend Lord Lansley will withdraw his amendment.

Lord Lansley (Con): My Lords, I am grateful to all noble Lords who have participated in this short debate. I particularly thank the noble Lord, Lord Purvis of Tweed, and the noble Baroness, Lady Hayter of Kentish Town, for their support for the purposes of Amendment 60A. If we all agree that, when the time comes, the Government will specify all the necessary conditions under Clause 1 to ensure that, under all circumstances, regulators can make whatever judgments, impose whatever requirements, and seek whatever evidence they require for a fitness to practise decision, then Amendment 60A is not required. The difficulty is that, as the Delegated Powers and Regulatory Reform Committee said, we do not know the appropriate conditions that will be specified in Clause 1. Clause 3 powers could technically override them. We just know it is not the Government's intention to do so, and they have provided assurances.

After Second Reading, my noble friend acted swiftly to amend Clause 1. That has provided substantial reassurance, but not quite enough. One route we might look at on Report is to see whether "any other specified condition" referred to in Clause 1(1) as amended might be further defined to make it absolutely clear that everything that contributes to professional standards and fitness to practise determinations and judgments by professional regulators should be encompassed within those conditions. The question is how to draft it without having to reproduce everything. This is the territory we are in, otherwise that is not the assurance that is in the Bill. We are simply living with a statement that has no definition within it.

I hope to engage my noble friend and other noble Lords further in discussion about how we might achieve the purposes that I think we all seek. As my noble friend said, we are in agreement about the intent; the question is whether the Bill provides not only the powers but the assurances necessary for regulators in future and clarity within the Bill. Insurance is a similar argument. Pending further discussions, I beg leave to withdraw the amendment.

Amendment 34A withdrawn.

Amendments 35 and 36 not moved.

The Deputy Chairman of Committees (Baroness Fookes) (Con): We now come to the group beginning with Amendment 37. Anyone wishing to press this, or anything else in this group, to a Division must make that clear in debate.

Amendment 37

Moved by ***Lord Palmer of Childs Hill***

37: Clause 5, page 4, line 14, at end insert—

"(3) Nothing in this section affects individuals whose qualifications were recognised by virtue of the European Union (Recognition of Professional Qualifications) Regulations 2015 before subsection (1) comes into force."

Member's explanatory statement

This amendment makes it explicit that qualifications recognised before the EU regulations were revoked are not affected.

Lord Palmer of Childs Hill (LD): My Lords, this provision is often described as a "grandfather" clause or policy, or "grandfathering", although those words are not in the amendment. It is a provision by which an old rule continues to apply to certain existing situations, while a new rule will apply to all further cases. Those exempt from the new rules are said to have grandfather rights, or acquired rights, or to have been "grandfathered"—there is a big use of the word "grandfather".

The virtue of the provision is that it keeps the expertise which exists in all these professions. Surely this must be very close to Members of your Lordships' House; if we have any reason for existing, it is that one would not want to lose the expertise of this House. In very simple terms, that is what this amendment seeks to do.

The amendment is simple. It makes it explicit—the Minister may well say it is already there, but it is not explicit—that the qualifications recognised before the EU regulations were revoked are not affected. This simply makes it clear. I hope the Minister might accept it as a clarification in the Bill. I beg to move.

Baroness Fraser of Craigmaddie (Con): My Lords, I rather hope that the Minister will—to use the word of the Bill—assuage my fears that these amendments are not required. If noble Lords will bear with me, I must say I really struggled to understand, when reading these amendments and looking at the Bill, how it could possibly be that we would put any barriers, hurdles or anything in the way of people whose qualifications have been recognised under previous EU regulations. It is really concerning to me.

To turn to my regulator of choice, the Health and Care Professions Council registered 551 new registrants from the EEA and Switzerland last year—the year of Covid—and 951 the year before. That is around 22% and 26%, respectively, of the total number of new registrants each year. It would be a tragedy if there were any barriers to those who have been registered as fit to practice and they were not able to do so.

Let us not kid ourselves that it is a simple path to registration for professionals from the EEA and Switzerland even with the previous EU regulations in place. These professionals have already experienced uncertainty in their status due to the UK's exit from the EU. Hopefully, most will have applied for settled status, but let us, as I say, not put any more barriers in their way. Even a whiff that their qualifications might no longer be recognised or that they may have to go through other processes could be enough to send these valued people back to their own countries.

I am also not clear whether it is proposed that there will be a transitional period between the existing and the proposed routes to registration for overseas registrants. If so, can further light be shone on this? I plead that any transition from one system to the other is as smooth and painless for professionals and regulators as possible. I look forward to being assuaged.

Lord Hunt of Kings Heath (Lab): My Lords, I put my name to Amendment 60, to which my noble friend will refer in the wind-up, and will also speak in favour of Amendment 37.

Amendment 37, as we have heard, makes it explicit that qualifications recognised before the EU regulations were revoked are not affected. My noble friend Lady Blake's Amendment 60 seeks to ensure that existing qualifications in the UK are not affected by the Bill. Rather like the noble Baroness, Lady Fraser, I assume that that is guaranteed or assuaged somewhere in the Bill, but it would be helpful to have the noble Lord's reference point on that.

The noble Lord, Lord Palmer, made some interesting points about grandparenting, which is obviously a long and sensible tradition when making changes to a regulatory body or regulating a profession for the first time which is already in some form of voluntary accreditation. I think the HCPC will be well used to doing that. Provided that we can be assured that the people being transferred over are, in the words of noble Lords, fit to practice, it should be a fairly straightforward process.

I was struck by the suggestion of the noble Lord, Lord Palmer, that we as Members of this House would be particularly favourable towards grandparenting—I suppose that means that in any reform of the second Chamber, existing Members would transfer over. It is probably about the only way to get this place to agree to reform—but in your dreams, my Lords.

Baroness McIntosh of Pickering (Con): I support the comments of the noble Lord, Lord Palmer of Childs Hill, in moving his Amendment 37 and echo many of the remarks made previously on this.

My starting point is this: we now face a potential shortage in many professions, particularly among veterinary surgeons and many categories of medical staff, including doctors, nurses and other clinicians. It therefore seems odd that we have two amendments in this small group on the need for this to be in the Bill. Can my noble friend explain, as he has said many times during the passage of this Bill, at Second Reading and in earlier debates, that the Bill is deemed to be a tool to address potential shortages in the professions, such as veterinary surgeons and medical staff at every level? If that is the case, is it his view—bearing in mind the two probing amendments in this group—that it should perhaps be explicitly stated in the Bill, for the avoidance of doubt?

Baroness Finlay of Llandaff (CB): My Lords, it is a pleasure to follow all those who have spoken on the amendments in this group, because they are incredibly important. The noble Baroness, Lady Fraser of Craigmaddie, spoke about the dangers of a "whiff" of doubt; I fear that whiff is becoming a smell out there among those whom we desperately need to retain in this country to do the work. I did a different type of straw poll, in west Wales; I just asked how many of the people were immigrants from Europe. We have over 270, and they are holding up the NHS. If they leave, I am afraid we will be in a real pickle. We have a real problem recruiting new people into jobs. We have vacancies not just among front-line clinicians but, as I spoke about on day one, among clinical scientists, where a terrible shortage is affecting our diagnostic processes.

The other problem is that those in Europe do not want to come at the moment because there is an element of doubt, and they feel that they will not be welcomed. Even those who have been well trained, who might come for one or two years and bring some skills over, are not doing that. They are staying away. Although it might sound a bit far-fetched, I think the unfortunate legacy of the Windrush scandal has tainted people's minds a little bit and tipped them over towards mistrust.

The Minister used the word "trust" earlier today in relation to this Bill. I urge the Government to make it absolutely crystal clear that the qualifications that were previously recognised will remain recognised in perpetuity for the people who hold them unless there is a major change. Something like that might happen; for example, a profession might disappear completely or change so much that ongoing training would obviously be wanted. There is a real need to emphasise that these are valid qualifications and that they are of equal status—and that the people who hold them are viewed as being of equal status, that they are welcome here and that we appreciate the work that they do.

6.30 pm

Lord Fox (LD): My Lords, this has been a short but important debate. I expect the Minister to stand up and say that EEA professionals whose qualifications were recognised before the end of the transition period will continue to be recognised, but I warn him—again, in the spirit of helpfulness—to be careful what he promises because there is a problem: how do we know who has qualifications?

For the 5 million-plus EU nationals who have applied for settled status, the Home Office has only been checking the box that says "settled status". It has not been verifying all withdrawal agreement rights, including professional qualifications. If these people remain in the job they are in now, so be it, but in the event that they move to another job with a new employer, I do not know how the process of them verifying their professional qualifications will happen. When the Minister answers this question, he needs also to answer the question of how this process will be effected for the millions of people, potentially, who came through the mutual recognition process, meaning that their names may not have been—indeed, probably were not—gathered with all the regulating bodies. How will it be managed? As previous speakers have emphasised, the role that these people already play in the United Kingdom is not just important but vital. It is also vital that the Government understand that these people's qualifications need to work not just for their current job but for their next job and the one after that.

Baroness Blake of Leeds (Lab): I thank everyone for their contributions in this really important area. I join noble Lords in raising concerns about the impact of the Bill on the qualifications of those who already live and work in the UK.

I thank the noble Lords, Lord Patel and Lord Hunt, and the noble and learned Lord, Lord Hope, for signing my Amendment 60. Their expertise, especially in the medical and legal professions, has been incredibly helpful for this debate and for my first amendment to a Bill in this House. I could not be more appreciative of such cross-party support. I share the intention behind Amendment 37 and thank the noble Lords, Lord Palmer and Lord Fox, and the noble Baroness, Lady Bennett, for tabling it.

It is absolutely clear from the debate that we need to give those who already have their professional qualifications recognised in the UK certainty and confidence that this legislation will not affect them negatively, especially because, in many cases, the professionals and people working in these areas already live in our communities, have decided to call the UK their home and are people on whom all of us so often rely, particularly for our vital public services. This is especially true in the context of shortages, as the noble Baroness, Lady McIntosh, set out, picking up on the comments made by the noble Baronesses, Lady Fraser and Lady Finlay, about the whiff of doubt that exists at the moment.

We cannot repeat this frequently enough: last year, the number of non-British people here included 169,000 NHS staff in England, 122,000 staff on the Nursing and Midwifery Council's register and 247,000 staff in social care. We are hugely grateful to all these key workers—especially for their efforts during the pandemic. As I said at Second Reading, we cannot clap for carers today then strip them of their qualifications tomorrow. We need to stand behind all these workers and want to do so side by side with Ministers.

In the Explanatory Notes to the Bill, the Government's central promise was that

"nothing in the Bill prevents, qualifies or otherwise impacts the ability of those with existing recognised qualifications from continuing their areas of practice in the UK",

but the Bill as drafted is currently silent on this. Therefore, Amendment 60 would write the Government's own promise into the Bill. Surely the Minister will have no objection to accepting this simple but extremely important amendment. How can he guarantee protection of workers without it?

I am very grateful to the noble Lord, Lord Patel, for pointing out in conversation that many who have registration are not currently practising, and there needs to be reassurance for them as well. We have the opportunity to provide the certainty and confidence that all so richly deserve. Let us do what we can to provide the atmosphere of trust that we have mentioned today.

Lord Grimstone of Boscobel (Con): My Lords, I thank the noble Lord, Lord Palmer of Childs Hill, and the noble Baroness, Lady Blake of Leeds, for their amendments. I note that they are supported by several other noble Lords. Many noble Lords, including the noble Lord, Lord Purvis of Tweed, have spoken previously about the importance of ensuring that professionals who have already had their qualifications recognised in the UK should be able to continue to rely on those recognition decisions. I completely agree with this. Those professions make an important contribution to the UK, the individuals concerned are very valuable to us and I am happy to put that firmly on the record. That is why this Bill, and any regulations made under it, will not affect the status of those with existing

[Lord Grimstone of Boscobel]
recognised professional qualifications. As I will explain, we are in complete assuagement territory here, without there being a whiff of a doubt, and I hope I can demonstrate that clearly to noble Lords.

To explain fully, the Government secured provisions to protect existing recognition decisions in each of the UK-EU withdrawal agreement, the UK-EEA EFTA separation agreement and the UK-Swiss citizens' rights agreement. EU-qualified professionals living or frontier-working in the UK at the end of the transition period who had their qualifications recognised by the relevant UK regulator will continue to have their recognition protected under the terms of the withdrawal agreement. In answer to the noble Lord, Lord Fox, those individuals will be on the professional register of the professions with which they are registered. This is of course a separate matter from any question of settled status in an immigration context.

There are similar provisions for holders of Norwegian, Icelandic and Liechtenstein qualifications under the UK-EEA EFTA separation agreement and for holders of Swiss qualifications under the UK-Swiss citizens' rights agreement. Indeed, under that last agreement, Swiss professionals can continue to apply for recognition of qualifications under the current terms up until the end of 2024. These provisions have been given effect in the 2019 recognition of professional qualifications regulations, as amended in 2020 using powers under the European Union (Withdrawal Agreement) Act 2020. Clause 5 does not amend or affect the legislation which upholds the UK's obligations under these agreements, and the UK will continue to protect the rights of these citizens.

The regulations which commence Clause 5(1) will include saving and transitional provisions. These will ensure that professionals whose qualifications were recognised from the end of the transition period to the point when the 2015 regulations are revoked are unaffected. The Government will consider carefully when to implement commencement regulations to support a coherent legislative framework, while also ensuring that decisions are taken at the right time for professions affected. This will support a smooth transition to the new framework for recognising overseas qualifications. These regulations will be laid before Parliament at a suitable time and not without the appropriate prior engagement with devolved Administrations, regulators and other interested parties. This also allows regulators time to transition from operating under EU-derived obligations to the new system suited to the needs of the UK economy. I hope this answers the point made by my noble friend Lady Fraser.

Additionally, the Bill does not change the status of any recognition arrangements that regulators have with counterparts in other countries. They can continue, and the Government are conducting extensive engagement with regulators to ensure that they understand the measures in this Bill. The Government will make clear in those interactions that the Bill will not affect in any way the status of professionals already practising in the UK. I hope this provides reassurance that the Bill is fully consistent with the intent behind these amendments, and that noble Lords therefore feel able not to press them.

The Deputy Chairman of Committees (Baroness Fookes) (Con): I have received requests to speak from the noble Lord, Lord Fox, and the noble Baroness, Lady Finlay of Llandaff. I call the noble Lord, Lord Fox, first.

Lord Fox (LD): My Lords, I thank the Minister for his partial answer to my point, but he will find if he goes back to the department that proof of recognition will have to be re-presented if people are moving jobs. If that is not the case, I will be happy to accept it and we can have one of his famous letters on the subject. My understanding is that this is not his department's doing but part of the hostile environment that the Home Office still pursues; the noble Baroness, Lady Finlay, made the point about the hangover from previous incidents. My understanding is clear on this, so I would be pleased if the Minister is able to disabuse me of it.

Baroness Finlay of Llandaff (CB): My Lords, to add to that, I listened carefully to the Minister when he spoke about the person holding the qualification, but my concern relates to the qualification itself. If somebody holds a qualification that was mutually recognised in the EU, has not yet come to this country but wishes to in five years' time, will that qualification remain recognised as it would have previously or is there a possibility of additional hurdles being put in place for that person coming in? I go back to the term "grandfathering" and whether the recognition that existed will continue, or whether it continues only up to date for those people who are currently on a register in this country and possibly have settled status. That was not clear, or perhaps I did not understand it.

The Deputy Chairman of Committees (Baroness Fookes) (Con): I invite the Minister to reply to both speakers.

Lord Grimstone of Boscobel (Con): My Lords, these are both important questions which affect the rights of individuals, and so I will write to noble Lords on these matters to be crystal clear with my answers.

Lord Palmer of Childs Hill (LD): My Lords, I thank all noble Lords for their contributions to this debate, which has been incredibly helpful. I particularly thank the noble Baroness, Lady Fraser of Craigmaddie, for introducing words like "whiff", "processes" and "painless". That is the whole point: this should be painless rather than putting things in people's way. I thank the noble Lord, Lord Hunt of Kings Heath, who has noticed the similarity between expertise in the House of Lords and keeping the expertise in qualifications. I thank the noble Baroness, Lady McIntosh of Pickering, for her comments about making people welcome, and I thank the noble Baroness, Lady Finlay, for saying the same.

6.45 pm

My noble friend Lord Fox made some very important points to which I do not think we have had an answer. He asked about the warning and about what happens if someone takes new employment rather than simply continuing in their old one. The noble Baroness, Lady Finlay of Llandaff, embellished that by asking whether,

if they had never come to this country but had the qualifications before they came, they would still be allowed to be here. We need to know from the Minister whether the Home Office is gathering the data, what will happen if that data is needed and how we can use it. I can see a position in the future where there will be disputes, just as with Windrush and other matters, because the data was not collected at the time.

The noble Baroness, Lady Blake of Leeds, talked about people needing certainty and confidence. At the moment I do not think there is certainty and confidence in the Bill. Other noble Lords have added many more important points to the amendment, but all it asks is for the Bill to make it explicit that there are grandfather rights.

I hope the Government will accept this very modest but important amendment. I give notice that, if they do not accept it, I intend at this stage to pursue it on Report. I beg leave to withdraw the amendment.

Amendment 37 withdrawn.

The Deputy Speaker (Baroness Fookes) (Con): We come to the group beginning with the question that Clause 5 stand part of the Bill. Anyone wishing to press this or anything else in the group to a Division must make that clear in debate.

Debate on whether Clause 5 should stand part of the Bill.

Baroness McIntosh of Pickering (Con): I am grateful to have the opportunity to discuss more broadly the contents of Clauses 5 and 6. Clause 5 relates to the revocation of the general EU system of recognition of overseas qualifications. It revokes the European Union (Recognition of Professional Qualifications) Regulations 2015 and provides regulation-making powers to the appropriate national authority—in this case the Secretary of State, the Lord Chancellor and the devolved Administrations—to modify any legislation that it considers necessary as a consequence of this provision. The fact that this is a broad regulation-making power underlines the need that I identified earlier to consult before the power is exercised, so I again press my noble friend on that point. Clause 6 looks at the revocation of other retained EU recognition law and provides the appropriate national authority with a regulation-making power to modify other legislation for professions that are outside the scope of these regulations but still part of the broader EU-derived recognition framework.

My first question to my noble friend relates to Clause 5(1), which represents basically a cliff-edge revocation of the whole of the EU MRPQ regime in UK domestic law. If we adopt such a one-size-fits-all measure, and given the constraint placed by Clause 2 on the gap-filling power in that clause, would it not be sensible for the Bill to include a power to save, in an appropriate case, the effect of specified elements of the EU-derived MRPQ rules in relation to a particular profession or professions?

This has been put forward by the Bar Council of England, which states:

"We doubt whether Clause 5(2), even read with Clause 13(1)(c)"—

which we will discuss separately—

"provides a power to save the effect of any part of the remaining EU-derived MRPQ regime."

My concern is that there may be parts of that regime which, for an interim period or even longer, some of the regulators or professions would wish to keep. I understand that that would not be possible. Is that something my noble friend might review for the purposes of the debate today?

I understand that Clause 5(1)

"would come into force on a day specified by the secretary of state in regulations."

A memorandum to the Delegated Powers and Regulatory Reform Committee says:

"BEIS has said that it intends that commencement regulations would "include savings and transitional provisions relating both to qualifications that have already been recognised and to applications that are already in progress but not yet complete".

Can my noble friend confirm how that will play in the different jurisdictions, particularly regarding the legal profession, which is dealt with separately in Scotland, England and Wales?

The Library briefing also states:

"Clause 6 would come into force on the day the bill was passed. In the context of clause 6, the Government has said not all pieces of relevant legislation will be revoked at the same time. Some arrangements may be kept for a longer period depending upon the needs of a given sector."

My concern is that this may lead to some confusion and a lack of understanding of the legal status of the provisions. I refer again to BEIS and its memorandum to the Delegated Powers and Regulatory Reform Committee on 12 May 2021. Paragraph 50 says:

"In particular, it is expected that the healthcare sector will need a longer period of time to transition to the new system to avoid recruitment and retention issues in those sectors",

which we have just briefly debated. It continues:

"BEIS is of the view that it is appropriate to allow for Departments and devolved authorities to revoke these measures at an appropriate time, without fixing a particular date in the bill."

Is my understanding correct that we could be faced with different situations in the different devolved nations? Are the Government mindful of what the implications might be?

I am grateful to have had the opportunity to discuss these concerns about Clause 5. Will my noble friend consider that there may be parts of the EU system we want to keep? I accept we have taken the decision to leave it, but, for an interim period, that may be the case. The Explanatory Memorandum states:

"Following the end of the transition period, this system had been retained in the interim to provide certainty to businesses and public services by offering preferential qualification recognition to holders of EEA and Swiss qualifications. The new recognition framework, as set out in Clause 1, will be implemented alongside revoking the 2015 Regulations."

To sum up, there could be different regimes working at the same time under Clauses 5 and 6. How does my noble friend intend that his department will manage that to the best possible effect?

Baroness Randerson (LD): My Lords, I welcome these amendments. I will start with the points the noble Baroness, Lady McIntosh, was dwelling on at the end—the impact assessment gives the impression that, when this Bill becomes law, it terminates the transitional arrangements which continue to recognise EU qualifications. Indeed, most of the Bill indicates

[Baroness Randerson]
that. Clause 6 undoubtedly muddies the water somewhat. There is a need for clarification from the Minister because there is scope for a great deal of confusion.

From previous comments made by the Minister, I gather that the UK wanted to agree mutual recognition of qualifications as part of the trade agreement with the EU but the EU was not prepared to accept that. I pointed out on the first day in Committee that this is not an agreement between equals; for example, there are 22,000 EU-qualified medics working in this country but only 2,000 UK-trained medics across the countries of the EEA plus Switzerland. In short, we depend a lot more on them than they do on us. The pattern is repeated across a large number of professions. It is not uniform, but it is repeated widely.

Therefore, the Government's decision to throw their toys out of the pram and say, "If you won't recognise ours, we won't recognise yours", is, I regret to say, simply self-defeating. It also displays a seriously worrying lack of awareness of how long it takes for a regulator to go through the approvals process for each new country's qualifications. The impact assessment refers to contacts with regulators but, as I said in a previous debate, these are very minimal, and regulators were notably sparing in their responses to government consultation. We do not have a thorough picture of how this will impact on regulators, but I can assure noble Lords that years, not months, is the norm for recognising qualifications—for going through the whole process. As a result of this Bill, there will be a gap when the old qualifications are no longer recognised and the new ones are not yet accepted. Already, we have shortages in a number of professions; we have had shortages for many years, but the Brexit situation has made them much worse. The rhetoric that went along with Brexit has made so many foreign professionals feel unwelcome, and that lack of feeling welcome has had an impact way beyond the EU immigrants; it has impacted on people across the world.

I suppose I should be reassured that the impact assessment states that, although the Bill sweeps away current EEA recognition, the regulators are able to sign recognition agreements with individual countries. However, there is an element of farce here, because dealing with that costs money and is bureaucratic and complex. It is a pity the noble Baroness, Lady Noakes, is not in her place, because she would be nodding fiercely with me on that one. But it will cost money, and that cost will fall on people working in each of the professions concerned. Also, the Minister himself told us in a letter that the old agreements were unpopular, although I have not found anyone echoing that within the sector. But the Government felt that they were unpopular and wanted to replace them.

The sensible thing would be for the Government simply to continue to accept the status quo—the EEA system—at least for a much longer interim period and perhaps review it after five years. I hope we can persuade the Minister that the pragmatic thing to do is to accept this amendment, or maybe even to commit to looking at it again and adding that the whole thing will be reviewed in five years' time. It will take that long to re-erect a sensible, comprehensive system to replace what the Bill is sweeping away.

7 pm

Lord Purvis of Tweed (LD) [V]: My Lords, it is a pleasure to follow my noble friend. She highlighted extremely well the nonsense in the Government's proposals, which seek a faster-track application system and reduced fees for in-demand services, at the same time as recognising that the Bill itself will increase fees. I will make a couple of points in support of my noble friend's case and that of the noble Baroness, Lady McIntosh. Some of us have not lost hope that a degree of pragmatism will still be found somewhere in the basements of Whitehall and that the Government can bring it up to see the light. If so, it would be in our self-interest and in the interests of our professions and public services.

On the first day in Committee, noble Lords discussed the Minister's attempt to read a degree of revisionism into the position of the UK and the EU in forward-looking negotiations and the withdrawal agreement. For the benefit of the Committee, the UK's negotiating document called for "a framework" for the relevant authority of a profession in a jurisdiction. The EU's response, in paragraph 43, referred to

"a framework for negotiations on the conditions for the competent domestic authorities".

There really was not much between the two after the UK Government said that they wanted a Canada-style agreement. The EU said, "You will have it", and we have such an agreement, with increased burdens and complications and the UK having to negotiate with each individual member state. That is the impression given by the Government's impact assessment, which says that it gives us a competitive advantage and our professionals an advantage over others. However, we seem to hear from the Government that they are now quite open to a Europe-wide mutual recognition system. The Minister is being coy: this is an opportunity for him to be abundantly clear on whether the UK would favour—continues to favour, if his argument is to be believed—a Europe-wide system.

My noble friend Lady Randerson pointed out why it is in our interests to hit the pause button and not inflict more damage. The regulated professions database, which the Government have cited in the Bill's accompanying documents, makes the case for us. Its records go back to 1997-98 and the number of UK doctors since then who have had their UK qualifications recognised in all European countries—the 27 and the smaller number before enlargement—is 2,468. In that period the UK has recognised 32,412 to work in our health service. The figures for civil engineers were 550 from the UK working in Europe and 1,227 Europeans in the UK.

For UK nurses going abroad, the figure is 4,570, while for EU nurses with recognised qualifications working in the UK over the period it is 47,000. If you take out Ireland—to which 3,850 UK nurses went, while Europe had 3,355 coming in—700 British-recognised nurses went to Europe to work, against 44,000 Europeans working in our health system. It is abundantly clear that these difficulties, which will continue, are putting pressure on our services which the Government say the Bill is meant to counteract.

The worst example I have found, however, is in social work. It is clear from government statements that there is a shortage in the profession. This database

shows that over the same period, 63,000 British social workers' professional qualifications have been recognised abroad, while in the UK we have recognised 201,000 from the 27 and their predecessors.

It is perfectly clear that we are creating a major problem in our labour market. The Government themselves have said in a Home Office statement that they forecast a 70% reduction in new applications. So the reason the noble Baroness, Lady McIntosh, is correct to say that there should be a degree of pause is that we have damaged the reputation of those who have worked here already, we have stopped that trajectory and, as I said, we are forecast to cut it by 70%. That will never be compensated for by those coming from other countries through some of those mysterious mutual recognition agreements that have not even been negotiated yet. I do not know what the Government's view is on solving this problem of demand. The Bill will not do that and they need to set out what the solutions will be. At the very least, there could be a degree of common sense so that we do not halt all the benefits that the UK has at the moment and hit the pause button. For that reason, I support the amendment.

Lord Grimstone of Boscobel (Con): My Lords, the core purpose of the Bill is to update how regulators recognise professionals whose qualifications and experience have been gained overseas, reflecting our status outside the single market and our global outlook. Clauses 5 and 6 are part of the means of doing that. I note that my noble friend Lady McIntosh of Pickering has given notice of her intention to oppose Clauses 5 and 6 standing part of the Bill. I hope that over the course of my speech I can change her mind. Noble Lords have raised a number of detailed technical points in this short debate, and I will obviously write to them on those points of detail, to the extent that I do not answer them fully in my response.

Clause 5 revokes legislation that places obligations on regulators to recognise professional qualifications in line with the systems that were in place when the UK was a member of the EU. Clause 6 complements Clause 5 by providing a power for modifications to be made to other retained EU recognition law to cause it to cease to have effect. The current arrangements for the recognition of professional qualifications were an interim system put in place to provide essential continuity immediately after the transition period. They were never meant to be permanent, nor do I believe that they should be. Legislation that obliges regulators to offer unreciprocated recognition to European Economic Area and Swiss-qualified professionals in the UK, often preferentially, is clearly not appropriate going forward. That is why Clause 5 will revoke the 2015 regulations.

Clause 5 also provides a power for consequential amendments to be made to other legislation, in particular corrections to cross-references or imported definitions. I hope noble Lords will appreciate that this will require a level of detail that would be set out more appropriately in secondary legislation. It will also enable the devolved Administrations to modify legislation that falls within their devolved competence.

We believe that there are benefits to all four corners of the UK from having a global outlook to the recognition of professional qualifications. We have not placed an obligation on the devolved Administrations to use this power because we trust that they will make decisions that will allow the new framework to operate effectively, including revoking any remaining legislation no longer compatible with our new status outside the EU single market. As we make these changes, we will work with interested parties, such as the devolved Administrations and regulators, to make sure that they work for the professions concerned.

Clause 5 will come into effect only through commencement regulations. These regulations will include saving and transitional provisions ensuring that professionals recognised before the revocation are unaffected—a point that we discussed in one of our earlier debates. The savings also ensure that any ongoing applications made before revocation would be treated under the rules of the interim system, which means that applications in the pipeline will continue to be considered.

The Government will consider carefully when to implement commencement regulations to support a coherent legislative framework while also making sure that decisions are taken at the right time for the professions affected. I assure noble Lords that we will not rush this. We will think about it carefully, and the commencement regulations will be brought in when we think it is the right thing to do, taking all this into account. This will support a transition to the new framework for recognising overseas qualifications. These regulations will be laid before Parliament at a suitable time and—I assure my noble friend Lady McIntosh—not without the appropriate prior engagement with the devolved Administrations, regulators and other interested parties. This also allows regulators time to transition from operating under EU-derived obligations to the new system suited to the needs of the UK's economy going forward.

I turn now to Clause 6, which complements Clause 5 and enables modifications to be made to other relevant retained EU recognition law to cause it to cease to have effect. This is legislation which provides for, or relates to, the recognition of overseas qualifications or experience for the purpose of determining whether individuals are entitled to practise.

In providing for the revocation of this EU law, your Lordships have just heard me say that the Government are committed to their existing obligations to implement the provisions in the UK-EU withdrawal, EEA EFTA separation and Swiss citizens' rights agreements with regards to qualification recognition. I reassure noble Lords, as I did in a previous debate, that Clauses 5 and 6 do not amend the UK's obligations under these agreements, nor do they prevent regulators setting up or continuing routes to recognition for professionals with overseas qualifications in line with other existing powers.

Clauses 5 and 6 are essential for paving the way for the introduction of the framework I have set out. I commend that these clauses should stand part of the Bill.

Baroness McIntosh of Pickering (Con): My Lords, I am grateful to those who have spoken and to the noble Baroness, Lady Randerson, for being so supportive, for her reference to the impact assessment and for her recognition that there will be a gap as a result of the Bill, as the old qualifications will no longer be recognised nor new ones accepted. I think both she and the noble Lord, Lord Purvis of Tweed—I am also very grateful for his support and forensic analysis of the situation—said that the status quo for a limited period would be acceptable.

I am grateful to my noble friend for his response. I am not entirely clear whether he suggested that we will now have that limited reliance on the status quo, because he said in relation to Clause 5 that the commencement regulations would be brought in at the right time after the appropriate consultation. I am not sure I heard him respond to the Bar Council's concerns that those good parts of the regulations that will be dropped when the new regulations come in might be kept in the longer term, but I commend that to my noble friend to consider.

The noble Lord, Lord Purvis, set out very pressing reasons, and went on to analyse the 70% reduction in applications that the Government have accepted there will be. He made a plea for a pause to limit the damage at this time. Concern has been expressed in the Committee, justifying this debate. I will consider whether further action is required at the appropriate stage, but for the moment I beg leave to withdraw my amendment.

Clause 5 agreed.

Amendment 38 not moved.

Clause 6 agreed.

7.15 pm

Clause 7: Assistance centre

Amendment 39

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

39: Clause 7, page 4, line 41, at end insert—

"(d) publish advice and information about immigration requirements for entry to the United Kingdom for purposes of practising a regulated profession."

Lord Foulkes of Cumnock (Lab Co-op): My Lords, there have been a number of interesting debates today, and this is an important one. This amendment requires the Secretary of State to make arrangements for the assistance centre to give information about visa and work permit requirements. In a previous debate, the noble Lord the Minister—the noble Baroness the Minister is answering this debate—told us that the assistance centre is up and running. Clause 7 provides for the assistance centre, which is there to facilitate transparency on the recognition and regulation of professional qualifications in the United Kingdom, to provide advice and assistance to UK qualified professionals who want their publications and experience to be recognised overseas, and to publish certain advice and information.

I agree with the Law Society of Scotland, which drafted this amendment for me, that it would be important for the assessment centre also to provide advice and information about visa and work permit requirements for entry to the UK for employment and other related purposes. At present, the UK Centre for Professional Qualifications—UK CPQ—which is managed by Ecctis, provides advice and information across the UK on recognition of professional qualifications in an international context in the UK and abroad. Clause 7 provides the statutory basis for that service.

The UK CPQ does not provide advice or information about visa and work permit requirements for entry to the UK; nor does it signpost to relevant advice and information on immigration matters. There is another body, the UK national agency for international qualifications and skills—UK ENIC—which is also managed by Ecctis. Visitors to its website, who wish to see information about visa and nationality matters, are directed to the Home Office. I do not need to tell the Committee that that is not the most helpful advice to give to anyone. That there is a choice of bodies with similar names operating in the same sphere and run by the same entity must be confusing to an individual from abroad who wants to have their qualification recognised but also to obtain the basis for employment in the UK; namely, a visa or work permit.

I agree with the Law Society of Scotland's view that it would be much better and more cohesive were the assistance centre more of a one-stop shop, in respect of the benefits of offering a joined-up service to nationals of other countries seeking to requalify and potentially establish themselves in the UK. This amendment will help achieve that. I agree with the Law Society's view that the Long Title of the Bill is broad enough to bring such functions within the ambit of the assistance centre. Perhaps between now and Report, the Minister—who I know is a very helpful Minister—could make inquiries about whether such a provision could be included in amendments later in the Bill's passage. In the meantime, by making this point, I hope that the Government will agree that there would be practical and reputational benefits of offering comprehensive advice and assistance to international colleagues.

That deals with Amendment 39. Amendments 44 and 50 are also in my name. I will not press them, because we dealt with the same principle on a previous amendment. Members who were there will recall that I passed on the responsibility to my friend, the noble and learned Lord, Lord Hope, who sadly cannot be with us today. What he explained then applies to this amendment equally well. The points made by the Minister and the noble Lord, Lord Lansley, were helpful, particularly the Minister's assurance that the regulator is not required to make the disclosure if that would contravene the data protection legislation. It was very helpful to have that clarified. The noble and learned Lord, Lord Hope, and I put on record our thanks to the Minister. I beg to move.

Lord Fox (LD): My Lords, it is always a pleasure to follow my near namesake, the noble Lord, Lord Foulkes, and endorse his words. This group contains a number of different amendments. I will focus on Amendment 43 in my name, but that does not indicate that I do not support elements of the others.

I have done what the noble Baroness, Lady Noakes, advises against, which is to table an amendment to one element of this clause in order to speak to a larger confusion that I have. This is a probing amendment, but the real point is: what is this centre for and why will it operate as it does? We have established a few facts at Second Reading and through previous amendments, so we know that the Government foresee one overarching centre rather than four national ones, and to do this, the Minister has painted a picture of two people and a website—a landing page. Forgive me, but this is a website requiring 48 lines of primary legislation, so it must have some importance in the mind of the Government to go to this much trouble when it replaces what was a sentence in an EU directive, which is the previous assistance centre. So much for red tape. We have 48 lines of primary legislation to establish a website run by two people.

My amendment leaves out Clause 7(4), which deals with disclosing information. Clearly, it reinforces that certain information cannot be disclosed, but to whom will this information be disclosed? It paints a picture of the collection and dispersing of individuals' data, so what is the point? Why is it there? What data is it—whose stuff? I do not understand what it is for. I understood that it was to point people in certain directions. This is saying that it is a requirement to disperse data, but what data, and to whom? That is the central reason why I have put my name to this amendment. Of course, if it is collecting important data, it would be nice to know that it is doing so properly, so the terms of this subsection are of course correct, but we need to know why this centre is being set up as it is and what on earth it is for.

Baroness Garden of Frognal (LD): My Lords, I have two very small amendments in this group, both taking us back to my unfavourite word, "substantially". When we were discussing this last week, my main objection was that "substantially" always implies that something is missing. Last week it was applied to standards, and my argument then was that you cannot water down standards so should not use "substantially". With these two amendments, my argument is that the word is completely unnecessary. In "substantially corresponds to", "substantially" is a modifier and "corresponds to" is a modifier; you do not need them both, so I simply put this forward to ask if we can please neaten up the Bill by two words and take out "substantially" in both contexts.

Baroness Noakes (Con): My Lords, I speak on Clause 7 standing part of the Bill, rather than on the detailed amendments in this group. We had a brief discussion about the advice centre on our first Committee day, when the Minister told us that the current UK Centre for Professional Qualifications does not cost very much, although he would not tell us how much. The UK set up the Centre for Professional Qualifications because it was required to by the EU, so I do not understand why BEIS has not looked long and hard at whether it needs to carry on funding it now that we have left. Just because people have occasionally found an item useful is not a sound rationale to carry on spending money on it. There has to be a demonstrated need, and nothing in the documents on the Bill has established this.

Until I got involved in the Bill, I had not heard of the centre. I have since visited the website and am doubtless going to be included in its statistics on hits next time it reports to the Minister how successful it is. I did not find it useful at all. I first wanted to know how I could come to the UK to practise as a registered auditor, but the website gave me no information at all. It does not have a global search facility, so I could not even work out whether the information was hidden somewhere on the website. When I said that I was a UK professional accountant seeking to practise abroad, again it had absolutely nothing to tell me.

I suspect that, if the centre disappeared from the web tonight, no one—but no one—would miss it. Most of what is on the website can easily be found with a search engine and a couple of extra clicks. It is not a treasure trove of information; it is very minimalist. The best thing that could be done with it is to put it to sleep, which is why I do not believe that Clause 7 should stand part of the Bill.

Baroness McIntosh of Pickering (Con): I am delighted to speak in support of Amendment 39 from the noble Lord, Lord Foulkes, and I commend the remarks of my noble friend Lady Noakes, because it takes a brave person to say what she did. I look forward to hearing my noble friend Lady Bloomfield's response from the Front Bench. I do not know whether I have the temerity to try the same, as a non-practising advocate, but I am tempted.

Amendment 39 is particularly important given the reasons that we debated in the short debate on Clauses 5 and 6 standing part of the Bill. Those reasons were raised again by the Law Society and the noble Lord, Lord Foulkes, who so eloquently moved Amendment 39: we need a tool to remove all barriers, or any whiff of a barrier, that might be in this place. It is important to take this opportunity to do that. I hope that my noble friend enthusiastically endorses Amendment 39 as a small but essential tool to enable those who might consider applying for their chosen profession to work in the United Kingdom to do so.

Another reason for this was given by the noble Lord, Lord Purvis, in summing up the last debate, who mentioned that we now have a Canada-style agreement. The briefing I have from the Law Society of England and Wales is rather discouraging:

> "This model is yet to deliver a single MRA between the EU and Canada in the three years since it came into force … We feel Government impetus is necessary to achieve MRAs."

Clause 7 is an essential part of the Bill. It is extremely important that we have an assistance centre and I welcome the fact that it is already up and running. It is even more important that it passes the Noakes test—that it is easy to use, fit for purpose and will embrace Amendment 39.

I am not going to speak at length, but I take this opportunity to support the amendment in the names of the noble Lord, Lord Foulkes, and the noble and learned Lord, Lord Hope of Craighead, on disclosure. I look forward to my noble friend's response on that and to Clause 7 stand part.

7.30 pm

Baroness Randerson (LD): My Lords, my noble friend Lady Garden has wisely pointed out the poor grammar in the Bill. I hope that note will be taken of that. The really significant question here is what the assistance centre is for. It is built on—and the Minister went out of his way last time to point this out—the modest size and the modest number of inquiries that the current assistance centre has dealt with. It is a creation of the UK Government as a result of a non-legal requirement from the EU—a suggestion from the EU. It is not a legislative requirement by the EU. The UK Government decided to make the requirement in law, but the EU situation does not make it a requirement.

We therefore have this organisation that has clearly, in the past, had a small, modest but useful function, but the world has moved on. If you search for anything online these days, there is a wealth of information. Even if you have a limited level of experience in a particular field, you rapidly discover what information is reliable and what is not. What is proposed here is a much bigger organisation—a much more grandiose and legally established organisation with scope for further growth. The Minister told me not to be suspicious, but I remain suspicious. In my view, the UK Government see this organisation as an opportunity for them to take a centralising, co-ordinating role which will nudge the devolved Administrations out of the way in fields where the vast majority of activity is devolved, such as health, teaching and social work. The day-to-day activity in the health service, the teaching profession and social work is done and controlled by the devolved Administrations, even if there are not always separate regulators.

We have raised previously the concurrency of powers of the devolved Administrations and the UK Government. This is an attempt by the UK Government to bring what they see as order and an element of control to the situation. If the assistance centre had a purpose, modern search facilities online have now made it redundant. I agree with the noble Baroness, Lady Noakes, that it is better to put it to sleep—put it out of its misery.

Baroness Hayter of Kentish Town (Lab): My Lords, while I absolutely agree with my noble friend Lord Foulkes that any advice would be better if it was comprehensive and included all the things that everyone would want to know if they were applying either to move here or to go away, the more fundamental question, which I and the noble Baroness, Lady Noakes, asked, is whether we need Clause 7 at all. As she and others have said, it is not clear why it is necessary to establish a statutory advice centre simply to handle information and provide advice and assistance. It will not make any decisions. It will not have the authority to chide regulators for not doing something; it does not have any authority over them. The statutory requirement is actually on regulators to provide advice to the centre—there is no statutory requirement on the centre to fine them if they do not do it or anything else like that—although, as has been said, there are already other ways of getting that information. In addition, only the UK Government, not the other Governments in the Bill, interestingly enough, are able to enforce this requirement. I do not know whether that is an oversight but, given that there is more than one national authority in the Bill, it would be interesting to know why the requirement on regulators is laid down only by the UK Government.

This is all very strange. It is a very clunky and convoluted way of simply asking statutory regulators to tell a Minister such information as is needed to provide advice to potential applicants on how they go about getting their qualifications recognised here. They have been doing that for years. We heard earlier about a number of regulators, particularly in the health service, veterinary science and other areas, that have been doing this for years without any statutory requirement to provide the advice, so it is unclear why the new law is needed. As has already been said, we know that the assistance centre is already in operation. But I think none of us knows why we need a specific underpinning now, and what it is that could not be done by a couple of civil servants within BEIS.

The Minister said last Wednesday that "new legislative cover" is required, but he did not spell out what it was required to do—why this could not be done on a voluntary basis. We have lots of other advice centres which do not have to have statutory underpinning, so why is legislation needed? He said, as the noble Lord, Lord Fox, just quoted, that the centre

"is basically a focal point—a signposting mechanism that tells people where to go to get more information about professions"

and that

"it employs either two or three people."

It must be tiny; I was going to say that it received 1,600 queries in a year, but it has now received 1,601—I think our little website here gets far more hits than that. As the Minister had the honesty to confess:

"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?'"—[*Official Report*, 9/6/21; col. 1501.]

If you google "nurse vacancies", you might just find it. The idea that we are employing anybody and paying them money to tell people about the address they need to write to to find out how to become a nurse in Great Britain makes me worried, and why on earth does it have to be a statutory body if it is just signposting?

The impact assessment says that

"the Secretary of State can (through contractual arrangements) require the national assistance centre to support professionals"—

it is unclear what "support" means—

"in getting their UK qualifications recognised overseas by providing reasonable information to their overseas counterparts."

Again, surely the regulator can do that. If a doctor wants to apply to be a doctor in New Zealand, for example, surely their regulator can supply that information. If it is to be done by the advice centre and by contract, it is really hard to think why, again, it needs two bodies or persons to be statutory if they are simply setting up contracts to be able to exchange information—because it is not a decision-making body.

It is unclear what the relationship will be between the centre and overseas regulators. If it is by contracts, how much will they be bound by data protection to ensure that the overseas regulators will look after people's data according to normal laws? That is easier in a regulator-to-regulator agreement—we have talked about these elsewhere, so why not here?

I am completely mystified as to why Clause 7 is in the Bill. Perhaps we can just take it out, and then we can all go home.

Baroness Bloomfield of Hinton Waldrist (Con): I have to confess that I am still surprised that this is proving such a contentious part of the Bill. For the record, the centre has had 1,602 inquiries—I rang it this morning and it was very helpful, answering the phone within minutes and telling me exactly what to do about what I was asking.

I thank the noble Lords, Lord Foulkes and Lord Fox, and the noble Baroness, Lady Garden of Frognal, for their amendments, which address wide-ranging issues around the operation of the assistance centre, in particular extending the scope of advice provided, readjusting how information-sharing interacts with data protection, and the definition of "corresponding profession".

Amendment 39 from the noble Lord, Lord Foulkes, seeks to place an additional duty on the Secretary of State to make arrangements for the assistance centre to publish advice and information about immigration requirements for entry to the UK for the purposes of practising a regulated profession. I clarify that, under the current arrangements, the assistance centre is part of the UK ENIC, which I had not realised until the noble Lord brought that up. The UK ENIC focuses more broadly on academic qualifications, whereas the assistance centre focuses on professional qualifications.

Placing an additional duty on the assistance centre to publish advice and information about immigration requirements would go beyond the scope of the Bill. Furthermore, under the provisions of the Immigration and Asylum Act 1999, immigration advice and services can be provided only by qualified persons. To include these additional requirements would increase the asks on the remit of the assistance centre and the qualifications of the staff required to deliver it. It would also increase the costs associated with doing so. I know that others in the Committee, including my noble friend Lady Noakes, wish any service to be as economical and targeted as possible.

The Home Office already provides guides and tools to the public to help them understand immigration requirements and eligibility, including a dedicated visa-checking tool. Adding this to the assistance centre contract would therefore duplicate Home Office services.

Amendment 43 tabled by the noble Lord, Lord Fox, would remove Clause 7(4), which clarifies that the disclosure of the information required under Clause 7 does not breach disclosure restrictions, such as any obligations of confidence. The subsection as drafted is both consistent with existing legislation and required to give clarity about the intersection of this clause with data protection legislation. Without it, no direction would be given on which takes precedence.

The noble Lord, Lord Fox, also asked about the information that the Government are asking regulators to provide to the assistance centre. This is very limited in nature and not onerous: it is to ensure that the assistance centre has the necessary information to support the delivery of its functions. It also facilitates transparency on the recognition of professional qualifications in the UK. Regulators are already required to provide this information to the current assistance centre, and, in our engagement, no regulators have raised concerns about continuing to do so. The objective of the service provided by the assistance centre is and always has been to complement and support regulators, not to replace them.

Amendments 44 and 50 tabled by the noble Lord, Lord Foulkes, relate to data protection in Clauses 7 and 10. Similarly to another tabled by him last week, they seek to create a defence if a disclosure made under the duties in either clause contravenes data protection legislation. As my noble friend Lord Lansley reflected on the first day of Committee, the approach in the Bill is consistent with existing legislation such as the Trade (Disclosure of Information) Act 2020 and the European Union (Future Relationship) Act 2020. I return to my earlier point that Clauses 7 and 10 require disclosure only when it does not contravene data protection legislation. Therefore, a defence is not needed.

7.45 pm

I now turn to Clause 7 more broadly, which provides for the continued delivery of the assistance centre. The assistance centre provides advice and assistance to overseas professionals seeking to practise in the UK and to UK professionals seeking to practise overseas. I understand that the noble Baroness, Lady Hayter of Kentish Town, my noble friend Lady Noakes and others seek to oppose this clause. I hope that I can address their concerns.

Many noble Lords questioned during Second Reading and Committee debates whether the assistance centre is necessary. I reassure them that the assistance centre is a small but useful signposting service. It has a small staff and offers support primarily through its website and a telephone advice service. This streamlined service supports professionals and is working well. It provides valuable assistance to overseas professionals in the UK and UK professionals seeking to practise overseas. The assistance centre receives an average of around 130 queries per month, which are likely to be from professionals seeking information on qualification recognition requirements in the UK or on regulators overseas. Its website received about 2,200 hits in May 2021. The assistance centre also issues certificates of experience for UK professionals who work in a profession which is not regulated in the UK but who want to work in a country where it is regulated. It completes an average of four to five of these per month.

In answer to my noble friend Lady Noakes, who asked whether it just duplicates services provided by the regulators, the assistance centre supports professionals with overseas qualifications and its website provides a portal to help professionals identify the right regulators, which may not always be clear, depending on the profession. The service's objective is and always has been to complement and support regulators, not to replace them, and it does this by signposting. Regulators are negotiating recognition arrangements with EU counterparts, and we are agreeing new trade deals. The assistance centre will be useful to overseas professionals from countries with which we are entering into new trade deals.

[Baroness Bloomfield of Hinton Waldrist]

This is a service which benefits the whole of the UK. When service requirements for the assistance centre are considered, the Government will engage on them with the devolved Administrations and regulators. The provision of an assistance centre is in keeping with international best practice. Many countries, including the United States, Australia, and New Zealand provide similar support services. The UK would be an international outlier if it did not provide such an assistance centre. This is not an overengineered service or, as some people have suggested, a solution seeking a question. It is already a valued service.

Amendments 48 and 51, tabled by the noble Baroness, Lady Garden of Frognal, probe the use of the word "substantially" in Clauses 9 and 10 and are similar to amendments debated and withdrawn on the first day in Committee. As I set out in that debate, the use of the word "substantially" reflects the reality that professions do not exactly align across different jurisdictions' regulatory systems and standards. For example, some countries do not make the same distinctions as others in how they define professions. As I have previously cited in your Lordships' House, for example, England and Wales distinguish between barristers and solicitors, but this is not the case in other countries. These amendments would, therefore, require absolute parity between professions in different jurisdictions, which could impinge on regulators' flexibility in exercising their discretion on this point, as well as opening them up to the potential for legal challenge. I therefore ask the noble Lord to withdraw his amendment, and I commend that Clause 7 continues to stand part of the Bill.

The Deputy Chairman of Committees (Baroness Barker) (LD): I have received a request to speak after the Minister from the noble Lord, Lord Fox.

Lord Fox (LD): I thank the Minister for her response. I am having trouble matching the words that she is using with the thing that she is describing. That is my problem. The words "a website run by two people" and "assistance centre" are not really the same, so are we talking about an assistance centre or a landing page? When I talked about a landing page the other Minister kind of nodded. It would help if the Government would clear up what this thing actually is and, in so doing, tell us how much they think it will cost.

The specific question I have is about data. The Minister seemed to suggest that in order for this centre/website to conform to existing data protection regulation it needed guidance in primary legislation. Is that because it will be asked to do more data protection, less data protection or the same amount? If it is the same amount of data protection, why does it need primary legislation to tell it what to do?

Baroness Bloomfield of Hinton Waldrist (Con): Providing a statutory basis for the continued existence of an assistance centre places a duty on competent authorities to co-operate with it. This is to ensure that the assistance centre has the necessary information to help support the delivery of its functions, rather than relying on voluntary information-sharing arrangements. In a practical sense, it provides a signposting system through its website. It also has a telephone answering service, which dealt with my question this morning about the need for English language skills for particular professions. It answered the question very carefully and properly by saying that that was not part of its remit and I needed to talk to the visa requirements section. The centre is at least directing you to where you need to go for your questions to be answered.

The legislation also requires that the assistance centre provides information to the Secretary of State when requested. As I said, this is not onerous information, but it is an important requirement, as the Secretary of State has a responsibility for the wider recognition of professional qualifications principles. Lastly, its existence in legislation helps validate the credibility of the assistance centre for engagement with its overseas counterparts.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, a lot of interesting things have emerged during this debate. The noble Baroness, Lady Noakes, my noble friend Lady Hayter and the noble Baroness, Lady Randerson, seem to have set up a new all-party group—friends of Google. I warn them to be careful and alert them to the fact that if you Google something you will find at the very top of the list people who have paid to come top of that list. If you look, for example, at getting a Covid test, you will find that the ones that you pay for are right at the top and the free ones are down at the bottom. Beware of Google—and other equivalents—because they do not necessarily give you the best advice.

The Minister has been very helpful in her response. However, some things still need teasing out as far as the assistance centre is concerned. I would argue still that the visa and admission regulations that I am suggesting would enhance its role. It was suggested by the noble Baroness, Lady Randerson, that the functions it is dealing with now might be better dealt with at a devolved level. As she knows, I am a very strong devolutionist. Immigration, visa regulations and other regulations are not devolved. Therefore, that would give the assistance centre a little more credibility.

However, my noble friend Lady Hayter has a good point: does it need to be statutory? I think you can have an assistance centre working very effectively without it having to be on the face of the Bill. Often, we argue strongly that things should be on the face of a Bill, and we get rebuffed, but I am not sure the case has yet been made for it to be statutory.

When I was a Minister, I used to tell officials and civil servants to go back and think again from time to time. I ask that both Ministers—the noble Lord, Lord Grimstone, and the noble Baroness, who has replied so eloquently to this debate—perhaps have another look afterwards, in the cold light of tomorrow morning, and go back to the department and say, "Wait a minute. Some valid points have been raised". That is what these sessions of Committee and Report are about—going back to the department. Perhaps it could be arranged for some of us to be given more information and some direct contact with the centre. There are things that can be done between now and Report that would make the Bill much better and

make it more likely for us to get consensus when we get to Report. I hope the Minister will be able to do that. She is nodding nicely to me as always. With that, I will withdraw the amendment.

Amendment 39 withdrawn.

Amendments 40 to 44 not moved.

Clause 7 agreed.

House resumed.

House adjourned at 7.55 pm.

Grand Committee

Monday 14 June 2021

The Grand Committee met in a hybrid proceeding.

Arrangement of Business

Announcement

2.30 pm

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, good afternoon. 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 touchpoints 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 those in the Grand Committee Room, to email the clerk using the Grand Committee address if they wish to speak after the Minister. I will call Members to speak in the order of request. The groups 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 (2nd Day)

2.30 pm

Clause 9: Financial penalties

Amendment 14

Moved by ***Baroness Grender***

14: Clause 9, page 7, line 9, leave out "£500" and insert "£5,000"

Member's explanatory statement

This amendment would raise the minimum financial penalty under the Bill from £500 to £5,000.

Baroness Grender (LD): My Lords, this group of amendments is an attempt to ensure that enforcement bodies have sufficient financial long-term sustainability. It also ensures that there are appropriate deterrents in the Bill to incentivise freehold landlords to understand just how serious a breach will be and the impact it will have on their current portfolio of properties. The additional aim is to create an incentive for local authorities to pursue financial penalties.

Today, of course, is the fourth anniversary of the Grenfell Tower fire where 72 people lost their lives, and I am sure that we are all thinking of those bereaved families, survivors and residents as they remember their loved ones. That tragedy underlines just how important it is that homes are safe and secure, and one of the first lines of defence is the enforcement authorities.

In addition to moving Amendment 14, I will speak to Amendment 15. While we appreciate that the Minister stressed at Second Reading that the fines would be for each individual lease, the danger remains that an enforcement authority will receive only £5,000. Indeed, Clause 9(3) states:

> "Where the same landlord has committed more than one breach of section 3(1) in relation to the same lease, only one financial penalty may be imposed on the landlord in respect of all of those breaches committed in the period".

Several noble Lords at Second Reading raised the issue of enforcement and resources to enforce. Local authorities' trading standards departments have experienced staff cuts of at least 50% since 2010. It is not unusual for skilled and experienced—and therefore more expensive—staff to have been replaced with less skilled and lower-salaried staff. Sometimes trading standards has been contracted out to third parties completely. Local authority trading standards departments need greater sustainable long-term resource and that means generating greater levels of income.

Therefore, there should be a wider range for the fines and a higher start point for the penalty. The amount should be consistent with the Tenant Fees Act 2019 where landlords breach Sections 1 and 2 of the Act on more than one occasion. If you are a leaseholder, you are not a home owner, and therefore the levels of potential fines should surely be similar to those for rogue landlords in the Tenant Fees Act. The Bill relies on local weights and measures authorities—namely, trading standards departments—to oversee this new law. The Government will already be well aware of the sluggish approach to fining and banning rogue landlords under the Tenant Fees Act 2019. When originally launched, the Government predicted that there were 10,500 rogue landlords; so far, only 43 have been registered. Speak to many local authorities and they will report that an operation of this nature requires early up-front investment, but other priorities such as social care with chronic records of poor funding will inevitably come first. As Liam Spender, a trustee of the Leaseholder Knowledge Partnership, points out:

> "It is likely most local authorities will decline to get involved, as they do in most private sector housing disputes now, on the grounds that leaseholders have civil claims they can use to recover any prohibited ground rent."

Waiting for the next local government settlement is a short-term solution and, frankly, unlikely to solve this problem given other competing demands on local authorities. Now the Government are adding another task with too limited financial reward: as the fines currently stand in the Bill, the incentive to take the necessary action to fine a freeholder will not be worth the effort.

Amendments 14 and 15 would raise the minimum financial penalty from £500 to £5,000 and the maximum financial penalty from £5,000 to £30,000. The potential

[Baroness Grender]

of greater fines would give local authorities an opportunity to invest in this operation, charge rogue landlords and freeholders and therefore sustain a longer-term, fully budgeted operation. If the Government are opposed to this increase, perhaps the Minister could share what level of financial penalty would make it worth while for a local authority to pursue a freeholder. If the argument is that this will have an impact if it is a penalty on a developer across several leases, what level of fine do the Government anticipate?

On Amendment 16, in my name and that of my noble friend Lord Stunell, the arguments are similar. It contains a new clause that would be inserted after Clause 12 that would extend the banning order regime under the Housing and Planning Act 2016, with an exception for rent recovery orders. It would ban landlords who received three or more penalties in any six-year period from collecting some or all of the monetary ground rents arising under pre-commencement leases. That should be a clear signal to persistent offenders that, under Clause 9 of the Bill, if the maximum penalty has been charged three or more times against the same landlord or a person acting on their behalf, there will be restrictions and penalties.

We recognise how significant the failure is of this part of the Housing and Planning Act 2016. On 9 January 2018 the then MHCLG Minister, Jake Berry MP, said the Government's estimate was that

"about 600 banning orders per year will be made".—[*Official Report*, Commons, Fifth Delegated Legislation Committee , 9/1/18; col. 12.]

In April, the Housing Minister, Christopher Pincher MP, confirmed that just seven landlords had so far been issued with a banning order. As the National Residential Landlords Association says of this failure:

"The Government needs to work with local authorities to understand the true extent of the pressures faced by environmental health departments responsible for enforcing many regulations"

affecting this sector.

"Too often, government has introduced initiatives to crackdown on",

for instance,

"criminal landlords without properly understanding whether councils have the resources and staff to properly enforce them. In short, regulations and laws to protect tenants"—

and to protect leaseholders from bad practice—

"mean nothing without them being properly enforced."

When we look at the level of these fines, we must remember that this industry is vast. The MHCLG's own estimate is that, of the 4.5 million leasehold properties in the UK, approximately 2.5 million are owner-occupied. All these people are likely to be paying some level of ground rent. The companies behind the freehold interests receiving these ground rents are huge undertakings. They are more than a match for any local authority seeking a £5,000 fine. For example, Proxima GR, a key company in the Vincent Tchenguiz freehold portfolio, reports in its most recent accounts that it expects to receive £2.4 billion in ground rent between 2019 and 2080. It is believed to control a portfolio consisting of freehold interests over hundreds of thousands of leasehold properties. The same accounts report cash income of £24 million in the same year. A fine of £500 or £5,000 for multiple breaches is no disincentive to any organisation of that scale. Information on other ground rent investors is hard to come by but, from the limited information available, there are many other substantial operators out there. For example, in 2016, leasehold properties worth £64.8 billion were sold. Of these, new-build properties were worth £13.7 billion, leasehold house numbers doubled, and developers made £300 million to £500 million a year from ground rent sales. Looked at from that perspective, £5,000 seems a very small sum to put as a maximum. Has the Minister considered an industry-funded redress scheme to support enforcement?

To conclude, there should be greater detail in the Bill about how to resource penalties and sanctions to sustain longer-term planning and funding. These are large industries with significant levels of income and profit: they need to be aware that their days of exploiting leaseholders are over and failure to recognise that will cost them dearly. I beg to move.

Lord Naseby (Con): My Lords, I am delighted to support the noble Baroness on Amendments 14 and 15. I was just reflecting on how important this issue is: hundreds of thousands, maybe millions, of families are affected. The problem probably goes back over half a century. It is to the great credit of my noble friend on the Front Bench that the Bill is before the Committee now, and I say to him "Well done." In 1968—I see my noble friend Lord Young sitting opposite me—I had the privilege of being elected, somewhat against the odds, as the potential leader of the London Borough of Islington. We won 57 out of 60 seats; we did a deal with the other three, because they were a local community group. I was then elected to be leader and chairman of the housing committee. Sitting here this afternoon, I still remember working really closely with the officers of that authority, from the town clerk down. It was not entirely to do with leaseholds, but it was to do with property and rogue landlords. Two in particular come to mind: a local one called De Lusignan and the one whom we all remember, Rachman. Those rogues and their successors have not gone away—the noble Baroness is absolutely right; they may well have multiplied for all I know. They were a huge problem even in those days.

There is another element, which I can talk about, though some noble Lords might have more difficulty. I have lived and worked in Pakistan, India and Sri Lanka. I have the greatest respect for those countries. I would go as far as to say that I love them dearly; I know them extremely well. As far as I can see, there is a rogue element, particularly in the poorer parts of our country, which exploits vulnerable migrants. That is wrong, and we know that it is wrong, but some local authorities appear to be slow, resistant, unwilling or too conscious of the social situation. In my view, as someone who has taken a deep interest in housing all my political life, that rogue element has to be addressed—it does not matter who they are.

The noble Baroness is right about the figures that are in the Bill. In today's world, £500 is absolutely no deterrent to anybody: you only have to see what is happening out there in the market. She is right that £5,000 is the beginning of a reasonable deterrent. Personally, I would do a multiplier by five, because

£25,000 somehow—perhaps it is the advertising man in me—sings out as even stronger than £30,000. I do not know why that is, but I thought about this when I was working on it over the weekend. I agree with the noble Baroness that £5,000 is the beginning of a proper deterrent, and I think that £25,000 should be the maximum.

Of course, it is for my noble friend on the Front Bench to decide what Her Majesty's Government believe is appropriate, but all I say to him is that this area needs dealing with, and here is an opportunity to do it. I again congratulate my noble friend and his colleagues on bringing this Bill forward. Let us make a really good job of it.

2.45 pm

Baroness Jones of Moulsecoomb (GP) [V]: I congratulate the noble Baroness, Lady Grender, on her clear exposition of her very sensible amendments. It is obvious to everybody that rogue landlords have an easy ride in this country. It is far too easy for such unscrupulous landlords to get away with far too much, and that extends to freeholders abusing leaseholders with exploitative ground rents. In shorthold tenancies, a lot of wrongdoing occurs unintentionally by uninformed or incompetent landlords, but that is not the case in freeholder-leaseholder relationships, where the freeholder is usually a big corporate entity that is professionally managed and legally advised. For that reason, any breach of this Bill is likely to be wilful, intentionally exploitative and involve large sums of money.

It is obvious, then, that the penalties currently contained in the Bill are paltry and unsuitable to deter or to punish the criminal behaviour. As a proportion of these massive landowners' revenues and profits, a minimum penalty of £500 is irrelevant. I would much rather see financial sanctions on companies being similar to those under the data protection laws, which specify penalties as a percentage of a company's global turnover. That is how you get companies to sit up and pay attention. At the very least, these penalties should be much higher than they are in the Bill. I am sure that the Government know that, so I have no idea why they chose this figure of £500, which is absolutely ludicrous.

Lord Stunell (LD) [V]: My Lords, as my noble friend Lady Grender has clearly set out, the current provisions in the Bill to enforce compliance by those who are determined to do wrong will not work, and that view has been strongly supported by the noble Lord, Lord Naseby, and by the noble Baroness, Lady Jones of Moulsecoomb. The three reasons for that are quite clear: the penalties themselves are trivial; the enforcement system will be ineffective; and rogue landlords will prosper.

First, the penalties themselves are trivial. The noble Lord, Lord Naseby, has made the point perhaps better than I can, but in many cases £500 will be less than the current annual leaseholder charge. Indeed, with escalation clauses in place, over the lifetime of the lease £500 might be seen as very small change indeed. The case for making these penalties bite is overwhelming, simply because the unscrupulous who carry on as though the law has not changed will readily write off these penalties as essentially meaningless. I shall not engage in a bidding war with the noble Lord as to how high we should go, but each of us in our different ways would make the point that £500 is nowhere near enough to be effective as a deterrent.

It is not just nowhere near enough to be effective as a deterrent; it is not anywhere near enough to pay for a sound enforcement policy. The enforcement system will be ineffective. It is supposed to be paid for by the pitifully small fines, which will be paid not by all those who offend but all those who are successfully prosecuted—only those fines will contribute to the funding of the trading standards department. It will therefore be the case that the trading standards department exercises passive power only, exercised, if at all, only when a big fuss is made about a particular case, perhaps by a local councillor or an MP.

It is extremely doubtful that any responsible financial officer of a local authority, when building a budget for the next year, would authorise the recruitment of staff to enforce legislation on the basis that it would be funded by £500 for each case that is won. Of course, it would need recruitment of staff because, as my noble friend Lady Grender pointed out, there has been a 50% reduction in staff in trading standards over the past decade and a loss of skills to go along with that. This new burden, to be dealt with effectively, would have to have additional resources. I am sure that the Minister is not content simply to put in place a deliberate paper tiger of enforcement—unless that does in fact suit the Government's purpose: something that looks okay in the Bill but about which their landlord friends can be told, "Don't worry, just keep your head down and carry on."

That brings me to Amendment 16, to which I have added my name. We have to stop rogue landlords prospering. Of course, they already do prosper, and that is what the Bill is all about: stopping abuses or restricting behaviour which, though lawful, ought not to be. Those with a great deal of power in a contractual relationship, the landlords, are imposing oppressive terms on those with very little power, the leaseholders. And those who impose the most care the least. Rogue landlords will weigh up the risks and rewards and reach a commercial judgment. They can easily afford to treat the penalty system as a small marginal cost as it stands; they know it will not even cost them £500 per breach but only £500 per breach which leads to a successful prosecution—that is quite a different thing.

That successful prosecution will be rare without Amendments 14 and 15, which seek to generate the money for there to be a team of people who can enforce it. That is where the importance of Amendment 16 lies, in introducing an effective banning order regime. Only with a clear process for banning repeat offenders, driving them out of the market, can the stakes be raised sufficiently high to deter rogue landlords and, in the most egregious cases, drive them out of business.

I want to hear the Minister say to your Lordships that he genuinely wants this Bill to deliver an effective regime of penalties and punishments that will safeguard the good intentions of this legislation against the small minority of unscrupulous landlords who seek to bypass it and who continue to exploit leaseholders

[Lord Stunell]
regardless. One way the Minister can do that is by accepting these three amendments. The Bill as drafted certainly does not give us those assurances. If he does not accept the amendments, he surely has a duty to your Lordships, and to leaseholders themselves, to explain what alternative mechanisms he proposes to put in their place instead.

Lord Lennie (Lab) [V]: My Lords, Amendments 14 and 15 refer to the penalties contained in the Bill, whereas Amendment 16, as we have heard, refers to the banning orders regime. I am pleased that the noble Baroness, Lady Grender, has introduced these, so that the Committee can consider whether these current penalties are appropriate and whether the banning orders should be extended.

First, on the issue of financial penalties, as we have heard, the amendments would increase the minimum financial penalty from £500 to £5,000, and increase the maximum penalty from £5,000 to £30,000. Given the sums of money which are involved in leasehold arrangements and the costs associated with ground rent, the current penalties seem lower than would be expected. If the Minister is not able to accept the noble Baroness's amendment, I hope he will explain and justify how the Government arrived at those figures.

On the banning order regime, the noble Baroness brings forward the question of whether the provisions of the Housing and Planning Act should be strengthened. The amendment proposes the banning of landlords from collecting ground rents if they receive multiple penalties. On the same issue, I would be grateful if the Minister could explain whether consideration has been given to banning landlords from renting properties at all when they receive financial multiple penalties. Tenants must be protected from rogue landlords who break legislation over and over again. I hope that the Government will detail what steps they are taking to hold these repeat offenders to account.

The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con): My Lords, I also join the noble Baroness, Lady Grender, in recognising that today marks the fourth anniversary of the Grenfell Tower tragedy, which was the largest loss of life seen in a residential fire since the Second World War. My thoughts are with the survivors and the bereaved.

I thank noble Lords present and those participating virtually for all their time and effort in scrutinising the Bill so far. We have had very good discussions in this Committee and through our engagement meetings. I am grateful for the commitment from all noble Lords to improve the Bill and to reform leasehold more generally.

I have listened to the concerns raised by noble Lords that the penalties set out in the Bill are not high enough and that there should be more significant consequences for those who breach the provisions of the Bill multiple times. It is vital that the Bill contains enforcement measures that offer a strong deterrent to any freeholders and their managing agents who try to get around its provisions, and in so doing protects leaseholders. Amendments 14 and 15 in the name of the noble Baroness, Lady Grender, would raise the penalties that can be imposed per breach from a minimum of £500 and a maximum of £5,000 to a minimum of £5,000 and a maximum of £30,000 pounds —and my noble friend Lord Naseby would seek to quintuple it to a maximum of £25,000 pounds.

In response to the noble Lord, Lord Lennie, penalties in the Bill have been set with reference to the typical ground rent collected currently by landlords. I believe that the penalties have been set at an appropriate level to act as an effective deterrent without resulting in a disproportionate enforcement regime. I point out that £500 is a minimum only and that freeholders could easily be liable for multiple fines for the same building; a flat containing 40 leases could leave a freeholder exposed to a maximum fine of £200,000, which is a significant penalty. I ask noble Lords to also note that, through the Bill, we are introducing a minimum penalty amount. I believe this is the first time that this has happened in leasehold law—we have not seen this in other leasehold legislation. This will act as a strong deterrent to any landlord who considers breaching the provisions of the Bill. In addition, the penalty applies per lease, so freeholders of multiple properties could receive higher penalties if they breach the legislation multiple times.

In addition to any financial penalties, enforcement authorities and the tribunal can order the freeholder or their agent to refund any prohibited rent within 28 days, including interest. As I said, the enforcement regime in the Bill is the first time that a penalty regime has been applied to ground rent. This landmark change will ensure a strong deterrent in the protection of leaseholders.

Amendment 16 from the noble Baroness, Lady Grender, and the noble Lord, Lord Stunell, seeks to allow a housing authority in England to apply a banning order under the Housing and Planning Act 2016 against landlords who receive three or more maximum penalties from an enforcement authority under the Bill. Banning orders under the Housing and Planning Act 2016 are intended for the most serious rogue private sector landlords and are not intended for leasehold housing. I note again that the penalties in the Bill apply per lease, so enforcement authorities can impose multiple penalties on freeholders who commit multiple breaches. Enforcement authorities and the tribunal can also order a refund of any prohibited rent.

The noble Baroness, Lady Grender, asked what incentives there are for local authorities to carry out enforcement penalties set at this level. They retain proceeds and, as I have pointed out, multiple breaches incur multiple penalties. There is also a point of principle here: that local authorities should not consider the potential financial windfall when deciding to take enforcement action; they should seek to set fines relating to the breach, and therefore they should be proportionate.

3 pm

The noble Baroness raised the issue of redress funded by landlords, which is an interesting suggestion. The enforcement regime in this Bill is the first time

that a penalty regime has been applied to ground rent. We believe that the regime in this Bill is sufficient as a strong deterrent and protects leaseholders.

Amendment 16 proposed by the noble Baroness, Lady Grender, and the noble Lord, Lord Stunell, would have the detrimental effect, which I am sure was not intended, of making it impossible to make rent repayment orders against anyone subject to a banning order for receiving any monetary ground rent. For these reasons, I ask the noble Baroness to withdraw her amendment.

Baroness Grender (LD): I thank the Minister for his response. I am very interested in his response about redress schemes—that is something that we could possibly explore at Report. Just to put things in perspective, the Government have recently published a draft online safety Bill which would enable a new online regulator to fine companies up to £18 million or 10% of their annual global turnover, whichever is higher. We are looking at those kinds of equivalents here.

The point about local authorities contemplating a possible windfall is the very opposite of the current scenario, where a local authority will look at a potential freeholder and ask whether, if it goes down the route of attempting to fine for breach of lease, three days' work alone by somebody with no legal skills will use up the £500 that it would get from the fine. While I appreciate that, as I said in my opening remarks, fines would be across all leases, there is a problem when, if there are multiple breaches for one lease, that is not recognised in the legislation as drafted.

The most important issue is that we need to understand that the penalties and punishments will actually work. We know that there are significant challenges for local authorities to enforce the current systems and that these new systems will seriously struggle and be seriously challenged.

I thank all noble Lords who have expressed their support for these arguments and amendments. Obviously, we will want to revisit this. We will look at the *Official Report* and see what can be done to continue to pursue this issue, which is all-important because, without enforcement, the Bill is simply not going to work. I beg leave to withdraw the amendment.

Amendment 14 withdrawn.

Amendment 15 not moved.

Clause 9 agreed.

Clauses 10 to 12 agreed.

Amendment 16 not moved.

Schedule agreed.

Clauses 13 and 14 agreed.

Amendment 17 not moved.

Clauses 15 to 18 agreed.

Amendment 18 not moved.

Amendment 19

Moved by ***Lord Lennie***

19: After Clause 18, insert the following new Clause—

"Assessment of financial impact for tenants in long leases of dwellings

(1) Within 30 days of the day on which section 3 comes into force (for any kind of lease), the Secretary of State must publish an assessment of the financial impact of this Act for tenants in long leases of dwellings.

(2) The assessment must consider whether further legislation is necessary to address the financial consequences of this Act for tenants in long leases of dwellings, including but not limited to in relation to—

(a) lease forfeiture;

(b) transfer fees;

(c) redress schemes;

(d) enfranchisement.

(3) The Secretary of State must lay the assessment before Parliament."

Member's explanatory statement

This amendment would ensure that the Government must publish an assessment considering the financial impact of this Act for leaseholders, and whether further legislation is required.

Lord Lennie (Lab) [V]: My Lords, this Bill has the support of these Benches because it begins to address the myriad problems facing leaseholders across the UK, but unfortunately it barely scratches the surface. That is why Amendment 19 would require the Government to

"consider whether further legislation is necessary"

in four areas: lease forfeiture, transfer fees, redress schemes and enfranchisement.

On lease forfeiture—the concept of a freeholder taking possession of a property over a debt of a few thousand pounds—there is a clear need for reform. The Law Commission has already consulted on this. Transfer fees—where freeholders place a charge on the sale of a property, often of around 0.25% of the sale price—are preventing home owners selling their homes. There seems no justification for the continued existence of these fees. Meanwhile, the potential for redress schemes should be evaluated to consider the most serious of leasehold abuses. On enfranchisement—the process of extending a leasehold or purchasing a share of the freehold—the Government must look at some of the obstacles currently in place. All in all, as I said earlier, the Bill barely scratches the surface of the issues facing leaseholders. Further legislation in this area is clearly required.

I am pleased that the noble Baroness, Lady Pinnock, has tabled Amendment 20, which raises the question of

"whether a further extension of the ground rents ban could benefit existing leaseholders, especially those facing bills for fire remediation work."

The issue of remedial costs was brought up in my earlier Amendment 9, and I hope that, this time, the Minister will give a cast-iron date for when the Government will bring forward legislation to properly protect leaseholders.

In Amendment 21A, the noble Lord, Lord Berkeley, probes the application of ground rents charged by the Crown, including the Duchy of Cornwall. The noble

[Lord Lennie]
Lord is right to probe the issue and to draw attention to the Law Commission's work in this area. I look forward to clarification from the Minister. I would be interested to hear whether the Minister can confirm how many Crown properties this relates to and whether the Government intend to engage the residents of these homes.

Baroness Pinnock (LD) [V]: My Lords, I will speak to Amendment 20 in my name and that of my noble friend Lady Grender. I draw the Grand Committee's attention to my relevant interests, recorded in the register, as a member of Kirklees Council and a vice-president of the Local Government Association.

Today marks four years since the Grenfell tragedy, which cost the lives of 72 people. It took away from many others their homes and their livelihoods. Those who survived will for ever have the dreadful memory of that night, leaving a dark mark on the rest of their lives. That tragedy has rightly cast a long shadow over the construction industry. Questions asked immediately following Grenfell are still failing to be adequately answered.

The Government know that the Grenfell fire was accelerated by the use of flammable cladding. They know that hundreds of other buildings have the same or similar cladding, with the same fire risk. They also know that post-Grenfell investigations of these self-same buildings have uncovered further fire safety defects, such as the lack of building regulation-required fire breaks. The Government's response to this life-threatening catalogue of errors is half-hearted at best. Leaseholders are being forced by the Government to carry the financial and emotional burden of the total inadequacy of the Government's response.

The reform of leaseholders' obligations is of course a central purpose of this Bill. I understand that the Bill seeks to prevent future unwarranted financial burdens being placed on leaseholders through ground rent demands. The purpose of Amendment 20, in my name and that of my noble friend Lady Grender, is for the Government to assess the financial impact on leaseholders of this Bill after six months. It is a perfectly reasonable and sensible amendment that I hope the Government will be minded to accept.

The cladding scandal has revealed the enormous financial impact on leaseholders. In a housing association block of flats in the Manchester area, leaseholders have been sent bills for £95,000, when those very flats were built to enable people on lower incomes to buy their own homes. Given that the value of their asset is now zero, paying any bill of that size is simply impossible for the leaseholders.

Those leaseholders who have, often unknowingly, signed up to escalating ground rent penalties are also omitted from the Government's thinking. For instance, one leaseholder found that his annual ground rent for a one-bed flat in London was to double every five years on a flat that was purchased for £170,000 in 2018. In 20 years' time, the ground rent will have risen from an affordable £1,050 per annum to a completely unaffordable £16,800 per annum. As with the innocent victims of the cladding scandal, these leaseholders need help from the Government, hence subsection (2) of my amendment.

There is an accumulation of evidence that leaseholders are not getting fair treatment as malpractices are uncovered. Those leaseholders facing massive bills for putting right fire safety defects have done everything right and nothing wrong. Those leaseholders who face increasingly large bills, having unwittingly signed up to ground rent clauses, are also victims of a housing scandal.

Amendment 20 is the opportunity for the Government to turn their attention to righting failures in the housing system for leaseholders, current and past. On the day when we remember Grenfell, let this also be the day when the Government finally agree to find financial solutions for leaseholders who have been left to pay the enormous price of the wrongs of the housing industry. I look forward to the Minister's response.

Lord Berkeley (Lab): My Lords, my Amendment 21A is grouped with Amendments 19 and 20, spoken to by the noble Lord, Lord Lennie, and the noble Baroness, Lady Pinnock. They have one thing in common, in seeking further information and reports from the Government to clarify and provide more information to help us debate not only this Bill but subsequent ones. I will confine my remarks to the Crown issues listed in Clause 23(2), which comprise the Crown Estate, the Duchy of Lancaster, the Duchy of Cornwall and government departments in summary, and in particular the definitions and scope of excepted areas.

It is interesting to refer to paragraphs 7.149 and following in the Law Commission's report. These basically suggest that the Crown, in its totality, is happy to comply with whatever legislation the Government put forward on these issues, except in relation to what are called "excepted areas", which are listed in paragraph 7.151. To summarise, those are:

"(1) where the relevant property stands on land which is held inalienably; (2) where particular security considerations apply"—

which is fair enough—

"(3) where the property is in"

or closely connected to

"historic Royal Parks and Palaces; and … (4) where the property … has a long historic or particular association with the Crown".

When it comes to the Duchy of Cornwall, which of course claims to be part of the Crown, the report goes on to say that the Duchy of Cornwall estates

"are specifically stated to fall within the fourth category".

I would challenge that; I think that it is specifically stated by the Duchy, and I will come on to why.

3.15 pm

After the Law Commission published its really good report, I wrote to the Crown Estate, the Duchy of Lancaster and the Duchy of Cornwall on 19 January this year to ask whether they were going to comply with what is in the Law Commission's report and, if not, for what reason. I got some helpful responses from the Duchy of Lancaster, which basically said of the scope that there were few properties which would comply with categories (3) or (4), and that it would comply with whatever legislation the Government put forward. I thought that was extremely helpful. The

Crown Estate commissioners also responded and said that the only exceptions it could see would be something such as Carlton House Terrace or 1 to 4 Carlton Gardens. Those are very different to the types of buildings that the Duchy of Cornwall is thinking about in its exceptions, which I shall come on to.

Five months later, I have heard nothing from the Duchy of Cornwall, in spite of two reminders. That is rather sad, because it has not been able to say which properties outside London it owns which might come into categories (3) or (4). I am in a bit of a quandary as to what to do here. We need the Government's help to try to get the Duchy of Cornwall to respond to the Government, even if it will not respond to me. What is the meaning of categories (3) or (4) and what properties might be excluded? The definitions are, in sub-paragraph (3), property which is not

"intimately connected with, the curtilage of … Royal Parks"

and, in sub-paragraph (4), properties which have

"long historic or particular association with the Crown."

The Duchy of Cornwall has claimed that the special conditions reflect the location. We do not know where that is but, leaving aside whether the Duchy has the right at all to own the Isles of Scilly, which is where I live, and its claim to have long association, the biggest property there which affects the Duchy is something called the Garrison. It was built by the predecessors of the MoD—the British Army, probably—to protect Scilly. I think it all started during the Civil War. Why does the Duchy think it has had long associations with that? I suppose that royalty has associations with the military, quite rightly. But I know several people who want to buy the freehold of their houses there, which are mostly from the 1960s; I think they would suggest that these houses had little architectural merit. For the Duchy to compare them with Carlton House Terrace seems to be stretching credibility somewhat. The Isles of Scilly does not generally need Duchy protection; the council is very good, there are lots of environmental protections and so on.

So my question is: will the Minister try in the next six months to get some definition from the Duchy and the other Crown bodies? First, I hope the report that I put in this amendment would treat all Crown bodies the same; secondly, if the ground rents are exempt from the enfranchisement process then there must be a common definition of why they should be exempt; and, thirdly, there should be a much clearer definition of the exceptions under categories (3) and (4). I hope the Minister will agree to that; provided that he can get the Duchy to respond to his letters, it should not be too difficult.

I will throw in one last suggestion. As the Duchy claims to be in the private sector, perhaps its name should be removed from Clause 23(2)(c) and it should be treated, at least for the purposes of leasehold reform, in exactly the same manner as every other private landlord in the country.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I support Amendment 19, in the names of the noble Lords, Lord Kennedy of Southwark and Lord Lennie, and Amendment 20, in the name of the noble Baroness, Lady Pinnock.

Like other noble Lords, I pay tribute to the 72 people who lost their lives in the Grenfell tragedy some four years ago. There have been many lessons from that tragedy for housing management purposes, and I hope that the Government and housing organisations learn much from them.

As it currently stands, this legislation will undoubtedly have a potential long-term financial impact for existing long-term leaseholders, as they will be excluded from it. I agree with the noble Lord, Lord Lennie, who said that, while the legislation is welcome—I definitely welcome it, and the Northern Ireland devolved authorities introduced similar legislation—it barely scratches the surface. There is no doubt that existing leaseholders will have to pay onerous ground rents with no sense of freehold. Amendment 18, which the noble Lord did not move, referred specifically to the need to remove ground rent for all leaseholders.

This legislation is quite limited and the Government have promised other legislation. When will that be brought forward? Can the Minister give us a revised timeframe with exact dates therein? The delay in bringing forward this limited legislation and the need for other aspects in relation to enfranchisement were raised at Second Reading and again today. I welcome the Bill's proposals, but I feel that enacting the amendments would ensure that the Government could bring forward legislation at a later stage and provide the important financial assessment on the holders of long leases that is urgently required.

To introduce fairness and equity into the property market, the new clause introduced by Amendment 19 should be accepted by the Government to ensure that an assessment takes place of the financial impact for tenants in long leases of dwellings that examines lease forfeiture, transfer fees, redress schemes and enfranchisement. The Law Commission report made recommendations in respect of enfranchisement following promises by Theresa May's Government in 2017 to tackle unfair and unreasonable abuses of leasehold, particularly the sale of new leasehold houses and onerous ground rents. With the legislation applying only to new leases, why are the Government allowing developers to exploit home owners through exorbitant ground rents? Why the piecemeal approach to this legislation? Why did the Government not bring forward more comprehensive legislation?

I believe the Government should accept Amendment 19. If enacted, it would enable the Government to have an assessment of the current housing situation to indicate whether further legislation to ameliorate the situation is required. I fully agree with Amendment 20, in the name of the noble Baroness, Lady Pinnock, which tries to help those facing fire remediation work. Again, I think of the whole area of Grenfell.

There is also a view in some quarters, particularly in the management of the property sector, that the government impact assessment accompanying this Bill demonstrates the negative impact of this legislation on the housing market: increasing house prices and creating more barriers to entry for consumers trying to get on to the property ladder. It has been suggested that, without proper and careful consideration of the detail and, in particular, the effects of these changes on apartment buildings, this legislation could have

[Baroness Ritchie of Downpatrick]
far-reaching implications across a range of issues, including building management, accountability and, crucially, the safety of apartment buildings. This is on top of the immediate impacts on the price of flats and the ability of prospective owners to buy new builds, which have been revealed in the impact assessment. Would it be possible for the Minister to comment on these observations in relation to the management of the property sector? Do the Government have any solutions in mind?

I look forward to the Minister's answers to all these questions. I support the amendments in the names of my noble friends Lord Lennie and Lord Kennedy of Southwark, and of the noble Baroness, Lady Pinnock.

Baroness Jones of Moulsecoomb (GP) [V]: My Lords, I regret to say that I found the Minister's rejection of the previous group of amendments extremely thin. I have always been puzzled why, when we have so many experts in your Lordships' House—I do not include myself in that number—the Government would not listen to common sense and accept amendments that would have an impact and massively improve the legislation. I very much hope that we will bring these amendments back on Report and win a majority of the House round, so that the Government have to listen and improve the legislation, which is extremely thin.

When I was on the London Assembly, I was chair of the housing committee at one time. Just a few years before Grenfell we had a very similar incident in the area I lived in. Because it was so close to me, I was able to visit the block and see the problems. The housing committee wrote a short report and, although very short, the things we found wrong with the building—Lakanal, down in Camberwell—were almost exactly the same things that went wrong at Grenfell. We could have learned from Lakanal; we could learn from Grenfell and the awful death toll experienced there. We have to say that we cannot let people get away with making the same mistakes again and again.

It is welcome that the Bill bans exploitative ground rents in new leases, but it offers absolutely nothing to the thousands of leaseholders already trapped in exploitative ground rent arrangements. I think in particular of the dreadful time that the thousands of residents in hundreds of flammable apartment blocks are currently experiencing. Again, I do not live in such a block and do not have a vested interest. There is sheer chaos and uncertainty, particularly in blocks recently deemed safe but which have since been re-categorised as dangerous and needing expensive remedial work. Many of these blocks now need waking watches to patrol 24 hours a day—a little bit like in your Lordships' House—and ensure that the building is evacuated in the event of fire. Fire systems that were previously deemed state of the art are now considered woefully inadequate and have to be totally replaced, so that every single apartment unit is individually alarmed.

3.30 pm

Then there is that nagging question in residents' minds: what if? What if they had obeyed the "stay put" guidance if there had been a fire in what we now know is a dangerously flammable building that must be totally evacuated? The Government promised "never again": that another Grenfell must never happen. But when the Government say such things, they have to then do something about it to ensure that it never happens again. It seems to have been left to freeholders and leaseholders to try to work out what to do and who will cover the cost, all while hoping disaster does not strike in the meantime.

After the very disappointing outcome of the G7 meeting, and following so many broken government promises, can the Minister please give us some hope that the Government are listening and will improve this Bill?

Lord Naseby (Con): My Lords, I think most legislators would agree that there should always be a review of legislation. Unfortunately, that has not always happened in the past, and I have put down a number of amendments to certain Bills to say that there should be a review. But quite frankly, to have a review within 30 days is totally unrealistic; it is far too fast. Given that we have Christmas holidays, Easter holidays and bank holidays—and even the occasional pandemic, with people working at home—I am sorry to say that proposed subsection (1) in Amendment 19 is not the least bit viable.

However, when we move on to Amendment 20, we come to a more realistic basis: that within six months of the Act being passed a review of its financial impact on leaseholders must be carried out. That is eminently sensible and a reasonable length of time. The Minister may have a different view, but looking at it from the outside—again, I speak as someone who has been involved in housing matters—I would have thought that it was a reasonable length of time.

Whether proposed subsection (2) in Amendment 20 is correct, I am not sure. It says:

"The review must make a recommendation".

I do not think it is the point of a review that it "must" do something. The whole point of a review is that it should look at all aspects of whatever it is reviewing and then make recommendations. That is a technicality, but it seems a more sensitive way of doing it.

I make one further point on the fire remediation work. I think Her Majesty's Government, and this Government in particular, have tried very hard to get a grip on this very difficult area. One sees daily the outbreak of fire because of cladding, and each one seems to be different. I do not have the experience or the wisdom to know whether Her Majesty's Government are doing enough in this area. I would appreciate from my noble friend, as would Parliament, a regular update on exactly what is happening on cladding. There is a great deal of confusion out there and clarity would help us all.

I was fascinated by Amendment 21A from my colleague the noble Lord, Lord Berkeley. I am conscious of having visited the model village that was formed in the Duchy of Cornwall—I cannot remember its name but I think it is in Dorset.

Lord Young of Cookham (Con): Poundbury.

Lord Naseby (Con): Yes, thank you so much.

I declare an interest in that I happen to own 40 acres around my home. Somebody suggested the other week that maybe a small bit of this—say five acres—might

be a help to the housing market. I certainly would not think of having it on a leasehold basis. If I am going to build houses in the interests of the community in Bedfordshire, they will be sold, because if something is sold the family involved have real ownership. When they own their home it is not a disincentive but an incentive to do something good for their home; it is in their interests. I suspect that it is a disincentive to do so for most leaseholders.

I think the noble Lord is right to ask the question. I think he said that he sent three letters to the Duchy. The least that the Duchy should do is come back to the questions he asked. I hope that will go on the record. I say to my noble friend on the Front Bench that none of these are black and white, other than the fact that there should be a review within the six-month period.

Lord Stunell (LD) [V]: My Lords, this has been a very interesting debate. Everybody has spoken with a sense of understanding and concern, remembering that today is four years since the Grenfell tragedy. It should be a matter of particular regret in the kind of debate that we are having that, four years on, so few of the deep issues that have been revealed subsequent to that fire have yet been fully dealt with or accounted for. It is a matter of regret to me that the building safety Bill is still somewhat on the distant horizon, and that we have not yet solved at all the question of who will pay for the costs of this tragedy, since it affects households right across the country.

Noble Lords would expect me to focus particularly on Amendment 20 in the rest of my remarks. Before I do, I will comment briefly on Amendment 19 from the noble Lords, Lord Kennedy and Lord Lennie, which calls for a review. I will skip the number of days and focus on the four issues that they have said need urgent reform and which every speaker in this debate and anybody who has considered the issue would agree on: lease forfeiture, transfer fees, redress schemes and enfranchisement. The Bill does not deal with those four issues. It is time that the Government face up to that and present to Parliament—preferably in the form of legislation, but if not a published report—precisely what their view is on those issues.

The move of the noble Lord, Lord Berkeley, to clarify where Crown exemptions come into play for leaseholders raises an issue that he has brought to your Lordships on a number of occasions. I would be very interested indeed to hear whether the Minister is brave enough to accept his challenge to write to the Duchy of Cornwall and get it to answer the noble Lord's letter. Your Lordships certainly deserve to hear from the Duchy precisely how it intends to proceed. If the legislation needs change and reform to take account of that, we need to hear the Minister say that he is ready to do that and to make sure that Crown exemptions are used with appropriate discretion and not in any way at all to put residential leaseholders of Crown land in a more disadvantageous place than those holding leases where the freeholder is a private body.

On Amendment 20, my noble friend Lady Pinnock set out, as she has done many times before to your Lordships, the grievous burdens placed on leaseholders across the country as a consequence of the remediation made necessary following property inspections post Grenfell. Before I go on, I remind noble Lords that I served as a Minister in the Department for Communities and Local Government, as it then was, with responsibilities for building regulations between 2010 and 2012.

The Grenfell inquiry has been hearing evidence of failures at many levels: building owners, building managers, designers, materials suppliers, on-site contractors, inspection teams and enforcement bodies. No one has escaped damning evidence of their failures. What there has not been is any evidence at all of failure by residents or leaseholders. On the contrary, it was the residents of Grenfell Tower who repeatedly warned of the dangers that other people chose to ignore. That led to the terrible tragedy, the deaths and the unmeasurable impact on so many lives of families in and around Grenfell Tower who survived that night.

It also led to the discovery that this was not an isolated case of many unfortunate things coming together in a sequence of horrible coincidences to make a one-off dangerous, combustible building. We now know that more than 400 other residential blocks have been found to have similar dangerous cladding, and the enforced inspection of those blocks has brought to light many other fire safety defects, costing billions of pounds in total. Many of those blocks are occupied by blameless leaseholders who find that they now live in a dangerous and unsaleable home and are being presented with enormous bills for remediation under the terms of their leases.

The Minister will say that this is not the place to insert a proper compensation scheme—nor does Amendment 20 do that—but he needs literally to take stock. That is what Amendment 20 tabled by my noble friend Lady Pinnock does. It asks for a taking stock of the impact of this Bill on leaseholders who live in those defective properties.

Time after time your Lordships have pressed the Government to come forward with a proper scheme of compensation for leaseholders all over the country who have been unwittingly caught up in the Grenfell scandal. Every time your Lordships have pressed Ministers—this Minister in particular—we are told, "Not here and not now". Meanwhile, as my noble friend Lady Pinnock spelt out, leaseholders are being sent five-figure bills with 28 days to settle or face the forfeiture of their lease. They cannot raise finance on their now-worthless properties, and the Government still have not issued the vital information on how they can even access the loan scheme the Government announced months ago.

Will the Minister tell your Lordships today when those missing loan scheme criteria will be published and what the distribution system of those loans will be? Please can he assure us that it will not be administered via an outsourcing company such as that in Virginia, USA, which earlier this year was the nemesis of the green homes grant fiasco? Let this piece of work be started soon, carried out efficiently and delivered to the benefit of leaseholders as quickly as possible.

Secondly, will he urgently bring forward a proper compensation scheme and lift the threat of forfeiture and bankruptcy from innocent leaseholders trapped in these blocks? Will he, as an earnest of good intent,

[Lord Stunell]
accept my noble friend Lady Pinnock's amendment today so as, at the very least, to commit to take stock of the impact that a ground rent ban could have on those affected leaseholders and tenants?

Lord Greenhalgh (Con): My Lords, I turn to Amendments 19 and 20 from the noble Lords, Lord Kennedy and Lord Lennie, and the noble Baronesses, Lady Pinnock and Lady Grender.

Under Amendment 19 the Government would be required to carry out a financial assessment of the Bill within 30 days of Clause 3 coming into force. The Government would also be required to consider whether further legislation would be necessary to address any financial consequences related to the Bill

"for tenants in long leases of dwellings, including but not limited to in relation to … lease forfeiture … transfer fees … redress schemes"

and

"enfranchisement."

The effect of Amendment 20 would be to require the Secretary of State to complete a financial assessment of the impact of the Bill on leaseholders, specifically with regards to building remediation costs.

3.45 pm

The purpose of the Bill is to restrict ground rent for future residential long leases. This naturally has a positive impact on leaseholders and, as noble Lords will know, is the first part of our major reform programme to make home ownership fairer and more transparent for leaseholders. I also direct the Committee's attention to the fact that an impact assessment for the Bill has already been carried out, is published and is available to view alongside the Bill.

Noble Lords will know that the Government are bringing forward legislation to address building safety; that is the appropriate place to deal with the issue of building remediation costs mentioned in Amendment 20. I also point out, in response to my noble friend Lord Naseby, that my department publishes a monthly data release on the building safety programme, including all the latest statistics. We will be publishing the underpinning details on the financing scheme referred to by the noble Lord, Lord Stunell, shortly.

The time it would take to satisfy the requirements set out in Amendments 19 and 20 for further financial assessment would be disproportionate and risk a delay to our wider leasehold reform programme, which I know none of us want. We want to see the Bill made into law with speed. As such, the Government cannot accept these amendments. We will focus on responding to the concerns of the noble Lords, Lord Stunell and Lord Lennie, regarding forfeiture and enfranchisement as part of the Government's response to the Law Commission's recommendations.

Amendment 21A, in the name of the noble Lord, Lord Berkeley, relates to enfranchisement rights for leaseholders of the Crown Estate. The Crown is exempt from the existing legislation governing the right for leaseholders to buy their freehold or extend their lease. I will have to write to the noble Lord, Lord Lennie, on the number of properties that this relates to. However, the Crown Estate has given a parliamentary undertaking that it will act by analogy in these cases, meaning that such leaseholders can, in practice, exercise these rights as any other leaseholder can. As set out by the noble Lord, Lord Berkeley, there are some exceptions including, for example, properties on the Isles of Scilly and in parts of Dartmoor.

Noble Lords may well be aware that the Law Commission carefully considered the question of the Crown Estate in its report on enfranchisement. I note the concern raised by the noble Lord, Lord Berkeley, about certain Crown leaseholders who are exempt from the parliamentary undertaking and reassure him that we are considering our response to the Law Commission's recommendations carefully in turn. I am happy to commit to writing to the Duchy of Cornwall about the enfranchisement provisions as part of the next Bill. I therefore ask the noble Lords to withdraw or not to press their amendments.

Lord Lennie (Lab) [V]: My Lords, I thank the Minister and all noble Lords who have spoken in this debate. The Minister's response seemed to be that the amendments are unacceptable to the Government, either because they deal with future leaseholders or because they would delay the Bill being enacted. I find that quite astonishing. As a number of noble Lords have said, this is the fourth anniversary of Grenfell. The Minister's suggestion that we are waiting for the building safety Bill—still to be proposed—to help deal with some of the issues of Grenfell is quite shocking. It will be even more shockingly felt by the families who suffered loss there. The Government were given the opportunity to build a better Bill, get a grip on the situation and give this rather timid legislation some proper teeth and real purpose, but that does not seem to be their will. We will wait for Report but, in the meantime, I beg leave to withdraw the amendment.

Amendment 19 withdrawn.

Amendment 20 not moved.

Clauses 19 to 21 agreed.

Clause 22: Interpretation

Amendment 21

Moved by ***Lord Young of Cookham***

21: Clause 22, page 13, line 29, leave out from ""rent"" to end of line 29 and insert "means rent reserved as such including any part of the rent, whether or not expressed to be in consideration of services to be provided, which is fixed or which varies or may vary by reference to any one or any combination of a specific amount, a specific period of time or a specific measure, disregarding any part of the rent expressed to be payable in consideration of services to be provided which varies or may vary in accordance with the cost of the services provided, or of the variable cost of repairs, maintenance or insurance to be effected by the landlord and which varies or may vary in accordance with the cost of the repairs, maintenance or insurance in question, or to be payable in respect of the cost thereof to the landlord or a superior landlord;"

Member's explanatory statement

This amendment probes whether the Government can improve the definition of "rent" for the purposes of the Bill. It is derived from definitions in the Leasehold Reform Act 1967 and the

Landlord and Tenant Act 1985. It is extended to include fixed service charges and index-linked service charges akin to monetary ground rents.

Lord Young of Cookham (Con): My Lords, one of the themes in our debate on Second Reading was the need for a clear definition of what exactly a ground rent is. In addition to those who have taken part in Committee, I recall the contribution of my noble friend Lord Hammond of Runnymede, who drew on his experience in this area to outline some issues about definition. The helpful briefing that we have all had from the Law Society has as its first priority the need to amend the definition of rent in the Bill. It says:

"The main issue with the Bill at present is the failure to distinguish between different types of rent. Although the Government's clear intention is to tackle ground rents alone, the Bill does not make this focus clear."

During the proceedings this afternoon, I have had a further email from Mr Hugo Forshaw of the Law Society saying that he is supportive of the spirit of my amendment; he has offered support for a tweaked amendment on Report because, apparently, mine is not absolutely perfect, in his view.

Amendment 21 deals with this important issue. We need an effective and clear definition if the legislation is to work in practice. There is no current clear definition. Clause 22(2) says:

"'rent' includes anything in the nature of rent, whatever it is called".

If I may say so, that is reminiscent of the controversy about self-identification and the context of gender identification—that if you say something is the case, then it is. The Government's current approach will, I fear, result in litigation to determine the scope of what counts as ground rent. While such litigation is ongoing, leaseholders will have to continue to pay ground rents in all but name to avoid forfeiture. It is therefore essential that there is a workable definition from the day this legislation is commenced, without leaseholders needing to engage in litigation with landlords to establish that definition.

I listened to my noble friend the Minister's point at Second Reading that the drafting of "rent" had been left deliberately wide so as to avoid providing a target for landlords to work around, but I am not sure this is wise. The drafters of our tax legislation face similar challenges, for example, yet manage to achieve a greater degree of precision than has been achieved here. There is value in ensuring that future leaseholders and their advisers can determine with certainty what is and what is not ground rent. That way, they can at least seek amendments to a proposed lease to avoid ever agreeing to pay a disguised ground rent. This broad definition risks capturing sums often reserved in the lease as rent, and therefore called rent, which may be perfectly legitimate service charges or insurance contributions. As my noble friend Lord Hammond said at Second Reading, they risk capturing market rents granted under a long lease, which is not the Government's intention.

Leading law firms have echoed the Law Society and my noble friend Lord Hammond in requesting a clear definition of ground rent, lest there be serious unintended consequences. For example, Herbert Smith Freehills says:

"As currently drafted, the form of the legislation does not differentiate between ground rent and any other kind of rent: in short, anything reserved as rent (eg service charge, insurance rent) would be cancelled and unenforceable. Similarly, there is no reference to the rent being of the nature of a ground rent, so if the lease exceeds 21 years, there would, as the Bill currently is drafted, be no way of granting a long residential lease without a premium and at a market rent. We expect these points are likely to be addressed as the Bill proceeds through Parliamentary readings."

The definition I offer is based on that found in Section 4 of the Leasehold Reform Act 1967, which is also the definition recommended by the Law Society. But I have added to that definition words that relate to any fixed charge, or a charge which varies or may vary by reference to an amount of money, a fixed measure—for example, RPI inflation—or a period of time: for example, a charge which doubles every 10 years. The aim of this drafting is to include within the definition of ground rent any charge that does not vary in accordance with the cost of providing a service or an item. This is done using the well-known and well-understood definition of "relevant costs" in Section 18 of the Landlord and Tenant Act 1985, for which there is already much case law.

The wording of Amendment 21 is deliberately extended to include fixed service charges, for which currently leaseholders have no means of redress. At least one set of barristers' chambers—Landmark Chambers—has already identified this as a potential weak point in the legislation, allowing ground rents to continue in a different guise. The aim of this drafting is to ensure that charges made in exchange for a tangible service, which may vary in accordance with the cost of a tangible service, are not within the definition of ground rent. That reflects the Government's policy, as set out in the Explanatory Notes. This strikes a necessary balance between bona fide service charges reserved as rent and any attempt to circumvent the ban on monetary ground rents by adding fixed service charges or index-linked service charges, or escalating fixed service charges which function as ground rents but which are not given that label.

My noble friend may say that, as the Bill applies only to future leases, some of these uncertainties can be resolved by drafting new standard leases for future use. But if either this Bill is amended or a future Bill implements government policy to enable existing leaseholders to buy out their ground rents, this definition may well be used to cover existing leases, so the need for clarity is even greater.

Paradoxically, the existing definition may catch items that are not ground rents— the case mentioned by my noble friend Lord Hammond—but may not capture fixed service charges that should be caught. On that basis, I beg to move my amendment.

Baroness Grender (LD): My Lords, the definition of rent is an area that requires detailed scrutiny when looking at loopholes during the passage of the Bill. As we heard from the noble Lord, Lord Young of Cookham, at present, as drafted in Clause 22(2),

"'rent' includes anything in the nature of rent, whatever it is called."

This wide definition has set alarm bells ringing. We therefore strongly support this probing amendment by the noble Lord, Lord Young.

[Baroness Grender]

As I described in the debate on the first group of amendments today, this is a billion-pound industry which will not let its grip on the market go lightly. It relies heavily on borrowed money to acquire freeholds, all secured on the basis of future ground rents. With the potential of a "rent" unpaid and forfeiture as the pot at the end of the rainbow, we need to make sure that there is some very specific detail in the Bill as to what "rent" means.

The danger is clear, especially on forfeiture, as defining any service charge as "rent" means it must be paid to avoid that forfeiture before a leaseholder can even protest or start to take legal action against the amount charged. The Leasehold Knowledge Partnership has warned that "rent" or a contractual arrangement, as we heard from the noble Lord, Lord Young, could take the form of a fixed payment for arranging buildings insurance or for appointing and supervising the managing agent. Can the Minister say whether, for instance, it is possible to include in a future lease a payment of, say, £200 per year rising in line with CPI inflation as a payment for the landlord's expenses in arranging buildings insurance if that exists as a fixed service charge rather than a prohibited ground rent caught by the new law? Does he accept or recognise that it would not be possible for leaseholders to challenge that payment as the law stands or is proposed in the Bill? What measures has the Minister's department taken to ameliorate this all-important issue?

The Bill says that no rent under a lease other than a peppercorn is permitted unless the lease is one of the types of lease excepted from the Bill. But in the Explanatory Notes we are told that the Act is intended to capture any payment under a lease that does not impose an obligation on the landlord to provide a service. LKP trustee Liam Spender put it this way:

> "In modern leases, and modern case law, 'rent' often has a broader meaning. Many modern leases will define 'rent' as including both ground rent and service charges. Some modern leases also specify separate 'insurance rents' to cover the costs of buildings insurance arranged by the landlord. It is uncertain if the bill intends to force future leases to be redrafted so that these provisions are no longer described as part of the 'rent', or if the bill is not intended to capture these provisions because they are payments for tangible services."

I look forward to the Minister clarifying some of those points.

4 pm

I recall, as I have said many times before, the debates around definitions of services in the Tenant Fees Act. For instance, we had a late amendment about permitting the replacement of keys to be included in the Bill as a cost, and at the time we debated the specifics of that to ensure that it did not broaden out to have an impact on tenants. We are in exactly the same position here with regard to the lack of a clear definition of rent. We should all be aware of any additional charges, and they must not be defined as rent. Indeed, the Building Societies Association suggests an industry-funded leasehold ombudsman scheme and far greater clarity on charges to resolve some of these issues. Welcome work has been done in this area by the CMA and National Trading Standards, particularly in providing important information on property listings, following on from the Consumer Protection from Unfair Trading Regulations 2008, but inconsistency in this whole area continues to exist.

Like the noble Lord, Lord Young of Cookham, I thank the Law Society for its very helpful briefing on this issue just before we sat down to meet today. It believes that rent needs greater definition because of the dangers that I have described. Indeed, it suggests using the definition of rent in Section 4(1)(b) of the Leasehold Reform Act 1967 as the model for any definition in this Bill. Section 4(1)(b) says that

> "'rent' means rent reserved as such, and there shall be disregarded any part of the rent expressed to be payable in consideration of services to be provided, or of repairs, maintenance or insurance to be effected by the landlord, or to be payable in respect of the cost thereof to the landlord or a superior landlord".

When the Minister responds, I would be grateful if he gave us some kind of sign of his thoughts on either the amendment by the noble Lord, Lord Young of Cookham, or the possibility of reflecting the Leasehold Reform Act 1967. It is fairly clear that a lot of organisations believe that this lack of a clear definition has the real potential for a multibillion-pound industry to find the next loophole in order to ensure that leaseholders, who continue to suffer and to pay, are the ones who will pay in future. With that in mind, we strongly support the amendment of the noble Lord, Lord Young of Cookham.

Lord Lennie (Lab) [V]: My Lords, we also strongly support Amendment 21. It rightly asks whether the Government can improve the definition of "rent". Unfortunately—we heard much of this from the noble Baroness, Lady Grender—there is a litany of housing legislation that is in desperate need of modernisation. I hope the Minister will use today's debate to explain what further legislation is planned to bring the provisions up to date.

On the specific issue raised by the noble Lord, Lord Young of Cookham, can the Minister confirm what engagement the Government have had with NGOs and representatives of tenants on the issue thus far? Can he confirm whether the Government have any plans, as suggested by the noble Baroness, Lady Grender, to update the definitions available in the Leasehold Reform Act 1967 and the Landlord and Tenant Act 1985?

Lord Greenhalgh (Con): My Lords, this amendment from my noble friend Lord Young seeks to capture within the definition of rent other charges, such as fixed service charges, if they are reserved as rent in leases. It also seeks to exclude from the definition of rent variable charges or insurance if they are reserved or form part of the rent. The comments on a proposal regarding the definition of rent received from my noble friend Lord Young and other noble Lords continue to be carefully considered. I am very grateful to all those who have given it such close examination and look forward to hearing the further deliberations from the Law Society.

This is an important point to discuss today, as the treatment of what is meant by a ground rent and a rent lies at the heart of what the Government wish to convey through the Bill. It sets the tone for leasehold reform legislation to follow. On the specific meaning

of rent, I am not unsympathetic to my noble friend Lord Young's intention in his amendment. Since the very outset, this Government have been alert to defining what is meant by a ground rent in such a way as to discourage avoidance activity by sectors of the property market which make a habit of such activity. I believe we are all agreed that preventing such activity is of the utmost importance.

To give noble Lords some more of the context behind our reasoning for this definition, we started from a similar position to many of the Committee when approaching this issue by seeking to define closely what is meant by a ground rent. It is a logical approach; tightly drawn definitions are often meat and drink to a strong legislating body such as this House. However, I ask your Lordships to reflect on the seeming ease with which some parts of the leasehold sector have found ways around generation after generation of leasehold legislation, drafted with the greatest care and scrutinised in both this House and the other place, as my noble friend Lord Young knows well.

After very extensive consideration, we have concluded that we would need to take a different approach to the definition of rent for the leasehold sector. We therefore purposely defined rent widely to prevent landlords avoiding the restrictions in the Bill by including spurious periodic changes under any other name. As stated at Second Reading, the Bill intentionally uses a wide definition so that it includes anything in the nature of rent, whatever it is called. For example, we are mindful of not wanting to allow for a new garden rent or parking space rent replacing ground rent after the Bill is passed. That is why the meaning of rent in the Bill is drafted in such broad terms.

Any change faced by leaseholders that looks and sounds like a rent, whatever it is called, will therefore be open to challenge through trading standards and the First-tier Tribunal. Freeholders, landlords and even managing agents acting on behalf of a landlord will be able to refund this rental charge, whatever it is called, and may face a penalty fine. This imposes a potential liability on managing agents and ensures that they will scrutinise future contracts with great care.

We agree that it is not necessary for a lease to reserve charges, such as service charges and insurance, as rent. Under the Bill's definition of rent, landlords will need to consider whether to itemise other charges separately in the lease. I point out that fixed service charges are a valid way for freeholders to charge for services where leaseholders and freeholders enter into a lease agreement. We are aware of criticism of the misuse of fixed service charges on occasion; these charges are generally in payment for a tangible service and differ from ground rent. Under the Bill, landlords will need to consider whether to itemise these in the lease agreement, and to be clear what the charge is and what a leaseholder receives in return.

I thank my noble friend Lord Young for raising the points made previously by my noble friend Lord Hammond of Runnymede. He raised two specific points, one on the definition of a ground rent for long leases over 21 years where a rack market rent is charged. I welcomed my noble friend Lord Hammond's thoughts on this and am happy to undertake today that my officials and I will continue to engage with him and others as we look further into this matter. My noble friend Lord Hammond also raised a point on intermediate leases where there is a head lease or multiple properties. I point out that there are a number of potential options to address the complexities in this scenario. Once again, I am grateful to him for raising this issue and will continue to explore the matter further before Report.

Above all, I welcome the efforts of my noble friend Lord Young to achieve our shared objective of a clear definition of rent. However, I fear that my noble friend's amendment would add complexity and provide opportunities for landlords to find workarounds to a Bill otherwise closed off by the simple definition it currently contains. I am interested to see what the Law Society comes up with and to see the revised drafting.

In response to the noble Lord, Lord Lennie, we have engaged with a number of NGOs and stakeholders in preparation for the Bill and I am happy to provide details of that in writing. While I appreciate the intention behind my noble friend's amendment and I am happy to continue discussions with him, I ask him to withdraw his amendment.

Lord Young of Cookham (Con): My Lords, I am grateful to all those who have taken part, as this is a modest Back-Bench amendment which has generated three Front-Bench responses. The noble Baroness, Lady Grender, reminded us that there is a lot of money riding on the definition of ground rent; there are huge financial instruments at stake. We do not want a shaky foundation for that market.

I listened to the Minister's reply. I will say only that he has so far failed to convince the Law Society or the lawyers I referred to, who do not believe that the broad definition adopted by his department is the right way to proceed. I am not sure that I was reassured by the Minister saying that, if there was any doubt, tenants could go to tribunals. The whole point of the amendment is to try to avoid doubt and grey areas and reduce the need for litigation.

At the beginning of his response, my noble friend said that his department continues to carefully consider the issue of the definition and that he was not unsympathetic to what I was trying to do. I am grateful for those responses. On the basis that discussions will continue between the noble Lord, Lord Hammond, and the department, the Law Society and the department, and indeed, those solicitors who have expressed serious doubts about the current definition, I am happy to withdraw the amendment.

Amendment 21 withdrawn.

Clause 22 agreed.

Clause 23: Crown application

Amendment 21A not moved.

Clauses 23 and 24 agreed.

Clause 25: Commencement

Amendments 22 and 23 not moved.

Amendment 24

Moved by ***Lord Lennie***

24: Clause 25, page 14, line 15, at end insert "or within 6 months of the day on which this Act is passed, whichever is earlier."

Member's explanatory statement

This amendment would ensure that the Bill comes into force within 6 months of the day on which it is passed, if regulations are not introduced by then.

Lord Lennie (Lab) [V]: My Lords, this final group of amendments is in relation to commencement. The Minister will be aware that different clauses of the Bill are intended to come into force on different dates and the Minister has the power to determine when certain parts are introduced. This is not a rare practice for primary legislation, but the Government should explain when they intend to reserve the power of commencement and whether there are any circumstances whereby the commencement could be postponed indefinitely.

Amendment 24 places a six-month limit, whereby the provisions will come into force if the Government have not already introduced them. I would be grateful if the Minister could confirm whether the Government intend for the provisions to come into force within six months and, if so, whether they would be minded to accept this amendment by way of a guarantee. As I have said during previous groupings, the provisions of the Bill are welcome, and I am sure that the whole Committee will want to see their introduction without delay. I am sure that the Government are determined to commence the provisions as soon as suitable but I am concerned that unforeseen events could lead to unnecessary postponement.

4.15 pm

Lord Blencathra (Con) [V]: My Lords, I declare a personal interest as someone who pays ground rent on my London flat. I am coming at this from a slightly different angle from the noble Lord, Lord Lennie.

My noble friend the Minister is an honourable man, and I therefore believe him when he says that the Government want this Bill to come into force as soon as possible; he has urged us not to push any amendments which might delay its passage. I am therefore mystified at Clause 25 and the very bitty commencement dates. As the noble Lord, Lord Lennie, said, Bills often have different commencement dates, but the only things coming into effect on Royal Assent are the regulation-making powers and the usual consequentials at the end of the Bill, which we have just voted through on the nod. If the Bill is as urgent as the Government and we on this Committee say it is, why have we no date for the commencement of the only thing which really matters—the abolition of new ground rents and their replacement by the new peppercorn regime? Every week which goes by allows more iniquitous leases to be created.

I understand that the residential homes sector has been granted more time to adjust. I am sure that Messrs McCarthy and Stone and others will put that time to good use, adjusting their service charges to take account of any future ground rent losses. But as we consider what to do about the commencement dates at Report, we really need to know, very firmly on the record, when we will see the second and third legs of this three-legged stool. When will the Government introduce a fully-fledged leasehold reform and abolition Bill, and when will they introduce provisions like those advocated by my noble friend Lord Young of Cookham and my noble and learned friend Lord Mackay of Clashfern to have a proper ground rent buyout system?

I know that my noble friend the Minister will say that it is up to the usual channels and that he cannot make promises on when other Bills will be introduced, but we need to stress to him, and to the rest of the Government, that we will be very impatient unless we hear a firm commitment that this will be as soon as possible—ideally, in the next Session of Parliament and not sometime in this whole parliamentary period.

We have all said that this Bill is a good first start—a very good one leg of the stool—but we must see firm promises on the introduction of the next two legs or I, at any rate, will not be content to agree the commencement mishmash in Clause 25 when we come to Report.

Lord Stunell (LD) [V]: My Lords, I address my remarks to Amendment 26, just spoken to by the noble Lord, Lord Blencathra. I strongly support what he said and the arguments that he put forward in support of his amendment.

One key risk of separating out the legislation for all new domestic leases from those of the 4.5 million existing domestic leases is that a gap will open up in the market between homes traded under existing leases and those traded under the new regime. As the noble Lord, Lord Blencathra, has just said, the existing leases are very disadvantageous compared to those that will be formed under the new Bill. In many respects, existing leaseholders will be under a double disadvantage. They will have a home that may be identical in every respect to one that is subject to the new Bill, with a lease signed a week after Royal Assent—or maybe in two years, when it is finally implemented. The existing leaseholder will be at a permanent long-term disadvantage up to the point when stage 2 of this reform comes into force.

This amendment would bring the Bill into force immediately. It would mean that the long tail behind the existing leaseholder system would be cut off. There would be no new leaseholders stuck with the old system, with a Bill that has had Royal Assent but not been brought into effect. It would, as quickly as possible, create a bigger market of those with new leases rather than old leases.

In its turn, that will throw up disparities between the two categories of leaseholder resident. Those who have an existing lease—particularly those with an informal lease extension, which might have huge escalating charges written into it—will find that the gap between them and their near neighbours under the new system widens and widens. Inevitably, that will lead to a two-tier market; perhaps at first only at the margins but, over time, as the number and proportion of new leases on the market increase in relation to the number of existing leases, that gap will widen. The disadvantage suffered by those holding existing leaseholders will also widen and will be twofold: first, they will find it harder to sell their leases on, because they will be less attractive to purchasers than those leases available

under this Bill; and, secondly, in the meantime, they will be stuck with paying through the nose the exorbitant terms of their existing lease.

Amendment 26 from the noble Lord, Lord Blencathra, is a good step forward in the absence of any real commitment by the Government to bring much closer together this Bill, stage 1 of reform, and the next Bill, stage 2 of reform. The noble Lord is absolutely right to press the Government and to express his concern that that announcement has not yet been forthcoming. Indeed, Ministers have been very reluctant to make it. We need to know when stage 2 will be before your Lordships' House. We need to know how soon it will be that the follies, injustices and oppressions of the current system will be stopped. We need to make sure that as few people as possible find themselves in the unenviable position of hearing, "Take it on these terms or take it on no terms."

In an earlier debate we debated the four things that the noble Lord, Lord Kennedy, thought should be reviewed. The Government did not accept that. In our first day's work we tried to make sure that there was some definite timetable for future reform. The Government were not willing to accept that. Today's amendment from the noble Lord, Lord Blencathra, would, unfortunately, still not achieve it, but it might be a powerful lever to force the Government toward bringing these two stages of reform closer together, cutting off the tail of existing leases being signed as quickly as possible, and, as soon as possible, reforming the whole system.

Lord Naseby (Con): My Lords, I do not want to be repetitive because much has been said by those who have taken a particular interest in the Bill—and indeed the market, which is why we are taking an interest in the Bill. I have little to add, but if I was sitting in my noble friend's position, as the Minister responsible, I would see merit in the timeframe of six months from the noble Lord, Lord Kennedy. That would be the maximum break.

I declare an interest in that I share an office with my noble friend Lord Blencathra. He is very clear on his views in life and he is more often right than wrong. My noble friend on the Front Bench needs to reflect on this.

We know that this has been a very difficult area and I have sympathy with my noble friend on the Front Bench. But we cannot have a situation where phase 1 happens—I think we all have confidence that it will, whether immediately, as my noble friend Lord Blencathra says, or along the lines of the amendment from the noble Lord, Lord Kennedy—but the second half is to happen only sometime in the distant future. I again reflect on the period when I was chairman of the housing committee in Islington. You could not have had a situation where people in one section of society had their problems sorted out but those in another section—almost identical, except that they are a bit earlier in life—did not, and their problems were kicked into the long grass. My dear friend on the Front Bench has to come back, maybe not today but on subsequent sittings on this Bill, with a firm commitment that the second stage will happen and with a timeframe for it to happen.

Lord Young of Cookham (Con): My Lords, before I speak in strong support of Amendment 26, I raise an issue on commencement, which I think I raised at Second Reading—namely, whether it is possible to have different commencement dates in England and Wales. It is not entirely clear from Clause 25, as I read it, whether one could specify different dates and whether the possibility exists, for example, for the Welsh Assembly to come to the Minister and say, "We would very much like this Bill to be enacted in Wales way ahead of what you are minded to do in England."

I turn to Amendment 26. During our first Sitting, my noble friend said:

> "In order to move on to further legislative action on leasehold reform, we need to get this Bill through as speedily as possible."—[*Official Report*, 9/6/21; col. GC 283.]

When he replied to Amendments 19 and 20 this afternoon he repeated that imperative for speed. This need for a swift passage has been behind the resistance to amendments even when, as we discovered last week, it was an amendment that delivered government policy.

As my noble friend Lord Blencathra said, the force of the Government's argument is weakened if they will not give a firm date for implementation. All we know is that retirement homes will not be affected for another two years. It seems entirely reasonable for my noble friend Lord Blencathra to argue, as in Amendment 26, for a quid pro quo: swift passage in return for swift implementation.

The other leg of the Government's argument has been, "Don't worry if this Bill doesn't do everything. Another one is right behind." I expressed some scepticism about this last week; we are still waiting for stage 2 of Lords reform promised in 1997. I know my noble friend's heart is in the right place but all he has been able to say is that stage 2 will be later in this Parliament, which is scheduled to last until December 2024. That legislation could then have a later enactment date, as this Bill does, so I think it fair to press the Government for clarity. Why not publish a draft Bill later in this Session and introduce it in the next one?

I end with a comment that adds weight to this need for clarity. This Bill was introduced in your Lordships' House and has had a relatively easy ride, but the other place is full of MPs under pressure from leaseholders in their constituencies. Even the at times assertive language of my noble friend Lord Blencathra will pale in comparison with what Ministers will hear in the Commons, so I strongly urge my noble friend to develop what is known in the trade as a concession strategy on dates if the Government really do want to see the Bill proceed to the statute book without delay.

Baroness Grender (LD): My Lords, I am really confused by the Government's approach on this. It seems to be summarised as follows: "Give us this Bill as quickly as possible so that we can take as long as we can and as long as we like to implement it." The problem is that there is a whole load of future leaseholders out there—and more importantly the marketplace, which believes that this lacks clarity.

Please do not take my word for it. I was reading a blog by Gary Murphy, an auctioneer on behalf of Allsop, which at the moment sells almost half of all

[Baroness Grender]
London ground rents traded at auction. He notes the intention for this to change over a very long period of time, in the Landlord and Tenant Act 1987, the Leasehold Reform, Housing and Urban Development Act 1993 and the Commonhold and Leasehold Reform Act 2002. He goes on to say:

"Before freeholders panic, and new investors smell blood, we have to remember that reforms in this area have been on the cards since 2017. Recent announcements have amounted to little more than a press release. Whilst effective in courting headlines, they have changed nothing for the immediate future."

The critical issue is that the marketplace, which needs to be convinced the most that this change is imminent and about to happen, is even less convinced than the noble Lords from whom the Committee has heard this afternoon. Until it is this market will continue, even if it is traded at slightly lower reserves.

4.30 pm

The certainty of a date is, therefore, critical. That is why I was more than happy to put my name to the amendment, in the name of the noble Lord, Lord Blencathra, for it to come into effect as quickly as possible. It is funny that the noble Lord, Lord Young, and I took down exactly the same quote: we must make progress "as speedily as possible". To do that, a clearly defined date is necessary, and not just for the leaseholders. The people in the marketplace neither trust nor believe that this is imminent and will happen. For that reason, I strongly support both amendments, particularly the one in the name of the noble Lord, Lord Blencathra.

Lord Greenhalgh (Con): My Lords, these amendments seek to set a fixed date or timescale for the commencement of the provisions of the Bill. I sympathise with that and thank noble Lords for raising this issue. The Government also wish to bring an end to the unjustified charging of ground rents as soon as it is feasible. Clause 25 provides that the Bill's substantive provisions will come into force on a day appointed by the Secretary of State by regulations. Noble Lords can rest assured that we do not intend to have an unnecessary delay in implementation.

Although I am grateful to my noble friend Lord Blencathra for his enthusiasm to see the Government's legislation come into force, commencing all the Bill's clauses immediately on Royal Assent is simply not workable. This would leave no time for the laying of regulations and other important matters relating to the implementation process. While most of the delegated powers in the Bill are intended for later use should the need arise—such as to close a loophole—some will be beneficial when the rest of the clauses are commenced and will need to be prepared prior to this. For example, regulations under Clause 2, specifying the form and content of notices to be exchanged by landlords and leaseholders in respect of a business lease, will aid transparency and understanding of the obligations of both parties under this legislation—an outcome which I am sure noble Lords would welcome. I am sure that noble Lords will want the Government to get such regulations right. I am also sure that the noble Lord will appreciate that, with the unpredictability of the parliamentary timetable, I cannot give a guarantee that the Act can come into force on the day it is passed.

Amendment 24, in the name of the noble Lords, Lord Kennedy and Lord Lennie, and the noble Baroness, Lady Grender, recognises that time is needed before the Act can come into force. Again, I appreciate the sentiment of wanting to see the Act brought into force as quickly as it can be. However, it is not appropriate at this point to set a hard deadline for commencement, as proposed in the amendment. The Government are mindful of the necessity of ensuring careful implementation of this new legislation and to allow for a planned transition to a leasehold sector without financial ground rents. As noble Lords would expect, we will work closely with the sector, enforcement bodies and others to ensure that the Bill is implemented as smoothly and speedily as possible. I again assure noble Lords that the Government are fully committed to bringing the Bill's provisions into force without delay.

My eagle-eyed noble friend Lord Young has spotted that the Bill applies to England and Wales and that, as currently drafted, there could be different commencement dates. Conversations with the Welsh Government continue to ensure that we meet the needs of leaseholders in England and Wales and address any commencement concerns.

I state again that I have listened carefully to noble Lords' concerns and will look at whether we can be more specific about commencement dates as we move to Report. I look forward to further discussions with noble Lords on this issue. Once again, the intention is to get the second stage of leasehold reform through in this Parliament, ideally in the third Session. However, I cannot make any hard and fast commitment to that, so I ask the noble Lord to withdraw his amendment.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): I thought I had a request from the noble Baroness, Lady Grender, to speak after the Minister. Does she now not want to do so?

Baroness Grender (LD): I will take the opportunity, since I have created so much confusion. I thank the Minister for saying that he will go back and see whether it is at least possible to specify some kind of commencement date. I would very much like to say to him that I think all sides of this House will happily work with him and his department and take recommendations if it is at all possible to specify a date in order to counter the market scepticism that I described to him. If it is at all possible to put a date by the end of this process, we would be very grateful for that move.

Lord Greenhalgh (Con): Of course, as a Minister I would like to have stronger lines at this stage but it is important to recognise that we need to lay the regulations and ensure that the enforcement of this works, and there are communications challenges. However, taking that all into account, I am sure that we can reach a situation where we provide much greater clarity and we can be more specific around commencement dates. We can work towards that as the Bill moves through this House and on to the next stage.

Lord Lennie (Lab) [V]: My Lords, the Minister seems to be trying to take three positions at the same time in response to this amendment: no unnecessary delay; to get the regulation right; and either not to have a date or to have a date depending on whether he can go away and get the stronger line from the ministry. I wish him well with that, because we are all saying that either a date needs to be hard, fast and managed or stage two must be timetabled into the legislative process. We welcome the review that will take place between now and Report and we look forward to something concrete coming back from the Minister in advance of Report. However, in the meantime, I beg leave to withdraw the amendment.

Amendment 24 withdrawn.

Amendments 25 and 26 not moved.

Clause 25 agreed.

Clause 26 agreed.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): That concludes the Committee's proceedings on the Bill. I remind Members to sanitise their desks and chairs before leaving the Room.

Bill reported without amendment.

Committee adjourned at 4.38 pm.