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PARLIAMENTARY DEBATES
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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
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

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

House of Lords

Monday 11 October 2021

2.30 pm

Prayers—read by the Lord Bishop of Carlisle.

Arrangement of Business

Announcement

2.38 pm

The Lord Speaker (Lord McFall of Alcluith): My Lords, when the 10 minutes allocated for each Question is over, the clerk will stand and nod to indicate that the time for the Question has elapsed. I notice now that the clocks are going to be working; at one stage we were told that they were not.

Members will have read my message last week summarising actions that we can all continue to take to lessen the risk of Covid to ourselves and to the staff of the House. I would particularly like to emphasise that Members are encouraged to wear face coverings, in line with current government guidance and commission endorsement, which expects and recommends that individuals continue to wear face coverings in crowded and enclosed spaces.

Black Dog Crisis Management Company

Question

2.38 pm

Asked by ***Baroness Chakrabarti***

To ask Her Majesty's Government what were the reasons for the Home Office hiring the Black Dog crisis management company; and what processes were followed before the firm was engaged.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I know that the House and the noble Baroness will not mind if I spend a few seconds in paying tribute to my colleague, friend and all-round wonderful man, the right honourable James Brokenshire MP. I have received messages from across the House and I know others will have done. I know that those will be a huge comfort to Cathy and his children.

To answer the Question, the company was engaged in November 2020 to provide external debriefing of a complex critical incident that had occurred in the context of migrant crossings of the channel. The company had supported the Home Office and other departments previously and was recognised for its subject matter expertise in the debriefing of complex critical incidents. The company was engaged directly as a single tender action for which justification was provided due to urgency.

Baroness Chakrabarti (Lab): I am certainly grateful to the Minister for that. I believe that I can speak for all of us on this side of the House in seconding those sentiments about James Brokenshire—a truly kind man and serious public servant.

To return to the question of crisis management in the Home Department, might it not be better for enhancing the reputation of the department to move away from private consultancy and to commission a public, statutory, judge-led inquiry into misogyny and the neglect of women in policing and the criminal justice system, in the light of the abduction, rape and murder of Sarah Everard?

Baroness Williams of Trafford (Con): My Lords, I am sure that the terms of reference and the details of that inquiry will be laid out in due course, but I will certainly take the noble Baroness's points back.

Lord Davies of Brixton (Lab): My Lords, the department is to be congratulated on seeking help in this area. I see from the organisation's website that its specialist areas of expertise include

"providing consultancy support to help clients to understand the leadership roles, responsibilities and behaviours required for effective decision making."

We hope that the department will make full use of this skill.

Baroness Williams of Trafford (Con): I thank the noble Lord for his point. The skills of the company were particularly useful in the context of the issue of the migrant crossings.

Lord Paddick (LD): My Lords, I associate myself with the remarks of the noble Baroness regarding James Brokenshire. It is a very sad situation.

Are there no internal consultants anywhere in Whitehall who could have advised the Home Office, rather than it spending public money on private sector consultants? Or was the crisis so bad that it was beyond the ability of anybody in Whitehall?

Baroness Williams of Trafford (Con): My Lords, these issues are often dealt with internally. This incident was one of some complexity and was quite novel in its aspect. That was why the STA was sought.

Lord Rosser (Lab): Is that the only occasion on which this company has been used by the Home Office? What changes were made as a result of the investigative work that it carried out? How many other departments apart from the Home Office find it necessary to use Black Dog Crisis Management to get them out of a mess?

Baroness Williams of Trafford (Con): It is my understanding that this company has been engaged previously by the Home Office. I can get the noble Lord some stats on other government departments if he wishes.

Baroness Jones of Moulsecoomb (GP): My Lords, could the noble Baroness clarify this for me? If a company wants a government contract, is it better to have a friend in the Cabinet, to give a large donation to the Conservative Party, or both?

Baroness Williams of Trafford (Con): If the noble Baroness wants to give a donation to the Conservative Party, I am sure that it would be welcome. Government procurement is open and transparent and there are very strict rules around it.

Lord Sikka (Lab): My Lords, I have two questions. First, what skills deficiencies in the Home Office's 16 directors and 277 senior managers persuaded the Secretary of State to award contracts to Black Dog Crisis Management, a company with £100 share capital and only one employee, who previously worked at the Cabinet Office? Secondly, when will these contracts be published in full?

Baroness Williams of Trafford (Con): My Lords, I understand that all direct awards are listed in the contracts finder area of GOV.UK. On skills, as I said, this was a particularly novel incident and that is why the STA, which is very restricted in its use, was used in this case.

Lord Browne of Ladyton (Lab): My Lords, my noble friend Lady Chakrabarti is right. The shocking daily revelations of the number of accusations of social misconduct against police officers, including rape, and the finding of the Met's institutional obstruction of investigations into Daniel Morgan's murder demand that any inquiry into the Sarah Everard murder should be a statutory inquiry.

On the original question, what was the complexity? The Home Office has 40,000 civil servants—half the size of the Army. What was it that compelled it to engage the services of a crisis management firm to deliver "debriefing exercises" for staff following incidents? Why did it have to call in the military to collect data on Afghan refugees living in hotels when it lost control of their numbers?

Baroness Williams of Trafford (Con): I fully support my right honourable friend the Home Secretary in announcing that the inquiry would take place. The details of that will be announced in due course. Among the complexities was the number of agencies involved. Of course, things such as the potential for danger to life are critical in these situations—as, indeed, is learning the lessons of such novel incidents.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I join the noble Baroness in paying tribute to James Brokenshire. I had the privilege of meeting him a couple of times and he truly was a lovely man. Public duty was always at the heart of everything he did. We pass our condolences on to his wife and family.

Like my noble friend Lord Davies of Brixton, I had a look at the website of Black Dog. I thought that the "disaster response teambuilding" services and the "crisis leadership skills" would be ones for the Minister maybe to bring to the attention of her ministerial colleagues, in particular the Home Secretary.

Baroness Williams of Trafford (Con): Other than thank the noble Lord for those points, I do not think that I have anything to add.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, in the remaining time is it possible to ask the Minister to answer the questions that she has failed to answer—

Noble Lords: Order!

Lord Foulkes of Cumnock (Lab Co-op): Why? There is time left.

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

Child Trust Funds

Question

2.47 pm

Asked by ***Lord Young of Cookham***

To ask Her Majesty's Government when they will issue their consultation on access to Child Trust Funds by adults with a learning disability.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Wolfson of Tredegar) (Con): My Lords, since the House last considered this matter, I have been working closely with officials to deliver this consultation. We have had discussions with various stakeholders. Our work on drafting the consultation was completed just before the reshuffle. I have now discussed the issue with the new Secretary of State. I am hopeful that the consultation will now commence very shortly.

Lord Young of Cookham (Con): I am grateful to my noble friend. In the 12 months since child trust funds matured, more than 10,000 children with learning disabilities have been entitled to the proceeds, but only a handful have negotiated the tortuous Court of Protection process advocated by the Government. Up to 1,000 have had funds released by financial institutions using a streamlined procedure not endorsed by the Government but likely to be in the consultation document. Does this not underline the need for urgency in amending the law, so that these children can get the funds to which they are entitled?

Lord Wolfson of Tredegar (Con): My noble friend does not have to impress on me the need for urgency. I have been working hard on this matter since it was first raised. The problem with the industry scheme is not that it is not endorsed by the Government but that it is inconsistent with the Mental Capacity Act, a piece of legislation passed by Parliament.

Lord Flight (Con): This issue has been raised five times by my noble friend Lord Young and this is the second time that I have supported him. It is a travesty that those with learning difficulties who are over 18 cannot access their child trust funds. It should not be necessary for parents to apply for a Court of Protection order on behalf of their adult children. As my noble friend Lord Young pointed out, only a handful of parents have negotiated the Court of Protection route successfully. There are surely less demanding ways to protect their beneficiary children's interests. Some financial

institutions have released funds using a streamlined procedure. Hopefully, this will be refined in the consultation paper, but it is not currently endorsed by the Government. The issue currently affects 10,000 children with trust funds who cannot simply access their cash when they reach the age of 18 without a court order. Can the Minister advise the House as to whether the DWP working group has considered this issue?

Lord Wolfson of Tredegar (Con): My Lords, let me give a short answer to a long question. It is not a question of whether going to court should or should not be necessary: it is necessary because Parliament passed the Mental Capacity Act, which requires it. In 1995, the Law Commission recommended a small payments scheme. That was not taken up by Parliament, but I am now consulting on it, because it seems to me that that is the right way forward.

Baroness Finlay of Llandaff (CB): My Lords, I declare my interest as chair of the National Mental Capacity Forum. Will the consultations specifically consider how to exclude coercion, malintent or diversion of the person's funds for use other than purely in their interest, if there is no lasting power of attorney or court-appointed deputy?

Lord Wolfson of Tredegar (Con): My Lords, the noble Baroness has put her finger on the point. What we have to do here is balance the need to protect vulnerable young adults—because that is what they are—with their desire and that of their parents and guardians to access small amounts of money speedily and efficiently. It is that balance which the consultation will be aimed at.

Lord Touhig (Lab): My Lords, I declare my interest as a vice-president of the National Autistic Society. Seven months ago, I told the Minister that, for families of autistic youngsters seeking to access the child trust fund, the Mental Capacity Act code of practice was a barrier. Mr Justice Hayden in the High Court said that the wording of the guidance needed to be revisited. In reply, the Minister said that he had met Mr Justice Hayden and that the Government were looking to address this. Can he tell the House: whether the Government have completed their look, and can he give us an update?

Lord Wolfson of Tredegar (Con): My Lords, the position with the Court of Protection is this: we did invite the court to look afresh at all its forms—that is a matter for the court and not the Government—and it declined to revise its forms. We want to do two things: first, consult on the small payments scheme, which I think really is the answer here; and, secondly, educate people. If people apply to the court before they turn 18, there is no time pressure and everything can be completed before the legal problem arises—which is at the point when the child becomes an adult and the parents, therefore, cannot access the money without an order of the court.

Lord Naseby (Con): My Lords, I declare an interest as chairman of the Children's Mutual, which, I believe, was the largest provider of child trust funds. Has my noble friend's department consulted with the senior management of the Children's Mutual and, perhaps, a couple of other leading providers? I do believe that, when the child trust fund was launched, there was some provision in case of difficulties that might arise at a later time. In any case, now may be the right time to make sure that the industry can help.

Lord Wolfson of Tredegar (Con): My Lords, we have consulted widely across industry with the major providers. I have to say to my noble friend that it is the case, I am afraid, that there was a lacuna here. I think the noble Lord, Lord Blunkett, who is not in his place now, candidly accepted that when child trust funds were put in place, no thought was given to people who would not be able to give instructions to banks at the time they turned 18. The Mental Capacity Act in 2005 only made that position more difficult. So we are now dealing with a problem that has been exacerbated by subsequent legislation. The way to deal with it is a small payments scheme: that is what we are going to consult on.

Lord Ponsonby of Shulbrede (Lab): My Lords, a few weeks ago, I spoke to Teddy Nyahasha, who is chief executive of OneFamily, a financial services firm that has administered 1.6 million child trust funds. The central point Mr Nyahasha made to me was that small donations or payments of up to £5,000 are made through something called the fair access protocol. He was seeking some recognition of that. If there was some recognition, there would be wider access for other charities and providers to expand the fair access protocol. Can the Minister say what he is doing about this?

Lord Wolfson of Tredegar (Con): My Lords, my officials met Mr Nyahasha on 17 August, and we are well aware of this proposal. The problem is that it is not a matter of the Government recognising the scheme; the scheme, I am afraid, is inconsistent with the Mental Capacity Act, and it is fundamental to the rule of law that the Government act in accordance with legislation passed by this Parliament. Therefore, we cannot just bless schemes that are inconsistent with the legislation. If we want to solve this, we have to change the legislation. That is what the consultation is aimed at.

Lord Addington (LD): My Lords, it is quite clear that the cock-up school of history has been proven correct on this issue. The Minister has said that the law is incompatible with the current status and intention of this. Surely we have enough time in Parliament to change the law. Will the Government guarantee that we get that time?

Lord Wolfson of Tredegar (Con): My Lords, guaranteeing government time might be a little above my unpaid pay grade—but what I can say is that there will be a consultation. As the question from the noble Baroness, Lady Finlay of Llandaff, pointed out, there are interests to balance here. There will be, I hope, an eight-week consultation, and I invite everybody to be

[Lord Wolfson of Tredegar]
part of that. Following that, if we are going to legislate, I agree that it is something we should be getting on with.

Baroness Altmann (Con): My Lords, I can only encourage my noble friend in his worthwhile endeavours to sort out this situation. I think a small payments scheme makes sense and, as the mood of this House shows, there is great support for allowing learning-disabled children to access the money that they need. In real life, Mikey, whom we have heard about before in this House, was able to get out during lockdown, and other children have been able to access sports therapy. Will the Minister acknowledge that this is a monumental success for the private financial industry, which for once has done its utmost to try to help people take money out of their accounts, which would cost them fees?

Lord Wolfson of Tredegar (Con): My Lords, I do think that the small payments scheme is the way forward. One of the mysteries in this cock-up, if I can use that word from the Dispatch Box, is why a proposal from the Law Commission in 1995 was, it seems from *Hansard*, not picked up by anybody in 2005 when the Mental Capacity Act was passed. It is that problem that I am now trying to resolve.

Lord Triesman (Lab): My Lords, I welcome the timely Question from the noble Lord, Lord Young. There are some other funds directed at children with distinct needs. Her Majesty's Government have repeatedly told local authorities that the premium plus grant, which is made available to children who are adopted from care in England and Wales, should be available to children adopted from overseas to ensure real equality for these kids, who often have significant educational difficulties. Will the Minister reissue the advice that Nick Gibb has issued and enforce the provisions of the Children and Social Work Act 2017 for these adopted children, and will the Government compel recalcitrant local authorities to act speedily and properly?

Lord Wolfson of Tredegar (Con): With respect, my Lords, I think that that is a question for the Department for Education. I will pass it on and ask the department to write to the noble Lord with an answer.

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

Net-zero Emissions Target
Question

2.58 pm

Asked by ***Baroness Ritchie of Downpatrick***

To ask Her Majesty's Government what fiscal measures they are taking in pursuit of their net zero emissions target.

The Minister of State, Cabinet Office and the Treasury (Lord Agnew of Oulton) (Con): My Lords, the Prime Minister's 10-point plan demonstrates our commitment to net zero. It sets out £12 billion of new government investment in green industries. We have set up the UK Infrastructure Bank, backed by £12 billion of capital, to help unlock more than £40 billion of overall investment in infrastructure. Carbon pricing will play a key role in helping the UK achieve net zero, at the same time as raising funds to be invested in the Government's spending priorities.

Baroness Ritchie of Downpatrick (Non-Afl): My Lords, our entire fiscal system is out of kilter with decarbonising the economy and achieving net zero. For example, look at the gas and oil sector: since signing the Paris agreement, the Government have given £4 billion to oil and gas companies. Can the Minister therefore commit, on the eve of COP, that this practice will be confined to the scrapheap of history and that those companies will receive no more funding through subsidies and tax breaks? If so, can this be included in the spending review?

Lord Agnew of Oulton (Con): My Lords, it is important to point out that we need to transition to a net-zero economy in an orderly way and that we cannot immediately switch on a full net-zero energy system. We are one of the fastest reducers of coal use in the world: our coal consumption has fallen by over 80% in the last 10 years, and we remain completely committed to accelerating.

The Lord Bishop of Oxford: My Lords, in order to avoid a disruptive transformation from our current carbon-intensive society, we need the Government to include fiscal measures to protect the poorest and most vulnerable households. Can the Minister confirm that the full Government road map to net zero will include a carbon fee and dividend element to cushion the blow for low-income households, as already successfully trialled in several Canadian provinces, Alaska and elsewhere?

Lord Agnew of Oulton (Con): My Lords, we already do a great deal to support those on lower incomes. We have a number of schemes to support those who are under pressure financially and at risk of higher energy prices. We will, of course, keep all those measures under review.

Baroness McIntosh of Pickering (Con): Will my noble friend ensure that the Government commit water companies to reach their net-zero targets by ending the automatic right to connect for massive new housing developments where water companies simply cannot accommodate the huge amounts of waste water required in antiquated Victorian pipes?

Lord Agnew of Oulton (Con): My Lords, there are currently no restrictions to water companies raising funds to make investments in reaching net zero, and water companies are able to submit plans for such investment to Ofwat as part of the price control. The Government are currently consulting on the strategic direction for the water sector. This consultation outlines the expectation that Ofwat will contribute towards protecting and enhancing the environment and will appropriately challenge water companies' plans to deliver the change needed in the water sector to meet net zero.

Lord Browne of Ladyton (Lab): My Lords, I am sure the Minister will agree that the Government need to take a joined-up approach to decarbonising the economy. Surely it is inefficient and wasteful to public funds to stimulate decarbonisation with some funds, while stimulating the creation of greenhouse gas emissions with others. When will we see subsidies for fossil fuels wound down?

Lord Agnew of Oulton (Con): My Lords, as I mentioned in an earlier answer, we need to do this transition in an orderly way. We need to ensure that our net-zero energy generation is sustainable. We are moving very quickly. We have seen, for example, the cost of offshore wind drop dramatically over the last five years, from over £100 per kilowatt hour to around £45, but we need to keep moving that along before we remove any more support to the traditional sources of energy.

Baroness Kramer (LD): My Lords, according to the CBI, the obstacle that most frequently holds back business from taking action towards net zero is uncertainty, especially about the Government's fiscal policy on the environment. Can the Minister assure the House that the Budget on 27 October will provide a clear net-zero fiscal strategy and road map, with a consistent environmental tax policy outlined, including principles and goals that business can rely on for the long term?

Lord Agnew of Oulton (Con): My Lords, I cannot speak to the detail of the Budget in a few weeks' time, but we have a strong message, which we have been consistent with over the last few years. We have made clear, for example, the recently announced emissions trading scheme, which provides a clear road map for heavy users of carbon. We are about to introduce the plastic packaging tax, which again is clear, for industry to get behind. We will continue to send those messages, but I think they are pretty clear. Indeed, we are seeing dramatic change by business. For example, coming up to COP 26, three huge companies have made very strong commitments: GSK, Hitachi and Microsoft have all committed to get to net zero in the next few years.

Lord Eatwell (Lab): My Lords, in the development of environmental fiscal policy, do the Government accept the fundamental principle that the polluter pays?

Lord Agnew of Oulton (Con): My Lords, ultimately, that has to be the direction of travel for us, but we cannot get there overnight. To implement that sort of stringent regime now would dramatically increase costs, which would then come back to consumers in other ways.

Lord Mann (Non-Afl): I have yet to meet a pensioner who has turned down free electricity. If the Government want to take the red wall with them on their environmental policies, why are they not bringing in again fiscal incentives for solar panels, giving some free electricity to households across the country?

Lord Agnew of Oulton (Con): My Lords, the market is playing its role. As the cost of solar panels declines, it becomes increasingly attractive for householders to implement those sorts of strategies. The cost of solar energy has declined dramatically over the last few years, and I think we will find that, very soon, it will be attractive for many households to take the route the noble Lord suggests.

Baroness Randerson (LD): Does the Minister agree that it would be very environmentally damaging to reduce taxes on aviation, which would in turn encourage more people to fly? Can he assure us that this will not feature in the Treasury's forthcoming fiscal plans to be announced in the spending review?

Lord Agnew of Oulton (Con): My Lords, as I said earlier, I cannot speak for the spending review or the Budget. However, we will not be seeking to inadvertently encourage excess use of aviation travel. But again, it is a very vital part of our economy and, until other forms of transport take its place, we need to support it.

Lord Whitty (Lab): My Lords, it is, frankly, widely believed in both business and environmental circles that the Treasury is at best lukewarm about using fiscal measures to support the climate change strategy. If that is not the case, why has the Treasury not used the supposed freedom post Brexit to remove VAT from building refurbishment, thus continuing to incentivise high-carbon demolition and disincentivise refurbishment and retrofit?

Lord Agnew of Oulton (Con): My Lords, I respectfully disagree with the noble Lord's view of the Treasury's position. I mentioned the emissions trading scheme that was announced earlier this year. We have published the *Industrial Decarbonisation Strategy*, which sets out the vision for a low-carbon industrial sector by 2050. In March this year we were the first G7 country to agree a landmark North Sea transition to support the oil and gas industry's transition to clean energy. Through this deal, the sector has committed to cut emissions by 50% by 2030. The Treasury is closely involved in all these initiatives.

Baroness Bennett of Manor Castle (GP): My Lords, I follow on from the question put by the noble Lord, Lord Eatwell, about the polluter pays principle. I am sure the Minister is aware of the International Monetary Fund's report earlier this month recommending that polluters—fossil fuel companies—should pay for deaths and poor health from air pollution and heatwaves, and for the impact of global heating. This is the International Monetary Fund. Will the Government be following this advice and publishing a road map for when they will get to the point of really making polluters pay?

Lord Agnew of Oulton (Con): My Lords, I repeat that we are moving very fast to decarbonising; we are one of the fastest in the G20, and indeed in the G7. If we push the envelope too hard, we will just see a boomerang of costs going back to consumers. We very much support the aspiration for polluters to pay but it must be done on a sustainable basis.

Baroness Chakrabarti (Lab): My Lords, on the one hand we have soaring utility prices, and on the other hand we have imminent climate catastrophe. The Minister repeatedly says he wants to move in an orderly fashion. Does that not point towards greater intervention and greater public ownership of vital utilities?

Lord Agnew of Oulton (Con): I am sure the noble Baroness will know that the current squeeze on gas prices has nothing to do with the quantity of gas available; it is a geopolitical move by Russia to put pressure on Europe, and we are caught up in it. Public ownership of our own utilities would make no difference.

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

Emissions Trading Scheme: Transport

Question

3.09 pm

Asked by ***Lord Oates***

To ask Her Majesty's Government what plans they have to expand the United Kingdom's Emissions Trading Scheme to include all forms of transport.

Lord Oates (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I draw attention to my interests as set out in the register.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, the UK Emissions Trading Scheme replaced the UK's participation in the EU Emissions Trading Scheme on 1 January 2021. The UK ETS applies to energy intensive industries, power generation and aviation. In the energy White Paper we

"committed to exploring expanding the UK ETS to the two thirds of uncovered emissions",

and we will set out our aspirations in due course.

Lord Oates (LD): I thank the Minister for his Answer, but could he give the House some indication of the timescale in which the Government intend to bring shipping within the UK ETS? If they do not intend to do so, what alternative approach will they take to curtailing maritime emissions, which are currently forecast to rise by 50% by 2050?

Lord Callanan (Con): I recognise the points the noble Lord makes and he will be aware that, in the transport decarbonisation plan, there is a commitment to assess how economic instruments could be used to accelerate decarbonisation measures alongside all the other aspirations of the plan.

Baroness Blackstone (Ind Lab): How do the Government intend to respond to the report from the Climate Crisis Advisory Group on carbon pricing, which says that emissions reductions from the advanced economies fall far short of what has been promised? I quote:

"Much stronger policy action across all sectors is needed".

In particular, can he indicate the Government's intention on a carbon border adjustment mechanism, and whether such a mechanism could raise nearly €10 billion a year as the *Financial Times* has claimed?

Lord Callanan (Con): Of course, these matters are never as simple as the noble Baroness makes out. Building on the previous Answer from my noble friend Lord Agnew, I say that it is important to recognise that the UK is proceeding faster than any other G7 country in our decarbonisation efforts. I am aware that the EU is looking at a carbon border adjustment mechanism—we will see if it happens or not—and of course we will look at the proposal.

Baroness Boycott (CB): Are the Government supportive of the citizens' climate assembly recommendation to introduce a frequent flyer levy? This would fit well with the polluter pays principle, which Ministers have advocated previously at the Dispatch Box, and the burden would fall on those most able to pay, something I am sure the Minister would deem fair.

Lord Callanan (Con): I am sure the Chancellor will want to update Parliament in due course on any proposed levies.

Lord Grantchester (Lab): Clearly the Government have not thought through the present crisis. So often it is the poorest throughout the world who bear the brunt of climate change. How will the Government apportion costs for the UK ETS to cover all forms of transport?

Lord Callanan (Con): The effect on poor people, including in the UK, will be one of the factors that we will need to consider when expanding the ETS. These are important fiscal measures. We will need to look at them properly and consider all the implications, and we will set out our thinking in due course.

Lord Fox (LD): My Lords, as the Minister pointed out, these schemes cover energy-intensive businesses. However, if the disorderly situation that is currently under way continues, manufacturers of ceramics, steel and cement—energy-intensive businesses—will not have any emissions to trade because they will have collapsed. Can the Minister clear up what is happening? Have talks between BEIS and the Treasury happened, as the Secretary of State said yesterday, or was the Treasury right that no talks have happened? When will the Minister let us know what is going on? Can the Government clear up this mess?

Lord Callanan (Con): I agree with the comments made by my Secretary of State yesterday. There are always ongoing discussions between government departments on a huge range of measures, and I am sure that the Treasury and BEIS will be closely involved in further discussions.

Lord McConnell of Glenscorrodale (Lab): My Lords, at the start of the pandemic last year, as a result of the lockdowns there was a significant problem in developing countries around the world in trading, due to the lack of access to shipping and other forms of freight. This problem could be exacerbated by the correct action to reduce and—I hope—eliminate emissions. Will the Government ensure that the COP 26 summit in Glasgow

delivers enough funding and other forms of support to developing countries to make sure that there can be a just transition?

Lord Callanan (Con): Again, in this matter we are leading with the funds that we have supplied to developing countries and we have promised. The Prime Minister and the joint president at COP are engaged in discussions as we speak, to try and drive up the commitment of developed countries to help lower-developed countries with their aspirations.

Lord Berkeley (Lab): My Lords, air is the most polluting of all modes of transport, and most air transport is excluded from the UK Emissions Trading Scheme because it is international. Will the Minister confirm that he is working hard to bring CORSIA—the Carbon Offsetting and Reduction Scheme for International Aviation—within the scheme and make some positive announcement for COP 26?

Lord Callanan (Con): The noble Lord makes a good point. The ETS already exists for domestic aviation and aviation to the European Economic Area. There is also a separate scheme developed by ICAO, which he referenced. We will need to look at how we implement that in the UK and its interaction with the UK ETS.

Baroness Young of Old Scone (Lab): With apologies to Jane Austen, it is a truth universally acknowledged that ambitious action as early as possible this decade is required to reduce CO_2 emissions as early as possible. The Minister says that we are moving faster than anyone else, but the Government have stated that the implementation of any expansion to the UK ETS following the first review of the scheme will not happen until 2026. Does he agree that this is far too slow? Can he tell the House why it is utterly unambitious?

Lord Callanan (Con): As I said in previous answers, we recognise the urgency of taking swift action on climate change. I repeat: we are moving faster than any other G7 country. I accept that the noble Baroness and other Opposition Members would like to be even more ambitious, but we must look at the implications of that on the competitiveness of British industry and the effect on people's fuel bills, et cetera. These are important matters and we must consider them in the round.

Lord Davies of Brixton (Lab): My Lords, I welcome what the Minister has said about the extension of the ETS to shipping, but will he take this opportunity to indicate the degree of urgency that the Government place on this issue, particularly the scandal of the continued use of bunker fuel by shipping worldwide?

Lord Callanan (Con): We agreed to undertake a review of the extension of the ETS to maritime emissions in the transport decarbonisation plan, and will do so. However, like aviation, this is an international issue; ships do not just stay in British territorial waters but move overseas as well. Therefore, we need to work with our international partners and the EU to come up with solutions to this.

Baroness Blake of Leeds (Lab): My Lords, in the Government's recent transport decarbonisation plan, no modes of transport other than aviation were mentioned in relation to the UK Emissions Trading Scheme. Could the Minister tell the House exactly why this was? Also, building on the excellent points made by my noble friend Lord Berkeley, can he update us on exactly how the ETS will be developed to accelerate aviation decarbonisation?

Lord Callanan (Con): I do not agree with the noble Baroness. The transport decarbonisation plan was the first such plan in the world. It sets out how the transport sector will move on a path to net zero and includes consulting on a world-leading pledge to end the sale of all new polluting road vehicles by 2040 and net zero in aviation by 2050. It is a world-leading, ambitious plan. I am sorry that the noble Baroness does not support it.

Baroness Wilcox of Newport (Lab): If the Government are minded to review their policy and include all forms of transport, will the Minister consider seeking the views of municipal bus companies such as Newport Transport, which is the clear leader in Wales, in their moves towards zero-emissions electric buses? It is the first operator in Wales to achieve a modern-day emissions-free squadron service. I know that Newport City Council and the transport company would be willing to share their experience of this excellent practice with the UK Government.

Lord Callanan (Con): I am sure we would be very happy to take into account the views of Newport Transport. I congratulate it on its commitment to zero-carbon transport. Of course, many other local authorities and bus companies around the UK are also developing battery buses, hydrogen buses, et cetera, so great progress is being made.

Social Security (Up-rating of Benefits) Bill

First Reading

3.19 pm

The Bill was brought from the Commons, read a first time and ordered to be printed.

Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill

First Reading

3.19 pm

The Bill was brought from the Commons, read a first time and ordered to be printed.

Health and Social Care Levy Bill

Second Reading (and remaining stages)

3.20 pm

Moved by ***Lord Agnew of Oulton***

That the Bill be now read a second time.

The Minister of State, Cabinet Office and the Treasury (Lord Agnew of Oulton) (Con): My Lords, it is a pleasure to open this Second Reading debate on the Health and Social Care Levy Bill. This is a short but

[Lord Agnew of Oulton]
very important Bill that aims to legislate the plan announced by the Prime Minister on 15 September. The plan will tackle the NHS backlog, put the adult social care system on a sustainable long-term footing and end the situation in which those who need help in their old age risk losing everything to pay for it.

The Government's plan will make a substantial difference to the lives of millions of people across this country. It will be funded with a record £36 billion investment in the NHS and social care systems. Noble Lords will be aware that such an ambitious plan requires funding. In order to pay for a significant increase in spending in a responsible and fair way, the Bill before the House today introduces a new 1.25% health and social care levy. The levy will apply UK-wide to taxpayers liable to class 1 employee and employer, class 1A, class 1B and class 4 self-employed NICs. However, it will not apply where taxpayers pay class 2 or class 3 NICs. It will be introduced from April 2022 and, from April 2023, the levy will also apply to those working over the state pension age.

Noble Lords may be aware that it takes time for HMRC to prepare its systems for such a major shift. That is why, as set out in Clause 5 of the Bill, in 2022-23, the levy will be delivered through a temporary increase in NIC rates of 1.25% for one year only. I would like to make it clear that all net revenues generated by the temporary increase in NIC rates will be ring-fenced and paid to NHS England, NHS Scotland, NHS Wales and the equivalent in Northern Ireland. From April 2023, the temporary rise in NIC rates will be replaced by a formal legal surcharge of 1.25%. Clause 2 of the Bill sets out that this revenue will be ring-fenced for health and social care only.

It is the intention that existing NIC reliefs and allowances will also apply to the levy. That will mean that 40% of all businesses will not be affected due to the employment allowance. When it comes to individuals, those earning more will pay more. The top 14% of taxpayers will pay around half the revenue raised. Conversely, at least 6.2 million people earning less than the NIC primary threshold will not pay the levy at all.

Let me once more remind Noble Lords today why this levy is so crucial. As the Prime Minister and the Chancellor have said, this levy will enable the Government to properly fund the NHS, so that it can recover from the pandemic. Senior NHS leaders have made clear that without additional financial support we will not properly be able to address the significant backlog in the health service. To get everyone the care they need will take time and will require additional revenue.

In addition, our social care plan aims to create a dramatically expanded safety net for people in their later life. This means that, instead of individuals having to bear the financial risk of catastrophic care costs themselves, we as a country are deciding to share more of that risk collectively. This is a permanent, new role for the Government and a structural increase in the size of the British state. We therefore need a permanent, new way to pay for it. Noble Lords will be aware that the only alternative would be to borrow indefinitely. That would clearly be the wrong course of action when our national debt is already the highest it has ever been in peacetime. Borrowing ever more today just means higher taxes in the future.

We need to fund our vision for the future of health and social care in this country over the longer term. As the Prime Minister said, with proper funding, we can tackle not just the NHS backlog and expand the social care safety net but afford the nurses' pay rise, invest in the best equipment, prepare for the next pandemic, provide the largest investment ever to upskill social care workers and build the modern, more efficient health service that the public across the UK deserve.

To conclude, this levy will enable the Government to tackle the backlog in the NHS. It will provide a new, permanent way to pay for the Government's reforms to social care, and it will allow the Government to fund our vision for the future of health and social care in this country over the longer term. I beg to move.

3.26 pm

Lord Eatwell (Lab): My Lords, I am grateful to the Minister for his brief introduction to the Bill.

The key promise of what he has described as the permanent new role for the Government, as expressed in the Bill and accompanying documentation, can be described as the introduction of the health and social care levy, which will mean that, between 2019 and 2025, the NHS England budget can increase by 3.9% per year in real terms. That is slightly above the long-run average of 3.6% in UK health spending. However, it is well above the 1.2% per year seen in the Conservative austerity years from 2010 to 2019, in which the share of GDP spent on the NHS fell year after year, leaving the NHS severely weakened when the pandemic struck. However, even this new higher rate of investment in the NHS will be well below the average of 6% per year seen under the Governments of Tony Blair and Gordon Brown.

It is useful to start from the fact that the Bill consists of three semi-independent strands woven together. First, there is the introduction of a new hypothecated tax: the health and social care levy. Secondly, there is the predominant alignment of the base on which the new tax is charged with the present tax base of national insurance contributions. I say "predominant" because the levy is also to be funded by the extension of NICs to those over 65 and by the dividend tax promised in the Budget later this month. Therefore the tax base is potentially malleable: it need not be NICs and it is not entirely NICs even at the beginning. Thirdly, there is the transitional arrangement of raising overall taxation in 2022-23 via the one-year increase in NICs—the transitional year.

To assess the true impact of the Bill it will be helpful to deal with these three strands of the Bill in order, beginning with the first strand: the new hypothecated tax. It is well known that hypothecation is a dirty word in the Treasury. National insurance contributions, for example, are not allocated uniquely to national insurance, and the road tax is not used for the upkeep of roads. Yet here we have a substantial increase in taxation that is, we are assured, pre-allocated to health and social care. Given the historic experience with other fictional hypothecation, it is reasonable to

ask: for how long will this last? It is noticeable that Clause 4 allows the Treasury to use the levy to make different provision for different purposes, not necessarily the purpose described by the noble Lord. The only conclusion can be that this is a grudging and perhaps temporary hypothecation—a temporary uplift in NHS spending sufficient to buy political time as NHS waiting lists reach all-time highs. Can the Minister make it crystal clear: is this hypothecation here to stay or is it a temporary political expedient?

Once introduced, taxes tend to rise, so does the Minister expect an expanded role for this new hypothecated funding of health and social care? Or does the Minister agree with the assessment of the Institute for Fiscal Studies that

"In the short run, the additional revenues may be spent on boosting spending on health and social care. In the longer-run, the hypothecation is an illusion"?

If for now we accept the Government's commitment to hypothecation, what is the rationale for the second strand: basing the levy predominantly on the NICs base rather than any other tax base? It is, after all, obvious that this will solely impact individuals whose income is mainly made up of earnings or profits, as opposed to other forms of income such as property income, pension income or savings.

When the Minister replies, will he explain why the levy does not cover income from buy-to-let properties? Why does the levy target the 17% of pensioners who work, while allowing wealthy pensioners receiving income from other sources to escape scot free? And why does the levy fall on low-paid workers?

Given the evident unfairness, I find the Government's attempts to justify the distributional impact of the levy in the document entitled *Illustrative Analysis of the Impact of "Building Back Better: Our Plan for Health and Social Care"* a disturbing insight into Tory instincts where the NHS is concerned.

It is customary for the Treasury to accompany fiscal changes with an analysis of the distributional consequences of those changes: the impact on the poorest 10%, the next poorest 10%, and each decile up to the wealthiest 10%. Here, for the first time, the Treasury presents the impact of the levy on individual social groups together with what it believes will be the consequential spending on healthcare from which that social group would benefit. In other words, payment of the levy by a given group and the provision of healthcare to that group are linked. It is but a short step from this approach to the idea that payment for healthcare and receipt of healthcare should be linked—a negation of the fundamental character of our NHS, in which funding and the delivery of care have never, before this document, been linked. I hope that when the Minister sums up, he will disown the document.

I turn to the third strand: the impact of the increase in NICs and the dividend tax from their introduction in April next year. The policy paper published by HMRC on 9 September sketches—the appropriate word for something that is very limited—the various impacts that the Government have considered. For example, HMRC refers to the impact on households:

"There may be an impact on family formation, stability or breakdown as individuals, who are currently just about managing financially, will see their disposable income reduce."

This is not the Opposition speaking, it is HMRC. On business, the Government tell us:

"This measure is expected to have a significant impact on over 1.6 million employers who will be required to introduce this change."

On the economy as a whole, HMRC says:

"The measure is anticipated to have a significant macroeconomic impact, with consequences including but not limited to for earnings, inflation and company profits. Behavioural effects are likely to be large, and these will include decisions around whether to incorporate or not, and business decisions around wage bills and recruitment."

That is all rather serious stuff. Will the Minister tell us what steps are being taken to offset the impact on those who HMRC says are just about managing financially and who will see their disposable income reduced? Is he content to serve in a Government who wilfully introduce extra taxation that they acknowledge will hit those who are just about managing while at the same time cutting universal credit? Is he proud to be doing this to those who are suffering in-work poverty?

What of the impact on those 1.6 million employers—many of whom, as HMRC says, may well be reassessing business decisions on wage bills and recruitment? Will the Minister tell us exactly what the Government anticipate will be the scale of the impact on recruitment? Does he agree with the assessment of the Federation of Small Businesses that the levy will result in 50,000 fewer jobs being created? Does he agree with the Institute of Directors, a well-known left-wing organisation, which argues that:

"This is an extraordinary time to be adding additional burden to business and the cost of employing staff"?

Where are we to find the Government's assessment of the impact of these measures on earnings, inflation and company profits? We have been offered none. However, the Institute for Fiscal Studies has again commented that:

"Following a rise in income tax of £8 billion and in corporation tax of £17 billion in the March Budget… the Chancellor has announced a further tax rise of £14 billion… which if delivered will raise the tax burden in the UK to the highest-ever sustained level."

When the economy is struggling to recover from the pandemic, when the furlough scheme has ended, when business support has ended, leaving small and medium-sized companies with debt-laden balance sheets, when output is barely back to pre-pandemic levels and is hampered by serious supply chain problems and fuel shortages, the Government raise the tax burden to the highest-ever sustained level. Does the Minister consider that in this critical recovery period, the introduction of a levy that will have "significant macroeconomic impact" is quite such a good idea?

Finally, we come to the most important question of all: will it work? A fundamental issue must be the division of revenues between the NHS and the social care providers. As has been made clear, spending will be heavily weighted towards the NHS in the first three years, and then perhaps there will be some crumbs for social care. How can the Minister really pretend that

[LORD EATWELL]

this is the plan that the Prime Minister promised two years ago? To quote the Institute for Fiscal Studies once again:

"While the precise path for spending—and hence for the availability and quality of care—is unclear, it is clear that the extra funding will not be sufficient to reverse the cuts in the numbers receiving care seen during the 2010s"—

the great austerity period.

"Thus, while more people will become entitled to financial support as a result of the reforms planned",

as the Minister told us,

"many people with care needs not considered severe enough will continue to miss out."

In fact, the focus of what has been announced is almost entirely on changing who pays for care rather than directly addressing the growing problem that too few people are getting the care they need in the first place.

In his introduction to *Build Back Better: Our Plan for Health and Social Care*, the Prime Minister writes:

"We will bring the health and the social care systems more closely together".

Over the weekend, there have been suggestions in the press that the Government are planning to create a national care service, integrated in some way with the NHS. If this is so, will the Minister tell the House what will be the role of the levy? Will it be raised further for what will be an expensive operation? Will hypothecation be extended?

I am afraid that the Bill is a typical example of ill-thought-through legislation, rushed through Parliament to spare the Prime Minister political embarrassment. If this was a plan ready more than two years ago, why the need for fast-track legislation? The explanation given by the Government is, I am afraid, disingenuous:

"The legislation is required to be in place for the 2022-23 tax year, which starts on 6 April 2022. The increase in National Insurance rates for that year will require changes to be made to the systems of employers and HMRC … it is important for both those employers and HMRC to have as much time as possible to implement the changes."

All this amounts to saying that, even though the Government have announced the policy, with great fanfare, uncertainty about whether it will be put into effect persists, halting action until the relevant legislation is passed. In other words, a Government with a majority of 80 in the House of Commons are uncertain whether they can pass a money Bill. Pull the other one.

The rush was clearly designed to limit the time for proper scrutiny of the Bill and its many implications—scrutiny that your Lordships' House can provide this afternoon. With that proper scrutiny, it will be evident that the provisions in the Bill are ill-thought-through and unfair, and will have potentially serious macroeconomic consequences.

The Deputy Speaker (Lord Haskel) (Lab): My Lords, the noble Baroness, Lady Brinton, is taking part remotely. I invite the noble Baroness to speak.

3.42 pm

Baroness Brinton (LD) [V]: My Lords, I declare my interests as a vice-president of the Local Government Association and a vice-chair of the All-Party Parliamentary Group on Adult Social Care. I also declare that I am disabled as a result of a long-term condition, and that my husband is my unpaid carer.

From these Benches, our focus is to see how this levy Bill will benefit those using social care and those working in it who are trying to provide an essential but frankly invisible service against impossible odds. There is no doubt that they have hoped that this Government will introduce real reforms for the care sector, especially after Ministers' abject failure to protect people in care homes during the pandemic: from the lack of tests and PPE, to lies about a "protective ring" around care homes while people died in horrifying numbers. The way hospital patients were moved into care homes to free up space without being tested for Covid was equally horrifying for patients, their families and the staff in care homes, too.

The current underlying problems in our care sector were there long before the pandemic. We have an iniquitous funding system, with the general public not understanding that they are more than likely to have to pay for their care, and that the so-called "hotel costs" of living in a care home—accommodation and food—will now be separated out.

Ten years ago, the three major parties all came together to support the proposals of Andrew Dilnot's review—but, just before we were going to achieve success, the Conservative Party walked away. Over the succeeding decade, the crisis in the sector has worsened considerably, not least because of the draconian cuts to local councils and other local services, especially to those that are there to help keep people out of homes, to keep their independence and their lives going. The current pricing of beds and the cuts to day services mean that independent living, which really would help keep people out of homes, just is not there. Staff in the care sector, unlike in hospitals, are paid at the minimum wage because, shamefully, as a society we regard social care as unskilled, when those of us who know the sector well see the exact opposite.

Worse, the funding rates for residents are based on most staff being on the minimum wage, making it impossible now for employers to compete with retail, hospitality and agriculture, where employers are charging customers more and are then able to pay their staff more. Worse, these dedicated staff, under this proposal, will be paying an increase in national insurance, which will further reduce their income at the exact time that they are facing cuts to universal credit and increases in the cost of energy, food and many other items. The limits on publicly funded costs and the iniquitous position of privately funded beds now cross-funding those in beds funded by the state must stop—and now. But this means that the real rates need to be paid to reflect that cost.

The paper *Build Back Better: Our Plan for Health and Social Care,* published last month with a foreword by the Prime Minister, is not a plan for health and social care. It is a funding plan for how people pay for their care and for the NHS, and for what element is paid for by the state. The Minister has set out the structure for paying the costs of those who will need support beyond the proposed cap, but not, as many think, for extra front-line funding for our care homes.

Even worse, the public do not understand that this cap excludes all of the so-called "hotel costs", regardless of the resident's length of stay. That means that those who believe this Conservative Government's words that they will no longer have to sell their home might find themselves, if they are asset-rich and pension-poor, likely to have to sell their home anyway for a large portion of their weekly care costs. This sleight of hand is breath-taking.

The extra funding referred to by the Minister in the paper for the next three years is first and foremost for the NHS, which is likely to have to absorb the 3% pay rise that the Government have graciously given it, as well as deal with the backlog from the pandemic. Once again, the Government are blunt: social care will get whatever sits behind and is left from that NHS spend. Already, many in the care sector are concerned that there will be nothing left for social care, so I really hope that the Minister will be able to say what funding from the £12 billion announced in the paper is guaranteed for the social care sector. Will any extra be provided if the NHS needs it all?

I echo concerns about what was said in newspapers over the weekend. There were leaks from the Government that local authorities might well be required to fund support for social care increases via council tax increases of 5% per annum for three years. That is another deeply regressive tax that puts a very specific burden on the lowest paid in our society. I echo concerns about the rumours outlined by the noble Lord, Lord Eatwell, about integrated health and care services in the future. Is this not all totally upside-down and back-to-front? Surely the principles of reform should be announced first, before a funding mechanism is agreed by Parliament. Despite the fact that the Commons is already looking at the Health and Care Bill for integrated care structures, the Prime Minister's proposals for reform of the social care sector remain stubbornly in his mind and behind the closed doors of No. 10. There needs to be honesty about the direction; reforms must be long-term and total. They are missing at the moment, and this is a key element.

How will the delivery of social care itself be reformed and do we know that the funds sought through the levy will be adequate for it? From these Benches, we were clear in our 2019 manifesto that we would raise additional revenue that would be ring-fenced to be spent only on NHS and social care services through income tax. This would be generated from a 1p rise in the basic, higher and additional rates of income tax. We would use this cash to relieve the crisis in social care and urgent workforce issues and to invest in the mental health and prevention services that I outlined earlier. This frankly represents an efficient and effective way of spending these extra resources and ensuring that they will have the greatest impact on the quality of care that people receive.

We from these Benches have been calling on the Government not to delay any longer and to engage urgently in cross-party talks on the wider future of social care. If the Prime Minister has not yet announced his reforms to social care but keeps saying that he is prepared to talk to other parties, why are we not talking now? Perhaps the Minister could remind him.

Two years ago, Boris Johnson pledged from the steps of No. 10 that he would fix the crisis in social care once and for all, as a top priority. But with social care services in crisis, it is time that he sets out how he plans to do it. Instead, people are selling their homes to pay for care and more than 1.5 million people are missing out on the care they need. More and more people are stranded in hospital, unable to leave because the follow-up care just does not exist, and the staffing crisis in the sector worsens daily. This is putting an increased strain on the NHS, which does not have the cash to cope.

The cost of inaction and delay is falling on the shoulders of the over 11 million unpaid carers in the UK, whose contribution to the current social care system is almost completely ignored. The cost of reform to the Government might seem large, but it is a fraction of the true cost to families across the country. Carers UK estimates that unpaid carers already save the Treasury £193 billion a year. Any discussions of funding for social care services need to include discussions on fair pay and support for hard-working carers employed in the sector. This pandemic has reminded everyone that caring for people's health does not stop at the hospital exit or the GP's surgery door. We can improve the NHS only if we properly support carers, whether unpaid family carers or dedicated staff working in homes and in patients' homes.

This Bill does not build back better; it is a building block to start the funding mechanism, but one that uses national insurance, disproportionately affecting those on low incomes, including, critically, those working in the sector. Perhaps that is this Government's secret plan. After all, the Secretary of State for Health and Social Care told the Conservative conference last week that we did not need the care sector, as families should just look after their own. Of all the comments from Ministers over recent weeks, that was the most chilling. I hope the Minister can reassure us that the Government believe in, and support, our hard-pressed social care sector and recognise the real need for reform beyond the financial levy. From these Benches, we remain prepared to help.

3.52 pm

Lord Forsyth of Drumlean (Con): My Lords, it is a pleasure to follow the noble Baroness, who speaks with such authority on this subject. I very much welcome the Prime Minister's determination to fix social care. However, this Bill does not do that. It is a bit like going into a restaurant and being presented with a bill for the meal before you have even seen the menu. I have to say to my noble friend the Minister, whom I admire enormously, that to speak for less than five minutes on a Bill of this importance to the economy and to millions of families—a Bill which has been rushed through for reasons that I still do not quite understand—says something about the relationship between government, the Executive and Parliament itself.

The Bill certainly will not fix social care but it will massively increase the regressive nature of the taxation system, because, as has been made clear, it will place the burden on those who have least, not those who have most. Way back in 2006, when we were in opposition, George Osborne and David Cameron asked me to

[Lord Forsyth of Drumlean]
spend a year of my life with some very able people of all political persuasions to produce a tax reform document. One of the recommendations was to look at merging national insurance with income tax. This is an absolute missed opportunity for those of us who believe we need a simpler, fairer, flatter tax system in our country.

I have a number of questions on the tax aspect. What measures will be in place to prevent people getting round these national insurance increases? I can see even now—well, I cannot actually see it, but I can imagine it—people in the City thinking, "Those bonuses we were going to pay in April, perhaps we had better pay them in March." How will we avoid the loss of expected revenue? Will measures be brought forward to avoid forestalling?

I will concentrate on social care. The Economic Affairs Committee, which I chair, produced a report more than two years ago called *Social Care Funding: Time to End a National Scandal*. We set out a series of arguments. Since then, we have had a number of debates in this House on this subject. There has been unanimity across the House on the need to deal with this urgently. Since then, and in the run-up to the publication of that report, demand for social care has grown and grown—and not just among the elderly. One of the really frustrating things about this debate is that everyone seems to focus on the elderly. We are told that it is not fair that young people have to pay for the needs of the elderly, yet half the budget goes on people of working age; the demand from that group is growing as well.

Our report set out a number of questions for the Government. I am very pleased that my noble friend Lord Bethell will speak later in this debate. At each and every debate, he has said that the Government will produce a White Paper but that they want to follow the recommendations of the Economic Affairs Committee and find a solution on an all-party basis, so that it is permanent and so we can move forward. This is certainly not an all-party solution. In case people think I have gone native, I also think it is a bit rich for the Opposition to keep criticising what the Government are doing, without putting forward their own proposals on social care.

In this context of increasing demand, our committee reckoned that it was necessary to spend £8 billion on social care just to get back to the standards of care that existed in 2010. This Bill aims to raise £12 billion, but that will not touch the sides of the problems which face the social care industry and the people who depend on it.

My right honourable friend the Chancellor said that it was a moral duty to ensure that the costs of this were met by an increase in taxation and not by borrowing. Personally, I think we need to think about how as a nation we can generate the wealth to meet our obligations to the elderly. If we are going to talk about moral duties, it is certainly a moral duty to ensure that there is a safety net below which those vulnerable people will not fall. And they are falling.

This Bill, and the Government's proposals set out in that document, do nothing to address immediate needs. As the noble Lord, Lord Eatwell, said, it is not clear how much of the £12 billion will actually go to social care. Last time we had an emergency payment for the National Health Service, it was £20 billion, and it disappeared into the health service. How much of it went to social care? Almost nothing. The entire cost of social care then was £20 billion. Some people refer to social care as the Cinderella service, but in this case, Cinderella never gets near to going to the ball. That is true of these proposals.

We are told that this will happen in 2023 and we are told that the Dilnot report is the answer. When our committee looked at Dilnot, we were concerned. If you have a cap on spending, the level at which the cap is set is very important, and £86,000 is quite high. Most people will, sadly, spend only three years in nursing care, so you would have to go pretty hard to spend £86,000. Does it apply then only to those who might spend a long period in nursing care? That is okay, but how will the £86,000 cap be calculated? Will we have an army of bureaucrats going through every invoice and every type of care provided in the course of a lifetime? No. I suspect—and the Government's own publication hints at this—that it will be calculated on the basis of what the local authorities would have paid. But we know, and our report pointed out, that the local authorities' rates are being subsidised by self-funders, who are sometimes charged as much as 40% more than the going rate for the local authorities. That is not to blame the local authorities; they do not have the money, so they try to squeeze.

What is the solution put forward for this? It is that everyone, even if they are a self-funder, can have their place found by the local authorities. That will not provide the revenue for the people who run the nursing homes. As a result, the nursing homes are going to disappear. Indeed, it is already happening that they favour self-funders because of the differential.

When we started our report on social care, I was attracted to the idea of a cap because the insurers would then be able to come in behind it. It will not work, however, because of the size of the cap and because, on the whole, people will not buy insurance for something they think will not happen to them. It is hard enough to get them to invest in pensions, when they know—or hope—that they are going to get old. They do not hope that they will require care in a nursing home or elsewhere.

The most chilling thing of all—because none of this money will be allocated to social care in the short term—is that it will all be left to local government. Over the weekend we heard the hints that the noble Lord, Lord Eatwell, mentioned: that local government will need to pick up the strain here. It does not have the money. If it goes on the council tax, that will be even more regressive and damaging and will introduce a postcode lottery for care. The sad thing is that some of the local authorities with the broadest tax base have the least demand, and those with the narrowest tax base have the most demand. There would therefore be inequality. Building up? This is building down. A postcode lottery would be the consequence.

What will the Government do to fulfil the Prime Minister's promise to fix social care? I have been watching the Brown-Blair films, and there is a bit

where Gordon Brown is alleged to have said to Tony Blair: "You have stolen my"—expletive deleted—"Budget". I have a feeling that the Chancellor's Budget has been stolen a bit here, because we have a commitment in this respect, but where are we on local authority funding? If we are really to fix social care, I assume that the Chancellor will make a very generous settlement to local authorities in order for them to provide the means they need to deal with this problem now. I hear someone saying it is unlikely—have faith.

If the Government really want to fix social care and are committed to the Dilnot solution, why on earth are they not doing it now? The legislation that provided for Dilnot was passed in the Care Act 2014—seven years ago. It is there on the statute book; they could do it now. What we are seeing here is a bit of: "I need money for the health service and I need money for social care. Let's think of a number that's not quite big enough, and we'll say that we'll do it first for the health service and then social care will get it." If you believe that, you will believe anything, because the truth is that the National Health Service needs that £12 billion and, three years on, the money will not be available—just like the £20 billion put in before, as I mentioned.

I have a question for my noble friend: is domiciled property to be included in the means test for domiciliary care? At the moment it is not. If it is, it will create a huge incentive for people to go into nursing homes and a real unfairness for people who wish to be cared for in their own homes.

I did a few calculations, in case my noble friend thinks I was being unfair about the regression. If you are an average worker on an average wage and are paying the basic rate of income tax at 20%, and you work that little extra to create that extra £1 of value, 20% of that disappears in income tax, 13.25% disappears in national insurance and your employer has to give up 15.05%. In other words, 48.3% of every £1 disappears—and we wonder why our productivity is low when those are the incentives. I do not believe that national insurance was the right tax to use to achieve the purpose that the Government intend.

Of course, it is too late to say that now. We cannot change it in this House; we have to leave it to the House of Commons. A decision has been taken, but it is for the Government to fulfil the Prime Minister's promise to fix social care and that means looking at the resources provided to local authorities, which have been absolutely heroic. My bins get emptied once a month now. Almost every service has been cut to the bone in order to try to help those people needing care. We look forward to the Budget at the end of the month and the fulfilment of the promises that have been made.

4.06 pm

The Lord Bishop of Carlisle: My Lords, it is a privilege and a little daunting to follow the noble Lord, Lord Forsyth. I should declare an interest in this debate, given that I share with my brother in caring for our 93 year-old father who has dementia. He lives with each of us for six months at a time.

To be positive for a moment, I should also say how grateful I am that the ongoing nettle of funding social care is being grasped, at least tentatively, by this proposed levy when, for so many years, it has been studiously avoided or ignored. Nor would I wish to quibble with the obvious benefit of this proposal for our hard-pressed NHS, resolving as it will at least some of the backlog of diagnosis and treatment that has built up during the pandemic. Despite the hesitations already expressed about Sir Andrew Dilnot's proposals, I am glad of signs that some of them—now 10 years old—are being partially implemented. I am also delighted that the question of integration between health and social care is, at least on the surface, being taken seriously at last.

But—and it is quite a significant but—there are several problems with this proposal, in addition to those which have already been raised, which demand our attention. First, we have already referred to the relatively small amount of money raised over the next few years that will actually go into social care when the whole social care system is already on its knees and in danger of breakdown.

Secondly, even after two years, there are real questions about whether the funding allocated will be enough and, indeed, as the noble Lord, Lord Eatwell, has indicated, whether this hypothecation will actually last.

Thirdly, little attention has been given as yet to workforce planning, which goes hand in hand with the developing integration of health and social care and is so crucial for the future. We are promised more of this in the forthcoming White Paper, to which I look forward and which will, I hope, also address issues such as the value and status of paid carers, many of whom will in the near future find themselves even worse off than they already are due to a combination of the levy, the removal of the universal credit uplift and the rising cost of energy and other goods, as mentioned by the noble Baroness, Lady Brinton.

Fourthly, the massive contribution of unpaid carers—really massive—is not yet properly recognised. We need further proposals for funding carers' breaks; for increasing the carer's allowance; and for honouring the Government's manifesto pledge on leave from the workplace. However, I am pleased to know that unpaid carers will be consulted about the White Paper and blueprint for adult social care which we all await with some eagerness.

The fifth point is that people of working age with complex disabilities currently account for about half the total spend on social care, as mentioned by the noble Lord, Lord Forsyth. I hope that they will also be consulted to ensure that any reforms in future meet their needs. Sixthly, while welcoming the money that will be aimed at hospital discharge and rehabilitation—about £500 million—I wonder whether this relatively small sum will be enough for the sort of preventive measures that could make such a huge difference to the current demand for social care.

Finally, whatever the amount raised by the levy and however it is ultimately distributed, the biggest question of all—this has been raised by the noble Baroness, Lady Brinton, and so graphically by the noble Lord, Lord Forsyth—relates to the quality and nature of the care on which this money will be spent. We on these Benches were unsuccessful in proposing a cross-party Select Committee to consider that issue, so instead we

[The Lord Bishop of Carlisle]
have established a commission that has been tasked with reimagining social care in this country. We look forward to sharing our findings in due course with both Her Majesty's Government and Members of your Lordships' House.

4.11 pm

Lord Macpherson of Earl's Court (CB): My Lords, I draw attention to my declaration of interests in the register, including the ownership of a flat that I rent out.

I have long been in favour of a health and social care levy and, unlike most former Treasury officials, I am in favour of the hypothecation set out in the Bill. It was clear long before we knew about Covid-19 that the country would need to spend more on the national health service and social care. Demographic pressures have been building for some time and are set to increase further over the next three decades. The events of the last year have confirmed that care home provision is simply not good enough. It is a mark of a civilised society how a country treats those in need of the greatest care.

It has also been clear for some time that the Government have lost the will to find offsetting spending savings to pay for demands on our health and social care system, so taxes have to rise. I have no great problem with that. With gilt yields rising, debt interest promises to be the fastest-growing programme in the spending review. Better to finance current spending out of revenue than through borrowing. So I congratulate the Treasury and the Minister on achieving something all too rare: persuading an oversensitive No. 10 to accept a tax rise that breaks a manifesto commitment. This is not a forced tax rise of the sort that followed crises in 1976, 1992 and 2009 but a discretionary one. The Government are choosing to spend more, so they are taxing more.

I am tempted to leave it at that, but I feel duty-bound to take issue with three aspects of the tax. First, there is the issue of fairness. It is a principle of sound taxation that the tax base should be as wide as possible to keep rates as low as possible. Here I fear the Treasury has missed a trick. The health and social care levy should be paid by everyone, old as well as young, and should be payable on all income.

I welcome the Chancellor bringing dividend income into the levy's coverage, but I am puzzled that rental income is exempt. The fact is that rental income has its own income tax schedule, Schedule A, so it would be easy enough to ensure that such income bore a higher rate of income tax. Indeed, for much of income tax's 220-year existence, unearned income incurred a higher tax rate than earned income. That has been turned on its head over the past 40 years as Governments have chosen to channel tax increases through national insurance and tax cuts through income tax. However, the issue of rental income is a matter not just of fairness but of economic efficiency. Housing already receives substantial privileges, which further entrenches the bias in favour of property investment over equity investment. Rentiers generally do not need additional privileges—they have enough already.

I am also concerned that the levy further increases the differential in tax between employees and the self-employed. However, having spent 30 years of my life trying to persuade politicians to close this gap, only to see the noble Lord, Lord Hammond of Runnymede, try and fail the year after I left the Treasury, I am sufficiently realistic to accept that there is a zero chance of correcting this anomaly.

My second concern is that Government have decided to apply the levy to employers by increasing the rate of national insurance that they pay. This is sleight of hand, as the incidence of the tax and its economic effect is the same whether it is borne by employees or employers. It would have been much more transparent to introduce a levy of 2.5% payable only by individuals. I fully understand that taxing employers is easier politically—they do not have many votes—but, as always with tax, there is no free lunch. Employers' national insurance is a tax on jobs. Tax more employment and you get less of it. That is why Margaret Thatcher abolished the national insurance surcharge in the 1980s.

I recognise that this Government have a rather different attitude towards business. The Chancellor has announced over £40 billion of tax increases this year. Nearly two-thirds of these will be borne by business in the form of high corporation tax and national insurance. That may be good politics, but at a time when Brexit has made it more important than ever that the UK is business-friendly, it is almost certainly bad economics. That, in turn, makes me wonder whether the Government will succeed in making the tax increase stick. Over the past 50 years, there has been many a radical tax change. Tax rates have swung wildly, new taxes have been created and old taxes abolished, but throughout this period, the tax take has remained stubbornly stable. No Chancellor has managed to get tax receipts above 34.1% of national income. Many Chancellors have forecast a rising tax take, only to be disappointed. This Bill envisages a tax take not seen since the days of Sir Stafford Cripps. I am sceptical it will deliver it.

My final point relates to where the money will be spent. I can see the case for capping the care costs individuals pay, but I agree with the noble Lord, Lord Forsyth, that it likely to have many unintended consequences. The social care cap is a simple income transfer from those who pay the levy to those who benefit from the cap. Of itself, it does nothing to increase the capacity of the social care sector. Given the travails of the past 18 months, that should surely be the priority at the current time. It would be tempting to rely on increased funding for local authorities, but, again like the noble Lord, Lord Forsyth, I fear that will not be forthcoming. It is not a protected programme, and recent Governments, since 2010, have chosen to squeeze local authorities over and over again. So, as well as looking forward to the increase in the social care levy, we will be looking forward to many an increase in council tax.

To conclude: I support this Bill, but the design of the levy has flaws. I hope that once the levy is in place, the Government will seek to address some of its faults.

4.18 pm

Lord Hunt of Kings Heath (Lab): My Lords, for decades, social care has proved to be an intractable problem. After numerous reviews and failed reforms, the level of unmet need rises, the pressure on unpaid carers grows, the supply of care providers diminishes and the strain on the undervalued care workforce ever increases. So, it is welcome that at last we have a proposal before us and, as the noble Lord, Lord Macpherson, has said, a recognition that taxes will have to rise to pay for it.

The problem is that these are the wrong proposals. What the Minister has brought to us today, is essentially a tax increase on younger and low-paid workers so the wealthy can retain more of the value of their properties to pass on to their children. As we have heard, it is a tax on employment that will hit businesses. It will not, as yet, solve the underlying pressures in social care.

What a flimsy Bill it is. It is treated—remarkably—as emergency legislation, despite the fact that the Government have had 11 years to bring forward proposals to Parliament. There have been no cross-party talks about this and no consultation, and no Select Committee was allowed to scrutinise the Bill before it was brought before Parliament. Clause 4, as my noble friend Lord Eatwell said, is remarkable in the power it gives to the Treasury to make any change it seems to want to in relation to the proposals before us. If this Bill were to receive proper parliamentary scrutiny, it would be torn to bits. No wonder the Minister spoke for less than five minutes.

My noble friend Lord Eatwell has already referred to the remarkable commentary from HMRC on this tax rise. I will repeat one comment that he made. HMRC said:

"There may be an impact on family formation, stability or breakdown as individuals, who are currently just about managing financially, will see their disposable income reduce."

As my noble friend said, how can the Minister justify that? What does he say to the CBI, which commented that a national insurance increase

"will directly hurt a business's ability to hire staff, at a time when businesses have faced a torrid 18 months and are now fighting crippling labour shortages"?

Indeed, having listened to the Prime Minister and Ministers last week, I might ask whether the Government have any interest at all in the future health of our business sector. It seems not.

Unfair as it is, will this levy be sufficient? In his opening remarks the Minister remarkably claimed, without any evidence whatever, that this will put social care on a long-term sustainable footing. But we have already heard that the levy is projected to raise £36 billion over the next three years, that all the money raised in 2022 will go to the NHS and that for the remaining two years £5.4 billion will be invested in social care. This money is not designed to alleviate existing funding pressures on the system, yet these are immense. The committee chaired by the noble Lord, Lord Forsyth, published an excellent report which estimated that an £8 billion yearly increase would be needed to restore care provision to 2010 levels—he has already referred to that. But the £5.4 billion, one assumes, is to be allocated primarily to implementing the cap.

The Health Foundation, following up on the Select Committee report, set out at the beginning of this month what it may cost the Government to fund the NHS and social care system in England, along with workforce requirements, over the next 10 years. It looked at two projections, stabilisation and recovery, and stated that both of them would need much higher growth than in recent years. It said that

"an additional £8.9bn and £14.4bn is needed in 2030/31 over 2019/20 for the stabilisation and recovery scenarios respectively."

Does the Minister really think that the levy is the answer to that, when most commentators reckon that, in the end, the NHS is going to need almost all of the levy and is likely to get it?

The claim that no one will be forced to sell their own home is surely questionable. My estimate is that on average a person will have to spend at least £160,000 before they get to the £86,000 cap. This takes account of a modest calculation of living costs at about £12,000 per annum, and the fact that the £86,000 cap, as the noble Lord, Lord Forsyth, who is surely right, said, will be calculated on local authority rates—despite the fact that the self-funders subsidise those local authority rates. Even when a person reaches the cap, they will still have to find living costs on an annual basis, and it is quite likely that the local authority will still pay only at the local authority rate, so many people will have to pay top-ups as well. Melissa Lawford in the *Sunday Telegraph* put the estimate much higher. She thought a self-funder would receive government support only after five years, having spent £296,000. The puzzle to me is that no effort at all has been made to encourage and incentivise the insurance market to provide a more effective way of support for self-funders.

The ABI, in a commentary it set out over the weekend, said that the cap should be viewed as a solution to avoid catastrophic care costs and not as a way to enable a private market to develop. A cap, in itself, would not prompt a market to develop. Why on earth are the Government not seeking to incentivise a private market to develop to help self-funders, allowing the Government to concentrate on the proper provision of social care for those who cannot afford to pay above any insurance prospect?

Why have the Government spent so long dithering about implementing Dilnot when they should have been thinking about a much more concerted approach to dealing with these issues, to encourage as many people as possible to support themselves while shoring up the pitiful state of our social care system at the moment? There is no plan. We are promised a White Paper in December. Does any noble Lord think that this is going to be well thought through in a way that will deliver a good social care system for us going forward?

What about carers? The right reverend Prelate asked what this would mean for carers. I would just say to him, as Carers UK has said, that carers have been propping up a chronically underfunded healthcare system at huge cost to their own personal health, finances and ability to stay in work. It is very telling that nothing, in all the claims the Government have made, has been said about how carers will be helped.

[Lord Hunt of Kings Heath]

Paul Johnson of the IFS recently described our social care system as the unfinished business of the National Assistance Act 1948. It enshrined, he said, a Poor Law philosophy of both needs-tested and then means-tested moving into the social care system, to be run in parallel with the free at point of use NHS.

This Bill is not the answer to that. It will not transform social care; it will not help care workers get the pay, terms and conditions they deserve; it will not help unpaid family carers. Instead, we have a huge, missed opportunity and a tax on the youngest and lowest-paid workers for the benefit of the better off. This Bill will not do.

4.27 pm

Baroness Tyler of Enfield (LD): My Lords, I declare an interest as a close family member is a long-term care home resident. Before turning to the specifics of the Bill, I will make a few general points about reform of social care, as others have done.

First, as well as looking at how the money is raised to provide a cap on social care costs and a more generous means test—as we are today—we must consider how we can best shore up a fragile and highly fragmented sector reeling from the impact of the pandemic, increased costs and low occupancy rates, with some care homes becoming increasingly financially unviable. Immediate funding is needed to improve the quality of care and introduce minimum standards for care homes.

Secondly, we urgently need a new deal for the care workforce, with action on pay, training development, career progression, professionalisation and recognition. In my view, care staff, who have given so much during the pandemic, deserve to be paid well above the minimum wage. Thirdly, and as the noble Lord, Lord Forsyth, pointed out, half the adult social care budget is spent on working-age adults—often people with learning disabilities—many of whom do not own their own home. So framing this whole social care debate in terms of trying to prevent older people having to sell their homes is only one part of a much bigger picture. Finally, the social care sector is complex and little understood, with both large and small providers providing both domiciliary care and care in care homes—something I hope I can expand on when we have our debate on Thursday.

The Bill takes forward the Government's decision to introduce a new tax to pay for social care, beginning as a 1.25% rise in national insurance from next year and then becoming a separate tax on earned income from 2023—the levy. It is estimated to raise £12 billion per year.

As others have already said, raising this money primarily from national insurance is regressive, falling disproportionately on the young and low-paid. While I welcome the fact that the levy will be payable on dividends and pension earnings, which is a step forward, there is no getting away from the fact that this tax will impact hardest the lowest earners and youngest, as the noble Lord, Lord Hunt, said, as well as hammering small businesses. The threshold for paying national insurance contributions is lower than the income allowance threshold, so a worker has to earn only £9,560 to start paying NI contributions, as opposed to £12,570 for income tax. The rate paid on national insurance falls as earnings increase, in contrast to the more progressive structure of income tax.

As well as its regressive nature, national insurance is levied only on earnings and not on unearned income, so those in work contribute more. In addition, increasing national insurance increases the tax gap between employees and the self-employed, and the gap between the tax that people pay on their employment income and the tax that they pay on income from renting out property. Those last two points were compellingly covered by the noble Lord, Lord Macpherson.

None of this feels fair to me. As Paul Johnson, director of the Institute for Fiscal Studies—much quoted already in this debate; I hope he is listening—has said previously:

> "Funding social care just from national insurance would be very inequitable."

He pointed out that the levy on employee earnings and employer wage costs, despite applying to working pensioners and running alongside an increase in tax rate dividend—we do not know what that will be yet—remains

> "a tax which will be overwhelmingly borne by workers with very little coming from pensioners."

That is a serious concern.

We already know that the vast majority of the money raised will go to the NHS, including £5 billion for healthcare in the devolved nations, to increase capacity and help with the backlog of treatments built up over the pandemic. Of course that is much needed, but it leaves only £5.3 billion to be allocated to social care, and the bulk of that—£2.5 billion—will fund the cap on lifetime care costs. Ultimately that leaves, by my calculation, some £2.8 billion over three years for social care reform, which is so much lower than many respected commentators, such as the Health Foundation, have said is needed. Indeed, a total reform package which included investment to improve access to social care, paid workers decent wages and enabled providers to deliver higher-quality care is estimated by the Health Foundation to cost about £12 billion, as the noble Lord, Lord Hunt, said. That sounds a lot but, to put it in perspective, it represents about a month's NHS funding or 0.6% of GDP.

Now that the Government have finally published their proposals for social care, it is time to start the long-overdue cross-party talks that have been promised for years to bring on a proper, long-term, sustainable solution that ensures that everyone gets the quality care they need, which this short-term fix clearly does not. For me, nothing should be off the table in those long-term cross-party talks; they should certainly include looking at other sources of income and wealth. It seems illogical that income from property rental is excluded, so we end up with a situation whereby a relatively low-paid pensioner earning a little extra to help make ends meet will end up paying national insurance, whereas a property owner receiving a good income from rent will pay nothing, a point made by the noble Lord, Lord Eatwell. To throw in another idea, how about taxing the IT giants in the digital

economy—the Facebooks and Googles of this world—so that they can start making a proper contribution to health and social care?

I have long believed that we should look for a long-term solution through the prism of intergenerational fairness, in which all generations contribute but no one generation is impacted unfairly. That will be vital to ensure greater buy-in across the generations. Although it may be a bit out of fashion, I have always sympathised with the recommendation of the Barker commission back in 2014 that the over-40s pay an additional national insurance contribution earmarked for adult social care. However, proper cross-party talks involving a wide range of stakeholders are far more likely to come up with a long-term funding solution that sticks, rather than being a political minefield in every general election.

This is a deeply flawed Bill which fails to set out a plan to fix the crisis in social care or improve pay and conditions for social care workers. Only a small proportion of the money raised will go to social care over the next three years, and even that is not guaranteed. It is deeply concerning that there is no commitment that Parliament will get a vote on the social care plan when it is finally published before spending the money it raises.

I end by asking the Minister to explain more convincingly than I have heard so far why the Bill was brought forward before details of the Government's social care reform plans for England have been published—which is very much the wrong way round, as many other noble Lords have said. Can he also clarify whether the cap on lifetime costs will be available only for those starting care from 2023—that is, it will not apply to those already in the system? If that is the case, it strikes me as very unfair.

4.36 pm

Lord Lansley (Con): My Lords, I am very pleased to follow the noble Baroness; I agree with her on one or two items I will come to in a minute. She had some ideas about how these revenues might be otherwise achieved. I will not offer my own ideas, but there is a question here; I wondered whether the noble Lord, Lord Macpherson of Earl's Court, might have said this. It seems very misplaced to have a fiscal effect of this scale in September when the Chancellor should be on his feet in late October with what ought to be the fiscal event that gives us the OBR's judgments, which enables us to see the whole panoply of revenue and expenditure, and I am surprised that it was done this way. It is obviously done for political reasons; it has enabled the Treasury to distance itself somewhat from the decision that led to this. I am grateful to my noble friend on the Front Bench for introducing the Bill in this way. He set out the Treasury's arguments in favour of the Bill; it was therefore necessarily a short speech.

The noble Lord, Lord Eatwell, is not in his place at the moment but I was surprised that he did not refer to Gordon Brown's hypothecation of a national insurance increase to the NHS. As a subsequent Secretary of State, I can say that this was important only in so far as it made the accounting for the NHS in the departmental accounts more complicated. It had no impact whatever on the decisions made about revenue and expenditure in the Department of Health, as it then was. This will not have an impact either. The NHS will continue to be funded out of general taxation, and the only impact of this increase is that it further reinforces the misplaced belief on the part of the general public that the NHS is funded out of national insurance contributions and it is therefore a contributory tax. It is not like that, has not been like that and will not be like that. The noble Lord, Lord Eatwell, made a point about whether people think that they have access to the NHS because they pay for it. They have free access to the NHS because they pay for it through general taxation, not because they pay for it through national insurance contributions, and the extent of their national insurance contributions has no impact, and should have no impact, on their access to the NHS.

I have two problems with using national insurance contributions in this way for the National Health Service. The first is that it is a tax on jobs. This is happening in the week after the Prime Minister has told the business community that it is going to have to pay higher wages, so it may well say, "If we have to pay higher wages, you might not impose on us additional costs of employing people", which is exactly the point that the noble Lord, Lord Macpherson, made. There is a gap at the moment between the cost of employing people in this country and the cost of employing people in, for example, continental Europe. However, we cannot be complacent about that, because there is a different gap and a cheaper cost of employing people in many of our other competitor countries. We have to be very aware of the risks associated with continuously increasing the cost of employment.

All that said, increasing national insurance is an inappropriate way of funding social care. Like my noble friend Lord Forsyth of Drumlean, I welcome the fact that the Government are addressing the funding of social care. They have done so in the past, through one or two mechanisms, but at no stage have we seen the increases in resources for social care keep pace with the rising cost. That is where we need to be. The NHS, as I know perfectly well from past experience, needs, broadly speaking, a 4% per annum increase in real terms to keep pace with demand. Social care is getting nothing like that, but the increase in demand for social care is very like that for the NHS.

More of these resources should go to social care than the Government intend—not all of them, but perhaps one-third over the next three years—and that should start now. If you ask people in the NHS whether funding for social care and funding for the NHS are separate, they of course understand the essential link between them. Funding social care now, so that we can remedy some of the lack of access to local authority-funded social care and enable people who have substantial, not just critical, care needs to get access to social care, will do a great deal to reduce the crisis in demand for the NHS.

This is particularly true of accident and emergency units, which are often presented with older, frailer people with comorbidities—incredibly difficult patients with whom to work. The NHS does not want to discharge such patients to their homes with comorbidities

[Lord Lansley]
and unresolved issues, so the cost to the NHS is very high. But such patients can be managed through the social care system and in primary care—we just need to make sure that they have fewer crises that have not been anticipated and dealt with.

Speaking as the Secretary of State who asked Andrew Dilnot to form his commission and prepare his report, I note that it is now over 10 years since it was presented. We legislated for it in 2014. It is available and it could be implemented now, but in my view it should not be paid for out of the national insurance increase. I proposed, more or less 10 years ago, that it should be paid for by removing the exemption for people's principal private residence from the means test for domiciliary care. My noble friend Lord Forsyth of Drumlean asked this question. Now, it would, I think, raise something like £1.3 billion a year. If, in addition, higher-rate taxpayers who are pensioners were not to receive the winter fuel allowance, we would have about the amount of money necessary to pay for the cap on care costs and the changes to the means test.

That is how it should be paid for—within the system, essentially by those who will benefit from it, because they have the underlying resources to do so, not least in the properties that they own. So let us not go down the path of unfortunate intergenerational impacts, particularly for younger people, of putting this on to national insurance contributions.

My final point is that a White Paper on social care and healthcare is coming. We already have the Health and Care Bill. The integrated care in that Bill is not integrated care between health and social care. When we talk about integrating health and social care, what we need is not institutional integration but integration around the care user and patient themselves. That is the only integration that will really work: integration around the person themselves. Whether it is done by personalised care or self-directed care, it needs to be supported by pooled budgets and joint commissioning. Fundamentally, it is about giving patients and care users themselves, and their families, much greater control over the nature of the services provided to them by the NHS and social care. I hope that is what we shall see in the autumn.

4.44 pm

Lord Lipsey (Lab): My Lords, if we did not have a national insurance contribution system, no one would even think of inventing it. This debate has been a succession of hammer blows to the structure of national insurance, which is not paid on unearned income such as rent, is paid at a higher rate by the poor than by the rich, and is not paid by the elderly, who in this case will be the main beneficiaries. It is a nonsense tax, which makes it odd that even this Government should choose it as their preferred way of funding increased spending on health and social care.

This afternoon, I will not go into the social care elements. The cap introduced by the Government is nonsense, but we will debate that on Thursday. I will focus merely on this choice of method. Paul Johnson, the director of the Institute for Fiscal Studies—the Johnson who never lies—has said:

> "Funding social care just from national insurance would be very inequitable. It would be a continuation of a long-term policy of hitting those of working age while protecting pensioners".

The Government know this and go to unbelievable lengths in their attempts to deny the clear facts. Boris Johnson said:

> "The top 20% of households by income will pay 40 times what the poorest 20% pay".—[*Official Report*, Commons, 8/9/21; col. 296.]

Yes, but that is because the poorest 20% pay virtually nothing because they do not earn the basic minimum for this.

Then there is the Treasury's document, published with this, called *Illustrative Analysis of the Impact of "Building Back Better: Our Plan for Health and Social Care" on Households*. In general, I am that rare creature: a supporter of the Treasury—much more so than the ex-Permanent Secretary has shown your Lordships that he is this afternoon. But let me put it as mildly as I can: this document will not go down in the history of the Treasury as one of its finest bits of work. It puts together two completely unrelated bits of government spending—the bit on health and the bit on social care—and calls them "a package". Of course, money spent on the NHS is reasonably progressive, because a great deal of it goes to poorer people, but money spent subsidising social care mostly goes to the better off. The cap will almost entirely benefit the better off, since half the population are paid for by the state anyway. It will not do to put these two things together.

Anyway, until we get this White Paper—if we ever do get it—we do not know what the Government are actually proposing. This is not just a matter of making a few broad statements that sound good on the telly interview. There is a great deal of detail on all this, and we do not know anything about that detail. There are some pretty weird assumptions in that Treasury paper. If you look down at the footnotes—the sort of thing that only I am geekish enough to do—you will see that the benefit calculation is done without including residential care. What is this whole business about? It is about people in residential care who run out of money, and yet that is excluded from the Government's analysis. You could not make it up.

I referred favourably to Mr Johnson earlier on. It would be a favourable contribution to public debate if the IFS was to produce a more detailed and objective expert analysis which is not shaped by the instructions of Ministers to deny what clearly is the truth.

Finally, I want to say something about the Government's procedure on this Bill. It is now more than 20 years—who would believe it—since the Royal Commission on Long-Term Care of the Elderly reported. I signed a minority report. It is a decade since the Dilnot report, which was legislated for by the Government, although the legislation was never brought into effect. Apart from those reports, there has been a non-stop flow of learned and wise contributions on the subject—well, some of them were wise.

Nearly two years ago, Boris said that it was a done deal:

> "We will fix the crisis in social care once and for all with a clear plan we have prepared"—

tick, tock, tick, tock. After that, we got the September announcement. We might have expected further consultation and discussion to fill the many gaps in it.

Indeed, we expected to have a White Paper, but very curiously we do not have a White Paper: we have this Bill before this House's powerless presence. We are voting for a levy to pay a lot for something, but we really do not know in any detail whatever what it is paying for.

The Government's excuse—I am amazed that even these Ministers dare utter it—is that it is to give time for employers to prepare for it. What about the 18 months that have passed since their plan was already fully baked, as Johnson told us on the steps of Downing Street? What about those months in the summer when, day after day, there were leaks in the newspapers about the alleged position of various Ministers on the details of this plan? Time did not matter then but, now, when they want to get this legislation through without either House of Parliament having a chance to look at it properly, time has been cut short for political reasons.

Legislating in a day should be done only in circumstances of extreme urgency. To do it for a tax that will not even bite until 2022 and for a policy that will not even be fully in being until 2024 is a travesty of democracy. Legislate first, policy later—it is Alice in Wonderland.

4.52 pm

Lord Bethell (Con): My Lords, in the last two years I have become seasoned in these debates on social care. I am completely and utterly persuaded that there are very strong arguments for the fundamental reform of how social care and our health system are provided for, and how it is operationally delivered. In the last 18 months, I have lived a ministerial life with day-to-day meetings where, at first hand, I have seen the pressures on the NHS and the huge and completely unsustainable amounts of money that have been spent to support the response to the pandemic. I have seen for myself the fragility of our social care system, for both the elderly and the vulnerable, the technology we needed to put in place to try to sustain people during the pandemic, the PPE, the support we gave to staff and the financial fragility of many of the providers. I am under no doubt that these matters need to be addressed very fundamentally.

Many noble Lords have spoken very movingly about their strong suggestions for not just the moral and pastoral cases but the fiscal case for why reform is needed, and how the financial issues need to be addressed. But I still stand here pleased to support the Bill because my biggest concern when I was on the Front Bench was that we would not address these issues at all. I was concerned that they would be lost in a political quagmire because I do not see any form of political consensus about any of these ideas. I say that with huge regret; I wish there was a political project and some form of collaborative enterprise where the voices in this Chamber and elsewhere had somehow come together to create some form of consensus, but I just do not see that happening.

Noble Lords, including the noble Lord, Lord Macpherson, and my noble friend Lord Forsyth, have made incredibly persuasive arguments about how to rewrite the tax code and completely rethink the financial arrangements around health and social care. I am strongly persuaded by the intellectual arguments they make, but I do not see us being in any shape to fundamentally rewrite the tax code this year.

Therefore, with that degree of pragmatism and in celebration of simplicity, I support this money Bill, because it addresses the sustainable financing of health and social care in the near term. Coming out of the pandemic, with a huge backlog at the NHS and with the financial fragility of many care providers, it is essential that we find some money as quickly as we can to plug those gaps.

The sequencing of this is incredibly frustrating. I wish there was a White Paper that laid out a clear programme for reform at every level, but that does not exist. The Bill provides some breathing space and a degree of confidence about where the money has come from, so that that work can be done, and that is why I support the Bill, but the Minister would help enormously if he could answer a few questions in his closing remarks about where the money is going—particularly the £500 million earmarked for the training of care providers. The noble Baroness, Lady Tyler, spoke very movingly and quite rightly about care providers, who did so much in the last 18 months and need so much more in terms of visibility of their career prospects, and therefore an idea of how that money will be spent would be extremely valuable.

Respite support for unpaid carers was clearly one of the most acute needs to emerge from the pandemic, and I was very moved to sit through debates on that. It would be very helpful if the Minister could talk about whether there will be resources to contribute to it.

Lastly, on my own particular interest in technology, we can make social care much more productive through better use of digital records and things such as acoustic monitoring and dementia-focused entertainment, and I ask the Minister to reassure us that NHSX will have the resources to address those issues.

4.57 pm

Lord Whitty (Lab): My Lords, it is of course a pleasure to follow the noble Lord, Lord Bethell, but also to underline that what he has bequeathed to his successor is no answer to this problem, and he is now asking the Minister to provide at the end of this debate an answer which he and his many predecessors failed to provide.

I am totally convinced that the social care system has been chronically underfunded for decades and that the NHS itself requires very substantial increases, not just because of coronavirus but because of earlier underfunding and mis-funding. I am therefore at one with the noble Lord, Lord Macpherson, that we do need a significant tax rise, but I strongly object to this Bill. I object to its ill-thought-out basis; its misuse and possible distortion of the national insurance system; its regressive burden and unfairness, in terms of its impact on low-paid workers, jobs and the young; its jobs-threatening impositions on employers; and its ambivalence on whether this is a temporary or permanent structure for our taxation system, with its half-baked and probably temporary hypothecation.

[Lord Whitty]

I also object, and here I follow my noble friend Lord Lipsey, to the way in which this House has been asked to consider the Bill. This has been designated a money Bill, but behind it is an enormous political and policy issue: it is not just about our resources; it is about what we are going to do with those resources. The House of Commons was asked in a day to pass the Bill, in both senses, and we are not really allowed to vote on it. This is treating Parliament with contempt. It is also treating the public with contempt, as well as those of us who are supposed to benefit from this increase in resources, and those who are expected to pay for it. I do not think we should be party to that. Unfortunately, given its designation, we have no means of not being party to it.

I take one phrase from the noble Lord, Lord Forsyth, much of whose speech I totally agree with—I also agree with, rather more than I expected, the speech of the noble Lord, Lord Lansley, and with the masterly speech by my noble friend Lord Eatwell—that we cannot agree wholeheartedly to a Bill before we have seen the menu. That is what we are being asked to do today.

Behind all this is the fact that social care has been underfunded, staff are underpaid and service quality is rarely checked. Residential care is paid for in a variety of different—mainly unjust—ways, principally by individuals and their families through self-funding and unpaid care, but also by local government and the NHS regarding the nursing component. It is a mess. Care workers attending the clients' own homes are subject to intolerable time regimes, their pay is awful, their management is awful and the visit diaries mean that those who really need sustained care rarely get it. The Covid epidemic has made this much worse.

Similarly, the NHS has been subject to severe cuts and constant reorganisations, but it has always been financed by general taxation. The tax proposed in this Bill is termed a "levy". Normally the term "levy" suggests that we are addressing a temporary problem—it may be a big one such as a war, but nevertheless a temporary problem—but this must be resolved on a long-term basis. The genesis of this proposition is interesting. Originally the proposition was to raise money for social care but somehow it has been hijacked by the absolute necessity to find very substantial sums of money for the NHS. The bulk of the money is, rather peculiarly, to be raised on the basis of national insurance not general taxation, but the proceeds will go into the general fund.

As the noble Lord, Lord Macpherson, said, hypothecation is usually a dirty word in the Treasury, yet the mandarins have somehow been convinced that it is sensible to apply it to this. I am not against that in principle, but I wonder how a complete shift in Treasury ideology, a muddled basis of taxation and a lack of clarity as to how long this will persist give us a proper way of forward planning. I have a theory about why this was done. My noble friend Lord Lipsey pointed out that the Royal Commission on which he notably sat and many think tanks, commissions and inquiries since then, including Andrew Dilnot's, have looked at this in detail. Some of those proposals have been half-baked, some pretty good, some partly good. Some have raised the issue of basing social care on a national social insurance basis. This is leverage. This is an old idea rethought. My feeling is that part of what the Prime Minister so wildly committed to, in resolving social care once and for all, was some of these ideas, which were floating around in circles in which he moved but were in reports he hardly read, which included a social insurance principle. This was regurgitated, therefore, in this form in this Bill when the Chancellor and the Secretary of State for Health realised that they need an answer to some of these issues. However, instead of it going into social care and making social care part of social security, it was hijacked and used for the very pressing and important needs of the national health service.

This is not a way to operate. The committee of the noble Lord, Lord Forsyth, provided a much sounder basis for proceeding in relation to social care. The issue of the integration of social care and the health service has been with us for a long time. Like the noble Lord, Lord Lansley, I mean integration not necessarily of institutions but of policy. This does not resolve the issue at all; it simply doles out the bulk of the money to one part and a little bit left over to the other.

The Bill is not about a sensible plan for bringing NHS and care services together, nor about putting both on a social insurance basis. It is about avoiding putting up income tax or profits tax contrary to the Conservative Party manifesto. It is about not depriving wealthier families of the inheritance of their parents' homes to pay for when they have to go into a care home. Frankly, it is about putting the burden on lower-paid workers and small employers, who will disproportionately be paying the cost.

What started out as a vaguely half-decent strategic idea for social care has ended up in a bodge, and one that I think will boomerang on this Government. I plead with the Government that there is time to think again—not much time, but time to devise both a financially viable long-term social care system, which may or may not be based to some degree on social insurance, and to find the undoubtedly much-needed money for the NHS, but in a much less regressive manner. We need a long-term plan for health and social security, not a thin White Paper that just tells us how much it will cost us when we do not know what it is. We need a strategy whose cost is based on everyone contributing according to their means. We can thereby ensure that people get the benefit according to their needs.

5.06 pm

Baroness Fraser of Craigmaddie (Con): My Lords, I refer to my interests as set out in the register. I have no illusions about the mountain that health and social care services have to climb as we emerge from the impact of Covid, and I have no illusions that the necessary steps will require significant funding. Like my noble friend Lord Bethell, I welcome the Bill in that at least it grasps the nettle of an issue that needs to be grasped urgently.

I will confine my remarks not to how the extra funding is raised but to how it is to be spent. First, I would welcome funding for improved health and care services in Scotland. In fact, the Scottish Government

have a manifesto commitment to establish a national care service over the next 10 years. I am sure they would welcome a union dividend of more than £100 billion, whatever they might say.

I also know that the other place debated and defeated the amendments to Clause 2 to allocate and give the funds from the Bill to the nations of the UK in accordance with the Barnett formula, but is it really in line with our stated intention to treat the devolved Administrations with respect for the Bill to state where the consequential spending is directed? Please let us not give Ms Sturgeon yet more ammunition to aim at Westminster.

Secondly, the levy perpetuates the status quo as regards spending on health and social care, as many noble Lords have stated. Experience, though, has taught us that investment alone will not be enough to fix the challenges faced by health and social care services. The Prime Minister himself, in the introduction to the *Building Back Better* document, said that

"when COVID-19 broke out, there were thousands of hospital beds filled with people that could have been better cared for elsewhere."

That was indeed true, and remains true, but our answer to this challenge is always just to create more beds. We saw great efforts going into the building of temporary Nightingale hospitals, but there was no equivalent for social care or community rehabilitation. Why not? Because, as always, social care is seen as secondary to the needs of the organisation that is the NHS.

If the solution is not just more money, it is also not just more people. The people in the current health and social care system are most definitely a crucial part of this answer, but just wishing for more of them is not the solution either—not least because there are worldwide shortages of supply in some specialisms and it would take years to train the additional numbers required.

I turn to the lessons learned during the pandemic, which is why we are here in this urgent debate. Research from the University of Glasgow and the London School of Hygiene & Tropical Medicine found that many disabled people and their families felt abandoned and that existing structural failings and inequalities were starkly exposed and magnified. Their research concluded that it was the third sector that was best able to adapt to this increased need in the community and to deliver the services and care during the pandemic.

I declare an interest as chief executive of a third sector organisation, Cerebral Palsy Scotland. Third sector organisations reimagined their services very early, often in difficult circumstances with huge funding and personnel challenges. They set about tackling isolation; filled gaps after the closure of daycare centres and community services; supported people to become digitally literate, so that they could access online healthcare; and, in effect, became the mechanism that kept people well and enabled the NHS to respond to the challenges of Covid. In fact, the state became reliant on a strong and resilient third sector. The third sector, therefore, plays a key role in the solutions facing health and social care, yet a few organisations seem to be relegated to the back pages in a list of stakeholders.

The justification for this levy is that we are trying to build back better. It is essential that we do indeed build back better because what we had before was not working. What we saw during the pandemic illustrates what happens when we fail to understand the impact of the withdrawal of services on disabled people and those with long-term health issues. It illustrated that, to keep people out of hospitals, we have to support them to remain well at home. It also demonstrated the importance of ensuring a robust third sector.

The key to the successful deployment of the health and social care levy will clearly be in the details of the much awaited White Paper and the Health and Care Bill, which I look forward to coming before this House. International examples of where integration has worked best have required local delegation and local solutions. In Scotland, we have been trying it since 2014 but, as my noble friend Lord Lansley said, it went from being a very person-centred hope to being one where the free at the point of delivery NHS was merged with the paid-for systems of social care. We are still dealing with the problems that trying to put those two large organisations together have created.

The answers that the Government are looking for clearly lie in fundamental reform of the whole system, not just little parts of it. We cannot just keep spending more and more money to fix backlogs. We must be bold, but we have to take those who use health and social care, those who work in health and social care and all cross-sector organisations that provide health and social care with us. If we do not, all we will do is take the taxpayers' cash and they will see no real benefits from it.

5.13 pm

Lord Hain (Lab): My Lords, I declare an interest that may be common to many, if not most, of us in your Lordships' House. I have a relative living in a care home in England, so when the Prime Minister, with his trademark flourish, announced a new social care policy, I was naturally encouraged. However, as I examined it against the reality facing my relative and most of our citizens needing residential care or 24-hour home care, I became increasingly sceptical. Here is my take on what his policy means from the front line. If the Minister thinks I have got anything wrong, will he please say so when he replies? Specifically, will he write to me in response to what I have said?

The Government said that the reforms would address the problem of people having to sell their homes to pay for the cost of care. From October 2023, they plan to introduce a new £86,000 cap on the amount anyone in England will have to spend on their personal care over their lifetime. The cap will be applied irrespective of a person's age or income—so far, so good.

However, Boris Johnson's reforms do not live up to their marketing, and the cap will help relatively few who need care. It would be a surprise to most people to know that only care costs will be covered by the lifetime cap and that these do not include the so-called hotel costs, which may be very, very high. Under the Prime Minister's framework, only money spent on meeting a person's personal care needs counts towards the cap. The Government's position is that a person would have to pay for living costs even if they did not need residential care but depended on care—maybe continuous care—at home. Spending on daily living costs, or what the Government refer to as hotel costs

[Lord Hain]
in a care home, does not count. There is therefore no help under the policy towards accommodation and food, as these are designated by Ministers as part of hotel costs.

The care costs would cover the nursing and care staff and possibly the costs of ancillary staff and medical supplies, but not the other costs of providing a residential care service. These include, for example, any mortgage on the residential home, insurance and legal fees, audit and professional fees, council tax, utility bills—such as rocketing heating costs—waste disposal, registration fees, transport costs, maintenance, marketing, office services and so on. These are categorised as counting towards the hotel costs and not covered by the lifetime cap.

I have looked at the current fees breakdown in a large care home in England with 50 beds running at 92% capacity. The current social service rate—the rate the local authority may contribute—does not even cover the care and nursing staffing costs; nor will the new plan. Yet the Prime Minister has given the impression that people entering residential care will benefit from the reforms to the social care charging framework with the introduction of the £86,000 lifetime cap on the amount anyone will spend on their care. In reality, only a small percentage, perhaps a measly 5%, will be protected from "catastrophic care costs". Therefore, contrary to what the Prime Minister claimed, many, if not most, people will still have to sell their homes to pay for care.

Although the reforms are meant to solve the current catastrophic crisis in social care, it appears from paragraph 60 of the Government's much-vaunted new policy, that there will be nothing for adult social care until April 2023. There is no funding in the levy to address the current problems facing social care and no plans to tackle the current gaps in the social care workforce, with over 100,000 vacancies. Although the Government's plan discusses greater professional development and career support for social care workers, backed by a £500 million investment and a workforce White Paper, it contains no credible plans to tackle the current chronic shortage of social care staff.

Stakeholders in social care have highlighted challenges associated with transferring revenue raised by the new levy from the NHS to social care in future years, pointing out that there is absolutely no precedent for this, especially with many parts of the NHS on life-support, facing massive funding gaps, and serious shortages—running into tens of thousands—of doctors and nurses. The new funding will probably stay in the NHS and care home employers will be left with an additional burden: having to bear the payroll burden of the national insurance hike provided for in this Bill. That means that they will have to pass that on to their residents, many of them dementia patients and therefore oblivious, even if their families most certainly will not be.

The Government have said they will ensure that local authorities have access to sustainable funding for core budgets at the spending review, but local authority leaders across the party divide do not believe this. They have suffered budget cuts of around 30% these past 11 years, and it is not honest to dump the problem back on local councils. That means that people needing care will have to sell their homes whatever the Prime Minister claims. People on very modest incomes or pensions living in modest homes will lose them to finance costs of around £5,000 monthly for residential and nursing care. The new levy is simply totally inadequate to fund plans necessary to reform adult social care if Britain is to claim to be a civilised society.

It is troubling that the Government's solution to addressing social care's core pressures appears to be the use of council tax, a social care precept and long-term efficiencies. To describe this as totally unrealistic is overly polite. The Prime Minister might better recognise it as sheer balderdash.

His reforms will instead create confusion and frustration among the public. On the one hand, people are told that the levy will fund adult social care and, on the other, that "hotel costs" are not covered. Hotel costs is a handy label for Ministers, because it implies to the public some super-duper state of luxury when actually it is a massive slice of providing care.

The £86,000 cap will benefit very few people, leaving most to continue paying high care home fees. Rather than create a simpler system of funding, the plan also paves the way for entrenching the complexity of funding that has beset social care for so long. This has left many families in a state of misery as they grapple with care costs of £1,300 per week in residential care homes, with staff on poverty wages and businesses struggling to survive. Sadly, this is no care plan; it is a care con.

5.21 pm

Lord Shipley (LD): My Lords, I remind the House that I am a vice-president of the Local Government Association. Like others, I was very surprised by the speed with which the Bill passed through the House of Commons. I was even more surprised by the lack of challenge to it. As we have heard from right across the House this afternoon, national insurance is the wrong tax to use. Calling this a levy makes no difference. It is a tax. It is a change to the tax system worth £12 billion a year for three years—indeed, inevitably, longer than that.

It is a tax on work and it is more regressive than income tax because the rate charged reduces at higher earning levels. Those earning under £967 per week pay national insurance contributions of 12%, but those earning over that level pay only 2% on earnings. If speed is needed, using income tax would be fairer, because the threshold for paying national insurance is lower than it is for income tax. Thus, this levy hits the lower-paid more. As we have heard, those paying income tax have a personal allowance of £12,570, but the national insurance threshold is £9,568 for employees and £6,515 for the self-employed. Most of the revenue for the new levy will come from workers earning under £50,000. That is particularly unfair to younger workers.

Reference has been made to the briefing note from HMRC. I repeat this point, because it is important. The briefing note says that the Financial Secretary to the Treasury has agreed that:

"There may be an impact on family formation, stability or breakdown as individuals, who are currently just about managing financially, will see their disposable income reduce."

It is astonishing that the Government find this acceptable. They have declared that they are pursuing a policy of levelling up. You cannot level up places without levelling up people, but you cannot level up people on low incomes by increasing the amount of tax they pay.

The context of the Bill is a tax burden which will be the highest in 70 years. At the same time, inflation is rising to over 4%, energy costs are spiralling and there is now talk of council tax rises of over 5% each year for several years. I submit that we cannot go on imposing high council tax rises year after year to help meet the cost of adult social care. The Government introduced the social care precept in 2016 at up to 3%, yet council tax is regressive. Council tax rises impact disproportionately on poorer people.

Yet the demand for social care is rising. Councils need an extra £2.6 billion a year simply to maintain current levels of social care, but they will get only £5.4 billion from the new levy over three years. Will there be enough money for social care? What is the spending profile for social care over those three years? How much will go to the NHS and how much will come to social care?

It could be argued that national insurance is easier for the Treasury to impose since it is relatively easier to administer. However, it hits the lower-paid and younger people most. A 1p increase in income tax, as my noble friend Lady Brinton has suggested, would at least raise contributions from better-off pensioners.

Council tax is being used to support adult social care based on property values of 30 years ago. It is, as I said, a regressive tax: those in lower tax bands pay higher effective tax rates than those in higher bands. One policy suggestion made recently by the Housing, Communities and Local Government Committee in the House of Commons is for a proportional property tax to replace council tax and business rates. I hope the Minister will agree that the time has come to look very closely at that suggestion.

This is an inadequate Bill, rushed through and ill thought-through, which will not solve the care crisis. I hope the Government will take note of the fact that most speakers today have found the Bill wanting.

5.26 pm

Lord Hannan of Kingsclere (Con): My Lords, that is one way of putting it. This Bill has been so hacked about from every Bench, so lacerated, that it seems an act of almost wanton cruelty to take out my own cleaver and join the mob. In the spirit of balance—at least, of karmic balance—let me therefore at least preface my remarks by saying that this is a good problem to have, in one sense, because we are talking about a problem caused by improvements in medical care and increased longevity, and we are looking at ways in which the wealth of an increasingly well-off society can spill over into the social care sector.

In the end, wrote Goethe, in what has always struck me as the single most depressing line in the whole corpus of European literature, we are all King Lear. Of course it was not quite true in his day and it is not true today, but we have a challenge, like every developed country, in ensuring that we are not stretched out upon the rack of this tough life any longer than necessary.

I wanted to agree with what I thought was a devastating takedown of the proposals by the noble Lord, Lord Eatwell, but I am going to disagree with one aspect of his remarks where he spoke about the reduced proportion of GDP going on health and social care. That strikes me as not a great measure. A more useful metric is what is the absolute amount. If you can grow an economy very quickly then a smaller proportion of that economy can be a much larger sum. It therefore seems to me that the question, if we are looking at how to fund this or indeed any other aspect of our welfare system, is where we strike the balance between getting instant revenue now by raising taxes and ensuring that that growth continues, thereby generating future surpluses. If, as in this case, we are looking at the prospect of increasing costs—because I think we can reasonably expect that longevity will continue to increase and that there will continue to be medical advances—how do we ensure that it is funded sustainably and that we do not, in removing money from the productive bit of the economy now, reduce the overall size of the economy and so damage future revenue?

However, I agreed very much with what the noble Lord said about the craziness, as we come out of the worst downturn that we have had—worse than anything we saw in either war or in the recession—of taxing jobs. Of all the ways that we could be raising revenue, this seems to me the most misconceived. On the contrary, we should be finding ways to reduce taxes on employment and investment so that, as furlough ends, we encourage people and firms to be investing and hiring more, thereby of course generating more economic activity and, in the medium term, more government revenue.

I would be very happy to see national insurance scrapped. If we consider the case made against it by the noble Lord, Lord Lipsey, and my noble friend Lord Lansley, it is quite difficult to see why anyone—I agree with what the noble Lord, Lord Lipsey, said—would invent it today. I very much support my noble friend Lord Forsyth of Drumlean's idea that we should be honest and merge it with income tax and stop the pretence that it is somehow a hypothecated tax paying for social care. Of course, Governments will never do that, because they will never admit the amount they are actually taking in income tax—so they pursue the strategy of having lots of little taxes to add up to one big one as a way of disguising the overall tax burden.

I also agree with the noble Lord on the absurdity of hypothecation. It is not that it is a bad idea, but that it is impractical. It did not work for Gordon Brown and has not worked for any other leader. It is impossible to devise a system where a Chancellor cannot simply substitute a different budget. It has defeated every attempt at doing so.

Finally, I agreed with the noble Lord, Lord Eatwell, when he spoke very truly and said that it is in the nature of taxes to go up. That has been true of almost every tax, going right back to the introduction of income tax as a temporary measure to pay for the Napoleonic Wars. Governments find that they do not have the revenue they need and have to widen and deepen the tax. So let us be clear what we are talking about; it is going to be a ratchet, where there is constant pressure for higher budgets, higher caps and so on.

[Lord Hannan of Kingsclere]

Why are we doing this? Why have we picked this tax and this method? And why, as every other Bench has asked, are we doing it in such a hurry? I was very struck by how few people in the other place on the Conservative Benches voted against it. My right honourable friend the Minister, with commendable honesty, described it as a

"permanent … increase in the size of the … state".—[*Official Report*, Commons, 14/9/21; col. 844.]

That is absolutely right. How many people on Conservative Benches in either House went into politics in order to pursue a permanent increase in the size of the British state? Yet there were only something like five Conservatives in another place who voted against it.

I suspect that that is because, when asked in isolation, this measure polled very well. It always does. If ever you phrase an opinion poll question as "Should we raise taxes to pay for"—insert desirable thing—you always get a very large yes, because people have been conditioned by our political discourse to hear the question as "Are you a nice person? Are you selfless or are you greedy?" They cannot tick a box in that opinion poll that says "Well, only if it is accompanied by efficiency gains", or "Yes, I will happily fund more clinicians, but I don't want to fund more NHS diversity officers", or "What has happened to the £20 billion that has already been spent?", or "Could it be done with the following priorities?" So they say yes because they do not want to look ungrateful.

My noble friend Lord Tebbit, when he was the Conservative chairman, once said that the only opinion poll on tax that matters, the only question that elicits a valid response, is "Do you feel that the amount of tax you personally are paying is too low, too high, or just about right?" I suspect that, when people see the implications, not least the second-order implications, of there being fewer jobs and therefore less overall revenue and slower growth, there will be a very different attitude.

Of course, your Lordships do not need to worry about opinion polls. The function of this House is precisely that it can take a longer view and bring perspective to these questions. It is clear, if you look at the long view and take a proper perspective, that the way to have growth and an economy that can then more easily accommodate increases in healthcare, social care and all the rest of it, is by pursuing the formula that has always and everywhere increased economic performance: freer trade, lighter regulation and lower, flatter and simpler taxes.

5.34 pm

Lord Griffiths of Burry Port (Lab): My Lords, it is with some trepidation that I add my voice to those who have spoken already on this matter. Some of the speeches will live with me for a very long time, in the way that the case has been put and the evidence put forward, and it seems almost recondite for someone like me to add to the detail. I want to come at it from the point of view of social care but also, perhaps existentially, from my experience with MHA—Methodist Homes for the Aged—the largest charity care provider in the country, which has been doing it for 75 years. It has 70 residential homes scattered across the country, looking after 4,400 people. Three thousand people are being helped to live in their communities, with staffing and support people to do that, and 11,000 in their own homes. MHA has 7,000 staff and 3,750 volunteers. As the cream on top of the milk, it is one of the leading exponents, in such institutions, of music therapy—just to indicate that all is not simply bread and butter.

It has to be said that seeking some guidance from MHA on what it has felt about what has been happening on the ground in the communities that it cares for is what gives me a sense of wanting to contribute to this debate. Things have been dire. Let us look, first of all, at the last 18 months—or whatever it is—since Covid started and see how it has affected the care system in general. If all goes well and things are better than we think and expect, we are talking about waiting two years before a certain amount of money might come into the system and be addressed to social care. The last 18 months have taken so much out of those providing social care that any talk of sustainability begs the question: sustaining what? Things have been dire. A 95% increase in insurance has had to be borne as a result of the pandemic, £2 million per year was needed to purchase PPE, there has been staff sickness, overtime, bank agency staff, restricted movement between care homes and so and so forth. Care homes have barely managed to hold the show together under the pressures that they have been feeling in these last 18 months. So when the Prime Minister got up and made the announcement he did—and we all hope there will be however many millions it is in two years' time—we have to ask ourselves, "What about now? What about repairing the damage that has just been done and is still being suffered?"

The thought that the mandatory vaccination status for care home staff which is not required in the health service could see a labour shift from care homes to hospitals seems really rather perverse. We simply have to recognise that many of the care institutions that we are talking about are in a dire, dire state. There is a dependency and a relationship between them and the local authorities that are being looked to, to anchor the proposals that are being made. MHA has contacted local authorities to see how to take advantage of the £3.2 billion that was given to local authorities to respond to Covid-19 pressures. Of the 188 local authorities that it works with, only 5% gave a 10% increase, there was a smaller uplift from 35% of local authorities, and 60% gave no uplift at all. You just wonder how much of this money that was supposed, through local authorities, to improve the situation financially for social care got to the front line. The conclusion from MHA is that almost none at all got there.

We also have the whole question of recruiting and retention. On this workforce business, perhaps if there are any HGV drivers who are surplus to requirement now that we are training them all ourselves and producing them for supply chains and all the rest of it, we could get them qualified to work in our care homes, because there is a desperate need. Across social care, so many years of low pay have been compounded by valued staff leaving, due—as I say—to Brexit and exhaustion from the pandemic, and now some staff leaving and moving to the NHS, as I have suggested.

The last 18 months have left the social care sector in dire straits. The next two years—until whatever, if anything, filters through from the latest arrangements—will have to be survived. Clearly, from the evidence I have been adducing, local authorities are not in a position to play their part. Frankly, to talk about the future of the social care sector seems redundant; survival is the very first thing, as well as a carefully thought-through policy. We have heard so many hints of good ideas that have been in circulation in cross-party committees which have worked on these issues. Therefore, this little piece of legislation seems tawdry.

I hope the Minister will recognise that, lovely man as he is, we want him to be the channel through whom we declare our displeasure to the Government he serves.

5.41 pm

Baroness Altmann (Con): I regret being unable to support this Bill and will try to articulate some of my reasons. There are so many, and I will not detail them all. I associate myself with every word of my noble friend Lord Forsyth's remarks.

While we debate this Bill, the care sector is marching ever closer to disaster. The measures we are debating—but of course are unable to amend—are nowhere near what is needed to fulfil the 2019 commitment to sort out the social care crisis. No help is guaranteed at all, near-term. The claims that these reforms demonstrate the courage to tackle the difficult issues that other Governments have ducked simply do not stand up to scrutiny. I wish they did, and I wish I could stand here and support a bold initiative to get to grips with a situation that is, frankly, a monumental national and social failure that has already, and will continue to, cost the lives of many vulnerable British citizens.

The challenges of social care are significant. This Bill simply fails to address them. It merely repeats the Dilnot-style measures already legislated for by the Care Act 2014, with a cap that still does not cover all the care costs and still leaves vital funding elements to cash-poor local authorities, which will keep having to ration, reduce or deny care for those in need.

Even the funding promised in this Bill is not ring-fenced to pay for care. It will first prop up the NHS, which already receives the lion's share of taxpayer money and has itself worsened pressures on social care through the pandemic and proved, yet again, the second-class treatment—for example, by discharging Covid-positive patients, refusing to admit elderly people to hospital and cutting the previous regular visits by GPs to care homes.

This Bill does little or nothing to address so many of the basic fundamental social care sector failings and will still leave ordinary families facing massive costs to subsidise local authorities, which underpay for council-funded residents. There is nothing to address the artificial distinction between free at the point of need NHS care for, for example, cancer, and the hugely expensive social care for, for example, dementia patients.

It does nothing to help reduce staff shortages, which are real and rising right now. In that context, I ask my noble friend to reconsider the proposal for mandatory vaccination. This measure will make the situation worse. There are currently more than 150,000 vacancies in this sector in England. Care staffing shortages have already been compounded by post-Brexit migration rules, as carers from overseas do not reach the new higher income threshold to be eligible to work in the UK. The Government themselves estimate that at least 40,000 CQC-registered care home staff will refuse the vaccine and risk being forced out on 11 November if mandatory vaccination is introduced.

Without staff, how can homes look after people needing care? Many care homes are on the brink of bankruptcy after pandemic costs, with high staff turnover and competition from the NHS and hospitality sectors, as the noble Lord, Lord Griffiths, just outlined. They do not demand vaccination. Care workers may therefore just move to different or better jobs, but the staff shortages run risks with people's lives. People have a right to refuse the vaccine. After all, even when vaccinated, they can catch and transmit Covid. I ask my noble friend the Minister to consider the case of a Ms Waite from Preston, who was dismissed from her care home job for gross misconduct for refusing the vaccine, despite having documented medical reasons for doing so.

This Bill will not reduce unmet needs or the financial fragility of care home operators. It will not end the current rationing of care, nor the ongoing reduction of preventive measures. The national economic model of social care relies on councils' public funding paying below costs of delivery. I am afraid this is simply not a meaningful commitment to social care. It encourages short-term use of this money, supposedly designed to improve social care for the NHS. This obviously needs to be facilitated—reducing the backlog in the NHS is important—but social care underfunding is equally serious for the health and lives of our nation.

I cannot agree that national insurance is an appropriate mechanism for care funding. There will be no contribution from pensioners' pensions, buy-to-let landlords or capital gains. This hardly spreads the burden widely or fairly across society. It may be rather better than the current costs falling entirely on those who are so frail or unwell that they cannot look after themselves and do not qualify for NHS help until they have used up most of their savings or assets to get public funding, but it will not stop people selling homes to pay for care. Indeed, if domiciliary care takes home value into account, it will increase the numbers of those who need to pay for care by selling their homes, although I do not believe that is an important yardstick in this debate.

This national insurance change is a regressive tax, which breaks a manifesto commitment and penalises the lowest earners and businesses already struggling to recover from the pandemic. Of course, as we emerge from Covid-19 disruptions, additional funding for both NHS and social care is needed, but the care crisis predates this period. Why should businesses pay for this?

I am disappointed to hear some on the Benches opposite turning this into a political issue. This is a social policy issue of the utmost importance, which has been neglected by successive Governments for decades. Worthy words, reviews, royal commissions and more have made recommendations for urgent change, but action on the ground was ducked. Even legislation has lain unimplemented, despite rising need

[Baroness Altmann]
and the financial collapse of major operators. Funding the NHS is still being prioritised over funding social care.

I have a few important questions for my noble friend. How much of the money raised by this levy is guaranteed for social care? Will the Government commit to abandoning their plans for mandatory vaccination for care staff? Can my noble friend give the House the estimated numbers of people requiring care over the coming years, as baby boomers now just starting to enter their 70s reach their 80s and demographic pressures mean a sharp increase in need relative to today's rather small cohort of more elderly people, with which this country is currently not even coping?

Have the Government considered introducing incentives for families to save for future care needs? I do not mean just insurance but actual savings, a tax incentive for those with pensions, such as tax-free withdrawals to keep money earmarked for their later life, in case they need care, and incentives for people to earmark their ISAs for care—for example, a maximum amount of ISA that could be passed on free of inheritance tax if set aside for care. More than 8 million over-60s hold a total £300 of billion, an average of £35,000 to £40,000 each, in ISAs, and those are 2018 figures which have probably increased since then. These are not necessarily earmarked for any purpose, and before the money is spent on cars, cruises or other goods, introducing an incentive not to spend it could benefit both families and the financial services industry.

As the care cap will start accruing only when needs are substantial, there is nothing to help those with moderate needs, and the cap will cover only local authority-approved rates. Many families will want to have some money to help them before the care cap even starts counting, and as more people have used their pensions or ISAs while relatively young, future taxpayer costs will be higher, because people will have exhausted their savings before they need care and will have no opportunity themselves to help support preventive measures, higher standards of care or care earlier than is otherwise the case.

This is a national policy issue. It is not about politics. I hope that my noble friend responds to cross-party offers of co-operation on this important issue.

5.51 pm

Lord Sikka (Lab): My Lords, I declare my interests as set out in the register. I am an unpaid senior adviser to Tax Justice Network and will be referring to some taxation issues.

I cannot support this bad and cruel Bill. It does not address the Government's failures on social care or the NHS. Local councils, which are responsible for social care, have seen their budgets plummet by up to 38% in real terms, and the Bill still does not provide the funding needed to reduce the NHS queues or improve social care. It does not create an integrated healthcare system in which social care is free at the point of delivery. It does not challenge profiteering by private equity, hedge funds and corporations from their involvement in social care and the NHS.

The 1.25 percentage point hike in national insurance, which I would like to popularise as "the Johnson tax", as that is what we should be calling it, hits the poorest the hardest. Following the Bill, people's wage packets will show deductions for three direct taxes: income tax, national insurance contributions and, from 2022-23, the newly invented health and social care levy, better known as the Johnson tax in many circles. This is from a Government who promised that there would be no increase in income tax or national insurance contributions.

Before the pandemic, the poorest 10% of UK households paid 47.6% of their income in direct and indirect taxes, compared to 33.5% by the richest 10% of the households. This regressive Bill does not provide any relief for the people at the bottom of the pile. People on the minimum wage will pay the additional national insurance. An employee on a £20,000 wage would pay £130.40 more each year, an effective increase of 10% in the amount of national insurance. This is in addition to the higher income tax which they will need to pay because the Government have frozen the personal allowances, while, at the same time, universal credit is cut by £1,040 for 5.5 million people. Did the Government ever wonder how people will survive? What will happen to social stability?

Many retirees are already struggling on the average state pension of around £8,100 a year and have sought to supplement this meagre pension through part-time jobs. This Bill will force retirees to pay more national insurance on their earned income. The national insurance hike will reduce people's spending power and have a negative impact on the local economy and household budgets. Levelling up it is not; kicking down it certainly is.

The Government's PR machine has made much of the 1.25% increase in dividend tax from April 2022. After the increase, dividends will be taxed at marginal rates of 8.75%, 33.75% and 39.35%, compared to marginal rates on earned income of 20%, 40% and 45%. So the tax privileges of the rich continue. At the same time, those receiving unearned income in the form of capital gains and dividends will pay zero national insurance, because it is not charged on unearned income.

Earlier in the debate, the noble Lord, Lord Eatwell, referred to the HMRC policy paper *Health and Social Care Levy*, which states:

> "There may be an impact on family formation, stability or breakdown as individuals, who are currently just about managing financially, will see their disposable income reduce."

Why are the Government hell-bent on hitting the poorest when they will also be facing higher inflation, including higher food and energy prices?

The Government claim that the national insurance hike will raise an additional £11.4 billion a year over the next three years. This could easily have been done without hitting the less well off, and in ways that reduced inequalities and unfairness. Earlier, the Minister said that there is no alternative other than borrowing. He is 100% wrong. For example, by taxing capital gains at the same rates as earned income, the Government could have raised an additional £17 billion a year, plus national insurance contributions of £8 billion. This reform alone would have generated more than double

the amount generated by the Johnson tax. The capital gains tax regime benefits only 265,000 taxpayers, mostly resident in London and the south-east of England, so that reform would also have reduced regional inequalities. Again, the Government do not really wish to address that.

By taxing dividends in the same way as earned income, another £5 billion a year in revenue could have been raised, plus the increase in national insurance contributions possibly hitting between £600 million and £1 billion.

I ask the Minister to explain why billions of pounds in unearned income from the sale of second homes, speculation on stock markets and dealings in foreign exchange, commodities, artworks, land and other markets are not subject to national insurance. Does he agree that those tax perks for the rich are unfair and should be eliminated altogether?

Currently, employees generally pay 12% in national insurance on incomes up to £50,270. As other noble Lords have pointed out, the rate on incomes above that is only 2%. This means that high earners pay a lower proportion of their income in national insurance compared to the less well off. By extending the 12% rate to all earned income—just earned income, not including what could be collected from unearned income—an additional £14 billion a year could be raised. Again, the Government do not wish to do that.

I ask the Minister once again to explain why he is content with such a regressive system of national insurance, and why the Government have chosen to hit the less well off rather than inconvenience the rich.

Let us look at the tax relief on pension contributions. Around £41 billion a year is given; most of it goes to people on 40% or 45% marginal rates. Some 1.5 million people get zero tax relief on their pension contributions because their income is less than the personal allowance. Simply ensuring that everybody gets just 20% credit—equivalent to the basic rate of income tax—would leave the Government £10 billion spare.

I have referred to only four ways of raising tax revenues to fund social welfare without adding anything to the basic rate of income tax, the 40% rate of income tax or national insurance contributions for the masses. There are dozens of other ways and if I had more time I would be delighted to go through them. Hurting the less well off is a deliberate choice by the Government, because they have numerous other options available. I cannot really support the Bill as it is very cruel and bad.

6.01 pm

Lord Naseby (Con): My Lords, it is clear that there is an understanding across the House that there is a crisis in social care. We all know that. We all campaigned in recent elections and we know that it is a real crisis. However, it does not help to come up with all sorts of wizard new taxes, as the noble Lord did just now. If I may say so to the noble Lord, Lord Eatwell, who I respect as an economist from the college next door to mine, he can analyse and criticise, but equally it behoves the spokesman from the Opposition Benches to put forward the alternative. The noble Lord knows that there is a crisis but there was not a word from him about what the answer is to meet it. It was, of course, a Labour Government who put up national insurance in 2003 for matters they considered at that point to be absolutely vital. I have been a leader of a local authority and I understand social care. My view is that, at a time of real emergency in social care, which this is, we have to find something simple that can be done quickly. That is why I support the Bill.

My noble friend Lord Forsyth, in what I thought was a really good speech, made it clear that there is a crisis. The question to my noble friend on the Front Bench is, if I read this Bill correctly, that it is the Treasury that will determine the share of the extra money that will go to social care. I find that profoundly unsatisfactory. If social care is the one key element of the problem, which we all recognise it is, surely Her Majesty's Government should decide, whatever money is raised—it will be a huge sum once it is up and running—that social care will get a ring-fenced proportion of that budget that shall not be leached away to something else in the National Health Service. That is fundamental.

I declare an interest: I am married, for 61 years now, to somebody who trained as a medical student across the road when I was courting her. She became a doctor. She did her house jobs in Calcutta. She set up her practice in Biggleswade when somebody died. She ran the biggest practice in that part of Bedfordshire, had three children and was a wife to a politician. She worked full-time. I have a son who is not dissimilar: he is a doctor and now a deputy coroner.

The other element of the problem lies principally with our general practice today. It is a shambles. Just to take my particular practice where I am a patient—which I obviously know in some depth—there are six doctors, one full-time and five part-time, four of which are ladies and one a gentleman. You cannot run any medical practice anywhere in the world—and I have worked in India, Canada and Sri Lanka—on the basis of part-time medical practitioners. The system does not work that way: people do not get ill on a part-time basis; people get ill and want attention. It has been made worse—and I can understand why, as my noble friend Lord Bethell set out. With the challenges they faced in the pandemic we had to have the triage. That I accept. It worked to a degree, but that is gone now. It did not work for the elderly or the infirm and it does not work for them now. The general practice in this country has got to the stage where it is no longer fit for purpose.

I do not know for how many years there have been no home visits, but it must be at least a decade. That is social care as much as anything because a home visit from a general practitioner helps prevent someone going into more extensive social care. There are no home visits even now: even people who have come out of hospital having had terrible Covid have no visit from the general practitioner to check whether they are recovering properly. I know that because actually—and I do not want to get too emotional about it—my wife nearly did not come back. There was no visit.

What, therefore, are the answers? I will suggest a few simple ones because this is not a broad debate on healthcare, but it is so important that it must get a

[Lord Naseby]
little bit on the record. We need more doctors, which means more students going into medical college, and it has to comprise roughly 50% men and 50% women. If we look at the countries that are successful in retaining doctors, we should look at the case history of Singapore. If you are a medical trainee in Singapore, you are required to work for five years in the national health service there or pay back the cost. That is not new to this country: my elder son happened to be sponsored by the Army. He had to sign on for five years as a medical doctor in Her Majesty's forces, or else pay back the grant. I think we should have a long, hard look at that.

We now have a situation where, while pre-pandemic, 80% of consultations were in the surgery, today that figure is, sadly, 58%. That does not work. We now have the Royal College of General Practitioners stating that the model of the full-time GP is probably something that we will never see again. That is absolute utter rubbish; I find it totally unacceptable and if he feels that way, I suggest that it is time he stood down and let somebody else lead the general practitioners of this country back to full-time practices.

6.09 pm

Baroness Bennett of Manor Castle (GP): My Lords, in following the noble Lord, Lord Naseby, I wish to entirely dissociate myself from anything he said about general practitioners. That was an unacceptable attack on people who have given so much to our society under the extreme pressures of pandemics. The gendered nature of his remarks was particularly disturbing. I do not know if it is something that the House authorities will look at, but I certainly think that they should.

To go back to what I was going to say, it is a great pleasure to take part in this mostly extraordinarily high-quality debate, and its fine level of forensic scrutiny—most notably the tour de force from the noble Lord, Lord Forsyth of Drumlean, who is not currently in his place. I also applaud the contribution of the noble Lord, Lord Sikka, who rightly labelled this as a Johnson tax, with the poorest hit hardest. I will circle back at the end to the reasons why I think that is a particularly accurate label.

We must look at what is happening here in this debate: we have a huge democratic deficit. We in your Lordships' House have torn this plan to shreds, but we cannot do anything. Such is the state of our antique, dysfunctional political system, Boris Johnson won 44% of the vote in 2019 and now he can do what he likes on anything at all, including taxation. The phrase "no taxation without representation" comes to mind, because the strange thing is that your Lordships' House is more representative of the country than is the other place. If we had a vote in your Lordships' House, it would be the Cross-Benchers—the non-party people—who would have the deciding votes.

It is worth thinking about what the words "social care" actual mean. Nobody that I have heard has really defined this or looked in detail at what it means; we tend to talk in the abstract. So I decided to look at Scotland's definition, where, of course, social care—in a far more democratic political system—is free.

A noble Lord: Not entirely.

Baroness Bennett of Manor Castle (GP): It is a lot freer than it is here. What does it cover? Personal hygiene, assistance at mealtimes, immobility problems, medication and general well-being. In Wales—also more democratic—there is a cap on how much can be charged weekly for such provision, similarly defined. Just imagine for a second being in the position of not being able to get or afford such care—to eat, to bathe, to take your medication with confidence you are taking the right pills at the right time. It is really stressful to need that care, and to not be certain that it is available to you is very distressing and, indeed, unconscionable.

In the course of this debate, I also find myself unable to resist challenging a statement made by the noble Lord, Lord Hannan of Kingsclere, that this is taking money from the productive bit of the economy. I challenge the noble Lord's definition of "productive". A carer ensuring that a frail elderly person is able to feed themselves; an assistant enabling a profoundly disabled young person to live a full life—that surely is the definition of a productive use of the resources of our society. We come back to a really fundamental question: is the economy there to serve us, or are we slaves to the economy? This is where I disagree with the noble Baroness, Lady Altmann—not currently in her place—who suggested that social care should not be a political issue. This is absolutely political; it is about the way people, particularly our most vulnerable, are able to live in society.

I want to address one crucial issue before I get to three points about the structure of the Bill and the way it works. Here I echo the words of the noble Baroness, Lady Brinton, who asked the Minister to disavow the claim from the Health Secretary that social care should be provided by families. I very much hope the Minister will directly address this point and will disavow that comment, because it suggests that the Government indeed regard this, as many have suggested from different angles, as a temporary measure; that they plan for the state to eventually step back from any kind of provision for social care at all.

We heard from the right reverend Prelate that he takes a share, entirely commendably, of the care for his 93 year-old father. But how many families are in a situation to do that? The pension age is rising; many people who might have provided care for elderly relatives are now in paid employment—they have to be to meet their costs. It is a standard assumption that both members of a couple, where people are in couples, will work. Also, sadly, we are seeing the level of disability among middle-aged people rising. There is also the question of space: 1.5 million people who live in social housing are already in overcrowded conditions, which means circumstances such as children sleeping in the living room. Where are you going to put an elderly relative you are caring for—in the bathroom? I very much hope that in addressing this issue, the Minister will answer the questions at greater length than when he introduced the Bill.

We have heard some noble Lords refer to the idea of funding social care through individuals paying insurance, although most have accepted that is unviable. However, we should regard being a member of what

we would hope is a decent, caring society as an insurance against hard times, illness and disability. That is why social care should be available without challenge at the point of use to all who need it.

I will address three specific points about the structure of this proposed Johnson tax: who is paying, how the money will be raised and where it is going. The noble Lord, Lord Eatwell, referred to how costs fall particularly on low-paid workers. He made some further interesting and disturbing points about the way the Government's illustrative analysis seems to put the idea of paying for healthcare linked directly to payment.

I want to pick up a couple of groups to see what that actually means. I credit the Liberal Democrats in the other place for uncovering the fact that NHS and social care workers will be paying 12% of the £7.4 billion expected to be raised from employees through the tax—£900 million. That does not include self-employed healthcare workers and social care workers, so the real figure is even higher—call it £1 billion. These are often low-paid workers, carers and nurses, far too many of whom we regularly hear are dependent on food banks to feed themselves. They are having money taken from them so that possibly a little more money goes into the system. I will quote an unusual source for me, Fraser Nelson in the *Spectator*:

"How can you justify increasing taxes on the working poor to safeguard the assets of the stonkingly rich?"

What we are seeing—I think the public is often not well aware of this, because for many it is an academic point which will never come into view—is the fact that the national insurance employee contribution falls from currently 12% of income to 2% of earnings over £50,270 a year, so that high-earners pay a lower proportion of their earnings in national insurance contributions than low earners.

Of course, national insurance contributions also kick in around £9,500, which means that even some people too poor to pay income tax are paying into the system. When we think about our broadly-speaking young people—the graduates paying back student loans—they will be taxed at 50% on any increase in salary above £27,288.

So, those are the people who are paying. How is it being arranged? I refer back to the excellent speech by the noble Lord, Lord Forsyth of Drumlean, who spoke about the need to combine income tax and national insurance and the missed opportunity for a simpler, fairer, flatter tax system. The noble Lord, Lord Naseby, was looking for an alternative solution. I can point him to the Green Party manifesto of 2019, which goes even further than the noble Lord, Lord Forsyth. It merges employee national insurance, capital gains tax, inheritance tax, dividend tax and income tax into a single consolidated income tax. All income is treated the same way for tax purposes. This ends the injustice of people who work for their income being taxed more lightly than those whose income is derived from wealth, frequently arrived at by accident of birth or blind luck. I also note that our manifesto provides free social care to the over-65s.

Finally, I get to the point about where the money is going, and this picks up points made by the noble Lord, Lord Sikka. A large amount of this money is going into a privatised, financialised sector—large chains of care homes with hedge fund owners taking returns of 12% or more a year out of the provision of care for our most vulnerable citizens. I very much enjoyed and commend the contribution of the noble Lord, Lord Griffiths of Burry Port, who talked about the commendable work of MHA and gave us an insight into just how difficult that work has been, particularly in the last couple of years. We also heard about the excellent work MHA is doing through music therapy. All the funds it gets go towards providing care. Think about what would happen if you scooped out 12% or more in financial returns and then still tried to meet the basic needs of residents—that is certainly all you would be able to do.

Of course, that is academic because, as many noble Lords have said, while this is talked about as being for social care, the money, for the next foreseeable time, will go into the NHS. With one more executive power grab, from 2025 the Chancellor will decide what happens then.

It is often suggested that there should be a "truth in advertising" rule for government policy. If we were to see that, we might see a total gridlock of government—one to rival the chaos in our supply chains—as opposed to the tangle of unpublished strategies, undeliverable targets and fantasy announcements that we have now. Were trading standards and the Advertising Standards Authority asked to cover the announcements of government, I think their websites would do down in seconds.

This is billed as a health and social care levy; it is clearly nothing of the sort. It does nothing to fix the enormous financial and structural issues in our care system. It leaves underpaid, overstressed workers seeking to care for underserved, neglected patients while private profits are scooped out of the system. It does not even do more than apply sticking plasters across some of the gaping gaps in our NHS.

I conclude by referring back to that term, "Johnson tax". It is misleading in its claims, it is fragile in its structure and it does not create any kind of solid framework for the future. I cannot help thinking of the London garden bridge, the Irish Sea bridge, the "Boris buses" and the so-called Emirates Air Line. It is misbegotten, unreliable and fundamentally unsound.

6.22 pm

Baroness McIntosh of Pickering (Con): My Lords, I congratulate the Government on at least tackling what is a very vexatious part of government policy. I refer to my interests: the work I do with the Dispensing Doctors' Association and the fact that I was a dispensing doctor's daughter and a dispensing doctor's sister.

There has been very little focus today on the delivery of care in people's own homes, as opposed to care homes. Through dispensing doctors and rural practitioners generally, and indeed those delivering care in people's own homes, I am very familiar with the fact that delivering NHS and social care in rural areas is more challenging and therefore costs more than in more urban settings. How do my noble friend the Minister and the Treasury expect that to be addressed through both the raising and the spending of the money raised

[Baroness McIntosh of Pickering]
through the levy? There used to be a sparsity and rurality factor in NHS funding, and it would be very welcome to return to that if we can. How will funding apply to and be highlighted for the delivery of care to the elderly in their own homes in rural settings?

I come to the points raised by my noble friend Lord Lansley about those who are elderly with comorbidities, who are often taken into hospital as an emergency and then find it difficult to be released from that setting into their own homes. I regret the fact that many of the community hospitals and wards that used to take them as a step-up, step-down halfway house before they were deemed safe to return home have disappeared. It is important that the release of these patients and their discharge from hospitals to their own homes is highlighted in the way the levy can be used.

Therefore, I would particularly like to ask my noble friend what proportion of the extra money raised in the earlier years will be allocated to the health service especially. How will that money be distributed between primary and secondary care? At the moment, we are seeing that, where primary care does not have the resources to deliver, people of whatever age—but particularly the elderly, with comorbidities—are turning up and being treated as an emergency in hospitals.

I would also like to ask, because the Bill does not set this out, at what point my noble friend will address the urgent problem of staff shortages, which a number of noble Lords have addressed this afternoon. There is clearly a shortage of nurses, and I saw that as recently as last week, when a family member was treated, excellently, by the NHS; there is clearly a shortage of nurses and doctors, and, I may add, carers too. When will my noble friend address that and when will the Government come forward with proposals for our consideration?

Finally, I would like to say how regrettable it is that this regressive form of tax is being chosen. There are alternatives. The least favourable option for me would be an insurance scheme, which I know operates in many parts of continental Europe, such as Denmark. I find it quite alarming that, when a member of my family in Denmark calls an ambulance, they have to produce the payment and show they have the coverage before they are whisked off to hospital. For me, that is probably the least favourable option. But I regret that the form that has been chosen in this Bill is the most regressive. As the noble Lord, Lord Shipley, pointed out in the Government's own tax information and impact note, it will impact on those who are just about managing at the moment.

I would like to point out something that the Government do not seem to have any recognition or cognisance of at all. By raising the levy on national insurance, the Government are taking money out of care and hospital care. Who are the largest employers in the country at the present time? The NHS and local authorities, and many noble Lords have referred to the fact that council budgets have already come under severe restraint. They are our two largest employers at the moment. The same tax information and impact note refers to the fact that:

"This measure is expected to have a significant impact on over 1.6 million employers who will be required to introduce this change."

What the note and the Bill fail to reflect is that both the NHS and local authorities will have to find this money.

My final question to my noble friend is this: what estimate have the Government made of the cost to the NHS, local authorities and other employers of this additional 1.25%? How are the Government going to make good that money to make sure that patient care is not depleted in the same degree?

6.28 pm

Lord Desai (Non-Afl): My Lords, an advantage of being the last speaker is that everybody has to come back into the Chamber to listen to you, because that is part of the rules of the game.

Let me say first that this has been a good debate. I mean, it is pointless, because we cannot amend a money Bill. The Commons has passed it, and the Government want to rush it through. Whatever we say, no notice is going to be taken, so we can be completely disinterested and make good suggestions—nothing partisan.

This is a bad Bill and a bad proposal. It is bad not so much from the point of view of the people who are going to bear the burden but from the point of view of the Government proposing it, because it is not very elastic in terms of raising revenue. It is procyclical, so the collections will fall any time life is hard and there is unemployment. Then we will have to do what Pitt the Younger set a good tradition for and raise the rates, so 1.25% is not the end of it. It is just the beginning and it will happen steadily if this tax stays on the books—and I am sorry to say that it will.

It is not to finance social care. Let us get it absolutely straight: social care is in the title of the Bill but this is not to finance it. It is to make up the NHS gaps, but they can never be filled. That is very clever, because people have this folk memory that the Beveridge plan created national insurance to finance the National Health Service when it was set up. That is the folk memory I was brought up on. So, everybody will say, "This is quite a nice tax because we will finance our NHS" and even poorer people will say, "I am willing to pay a little bit more to finance the NHS because it is very close to me." As the noble Lord, Lord Hannan, said, people will be asked, "Will you pay extra tax?" They will say, "Of course I will pay extra tax for the NHS" because, as people have said, we only have one religion in this country and that is the NHS.

Financing social care will have to be done later on and I will come on to that. We have this tax, and lately there has been a flurry of excitement in the newspapers that the Tories are becoming a high-tax party and people are asking what will happen. Do not worry, I say to these Benches; you are not being taxed—the poor are being taxed. That is what the Conservative Party came into power for, so relax, you are all safe. The question of how we will finance social care will remain. How will we organise social care is for another day, but how are we going to fund it?

Before I get into those sorts of things, I have a technical question for the Minister, and I would like a reply. I have been working hard. Will the carried

interest of private equity firms be subject to the levy or not? I would like an answer to that because that may bring in a bit more money. The noble Lord, Lord Sikka, shakes his head. I can see that he knows the answer. I do as well, but I will not go into it. He suggested various schemes in which money can be raised. I have always thought that I have a very clever device to raise money. I do not think anybody would like it and I have a record on this; I was sacked twice from the Opposition Front Bench for proposing new taxes nobody liked. Here goes, as I am no longer on the Front Bench.

The original problem is this: the better-off middle classes have property, and they do not want to sell the property to finance old-age care. I think the noble Lord, Lord Hunt, pointed this out. Instead of tackling that problem, the thinking is, "Oh, the poor better-off people want to hang on to their house and pass it on to their children. How can we save them from the terrible problem of having to sell a house?" Fine—let us respect that wish. People do not want to sell their house. The house is the one asset more widely owned in this country—not by the majority but more than any other asset. Quite rightly, people want to hang on to their house. Houses are a very good investment because you have an unrealised capital gain. My question is: how do you tax unrealised capital gains? That is the essence of the problem: making sure that people do not have to sell their house but pay part of its unrealised capital gain. Your Lordships can see where this is going and no one is going to like it, but it is very lucrative for raising money.

I shall take my own example because that is a very simple thing to do; I am not making up the numbers too much but I will not give your Lordships the true numbers. I have a house, which I have had for 17 years, and it has quadrupled in price. No other asset that I know of would give me that high a return, and every middle-class family knows this. However, I have paid the same council tax based on the original price at which I bought the house so I have pocketed all of its unrealised capital gain. The poor council has not got anything out of it, even though it has higher expenditure for collecting my garbage and so on.

How can we release that unrealised capital gain to councils? The answer is very simple. You do not have to raise a council rate; you have only to raise the value of the base on which the tax falls. Since I am a very ambitious person when it comes to imposing tax, I would do this annually but you could do it quinquennially: we could have a national commission for valuing property that valued all properties across the country by different types—one bedroom or two, garden or no garden, SW1 or NE17 or wherever—and it would announce a number for each type of house where the price had gone up by X per cent.

The base of the council tax for those kinds of houses would go up. I would not be taxed fully for the quadrupling of my house price but I might be taxed for its doubling, so I would pay more council tax while I was living in the property. When I came to sell, I would make a capital gain. I would not lose money. My children, or whoever I wanted to pass my property on to, would get the property. The property would not be gone, it would stay with its owner, but we would milk a little bit of the capital gain that accrues every year because of inflation and growth. People think that is impossible but it is not. Anyway, I am not running the country.

I believe that some sort of flexible, elastic tax like that is required. To take care of the problem of the postcode lottery which the noble Lord, Lord Forsyth, mentioned, where a poorer council would not get it but a richer council would, one could equalise because the increase in the base rate would be national. There would be some partial exchange. I cannot solve all problems in this short speech but I can solve some.

I urge the Government to consider this, although not now because they do not have the opportunity. In fact, if not the Government then perhaps, as the noble Lord, Lord Forsyth, said, we in the House of Lords ought to form a committee to solve this problem. Members down the Corridor are not going to solve it because they do not have the time, but we do, and being elderly is our problem so we have a stake in this. We ought to genuinely look for elastic, high-yielding ways of taxing property without, as far as possible, affecting people's desire to hang on to their property while they live. If we could do that—and only the House of Lords could; no one else can—that would be a very good thing. I urge the Government to make room to implement that proposal and then take our propositions seriously.

6.40 pm

Baroness Kramer (LD): My Lords, I am the first of the winding speakers. I have listened to many debates in this House, but it is very rare to hear speech after speech of the quality that we have had today. Frankly, it makes it even more galling that the other place dealt with this Bill so quickly, when there was so much that needed to be said and changed. It is galling that we cannot in any way directly impact the shape of the Bill, other than by hoping that we have persuaded the Government to reconsider an issue here or there, but that is the world in which we function. At least we can make sure that we are heard. I hope the Government will read today's speeches because they have been quite extraordinary.

I come from a party that has been talking about a hypothecated tax to increase the funding of health and social care for years. We always assumed that that would be based essentially on income tax, as the broadest-based tax and the most progressive of the taxes available. Lots of other ideas have come from the Floor today, including a much more regular re-rating of property. There are many ideas to consider, but the essential principle that the increased funding for the NHS and social care should be funded by a very broadly based, progressive tax is to me fundamental and sensible.

One of the reasons we as a party have gone in the direction of a hypothecated tax is to keep the Treasury's sticky fingers off the additional money. It will be important to hear an answer from the Minister on the question that the noble Lord, Lord Eatwell, raised about how long this levy will be hypothecated. We need some assurance and a fuller understanding of that issue.

[Baroness Kramer]

When I first heard that the Government were going to consider a levy, never in my wildest dreams did I consider that it would be put on national insurance. It would be hard to find a more unsuitable basis for raising this kind of funding. Many people have made the fundamental point that the threshold for paying national insurance is much lower than that for income tax, so this falls on the poorest in our society. The levy has a rate step-down for people earning higher incomes and of course it does not touch unearned income. We understand that there will be some sort of dividend tax but, as others have said, unearned income, whether on property, pensions or savings, is not captured. The Government talk constantly about levelling up, but they plan to put a tax on those with the lowest incomes, while excluding the sources of income of many of those with the highest incomes. How on earth does this contribute to levelling up?

It is normal for us to see a distributional analysis—this was raised by the noble Lord, Lord Eatwell, and others—to show where the costs fall. I would be very interested to see an analysis which separates out where the costs and the benefits fall. That information will be critical. As many have pointed out, those who will be able to benefit from the cap will be some of the biggest winners in all this, rather than people who are currently struggling because the social care on offer to them is completely inadequate and needs to be better funded. We need that distributional analysis, broken out in an appropriate way.

Context matters when we consider increasing something such as national insurance. Context always matters. The context in this case is a rapidly rising cost of living. I read today that inflation is now anticipated to reach 6% by the spring and to fall back only to about 3% for the remaining decade. That will be an incredible hit for individuals, and much of that inflation will be embedded in essentials such as food and energy. Bitterest of all for almost everybody on low incomes is the £20-a-week cut in universal credit, coming as part of this overall package. It is described by the Resolution Foundation as a "toxic" combination, and that is perhaps the most accurate phrase.

If we look back at the work done by the House of Commons Library just to give people a sense of exactly how that works, we see that a typical NHS worker is on something like £19,330 a year, and many such workers rely on universal credit. They are about to see their income fall by almost £80 a month at this time of rising prices. That is despite the 3% pay increase that they have been awarded, because the increase in national insurance and the cut in universal credit are dwarfing the pay increase. The Government must have known that when they agreed to the 3% pay increase, and frankly, it makes me absolutely furious that we did not have full honesty, transparency and openness at that time.

I have a particular question to ask the Minister because I would like some clarity on this. The Government intend to reimburse government departments for the increase in national insurance contributions for those whom they employ directly. But many departments, and far more especially local government, contract out services, and indeed, the Conservative Government have pressured them to keep contracting out services for a long period. What happens when that increase in national insurance hits the cost of outsourced services? Will the Government pick up that added bill? As many others have said, we now see local authorities considering a 5% increase in council tax just to cover the underfunded cost of social care, and I do not think that includes the additional impact of the national insurance contribution on the cost of outsourced services. We absolutely have to get some sense of an answer.

We all know—we have heard again today from speaker after speaker—that this levy is far from adequate to solve the problem, not just of social care but even of the NHS, especially with its post-Covid backlog. Social care is again pushed into the Cinderella role. We know also that over the next three years, of the £36 billion raised, it is anticipated that at best only £5.4 billion will go to social care. That is a drop in the ocean in many ways, particularly listening to the numbers that the noble Lord, Lord Forsyth, quoted on the need for an £8 billion-a-year increase; others updated those figures to something closer to between £9 billion and £14 billion. Like many others, I am absolutely convinced that we will not see the NHS claim this money just for a short two or three-year period. When I talk to people in the NHS, they are very clear that they will need to claim the lion's share of all that money for more than a decade to be able to bring the National Health Service to the level that will enable it to deal with its current and anticipated burdens.

Demographics are moving against us as well. Many people talked about the fact that half of those using social care presently are adults with various forms of disability. They will be moving into old age. The demographics mean that we will see an ever-increasing social care burden, so we need a comprehensive plan, as many said—a proper framework to be able to deliver social care. I would love to know what is in that famous White Paper which was apparently in the Prime Minister's back pocket, but we have not even seen that at this time. I also agree with so many of those who say that when you look at this package, it is clear that not only does it not fund the social care reforms that we need to deal with the desperate staffing shortages—now well over 120,000 people—but those who think that their costs will be covered will find that they are not covered for "hotel costs". May I say what an appalling term that is? These are costs of living, not costs of luxury holidays. They are not hotel costs in the sense that anybody would ever anticipate. In addition, that the cap will be tied to costs defined by local authorities' assessment of cost rather than the real cost puts us in an absolutely extraordinary situation.

I know that I should finish very quickly. From all the voices that I have heard today, I have taken that there is a huge amount of common ground across parties, Benches and ideologies. We are not all absolutely in agreement on every single point. However, it is clear that it is possible to pull all parties together and establish an underlying policy and principle that everyone can sign up to and that then guarantees that both the schemes and the funding do not become political footballs in ensuing elections. It also means that we can have in place the kind of long-term planning that is fundamental to the answers that we are searching

for. Could the Minister take back or even give us confirmation today that he will be genuinely pulling together all the various voices to both establish the framework and think through the funding? We all completely admired the statement made by the noble Lord, Lord Forsyth of Drumlean, right at the beginning. We are being asked in the Bill to pay a bill but have no idea what on earth is on the menu and what services will be provided. If we do not do this on an all-party basis, we will be doing something that, frankly, has very little future.

6.51 pm

Baroness Thornton (Lab): My Lords, I first thank all noble Lords for their contributions. After 23 years in your Lordships House, this is the first time I have been on the Front Bench during a money Bill. I am used to, of course, at Second Reading, thinking about the legislation that might be amended and how we might amend it and put it under greater scrutiny—so more is the pity today.

During the 2019 general election, Boris Johnson said,

"Read my lips, we will not be raising taxes on income or VAT or national insurance".

The Chancellor of the Exchequer has gone further and solemnly said,

"Our plans are to cut taxes for the lowest paid through cutting national insurance".

After the general election, on the steps of Downing Street in December 2019 and on his return from Buckingham Palace, the new Prime Minister said,

"and so I am announcing now—on the steps of Downing Street—that we will fix the crisis in social care once and for all with a clear plan we have prepared to give every older person the dignity and security they deserve".

Almost two years later we can see that there was no plan prepared or even in existence, and that it was an untruth when Boris Johnson promised that national insurance would not be raised. These two facts cannot be excused by the intervention of Covid-19. As my honourable friend Rachel Reeves, the Shadow Chancellor, said,

"There are two tests for the package announced yesterday. First, does it fix social care? Secondly, is it funded fairly? The answer to both those questions is no. It is a broken promise, it is unfair, and it is a tax on jobs".—[*Official Report*, Commons, 8/9/2021; col. 327.]

After the devastating critique of the Bill and its effects by my noble friend Lord Eatwell at the opening of the debate, combined with the Adam Smith Institute condemning the Prime Minister's speech to his own conference as "vacuous and economically illiterate", I think it is safe to say that we are all in trouble.

At the end of the remarkable debate today, I take a moment to pay tribute to the extraordinary work and commitment of social care staff over the last year, in the independent sector and local authorities. They have been on the front line of this pandemic, going beyond the call of duty in helping hundreds of thousands of people through an extremely difficult time. I want to recognise that the vast majority of care and love provided to our vulnerable fellow citizens is from their families—unpaid and unsupported carers—and who in this Chamber has not been fulfilling that role in some way or other over the last year or so? I pay tribute to the volunteers and community activists who stepped up during the pandemic to ensure the well-being of millions of the most vulnerable in our communities.

Throughout the pandemic we saw that social care was still not funded or treated as equally important as the NHS: front-line care workers are chronically undervalued and underpaid; families, who provide the vast majority of care, get too little support in return; and an already fragile care market has been made even more susceptible to failure, with all the human consequences that that will bring.

At least we now know the Government's underlying philosophy on social care. Sajid Javid, in his Conservative Party conference speech, said that health and social care "begins at home" and that people should turn to:

"Family first, then community, then the state."

That tells us a great deal. Not only is it disrespectful to the millions of unpaid family carers, whom this levy does nothing to help or support—4 million of whom are children—but it is deeply ignorant to imply that people

"always go first to the state"

when family and friends do so much, increasingly during the pandemic, and so many have been pushed into poverty, even having to give up work to care for relatives in many cases.

The truth is that many people are unable to cope with their relatives' caring demands because of other caring commitments; perhaps they do not live near enough, or are elderly, disabled and have care needs themselves; or they simply cannot cope with complex needs. It is also worth noting that unpaid social care falls disproportionately on women—72% of carer's allowance recipients are women—so it also perpetuates gender inequality. The levy we are debating also does not address how to meet unmet care needs, which highlights the wider issue and need for reform. The Secretary of State's "family first" line exposes the Government's lack of policy and ambition for reform, in sharp contrast to Labour's policy of "home first"—enabling people to receive the care they need, with dignity, in their own home.

I have come to the conclusion, sad and frightening as it is, that this Government do not understand who the cared for are and who does the caring in our society. Is the Minister aware that one-third of the users of social care—and half the social care budget goes to them—are working-age adults with disabilities? *Build Back Better* hardly mentions them at all; it just assumes and addresses our ageing population. Is he aware that more people get care and support in their own home than in care homes? Is he aware that one in three unpaid family carers has to give up work or reduce their hours because they cannot get the help they need to look after their loved ones? They lose their income, employers lose their skills and the Government lose their taxes.

Yet, despite social care being vital to so many people, over the last decade the Government have repeatedly failed to tackle the underlying problems in the system—a fact brutally exposed by Covid-19. It is quite reasonable for the noble Lord, Lord Forsyth, to ask what Labour would do instead. Our goal is to

[Baroness Thornton]
transform the situation for older and disabled people, as part of a much wider ambition to make Britain the best country in which to grow old. In this century of ageing, we understand that social care is as much a part of our infrastructure as our roads and railways. If you neglect your country's physical infrastructure, you get roads full of potholes and buckling bridges, which prevent your economy functioning properly. The same is true if you fail to invest in your social infrastructure. Without a properly paid and trained care workforce, vacancy and turnover rates soar, fewer people get the support they need and families end up taking the strain.

We have been calling for a 10-year plan of investment and reform, empowering users and families to live the life they choose, ensuring their views and experiences drive change throughout the system, with a guiding principle of "home first". We will always need residential and nursing homes, but the vast majority of people want to stay in their own home for as long as possible. Yet too many struggle to get even the basic support or home adaptations that make this possible. Greater use of technology can also help people live independently for longer, as can expanding the housing options between care at home and a care home.

Delivering on the "home first" principles requires a fundamental shift in the focus of support towards prevention and early intervention. Some 1.5 million older people need help with the basics of getting up, washed, dressed and fed but do not get any support at all. That is not good for them, or for taxpayers if they end up needing more expensive care or end up in hospital as a result.

None of these improvements will be possible without transforming the pay and conditions of the workforce. This pandemic has shown, more than ever, that front-line carers are essential to a properly functioning society and economy, yet two-thirds do not earn the real living wage and a quarter are on zero-hours contracts. So it is time for a new deal for care workers to back the aspirations of staff, tackle high vacancy rates and deliver at least 500,000 extra staff, whom we will need over the next decade just to meet growing demand.

As a starting point, Labour has called on the Government to guarantee that all care workers are paid at least a real living wage of £10 an hour in their plans for social care reform. Alongside this, families need decent support to help care for their loved ones, so that they do not put their own health and livelihoods at risk. We back a new partnership with unpaid carers, so that they get proper information, advice, breaks, and more flexibility in the workplace to help them balance their work and caring responsibilities. Our vision is for social care services to be fully joined up with, but not run by, the NHS. We have learned from the media that, as many noble Lords have said, there is likely to be a comprehensive plan for a new national care service, under which health and social care could be delivered by the same organisation, and that it is being actively considered for inclusion in a White Paper next month. Well, we have been waiting for a White Paper for two or three years, so who can say when that will happen?

I hope that the noble Lord, Lord Bethell, is enjoying his non-governmental role. At no point over the past two years have he or the Government attempted to have cross-party discussions about the future of social care—not once. I am totally puzzled as to why he did not take up the good ideas in the paper led by the noble Lord, Lord Forsyth, for instance.

So we have a half-baked Bill before us today which says that national insurance contributions will rise by 1.25 percentage points from next April, to raise £12 billion a year for the NHS and social care, but social care will not get any of the funding for two or three years, if at all. The Minister must have picked up the scepticism across the House about how that will roll out. At the same time, launching the Bill before us today, Downing Street remained unclear about how an integrated system would work best. In addition, we have a huge NHS Bill in play in the Commons which says that its aim is to create integrated care systems—well, who would have thought?—for providers and commissioners of NHS services, together with local authorities and other local partners to collectively plan health and social care services. Can the Minister describe what the final outcome of all this might be, and in what kind of timetable?

My noble friend Lord Eatwell posed many questions that the Minister must address in his closing speech. My noble friends Lord Hunt, Lord Lipsey, Lord Whitty, Lord Hain, Lord Griffiths and Lord Sikka have added many important and pertinent questions, and I have added one or two of my own. The Minister now has an opportunity to persuade the House that this Bill solves at least some of the problems that face social care.

7.03 pm

Lord Agnew of Oulton (Con): My Lords, this has been an interesting debate. The quality of speakers has been very high, and I am aware that most of them know far more about these issues than I do—so it is with a certain humility that I attempt to reply. Also, as someone who does not appear that often, even I have noticed that I do not necessarily have the mood of the House with me on this Bill. However, I will spend longer in summing up than I spent in opening, to try to address some of the concerns and at least put the Government's point of view on the many challenges that have been raised.

I will start with my noble friend Lord Forsyth, the noble Lords, Lord Eatwell and Lord Shipley, and the noble Baronesses, Lady Tyler and Lady Kramer, on the fundamental issue of the use of national insurance as the linchpin for this tax raising. We need a broad-based tax, such as income tax, VAT or national insurance, to raise the sums needed for such a significant investment. There is a precedent here. In 2003, the Labour Government increased the same NIC rates by 1%, specifically to increase funding for the NHS. There is an existing NIC ring-fence for the NHS. The NIC system already directs a ring-fenced proportion of receipts to the NHS. This ring-fence was established in 1948 and expanded by the Labour Government in 2003. I cannot provide the noble Lord, Lord Eatwell, with a cast-iron guarantee that the hypothecation will remain in perpetuity, but we see the principles here and, as my noble friend

Lord Hannan said earlier, rarely do these taxes, once created, go away—so I hope to give some reassurance on that.

This also ensures that businesses contribute to the NHS. That is fair and reasonable, because they need a workforce that benefits from the NHS. Lastly, NICs apply on a UK-wide basis.

The noble Lords, Lord Macpherson and Lord Sikka, asked why we have not included rental income in the widening of the net. We have included dividends while excluding modest amounts of dividend, up to £2,000 a year. With regard to income from property, tax is currently levied at the same rates as income tax on earned income. Divergence in these rates would add complexity and create opportunities for avoidance. Those who earn their income from property have made a contribution to public finances. The property allowance has been frozen, as have the personal allowance higher rate and additional rate thresholds.

The Government are making sure that landlords continue to make a contribution. For example, we have restricted tax reliefs available to landlords. Over the past four years we have restricted relief for finance costs: it can now be claimed only at the basic rate, not at 40% or 45%. That has raised more than £1 billion. The higher rate of stamp duty for additional residential dwellings means that landlords now pay between 3% and 15% extra tax on those properties.

The noble Baroness, Lady Tyler, raised the issue of people over the state pension age, and noble Lords asked about the whole issue of intergenerational fairness. If we were to raise the sums required just for those over 40, the levy would need to be 60% higher, at around 2%. This would be a much larger burden on working people. Furthermore, around half of all the funding raised by the levy will go towards health and social care services that benefit working-age people, such as general NHS funding and vaccines. Working-age people will also benefit from limits on what they would need to pay if they themselves needed care in later life, and they will gain the peace of mind that comes from protecting their family members from substantial costs.

The noble Lords, Lord Eatwell and Lord Sikka, my noble friend Lord Forsyth and the noble Baroness, Lady Tyler, asked about the impact on the lowest paid. In relation to individuals, NICs are a progressive way to raise money: the highest-earning 14% will pay about half the revenues raised, while 6.2 million people who earn less than the NIC threshold of £9,500 will be kept out of the levy. I accept the points raised by two noble Lords about the cliff-edge nature of NIC contributions for higher earners, but the brutal reality is that, in the round, that top 14% will be paying around half of the total. That goes to the crux of this whole debate: we have tried very hard to ensure that this is a broad-based tax—as broad as possible.

Lower-income households will be large net beneficiaries from the package, with the poorest households gaining the most as a proportion of income. As was noted by one noble Lord, the highest 20% of households by income will contribute 40 times as much as the poorest 20%. One can make arguments about how much the bottom and top earn; nevertheless this is a highly redistributive approach to a difficult tax and an issue that all parties have dodged for 20 years. It is a genuinely progressive policy, and the distributional analysis published by the Treasury makes that clear.

Going beyond that, since 2010, Conservative Governments have consistently kept lower-paid people out of tax and kept the cost of living down. The income tax personal allowance threshold has increased by over 90%, meaning that a typical basic rate taxpayer now pays £1,200 a year less than they would have done otherwise. We also increased the NIC primary threshold by over £800, in April of last year, with a typical employee saving just over £100. In April of this year, we increased the national living wage to £8.91—an annual pay rise of £350 for someone working full time on the national living wage. Taken together, our changes to national insurance mean that someone working full-time on the minimum wage is currently £5,400 better off than in 2010.

The noble Lords, Lord Eatwell and Lord Macpherson, asked about the impact on employers. Some 70% of the money raised from businesses will come from the largest 1% of employers, and some 640,000 employers are excluded through the assistance at the bottom end. Again, as a Conservative Minister myself, I do not like raising taxes for anybody, but we have tried to broaden this tax as much as possible. Around 40% of businesses will not be affected by the levy. The noble Lord, Lord Macpherson, and my noble friend Lord Hannan, are not happy about a tax on jobs. The OBR will consider the economic effects of the levy in the light of its updated economic and fiscal forecasts, which will be published in the next couple of weeks alongside the Budget.

The noble Lord, Lord Eatwell, asked about the tax bill on the UK. We have had to take these difficult decisions because, as I said in my opening comments, this is a permanent increase in taxation for a permanent challenge that we face in a country with aging demographics. Our tax system remains competitive, with our tax take as a share of GDP lower than major international competitors, and broadly in the middle of the G7.

My noble friend Lord Forsyth asked about anti-avoidance rules, which is a very important question. I suspect, pragmatically, that there will be some fiddling around at the edges in the March/April threshold, but this whole piece of legislation will be subject to the full anti-avoidance rules that apply to NICs. Indeed, the recent work on IR35 would probably have been the biggest area of weakness had we not engaged in those reforms. The noble Lord might be interested to hear that even government departments are being threatened with fines by HMRC for non-compliance with IR35, so HMRC is out there already.

The noble Lord, Lord Eatwell, and the noble Baronesses, Lady Brinton and Lady Kramer, asked about hypothecation. I touched on this earlier. In 2022-23, all revenue from the health and social care levy will be directed to NHS England and equivalent bodies in Scotland, Wales and Northern Ireland through the existing NHS allocation. From 2023-24 onwards, levy revenue will be ring-fenced in law for health and social care. HMRC will pay the proceeds to those

[Lord Agnew of Oulton]
responsible for health and social care in all four parts of the UK, including NHS Scotland, NHS Wales and the equivalent in Northern Ireland.

The noble Baroness, Lady Fraser, asked about devolution and our way of handling that. This is absolutely a UK-wide problem. We have taken the decision to act on a UK-wide basis for the benefit of citizens across the UK. Scotland, Wales and Northern Ireland will receive Barnett consequentials on the additional health and social care funding in the usual way, with exact totals to be confirmed in the SR. Early indications are that, pro rata, the populations of the devolved authorities will receive more money from this approach.

The noble Baroness, Lady Brinton, asked about the funding specifically for social care. The Government are committed to spending £5.4 billion across three years on adult social care from this levy. This funding will end unpredictable care costs and include over £0.5 billion to support the adult social care workforce, in recognition of their efforts over this terrible pandemic. It includes funding to enable all local authorities to move towards paying providers a fair rate for care, which should drive up the quality of adult social care services, improve workforce conditions and increase investments.

Several noble Lords asked about funding for local authorities. We are committed to ensuring that local authorities have access to sustainable funding for core budgets at the spending review. We will ensure that every council has the resources they need to deliver these reforms.

The noble Lord, Lord Griffiths, spoke movingly and clearly understands this sector very well. I would like to reassure him that substantial support has been provided to the social care sector through the pandemic—for example, billions of items of free PPE prioritised to care workers, residents and unpaid carers for vaccination. We have made available £2.4 billion in specific funding for adult social care. This is made up of £1.75 billion for infection prevention and control, £522 million for testing, and £120 million to support workforce capacity. This funding is additional to the £6.1 billion for local authorities to deal with the impact of the pandemic on their services, including adult social care.

I turn to some specific questions on social care spending. First, on the size of the cap, the new £86,000 cap will end unpredictable care costs so that more people can preserve their savings and assets. Andrew Dilnot's report was published 10 years ago and reflected the circumstances in 2011. Clearly, levels of wealth and asset prices have increased since then. We think that we have set the cap broadly at the right balance of achieving personal responsibility for planning for old age but putting in place a safety net where exceptional costs or periods of care are needed.

On domiciliary care, I think my noble friend—

Lord Hunt of Kings Heath (Lab): Would the noble Lord give the House an estimate of how much a person would really have to spend before they reach the £86,000 cap? Does he agree that it will be at least double?

Lord Agnew of Oulton (Con): My Lords, more detail will be set out in the Budget and spending review in the next two or three weeks to address the noble Lord's question.

The noble Lord, Lord Hunt, my noble friend Lord Bethell and the right reverend Prelate asked about help for carers specifically.

Lord Forsyth of Drumlean (Con): I apologise. My noble friend was about to answer the question on domiciliary care.

Lord Agnew of Oulton (Con): Yes, sorry. I lost my thread. There will be no changes to existing procedures.

Noble Lords asked about support for unpaid carers. Of course, they play a vital role in the care system. I suspect that there is hardly anyone here in the Chamber who has not been involved in the care of their parents at the end of their lives on an unpaid basis. I certainly had to—but luckily I am one of seven siblings and we all live in the same county. None the less, it is a considerable burden.

The Care Act encourages local authorities to support unpaid carers and to provide preventive care to stop people's early care needs escalating. A new cap on care costs will offer greater certainty to unpaid carers and support informed decision-making and planning for the overall costs of care.

The Government will take steps to ensure that the 5.4 million unpaid carers have the support, advice and respite they need, fulfilling the goals of the Care Act. We will work with the sector, including unpaid carers, to co-develop more detail in our plans and will publish further detail in the White Paper for reform later this year—and on the matter of the White Paper, I say to noble Lords that it is not long now. It is only a couple of months; it has been promised before the end of the year, and I am perhaps a little more optimistic than some Members of the House.

Baroness Kramer (LD): Before the Minister leaves this area of exploration, does he have an answer to my question on whether the Government will pick up the costs of the additional national insurance to be paid by those to whom local government outsources services? I believe it is a yes or no answer.

Lord Agnew of Oulton (Con): I cannot give the noble Baroness a clear answer on that now. More detail will be available in the Budget and the spending review. If it does not transpire in those documents in the next couple of weeks, the noble Baroness can write to me and I will investigate further.

On the adult social care workforce, our investment is at least £500 million across the three years to deliver new qualifications, progression pathways and mental health support. This workforce package is unprecedented investment: it is something like a fivefold increase in public spending on skills and training for this sector.

The noble Lord, Lord Griffiths, asked about vaccines for NHS staff. He is correct that at the moment there is no requirement for NHS staff to be vaccinated. However, we have a consultation under way to try to find the best way through on that sensitive issue.

I have probably answered the noble Baroness, Lady Kramer, as much as I can on the compensating of NICs. Just to confirm, I say that the Government will compensate public sector bodies such as the NHS for the increased cost of employer NICs. If they did not, they would simply reduce the amount available. The Chancellor will set out more details in his spending review.

My noble friend Lord Bethell asked about NHSX funding. We remain absolutely committed to all aspects of technological improvement. Again, I am more optimistic over the long term because I believe we will find new ways of treating this sector more efficiently, and NHSX will play a part in that.

My noble friend Lord Naseby made a point about the structure of GPs' surgeries. We will have to see some dramatic changes in that area. In my view, we cannot sustain surgeries in which five-sixths of the doctors are working only part-time, but again I think this will throw up opportunities. The two sectors will have to work much more closely together—

Baroness Thornton (Lab): The Minister is straying into territory that I think is probably unwise. The noble Lord, Lord Naseby, made various assertions, but there is no proof that part-time doctors and GPs are less efficient or that this is a less efficient way of working. We know that this absolutely is not the case in lots of other places, and there is no proof that it is in this case. The Minister might be wise not to go there.

Lord Agnew of Oulton (Con): I respectfully disagree with the noble Baroness on that. Your Lordships are having a much more detailed debate on health reform very shortly, so I am sure that will be teased out in those discussions.

The noble Lord, Lord Lipsey, asked about the White Paper. As I said, we certainly hope to see that out in the next few weeks.

The noble Lord, Lord Desai, asked about the taxation of carried interest and private equity firms, but I suspect he was being slightly disingenuous as he knows we are not extending this to capital gains tax, only to dividends. No doubt there is a separate debate to be had on that, but at the moment it is a capital gain.

The essence of this debate is the fairness of the way the tax is being structured—

Lord Eatwell (Lab): It is fortunate that the Minister just brought up once again the issue of fairness and the discussion of it in the House. At the beginning of his speech, he referred to the proportion of the total raised from—I think he said—the top 14% of payers. This is a completely bogus statistic and has nothing to do with fairness. Let me give him an example. Let us suppose that someone earns £1 million and there is a 10% levy. They pay £100,000 on the levy and have £900,000 left. Then let us suppose that someone earns £10,000 a year—they would still be caught by this levy, by the way—and, to keep the numbers easy, that they still pay 10%. Their income has gone down from £10,000 to £9,000 and, as Marcus Rashford has said, they are choosing whether to eat or to stay warm. To understand fairness is to understand the impact on individuals of the measures taken. Using these absolutely bogus numbers, which are not at all representative of fairness, simply distorts and degrades the debate.

Lord Agnew of Oulton (Con): I take on board the noble Lord's points, but the reality is that the highest-paid in this country are paying the largest contribution to this tax and indeed PAYE itself. I accept entirely what he says about the impact being disproportionately greater on poorer people, but that is why we have designed the structure to protect as many people as possible. As I mentioned in my opening comments, some 6 million people will not be subject to this at all, and we have kept 40% of smaller businesses out of it. Those on higher earnings will pay a lot more, and that is an important principle, but I absolutely accept the point he made.

I am grateful for the opportunity to explain the Bill and address the issues that have arisen today, and I now commend the Bill to the House.

Bill read a second time. Committee negatived. Standing Order 44 having been dispensed with, the Bill was read a third time and passed.

House adjourned at 7.26 pm.

Grand Committee

Monday 11 October 2021

Public Service Pensions and Judicial Offices Bill

Committee

3.45 pm

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): My Lords, Members are encouraged to leave some distance between themselves and others and to wear a face covering when not speaking. If there is a Division in the Chamber while we are sitting, the Committee will adjourn as soon as the Division Bells are rung, and it will resume after 10 minutes.

Clauses 1 to 15 agreed.

Clause 16: Powers to reduce or waive liabilities

Amendment 1

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

1: Clause 16, page 14, line 2, leave out "may" and insert "must"

Member's explanatory statement

This would require, rather than allow, pension scheme regulations to make provision for circumstances in which a liability owed by a person to a scheme will be reduced or waived. This is to probe further details on what circumstances will be provided for and how the schemes will be designed.

Lord Ponsonby of Shulbrede (Lab): My Lords, I rise to speak to Amendments 1 to 3 in my name. They are probing amendments to draw out some further detail, and I thank the noble Baroness, Lady Janke, for adding her name to them. I put on record my thanks to the Police Superintendents' Association for raising its members' concerns with us.

Recurring themes will emerge in our deliberations on this Bill—particularly questions of oversight, of the details and the actual mechanics of when and how the remedy is to be delivered and of how that will impact on members. With these amendments, we are trying to flesh that out.

I recognise that the Bill is essentially an enabling Bill, and it provides powers for schemes to do the detailed work required by the remedy. Therefore, it is one piece of a very complex picture. The Committee will particularly benefit from the expertise of some Members here today, and we hope to probe some key questions and add to the understanding of what impacted scheme members can expect.

Amendments 1 to 3 are simple probing amendments to Clause 16. Currently, the clause provides that a scheme "may" make provision to waive or reduce a scheme's members' liability. These amendments would change that word to "must". The Explanatory Notes state:

"Clause 16 provides that scheme regulations for a legacy scheme may make provision whereby a liability on an individual to repay overpaid benefits … or to pay an amount in respect of underpaid contributions … is reduced or waived."

In simpler terms, due to the changes and choices that the Bill provides for, some members may end up owing their scheme funds due to their having underpaid contributions or having been overpaid pension benefits.

Clause 16 provides that schemes have the power to waive or reduce those costs for people in certain circumstances, but the Bill does not provide any detail of what those circumstances will be. The Explanatory Notes give the following example:

"where a pensioner member has been overpaid their pension benefit and reimbursing the … scheme would cause hardship, the pension scheme could write off part of the liability."

That is a welcome example, but it appears only in the Explanatory Notes. There is no level of detail reflecting that, or indeed any of the possible circumstances, in the Bill itself.

So, I have number of questions for the Minister. Can he provide more detail on the circumstances in which the Government would expect relief to be provided under this clause? Secondly, has the department estimated how many people may be affected in this way? Thirdly, I know the Minister will tell us that the Government's aim is to provide the schemes with discretion to support their members, but should not every scheme at least be required to set up provisions to provide relief where necessary? Furthermore, on the question of when a waiver or reduction would be necessary, are there situations in which the Government would expect every scheme to provide relief, such as where financial hardship is caused? In this case, would it not be appropriate to include those details in the Bill?

Another question concerns Clause 24, which provides that the powers under this clause must be exercised in accordance with Treasury directions. So, the Treasury intends to provide some directions to the schemes on these issues, but outside the Bill and away from parliamentary scrutiny. What plans do the Government have to consult on the directions and the circumstances this clause may be applied to, so that the schemes reflect the actual situations experienced by members?

I know that the Minister is only too aware of this issue and, in many ways, we keep coming back to it. This is a complex Bill and we have a number of hours to look into that complexity. Clause 16 recognises that the impacts may need to be mitigated. What we are seeking is clarity on the protection and assistance that will be available. I look forward to the Minister's explanation. I beg to move.

Baroness Janke (LD): I signed Amendments 1, 2 and 3 and support the reasons laid out for us today by the noble Lord, Lord Ponsonby. It is be important that all members of the scheme understand how this system will work. As we have heard, it is a complex Bill that will affect many people, so I agree that an estimate of the number affected would be helpful. The transparency and consistency of the scheme need to be clear, and I hope the Minister will be able to provide that clarity. I also agree that it would be helpful to have the Treasury directions on the face of the Bill, rather than outside it, so that there are no misunderstandings and the people affected by this provision understand clearly how it will work for them.

Viscount Younger of Leckie (Con): My Lords, I thank the few noble Lords who have spoken for their contributions to this first debate in Committee: the noble Lord, Lord Ponsonby, and the noble Baroness, Lady Janke. I also thank the noble Lord, Lord Davies, who I believe was originally intending to speak.

Before I address the points raised, and as we are commencing Committee, I will set out briefly the core principles which underpin this Bill; in my view, this will provide a nice bridge between Second Reading and Committee. At the core of the Bill are fairness and equal treatment. The Bill ensures that those who deliver our valued public services continue to receive guaranteed benefits in retirement that are among the best available, on a fair and equal basis. This core objective is underpinned by the principles of greater fairness between lower and higher earners, fairness for the taxpayer, future sustainability and affordability of public sector pensions.

I thank noble Lords for continuing to work with me to ensure that these important objectives are achieved through this Bill in support of the vital public services on which we all rely. I also draw noble Lords' attention to the policy statements covering various key elements of this Bill, which were deposited in the House Libraries on 4 October. I trust that noble Lords will have seen these despite the tight timetable; I am aware that many noble Lords will have only just returned from recess.

These amendments are intended to ensure that a comprehensive remedy is delivered for all members by requiring, rather than enabling, regulations to be made under Clauses 16 and 19. I take the point made by the noble Lord, Lord Ponsonby, that these are probing amendments, but I would like to give a full response and hope that I can answer the five or six questions that he asked. If not, I will certainly write to the noble Lord and, indeed, copy in other noble Lords who have spoken.

Before considering the specifics of noble Lords' amendments, I thought it would be helpful to remind this Committee about the practical effects of stating that regulations "must" be made as opposed to "may" be made. When an Act states that regulations may be made for a particular purpose, it grants whoever is responsible for making those regulations a power to make them. In all likelihood, they will make those regulations but, if it is not necessary or appropriate, they can choose not to. Where an Act states that the regulations must be made, it imposes a duty on that person to make those regulations. If they do not, they are breaking the law even if those regulations are not necessary or not the most appropriate course of action in a particular set of circumstances. Accordingly, it is appropriate to exercise caution about occasions when a duty to do something is imposed since otherwise it could lead to unintended consequences and possibly to unmeritorious litigation about whether a particular duty has been complied with.

Amendments 1, 2 and 3 proposed by the noble Lord, Lord Ponsonby, would require, rather than allow, pension scheme regulations to make provision for a liability owed by a person to a scheme to be reduced or waived. The amendments put forward by the noble Lord, Lord Davies, would amend the Bill so it requires, rather than allows, pension scheme regulations to make provision for transfers into and out of a scheme in relation to remediable service.

As a general point, there are 17 new public service pension schemes in scope of Chapter 1 of the Bill. For each of those schemes there are also connected legacy schemes. Pension provision for these workforces has evolved considerably over several decades. In view of the complex landscape—which the noble Baroness, Lady Janke, referred to earlier—that has resulted from this, it is particularly important that schemes have flexibility to deal with some of the more specific circumstances in which members may find themselves. Therefore, the Bill enables rather than requires regulations to be made in Clauses 16 and 19.

As set out in the consultation response published in February 2021, the Government are committed to taking a proportionate approach to the recoupment of overpaid benefits. The powers provided by Clause 16 allow the Government to uphold this promise. Put simply, when a member owes overpaid pension or lump-sum benefits to a scheme, Clause 16 provides a power to allow scheme regulations to make provision to reduce or waive that member's liability.

The reasons for the inclusion of Clause 16 should be spelt out, and they are threefold. First, the clause provides that contributions owed by or to a member may be reduced to reflect tax relief that was paid or due on those contributions. The purpose of this is to ensure the member is placed in the correct position net of tax. Secondly, it provides that contributions owed by the scheme to a person under Clause 14 may by agreement be waived. This is to ensure that members who become legacy scheme members under Clause 2(1) and owe contributions as a result, can have that liability waived until they make a choice under Clause 9 whether to receive legacy benefits or instead elect to receive new scheme benefits. Where a member knows they want to receive new scheme benefits, this will allow them to avoid having to pay legacy contributions in the interim period. Corresponding provision is also made for amounts owed by the scheme to the member to be reduced or waived with the member's consent. Finally, the clause allows schemes to reduce or waive amounts owed by members where that arises other than by choice of the member and requiring the payment would cause undue hardship or prejudice. This is for a small group of members who had tapered protection and will be placed in a worse position regardless of whether they choose legacy scheme benefits or new scheme benefits in relation to their remediable service.

Clause 16 is part of a package of measures intended to mitigate such circumstances. Therefore, it is expected that the responsible authorities and scheme managers will consider using this power in conjunction with the power in Clause 21 to pay compensation and the power in Clause 23 which permits responsible authorities to make regulations setting out the process by which relevant amounts may be paid such as, for example, in instalments.

4 pm

In exercising an ability to reduce or waive liabilities under regulations made using the powers in Clause 16, the Government would expect scheme managers to look at each individual's circumstances on a case-by-case basis, subject to any provision in Treasury directions under Clause 24(3). The power to make regulations for this purpose in Clause 16 is expressed as a permissive power rather than a requirement as it is important that schemes are able to exercise discretion and to consider the circumstances of individual members.

A blanket requirement to waive or reduce liabilities arising as a result of the remedy would give rise to a difference in treatment between those who were in scope of the remedy, whose liabilities could be reduced or waived, and those who are not in scope, where there is no such possibility. This could result in further age discrimination. It is therefore important that the discretion for schemes remains.

Clause 19 deals with transfers between pension schemes. The approach taken by the Bill is to ensure that members are placed in the position that they would have been absent the discrimination that arose. In relation to transfers, this means that where members move between public service pension schemes they will retain a choice in relation to any period of remediable service. The member will be able to choose whether to receive legacy benefits based on the legacy benefits transferred from the exporting scheme or new scheme benefits based on the new scheme benefits from the exporting scheme. Where a member leaves a pension scheme, they may be eligible to transfer their pension rights to another pension scheme.

Where a cash equivalent transfer value is paid out of a public service scheme and it relates to a period of remediable service, the value will be determined on a "higher of" basis. This accounts for the fact that the member would have been able to choose between two sets of benefits for the remedy period. Clause 19 therefore provides for scheme regulations to make provision about transfers into and out of the scheme in respect of rights in relation to remediable service, both where another public service pension scheme is concerned and where the transfer is between a public service pension scheme and another private occupational pension scheme.

The rules and processes around transfers differ between schemes; for example, some public service pension schemes are more permissive of transfers out into private occupational pension schemes than others. To minimise the risk of unintended consequences, it is therefore important that Clause 19 takes a permissive, rather than mandatory, approach to scheme regulations. This ensures that schemes are able to make regulations that are legally and practically operable, in view of existing processes and requirements in scheme regulations, and avoids the risk that members are disadvantaged as a result of their transfers not being able to be dealt with in line with the policy intent that I have set out.

Amendment 12 would also require rights to be varied in a specific way. But it is not appropriate to mandate one particular approach to the treatment of transferred rights in the primary legislation here. That is why, for example, subsection (4) sets out a different approach, backed up by the safeguard in subsection (5) to ensure that the value of the rights is protected. Accordingly, Clause 19, read as a whole, provides a comprehensive suite of powers to enable schemes to make appropriate provision in regulations to take account of the wide variety of circumstances that may occur. That is appropriate and necessary here to ensure that schemes have the flexibility they need.

Any regulations made under Clause 19 are subject to Treasury consent and, under Clause 24, must be made in line with any provisions on transfers in Treasury directions. This ensures an additional level of assurance and consistency, where required.

I hope that I have reassured the noble Lord that the Government have considered carefully how the powers in Clauses 16 and 19 should be exercised and that retaining an element of flexibility for schemes is important. There was quite a lot of technical information in my response, but I hope it has gone some way to answering the several questions asked. The noble Lord, Lord Ponsonby, asked whether the department had an estimate of how many members may be subject to a waiver. We do not have an estimate of the number of members with transitional protection who may be worse off. However, schemes consider that the number is likely to be in the hundreds. I hope that that provides some help. With that explanation, I ask the noble Lord to withdraw his amendment.

Lord Ponsonby of Shulbrede (Lab): My Lords, I thank the noble Viscount for his explanation and for addressing some of the questions which I asked. I will reflect on the answers. I should also apologise to my noble friend Lord Davies as I gave him some bad advice and he did not speak to his amendments. He tells me that similar issues are coming up in the next group; I do not know whether it would be possible for him to speak to his amendments out of order. Nevertheless, having said that, I will reflect on the detailed answer which the Minister has given, and I beg leave to withdraw my amendment.

Amendment 1 withdrawn.

Amendments 2 and 3 not moved.

Clause 16 agreed.

Clause 17 agreed.

Clause 18: Voluntary contributions

Amendment 4

Moved by ***Lord Davies of Brixton***

4: Clause 18, page 15, line 31, leave out "may" and insert "must"

Member's explanatory statement

This amendment would require, rather than enable, scheme regulations to make provision about cases where a member has paid voluntary contributions.

Lord Davies of Brixton (Lab): My Lords, effectively these issues have been presented by my noble friend Lord Ponsonby and I have the great advantage, of

[Lord Davies of Brixton]
course, of having the Minister's reply to the questions that I have not yet asked. In a sense, I am happy to take them as read.

I do not have an interest to declare but it would be helpful to the Committee if I declared a non-interest: I did have a declarable interest up to the end of August, in that I was a paid adviser to various trade unions on this very issue. Clearly, there would have been a conflict, but I ceased to hold that role at the end of August. The declaration will appear in the register of interests for a year but is no longer valid. I think that covers me for the whole of the Committee stage and that I do not need to say that again.

It might be helpful for the Committee if I say a little more than that, in that I have been a close observer and participant in the process of the reform of public service pensions, it seems, for the whole of the 21st century so far. Although we had the report of the noble Lord, Lord Hutton, in 2011, the process actually started earlier than that in 2005 with what was known as the Warwick accord between the then Labour Government and public service unions. I was involved at that stage, and in the discussions before and after the presentation of the Hutton report. Indeed, if I had to nominate my specialist subject in "Mastermind", a strong possibility would be public service pensions reform in the 21st century.

These are not exactly random thoughts, but I thought that it might be helpful if I just set out three relevant and little-known facts about public service pension reform. As I mentioned, it did not start with the Hutton report but with the Warwick accord, going back to 2005 and the subsequent public service forum agreement of that year. Major changes took place in public service pensions at that time.

Just to clarify, the reforms were carried out in accordance with the heads of agreement of 15 December 2011 with the then coalition Government. Although it is described as a heads of agreement, it was not a total agreement but, effectively, a decision by the Government that was accepted by some, but not all, trades unions. A background point but an important one is that the new schemes were not worse for everybody. A non-trivial proportion of the public service workforce will gain from the reformed schemes, so the situation is not as simple as it is sometimes presented.

Turning to Amendments 10, 11 and 12, the issue here is that if people had had what they were entitled to following the Supreme Court decision, they might have made different decisions from those which they made at the time. Clause 19 refers to transfers. If you were in the old scheme you decided to make a transfer, but had you been in the new scheme, you might have decided not to, and vice versa. These issues are therefore important. To be honest, I do not envy the job of administering this process, but it is there and the Government are obliged to pursue it.

I listened to what the Minister had to say on the issue of "may" or "must". I should add that I did some research, along with my noble friend, and we are grateful to the Police Superintendents' Association for having drawn these issues to our attention. We have with us a magnificent set of legal talent, and perhaps at some stage we might have a definitive view on the difference between "may" and "must". The problem here is that from the viewpoint of the Police Superintendents' Association and other members of public service pension schemes, there is a level of mistrust. The issue is not some semantic definition of whether "may" or "must" works; they see "may" and they think, "Maybe the Government are not going to do what they've promised." Saying "We're going to do it anyway" does not totally answer the question that is put before you by having to choose "may" or "must", because it invites the rejoinder, "Well, if you're going to do it anyway, let's have 'must' in there, and everyone can feel comfortable."

There is no doubt that these issues are going to have to be dealt with in the process of implementing the court judgments, and from the perspective of the scheme member, "must" seems to work. My noble friend and I heard what the Minister had to say, and we will read with interest the precise wording. I take it that the Minister will not be writing separately on the issue, but the statement as set out in *Hansard* will be the definitive government position and we and the scheme members will study that, come to a view and, if necessary, return to the issue on Report.

I do not know whether I should do this now, but I happily indicate my intention not to push my amendments to Clause 19.

Viscount Younger of Leckie (Con): My Lords, it might be helpful—

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): I am so sorry—I am getting slightly muddled. In the interests of clarity, I point out that the amendment proposed is:

"Page 15, line 31, leave out 'may' and insert 'must'".

I do apologise to the Minister.

Viscount Younger of Leckie (Con): Just for my own clarity, I thank the noble Lord, Lord Davies of Brixton, for his comments, but he might like to speak to the amendments in this group, which are 4, 5, 6, 7, 8 and 9.

4.15 pm

Lord Davies of Brixton (Lab): Essentially the same background applies: this is the position in which we find ourselves following the Supreme Court judgment. It is a dog's dinner really. We would never choose to be here but, now that we are here, we have to sort it out—but it is a mess. One of the most complicated issues which will need to be resolved is about people who paid ADCs in one scheme and would not have paid them in the other scheme or did not pay ADCs in the scheme they were in but would have done so if they had been in the other scheme. Some sort of assessment of some alternative reality has to be made, so the issue is complicated.

These amendments repeat "must" and "may" issue—and I have dealt with that—but they also deal with how the issue is resolved. There is a problem with additional voluntary contributions, which people pay voluntarily to secure additional benefits. It clearly is a decision determined by the scheme in which they will accrue benefits. If they misunderstood which scheme they were in, they may well have taken a different decision. The Bill gives the scheme administrator the

decision about how that matter is resolved. Amendment 8 would place the decision about how the issue is resolved directly in the hands of the member rather than, as the Bill stands, leaving in the hands of the scheme administrator. It is an issue of the hypothetical: if a member had been in a particular scheme they would have paid contributions. As I understand it—and I would be grateful for the Minister's clarification—the Bill as it stands deals only with how the contributions that the member has made are handled, but there is also the issue of the additional voluntary contributions that the member did not make but would have made. Finally, Amendment 9 seeks to make it clear, when a refund of contributions is decided on, the contributions that were made will be repaid with interest included in the sum. That covers the issues and I will be grateful for the Minister's comments. I beg to move.

Viscount Younger of Leckie (Con): My Lords, here we address six amendments that have been brought forward on Clause 18 by the noble Lord, Lord Davies of Brixton. I note again his declared interests that he pointed out at Second Reading and his expertise in this area, and I very much look forward to his appearance on "Mastermind" on his specialist subject.

Clause 18 provides for scheme regulations to make provision in relation to additional voluntary contributions paid during a member's remediable service. As the noble Lord, Lord Davies, said, the first two amendments would require, rather than allow, scheme regulations to make provision about these matters. I hope that I can reassure the noble Lord that this is not necessary. I want to give a full response, although not quite as full as on the first group—but it is a full response on some of the important issues that the noble Lord has raised.

The reason this clause is enabling rather than directive is that not all additional benefits purchased during a member's remediable service will need to be revised as a consequence of the Bill. For example, some legacy schemes provide that members may purchase additional pension by way of a lump-sum payment or periodic additional contributions, so the Government have agreed that members may complete the payment for these benefits when they have already commenced. The resulting benefits will not be changed, regardless of a member's choice of whether to receive legacy or new scheme benefits. However, making Clause 18 directive would require schemes to vary the benefits, contrary to what schemes and members have asked for and government has agreed to.

The third amendment brought by the noble Lord would extend Clause 18 to require scheme regulations to provide members who were moved to the new schemes but did not make additional contributions with the option to purchase additional legacy scheme benefits, where they can show that they would have done so had they been able. I once again thank the noble Lord for tabling this helpful amendment. The Government will consider the principles underlying it and will take this away before returning with a thorough explanation of how the matter may be addressed in due course. The drafting of this amendment, at present, does not achieve the overall intention here, since Clause 18(1) provides that this applies only to cases where a person has paid voluntary contributions.

The fourth and fifth amendments are concerned with members who did make additional contributions to a new scheme. They would require scheme regulations to provide members with the options available under the Bill—to alternative or equivalent benefits in a legacy scheme, or to compensation for the contributions made. This provision is permissive rather than directive, because not all three options are intended to be used in every case. Alternative benefits are an approach whereby the benefits awarded in the legacy scheme are effectively recreated as though the member's additional contributions had always been made there. Equivalent benefits are for situations where an appropriate alternative does not exist in the legacy scheme. In such circumstances, a member would instead be offered a benefit in the legacy scheme that is of directly equivalent value. So in both cases, the policy is that the member may choose instead to receive compensation for their additional voluntary contributions, where they do not wish to receive the alternative or equivalent benefit. Making this provision directive rather than permissive would not therefore work, as not all options will exist in all cases. I hope that explanation is clear and helps to answer the questions raised by the noble Lord.

The final amendment brought forward by the noble Lord relates to interest, as he mentioned, and requires that interest is paid on compensation payments. It is a fair point. The Government have committed to pay interest on these compensation payments, and provision is already made under Clause 23 accordingly. With those assurances on all the noble Lord's amendments, I hope he is willing not to press them.

Lord Davies of Brixton (Lab): I welcome the Minister's comments, particularly on unpaid AVCs. I will look forward to his response with interest. In light of his other comments, we will read *Hansard* with interest and decide what to do on Report. I therefore withdraw Amendment 4.

Amendment 4 withdrawn.

Amendments 5 to 9 not moved.

Clause 18 agreed.

Clause 19: Transfers

Amendments 10 to 12 not moved.

Clause 19 agreed.

Clause 20 agreed.

Clause 21: Power to pay compensation

Amendment 13

Moved by ***Lord Davies of Brixton***

13: Clause 21, page 17, line 41, leave out "may" and insert "must"

Member's explanatory statement

This amendment would require, rather than enable, scheme managers to pay compensation in respect of compensatable losses.

Lord Davies of Brixton (Lab): My Lords, I shall speak also to Amendments 14 to 19, so it is a bumper bundle. Again, we have the "may/must" issues, and I assume the same position will apply.

[Lord Davies of Brixton]

Amendment 14 brings us to the issue of Treasury directions, on which we will probably have a more substantive debate in a later group of amendments. There is a general argument about Treasury directions being used in this context—it will be useful to have that debate. The issue raised here is whether it is appropriate to have any directions at all; the issue elsewhere is whether we have directions or regulations. The Bill appears to say that these unknown Treasury directions will lay down how the compensation will be made and the parameters set. I think the strong view here is that it should be in the Bill rather than in directions.

Amendment 15 would add a new subsection setting out where compensation would be paid. I readily admit that it probably needs tighter wording, but it raises the three areas that are of concern to scheme members. Again, I have to mention that the lead here has been taken by the Police Superintendents' Association.

The first circumstance is where individual scheme members would have made other decisions had they been in another scheme and, because of that, have encountered some financial loss; that is, had they known they were really in scheme B rather than thinking they were in scheme A, their decisions would have been different and, because of that, they have incurred some financial loss. I do not envy the job of working out how to assess losses in these circumstances, but they can be real and important, so the issue needs to be addressed. The example we have been given is where, because of the fall in their income, members have incurred loss in selling and buying a house; they incurred financial charges because they thought their income would be lower as a result of being in a different scheme. However, they were not in a different scheme so they did not need to incur that expenditure.

The second area set out in the amendment again affects the police service in particular and concerns where a scheme member genuinely thought that a binding commitment had been given by the Government on the nature of the scheme to which they belong, and they believe that that binding promise has been broken. This is the subject of legal action at the moment. There is no doubt that it is a real concern; it is going through a legal process. We should recognise the level of concern among members about the losses they have incurred because the Government are resiling from promises which they reasonably thought had been made.

The third area of loss is what is called the pensions trap. I will spend a bit of time talking about that because it has gained considerable traction. The first point to make is that, although the uniformed services—the fire service, firefighters and the police—have made most of the running on this issue, it affects all schemes; well, I have not checked them all, but it affects all the major schemes. It is just that, in the case of firefighters and the police, it is of much greater salience. That is why those services have raised this issue most strongly. I think we would admit that there are also areas of employment where we would be particularly concerned because of what we owe to our uniformed services.

4.30 pm

The background to this is that quite different schemes are involved. The old schemes and the new schemes are different and do not play well together. When you try to put part of people's work in one scheme and another part in another, it is not as simple as adding them together. They work against each other in ways that are relatively technical but which I hope to explain.

The fundamental issue, which is why this affects the uniformed services more than other areas of employment, is the change in the retirement age. In a scheme where someone expected to be able to retire at 50, they may be told, "Well, you're not actually going to receive your pension until you're 60"—even 67 in some circumstances. The impact of doing that for different sorts of schemes is quite different.

There is no doubt that the original agreement, going back to Warwick, was to extend working life. It has been a key element of the Government's reforms of public service pensions throughout. Perhaps all of us—that may include me—should have been clearer about the unintended consequences. It cannot have been the Government's intention that accrued rights in the first scheme would de facto be significantly cut. We should have paid more attention to the effects. My excuse is that I was working mainly with the Civil Service scheme and the teachers' scheme, where this issue is not so great; it is still there but it is not as significant.

When the police first raised this issue—again, the Police Superintendents' Association has made the running on this—I rolled my eyes and thought, "Well, they've got equality and the courts accepted their case, so what more are they asking for?" However, the more I looked into this issue, the clearer it became to me that it is real. People are suffering a loss.

The underlying problem is that the new combined benefits, with one set of benefits in the old scheme and one set in the new one, do not accurately reflect the benefits that the member loses by having a later retirement age. In most private sector schemes, if you take your pension late, it is increased because you lose those payments. For reasons lost in the depths of history, most public service schemes do not do that. For example, if you retire two years later, you lose two years' worth of pension. Normally, the expectation is that you are getting two years' worth of pay during that period so you are not really losing anything, but the result is real enough.

The problem—I hope I can explain this clearly—is that to accrue benefits in the new CARE scheme, you have to effectively give up your benefits from the predecessor scheme, and the amounts involved can be substantial. Looking at a not atypical case—and though I refer to "he", it is really "he or she"; it affects men and women—let us take someone who entered the police scheme aged 21 in 2003. At that time, they still had the reasonable expectation of retiring at 51, after 30 years of service, with a full pension. That was their scheme, that is what they could reasonably expect; this was before the discussion about extending the retirement age in public service schemes.

If we assume that this person's final pay would be something like £42,000 at current terms—if this was someone who had had a fairly standard progression

through the police service—they would get two-thirds of that at 51, which would be £28,000 a year. However, in 2022, when they are 40, they are told, "No, you can't retire, you have to work until you are 60, because you are now in the CARE scheme and your benefits are not payable from that scheme until you are 60." At age 51, when he expected to retire, he could take his 1987 scheme benefits unreduced, but only by retiring, and he could then have his CARE benefits, but they would be very significantly reduced. So, when he thought he was going to retire, he is faced with having a significantly lower pension; he cannot afford to retire, so he has to go on working. Each extra year that he works, he loses the money he would have got and he expected to get from the 1987 scheme, which will be about £18,000 a year. He is losing £18,000 a year by maintaining his service in the police, even though, on the face of it, he could have taken that pension at 51.

This person is accruing CARE benefits in the new scheme as well, but the value of those CARE benefits, I calculate, is less significant than the money he is losing from the 1987 scheme benefits: he is a net loser by working another year, and this is before allowing for the extra contributions that the member is having to pay to belong—these are not trivial contributions the member is having to pay for being in the CARE scheme. It cannot be right that a member is placed in the situation that the benefits they reasonably expected are lost and, overall, the value of their pension benefits is declining rather than increasing, even though they are continuing to work and continuing to pay contributions. That is the third area that is covered in Amendment 15.

These are all important issues and I hope the Minister will give some indication that the Government are prepared to consider these issues and find ways of addressing the problems. To repeat, the decisions people took because they thought they were in a scheme that they were not in, the decisions where the Government have made a promise—I think there is some evidence that at least some limited promises were made—and where the member, by deferring their retirement, is losing significant sums from their 1987 scheme pension are real issues that need to be addressed and I hope some positive response will be made.

Those are the amendments to Clause 21; I think we are also considering Clause 23 in this group. Again, we have the "may" and "must" issues. The specific issue picked up in Amendment 18—these words appear in the Bill—is about the process of being paid compensation. The Bill deals elsewhere, in the previous clause, with the circumstances in which compensation is paid. Clause 23 deals with the process of obtaining compensation, and Amendment 18 deals with the specific issue of when this compensation will be paid. Clause 23 says that it will be paid

"only on the making of an application".

The word "only" is particularly problematic, because in many cases people will just not know that they are entitled to compensation. We need to know from the Government—in a sense this is a probing amendment—how people will be told that they are entitled to compensation. What steps will be made to ensure that there is full awareness of the process and procedure for receiving compensation? Again, this point applies to all the public service schemes; it is not one that applies only to the police or fire service.

Finally, Amendment 19 suggests some time limits being placed on the process. Again, I think this reflects some sort of lack of faith in the Government and, whether true or not, they should seek to address this issue. I beg to move Amendment 13.

Lord Ponsonby of Shulbrede (Lab): My Lords, first, I thank my noble friend Lord Davies for his comprehensive speech introducing these issues. I also thank the noble Baroness, Lady Janke, for putting her name to the amendments in my name.

There are two issues raised in Amendment 15 to which I would like briefly to add my voice. These are the realities of the current situation which various police forces have raised with us. As I understand it, proposed new paragraph (b) in Amendment 15 refers to members who were given a commitment that they could retain access to the legacy scheme until their retirement but are facing difficulties because their retirement is based on years of service, not a retirement age. What is particularly concerning is the reported risk that the changes will be disproportionately impactful on female officers, who are more likely either to have worked, or to be currently working, on a part-time basis. That permission has been granted for a judicial review on this issue is testament to the complexities which sit alongside this Bill and which still have to be navigated. The amendment would not alter anything in the Government's plans but would require this situation to be considered as one type of compensatable loss. I am interested to hear what the Minister has to say on this issue.

Proposed new paragraph (c) in Amendment 15 makes reference to what has been introduced to me as the "pensions trap"—as referred to by my noble friend—in which an officer who makes financial decisions based on one pension will find their contributions from the alternative scheme reduced as a consequence. I look forward to the Minister's response on this issue. As my noble friend says, it has gained a great deal of traction in the press.

4.45 pm

As a whole, this group deals with compensation. There is no disagreement that compensation will be necessary as part of the remedy. Examples of compensatable losses incurred by members are included in the Bill. The amendments in my name, kindly co-signed by the noble Baroness, Lady Janke, are intended to probe further on how such a compensation scheme as provided for by Clause 84 would operate.

Amendment 27 would require, rather than simply allow, the Treasury to make provision for a compensation scheme. Can the Minister foresee a situation in which the Treasury would decide that no scheme should be operable to consider the losses by members?

Amendment 28 probes whether there will be a right of appeal for a member who receives a decision from the body established to administer the scheme. Is the Minister able to provide any further detail to the Committee on how the intended scheme will operate for a member who is interacting with it?

[Lord Ponsonby of Shulbrede]

Amendment 29 probes the intended membership of the administrating body. It would require the body to be run by an independent chair and to include members recommended by a relevant scheme's advisory board. This suggestion seeks to secure a level of independence from both the scheme managers and the Treasury and to ensure that the body includes expertise on the impact of the discrimination on scheme members. Is the Minister able to provide more information to the Committee on what membership is planned for the administering body?

Amendments 30 and 31 deal, once more, with oversight and consultation. Since Clause 84 provides for substantive details of the compensation scheme to be made in regulations, Amendment 30 would require the Government to consult representatives of the impacted scheme members ahead of making those regulations, and Amendment 31 would provide that these regulations are subject to the affirmative procedure, rather than the negative.

Finally, Amendment 20 touches on the same issues. It would amend Clause 24 to provide that before giving Treasury directions under that section the Government must first consult groups who will be affected by the directions and related regulations. In its report on public service pensions in June this year, the Public Accounts Committee referred to the McCloud judgment as:

"The Treasury's £17 billion mistake".

It went on to say that this was:

"A mistake which could have been avoided by listening to advice".

The concern that Amendments 20, 30 and 31 are all pointing out goes back to the role of the Bill as enabling legislation. The Bill establishes a wide range of regulation-making powers to allow schemes to take actions to support the discrimination remedy. Significant details are then to be written in at a later stage through not only regulations but Treasury directions. While regulations are the appropriate vehicle for much of the detail, the question is a simple one: how do we action the legislation to allow the remedy to be established while also allowing oversight and proper engagement on the next steps which are to come? How do we ensure that this time the Treasury is "listening", as the Public Accounts Committee puts it? The Police Superintendents' Association has raised particular concerns about how its members will be consulted on the finer details of the provisions that are made through Treasury directions. It would be helpful to hear from the Minister what commitment he can give to ongoing consultation with members, including on provisions made through directions rather than legislation, and what long-term provisions there will be for oversight of the Bill and the regulations made under it, particularly on such key issues as compensation arrangements.

Baroness Janke (LD): I, too, would like to speak to the amendments in my name. I do not have a great deal to add to what the noble Lord, Lord Ponsonby, has said other than to say that I think that this is a particularly important part of the Bill. We have heard from many people who are affected by this Bill about the need for confidence in the measures contained in it and for trust in light of what happened to lead to the need for this legislation. These amendments are to probe what the Government are planning in terms of a compensation scheme and, as has already been said, the right of appeal and members' rights as to how their representatives may be involved in any compensation scheme. The requirement for consultation clearly goes without saying, and the Government need to do much more work on this part of the Bill to ensure that members have confidence in it.

The noble Lord, Lord Davies, referred to promises having been made but not being honoured and the fact that many outstanding issues still await resolution. I hope that the Minister can clarify what the Government intend and that the proper process will fill members with confidence and ensure much greater trust than has been the case so far.

Viscount Younger of Leckie (Con): My Lords, I thank the noble Lord, Lord Davies, once again and indeed the noble Lord, Lord Ponsonby, and the noble Baroness, Lady Janke, for their valuable contributions and remarks. Given that the noble Baroness is right that this is an important part of the Bill, I wish to give a pretty full response, so I hope the Committee will indulge me as I want to go through in some detail the issues that have been raised and, of course, answer as many questions as I can.

I start by saying, just as a point of agreement, that this group of amendments seeks to ensure that members are correctly compensated for any detriment that they have suffered as a result of the discrimination that has arisen. I reassure this Committee that this is certainly a shared objective.

The noble Lord, Lord Davies, put forward three amendments to Clause 21. It may be helpful if I set out the intended purpose of this clause. It confers power on scheme managers to make payments in relation to compensatable losses. This is compensation in relation to losses incurred as a result of the discrimination, the remedy provided by the Bill, or in respect of certain tax losses. The clause allows for matters that are not directly remedied by the Bill or scheme regulations to be put right.

Amendment 14 would remove the requirement that losses may be compensated only where they are of a description specified in Treasury directions. However, in the Government's response to the consultation on remedying the discrimination, we set out that some member representatives and employers considered that there would be a need for consistent treatment across and within schemes.

The Treasury directions are one way in which we intend to ensure that such consistency is achieved. The proposed amendment would remove the central consistency that we have committed to provide and would instead require scheme managers to determine all claims in an exercise of their own discretion alone, which could lead to inconsistent and potentially unequal treatment across schemes. I am sure this Committee would agree that we do not want that. That approach would give rise to the concerns that respondents to the consultation raised. We do not consider that is a responsible or appropriate approach. The Government

have committed to providing a consistent and full remedy to members and we believe that will be best achieved by the current drafting.

Amendment 15—which was spoken to eloquently by the noble Lords, Lord Davies and Lord Ponsonby—seeks to compensate members for the closure of the legacy pension schemes and for any contingent decisions taken where a member had a period of remediable service that was under a new scheme. Paragraphs (b) and (c) of the amendment from the noble Lord, Lord Davies, in particular, closely relate to an ongoing judicial review challenge before the courts—which the noble Lord alluded to—and it would be inappropriate to discuss in detail. However, the effect of the amendments would be to provide the substantive remedy that the claimants are seeking in the judicial review claim. It would compensate members who were in scope of transitional protection but have not yet retired and will now be in scope of the prospective measures set out in Clauses 76 and 77 of this Bill. Providing compensation in this circumstance would therefore be contrary to the intention of those clauses that all members are to be treated equally from 1 April 2022 by accruing service in the reformed schemes, regardless of their age.

It is important to stress that the Court of Appeal found in the McCloud and Sargeant case in 2018 that the transitional protections offered under the Public Service Pensions Act 2013 amounted to unlawful discrimination. Accordingly, offering compensation to transitionally protected members would effectively undermine the Court of Appeal judgment by perpetuating this unlawful discrimination through different means. The effect would be that instead of allowing transitionally protected members to continue in service in legacy schemes, they would now be receiving the benefit of financial compensation. Non-transitionally protected members would not receive such compensation, so there would still be an unfair difference in treatment.

I will pick up on a point made by the noble Lord, Lord Davies, to try to be helpful concerning police stakeholders. The Government really do understand the concern raised by stakeholders regarding the difference in when members can access their full pension in the 1987 and 2015 police pension schemes. I can reassure noble Lords that the Home Office is engaging with police stakeholders on these matters. However, it is the Government's view that it will be appropriate for future pension accrual to occur in a scheme with different retirement provisions, for the reasons set out by the noble Lord, Lord Hutton, in his report. As set out in the consultation response regarding this specific issue, it is right that the Government be able to make changes when they judge it necessary to do so. The commission's original objectives and recommendations, leading to the 2015 reforms and reform schemes, still hold. The Government therefore consider that this is not appropriate and that it is crucial to the effectiveness of the remedy that the discrimination is not perpetuated.

Returning to paragraph (a) of the amendment, this clause already makes provision for losses that arose as a result of the discrimination; that is covered by the first condition, contained in subsection (4). I hope that I can therefore reassure the noble Lord, Lord Davies, that the amendment is not needed.

The noble Lord has also put forward four amendments to Clause 23. Amendments 16 and 17 would require, rather than allow, scheme regulations to make provision under which interest is required to be calculated and paid on amounts owed to or by members under or by virtue of the Bill, and about the process by which amounts and any interest on them are to be paid; I know that this matter cropped up in debate slightly earlier. Where sums are owed to schemes or members, for example relating to contributions or benefits, Clause 23 provides powers for scheme regulations to make provision about the payment of interest on those amounts. Interest will be added to amounts payable by schemes or members. The Government consider that the addition of interest is necessary to ensure fairness between members. For example, where members owe contributions, their comparators in the scheme will have been paying the correct level of contributions throughout, so would not have had the benefit of the additional money over time. Interest will be paid on benefits or contributions owed to members to reflect that the payments relate to earlier periods of time.

Clause 23 also provides that scheme regulations may make provision about the process by which amounts due to and from schemes are to be paid. This includes matters such as providing for when amounts are to be paid, allowing for those to be paid by instalments if appropriate, netting off amounts owed by a person against amounts owed to a person, and conferring rights of appeal against a decision taken under the regulations. The amendments would require scheme regulations to make such provision. However, the Government do not consider that imposing a duty on schemes to make such regulations would be appropriate. Doing so could lead to vexatious claims that schemes have not made regulations to deal with obscure situations that could arise. Rather, the Government consider that granting schemes a broad power, exercisable in accordance with Treasury directions, is the right approach to ensure that schemes can make all the necessary and appropriate provision in scheme regulations, while providing sufficient flexibility to account for the differences in the public service pension schemes that I referred to earlier.

The noble Lord's third amendment, Amendment 18, would remove provision for schemes to make a payment only on the making of an application. This provision is there for the benefit of members: for example, members may not wish to receive amounts that they are owed. This could arise if they are an active or deferred member and intend to choose reformed scheme benefits upon retirement in order to avoid double corrections, as envisaged by Clause 16(8).

5 pm

In addition, the contents of the application may be necessary in order to provide the scheme manager with all the information it needs to calculate properly the amounts to be paid. Accordingly, the amendment is not appropriate since it would unduly restrict schemes in making the provision they need to make in scheme regulations to ensure the smooth operation of the processes for making corrections and paying compensation. I hope that the Committee will forgive me for getting into quite a lot of technical processing issues here.

[Viscount Younger of Leckie]

Amendment 19 requires that compensation payable under Clause 21 must be paid "within 28 days" of approval or after an appeal has been determined. The intention of the amendment—to ensure that compensation is paid promptly—is clear, and I hope that I can reassure the noble Lord that schemes will be settling amounts due without unreasonable delay and that schemes already operate within a broader regulatory landscape to ensure proper administration; I shall return to this issue in more detail in responding to Amendment 28. However, it may encourage vexatious claims if the primary legislation is overly prescriptive about the timeframe for payments of compensation to be made, so the Government do not consider the amendment to be appropriate for that reason.

The noble Lord, Lord Ponsonby, has proposed Amendment 20 to Clause 24, which would require the Treasury to consult affected parties before issuing Treasury directions—this is a fair question. Treasury directions are intended to set out to schemes how they should exercise a particular power, rather than creating a new power. They ensure that, where Treasury Ministers who are responsible for public service pensions policy in England, Scotland and Wales consider that a consistent approach is necessary or desirable, the Treasury may give direction to schemes. In Northern Ireland, the directions will be made by the Department of Finance, which is responsible for public service pensions policy there. Since those regulations are subject to Treasury consent, the directions bring transparency and efficiency to the process of preparing scheme regulations.

The Treasury has already undertaken informal and formal consultation with employee representatives on the changes made by the Bill. Many respondents made the case that consistency is needed in delivering the remedy.

As I have set out, the purpose of the Bill is to remedy the discrimination that arose when transitional arrangements were implemented alongside the new pension schemes. That means placing members in the position they would have been in, had the discrimination not arisen. Were the directions to fall short of that aim they could, of course, be subject to further challenge by judicial review.

I highlight that the Bill has been considered by the Delegated Powers and Regulatory Reform Committee, which reported that there is nothing in it that they would wish to draw to the attention of the House regarding the use of either regulations or Treasury directions.

Five amendments to Clause 84 have been put forward by the noble Lord, Lord Ponsonby of Shulbrede, and the noble Baroness, Lady Janke. Clause 84 allows the Treasury to create a compensation scheme to pay compensation in respect of "compensatable" losses under Clauses 21 and 56 of the Bill. An equivalent provision in relation to the Department of Finance in Northern Ireland is contained in Clause 85. There is no current intention to create such a scheme. Rather, scheme managers, who are responsible for administering the schemes, will provide compensation to members through the power in Clause 21. However, this clause provides the Treasury with powers to create a scheme if that is later considered appropriate or necessary. I hope that that gives some reassurance.

Amendment 27 would require, rather than allow, the Treasury to make regulations providing details of a compensation scheme. However, as the Government currently have no intention to create such a scheme, a blanket requirement to do this would not be appropriate.

Amendment 28 concerns a right of appeal by members against compensation decisions made by the body administering the compensation scheme. It would help to explain that scheme managers of public service pension schemes are already required by the Pensions Act 1995 to provide internal dispute resolution procedures; indeed, all occupational pension schemes are. As such, the decisions taken by scheme managers on compensation will therefore be in scope of this existing, established procedure. Further, there is already provision in Clause 23(2)(d) that allows scheme regulations to make provision conferring rights of appeal against decisions taken under the regulations. Accordingly, no further provision is necessary or appropriate in this Bill.

Amendment 29 concerns the body appointed to run a compensation scheme and would require it to consist of an independent chair and members appointed on the recommendation of a relevant scheme's advisory board or equivalent.

These amendments are of course being raised by the noble Lord, Lord Ponsonby. His Amendment 30 concerns the power for the Treasury to make regulations to establish a scheme under Clause 84. This would require the Treasury to consult members or their representatives and such other persons that it considers appropriate before making regulations.

Finally, Amendment 31 would require the regulations to be subject to the affirmative procedure and, therefore, automatically subject to debate before they could come into force. If a scheme were established using the powers in Clause 84, its function would be limited to the management and administration of the compensation arrangements in Clauses 21 and 56. I hope that the noble Lord, Lord Ponsonby, agrees that Amendments 29, 30 and 31 would not be appropriate, given this rather narrow function.

I hope your Lordships are satisfied with my rather full explanation of the intention behind the relevant clauses and the compensation provisions more generally, and that the noble Lord withdraws his amendment.

Amendment 13 withdrawn.

Amendments 14 and 15 not moved.

Clause 21 agreed.

Clause 22 agreed.

Clause 23: Interest and process

Amendments 16 to 19 not moved.

Clause 23 agreed.

Clause 24: Treasury directions

Amendment 20 not moved.

Clause 24 agreed.

Clause 25 agreed.

Clause 26: Remediable service statements

Amendment 21

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

21: Clause 26, page 21, line 21, after "description" insert ", provided in clear and accessible language,"

Member's explanatory statement

This probing amendment raises the need for information in a remediable service statement to be provided in clear, easy-to-understand language.

Lord Ponsonby of Shulbrede (Lab): My Lords, this group deals with a straightforward issue, which should not need much explanation, but should be at the heart of our deliberations on this Bill. I raised it at Second Reading and it was also raised powerfully by the noble Baroness, Lady Janke, with whom I share this group. I will speak to her amendment within the group.

In recommendations made in 2011, predating the pensions reforms that gave rise to the discrimination that the Bill seeks to address, the Public Accounts Committee recommended that

"HM Treasury should work with employers and pension schemes to ensure that clear and relevant information is provided to employees on the value of their pensions."

In June this year, a decade later, the PAC reported that it was "disappointed" by the "limited progress" that had been made and that

"more needs to be done to improve employees' understanding."

The crucial relevance to the Bill today is captured—one could almost say understatedly—by the PAC when it says:

"The problem has been exacerbated with further complexities being introduced as a result of government's response to the McCloud judgment."

I do not need to put too fine a point on how complex the remedy and the legislation before us today are. We are the people attempting to scrutinise it, and we are only too aware of these complexities. Imagine the impact of this sudden deluge of remedies, liabilities, regulations, protections and decisions on those of our public service workers who are building up their pension in their career, perhaps as a teacher, a firefighter or a civil servant. It must be an utmost priority that scheme members are given accessible, timely, easy-to-understand and easy-to-access information to help them to understand what has happened and what it means for them.

Clause 26 makes provision for remediable service statements—essentially, annual benefits statements for members that would include information on the benefits available under the legacy scheme, information on the impact that making certain choices under the Bill would have on those benefits and a description of how and when a choice can be made. This is the primary mechanism in the Bill for providing information to members on how the remedy could have an impact on them.

Amendments 21 to 23 in my name would require the information in those statements to be provided in "clear and accessible language". Their aim is to probe whether the content included in the statements will be plain-language, practical descriptions of what these options mean for the value of a person's pension, or whether members will find themselves faced with a complex financial statement that is too difficult to use.

Amendment 25 raises a specific concern around tax returns: ensuring that members have what they need to fill out a self-assessment tax return. For example, members of affected schemes will have to work out tax relief on contributions, as well as their annual allowance and other values. Will a remediable service statement include the necessary information to allow a member to navigate the tax impacts of the changes to their pension status? If not, will financial advice be available to ensure that they can accurately fill out a self-assessment statement, taking the remedy into account?

Finally, Amendment 24 in my name and Amendment 33 in the name of the noble Baroness, Lady Janke, deal with the key to this issue: what guidance, help or services the Government plan to provide to help impacted members to understand what this means for them, and how members will be signposted to them. If a person has no idea what their statement means, how their pension has been affected and when they are likely to be required to make a decision, who do they call? Where do they go for practical advice? I look forward to the Minister's reply.

Baroness Janke (LD): My Lords, I very much agree with the points made by the noble Lord, Lord Ponsonby. There is a huge challenge here for the Government. When you think of how many individuals with individual futures will be affected by this Bill, it is something that really needs deep thought in terms of what kinds of guidance and support will be provided, how they will be resourced and how the Government will signpost them.

It does not sound too challenging to say that members get to retirement then make whichever choice is best for them, but actually lots of complicated decisions requiring support and high levels of knowledge need to be taken. For example, in some cases, members may have built up rights that fall due at different ages. If there is no single retirement age, when do they have to make their choice? In some cases, a higher pension may be owed at the time under one set of rules but, as retirement continues, it may turn out that the other set of rules would have given a bigger total pension. Again, help needs to be given.

The Government have already accepted that people with complex tax issues can have financial advice, but what about the millions of public sector workers who will have to make these choices? On financial planning, we encourage people to make plans for their pensions and explore how they are going to live post retirement, but how easy will it be to make a proper plan with the new system being put in place? For example, will the pensions dashboard provide the information they need?

It is an enormous task for schemes to unpick, administer and communicate. Members are going to need a lot of help to understand what is happening, so it would be very helpful to know what the Government intend to provide in the way of support systems to enable members to make the best choices, and to trustees of the pension schemes as well. We welcome how this is to be resourced and I hope that we will

[Baroness Janke]
have a clear and detailed statement on supporting elements for the implementation of the scheme. I look forward to the Minister's response.

5.15 pm

Viscount Younger of Leckie (Con): My Lords, once again I start by thanking the noble Lord, Lord Ponsonby, and the noble Baroness, Lady Janke, for introducing this theme and for their contributions. Providing sufficient guidance for members to make informed decisions regarding their pensions is of course of the utmost importance and worthy of proper scrutiny, so I am pleased to respond to their points and hope that I can give reassurances. The noble Baroness is correct that it is a challenge, but I hope that I can prove, or show, that much thought has been put into this important matter already.

Amendments 21 to 25, tabled by the noble Lord, Lord Ponsonby, and Amendment 33, tabled by the noble Baroness, Lady Janke, all deal with the important matter of communication: communicating the impacts of the remedy and the choices available to members. Amendments 21 to 25 seek to ensure that the information provided to members is clear and easy to understand, as well as signposting them to sources of further information and assistance and ensuring that certain tax information is provided. Amendment 33 seeks to require the Government to publish guidance for members and provide further assistance, such as a helpline or online services, as well as laying a copy of such guidance before Parliament and providing a report on the effectiveness of this guidance.

The Government recognise the importance of providing members with clear, accessible and accurate information. It is this information that will inform members' decisions about whether to receive legacy or reform scheme benefits in relation to their remediable service, or whether to opt for service to be reinstated under Clause 5. Perhaps I may provide reassurance to the Committee on the measures already in the Bill which provide for members to receive information that shows the option of benefits available to them in the form of remediable service statements. That will include details of any lump sum, pension and survivor's benefits under the scheme. For the vast majority of members, the decision will be very straightforward: the member will simply choose the option that is most valuable to them.

Clause 26 already contains the appropriate provisions as to what should be included in the remediable service statements; for example, subsection (5) outlines that a statement

"must include … a description of when and how any election"

should be made. The information contained in the remediable service statement will be personal to the member. The statement will set out their entitlements and allow them to clearly understand the benefits available, under the options available, to determine which one they wish to take.

The provisions in the Bill are additional to existing requirements under the Public Service Pensions Act 2013—an important point—which already require the public service schemes to provide members with information about their entitlements. Clause 26 ensures that members are provided with additional information, specifically about their remediable service only. To break this down, first, for active members statements will be provided on an annual basis and enable members to see how the two sets of benefits compare as their careers progress and they get closer to retirement. Secondly, for deferred members, a one-off statement will be provided initially but the member will be able to request up to one further statement per year. For pensioner members, and in respect of deceased members, a one-off statement will be provided, ensuring that these members have the information they need to make an immediate choice in respect of their remediable service.

Schemes will also develop further guidance and tools where appropriate; we expect that some will choose to provide retirement calculators, for example. However, in view of the different requirements of workforces, the different methods of communication currently used by schemes and the different tools they already provide, it would not be appropriate for the Bill to require this to take a particular form. To give an example, the NHS scheme is, as the Committee can imagine, one of the largest—if not the largest—occupational pension schemes in the world. It has considerable expertise in providing bespoke member communications, guidance and support. The information required under this clause will supplement and become part of an established service provided for members.

Furthermore, in relation to Amendment 25, it is worth noting that most individuals affected by the Bill will not have to correct their tax position, either through the tax system or by claiming compensation. The Bill also contains various provisions to reduce interaction with self-assessment. In addition, schemes are already required to provide members, where appropriate, the relevant information to complete their tax return on an annual basis, and this information will be updated and provided to the member where their tax position changes. Therefore, this amendment would duplicate the existing processes. However, where there is an interaction with the tax system, the Government recognise that there will need to be further guidance to complement existing HMRC guidance and scheme processes which already provide the required information to complete a self-assessment return, and this will be provided in time to allow members to make an informed choice, which is an important point to make.

I wholly agree that communication with members will be key to the successful implementation of the remedy but I hope I have reassured the Committee that the Bill already provides for all the information required for members to make necessary informed decisions. Taking all this into consideration, I hope that the noble Lord will withdraw his amendment.

Lord Ponsonby of Shulbrede (Lab): I thank the Minister for that explanation. I have to say that he did not provide me with a great deal of reassurance because on the one hand he said that all the information will be provided in any event and then, on the other, he said that he recognises that further guidance will be necessary. I am grateful that further guidance will be forthcoming.

It is a concern that has been raised directly by the various police forces I have spoken to about this issue. Nevertheless, I beg leave to withdraw the amendment.

Amendment 21 withdrawn.

Amendments 22 to 25 not moved.

Clause 26 agreed.

Clauses 27 to 79 agreed.

Clause 80: Amendments relating to employer cost cap

Amendment 26

Moved by ***Lord Davies of Brixton***

26: Clause 80, page 56, line 3, leave out "(2) and (3)" and insert "(1A) to (3).

(1A) In subsection (3), for "directions" substitute "regulations" .

(1B) In subsection (4), for "directions" substitute "regulations" and delete paragraph (c)."

Member's explanatory statement

This amendment requires the calculation of the employer cost cap to be set in accordance with Treasury regulations, rather than Treasury directions. It also removes from the calculation the effect of changes in the cost of connected schemes.

Lord Davies of Brixton (Lab): Amendment 26 is a twofold amendment. Two issues that are connected, but are potentially distinct, are wrapped into one amendment. On the one hand, the amendment states that the requirements for the cost cap mechanism should be set out in regulations rather than directions; on the other, it states that the cost of remedy should be excluded from the cost cap mechanism. They work together, but they are distinct.

The use of directions as opposed to other means of establishing regulations and subsidiary legislation of any sort is an important issue that potentially needs to be discussed in principle. I shall not start discussing it in principle today. There is a debate to be had and concern that a Government could use directions to exclude important matters from parliamentary scrutiny. It is a real fear that should be taken seriously. However, that is not the case I am making today. There is a general, generic problem with directions.

The argument is related directly to these directions. It is important to understand that "directions" in this amendment are not directions in the current Bill but directions under the provisions of the principal legislation: the Public Service Pensions Act 2013. Section 12 of that Act sets out the basis on which the cost cap mechanism works. It provides in subsections (3) and (4) that the cost cap mechanism should be

"in accordance with Treasury directions."

The Minister said, quite rightly, that when this Bill went to the Delegated Powers and Regulatory Reform Committee, it had no comment on it. I remind the Committee that it is not the directions in this Bill that I am talking about today but the directions in the principal legislation. The debate on the principal legislation took place on 5 December 2012. In the memorandum prepared by the Treasury, comments were made about these directions. The Treasury's submission to the committee, which was accepted, was:

"The effect of the directions on the design of the scheme will be subject to parliamentary oversight when the scheme regulations are made. It is therefore considered unnecessary for the directions themselves to be subject to additional parliamentary control."

My argument now is that the directions—which, coincidentally, were agreed last Thursday—do impinge on the design of the scheme and hence are not subject to regulations and are outside parliamentary control. The specific issue is the generic use of directions, but in this case, the Government are seeking to introduce directions—they did so last Thursday—which do subvert parliamentary control.

They do that in two important ways. The decision is made in those directions that the cost of the remedy should be included in the cost control mechanism. I believe that there is a debate to be had about that issue and the Government are avoiding it by making the decision in the directions.

I must mention again that this is currently subject to legal action—potentially; I am not sure whether or not the formal case has been submitted. A number of trade unions are in the process of challenging the inclusion of the cost of the remedy in the cost control mechanism. Obviously, we cannot interfere in the legal process but, as a matter of parliamentary sovereignty, we need to assert that a decision as important as how the cost of the remedy should be met should be subject to parliamentary oversight.

5.30 pm

The Government's collective line, as set out in the directions, is that this should be included in the cost cap mechanism and potentially will feed through and have an effect on members. We are talking here about the 2016 cost cap calculation; five years later, we are still discussing it. The Government have said, quite rightly in my view, that the cost cap mechanism will not trigger an increase in members' contributions or a reduction in their benefits. However, the application of the cost of the remedy in that way could deny members the potential of benefit improvements and/or reductions in their contributions. That in itself is a vastly important decision and not one that should be made in the context of directions.

The decision is also made in the directions that the cost of the remedy should be included in the mechanism and covered over a period of four years. Pension scheme costs are typically spread over 11, 15 or even 20 years. Spreading them over four years would obviously mean that the impact is that much greater. I am not seeking in this discussion to debate whether the remedy should be included; I will come on to that in a minute because that is the second limb of this amendment. On the crucial issue of how this decision should be made, it clearly should come before Parliament. I suspect that, as a financial matter, it will go only to the House of Commons, but that is a subsidiary issue; I have no doubt that this decision should be reviewed by Parliament.

We come on to whether the cost of the remedy should be included in the cost cap mechanism. That will also be subject to legal challenge, which, again, I do not seek to influence in any way. However, there is no doubt that we are in this mess—this dog's dinner—because of decisions taken by the Government back at

[Lord Davies of Brixton]
the tail end of 2011. The decision was made to include the transitional protection. We have been told by the Court of Appeal, not the Supreme Court, that this was unequal treatment and therefore illegal. That decision should never have been made in the first place. It was the Government's mistake—their proposal in the heads of agreement, which was legislated for in that form, and which turned out to be illegal. The question is: whose responsibility is the additional cost of that error? From the members' perspective, there is no question but that it is the Government's responsibility to meet this cost and it should not fall on members.

That is a point of principle; there is also a more technical argument. Government decisions on this are coming thick and fast. It was also decided last week to proceed with the reform of the cost control mechanism. Any reform of this mechanism will apply only as it impacts on the 2020 valuation and the future. We are still waiting for the completion of the 2016 procedure, for which the directions were announced last Thursday.

But here we are talking about how the cost control mechanism will work in future. The Government's decision was that in future, from 2020 onwards, the cost control mechanism should operate on what is called—I had better get this right—a new scheme-only basis: that the impact of the old schemes should not impact the cost control mechanism. Indeed, we had a letter from the Minister, again last week; I have a copy here somewhere. Along with his colleague, Simon Clarke, he informed us that the Government propose to move the cost control mechanism to a reformed scheme-only design: to remove any allowance for legacy schemes in the mechanism so that it only considers past and future service in the reformed schemes. That is a declaration of government policy in relation to the 2020 cost control mechanism in future.

If we are going to have it on a reformed scheme-only basis in the future, it raises the question of the 2016 cost control mechanism. In reality, that has not yet been completed, even though we now, somewhat more belatedly than the Government announced, have the directions. The costs of the remedy either fall on the old scheme—if people decide to stay in the old scheme—or on the new scheme if they decide they are going to have new scheme benefits. But the way the cost control mechanism works is that it is calculated on new scheme benefits only. They assume that everyone is already in the new scheme from 2015. So, if you exclude the cost on the old scheme because you are using a new scheme basis—and for those who choose the new scheme, the cost is already included in the calculation—why is the cost of the remedy being, in effect, double counted in the cost control mechanism calculation if it is already there? People may be confused; it is a confusing process. The Government are now proposing that the further liabilities that were accrued in the old scheme should be included in the cost control mechanism going forward. It is that part which is being excluded under their new proposals.

There is real complexity here. If you exclude the cost of the old scheme from the cost control mechanism, you have to exclude that part of the cost of the remedy which is going to fall on the old schemes. To the extent that the cost falls on the new schemes, it is already included in the calculation. I argue that the cost of the remedy should not be included in principle, but I also argue that it does not make any sense under the terms of the Government's own policy as to how the cost control mechanism should work.

So, there are two limbs, two legs, to this amendment. First, in this specific case—without commenting more generally on the issue of directions—an important policy decision is being made in those directions, so they should not be directions. I suggest that they should be regulations. Maybe the Government could take that away and think about it, but there should be parliamentary oversight of such a crucial decision. But, over and above that, it simply does not make sense to include the cost of the remedy in the cost control mechanism. It is included only because of the way in which the principal legislation is written. I beg to move my amendment.

Lord Ponsonby of Shulbrede (Lab): My Lords, I wish to speak briefly to this amendment. I open by paying tribute to my noble friend Lord Davies for the expertise with which he has raised these issues surrounding the cost control element. I look forward to a comprehensive response from the Minister on this difficult issue—that would be to the benefit of the whole Committee.

I particularly ask the Minister to respond to the point made by the cross-party Public Accounts Committee that this is the Treasury's mistake, yet, in the words of the committee:

"The Treasury now wants pension scheme members to pay the estimated £17 billion cost to put that right."

I want also to touch on the Government's response to the consultation on the cost control mechanism, which was published only a few days ago, as my noble friend said. I know that the details of the reforms are to be dealt with in future primary legislation, and I am sure that that will be thoroughly debated at the time, but the response did not give us any information on how the proposed reforms interact with the issues that we are dealing with in the Bill in front of us today. This is essentially the question that my noble friend was asking.

The response said:

"The Government will provide further details on … the extent to which there will be any interaction with the McCloud remedy at future valuations, in due course."

It seems that, at the same time as we are having complex discussions on the immediate impact of the 2016 valuations on members, there is little or no information about how the Government plan to deal with this issue in the long term.

Clause 80 is welcome, but Ministers will be only too aware that it neither fully answers the concerns of the trade unions over the inclusion of the remedy in the 2016 valuations nor sheds any light on the Government's intentions for the treatment of the remedy costs in future valuations. I understand that this is a complex matter, and I look forward to the Minister walking us through this complex landscape of issues.

Viscount Younger of Leckie (Con): My Lords, we have come to another important part of the Bill. I recognise that the operation of the cost control mechanism

is of considerable interest to the Committee, particularly the noble Lord, Lord Davies, whom I thank once again for his remarks, and the noble Lord, Lord Ponsonby, who—I remind myself—gave some valuable contributions at Second Reading and touched on this topic. We should also remember that the cost control mechanism should be considered within the wider context within which the Bill should be considered.

I hope that my subsequent letters on this topic have proved informative on progress being made in this area. I am happy to be able to expand on some of those key areas during this debate, but obviously there are some questions that need answers arising from this particular debate, and I will do my best to answer them.

First, on the subject of letters, I deposited a letter in the Library last week to bring to the Committee's attention the fact that, on 7 October, the Treasury published amending directions that will allow schemes to complete the cost control element of the 2016 valuation process. As previously announced, these amending directions confirm that the McCloud remedy will be captured as a member cost in the completion of the 2016 valuations. This is right, given that addressing the discrimination identified in the McCloud and Sergeant judgments, giving members a choice of scheme benefits for the remedy period, involves increasing the value of schemes to members.

This matter led to a couple of questions being raised, first by the noble Lord, Lord Davies, who made the point that he thought that it was not appropriate for members to pay the costs of remedy. Separately, the noble Lord, Lord Ponsonby, raised the question of the inclusion of remedy in the 2016 valuations. Indeed, he questioned the role of the Treasury and government.

5.45 pm

Let me try to give some answers. When the cost-control mechanism was established, it was agreed that it would consider only costs that affect the value of the schemes to members, known, as we know, as member costs. Addressing the discrimination identified in the McCloud and Sargeant judgments by giving members a choice of scheme benefits for the remedy period involves increasing the value of schemes to members. Costs associated with this therefore fall into the member cost category. As a member cost, the McCloud remedy will be taken into account in the completion of the cost-control element for the valuation process.

I think it is fair to make a few more comments about why it is necessary for these costs to be allowed for in the valuations at all. I shall expand a bit further on this. Schemes are required to complete valuations by statute. Given this requirement, it is appropriate that these are completed based on an accurate assessment of the value of schemes to members, which necessarily includes remedy. Failing to capture the value of remedy could mean that members' benefits are changed based on an incomplete and inaccurate assessment of the value of these pension schemes. This would represent an acceptable risk to the taxpayer, introduce volatility into the mechanism at future valuations and, we believe, fundamentally undermine the stated purpose of the mechanism to fairly assess the value of schemes to members in a way that is consistent and transparent.

Following publication of these amending directions, schemes can now finalise their 2016 valuations, providing certainty on the outcome to scheme members. I recognise that there are wider concerns about the operation of the mechanism, in particular whether the mechanism is too volatile under its current design. I will discuss the Government Actuary's review of the mechanism shortly. However, I highlight that, in light of the concerns regarding whether the mechanism is working in line with the original policy aims, the Government have previously announced their intent to waive any ceiling breaches that arise from the 2016 valuations, while honouring any floor breaches. This means, as I am sure the Committee will know, that any benefit reductions that would ordinarily occur following ceiling breaches at the 2016 valuations will not be implemented. No member will see a reduction to their benefits as a result. The Government have legislated for this in Clause 80 of this Bill, to which this amendment relates.

Secondly, looking at the cost-control mechanism review, I wrote to your Lordships to state that the Government have responded on consultation proposals to improve the cost-control mechanism for the 2020 valuations onwards. In brief, the reforms are three-fold. First, they take forward the reformed scheme-only design. This reform ensures that costs associated with legacy schemes will be excluded from the mechanism. The second of these reforms is including a symmetrical economic check. This will ensure that any breach of the mechanism would be implemented only if it would still have occurred had long-term economic assumptions been considered.

This led to a question from the noble Lord, Lord Davies. He asked why member costs are spread over four years, and I shall try to answer that. The Government believe that it is right to capture the full impact of remedy at the 2016 valuations given the remedy period will end by the end of the implementation period for this set of valuations. This means that remedy will not need to be allowed for at future valuations. In addition, one of the Government's aims for how the remedy should be dealt with in completing the 2016 cost-cap valuations is that it should not unduly reduce intergenerational fairness. Therefore, capturing remedy over four years also more closely aligns those who benefit from remedy with those who pay for it. A long spreading period would likely exacerbate intergenerational unfairness. The Government Actuary has advised that a four-year spreading period is a reasonable way of achieving the intergenerational fairness objective. I hope that provides a reasonable explanation.

Lastly, on the three aims, the Government will widen the corridor from 2% to 3% of pensionable pay. This will ensure a more stable mechanism, which was intended when the mechanism was originally established.

The amendment in the name of the noble Lord, Lord Davies, seeks to remove reference to connected schemes from the list of costs which the Treasury may specify for inclusion in the scheme's assessment of their costs against the cost cap, but this is precisely what the Government intend to do by moving to a reformed scheme-only design, starting from the 2020 valuations. This reform ensures consistency between the set of benefits being assessed and the set of benefits

[Viscount Younger of Leckie]
potentially being adjusted. It also allows the mechanism to better meet its objectives of stability and will reduce intergenerational unfairness.

Now that the Government's response has been published, I would like to make one important point to the Committee: I invite your Lordships to discuss the reforms as soon as possible in the coming days. This is because, of course, it has just come out recently. I recognise that these reforms are an area of close interest for many noble Lords, and I would welcome the opportunity to further understand their positions on the reforms. These discussions are a matter of priority for me, so as to give your Lordships, particularly the noble Lords, Lord Ponsonby and Lord Davies, adequate time to consider the proposed changes, so my department will be in touch on this matter. Furthermore, we believe that this will be beneficial, as I understand that the amendment proposed by the noble Lord may not have the intended effect of preventing legacy costs from being included in the mechanism. This is because Clause 12(4)(b) of the Public Service Pensions Act 2013 still gives the Treasury a wide scope to specify which costs should be accounted for in cost control valuations. This is a crucial reform, and one that we must get right.

Moving on to the use of Treasury directions, I recognise there is a strong interest here; it is a theme that has been covered in some detail in this debate and previously. It may be helpful to recap some of the themes to provide some further assurances. In respect of the cost control mechanism, the framework for this has been established in primary and secondary legislation, and so is subject to parliamentary scrutiny. Within this statutory framework, the use of Treasury directions ensures that the Treasury can take a consistent approach across schemes in England, Scotland and Wales. The directions themselves are published, and therefore provide transparency about the Government's approach.

It is also important to be clear that the directions we are referring to here are technical instructions for scheme actuaries. They are complex and granular in detail and require to be updated regularly to reflect new developments and revisions to assumptions. The established approach across government has been that directions provide a suitable means for making technical instructions of this nature. In contrast, technical instructions of this nature are unlikely to provide a suitable platform for a parliamentary debate on the constitution of the cost control mechanism, if that is the noble Lord's intention. In the case of the Treasury directions published on 7 October in relation to the 2016 cost control process, the Treasury engaged closely with stakeholders to ensure that the amending directions support schemes to accurately reflect changes to the value of member benefits as a result of McCloud remedy. Drafts of the amending directions were shared with schemes and scheme advisory boards to allow feedback and provide schemes with the opportunity to make any necessary updates to their 2016 valuation data and, indeed, their assumptions. In line with our statutory requirements, the Government also sought the formal view of the Government Actuary, who has confirmed that the amending directions are technically complete and reflect a reasonable way to ensure the 2016 valuations are completed, based on the best estimate of the value of these pensions.

More broadly, the use of Treasury directions in this context is in accordance with long-standing practice in public service pensions policy. I have addressed some broader points on the use of Treasury directions in relation to previous amendments, as the Committee will know. I also highlight again that the Delegated Powers and Regulatory Reform Committee has considered this Bill and the powers within it and has reported no single issue to bring to the attention of the House. I know that I have said that in the past, but I say it again in relation to this amendment. I hope this rather lengthy response provides the noble Lord, Lord Davies, in particular, with some reassurance on the purpose and use of Treasury directions and I ask him to withdraw his amendment.

Lord Davies of Brixton (Lab): I thank the Minister for his detailed response and I look forward to the opportunity for more detailed discussion at a meeting. I am not totally convinced, and I suspect that this is something we will return to on Report, but I beg leave to withdraw the amendment.

Amendment 26 withdrawn.

Clause 80 agreed.

Clauses 81 to 83 agreed.

Clause 84: Power of Treasury to make scheme for compensation

Amendments 27 to 31 not moved.

Clause 84 agreed.

Clauses 85 to 90 agreed.

Amendment 32

Moved by ***Baroness Janke***

32: After Clause 90, insert the following new Clause—

"Review of the impact of this Act on fairness

(1) Within six months of the day on which this Act is passed the Secretary of State must lay before Parliament a review of the impact of this Act on fairness to members in receipt of pensions to which this Part applies.

(2) The review under subsection (1) must make reference to the impact of the provisions on women in particular.

(3) The review under subsection (1) must make recommendations as to whether further legislation should be brought forward by the Government to try and close the public service pensions gap between men and women."

Member's explanatory statement

This amendment would require the Government to report on the impact of this Part on fairness, especially with regards to women.

Baroness Janke (LD): My Lords, this amendment calls for a review of the fairness and just treatment of some of the issues that have already been raised, particularly with regard to disbenefits to members of current schemes. We have heard of those today; the pensions trap was already described in detail by the noble Lords, Lord Davies and Lord Ponsonby. Women police officers are also being unfairly treated in the Bill, in that those who have taken time off for caring

responsibilities can make up the time they had lost under the police pension scheme, but under the new scheme, which is based on age, they have to work longer. That is an example of some of the issues caused by the Bill that may not be addressed by some of the amendments we have put forward.

Gender in pensions is not a new issue. The gender pension gap is a serious matter; the average pension pot for a woman aged 65 is one-fifth of that for a 65 year-old man. Women receive £29,000 less state pension than men, over 20 years. This deficit is set to continue, closing by only 3% by 2060. This amendment seeks to highlight the importance of this issue and the need for urgent measures to address it, so we are raising specific disbenefits in the new scheme, particularly in relation to women and the gender pension gap. I look forward to the Minister's response.

Lord Ponsonby of Shulbrede (Lab): My Lords, I will speak briefly on this matter, but I acknowledge its importance and I thank the noble Baroness, Lady Janke, for raising it. The amendment touches on a number of key issues that we have debated today: the long-term oversight of the Bill and its impact; fairness, particularly the consequences for women and part-time workers; and the need for decent, accessible information for workers on the value of their pensions. We have seen what happens when the effects of pensions legislation are not fully taken into account or monitored. It results in the Bill in front of us and all the related complex consequences we see here today.

On the gender pension gap, during the course of today, we raised specific concerns about the different impact some changes will have on women, who are more likely to have been part-time workers or to have taken time out of their careers for caring responsibilities, leaving them with interrupted contributions and interrupted years of service. The noble Baroness made this point all too clearly. What is particularly shocking about the gender pension gap is how little it is commonly talked about and recognised. I hope that this Committee stage will slightly raise the profile of the issue, but I know that the noble Baroness, Lady Janke, as well as my noble friend Lady Drake and others, has consistently raised it across the House and brought it to the Government's attention at every opportunity.

The cross-party Women and Work All-Party Group has called on the Government to "take urgent action" to close the gap which, as it points out, has persistently "remained at about 40% for the last five years".

The recommendations of the all-party group include that:

> "The Government should publish guidance directed at women on how to adequately prepare for retirement and encourage employers to calculate their gender pension contributions gap in order to compare this to their gender pay gap data."

There is cross-party understanding of this issue and cross-party support for it has been raised in other forums. What is needed to tackle it adequately is political will. I look forward to the Minister's reply.

6 pm

Viscount Younger of Leckie (Con): This was a much shorter debate. I begin by thanking the noble Baroness, Lady Janke, and the noble Lord, Lord Ponsonby, for the points they made and for raising this important matter. As I touched on earlier in debate, of course I agree that fairness and equal treatment lie at the heart of the Bill—that is, fairness between lower and higher earners and fairness for the taxpayer—as well as the future sustainability and affordability of public service pensions.

Let me go further. The Government agree with the importance of assessing the impact of the Bill on members of the public service pension schemes with protected characteristics, including—importantly—women. This is why the Government sought responses to the consultation on equalities impacts and conducted a full equalities impact assessment of the Bill, which was published alongside its introduction. In addition, when making the necessary changes to their scheme rules to deliver remedy, schemes will carry out any appropriate analysis of equality impacts for their specific schemes alongside consultations on these changes, in compliance with the public sector equality duty contained in Section 149 of the Equality Act 2010.

The Government's equalities analysis highlights a number of important features of this Bill, which aims to ensure equal treatment between men and women. I note the points made by the noble Lord, Lord Ponsonby. For example, with regard to the main public service schemes, requiring members in scope of remedy to choose their benefits long before retirement could disadvantage women, who may be more likely to take a career break or work part time between implementation of the remedy and their retirement. By allowing this choice to be made at retirement, the deferred choice underpin avoids additional complexity for these groups by allowing them to make their decision in full knowledge of how part-time work or career breaks have affected their earnings and pension accrual. Similarly, by making remedy available to individuals who were in service on or before 31 March 2012 but subsequently left and rejoined, provided that their break in service was less than five years, the Bill ensures parity for groups that may have been more likely to take career breaks—for example, to care for young children or elderly relatives.

The Bill also provides that, from 1 April 2022, all public service workers who remain in service will do so as members of the reformed schemes, which provide career average—so-called CARE—benefits. CARE schemes offer fairer outcomes to those who experience lower salary progression over the course of their careers. As such, statistically, a higher proportion of women and those with other protected characteristics are likely to be better off under CARE schemes, which are broadly more beneficial for lower and some middle earners. The Bill also provides that men and women in the same scheme and of the same date of birth will have the same scheme normal pension age—NPA—under their particular reformed scheme design, and the same NPA for their legacy scheme benefits.

More broadly, the Government recognise the importance of public service pensions in addressing the pensions gap in society between men and women. As women make up roughly 65% of active public service pension scheme members, the provision of generous defined benefit public service pensions actively serves to reduce that gap. Nevertheless, the Government recognise that, in the public sector, differences remain

[Viscount Younger of Leckie]
in average annual pension payments and accrued pensions; this was alluded to by the noble Baroness, Lady Janke. However, these reflect past differences in earnings over members' careers rather than differences in their pension terms.

Therefore, the best way to combat differences in pensions accrual is to tackle the gender pay gap and promote equal opportunities for career progression, regardless of sex or other protected characteristics. The Government are taking active measures on both, including through mandatory gender pay gap reporting. As a result, the gender pay gap continues to be lower in the public sector than the private sector; I have some statistics that I could give to the Committee. As already mentioned, these differences should reduce over time as a result of the move to a CARE benefit design, which all members will accrue from 2022 and which will lead to fairer outcomes for those with lower pay progression.

Given the extensive analysis that has already been conducted and published, as well as the further analysis that schemes will carry out, the Government do not think that a further review is required at this stage. I understand the sentiments behind the amendment but we do not agree that it is necessary. I therefore ask the noble Baroness to withdraw her amendment.

Baroness Janke (LD): I thank the Minister for his response and take his assurances very seriously. Again, this is perhaps something we need to reflect on as it affects society as a whole. I believe we should use every occasion we can to address these fundamental unfairnesses. Having said that, I am sure we will reflect on this, but at this point I beg leave to withdraw the amendment.

Amendment 32 withdrawn.

Amendment 33 not moved.

Clauses 91 to 114 agreed.

Schedule 1: Retirement date for holders of judicial offices etc

Amendment 34

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

34: Schedule 1, page 85, line 11, leave out "75" and insert "72"

Member's explanatory statement

This would set the judicial retirement age in the Judicial Pensions Act 1959 to 72, rather than 75. This is a probing amendment to raise the issue of the appropriate retirement age for the judiciary.

Lord Ponsonby of Shulbrede (Lab): My Lords, we now move to a different aspect of the Bill: the retirement age of members of the judiciary. I thank noble and learned Lords who have sat through the past couple of hours of quite detailed discussion of other aspects of the Bill. This amendment has one great merit, which is that it is easy to understand. I remind the Committee that I sit as a magistrate in London.

I raised this subject at Second Reading, as did other noble Lords, and I received a letter from the Minister in which he set out the Government's view that 75 is a more appropriate age for the retirement of members of the judiciary than 72. He did that based on responses to a public consultation run last year. The letter prays in aid some statistics based on the response to the consultation and some representative bodies, which basically backed 75 over 72. As I made clear in my Second Reading speech, there are other representative bodies which back 72 over 75. Just to repeat what I said in the Second Reading debate, the Lord Chief Justice of England and Wales, the Lord Chief Justice of Northern Ireland, the President of the Supreme Court, the Lord President of Scotland, the Magistrates' Leadership Executive, the Chief Coroner of England and Wales and the President of Tribunals favoured 72, not 75.

As somebody who took part in the consultation, I say that the questions in the consultation were not put in the context of whether the increase in the retirement age promotes inclusion and diversity in the magistracy, which is of primary importance—it is superior to other considerations when considering the retirement age—and whether the appraisal system is adequate properly to appraise older colleagues. Here I have to speak frankly, and as somebody who regularly appraises magistrates. There is a prospect of mental decline, which accelerates as one grows older. Although one has to be robust when carrying out appraisals, it can be difficult to say to a long-standing colleague that they should reflect on whether they should continue in their current judicial role. I think it is more likely that those difficult conversations will have to be had if the retirement age is set at 75 rather than 72.

In the Minister's letter, he gave the proportion of BAME members in different arms of the judiciary: 13% for magistrates, 10% for judges and 17% for non-legal tribunal members. Clearly, there is an aspiration within the Government—and, I know, within the judiciary as a whole—to increase and improve these figures. One of the central points of the Lammy report which I think the Government have accepted is the importance of increasing diversity. I would argue that increasing diversity within the judiciary is more important than, and trumps, increasing the judiciary's retirement age. Indeed, increasing the judicial retirement age militates against greater diversity. Because there is only a limited administrative resource, the administrative effort should focus on the recruitment of younger people as a whole but particularly from minority groups within our society.

I have put forward my amendment—to have 72 rather than 75—in a constructive way. It is the way to enable colleagues to continue for another two years but also to focus on what I see as the overwhelming importance of increasing diversity in our wider judicial family. I beg to move.

Lord Etherton (CB): I thank the Minister for his full letter, following Second Reading, and his suggestion of a further meeting. I am very grateful for both of those. I support everything that the noble Lord, Lord Ponsonby, has said and it is a great pleasure to follow him.

I join in on this amendment and support it because of the adverse impact of the increase in the maximum retirement age to 75, rather than 72, on diversity in our most senior courts, especially the Supreme Court and the Court of Appeal. While all salaried judges are

critical to the administration of justice, the most senior courts are those that tend to send the clearest message to our nation, and indeed to other countries, of whether or not we value diversity within the judiciary. At present, we lack a sufficiently diverse senior judiciary. While some progress has been made, particularly in the last 10 years, on the recruitment of women—still inadequate—there is a notorious lack of people from a minority ethnic background. Indeed, in the just over four years that I was Master of the Rolls, it was sometimes extremely embarrassing not to have on the panel of judges in the Court of Appeal anybody from such a minority background.

To increase diversity, there must be sufficient opportunities for appointment to the senior courts. This requires existing judges to retire. The increase in the maximum retirement age to 75, rather than to 72, will in effect freeze the opportunity for the advancement of underrepresented groups and the throughput of more diversity within the judiciary. As the noble Lord, Lord Ponsonby, said, all the most senior judges in England and Wales were in favour of an increase in the judicial MRA to 72 rather than 75. The adverse impact of raising the MRA to 75 in a single stride is plain: the average age of judges in the Court of Appeal is just under 64. This means, potentially, that if the MRA is raised to 75 there will be very few vacancies for a further 11 years.

6.15 pm

It is said in response to this that the evidence is that judges tend to retire before they reach the MRA. That is not, however, true of the Court of Appeal or the Supreme Court. Of the 13 judges who retired from the Court of Appeal in the past two years or so, more than 70% stayed until the current maximum retirement age of 70. The best evidence I have been able to obtain is that 90% of those due to retire in the next three years will go beyond 70 if permitted. So far as concerns the Supreme Court, of the nine Justices who have retired in the past five years, eight went to the mandatory retirement age. There is nothing to suggest that this pattern would not be followed if the MRA was raised to 75.

The issue of raising the MRA gained traction when there was a worrying shortage of applicants to the High Court. To a very significant extent that was due to the pension amendments made in 2015, which were subsequently found to be unlawful and discriminatory on grounds of sex, race and age. Indeed, in some cases, it was only financially prudent for candidates to apply to the High Court if they refused a judicial pension altogether. The present Bill will remedy that state of affairs. The latest recruitment round has overall been a success and the shortfall, principally in the Queen's Bench Division, is relatively modest. Accordingly, underrecruitment is not a sufficient justification for undermining future increase in diversity by going from 70 to 75 rather than to 72.

It has been said that raising the MRA to 75 will increase diversity and the attractiveness generally of applying for judicial office because it will enable potential applicants to work for longer before seeking judicial appointment. I am not aware, however, of any significant number of applicants in their sixties. They are, generally speaking, in their forties and fifties. I should mention briefly that there are specific issues in the recruitment of district judges, but that has nothing to do with the MRA.

Then it is said that this is a once-in-a-generation opportunity. I respectfully do not accept that there can be weighed in the balance against increasing diversity in our senior courts a suggestion that the Government would not bring forward further legislation to change the MRA from 72 should there be a good case for doing so. The absence of a diverse judiciary in our most senior courts should be a cause of embarrassment. A large number of good initiatives to increase that diversity has been undertaken by the Judicial Appointments Commission, senior judges and others. There are all kinds of systemic difficulties in this task, but progress, even if slow, is being achieved. Let us not obstruct that progress by a measure which would freeze to a large extent the opportunities for those who are currently underrepresented to play their part in our senior courts.

The previous Lord Chief Justice, the noble and learned Lord, Lord Thomas of Cwmgiedd, was hoping to speak; he was sitting here in Committee but has had to go away. He has specifically asked me to convey to the Committee that he strongly supports this amendment.

Lord Woolf (CB): My Lords, it gives me great pleasure to speak after the former Master of the Rolls, an office that I held at one time before becoming Lord Chief Justice, on this occasion for the first time. I am yet hoping to hear from another judge who will be speaking who I have not had the opportunity to hear from.

I was very much a judge at the time that the MRA for a judge was, and had been, 75. In my view and that of my colleagues, that worked admirably. There was no problem about it, subject to the question of diversity, to which I will draw attention shortly, which is a single matter. I emphasise that at Second Reading, the noble and learned Lord, Lord Mackay, intimated that, when he was Lord Chancellor—I was Lord Chief Justice subsequently—the age of 70 was in operation.

As was confirmed by what the noble and learned Lord, Lord Etherton, said, there is no doubt that reducing the age from 75 to 70 did not work. That is why all the judiciary and the former judiciary believe that there is a real and very important need for the age to be increased, for reasons identified by the noble and learned Lord, Lord Etherton. The only question is whether it should be increased to 72 or 75.

I suggest that the view that 72 will have a particular adverse effect on diversity is not correct. We are concerned about a failure to get enough female judges appointed, especially to the important offices, but that depends on their being appointed, not on the date of retirement being artificially restrained to a lower age than it would otherwise be, if the Government's intentions proceed as they are at the moment.

I have also had experience of indirectly employing judges to the international courts with which I have been involved—this is referred to in my entry in the register. The fact is that excellent judges who are under the age of 75 are able to be recruited for courts in

[LORD WOOLF]
other countries. The fact is that if we go ahead with the lower age, we would be depriving ourselves of useful powers in the judiciary of this country in the highest posts if they are not able to fulfil the term that, as I submit, they should be able to fulfil. If they do not want to stay on until 75, the MRA of course does not have any impact upon their ability to retire at an earlier date.

The important question, therefore, is whether there really is such a dampening effect on the employment of female judges that it has to give way to what should be the natural term of appointment of the most senior judges in this country. I can say only, based on my experience, that I do not think there is any evidence to that effect. The fact is that in the appointment of judges we would like to recruit more of—that is, able judges of the highest quality who are female—into the judiciary, so far we have not been able to recruit them. That is true; we would like to recruit more, but it has not happened. On appointment, the fact is that those who are responsible for appointment take into account, and are perfectly entitled to take into account, where there is a female applicant, the fact that she is female. Of course, because of the need, that means that female judges are in a position where, if they apply to be appointed, they are more likely to be appointed than their male counterparts, because there is a need for females.

I certainly subscribe to the view, especially with appellate courts, that having a female judge on those courts is a matter of the highest importance, and I would be astonished if those responsible for the appointment did not take that into account in selecting who would be appointed. So, on the basis of my experience, I say that we should not, and it is not right to, deprive very good judges of the full term of their appointment if that be an age in excess of what it is now, to 75, because it might mean—although there is no evidence that it does mean—that female judges would need to be appointed. I appreciate that the noble and learned Lord referred to people being cut out, but to say that in the course of a judicial career that goes to an age above 70, a judge is going to be locked out of the opportunity of being appointed because colleagues can stay to 75, I really suggest is unrealistic.

I urge the Government to adhere to the view of the noble and learned Lord, Lord Mackay, and myself that changing the age from 75 to 70 was a mistake—a mistake that this is an opportunity to correct, and we should do that. We will lose, of course, the opportunity to have those five years, which we now have in international courts, but our first responsibility is to the courts of this country and the standards of those courts.

Baroness Hallett (CB): My Lords, I support the amendment to make the judicial retirement age 72, rather than 75. I should first declare that I was a judge adversely affected by the current mandatory retirement age of 70: I had to retire in 2019. I thought I had a good five years left in me, but it was not to be. None the less, I support the amendment down to 72.

I was also chair of the diversity committee of the Judges' Council until 2019 and I spent a lot of my professional life trying to improve diversity on the Bench for judges and magistrates. I had some success, but it was limited success. We organised mentoring schemes, application workshops, outreach events of every kind and support of every kind for women, BAME lawyers, employed lawyers, academics and solicitors, encouraging them to apply for a judicial post. I must have spoken to hundreds over the years, and I never once heard an argument that the retirement age was a factor in their not applying for the Bench. There were many other complex factors, particularly for solicitors, and it was not the retirement age.

6.30 pm

If ever we triggered an interest from someone who said, "Well, I'm a tax solicitor. You don't want to have me on the Bench", I would say, "Yes, we do". The problem then became that, because a limited number of judges are appointed each year and a limited number of selection exercises are run by the Judicial Appointments Commission each year, there would be no vacancies in their chosen area for some years.

I will give one example. The first rung for the likes of me, a criminal practitioner, was to become a recorder of the Crown Court. The last recorder selection exercise closed in September 2020. No recorder selection exercise took place this year and none is as yet advertised for 2022. Few applicants get through on their first attempt, and it is hard to maintain their interest and enthusiasm when they realise that there will not be another judicial bus coming along for years. Allowing all current judges to sit until they are 75 will mean that there are even fewer empty buses because they will be clogged up by the likes of me, waving their Freedom Passes, so I do not accept that raising the age to 75 will not adversely impact the diversity of the Bench. Raising it to 72 will have an impact on diversity, but I can live with that for the reasons given by the Minister and others. It is impossible to improve the diversity of the Bench significantly in the years to come—that is when we need to do it because the public demand it—unless there is a constant flow of new recruits and a fair system of appointment to the Bench.

The MoJ recognised the impact on diversity in its response to the consultation on this issue, and has committed to improving diversity by supporting the Judicial Diversity Forum. I sat on that forum and do not for one moment doubt the commitment of its members, but its success has been limited despite the commitment and determination of all those involved. Even if it improves its success rate and manages to attract and support far more applicants from non-traditional backgrounds, they can be appointed only to a vacant post. Raising the mandatory retirement age of judges to 75 is bound to restrict the number of vacant posts, which is why I support the amendment.

Baroness Janke (LD): My Lords, it is clear that everyone in the Room would say that it is important that our senior judges, in the Court of Appeal and the Supreme Court, reflect the society in which we live if they are to be respected and seen as part of the current era. At the moment, they do not, and we are all concerned about this.

From what we hear, the amendment is acceptable and does not have the effect on diversity that raising the minimum retirement age to 75 would. It is worth noting the comments on the Ministry of Justice's 2020 statistics:

"Although the proportion of judges that are women continues to increase gradually, women remain under-represented in judicial roles in 2020. This is particularly the case in the courts where 32% of all judges, and 26% of those in more senior roles (High Court and above) were women—compared with 47% of all judges in tribunals."

The BAME situation is much worse:

"The proportion of judges who identify as Black, Asian and minority ethnic … has also increased … but remains lower for court appointments compared to tribunals, particularly at senior levels (4% for High Court and above, compared with 8% of all court and 12% of all tribunal judges). However, the association between age and ethnicity—with lower a proportion of BAME individuals at older ages, and more senior judges being older on average—should be borne in mind."

I wonder whether the Minister can say whether the Government have thought of doing an impact assessment. The one at the beginning of the Bill does not address this issue at all. If there is some argument about it, it would be good to have an impact assessment that lays out the evidence we have heard from some noble and learned Lords today.

I look forward to the Minister's response but very much hope that, by the time we get to Report, we have a body of evidence on which to make this judgment. I am sure that the noble and learned Lords here today will be able to make some of that available.

Lord Woolf (CB): I am sorry; could I just add one thing? The noble and learned Lord, Lord Brown, was sitting here wanting to address the Committee. I know without hesitation or doubt that he was going to support the view I was taking. So, I am afraid that we have to bear in mind that there are some who have a different view from that expressed by other noble and learned Lords and who would take a more relaxed view than has been indicated about the Government's proposals.

Viscount Younger of Leckie (Con): My Lords, this has been a rather busy debate. I thank all noble Lords who have contributed, including the noble Lord, Lord Ponsonby, at the beginning, the noble and learned Lords, Lord Etherton and Lord Woolf, the noble Baroness, Lady Janke, and particularly the noble and learned Baroness, Lady Hallett, who I do not think has spoken in any of the debates I have been involved in; she is most welcome. I appreciate the careful consideration that has clearly been given to this knotty issue, and I welcome the opportunity to discuss the matter further and in depth. We obviously covered it in some depth at Second Reading.

I wanted to say something at the outset about Amendment 34, which seeks to raise the mandatory retirement age in the Judicial Pensions Act 1959 to 72, rather than 75 as proposed in the Bill. I point out that the amendment as drafted would have the effect of changing the retirement age to 72 for only a small number of senior judges. However, I understand from the contributions today that this is, if I have got this right, more of a probing amendment, and that its intention is to raise for debate—which we have had today—what mandatory retirement age should be provided for in this Bill for all members of the judiciary. I just wanted to make that point.

I recognise that there are different views, not just among Members of this House but among others outside, including within the judiciary, on the most appropriate age at which members of the judiciary should retire. I therefore appreciate the close interest that this Committee has in the consultation that took place in 2020 on this matter. It is obviously a challenge to get agreement, and I take the view from the noble and learned Lords, Lord Woolf and Lord Etherton, and indeed the noble and learned Baroness, Lady Hallett, that there are definitely different views. We know that.

As the noble Lord, Lord Ponsonby, mentioned, I endeavoured to cover in some detail in the letter I wrote to your Lordships following Second Reading some more information on this issue. However, I welcome the opportunity to provide further reassurance—and I hope I can—on the robust consultation that took place, which has to led to the decision, and to explain why, on balance, the Government feel it is right at this point to raise the mandatory retirement age to 75. I shall expand on that in my remarks.

First, as this Committee will know, a full public consultation ran from July to October 2020 and received 1,004 responses. The vast majority of respondents, 84% in total, believed that the mandatory retirement age should be increased, with 67% of respondents indicating that a retirement age of 75 was the better option—in a measured way and all things considered, I should say. Of the individual respondents who reported their gender, 62% of female respondents supported a mandatory retirement age of 75. But let me now turn to the Government's rationale for raising the judicial retirement age to 75.

It is interesting to note that there is, of course, a view that the mandatory retirement age should be raised. I think the point was raised that this is about whether it should be either 72 or 75; at least that is some form of agreement. It is important that we set a judicial retirement age which we believe will stand the test of time, given that such changes are once in a generation.

Just to put all this in perspective, the previous adjustment to the judicial retirement age was 28 years ago. I pick up the point raised by the noble and learned Lord, Lord Woolf. In my view, and in his, it would not be ideal to make a modest increase of just two years and then to have to revisit this question in the relatively near future. It is better for the smooth administration of justice that we make a change now—if we want to make a change, and we think it is right—that supports our judiciary to meet the demands of the justice system, both now and in the future.

We have, of course, seen many changes since 1993, when the current retirement age of 70 was set. By 2019, life expectancy had increased for men by 5.8 years and for women by 4.1 years. We have also seen changes in wider societal norms on retirement: the Equality Act 2010 resulted in the removal of a compulsory retirement age from most professions. It is a widely accepted position that the judiciary is different in this

[Viscount Younger of Leckie]
respect, and there are very important principles we wish to maintain for setting a judicial officeholder's retirement age in statute. However, the Government believe that the time is right to review the age at which that should be set. The proposal to increase it now is in line with the wider acceptance in our society that older people continue to make a significant contribution. Indeed, many noble Lords continue to make valuable contributions to the work of this House long past 70 or indeed 72 and even 75. As I expect noble Lords are aware, the average age of Members of this House in January last year was a positively spring chickenlike 77. I think we should bear that in mind.

The noble Lord, Lord Ponsonby, raised appraisal schemes, which I found interesting with my background in human resources. I would love to expand a lot on this, but appraisals are a matter for the judiciary. I shall set out the Government's position on this as it is an important point. It is not for the Government to direct, but here we are. Having individual assessments undermines one of the core purposes of the mandatory retirement age, which is to maintain public confidence in the health and capability of the judiciary without the need for individual assessments. Individual assessments have the potential to infringe on the principle of judicial independence which is fundamental to our judicial system and must be fiercely protected. Judges must be free to hear and decide cases without the spectre of assessment sitting over their shoulder. Some sitting judges can already have their appointments extended past their compulsory retirement date to 75 without the need for a capability assessment. Subjecting only older judges to individual assessment risks being discriminatory on the basis of age, and we do not currently consider that that would be justified. However, I return to the first point that I made that appraisals are a matter for the judiciary and as I speak for the Government I have to stick with that.

A key issue here is trust. This was mentioned. The legitimacy of our judiciary relies on public confidence that its judgments can be accepted as right and fair. It is very positive that the Ipsos MORI Veracity Index shows a remarkably high level of trust in our judiciary. The 2020 index showed that 84% of the public trust the judiciary. Thank goodness for that. I do not think that more judges, magistrates and coroners sitting up to age 75 will dent that high level of trust.

As the noble and learned Lord, Lord Woolf, said, it is important to note here that the new mandatory retirement is, of course, a maximum, rather than a minimum, retirement age. It is not expected that even a simple majority of the judiciary, and judges in particular, will wish to sit until they are 75, but I take the messages that were relayed by the noble and learned Lord, Lord Etherton, from his experience. I do not dismiss what he said. It again comes back to the balance that we have decided to take. Data from the *Forty-Second Annual Report on Senior Salaries* showed that from 2011-12 to 2018-19, the average age of retirement across salaried judges in England and Wales was 67, but the Government believe that it is right that this measure would provide the judiciary a little more flexibility over when they retire.

It is known that we already greatly benefit from the expertise of judges older than 70; indeed, many incredibly important inquiries are chaired by former Justices of Appeal and High Court judges whose intellectual capacity was undimmed when they retired at 70. There are also many instances in which members of the judiciary are, at present, able to retire up to the age of 75: a number of judges who, having been appointed before 1995 when the changes to retirement age came into effect, are not due to retire until after 72 or up to 75. Similarly, coroners appointed before the Coroners and Justice Act 2009 do not have a retirement age in statute.

6.45 pm

Furthermore, when there is a public need, some sitting judges can already have their appointments extended past their compulsory retirement date to 75. We believe that the justice system benefits from the extra flexible capacity provided by these judges. The current legislation does not allow all judicial officeholders to sit beyond 70, and those that do cannot all continue to sit on the same basis as they could before they were 70. That is why we feel that it is logical and fair to increase the retirement age for all judicial officeholders, including coroners and magistrates, to retain their vital expertise for longer.

At Second Reading, the noble and learned Lord, Lord Etherton, raised some important concerns about the impact of a higher mandatory retirement age on judicial diversity; the noble and learned Baroness, Lady Hallett, also made this point. I want to address this aspect, which is part of the balance.

First, let me reaffirm the Government's commitment to judicial diversity: that we should aspire to a judiciary that better reflects the society it serves. As I stated in the course of my closing speech at Second Reading, we acknowledge that the retention of older officeholders could have an impact on the flow of new appointees to judicial offices, which may have a very small impact on the rate of diversity change overall. However, we also believe that the longer judicial career afforded by a higher retirement age could help to attract more diverse applicants. I am sure noble Lords will agree that this is a matter for further debate.

I want to pick up on the questions asked by the noble and learned Lord, Lord Etherton, and the noble and learned Baroness, Lady Hallett, about the impact of so-called bed-blocking in the senior judiciary caused by raising the age to 75. The Government recognise, along with the judiciary, that the senior judiciary—that is, the High Court and above—is less diverse than the judiciary as a whole in terms of women and black, Asian and minority ethnic judges. It is true that, in the senior courts, the average retirement age has been slightly higher than the overall average retirement age of 67 across all salaried judges, but it is still below 70. Given previous patterns, we do not expect all senior judges to choose to sit until 75, a point I made earlier. However, there may be a period of adjustment during which fewer vacancies arise following retirement, so we should expect to see movement in the senior courts. Of course, when vacancies do arise, the additional time may mean that a broader pool of candidates has developed. I hope that helps a bit.

In particular, the higher retirement age will make the option of beginning a judicial career later in life, possibly following career breaks to balance family and professional responsibilities, more attractive. In the legal profession itself, many lawyers work well into their 70s. Why would the legal expertise of lawyers in their 60s, when they may first consider applying for judicial office, not be an asset to the judiciary?

On average, lawyers have 17 years of post-qualification experience before they are appointed to judicial roles in the courts that require five years of post-qualification experience, and 27 years of post-qualification experience for roles that require seven years of post-qualification experience. That is why only about 5% of judges in our courts and tribunals are under 40, and about 27% are under 50. We therefore assess that, in the longer term, providing an extra five years of eligibility to apply for judicial office could broaden the pool of diverse candidates, including those senior lawyers—both solicitors and barristers—who may have ambitions for office in our senior courts.

The proposal to increase the mandatory retirement age would also apply to the highly valued magistracy. As of April 2021, we have more than 12,000 unpaid magistrates dispensing justice so ably in our magistrates' and family courts. Around 50% of them are aged over 60. The majority of individual magistrates—67%—who responded to the Government's consultation thought that their retirement age should be 75.

The Government think it very important, however, that we do not just rely on magistrates sitting longer but recruit younger magistrates, which is a helpful message to the noble and learned Baroness, Lady Hallett. That is why the Government are delivering a new recruitment programme for the magistracy to recruit greater numbers of magistrates from diverse backgrounds and identify the barriers we need to eliminate to attract more diverse people to apply for this worthwhile and very fulfilling role.

I hope I have reassured the Committee that the Government have given full consideration to this matter. In deciding the appropriate retirement age, we seek to strike a balance—and it is a balance—between the benefits that increasing the retirement age will bring against its impacts. I appreciate the concerns that the Committee might have about inhibiting the flow of new judicial appointments and age-related capability, but we consider that these are outweighed by the significant benefits for recruitment and retention at a time when some of our courts and tribunals need more judicial resource to support the timely delivery of justice. I thank again all noble Lords who have taken part in this debate and ask the noble Lord, Lord Ponsonby, to withdraw his amendment if he feels able to.

Lord Ponsonby of Shulbrede (Lab): My Lords, I certainly support 100% the new recruitment programme for magistrates. When I first became a magistrate 14 years ago, there were 30,000 magistrates; there are now 12,000, so it is high time that there was a large recruitment process to address the deficit of BAME magistrates.

The noble and learned Lord, Lord Etherton, kindly supported my amendment and spoke eloquently about the different aspects of the senior judiciary. I say to the noble and learned Lord that I am many things but I am not learned in the context of this Committee. Nevertheless, I am grateful for his support. The noble and learned Baroness, Lady Hallett, spoke with great authority and I hope that the Minister will listen to one particular phrase she used: that the public demand change. It really is not good enough that BAME people are so unrepresented in all levels of the judiciary.

One of the things I do is to sit in Highbury youth court, where a very large proportion of the defendants we see are from BAME communities. However, it needs to be said that the victims are from those communities as well. The defence lawyers are from those communities, as are the prosecuting lawyers and the legal advisers. Obviously, the youths are under 18 but all the professionals I am talking about are in their 20s, 30s and early 40s. There is a large cohort of expertise coming through the system. When I sit there as a magistrate, I am very frequently older than the grandparents of the youths I am dealing with. The way that we as magistrates are represented when we hear those cases is not right and it needs to change.

I will say a few words about the noble and learned Lord, Lord Woolf —my noble and learned friend, if I may say so. He spoke about the frustrations of trying to recruit women to roles as senior judges but did not address any of the issues about recruiting BAME judges at all levels. That is really the central issue; for me, it trumps all other considerations when we are considering magistrates' retirement age. Having said all that, I beg leave to withdraw my amendment.

Amendment 34 withdrawn.

Schedule 1 agreed.

Schedules 2 to 4 agreed.

Bill reported without amendment.

Committee adjourned at 6.55 pm.