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Tuesday
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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

Grand Committee

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The abbreviation [V] after a Member's name indicates that they contributed by video call.

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

Tuesday 28 June 2022

2.30 pm

Prayers—read by the Lord Bishop of Guildford.

Royal Assent

2.36 pm

The following Act was given Royal Assent:

Social Security (Additional Payments) Act 2022

Death of a Member: Baroness Greengross

Announcement

2.36 pm

The Lord Speaker (Lord McFall of Alcluith): My Lords, I regret to inform the House of the death of the noble Baroness, Lady Greengross, on Thursday 23 June. On behalf of the House, I extend our condolences to the noble Baroness's family and friends.

Insurance Industry: Travel Premiums

Question

2.37 pm

Asked by ***Lord Blunkett***

To ask Her Majesty's Government what discussions they have had with representatives of the insurance industry regarding the use of age as a trigger for substantial increases in premiums for travel and other related cover.

Lord Blunkett (Lab): My condolences too for a very great woman. I beg leave to ask the Question standing in my name on the Order Paper.

Baroness Penn (Con): The Government continue to work closely with insurers and the independent regulator to ensure that everyone has access to suitable and affordable insurance. The Financial Conduct Authority requires firms offering retail travel insurance to signpost consumers to a directory of specialist providers if they are declined cover, offered cover with an exclusion or charged a significantly higher premium for the medical coverage element.

Lord Blunkett (Lab): My Lords, in March 2020 there was an outburst of gross discrimination against people on age grounds that nearly locked people in their own dwellings because they had reached the age of 70. Perhaps the Minister can go back to the Association of British Insurers, which produced a review in 2018, and point out that many of its members are raising exponentially the fees required for cover for people over 70, 75 and 80. Given that only 7% of over-65s claim in any given year, surely it is possible for us to ensure that people who are living longer, fitter and able to travel can do so and have the cover necessary to make that possible.

Baroness Penn (Con): My Lords, travel insurance is fundamentally designed to cover medical expenses, where age can be a risk factor. The Government do not intend to intervene in commercial decisions made by insurers, as this could damage competition in the market. The new rules that I referred to in my Answer came into place in April 2021—after the example the noble Lord gave. They mean that firms need to signpost consumers to a directory of specialist providers if the medical premium they are being charged is significantly higher than normal. The Government continue to want to promote financial inclusion, and have the Financial Inclusion Policy Forum in place to ensure that they consider all questions around financial inclusion.

Lord Sharkey (LD): My Lords, people with serious pre-existing medical conditions often find it difficult to get travel insurance. As the Minister has said, in April last year the FCA introduced new signposting rules to make it easier. Can the Minister reassure the House that insurance companies and brokers are currently complying with the signposting rules and that this signposting is as prominent as it should be?

Baroness Penn (Con): My Lords, it is for the Financial Conduct Authority to regulate the market and ensure its rules are being followed. It has the resources to do so, and I will follow up with the FCA to see its judgments on that.

Lord Grocott (Lab): Did I understand the Minister to say in response to my noble friend Lord Blunkett that basically, it is nothing to do with the Government—"We can't do anything; it's up to someone else to sort it out"? That seems to be an increasing characteristic of the Government in certain key areas of policy. If people are demonstrably being ripped off, which is the clear implication of the Question, is it that the Government cannot intervene or that as a matter of principle they will not intervene?

Baroness Penn (Con): There are several elements to that. It is for the market to determine the provision but, if that market is not functioning, it is for the regulator to take action; if it is not functioning properly, that is what we expect the regulator to do. I pointed to one example where the regulator acted in needing to signpost consumers to alternative providers if the insurer it had approached could not provide reasonable cover. The role of the Government is to look at policy; that is where the Financial Inclusion Policy Forum comes in—we work with the market and the regulator to ensure that we get the right outcomes.

Lord Kirkhope of Harrogate (Con): My noble friend should surely be concerned about this level of age discrimination, which applies not only in this field but particularly in that of car hire. I understand that some good drivers over the age of 70 are being denied the opportunity to hire a car, the reason given being a

[Lord Kirkhope of Harrogate]
failure to obtain insurance. Is this not unacceptable, bearing in mind the statistics on the safe driving of older drivers?

Baroness Penn (Con): Age can be a risk factor in the provision of insurance. It is right for the market to take that into account but, where there are examples of discrimination that go beyond assessment of the risk factor, that is for the FCA to consider as the regulator of the market.

Lord Watts (Lab): The Government rely on the regulator, but is not the problem that many regulators do not do the job, be it water, insurance or many other areas? What are the Government doing to monitor the performance of regulators and, when they fail, to remove and replace them?

Baroness Penn (Con): I think I have explained one action that the regulator has already taken in respect of this question, on the signposting agreement that came into place in April last year. The FCA has also acted on general insurance pricing practices, where it was found that existing customers renewing their insurance were being charged unfair rates so that insurers could offer new deals to people who were prepared to move. As I said, the FCA has taken action on that front. Since 1 January 2022, new rules have been in place. As I also said, the Government have the Financial Inclusion Policy Forum, bringing together market operators and the regulator to look at questions of financial inclusion and see what we can do. The Government publish an annual report on the action taken within that forum.

Baroness Altmann (Con): My Lords, I am conscious that my noble friend finds herself in a difficult position—it is usually for the regular and the industry itself to behave appropriately. Have the Government asked the regulator to make inquiries about the pricing of insurance? It is notoriously opaque in justifying risk margins, profit margins and the ways pricing structures are determined. It sometimes feels like a free-for-all in the market.

Baroness Penn (Con): As I just pointed to, a quite significant reform was put in place in January this year regarding general insurance pricing practices. These measures are intended to improve the way that insurance markets function and reduce harm for consumers affected by price walking. We want to see how those reforms operate and bed in over time, but I gave a commitment to the noble Lord, Lord Sharkey, to communicate with the FCA about its assessment of the market in relation to age. I will get back to noble Lords.

Lord Tunnicliffe (Lab): My Lords, in life and in politics there is always a trade-off between intensity of gaze and breadth of vision. I sense an intensity of gaze from those of the average age in this Chamber, who would like to see some rule by which people of the Minister's age could subsidise us old fogies. I understand that the law does not say that, unfortunately, but there are two areas on which I would like an answer. First, in order to be effective, the new rules must have very positive promulgation, but I do not sense that they have it. Every citizen seeking this should know about them. Secondly, when the algorithm has just turned you down, it is a pretty frightening situation—especially when your wife has just spent £7,000 on a holiday trip—and at that point you feel very vulnerable. Could the Minister go further on what mechanisms exist, and which ones should exist, to ensure that this marketplace is fairly pricing this important minority of customers?

Baroness Penn (Con): My Lords, I believe that the way the signposting agreement is designed ensures that, when a consumer is turned down for insurance or is charged a significantly higher premium for the medical element of it, the obligation is to directly signpost them to alternative provision or a register of specialist providers, so that every consumer who finds themselves in that position is given an alternative pathway to find insurance. There is a wider question about general knowledge of alternative provision beyond that signposting, and I will happily take that up with the FCA as well as in government.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, do not certain insurance companies, such as Saga, specialise in insurance for elderly people? Perhaps the Minister can shed some light on that.

Baroness Penn (Con): Certainly, there are providers in the marketplace that will then specialise. People should be signposted to such providers, so that they know there is a solution out there for them.

Small Modular Nuclear Reactors

Question

2.47 pm

Asked by ***Viscount Hanworth***

To ask Her Majesty's Government when, and under what circumstances, they will place orders for small modular nuclear reactors.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, the energy and security strategy sets out our intention to take one nuclear project to final investment decision in this Parliament and two projects to final investment decision in the next, including SMRs. As with any government decision, this will be subject to value for money, relevant approvals and technological readiness and maturity.

Viscount Hanworth (Lab): I am not reassured by the Answer the Minister has given. To await the completion of a generic design assessment of a proven technology is to impose an unnecessary delay. There is an international market awaiting small modular reactors. Unless the Government provide full and immediate support for the SMR of Rolls-Royce, foreign producers will capture the market and we may have to depend on them for

the reactors we will need to install in the UK. Does the Minister regard that prospect, and the prospect of losing overseas markets, with equanimity?

Lord Callanan (Con): We are providing immediate support to Rolls-Royce to develop the SMR; we provided it with £210 million to do exactly that. However, it is important that we go through all the relevant design approvals to make sure that SMRs are safe and easy to deploy. That is an important step to go through and which is legislated for in this country, and we should make sure that we follow it.

Lord Bilimoria (CB): My Lords, building a large nuclear reactor takes well over a decade but, once built, it can power 7% of this country's electricity. However, I am reliably informed that these small modular nuclear reactors can be put up within four to five years. Why are the Government waiting? These reactors can power a city the size of Sheffield. Why not do it now in order to have cleaner energy and to be more energy self-reliant?

Lord Callanan (Con): The noble Lord might want to ask the people of Sheffield whether they want an SMR beforehand. As a serious point, this is very important; indeed, it is a matter of legislation that reactors are proved to be safe. I agree that it is a shrunken design of existing reactors; these are on a much smaller scale and designed in a modular way. It is important that we go through all the relevant approval processes. The design is not yet complete, and they have not even been submitted yet for GDA.

Lord Cunningham of Felling (Lab): My Lords, can the Minister remind the House of when Britain built a civil nuclear reactor on time and within budget? I ask this not to cast any doubt on the Minister's commitment, but to say that we know that there are numerous opponents of civil nuclear power and every time we build a reactor we give them more and more excuses over delays and cost overruns to attack the idea of civil nuclear power. It is a terrible error for which both Governments have been responsible; I am not just blaming the present Government. We give them open goals to shoot at. Should the Government not look at the whole process and come up with a new scheme or ideas to ensure that this error is eliminated?

Lord Callanan (Con): We are always open to new ideas for how we can speed the process up. We want to see both existing nuclear technology and the SMR process brought forward as quickly as possible, but it is important that we go through all the relevant design approval phases to make sure the technology is safe. Many communities are willing to accept SMRs, particularly those that already have nuclear reactors in their area, so it is not the case that everybody is opposed to them. Nevertheless, it is important that we go through the proper processes.

Lord Howell of Guildford (Con): My Lords, I declare an interest both past and present in this area. I welcome the support the Government have so far given to SMR development in this country. Of course, it is going on in many other countries as well. How does this play out in relation to the plan at Sizewell C, where the idea is to build another large-scale reactor as a replica—I repeat, replica—of Hinkley Point C? Hinkley Point C has had its own problems; it is over time, over budget and has component difficulties. Do we really want to think in terms of a large-scale replica there or in other sites, when the SMR option is coming on fast? We are at the edge of new technology in nuclear power; should the Government not think very carefully before deciding between SMRs and another large-scale reactor with all its problems, as already indicated?

Lord Callanan (Con): My noble friend makes an important point, and we will take into account all these factors, including value for money, when we make decisions in the next Parliament on whether to proceed in these cases.

Lord Wigley (PC): My Lords, may I break the habit of a lifetime and welcome the statement made by the Prime Minister in his speech in Newtown last month, when he announced an SMR for Trawsfynydd? Can the Minister confirm that the five-year timescale announced by Cwmni Egino, which will be taking this forward, is within the framework of what he has just described and that this project will go ahead for 2027?

Lord Callanan (Con): I cannot confirm any individual projects, but I have said that we are proceeding with making final investment decisions in the next Parliament on two further nuclear reactors.

Lord Ravensdale (CB): My Lords, I work in the nuclear industry and one of the biggest issues I am currently seeing is a lack of available skills to undertake the work. We are doing our best to recruit, but we simply cannot find the skilled engineers to meet the demand we are seeing. Does the Minister agree that a sector-wide skills strategy is needed to demonstrate how we will deliver the more than 100,000 new jobs in the industry that will be needed by 2030?

Lord Callanan (Con): The noble Lord makes an important point. There are a lot of very skilled engineering jobs. We have made some errors in the past on our nuclear strategy, which resulted in a lot of very skilled employees leaving the country and the industry effectively closing down. We are resurrecting the industry now and it will be a longer-term process to build up the skills base, but the noble Lord is right.

Baroness Blake of Leeds (Lab): My Lords, although we on these Benches welcome an increased rollout of small modular nuclear reactors, given that they offer savings in cost and construction time and more flexibility related to energy demand, it will likely take until 2024 for the first project to reach a final investment decision. Furthermore, Rolls-Royce does not expect to turn on its first SMR until 2029. This is a positive long-term strategy but it does not address the short-term and immediate need for action. Can the Minister inform us

[Baroness Blake of Leeds]
of what solutions the energy security Bill offers to reduce our dependency on oil, coal and gas in the short term?

Lord Callanan (Con): The noble Baroness makes an important point; these are long-term decisions. Most energy policy decisions are longer term, as it takes many years to bring on stream new energy infrastructure projects in whatever field we are looking at. In the short term, however, the answer to the noble Baroness's question relies principally on renewables: we are advancing the hydrogen strategy and accelerating the rollout of offshore wind, which has proved immensely successful. In this country, we have the second-largest offshore wind capacity in the world and it is a world-beating industry.

Lord Stoneham of Droxford (LD): Could the Minister confirm whether the Government consider regulated asset base—RAB—funding appropriate for something as experimental as these small reactors?

Lord Callanan (Con): We have not made a decision on the relevant business case model—it could be either the RAB or the CfD model—but we will consult on this shortly.

Lord Naseby (Con): My Lords, my noble friend knows as well as anyone that we have suffered an energy crisis and continue to have one. Against that background and the vacillation over the North Sea, which is not my noble friend's fault, does he not think that, given Rolls-Royce's history and what it did during the war—twice as quickly as anyone forecast—it is a major company that can really get a grip on this, if Her Majesty's Government push the button for it to do so?

Lord Callanan (Con): I agree with my noble friend's point: Rolls-Royce is indeed an excellent company, which is why we are funding it to do this work.

Baroness Jones of Moulsecoomb (GP): My Lords, I am so glad that the Minister mentioned safety because a recent study from Stanford University says that, overall, small modular designs are "inferior" to conventional reactors—

Noble Lords: Oh!

Baroness Jones of Moulsecoomb (GP): It is not my work; it is from a university. The study says that they are inferior with respect to radioactive waste generation, management requirements and disposable options. The researchers make the point that they should not be doing this research; the vendors should. Will the Government make sure that such research is done by vendors?

Lord Callanan (Con): Of course they are doing that research. A vital part of the work and the financing model will be to make sure that all decommissioning costs are taken into account, which is one of the advantages of the SMR process: SMRs will, we hope, be easier and cheaper to decommission. But this is all part of the design process that we are going through, and it will be subject to the proper regulatory approvals. I obviously do not agree with the noble Baroness's anti-nuclear stance, but it is nevertheless important fully to take into account the safety approvals process.

Commonwealth

Question

2.58 pm

Asked by ***Baroness Anelay of St Johns***

To ask Her Majesty's Government what assessment they have made of the progress made during their term as chair-in-office of the Commonwealth towards building a Commonwealth that is fairer, prosperous, more sustainable and more secure.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, over the last four years, the United Kingdom, as chair-in-office, has worked closely with our Commonwealth partners to pursue the shared priorities that leaders set out at CHOGM 2018 in London, with an investment of over £500 million in projects and programmes on girls' education, trade, human rights and women's economic empowerment. The UK's assessment of its delivery of our chair-in-office priorities is outlined in two chair-in-office reports, the second of which was laid in both Houses in May this year.

Baroness Anelay of St Johns (Con): My Lords, nearly a million girls in 11 Commonwealth countries do not have equal access to education. The UK's most recent report as chair-in-office—the final report to which my noble friend referred—states that Rwanda is one of the 11 Commonwealth countries that marginalise girls. It is now the chair-in-office for the Commonwealth, so what commitment has it given to the UK that, as chair-in-office, the country will eliminate the marginalisation of girls in education?

Lord Ahmad of Wimbledon (Con): My Lords, as my noble friend will be aware, the issue of girls' education remains—and rightly so—a priority for Her Majesty's Government and our Prime Minister. I can assure my noble friend that we have had a strong exchange of concerns and views with all members of our Commonwealth family over the importance of education, not least for girls across the now 56 countries of the Commonwealth. We will continue to pursue this objective, not just in our conversations with countries within the Commonwealth but beyond. Rwanda remains very much committed to the values of the Commonwealth family.

Lord Collins of Highbury (Lab): My Lords, one of the priorities set by the London CHOGM was LGBT rights. I congratulate the Minister on his work to ensure that this continued throughout the chair-in-office period. What can he tell us about how this work will continue over the next two years? We must bear in mind—as he acknowledged to me yesterday—that LGBT rights are now under threat globally, and we need to ensure that we continue to act.

Lord Ahmad of Wimbledon (Con): My Lords, one of the areas we pursued during our time in chair-in-office was to strengthen the voice of civil society within the context of the Commonwealth. Although I was not able to share this with him yesterday, I can now report to the noble Lord that, in the civil society engagement we had, we had well over 10 Foreign Ministers engaging quite directly. There was a quite specific question on the issue of LGBT rights. While it does remain a challenge in a number of Commonwealth countries where backwards steps have been taken, it is also notable that certain countries—including, for example, the likes of Botswana—have taken forward steps on this important issue. We continue, as we have done during our time as chair-in-office, to fund human rights priorities, including those of LGBT rights. They were featured very prominently in the civil society discussions, and I am sure of the important role civil society organisations will play in ensuring that all countries of the Commonwealth will adhere to the values of this important principle, and not just during Rwanda's chair-in-office.

Lord Haselhurst (Con): My Lords, if we are to expect the Commonwealth to remain a strong and influential organisation far into the future—bearing in mind the high proportion of Commonwealth citizens who are aged under 25—would it not be sensible to encourage, perhaps through officers of the Commonwealth Parliamentary Association, the setting-up of a Commonwealth-wide youth organisation, just as has happened with both women, on the one hand, and small jurisdictions, on the other?

Lord Ahmad of Wimbledon (Con): My Lords, again I agree with my noble friend. As he will be aware, within the Commonwealth context, there is the Commonwealth Youth Forum. Together with a number of other Ministers, including the Prime Minister of Canada and the President of Rwanda, I attended a meeting where the youth forum delegates were directly reporting back on the importance of their priorities. Of course, 60% of the Commonwealth is under 30—although I think that this House acts as a strong voice for the 40% who are not. Equally, we need to remain focused: the youth forum plays a central role in the thinking on this, and will be feeding not just to the chair-in-office but to the member states as well. In addition, the role of the CPA is well recognised.

The Lord Bishop of Guildford: My Lords, as the Minister knows extremely well, this week marks a brief lull between the Commonwealth Heads of Government Meeting in Rwanda last week and the International Ministerial Conference on Freedom of Religion or Belief in London next week. Given the overlap between those two conferences, what progress has been made on this basic human right, not least given that three of the Commonwealth nations—India, Pakistan and Nigeria—are among the worst when it comes to protecting the rights, and even the lives, of Christians and those of other faiths and beliefs?

Lord Ahmad of Wimbledon (Con): The right reverend Prelate raises an important issue. It seems to be a continuum. As someone who is overseeing the FoRB conference as well, I was wondering whether the "Minister for Conferences" is being added to my portfolio. Nevertheless, it is an important area which is of focus to Her Majesty's Government. I am working very closely with Fiona Bruce on the delivery of next week's conference, at which over 30 countries will be in attendance. On the countries the right reverend Prelate referred to, I would also note that there are many where there are distinct constitutional protections for all communities and faiths. It is important that all countries of the Commonwealth stand up for the rights of the faiths and beliefs of all.

Baroness Smith of Newnham (LD): My Lords, at last week's CHOGM, the communiqué read that the

"Heads emphasised the commitment in the Commonwealth Charter, to international peace and security, and to an effective multilateral system based on international law."

What have Her Majesty's Government, as chair-in-office, and the Prime Minister, in particular, done to talk to other heads of Commonwealth Governments to try to persuade them of the importance of supporting Ukraine and the British position on Ukraine, rather than seeing Prime Minister Modi alongside President Putin and President Xi?

Lord Ahmad of Wimbledon (Con): My Lords, the importance of Ukraine—indeed the next Question I will be answering is on that very subject—was a discussion that did not meet with total agreement. I sat through and indeed represented the United Kingdom at the Foreign Ministers' meeting. Nevertheless, I think we worked very constructively with all partners to ensure that the language on Ukraine was not just sustained but also recognised by all members of the Commonwealth. Our advocacy and that of other partners is important. The Ukraine conflict is far from over as we saw through the attacks only yesterday.

Lord McDonald of Salford (CB): My Lords, the narrowness of the re-election of the noble and learned Baroness, Lady Scotland, as Secretary-General of the Commonwealth is almost as well known as the strength of Her Majesty's Government's opposition to that re-election. Will the Minister please say whether the Government think that the noble and learned Baroness has a mandate for her remaining time in office, and what will his relationship be with her for the remaining two years she has in office?

Lord Ahmad of Wimbledon (Con): My Lords, I am sure the Secretary-General of the Commonwealth will share my view that we enjoy a very strong, constructive relationship. That is important to take the Commonwealth forward.

Lord Howell of Guildford (Con): My Lords, I must say that I welcome this, despite one or two difficulties that we have just touched on. I think an orderly transfer of the Secretary-Generalship in two years' time is a very sensible thing. I also welcome quite a lot of achievement at Kigali. Two new members joined and there were many other successes, thanks not least to my noble friend the Minister sitting here and, on

[Lord Howell of Guildford]
the commercial side, to my noble friend Lord Marland. Looking into the future, did my noble friend see any talk of the increasing Chinese involvement in island state after island state, coastal state after coastal state in Africa in a systematic advance not in just commercial matters but in military and officer training matters as well? Will he tell his expert planners in the Foreign Office that this is a real challenge to Britain's security, as well as world security, and it needs a good deal more attention than it has had so far?

Lord Ahmad of Wimbledon (Con): Again, I agree with my noble friend in his expert analysis and the wise counsel he offers to the FCDO. It is important that we remain vigilant. Indeed, it is not just across Africa, when we see the recent engagement of China across the Pacific and particularly on specific islands. That is why we are, through the announcement of British International Investment, working with key partners in ensuring that there is a long-term structured offer to all members of the Commonwealth in ensuring their sustainability and economic progress.

Lord Anderson of Swansea (Lab): My Lords, while welcoming the fact that the Commonwealth is still attractive to new members, we are bound to ask whether there are now any relevant criteria for membership such as links with Britain or human rights credentials.

Lord Ahmad of Wimbledon (Con): On the noble Lord's second point, there is a very strong and objective criterion assessment. No new member state joins unless the existing members of the Commonwealth agree. On the issue of past history, I think the Commonwealth is moving forward. Rwanda was never part of our imperial past, but it is very much part of our common future within the Commonwealth family.

Aiden Aslin and Shaun Pinner

Question

3.08 pm

Asked by ***The Lord Bishop of St Albans***

To ask Her Majesty's Government what representations they have made to the government of Russia and the unrecognised Donetsk People's Republic (DPR) on behalf of British nationals Aiden Aslin and Shaun Pinner, following their death sentence by a court in the DPR.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon): My Lords, Her Majesty's Government condemn the sentencing of two British nationals, Aiden Aslin and Shaun Pinner, held by Russian proxies in eastern Ukraine. Both are soldiers in the Ukrainian armed forces and therefore prisoners of war entitled to protection under international humanitarian law. The so-called trial in the non-government controlled area of Ukraine has no legitimacy, and the United Kingdom is fully supportive of the Government of Ukraine in their efforts to get them released.

The Lord Bishop of St Albans: My Lords, what discussions are taking place with our European and American partners to say to Russia that, if these executions go ahead, there will be serious repercussions? What guidance has been given to the estimated 3,000 UK nationals who are now fighting, many of whom have not joined the official army and therefore do not come under the Geneva convention, who are putting themselves at huge risk should they be caught?

Lord Ahmad of Wimbledon (Con): My Lords, on the right reverend Prelate's second point, the advice from the British Government has been very clear: do not travel to Ukraine. As for our work with allies and partners, first and foremost we are working very constructively with Ukraine. The detainees are part and parcel of the engagement the Ukrainians are having with the Russians directly and we are very supportive of those efforts—a point well made by my right honourable friend in her call with the Ukrainian Prime Minister this morning.

Lord Purvis of Tweed (LD): My Lords, I understand that the Government will not recognise these courts, because we do not recognise these territories, but I also understand that the defence team of the British nationals has deferred lodging a defence because they believe that UK ministerial intervention will be successful. Their deadline for this is 8 July. I understand that the Government are in a sensitive position; they have already made representations to Moscow, but has consideration been given to a humanitarian envoy who can give direct support to these individuals to ensure that they have the equivalent of personal consular support, even though that is not possible because of our lack of recognition of these regions?

Lord Ahmad of Wimbledon (Con): My Lords, I hear what the noble Lord says. Of course, he is right to articulate that we have been making representations, including directly with the Russian authorities. We do not recognise the de facto authorities in occupied parts of Ukraine, and I think that is the right approach. I assure him of our good offices in every element of ensuring the rights of all the detainees who are currently being detained by Russia and strengthening the hand of Ukraine in their representation.

Lord Browne of Ladyton (Lab): My Lords, in the case of Aiden Aslin, on 18 April, Graham Phillips, a former British civil servant and pro-Russian propagandist, published a video interview with him—a prisoner of war, in handcuffs, physically injured and manifestly under duress—and extracted from him an admission, in those conditions, that he was not a Ukrainian soldier but had a different relationship with the war. Experts who have studied this video and its circumstances say there is sufficient evidence there to support the view that this was a breach of the Geneva conventions on the treatment of prisoners of war, and that Phillips, a British citizen, is at risk of prosecution for war crimes. As he is a British citizen, ought we not to be further investigating this to see whether he has indeed violated international law, and issuing a warrant for his arrest?

Lord Ahmad of Wimbledon (Con): My Lords, as the noble Lord will be aware, prisoners of war cannot be prosecuted for taking part in direct hostilities. The whole process is about their early release, and they must be released and repatriated without delay at the end of hostilities, if not before. Certainly, that is the case we have been making. I can share with the noble Lord that, of course, these situations are extremely sensitive, but we need to remind Russia that it has an obligation to ensure it upholds the principles of IHL.

Lord Hannay of Chiswick (CB): My Lords, can the Minister say what contact, if any, the Government have had with the Red Cross, whose role is very clearly defined in terms of the Geneva conventions and prisoners of war? It was very active in rescuing a lot of people from Mariupol and therefore has no problem about contact with these illegal authorities.

Lord Ahmad of Wimbledon (Con): My Lords, we are engaging directly with all agencies on the ground. The noble Lord mentions the Red Cross; of course, it has played an important role in reaching many communities within Ukraine, including those in the occupied areas, and we will continue to engage with it. But even an organisation such as the Red Cross is facing real challenges in this respect.

Baroness Symons of Vernham Dean (Lab): My Lords, the Minister did not answer my noble friend's question about Graham Phillips and whether the Government are undertaking any investigation to establish whether or not he has violated international law. He was asked a direct question. I would be grateful if he would answer it, please.

Lord Ahmad of Wimbledon (Con): I am sure the noble Baroness will appreciate that I am not going to comment on the specifics, particularly in the sensitive situation which currently applies to the detainees. I can assure her that we are looking at all elements of their detention. It is important that those representations for their early release are made through Ukraine. That is the position of our Government, but I cannot go further than that.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, does the Minister agree with me that the values displayed by the Russian Government in connection with this Question, and also with yesterday's bombing at the shopping centre, display an indication that this is a conflict that we cannot allow Ukraine to lose?

Lord Ahmad of Wimbledon (Con): I agree with the noble Lord. That is why we have been absolutely at one—and I appreciate the position of Her Majesty's Opposition in this regard—in staying strong in our position on helping Ukraine with humanitarian support, diplomatic efforts and economic reconstruction, as well as military support for the fight. This is a war Russia started. Russia should stop the war and stop it now.

Lord Collins of Highbury (Lab): My Lords, the Foreign Secretary has promised to do whatever it takes to secure the release of these individuals. In addition to the Red Cross and other humanitarian organisations that have intervened in similar circumstances, there is of course the office of the Secretary-General of the United Nations, who has been quite effective in direct communications with Russia, particularly on humanitarian corridors. Can the Minister tell us whether the Foreign Secretary or the Prime Minister has been in contact with the Secretary-General to raise these cases?

Lord Ahmad of Wimbledon (Con): My Lords, as the noble Lord will be aware, the Secretary-General himself has had to face many challenges in his direct engagement with Russia. Indeed, although he made a visit to Moscow, that was possible only after various representations were made. Russia was blocking his visit, and I am sure that many within the international multilateral framework are frustrated by the lack of engagement Russia has shown on a wide range of issues. What I can share with the noble Lord is that we are engaging with all partners, including the United Nations, at the very highest level across a range of issues, including those of detainees.

Business of the House

3.16 pm

Lord Fox (LD): My Lords, I recognise it is unusual for a Member to bring forward a point of procedure but this is an unusual situation. The Procurement Bill started in your Lordships' House and had its Second Reading on 25 May. The first of five Grand Committee sessions is planned for next Monday. It is a complex Bill with significant ramifications for the whole country. Today the Government tabled 342 amendments to their own Bill. These amendments change a wide range of clauses running right through the Bill. Contrary to the Cabinet Office's *Guide to Making Legislation*, not a single amendment has a Member's explanatory statement, and I cannot see an updated Explanatory Memorandum, nor an impact assessment.

The timing and scale of these amendments are cynical and against the spirit of good legislation. We are used to undercooked legislation, but this Bill is only party formed. To deal with the situation properly, I ask that the Government do what they could, and should, already have done: withdraw this Bill, revise it, produce all the necessary new supporting documentation, and then have a new Second Reading for what is, in effect, a new Bill. Given that Report probably will not surface until October, there is time to do this properly.

Lord Cormack (Con): My Lords, the noble Lord has made a very reasonable request in the circumstances. This is yet another example—and I have raised many in the past—of the Government treating Parliament with contempt. It is something up with which we should not put. It is just not acceptable for the Government to behave like this, as if we, the Parliament of the United Kingdom, are a creature of the Executive; we are not.

Lord Foulkes of Cumnock (Lab Co-op): The noble Lord, Lord Cormack, is absolutely right. It is happening everywhere: the so-called Bill of Rights, which is not a Bill granting rights but a Bill taking rights away, is being introduced in the other place without any pre-legislative scrutiny, in spite of the fact that three committees have requested pre-legislative scrutiny. It ought to be done. This is the cavalier way in which the Executive are treating the legislature, and if we do not stand up against the Executive, this democracy is not something that we can be proud of.

Lord Ashton of Hyde (Con): My Lords, I am going to be brief, because we have a lot of important business to do. On normal occasions, the way to address these issues is for the usual channels to discuss them, and I certainly have not been approached by the usual channels on this. However, I have some sympathy with the noble Lord, as well as some experience, having taken through well over 200 government amendments on a Bill previously. I found that the way to get that through well and with agreement in that case was to have plenty of engagement outside the Chamber. I gather that the noble Lord has already met the Minister this morning, and since then more information has been provided, particularly in the shape of a Keeling schedule.

I am told that a lot of these amendments—the majority—are technical, and I do not mean technical in a way that is trying to avoid the issue. The others are explanatory. But if we have proper engagement before Committee—and, of course, five days of Committee are planned, two of which have extended hours—there will be plenty of opportunity to scrutinise these amendments. I know that the Minister is more than ready to engage further with the noble Lord, so I am certainly of the opinion that he will be ready and able to give the Bill the scrutiny it deserves.

Pharmacy (Responsible Pharmacists, Superintendent Pharmacists etc.) Order 2022

Motion to Approve

3.21 pm

Moved by ***Lord Kamall***

That the draft Order laid before the House on 28 April be approved.

Relevant document: 1st Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Kamall) (Con): My Lords, since the outbreak of the coronavirus pandemic, the country has faced its greatest health and economic challenge for decades. Community pharmacies have proven once again that they sit at the centre of our communities and are a vital first port of call for healthcare advice. It is therefore important that we have a strong and flexible governance framework in place to meet the challenges of modern pharmacy and to deliver safe and effective services to patients, for patients.

The purpose of the draft Pharmacy (Responsible Pharmacists, Superintendent Pharmacists etc.) Order 2022 is to define and clarify the core purpose of the responsible pharmacist, who is the person in charge of a particular retail pharmacy premise, and the superintendent pharmacist, who is the person responsible for all retail pharmacies across a retail pharmacy business. The draft order also gives powers to the General Pharmaceutical Council and the Pharmaceutical Society of Northern Ireland to define in professional regulation how the purpose of these roles is fulfilled.

These regulators already have powers to set rules around professional standards. It therefore makes sense that these powers sit with the regulator rather than with the Minister. In doing so, we are putting in place a more flexible regulatory framework and the necessary system governance framework to support maximising the potential of community pharmacy and to make better use of the skill mix of pharmacy teams to deliver more clinical services in the community and support wider NHS capacity. The draft order will apply across the United Kingdom, and I draw your Lordships' attention to two provisions specific to Northern Ireland, which aim to align the law in Northern Ireland with that in the rest of the UK.

At the request of the Department of Health in Northern Ireland and the Pharmaceutical Society of Northern Ireland, it is proposed to give the Department of Health in Northern Ireland the power to appoint a deputy registrar in respect of duties set out in the Pharmacy (Northern Ireland) Order 1976. This will essentially mean that there is no disruption to maintaining the register of pharmacists and pharmacies in the absence of the registrar, and secondly, it will extend the requirement that a superintendent pharmacist must inform the relevant pharmacy regulator when they stop holding the role in a pharmacy business to include Northern Ireland and the Pharmaceutical Society of Northern Ireland.

I hope that noble Lords will agree that these technical amendments are helpful in aligning pharmacy law in Northern Ireland with that of Great Britain and enhance public safety by ensuring that important functions can be performed in the absence of the registrar.

I also take the opportunity to thank the Secondary Legislation Scrutiny Committee for its welcome scrutiny of this work. I encourage noble Lords to read the committee's first report, which draws these regulations to the attention of the House. Officials have provided supplementary information to the committee, which I can make available to the House.

In summary, the draft order will clarify and strengthen the organisational governance arrangements of registered pharmacies and make sure that the key roles of the responsible pharmacist and superintendent pharmacist are clear for all pharmacy professionals and owners. It will also ensure that pharmacy practice matters rightly sit with the professional regulators rather than with Ministers, as is the case for other healthcare professionals.

The proposals include safeguards to ensure that any changes the regulators might make are subject to full consultation, in much the same way as is expected from the Government. This will ensure that patients, the public, pharmacy professionals and the pharmacy

sector will be able to have their say on what the standards should say, and Parliament will have the opportunity to scrutinise any instrument laid before Parliament by the regulators. I and my colleagues in government look forward to those discussions.

On the amendment in the name of the noble Lord, Lord Hunt, I completely understand the concerns about the pressures on pharmacy teams who are still recovering from the impact of the pandemic. I am sure that noble Lords would like to join me in once again putting on record our thanks for the outstanding work and professionalism of the pharmacy workforce. We recognise that, along with all other staff in the NHS, community pharmacy teams have played an enormous role in the response to the pandemic and that this and other compounding factors are having an impact on the pharmacy workforce.

Employers are concerned about high costs of locums and difficulties in recruitment and retention of staff. For example, some employers are more reliant on locums and therefore more sensitive to increases in locum daily rates. I hope noble Lords will remember that in community pharmacy the employers are often commercial organisations that have a clear role and responsibility in staff recruitment and retention. These issues and the cost of locums cannot really be addressed by the legislation before your Lordships today.

However, that does not mean that the Government and the NHS are being passive on this account. We are monitoring the situation carefully. Analysis undertaken by NHS England shows that any workforce challenges that community pharmacies are facing are limited to geographical areas, and, as with the wider NHS, there are a number of complex and multifactorial issues. NHS England is working closely with employers to provide support and adopt a shared approach, to ensure that the essential NHS services provided by community pharmacy contractors continue to be available to patients.

There remains good access to NHS pharmaceutical services in England overall at the macro level, with 80% of the population within 20 minutes' walking distance of their nearest pharmacy, and there are two to three times more pharmacies in the most deprived areas. I recognise that in many cases this does not drill down to some of the local difficulties in specific areas which are facing a number of factors. Given that, I beg to move.

Amendment to the Motion

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

At end insert "but that this House regrets that the Order does not make provision about the wider workforce challenges facing the community pharmacy sector".

Lord Hunt of Kings Heath (Lab): My Lords, I certainly have no objection to this statutory instrument, which, as the Minister said, requires a strengthening of the governance that relates to superintendent and responsible pharmacists. My complaint is that this could have been so much more. My principal purpose in tabling my amendment and allowing us to debate this is to talk about the potential of community pharmacy and my frustration that the Government are doing so little to support the sector. I find that quite extraordinary.

As the Minister said, the NHS is going through an incredibly tough time. We have a huge backlog of patients waiting for treatment, workforce pressures, scary ambulance waiting times, and there is a real sense of demoralisation in primary care. You would think that the Government would have welcomed with open arms the contribution that community pharmacy can make. Instead, however, it seems that the sector continues to be undervalued and starved of investment.

3.30 pm

The contribution that community pharmacies made during the pandemic was really extraordinary. As noble Lords will know, hospitals were very much focused on Covid. They were taking great precautions and were sometimes unable to deal with patients needing routine and sometimes urgent treatments. In primary care, it was very difficult for patients to obtain face-to-face appointments. Through all this, the only reliable, accessible part of the NHS that you could go to see, face to face, were the community pharmacists. We should pay great tribute to them. It is noticeable that there was an increase of nearly 40% in the number of people visiting community pharmacists during the pandemic.

I also pay tribute to the role of community pharmacies when it came to the rollout of the vaccine. The Company Chemists' Association reckons that they have delivered more than 24 million vaccines to date, which is a tremendous feat. The Pharmaceutical Services Negotiating Committee estimates that around 1.6 million people visit a community pharmacy every day in England, and say that that saves about 32 million appointments per year to general practitioners.

As the PDA says, we now understand that the pharmacy can provide a much more comprehensive contribution to health care than was ever contemplated in years gone by. Thinking about the future, and how pharmacies could play a central role in new multi-disciplinary working in primary care, this could be a real game-changer for co-ordinated primary care, given the silo working that we have seen consistently in that sector over the years.

I acknowledge that some of that is recognised by the Government. The Minister himself paid tribute to community pharmacies today. I should say that the *NHS Long Term Plan* promised to make greater use of community pharmacists' skills, and new clinical services have been introduced. I particularly welcome the Community Pharmacist Consultation Service, where staff in general practice and NHS 111 can refer patients to community pharmacies for advice on and treatment of minor illnesses. That is very welcome indeed, but we need to build on it. We must recognise that, at the same time, community pharmacy is absolutely hamstrung by workforce pressures and budgetary austerity, which threatens the viability of some parts of the sector, and certainly its ability to take on a much greater workload in future.

On funding, the Company Chemists' Association reckons that the last increase in funding was in 2014. However, it was then cut by around £200 million a

[Lord Hunt of Kings Heath]
year in 2016, and the current contractual framework agreed in 2019 has not been adjusted, despite the pandemic and rising inflation. An analysis by the CCA shows that per capita spend in the community pharmacy sector decreased by nearly 10.7% from 2014 to 2019. As the PSNC says, it is clear that pharmacies are proving themselves, time and again, to be the most accessible healthcare locations, helping patients with a wide range of increasingly complex conditions and needs. It is astonishing that this work is all being done without specific funding.

The Minister was a little unsympathetic when it came to workforce issues. He seemed to be saying that because community pharmacies are essentially commercial businesses, workforce issues are their responsibility. Given that the great majority of income for community pharmacies comes from their work on NHS dispensing, you cannot divorce the viability of community pharmacies from the funding that the Department of Health makes available—and of course that impacts on the workforce.

The Minister said that the situation is being monitored and suggested that this was more a geographical disparity than a general problem. However, there are a record number of pharmacy vacancies, and we know that many of the businesses are struggling to recruit because of a number of related issues, such as a reduction in the number of students, Brexit and pharmacists choosing to work elsewhere. I am not opposed to this. The movement of some community pharmacies into GP surgeries and primary care networks is a good thing, but there is still a huge role for the community pharmacy sector on the high street as well.

There is a risk here. We have seen during the pandemic that community pharmacies can do more. They certainly have the professionalism and skills to take on more responsibility. However, the combination of funding and workforce pressures makes it unlikely that they can take on these new roles to the extent that would be extremely desirable in an NHS which is very hard-pressed and which will continue to be hard-pressed over the next few years.

My main message to the Minister is this: surely there is now a case for Ministers setting out a long-term vision for community pharmacies, placing them at the heart of primary care and ensuring that there is funding and workforce support to enable this to happen. Given the tremendous pressure on the health service, we have a huge untapped resource which we must fully encourage to do all it can to support patients at a very difficult time. I beg to move.

Baroness McIntosh of Pickering (Con): My Lords, I congratulate my noble friend on bringing forward the order before us today. I am interested to understand the background to why we are moving from ministerial discretion to regulated control. I think my noble friend will assure the House this afternoon that the concerns raised by the Secondary Legislation Scrutiny Committee have been addressed and that any changes will be brought forward by statutory instrument, in which case the committee and the House will have the opportunity to look at them.

I join the noble Lord, Lord Hunt, and my noble friend, in paying tribute to community pharmacies for the work that they have done throughout the years, and particularly during the Covid pandemic.

What will the position of dispensing doctors be, who fulfil a role where community pharmacies do not reach? Quite a large network of rural areas is served by dispensing doctors. As the daughter and the sister of dispensing doctors, and as someone doing outside work with dispensing doctors, I think it is appropriate that we look at how they are potentially being asked, for example, to deliver a booster jab this autumn at the same time as the flu jab. That will pose enormous logistical challenges for community pharmacies, dispensing doctors and others. How do my noble friend and his department expect to address those challenges so that the rollout will go as smoothly in the autumn—particularly if it is combined with a flu jab—as it did in the previous three or four rounds?

Lord Grade of Yarmouth (Non-Afl): My Lords, the health or otherwise of independent community pharmacies can be judged by the rate of closures, which has been increasing over the last few years for a number of reasons, not least the overall deal with the NHS. That deal requires, for example, an individually owned community pharmacy to be deemed to have received the same discount on the purchase of drugs that Boots and the other big chains get on volume discounts. There is a serious crisis in this sector. Can my noble friend the Minister give us some idea of the rate of closure? If he does not have the statistics today, perhaps he could place them in the Library. Closure is an upward trend.

The Deputy Speaker (Lord Brougham and Vaux) (Con): The noble Baroness, Lady Brinton, will be taking part remotely and I call her now.

Baroness Brinton (LD) [V]: My Lords, I thank the Minister for his introduction to this Order and the noble Lord, Lord Hunt of Kings Heath, for explaining his amendment. First, as others have said, it is important to recognise the contribution pharmacists in our health service have made for many years—long before the NHS was created. Too often we talk about clinical and health care professionals and do not raise the vital contribution made by pharmacists. Covid-19 has really demonstrated in a number of ways that they are not only a cornerstone of the NHS and our healthcare system. In the pandemic, and lockdown especially, they also stepped up, took on extra responsibilities and became a new frontline service for people concerned about minor symptoms that they would normally have taken to their GPs, while their GPs were overrun with many more serious cases, including Covid cases.

I too thank the PSNC for the pharmacy advice audit it sent through earlier this week. We now know that nearly a quarter of a million consultations a week—that is 65 million informal healthcare consultations a year—are still being carried out in community pharmacy because patients are unable to access another part of the healthcare system. We should not forget, either, that the pharmacy database was used as the basis for

the NHS app because it already had direct links with GP records, prescriptions and vaccinations that were delivered by pharmacists in their pharmacies.

Turning to the SI, which clarifies the governance of, and sets out the roles of, responsible pharmacists and superintendent pharmacists, the brief summary by the Secondary Legislation Scrutiny Committee raises some key issues. The Minister is right: although there are only three paragraphs, its report is certainly worth reading. It says in paragraph 14:

"several proposals were not popular with respondents to the consultation exercise on the grounds that they may reduce patient safety, particularly provisions allowing Superintendent Pharmacists to cover more than one firm and Responsible Pharmacists to cover more than one pharmacy or to operate remotely. We also note significant levels of distrust from the profession that the regulator, the General Pharmaceutical Council … would be able to set standards and rules appropriately."

Worryingly, the committee goes on to say:

"We found the response of the Department of Health and Social Care … to these concerns, as set out in the Explanatory Memorandum, unconvincing."

In the next paragraph, it says:

"In supplementary material, DHSC told us that to counter the concerns the GPhC will be required to consult on any proposed rules, which will provide the profession with an opportunity for scrutiny and comment. In addition, any changes to professional rules made … would need to be made by a statutory instrument following the negative resolution procedure in Parliament."

Although this extra information to the Secondary Legislation Scrutiny Committee is reassuring, I still want to ask the Minister what the timescale is likely to be before such an instrument is laid before Parliament for scrutiny, explaining those concerns outlined by the committee and how they will be alleviated.

I thank the General Pharmaceutical Council for its briefing, which sets out the safeguards in the draft order to consult on the rules and report back. I know we look forward to seeing the detailed responses to the consultation and how they might affect the resulting resolution. With any change in responsibility, trust is absolutely critical, and this is on top of the increase in community consultations and referrals to other parts of the healthcare system that pharmacists throughout the UK are now carrying out. This is the real change already happening in our primary care system that Ministers say we should be looking for, and the public have taken to it.

The All-Party Pharmacy Group notes that the new demands on pharmacists have been coupled with a real-terms decrease in funding over the last eight years. Despite their desire to help, many pharmacies have had to limit or reduce their offerings and, as the noble Lord, Lord Hunt, has said, some pharmacies are closing. It is in this context that the noble Lord has brought forward his amendment, asking your Lordships' House to consider that

"the Order does not make provision about the wider workforce challenges facing the community pharmacy sector".

3.45 pm

We echo that sentiment from these Benches. The noble Lord's speech explained many of the problems the pharmacy sector faces, which I will not repeat, and he is right that the PSNC is doing everything asked of it but the system—funding and workforce—is not backing up the role of pharmacists that everyone wants to see. So I ask the Minister the following questions. What assessment has he made of community pharmacy closures and is there a plan to adapt the funding model to prevent any further losses? Will the Minister recognise the value of increasing independent prescribers and commit to a funding plan that supports training for both existing and new pharmacists to become independent prescribers? Does the Minister also agree that integrated care systems should consider pharmacy workforce planning across all sectors of health and social care? Will the Minister confirm whether the department is working on a long-term plan for pharmacies? If so, when will it be published?

The Minister knows that, during the passage of the Health and Care Act, amendments supported across your Lordships' House sought to place a duty on the Government to plan and publish key workforce plans for all parts of the NHS. Our pharmacy sector, especially community pharmacies, is stepping up to its new responsibilities, despite decreased funding year on year, increased roles and taking over part of the front-line consultation with the public. Without a clear workforce plan for the pharmacy sector, the Government are setting it up to fail. That is why, if the noble Lord, Lord Hunt, decides to press his amendment to a Division, our Benches will support him.

Baroness Wheeler (Lab): My Lords, this debate has been a welcome opportunity to clarify the role of responsible and superintendent pharmacists, as set out in the SI, and to take a closer look at the wider industry, its workforce and, in particular, the support and funding community pharmacies need to enable them to operate effectively and undertake the extended role they need as an integral part of the local primary care team.

I congratulate my noble friend Lord Hunt on his excellent speech and presentation of the strong case for his amendment. All speakers have rightly paid tribute to the role played by community pharmacies during the pandemic, which remained open and continued to offer their full range of services. We all acknowledge the huge contribution they made then and make now to front-line care: the delivery of mass vaccination programmes for both Covid and flu, providing essential preventive programmes, such as blood pressure checks, providing medicine support for patients discharged from hospital, and supporting patients, particularly those with long-term conditions, with their self-care and self-management. All this takes pressure off GPs and ensures better access for patients to healthcare information and advice, and more efficient use of NHS resources. The estimate that the NHS could save £640 million through nationwide treatment of minor ailments by community pharmacists is an example of how their role should be extended.

The new community pharmacy consultation service mentioned by my noble friend Lord Hunt—involving GP surgeries, NHS 111 and pharmacies—for minor illness or medication consultations, and the pilot schemes for NHS Direct cancer referrals to pharmacies for patient scans and checks, are both key developments which we very much welcome.

[Baroness Wheeler]

I also pay tribute to my colleague Peter Dowd MP for his excellent Westminster Hall debate last week, which I commend to your Lordships. It set out a compelling case on the contribution community pharmacists could make with the right support and funding and increased collaboration with GPs, a case which had strong cross-party backing from supporting speakers. However, no part of the extended role we all want to see can be delivered unless the major workforce issues across community pharmacies are acknowledged, and the ongoing discussions with the Pharmaceutical Services Negotiating Committee on the current agreement and future funding acknowledge the scale of the resources needed.

On the SI, we support and welcome the aim of clarifying and strengthening the governance requirements of responsible and superintendent pharmacists. I thank the General Pharmaceutical Council for the reassurances in the note it prepared for this debate on extensive public consultation and engagement with patients, the public and the pharmacy and health sector on the rules and standards to operate under the extended remit the SI gives them.

Like my noble friend and the noble Baroness, Lady Brinton, I await the Minister's response to the concerns of the Secondary Legislation Scrutiny Committee on the profession's general distrust of the council on the setting of appropriate standards and concerns about patient safety if the pharmacist is absent from the pharmacy. As the committee rightly stressed, the Government need to improve on the reassurances they offered the committee. How are the profession's concerns and reservations to be addressed? How will the Minister address the Pharmacists' Defence Association's deep worry that the new focus of the GPC in exercising its rule-making powers, minimising the burden on businesses, could lead to less focus on patient safety, which surely must be the council's number one concern?

On workforce, all the excellent stakeholder briefings we received for this debate point to a crisis across the pharmacy industry. While the numbers of pharmacists on the register and of pharmacy technicians have increased, there has been a serious reduction in the numbers of students in training and of dispensary and counter staff. As we have heard, the primary care networks, with pharmacists working in GPs' surgeries and away from pharmacies, have had a significant impact on staffing levels in high-street pharmacies, which to cover vacancies have to make increasing use of locums, the cost of which is spiralling. The Company Chemists' Association's estimate of a shortfall of 3,000 community pharmacies in England is not the setting or context in which any newly extended role for community pharmacies can develop strongly and flourish.

There is also the PDA's serious concern about the pressures on staff in some pharmacies, such as unsafe staffing levels, poor pay and working conditions, long hours and suffering physical abuse from customers, which cause them to want to change jobs or leave the profession. What are the Government doing to ensure that risk assessment and preventive safety measures are in place, as well as a zero-tolerance approach when incidents occur? How can the welcome development of primary care networks and pharmacy services in GP surgeries develop hand in hand with ensuring enough staff and resources for community pharmacies to provide the quality of professional care that they want to deliver and we all want to see? How will the Government help pharmacies invest in staff training and development?

On funding, the Minister will have heard the concerns from across the House. The CCA's estimate of funding last being increased for the sector eight years ago, in 2014, and the cuts of £200 million that it had to find two years later, paint a sobering picture of how the industry has fared. The current community pharmacy contractual framework agreed in 2019 has not been adjusted despite the pandemic and rising inflation and costs. The £370 million from the Government to meet pandemic costs was a loan, as we know from valiant attempts in this House to ensure that the industry did not have to repay it. I understand that it was repaid and then a separate admin process was established for the industry to claim back the extra costs incurred during Covid. Does the Minister have any further information on the sums reclaimed under this procedure? Can he reassure the House that the current negotiations with the PSNC on year 4 of the five-year funding agreement will include funding recognition for the extended and full role that community pharmacies need to play?

The need for an overall strategy for the primary care workforce across GPs, pharmacies and community services becomes ever more urgent, as this debate and the questions from noble Lords have clearly demonstrated. I look forward to the Minister's response. We will fully support my noble friend's amendment, should he put it to the vote, highlighting the vital importance of having the clear, long-term strategy and vision for community pharmacies that we have all been calling for.

Lord Kamall (Con): My Lords, I thank all noble Lords for their contributions and once again apologise for the delay in bringing this matter before the House. I welcome the essential role that your Lordships play in scrutinising measures. I experienced that during the passage of the Health and Care Bill, and I think we have a better Act as a result of the scrutiny from across the House. I will try to address as many as possible of the points raised before I conclude. I will try to cover most of the points but I pledge to write to noble Lords if I have missed any specific points.

If we look at the overall picture of the NHS, I am sure noble Lords recognise that we seem to have more doctors, nurses and pharmacists than ever before. As someone said to me the other day, that is all very well but the supply is not keeping up with the demand. If we consider our whole understanding of health, some of the things we ignored many years ago are now things we deem as needing treatment. For example, the whole area of mental health was ignored for many years. PTSM, which people talk about now, was officially recognised only in the 1980s. I know that we will probably talk about that in the next debate.

Before a debate the other day about neurological conditions, I asked my officials to give me a list of all the conditions. They said, "Minister, there are 600 of them." Let us think about this. We were not even aware of that previously. It shows the great complexity

as we become more aware of conditions and issues, putting even more pressure on our health service and health professionals, even though we have more health professionals than ever before.

The Secretary of State recently pledged to start with pharmacies when it came to overall primary care. The community pharmacy contractual framework, to which the noble Baroness, Lady Wheeler, referred—the 2019 to 2024 five-year deal—set out a joint vision for the sector, and an ambition for community pharmacies to be better integrated in the NHS and provide more clinical services. We saw this during the pandemic when pharmacies provided vaccines and we have seen recently that they will be providing more initial advice on issues such as cancer—and they welcome this.

At the same time, we are seeing an overhaul of the overall model. It is time to move away from the old model, in which you see your GP for five minutes and then hope for a referral somewhere else. Services previously considered part of secondary care are now being taken over by primary care centres. Areas previously considered the work of GPs are now being taken over by nurses and physiotherapists, as well as by pharmacists in the community.

Despite the challenges of the last few years, we have jointly delivered the introduction of a new range of clinical services at the community level. These are important in their own right and we are negotiating with the Pharmaceutical Services Negotiating Committee on the expansion of additional services to be introduced in the fourth year of the five-year deal. I very much hope that my right honourable friend the Secretary of State will be able to make an announcement soon. Longer term, we want to build on what has already been achieved and make better use of existing skill sets and those that are developing; for example, the prescribing and assessment skills that all pharmacists graduating from 2026 will have acquired during their training.

I turn to some specific points. We now have more pharmacists than ever before. Data from Health Education England shows that we now have an additional 4,122 pharmacists employed in the community compared with 2017, and the number of registered pharmacists has increased year on year. The number of primary care pharmacy education pathway trainees coming from community pharmacy increased by nearly 2,500. Reforms to initial education and training of pharmacists means that pharmacists qualified from 2026 will be qualified to prescribe at the point of registration. On top of the £2.5 billion that we are spending on the sector, Health Education England is investing £15.9 million over the next four years to support the expansion of front-line pharmacy staff in primary and community care.

We are also supporting a significant expansion in primary care capacity through the additional roles reimbursement scheme, enabling primary care networks to recruit clinical pharmacists and pharmacy technicians, two of 15 roles that PCNs can choose to recruit to. We saw the strength and potential of community pharmacies —many noble Lords referred to it—during the Covid vaccination campaign and the role that community pharmacies played in it. It is not yet known whether recurrent boosters will be required annually. We are looking into that and whether pharmacies will be once again called on.

Noble Lords will recognise—we had this debate many times during the stages of the Health and Care Bill—that to support long-term workforce planning, we are looking first at the long-term strategic drivers of workforce demand and supply. Building on this work, we have commissioned NHS England and NHS Improvement to develop a long-term plan for the workforce for the next 15 years, including long-term supply projections. Once this work is ready, we will share the conclusions and start to home in on what it means for recruitment, skills needed and skill gaps.

A number of noble Lords raised fears or concerns about what the regulators will do with their new powers. This is understandable: community pharmacies are private businesses and increased regulatory burden will be a concern for many of them. However, once again, we have to get the right balance between regulation and making sure of safety. The proposals include safeguards to ensure that any changes the regulators make are subject to full consultation, in much the same way as is expected from the Government. This will ensure that patients, the public, pharmacy professionals and the pharmacy sector have their say on what the standards should say.

There were some concerns about remote supervision. It is important to emphasise that a lot of the issues raised today do not affect this legislation, but I completely understand the point about taking advantage of the situation to debate the wider issues.

4 pm

Many noble Lords have asked about the role of primary care networks. One of the tensions that we have is that in some parts of the network we have seen an expansion in primary care capacity through additional roles, but there are accusations—or tensions—that PCNs are poaching community pharmacies, and we are asked what the Government can do. We want to make sure that we address that tension to ensure that the approach is appropriate. Of course PCNs need pharmacies, but at the same time what pressure does that put on community pharmacies? At the end of the day, it is important that patients and others have access to a pharmacy within a close distance.

I turn to issues raised by other noble Lords. My noble friend Lady McIntosh talked about dispensing doctors. I apologise: I should have foreseen that question, and I commit to writing to my noble friend. On the rate of closures, I commit to writing to more than one noble Lord who asked about that, and I will get that data.

On the timeline, even I find this slightly unhelpful, but I will read out what I have been advised: the timeline has been brought forward by regulators and they are going to outline the programme of work, but I do not yet have specific dates. As soon as I have specific dates from the regulators and the timeline, I commit to writing to noble Lords.

In closing, I am grateful for the contributions from noble Lords today. Introducing the order will give pharmacy regulators the necessary powers to set standards and rules on pharmacy practice matters and the core roles of responsible pharmacists and superintendent pharmacists. We hope this will allow the rules better to keep pace with the changes in modern pharmacy

[Lord Kamall]
services. We recognise what was highlighted by the Secondary Legislation Scrutiny Committee's first report, and any subsequent draft rules produced by the regulators will require full public consultation and scrutiny by Parliament. We look forward to discussing these matters in debate.

I turn to the amendment in the name of the noble Lord, Lord Hunt. Of course I have sympathy with the issues that he has raised. Strictly speaking, they are not matters that can be addressed by the legislation before your Lordships' House today, so while I understand the frustrations, I do not support the noble Lord's amendment. I thank Members for their interest and for the positive debate today and I commend the order to the House.

Lord Hunt of Kings Heath (Lab): My Lords, I am grateful to noble Lords who have taken part in the debate and to the Minister. The noble Baroness, Lady McIntosh, was right to raise the concerns of the Secondary Legislation Scrutiny Committee. I was reassured by the briefing we had from the General Pharmaceutical Council. Clearly, it is something we need to keep a watch on.

As far as timelines are concerned—and I declare an interest as a member of the GMC—the Minister will be aware that there is a huge backlog of regulatory instruments that need to come forward to make changes to the regulatory system. I hope he will be able to give a great deal more priority to this issue over the next few months.

The noble Baroness, Lady McIntosh of Pickering, mentioned dispensing doctors. Noble Lords will perhaps not be unaware that there is sometimes a tension between community pharmacists and dispensing doctors, but that does not mean that dispensing doctors do not have a valuable role to play in future.

The noble Lord, Lord Grade, made important points about closures and funding. I do not know whether anyone really understands how community pharmacy is funded. It is certainly a very complex situation, which in four years as the Minister responsible I am not sure I ever quite discovered. The noble Lord raised a substantive point there.

I was glad to have support from the noble Baroness, Lady Brinton. She spoke well about the fact that community pharmacies had to step up because access in other parts of primary care has become so difficult. My noble friend Lady Wheeler made an important point about minor ailment services and savings that could accrue to the NHS if community pharmacy were used more.

I was grateful for the Minister's response. He painted the picture that in actual terms you could say the health service has more staff, but he will know that respected think tanks and analysts have been saying for many years now that, because of the nature of healthcare and demographic changes, we have to run very much faster to meet the new demands. That is where the problem arises in community pharmacy. The Minister will not be surprised that, because of the long-term challenges, many noble Lords in this House regret that the Government did not accept this House's recommendation that we have a proper long-term workforce strategy which is funded to try to forecast and deal with those issues.

On the substantive issue of community pharmacy, it faces many challenges. Many community pharmacy businesses are facing a viability situation. I do not think that the current contract the Minister talked about is really doing what it needs to. I am hopeful about the talks that he mentioned and potential agreement in the future, but at the moment I doubt that the Government are really going to come up with the goods. It is a tragedy because here is a profession and a sector which could do so much more at a time of huge pressure. It needs to be given the wherewithal to do it. I wish to test the opinion of the House.

4.06 pm

Division on Lord Hunt of Kings Heath's amendment.

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Amendment to the Motion agreed.

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Motion, as amended, agreed.

Draft Mental Health Bill

Statement

The following Statement was made in the House of Commons on Monday 27 June.

"With permission, Mr Speaker, I would like to make a Statement on our plans to bring the Mental Health Act 1983 into the 21st century. Today, just as we pledged in the Queen's Speech, we have published a draft Mental Health Bill to modernise legislation that was passed by the House almost 40 years ago and make sure that it is fit for the future.

Last year, we invested £500 million to support those with mental health needs who were most affected by the pandemic and, as we set out in the NHS long-term plan, we are investing record amounts into expanding and transforming mental health services. That will reach an extra £2.3 billion each year by 2023-24. Later this year, we will also publish a new 10-year mental health plan followed by a 10-year suicide prevention plan, which, as I set out in a speech on Friday, will place a determined focus on this major source of grief and heartbreak so that fewer people will one day get the news that turns their lives upside down. But we cannot make the critical reforms that we need and that

are so essential to the country's mental health system without making sure that the law that underpins our country's mental health system is up to date, too.

Since the 1983 Act, our understanding of and attitude towards mental health has transformed beyond recognition, and it is right that we act now to bring the Act up to date. The Mental Health Act was created so that people who have severe mental illnesses and present a risk to themselves or others can be safely detained and treated for their own protection and that of those around them, but there are a number of alarming issues with how the Act is currently used. Too many people are being detained. They are also being detained for too long, and there are inequalities among those who are detained. The previous Prime Minister, my right honourable friend the Member for Maidenhead, Mrs May, asked Professor Sir Simon Wessely to lead a review into the Act. I pay tribute to my right honourable friend for her tireless commitment to this most important of issues and to Sir Simon for his illuminating report, which made a powerful case for reform and was rightly welcomed on both sides of the House. It made for uncomfortable but essential reading, vividly showing how currently the Act fails patients and their loved ones and deprives people of autonomy and control over their care.

The draft legislation that we have published today builds on Sir Simon's recommendations as well as those in our White Paper, which was published in partnership with the Ministry of Justice last year. Just like Sir Simon's report, the White Paper was welcomed by both sides of the House. It was also welcomed by leading charities including Mind, the National Autistic Society and Rethink, countless mental health professionals and, critically, the people who use mental health services and their loved ones. Today, we are showing how we will put the vision into action. The Bill is a once-in-a-generation reform, and I would like to set out briefly to the House the important themes that sit behind it.

First, the Bill rebalances the criteria for detention so that it will take place only as a last resort when all other options have been explored and considered. Under the new criteria, people will be detained only when they pose a significant risk of harm to themselves and others, and patients should be detained only if they will benefit from the treatment that is made possible by their detention.

Secondly, the Bill shows how we will give patients more control over their care and treatment. It will ensure that, in most cases, clinicians can administer compulsory treatment only if there is a strong reason to do so. In future, all patients formally detained under the Act will have a statutory right to a care and treatment plan, drawn up between the patient and their clinician, and personalised based on the patient's needs. It will give them a clear road map to their discharge from hospital.

There are some cases when patients are not able to make decisions about their own care or feel that they could benefit from greater support. Currently, patients are not always able to choose who can represent them, as their nearest relative automatically qualifies to act on their behalf. The Bill will change that, allowing patients to choose a nominated person who they believe is best placed to look after their interests. The Bill will also increase the powers of that nominated person, so that they can be consulted about the patient's future care.

Thirdly, the Bill will tackle the disparities in how the 1983 Act is used. Black people are four times more likely to be detained under the Act than white people, and 10 times more likely to be placed on a community treatment order. The Bill provides for greater scrutiny of decision-making, including through greater use of second opinions on important decisions, and through expanded access to independent tribunals; that will help us to address the disparities in the use of the Act.

Fourthly, the Bill will enhance support for patients with severe mental health needs who come into contact with the criminal justice system. Under the 1983 Act, too often, people in prison experience delays in getting treatment in hospital. Courts are sometimes forced to divert defendants who require care and treatment, some of whom have not been convicted, to prison as a so-called place of safety. The Bill will make crucial improvements so that vulnerable offenders and those awaiting trial can access the treatment that they need. It will tackle delays and speed up access to specialist care by introducing a new statutory 28-day time limit for transfers from prison to hospital, and it will end the use of prison as a so-called place of safety, so that patients can get the care that they need in the appropriate hospital setting.

The Bill will also amend the Bail Act 1976 so that courts are no longer forced to deny a defendant bail if the judge's sole concern about granting bail has to do with the defendant's mental health. The Bill will allow the judge to send them to hospital instead, so that they can be in the best environment for their mental health and can receive any treatment that they need.

Finally, the Bill will improve the way that people with a learning disability and autistic people are treated under the 1983 Act. One of my priorities in my role is personalised care. The current blanket approach cannot be allowed to continue; it means that too many autistic people and people with a learning disability are admitted into institutional settings when they would be better served by being in the community. The Bill will change this. It limits the scope for detaining people with learning disabilities and autistic people for treatment unless they have a mental illness that justifies a longer stay or they are admitted through the criminal justice system. It also gives commissioners of local authorities and integrated care boards new duties to make sure that the right community support is available instead.

I look forward to working with honourable Members in all parts of the House as we take these plans forward. This momentous Bill deals with one of the most serious and sombre responsibilities of any Government: their responsibility for the power to deprive people of their liberty. Mental ill-health can impact any of us at any time. It is essential that we all have confidence that the system will treat us and our loved ones with dignity and compassion. That is what the Bill will deliver. I commend the Statement to the House."

4.20 pm

Baroness Merron (Lab): My Lords, I start by thanking Professor Simon Wessely for his independent review of the Mental Health Act 1983, an outdated piece of legislation that far too often has facilitated the inexcusable treatment of those with mental health problems.

Yesterday, the Secretary of State for Health said that the report made "uncomfortable but essential reading", and indeed it did. When it is at its best, legislation supports the saving and improvement of people's lives, and I am sure that all sides of your Lordships' House intend that this Bill will get us to this point.

In supporting this overhaul of the legislation, pre-legislative scrutiny will be crucial, not least because it gives an opportunity to build consensus. Can the Minister provide details of timescales and arrangements for this scrutiny? While the Government have adopted most of the recommendations of the review, can the Minister comment on the ones that have not been accepted and the reasons for doing so?

It is welcome that this Bill contains a number of improvements. It gives people more say over how they are treated. It prevents the use of Section 3 of the Act on those who are autistic or have a learning disability but do not have a mental health condition. There is the new duty on clinicians to consider a person's wishes and feelings and involve them in decision-making before deciding whether to treat them. There is access to advocacy and statutory care and treatment plans, which will give more transparency and accountability to clinical decision-making and put people's choices first. All of these and others are welcome.

However, there is a need for the Government to go further. In the debate in the other place, the Secretary of State replied to many of the concerns raised by saying that the new, cross-government *Building the Right Support* plan would answer a lot of them. Can the Minister confirm when we can expect the plan and what it is likely to cover? When will we see the proposed new 10-year mental health plan and 10-year suicide prevention plan?

Black people are over four times more likely to be detained under the Mental Health Act. Can the Minister confirm whether the Government have any intention to review community treatment orders, which are evidenced as coercive, as not reducing readmissions, and being disproportionately applied to black people? Will the guiding principles suggested by the independent mental health review be included, as these would strengthen people's rights and help focus decision-makers on eliminating racism? How will the mental health equality framework be advanced so that there are culturally appropriate services and the freedom for local areas to respond to the needs of their specific populations?

On young people, will the Minister look to see the Bill strengthened in making reforms for those young people? Will he address the failure to give under-18s the right to make advance decisions to refuse treatment? Without this, they will be unable to access enhanced treatment safeguards in the same way as adults. Will he also look at the lack of a statutory decision-making test for those who are under 16 which could also render many of these reforms ineffective for the youngest and often most vulnerable people in the system? It is of note that Anne Longfield, the former Children's Commissioner for England, said that the profit-driven care system was failing vulnerable children. Following reports in today's media and the MacAlister social care review, what action will the Minister take to put this right?

On the new criteria for detention, will the Minister review this too? Ensuring that fewer people are inappropriately detained is a crucial intention of the reforms, and changes are very much needed to significantly reduce this practice.

Staffing levels are crucial to ensuring quality mental health services. These Benches have been calling for the recruitment of 8,500 mental health staff to treat 1 million additional patients a year, so can the Minister confirm when we will get the Government's vision for their workforce strategy?

I look forward to the Minister's response, and if he is unable to answer all my questions today, I would be grateful if he would write to me. Modernising the Mental Health Act will undoubtedly help make mental health services more equitable, compassionate and effective. I am sure that these are aspirations we all agree we must work towards.

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, the noble Baroness, Lady Brinton, is taking part remotely.

Baroness Brinton (LD) [V]: My Lords, from these Benches we would also like to thank Sir Simon Wessely for his report. We welcome reform to the outdated Mental Health Act and we are pleased to see that the Wessely review is finally being implemented by the Government, even if they are not accepting all the recommendations. The Liberal Democrats pledged in 2019 to implement all the recommendations of Sir Simon's review, including bringing forward the necessary investment to modernise and improve patient settings and ambulances. We will apply the principle of "care, not containment" to mental health, while ensuring an emergency bed is always available if needed. Sadly, that has not been the case in recent years.

The Statement talks of the Mental Health Act 1983 and how it was designed to protect those who presented a risk to themselves or to others, but it has long been unfit for purpose, with some practices adding more distress to those already struggling with mental health conditions. I am sure most of us have seen that with our families and friends, because everybody knows somebody who has had mental health problems. For too long, people from ethnic minority groups, as well as autistic people and those with learning disabilities, have been unfairly detained under this Act and it has caused huge distress and damage, not only to the individuals themselves but to their families too.

Shockingly, black people are more than four times more likely to be detained under the Act and more than 10 times more likely to be subject to a community treatment order. The noble Baroness, Lady Merron, said it is important to eliminate racism in mental health and criminal justice system interventions for

[Baroness Brinton]
those with mental health problems. This is long overdue. It is or has been, frankly, institutional racism, and it is time that it is dealt with very quickly.

That people with learning disabilities and those who are autistic are being detained under the Act even when they do not suffer from any mental health conditions is appalling. The Statement says that the Bill will change this, but can the Minister assure us that the Government are serious about tackling these issues and will have no cause to delay this Bill again? While pre-legislative scrutiny is important, it should not lead to further delays in getting the Bill on the statute book next year.

It is good that the Statement announces £150 million over the next three years to bolster mental health services, especially to support people in crisis and avoid their having to attend A&E, which is not good for them and not good for A&E either, but I ask the Minister, since it is not clear from the Statement: is this entirely new money, or is it coming out of the mental health budget that was announced?

It is good that patient safety will be enhanced, but what is being proposed to bring much of the elderly and decrepit mental health building stock up to date and suitable for the 21st century? Some of the buildings are not just unsafe; they are actually not very pleasant places to be either.

The cost of living crisis continues to have a significant impact on families and the demand for mental health services for parents with young families is increasing, but the support to deliver these services is simply not keeping pace with demand, with nurses reporting cuts to funding and staff shortages. What plans does the Minister have in place to improve access to mental health services for new parents?

The Statement mentions the important proposals to give patients more control over their care and treatment. This is vital. We in the disabled community say that there should be nothing about us without us, and that is true too for those with mental health issues. The proposal for the nominated person to be chosen by the patient is a great step forward too, but that may well be hard for family members not selected as the nominated person, who may be excluded from any information about their family member's mental health or progress, or as my honourable friend Daisy Cooper MP said yesterday, may not even know which part of the country their family member is staying in. This is part of the navigation of a future which is important to get right for the patient, while making sure that close family members who are worried about their loved ones are not cut out of the information loop entirely. Perhaps the Minister can give us some indication of how this trickly situation could be navigated.

The Government have said that they are accepting most of the recommendations of the Wessely review, but I add my concern to that expressed by the noble Baroness, Lady Merron: why have some not been accepted? Having said that, we accept the Wessely review and look forward to the pre-legislative scrutiny and the opportunity to discuss this Bill in detail when it comes into Parliament.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Kamall) (Con): I thank the noble Baronesses for their very detailed questions. I will write if I do not cover all the questions.

We want pre-legislative scrutiny to commence at the earliest opportunity, and I understand that this is being discussed by the usual channels. The hope is to appoint the committee if possible before the summer; we want to do this as soon as possible. Our ambition is that once pre-legislative scrutiny has been completed and understood, we can introduce the Bill in the new year, to allow noble Lords the scrutiny that the Bill deserves. That is the indicative timeframe at the moment. As long as things go smoothly, pre-legislative scrutiny will start as soon as possible and we will then, I hope, be in a position to have a better-informed Bill, the new draft of the Bill having been through pre-legislative scrutiny.

We hope to see a lot of potential amendments to the Bill following pre-legislative scrutiny. Having had a baptism of fire in this House, in coming straight into this position and taking up the Heath and Care Bill, I know that there will be many valid points that will no doubt be taken on board as we debate the mental health Bill. As we saw with the debate on the Health and Care Bill, noble Lords across the House were able to improve it. Even though as government Minister I sadly had to disappoint on some of the amendments, I think we made a better job of it.

I am pleased that the important issue that black people are four times more likely to be detained under the Act, and 10 times more likely to be subject to a community treatment order, was raised. Central to addressing this is the patient and carer race equality framework, which is being rolled out by NHS England and NHS Improvement. We hope that this will support NHS mental healthcare providers to work with their local communities to improve the ways in which patients access and experience treatment.

We have already commenced culturally appropriate advocacy pilots, providing improved culturally appropriate services so that people from different backgrounds and their needs can be understood. One thing I would caution is that it is very easy to group people with the same skin colour as having the same needs. There is incredible diversity—I know this myself, coming from one of the immigrant communities—within these communities and in the pressures that arise from one community to another. Overall, it is important that we address those. We are working with Health Education England to undertake programmes on the diversity of the workforce, and to make sure that patients' voices are represented.

Both noble Baronesses talked about the principles. We felt that the principles informed every decision we have made in developing the draft mental health Bill. Although it has not been possible to create clear overarching principles in primary legislation as recommended by the independent review, the reforms break down the review's principles into specific duties that appear in the draft Bill—for example, ensuring that people are detained only when absolutely necessary; ensuring that if people are detained this must be for the purpose of, and have a reasonable prospect of,

providing them with therapeutic benefit; introducing new patient safeguards to make it harder to override someone's refusal of a particular treatment; and the creation of a new clinical checklist which will put greater emphasis on tailoring treatment to the individual patient. We believe that, together, these more specific duties deliver much of the intended impact of the review's principles, but in a better way.

The overall picture of the sector is a mixture of private and state providers, but for us, it matters that the Care Quality Commission has the role of making sure that all providers are regulated properly and that they meet requirements. All providers in receipt of NHS contracts must meet requirements, including those in the NHS provider licence and the NHS standard contract. Contracts to private providers can be and are terminated when these are not met.

We have consulted on the independent review's recommendations, and less than half the consultees supported the approach of giving patients the ability to appeal treatment at the MHT, the power sitting with a single judge acting alone. I am sure that this will come up in pre-legislative scrutiny and as we debate the Bill itself.

On the workforce, once again, there has been growth, but we all understand that demand is outstripping supply. We are looking at that as part of the long-term plan and the Health Education England review. I do not have an exact date; every time I ask for one, I am always told that it will be soon. I do not think that means it is being kicked down the road—I just think that there is not a proper date yet, given that all the consultations and responses have to be addressed. Work is ongoing to confirm plans to 2024 for integrated care systems.

We are providing more than £90 million of additional funding in 2022-23—£70 million as part of the NHS long-term plan and £21 million through the community discharge grant—to make sure that we reduce in-patient numbers and ensure that people with learning disabilities and autistic people can live in the community.

I am very aware of the issue of children and young people's mental health. There are a number of different factors, and it is not easy to narrow them down to one. There could be environmental factors; it could be pressure; it could be that some of them are child carers, who feel large amounts of pressure at too young an age. In 2021-22, we provided an additional £79 million in response to the pandemic to expand children's mental health services in that financial year, but we are very aware of how much more demand there is for mental health services, particularly for children. For us, two years is a relatively small proportion of our life, but for children it is a massive proportion, and they want to get that time back. That has created huge mental health issues for children, so we are tackling that.

As I said, I will write to the noble Baronesses on all the questions I have not answered.

4.37 pm

Baroness Chisholm of Owlpen (Con): My Lords, the noble Baroness, Lady Merron, talked about patients being detained for too long, particularly those who have been sectioned. My right honourable friend Jeremy Hunt MP, down the other end, talked yesterday about how it would be good to put something in the Bill to say that those who had been sectioned had to be re-evaluated fortnightly, or at least monthly. This is a very good idea, because we know that there are problems with people, particularly those in the autistic community, who are detained for far longer than need be. Could my noble friend the Minister make sure that this is brought up in Bill meetings? I hope that it could go in the Bill.

Lord Kamall (Con): I thank my noble friend for the question and for raising this issue. I am aware that my right honourable friend the Secretary of State intends to meet Jeremy Hunt to discuss this in more detail. In my first week, or first fortnight, as Minister, one of the debates I took part in was led by the noble Baroness, Lady Hollins, about detention. That brought home to me at a very early stage in my ministerial career how shocking some of these events are and the way that young people, particularly those who are autistic or have other conditions, are being treated. My right honourable friend the Secretary of State will meet Jeremy Hunt to discuss this, and I hope that it will also be approached in the pre-legislative stage. If not, I am sure that it will be debated in this Chamber.

Lord Judge (CB): My Lords, I admire the enthusiasm for speed that the Minister expressed earlier from the Dispatch Box. Can he say whether that rules out having detailed pre-legislative scrutiny? This Bill should have no political elements to it at all, except possibly the cost, but all the other issues should be capable of sensible evaluation between intelligent people trying to achieve the same objective, which is improvement in our mental health services. Can the Minister's enthusiasm for speed please not lead us to the problem identified in this House on the Procurement Bill this afternoon, where, after Report, there are 322 government amendments? That is not the way to legislate.

Lord Kamall (Con): The noble and learned Lord makes an important point. I am very much aware of today's earlier discussion, when I was smiling, perhaps over-smugly, thinking, "At least we've got pre-legislative scrutiny." However, I accept the noble and learned Lord's point that it has to be proper pre-legislative scrutiny. I hope he will forgive my lack of experience on this. I am not yet aware of the difference between good and thorough pre-legislative scrutiny and brief pre-legislative scrutiny, so I will have to take this back to the department and will write to him and others.

Lord Davies of Brixton (Lab): We thank the Minister for the draft Bill. Although it is on the law of mental health, it has clear financial implications and so a specific commitment to provide the resources to implement the changes in the law would be valued. In addition, however, given the agreement that there is about what will be in the Bill, what steps are the Government taking to get it implemented straightaway? There are so many proposals in Sir Simon Wessely's report that could be implemented immediately, so I hope the department is pursuing that proactively.

[Lord Davies of Brixton]

It is important to understand a bit of the context here. We are heading into financially difficult times. We know that there is a close connection between people's personal financial problems and mental health and that there will be an increasing level of indebtedness, which automatically means greater need for services. Maybe the Minister can reassure us that the resources will be there to carry out what is in the proposals.

Lord Kamall (Con): The noble Lord makes an incredibly important point. We have seen the impact that the pandemic has had on mental health across all age groups. During the Health and Care Bill, the noble Lord and many others raised the issue of parity between mental health and physical health, and I thank him for that. That brought home that the current legislation is out of date, which is why we really need to update it. I also thank noble Lords who have spoken so far for agreeing that this is not a party-political issue at all. We all want to address this issue, and maybe the issue of funding will come up. The Government remain committed to achieving parity between mental and physical health services to reduce inequalities. We are making good progress; investment in NHS mental health services continues to increase each year, from almost £11 billion in 2015-16 to £14.3 billion in 2020-21. We expect all current CCGs—and ICBs once operational—to continue to meet the mental health standard, and we have made a number of amendments. We are investing more than £400 million over the next four years to eradicate mental health dormitories. Clearly, as we go through the Bill, there will be financial implications, which will be considered as we debate it. I cannot give a clear pledge on which measures will be implemented until we have seen the Bill. Clearly, however, we understand that a lot of this is long overdue, so the quicker we can get this done and come to an agreement satisfactory to all sides of the House, the sooner we can get on with implementing it.

Baroness Tyler of Enfield (LD): My Lords, I welcome many of the proposals contained in the draft Bill, particularly those that give people affected by the Bill more say over their treatment and care. However, as others have said, the Bill is currently worryingly silent on workforce issues, and I think we all agree that they will be critical to the successful implementation of any reforms. My specific question to the Minister is: what assurances can he give that children and young people aged 18 and under will benefit from the reforms at least as much as adults and, specifically, will they be able to access the same treatment safeguards as adults?

Lord Kamall (Con): When I was having initial discussions on the various parts of the Bill, children and young people's mental health clearly came up. The statistics are staggering. Some 420,000 children and young people were treated through NHS-commissioned mental health services in 2021. That is an increase of 95,000 in just a few years. That is still without us being aware of everyone who needs access to the system, or young people and their parents and families being aware of what support is available.

We are continuing to increase investment into mental health services by at least £2.3 billion a year by 2023-24, as set out in the *NHS Long Term Plan*. There is also the extra money in response to the pandemic, which saw extra demand. We have 287 mental health support teams in place in around 4,700 schools and colleges across the country but, once again, more needs to be done. It is one of those issues where demand outstrips supply.

We now have mental health support teams covering 26% of the country a year earlier than planned, but we hope to increase this progressively over the years so that as many schools as possible are covered. We have delivered 7 million well-being for education recovery programmes. We understand the tensions and workforce issues that will inevitably arise. The Health Education England review and the Government's strategic review are considering all the changes in healthcare overall; all the technologies and ways of delivering services; and the change from secondary to primary and down to the community. We are working out in the response what workforce we need for each of those changes.

Baroness Hollins (CB): My Lords, the average stay for people with learning disabilities and autistic people detained under the Act is five and a half years and, shockingly, many people are criminalised during their admission, making their discharge even more difficult. Although removing learning disability and autism from the Act is clearly the right thing to do, does the Minister agree that, unless there is some improvement in the care and support provided in the community to avoid those admissions in the first place, this could put people at risk? That is a concern in the wider community at the moment. We should take them out, but how do we look after people better?

Lord Kamall (Con): I start by paying tribute to all the work the noble Baroness has done in this area, and for educating me more on this issue when I was a relatively new Minister. All I can say at this stage is that patients who have a co-occurring mental illness as well as a learning disability or autism may well be detained under the Act, but we want to make sure that there is support in the community. This is one of the big debates we have seen on a number of issues—for example, on social care. How much of social care will be in homes and how much will be in the community? Does technology improve that? Does constant online communications technology, sensors and the ability to speak to somebody online almost immediately change that equation? A lot of that will be discussed as we debate the Bill and by the experts who, we hope, will be on the pre-legislative scrutiny committee.

Baroness Armstrong of Hill Top (Lab): My Lords, I chair the Public Services Committee and we are currently concluding a report on workforce in the public sector. I hope the Minister will be able to read it and think about it over the recess to make sure that he takes account of it. In my work with women with complex needs, particularly those who have been groomed, it is absolutely clear that their sexual exploitation has led to significant trauma. The NHS will never be able to

be the first body they interact with, or able to train enough people in the next 10 years to look after the wide range of people who we know now need mental health care. That means the Bill must link to the work of the voluntary sector and how we address trauma in people first approaching a public service, or any service. I am concerned that the Government think they can do it just by training more people, which will take a long time. They need to be working in a pathway that starts at a very different level.

Lord Kamall (Con): I could not agree more with the noble Baroness. One thing we must be well aware of is that, although there are pressures and we are asked for more funding, the Government alone cannot do all this. Sometimes officials, be they from local or national government or from another state organisation, are mistrusted by vulnerable people. Local civil society groups, voluntary organisations and, often, those who have suffered the same problems themselves and then been inspired to set up their own organisation to support others—who can empathise with the situation many of these poor women are in—are sometimes the best first point of contact. As the Government spend more on this, we must make sure that we are not squeezing out the voluntary sector or local civil society, but working in partnership with them.

Lord Mawson (CB): My Lords, my colleagues and I have been involved in this space for many years. I was in conversation with my colleagues just last week. I agree with the noble Baroness, but one of the challenges we face is the financing when organisations try to create this more integrated environment. The money and the streams coming out of the Treasury are endlessly pulling apart the very services that need to be connected. I encourage the Minister and his colleagues to look at some of that. In Bromley-by-Bow we are still dealing with 62 different funding sources from government, with all the attendant bureaucracy that is trying to deal with this problem.

Lord Kamall (Con): The noble Lord makes a very important point from his own experience. I thank him for all his engagement and for educating me on what happens in the community. We must be careful because often, these issues are not simple or binary but are multi-faceted, and we then have different initiatives from the Government, which overlap. There is probably an incredibly complex Venn diagram of who is responsible, where the funding pots are and at what level you get the funding—is it local government, national government or philanthropy networks, for example? I would love to make it easy—but will I be able to?

Also, whenever you have change there are often winners and losers. Often, those who lose out because of change are very concentrated and make their voices heard, while the winners are dispersed and we do not hear them saying, "This is a great change." Therefore, we must be very careful with any change in funding. However, the noble Lord makes an incredibly important point. We must ensure that we are not squeezing out civil society and pulling people in many directions, and that it is much easier to access finance. The noble Lord, Lord Glasman, made the point that as a Labour Peer, he is incredibly proud of 1945 and the welfare state, but that he worries that in doing such things, sometimes the state squeezes out local community groups and breaks the bonds in local communities. We must ensure that we get the right balance.

Lord Stevens of Birmingham (CB): My Lords, I welcome the draft mental health Bill. Prime Minister Theresa May was right to ask Sir Simon Wessely to develop these proposals, which command wide support across the sector. It was pleasing to hear the Minister commit to the Bill's passage through Parliament before, and hopefully well before, the next election. However, as a number of noble Lords have pointed out, to will the end is to will the means. The Minister will know that the Royal College of Psychiatrists and others, in the impact assessment for this draft legislation, have shown that to make this work in practice will require more people working in mental health.

To that end, if the Minister does not mind me banging a familiar drum, it is surely paradoxical that UCAS is reporting that only 16% of applicants for undergraduate medicine and dentistry got an offer this year. We are turning bright and brilliant young people away at precisely the time when the NHS, and indeed our mental health services in the future, will need their services. Deans of medical schools report that this year is the hardest in living memory to enter undergraduate medicine. Can the Minister give us a date by which the Government will declare their hand on the needed expansion of undergraduate medicine?

Lord Kamall (Con): I am sure the noble Lord is aware that one of the things we found when looking at the shortage of doctors—even though we have more doctors than ever before—was that some people are likely to stay close to where they were trained. That is why, for example, we have opened the new medical schools, and we are bringing more doctors into the system. Clearly, that will not happen overnight, since training to be a doctor takes a very long time.

We are also looking at what else needs to be done at that level. There are other pathways, such as nurses becoming doctors after a certain amount of time. Clearly, international recruitment plays an important role there. Our aim is to have an additional 27,000 mental health professionals in the NHS workforce by 2023-24. We are investing money to achieve that, but again, it is a question of how long it takes for the money to get through. At the same time, we must ensure that by having this additional workforce in the NHS, we are not squeezing out the voluntary sector but ensuring that we are working in partnership with it.

Baroness McIntosh of Hudnall (Lab): My Lords, I am sure the Minister will agree that if we get to point of having to apply the Mental Health Act to a particular individual, the system has failed because that person is, by definition, in crisis. I entirely accept that this Bill is necessary because the current legislation is no longer fit for purpose—Simon Wessely's review is a very salutary read in that respect—but it is none the less the case that what we really need is to better equip our preventive services to deal with incipient mental health

[Baroness McIntosh of Hudnall]
problems as they emerge, trying to prevent them becoming critical. That has been alluded to, in various ways, during this discussion.

Can the Minister tell the House where the £900 million —I think that is what he said—that is being committed immediately to the improvement of mental health services is to be spent? The real crisis is in the availability of human resource to deliver the service. There simply is not enough of it, as many people in this House, and certainly beyond, know from personal experience.

Lord Kamall (Con): As noble Lords discussed during the Health and Care Bill, prevention is crucial. One thing I became aware of when I became a Minister was, when talking to the NHS and others, how they want to move away from purely curing to prevention. In response to the noble Baroness's specific question, I commit to write to her on the exact allocation of that, but there is one area that plays an incredibly important role. We know, for example, looking back on the crisis, that when we did not know how long it would last, that created a lot of uncertainty. Uncertainty is very unbalancing for people, and it is a huge factor in them having mental health issues. Clearly, one of the issues that came up during the Bill was the use of civil society organisations, social prescribing, music and art therapy, but also conversations—people being able to talk to someone about the issue they are facing and feeling they are not alone. Clearly, that is something we have looked at, in terms of prevention, but in response to the specific question I commit to write to the noble Baroness.

Baroness Royall of Blaisdon (Lab): My Lords, I am sure that prevention will be part of the new 10-year mental health strategy—or I hope that it will be—and also part of the 10-year suicide strategy. My noble friend asked when we might expect to receive a copy of that strategy, because of the exponential need, which the Minister has recognised, especially in relation to young people. I remind noble Lords of my interests in the register. I urge the Government to produce that strategy as soon as possible.

Lord Kamall (Con): Clearly, there are a number of different facets to mental health and what we are looking at, but suicide is one of those areas. In fact, my right honourable friend the Secretary of State met a very well-known anti-suicide charity, or support group, the other day, to talk about this specific issue. It is a tragedy; we must do all we can and treat it with the same urgency that we would any other major killer. We know about the high percentage of male suicides and what proportion that is of young men's deaths. We are looking at the drivers linked to suicide, including those that were not necessarily reflected in our previous strategy, such as gambling, domestic abuse and online safety.

We are engaging widely to shape our plan. We have announced a number of commitments for that plan, including a best practice guide, safety plans, et cetera, by early next year. I do not have the exact date yet, but I keep being told it is soon. That is not very helpful, I know, but I will try to get more information for the noble Baroness.

Women's Rights to Reproductive Healthcare: United States

Commons Urgent Question

5 pm

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, with the leave of the House, I shall now repeat an Answer to an Urgent Question in the other place given by my right honourable friend the Minister for Asia and the Middle East. The response is as follows:

"Access to abortion services in the United States is a matter for the US Supreme Court and for authorities in individual states. The US Supreme Court opinion of 24 June in the case of Dobbs v Jackson Women's Health Organization does not make abortion illegal across America. Rather, it removes federal protection for abortions, hence allowing individual states to determine their own laws. Thirteen states have so-called 'trigger laws' that will automatically outlaw abortion; seven of these are already active. In total, we understand that 26 states are likely to ban or restrict abortion or have bans that predate Roe still technically on the books.

As the Prime Minister has said, this is not our court—it is another jurisdiction—but this is a big step backwards. I share his view. The United Kingdom's position is that women and girls in the UK should have the right to access essential health services, including those relating to sexual and reproductive health, which includes safe abortion care. More broadly, the United Kingdom's approach is to support sexual and reproductive health and rights, including safe abortion for women and girls around the world."

5.02 pm

Lord Collins of Highbury (Lab): I thank the Minister for repeating that response. In the other place, Amanda Milling highlighted the priority given to women and girls in the international development strategy, including the right to sexual and reproductive health. The judgment, as the Minister rightly says, is a matter for the US jurisdiction, but it will no doubt give oxygen to the evangelical right across all continents. So positive words will not be enough to protect a woman's right to choose. Can the Minister highlight what we will do to support women, particularly civil society groups and other women's groups, to ensure that their human right to choose abortion if they need it is protected? What will we do to support them?

Lord Ahmad of Wimbledon (Con): My Lords, I am sure the noble Lord acknowledges that, over many years, the United Kingdom has taken a strong and principled position on this. Indeed, the noble Lord and I have had exchanges on this matter, and I am sure he recalls when challenges were posed in the United Nations Security Council, when a resolution was passed on conflict-related sexual violence with an omission on sexual and reproductive health. At that time—I was there—we used the explanation of vote as an opportunity to, once again, restate the very rights articulated by the noble Lord.

I do not think there is a difference of perspective here between the Government and Her Majesty's Opposition, and it is important that we stand up for the right for women to have access in this way. As I have said before, what is happening in the United States is a matter for the United States, but the United Kingdom will retain its strong and principled stand in this respect.

Baroness Barker (LD): My Lords, the United States and the United Kingdom are recognised as global leaders in maternal healthcare and fully inclusive reproductive rights. Last year, the Government cut their pledge to the UN Population Fund by 85%. Given that an incoming US Government might reinstate a global gag at any time, could this Government pledge to reinstate some of that funding?

Secondly, could we strike a completely different note—one that sympathises with, rather than criminalises, women in desperate need of fully inclusive reproductive healthcare—and decriminalise abortion in this country?

Lord Ahmad of Wimbledon (Con): My Lords, the noble Baroness's final point is of course very much a matter of discussion. Various initiatives and discussions are currently under way to ensure, as I have stated before, the ability of every woman who so chooses to have rights and access to such facilities. The noble Baroness rightly raised the issue of access to the UN initiative in this regard. I can confirm that we have already allocated £60 million. When my right honourable friend the current Foreign Secretary took over office, the reduced funding on women and girls was restored.

Baroness O'Loan (CB): My Lords, does the Minister not agree that it would be both illogical and embarrassing for the United Kingdom to make representations to the US on this issue? The US Supreme Court has simply returned the issue of the provision of abortion services to each state, leaving the decision in the hands of the democratically elected representatives of the people of each state. Is the Minister aware that there is no human right to abortion under either the Universal Declaration of Human Rights or the European Convention on Human Rights, despite the regular but erroneous assertions that such a right exists? Is he also aware that the unborn child's right to life is protected under the Convention on the Rights of the Child, to which we are a signatory?

Lord Ahmad of Wimbledon (Con): My Lords, I assure the noble Baroness that I am aware of all the respective conventions. We have articulated the clear position that this is a matter for the United States, but equally I respect—as we are seeing today—that people will have different perspectives, insights and principled views on abortion. My right honourable friend the Prime Minister has articulated where we are currently. I think that many across your Lordships' House and the other place share his view but, equally, respect that others may have a different perspective.

Baroness Armstrong of Hill Top (Lab): My Lords, I thank the Minister for repeating the Answer. I am sure that, having visited a whole range of countries across the world, he knows how important the work on reproductive rights with young women and girls is. I have been involved in working with young people from this country volunteering abroad with young people from their host country, doing some significant work. There is a real challenge now: because of the reduction in aid from this country, much of that work in some countries is now stopping. It is educational work around the health of women. Most of the young women I met never got to the abortion stage; they were working at a much earlier stage on their reproductive rights and sexual education. Will the Government have another look to make sure that our work and our reputation on this are not further undermined and can be restored at least to the levels at which they used to be?

Lord Ahmad of Wimbledon (Con): My Lords, I believe I have already stated that my right honourable friend the Foreign Secretary has prioritised spending on women and girls, including on sexual and reproductive rights. Indeed, it is an area we have focused on for a number for years. The majority of our SRHR programming focuses on increasing and improving voluntary planning information supplies and services. In 2019-20, the UK supported 25.4 million women and girls to use modern methods of contraception, including the sharing of information. With all these efforts, it is important that we continue to work and remain focused on what we seek to do. I fully recognise the important efforts and the work of the noble Baroness in this respect.

Baroness Hoey (Non-Afl): My Lords, just as the United Kingdom allows every part of the United Kingdom to make its decisions on abortion, surely the Minister must agree that the United States, a democracy, must be allowed to have its individual states, whatever we think of the issue. Does he agree with me that, just as many of us got quite annoyed at the United States interfering in our decisions over something such as the protocol, we should keep well out of this and Her Majesty's Government should not get involved in the internal affairs of the United States?

Lord Ahmad of Wimbledon (Con): The point made by the noble Baroness is exactly what I have articulated: we have made it clear that this is very much an issue for the United States. Of course, each state has its own elected representatives. It is for the people of those states to choose their democratically elected representatives.

Lord Cormack (Con): My Lords, I am glad my noble friend has reiterated that point; it is an important one. There are many Christians in this country who are very troubled about the whole subject of abortion, and that should be borne in mind as well.

Lord Ahmad of Wimbledon (Con): My Lords, I recognise what my noble friend has said. Any democratic country—any open society—gives everyone the right to express their view. What demonstrates the strength of our own country is that, while you might not respect a particular view, you respect and defend the right of someone to hold an opinion contrary to your

[Lord Ahmad of Wimbledon]
own. We are a diverse, rich country in all sorts of aspects, including our faith diversity. We also recognise that America is a shining light and the closest ally of the United Kingdom. There is much that we share on strengthening democracy and human rights around the world; that will remain a strong sense in our focus globally as well.

Lord Judge (CB): Is not the lesson for this country from that decision that there should be absolutely no political involvement in the appointment of senior judges?

Noble Lords: Hear, hear!

Lord Ahmad of Wimbledon (Con): The noble and learned Lord has expressed that view very clearly.

The Earl of Sandwich (CB): As the Minister has just come back from the Commonwealth conference, can he say a word about Africa and whether he thinks some of those states will be backtracking on this?

Lord Ahmad of Wimbledon (Con): My Lords, one important thing about networks such as the Commonwealth is that they allow us to look at a broad range of human rights issues in a progressive and productive way. As the United Kingdom's Human Rights Minister, the guiding principles that I apply in discussions are, first, to be constructive and, secondly, to recognise that many countries across the world, including those within the Commonwealth, are on a journey, specifically in relation to human rights; that may be on media freedom, religious freedom, LGBT rights or, indeed, women and girls.

I look back on our own history and see that we as a country travelled on this very path, sometimes with great difficulty and challenges, but we overcame them—through the strength of our democracy, the rights of representation, and an open but independent judiciary. These are experiences from our journey that we share across the world, and the principles that we involve and engage with in our discussions with our Commonwealth partners.

Rape: Criminal Prosecutions

Commons Urgent Question

5.12 pm

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bellamy) (Con): My Lords, with the leave of the House, I shall now repeat in the form of Statement the Answer given by my honourable friend the Minister of State for Justice to an Urgent Question in the other place. The Statement is as follows:

"Last year, in the end-to-end rape review, this Government committed to more than doubling the number of adult rape cases reaching court by the end of this Parliament. We are under no illusions about the scale of the challenge, but we are starting to see early signs of progress. There are more victims reporting these cases to the police. The police are referring more cases to the CPS and the CPS is charging more cases. Rape convictions are increasing—indeed, there has been a 67% increase since 2020—and timeliness is improving, with the time it takes for cases to be completed, from charge, continuing to fall, down by five weeks since the peak in June last year.

This is encouraging, but it is just a start. That is why we have identified eight levers that are driving this change. First, we are increasing victim support. We have now quadrupled the funding for victim support provided by Labour to £192 million by 2024-25, as well as increasing the number of independent sexual and domestic violence advisers to more than 1,000 by 2024-25.

Secondly, we are rolling out pre-recorded cross-examination for rape victims to all Crown Courts nationally, helping to prevent more victims being retraumatised by the experience of giving evidence in a live trial. Thirdly, suspect-focused investigations, known as Operation Soteria, are being rolled out nationally. That will be completed by the first half of next year, and will mean that the police focus on the suspect's behaviour rather than on the victim's credibility. Fourthly, we have reformed and clarified disclosure rules, working with the police to make sure that victims' mobile phones are examined only where strictly necessary.

Fifthly, we are reducing the stress of intrusive requests for third-party information—for example, medical or social services records—and working with the police and the CPS so that they are gathered only when relevant. Sixthly, we are boosting capacity and capability by increasing the ranks of our police and the number of specialist rape and sexual offences roles in the CPS. Seventhly, our efforts to expand Crown Court capacity continue, with a £477 million investment over the next three years to reduce victims' waiting time for trials. Eighthly, our CJS delivery data dashboard is increasing transparency and giving the Government and local leaders the information they need to do better for victims.

We are going even further than the commitments that we made in the rape review because we have listened to victims and those who work with them. We have recently announced a pilot of enhanced specialist sexual violence support in three Crown Court centres. This Government are on the side of victims. We want no rape victim to feel as though they are the one on trial. We want every rape victim to feel that they can come forward and seek support. We want to lock up the rapists who commit these abhorrent crimes. We want to protect the public. We will make our streets safe."

5.17 pm

Lord Ponsonby of Shulbrede (Lab): My Lords, I thank the Minister for repeating the response to the Question in the other place. This is a deeply serious subject. The situation in our Crown Courts is dire. Home Office figures show that just 1.3% of the 67,125 rape offences recorded by the police in 2021 led to a prosecution. The Statement pointed to a small improvement in the figures, and I acknowledge that improvement. However, those improvements are starting from a tragically low base. In the vast majority of cases the police do not refer the case to the CPS because they see witnesses as unreliable through drink, drugs or mental capacity.

I and the Government believe that the proper training of police officers can improve this situation. I have two specific questions for the Minister. First, does he believe that there should be specialist rape units in all police forces? Secondly, does he believe that the number of specialist trained police officers should be publicised and publicly available?

Lord Bellamy (Con): My Lords, I am sure that the question of improved training for the police has an important role to play in dealing with the situation that we are faced with. We are undertaking, in effect, a multitrack approach, which I think has three main aspects: restoring victims' trust in the system; improving investigations—that is where police training comes in very directly; and improving the procedures in the police, the CPS and the courts. With those three aspects, including increased training for the police, I venture to hope that we shall recover from the present situation.

Lord Thomas of Gresford (LD): My Lords, 71.2% of the 1,500 cases prosecuted last year resulted in a conviction. However, of the 55,000 complaints, 23,259 victims did not support further action. What causes have the Ministry of Justice identified for nearly half of complainants refusing to support a prosecution?

Lord Bellamy (Con): There appears to have been some loss of trust in the system on the part of victims, which we are doing our best to remedy. The very beginning of the programme, as I sought to explain, is about restoring victims' trust in the system. The importance of independent sexual violence advisers is crucial here. There is evidence that the intervention of such an adviser improves the likelihood of a victim complaining and persevering with the case. There are, as I said, trials of specialist units in three Crown Courts to support victims. We are working with Rape Crisis England and Wales to mobilise the best-quality support service for victims. This month we shall start operating a 24-hour victim support service. This combination of measures on this multitrack approach will, I hope, alleviate the situation to which the noble Lord refers.

Baroness Newlove (Con): My Lords, while I welcome the Statement and lots of money being thrown into this area, I do not feel that this supports victims. This all seems to be going into agencies that should know how to treat victims first and foremost. I am supporting victims—rape victims—where police officers are not supporting them or giving the right advice. As Victims' Commissioner, I worked on a lot of what is in the Statement. IDVAs and ISVAs are very important but just over 1,000 is not enough to support what they have to do—and that is by 2024-25. This seems to say that we are going to have talks with all the agencies, but who is talking to the victims? How is the information being received by victims? I am not disappointed by the money, but this is about agencies letting victims of all crimes down—never mind rape victims—and it is not very victim-focused. This will all join together only when we have legal rights for victims.

Lord Bellamy (Con): I thank the noble Baroness for her intervention and take note of what she says. We are working as hard as we can to introduce a co-ordinated and effective support service for victims. There is in prospect a further victims' Bill, due later this year, which I hope will reinforce support for victims. It is a matter of co-ordinating, improving and building on what I suggest to your Lordships is the encouraging start we have already made.

Lord Morris of Aberavon (Lab): My Lords, having spent most of my professional life at the criminal Bar, I am deeply concerned about the entry of young people to—and now their exodus from—the criminal Bar, loaded with debt from degrees, conversion courses, Bar finals and pupillages. I have two specific questions. First, why will the proposed increase in fees not come into effect until September and will it affect trials? Secondly, if the Attorney-General, as the head of the Bar, has not met the Criminal Bar Association, will she do so to discuss what other practical steps can be taken to deal with the appalling delays in rape cases? Delays in consensual cases rapidly diminish the chances of conviction in my experience.

Lord Bellamy (Con): My Lords, part of the noble and learned Lord's question puts me in a difficult position because last year I was responsible for a quite separate, independent review of criminal legal aid. The matter of criminal legal aid and fees will therefore be dealt with by my noble and learned friend Lord Stewart on another occasion. Having carried out that independent review, I am not in a position to enter into that matter—much as I would wish to, I am not able to.

On the question of delays in criminal trials, as I indicated, the delays are falling—slowly, but they are falling—and we are taking very large, important steps to reduce the waiting time before these cases take place.

The Lord Bishop of Guildford: My Lords, gender-based violence has been a major theme in our discussions across the Anglican Communion, from a wide range of cultures. Many international communities look to the United Kingdom to lead in this area, given the deeply traumatising effect that such violence can have—obviously on the victims but also on whole communities over generations. David Cameron originally signed up to the Istanbul convention on preventing and combating violence against women and domestic violence, in company with almost all our European partners; why has that decision not been ratified by subsequent Governments, putting us in the small company of Bulgaria, Hungary and a few smaller eastern European nations? Although that may not indicate a lack of commitment in this area, might it not at least be seen in that light?

Lord Bellamy (Con): To the best of my recollection, we are on the point of ratifying the Istanbul convention. I am not in a position to confirm that this afternoon, but I will write to the right reverend Prelate or place information in the Library. He will forgive me for not being able to give a fuller answer to his question.

Lord Paddick (LD): My Lords, it is vital that rape victims have confidence in the police. It is nine months since the conviction of a serving Metropolitan Police officer for rape and murder, four months since it was revealed that officers were joking about raping women in a work WhatsApp group and a few days since another lone female was murdered on the streets of London—and, today, Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services placed the Metropolitan Police in special measures. Why has the Home Secretary not appointed a new commissioner to help to restore women's trust and confidence in the police?

Lord Bellamy (Con): I entirely understand the noble Lord's point. This is a matter for the Home Secretary.

Lord Cormack (Con): Although I have total sympathy with what the noble Lord, Lord Paddick, said, would my noble and learned friend agree that it is vital that we never lose sight of the basic principle of English justice—namely, that a man or woman is innocent until proven guilty?

Lord Bellamy (Con): Yes.

Higher Education (Freedom of Speech) Bill

Second Reading

5.27 pm

Moved by ***Earl Howe***

That the Bill be now read a second time.

Earl Howe (Con): My Lords,

"If liberty means anything at all it means the right to tell people what they do not want to hear."

George Orwell's words from 1945 remain just as apposite today. I hope and believe that we are all in agreement that freedom of speech—the right to voice one's opinion without fear of repercussion—is vital to the proper functioning of a democratic society. This principle is surely no less important in a university setting. Free speech is the lifeblood of a university, allowing students and teachers to explore a spectrum of views, engage in robust debate and pursue their quest for knowledge.

The phrase "world class" is sometimes overused, but our higher education is world class, and it would not be wrong to equate much of its success to the value we place on free speech in this country. You need only look to some of our most influential historical figures to understand how free speech can influence the course of history. Let us not forget that the views of trailblazers such as Emmeline Pankhurst and Mary Wollstonecraft were first dismissed and ridiculed, but their willingness to stand up and argue for what they believed in ultimately secured women the right to vote.

Both students and academics arrive at our universities expecting to be challenged. Yet, we know that fear of censure is increasing and this is having a chilling effect on discourse and debate. There is a growing body of evidence to bear this out: the proportion of students who believe that universities are becoming less tolerant of a wide range of viewpoints has risen to 38%; this figure stood at 24% in 2016. Here, I thank my noble friend Lord Johnson who, as Universities Minister, was one of the first to raise concerns on this important matter, including in his landmark speech at the Limmud conference in December 2017.

I firmly believe that we must address these issues and that the Bill before us is the best way to do so. By way of an example—which happens to be the freshest in my mind—the experience of my right honourable friend the Secretary of State for Education at the University of Warwick highlights that, even if we do not agree with views expressed by others, it does not mean that we have the right to silence them. A student firmly interrogated the Secretary of State's statement on trans rights. Their views differed greatly but, as the Secretary of State said, the student's

"right to free speech is vital too".

Areas of disagreement do not always have to be met with hostility; there is scope to agreeably disagree. I am looking forward to hearing the views of noble Lords during today's debate, and I thank those who have come to contribute to it.

The Bill will protect lawful freedom of speech and academic freedom on campus. The measures will strengthen existing legislation and address gaps in existing law. As I shall explain, these are very much active measures, not just a means to address a problem once a breach of the duties has taken place. New duties will be placed on higher education providers and constituent colleges to take "reasonably practicable" steps to secure freedom of speech within the law for staff, members, students and visiting speakers. They will be duty bound to pay particular attention to the importance of free speech when taking these steps. Importantly, these duties also, for the first time, clearly extend to "academic freedom".

In a new measure, the Bill will require providers and constituent colleges to promote the importance of freedom of speech and academic freedom. The Office for Students will be bound by a similar duty. Furthermore, higher education providers and their constituent colleges must develop and publish a code of practice, which must include an overarching statement of the values and procedures they will uphold, and which they must bring to the attention of their students at least once a year.

Student unions are at the heart of many students' university experience; they offer a distinct space for students to come together and engage in areas particularly close to their heart. This legislation, therefore, contains duties that apply specifically to student unions at approved fee cap providers, which is the majority of registered higher education providers. Like higher education providers and constituent colleges, under this legislation they must take steps to secure lawful freedom of speech. Similarly, they must publish their own code of practice.

At present, there are no effective means of enforcing the current law if higher education providers are in breach of it. This may explain some individuals' hesitancy to express their views. To address this, the Bill creates a new statutory tort for breach of specified freedom of speech duties by providers, constituent colleges and

student unions. This will enable individuals to seek legal redress for the loss they have suffered as a result of a breach.

The higher education sector will play a leading role in delivering the ambitions of this legislation, but the regulator also has an important part to play. The Bill gives new powers to the Office for Students, which will identify best practice and provide guidance on how to secure and promote free speech. The Office for Students will be required to impose mandatory registration conditions on providers relating to freedom of speech and academic freedom, as well as monitoring the compliance of student unions with their freedom of speech duties. As with the lack of an enforcement mechanism, there is currently no specific route for all those who might be affected to lodge complaints relating to freedom of speech. The Bill creates a requirement for the Office for Students to provide a complaints scheme that will provide a right of redress for students, members, staff and visiting speakers. This scheme will be overseen by the Director for Freedom of Speech and Academic Freedom, a new position on the Office for Students board. These measures will enhance the strengthened freedom of speech duties and encourage compliance.

On Report in the other place, my colleagues introduced several minor and clarificatory amendments. Two substantial amendments were also tabled. The first creates a duty for providers, constituent colleges and student unions not to pass on security costs associated with free speech events to the organisers, unless there are exceptional circumstances. The second was an amendment on "overseas funding": this creates a duty for the Office for Students to monitor overseas funding received by higher education providers, their constituent institutions and student unions. This will enable them to assess the extent to which the funding presents a risk to freedom of speech and academic freedom.

I finish by emphasising that the Bill is not about allowing unlawful speech. The right to freedom of speech is not an absolute right and it does not include the right to harass others or incite them to violence or terrorism. This is definitely not a licence to break the law. The Bill is about encouraging varied and thoughtful debate, so that future generations develop the ability to think critically, challenge extreme narratives and put forward new—and sometimes controversial—ideas. I firmly believe that these are essential skills in a modern, forward-facing society. I look forward to the debate ahead of us today and beg to move.

5.36 pm

Baroness Thornton (Lab): My Lords, I thank all noble Lords who will speak in today's debate and all the organisations and the Library for their excellent briefing on the Bill.

I also thank the Minister for presenting the Bill with his usual clarity and elegance, expressing many aspirations that many of us would agree with about free speech. Having worked with the noble Earl for many years, both as a Minister and in opposition, revising and improving many pieces of legislation, I have come to admire his intellectual acumen and political nous. I fear that he will have to bring both to bear in great measure to justify and succeed in getting what is regarded by many as a shoddy piece of legislation—at best, unnecessary and, at worst, divisive—through your Lordships' House in its present form.

Labour, unlike the Conservatives, over many years, has always championed free speech. It was a Labour Government who introduced a law guaranteeing freedom of expression. It seems to us on these Benches that, as higher education and our students move out of the difficult and sometimes traumatic time that Covid brought, the Government should be addressing the immediate issues of rent, getting a job and the rise of mental health conditions among our young people. Three out of every four students are currently worried about managing financially, one in four has less than £50 a month to live on after rent and bills, and 5% of students are using food banks to get by. Surely these matters are the priority, rather than focusing on a row largely manufactured in Whitehall based, at best, on flimsy evidence. A review of 10,000 events revealed that only six were cancelled and four of those because of faulty paperwork.

The Commons Minister, Michelle Donelan was asked what evidence lies behind her statements on ConservativeHome that there is

"a cluster of institutions that are in the grip of a close-minded, intolerant ideology—and at the centre of this cluster lie our universities."

She said that she believed it to be true. This seems a flimsy base for legislation from a Secretary of State who says that he believes in an evidence-based approach. Can the noble Earl please tell the House to which "institutions" his honourable friend was referring? As my honourable friend Kate Green MP said at Second Reading over a year ago,

"it is an evidence-free zone when it comes to underpinning the concerns that he says it is addressing."—[*Official Report*, Commons, 12/7/21; col. 53.]

The lack of an evidence base is one challenge the noble Earl will have to face as the Bill progresses through your Lordships' House, but there are others. There is an understandable concern that the Bill may undermine existing protections against discrimination. That it introduces a new mechanism that some believe may allow hate-filled individuals to sue a university if they feel that their opinion has not been adequately heard may allow extremists, racists and Holocaust deniers to have a voice and a much-craved platform on our campuses. We will need to test these things during the passage of the Bill.

Additionally, we need to ask how the resources to fight those challenges will be found. We will test the effectiveness of the new clauses added by the Government. From these Benches, we will seek to amend the Bill to require an independent appointments process for, and prevent party-political donations from, the new, to-be-appointed director of free speech. We will seek to broaden the definition of academic freedom to include, for example, criticism of institutions, conducting research and joining a union. We will seek to add a sunset clause, so the legislation expires after three years unless an extension is approved through an affirmative SI. We will seek to require the Office for Students to consider competing freedoms when investigating free

[Baroness Thornton]
speech complaints and seek to prohibit the use of non-disclosure agreements by universities in relation to sexual harassment.

I want to raise with the noble Earl the appointment of the director of free speech. This job was advertised on 13 June or thereabouts, which is, of course, the date that the Bill completed its passage through the Commons but had yet to reach your Lordships' House. The closing date for applications is 13 July—so be quick if you want to apply for this almost £100,000-a-year job. Can the noble Earl address the question of pre-emption? When will the appointment be made if the closing date is 13 July? Will it before the position has been agreed by Parliament? What parliamentary scrutiny will the appointment receive?

Looking at the job description—which I recommend noble Lords to read—the position seems to require no legal background. I hold no brief to create work for lawyers, but surely if we are to have a director of free speech, a person tasked with the job of settling contentious cases, it must be in all our interests for that person to have a broad understanding of the sector, the legal framework around free speech to which I have referred and the sector's regulatory framework, but these elements are not essential in the job description.

In conclusion, the issue here is evidence, and that is why these Benches have deep reservations about the unintended consequences of this Bill. Its top-down, one-size-fits-all approach demonstrates the weakness at the heart of the Government and their misplaced lack of trust in our academic community. I have great hope that the many noble and learned Lords and the phalanx of chancellors, vice-chancellors and heads of colleges who inhabit your Lordships' House will cast their eyes on the Bill and between us we might knock it into some sensible shape. At the least we can do no harm, and if we are very successful, we may enhance free speech in higher education. I look forward to the debates to come and the next stage of the Bill.

5.43 pm

Lord Wallace of Saltaire (LD): My Lords, this Bill is unnecessary and un-Conservative. It addresses a problem that is far less severe than right-wing think tanks have claimed, and for which the Government's White Paper admitted that there is very little supporting evidence. Ministers who preach deregulation and shrinking of the role of government are introducing a Bill to impose burdensome and costly new regulations on British universities—the sort of thing that authoritarian Governments in Hungary and Russia impose to limit critical debate and cripple civil society. This is not what a Government who claim to be leading the democratic world against authoritarian regimes should be doing.

It is also an orphan Bill. Those who pushed for it in government—Munira Mirza, the champion of culture wars in No. 10, and Gavin Williamson and his special advisers in the DfE—have now left. Perhaps for that reason, the Bill loitered in the Commons through the last Session, giving hope to some of us that reasonable voices in government had thought it wise to let it die. But here it is, staggering on because wiser counsels within the Conservative Party have not prevailed, pushed onwards by the American and Australian-trained campaigners in No. 10 who think that fighting culture wars appeals to the Conservative base.

Our Prime Minister has been fond of the boast that the UK is "a soft power superpower". The Minister will recall that the integrated review of foreign and security policy devoted an entire chapter to the importance of soft power. It listed as its most valued institutional components the BBC, the British Council, the quality and financial scale of our overseas development programme, the reputation of our universities, and the strength of our cultural sector. Since then, the Government have cut the aid budget, sidelined the British Council and repeatedly attacked and financially weakened the BBC. Now this Bill threatens to weaken the global standing and reputation of our universities by extending government oversight of academic debate, appointments and promotions.

There is a problem of toleration of dissent by the current student generation in our universities. The Higher Education Policy Institute has just published a survey which indicates that students have become more protective of what they see as vulnerable minorities, less willing to accept that freedom of speech necessarily includes the right to offend and less willing to tolerate university teachers whose views clash sharply with their own. We have seen a small but painful number of instances in which universities have failed to defend their staff in such circumstances, most sharply the University of Sussex in the case of Professor Stock.

University leadership needs to underline the importance of tolerance of different views among staff and students, but in a free society that role should be played by university leaders and not be imposed by government. In any case, how severe and widespread a problem is this for the over 100 universities? Is the challenge we face worse than in in previous cycles of student activism, which universities have come through without requiring heavy-handed government intervention?

Gavin Williamson in his preface to last year's White Paper specifically deplored attempts to block Ministers from speaking at and ambassadors from visiting universities. The very first lecture I gave as a newly appointed lecturer at Manchester University in January 1968 was disrupted by a protest at the suspension of a student for assaulting an Education Minister the night before. I went to a ceremony at King's College London some weeks ago to unveil a portrait of one of the students who had disrupted my lecture, who has since become an adviser to Governments and a globally recognised academic.

Some noble Lords may be old enough to remember the Stop the Seventy Tour and the wider student campaign against apartheid South Africa. My wife can still remember the song she and others sang as they blocked the South African ambassador from speaking at Oxford University. I have just read a memoir of the Stop the Seventy Tour which confirms that at least two of its most activist members have since become Members of this House.

Last year, I spoke to a number of vice-chancellors about this Bill and the issues it raises. One retired VC reminded me that he had struggled to maintain order on his campus in the face of deliberately provocative

speakers invited by the then chairman of his student Conservative Association, one John Bercow. A current vice-chancellor told me that the biggest problem of this sort he faces is keeping the peace between his Chinese and Hong Kong students.

There is nothing new about student protest or arguments about the limits of freedom of speech in universities—and I have been an academic for 40 or more years. The question is whether the imposition of a heavy external burden of intrusive regulation, with the introduction of a new tort that will transfer large sums of money from university funds to lawyers through litigation, is a proportionate response to the limited number of unacceptable instances we have seen, above all related to trans rights. I suggest that the proposals are disproportionate. This extension of state interference over autonomous institutions is authoritarian and not Conservative.

The Bill covers not only students and student unions but also staff, visiting speakers and the loosely defined "members" of higher education providers. I understand that, as a retired professor, I may count as a "member" of the LSE, with standing to sue or be sued under the Bill—I shall have to check with the director. The provision that permits discontented staff to sue if they consider

"the likelihood of their securing promotion or different jobs at the provider being reduced"

opens a huge can of worms. I declare an interest: I was once passed over for promotion at the department of government at Manchester on the grounds that I was "too interested in politics".

The anti-intellectual right in the United States, with its claims that universities are hotbeds of liberalism actively discriminating against honest conservative thinkers, has close links with right-wing bodies in the UK. Policy Exchange in London has claimed on its website to have provided the foundations for the Bill, with almost all of its recommendations in two reports being accepted. I regret that the noble Lord, Lord Godson, is not here today to take credit for that achievement. He might also wish to tell us how much of the significant American funding for Policy Exchange has come from those right-wing foundations that have fuelled Trumpian Republicanism. Think tanks, like universities, should be transparent about their foreign funding.

I was struck when I read the Policy Exchange papers that they had almost as many references to American examples as British, including some from hard-right foundations. They included the claim that the staff of British universities are overwhelmingly left-wing: 80% apparently failed to vote Conservative or UKIP in the last two general elections. Given that over 20% of staff in most universities are not British citizens, and that a large proportion of that staff are scientists and medics and not particularly interested in politics, I find this statistic completely unbelievable.

I am concerned, however, about the undertow of anti-intellectual, anti-rational argument from right-wing critics about Britain's alleged liberal elite and its allegedly malign hold on our cultural and educational institutions. The *Times* gave Douglas Murray two pages last Saturday to develop this theme, in which he stated that it's now virtually impossible for a climate change sceptic to gain appointment as a university chancellor or museum director. If challenging the allegedly oppressive liberal cultural elite means insisting on climate change sceptics being appointed to senior academic positions regardless of their attitudes to evidence and reasoned debate, then our universities and their reputation are, indeed, at risk.

The shadow of Brexit hangs over this, of course, as over so many other aspects of British politics and public debate. The claims that appointments and promotions are biased against conservatives comes from leading members of Historians for Britain and a handful of political scientists. There is no evidence that I am aware of of structural bias against conservative academics; indeed, the founder of UKIP was a friend of mine and a colleague at the LSE. Opening appointment and promotion procedures to challenges over alleged political bias would be a serious incursion into the autonomy of our universities and a feast for lawyers in civil cases.

This is not the first time that structural bias in universities has been alleged. When Margaret Thatcher became Prime Minister, she was determined to abolish the Social Science Research Council. She believed, as a hard scientist, that there was no such thing as social science; that what was taught in universities was intrinsically socialist. She asked Lord Rothschild to report. He, thankfully, responded that careful social and economic research was essential to good government, and that public money should continue to underwrite it. She nevertheless insisted on removing the word "science" from what has since then been labelled the Economic and Social Research Council.

Allegations about left-wing bias in universities focus on social science and humanities, and above all on historians, but history faculties have always argued among themselves, often bitterly. The political balance among academic historians in Britain has been adversely affected by the choice too many of our self-declared patriotic historians have taken to emigrate and take better-paid posts in the United States. Different disciplines have different tendencies. One vice-chancellor told me that his university has a structurally left-wing sociology department and a structurally right-wing economics department: it goes, he said, with the disciplines. Those who want to use this Bill as a lever to promote more solidly conservative views in our higher education institutions should reflect that Britain's most clearly conservative institution, after the University of Buckingham, is Christ Church College, Oxford: not the greatest example of toleration of dissent and diversity.

Others will touch on the tangle of vexatious lawsuits that this Bill will impose on universities. I briefly mention the comment of another vice-chancellor that it will be completely impossible, in the current heated political atmosphere, to find a candidate for the post of free speech champion who will be acceptable to all sides. Nor can we have confidence in Ofcom assuming this role, when the noble Lord, Lord Wharton, as chair, associated himself with Viktor Orbán and the authoritarian right at a recent Budapest conference. I speak with particular feeling on this as a former visiting professor at the Central European University and a member of its senate in Budapest in its early years, when Viktor Orbán still called himself a liberal.

[Lord Wallace of Saltaire]

At a time when trust in this Government is at an all-time low, when suspicion of No.10's political appointments is high, when the contamination of the Conservative Party by American Republicanism should concern all decent Conservatives, we will have to do our best, as the revising Chamber, to mitigate the damage this Bill could do to the global reputation and standing of our universities.

5.56 pm

Baroness D'Souza (CB): My Lords, this is, I think, a well-meaning Bill, but I question its necessity. I imagine no one here doubts that free speech should be protected, given it is one of the mainstays of our democratic settlement. The issue is by what means, and this is crucial because laws once on the statute book can be reinterpreted and misinterpreted. Furthermore, laws alone do not guarantee a more gentle and humane society—for that, we need a change in culture and behaviour.

Although this is clearly not the best time to uphold American constitutional rights, I have often envied American first amendment rights. The UK has never had such a codified protection of freedom of speech and assembly, but this protection in the UK is implicit in many of the laws we do have, and has existed for centuries as an almost definitive feature of British intellectual discourse.

The US Supreme Court has, in many courageous landmark decisions over the last few decades, made a clear distinction between two kinds of speech: advocacy and incitement. It has set out two conditions that must be satisfied to justify a suspension of first amendment rights. First, the words must be directed to inciting or producing imminent lawless action. Secondly, the words must also be likely to incite or produce such action. In other words, there had to be, according to the Supreme Court, a clear temporal relationship between inciteful words and subsequent criminal action. At the same time, the court provided a three-part test for determining the legitimacy of any restrictions on free speech: any restriction must be provided by law; it must serve one of the legitimate purposes expressly set out in the text; and it must be necessary. Thus, the Supreme Court ruled that a black anti-war activist who threatened to shoot President Lyndon Johnson if he were to be forced to kill his black brothers was not intending to kill the President but to state his political opposition. Similarly, an opponent of the Vietnam war was justified in expressing sympathy and support for those unwilling to obey the military draft; the judge saying

"statements criticizing public policy and the implementation of it must be … protected"

to give freedom of expression the breathing space it needs.

It is an old and tested argument that the answer to hate or offensive words is more speech, to ensure that dissent remains within the political sphere and does not stray into criminal actions. This Bill recalls many issues that have given your Lordships' House concern in the past: banning potentially noisy protests; tolerating dissent; hate speech; and now the freedom to express contentious views in the academic context.

There is an array of Bills that afford protection to free speech, as the very useful Library briefing has set out. These include the Education Act 1986 and the relatively recent establishment of the Office for Students, which requires all publicly funded education bodies to comply with public interest governance principles. However, the Government argue that these protections are spread among a number of statutes and, despite the well-publicised events in very recent years of no-platforming and campaigns against individual academics, the Office for Students has been reluctant to exercise its regulatory authority.

The current framework allows judicial review of a decision made by any educational body, which, in turn, permits only discretionary remedies and no scope for damages. The Government's rationale is to bring all these laws together under a single banner and to strengthen monitoring and action.

Despite the many safeguards in our political system, the worry is that this spread of free speech rules and regulations may well itself have a chilling effect on free speech, while at the same time failing to eradicate vicious attacks. The law will permit a platform for those opposed to, say, gender terminology, and it may even prosecute those who attempt no-platforming. But the culture of intolerance will continue in other outlets, perhaps with even greater vigour.

It is useful to ask how far laws change the prevailing culture. The anti-smoking laws have certainly very successfully banished smoking in public areas; compulsory seatbelts have drastically cut fatal accidents. Will this Bill enable the academic sector to remain safe from attacks by those who hold contrary views? Will it eliminate "cancel culture"? Not in a hurry, I do not think. The self-righteous anti-lobby, or "woke culture", is well entrenched in our social media and in actions against those who do not share its views. It requires rather a lot of courage for an individual, even though backed up by legislation, to face these kinds of onslaughts. The context of protest has led to self-censorship, possibly one of the most insidious kinds of censorship. Many academics would admit to modifying views and words in order to avoid attacks, and this is not conducive to intellectual exchange or opportunities to bring new ideas into the public arena. Darwin had a really tough time in the 19th century and JK Rowling is having a tough time today.

Then there is the question of necessity. I am informed by one of my grandsons that the Oxford Union has only ever cancelled three debates, none due to protest. Are the instances of interference in academic freedom numerous enough to justify the increase in monitoring and potential criminal charges in the Bill? Are the bodies mandated to bring formal complaints and action sufficiently distanced from the Government of the day? Will potential criminal sanctions contribute to the free intellectual discourse we all wish to see flourish? There are other loopholes in the legislation that could see the regulations abused and have the opposite effect with unintended consequences. Will this legislation have the desired effect in the absence of other legislation to limit online harms, and will it eliminate cancel culture?

Can a law adequately define contentious speech and views separately from the context in which they take place? Freedom of expression and its regulation

depend on context; students at educational institutions are especially in need of protection because they are usually a captive audience addressed by teachers regarded as authoritative. The conundrum is that precisely because of these factors, students may also need to be protected from language that borders on incitement; for example, pro-Nazi or extreme religious views. The task of distinguishing between offensive talk and a call to action might be a very delicate one. So my inclination is towards non-interference by the state, and this Bill will need careful scrutiny to avoid undue regulation of what is a fundamental right.

6.03 pm

The Lord Bishop of Coventry: My Lords, intense competition for students, jostling for promotion among lecturers, vigorous, often intense and sometimes rancorous debate, with dashes of sharp practice and occasional mob violence—not a preview of some future Office for Students report but a snapshot of the early academic career of Augustine of Hippo. One of his first publications was advice to lecturers and, significantly for this debate, he later asserted that "By force we can make no one believe." I will make some general points about the Bill and then raise three more specific issues.

Timothy Garton Ash speaks of three "vetoes" that silence the ability of people to express themselves: shouting them down, the "heckler's veto"; declaring what they say to be offensive, the "offensive veto"; and, in extreme cases, threatening to kill people, the "assassin's veto".

Sadly, it seems that we have seen each of these techniques in action within higher education, as some of the evidence submitted to the Bill Committee demonstrated. It may quite reasonably be argued that such incidents are very rare, and that existing legislation already provides sufficient means of tackling such threats to freedom of speech, and to academic freedom, or that such things have always occurred, but I am not so sure that all is well. It is also true, as the survey for the Higher Education Policy Institute found, as we have already heard, that students are increasingly prioritising safety, especially for minorities or vulnerable groups, over free speech. There seems to be a generational difference in what is regarded as legitimate free speech—free speech within the law.

Yet there is also evidence that a significant proportion of students report self-censoring their own views and convictions and are reluctant to voice them in public. Similarly, among some academic staff there was a reluctance to imperil one's career, possible promotion, publication or application for research funding by expressing views that were perceived to lie outside the overall culture of the institution or department. Those willing to take a different line appear to be senior staff, who either did not seek promotion or a new role or who had already established their reputation.

Freedom of speech and, by extension, the right to challenge, provoke, disturb, upset and sometimes to offend, are matters which are worth protecting in law. But these imperatives derive their true value from how they sustain the fundamental purposes of higher education: seeking truth and developing wisdom. They are not ends in themselves, but the means by which we pursue the truth, which is to our common benefit. Christian faith is rooted in the person who testified to truth in the tribunals of power and who promised the means to discern truth—the spirit of truth so movingly invoked at Lord Judd's thanksgiving service earlier today. This is a vision of open truth-seeking which the Church has, at its worst, sought to stifle in society, but at its best, has helped to embed in university life.

Truth will set you free. By definition, we are all invited to share in this liberative function, to seek the truth as a basis for our common life. Therefore, although we cannot legislate for civility, my hope is that the letter of this proposed law, which is to protect freedom of speech, might make room for the spirit of the law, which is to seek truth without diminishing or dehumanising others.

Indeed, this Bill alone will not accomplish its objectives or guard against potential harms through purely statutory or regulatory means. Alison Scott-Baumann's work on free speech provides some deep wisdom on nurturing communities of inquiry through an "etiquette of argument", as she calls it—a way of communicating over divisive issues without causing harm. We are having a go at developing similar principles of conversation in the Church of England at the moment, with some success. At the core of these principles is a fundamental understanding that the truth that we seek is written into our human dignity; therefore, one cannot be compromised without the other.

I turn to some points of detail. The House of Lords Library highlights continued concerns about the potential confusion between the responsibilities of individual institutions, the Office for Students and its new director of freedom of speech and academic freedom, and the Office of the Independent Adjudicator. While new Schedule 6A provides some helpful clarification, I would be grateful for further assurances from the Minister about the interaction between these various, potentially overlapping bodies.

I share concerns already expressed about the new statutory tort. While the Office for Students will be able to dismiss unmeritorious, vexatious and frivolous claims, there remains a real concern that this provision will lead to increased litigation, including through the small claims court, which universities will inevitably need to defend, incurring expense and time, even if the case is dismissed, as I understand it.

Finally, new Sections 3 and 4 in new Part A1 may be read as posing problems for the provision of premises and facilities that meet the religious and spiritual needs of a range of staff and students—a concern also raised in the written submission of the Free Church Federal Council of England and Wales. I am grateful for the assurances given in yesterday's briefing that there is no intention to compromise dedicated faith premises. Nevertheless, I would welcome a discussion with the Minister, as requested by the Second Church Estates Commissioner in his letter to Minister for Higher and Further Education, to resolve the matter fully.

Augustine was of course right: "By force we can make no one believe". But sometimes we need legitimately to use the force of law to restrain actions that adversely affect the rights and dignities of others and to protect the rights we have for free speech and freedom of expression. So, although the Bill needs clarification on

[The Lord Bishop of Coventry]
a number of matters, it is a measure whose intentions I support. I hope to see how the Bill can be better shaped to serve those intentions.

6.11 pm

Lord Willetts (Con): My Lords, I begin by declaring my interest as a visiting professor at King's College London—about which we have already heard—and the chancellor of the University of Leicester.

The Minister began his excellent speech at the starting point that I am sure all of us on all sides of this House share: the importance of university as a particular place where freedom of speech is not just practised but learned and passed on to the next generation, who may learn how to disagree better than they managed earlier in their educational careers. So, universities do matter. They are places which should offer protection from social media storms, cancel culture and—dare we say it?—political pressure. But they have not always been able to do this.

I found the most illuminating investigation of what can go wrong in our universities in the independent review of what happened at the University of Essex produced by Akua Reindorf. The review identified that, in a specific instance, the university had essentially attached far more weight to the equality duty than to the promotion of freedom of speech, which was exacerbated by a misunderstanding of the protected characteristics under the equality duty in the very sensitive area of gender reassignment. Things can go wrong; we recognise that. However, I hope that the Minister will be able to answer some real concerns of substance about this proposed legislation.

First, how is it going to work? I remember a previous round of concern on this issue which led to the 1986 Act, and we already have the Office of the Independent Adjudicator and some role for the OfS. Now, this legislation proposes two very significant extensions of powers—first, for the Office for Students, with a very significant new regulatory responsibility. In addition, we have this statutory tort provision, which could well mean that there will be vexatious, difficult and complex legal proceedings. Can the Minister explain why, faced with what is often a policy choice between going down the regulatory route or the legal protection route, both are to be applied in this legislation, and why he thinks both are necessary?

Secondly, will the Minister explain whether the aim is that all lawful free speech should be permitted in universities? That would be a very simple and clear starting point, which seems to be what Ministers are saying. However, on the very first day after the legislation was proposed, we already had an example of how tricky this is when the Minister said that it would enable Holocaust deniers to speak and was promptly slapped down by No. 10 saying that they should not. The Ministers in the Department for Education are currently pressing universities, for very understandable reasons, to endorse the wide-ranging IHRA definition of anti-Semitism. Everything covered in that definition is clearly objectionable, offensive and wrong. I am no lawyer, but it is not clear to me that everything which would be in breach of the IHRA definition of anti-Semitism is illegal. If it is not illegal, would it therefore be protected under this free speech legislation—in which case, why are Ministers currently pressing universities to take and act on a definition of anti-Semitism that seems potentially in conflict with the legislation they are now trying to pass?

Let me give a second example: the Prevent duty. As a Minister, I was very much aware of the pressure from the Home Office, which was interpreting the Prevent duty and definitely wanted universities not to invite speakers it thought would foment Islamic extremism, but it did not regard what they were going to do as necessarily illegal. The Home Office thought that universities had a responsibility that went beyond simply the protection of an absolute freedom of speech within the law. The Minister needs to explain exactly what he means when he says "lawful free speech". If, as I suspect, in reality there will be statements that the Minister would expect not to be protected by the new director of free speech, he will understand as soon he has conceded that point why the appointment matters so much. We are passing legislation that will enable a regulator not to protect under free speech free speech which, nevertheless, in its most absolute form, would be allowed. No wonder there is considerable anxiety in this House about that power.

My third point to the Minister arises from my respect for the wide range of roles he carries out in this House. Yesterday, in this very Chamber, I think he was speaking about military personnel and defence issues. May I invite him, as he is clearly seen as an extremely senior member of the Lords ministerial team, to consider also taking responsibility for the online harms Bill when it comes to this House? I look forward to hearing him explain the importance of protecting not just children but adults from "harmful content" and "harmful communication". When Ministers are pressed on why these provisions are necessary, we are told that it is because they will cause "serious distress". This is snowflake culture. "Serious distress" is to be used in a separate piece of legislation going through Parliament in this Session. There will also be two sets of secondary legislation: one to implement this Bill, which will be about freedom of speech, and a separate body of secondary legislation to provide for the regulation of online harms. It is perfectly possible for a university to be fined for breaching this legislation because it would not permit something to be said which an online tech giant would be fined for transmitting. This is a ludicrous position to have got into. As both measures are going through Parliament at the moment, I very much hope that this Minister, above all, will ensure some consistency between them.

6.18 pm

Baroness Royall of Blaisdon (Lab): My Lords, it is a pleasure to follow the noble Lord. I look forward to the answer from the Minister about those complexities —my goodness. I begin by reminding the House of my interest in the register as principal of Somerville College, Oxford.

I start with a quotation often attributed to Voltaire: "I may not agree with what you have to say, but I will defend to the death your right to say it". That, in essence, is the right to free speech. I consider that the

free expression and exchange of views are fundamental to the academic, social and extracurricular experiences of being at university. Oxford University's statement on freedom of speech says exactly that on the website and it is endorsed by the collegiate university as a whole.

I welcome the Government's commitment to the protection of free and lawful speech and debate in higher education, but I do not believe that the Bill is either necessary or desirable. In seeking to fix something that is not truly broken, it could be seen as yet another spark to inflame the culture wars. As my noble friend said earlier, a recent review of 10,000 speaker events across universities found that only six had been cancelled, with four of those due to incorrect paperwork. I fear that the Bill will impose bureaucratic burdens on our precious universities, which are part of the questioning and accountability mechanisms our society needs and deserves.

Freedom of speech in universities already gets fulsome legal protection. The Human Rights Act requires universities to protect freedom of expression under Article 10 of the ECHR. Section 43 of the Education (No. 2) Act 1986 requires universities to

"take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers".

That is a great statement that seems to suffice.

I am concerned about politicisation of this issue. I suggest that such an important role as chair of the OfS requires the best person for the job, and I suggest that perhaps the person in office at the moment is popular with the Prime Minister. The responsibilities of the chair are immense, especially as the Bill provides for the Orwellian director of freedom of speech, who will have sweeping powers, act as judge, jury and executioner in free speech complaints and potentially monitor overseas funding of universities. The fact that the chair spoke via video link at the Conservative Political Action Conference in Budapest calls into question his judgment in relation to free speech. He said that he did not know that he was appearing on the same platform as a notorious far-right, anti-Semitic, racist journalist—a poor excuse. In his speech, he endorsed the recent victory of the Hungarian Prime Minister Viktor Orbán, whose Government have curbed freedom of expression and countless other human rights. The OfS said that the noble Lord, Lord Wharton, was not speaking in his capacity as chair of the OfS. Frankly, that is not good enough.

Today, I learned that Minister Donelan has written to all vice-chancellors suggesting that the Race Equality Charter is

"potentially … in tension with creating an environment that promotes and protects free speech".

I am speechless. Can the Minister really defend such a suggestion? I am often asked whether wokeism is rife in our universities and specifically at Oxford. I suggest that it is not.

The Bill appears to require in statute that providers place greater relative importance on always securing free speech. It does not make any mention of the other legal duties that universities, student unions and constituent institutions need to abide by, despite the fact that these duties may potentially conflict with securing free speech in some cases, as the noble Lord suggested. Can the Minister say which duties have primacy?

The new statutory tort is far too open-ended. Safeguards against misuse are needed to ensure that this would be a genuine protection for staff, students and speakers. The Government make much of not involving judges in political questions, but I fear that this Bill could encourage frivolous litigation by provocateurs and draw the courts into very difficult political terrain.

The Bill's current wording around the scope of the OfS's free speech complaint scheme appears to allow for complainants to escalate their "free speech complaint" through multiple routes simultaneously. This is likely to lead to immense confusion. A situation of competing judgments could undermine faith in local disciplinary processes and in the procedures of the Office of the Independent Adjudicator and the OfS. At present, the OIA considers student complaints only once the local process has been completed. Does the Minister agree that a similar principle should apply in relation to the proposed framework for free speech-related complaints?

The Bill allows simultaneously for the imposition of sanctions by the OfS for breach of a registration condition and for the issuance of recommendations that higher education institutions, student unions and constituent institutions pay fines. Is it the intention that they could be hit by a number of simultaneous penalties? If so, that could be particularly damaging to student unions.

In relation to overseas reporting, the Bill imposes a general monitoring duty on the OfS that the regulator "must" request information pre-emptively from providers, regardless of whether it has reasonable grounds to suspect a risk to freedom of speech, and seemingly without limitation by the country and potentially exposed persons exemptions, despite the risk-based exemptions set out in subsections. Does the Minister agree that it would be sensible for the OfS to request information only where it has reasonable grounds to suspect a risk to freedom of speech and/or a provider being in breach of a freedom of speech duty owing to overseas funding, and that information in scope for any OfS reporting requests should be restricted to funding from certain countries or individuals?

This Bill will represent the first and only direct way in which the OfS regulates student unions. It spells out how the OfS will take enforcement action against student unions it considers to be, or to have been, in breach of the new free speech duties that will be incumbent upon them. Like colleagues from many other universities, I am concerned that the Bill provides only for a disproportionate punitive approach and fails to offer a gradated scheme of interventions short of a monetary penalty.

Benjamin Franklin said:

"Without Freedom of Thought, there can be no such Thing as Wisdom; and no such Thing as publick Liberty, without Freedom of Speech."

It is my belief that our universities are already proud bastions of freedom of thought and freedom of speech.

6.26 pm

Baroness Deech (CB): My Lords, I declare interests, first as the first holder of the Office of the Independent Adjudicator for Higher Education, dealing with student complaints, and secondly as former principal of St Anne's College, Oxford, where the only time I ever banned speech was a session that was planned on how to practise safe male sadomasochism. I have no regrets about having banned that.

What an indictment of our universities it is that we should need to return to this topic again. I have spoken about it many times in this House.

Academics have the right to say and debate controversial and provocative things subject only to the laws that prohibit and criminalise certain topics, of which there are surprisingly many, ranging from the prevention of terrorism to defamation and racial discrimination. Universities are not and never have been at liberty to limit freedom of speech beyond the law, which is why it is so shameful to see professors hounded out for, for example, their views on gender. My views in a nutshell are that it is a problem, but that this Bill is not the right way to tackle it.

Policy Exchange, on whose research the Bill is largely based, found that there was extensive political discrimination in universities, with remainers against leavers, hostile attitudes between left and right, gender-critical researchers and transgender activists, reflected in difficulties in publication and probably other promotions in the university. There is today huge cultural pressure to conform to the acceptable doctrines of the time. Dissenters feel they must keep quiet. The Higher Education Policy Institute survey this month found a distressingly large amount of agreement among students about banning things that cause offence to them and a need to feel comfortable, which is not what you go to university for.

Sadly, current controversies over free speech have tended to divide along strong lines of black and white. Each side believes that the other is wrong and therefore stupid and to be silenced. It is happening over transgender, and it happened over Brexit. The French revolutionaries, the Cultural Revolution, Nazism and fascism all blocked free speech on the ground that they and they alone possessed the moral truth. Outside of the universities too, there is very limited liberty to say things that do not conform with the prevailing trend, and the consequences can be cancellation, loss of job or even violence. Even here in the House of Lords there have been attempts to silence our individual opinions and words.

But this new Bill is not only superfluous and riddled with contradictions and ambiguities but is likely to make the situation worse if activists use the complaints system to be instituted in the OfS and even take to the courts. A student life is only three years, and taking to the courts in any subject, as we know, is likely to last long beyond their graduation and do them no good. The complaints system will be in addition to the long-established and—I would say—successful one run by the Office of the Independent Adjudicator for Higher Education, which I set up. I cannot see how the director of freedom of speech at the OfS cannot be but conflicted. Moreover, I cannot see the point of duplicating what is already available at the adjudication office. It is possible under the Bill that the OfS might deal with one side of a complaint, from a staff member, and the OIA will receive a complaint from a student about the same incident. There needs to be clear demarcation. The OfS will be able to offer a remedy only for the free speech aspect, while the OIA can offer broader remedial action.

Sadly, I have had significant experience of trying to help Jewish students as a patron of UK Lawyers for Israel. Those students have faced threats to their safety and even refusals of references when trying to assert their rights to free expression. The London colleges, notably LSE, SOAS, KCL and UCL, are often regarded as hostile environments for Jewish students and, right now, Goldsmiths has embarked on a study of anti-Semitism in its college. This new legislation must not undermine the existing protections, flimsy though they are, to stop anti-Jewish racism and Holocaust denial.

The Bill refers to freedom of speech within the law without giving a definition. One can easily imagine a Holocaust denier or a Hamas leader taking legal recourse for being denied a platform. Holocaust denial is not actually illegal, but it has been argued that the Equality Act and Prevent duties will ensure that it is not permitted on campus. Not only has this not been tested, we know that every year extremist Islamist speakers are allowed on campus preaching hate.

Do the universities not also have duties to prevent harassment and foster good relations under their public sector equality duty? Are they doing it? Will freedom of speech trump the other values, not expressed in straightforward law, that universities promote? There is no requirement in the Bill to consider competing freedoms. How does an authority decide between, on the one hand, Holocaust denial as an exercise of freedom of speech, and, on the other, the right of Jewish students not to be harassed and defamed? Will there still be a duty to prevent serious psychological injury? What about the freedom to speak against transgender issues? Will academic freedom triumph over demonstrably false assertions? What about a lecturer who wants to say that the US election was stolen from Trump or that climate change is a lie? The emphasis in the Bill might in future provide a cover for knowingly malicious and mendacious conduct.

Conspiracy theories put forward together with intimidation and vilification may be permissible and tolerable as political speech, but not as academic freedom, which they are not, or free speech, which has to be based on truth, not pseudoscience or neglect of the truth. We have seen the dangers of that in the political sphere also.

How relevant will the IHRA definition of anti-Semitism, already mentioned and now adopted by 103 UK and Irish universities, be? The definition is not legally binding, but it addresses modern anti-Semitism, which is dressed up as opposition to the very existence of the only country in the world that offers a safe haven to Jews in a world of rising anti-Semitism. The definition should help universities to understand this. Far from it dampening criticism of Israel and exploration of the Palestine/Israel issues, there is no issue more explored on campus. Just Google and see endless

debates and actions relating to boycotts, targeting of Jewish students, violent protests and day in, day out debate about those very issues. Will the Bill prohibit the boycott by institutions and organisations of Israeli academics and universities and, sometimes, the refusal of professors to support Jewish students who want to study Israeli matters or require references? There really is a problem but the Bill may very well make it more complex, more expensive and even worse.

6.34 pm

Baroness Hoey (Non-Afl): My Lords, I find it rather depressing that Her Majesty's Government have had to bring forward a Bill to ensure freedom of speech in higher education. I grew up in an era when you aspired to go to university not just to get wonderful academic teaching leading to a degree, but also to have the opportunity to explore new ideas, face challenges you had not met before, widen your horizons and challenge some of the traditional views. The idea that someone might not like what you said and try to stop or cancel you—a word we had never heard of in those days—rather than debating or arguing was unimaginable.

I understand why many in your Lordships' House do not seem to think that the Bill is right but, sadly, I believe that the need for it is now clear and the reasons for the changes are many. I refer to the Policy Exchange report from 2020, which found a significant lack of "viewpoint diversity" at universities. Some of the statistics were shocking. As someone who campaigned all over the country for the United Kingdom to leave the European Union, the one that stood out for me was that just over 50% of academics would feel comfortable sitting next someone at lunch who was known just to have voted to leave—not even to have campaigned, so I will not be getting many invitations to academic lunches. That is just for having used your vote democratically in a parliamentary approved official referendum.

We have seen individual academic career prospects and access to research funding adversely affected by discrimination based on the individual academic's views. Of course, the hounding of Professor Kathleen Stock, forced out of Sussex University by constant and repeated abuse and intimidation because of her views, has been slightly a focus of this Bill. But if this could happen to someone such as Professor Stock, how many other people coming into university to teach for the first time suddenly find that they have to be very, very careful about what they say?

A higher education council study is also alarming. It tracked attitudes of a representative sample of university students over the past six years. What it found should alarm all of us. The new generation of university students is increasingly supportive of removing from their campuses words, ideas, books, speakers and events they find uncomfortable or offensive. They seem willing to impose restrictions on others and to curtail views they disagree with. "Safe spaces" seems to be this new buzz word. We have to shield students from words and ideas that make them uncomfortable, and if you question or challenge this orthodoxy, you should be punished or ostracised. Matthew Goodwin pointed out in an excellent article on Unherd that a lot of this is happening right here in our own universities: refusing to allow tabloid newspapers to be sold on campus; banning speakers—maybe only a few, but nevertheless—who offend students; supporting getting rid of academics if they teach material that offends; and removing memorials of historical figures.

I do not want to stop anyone—to stop students—protesting about something they feel strongly about, and I do not believe the Bill does. In my day, we were always protesting about apartheid in South Africa, for example. I do not even mind students criticising lecturers on the grounds of the quality of their teaching; again, I do not think the Bill does that.

Academic freedom must be the primary duty of universities, and it should be defined more broadly than it is in the Bill. Too many of those in charge of our universities have been too weak or complacent to fight back against some of this behaviour. Too often, they have given into any demand from the student body, which must be agreed with at any cost, or they agree with anything that looks like it is the latest fad or, if I may use the term, a woke issue.

There will be amendments to this Bill which will make the protections of academic freedom stand fast. For example, in saying that HEPs must take reasonably practical steps to secure freedom of speech within the law, the duty is not clear enough. The responsibility to secure lawful free speech on topics of an academic or political nature should be an absolute and positive duty. I am sure that other amendments will come through your Lordships' House, many of which have been suggested by what I consider to be the excellent Free Speech Union.

This freedom of speech Bill is about education, and education is devolved, but surely freedom of speech in universities across the United Kingdom should be in the Bill. In Northern Ireland we have one Russell group university, Queen's University, and the University of Ulster. Why should this not apply there? If we wait for an Assembly to do something like this, none of us, not even the youngest Member of your Lordships' House, will be around to see it happen. An amendment should be brought in to include those universities. Freedom of speech should not be a devolved issue. I remind your Lordships that, in the Ashers cake case, the Supreme Court recognised that ECHR Article 10 must include the right not to have to say what you do not believe. Prohibition of forced speech must be a key element of freedom of speech.

The Bill can be amended for the better to meet some of the challenges that noble Lords have already mentioned, but I support it. If it is changed quite a lot, it might be a wake-up call to those in authority in universities who have perhaps taken their eye off what academic freedom really is.

6.41 pm

Lord Johnson of Marylebone (Con): My Lords, I draw attention to my interests in the register, as chairman of Access Creative College, chairman of ApplyBoard and as another visiting professor at King's College London.

I welcome what the Government are trying to do in this area, and it is obviously of great importance to the vitality of our higher education and research system.

[Lord Johnson of Marylebone]

The Bill represents a very significant extension of the existing legislation on the statute book in relation to freedom of speech in higher education and, as my noble friend Lord Willetts said in his excellent speech, it will require significant reconciliation with the Prevent duty, the IHRA and other legislation coming through this House in this Session. Some of that tension obviously already exists with the existing legislation, but it will get a lot sharper as a result of the new tort, the statutory complaints system and the creation of the role of the director of free speech within the Office for Students.

Because these issues have already been pretty well debated in the other place, and here this afternoon, I want to focus in my brief time on the Government's recent amendment on Report in the other place in relation to overseas funding. This came in relatively late and has not received as much attention as it might have done. It is a very important addition to the Bill and, although I very much support what it is trying to do, it requires significant improvement as it goes through this House. This section of the Bill now manages at once to be excessively bureaucratic and to miss a significant part of the problem that arises in relation to overseas funding of our higher education system.

The four categories of relevant funding that are addressed in the Government's amendment are good as far as they go: namely, endowments, gifts and donations; research contracts; research grants; and educational and commercial partnerships involving foreign Governments, foreign organisations and politically exposed people in countries that are not on the approved ATAS list. If your funding comes in one of these sources from a country that is not a NATO or EU country, or Japan, Singapore or South Korea, you will be captured by the reporting requirement. My concern is that the reporting requirement is ridiculously bureaucratic. That arises because the threshold that has been set is far too low, at a proposed £75,000.

Take UCL, for example. This is an organisation with income of £1.6 billion in the last financial year, £500 million in research grants and almost £50 million in philanthropic donations. Obviously, not all higher education institutions in this country are as big as UCL, but to ask UCL to devote resources to counting every dollop of £75,000 that might come from an overseas source in this way is ridiculous. A more suitable threshold might be £1 million.

The control-freakery of the proposed threshold contrasts starkly with the super-chillaxed way in which the Government's chosen definition of overseas funding manages to exclude altogether the largest source of such overseas funding: the income that universities receive from the uncapped tuition fees from international students. To be clear, I strongly support the contribution that international students make to the success of and the learning and research environment in our universities. However, it is extremely important, for obvious reasons, to have a diverse international student body, and I worry about the concentration of students from particular countries within some of our most significant institutions. This concentration of students from particular countries has the potential to create financial dependencies on student flows from particular countries that may limit freedom of speech and result in academic self-censorship.

Six of our Russell group institutions had more than 5,000 Chinese students in the most recent academic year. One of our leading Russell group institutions has more than 11,000 Chinese students out of a student body of 44,000. That is a very significant number; by my back-of-the-envelope calculation, they must be bringing into that institution more than £200 million of tuition fee income, representing at least a third, possibly more, of its tuition fee income from domestic and foreign students combined. This is potentially creating a lack of financial resilience in some of our most important research organisations and, with it, the associated threats to freedom of speech and research integrity that arise precisely from this dependence on the income from students from one big and autocratic country. This is a dependence that is now too big to ignore.

Others in this debate have raised the question of self-censorship. This is very difficult to measure precisely but we must not be complacent about it and pretend that it is not a problem in academia. As Professor Kerry Brown, the leading China expert at King's College London, recently wrote in a paper for HEPI on China and self-censorship:

> "While one can sometimes find tangible evidence in the form of conversations, emails, letters or other means, that pressure has been placed, with much self-censorship the act itself is invisible—it occurs in people's heads, before and as they write and is very private … What is clear is that in the last few years, the fear and anxiety of facing individual and institutional consequences for straying over the ever-shifting red line that manages to offend China has risen dramatically … China is increasingly willing to call out those who criticise it. For universities, this can run the risk of impacting on the recruitment of Chinese students, or undertaking research collaborations with China."

These are issues to be discussed in greater detail in Committee, but this is why I would welcome a broader definition of overseas funding than we have at present in this Bill. It would be sensible to add a duty on the Office for Students to consider whether a registered higher education provider is overly reliant on overseas tuition fee income from students from a single country of origin. If we are to legislate again on freedom of speech and higher education, this surely must be part of the discussion.

6.49 pm

Baroness Garden of Frognal (LD): My Lords, it is a pleasure to follow the noble Lord, Lord Johnson, who was a very open-minded higher education Minister. This has been a fascinating debate, but quite disconcerting. We have just been dealing with the Schools Bill, a Bill so bad that three Conservative Education Ministers have called for it to be terminated, and now we face another Bill which appears unnecessary, irrelevant and possibly harmful too. When Gavin Williamson, the then Education Secretary, introduced it in the Commons, he was constantly interrupted with questions, complaints and observations from all sides about why the Government were wasting time on such a Bill. We do not interrupt in our House, we listen courteously, and I thank the noble Earl the Minister for carrying out the hapless task of trying to convince us that this Bill is worth our time and trouble.

Higher education institutions are more than aware of the importance of freedom of speech. It is important that young people should be exposed to views contrary

to their own, in a caring and learning environment where views should be respected but most certainly challenged where they are prejudiced, ignorant or harmful. No one has a right not to be outraged or offended, although increasingly some young people feel that they should not be exposed to views contrary to their own. I remember a number of revolting students at Oxford in the 1960s and some very robust debate, but I do not think that any of us suffered from it.

The recent HEPI survey, which my noble friend Lord Wallace referenced, is disturbing in the number of young people who do not seem to want to operate outside their comfort zone. But why is this Bill needed? An assessment by the Office for Students found that just 53 out of 59,574 events with external speakers were refused permission in 2017-18. Perhaps that was an unusually slow year for cancel culture and there is a real problem. However, the Bill comes before we have had a proper national public debate about where we think the acceptable boundary sits between speech that is offensive or hurtful but that ought to be permitted under the Bill, and speech that is harmful, divisive and, although perhaps not unlawful, has no place on campus. We have not had that debate, so the Government are rushing into legislation before we have much tangible evidence of the boundaries of acceptability.

Freedom of speech and the free exchange of ideas in pursuit of truth and knowledge are central to our universities' whole purpose, but where is the evidence that there is a problem? This Bill is unnecessary and unclear. There is a real risk that our universities will be subject to vexatious and frivolous claims, which will cause distress and waste time and may make universities more risk-averse and more cautious about whom they invite to speak. So students will not be exposed to contrary views or be able to frame arguments and responses in defence of their own views.

Of course, we have a right to free speech. We need to be able to challenge people whose views are different from ours. Informed public debate is a vital element of a democratic society. It is vital to academic freedom, however difficult and contentious it might be, but, as has already been mentioned, we already have laws to protect free speech in the Education (No. 2) Act 1986. We really do not need any new laws, particularly ones as contentious as this. We have an Office of the Independent Adjudicator for Higher Education—and our thanks to the noble Baroness, Lady Deech, for that. Why can it not deal with any problems in this area? The new director seems to have alarming powers, apparently without the need for any legal background.

I turn to no-platforming. As we have already heard, in 2019-20, of almost 10,000 events involving an external speaker, just six were cancelled—that is 0.06%. It is not a major problem and the heavy-handed proposals in this legislation are certainly not justified or needed. It has been said that this is an authoritarian sledgehammer to crack a nut. It might well give universities a reason to stop holding events that would broaden students' minds.

We oppose the Bill. It is not based on evidence and is not proportionate. Worst of all, it actively undermines the very principle of free speech that it claims to support. Free speech is about the right of every individual to speak truth to power, but the Bill does the opposite. It gives those in power or with power the ability to determine who is free to say what. Far from protecting our freedoms, it is yet another example of the Government's concerted efforts to take our freedoms away. Given that universities are already required to protect freedom of speech and that research suggests that no-platforming is incredibly rare, the Government should drop this Bill entirely.

As others have said, the likely consequence of all this is that universities and student unions will err on the side of caution and steer away from anything risky—in other words, not more free speech but less—and for those with really outlandish views, there will be a legal stick with which to beat institutions. We have already heard from the noble Baroness, Lady Royall, the great quotation of the principle:

"I disapprove of what you say, but I will defend to the death your right to say it."

We have wasted enough time on the Schools Bill. Please do not make us waste yet more time on this one.

6.55 pm

Baroness Stroud (Con): My Lords, I support this higher education Bill. I am sure it will benefit from the input of noble Lords in this Chamber, but its intention is good. This Bill is one of the first of its kind worldwide. It resets the balance in favour of freedom of thought and expression. It comes at a time when our public discourse and intellectual conversation are becoming increasingly intolerant.

Academic freedom is central to the character and nature of who we are as a nation. It is essential for the discovery of and search for truth, the foundation on which we build our society, to which my friend, the right reverend Prelate the Bishop of Coventry, drew our attention earlier. It is essential for the development of a resilient generation of critical thinkers who are not afraid of ideas. It is essential for progress: without the freedom to think and express the free exchange of ideas, the entrepreneurial spirit and the drive for innovation are extinguished. They are essential to the growth and prosperity of our nation and to a truly democratic society.

Only when people are able to think freely, speak freely and exchange ideas freely are good ideas able to flourish and bad ideas defeated. It is therefore vital that this freedom is protected among those whose very profession it is to exchange and debate ideas and pass them on to the next generation. There are some who, as we have been doing this afternoon, genuinely ask the question: "Is academic freedom under threat?" But for those who have sons and daughters in our universities, or who are connected with the academy, the answer will come back: "Yes, it is." Perhaps it is not in the minds of those in illustrious posts that some hold in this Chamber, but parents up and down the land and professors and lecturers in our universities would say that that is their experience.

We need only consider the recent experience of Professor Kathleen Stock—hers one of nearly 100 recently recorded cases—to appreciate the toll that academic intolerance can take on the lives of those who dare to speak out in an increasingly hostile public square. This is damaging not only to the individual academic concerned

[Baroness Stroud]
but to the intellectual growth of our next generation of students. These students will soon join businesses up and down the land as active participants in the public square and in our workforce. They need to be able to engage in new, innovative and exciting ideas without fear and with creativity.

I appreciate that for some of your Lordships, like me, it has been a few years since we last sat in a tutorial or a lecture. I acknowledge that students have always questioned and critiqued dominant societal narratives. However, in recent years the power of students and student unions to lobby, disinvite and cancel speakers and professors from their universities has gained traction. This matters and universities do not appear to be equipped to resist this. For example, time and again university administrators have pursued the path of least resistance, opting to cave in to vocal minorities who seek to cancel or censor those who are disagreed with. Much of the focus of this afternoon has been on the free exchange of ideas between students, but this about professors and lecturers within universities as well. This cancelling of a speaker then creates a chilling effect in the academy, disincentivising those who profess new or unorthodox views from participating. This, in turn, damages viewpoint diversity, essential for a world of creative ideas to flourish.

Recent research at King's College London suggests that one-quarter of students are self-censoring their views. Survey data collected by the University and College Union, a trade union representing more than 120,000 academics and support staff, suggested that one in three academics now self-censors due to the fear of suffering negative consequences if they voice their views or deviate from the dominant orthodoxy. This matters.

This environment in the academy has very real consequences, not only for scholarship but for professors and students themselves and, ultimately, for our nation. UK academics are significantly more likely than their counterparts across the European Union to report abuse and bullying, and to feel the need to conceal their beliefs. In a competitive marketplace of ideas, when we need to be driving growth and innovation, academic freedom stemming from the freedom to think and speak is critical.

I support this Bill because of the appropriate and moderate ways in which it seeks to actively promote academic freedom on campus and address the chilling effect of our cancel culture. I particularly draw attention to the creation of the free speech champion, which was discussed earlier. When a student or academic has been cancelled despite acting within the law, the free speech champion would be empowered to investigate and potentially fine or sanction the censoring bodies. The creation of this champion coincides with strengthening the duties around free speech, particularly around student unions, requiring them to respect freedom of speech as they carry out their functions. This Bill will give the regulator the teeth it needs to ensure that academic freedom is not just protected but promoted on campus.

Academic freedom is the ability to put forward new ideas and controversial or unpopular opinions. It is vital to remember that many of the intellectual and cultural positions we now seek to preserve came into existence by questioning the majority view. Academic freedom, alongside freedom of thought and freedom of speech, are our cardinal democratic freedoms: it is from these freedoms that all other liberties flow. If we get this Bill right, Britain can continue to declare itself a beacon of freedom and a model from which academic systems around the world can take inspiration, and we will empower the next generation to be intellectually resilient, able to engage with challenging ideas and equipped for all that lies ahead.

7.02 pm

Baroness Chakrabarti (Lab): My Lords, I declare interests as a former chancellor of the Universities of Oxford Brookes and Essex, as, variously, a visiting and honorary fellow and professor of a number of universities and constituent colleges, as a visiting professor at the LSE and as, over this last academic year, someone who has benefited enormously from working with a PhD student at King's College London.

I have always campaigned for freedom of speech and for all other fundamental rights and freedoms, from which it cannot be plucked or separated. I have done this, or tried to do this, on behalf of those who were for the moment vulnerable, demonised and endangered, including those with whom I profoundly disagreed and who have even denigrated the very rights that should protect them.

Today feels like "a bright cold day in April, with the clocks striking thirteen". This Bill is wrong-headed in principle and clumsy in execution. Freedom of speech is not advanced by particularism, complex or onerous regulation or government tsars but when we each practise what we preach, lead by example and understand that it is the ultimate two-way street in a human rights framework built upon equal treatment, the very antithesis of which is partisan protection and hypocrisy. In short, my speech cannot be free while yours is always treated as a little more expensive or otherwise put practically beyond reach.

This Bill comes amid a wave of anti-rights legislation and rhetoric. In particular, on-street dissent has been criminalised today by the Police, Crime, Sentencing and Courts Act and will be eroded still further if the measures copied and pasted from anti-terror law in the Public Order Bill are allowed to pass. Cabinet Ministers and other government sources are on the record for their "war on woke" which, by definition, prioritises opinions that they find agreeable over those that they find uncomfortable in a kingdom that they do not seek to unite.

In a manner reminiscent of Mr Trump across the water, pro-Brexit protesters in 2019 and statue defenders in 2020 were actively encouraged by some of the same Ministers who now seek to impugn climate and race-equality activists and lawfully striking and picketing trade unionists. So higher education providers and student unions have good prior reason to give a critical, sceptical reading to this Bill.

To add insult to injury, we are speaking less than a week after the Government's introduction of what Amnesty International called the "Rights Removal Bill" and at least one noble Lord opposite called the

"Bill of Wrongs". This proposes to repeal the Human Rights Act without a single enhancement of rights protection but drastic diminution instead. This is forensically important, as the Department for Education relies heavily upon the Human Rights Act in its various explanations and justifications for this opaque Bill.

In particular, while the rights removal Bill has been sold as enhancing free speech, it reduces the positive obligations on public authorities to guarantee rights within their realms and attempts to limit Article 10, on free speech protection, to areas outside the criminal law. That licenses ever-broader anti-speech offences and police powers in the future. So far from being universalist, the Government's approach to rights and freedoms is not even constitutional or one-nation. Instead, it is contradictory and partisan.

As to the detailed convolutions of this Bill, your Lordships' House will want to allow significant time for their scrutiny in Committee. In the meantime, will the Government prepare new memoranda explaining how the provisions will interact not just with the Human Rights Act, which they plan to scrap, but with its so-called replacement, alongside the Equality Act and Prevent programme, which has been such a complication of, if not threat to, free speech on campus, and all the other pre-existing regulatory duties on higher education bodies?

How can it be a protection of academic freedom to give more and more power over independent institutions of scholarship to the Government's Office for Students and the new director for freedom of speech? Who is going to fund litigation for claims and defences of a breach of the new statutory duty, at a time when civil legal aid is virtually non-existent? How will institutions be protected from vexatious litigation by wealthier interest groups in particular? As to the new provisions relating to foreign funding, who should decide which funding is or is not acceptable in our world-class academy? How will our institutions of higher learning be protected from the weaponising of provisions in this Bill as proxies for human rights and other disputes internationally? What are the Government doing about what many academics feel to be the real threats to their freedom—precarious employment, lack of representation on governance structures, directions as to which research to undertake and political interference, including the attack on the arts?

You cannot cancel cancel culture, any more than you can realistically no-platform ideas you detest in the age of the internet. However, you can demonise the courts, the arts, the academy and even the young in a culture war of divide and rule. Some speech is free, it would seem, and some is rather more expensive: that is the real message behind this Orwellian Bill.

7.09 pm

Baroness Shafik (CB): It is a pleasure to follow the noble Baroness, Lady Chakrabarti, who brings a great deal of expertise and insight to this important debate, as indeed have all Members who have contributed. I thank the Minister, first, for the comprehensive introduction to the debate and, secondly, for the constructive and kind way in which he has engaged with me in advance. I have also discussed assurances with the Secretary of State. I draw noble Lords' attention to my registered interests, specifically my role as director of the London School of Economics and Political Science, which of course will be directly affected by this legislation.

It is absolutely right that the Government want to protect and promote freedom of speech. Indeed, freedom of speech and academic inquiry is central to everything that universities do. That necessitates the full freedom to pursue lines of academic inquiry, even when they may end up in uncomfortable places. At the LSE, our very international community welcomes speakers from across the political, national and ideological spectrum to its campus, as the noble Lord, Lord Wallace, noted. They set out their stalls, respond to challenge and, in the best traditions of university life, educate our students on different points of view and, more importantly, on how to engage with those different points of view with intelligence and respect.

As the noble Baronesses, Lady Thornton, Lady Royall and Lady Garden, noted, the House Library references a report and a survey of 10,000 cases of external speakers, only six of which were cancelled. That is 0.06% of all events surveyed. I am proud to say that, as far as I know, at LSE we have never no-platformed a speaker. That is because we actively manage and promote freedom of speech collectively. It is an interesting question whether you need 23 pages of legislation for a 0.06% problem, particularly given that the higher education sector faces so many other challenges, but here we are.

I turn to the content of the Bill, which proposes a new legal "Duty to promote" under Clauses 1 and 3. This would change the legal balance between the protection of freedom of expression and other statutory duties placed on universities over the years, such as the public sector equality duty and the Prevent duty. Those duties are in potential conflict with this legislation, as noted by the noble Baronesses, Lady Deech and Lady Chakrabarti. I would very much welcome insight from the Minister into how all these duties will coexist successfully and what guidance will be available to universities to avoid being caught in the middle of conflicting legal obligations.

Clause 4 would create an avenue for civil proceedings for anyone who believes that their freedom of speech has been curtailed. Drawn too broadly, this new tort would pave the way for vexatious, time-wasting and expensive litigation, as many Peers have noted. The Bill is very unclear as to the exact circumstances that would allow this tort to be pursued. For example, will there be a threshold of harm? I believe that there should be, similar to the threshold in the Defamation Act the Government passed in 2013. Will the Government confirm that this new tort could be pursued only if the existing university complaints procedures had been exhausted? Again, I believe that this should be written into the legislation, analogous to the protections in the new OfS complaints scheme set out in Clause 8. Better yet, choose just one route for complaints, as the noble Lord, Lord Willetts, suggested. I suggest that the regulatory route would be much simpler than the litigious one.

Clause 10 legislates for the new director for freedom of speech and academic freedom in the Office for Students, which has been much discussed. Of course, I understand that if we pass this legislation the Government

[Baroness Shafik]
will want expertise in the Office for Students to keep an eye on it, but we must be clear: the director must be an expert. I know that the recruitment process for this director has started. It would be reassuring to know that the selection panel is well staffed by those with expertise in the legal issues around free speech and the challenges facing universities, and will choose someone with expertise in both areas.

I turn finally to Clause 9, which sets out the requirement for the reporting of foreign donations to and contracts with UK universities. It is understandable that Ministers want to keep an eye on relationships with foreign powers and organisations, especially where there are issues of national security, but this must be proportional and risk-based. I therefore strongly welcome the Government's commitment to ensure that there are sensible exemptions to the new reporting regimes, especially where national security risks are low. Although these exemptions will be set out in subsequent guidance, it would be helpful to have on the record the Government's thinking thus far before the Bill passes. The Government have suggested a reporting threshold of £75,000 for foreign funding, though the equivalent in the United States is $250,000. A sensible equivalent would reduce undue bureaucracy and expensive costs for what are small-scale arrangements, as mentioned by the noble Lord, Lord Johnson. I am also keen to understand what additional resource the Office for Students will have to monitor what will be a significant increase in its workload.

In conclusion, I thank the Government for the constructive way in which they have approached this legislation so far. As the Bill progresses, I hope we can achieve some sensible amendments that will enable the Government's ambitions to protect free speech while supporting a universities sector that continues to be the envy of the world.

7.16 pm

Baroness Fox of Buckley (Non-Afl): My Lords, the noble Baroness, Lady Shafik, raises some interesting, detailed points that I hope we can look at in Committee. More broadly, I welcome the Bill—although I do so with something of a heavy heart and qualms.

I regret the need for legislation to enforce what should be intrinsic to universities, academic freedom, but I have watched with horror as the HE sector has tried to balance free speech against an ever-expanding array of institutionalised values and mandated outcomes over recent years: student satisfaction targets; promotion of equality, diversity and inclusion initiatives; and external benchmarking schemes in racial diversity, gender identity and environmental literacy. All can and do undermine curriculum freedom. Then there are the demands of the REF and the managerial prioritising of employability skills—on and on it goes. In the midst of this, academic freedom can and is squeezed out and deprioritised.

I hope to amend the Bill to strengthen the idea that academic freedom is the primary duty of universities. It is what distinguishes universities from think tanks, policy and research NGOs, private companies or tutorial and teaching services. The pursuit of knowledge for its own sake and true freedom to explore and challenge ideas without fear or favour are the point of academic freedom—no ifs or buts—and what makes a university a university.

Of course, we need to be wary of government overreach in the autonomy of universities and careful of the Bill's unintended consequences, such as the chilling effect on students' right to protest. I get the irony of the scorn poured on the Bill as a device for cancelling cancel culture. More than anything, I do not want the Bill's proponents to treat this legislation as a technocratic silver bullet, as though all will be well if it is passed. Beware of legalistic complacency. Many of the most egregious censorious trends are cultural, informal and deep rooted, and need to be debated and defeated through the battle of ideas.

The main challenge the Bill faces are the opponents who dismiss the need for it, as we have heard here today, and see it as a hyped-up moral panic—some kind of tedious Tory culture war against woke students. I concede that the Government's inconsistencies do not help to reassure. A few months ago, Education Secretary Nadhim Zahawi declared that he would crack down hard on academics who espouse dangerous narratives on the Russia-Ukraine war. Does this mean that the Government's commitment to academic freedom is dependent on academics holding the correct views on foreign policy, or should we defend the free speech of useful idiots as well as those we agree with? The elephant in the room is surely the Online Safety Bill—a huge threat to free speech in the UK, as the noble Lord, Lord Willetts, indicated. He also noted a number of other contradictory trends.

That said, I think the gaslighting of those of us who raise the growing problem of censorship on campus is a form of denialism that is unhelpful. When I wrote the book, *'I Find That Offensive!'*, on the rise of Generation Snowflake's campus censorship, I was accused of manufacturing a sensationalist crisis. Actually, I underestimated the trend. My motives were challenged as raising the alarm; I was treated as rather dodgy. That is the same as the cheap, conspiratorial accusations we have heard in this House today that this Bill is driven by some alt-right agenda as a disguise for hate and bigotry to gain a voice.

The idea that the Bill is a sledgehammer being used to crack a nut is expressed by those who seem stuck in the past with a dismissive, "Oh, it was ever thus—nothing to see here". We keep hearing the same evidence from Wonkhe of 10,000 events involving external speakers, and only six were cancelled, and so on. But these no-platform stats miss the important point. Comments from opposition Benches here ignore the corrosive rise of self-censorship that the noble Baroness, Lady D'Souza, raised. You do not have to be de-platformed to feel its chill wind. The NUS has a guidebook called *Managing the Risks Associated with External Speakers*. If you are an external speaker, as I have been many times, you are asked to sign a form promising not to say anything that would make the audience feel uncomfortable.

The message is, "Watch what you say." Often, speakers are cancelled, dismissed, or simply warned about the content of speeches on the basis of harm and safety—"Be careful". JS Mill's harm principle has now been expanded exponentially to include psychological harm, pathologising

debates through the prism of therapeutic terms, with trigger warnings and post-traumatic stress disorder if you hear the wrong thing and so on. Safe spaces are not about protection of physical safety, but safety in terms of protection from dangerous ideas.

The threat of external speakers being banned as a safety risk today is very different from the no-platforming of the far right in the 1980s. It institutionalises the link between words and harm. No wonder people bite their lip. As has already been indicated, the main problem is less about external speakers than about a toxic atmosphere on campus for students and staff; self-censorship is damaging to intellectual inquiry. There is a mood of snitching and "watch your back", a system of public shaming—of reporting one's peers for "wrong-think" for comments made in seminars or in the bar.

Only recently, we saw the University of Cambridge setting up an anonymous reporting system, encouraging students and staff to name anyone considered guilty of a wide range of listed micro-aggressions. It is no surprise that in 2017 the trade union, the University and College Union, in its own report on academic freedom, reported that 35% of its members self-censor for fear of loss of privileges or demotion. A 2020 Survation poll for ADF found that 29% of students in British universities keep their views hidden when they are at odds with their peers or lecturers, that 40% withhold their views on religious or ethical subjects, and God help any Hungarian students studying in the UK who dare to admit that they voted for Orbán if they are at universities led by people in this House. Apparently, that is enough to get you cancelled. They would stay schtum.

If the price of expressing the wrong views is that you are dubbed the purveyor of hate, bigotry or wrong-think, obviously students and staff will shut up or are so careful that it leads to an anodyne, enervated and sanitised learning environment antithetical to an intellectually lively atmosphere of free inquiry. We should also note that it is not being cancelled but the process of being accused and investigated that has become the punishment, leaving a stigma and a question mark on one's reputation. You have only to look at the case files of Academics for Academic Freedom or the Free Speech Union to get the gist.

In October 2020, a group of LGBT activists tried to get a porter from Clare College sacked because, in his role as a Labour councillor, he voted the wrong way on the issue of "trans women are women". I do not blame those students; I blame our generation for not setting an example to them, and I blame those people who run universities for not looking them in the eye and saying, "Academic freedom matters more than anything else." That is why I hope this Bill will help.

7.24 pm

Lord Cormack (Con): My Lords, it is always a great pleasure to follow the noble Baroness; she makes stimulating speeches. She does tend to overegg the pudding a bit; nevertheless, I listen to her with great interest, and I am delighted to follow her.

Free speech is more important than anything else—and we in this place ought to know that better almost than anyone. "The price of liberty," said Burke—and of course, liberty without free speech is impossible—"is eternal vigilance." I am glad that we are having this debate because there is currently a tendency among some to be a bit complacent. One thinks of some pretty horrific examples: Kathleen Stock, who has been mentioned by noble Lords on two or three occasions, and JK Rowling.

One of the cancers of our age, which makes the proliferation of coarse speech and crude attack so much easier, is social media. Many in our universities, and others, use this, and many suffer from it, so it is right for us to ask: what can we do about it? But I do not think a Bill like this is necessarily the best way forward.

Those who have questioned the wisdom of the Bill have more than a point. I say to my noble friend—who introduced the Bill with his characteristic gentle elegance and in whom I have as much trust as I have in anyone in political life—that it needs to be significantly improved if it is to go on the statute books and fulfil its purpose. I do not think we need such a Bill but, clearly, we are going to have one, so it is the duty of your Lordships' House to make it as effective as possible, and as least disruptive as possible.

Speaking as one who has the honour to have been a visiting fellow at St Antony's College, Oxford, who helped to found the parliamentary fellowship scheme 30 years ago, and who is still admitted to the senior common room—I have also visited many other universities, and I am on the court of Lincoln University—I believe that we have institutions of which we can be truly proud. But it is very important indeed that students are exposed to views and attitudes that they consider to be offensive, because that itself is stimulating. Unless you can produce a counter-argument, you have not understood the argument. It is crucial that our young people are stimulated and exposed to a variety of views, just as they should be exposed to a variety of academic and scientific disciplines. I very much hope that one thing that will be a casualty of this Bill is the so-called "trigger" movement. It has been dismissed, I am glad to say, but it was even suggested that the online version of *Hansard* should be adorned with trigger warnings that there may be some offensive language to follow.

Lord Moylan (Con): Shame.

Lord Cormack (Con): Indeed, shame. I believe we have had that dealt with.

We know about the counterculture and the cancelling because earlier this year four of us were complained about to the Commissioner for Standards because of remarks we had made in a good, vigorous and brief debate on an amendment to a Bill that sought to end the presence of physically intact males in women's prisons. The committee, now chaired rather splendidly by the noble Baroness, Lady Manningham-Buller, rewrote some of the rules and guidance, and the fundamental right that Members of both Houses have enjoyed since the Bill of Rights in 1689 was underlined thrice. That is as it should have been, but if we can be threatened even in this place then we have to be vigilant about the defence of free speech. If free speech is eroded in any way in our universities, the institutions from which future Members of both Houses will come, then that does not augur well.

[Lord Cormack]

As we know at the moment, democracy has to be fought for. As we know, there is a great power, the second greatest power in the world right now, which is already flexing its muscles in a variety of ways—roads and belts, belts and roads. We have to be a bastion of democracy, but we cannot be a bastion of democracy without having universities and colleges that produce vigorous democrats.

7.31 pm

Lord Macdonald of River Glaven (CB): My Lords, since the noble Lord, Lord Whitty, is not present, it is my great pleasure to follow the noble Lord, Lord Cormack. In doing so, I refer to my entry in the register of interests as a former warden of Wadham College, Oxford and an honorary fellow there and at St Edmund Hall, Oxford.

I disagree with noble Lords who perceive no problem to be addressed, but I agree with noble Lords who have argued that the Bill addresses those problems in the wrong way. A few years ago, around 2014, when I was working in Oxford, I attended a public lecture given by the dean of the law school of a leading American Ivy League university. My role was to respond to his remarks before the topic was opened up to audience participation. He was addressing the question of free speech and to my consternation—and of course I paraphrase him somewhat—he posed the argument that free expression could most accurately be seen as a weapon of power in the hands of elites who were licensed by law to employ it to repress the disadvantaged and marginalised. In this sense, as he saw it, limits on the right to free expression could be seen as protective and in some circumstances even liberating. Language was power, and to police it could therefore be radical and affirming. In my responding remarks, I strongly disagreed with him and suggested that it was all right for him to be playing with such ideas, with all his copper-plated US first-amendment protections, but in Europe, where legal protections for free speech have always been more contingent and conditional and have had a more painful, bloody history, he was playing with fire.

It is important for us to acknowledge that, eight or so years later, those ideas that I first heard expressed in an Oxford lecture theatre have become a little more mainstream. It is more common than it should be, including in the UK, to hear free speech categorised as a threat to safety, when it is not being decried in some intellectual circles as an Enlightenment sham. It is perhaps less common than it should be to hear it described as the greatest historical progenitor of human progress.

The reasons for that shift, particularly on the left side of politics, are complex. There are some genuinely progressive elements in play: the growing understanding of the importance to society of protecting minority rights; distaste for racism, sexism and homophobia; and hostility to unfounded discrimination. It is surely an unalloyed good that terms of racist, sexist or homophobic abuse are no longer acceptable and that these forms of speech have, by broad consensus and even by law, been curtailed. However, the inroads into untrammelled speech are now going somewhat further than that, and there is a danger that we are beginning to descend into a world where feeling trumps fundamental rights, including the right to free speech. In universities, that is a hopeless direction of travel.

We should of course not overstate the position. In my old university, the University of Oxford, there is a powerful attachment to the fundamentals of free speech, driven from the top. Oxford's official free speech statement, which I drafted along with Professor Timothy Garton Ash, is explicit that robust intellectual exchange and views that shock, even which offend, are bound to be part of the currency of discourse in higher education, that this is part of the lifeblood of the university and that it should be welcomed in the interests of truth and learning. Of course, that lifeblood is stilled if feeling —a sense of being offended—becomes the determinant of what may acceptably said. That is the risk that I assume the Bill is intended to address, and I think we should be frank and acknowledge that that risk exists.

HEPI's survey was analysed by the think tank in this way:

> "The results show clearly that students have become significantly less supportive of free expression."

I will not run through all the statistics, but some of them are alarming: 79% of students believe that students who feel threatened should always have their demands for safety recognised; 61% say that when in doubt their university should ensure that all students are protected from discrimination rather than allowing unlimited free speech; the proportion of students who agree that if you debate an issue like sexism or racism then you make it acceptable has doubled to 35%; 86% of students support the no-platform policy of the National Union of Students while only 5% say the NUS should not limit free speech or discussion; 39% of students believe that student unions should ban all speakers who cause offence to some students; and the proportion of students who think that academics should be fired if they teach material that heavily offends some students is now 36%, up from 15% in 2016. So the direction of travel is towards a greater censoriousness and the prioritising of feelings and something called "safety" over more traditional free-speech values.

It is noticeable that no-platforming incidents, which newspapers routinely attribute to universities themselves, almost invariably result instead from decisions taken by very small numbers of students at poorly attended student union meetings. However, we have to acknowledge, as some noble Lords have, that this is the country—our country—in which a distinguished philosopher was forced from her university job for expressing, in an entirely lawful and respectful manner, gender-critical views: in other words, for exercising her free speech and her right to academic freedom. The fact that we all now probably suspect that Professor Kathleen Stock would struggle to gain future employment at another UK university without facing protests and boycotts even if she wanted to, which I understand she does not, is deeply worrying. I myself have had the experience more than once of young non-tenured academics lowering their voices when expressing to me views that they fear might not find favour with the bulk of their colleagues. That is troubling.

However, the Bill does not address these problems in the correct way, and I will swiftly indicate why. The first reason is bureaucracy. My experience of additional

levels of bureaucracy is that they are not usually liberalising; quite the opposite—they tend to weigh down those to whom they are intended to administer. Will these new processes free up discourse, or will they do the opposite and encourage sclerosis?

The second is legal action. I can imagine many ways in which the process envisaged by the Government could become a tool of abuse, consuming time and resource to an uncomfortable degree.

Thirdly, the precise role and powers of the director of free speech—having listened to the speech by the noble Lord, Lord Wallace, with such pleasure, I was rather hoping he might apply for the position himself but, frankly, I do not think he would get past the vetting process—it is important that the independence of universities is protected and they do not become the plaything of quangos. Universities to the greatest extent should be self-governing institutions, and I am not attracted by the idea of a director of free speech running around issuing edicts that may or may not be workable on the ground. And how is all this to coexist with university anti-harassment policies? Harassment by speech occasionally exists and universities have to deal with it. It is not clear that Ministers have given sufficient thought to that.

My last reason is Prevent. Many of us argued when the Prevent duty was applied to universities that it created tension with existing legislation requiring universities to uphold free speech. At Oxford, we resolved this difficulty by deciding that the Prevent duty to address so-called non-violent extremism speech—in other words, the apparent requirement contained in the Prevent legislation for universities in some circumstances to block speech that was perfectly lawful, as the noble Lord, Lord Willetts, noted—was to be viewed and applied within the context of pre-existing rights, including the right to free speech. That seemed to work well. Does the Minister agree that, if the Bill is passed, the Prevent duty as it applies to universities will be subject to the free-speech strictures contained in the Bill?

7.40 pm

Lord Moylan (Con): My Lords, it is a privilege to follow the noble Lord and I rise as a rare speaker from the Conservative Benches who neither is nor ever has been a visiting professor or honorary fellow at a distinguished academic institution. I started this debate with quite an open mind but, listening carefully to the speeches opposite, I have been persuaded to give whole-hearted support to the Bill.

First of all, the Bill is not about student protest. When I was president of the Oxford Union many years ago, I had the privilege of welcoming the former President Richard Nixon to give an afternoon lecture. The demonstration was huge, carefully supervised by the local police and monitored by the US Secret Service. I welcomed that; the size of the demonstration was a measure of the success of the event. Even more than the numbers of students packed inside, the demonstration outside showed that you had really hit the button. I am not trying to stop student protest, nor is the Bill.

Instead, to understand the thrust of this Bill, it is helpful to start with one of the most perceptive, and one of my favourite, quotations from the late Lord Keynes. Since this is a debate of learned quotations, I hope noble Lords will forgive me if I read it to them:

> "Practical men who believe themselves to be quite exempt from any intellectual influence, are usually the slaves of some defunct economist. Madmen in authority, who hear voices in the air, are distilling their frenzy from some academic scribbler of a few years back."

Indeed, I say as an aside to the right reverend Prelate the Bishop of Coventry, the whole debate around the Reformation was, in effect, framed by the academic scribbler he referred to, St Augustine of Hippo, some 1,100 years earlier, and the rather overexcited interpretations of those writings was still being worked out by a junior academic at a recently founded university lost in the forests of eastern Germany at the time.

The point I want to make is that academic thought has a real influence on social change, even if the time lag—as Lord Keynes said, it might be a few years or decades—is very significant. That is a really important point to take hold of. To take it a step further, taking their guidance from a contemporary of Keynes, Antonio Gramsci, activists are tempted in recognising this to seek to capture that academic podium precisely because of its long-term influence and, in doing so, to seek to deny it to others. That is exactly what many of us feel has been happening in our universities over the last decades.

Because of the shortage of time, I will not list examples. The noble Lord, Lord Macdonald of River Glaven, the noble Baroness, Lady Fox of Buckley, and others, have given many examples both of incidents and changes in attitude which illustrate what I think is going on and what is such a deep cause of concern to many of us. Noble Lords on the opposite Benches have said repeatedly that these incidents, which they admit are objectionable, are very rare. However, it is not the frequency of the events we should be looking at but their egregiousness. Their rarity could be taken as an example, proof or evidence of the success of the policy I have mentioned being pursued. As the noble Baroness, Lady Fox of Buckley, has said, the punishment is the process. As the noble Lord, Lord Johnson of Marylebone, said in relation to Chinese influence, self-censorship is the response. So, of course, if the policy is being successful, you would expect incidents to be rare. That in itself proves nothing.

This Bill is an attempt to rectify the balance in all of that. While it is probably inevitably ham-fisted, it none the less deserves our support in principle. It may be capable of certain improvements. I suggest two. I was very struck by the remark of the noble Baroness, Lady Fox of Buckley, that we should address the plurality of objectives that we impose on universities. A number of them were mentioned by the noble Lord, Lord Macdonald of River Glaven. We should address them by trying to create some priority among them: some are more important than others. I agree with the noble Baroness that academic freedom should perhaps be put at the top of that tree as an overriding priority, not simply competing with lots of others, which both confuses the leadership of universities and, equally, makes it easy for those who wish to exploit the situation to escape by running around different competing priorities. An amendment to that end would be very welcome and would provoke a very interesting debate.

[Lord Moylan]

The second area the Bill is wholly silent on, and where an amendment would certainly provoke some interesting debate, is funding. The Bill, as far as I can see, says nothing about the influence of funding on shaping academic debate and discussion and how capable it is of potential abuse. I mean both funding within the university and funding, usually on a much larger scale, from central funding councils making grants to support various areas of research. We might well want to see amendments to make that funding more transparent and show that it was balanced—I am not talking about funding flat earthers or people like that, but, within the limits of a sensible academic debate, making sure that people are being funded in a balanced and sensible way.

I welcome the Bill's general principle and take the view that it could be strengthened. It would be a great mistake to try to oppose it by digging into the weeds. We need to see the trees and the forest, and to understand what we need to do.

7.47 pm

Lord Sikka (Lab): My Lords, it is a great pleasure to follow the noble Lord, Lord Moylan. I declare my interests. I am an emeritus professor at the University of Essex and the University of Sheffield. I have spent some 43 years in the higher education sector. I have spoken at academic venues all over the world and I have welcomed scholars and other speakers from all over the world.

I just cannot see the need for this Bill. I have not encountered the problems this Bill is trying to deal with. There is more diversity of views on university campuses than at party-political conferences, but I do not see the Minister trying to introduce the notion of free speech for party conferences. Maybe because the Government's problem is that they are really attacking civil liberties and clamping down on dissent. After all, young people have to learn to express their views and they just do not like it.

The Government claim that the Bill protects free speech, but there is no indication in the Bill or the Explanatory Notes, as far as I can see, of when free speech crosses into hate speech. What are the boundaries? When does one become the other? Free speech is a social construct; it is always in the process of being made but is never finally made. It is shaped by contemporary discourses. On that basis, I am willing to argue against racism, but I will never provide a platform to anybody who is willing to argue for racism. Does that make me unbalanced? I doubt it. I am trying to prioritise social justice over some vulgar version of free speech, and the two inevitably clash. I hope the Minister will be able to tell us how we mediate this clash—how does the Bill deal with this?

In his introductory remarks, the Minister said that the Bill strengthens freedom of speech and academic freedom, but I can find no evidence of this in its proposals. Academic freedoms include freedom of inquiry, investigation, publication and dissemination, and these are all under threat from the funders and the Government. I will give some examples. Too many funding contracts include clauses that give funders the final say on whether research can be published. They can and have blocked, in subtle and not-so-subtle ways, the publication of unwelcome findings—they just do not like it.

A classic example is a pharmaceutical company that funded a researcher to compare its branded thyroid drug with generic competitors. The researcher found that the generic products were just as good as the expensive branded products. The publication of that research would have jeopardised the funder's sales and profits, so the drug company went to incredible lengths to suppress the research, including taking legal action against the researcher and the university to prevent them publishing the findings. I do not see the Government outlawing any of this or dealing with that problem in the Bill.

Over the years, several studies have focused on links between cancer and passive smoking, and tobacco companies have secretly funded research specifically designed to refute these links. They design the research questions and collect and provide the data, and, in the final analysis, their employees write parts of the paper, which has an academic's name on it, so that they can gain political advantage from the research.

Industry funding drives researchers to study questions that do not upset the funders, which often means that they focus on maximising benefits and minimising harms related to the particular funder's products or services. That is unacceptable. Uncomfortable questions are simply not asked. I am an accountant, and you would be hard-pushed to find an industry-funded piece of academic work that examines audit failures in any depth—there are not many studies on it, because people know that they will not get the funding if they want to do that kind of research.

The Government themselves have eroded academic freedoms. In November 2020, the *British Medical Journal* published an article titled:

"Covid-19: politicisation, 'corruption,' and suppression of science".

It documented four instances of government suppression of research during the Covid pandemic. In one case, the Government procured an antibody test that fell short of the performance claims made by the manufacturer. Researchers from Public Health England and collaborating institutions pushed to publish their study's findings before the Government committed to buying a million of these tests, but they were blocked by the Department of Health and the Prime Minister's office. Subsequently, Public Health England unsuccessfully attempted to block the *BMJ*'s press release about the research paper. The key issue here is the conflicting commercial interests and consultancies of Ministers and their advisers—they just did not want to see this piece of research.

I will give a personal example. Some years ago, I secured a small grant from the Institute of Chartered Accountants in England and Wales to examine the resignation letters submitted by company auditors. By law, they have to say whether there are circumstances in connection with their resignation that shareholders and creditors need to be aware of. This was a big study. Only 2.5% of the auditor resignation letters at plcs were accompanied by any statement listing the reasons. Almost all filed a nil return, even though there were

headlines and front-page news stories about scandals within days of the auditor resigning. There is massive legal non-compliance. We submitted the findings to the Institute of Chartered Accountants in England and Wales, but it was not happy about them. There was no correspondence, and it was all done on the phone: "We will tell you", "We will come back to you, and then you can come back to us". Years and months passed by, and it never published the information. I have been in the game long enough, so, in the end, I knew what to do: I found alternative means to publish papers from this—but not everyone can. I never went back to any accountancy bodies for research grants again.

My point is that the Bill does nothing to check the funders' influence on academic research, and it completely fails to advance academic freedoms. I hope that the Minister will give serious thought to this is. If not, I will consider tabling some amendments to further explore these points.

7.55 pm

Lord Stevens of Birmingham (CB): My Lords, I declare my interest as an honorary fellow of Balliol, my former interest as head of the largest employer of graduates in this country, and perhaps even my future interest as the parent of an 18 year-old, hopefully heading off to university next year.

Parliament is right to want to protect academic freedom and free speech on campus. We have heard specific cases of concern today, and there is a problem that needs to be nipped in the bud. But we do not need battle slogans from the culture wars. Any legislative proposals need to be carefully calibrated because there are complex and competing considerations.

We have heard today that conflicts over academic freedoms stretch back through history. The noble Lord, Lord Wallace, started the clock at 1968, the noble Lord, Lord Moylan, mentioned the Reformation, and the right reverend Prelate the Bishop of Coventry mentioned St Augustine. I am reminded that our oldest university, Oxford, predates Parliament itself and Magna Carta. In 1377, John Wycliffe, translator of the Bible, found himself no-platformed by Pope Gregory and dismissed from the university. As a student, I remember looking out at the Martyrs' Memorial, where Cranmer, Latimer and Ridley were "cancelled" by Mary Tudor as they were burned at the stake. In 1683, the books of John Milton, our greatest advocate for freedom of speech, were not subject to a trigger warning but burned in the Bodleian. So history tells us that these debates go back a long way.

History also teaches us that the greatest threats to academic freedom have generally come not from within universities but from overbearing theocracy and an overreaching state. This remains true around the world today, and it is not a left-versus-right issue. The Republican Governor of Florida is currently trying to rig academic appointments and gag professors. Authoritarian regimes of all ideological hues cannot stand independent universities, which is why China, Hungary and Iran all score badly on the global Academic Freedom Index. Subject to the important points made by the noble Lord, Lord Johnson of Marylebone, and the noble Baroness, Lady Shafik, this is why Clause 9 is, in my view, right in principle to require transparency about our universities' international funding from countries that do not respect academic freedom.

However, that concern about government intrusion is also why we should be judicious, nuanced and restrained before we impose more state regulation and political control on our universities. As was pointed out, in your Lordships' recent debate on the Schools Bill, a number of former Conservative Education Ministers objected to a centralising power grab by the Department for Education. This Bill suggests that that was not a one-off aberration.

Since this is Second Reading, it is worth considering the underlying principles at stake. First, we need to consider whether the Bill yet satisfactorily combines free speech protections on the one hand with safeguards for academic rigour on the other. Universities promote academic free inquiry because it contributes to their distinctive mission, which is to advance knowledge and education through structured debate, based on reason and evidence. Unlike Speakers' Corner in Hyde Park, Twitter or the op-ed pages of a newspaper, universities have a distinctive responsibility to instil respect for established facts and evidence-based knowledge. It is a fundamental epistemological misconception to argue that the mission of universities places them under some sort of obligation to give airtime or credence to those who argue, for example, that there were no gulags in the Soviet Union, that vaccines cause autism, that the *Protocols of the Elders of Zion* are genuine or that intelligent design explains the origin of the universe. I say to the noble Baroness, Lady Fox: that is not viewpoint diversity, that is crank conspiracy and licensed idiocy. The Minister for Higher Education asserted in the Commons that this is not what this Bill will produce. Here, in your Lordships' House, we should consider perhaps clarifying amendments to ensure that it does not.

The second question is the one my noble friend Lord Macdonald raised a moment ago: are universities striking the right balance between challenging discussion and inclusive participation? If not, will the Bill help or hinder? Universities have to weigh conflicting goals and legal obligations. Universities are right to try to ensure equal participation for all their students, because in an academic setting, it is the quality of reasoning and evidence that counts, not whether you are Jewish, black, female or gay. White supremacists and religious fundamentalists who regard some students as inherently inferior are, therefore, themselves intrinsically incompatible with the proper functioning of a university.

On the other hand, many academics worry that claims for identity-based protection are increasingly being weaponised, with the risk that universities become so-called sanctuaries for comfort. This afternoon, we have heard statistics from the Higher Education Policy Institute survey quoted extensively. I will repeat a particularly salient data point raised by my noble friend Lord Macdonald: 36% of students believe academics should be fired if they teach material that heavily offends some students—a proportion which has doubled in the past six years. There is also accumulating scientific evidence, including from randomised controlled trials, that trigger warnings and the like may actually harm, rather than protect, survivors of past trauma. So we

[Lord Stevens of Birmingham]
need a course correction if we are to avoid spiralling towards the poisonous antagonisms now paralysing so many US college campuses. In doing so, however, we need to tread with care. As the Bill stands, a new politically appointed commissar in the OfS would be handed sweeping powers to oversee free speech and academic freedom in this country. The Bill has completely inadequate safeguards on how that post is appointed and how the new role will operate.

Furthermore, as the noble Lord, Lord Willetts, rightly argued, if the OfS is to have new regulatory oversight powers, there is no need to create competing, costly and complex alternative mechanisms via the courts. The Department for Education's revised impact assessment, at page 24, laughably and ludicrously pretends that creating a new statutory tort will cost nobody anything ever. In the real world, Clause 4, as currently drafted, will ensnare our universities in vexatious, partisan and pointless litigation for years to come. At a time when universities' real-terms tuition funding is being so heavily squeezed, every extra pound they have to spend on lawyers is a pound less for students. As we heard earlier, at a time when the courts in this country are already overwhelmed—with thousands of rape cases, violent crimes and civil claims waiting years to be heard—it makes no sense to divert scarce judicial resources to second-guessing both the Office for Students and universities themselves.

In summary, my view is that the Bill is going to need thoughtful and sensitive amendment to avoid doing more harm than good.

8.04 pm

Lord Desai (Non-Afl): My Lords, I must apologise for going in and out of the Chamber while other noble Lords were speaking; I had not timetabled for all the business that happened between Oral Questions and the start of this debate.

I will first say that I happen to be a martyr in this struggle for academic freedom and freedom of speech. I was a lecturer at LSE in the academic year 1968-69, when at least two of my colleagues got sacked. Do not for a moment believe that we always had academic freedom in this country; nor should we believe that there is academic freedom in the United States, despite the first amendment and all that. The teacher who supervised me—whom I shall not name—had to leave the university overnight because of McCarthyism. He had to come to Oxford for shelter for a few years before he could go back to America. He was told, "Just leave the country and don't ask any questions before you get called by the state legislature for your views." He was an econometrician and a mathematical person; he was not even like me, someone with mixed thoughts. We must always ask for some protection.

Obviously, when you are old, you do not like what the young are doing; you think they are completely out of kilter and should be stopped from doing whatever they are doing. Notwithstanding that, I feel that there is a problem with academic freedom. From what I read in the newspapers, there is a problem with cancel culture. This clearly includes the idea that, if you discuss issues of gender or sex, there are bars to discussing those any further. It happened to me: I shall not name the person who stopped me, but when I was discussing International Women's Day in a debate in your Lordships' House and tried to make a distinction between people who are born women and those who have chosen to be women, someone immediately got up and said, "Stop this now; don't go any further. You're not allowed to go any further." I thought that was all right and sat down. It did not really matter; I was not saying anything profoundly original.

I think there is a climate where there are certain topics which cannot be discussed. It used to be the case, again in the 1960s, with a man called Professor Eysenck who used to teach somewhere in south London that whenever he appeared at the LSE the most left-wing of the students used to want to prevent him from speaking. I was one of the few people saying: "Let him speak. Speaking does no harm to anybody. He is just expressing an opinion."

The whole point is that people think speaking causes harm and speaking itself is an offence. This has happened with JK Rowling and the woman at Sussex who was a professor and had to leave.

I think there is a problem. Now, the question really is: does this Bill solve it or does it create other problems? I think that is a matter of detail; it is not a matter of principle. Even if it was true that academic freedom was beautifully protected and everything was fine, it would still not do any harm to have a law passed.

The question to examine is not whether the Bill is necessary but whether we can improve it so that it does more good than harm. It is our duty as the elderly House which has lots of talent in various ways: the people here who run universities, who have been to universities, who are free-thinking people. Let us get together and construct a solution to this problem which does as little harm as possible and as much good as possible.

I am somewhat worried about this thing about universities and foreign money. It almost looks to me like xenophobia, as if all foreign money is suspect and foreigners are not like us; therefore, they are not good enough. If they are giving money, why are they giving it?

I remember I had tutees from China in the great days of Mao. They came and I was able to subvert them. I thought that it was very good that they were there because I was able to tell them how they could think in a way independent of the way they were taught to think. I do not know what happened to them later on.

The fact that people from foreign countries with dubious prospects come to our universities is no problem. Our task is to make them think better, to think freely. Let us make quite sure that the universities satisfy the requirement of economic freedom and protect freedom of speech but, beyond that, let us not interfere too much and ask, "Why did you admit this man from Russia?" We normally give them peerages, but that is not always the right thing to do.

Our task is to make quite sure that our universities are safe to do what they want to do and people do not have to leave or resign or be blackballed just because they have a view which a noisy minority may not like. It is a Bill which we ought to improve and let us go ahead and improve it.

8.11 pm

Viscount Eccles (Con): My Lords, in following the noble Lord, Lord Desai, I agree with him that the Bill is attempting to deal with very clear problems, but I am not sure it is dealing with them as a matter of detail. I think it also treads on the ground of principles. In following the noble Lord, Lord Desai, I am very conscious of the speech from the noble Lord, Lord Stevens, which I thought was an extremely good exposition of the position.

My question at this late stage in the debate in thinking about whether the Bill will improve the situation for freedom of speech is to wonder about the present regime. It depends predominantly on, I think, Section 43 of the 1986 Act and, of course, on the provisions of the 2017 Act, which set out the OfS.

It is interesting to look at the general duties in Section 2 of the 2017 Act. The first one is

"the need to protect the institutional autonomy of English higher education providers".

I suppose that we agree with that.

I am not absolutely certain that every provider of higher education quite appreciates the importance of the word "autonomy". I have a feeling that some providers, in their evidence that led to the Bill, are looking for some shelter or some cover, and my concern is not to give them that shelter or cover, and not to give up on the general duty to protect institutional autonomy, because it seems to me that, for a functioning democracy to work well, it is extremely important that we have autonomous institutions between Parliament and the people. I am not at all clear to what extent it is part of Parliament's duty or, indeed, in Parliament's interests, to get directly involved in trying to solve some of the problems that have been articulated this evening.

Indeed, Section 2(8)(a) of the 2017 Act, under "General duties", which goes somewhat beyond the original list of eight duties, says that the OfS must have regard to

"the freedom of … providers … to conduct their day to day management in an effective and competent way."

The freedom and indeed the duty to manage day-to-day affairs goes back a long way in our post-war history. It goes back, in fact, to Herbert Morrison and his control, on behalf of Attlee, of the nationalisation programme, where the distinctiveness of day-to-day management was set up and was extremely important to all of us who dealt with those institutions subsequently: on the whole, it worked extremely well. This leads me to say that Parliament should be very careful about eroding that freedom to conduct day-to-day management.

So, in thinking about these problems and thinking about the Bill, which is after all a big insertion into existing legislation—if and when it becomes an Act, it is not actually going to be a separate Act; it is going to be an insertion into the existing Act—we should be very conscious of the fact that it may be that this is not really a matter for Parliament when it comes to how we are going to deal with the problems of today and preserve the freedom of speech. I think we should have one more big effort to say to the higher education providers, "This matter is really up to you. There is sufficient legislation to enable you to carry out these duties, and we see it as being a preferable way of conducting business only to do those things that, after suitable consultation and pre-legislative scrutiny, we agree mutually should be done, rather than that anything is imposed upon you because we have identified a problem and, in our search for votes, we want to put something to Parliament without sufficient care and consideration."

8.18 pm

Lord Moore of Etchingham (Non-Afl): My Lords, like many noble Lords, and indeed like the noble Viscount, Lord Eccles, who has just spoken—my instincts are as he expressed—I have a certain prejudice against this Bill. That is how I originally approached this matter. I felt that free speech is so deep-rooted in the life of our universities that it needs no legal protection. I feared that statutory intervention in this area could prove cack-handed and, indeed, counterproductive. The noble Lord, Lord Willetts, reinforced that with his point about the online harms Bill: the contrast between that and the freedom of speech Bill seemed to be a very fine example of that doctrine of cakeism for which our Prime Minister is known—having your cake and eating it; doing two opposite things at once.

I have thought about this quite a lot, and I have come to think differently and to feel more strongly in favour of the Bill, for two reasons. The first is a matter of historical fact. We need to recognise that even our most ancient universities have not invariably upheld free speech. There are innumerable examples of this, but one that strikes me is that 150 years ago, roughly speaking, John Henry Newman, the future Cardinal Newman, famously converted to Rome. That is a very important event in the history of Christianity, but what is not remembered is that one of things he had to do when he did that was to resign his fellowship of Oriel College, Oxford. At that time, one could not say anything that denied Anglican beliefs if one worked at the University of Oxford. That is not an incredibly long time ago, so the freedom of speech that we hold so dear is actually something that really came about only in the late 19th century in our universities. By the same token, if it came about quite late, it could also go away quite easily: I do not think freedom of speech is necessarily as deeply ingrained as we might imagine.

But my second and more urgent reason for coming round to this Bill derives from my recent study of what has been happening in Cambridge. I do think that it is important to go through in some detail what actually is happening in universities in order to understand this. I should explain that Cambridge—I do not know if this counts as declaring an interest—is my own university, and many members of my family have been there. Indeed, my great, great, great aunt, Barbara Leigh Smith Bodichon, was the co-founder of the first women's college, Girton. I love the place dearly, but I must say I have become alarmed about it.

More than two years ago, through a bit of journalistic research, I found out that Jesus College's China Centre, far from providing academic study of that great nation, was pumping out what amounted to Xi Jinping propaganda. Its website used his own slogan "national rejuvenation" to praise his work. It gradually emerged as I started to ask more questions that the China Centre was financed by Chinese regime money and

[Lord Moore of Etchingham]
never invited critics of the Chinese Communist Party on to its platform. By this time, Covid was spreading from China throughout the world, but the China Centre had nothing to say. Had its silence, I wondered, been bought? I think perhaps it had—an astonishing thing that it could have happened in a great university. I must say I am glad that new Section 69D, I think it is, in this Bill—though I understand the worries of the noble Lord, Lord Johnson, about the detail of it—will make sure that there is provision so that we can understand if money is coming from foreign regimes. That is very important, particularly in the case of China.

I further discovered that this engagement with a communist regime was not the frolic of one college but was strongly backed by Cambridge's vice-chancellor, Professor Stephen Toope, who had himself spoken in Beijing about his admiration for President Xi's polices. I found that all my inquiries about these matters were fiercely resisted by the university and college authorities, I have never to this day been allowed to interview or speak to the director of the China Centre, Professor Nolan.

So it was in this context that I became interested in the universities' current attitude to free speech. In 2019, the controversial conservative thinker Dr Jordan Peterson had had the offer of a visiting fellowship withdrawn because it was said his views might upset students. But on the other hand, Dr Priyamvada Gopal, a fellow of Churchill College, was very differently treated. After she was criticised online for tweeting the words "White Lives Don't Matter", she was immediately made a professor. Not long after that, in December 2020, Professor Toope promulgated a new definition of free speech which he wanted the university to adopt. It insisted that freedom of speech must be qualified by the need to be "respectful" of the opinions and "the diverse identity" of others. Freedom of speech was no good, he said, if people were

"made to feel personally attacked".

Critics of Professor Toope's approach did not, of course, support personal attacks, but they did point out that if being personally attacked was to be defined by the feelings of the alleged victim, then the effect would be to give any objector a veto on free speech. Despite backing for the Toope definition from the university establishment, the dons, led by Professor Arif Ahmed of Caius College, defeated it in a proportion of four to one, and the word "respect" in the Toope definition was replaced by "tolerate", which is exactly right.

Now if that had been the end of it, I might have conceivably been voting "Not content" tonight, because self-correction would have prevailed without the need of law, but I was struck by what happened next. Professor Toope apparently accepted the revised definition, but six months later the university suddenly announced what it called a new reporting tool. This provided for the anonymous denunciation of those accused of "racism, discrimination, and microaggressions". Its definition of racism included—

"a system of advantage that sets whiteness as the norm … and promoting (implicitly or explicitly) being white."

If racism and whiteness were to be equated, some dons realised, no white person could ever be guaranteed freedom of speech: any exercise of that right could, by definition, be ruled racist. There was a fearful row about it and the Cambridge authorities muttered about how a template from other universities had somehow entered "certain ancillary material" into the system, and the reporting tool was withdrawn. However, in November, a Cambridge college—Downing—tried yet again, criticising "whiteness" and seeking to police not only conduct but beliefs. This document was slightly modified under protest but not withdrawn.

As the noble Baroness, Lady Fox, mentioned, this month, Cambridge University's HR department put out what it calls a "mutual respect policy". Although it insists that it contains nothing contrary to freedom of speech, it provides for mandatory training courses in which the concept of "respect" can be suborned to enforce or suppress certain opinions. I am afraid that, in many workplaces, HR is now becoming a politicised means of impeding free speech rather than caring for the needs of employees. I have taken your Lordships through this sequence because it shows a pattern to be found not only in Cambridge but across higher education, using co-ordinated materials and similar ideology.

Before the end of the last century, the concept of institutional racism was officially recognised. Today, I fear that a culture of institutional repression has grown up, most severe in the place where it should be least expected: our universities. It rarely attacks free speech directly but that is its intended effect. It exploits our proper concern to achieve the fair treatment of individuals —especially ethnic minority individuals—as cover for its purposes. I have witnessed how the leadership even of a university as great as Cambridge has allowed this to happen. I feel that Parliament is well justified in stepping in to arrest this repressive trend before it is too late, and I therefore support the Bill.

8.27 pm

Lord Strathcarron (Con): My Lords, I declare an interest as a publisher, often of higher education academic titles, which increasingly are digital-only and therefore easier to take down or cancel than physical books. I will come on to the relevance of that in a moment. Luckily for us all, as I am the last seven-minute speaker, a lot of the points I wanted to make have been expressed very eloquently by the noble Lord, Lord Willetts, and the noble Baroness, Lady Fox of Buckley, so this is a very shortened version of my speech.

Although any encouragement of free speech is welcome, there is an element here of the Government giving free speech with one hand and taking it away with the other. For example, an academic may now be able to lecture on a controversial subject—say, genetic or, heaven help us, gender politics or identity, all of which would come under legal free speech. But if that professor, one of his or her students or the institution posted that online and somebody out there who read it suffered hurt feelings, as they are bound to, and quickly organised a Twitter mob, which is not difficult to do, the Online Safety Bill would classify the content as "legal but harmful"—what a minefield those three words are—and outsource censorship of it to Silicon Valley AI bots, in exactly the same way as the CCP outsources its censorship of WeChat and Weibo, the Chinese equivalents.

In Committee, I hope we will be able to future-proof the good parts of the Higher Education (Freedom of Speech) Bill from the bad parts of the Online Safety Bill.

8.29 pm

Lord Storey (LD): My Lords, this debate started with the noble Earl, Lord Howe, talking to us about the importance of free speech at our universities; he used the word "discourse". He told us briefly what the Bill was about—first, putting further duties on higher education, which would be done by a code of practice. The Government are very good at developing codes of practice; they are just not very good at following them. I hope that if this code of practice appears, the Government will make sure that it is followed.

The Minister also told us that there would be a director of free speech. I wonder whether the former editor of the *Daily Mail* will be pushed into this job, or whether the position will be filled in a proper way.

Every single person I have listened to in this Chamber has rightly said how important free speech is and has stressed the importance of free speech in our universities and colleges. Quite a number of noble Lords have referenced Professor Kathleen Stock. I have to say that the way the University of Sussex handled that matter meant that it was not the University of Sussex's finest hour. However, very few Members have mentioned all the other people who have been shouted down, abused, insulted and, in some cases, lost their jobs—through the institution called social media.

In a liberal democracy, citizens have, thank goodness, the right to speak their minds on the great and small issues of the day. Whether that is on a soapbox at Hyde Park Corner or in a lecture theatre in a university, the hallmark of our society is freedom of speech. Fundamentally, it is the right that makes our universities among the best in the world. We must remember, however, that with this great freedom comes great responsibility to uphold the law of the land. You can speak your mind on the most controversial issues, but allowing your argument to devolve into, for example, racism or xenophobia, is patently unacceptable and so it is also unlawful for individuals or organisations to hide behind freedom of speech while inciting hatred and violence. Speech has its boundaries. Protecting the human rights of some individuals should not entail infringing the rights of others.

There will be occasions when universities judge that in the interests of the safety and well-being of their collegiate body it is not advisable for a particular speaker to lecture on campus as their presence may either dangerously inflame passions or otherwise threaten students. It is a difficult decision to make, but it is a power that Governments retain when they decide to refuse entry permits for certain overseas visitors who are invited to speak at events; likewise, it is a decision that must remain the prerogative of individual universities, which have a duty of care and well-being for all their students. I fear that if passed, the Bill will strip those institutions of this ability to make those important decisions on behalf of their students' safety and will subject universities to unending and needless lawsuits.

In truth, the Bill is just not needed, as my noble friend Lady Garden said. We have heard a lot of noise from the Government about how free speech is being curtailed on university campuses, speakers are being no-platformed and students are apparently unable to speak their minds. However, the Office for Students has found no evidence of free speech being systematically suppressed on campuses. Further, of all the speaker requests made to universities from 2019 to 2020, only 0.21%—I stress that—were rejected. Could the Minister tell me where is this "epidemic of suppression" the Government have been droning on about? Why are we spending hours on this legislation, subjecting university authorities to a potential landslide of civil suits and rendering universities less able to safeguard their students, all to rectify a problem that, if it exists, is very minor—0.21%. Is it really an issue?

The Bill sounds like a dog whistle for right-wingers who feel that universities are hothouses for left-wing thought and action. They are the very same right-wingers who shout "foul" when critics take aim at their ideas, be it the British Council, as my noble friend Lord Wallace said, or the BBC et cetera. The Government should not be entertaining this group of people at all, not least with a Bill such as this which opens up a Pandora's box for our already stressed universities.

Those same stressed, and now threatened, universities are on the cutting edge of research, often doing world-leading work in conjunction with our international partners. It is vital this work continues, so I welcome the Bill's inclusion of new, easier reporting requirements that will allow more seamless research agreements between our universities and our most trusted friends around the world. But the Bill could go further. We should also raise the reporting threshold for such agreements, so that small partnerships with other friendly nations are not needlessly held up by red tape.

Like the noble Lords, Lord Johnson of Marylebone and Lord Stevens, I welcome the addition to the Bill of countries exempt from the before-mentioned reporting standards. This will ensure that research partnerships with our most trusted allies will be unencumbered by the regulatory friction that can so often stall the best of agreements. Is the Minister worried that enforcing reporting requirements on non-exempt countries might have a chilling effect on foreign investment in our universities? I should be very appreciative if he could meet me and other concerned Peers at a later date to discuss this issue.

In closing, the Bill does more harm than good for our nation's most important centres of education. Far from encouraging unfettered speech, I think we all need to recognise that language is a powerful weapon, and we should all be aware of the harm it can cause. We live in an age when we are, I hope, more aware of people's feelings and of how words can affect people's well-being and mental health. Protecting hurtful speech in the way the Bill does is not conducive to a more understanding society.

8.37 pm

Lord Collins of Highbury (Lab): My Lords, I was not going to declare an interest until I heard the contribution from the noble Lord, Lord Cormack,

[Lord Collins of Highbury]
which reminded me that I too had been a visiting parliamentary fellow at St Anthony's, which I enjoyed very much. I was a joint fellow with a Conservative Peer and we planned a schedule of lectures with competing arguments, so I understand the value of challenging thought and ideas—it is absolutely what makes for progress.

As we heard in the excellent introductory speech from the noble Lord, Lord Wallace, the Bill has had a fragmented and bumpy ride through Parliament. Not many Bills would be introduced in May 2021, and complete their Committee stage in September of that year, and then finally get to Report and final stages on 13 June this year. What a long ride it has had.

The Bill is primarily searching for a problem. Sadly, my noble friend Lord Blunkett could not be with us today, but last week he put it to me that it is all about gesture politics. He said it is "Putting up an Aunt Sally that doesn't really exist and knocking it down again". What is the evidence? We have heard views about that. The report of the Joint Committee on Human Rights into free speech at universities in 2018 found that there was no major crisis of free speech on campus. As the noble Lord, Lord Storey, highlighted, the Office for Students said that 0.21% of invitations were rejected. We have heard a lot about the chilling effect, and it has lots of implications; whether it be for financing, through the number of foreign students, or for the number of grants, I have no doubt that it influences the response of institutions.

The noble Baroness, Lady Stroud, referenced the UCU evidence. What I found really interesting about the UCU briefing on this matter is that, when I was at university, academics talked about tenure guaranteeing freedom of speech and guaranteeing academic freedom. Now when a student goes to university, half their teachers are on short-term contracts and likely to be sacked for all kinds of reasons. If that is not a chilling effect on academic freedom, I do not know what is. Let us make sure that we look at the evidence.

My noble friend Lord Blunkett also said to me that this is a distraction from what really matters to the sector and to students. Three out of four students are currently worried about managing financially, one in four have less than £50 a month to live on after rent and bills, and 5% of students are using food banks. In my opinion, that is the real crisis in our universities. Of course, the challenges faced by students reflect what is going on in wider society. As my noble friend Lady Thornton said in her opening speech, unlike the Conservatives over the years, Labour has always championed free speech. It was a Labour Government who introduced a law guaranteeing freedom of expression.

What have we got here? We have a Bill that has gone through the Commons and that will create a director for freedom of speech and academic freedom on the OfS board, as well as a new OfS registration condition on free speech, strengthening an existing duty known as Section 43. It also introduces a statutory tort, giving private individuals a right to seek redress for loss incurred as a result of a breach of Section 43, and so-called enhanced contractual protections for academics with regard to academic freedom. It is very difficult to see that given the stats which I have just mentioned. The Bill also has the addition of a duty to disclose overseas gifts and contracts affecting freedom of speech—which no doubt has persuaded some noble Lords to support it.

Across the House, throughout this debate, I have heard the serious reservations of noble Lords about the unintended consequences of these proposals. I listened with great interest to the contribution of the noble Baroness, Lady Deech, whom I do not often agree with but on this one I completely agree with her. It is those unintended consequences that we should be most worried about. The Bill reflects a top-down, one-size-fits-all approach, which the noble Viscount, Lord Eccles, referred to. It demonstrates a weakness at the heart of the Government and their misplaced lack of trust in the academic community.

I hope the noble Earl will address the concerns raised in the debate, which are shared not only by noble Lords across the House but by the sector. We need to know how the Bill will interact with existing legislation and other duties which relate to free speech and academic freedom, including, as my noble friend highlighted, the proposals to reform the Human Rights Act. Ministers have claimed that the new statutory tort would be a backstop, but what safeguards will there be to ensure that it does not lead to universities having to defend themselves against vexatious and frivolous claims brought by anti-vaxxers, Holocaust deniers and hate preachers?

We have also heard, from the right reverend Prelate the Bishop of Coventry, about the interaction between the role of the OfS free speech complaints scheme and the director for freedom of speech and academic freedom, and how they will interact with existing ombudsman and, as the noble Baroness, Lady Deech, said, the Office of the Independent Adjudicator for Higher Education. We also believe, on these Benches, that there should be a requirement for the new director for freedom of speech to consider competing freedoms when investigating free speech complaints.

The noble Lord, Lord Johnson, raised overseas donations—a late addition to the Bill. As the noble Lord said, will the Government ensure that duties on overseas funding are targeted with risk-based exemptions and proportionate reporting? What sort of extra duties will be placed on universities? We need to have a proper assessment.

I have no doubt that we will return to these issues in Committee. I repeat my noble friend's assertion: we will be tabling amendments to ensure that an independent appointments procedure is used for the post of director for freedom of speech, and also to ensure it is not a party-political appointment. I do hope the Minister will respond to her questions, specifically those about the post being advertised, the job description, and the requirements of the person specification for the job, which does not seem to address what we are being told the job is about. Certainly, with a closing date of 13 July, will we see this appointment being made before parliamentary approval?

Labour will also seek to broaden the definition of academic freedom, to include for example, criticism of institutions, conducting research and joining a union—something that I think is fundamental to a free and democratic society—and will also propose, as my noble friend said, a sunset clause to the legislation.

There is one thing I wanted to return to in more detail. If there is a problem—and I have heard from noble Lords and I accept there are issues to address—is this legislation the best way to deal with it? Surely, adopting and promoting best practice in our universities and with academics and teaching staff is the real answer. We have a sector that leads the world, and I understand the view of Universities UK that it is important that additional legislation and duties placed on universities that seek to address the small number of incidents that we have heard described this evening need to be proportionate. I have heard and read that Universities UK has stated its willingness to work with the Government on the Bill to demonstrate their members full and firm commitment to freedom of speech, which I think I have heard from across this House. But what I find most disappointing about the Government's attitude is they have not really examined the vast array of really good practice. How do we encourage good practice? The Manchester guidelines, the Chicago principles or even Robert French's independent review of freedom of speech in Australian higher education—to name but three—show countries around the world have similar issues, but the point is how they go about addressing them.

If the Government were really interested in promoting and protecting freedom of speech and academic freedom, they would seek to encourage this approach across the sector, as I think was referred to by the noble Viscount, Lord Eccles. It would be far more effective and would not have the unintended consequences that this proposed legislation would have. Such approaches would go a long way to fostering the healthy culture of debate that we all want on our campuses. We have to understand that, sometimes, institutions and student unions will get it wrong. That is the nature of debates on the parameters of free speech, but it is a small price worth paying for a collective and more consensual approach to protecting freedom of speech on campus.

I have heard about the competing pressure on freedom of speech, safe places and respect. As a student 45 years ago—or maybe longer, I suppose—as a young gay person trying to study in that environment, actually, disrespect did turn into hate speech, and hate speech turned into violence. Do not think of words as simply a painful experience, if they encourage violence. That is what we experienced with Section 28—words that said that you cannot preach something in schools because it is a danger to children. That was in Section 28, and it is what we must guard against. Respect is about respecting all; it is not just about a difference of opinion. I want debate but I also want to protect individuals.

8.52 pm

Earl Howe (Con): My Lords, this has been a memorably good debate. I thank all speakers for the knowledge and personal insights that they brought to it. I am grateful particularly to those noble Lords who felt able to give the Bill a broad welcome and I look forward to their constructive support as it proceeds.

As we heard, by no means all who have spoken were so positive. Some, such as the noble Lords, Lord Wallace of Saltaire and Lord Collins, the noble Baronesses, Lady Thornton and Lady Royall, and my noble friend Lord Willetts are clearly very troubled by the Bill. So it is perhaps appropriate for me to start by addressing some of the deeper-rooted concerns that were expressed.

From the noble Lords, Lord Wallace and Lord Collins, the noble Baroness, Lady Garden, and others, we heard genuine concern that there is no substantive problem to be addressed and that any chilling effect or cases of no-platforming are being exaggerated, possibly even for political reasons. I understand these concerns, but let me try to allay them. The reality is that one needs look no further than the available data and information from the higher education sector itself to see that there is a problem.

In October last year, 200 academics wrote to the *Times* to report that they had received death threats and abuse simply for expressing views. They did not feel supported by their universities. One of those academics had expressed an opinion about the need to protect women-only spaces, such as refuges, prisons and hospital wards. However, this brought her into conflict with students and staff, who saw her opinions as transphobic. It also caused her to be compared to eugenicists and white supremacists, in addition to being called a bigot. This is just one case among those 200 staff who wrote to the *Times*.

Several studies, surveys and reports highlight instances in which freedom of speech and academic freedom are being curtailed in the higher education sector. A 2019 King's College London report showed that 26% of students think violence can be justified in preventing someone espousing hateful views. A similar proportion reported not feeling free to express their views at university for fear of disagreeing with their peers.

There are also high-profile cases in which academics have been harassed for expressing perfectly lawful views. The noble Lord, Lord Macdonald, cited the case of Professor Kathleen Stock, who resigned from her post at the University of Sussex due to fears over her personal safety after harassment from students. There are many similar examples. Professor Rosa Freedman's door at the University of Reading was drenched in urine. At Oxford a left-wing feminist academic, Selina Todd, had to be given security guards after threats to her safety. Raquel Rosario Sánchez, a PhD student at the University of Bristol, was subjected to a campaign of intimidation by trans activists after agreeing to chair an event, held by Woman's Place UK, called A Woman's Place is Speaking Out. I could go on.

There is without doubt a problem with the suppression of free speech on university campuses. I want to be very clear: it is not confined to either the right or the left of political opinion. This leads me on to my next point, which is to address concerns that the introduction of the Bill is politically motivated. Students and academics from across the political spectrum have been impacted by the censure of free speech on campuses. From those on the left to those on the right, there is a real fear about airing what might be controversial opinions. The Bill is designed to protect free speech on a diverse range of topics, including minority ones. Freedom of speech and academic freedom are fundamental principles in higher education. This is not about promoting and protecting one political view over another.

[Earl Howe]

I will clarify a further point, prompted by the noble Baronesses, Lady D'Souza and Lady Garden, and mentioned by the noble Baroness, Lady Fox. The Bill is not just about eradicating no platform. It is about creating a wider culture on campus, such that everyone feels able to express their views and challenge those of others, even when those views are unpopular or controversial, and to do so without fear of negative consequences. Everyone needs to be aware that when things do not go as they should, there is a meaningful route of redress for individuals.

The noble Baroness, Lady D'Souza, followed that up by asking: does this not need cultural change, not just legislation? Absolutely, yes. This needs cultural change, and we welcome initiatives by universities, academics and students to do all they can to move in that direction. But as we have seen historically on issues such as gender equality, race discrimination and human rights, cultural change occurs more readily when backed by appropriate legislation.

I turn now to an issue that has given rise to a number of expressions of concern. I listened carefully to noble Lords such as the right reverend Prelate the Bishop of Coventry, my noble friend Lord Willetts and the noble Baroness, Lady Shafik, who are worried that the creation of a new tort, as proposed in Clause 4, may lead unintentionally to a deluge of court cases initiated by vexatious, publicity-seeking pressure groups. Nobody, least of all the Government, wishes to see universities burdened in this way. It may be helpful if I explain why I do not think the scenario that some noble Lords envisage is at all likely.

To succeed with a civil claim, a claimant would need to be able to show that a provider, college or student union owes them a duty of care; the category of those potentially owed a duty of care under the Bill is narrowly defined. They would then need to point to a genuine and material loss they had suffered as a result of a breach of the freedom of speech duties. Those tests are not a low bar, and any claimant who pursued their case vexatiously would certainly struggle to prove it. In the background, of course, a vexatious claimant would be assuming a considerable financial risk, not only in the form of their own legal costs but by being potentially liable for those of the defendant. That is why we believe the tort will be resorted to very much as a backstop. The availability of the free complaints scheme through the Office for Students, which will provide a much easier and more straightforward route to redress, should make litigation unnecessary and therefore unlikely in the vast majority of circumstances.

Setting aside for a moment the concerns around the tort, the noble Lords, Lord Wallace and Lord Storey, and the noble Baroness, Lady Royall, expressed a worry that the wider provisions of the Bill would impact on higher education institutions in terms of administrative burdens. I am the first to agree that unnecessary bureaucracy directly impacts on how well higher education providers can do their job; every pound spent on unnecessary bureaucracy is a pound less that is being spent on teaching and research. However, I am also convinced that if straightforward measures can be put in place to protect our core UK values, it is right and necessary that we do so. We have ensured that their scope is proportionate to the risk. To pick up a point made by the right reverend Prelate, we sincerely hope that providers and student unions will embrace the mission to generate rigorous and healthy debate on campus, understanding how vital it is to academia and our country's democracy.

I turn to the proposal in the Bill to create a new post in the Office for Students: the director for freedom of speech and academic freedom. The noble Baronesses, Lady Thornton and Lady Royall, and the noble Lords, Lord Storey, Lord Wallace and Lord Collins, asked several questions about the appointment of this individual. As has been mentioned, the role was advertised publicly from 13 June 2022. To allay the doubts expressed on that score by the noble Baroness, Lady Thornton, and the noble Lord, Lord Collins, I can reassure them that the Government can undertake preparatory actions in anticipation of full implementation following Royal Assent.

Worries were expressed about bias in the appointments process. Freedom of speech and academic freedom are fundamental principles in higher education, not the preserve of one particular political view. The director for freedom of speech and academic freedom will be appointed in the same way that other members of the OfS are appointed, under the Higher Education and Research Act 2017 by the Secretary of State, and this will be done in the usual way in accordance with the public appointments process.

My noble friend Lord Willetts, who I am sorry to see is not in his place, asked why we need the regulatory route as well as the tort. As he is not here, I will write to him about that and copy the answer to other noble Lords.

The noble Baroness, Lady Royall, argued that the Bill establishes the possibility of simultaneous penalties. It is already possible for there to be a complaint through the Office of the Independent Adjudicator for Higher Education and regulatory action at the same time. The Bill does not change that. These actions perform different functions, with the complaint having the potential to provide the individual with redress but with regulation intended to ensure that provider behaviour as a whole meets its registration conditions using a proportionate approach based on risk.

The noble Baroness, Lady Deech, asked what the difference will be between the Office for Students complaints scheme and the complaints scheme operated by the OIA. While the Office of the Independent Adjudicator for Higher Education will remain the body for general student complaints about providers, the OfS scheme will focus exclusively on freedom of speech and academic freedom. The OfS will offer a complaints scheme for staff and visiting speakers who cannot complain to the OIA, as well as for complaints about student unions also not covered by the OIA scheme. All those who consider that they have suffered because of a breach of the new duties will have access to the OfS scheme, including students.

On a point raised by the noble Baroness, Lady Thornton, and the noble Lord, Lord Stevens, I make it clear that it will be for the OfS to make decisions, not the director personally. It is not unusual for a regulator to be able to consider legal matters when making

decisions; for example, the Charity Commission already does this in relation to charity law. It is also common practice for out-of-court redress schemes to consider legal issues when making decisions around a recommendation of redress. If alternative dispute resolution bodies could not consider legal issues, they would not be able to fulfil their functions. For example, the Office of the Independent Adjudicator for Higher Education does this.

Returning to the issue of political bias—I draw this to the attention of the noble Lord, Lord Wallace—it is important to note that the chilling effect on free speech appears to increase when political views are expressed. Studies confirm that this affects people from across the political spectrum. Policy Exchange polling shows that 15% of those identifying as centre or left are choosing to self-censor. The Government are clear that freedom of speech is not about promoting and protecting one political view over another.

The noble Lord, Lord Sikka, asked how providers are supposed to know what speech is unlawful. The Bill does not change the legal position in this country on what speech is lawful and what is unlawful. It will be for providers, constituent colleges and student unions to determine the lawfulness of speech by considering it in the light of the provisions of criminal law, such as the Public Order Act 1986 and legislation such as the Equality Act 2010. That is no different from the process that they must go through already.

My noble friend Lord Willetts asked whether the Bill was designed to protect all legal speech. Once again, as he is not here, I will write to him about that and copy my answer to other noble Lords. However, I say to the noble Lord, Lord Stevens, that there is nothing in the Bill that encourages higher education providers or student unions to encourage baseless and harmful claims or bad science on campus.

Certain noble Lords suggested that the Government were presenting a confused picture to universities on such matters as anti-Semitism. The example of the IHRA definition of anti-Semitism, also referred to by the noble Baroness, Lady Deech, was mentioned. First, it is up to providers as independent and autonomous organisations to decide on whether to adopt the International Holocaust Remembrance Alliance definition of anti-Semitism. Secondly, the Government do not see a conflict between protecting freedom of speech and adopting the IHRA definition. I believe the Bill strengthens protections for freedom of speech likely to support Jewish students and staff, who, on a number of occasions, have had their speech shut down by others. However, the Government recognise that the adoption of the definition is necessary but not sufficient, and there is more that providers need to do to make sure that instances of anti-Semitism on campus are not tolerated.

I shall comment briefly on the Prevent duty, mentioned by a number of noble Lords, including the noble Baroness, Lady Chakrabarti, and the noble Lord, Lord Macdonald. The Government are clear that the Prevent duty should not be used to suppress freedom of speech. The duty requires providers and constituent colleges, when exercising their functions, to have due regard to the need to prevent people being drawn into terrorism. The legislation imposing the Prevent duty in relation to higher education specifically requires that providers must have particular regard to the duty to ensure freedom of speech and to the importance of academic freedom.

A number of speakers, including the noble Baroness, Lady Deech, referred to the vexed issue of Holocaust denial. I wish to be very clear on this point: any attempt to deny the scale or occurrence of the Holocaust is morally reprehensible and has no basis in fact. In many cases, those who deny the Holocaust also have links to neo-Nazi extremism, anti-Semitic violence and intimidation. The European Court of Human Rights has held that Holocaust denial is not protected speech under Article 10 of the European Convention on Human Rights, and our legislation does not change that. For the avoidance of any doubt, this legislation will not protect those who deny the Holocaust.

The noble Baroness, Lady Chakrabarti, asked about the Bill of Rights and specifically how that Bill and its amendments to Section 12 of the Human Rights Act will affect this Bill. The proposals to strengthen freedom of expression through reforms to the Human Rights Act complement the creation of this tort, which is seeking to give greater protection to free speech as well. If anything, the MoJ proposals only bolster the requirement that universities take steps to ensure free speech.

As a general comment, and in answer to those who have asked how the new duty fits with other legal duties a provider, college or student union may have under the Equality Act or criminal law, the duty to take "reasonably practicable" steps means that providers, colleges and student unions can take account of all their legal duties on a case-by-case basis. If another legal duty requires or gives rise to a certain action, it would not be "reasonably practicable" to override that.

My noble friend Lord Strathcarron was worried about the potential clash between this Bill and the Online Safety Bill. It is perhaps a debate for Committee, but I shall seek to persuade my noble friend that there is no conflict between that Bill and the one before us.

The noble Baroness, Lady Royall, raised the issue of overseas funding and asked why the OfS will ask for information about this pre-emptively. We are ensuring that the scope of the new reporting requirement on overseas funding is proportionate to the risk. We recognise the importance of protecting commercial sensitivities so that the sector does not fall behind its competitors in the rest of the world. We must ensure that the Office for Students has the information at its disposal to enable it to better understand the possible extent of influence from a foreign source at a country level. The reasons for that were well articulated by my noble friend Lord Moore.

My noble friend Lord Johnson, the noble Baroness, Lady Shafik, and the noble Lord, Lord Storey, questioned the level of the proposed threshold for reporting the receipt of overseas funds by a university and argued that the threshold should be higher than £75,000, which is the currently intended level. For now, I have listened carefully to the points they made. The Government have struck what they consider to be the right balance, but this is a matter to be determined in regulations, so there will be ample time to discuss it further.

[Earl Howe]

In answer to the noble Baroness, Lady Chakrabarti, who asked what criteria will determine what overseas funding is acceptable, we continue to welcome foreign investment and donations to higher education as they are a key part of supporting innovation and development within our universities. Through the Bill, we are simply trying to implement measures that help to safeguard our world-leading higher education sector from those who may wish to interfere with our values. I would be happy to meet the noble Lord, Lord Storey, and other noble Lords to discuss these issues.

Time is now against me, as I have just been rightly reminded. I shall write to noble Lords whose questions I have not had time to address, including my noble friend Lord Eccles and the noble Baroness, Lady Hoey, who asked me why the Bill does not cover the rest of the UK. I thank all speakers for their contributions once again. I hope that my responses provided some useful clarification in response to the thoughtful points and questions that noble Lords raised.

Freedom of speech in our universities is under threat: unfortunately, a growing trend aims to prevent anyone from airing ideas that some groups may disagree with or find offensive, and we cannot ignore that. Hence, today, I have set out how the Bill will ensure that freedom of speech is both protected and promoted in higher education. It will strengthen existing freedom of speech duties and directly address gaps in the existing law, introducing clear consequences for breaches of the duties. Therefore, I take pleasure in commending the Bill to the House.

Bill read a second time and committed to a Grand Committee.

Higher Education (Freedom of Speech) Bill

Order of Consideration Motion

9.14 pm

Moved by ***Earl Howe***

That it be an instruction to the Grand Committee to which the Higher Education (Freedom of Speech) Bill has been committed that they consider the bill in the following order:

Clauses 1 to 11, Schedule, Clauses 12 to 14, Title.

Motion agreed.

House adjourned at 9.14 pm.

Grand Committee

Tuesday 28 June 2022

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Lord Beith) (LD): My Lords, 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 resume after 10 minutes.

Local Government (Exclusion of Non-commercial Considerations) (England) Order 2022

Considered in Grand Committee

3.45 pm

Moved by ***Lord Greenhalgh***

That the Grand Committee do consider the Local Government (Exclusion of Non-commercial Considerations) (England) Order 2022.

Relevant document: 3rd Report from the Secondary Legislation Scrutiny Committee

The Minister of State, Home Office and Department for Levelling Up, Housing & Communities (Lord Greenhalgh) (Con): My Lords, this order was laid before your Lordships' House on Monday 25 May 2022, under Section 19(3) of the Local Government Act 1999, for approval by a resolution of each House of Parliament. The order was considered and approved in the other place on Monday 20 June.

The illegal invasion of Russian forces into Ukraine has shocked the world and has been met by unprecedented global condemnation. Soon after the invasion, many local authorities also gave their own public condemnation of the Russian state's action. They were clear they did not want local taxpayers' money to be used to fund this reprehensible attack, and many noted their own intentions to break contracts with Russian-controlled companies. Local authorities are, however, subject to Section 17 of the Local Government Act 1988, which prohibits "non-commercial considerations" playing a part in commercial decision-making. Such non-commercial considerations include, at Section 17(5)(e) of the 1988 Act,

"the country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors".

With regard to Russia and Belarus, this element of the Act is untenable.

This limitation was laid out in the Cabinet Office's policy procurement note 01/2022, which was issued in March. In this advisory note, organisations in scope—government departments, their NDPBs and executive agencies—were asked to review their contract portfolios to identify Russian and Belarusian prime contractors and consider the termination of these contracts. The PPN particularly noted that the Government were actively considering a solution for local government to enable councils to follow the Cabinet Office's advice. Council leaders have rightly been calling for action, requesting a flexible approach for those councils that wish to divest themselves of any dependence on Russian state-owned companies. My right honourable friend the Secretary of State wrote to leaders on 11 March, preparing them to consider their exposure to Russian and Belarusian-owned companies.

Your Lordships will recall that we held a debate on 24 March regarding Gazprom UK. In that debate, noble Lords made clear their desire to amend public procurement rules to align local authorities with the rest of the public sector, so I am pleased that today we are considering this order, which will enable us to disapply the provisions I have referred to at Section 17(5)(e) of the Local Government Act 1988. The order will enable best-value authorities and parish councils in England, if they so wish, to terminate both proposed or subsisting public supply or works contracts, in accordance with the terms of the contract, where either: first,

"the country or territory of origin of supplies to the contractor"

is Russia or Belarus; or, secondly,

"the location of the business activities or interests of a contractor"

is Russia or Belarus.

As council leaders have requested, this order will allow relevant authorities the flexibility to terminate proposed and subsisting contracts should they so wish. It will allow them to take comparable action to central government, as set out in the PPN, and ensure they are not funding Putin's war machine. It is important to note that the Government are not mandating the termination of contracts nor creating new burdens on local authorities. This is a permissive power and the decision to terminate contracts rests with the authorities in question. As the PPN sets out for central government, and as my right honourable friend the Secretary of State has advised local authority leaders, decisions to terminate such contracts should be made on a case-by-case basis, in accordance with the terms of the contract, and only where an alternative supplier can be sourced in line with value for money and affordability, and with minimal disruption to public services.

It is important to note that this policy will not enable these bodies to instigate their own unofficial municipal foreign or defence policies, but will not prevent them from undertaking their own divestment measures where these align with official government sanctions, as in this case.

As I have said, this will not add a new burden to local authorities. Nevertheless, the Government remain committed to engaging with any local authority with concerns about its financial position or service delivery or that may be facing pressures that it cannot take steps to manage locally. I reaffirm that commitment today.

This Government send a clear and strong message: Russia and Belarus should not benefit from public contracts and from the British taxpayer. We condemn Russia's unprovoked, premeditated and illegal war. Across the United Kingdom and at all levels of government we remain steadfast in our support to ensure that Ukraine wins its battle for self-determination and that Russian forces withdraw.

[Lord Greenhalgh]

This Government have introduced financial and investment sanctions. We provide military support, humanitarian aid and lead international efforts to support Ukraine's objectives. We will continue to use all levers at our disposal in central government and, in the case of this order, local government, to cut off funds to Vladimir Putin's war machine and demonstrate that we will not tolerate this abhorrent attack on Ukraine. I hope your Lordships will join me in supporting the proposed order. I commend it to the House.

Lord Jones (Lab): My Lords, I support the Minister in what he has said and thank him for his introduction. I also thank him and his department for the Explanatory Memorandum, which is lengthier than usual, and very helpful. There was an echo of these matters in the Chamber less than an hour ago in one of the Questions, which was about Russia. This order is the consequence of the gangster style of Russian leadership, with its cruel and dreadful impact on the nation of Ukraine.

Time is of the essence. I will pose several questions to the Minister and, if he cannot answer at the moment, I ask that he write. First, does he know how many contracts might be involved as a consequence of his order? Following that, what might be the employment consequences? It is a question of numbers, and some answers on these matters might be helpful. Lastly, can he give an example or two—or more—of the sorts of contracts that shall be terminated? In the departmental consideration of the making of the order, surely examples were brought forward. It might help the whole House if answers to these questions were proffered, either now or later.

Baroness Pinnock (LD): My Lords, I draw attention to my relevant interests as a councillor on Kirklees Council and as a vice-president of the Local Government Association. I support the terms of this statutory instrument, which, as the Minister said, is a reaction to the heinous acts of what has become a murderous Russian regime that is directing its unrelenting firepower on the citizens of Ukraine. As a result, it is incumbent on us to do whatever small act we can to reduce links that might enhance businesses based in Russia or Belarus.

Following on from the questions asked by the noble Lord, Lord Jones, does the Minister know, or can he find out for us, the total value of local government business currently placed with Russian or Belarusian businesses? If he does not have that information, will he write to us and perhaps put the information in the Library? People would widely welcome that information, I think.

When I saw this SI, I thought it demonstrated how overcentralised we have become that we must have secondary legislation to enable local government to make decisions about where it places its contracts. What the Minister said—that there was pressure from local council leaders on the Government to enable this action to take place so that local authorities did not open themselves to legal challenge—proves my point. It spoke to me. For goodness' sake, precious government time has had to be spent on drawing this measure up so that councils can make the sane and sensible decision to stop making new contracts with Belarus and Russia. We need to change that. Perhaps we will get another SI from the Minister in future just to release councils from this burden of insensibility, but clearly I totally agree with what is contained in this order.

Lord Khan of Burnley (Lab): My Lords, first, I refer noble Lords to the register, which details that I am still a local councillor in the finest borough in the country, Burnley Borough Council. I thank the Minister for his speech outlining the sensible and pragmatic proposal before us, which responds to the sector and ensures that we show our solidarity at not only the national government but the local government level across the United Kingdom.

I am pleased to say that we on these Benches strongly support this statutory instrument. We support the Secretary of State and the Government giving local authorities the flexibility to make the decisions that are right for their localities. It is the right thing to do. We have continuously called on the UK Government to move faster and harder on economic and diplomatic sanctions against Putin's barbarous regime. Too often we have lagged behind the EU and the US, while some promised measures have yet to be implemented. Ministers need urgently to introduce a new US-style law to act against those who act as proxies for sanctioned individuals and organisations. Supporting this statutory instrument further demonstrates that our support for Ukraine at all levels of government remains undiminished. The UK and our allies have shown remarkable strength and unity in response to President Putin's invasion of Ukraine. We will not be party to funding his war machine. Noble Lords have spoken with great solidarity in relation to the situation in Ukraine and supporting the order.

Having listened to noble Lords—in particular my noble friend Lord Jones, who, like the noble Baroness, Lady Pinnock, asked some excellent questions—I want to ask the Minister a few questions of my own in the same spirit. How has the department engaged with local authorities to make them aware of these new powers? Will the Minister encourage local authorities to exercise these powers? If so, how? What assessment has the department made of the level of contracts in the public sector with Russia and Belarus?

I just want to pick up on the point made by the noble Baroness, Lady Pinnock, about highlighting the challenge of overcentralisation. Like the Minister and the department for levelling up, we must look to ensure that, rather than responding after pressure from local authorities, we lead from the front so that local authorities are not put in difficult positions. I look forward to the Minister's response.

Lord Greenhalgh (Con): My Lords, I thank the Committee for considering the order and for all the contributions to the debate. I am sure we can agree that it will further simplify our already strong message to Russia that we stand firmly with Ukraine and will use all levers possible to cut off funding to this illegal invasion. Allow me to try and respond to the points made by noble Lords.

I start with the points raised initially by the noble Lord, Lord Jones, and then backed up ably by the noble Baroness, Lady Pinnock, around what we know

about which local authorities have contracts with Russian and Belarusian-backed companies and the value of those contracts. The Government do not hold data on how many contracts and sub-contracts are held by local authorities with organisations under the control of Russia or Belarus. However, we know that there are contracts and that the Secretary of State has been asked by a number of council leaders to amend legislation to allow councils to terminate such contracts.

The noble Lord, Lord Jones, wanted some examples of contracts that fall into this. I will give one, which makes two points that have been raised by noble Lords. The first is that Portsmouth City Council has a contract with Gazprom and has decided not to terminate the contract. I make this point because it is not for Ministers or central government to use the bully pulpit. In response to the noble Lord, Lord Ahmad, I say that we are giving a permissive power for local authorities to make the decision about whether they withdraw from these contracts or not. We want them to go through the process and have the ability to do so, which currently in theory they do not, which is why we are bringing in this statutory instrument. We have been asked by the noble Lord, Lord Jones, about the impacts of employment—

Lord Jones (Lab): Did the Minister see the piece of paper his noble friend Lady Scott whipped fast to him under the papers she has just put down?

Lord Greenhalgh (Con): What paper?

Lord Khan of Burnley (Lab): It is Lord Khan, not Ahmad.

Lord Jones (Lab): From the officials.

The Deputy Chairman of Committees (Lord Beith) (LD): Has the Minister sat down?

Lord Greenhalgh (Con): The Minister's getting up, but the Minister's getting confused. I am sorry; I meant "the noble Lord, Lord Khan". I have been confused by people writing the wrong name. I am just reading from the top of the page—my apologies.

Here is the piece of paper. Going on to the next point, I say that we do not know about the impact on employment, and the impact on business is dependent on whether the country or territory of origin of supplies or location of business activities is Russia or Belarus and whether the relevant authority has decided to terminate contracts. Therefore it is not easy to estimate the impact on employment. But, again, this is a permissive power, and local government will ultimately make the decision in the interest of local services and value for money.

I will answer the noble Lord, Lord Khan, about what local authorities should do when these regulations come into effect. The Government will make sure that we provide guidance to local authorities as and when this order comes into force. There has been considerable engagement, and a need has been identified to do this and to bring forward the secondary legislation. These councils have been writing to the Secretary of State since the invasion of Ukraine, setting out the need for the Local Government Act 1988 restrictions in this area to be lifted, to allow local authorities to act. This statutory instrument will allow them to do this, so there has been considerable engagement, as noble Lords can see, and I hope your Lordships will support me in supporting the order.

Motion agreed.

Local Authority and Combined Authority Elections (Nomination of Candidates) (Amendment) (England) Regulations 2022

Considered in Grand Committee

4.04 pm

Moved by ***Lord Greenhalgh***

That the Grand Committee do consider the Local Authority and Combined Authority Elections (Nomination of Candidates) (Amendment) (England) Regulations 2022.

The Minister of State, Home Office and Department for Levelling Up, Housing & Communities (Lord Greenhalgh) (Con): My Lords, this statutory instrument was laid before the House on Monday 6 June under Sections 9HE and 105(2) of the Local Government Act 2000, and Section 114(1) of and paragraph 12(4) of Schedule 5B to the Local Democracy, Economic Development and Construction Act 2009, for approval by resolution of each House of Parliament. This instrument amends local election rules to account for the new disqualification for sexual offences introduced by the Local Government (Disqualification) Act 2022. These changes are necessary to ensure that future mayoral candidates continue to correctly declare that they are eligible to stand in elections. This will provide continued clarity for candidates and electoral administrators.

The Local Government (Disqualification) Act closes the loophole which meant that anyone who commits a sexual offence but is not given a custodial sentence could stand for local government election—or, indeed, if convicted once in office, could remain in office following that conviction. The Act passed with cross-party support earlier this year and comes into force today. Election processes now need to be updated through this instrument, which updates "consent to nomination" forms used in local authority mayoral elections. At nomination, a candidate must declare that they are not disqualified by signing such a consent to nomination form. The format and wording of these forms is prescribed in secondary legislation.

4.06 pm

Sitting suspended for a Division in the House.

4.15 pm

Lord Greenhalgh (Con): This instrument amends four instances of such forms prescribed in election rules: two instances for county, district and London borough mayoral elections; and two for combined authority mayoral elections. Regardless of the type of

[Lord Greenhalgh]
office, the amendments to each consent to nomination form have the same effect. The changes update the forms to add a new reference to the updated criteria inserted by the disqualification Act. Further, this instrument updates the forms to require that copies of the relevant new sections from the disqualification Act are reproduced in full and appended to these forms for candidates' information.

Noble Lords who have been following this matter closely will recall that the disqualification Act was informed by a 2017 government consultation. In our response, we committed to seek to legislate to disqualify sex offenders from local government. This instrument is the last stage to implement this commitment fully.

It should be noted that, alongside this instrument updating mayoral election rules, a similar instrument was made by negative procedure on 30 May. The Local Authority and Greater London Authority Elections (Nomination of Candidates) (Amendment) (England) Rules 2022 updated election rules in the same manner for all tiers of councils, the London Assembly and the Mayor of London.

These amendments to election rules follow statutory consultation with the Electoral Commission. We incorporated its suggestions and the changes have its full support. It has updated its guidance to inform candidates of the new disqualification criteria. Following this instrument coming into force, it will update the nomination packs containing the new consent to nomination forms.

I should clarify the remit of these changes. This statutory instrument applies to England only. Wales has legislated to disqualify sex offenders from local government office but the changes did not require amendments to secondary legislation. Implementation of this instrument should not be delayed as the provisions of the Act are in force from today.

This instrument fulfils the Government's commitment to protect local communities and make sure that they can have continued trust and confidence in their mayoral candidates. I commend these regulations to the Committee.

Lord Jones (Lab): My Lords, the regulations refer to today, so time is of the essence. I rise mainly on a point of principle. The Executive should always be questioned by the legislature; it is in that spirit that I always address your Lordships' Committee. I fought eight general elections—I am glad to say that I won them—but I never saw forms such as are in the schedule. Their drawing up internally in the department must have been quite something; if they are now in their new form, congratulations should surely go to the department. One can only assess the hours that went into painstakingly putting them together. In a general election, one's nomination form was always of supreme importance; you had to get it right because, if you did not, you did not get on the ballot paper. It is understandable that we need exactitude.

To make progress, can the Minister say how many mayors there are now? There are not many. Everyone knows of the great mayoralty of London but can the Minister itemise their numbers and say what they are so that the record might be up to date?

Baroness Pinnock (LD): My Lords, I repeat the interests that I stated in the discussion of the previous statutory instrument as a councillor and a vice-president of the Local Government Association. I welcome the addition to the disqualification criteria of anyone who is on the sex offender register. I note what the Minister said, which is also in the document, that, although we are discussing the consent to nomination for mayoral candidates, this has been laid as a negative instrument to include councillors at all levels, including in London. I welcome this.

The Sexual Offences Act was passed in 2003 so why has it taken nigh on 20 years to get what would for everybody be an obvious disqualification criterion included on the consent of candidates form? What has it taken 20 years? I was lobbied by a sitting councillor in the north of England about a parish councillor who was put on the sex offender register. There was no way of disqualifying them. I remember sending Written Questions to the appropriate Minister at the time seeking some action on behalf of the Government to rectify this error because, whatever we think about the situation, people will not stand if they are on the sex offender register. If they have already been elected, they will not be disqualified if the criterion does not exist. That is what happened in this case. If you are elected to public office, you have authority and access to institutions that are not necessarily available to others. If you are on the sex offender register, that brings an additional risk to members of the public. Why has it taken 20 years when my little network of folk knows of an example where a disqualification should have occurred but could not occur because of this lack of action by the Government?

I have a second question, which I know the Minister will be happy to answer. We have this SI for council and mayoral elections, including for combined authority mayors, but what about Members of Parliament? Why is there not an SI that changes the consent to nomination candidates' form for Members of Parliament? They have even greater status and access to institutions than a councillor or a mayor. Why is that not here? I gently reference the fact that, currently, a number of Members of Parliament are being investigated about complaints of sexual harassment or offences. That would seem to me to indicate that we—those of all parties and none—have got to be more aware of the folk that we ask to stand for public office. Here is a way, by including this criteria in a parliamentary candidates' consent to nomination, to provide that bar and give protection to the public.

I clearly support what is here today but I have questions for the Minister. I think that he is now trying to find answers to them; I look forward to those.

Lord Khan of Burnley (Lab): My Lords, I again refer your Lordships to my entry in the register, stipulating that I am a local councillor in Burnley Borough Council.

This instrument will update the candidate consent to nomination forms to reflect the very welcome changes introduced by the Local Government (Disqualification) Act 2022, to which the Minister referred. An overwhelming majority of local councillors, mayors and mayoral candidates serve their communities to the best of their ability in the spirit of public service and public duty.

I have done so for 15 years as a local councillor. I know that the Minister served as a council leader, as did the noble Baroness, Lady Pinnock.

However, when individuals fall short of the standards we expect from elected representatives we must ensure that action can be taken to remove them from office and, importantly, prevent them standing in the first place. Labour supported the associated Private Member's Bill, with my honourable friend the shadow Minister, Jess Phillips MP, stating that

"it is important that this change is made in relation to all representatives, but with a special focus on those who act as corporate parents."—[*Official Report*, Commons, Local Government (Disqualification) Bill Committee, 1/12/21; col. 4.]

It is great to have some cross-party agreement on what is quite a sensible thing to do. It is vital that we uphold the best standards in public life at all levels of government. I echo my noble friend Lord Jones's comments. He spoke about the extra effort and hard work that has gone on behind the scenes to get this here.

I shall finish by asking the Minister a few questions, in the spirit of previous speakers. Are any further instruments necessary to implement provisions of the Local Government (Disqualification) Act 2022? Finally, can he confirm whether these measures will be in force for any upcoming local authority by-elections? I look forward to his response.

Lord Greenhalgh (Con): My Lords, I thank the Committee for considering this draft instrument. I also take the opportunity to pay tribute to the sponsors of the Local Government (Disqualification) Bill. I thank my noble friend Lord Udny-Lister and the Member for Mole Valley, Sir Paul Beresford—both very distinguished former leaders of Wandsworth Council—for their diligent work to progress the Bill here and in the other place respectively.

I will take a few moments to respond to noble Lords' questions. In response to the noble Baroness, Lady Pinnock, this has taken a long time, but it was one of those things that came to light. It is a loophole that has been closed because of the Private Member's Bill taken forward by my noble friend Lord Udny-Lister and Sir Paul Beresford. They are to be commended. It has taken too long, but we have got there. It is one of those things where we are responding to something that, frankly, was not front of mind until, as the noble Baroness said, there was someone in office who chose not to stand down when this became apparent.

The noble Lord, Lord Khan, wanted to know about implementation. My understanding is that the SI will come into effect the day after it is made after the Act commences. The issue is not about speed and delay but whether there is enough time to prepare. Certainly, there was no need for the usual. We are moving at pace. Therefore, by-elections will be covered because of the speed of implementation.

The noble Baroness, Lady Pinnock, wanted parity, if you like, and asked why not MPs, given some of the recent incidents and cases in the other place. As I previously responded in support of the Bill at its Third Reading,

"standards and conduct for MPs and PCCs are governed under separate regimes, with their own mechanisms to disqualify or sanction unacceptable behaviour."—[*Official Report*, 4/3/22; col. 1083.]

We are doing this for members of a local authority, counsellors, local mayors, members of the London Assembly or the London mayor. There are other regimes for MPs. As noble Lords know, MPs can, under certain circumstances, be recalled if at least 10% of the constituency electorate sign a petition.

The noble Lord, Lord Jones, really tested me on the number of mayors and having a schedule of mayors. This is not as easy as noble Lords would think. Obviously we have the London mayor and the London Assembly as one model. A number of combined authorities have a directly elected mayor: Cambridgeshire and Peterborough, Greater Manchester, Liverpool City Region, North of Tyne, South Yorkshire, Tees Valley, West Midlands, West of England and West Yorkshire. Obviously we are covering directly elected mayors, of which we have a number now. There are four in London, in Croydon, Hackney, Tower Hamlets and Lewisham, as well as all the ceremonial mayors. I am told that the total number of directly elected mayors is 26 in England. That is quite a bit of work in response to the question from the noble Lord, Lord Jones.

In conclusion, it is essential that the provisions of the disqualification Act are accurately reflected in mayoral election rules. That is exactly what this instrument achieves, while ensuring that local government can continue to command people's faith and trust, both now and in future. I therefore commend these regulations to the Committee.

Motion agreed.

Plant Health etc. (Miscellaneous Fees) (Amendment) (England) Regulations 2022

Considered in Grand Committee

4.31 pm

Moved by ***Lord Benyon***

That the Grand Committee do consider the Plant Health etc. (Miscellaneous Fees) (Amendment) (England) Regulations 2022.

Relevant document: 5th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con): My Lords, this instrument makes amendments to plant health fees established in the Plant Health etc. (Fees) (England) Regulations 2018 to ensure that there is no underrecovery or overrecovery of costs.

First, it ensures that the fees charged for plant health checks on regulated commodities imported into England from all third countries reflect the frequencies of those checks established under the new risk-targeted inspection scheme set out in the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022, which will be laid in Parliament on 30 June and apply from July 2022. This approach to fees does not apply to a new flat rate fee, which this instrument also introduces and which I will discuss shortly.

[Lord Benyon]

It is our responsibility to protect biosecurity across plant and animal health and the wider ecosystem. To that end, plant health checks, encompassing documentary, identity and physical checks, are carried out on certain regulated consignments imported into England from third countries that may carry pests or diseases that could pose a risk to our biosecurity.

Currently, the highest-risk commodities are subject to 100% plant health checks. The level of identity and physical checks on other commodities is based on risk. The new risk-targeted inspection scheme will provide a risk-based method to determine the frequency of plant health checks, focusing specifically on risks to GB biosecurity. This scheme will apply equally to certain regulated imports from non-EU countries and from EU member states, Switzerland and Liechtenstein.

It is UK government policy to charge for many publicly provided goods and services. The standard approach is to set fees to recover the full costs of service delivery. This relieves the general taxpayer of costs so that they are borne by users who benefit from a service. This allows for a more equitable distribution of public resources and enables lower public expenditure and borrowing.

Charging for plant health services is consistent with the principle that businesses using these services should bear the costs of any measures to prevent harm that businesses might otherwise cause by their actions or non-actions, since most serious plant pests and diseases that arrive and spread in this country do so via commercial trade in plants and plant produce.

In line with the standard approach that the full cost of service delivery be recovered from businesses using these services, fees for physical and identity checks will reflect the frequencies established under the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022. For commodities subject to reduced levels of physical and identity checks, a proportionally reduced fee is applied.

This statutory instrument applies to England only. The Scottish and Welsh Governments are following the same approach in terms of applying fees to recover the full costs of their respective inspections. The Scottish and Welsh Governments laid corresponding legislation on 20 May and 21 June respectively.

Secondly, this instrument provides for a flat rate fee on certain plants for plants imported to England from all third countries. The new risk-targeted inspection regime will see plants intended for final users subjected to lower frequencies of checks, compared with 100% frequencies for plants not intended for final users. This flat rate fee aims to prevent plants that have completed their production stage in a third country and are ready to be sold to consumers after import benefiting from a cost advantage over plants imported to complete their production in Great Britain, while maintaining full cost recovery. The policy for a flat rate fee was proposed following stakeholder concerns. The Welsh Government have laid a similar piece of legislation to implement the flat rate fee.

We have worked closely with industry bodies, including the Horticultural Trades Association and the National Farmers' Union, on developing our approach to the flat rate fee. Following a consultation, it was decided that a new flat rate fee should be applied to plants for planting and cuttings. After feedback that a switch to a flat rate fee would significantly increase fees for importing bulbs and seeds for the final user, we have restricted the flat rate fee to commodities where there is a clear benefit to trade. This excludes bulbs and seeds from the proposed flat rate fee.

Thirdly, this instrument extends an exemption from the payment of fees for pre-export and export certification services where goods are moving from England to a business or private individual in Northern Ireland. This will continue to enable trade between England and Northern Ireland in line with the Government's movement assistance scheme. The Welsh and Scottish Governments are extending these exemptions in a similar fashion.

Finally, an error is corrected to reinstate in the fees regulations a provision for fees for samples taken on imports, which was omitted by the Plant Health etc. (Fees) (England) (Amendment) Regulations 2021.

This instrument is necessary because it ensures that there is no over-recovery of fees charged for plant health checks on commodities imported from third countries and maintains the full cost recovery of plant health services. If this instrument is not made, it would lead to over-recovery of fees from businesses, which would mean that proposals agreed with stakeholders on a flat rate fee for certain categories of plants would not be implemented. I beg to move.

Baroness McIntosh of Pickering (Con): My Lords, I thank my noble friend for introducing the regulations before us. I broadly welcome them, but I have a number of questions.

Paragraph 12.1 of the Explanatory Memorandum states:

> "The impact on business … is that these changes are estimated to save businesses c. £1.2m per annum due to lower levels of checks and subsequent impact on fees."

Obviously, a lower level of fees will be pleasing for the industry, but I had not grasped that we are introducing a lower level of checks through this instrument.

One of the difficulties of this instrument, which my noble friend just introduced, was also set out in the Secondary Legislation Scrutiny Committee's fifth report. As my noble friend stated at the outset, there will be a second statutory instrument at the end of June that will set out the regime. Why has the way in which the fees have been structured been separated from the regime? Why have we not had an opportunity to consider them both together? I would have thought that the regime was probably of most interest. When might we expect to see that statutory instrument, as today is already 28 June?

Am I right to assume that paragraph 28 talks about the inspection fees being corrected, as they are being reinstated, when samples of imported consignments are taken for lab testing to confirm the presence of certain plant pests? Can my noble friend elaborate on whether that is done on an ad hoc basis or responding to intelligence? Does it include such laboratories as FERA, which I had the honour to represent in North Yorkshire for the last five years I was in the other place?

Also, is this one of the instruments that appears on the famous dashboard that we heard about last week? Is it one of the 570 statutory instruments that is retained EU law or is it a stand-alone instrument? Will we come back to look at this in a different context? I welcome the opportunity to debate and approve the regulations this afternoon.

Baroness Jones of Whitchurch (Lab): My Lords, I thank the Minister for his introduction and for the helpful briefing that he organised beforehand.

The Explanatory Memorandum makes it clear that the purpose of the regulations is to help reduce biosecurity risk and to protect the environment from the spread of harmful pests and diseases. Obviously, these are objectives that we can all aspire to, but I would like to explore in more detail whether the proposed changes will achieve that result.

The new fees structure set out in this SI is based on a new risk-targeted inspections scheme which is set out in a separate SI, the Official Controls (Plant Health) (Frequency of Checks) Regulations, which this SI says will apply from July 2022, and to which the Minister referred as well. However, that SI has not been published yet. When I queried this with the department, I was told that it would be published on 30 June, which happens to be a couple of days after this debate. The noble Baroness, Lady McIntosh, also raised this point. Where is the parliamentary scrutiny in this process? We are being asked to agree the fees without seeing the risk-based scheme in the first place.

The basis of the proposed changes was set out in a government consultation. In the Government's response to the consultation, dated 31 March 2022, they concluded that imposing full checks on all categories of plants needed to be balanced with the impact on regulators and trade. In effect, it appears that this is a watering down of our biosecurity risk regime at a time when the threat of importing new plants and diseases with new and emerging pathogens is increasing.

I think it is fair to say that this is not a very reassuring SI in terms of the impact on biosecurity, and that the proposed changes were not greeted with unanimous support during the consultation. For example, the Government's response to the consultation flags up that concerns were raised about the ability of the plant health risk group to respond quickly to new outbreaks. Obviously, there are different sorts of outbreak; some can be predictable, as can some disease threats, but some occur unusually and out of the blue. Is the plant health risk group really in a position to be able to judge and assess that risk, and to measure the right plants that are coming across our borders? There was a feeling that the inspection methods and technology applications were out of date and that we needed to modernise them. Concerns were also raised about the need for more transparency on the interception of pests and diseases and that, if a new pest or disease had been identified on UK shores, it needed to be shared more immediately.

These are all real challenges that Parliament has not yet had the chance to discuss, so I hope that the Minister can clarify why we have had such limited opportunity for parliamentary scrutiny on a very important issue that we have debated on a number of occasions in the past. Quite rightly, everyone has said that there is an acute need to take biosecurity more seriously.

Returning to this SI, first, it acknowledges that some commodities will be subject to reduced levels of physical and identity checks, leading to a lower fee being applied. However, nowhere does it really say that those at higher risk levels will have to pay a higher fee. I am interested to know how that will work in terms of our biosecurity protection.

4.45 pm

Secondly, the SI sets out fees for checks on high-priority commodities from the EU and/or commodities from non-EU countries. It says that the full costs of service delivery will be recovered from businesses using these services, as the Minister said in his introduction. On the practicalities of this, do Defra and the Forestry Commission, for example, have a dedicated fund for paying the staff who carry out the plant health checks? Can we ensure that this is cost neutral on that basis? Does it pay for the inspectors at the ports and entry points, as well as the laboratory staff checking for these new invasive pests and diseases? What numbers of staff are covered by the payments? Are we confident that staffing levels are at full complement to provide this new risk-based service? I think I am right that it was not necessary to carry out these checks on EU plant imports when we were part of the EU, so is this an additional charge on imported plants which will be passed on to the consumer?

Thirdly, the fees set out in Schedule 1 show a very wide disparity. For example, it will cost £1.01 to physically check branches with foliage imported from the EU, compared with £156.69 to physically check seed potatoes from some third countries. Can the Minister explain why there is such a big difference in inspection costs?

The SI also provides for a temporary flat rate fee on imports intended for final users from the EU, as the Minister explained. The Explanatory Memorandum says that this is to prevent plants finished in the EU having

"a cost advantage over plants imported for finishing in Great Britain."

It goes on to say that Defra has decided to restrict

"the flat rate … to … goods where there is a clear benefit to trade".

Who makes the judgment on this "clear benefit to trade"? How long is the temporary flat rate fee intended to last? I look forward to the Minister's response.

Lord Benyon (Con): I am grateful to both noble Baronesses for their points. To continue to protect plant biosecurity while facilitating the trade and movement of plants and plant material, it is essential that consignments that could pose a risk be subject to risk-based inspections before entering Great Britain. As I described, this instrument will maintain the alignment of plant health inspection fees with UK government policy to recover the full costs of official checks to manage risks arising from commercial activity.

I will respond in a rather random way to both questioners—I hope the Committee will forgive me. First, my noble friend Lady McIntosh and the noble

[Lord Benyon]
Baroness, Lady Jones, asked why the two SIs are being dealt with separately and why Parliament has not been given a chance to debate measures in the other SI before deciding on this one. The Official Controls (Plant Health) (Frequency of Checks) Regulations 2022 set out the methods used to calculate the frequencies on which the fees in this instrument are based. Those methods and the resulting frequencies of checks have been published via consultation.

Both SIs are scheduled to come into force on 22 July and require scheduling to ensure that they do so in an aligned fashion. The difference in scheduling of these SIs is due to the different type of parliamentary procedure that they should follow, determined by their parent Acts. The Official Controls (Plant Health) (Frequency of Checks) Regulations 2022 will be open to full parliamentary scrutiny, as per the negative procedure, following being laid on 30 June.

I reassure both noble Baronesses that we have raised the standards of biosecurity in this country since leaving the EU. We have put resources behind it, employing 150 more inspectors, and we are approaching it in a unified way, with Border Force improving our training at ports of entry. As the Committee knows, we are rolling out our BCPs in the coming months to make sure that we stop more high-risk plants at the border, rather than at point of delivery.

The noble Baroness, Lady Jones, asked about some fees and checks being reduced significantly and whether that means that we are somehow weakening biosecurity as we will not be inspecting so intensively. The new inspection arrangements are based on international standards for categorising commodities according to risk. This will allow the Animal and Plant Health Agency to focus on those commodities representing the highest potential risk, including trees and other woody plants to be grown outdoors, while reducing input on those products representing a low risk due to their intended use, such as houseplants and many fruits and vegetables for consumption. In this way, we will be targeting resources in the most effective way to protect GB biosecurity while avoiding unnecessary burdens and costs on businesses.

The noble Baroness asked who makes this decision. Experts make the decision, not me. Our Chief Plant Health Officer, who I speak to regularly and have spoken to today, and I have a monthly biosecurity meeting where we look at risks, but the risk is managed by people who understand its evidence base. Those are the basic criteria around which we make this decision. The plant health risk group meets monthly and continuously monitors new threats, taking account of the results of import inspections and other relevant information, such as scientific reports and developments in other countries. Inspection frequencies are one tool by which risks can be mitigated, and they will be kept under frequent review. However, it is already the case that the highest-risk plants and products, including trees and woody plants, will be inspected more intensively, and that we will keep our import requirements under continuous review to determine where they need to be strengthened in response to new or altered risks, as was the case in the recent pine processionary moth incident.

Going back to my noble friend Lady McIntosh, certain goods are subject to routine sampling and testing, such as seeds. In other cases, goods are sampled when an inspector sees something concerning during an official import inspection. A sample is taken to confirm the presence or absence of a controlled pest.

A question was asked about the large difference between some fees. It is a good point to make. The risk associated with specific commodities is the basis on which the fees are set. The highest-risk commodities are subject to 100% documentary, identity and physical checks and 100% of associated fees. Lower-risk goods are subject to lower frequencies of checks and therefore proportionately lower fees. Defra and its agencies are not alone in doing this. There is a protocol across Whitehall about charging for these activities. That protocol is set by the Treasury. We work closely with it to make sure that our rules for cost recovery are in accordance with those laid by the Government.

I should say at this point that the Government announced on 28 April that the remaining import controls on goods from the EU, Liechtenstein and Switzerland, including plants and plant products, will no longer be introduced this year. Instead, traders will continue to move their goods from the EU to GB as they do now. The rest of the controls which were planned for introduction on 1 July are no longer going ahead. This means that import checks of high-priority plants and plant products will not be moving to border control posts yet. Deregulated and notifiable produce and cut flowers will not be subject to import checks from July. Low-risk Article 73 goods will no longer require prenotification but will be assessed on a risk basis.

I have received inspiration in reply to a question about who makes the decision. This is agreed on the basis of consultation with stakeholders, as we have done with this SI, which has the support of the industry. That is really important to us.

There was also a question about the flat-rate fee. The fee will be in place until a fees review has taken place. That will involve a full review of all plant health fees, including the methodologies used to determine them. It is a multi-year process involving close work with stakeholders.

The other point I would make is on the disparity in funding for foliage versus physical checks, which the noble Baroness rightly raised. There is a serious risk to seed potatoes, which is why they are charged at a higher cost. Foliage—an apple, for example—is a simple product to assess. We want to make sure that we are doing it on the basis of risk but also in accordance with cross-government rules on charging.

As I have outlined, these regulations ensure that full cost recovery of plant health services is maintained and that the costs of inspecting imported plant health-controlled material are met by those businesses using Defra's import inspection services. With that—

Baroness Jones of Whitchurch (Lab): I thank the Minister for his reply, which was, as ever, very comprehensive. I just want to go back to the original point about the missing SI that is not here. The Minister said that it and this SI originally came from two pieces

of legislation, which is why they ended up here in a different order, but there must be somebody in Defra who can apply a bit of common sense to that ordering. I do not wish to make too much heavy weather of it but I hope that a lesson is learned from this. The department needs to ensure that, whatever the originating piece of legislation, instruments come before Parliament in a sensible order so that we can deal with concurrent bits of legislation at the same time. I leave that thought with the Minister.

Lord Benyon (Con): That thought is well made and will be reflected on. We want to make sure that we are doing this properly. As the noble Baroness says, the instruments come from two separate pieces of legislation. Which measures are affirmative or negative, in what is brought before us in this place, is an enigma wrapped in a mystery to me. However, there are wiser minds than mine that understand these things. I accept the point: we try to apply common sense in everything we do and make it easy for noble Lords to hold the Government to account, but we are bound here by two distinct pieces of legislation. I am hopeful that they will go on to the statute book and improve the regime, and be in place by the middle of next month.

Motion agreed.

Common Agricultural Policy (Cross-Compliance Exemptions and Transitional Regulation) (Amendment) (EU Exit) Regulations 2022

Considered in Grand Committee

4.58 pm

Moved by ***Lord Benyon***

That the Grand Committee do consider the Common Agricultural Policy (Cross-Compliance Exemptions and Transitional Regulation) (Amendment) (EU Exit) Regulations 2022.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con): My Lords, I declare my farming interests as set out in the register.

These regulations apply to retained EU law relating to the common agricultural policy, specifically: rural development; the common organisation of the markets, known as the CMO; and the underlying cross-compliance rules that farmers and land managers must follow on their holding if they are claiming certain rural payments. The instrument, made using the powers of the withdrawal Act, is extremely limited in scope. It makes no policy changes to retained EU law and no provision for future funding.

This instrument corrects a number of requirements to make notifications to the European Commission, references to "member states", references to EU funding and EU policies, reports to be prepared by the European Commission and references to prospective EU legislation not yet made. These references came into force in the EU through Regulation 2020/2220, which the European Commission published and brought into force only in December 2020. This was too late for Defra to address prior to the end of the transition period, therefore the references were brought into retained EU law in the UK at the end of that period.

These references are redundant or deficient in a domestic context. They would, if possible, have been amended or removed from the statute book by Defra's 2020 EU exit SIs had the EU regulation that introduced them been made earlier. The provisions being amended add little to domestic law, place unnecessary requirements on the UK to comply with EU policies that the UK does not share, or actively contradict amendments that Defra and the devolved Administrations have already made to provide for the future of agriculture in the UK.

5 pm

Leaving these references in force would leave an apparent ambiguity in domestic agricultural rules as it would give the misleading impression that the UK remained a member state of the EU; would receive EU funding for domestically funded schemes; was complying with the EU's common agricultural policy strategic plans; would carry out EU reports; would make notifications to the European Commission; or would seek authorisation for programme modifications from the European Commission. This might be a source of potential confusion for some stakeholders.

This statutory instrument also amends Schedule 3 to the domestic Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014—a snappy title—which set out the circumstances under which a breach of the standards of good agricultural and environmental condition set out in Schedule 2 to those regulations is not a non-compliance with the cross-compliance rules.

The domestic Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 implemented certain aspects of the common agricultural policy. Section 3 ensures that, where a farmer is carrying out an obligation, restriction or action under a domestic management agreement or measure, and where that conflicts with cross-compliance rules, this will not be considered a non-compliance—if noble Lords understand the double negative.

The amendment made by Regulation 2 of this instrument extends the list of management agreements and measures in Schedule 3 to the domestic common agricultural policy of the same regulations. This is in order to include new domestic scheme agreements made under Section 98 of the Environment Act 1995 and Section 1 of the Agriculture Act 2020, ensuring that the status quo prior to the end of the transition period as regards domestic agri-environment schemes continues going forward and that farmers engaging in new environmental land management schemes, for example, are not placed at unfair risk of penalisation for complying with scheme requirements.

The amendments made by this instrument to remove European references apply in England and Northern Ireland only, except for the amendments made by Regulation 4 of the instrument, which are UK-wide. This is because, with the exception of the amendments made by Regulation 4 of the instrument, Scotland and

[Lord Benyon]
Wales chose to review and correct these remaining European references using their own legislation in 2021. The amendments made by Regulation 2 of this instrument to Schedule 3 to the common agricultural policy of the same regulations are England-only in scope, reflecting the England-only scope of these regulations. The instrument has been developed in close consultation with the devolved Administrations and laid with their consent. This instrument does no more than is appropriate to remove or correct inoperable European references and cross-compliance exemptions, and is predominantly technical in nature.

I beg to move.

Baroness McIntosh of Pickering (Con): My Lords, I greatly enjoyed my noble friend's presentation of the instrument before us. I think that paragraphs 7.7 and 7.8 set out exactly what my noble friend said. I would just like to ask for a point of clarification. We were informed last week about this dashboard. I have had great amusement trying to find the dashboard and identify the 570—I am told—Defra regulations, of which I assume this is one.

Is my noble friend of the view that this instrument will come back before us within the next year? That would greatly help me. A close reading of today's *House of Lords Business* will show that I have tabled a Question to help me to understand. If 570 Defra items are listed on the retained EU law dashboard, published on 22 June, which relate to phytosanitary, plant or animal health, welfare and hygiene measures? Presumably we will have the opportunity to consider each in turn when they come before us, but as a general rule many of them will fall because, like this one, they fall within a transitional period. As the CAP comes to a close and Brexit kicks in to a greater extent there will presumably be retained EU legislation such as this that will fall. Will we come back to this particular instrument in the next year or two for those purposes?

There must be other pieces of retained EU legislation that we spent hours going through in this very Room or remotely to see how they would apply, many of which I imagine we would wish to retain. Do we have to wait for the Brexit freedoms Bill—I am not quite sure what it is called—to come before us, or will we approach this on an ad hoc basis? It would certainly help me to understand, since I committed so many hours to my greater knowledge and understanding of what the EU retained legislation was at the time, what the situation will be with this and other instruments.

It strikes me that it will take up an inordinate amount of Defra officials' time to go through this exercise. If such instruments will fall anyway, will we have to meet physically to confirm that they are redundant and that they have fallen out of use or will that happen naturally? Will we be required to go through every single regulation that we adopted as part of our retained EU law that we wish to keep on the statute book?

Baroness Jones of Whitchurch (Lab): My Lords, I thank the Minister for his introduction to this SI and for the helpful briefing beforehand. I accept that the majority of these changes are technical in nature.

First, although it is not ideal, I understand why the changes to EU regulation 2020/2220 could not be made at this time, given that it was passed so close to the end of the transition period. It therefore makes sense to take this opportunity to remove the provisions to minimise ambiguity and potential confusion. I also accept that it is helpful to remove redundant references to the EU and member states where they no longer apply in UK law.

Secondly, with regard to the changes to cross-compliance regulations, I can see why it might be necessary to widen the scope of the existing cross-compliance exemptions as set out in Schedule 3. However, I have some specific questions about this. These new exemptions to the schedule are very specific and refer only to the specific changes we made to Section 98 of the Environment Act 1995 and Section 1 of the Agriculture Act 2020. Can we be sure that these two provisions are the only two occasions where exemptions to the cross-compliance rules should be necessary?

I am struggling with some of the detail here, but I do not think many farmers will be operating exclusively under those agreements. That raises the question of what happens if, for example, their environmental work is, say, 20% but also has a direct impact on other activities, such as food production, at 80%. Would they be penalised, or is there an element of discretion? If so, what would that look like? In other words, what is the interface between the old cross-compliance and the new arrangements? How much discretion is there in all that or is it absolutely fixed in stone?

I still do not feel, having read the SI several times, that the application of the cross-compliance rules is clear, notwithstanding double negatives and so on. I would not relish being a farmer and having to try to understand and apply them. To be absolutely clear about this, are they to be applied only to claims under the old basic payment scheme? Therefore, will the cross-compliance rules be phased out as any claims under the old CAP scheme are phased out?

Given that there is wide acknowledgement that the CAP was too rigid and the financial penalties for non-compliances were too onerous, why are the Government not taking this opportunity to introduce the lighter-touch regime we were promised when we debated the then Agriculture Bill? Can we be assured that the roll-out of ELMS and any future UK agricultural and rural payment schemes will be assessed without cross-compliance penalties? How is that all going to work in future?

I look forward to the Minister's response. I also look forward to the Minister's response to the very interesting questions from the noble Baroness, Lady McIntosh, which I would like to know the answers to as well.

Lord Benyon (Con): I am grateful to the noble Baroness and my noble friend for their contributions; I will try to answer their questions.

On the dashboard, these regulations and all retained EU law will be carefully reviewed as we go through the next few months. The Bill text is yet to be finalised. We are working closely with the Cabinet Office on what will be required in Defra-retained legislation. My noble

friend Lady McIntosh is right to point out that we are coming to the end of the transition period, which is why we are doing all this stuff now. The tidying-up operation we are bringing in is because the sunset element of the EU withdrawal Act will be later this year and we want to get these matters resolved.

My noble friend asked how this instrument relates to the Brexit freedoms Bill. This instrument was an EU exit instrument made using the powers of the European Union (Withdrawal) Act 2018. As such, it makes no policy changes and does no more than is appropriate to make this common agricultural policy legislation fully operable now that the transition period with the EU has concluded. The Brexit freedoms Bill makes it easier to amend or remove outdated retained EU law from the statute book, ensuring that the UK continues to seize the benefits of Brexit and utilise our regulatory freedoms. Future regulation will be in line with our new regulatory principles. This answers some of the points that the noble Baroness, Lady Jones, made. Our rules will be proportionate and create a collaboration with business to help spur on economic growth.

I would just say, to her final point on ELMS, that we are trying to generate a culture change within agriculture. The cross-compliance rules of the common agricultural policy were tedious—I speak with the scars on my back from having to fill in the IACS forms and all their successors—and you could feel the dead hand of government on your shoulder regulating every aspect of what you do. We are transferring to a system that trusts farmers to draw down from a list of possible actions they might like to take and treats them rather like we do taxpayers. We taxpayers fill in our tax returns and the Government trust us unless they have reason not to. Occasionally, they will do an inspection. Occasionally, they will do a risk-based, intelligence-based assessment of whether somebody is at risk of breaking those rules. If they do break those rules, there are sanctions, but we want to be working with farmers much more, encouraging them into the new schemes and seeing the benefits that will come from that.

The noble Baroness, Lady Jones, made a very important point about cross-compliance regulation and enforcement. We are reforming our regulatory system, as I have said, to meet the country's need and we will deliver a clear, fair and effective system. Cross-compliance will end at the point that the CAP direct payments are dealing from land. However, protections provided by cross-compliance will mostly continue. Domestic legislation already contains most of the same rules as cross-compliance and enforcement action to deal with any non-compliance.

The end of cross-compliance provides an opportunity, as I say, to move away from an approach that is seen to be disproportionate. We are reforming our farming regulatory system using the Dame Glenys Stacey 2018 review recommendations and by working closely with farmers and others. We want a farming regulatory approach that is focused on outcomes and based on the core principles of partnership, adaptability, proportionality, transparency and efficiency.

Some questions related to the whole area of complexity. Defra is working hard to make the system as easy as possible for everyone. We have simplified the online application system to make it faster and easier for farmers to apply and revised the scheme standards to make them clearer and more self-explanatory. Farmers can be in the SFI and the Countryside Stewardship scheme or the Environmental Stewardship scheme at the same time, so long as they are not being paid for the same actions twice and the actions are compatible.

5.15 pm

The guidance includes information on how the scheme interacts with others, and the system will automatically show people which areas of their land are eligible for the sustainable farming incentive. The department's "Future Farming" blog has quick links to all its schemes, and its future farming and countryside engagement teams run fortnightly show-and-tell demonstrations with the top three farming organisations so that they can cascade the information to their members. I saw them in action at Groundswell last week, where they were explaining these schemes to farmers. They are going round all the shows and making themselves available by all means, electronic and physical, to convey the new regime that we want and to make sure that farmers and other stakeholders understand it in the future.

I will look through *Hansard* to see whether there are further points that I have missed, but without knowledge of any further points, I beg that this motion be agreed.

Baroness Jones of Whitchurch (Lab): I am sorry, I do not normally interrupt the Minister, but can this be right? I think the Minister said, which I did not expect him to, that when the basic payment scheme is phased out, as it will be, cross-compliance will carry on after that. Is that the correct understanding of what he said?

Lord Benyon (Con): There is some conditionality on the scheme. If you say that you are going to plant a headland, you have to plant a headland with wild flowers, and it is the same if you are doing something that comes under the heading of "public goods" that we are pushing through our new schemes under the SFI. However, as I said, we want to do this with a light touch. We want farmers to be trusted to do it. The cross-compliance elements will remain as the schemes are phased out, but then we want to move to a system that is more trusting of farmers to do the right thing.

Motion agreed.

Committee adjourned at 5.17 pm.