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House of Lords

Friday, 24 October 2014.

10 am

Prayers—read by the Lord Bishop of Rochester.

Medical Innovation Bill [HL]

Committee

10.05 am

Amendment 1

Moved by ***Lord Turnberg***

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

"Provision of advice by registered medical practitioner

(1) This Act applies only to decisions made by a registered medical practitioner to advise a patient for whom he has assumed a professional responsibility for the provision of advice with regard to the choice of treatment for—

(a) a cancer which in the reasonable opinion of the practitioner is affecting the patient and is likely to cause the patient's death without the provision of effective treatment;

(b) such other conditions as may be prescribed by regulations made by the Secretary of State.

(2) A condition to which this Act applies is referred to as a "relevant condition"."

Lord Turnberg (Lab): My Lords, this is a rather omnibus group of amendments. I will do my best to try to speak to all of those to which my name is attached as well as to serve the others.

I should say at the outset that in setting out my amendments my purpose is to try to make sure that any Act that comes out is both sufficiently safe for patients and practicable so that the innovative practice that everyone wants to see is achievable. However, I would hate to see the opening up of a bureaucratic and legal nightmare that Sir Robert Francis tells me he still has problems with.

I would also like to correct a couple of possible misapprehensions. The first of these is that I want in some way to inhibit innovation in medical practice. I find that particularly galling when I have spent much of my life in clinical practice trying to introduce innovations. In my own field of gastroenterology I constantly tried novel treatments for Crohn's disease, for example, and, indeed, published in journals the results of the research that I carried out. I say as an aside that at that time I did not feel the need for a Bill of this sort to allow me to innovate when I already had ethics committees' approval and the informed consent of my patients. I fear that I am not alone in wondering whether the Bill is necessary. When Action against Medical Accidents, for example, and a number of important medical bodies express doubts about the need for it, one begins to wonder. I will not reiterate the Second Reading arguments as I want to concentrate on trying to make the Bill workable. However, I reiterate that innovation has been part of my very being and I still want to do everything that I can to encourage it.

The other misapprehension seems to be that there have been no advances in the treatment of cancer since the Middle Ages. That is patently not the case for many cancers—for example breast cancer, where there have been remarkable improvements, and in the leukaemias, where many, especially in children, have been cured. Now we see remarkable possibilities emerging for melanomas and a number of other carcinomas. However, it is certainly the case that no major advances have been made in the treatment of some cancers of the pancreas or the ovary, for example. That is terribly sad but true. It is also true, however, that no one anywhere has come up with a breakthrough for any of them—not in the USA, Japan, Oxford, Cambridge or anywhere—despite enormous effort by many researchers across the world. I declare my interest as a trustee of the charity Ovarian Cancer Action. We support a fascinating range of research into potential cures and keep a very careful eye on any advances in the field through our international band of distinguished researchers and advisers, who are often mainly based in the USA, so the idea that someone somewhere has a wonder cure that we have not heard about seems somewhat remote. I fear that we may have some way to go to find a cure but we at the charity have heard recently of some fascinating research in Oxford that we are supporting. However, we have some way to go.

I have tabled these amendments as I fear that the Bill's wording leaves open to too great a degree the potential for harm by unorthodox, unregulated practitioners. Amendment 1 seeks to make it clear that we are talking about registered medical practitioners and that for the moment we should limit the innovative treatments to patients with cancers that are likely to kill them. The idea here is that this would narrow the field of endeavour a little and give time to consider whether, after the Act is in operation and has been shown to be valuable, it could be expanded and consideration be given by the Secretary of State, taking advice from reputable sources, as to whether other conditions should be included. After all, cancers are among the most high-profile cases where patients are constantly seeking new and better treatments and are willing to try almost anything.

It is under those circumstances that my Amendment 7 is absolutely critical, as it is for precisely these vulnerable people, desperate to try anything, that we have to have in place processes and mechanisms to protect them from unethical practitioners who may take advantage of their vulnerability. We have to face the fact that there are practitioners out there using all sorts of weird and wonderful treatments that have no basis whatever. So, in Amendment 7, I set out in some detail the conditions under which a doctor may prescribe such an innovative treatment. He or she should be the doctor with responsibility for that particular patient's care. He should have reached,

"an honest and responsible opinion",

that it will be more effective than orthodox treatment and that it is in the patient's best interests. He should make sure that other doctors looking after that patient who have an interest in that patient will agree with him and he should have the agreement of another expert in the field. He should have not just consulted that person but obtained their agreement—not just to take

[LORD TURNBERG]
account of that person's views, as in Amendment 12 of the noble Lord, Lord Saatchi—and it should all be put down in writing in the patient's record. I like the way in which Amendment 14, tabled by the noble Baroness, Lady Masham, sets out the requirement for patient consent, and hope that that can be incorporated. I hope that the noble Lord, Lord Saatchi, will agree that this will make his Bill a safer Bill and that he will accept this amendment or something very like it.

My Amendment 15 also proposes, first, that all the considerations that have gone into reaching the decision to innovate, together with the type and nature of the innovation, should be recorded in the patient's record and, secondly, that the results of such innovation should be available in some public format. Here I have suggested that it should be available within six months. I am not wedded to that time limit, only to the principle that others should be able to learn from someone else's innovations. I know that the noble Lord, Lord Saatchi, has the agreement of Oxford University that it will act as a repository for this information. However, as I understand it, there is no compulsion on behalf of the innovating doctor to report to Oxford. We need something in the Bill that makes it not just desirable but essential. My Amendment 19 also makes that point clear.

Amendments 21 and 32 refer to research. Here I want to make the Bill absolutely clear that those engaged in research involving clinical trials will not be subject to even further stringent requirements than they already labour under. After all, these innovative treatments which we are all so desperately seeking are entirely dependent on high-quality research in clinical trials. However, there is a fear out there in the Association of Medical Research Charities—in which I express my interest as scientific adviser—the Medical Research Council, the Wellcome Trust and so on, that the stringent requirements under which researchers operate, involving clinical governance, research ethics committees, informed consent by patients and so on, will be added to by the conditions set out in the Bill. No one, least of all the noble Lord, Lord Saatchi, I suspect, wants his Bill to act as a further deterrent to clinical trials of new treatments. I therefore hope that he will find these amendments helpful.

10.15 am

Amendment 24 in the names of the noble Baroness, Lady Masham, and myself raises the issue of what a doctor may or may not be able to do when faced with an unusual or unexpected situation in an emergency, where there is little or no time to consult anyone else. I remember, for instance, the case of a colleague of mine, an orthopaedic surgeon, on an aeroplane when a patient suddenly became extremely breathless and lost consciousness. He had developed an acute tension pneumothorax, a serious condition in which a lung ruptures and air becomes trapped outside the lung in the chest cavity, where it compresses the lung and the heart. The only treatment is to get the air out of the cavity fast. My surgical colleague on the aeroplane, with no instruments, got hold of a wire coat-hanger, opened it up, plunged a sharp end through the chest wall and followed it up with a small tube from the end of a ball point pen. Air rushed out, the patient recovered consciousness and no one sued the doctor for using an unorthodox treatment. I am also aware of some novel, untried treatments recently used on Ebola victims, without anyone fearing litigation. So Amendment 24 is to make sure that doctors do not feel more constrained than they are already from acting in an emergency. I hope that the noble Lord will agree that this will be a valuable addition to his Bill.

Finally in this group, Amendment 33 brings up the point that regulations made under the Act should be exercisable by statutory instruments. We may return to this later in our debates on some other relevant amendments. I hope that the noble Lord, Lord Saatchi, will recognise that in raising my amendments my intention is to support him as strongly as I can in making innovation in medicine an important part of practice that is safe and practicable, and I hope that he will find these amendments helpful. I beg to move.

Lord Saatchi (Con): My Lords, I am grateful to the noble Lord, Lord Turnberg, for opening this Committee. I am greatly respectful of all he has said. In speaking to his Amendment 1, I will speak also to Amendments 8, 9, 11, 12, 16, 20, 25, 26 and 27 in my name; Amendments 7, 15, 19, 21, 24, 32 and 33 in the name of the noble Lord; Amendment 10 in the name of the noble Lord, Lord Pannick; Amendments 13, 17, 22 and 30 in the name of the noble Lord, Lord Winston; and Amendments 14, 18 and 34 in the name of the noble Baroness, Lady Masham.

In winding up the Second Reading debate—at which I was grateful, as I am today, for so many of your Lordships' attendance, and for all that was said; it was an excellent debate—I gave an undertaking that there would be an opportunity to consider whatever amendments were suggested as a result of the study by the NHS medical director, Sir Bruce Keogh, commissioned by the Secretary of State. I suggested that it might be possible to leave those amendments to be considered in the House of Commons, but a number of your Lordships made it clear to me that there was a desire to consider these important matters in this House so that we can, I hope, send the Bill to the other place in a form that represents the consensus not just of myself and the Government but of all noble Lords who have taken such a helpful and serious interest in the Bill.

I and the Government have listened to these representations. I can testify to the seriousness with which the Government have paid attention to all that has been said. I have witnessed it with my own eyes. I am very grateful to my noble friend the Chief Whip for facilitating the Committee for the purpose of considering the amendments which were settled by Sir Bruce Keogh and which stand in my name. I hope that after today it will be possible for the Bill to make swift progress into the House of Commons so that it has a reasonable chance of becoming law before the general election. There will of course be an opportunity for the issues considered in this House, and perhaps others as well, to be considered in a Public Bill Committee in another place.

I do not propose to give a lengthy, detailed description of each amendment in the group; I have been warned not to attempt a Second Reading speech of any kind.

To some extent the amendments are self-explanatory—they build on the safeguarding themes already in the Bill on introduction—but let me give a brief introduction to the purpose and effect of the amendments, which are now known as the Keogh amendments. I will do my best to answer any questions noble Lords have.

The key amendment that addresses the safeguards in the Bill is Amendment 12, which replaces Clause 1(3) of the Bill. The most significant features of the new list of safeguards are as follows. First, proposed new Clause 1(3)(a) requires the doctor to,

"obtain the views of one or more appropriately qualified doctors in relation to the proposed treatment".

I suggest that that must be read with Amendment 16, which inserts proposed new Clause 1(4) into the Bill, to the effect that,

"a doctor is appropriately qualified if he or she has appropriate expertise and experience in dealing with patients with the condition in question".

Proposed new subsection (3)(b) requires a doctor to take full account of those views in a way that a responsible doctor would be expected to do. That ensures that a doctor cannot ignore views or give them minimum weight unless there are reasonable grounds for doing so. The proposed new clause provides a critical safeguard in ensuring that there is expert peer review of the doctor's proposal and that the doctor acts responsibly in taking account of that view. We have all been concerned to ensure that the Bill cannot be seen as giving comfort to quacks or cowboys. This provision will hopefully give additional comfort to the noble Lord, Lord Turnberg, and to other noble Lords that the Bill does not do so, and, as I said at Second Reading, that it provides a statutory benchmark of good practice that will act as an effective deterrent to quacks and charlatans.

Proposed new subsection (3)(d) requires the doctor to consider a number of factors relating to the proposed treatment, including a requirement to consider,

"the risks and benefits that are, or can reasonably be expected to be, associated with the proposed treatment",

other accepted treatment,

"and not carrying out any of those treatments".

The proposed new subsection no longer requires a doctor to notify their responsible officer about the proposed treatment. The responsible officer may not have expertise relating to the condition in question and it may be difficult for a doctor to notify them in advance in all cases.

These replacement provisions are not designed to alter the fundamental purpose of the Bill as I explained it on Second Reading, which is simply to bring forward the Bolam test to the point of treatment, so that doctors can be reassured in advance that they are innovating in a manner that the law will regard and uphold as responsible. They would not have to wait or speculate about the possibility of litigation or disciplinary proceedings before finding out whether their action is considered reasonable. By giving certainty we help doctors to innovate with confidence. We help the thousands of patients who wish to benefit from innovative treatment and do not wish the doctor to be scared off or institutionally discouraged by the mere possibility of later litigation.

A number of the amendments proposed by Sir Bruce Keogh are designed to emphasise or clarify aspects of the Bill, rather than to change its legal effect. I shall therefore mention them only briefly. Amendment 8 amends Clause 1(2) to emphasise that the protection offered by the Bill applies to the doctor's departure from the existing range of accepted treatments for a condition, not just to his decision to do so. Amendment 9 emphasises that the Bill applies only to medical treatment. Amendment 11 amends Clause 1(2) to provide that a doctor's departure from the existing range of accepted medical treatments for a condition is not negligent where the decision to depart is taken responsibly. This applies an objective test of responsibility to the doctor's decision and prevents a doctor who acts irresponsibly from relying on the Bill. Amendments 20, 25, 26 and 27 are minor and consequential.

Amendment 1 would limit the Bill to terminal cancer and other conditions prescribed by the Government. I have considerable sympathy with this. As your Lordships are aware, the Bill is aimed in particular at the horror of cancer and terminal or extreme conditions. However, the principle is a general one: that doctors and patients are entitled to clarity and certainty at the point of treatment. That is its main aim and purpose. I understand completely that some Peers dislike the idea of the Bill being used for cosmetic surgery, for example. I would certainly consider an amendment later—subject to the views of the Minister, who I am sure will speak to this—either in the Lords or the Commons, to exclude cosmetic surgery if the House feels that that is important. That might well be possible, subject to discussion with the noble Lord, Lord Turnberg, and with the agreement of Sir Bruce Keogh and the Secretary of State. In the mean time, I ask the noble Lord not to press the amendment.

I turn to Amendment 7, to which the noble Lord, Lord Turnberg, gave great importance. I believe that it is similar to my amendments in the sense that they both replace the existing conditions for the operation of the defence to negligence under the Bill with an alternative set of conditions. I understand that the noble Lord is trying to find a set of conditions that limit the opportunity for the Bill to be misused by quacks. As I have said, my amendments, proposed by Sir Bruce Keogh and the Secretary of State following consultation, have the same purpose. I hope that the noble Lord, Lord Turnberg, will therefore feel that those amendments address the fundamental concerns addressed by Amendment 7 and that he may feel able not to press it.

Amendment 10 inserts a reference to reasonableness and proportionality in the conditions for application of the test under the Bill. I agree that reasonableness and proportionality are key requirements of that test. I believe they are already provided for in the Bill as drafted and in the amendments standing in my name. In the interests of preserving a single coherent package of amendments as prepared by Sir Bruce Keogh, and on the understanding that reasonableness and proportionality are inherent to that package, I hope that the proposers will feel able not to press the amendment.

[LORD SAATCHI]

Amendment 13, in the name of the noble Lord, Lord Winston, is similar to my amendments in the group in that it replaces the existing conditions for the operation of the defence to negligence under the Bill with an alternative set. I understand that the noble Lord is trying to find a set of conditions that limit the opportunity for the Bill to be misused. My amendments were proposed by Sir Bruce Keogh and the Secretary of State for exactly the same purpose. I hope that the noble Lord will feel that those amendments address the fundamental concern of his amendment and that he will feel able not to press it.

I absolutely understand the aim of the noble Baroness, Lady Masham, in Amendment 14, which is to amplify the existing set of patient safeguards in the Bill. I hope that the noble Baroness will accept that the package of safeguards prepared in consultation with the profession by Sir Bruce Keogh and set out in my amendments deal with the concerns reflected in her amendment. I welcome the opportunity to discuss these issues with the noble Baroness in more detail. In the mean time, I hope that she will feel able not to press Amendment 14.

Amendment 15, in the name of the noble Lord, Lord Turnberg, would require the results of innovation carried out in reliance on the Bill to be registered or recorded. This is a most important amendment and I can certainly assure the House that I have great sympathy with its aim—it has been our aim from the beginning. I explained at Second Reading that we strongly believe that the Bill should be used to generate useful data about innovation. We agree completely with what the noble Lord, Lord Turnberg, said: if the Bill were successful in its aims and encouraged innovation, what would be the point if no record of the innovations was kept in an open, transparent and fully disclosable way to show that the claims that we make—that the Bill will advance scientific knowledge—were true.

10.30 am

I expressed delight, which I repeat, and gratitude that the University of Oxford has expressed a willingness to facilitate a central database. It is prepared and willing to do that, and it considers it very important, as we all do, including the noble Lord, Lord Turnberg.

I have been convinced that the medical profession has the mechanisms in place to allow a database to be established without statutory authority. That of course leads to the question of whether this requirement should or should not be on the face of the Bill. I have been convinced—and the Minister will say more about it—that the regulators can use guidance and other forms of professional regulation to ensure that the database is used. I would have been happy to include it in the Bill but we must hear the views of the Minister. I am sure I can say to the whole House with confidence that the Government share my view and that of the noble Lord, Lord Turnberg, that the keeping of a register of innovations is a most important part of what is claimed to be the merit of the Bill.

I turn to Amendment 17 in the name of the noble Lord, Lord Winston. This excludes a list of procedures from the application of the defence provided by the Bill. As I said in response to the amendment of the noble Lord, Lord Turnberg, I am certainly happy to consider providing for exclusions, and I believe that the Minister will say the same. However, I should like more time to consider and perhaps to consult on what those exclusions should be. In particular, I should like to discuss with the noble Lord, Lord Winston, and others certain aspects of the proposed exclusions. For example, I am a little concerned that the final item in the list might introduce an unhelpful degree of uncertainty into a Bill that is all about bringing certainty to the process. I therefore hope that for the present, and in anticipation of those discussions, the noble Lord will be prepared not to press his amendment.

Amendment 18 is in the name of the noble Baroness, Lady Basham—Lady Masham, forgive me. I am concerned that the potential effect of the amendment will be negative, although of course I recognise and understand the aims of the noble Baroness in tabling it. The Bill aims to try to avoid interfering in the details of how the medical profession regulates itself or in matters of law that are well settled. The aim has been to bring clarity to one particular issue on which doctors require additional clarity and certainty at the point of treatment in order to give them the confidence to innovate responsibly. The question of what amounts to informed consent should, I believe, be left to best practice, as determined by the regulatory bodies within the medical profession with such guidance as the law may give from to time through decided cases. I do not believe that it would necessarily be right for the Government to tell the profession how to behave or to shape the law. The Government are resistant to doing that and I share their resistance. For this reason, I hope that the noble Baroness will feel able not to press her amendment.

Amendment 19 in the name of the noble Lord, Lord Turnberg, would require the results of innovation carried out in reliance on the Bill to be registered or recorded. As I said, we have great sympathy with the aim of the amendment. We strongly believe that the Bill should be used to generate useful scientific data about innovation. I am satisfied that the medical profession has the mechanisms in place to allow such a database to be established without statutory authority, which I think is the point of the amendment. I know that the Minister, my noble friend Lord Howe, will want to address this point, as I am sure he is aware that it is of great importance to many Members of your Lordships' House. I believe that he shares my view that the aim can be achieved without a reference on the face of the Bill, but he will tell us that later. We look forward to hearing what the Minister says and I hope that we will be able to follow his lead. I hope therefore that the noble Lord, Lord Turnberg, will be content not to move this amendment.

Amendment 21 in the name of the noble Lord, Lord Turnberg, would remove the restriction of the Bill to treatment rather than research. It substitutes a requirement for consent, and it saves the existing provision for clinical trials. We all hope that useful research data will come out of innovation under the Bill, but how research should be regulated is a separate area of law. The Bill concerns only when medical treatment, rather than research, is negligent. We believe it is important to keep that distinction, which is clear from the Bill as presently framed. The consent requirement

is already preserved by the Bill and in the amendments prepared by Sir Bruce Keogh standing in my name. I hope therefore that the noble Lord, Lord Turnberg, will be content not to press this amendment.

Amendment 22 in the name of the noble Lord, Lord Winston, repeats the requirement for treatment to be in the patient's best interests but states that failure to innovate can never be legally negligent. We believe that the first point is already clearly covered by the Bill as drafted. The second point is already covered by the law as it stands—at least, so far as it should be. The advice I have is that it is difficult to imagine a case either before or after the enactment of the Bill in which a doctor could be found negligent for failing to innovate. In theory, however, it is possible that it would be considered negligent for a doctor expressly to refuse even to consider the possibility of trying an innovative treatment in circumstances where the balance of risk and other relevant factors clearly indicated the value of attempting the innovation. As part of the purpose of the Bill is to encourage doctors not to treat requests for innovation simply dismissively, I would not want to rule out that theoretical possibility by giving a new and inflexible defence to doctors. In the light of that, I hope that the noble Lord, Lord Winston, will be prepared not to press Amendment 22.

I now come to Amendment 24 in the name of the noble Lord, Lord Turnberg. This would make special provision for a case where treatment has to be delivered in an emergency—a most important point. The procedures proposed by the Bill are designed for cases where a consultation with colleagues is possible. Where no consultation is possible because treatment is required in an emergency, the existing law is already sufficient to determine how doctors should behave. We do not believe it is necessary to attempt to replace the existing law on emergency procedures, and therefore I hope that the noble Lord will be content not to press the amendment.

Amendment 30 in the name of the noble Lord, Lord Winston, would require each NHS trust to establish a clinical ethics committee. As I said, the Bill is careful to avoid telling the medical profession how to regulate itself. We believe that it might be better to leave it to NICE, the General Medical Council and other relevant regulatory bodies to issue guidance in accordance with existing mechanisms on how clinical ethics should be determined. I see also that the mechanism suggested by the amendment would go far beyond the very narrow field of innovation with which the Bill is solely concerned. Therefore, I hope that the noble Lord, Lord Winston, will be prepared not to press the amendment.

I come to Amendment 32 in the name of the noble Lord, Lord Turnberg. The Bill already expressly provides that it applies only to a decision on whether a particular course of treatment is in the best interests of a patient. I believe it is already clear that nothing in the Bill affects the law relating to research and the operation of clinical trials. In the light of that, I hope that the noble Lord will not feel it necessary to press the amendment.

Amendment 33 in the name of the noble Lord, Lord Turnberg, deals with the possibility of limiting the Bill to terminal cancer and other conditions that may be prescribed by the Government. Obviously, again, one has great sympathy because, as the noble Lord knows better than anyone, that is one of the main purposes of the Bill. It is aimed at cancer and terminal or extreme conditions. However, the principle that doctors and patients are entitled to clarity and certainty at the point of treatment is a general one. It is understood that some would prefer to remove the possibility of the Bill being used for cosmetic surgery. That is an issue for discussion later and would be subject to the agreement of Sir Bruce Keogh and the Secretary of State. In the mean time, I would ask the noble Lord, Lord Turnberg, not to press Amendment 33.

Amendment 34 is tabled in the name of the noble Baroness, Lady Basham—Lady Masham. I am so sorry; I hope that she will forgive me. The amendment requires the Government to monitor and promote uniformity of access to medical innovation. These are the concerns that have led the noble Baroness to table the amendment. I hope she knows that I do not underestimate the importance of her concerns, but perhaps I may say that the amendment might take the Bill into completely new territory. The point is that the amendment raises issues about access to facilities and the resources required for medical treatments that, although they are important, are not part of the very specific, simple and single problem that the Bill aims to address. The noble Baroness might be willing to accept that there is a danger that, in attempting to grapple with resourcing and access matters, this narrowly focused Bill will overreach itself and might fail if it becomes entangled in wider issues. I am sure that the noble Baroness would not wish my attempt to resolve the issue of the deterrent effect of the fear of litigation to fail for this reason. However, I would welcome the opportunity to discuss with her the issues of access to innovation and what might be done to make the situation fairer and more uniform, which is what she rightly wants. In the mean time, I hope that she will not feel it necessary to press the amendment.

To what I am sure will be the great relief of noble Lords, I think that I have come to the end of this group of amendments.

Lord Pannick (CB): My Lords, I have tabled a number of amendments in this group and I thank the noble Lord, Lord Saatchi, for his helpful responses to them. The purpose of my amendments is to ensure the protection of vulnerable and often desperate patients and their families. Amendment 10 seeks to introduce a test of reasonableness and proportionality. The noble Lord, Lord Saatchi, said in his comments that reasonableness and proportionality are central to the objectives of the Bill. Perhaps I may explain my concern.

The Bill uses the concept of "responsible" innovation. Clause 1(3), along with Amendment 12 in the name of the noble Lord, Lord Saatchi, which he has rightly described as crucial, would define responsible innovation by reference to process; that is, obtaining and taking account of the views of others, considering the risks and benefits, and securing transparency. My concern is that this is insufficient because it says nothing about the substantive content of the decision of the doctor to innovate. Amendment 10, which has the support of the noble Lords, Lord Winston and Lord Turnberg,

[LORD PANNICK]
would provide that innovation is lawful only if it is "reasonable and proportionate" in a substantive sense. It must be reasonable in the sense that the course of innovative treatment should be based on a reasoned decision, that in the light of some evidence the treatment has some prospect of success, and proportionate in the sense that in the patient's case and taking into account the existing available treatments, the innovative treatment is not likely to cause pain and suffering that is unjustified by the prospects of success. Plainly, this is going to depend, and will necessarily depend, on the circumstances of the individual case.

At Second Reading, the noble and learned Lord, Lord Mackay of Clashfern, who I am pleased to see is in his place, said at col. 1457 that in the context of innovation, it is very difficult to see how you can assess the "reasonableness" of treatment. With respect, I do not accept that. You assess the reasonableness of an innovative treatment in a substantive sense by asking whether there is some evidence to suggest that the treatment will or may have a positive result. I think that reasonableness and proportionality are as important in the context of terminal illness as they are in any other context. Unreasonable and disproportionate medical treatment can cause pain and suffering and it can of course blight the remaining time that patients have with their families.

10.45 am

I have also added my name to Amendment 15, which was welcomed by the noble Lord, Lord Saatchi. If innovation is to offer the prospect of increasing the fund of knowledge about possible medical treatments and their prospects of success, and all too often, failure, it is essential that results are recorded and made available to other responsible persons. Amendment 17 also deserves consideration. As the noble Lord, Lord Saatchi, noted, the Bill is not restricted to terminal illness and at the moment it covers all conditions, however trivial. It also applies to all patients, children as well as adults. Amendment 17 suggests that there are some areas of treatment that should not be covered by these provisions. We can debate the details—not today, but at a later stage, and I would welcome discussions with the noble Lord, Lord Saatchi, on this—but we need to be very careful indeed before including paediatric care and mental health in the Bill, and indeed there may well be other areas for exclusion.

Further, I would mention Amendment 22 which seeks to protect the interests of doctors by making it clear in the Bill that the doctor has no duty to institute an innovative treatment when he or she does not consider it to be in the best interests of the patient. The noble Lord, Lord Saatchi, said that this is covered by existing law. No doubt it is, but if the Bill is designed to provide clarity for doctors as well as patients, it needs to address this point.

Lord Winston (Lab): My Lords, this is a surprisingly complex Bill, and indeed the various amendments that have been tabled in the first group conflict with each other. As a consequence I will concentrate on only a few of them in order to get some clarity. The noble Lord, Lord Saatchi, talked about clarity and certainty when he introduced the Bill, but I feel that the whole of this Bill will increase lack of clarity and promote uncertainty on the part of patients, which is something that really concerns me. I must also say that, as it stands, I believe that the Bill is quite dangerous. I say that with great respect to the noble Lord, Lord Saatchi, to whom we are grateful for introducing something of this kind.

I should say to the noble Lord at the outset that all of us who work as medical practitioners and scientists want to see innovation. No one could doubt that, as my noble friend Lord Turnberg pointed out. My entire career in the health service spanning 40 to 50 years has been a constant series of innovations, and I have to say that never once have I looked over my shoulder and thought that there might be a risk of litigation as a consequence of my innovating. That seems to be the reasoning behind the purpose of this Bill, but I believe that the noble Lord is mistaken in his view that practitioners are concerned about litigation because of innovation. They are certainly concerned about litigation, but they are not concerned because they are trying to do things which they can clearly claim are in the interests of their patients. That is a really big problem.

Had the noble Lord, Lord Saatchi, along with his noble friend the Minister of health, decided to focus on certain other aspects, I would have argued that some of the permissions for research ethics would have been a very important issue to look at. They are increasingly inhibitory. I would also cite some of the problems that have arisen out of the Human Tissue Act 2004, which was introduced by a Labour Government. There is a number of other issues that could have been looked at, such as the fitness to practise regime of the GMC, which the noble Lord mentioned.

However, let me concentrate on the Bill. I will start with Amendment 17. The noble Lord, Lord Pannick, introduced some of the questions and I want to deal with those in a bit more detail. I must suggest that anybody who has a sensitive disposition leaves the Chamber at this stage because I am going to describe personal experiences, which, I have to tell your Lordships, are unpleasant. I can give endless examples but will confine myself to two cases of maternal care. In doing so, I declare an interest as the chairman of the Genesis Research Trust at Imperial College and, of course, as a formerly practising gynaecologist.

When I was in training in a district general hospital in Essex, I was confronted in the middle of the night with a woman who started to bleed torrentially after birth. The blood went completely over the obstetric ward floor and then started to leak out under the sill of the floor into the corridor beyond. It was very clear that no matter how fast we transfused this patient with all the blood we had available, and eventually with O negative blood, this woman was going to exsanguinate and there was absolutely nothing one could do about it. I tried an innovative procedure with that uterus that was not described in the literature but had I not done so, that patient would have died.

I have to say to the noble Lord, Lord Saatchi, that, unlike him, I have tangled with innovation throughout my life. I have had sleepless nights; I have had trembling hands when facing patients who might die because

I knew that I had to take a decision on the spur of the moment that might make the difference between life and death. Amendment 17 is partly concerned with that, and if we do not press it today, I think we will need to reconsider it on Report.

I will tell the noble Lord another story. This is pretty graphic as well. I was called in the middle of the afternoon to a case in the casualty department of the district general hospital where I was working as a registrar in training with about five years' experience. There was a woman—barely a woman; a girl, really, just out of her teens—who was lying virtually unconscious on a trolley in the emergency department. There was no relative with her, there was no history with her; there was no way of knowing what was the problem.

When I examined her very quickly, I noticed that her breasts were somewhat active and her abdomen was distended, and it became likely that she might have a pregnancy but of course there was no way of verifying that. There would not be time to do a test because this woman was lapsing into unconsciousness; indeed, as I was examining her, she became unconscious and her blood pressure dropped to unrecordable levels. I put her on a trolley and ran down to the operating theatre with it. I had asked them to call an anaesthetist to help me. When the anaesthetist arrived, who was a much more senior doctor than I, he refused to have anything to do with the treatment of this patient. He was not prepared to consider anaesthesia for this woman because he felt that that would not be appropriate for somebody who was already unconscious.

I do not say this out of any sense of pride or because I am being all-powerful but this is simply how one acts in an emergency. Without scrubbing up—with unclean hands, simply with gloves on—I took a knife and opened her abdomen briskly and tied off the bleeding point. It was an ectopic pregnancy and once we had removed the bleeding point her blood pressure immediately became recordable. That woman left hospital seven days after the procedure.

Had we gone through any of the procedures that are described in the Bill, I have absolutely no doubt that that unmarried 21 year-old girl would have died there on the table, and I would have been haunted by that had I not innovated in a way that was appropriate. It was only when the abdomen was open and the blood was welling out that my anaesthetist put a tube down her throat and assisted me with the anaesthesia. He was not frightened of litigation; he just thought that the patient was going to die.

In Amendment 17 I have delineated a few of the examples in medical practice where there is a real case for not innovating. I could argue—I notice the noble Lord, Lord Kakkar, is in his place and I hope he will agree with me—that every single one of your Lordships in this Chamber will have different anatomical variants in your abdomen. For example, if you are undergoing a hernia operation, the skill of the surgeon in trying to decide what the variant might be is something that he needs to tackle immediately and without consent of either an ethics committee or a group of doctors who might give him permission to do so. It is a nonsense to suggest that a surgeon needs to do that sort of thing in the process of innovating in surgical care. That is also true for neonatal care, where of course we do not have very good chances sometimes of deciding when a very small baby is on the point of death. There are many other examples. I would just argue that there is one rather exceptional case, which I have alluded to, which is in reproductive medicine.

In my view, that is a different situation. The risk is that if we encourage innovation, as we are inclined to do and as is happening in private practice at the moment for quite large fees, there is a real risk in the long term. For example, this week two companies have offered to freeze the eggs of their employees to try to delay their childbearing. It sounds a very humanitarian thing. It is not, it is a purely business proposition. What they are doing, of course, is trying to manipulate their female employees by doing this. But the doctors who are prepared to charge substantial sums of money for this freezing have not considered the real success rate that even young women who freeze their eggs have. In the United Kingdom, around 7% of patients who have had their eggs replaced actually have a pregnancy, and we do not even know how many of those pregnancies go on.

During that treatment, there are different ways of freezing eggs which are innovative, which have not been properly tested and which may, for all we know, have epigenetic effects 50 years on, when there may be a risk of high blood pressure, heart disease, osteoporosis or dementia. Indeed, we now know from some animal experiments that there are genuine incursions into the human embryo and the human egg, which in animals certainly cause very interesting but rather alarming changes in the central nervous system as a result of what is happening innovatively in humans. Of course, we cannot prove it in humans because we have to wait for a long time. I argue that Amendment 17 is essential but I suspect that more aspects of medicine will need to be covered in the Bill.

I support completely the amendment of the noble Lord, Lord Turnberg, who started the debate this morning. If he decides to press that amendment, I will certainly join him in a vote. The problem I will have, of course, is that part of that amendment, and certainly some of the implications of it, conflict with my Amendment 30, which argues that we should have clinical ethics committees. In my view, there is a strong reason to do that. I know that the Minister is very unlikely to accede to that request but there is a real issue about having better supervision of clinical treatments. We have research ethics committees but they are totally different. They do not cover routine practice. It is not a matter of simply leaving it to the General Medical Council. That is really not adequate. It needs to be dealt with locally and by the people who are concerned with the particular population with which they are involved.

I do not intend to go on at great length about the amendments in detail but there is no question that we will need to come back to some of them; others we may even wish to divide the House on this morning. But for the moment, I think I have said enough about those amendments.

Baroness Masham of Ilton (CB): My Lords, my Amendments 14, 18 and 34, on safeguarding, are in this group.

[Baroness Masham of Ilton]

Since the previous stage of the Bill, the deadly Ebola infection in Africa has hit the headlines and the need for fast-track innovative medicines and vaccines has become vital, as has the need for countries to come together to help support and educate suffering populations. In addition, last Tuesday the "Panorama" programme showed the innovative research being done on the spinal cord to enable paralysed people to walk. It is encouraging to see experts across countries working together.

11 am

It is the duty of the House of Lords to try to improve Bills. This Bill, which the noble Lord, Lord Saatchi, has persevered with, has the best of intentions but there are concerns which we are trying to address. My Amendments 14 and 18 concern patient safety and Amendment 34 is to stop a postcode lottery. The Royal College of Surgeons of Edinburgh said it retained its belief that the Bill presents a notable threat to patient safety and so should not become law. It said it shared the view of Sir Robert Francis QC, who said that the Bill,

"is actually dangerous for patients because it proposes safeguards which are illusory",

meaning things that seem to be true, but are actually false. It is so important to get a Bill safe.

I knew Les Halpin, who had motor neurone disease. He knew so well how important it is to find cures for such diseases. If a person is dying and they want to live, they will try anything that might help and people who love them will also do anything to help. Therefore, the Bill is causing a dilemma for some people.

Patients need access to innovative, safe and effective treatments in a timely manner. Many organisations representing patient research support the intentions behind the Bill but have concerns. They believe the best way to access the efficacy and safety of treatments is through robust research studies with appropriate clinical monitoring and collection of data and other evidence on a rigorous statistical basis with appropriate ethical approval. I look forward to the response of the noble Lord, Lord Saatchi, and the Minister.

I shall ask the Minister and the noble Lord, Lord Saatchi, some questions. Will the NHS pay for unapproved drugs used under the Bill or will the patient and/or their family be expected to pay? If it is the former, then what roles will the NHS and NICE have in determining how much can be spent? If it is the latter, is there not a risk of creating a two-tier health system where access to unapproved drugs and innovative treatment is also available to those who can afford them? Is the legislation intended only in instances where clinicians are attempting to cure an illness or can it be used for symptom control as well? If it can be used for symptom control, then what safeguards are in place for patients for long-term use of experimental and unapproved drugs? Are patients using unapproved drugs under the Bill also able to access palliative care? The cancer drugs fund showed that many of the drugs used by patients were highly toxic and that palliative care could alleviate side-effects of these drugs as well as symptoms of disease. Will this be provided alongside experimental or unapproved drugs?

I look forward to the answers to the questions and to the response to my Amendments 14, 18 and 34, which give priority to informed consent in order to protect patient safety, manage the expectations of patients accessing innovative treatments and avoid exacerbating the postcode lottery of services. Without robust safeguards there is a danger that people could undergo potentially risky treatments without a full understanding of what they entail.

Lord Giddens (Lab): My Lords, I am neither a medical specialist nor a lawyer and it is pretty near impossible to follow a speech such as that given by my noble friend Lord Winston. However, I am a sociologist and we deal in unintended, or what we often call perverse, consequences. Therefore, to me it is highly important that this Bill, which itself is an innovation, covers the question of whether perverse consequences could arise and whether the Bill could therefore end up subverting some of its own intentions.

With this in mind, I ask the noble Lord, Lord Saatchi, to think again about Amendments 13, 15 and 17 and perhaps to be a bit less dismissive of them than he was in his speech, because I think they would enrich the Bill. A clinical ethics committee would be a more robust way of affirming decisions than the existing way in the Bill. Amendment 13 spells out procedure to be followed. More importantly, it also insists that written records are kept. Critics say that it would add to the bureaucracy but there is no reason why such a committee could not be quite small and have a limited brief.

I regard Amendment 17 as very important. It is crucial that if it becomes law the Bill applies to very specific and limited circumstances. Especially important in my view, and I again speak as a lay person with no direct expertise, are the clauses limiting the legislation to drug treatments and excluding surgery and conditions involving acute trauma. It is important to spell these things out and I do not think they in any way undermine the Bill. They could contribute to what I think should be a key concern of noble Lords to close any avenues to perverse consequences that could arise, especially with legislation dealing with vulnerable people. We all know the issues here are twofold—what do you do about reckless doctors and how do you make sure that vulnerable patients are not exploited? The more loopholes we can close, the better for the progress of the Bill.

Baroness Finlay of Llandaff (CB): My Lords, I have added my name to Amendment 15 and I hope that the Minister will give it due consideration. It is really important that the process laid out in the Bill is recorded in the patient's clinical record. That is the one way that you can verify that things have been done properly. It is also important that there is notification to the central register, as referred to by the noble Lord, Lord Saatchi.

I also hope that the Minister will be able to give due consideration to the situations already mentioned by the noble Lord, Lord Winston, and others. It is very important that we do not make it more complicated than it is already for clinicians to be able to treat patients as they feel appropriate. It is also important

that patients have the appropriate safeguards in place. While quite a lot will go into guidance, there is merit in having emergency treatment actually in the Bill as a situation where the Bill would not apply and that treatment in the best interests of the patient in an emergency can proceed by whichever means appear to be best at the time.

Lord Kakkar (CB): My Lords, I declare an interest as Professor of Surgery at University College in London and as a member of the General Medical Council. I welcome the interventions of my senior clinical colleagues the noble Lords, Lord Turnberg and Lord Winston. They have helped us to understand that although it is hard, this is a vitally important Bill to drive forward the practicalities of innovation in clinical practice. I hope that it will also drive forward a positive culture of putting innovation at the heart of all clinical thinking. However, there must be safeguards to ensure the protection of vulnerable patients. A number of amendments in this grouping try to address that issue. When this Bill was first made available for public comment some years ago, I was initially anxious about the fact that there were insufficient safeguards. The approach that I wished to adopt was one that I know has been considered but has been also dismissed. I have, however, become reassured by the process under the supervision of the Medical Director of the NHS, Sir Bruce Keogh. He has consulted widely among the profession and I believe that the amendments in the name of the noble Lord, Lord Saatchi, particularly Amendments 12 and 16, bring us to a place where appropriate safeguards have now been introduced. I hope that they will be judged sufficient to provide the protection that all responsible and reasonable clinical practitioners would want in a Bill of this nature.

There are two other amendments being considered in this group that I believe to be vital, Amendments 15 and 19, dealing with the registration and reporting of the results of innovation. There is no doubt that if this Bill is to achieve what it hopes to, the innovations that are provided as a result of having this provision available to us in clinical practice must be reported widely and be available for other clinical practitioners to consider. I know that, at this stage, the view is that other mechanisms are available that provide the opportunity for that reporting to be made, but I wonder whether the Minister might consider during the further passage of the Bill how very powerful a provision of the kind suggested in the two amendments would be in securing the greatest benefit for the largest number of patients.

Another question to have been raised on this group of amendments is that of being certain that the Bill does not apply to situations of emergency care and does not in any way interfere with the mechanisms available for ethical and appropriate clinical research. A strong research governance structure supported by strong legislation is available in our country, and this Bill should not be seen to impinge on that in any way. I am reassured by the noble Lord, Lord Saatchi, saying that the Bill does not relate to the conduct of research and should not be confused as doing so, nor does it in any way interfere with what are, as the noble Lord, Lord Winston, said, acute and deeply stressful decisions that have to be taken in the situation of providing emergency care. I hope that the Minister will be able to reassure us that other legislation, guidance and mechanisms exist to ensure that the Bill does not impinge on those two areas.

Baroness Gardner of Parkes (Con): My Lords, I strongly support the Bill and hope that we will be able to reach agreement on important points today. It is essential that patients should feel safe, so all the safeguards being put forward are welcome, but patients also want to feel hope. When I think of Les Halpin, referred to by the noble Baroness, Lady Masham, I recall his rapid deterioration with motor neurone disease. When he first launched the idea of doing something, it was hard to detect that there was anything wrong with him. Within no time at all, it seemed—but probably it was about a year—he could not stand; he was in a wheelchair; and he had to have his head supported. It was unbelievable. What he wanted, not only for himself but for others, was hope.

The noble Baroness, Lady Masham, referred to Ebola, where they are trying things, irrespective of whether they know they are right, and in many cases they are probably working. It is hard to know. When I was chair of the hospital that has the Ebola clinic here in the UK, we had a case and the man recovered. In those days, there was no treatment other than just isolation and patients relying on their own strength to pull through. The noble Lord, Lord Winston, related a story about an ectopic pregnancy. It was interesting to see there how there was a conflict between two highly qualified medical practitioners. If he had not bravely taken that action, irrespective of any action that might be taken against him, that woman would not have survived. We do not want to make the procedure so enormously complicated that, by the time you have the result, it is too late for the person that you are aiming to help. On the other hand, I think that everyone agrees that the recording of the information, referred to by the noble Lord, Lord Turnberg, in speaking to his amendments, is essential. Unless it is recorded and open for use by everyone, it might help one individual, but no one will know what happens and how to help any others afterwards on a wide scale.

I think that everything that can be said on this Bill today will be said. I remember at Second Reading that the noble Lord, Lord Winston, was worried about people being sued for failure to innovate. I feel that that is only a remote prospect and should not be worried about too much. If all the safeguards are put in place, I believe that that will not happen. I strongly support the Bill and hope that the Minister will assure us that we will be able to proceed with it.

11.15 am

Lord Cormack (Con): My Lords, my noble friend Lady Gardner is right to talk about hope. It has been said that the real poor of the 21st century are those without hope, but there is a worse condition and that is to have false hopes. There was a very moving article earlier this week in the *Times* by Melanie Reid, writing from her wheelchair. Those of us who read her columns from time to time can only admire her courage, resilience and sense of reality. She was writing in the context of

[LORD CORMACK]
the gentleman in Poland who has been given some form of locomotion as a result of brave, innovative surgery.

We are all very conscious of the background to today's debate, which is different from that to the Second Reading, because, since then, we have had, as has already been mentioned, the Ebola outbreak and the need for untried and untested treatments because they are the only things that might conceivably offer some hope. We have also had the extraordinary affair of the young boy taken to Prague for treatment that he was not apparently able to have in Southampton, and we had the grotesque spectacle of his parents being put in jail. It was the most dreadful story.

Those remarks are merely in preface because I strongly support the aims and objectives of my noble friend. He has done this House a service in bringing this Bill forward, but he has done more than that, because since the Second Reading, he has clearly listened. He has had long conversations with Sir Bruce Keogh, the Secretary of State and others, and has striven to make his Bill much better than it was at Second Reading. We are all very much in his debt for that.

I readily acknowledge that we have heard some powerful speeches today from people who truly know what they are talking about. I readily concede that this Bill is not perfect now. I believe that if we are to legislate on this front we need to get the best possible Bill to become an Act of Parliament and speed must not be the only criterion we take into account when we are legislating on such a complex issue.

It was very moving to hear what the noble Lord, Lord Winston, said about some of his own experiences. The account given by the noble Lord, Lord Turnberg, of the surgeon at 30,000 feet also brought home to us how incumbent it is upon those with medical and scientific knowledge to be able to react quickly. The whole purpose of science and medicine is to innovate, otherwise people are merely being repetitious, and if you are merely repetitious then you cannot make true progress.

I think that there is a way forward on the legislative front this morning. I hope that we can today accept the amendments that the noble Lord, Lord Saatchi, has thoughtfully and helpfully tabled, and I believe that there should be another stage, a Report stage, where in the light of the amended and improved Bill, people such as the noble Lord, Lord Winston, whom I admire greatly, and the noble Lord, Lord Turnberg, who has done so much himself, can sit down with the noble Lord, Lord Saatchi, and further improve the Bill, so that when it goes to another place it has the benefit of that vast reservoir of medical talent and experience which is unique to this Chamber.

If ever anything justified the existence of this Chamber, it is a debate such as we are having this morning, where people who have really achieved great things in their chosen field are able to bring the benefits of their experience to our counsels.

I hope that this morning we can accept the amendments of the noble Lord, Lord Saatchi, and that he will then consult the noble Lords, Lord Winston, Lord Turnberg, and others, so that when we have further amendments on Report, we can make the Bill as foolproof and comprehensive as possible. It can then go to another place, where I hope that they can expedite its progress to the statute book.

Lord Winston: My Lords, perhaps I may intervene briefly before the noble Lord, Lord Cormack, sits down. He refers to the Ebola virus and to proton beam or carbon beam therapy—I am not sure which it was—and the boy who eventually went to Prague, I think it was. In the case of carbon beam or proton beam therapy, there is extensive medical literature about the treatment, so it is not innovative in the context of the Bill. I suggest to the noble Lord that with regard to the Ebola virus, although a very experimental vaccine has been given that has not been tested, there has been extensive discussion in all sorts of circles, including the *New England Journal of Medicine*, which is one of the leading journals in the world of medical practice, of whether such plasmas or vaccines should be given. That is fundamentally different from the Bill. I thought that the subject of Ebola might well come up, and I just wanted to make it clear that that threat is a very different issue and would be outside the scope of the Medical Innovation Bill.

Lord Cormack: As that was meant to be an intervention, I suppose that I had better respond. I was merely mentioning things that had happened since Second Reading; I did not begin to suggest that they were relevant to the Bill. I mentioned them by way of background, but of course I take the graciously worded rebuke and entirely accept what the noble Lord, Lord Winston, just said about the scientific background to both those examples.

Lord O'Donnell (CB): My Lords, like the noble Lord, Lord Giddens, I am not a medic. I rise to speak because I think that this issue creates all sorts of problems and challenges in which my experience in public policy and economics can help. To me, what determines innovation is essentially economic. Economists have studied for a long time precisely how you get innovation in systems. I will not lecture noble Lords on the medical side. It is important that we operate with our heads, not our hearts, in this, so you will not get any emotional stories for me; I will be boringly analytical. I think that this is an issue about evidence-based policy.

We know that markets will not solve the issues that the noble Lord, Lord Saatchi, raises in the Bill. The incentive structures are such that the pharma companies will go for those areas where they can sell large amounts of drugs. Rare cases will be problems. One issue I have as someone who cares enormously about evidence-based policy—I gave a lecture at the Royal Statistical Society earlier this week on this, when I went on at length, which I will not repeat—is how you generate the right amount of data to handle this problem. I received a briefing from the BMA which said that there was no evidence to support such things. Of course there was no evidence; that is the whole point. We have to find ways to generate evidence.

I strongly support the Bill. In that, I am with Sir Michael Rawlins, president of the Royal Society of Medicine and former head of NICE, who knows about the analysis, so I take the medic side as given. I am very pleased that the noble Lord, Lord Saatchi, has accepted the safeguards. If you believe, as I do, that the really important part of this is the generating of evidence, we need something in the Bill to state that we will record evidence and register it correctly. That makes a lot of sense, but as a good former civil servant, I look forward to hearing the Minister's reply and hope that he will reassure me that there is an equivalent way to do that. If that is true and is as solid, I will accept that; but in its absence, we need to make sure that we learn, that we get every innovation documented so that we build up the evidence base. That is what this is about—innovating safely and successfully.

Lord Kirkwood of Kirkhope (LD): My Lords, I am pleased to follow the noble Lord, Lord O'Donnell, whose experience in the area of public policy is well known. I have come late to consideration of the Bill. Regrettably, I could not make the debate on Second Reading. My interest in the subject was generated by a four-year period on the General Medical Council, which ended at the end of 2012. I was deeply sceptical about the Bill when I first read that the noble Lord, Lord Saatchi, was proposing it. However, I pay tribute to those colleagues who have thought about the amendments and presented them. I am not a medical doctor; I trained as a pharmacist; but this has been a very good, easily understood, high-quality debate about the issues. I pay tribute to the noble Lord, Lord Saatchi, because he has obviously been listening very carefully. He may even win my support, subject to one or two points that I will raise in a moment.

As a former business manager, I am prepared to accept the Saatchi-Keogh package, as it were, but I would not want to take a final decision on some of the other important amendments. I might support some of them at Report, but I do not think that this morning is a good time to do anything other than take a step forward with the amendments of the noble Lord, Lord Saatchi, with the help of Bruce Keogh. That would be in the best interests of the consideration of the Bill. I warmly accept the noble Lord's change of heart, if that is not too strong a way to put it. The Bill is much better dealt with in this House than along the Corridor, because I have been along the Corridor and I know what happens there. This is a much better context in which to get the Bill as good as it can be before we send it there. I recognise that that was a big decision for him.

I would be much happier to vote for this package in its entirety if the noble Lord paid attention to five amendments. I have listened to the careful way in which they were presented this morning. The Turnberg Amendments 15 and 19 are very important for me, and the noble Lord, Lord O'Donnell, made an important case. If we do not capture the benefits, the Bill is not worth having. At the top of my Christmas list of five amendments are Amendments 15 and 19. Given the tone of the debate in the House, the noble Lord, Lord Saatchi, may reflect that if he does not concede something in that direction he will find it difficult to persuade me that the Bill is worth having at all. Second on my list is Amendment 10, tabled by the noble Lord, Lord Pannick, because I think reasonableness and proportionality are necessary in the Bill. The noble Lord made a concise and compelling case. The noble Lord, Lord Saatchi, dismissed it rather lightly, so I ask him to think again about Amendment 10. Amendment 17 concerns restrictions. I am very nervous about the Bill being applied to mental health, and I corroborate and underscore comments made by other colleagues. Lastly, Amendment 22, in the name of the noble Lord, Lord Winston, would make it absolutely clear that there is no duty to innovate. That may seem irrelevant but it is important for the protection of doctors—and I say that as a former member of the General Medical Council.

11.30 am

I want to ask another two or three questions. Is there any way that the Minister or someone else could help the noble Lord, Lord Saatchi, to come up with something that may not be a full-blown impact assessment? I am slightly nervous about the opportunity costs and some of the bureaucracy that might creep in. Your Lordships will know how we gold-plate these things. It may not be in the mind of the noble Lord, Lord Saatchi, at all—I am sure that it is not—but I would like at least some ballpark guess as to what we might let ourselves in for if we unleashed this legislation without thinking about that carefully.

I am also confused—it may be just me—about whether we are leaving the common-law provisions intact. I think that the Keogh package leaves that part of the Bill intact to reassure people. It may be welcome but is there not a conflict between this new process, which is statutory, and the existing provisions? How are regulators to cope with that? Do they pick and choose which route they take if they want to arrange a fitness-to-practise inquiry? I am not clear how these two things fit. That may not be an issue of any consequence but I do not understand it and would like to understand it before we get to Report.

From my accent, the House might expect me to raise this, but this would put an English and Welsh situation into place. We have a United Kingdom regulator but we have another jurisdiction in Scotland, which will have none of this. Unless other people tell me differently, I see no plans to do that in Scotland. Is there an inelegance there that has been thought about? In the federal Parliament, if I may put it that way, we always need to think now that there are other jurisdictions which need to be weighed in the balance when we consider these things. Is there a potential conflict between the Keogh package and what happens in Scotland?

I am a practising pharmacist. I declare an interest as I have just accepted an invitation to act as a chair for the General Pharmaceutical Council on its task and finish group on fitness to practice for pharmacists. We have obviously made real progress on taking the team problem out of the Bill. We now have it as a clear medical responsibility for the medical practitioner. But what happens to a pharmacist who dispenses a

[LORD KIRKWOOD OF KIRKHOPE]
prescription made by a general practitioner in the furtherance of something innovatory? We should remember that the pharmacist is a sole practitioner, not protected by any NHS provision or indemnity. To what extent, if any, would pharmacists put themselves in the firing line if they were to dispense a prescription in pursuit of medical innovation?

The noble Lord, Lord Saatchi, has got me half way along the road. I hope that we will take no action today other than to accept the package of Keogh-Saatchi provisions. I am happy to do that but I warn the noble Lord, if that is the right verb, that some of us might be waiting for him at Report if he does not give a little more thought to some of the important issues raised by colleagues today.

Baroness O'Neill of Bengarve (CB): My Lords, I am sorry to say that I am another non-medic. Indeed, I am a philosopher by trade and training but I would like to make three points. First, I was puzzled at Second Reading and again this morning by a certain divergence of vision among those of our medical colleagues with surgical experience and those who are not surgeons. It seems that, on the whole, those with surgical experience are quite happy with current legislation. They feel that they must innovate and that the non-standard anatomy, which I have learnt that we all enjoy, means that they cannot go in there with a rule book and just stick to it. I have not heard quite the same uniformity from our clinical colleagues who are non-surgeons. I hope that we could be a bit clearer about whether surgical procedures should be in here at all.

Secondly, the question of unintended consequences has already been raised by the noble Lord, Lord Giddens, and others. Some quite process-heavy amendments have been proposed which deserve rather more picking apart than they have already received. We do not wish to put in so much process that we successfully stifle the very innovation that it is the purpose of the Bill to achieve. I hope that we can come back to those amendments.

Finally, and with trepidation as I am standing right behind the noble Lord, Lord Pannick, there is a bit of a difference between reasonableness and proportionality. They tend to come as twins. I am entirely in favour of reasonableness but proportionality suggests that you have at the back of your mind enough data to say what is proportionate and what is not. I fear that introducing requirements for proportionality may actually wreck the possibility of innovation in areas where part of the objective is to obtain the data, because they are not yet there. I would have thought that from a patient's point of view it is reasonable to go for a treatment for which there are not yet complete data, and therefore no judgment of proportionality can be made, but which nevertheless is reasonable because the other options are dire.

Lord Mackay of Clashfern (Con): My Lords, I had not intended to take much part this morning but, my name having been mentioned, I am stimulated to respond. The Bill is about innovation. Therefore, if a doctor is attacked for some failure in respect of innovation, the ordinary rules of defence that are presently available do not seem appropriate. Our colleagues who are excellent innovators have managed to avoid the necessity for litigation as a result of their innovations. However, if by any chance any of them were challenged, how would they go about their defence?

I make this basic point in answer to my colleague the noble Lord, Lord Pannick. He quoted what I said at Second Reading. It will not surprise your Lordships if I happen to hold still to what I said then. The point is that when there is an innovation, there is not much material on which to judge whether it is reasonable or proportionate. If there were in the existing practice, it would not be an innovation. The problem is therefore that the ordinary formulations of reasonable and proportionate with which lawyers are very familiar—I am enough of a lawyer to be familiar with them—are not really appropriate. I believe that the test which my noble friend Lord Saatchi's Bill originally had, and which is preserved among all the innovations that have taken place since, is in Clause 1(4)(a):

> "Nothing in this section … permits a doctor to administer treatment for the purposes of research or for any purpose other than the best interests of the patient".

That is a simple test which the doctor must face at the time of innovation and, so far as I am concerned, elaboration with the familiar legal phrases that are very dear to lawyers is a mistake. I therefore adhere to what I said at Second Reading.

I should perhaps say that I am not entirely without experience in this area for when I was in practice in Scotland, which is now a long time ago, I did quite a lot of work in the Medical and Dental Defence Union of Scotland area. My very first appearance as a counsel in this House was in respect of a doctor's negligence. My experience was over quite a long period; it may not have been very good but it was certainly extensive. I very much support the Bill and hope that we need not get around to voting on it today. There is plenty of scope for discussion about these matters and a good deal of substance in many of the amendments. We should discuss them further and, if necessary, have votes on Report.

Baroness Wheeler (Lab): My Lords, on behalf of these Benches I welcome the commencement of the Committee stage of the Bill. At Second Reading we underlined the necessity for close scrutiny by this House, and we are pleased that the opportunity has been presented to us. In that debate there was both strong support for and strong reservations about the Bill, with many questions and issues to be addressed. We have moved on since then, but despite acknowledged progress made on safeguards for staff and patients contained in the amendments from the noble Lord, Lord Saatchi, there remain crucial reservations and concerns from key parts of the medical profession and from patients' organisations, as we continue to discuss today.

We commend the work that the noble Lord has undertaken on the Bill, and feel that the changes on patient and staff safety signify improvements to it. It is reassuring that his proposed amendments have the backing of Sir Bruce Keogh, the NHS medical director,

and the Government, and that the common-law Bolam test would remain unaffected by the Bill. The noble Lord, Lord Saatchi, knows that there is strong support for the principles and the intent of what he is trying to achieve. Labour has always strongly supported efforts to put innovation at the heart of the NHS and to bring innovative treatments to patients faster.

After Second Reading, the Minister for Health, Dr Daniel Poulter, responding to a Parliamentary Question in the Commons from Labour on the progress of the Bill, acknowledged the Government's support for the principles of the Bill but emphasised that the amendments were necessary,

"to ensure it does not: put patients at risk; deter good and responsible innovation; place an undue bureaucratic burden on the National Health Service; or expose doctors to a risk of additional liabilities".

These four key tests are what we should keep firmly in focus today, and I hope that the noble Lord, Lord Saatchi, and the Minister will address whether they consider that the tests have been met in the revised Bill in their responses to the issues that have been raised today.

I will limit myself to speaking on just some amendments in this group. Like other noble Lords, I look forward to hearing from the noble Lord, Lord Saatchi, and the Minister on the key issues raised by the many experts in this field who have spoken today. On patient safety, as I have stressed, we welcome the efforts made by the noble Lord, Lord Saatchi, in his amendments to address widespread concerns that the overall Bill would encourage reckless rather than responsible innovation and put patients at risk. We support the new emphasis on reasonable and responsible innovation contained in amendments in the next group, as well as the reference in Amendment 10 in this group from the noble Lord, Lord Pannick, and my noble friends Lord Turnberg and Lord Winston, to the doctor needing to act in a manner that is both reasonable and proportionate. The new provisions in Amendments 8 and 9 are important because we recognise that they are designed to provide that a doctor's departure from the existing range of accepted medical treatment for a condition is not negligent where the decision to depart is taken responsibly.

We also welcome the deletion of the references in the previous Bill to the doctor's responsible officer and appropriately qualified colleagues in respect of the staff to be consulted about the proposed treatment. These caused much confusion among both supporters and people with concerns about the Bill, and the new reference in Amendment 16 to the need to obtain the views of one or more appropriately qualified doctors in relation to the proposed treatment is clearer—although it is a critical area that will also need to be developed under guidelines, codes and/or regulations. It needs to be clear who is an appropriate qualified doctor. The new definition of a doctor being,

"appropriately qualified if he or she has appropriate expertise and experience in dealing with patients with the condition in question",

is also an improvement to the Bill, although the question of the independence of the doctor whose opinion is being sought is a critical one.

My noble friend Lord Turnberg addressed this earlier with much force under Amendment 7. Key stakeholders have stressed that requiring the doctor to have regard to the opinions of other professionals responsible for patients' care, together with the requirement for written consent to be sought from at least one other doctor who is independent of the responsible doctor, would be a welcome step in providing more clarity to the process.

There is an extremely worrying potential for conflict of interest here—for example, in the supporting doctor's involvement in the development of the drug or treatment in question—and clear guidelines and rules of engagement will be essential. Sir Robert Francis QC points to the problem that arises from the choice of the appropriate qualified doctor to consult resting entirely with the doctor wanting to offer a new treatment. He or she is free to choose someone in his own partnership or laboratory, or someone with a commercial interest in promoting or selling the treatment. It is less than clear who is the final judge of whether the individual is appropriately qualified. There is also concern among a number of stakeholder groups that pharmaceutical companies could put undue pressure on doctors to try out potentially dangerous treatments, and this concern will also need to be addressed.

Concerns remain that the involvement and consent of patients to untested innovative treatments are not more explicitly in the Bill. Amendment 14 from the noble Baroness, Lady Masham, addresses this issue by specifying the need to obtain informed consent in light of the aims, processes and risks. I look forward to hearing further from the noble Lord, Lord Saatchi, on how he considers the Bill can address this, as this point has been raised by a number of noble Lords in the debate.

11.45 am

A number of amendments rightly underline the importance of there being a clear record in writing of the advice given to the patients, and noble Lords again have expressed sympathy for that. We need to see the reasons for giving it and the steps taken to comply with the requirements of the Act. Amendment 15 from the noble Lord, Lord Pannick, the noble Baronesses, Lady Emerson and Lady Finlay, and my noble friend Lord Turnberg specifies the recording of innovative treatments and the positive and negative results on the patient's medical record, as well as the results of the treatment being available on the public record at a later stage. These are all important processes that we would like to see followed.

Amendment 24 from my noble friend Lord Turnberg and the noble Baroness, Lady Masham, relates to the situation in the case of acute trauma and emergencies. Obviously situations will arise where there is insufficient time for full consultation and approval on using an innovative treatment or procedure, and it is right that consideration is given to how they should be dealt with. The Medical Defence Union points out that,

"in an emergency doctors know they must act in their patient's best interests. The Bill does not prevent that, but it is silent on the matter. However, delay could be fatal if doctors believe innovative treatment is necessary but delay in order to seek advice about the Bill's requirements".

[Baroness Wheeler]

We have heard in today's important debate that noble Lords want dialogue and discussion with the noble Lord, Lord Saatchi, and indeed he has said that himself. Is he prepared to consider hosting a round-table discussion with all those Peers who have an interest in the matters before us today? That would be a very helpful way forward.

Lord Turnberg: My Lords, I hope that I am not out of order in responding to some of the comments from the noble Lord, Lord Saatchi, about my amendments. I am grateful to him for his comments and I listened with care to what he had to say. I am also impressed by the noble Lords, Lord Cormack and Lord Kirkwood, and indeed the noble and learned Lord, Lord Mackay, that further discussions may be possible before Report, which I would very much welcome.

On Amendment 1, I note that the noble Lord, Lord Saatchi, is not very keen on the idea of limiting the scope of the Bill at the moment to cancer, but my point here was to start with that and expand cautiously in the light of experience. I note that the noble Lord, Lord Kirkwood, also urged some caution in the way in which we introduce the Bill. The amendment also impacts on Amendment 17, whose lists of exclusions, if we went along the line of limiting the Bill to cancers, would not be quite so necessary.

My Amendment 7 and Amendment 12 from the noble Lord, Lord Saatchi, overlap to a considerable extent, and I am grateful for that. The main difference is that his concentrates largely on taking account of the views of another expert, while mine suggests that we should obtain the agreement of at least one other expert, which should be recorded in the note. I think that that strengthens his amendment, and I hope he will think about that rather carefully.

On Amendment 15, a number of other noble Lords have referred to the need to have any innovations recorded in some form of register but also in the patient's records. I listened carefully to whether the noble Lord, Lord Saatchi, had accepted the idea that the record should be in the notes as well, and I hope he will accept that too.

Amendments 21 and 32 talk about research. I am pleased that the noble Lord agrees with the principle that this Bill should not interfere with research; I do not think that anyone feels that it should. However, there are many in the research world who are concerned that the Bill might have that unexpected consequence. Something in the Bill along the lines that would exclude the possibility would therefore be extremely helpful.

Similarly with Amendment 24, which talks about emergency care, it is true that the Bill may not cover emergency care, but there are people involved in accident and emergency departments who are concerned that the Bill may somehow, in some way, inhibit them. It would be a shame if the impression left by the Bill inhibited that sort of emergency innovative practice, hence the reason to have something in the Bill.

I do not intend to divide the Committee today on any of these amendments, and I am very grateful for the informed debate on many of them. I hope we will have a chance to come back to at least some of them on Report.

Lord Winston: Does my noble friend agree that one of his amendments tends to limit the Bill almost entirely to cancer treatment? There is a problem even there, however, because, as the noble Baroness, Lady O'Neill, said, surgery is an important part of cancer treatment. It is absolutely certain—I am not a cancer surgeon but I have watched many cancer operations, and perhaps other surgeons in the Chamber will support me on this—that cancer surgery is often the most innovative surgery, and you cannot possibly take a decision with the sorts of permissions that are usually required beforehand, because you do not know exactly what you are going to encounter. There is a problem there with the structure of the Bill as it presently stands.

Lord Turnberg: I accept entirely what my noble friend has said. The surgical aspects of the Bill are quite tricky.

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe) (Con): My Lords, this large group of amendments, all in their own separate ways, seek to ensure that patients are protected against negligent or irresponsible treatment. As we have heard, these amendments take many different approaches in seeking to achieve essentially the same goal. The Government are absolutely committed to safeguarding patients. That is why my right honourable friend the Secretary of State for Health asked Sir Bruce Keogh, the medical director of NHS England, to work with the medical profession to devise a package of amendments that would make this Bill safe for both patients and doctors. Like my noble friends Lord Kirkwood and Lord Cormack, I take this opportunity to commend my noble friend Lord Saatchi for listening to concerns and agreeing to table the amendments recommended by Sir Bruce Keogh in full.

I now address the amendments themselves. On Amendments 1, 7, 17 and 33, the Government do not feel that there is anything to be gained by restricting the scope of the Bill in the way proposed. To set out specific medical treatments or circumstances that would or would not be covered by the Bill would make it complicated for doctors to follow and less flexible to individual patients' circumstances. That was well exemplified by the exchange that we have just heard. This might limit the Bill's usefulness to patients and doctors alike. I say to the noble Lord, Lord Turnberg, that there is no question of the Bill applying to unregulated practitioners: it applies to doctors. In answer to the noble Baroness, Lady Wheeler, about what constitutes an appropriately qualified doctor, we believe that to define the required level of experience and expertise would create an overly burdensome requirement on doctors looking to innovate responsibly. A requirement that a doctor is appropriately qualified provides a sufficient safeguard to patients. New Clause 1(3)(b) requires the doctor to take full account of the views of an appropriately qualified doctor in a way in which a responsible doctor would be expected to do.

The provisions in Amendment 7 outlining the process that a doctor must follow to reach a responsible decision are largely addressed by my noble friend Lord Saatchi's Amendment 12. The provisions in Amendment 7 which

require doctors to consult a specified range of other doctors are too restrictive and would make the Bill complicated for doctors to follow. My noble friend's amendment for doctors to take full account in a responsible way of the views of one or more appropriately qualified doctors in relation to the treatment is less burdensome and is a better equivalent to the existing law.

The noble Lord, Lord Pannick, raised concern that a responsible decision under the Bill is defined as relating to the process rather than the substance of the decision. I listened very carefully to that point. The steps that a doctor has to take under new Clause 1(3) include taking account of substantive factors as well as process. This includes taking full account in a responsible way of the views of one or more other doctors about the proposed treatment. In addition, the doctor must consider the risks and benefits of the proposed treatment as compared to other treatments and to not carrying out any treatments at all. This strays outside the realm of process.

The Government's view is that it is not necessary in this Bill to require doctors to record their innovation in medical records as set out in Amendments 7 and 15. The General Medical Council's *Good Medical Practice* guidance already sets out requirements on doctors to record their work clearly in clinical records, including clinical decisions made and discussions with patients. On Amendment 19 and the related Amendment 34, the Government believe that requiring doctors to record the results of innovative treatments in order to demonstrate that they have not been negligent is not the right approach. This is too bureaucratic and risks deterring doctors innovating. As regards the idea put forward by the noble Lord, Lord Winston, that there should be some sort of oversight by a clinical or research ethics committee, that would add a very significant level of bureaucracy. Considering the time it would probably take to receive a response, it would act as a barrier to innovation. As the noble Lord knows, research ethics committees are specialists in considering research proposals and would not necessarily be qualified to comment on innovative clinical practice. They do not necessarily have universal coverage and they would not necessarily have the requisite knowledge to advise doctors on very specialised innovative new practices.

However, I have heard the legitimate concerns of noble Lords today, and I commit on behalf of the Government to explore this issue further and constructively with the relevant professional bodies. It will clearly be helpful to understand, should this Bill become law, what might be useful in terms of record keeping and reporting in relation to medical innovation. Furthermore, I commit to ensuring that any guidance that may be appropriate is developed and made available in a timely manner. I hope the intention to issue guidance will be of help to my noble friend Lord Kirkwood.

Amendments 12, 14, 18 and 21 seek to ensure that consent is sought and that proper consideration is given to the views of the patient. My noble friend Lord Saatchi's Amendment 12 ensures that to fall within the Bill a doctor must obtain any consents required by law. This amendment also ensures sufficient protection for the views of the patient. Furthermore under the existing law of consent patients already have the right to information about the testing and treatment options available to them.

The noble Baroness, Lady Masham, posed questions about drugs. She asked me whether the NHS would pay for unapproved drugs or whether the patient would have to do so. It is worth noting that nothing in the Bill allows doctors to bypass any processes or requirements set by the trust that they are working for. This would include ensuring that the trust would fund any treatment if it were to be provided within the National Health Service. She was fearful that this could result in a two-tier health system in which a patient would be required to pay for innovative treatment. The Bill does nothing to alter funding arrangements for accessing innovative treatments within the NHS, as I have said. That will be governed by whatever rules apply in the trust concerned. However, the Bill also does not change the ability of patients to pay for private medical treatment, as they are able to do now.

Noon

The noble Baroness asked about untested experimental medicines. Existing medicines legislation omits the use of unlicensed medicines, whether tested or untested, to be prescribed by the physician on his own responsibility for the treatment of his patient for an unmet medical need. The decision on whether they prescribe unlicensed medicine will remain a matter for the doctor, or the prescriber who has clinical responsibility for that patient's care, taking into account their individual clinical circumstances. The GMC gives professional guidance to its members about what they need to consider when deciding whether to prescribe an unlicensed product, such as explaining to the patient that the product is unlicensed, making sure that they understand the risks and obtaining voluntary informed consent from a patient. In general, we hope that the Bill will give doctors greater confidence to innovate in medical treatment, which may well include prescribing unlicensed drugs.

The noble Baroness also asked whether patients accessing innovative drugs under the Bill would also be able to access palliative care. The Bill does nothing to change the role of the doctor in offering whatever treatment they feel is clinically appropriate to their patient. If the treatment is provided within the NHS, naturally, as I have indicated, the conditions or requirements imposed by the employing trust would have to be adhered to. Subject to that, however, the doctor is free to offer whatever treatment they feel is right. That could, in an appropriate case, involve offering a patient a combination of innovative treatments and standard palliative care.

Amendment 21 also removes the exclusion in the Bill for research. The Government's view is that it is important that the Bill is not used to circumvent existing law on research. Similarly, Amendment 32 would ensure that the Bill does not affect any legislation which relates to clinical trials and research, and it is important for the Committee to understand that the Bill, as amended by my noble friend Lord Saatchi, would not affect any of the legal requirements relating to research—and in fact explicitly excludes research—

[Earl Howe]
meaning that the focus is on individual innovative treatments. Innovation is very important but it is not a substitute for medical research, which usually tests the efficacy of treatments in a systematic way.

The noble Lord, Lord Kakkar, feared that the Bill might impinge on research and emergency care. I will come on to emergency care later but, as regards research, the Bill makes explicit provision in Clause 1(4)(a) that it does not permit,

"a doctor to administer treatment for the purposes of research".

Where a doctor is proposing to carry out research, they must comply with the relevant regulation and legislation relating to it.

Amendment 27 has the same effect as my noble friend Lord Saatchi's Amendment 12, which removes the requirement for a doctor to notify their responsible officer about the proposed treatment. The responsible officer may not have expertise relating to the condition in question. It may be difficult for a doctor to notify them in advance in all cases. The deletion of this provision should reduce bureaucratic burden for doctors, without any disadvantage to or loss of protection for, patients.

Amendment 30 sets out an oversight mechanism which the Government believe is more bureaucratic and less effective than that offered by my noble friend's package of amendments. In particular, my noble friend's Amendment 12 requires that a doctor carries out a more robust consideration of the risks and benefits, including consideration of the proposed treatment, but also of other options.

Amendment 22 would clarify that doctors are not required to innovate, and that they will not be negligent if they fail to innovate. The Government's view is that nothing in the Bill requires a doctor to innovate. Doctors are no more likely to be sued for failing to innovate as a result of the Bill than they are under existing common law. I say, particularly to the noble Lord, Lord Winston, that under the current law a doctor will not be negligent when departing from the existing range of medical treatments if he can show that his decision is supported by a responsible body of medical opinion. That is called, as the noble Lord knows, the Bolam test, which has been developed by the courts. The Bill preserves the existing law, so that it will then be the doctor's choice whether to follow the Bill when innovating or whether to be judged according to the Bolam standard.

As regards emergency situations, as I have said, the Bill does not need to be used in all situations. The existing law remains. That route can be used where the doctor does not want to follow the Bill, or where it is not appropriate to do so. That, indeed, could include an emergency.

Lord Turnberg: I am sorry to interrupt the Minister's flow. Does he not think that that is confusing for doctors in an emergency situation, wondering which route to take and about the options at that stage, rather than just getting on with the job?

Earl Howe: Personally, no, I do not—although my noble friend may choose to address that point. I believe that what initially motivated my noble friend to introduce the Bill was a perception on his part that there are doctors out there who are afraid to innovate, and perhaps afraid to innovate even on the spur of the moment, for fear of being litigated against. If that situation were to apply, that doctor could regard the Bill as a useful way forward. I do not think that that poses any confusion, because my noble friend is proposing to bring the Bolam test forward, as he has clearly explained, so that the essence of the principle that the courts look at would apply in whichever course the doctor chose to take.

The noble Baroness, Lady Wheeler, made a point about conflict of interest. The Bill makes it clear that the doctor will only be protected from a successful claim in negligence where they have reached a responsible decision. That includes a requirement to consult with one or more appropriately qualified doctors. In choosing which doctors would be most appropriate to consult, a doctor would need to be confident that their views would enable him or her to reach a responsible decision in order to benefit from the protection offered by the Bill. Just to make the point absolutely clear, I say that the Bill does not change the law of consent in relation to children or people who lack capacity, whereby any treatment provided to them by a doctor must be in their best interests.

Amendment 10 would add a requirement on doctors to act in manner that is reasonable and proportionate. My noble friend Lord Saatchi's Amendment 11 would ensure that a doctor must be acting responsibly in an objective sense when making a decision to depart from the existing range of accepted medical treatments for a condition. Under the law of negligence, "reasonable" and "responsible" have the same meaning. Therefore, the Government's view is that Amendment 10 is unnecessary.

Amendment 24 would clarify that doctors would not have to follow the steps of the Bill in an emergency. My noble friend Lord Saatchi's Amendment 29 ensures that it is for the innovating doctor to decide whether to take the steps set out in the Bill or to rely on the existing Bolam test, as I have just explained. There is no requirement to follow the Bill.

My noble friend's package of amendments ensures that the Bill comes as close as possible to achieving the policy intent of bringing forward the Bolam test to before treatment is carried out. The amendments would do this in a non-bureaucratic way by avoiding the creation of new approval structures or alteration of the remit of existing groups such as multidisciplinary teams. They provide a critical safeguard in ensuring that there is both expert peer review of the doctor's proposal and that the doctor acts responsibly. The Bill would not provide any protection to a doctor who carried out an operation or procedure negligently. The Government would not support any Bill that sought to prevent patients who receive negligent treatment from seeking compensation or which sought to remove the requirement of doctors to behave responsibility and in the best interests of their patient.

I will turn briefly to the questions put to me by my noble friend Lord Kirkwood. First, he asked me whether the Bill would apply to pharmacists who dispense medicines. The Bill applies to a decision by a

doctor to innovate, which would include a decision to prescribe an innovative medicine. The Bill does not impact on the reliability of a pharmacist who provides a patient with a medicine in accordance with a doctor's prescription.

My noble friend also asked whether the Bill would apply in Scotland. It would apply in England and Wales but not Scotland or Northern Ireland. Medical negligence law is within the legislative competence of Northern Ireland and Scotland, but not Wales. He also asked me whether there is a conflict between the Bill and the common law. Under both the Bill and the common law a doctor will not be negligent if they have acted responsibly. The Bill, so far as possible, brings forward the common-law Bolam test, as I have explained, to before the doctor offers treatment. There is therefore no conflict between the requirements under the Bill and the common law. The Bill simply offers doctors a way to demonstrate and be confident before providing treatment that they have acted responsibly and thus not negligently.

As regards the cost of implementing the Bill, which my noble friend also asked me about, my reply to him at this stage is that there is not sufficient evidence for us to arrive at a cost figure. The impact of the Bill is by its very nature hard to predict.

I hope that noble Lords will accept my noble friend's package of amendments in this group—that is to say, Amendments 8, 9, 11, 12, 16, 20, 25, 26 and 27. It is the Government's view, based on medical and legal advice, that together these amendments do all that is necessary to protect patients, while freeing doctors to innovate responsibly without undue bureaucratic burden.

Lord Saatchi: My Lords, I thank all noble Lords who have spoken on this group, which was initiated by the noble Lord, Lord Turnberg. Many interesting points have been made on ethics, law, science and medicine. I am sure that we will all agree that the Minister has dealt with them all admirably. He certainly put the points better than I could have myself, and I hope that he has covered most of what was said.

What can I add to what my noble friend has said? I do not want to descend into anecdotage, but if any noble Lord sensed a reluctance on my part in relation to these amendments, perhaps this will help. I was taught the importance of what the noble and learned Lord, Lord Mackay, and the noble Baroness, Lady O'Neill, said as regards trying to maintain the simplicity of the Bill in an exchange with the noble and learned Baroness, Lady Butler-Sloss. At an early stage Daniel Greenberg, the Parliamentary Counsel, who has been the draftsman of the Bill throughout, showed her the first or second draft and said, in effect, "What do you think?". She replied, "Make it shorter".

Over the course of the last two years we have tried very hard to keep the Bill in a state which I think the noble and learned Baroness and the noble and learned Lord, Lord Mackay, would approve of. I learnt from her that the courts want to have an Act of Parliament that is absolutely crystal clear in its intent, so that there is no doubt and confusion at all in the mind of the court about what Parliament intended with this or that clause, phrase or wording. We have tried very hard to do that. I reassure your Lordships that if that has in any way given the appearance of reluctance on my part, I am deeply apologetic.

I would certainly welcome following up the suggestion of the noble Baroness, Lady Wheeler, and those of many other noble Lords. The noble Lord, Lord Kirkwood, had an excellent wish list of following up Committee today—with your Lordships' approval—with discussion between now and Report to see where we can get to. I am trying only to deliver to the noble and learned Baroness, Lady Butler-Sloss, and her fellow judges in the courts, an Act of Parliament that is simple, completely straightforward and totally clear, and which does what it is supposed to: provide clarity and certainty at the point of treatment both to the doctor and the patient. As noble Lords can see, I am resisting the enormous temptation to revert to a Second Reading speech, so I will now sit down, after a long group of amendments, so that we can go on to the next group.

12.15 pm

Lord Turnberg: My Lords, I am very grateful to the noble Lord, Lord Saatchi, and to the Minister for their comments and their acceptance of many of the points that we made in these amendments and in Amendment 1. I commented earlier on many of the points that have been made. I am somewhat disappointed that the Minister does not like the idea of ensuring that agreement in writing is put into the patient's record—I thought that that would be quite a useful thing to have. However, perhaps we can talk about that at a later date. Meanwhile, I beg leave to withdraw my amendment.

Amendment 1 withdrawn.

Clause 1: Responsible innovation

Amendment 2

Moved by ***Lord Pannick***

2: Clause 1, page 1, line 2, after "encourage" insert "reasonable and"

Lord Pannick: My Lords, Amendment 2 refers again to the concept of "reasonable" innovative treatment. I will be very brief on this. First, I am reassured by the comments just made by the Minister that as a matter of law, "responsible" and "reasonable" in this context have the same meaning. Secondly, I am persuaded by the noble Baroness, Lady O'Neill of Bengarve, that we do not also need a criterion of proportionality in this context.

Thirdly and finally, the noble and learned Lord, Lord Mackay of Clashfern, pointed out that in this context of innovation there is of course by definition a limited amount of information already available. That is why innovation is required. My concern is that to justify the innovative treatment, especially if it causes further pain and suffering, it needs to be based on some evidence or at least on a rational judgment that there are some prospects of success. I should also mention Amendment 4, which would leave out the concept of "reckless" treatment. I note that the noble Lord, Lord Saatchi, has added his name to a similar amendment: Amendment 5. I beg to move.

Lord Saatchi: My Lords, I think that the Minister has answered this point, and I do not know what I can add. The Bill at the moment focuses on "responsible" and "irresponsible", and it is very pleasing to hear that the noble Lord, Lord Pannick, might accept that the Bill concentrates on that distinction, and that to introduce a reference to "reasonableness" or "proportionality" might risk causing confusion. Therefore, perhaps this is a topic on which he can satisfy himself in the discussions that follow Committee.

Lord Turnberg: My Lords, I strongly support Amendment 2 in the name of the noble Lord, Lord Pannick, for inserting the word "reasonable" for all the cogent reasons that he has given. Amendment 3 follows on from my earlier Amendment 1, which defines "relevant condition" and does not need further discussion here. I am very pleased to see that we have the agreement of the noble Lord, Lord Saatchi, that the word "reckless" will disappear from the Bill.

Baroness Butler-Sloss (CB): My Lords, I strongly support the Bill as it is drafted. I am relieved that the noble Lord, Lord Saatchi, produced a short Bill; I hope that the House does not think that it was a bad idea to suggest that a short Bill might be more attractive than a longer one. For that reason I am not at all happy about the various amendments that were in the first part of our discussions today.

I do have reservations about the words in brackets in Clause 1(1), and I take the view that the noble Lord, Lord Pannick, is probably right to say that they should be excluded.

Baroness Finlay of Llandaff: My Lords, I added my name to the amendment deleting "reckless" because I felt quite strongly that it detracted from the overall intention of the Bill. This is not about reckless innovation; it certainly must deter irresponsible innovation, but it is about encouraging responsible innovation. I also added my name to Amendment 3, on treatment for the "relevant conditions", because many of these patients who are seriously ill will have multiple co-morbidities and may have many things happening to them. This Bill is aimed, as far as I have understood, at the principal condition—the condition for which patients are often desperate for some innovative treatment. It should not inadvertently allow lots of other strange things to be presented to patients to cope with many of the other co-morbidities that they may have.

My feeling about that comes particularly from my own specialty, which the House knows is palliative medicine, where we see time and again patients who are very emotionally vulnerable, psychologically fragile and potentially in despair, so they are unable to make sense of what is going on. In that state, they are quite vulnerable to people presenting all kinds of strange treatments with false claims. I will give a specific example from my own practice. We came across a group of patients on a ward who all had small crystals by their bed, and we discovered that a member of staff strongly believed that holding on to these crystals would shrink the patients' cancers. The evidence for it was absolutely zilch; I think that the patients had paid to have the crystals given to them. That type of so-called experimentation is completely outside the scope of the Bill—and must be outside its scope. That is why it struck me that the wording about the relevant medical condition should feature in the Bill, because of the potential for exploitation otherwise.

Earl Howe: My Lords, this group of amendments seeks to alter the purpose clause of the Bill. Under the law of negligence, the words "reasonable" and "responsible" have the same meaning, as the noble Lord, Lord Pannick, reminded us. As such, the addition of "reasonable" is not necessary and risks creating confusion. Existing clinical negligence law commonly refers to a responsible body of professional opinion. The addition of "reasonable" may suggest that the test under this Bill differs from the existing Bolam test.

The noble Lord, Lord Pannick, asked me whether the Bill required a rational judgment of success. Proposed new subsection (3)(d) in Amendment 12 requires the doctor to consider a number of factors in relation to the proposed treatment. This includes a requirement to consider,

"the risks and benefits that are, or can reasonably be expected to be, associated with the proposed treatment",

other accepted treatments, or,

"not carrying out any of those treatments".

In weighing this up, the doctor must apply an objective standard as to what could reasonably be expected in relation to those treatments. This provides a further safeguard for patients in ensuring that a doctor may not offer an innovative treatment in accordance with the Bill unless he has acted in an objectively responsible way. I hope that that helps the noble Lord, Lord Pannick.

My noble friend's Amendment 11 seeks to ensure that a doctor must be acting responsibly in an objective sense when deciding to depart from the existing range of accepted medical treatments.

On Amendment 3, the Government do not feel that there is anything to be gained by restricting the scope of the Bill in this way. To set out specific medical treatments or circumstances that would or would not be covered by the Bill would make the Bill complicated for doctors to follow and less flexible to individual patients' circumstances. This might limit the Bill's usefulness to patients and doctors alike.

On Amendments 4 and 5, the Government support the amendment to remove the reference to deterring "reckless irresponsible innovation" from the purpose clause. Recklessness has a very specific meaning in criminal law, and the term is out of place in a Bill about the law of negligence. Furthermore, the substantive provisions of the Bill focus on how a doctor can demonstrate that he has acted responsibly. This amendment therefore ensures that the purpose clause better reflects the focus of the Bill. I hope that noble Lords will accept Amendment 4, which brings clarity to the purpose of the Bill.

Lord Saatchi: My Lords, I thank my noble friend the Minister for what he said. I think that there is a consensus on Amendment 5 in my name, that of the noble Lord, Lord Turnberg, and that of the noble Baroness, Lady Finlay, to remove the word "reckless". I think that we are agreed on that. My noble friend dealt with the point under Amendment 3 from the

noble Baroness and the noble Lord. We understand the wish to exclude certain treatments and types of surgery, and perhaps that is something that we can discuss between now and Report.

I share the Minister's wish to accept Amendment 4 from the noble Lord, Lord Pannick, which removes the reference to deterring quackery from the purpose clause. We are agreed on the view that, if the noble Lord, Lord Pannick, believes that it is important to confine the purpose clause to the positive, we should not insist on the inclusion of both limbs—positive and negative—since as a matter of law the negative flows naturally from the positive in any event. If the noble Lord, Lord Pannick, presses that amendment, I shall support it.

Lord Pannick: I beg leave to withdraw the amendment.

Amendment 2 withdrawn.

Amendment 3 not moved.

Amendment 4

Moved by ***Lord Pannick***

4: Clause 1, page 1, line 3, leave out "(and accordingly to deter reckless irresponsible innovation)"

Amendment 4 agreed.

Amendment 5 not moved.

Amendment 6

Moved by ***Lord Winston***

6: Clause 1, page 1, line 3, at end insert—

"( ) For the purposes of this Act, "innovation in medical treatment" means—

(a) the use of a medical procedure, treatment, therapy, device or instrument which has not been subjected to a randomised clinical trial or equivalent clinical validation, or for which there is no published evidence of its risks or benefits in peer-review medical journals;

(b) the prescription of a drug which has not been licensed by the UK Medicines and Healthcare Products Regulatory Agency and the European Medicines Agency;

(c) the prescription of a licensed drug for a treatment, condition or therapy not recommended by the manufacturer; or

(d) the use of a device or instrument which has not been regulated under the Medical Devices Regulations 2002 (S.I. 2002/618) for the purpose of that particular treatment."

Lord Winston: My Lords, one issue that crops up again and again in this Bill is that we have not defined what is meant by innovation. This amendment tries to detail where something would be innovative—for example, a drug that has not been recommended by the manufacturer or a device or instrument that might be used in the course of infiltrating a patient's body in some way. It may be a telescope or a plastic tube, or any therapy, device or instrument that has not been subjected to randomised clinical trials or published in a peer review journal. I have probably said enough about this amendment. It is very clear that, although the Minister says that we are trying to complicate the Bill unnecessarily, I think that sometimes the Bill needs more complication—it is not that simple—and certainly in my view the definitions of innovation are essential, because that is what the Bill is about.

12.30 pm

Lord Blencathra (Con): My Lords, I say, for the record, that I have been here throughout but below the Bar of the House, so I am not suddenly intervening in the debate.

Inevitably, the Bill of my noble friend Lord Saatchi has been driven by terminal cancer care, and we understand the motivation. As regards the discussions on the first group of amendments, I agree with the noble Baroness, Lady O'Neill, that we have heard from some of Britain's most distinguished "scalpel" experts but we need to hear a bit more from physicians who have responsibility for long-term and chronic care. That is why I totally support my noble friend's Bill and the amendments he has proposed but I also support Amendment 6 proposed by the noble Lord, Lord Winston. I support it but I hope that it may not be necessary and that my noble friend Lord Saatchi will see that it is already taken care of in the Bill. However, I would like to flag up in this debate that it is important that the Bill covers innovative drug treatments, including drugs which are not necessarily authorised or approved in this country.

One does not want to get into describing personal medical things—it is a bit grubby. However, as an enthusiast for the Bill, who has experience of innovation approved by medical authorities in this country and has participated in some innovative treatments not approved in this country, I think that the House should hear from the users at the sharp end, so to speak.

I was diagnosed with MS in 1996. It is slow, progressive and each year it slightly tightens its grip. I would say to our distinguished lawyers, as I said at Second Reading, that when one goes to see one's consultant, one does not go with a lawyer in hand to see whether the consultant makes mistakes and one can sue him. I suspect that, like me, a hundred thousand other MS sufferers and those with Parkinson's and motor neurone disease all go along to ask, "What is new? Have you seen the latest research? What have you got? Is there anything that will work?". We know that at the moment there is no cure for MS, although I think that researchers are getting pretty close to finding one, but we want to get palliative care.

As I say, I do not want to go into details but some of the side-effects of increasing MS are pretty nasty and, frankly, life is not worth living unless those side-effects are dealt with. For many MS sufferers, as the nerve endings die, particularly in the legs and feet, the feet drag. No problem there, as one loses some strength in the legs, one can have a wheelchair. But many people suffer a complete loss of bladder control. If one has to go to the loo every 10 minutes, life is just not worth living. An innovative treatment was developed by the Swiss, which was then experimented by the National Hospital in London. Those Botox injections directly into the bladder were not a life-saver but they made life worth living again. Without going into details,

[LORD BLENCATHRA]
I fought my way through to become patient No. 51 in the clinical trials. That treatment has now been approved by NICE after all these years.

I am not saying that I am typical of patients with this sort of slow, progressive disease but I suspect that I am typical of many who will try any innovative treatment. I am 16 days into a treatment with a new drug, Fampridine, which is approved for use in this country but only, I think, in the national neurological hospital in the wonderful Queen Square. I believe that in clinical trials of the drug, 40% of people experienced a 40% improvement in their ability to lift their feet a tiny bit. However, lifting one's feet a quarter of an inch when one is walking is very beneficial as it stops one tripping over every dead fly on the carpet.

As I say, at the moment there is no cure for MS but these innovative treatments are making life better. After just 16 days of my experimental treatment, I certainly feel a marginal improvement—at least I am not declining further. That may be the only hope one can offer many people—not that we can fix them but we will make the quality of their lives better for the long term and we will try to hold the disease at bay. Therefore, the provisions of Amendment 6 are absolutely apposite.

In October or November of last year, an American research institute, the Scripps Institute, reviewed about 10,000 drugs currently approved in the United States for various conditions and treatments. The staff there discovered, partly by accident, that there was one drug prescribed for Parkinson's which seemed to repair the myelin sheath, certainly in their laboratory animals suffering from MS. I understand from my research that American doctors have slightly more power to prescribe off-label treatments than do British doctors. If it is in the patient's best interests, they are entitled to prescribe a medicine which is not authorised or approved for that condition. British doctors do not seem to have that same flexibility or freedom, except perhaps if a drug is prescribed for adults and a child has those same symptoms, they may off-label prescribe a quarter of a pill or half a pill, like half an aspirin given to children with an illness. As I say, British doctors do not seem to have that freedom or flexibility.

The vast majority of people do not have the benefits I have of contacting an American doctor and managing to get my hands on some of those pills. They are prescribed in this country for a certain condition but no doctor can prescribe them for MS patients at present. It will be another five or 10 years by the time all the trials are conducted. I appreciate that this Bill is not about laboratory experiments or turning us into lab rats, although I am happy to go much further than the terms of my noble friend's Bill and be a lab rat for some of these things. However, unless physicians treating long-term chronic illnesses can prescribe off-label treatments, which they think are in the best interests of the patients, this Bill will have failed. I hope that we can include off-label treatments.

I am obviously not an expert but I am deeply interested—I declare that interest as a patient—in the cocktails of drugs that seem to be available. For many treatments—it is the same for HIV and many others—there is no magic pill about to come on the market that will fix them. However, doctors have discovered that a combination of drugs, cocktails of various things, may have palliative or curative effects. I am on various cocktails of drugs, involving daily injections, weekly pills and various tablets. I can say that most of these are approved in this country but some are not. I am not taking illegal drugs but tablets and pills that have not been approved by NICE but which I, unlike the vast majority of patients in this country, can acquire from abroad. So I hope that if the Bill goes through and if the treatments mentioned in Amendment 6 are automatically included I will, one day soon, able to try those drugs without having to acquire them from doctors in New York. I hope that that would apply to many other patients in this country.

I am supportive of all the contents of Amendment 6 but if my noble friend says that it is not necessary, I am happy to go along with that.

Lord Kakkar: My Lords, I have some concerns about the wording of Amendment 6. Is it intended, for instance, to restrict the use of an agent or intervention that has been tested in a completely different situation—there may be some peer-review publication or some clinical validation in a completely different situation—but where it is proposed to use the treatment for another condition? One will recall that Gleevec was an agent developed principally for the management of patients with chronic myeloid leukaemia; it was an interesting biological compound that targeted a specific mutation in a signalling pathway in cells in that form of leukaemia. Many years later, it was noticed that that signalling pathway mutation was also seen in a particularly rare form of tumour, a gastrointestinal stromal tumour. Those who were innovating decided to use the drug because the genetic mutation appeared to be the same for treating that particular type of tumour to great effect. Would the description of innovation in the amendment have prevented that happening?

Proposed new paragraph (d) of the amendment deals with the question of devices or instruments. What happens if they have been developed and regulated for a particular intervention, and then an innovator decides to use them for a completely different condition? They will have been made available for regulated use but not for the condition in question. Would this amendment therefore restrict that type of innovation?

Lord Winston: I do not think that it restricts anything at all but actually makes the Bill of the noble Lord, Lord Saatchi, workable. We need some kind of definition of what an innovation is. That is all the amendment tries to achieve. It is not in any way restrictive. Of course, if one decides to put a plastic tube that is normally used to infiltrate the trachea into another organ, this amendment will permit that to happen, when currently it would not be allowed.

Lord Giddens: My Lords, the noble Lord, Lord Saatchi, knows that I support the thrust of the Bill but there are issues around some of these amendments that the noble Lord might at least listen to.

As I have mentioned previously, one of the core things about this legislation, given its sensitive nature, is that we have to comb through it all the time for possible perverse consequences. At the risk of sounding like sociology 101, unintended consequences are different from perverse consequences. Unintended consequences can be good or bad; perverse consequences undermine good intentions and reach the opposite result of what an individual needs to achieve. For example, strong rent controls were introduced in New York City to help poor people; in fact, they adversely affected them because they could not find places to live. The noble Lord says that the Bill is crystal clear in its intent, but that is not enough because there is a massive difference between intent and consequence. I therefore feel that as a general principle we should comb through the whole Bill to try to spot possible perverse consequences.

On the whole, with the reservations that have been noted, I support Amendment 6 because it might help to block off some of those reservations. We surely must know what innovation actually means in the context of clinical practice. Without such specification, one can see that various perverse consequences could occur. What would happen, for example, if a doctor was accused in court of failing to innovate because he or she did not try some eccentric form of treatment that was available? One could block off that perverse consequence by specifying, in the way in which Amendment 6 tries to, what actually counts as innovation.

I feel strongly that as the Bill proceeds through Parliament we must tighten every loophole that could lead to a situation in which, to some degree, the Bill undermines what it is actually supposed to achieve—helping vulnerable patients in a situation in which they are often desperate by bringing innovations to them that they would not have had available before. However, I fear that some of those things could happen if one is not aware of the minefield of perverse consequences. If we do not examine it all carefully there could be consequences that, to some degree, undermine the purest of intentions with which the legislation is introduced.

Lord Pannick: My Lords, I added my name to Amendment 6 because I agree with the noble Lord, Lord Winston, that it would improve the Bill to provide a definition of the core concept of innovation. As the object of the Bill is to provide greater clarity for medical practitioners, it is surely perverse not to include any definition of that core concept in the Bill. No doubt Amendment 6 needs improvement, perhaps for the reasons given by my noble friend Lord Kakkar, but I could not be persuaded that it is beyond the very considerable skills of the draftsman of the Bill, Daniel Greenberg, to provide a definition of innovation.

Lord Mackay of Clashfern: My Lords, the word "innovation" is a straightforward word in the English language. I am not sure that clarity is necessarily brought by multiplying it by how many in this amendment. Apart from anything else, one of the possibilities of innovation is for a doctor to say, "The standard treatment for this is a particular course of operation and chemotherapy. My belief is that that would not ultimately save you; it would subject you to a lot of pain and suffering and so on. The best thing, as far as I am concerned, is that you should not have any further treatment". I am not sure whether that comes under the definition in Amendment 6, but if we want simplicity, we should go for perfectly clear English words. "Innovation" is one of them.

12.45 pm

Baroness Masham of Ilton: My Lords, I support what the noble Lord, Lord Blencathra, has said. The use of drugs seems much more flexible in the private sector than in the National Health Service. I ask the Minister to look very closely at the funding of these drugs if they are to be accepted in the Bill.

Baroness Wheeler: My Lords, I am pleased that Amendment 28 has been grouped with the amendment of my noble friend Lord Winston and the noble Lord, Lord Pannick, as we have considerable sympathy with their attempts to define innovation. I understand that it is a probing amendment. We consider that the Bill would benefit from a clearer understanding of what we mean by innovation and indeed of some of the exclusions that would apply that were referenced in the earlier comments on Amendment 19. I am grateful to my noble friend Lord Giddens. His perspective on that was helpful. I look forward to the response on that.

Amendment 28 is also a probing amendment and underlines that medical innovation and the adoption of new treatments require the whole NHS to make both research and innovation its business. The Secretary of State, the NHS regulators and all the key NHS bodies have a clear responsibility and the authority that they need; they need to use it. We have had many debates in this House that recognise the scale and pace of innovation taking place across the NHS and the frustrating barriers that prevent innovative treatments being adopted.

The noble Lord, Lord Saatchi, considers that doctors' fear of medical litigation or disciplinary proceedings is a key factor that,

"reinforces a culture of fear and defensive medicine in the NHS".

Whether medical litigation evidence supports that or not, we need to keep emphasising that it is just one of a number of barriers that have to be overcome. I know that the noble Lord recognises this as the context for his Bill. As Sir Robert Francis QC puts it:

"The real obstacles to responsible innovation are not to be found in the Bolam test but in the minefield of regulation and bureaucratic inertia which doctors presumably have to surmount, not to mention the reluctance to fund innovative treatment".

The contribution of the noble Lord, Lord Blencathra, underlines that we are far too slow in this country to introduce new treatments.

The Health Research Authority is still yet to make a real impact on speeding up the painfully slow, complex and bureaucratic process of getting innovation in care and treatment adopted in the NHS. There is huge frustration across the NHS that existing pathways and mechanisms are not being fully used, such as the single portal of entry and single application procedures for

[Baroness Wheeler]
clinical trials. NHS Trusts' slow implementation of the UK life sciences strategy, Innovation, Health and Wealth, and the very low level of awareness and action that they have taken on that strategy are continuing causes for concern.

Most important too is the role of Health Education England to ensure innovation and research are incorporated into education and training of key medical and other health staff. The excellent vision report from the Association of Medical Research Charities, which my noble friend Lord Turnberg takes every opportunity to raise and endorse, showed the huge challenges we face building support among doctors and patients for participating in research that leads to innovation.

As research and innovation go hand in hand, we were keen to include reference to research and innovation in our amendment, but I hear what has been said by the noble Lord, Lord Saatchi, and the Minister on this. I note that the Medical Defence Union, while now supporting the changes the noble Lord, Lord Saatchi, has made to the Bill, also makes the point about the importance of research being included because that is where most innovation takes place. It is concerned on this issue because it feels that many doctors are likely to be uncertain about whether the Bill would apply to innovation they are contemplating. This may hold up a proposed treatment or procedure while they check the position. In most cases, the Bill will not apply. Even where innovation arises out of a research project, doctors are likely to want to ensure that information gathered in treating the patient contributes to overall research in that area, and the MDU is concerned that the wording of the Bill may prevent that. I would be grateful for comments on this point from either the noble Lord, Lord Saatchi, or the Minister.

Our amendment seeks to place the Bill in the context of the duty of the Secretary of State and the key bodies of the NHS to support responsible innovation in medical treatment and would make it clear that that is the overall purpose of the Bill. I would welcome a response from the noble Lord, Lord Saatchi, on whether, despite his desire to keep the Bill short, he considers that a clear definition of the core concept of innovation, as the noble Lord, Lord Pannick, said, could be incorporated into the Bill as a reference to its overarching purpose. I would also appreciate the Minister's comments on this.

Baroness O'Neill of Bengarve: My Lords, before the noble Earl responds, I would like to know whether other noble Lords think that this attempted definition of "innovation" does not perhaps inadvertently classify some entirely traditional medical treatments as innovations simply because they have been around for much longer than randomised clinical trials with equivalent clinical validation, and there will be no published evidence of their risks and benefits in peer-reviewed medical journals. I have in mind such homely treatments as prescribing the drinking of a lot of water, taking the waters or dietary advice. Many such things seem to be medical treatments but have probably not been documented in the journals.

Baroness Butler-Sloss: It seems to me that if one is going to have Amendment 6, instead of saying that it "means", it should say that it "includes". That would then leave open everything else that might come in as medical innovation.

Earl Howe: This group of amendments seeks to define innovation and the scope of the Bill. This is a uniquely difficult task as innovation is, in essence, about constant improvement, change and progression. It is essential that in the act of defining we do not inadvertently limit responsible innovation. I ask the Committee to take on board the point neatly made by my noble and learned friend Lord Mackay.

Amendment 8 to Clause 1(2) in the name of my noble friend Lord Saatchi limits the scope of the Bill to situations where a doctor departs from,

"the existing range of accepted",

medical treatments for a condition. This will be well understood by doctors, who are best placed to know whether they are following accepted treatments. This amendment also ensures that the Bill applies only to medical treatment.

A further provision, Clause 1(4)(a), ensures that the Bill applies not to research but only to the care of individuals. This exclusion of research is sufficient to achieve the same effect as Amendment 6 in the name of the noble Lord, Lord Winston. I hope that that clarifies that point for the noble Baroness, Lady Wheeler.

The Bill's definition of innovation allows for situations in which doctors choose to carry out no treatment in the best interests of the patient. The definition of innovation in medical treatment proposed by the noble Lord, Lord Winston, would exclude that. I hope that that point, if no other, will give him pause when he decides what to do with Amendment 6.

There is another basic point to make here. Defining innovation on the face of the Bill would restrict the application of the Bill and could risk uncertainty for doctors as to whether the protection offered by the Bill would extend to the treatment that they are proposing. It is important that the scope of the Bill is clear to the medical profession.

Moving on to Amendment 28, the Government do not believe this to be necessary. The Government are already fully committed to promoting innovation which can save and improve lives. The Committee may be aware that NHS England has a full programme of initiatives to unblock innovation and disseminate the benefits to the NHS and beyond—something that the Government fully support. These include Innovation Connect, a programme to help innovators in the health service and industry to realise their ideas, embed them into clinical practice and exploit new opportunities in international markets; NHS innovation challenge prizes to encourage, recognise and reward front-line innovation and drive the spread and adoption of these innovations across the NHS, and the NICE Implementation Collaborative, which supports work streams by providing essential support to overcome identified barriers to innovation. Those are just some examples.

My noble friend Lord Blencathra asked in particular about off-label treatments. Without repeating the answer that I gave earlier to the noble Baroness, Lady Masham,

on a similar issue, the Bill sets out a series of steps which doctors can choose to take when innovating to give them confidence that they have acted responsibly and with the intention of reducing the risk to doctors of successful claims in clinical negligence. With that threat diminished, the intended effect is that doctors will be confident to innovate appropriately and responsibly. That applies in full measure to off-label treatments. I would say as an aside that the cancer drugs fund, which has enabled access to a number of novel medicines, including off-label treatments, has benefited more than 55,000 patients since September 2010. So the decision on whether to prescribe unlicensed or off-label medicines will remain a matter for the doctor or prescriber who has clinical responsibility for the patient's care, taking into account their individual clinical circumstances.

In response to the noble Baroness, Lady Masham, about funding, I should make the simple point that the Bill does not add any extra funding for drugs. Funding may be a consideration in certain circumstances, but the Bill does not affect the situation one way or the other.

I hope that noble Lords will take into account the Government's view that innovation is best defined as a departure from the standard range of existing medical treatments, and that on reflection the Committee will not accept Amendments 6 and 28.

Lord Saatchi: My Lords, as we have just heard, Amendment 6 attempts to make a definition of "innovation". I myself think that that is quite difficult to do, even though the noble Lords, Lord Pannick and Lord Winston, made it clear that they are trying to provide a definition in order to assist the purposes of the Bill. I find it difficult to do for the reasons given by my noble and learned friend Lord Mackay. The word is clear and the Minister has just defined it even more clearly, which is that innovation is a departure from the standard procedure. I am advised that that definition of the concept is sufficiently clear for doctors, patients and the courts to be able to judge in the light of the circumstances of each case. I am told that the proposed definition also refers to some procedures, so that the legislation may become outdated at some point.

The main point in plain English is that the noble Lord, Lord Winston, himself described innovation elsewhere as being serendipitous; in other words, the term has in it the concept that what is about to happen is unheard of and unknown, and therefore it is a true innovation because it has not been conceived of. It is quite difficult to make a definition, but perhaps that is something we can talk about with the noble Baroness, Lady Wheeler, when we meet before the Report stage.

I wish I could say something more encouraging to the noble Baroness, Lady Masham, about funding. Many people have said to me over the course of the long journey of this Bill that, "This is all very well, but what we actually need is more money. If we had more money, we could have more innovation for every disease". I really do not know whether that is true because there are completely different views about it. However, the one thing that is certain is that this Bill, as my noble friend the Minister said, does not do anything to increase the UK GDP, nor does it increase the percentage of UK GDP that is spent on health, nor does it increase the percentage of UK health spending that is spent on innovation. As my noble friend has just said, it has no impact on what the noble Baroness is interested in hearing, which is on the subject of funding. It is completely neutral.

I will come to Amendment 28 in a moment. Perhaps at this point I could say that it is wonderful to hear my noble friend Lord Blencathra speak because we are hearing the true voice of the patient, as I understand it. We all say that what we do in this House and in the Department of Health is putting patients first. If that is what we are doing, your Lordships have just heard the true voice of the patient and nobody has ever expressed it better.

1 pm

As we have heard, Amendment 28, in the name of the noble Lord, Lord Hunt, creates new statutory duties of encouraging innovation. I am extremely grateful to Members of the Front Bench opposite for their benign approach to the Bill and their support for encouraging responsible medical innovation. It is enormously welcome to hear what they say and I strongly endorse the sentiment behind what they are trying to do with this statutory duty.

We have heard that my noble friend the Minister has difficulties with a new statutory duty. He has expressed his view very clearly. He may be able to persuade the noble Lord, Lord Hunt, the noble Baroness, Lady Wheeler, and your Lordships generally that this amendment is, as he says, unnecessary. I greatly support what the authors of this amendment are trying to do. It is clear to us all that the important thing about Amendment 28 is that it shows that all sides of this House are united in seeking to use the Bill as an opportunity to drive medical innovation forward in a safe and responsible way.

Lord Winston: My Lords, I thank noble Lords for their interventions on this amendment. In view of what has been said, I think we need to take these ideas away and think about them and consider the points made by the noble Lord, Lord Kakkar, and others. I thank the noble Lord, Lord Saatchi, for his courtesy in his reply to my amendment. For the moment, I beg leave to withdraw the amendment.

Amendment 6 withdrawn.

Amendment 7 not moved.

Amendments 8 and 9

Moved by ***Lord Saatchi***

8: Clause 1, page 1, line 4, leave out "to decide"

9: Clause 1, page 1, line 5, after "accepted" insert "medical"

Amendments 8 and 9 agreed.

Amendment 10 not moved.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): I must inform your Lordships that if Amendments 11 and 12 are agreed to, I cannot call Amendment 13 on grounds of pre-emption.

Amendments 11 and 12

Moved by ***Lord Saatchi***

11: Clause 1, page 1, line 5, leave out from "decision" to end of line 7 and insert "to do so is taken responsibly."

12: Clause 1, page 1, line 8, leave out subsection (3) and insert—

"(3) For the purposes of taking a responsible decision to depart from the existing range of accepted medical treatments for a condition, the doctor must in particular—

(a) obtain the views of one or more appropriately qualified doctors in relation to the proposed treatment,

(b) take full account of the views obtained under paragraph (a) (and do so in a way in which any responsible doctor would be expected to take account of such views),

(c) obtain any consents required by law to the carrying out of the proposed treatment,

(d) consider—

(i) any opinions or requests expressed by or in relation to the patient,

(ii) the risks and benefits that are, or can reasonably be expected to be, associated with the proposed treatment, the treatments that fall within the existing range of accepted medical treatments for the condition, and not carrying out any of those treatments, and

(iii) any other matter that it is necessary for the doctor to consider in order to reach a clinical judgement, and

(e) take such other steps as are necessary to secure that the decision is made in a way which is accountable and transparent."

Amendments 11 and 12 agreed.

Amendment 13 not moved.

Amendments 14 and 15 not moved.

Amendment 16

Moved by ***Lord Saatchi***

16: Clause 1, page 1, line 18, at end insert—

"( ) For the purposes of subsection (3)(a), a doctor is appropriately qualified if he or she has appropriate expertise and experience in dealing with patients with the condition in question."

Amendment 16 agreed.

Amendments 17 to 19 not moved.

Amendment 20

Moved by ***Lord Saatchi***

20: Clause 1, page 1, line 20, leave out "administer" and insert "carry out"

Amendment 20 agreed.

Amendments 21 and 22 not moved.

Amendment 23

Moved by ***Lord Saatchi***

23: Clause 1, page 1, line 22, leave out paragraph (b)

Lord Saatchi: My Lords, in moving Amendment 23 I will speak also to Amendment 29 in my name.

Amendment 23 is a paving amendment. The substantive amendment in this group is Amendment 29, which inserts a new clause into the Bill after Clause 1, expanding the existing provision that states that the Bolam test is unaffected by the Bill. It is for the innovating doctor to decide whether to take the steps set out in the Bill or to rely on the Bolam test as at present. The new clause also includes express provision that doctors are not negligent merely because they have not followed the Bill. I beg to move.

Lord Turnberg: My Lords, I am very pleased to see Amendment 29 in the name of the noble Lord, Lord Saatchi. I support it because it allows doctors to continue to rely on the current common-law arrangements based on the Bolam principle and on a body of reasonable medical opinion. It means, however, that there are now three options open to an innovating doctor. He or she can engage in a research clinical trial in which ethics committee approval has been given, the patient has given consent and all the regulatory approvals have been given. He or she can rely on the Bolam principle and take all the precautions that entails or he or she can go through the processes outlined in this Bill in the belief that this will somehow avoid the fear of litigation under the common law. I just wonder if that might lead to a little confusion and lead doctors simply to use and rely on the current common-law principle. However, I am happy for this amendment to be approved. I see that it would be a useful amendment to the Bill because it gives the doctors the opportunity to use what they always have done.

Lord Kirkwood of Kirkhope: Perhaps I may expand on the point I made on the first group of amendments. I am grateful for the comment from the Minister, which I understood as far as it went. I agree with what the noble Lord, Lord Turnberg, has just said. This changes how the regulator approaches a complaint, as far as I can see. It would not change the way that the regulator decides whether there is a cause to answer but it seems that this clause—which I think I welcome—gives the doctor an option of which defence he uses against the allegations in front of him.

As I know from previous experience, the General Medical Council has very clear, long-established systems for determining how complaints are lodged and how fitness-to-practise procedures are put in hand. It is very carefully controlled. Do I understand that the proposed new clause in Amendment 29 would merely—if I can put it that way—give the doctor against whom the complaint was alleged the choice of one of these channels of defence in relation to any complaint made against him by the regulator? I am still not clear as to whether I understand this properly. I think I am in favour of this amendment but I am not too sure. If anybody can help me understand it better I would be really pleased.

Baroness Wheeler: My Lords, we have had a very authoritative and detailed contribution on the issues raised by Amendment 29 from the noble Lord, Lord Saatchi. Opinion among noble Lords and indeed the

stakeholder medical and patients' organisations is still divided on: first, whether a change to the law is required or whether the existing law and professional ethics arrangements will allow responsible innovation; and secondly, whether the potential two options/processes—or three as my noble friend now makes it clear will be available if the Bill becomes law—will improve and speed up the administering of innovative treatments or will cause considerable confusion among doctors about which system they should use, lead to more bureaucracy and deter them from embarking on the course?

As we said earlier, we welcome the attempts of the noble Lord, Lord Saatchi, to ensure that with this amendment the Bill does not affect the common-law Bolam test. On the overall Bill he has led a powerful campaign and is reported to have won the support of patients responding to the consultation and the publicity from Cancer Research UK, Marie Curie Cancer Care and other patient organisations. I was pleased that the noble Baroness, Lady Masham, raised a number of questions from Marie Curie about palliative care and the use of drugs arising from issues in the Bill, and I was grateful for the Minister's very helpful response.

The General Medical Council has now given its support to the amended Bill and the Medical Defence Union has said that the amendments cover the main objections to the previous Bill. However, we have to acknowledge that some key stakeholders maintain that the Bill is not necessary because the existing law already ensures protection for doctors to innovate, and the current law and ethical guidance from the General Medical Council are clear. The Royal College of Surgeons still has strong reservations about the Bill, particularly about it applying to surgery, as we have heard. The Medical Protection Society still believes that it confuses rather than clarifies the law. The Association of Personal Injury Lawyers says that the amendments make a confusing Bill even vaguer. The BMA still strongly questions the necessity and desirability of clarifying or changing the law. Action Against Medical Accidents, one of the leading patient organisations, still says that the Bill is fraught with unintended and dangerous consequences and will create a more bureaucratic system. Sir Robert Francis QC, while considering that the amendments have produced an improvement in safeguards over what was originally proposed, has said that serious problems remain. In particular, he is concerned, as my noble friend Lord Turnberg pointed out earlier, that the Bolam amendment, while restoring a level of safeguard, also has the disadvantage of restating Bolam in different language, leading to a real risk of confusion. His question is: why not just stick to Bolam? I would be grateful for the noble Lord's comments on that.

Will the noble Lord, Lord Saatchi, and the Minister tell the Committee whether they consider that the amended Bill now meets Dr Dan Poulter's key test that I referred to earlier; namely, of not placing an undue bureaucratic burden on the NHS or not exposing doctors to a risk of additional liabilities?

I welcome the response of the noble Lord, Lord Saatchi, on the question of convening a round table, which I think will be a very helpful way of going forward. Obviously, it will never be possible to satisfy everybody's concerns but, if the Bill is to be further supported, what steps will be taken by the Government to engage with stakeholder concerns?

Earl Howe: My Lords, the Government support these two amendments, which ensure that the Bolam test will remain unaffected by the Bill. In practice, this will mean that it is for the innovating doctor to decide whether to take the steps set out under the Bill or to rely on the existing Bolam test. In other words, there would be no requirement for doctors to follow the Bill when innovating.

The amendments clarify that, separate to the existing Bolam test which is applied by the courts, the Bill provides doctors with an alternative option for showing that they are acting or have acted responsibly. Furthermore, subsection (2)(b) of the proposed new clause provides that doctors are not negligent, and thus will not be judged adversely if their actions are later challenged, merely because they have not followed the Bill.

My noble friend Lord Kirkwood asked how the proposed new clause affects how a regulator approaches a complaint or fitness-to-practise procedures. This Bill addresses clinical negligence law and how the courts will assess these cases, not how the regulators will process fitness-to-practise cases.

The noble Baroness, Lady Wheeler, asked whether the Bill was necessary. The Department of Health's consultation on the Bill revealed that some doctors find the threat of litigation to be a block to innovation, although this view was not universally held. The Bill is aimed at reassuring those doctors who feel unable to innovate due to concerns about litigation. There will also be many doctors who are not afraid to innovate and for whom litigation is not a material concern. Those doctors can continue to act as they have done previously and rely on the existing law of clinical negligence, or, as I have explained, they may choose to take advantage of the Bill instead.

I hope that noble Lords will accept these two amendments, which give flexibility and choice to doctors who want to innovate.

Lord Winston: There is something troubling me here. Let us say that somebody in an emergency or other situation does not have a chance to go through the required tests stipulated by the Bill, consulting other individuals who may be confident about or more experienced in that position. I still do not understand in the context of what the Minister has just said where that individual stands in innovating without those permissions. Is that still part of the Bill? How does that work? Is there a risk of that person being irresponsible in view of his not fulfilling what is required in the Bill when he is innovating?

1.15 pm

Lord Woolf (CB): My Lords, before the Minister replies, perhaps I could just make a comment. I have resisted getting involved in the various excellent speeches that have been made so far. While I am on my feet,

[Lord Woolf]
I make it clear that I strongly support the noble and learned Lord, Lord Mackay. There is a danger in looking at these as alternatives. If the matter comes before the court—of course, one hopes that it will not—the court's approach would be to say that there is nothing in the Bill, because of the amendment we are now considering, which prevents the Bolam test being relied upon as it is today, without the Bill.

On the other hand, if the situation is one that enables the Bill to be relied on, that is another matter that the person can rely on. In some situations, such as a state of emergency, it may not be possible to rely on the Bill, but that does not prejudice the doctor involved in any way, because the Bill leaves the Bolam test intact. It is supplementing the Bolam test, and the importance of the fact that it is supplementing it is apparent in the fact that it states that if the doctor can comply with the Bill, he knows that he is safe and does not have to wait until the Bolam test has been applied to find out whether he is in danger. I think that that is understood. Does the Minister agree with my approach, which is that these are not alternatives?

Earl Howe: I completely agree with the noble and learned Lord's analysis of the situation. I hope that that has been helpful to the noble Lord, Lord Winston. Earlier, the noble Lord cited an example where a doctor was confronted by an emergency requiring innovative practice. Whether the doctor was acting responsibly or not, and the consequences, will depend on a number of factors. It will depend on the extent to which the doctor is confident in his or her judgment, based on experience in previous clinical practice and can, if necessary, show to a court that what he or she did was responsible and, at least in intent, in the best interests of the patient.

The noble Lord asked whether there was a risk of a doctor being found to be irresponsible in some emergency situations where innovative treatment is practised. Yes, there would be a risk if the process outlined in the Bill were not followed—but that situation obtains today.

Lord Winston: Both the Royal College of Surgeons of Edinburgh, of which I am a fellow, and the Royal College of Surgeons in London, absolutely support the idea that surgery should be excluded from the Bill for this very reason: they consider that there might be situations where the courts become unnecessarily involved. That involves extra expenses to the health service because of our current concern with litigation. As the noble Earl well knows, in obstetrics, for example, litigation already accounts for a huge proportion of the expenses devoted to maternal care. There are considerable knock-on effects where litigation may be started because of lack of clarity. It is possible that I am being stupid—I recognise that I am not nearly as intelligent as the noble and learned Lord, Lord Woolf—and I will have to go away to think about this, but there seems to me to be a misconstruction here which is puzzling and, I think, worrying.

Lord Saatchi: I hope that this may help my noble friend Lord Kirkwood. What we have just heard from the former Lord Chief Justice and the Minister is completely clear to me. I will try to explain it in this way: if the doctor feels completely confident that the innovation he is about to attempt will be approved when the Bolam test is applied in a subsequent trial, he will go forward with his innovation. If a trial then takes place, he either will or will not be proved right when the test is applied—that is, if he departed from standard procedure and decided to do it on the basis of his confidence that the Bolam test would make him innocent of negligence.

However, as we all know—this is fundamental to the Bill—if the doctor is obliged to speculate in advance about what might or might not happen in a trial, that raises a very high degree of uncertainty. If it is possible for a doctor to move the Bolam test forward and comply with it in advance, which is what would happen as a result of the Bill becoming an Act of Parliament, that would enable the doctor to move forward with an innovation without the fear that a subsequent trial will find him guilty. I therefore say to my noble friend Lord Kirkwood that what we have here in simple, plain language, is that the Bill is giving the doctor an option if he wants to be certain before he goes ahead with an innovation. It is not a requirement that he does that. If he is confident of the result of a subsequent application of the Bolam test, he does not need the Bill at all. It is a fundamental benefit of the Bill that it gives that option, which I think is a very simple one.

Baroness Gardner of Parkes: Can I seek some clarification? I wonder whether anyone could make clear for the Committee whether, if the doctor says that he does not want to do the innovative treatment, there is a defence in court on the grounds that he thought that it would be unwise or unsatisfactory. I say this because everyone seems concerned about the effect of not doing something innovatory.

Earl Howe: I can reassure my noble friend on that score that a doctor's clinical judgment not to go ahead with something innovative would be something that the doctor would be able to cite in court, if necessary, as being the most reasonable course to take in the circumstances.

Amendment 23 agreed.

Amendment 24 not moved.

Amendments 25 to 27

Moved by ***Lord Saatchi***

25: Clause 1, page 1, line 25, leave out "section" and insert "Act"

26: Clause 1, page 2, line 1, leave out from "a" to end of line 2 and insert "registered medical practitioner;"

27: Clause 1, page 2, line 3, leave out paragraph (b)

Amendments 25 to 27 agreed.

Amendment 28 not moved.

Clause 1, as amended, agreed.

Amendment 29

Moved by ***Lord Saatchi***

29: After Clause 1, insert the following new Clause—

"Effect on existing law

(1) Nothing in section 1 affects any rule of the common law to the effect that a departure from the existing range of accepted medical treatments for a condition is not negligent if supported by a responsible body of medical opinion.

(2) Accordingly—

(a) where a doctor departs from the existing range of accepted medical treatments for a condition, it is for the doctor to decide whether to do so in accordance with section 1 or in reliance on any rule of the common law referred to in subsection (1);

(b) a departure from the existing range of accepted medical treatments for a condition is not negligent merely because the decision to depart from that range of treatments was taken otherwise than in accordance with section 1."

Amendment 29 agreed.

Amendment 30 not moved.

Amendment 31

Moved by ***Lord Turnberg***

31: After Clause 1, insert the following new Clause—

"Code of practice

(1) The Secretary of State may issue one or more codes of practice in connection with—

(a) the process to be undertaken by a doctor before giving advice under this Act;

(b) the form in which the agreement required under section 1(2)(d) is to be recorded;

(c) the factors which the doctor should take into account in deciding to offer advice under this Act;

(d) requirements for making and keeping records required by the Act;

(e) such other matters relating to the operation of the Act as the Secretary of State thinks fit.

(2) Before issuing a code under this section, the Secretary of State shall consult such persons as he thinks appropriate."

Lord Turnberg: As we have heard, my Lords, there is a degree of uncertainty surrounding certain aspects of the Bill that we have been trying to clarify. It is on that account that I have tabled Amendment 31, which sets out the need for a code of practice in which the Secretary of State describes in somewhat more detail what the Bill is about and how it should be enacted. I hope that it will be helpful to have that in the Bill.

Lord Hunt of Kings Heath (Lab): My Lords, this has been a fascinating debate, both in Committee and at Second Reading. We are all very grateful to the noble Lord, Lord Saatchi, for listening carefully and bringing the amendments that he has today, and for agreeing to a roundtable discussion between Committee and Report, which is a very constructive response to some of the issues that have been raised.

I say at once that I am absolutely with the noble Lord on the need to encourage innovation in our NHS, but the more that I have listened to the debate, the more convinced I am that it is not so much a question of the law but more one of actual practice within our NHS. I am afraid that we have to face up to the fact that there is a culture of regulatory processes and funding procedures that often get in the way of introducing innovation. For me, the Act that the Bill will become will be a signal to the NHS.

The noble Lord, Lord Blencathra, raised some interesting points about some of the problems that we have at the moment. He talked about off-label medicines. The Minister responded by saying that the Government are committed to innovation and gave a number of examples, which were welcome, but the point that I would put to him is that we now have a situation where NICE produces technology appraisals of new innovative procedures and drugs that clinical commissioning groups are essentially breaking the law by not implementing. He knows that they are under a requirement to fund the use of those procedures and medicines within three months of the technology appraisal being issued, yet we know from research by patient groups that the actual implementation is patchy. We could do an awful lot in relation to innovation if we insisted that people locally did what they were required to do.

My second point relates to the drug budget, an issue that the noble Lord raised. A few months ago the Government concluded an extremely interesting agreement with the branded drug companies, so that for five years the cost of branded drugs in England, apart from modest rises in inflation, will be fully met by the pharmaceutical industry. This is a very good agreement and one that I very much welcome. We still hear people in the NHS saying that they cannot afford the new drugs, yet the industry has promised to pay back any increase in the cost of those drugs over what they are paying now plus a modest increase in inflation. Here is a wonderful opportunity at last for the NHS to move quickly in widely adopting new medicines, but somewhere in the system someone is stopping it. I have read the NHS England five-year plan and it says nothing about the introduction of innovative new medicines.

I am sorry that this is a little outside the noble Lord's Bill and I hope that he will forgive me, but this is about innovation. I am genuinely puzzled, and we will come back to this point, about why the Government did not rush to insist that the NHS took advantage of the agreement. In fact very few people in the NHS know about the agreement. My concern is that the rebates that the drug industry is going to give will be used for other purposes, which would be a very big mistake.

I hope that the Minister will agree to the amendment; I strongly advise him to do so, or at least to consider it. It is clear from the speeches that have been made that there is some confusion about the circumstances in which the noble Lord's provisions are going to be made. Earlier in our debates, the noble Earl essentially said that doctors would have a choice when it came to whether, in relation to a given medical treatment, they would use this Bill's provisions or rely on the traditional approach, the Bolam test. The noble and learned Lord, Lord Woolf, said that they are not alternatives

[Lord Hunt of Kings Heath]
and, in the circumstances raised by one noble Lord where there was not time to get the advice of the clinicians that is provided for in the noble Lord's Bill, you would rely on the Bolam test. I am only a lay person, but I suspect that there is a risk of doctors not catching the nuance of that distinction. It is clear from the various letters that we have had from many of the medical bodies that there is some concern about this. I know that the noble Lord will speak and I strongly endorse his amendment on the regulation-making power, but I strongly advise the Government to agree to issuing guidance to the medical profession in this regard. There is a danger of some confusion and such guidance would be useful. If the noble Lord is not able to accept this amendment today, perhaps he will give it some further consideration.

1.30 pm

Earl Howe: My Lords, the Government's view is that it is not necessary to include in the Bill a provision for the Secretary of State to issue codes of practice about the Bill, but I hope that I can reassure the noble Lord, Lord Hunt, on the last point that he made. If the Bill is passed, the Government will work closely with the professional bodies, including the General Medical Council, to help doctors to prepare for the changes to the law. This will include producing any guidance that may be helpful.

I listened carefully to the points that the noble Lord made about the adoption of innovative treatments in the National Health Service. He knows from his experience as a Minister that this issue has been with us for quite a long time. We have silos of innovation and forward-thinking practice throughout the health service. The challenge has been to spread that innovative behaviour more widely and for the diffusion of innovative treatments to become second nature to the health service. It is a cultural issue.

The noble Lord is right to say that in many cases the non-adoption of NICE-approved drugs is a particular feature in parts of the NHS. That is exactly why the document *Innovation, Health and Wealth* was published some time ago. It is why we now have the NICE implementation collaborative, which is designed to bring together the key players in the system to ensure that NICE-approved medicines are adopted. There is the innovation score card, which helps in this regard. The academic health science networks are there to shine a spotlight on promising new innovative devices and medicines and to spread them at pace and scale throughout the health service. The early access to medicines scheme is another example of where we are trying to give patients access to innovative treatments, even before they have been licensed.

There is on occasion a good reason why a NICE-approved medicine may not be adopted by a particular trust. That is quite simply that for a given condition there are many alternative treatments, many of which have been endorsed by NICE. The Government cannot mandate clinical decision-making by individual doctors. Where there is a choice between one and another NICE-approved medicine available to a doctor, it is open to the doctor to make that choice. Nevertheless, the noble Lord's basic point is well made and I hope that he will accept that the Government are taking a number of measures in conjunction with NHS England to ameliorate the situation.

I hope that, with the remarks that I made earlier about producing guidance, the noble Lord will be reassured and the noble Lord, Lord Turnberg, will not press his amendment.

Lord Saatchi: My Lords, perhaps we could add this point to the discussions that we are going to have before Report. My noble friend the Minister expresses a modest view of what the Government should and should not do and wants to leave it to the regulatory bodies to make this happen.

I refer once again to anecdote. The noble Lord, Lord Turnberg, said to me at an early stage in this process, in which he has been a great inspiration, "What are you going to do after the Bill becomes law?". I said, "I am going to go on a very long vacation". He said, "Oh no you're not". I said, "Why not?". He said, "Your work is only just beginning". His point, and he speaks as an expert, is that a culture change is contained in this Bill. "Culture change" is a phrase that my noble friend just used, and it was used by Dame Sally Davies, the Chief Medical Officer, many months ago. A culture change is being sought, but it will not happen overnight. It will follow, exactly as the noble Lord, Lord Hunt, says, a great deal of education and discussion in the medical profession.

Not to go on, but the noble Lord, Lord Turnberg, said that this will fall largely not just on the regulatory bodies, such as the GMC and NICE, but on the royal colleges. They will have to be involved in the process of educating people about what this means. This is the beginning of the process and I am rather with my noble friend in not wanting to have the Government set out the rules. I hope that that is acceptable to the noble Lord, Lord Hunt.

Lord Turnberg: My Lords, I am slightly reassured by the noble Earl's comments that the Government's intention is to produce some guidance with help from the relevant bodies. I am sorry that he does not think it necessary to have that in the Bill. I wonder why not. He has not explained why the amendment should not be there, because it sets out the need for such a code of practice. Meanwhile, however, I beg leave to withdraw the amendment.

Amendment 31 withdrawn.

Amendments 32 to 34 not moved.

Clause 2: Short title, commencement and extent

Amendment 35

Moved by ***Lord Saatchi***

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

"(1A) Sections 1 and (Effect on existing law) come into force on such day or days as the Secretary of State may by regulations made by statutory instrument appoint.

(1B) Regulations under subsection (1A) may—

(a) appoint different days for different purposes;

(b) make transitional or saving provision."

Lord Saatchi: My Lords, I also speak to Amendments 37 and 38 in my name and Amendment 36 in the name of the noble Lord, Lord Turnberg. Amendments 35, 37 and 38 amend Clause 2 of the Bill on commencement and provide for the Bill to be brought into force by the Secretary of State. I am content with this change proposed by my noble friend, on the basis that it will allow time for the Department of Health and professional bodies to produce any guidance that may be helpful. Amendment 36 would stop the Bill coming into force on Royal Assent and would allow the Government to control commencement. The amendment has essentially the same effect as my amendment and I hope that the noble Lord, Lord Turnberg, will be content not to press it. I beg to move.

Lord Kirkwood of Kirkhope: Not to prolong events, I support Amendment 35, which I think is sensible. It is necessary to make sure that steps are taken so that practitioners are fully advised and informed in England and Wales about the provisions in the Bill. I assume that the answer to my question is yes, but can I have an assurance that the regulators have the full Section 60 power that they would need to implement this? If there is any doubt about the regulators not having complete legal cover, will the department make sure that any Section 60 provisions for those powers are put in place before these statutory instruments are brought forward, to avoid any confusion?

Lord Turnberg: My Amendment 36 has a similar effect to that of Amendment 35. Mine seems somewhat simpler, but I am quite happy to bow to Amendment 35 in the name of the noble Lord, Lord Saatchi.

Earl Howe: My Lords, this group of amendments addresses how the Bill would come into force. My noble friend Lord Saatchi's Amendment 35 would ensure that the Bill came into force in accordance with regulations made by the Secretary of State rather than on Royal Assent as under the Bill as introduced. This would allow the Government and the medical profession time to prepare for the changes to the law made by the Bill—for example, to produce any guidance that might be helpful. This amendment also enables transitional and saving provision to be made if necessary. My noble friend's Amendment 35 achieves the same objective as Amendment 36, which the Government therefore do not consider necessary.

The Government also support minor technical Amendments 37 and 38, which clarify that the section in question comes into force on the day on which the Act is passed. I urge noble Lords to accept Amendments 35, 37 and 38, which would ensure a smooth commencement of the Bill, and I hope that my noble friend Lord Kirkwood will allow me to write to him on the question that he posed a minute ago.

Amendment 35 agreed.

Amendment 36 not moved.

Amendments 37 and 38

Moved by ***Lord Saatchi***

37: Clause 2, page 2, line 10, leave out "Act" and insert "section"

38: Clause 2, page 2, line 10, leave out "it" and insert "this Act"

Amendments 37 and 38 agreed.

Amendment 39

Moved by ***Baroness Finlay of Llandaff***

39: Clause 2, page 2, line 11, at end insert "but shall only come into force in Wales following legislative consent from the Assembly"

Baroness Finlay of Llandaff: My Lords, I will be brief; this will probably turn out to be a probing amendment. We have an interesting situation in Wales because health and healthcare provision is completely devolved. The experience of patients under the Welsh NHS falls completely within the legislative competence of the Assembly. However, if I am right, this relates to the law of negligence, and the Ministry of Justice does not have any devolved functions. The concern expressed to me within Wales has been about the use of resources and the possibility of practitioners being answerable as regards legislation that covers England and Wales, when the provision of healthcare is something for which they are answerable to the National Assembly. I tabled this amendment with a view to seeking clarification over that.

Sadly, we have had experience of extremely strange medical practices sometimes being put forward in the past. The Assembly is particularly concerned that, with its move toward prudent healthcare, which is a whole policy direction for NHS Wales, the Bill should not inadvertently cut across the principles of prudent healthcare, the first of which is, of course, to do no harm. I tabled the amendment with that in mind.

Earl Howe: My Lords, this amendment seeks to ensure the Bill would not apply in Wales unless a legislative consent Motion had been passed. The operative provisions of the Bill relate entirely to modifying the law of tort, which is a reserved matter. The Bill can fairly and realistically be classified as relating to a non-devolved subject, and therefore not within the competence of the National Assembly for Wales. The Government cannot accept this amendment, and I urge noble Lords to resist it.

Baroness Finlay of Llandaff: I am grateful to the Minister for the clarification. I expected that answer, but it is important to have it on the record. I beg leave to withdraw the amendment.

Amendment 39 withdrawn.

Clause 2, as amended, agreed.

House resumed.

Bill reported with amendments.

Mutuals' Redeemable and Deferred Shares Bill [HL]

Second Reading

1.44 pm

Moved by ***Lord Naseby***

That the Bill be read a second time.

Lord Naseby (Con): My Lords, noble Lords may wonder why I have become involved in the mutual world. I have to thank Peter Gray, one-time chief executive and chairman of the Tunbridge Wells Equitable and Friendly Society, who revitalised that society in the 1970s and 1980s, and the Association of Friendly Societies. It was he who inspired me to take a real interest and, as a result, I chaired that organisation from 1992 to 2005.

The other inspiration that has caused this Bill to see the light of day comes from the Chancellor of the Exchequer, the right honourable George Osborne, who somehow persuaded the powers-to-be to make in the Conservative manifesto a commitment to mutuality both in the workplace and in the structure of the mutual financial sector. There are broadly five sectors of the mutual financial world. Building societies, credit unions and co-operatives have all been helped by the Chancellor already. However, two of the five have yet to be helped—namely, mutual insurance companies and friendly societies. Why do they need help? It is simply because, unless they can raise additional capital, they will never be able to expand or develop to their true potential. Indeed, unless they are helped, I suspect that they will either wither on the vine or demutualise. So we have today's Bill, which has been in gestation now for close on two years, helped by the Treasury—and I pay particular thanks to the right honourable Sajid Javid MP and his successor in looking after this Bill, Andrea Leadsom MP, who have also helped it on its way. I have had consistent help from my noble friend on the Front Bench this afternoon.

The Bill refers to two classes of shares—deferred shares and redeemable shares. One of the key hurdles that I and my team have had to jump was to persuade the regulator that both those vehicles meet the requirements of Solvency II and would therefore be eligible for tier 1 capital, which is absolutely vital for development capital. We have been successful with the deferred shares element, but have not yet persuaded all parties that it is possible for redeemable shares as well. I therefore had to make a decision on whether to go ahead now with just the deferred element of the Bill, which goes a long way to help mutual insurers and friendly societies, or whether to persevere to try to persuade the authorities about redeemable shares. I decided, in the face of having only five months left of this Parliament, to drop the redeemable element. I suspect that my noble friend on the Front Bench will do just that in Committee, in moving certain government amendments.

I want to look at the effect of the Bill. Clause 1 gives powers to the Secretary of State to prohibit the use of a new class of deferred shares. That is on the assumption that the redeemable element was removed. This will affect industrial and provident societies, friendly societies and mutual insurers. Furthermore, holders of shares must be or will become a member of the Society of Mutual Insurers. To maintain the mutual characteristics of the organisation, they will be entitled to only one vote as a member, regardless of the value or number of shares they hold. They will be entitled to only the level of remuneration payable under the rules of the mutual. Deferred shares may entitle the holder only to repayment of their nominal value on the solvent liquidation of the mutual. This removes any risk of carpet-bagging by those interested solely in demutualisation. The power to make regulations under the Act is exercisable by statutory instrument and must not be made unless a draft of it has been laid before, and approved by, resolution of each House of Parliament—that is, the affirmative procedure.

I will not talk about Clauses 2 and 3 because they relate exclusively to redeemables. Clause 4 sets out how regulations may provide for a mutual to issue deferred shares,

"being shares that incorporate a term which prohibits the repayment of any principal to the shareholders save in either or each of the following events … the winding up or dissolution of the … mutual … in circumstances where all sums due from the society or mutual insurer to creditors claiming in the winding up or dissolution are paid in full … the granting of relevant consent by the appropriate authority … The memorandum or rules of any society or constitution of any mutual insurer may exclude or restrict the issue of deferred shares … A society may only issue deferred shares if it is authorised to do so by its memorandum or rules and a mutual insurer may only issue deferred shares if it is authorised to do so by its constitution".

This means that no shares will be issued until the current members have approved it. However, the key benefit—this is absolutely crucial—is that these shares would, when issued, be classed as tier 1 capital and meet the requirements of Solvency II.

Clause 5 restricts the voting rights of holders of a deferred share and obviously will need amendment to remove "redeemable". It means that if their only membership is via holding such a share, they may not participate in any decisions concerning amalgamation, transfer of engagements or conversion into a company or, in any case, a proposed transfer or sale of business or property under Section 110 of the Insolvency Act 1986. This is a further safeguard against the motivations for demutualisation.

Clause 6 sets out the proper legal definitions for the various types of mutuals affected by this legislation. Clause 7 is the usual Short Title, commencement and extent.

I would like to spend a few moments explaining why this Bill is so important. It is important because it gives access to new capital, particularly for friendly societies and mutual insurers. First, all mutuals need to be able to play a full part in our economy with diverse corporate ownership. Friendly societies and mutual insurers do not have the ability to raise capital that some co-operatives and building societies do, or indeed public limited companies.

Secondly, without new capital, many mutuals could be driven into inappropriate corporate forms through demutualisation. If more mutuals convert to other corporate forms, consumer choice would be reduced and large numbers of consumers would no longer have non-listed, member-owned options in the financial services marketplace. This both reduces competitive pressure from the operation of different business models in the same market and adds to systemic risk to the economy.

Thirdly, a lack of capital limits mutuals' growth and the ability to develop new services. The growth rate of a mutual is constrained by its relative inability to add capital through retained earnings.

Fourthly, like all businesses, mutuals need to be able to benefit from the economies of scale available only by growing their business. Mutuals need to gather sufficient capital to serve their members well, extend services to new members, expand their menu of services and achieve economies of scale.

Fifthly, it is important to learn the lessons from the recent financial crisis. If financial services businesses are to build up stronger capital bases, they require the legislative and regulatory agility with which to do so.

Sixthly, there are direct benefits of being able to issue these new shares. Debt, the alternative, is of a lower quality than equity for firms wishing to build their capital base. There is inevitably a limit to the amount of debt that can or should be raised. Mutual shares would therefore present an opportunity for small mutuals to raise funds that they may not be able to do otherwise, and for larger mutuals to raise tier 1 funds that subordinated debt does not provide.

These shares are alternatives to private equity buyout, which shows signs of growing. They are also alternatives to demutualisation, and this is crucial. When one looks back 20 years, the UK mutual insurance sector was the largest in Europe but now accounts for just 2% of mutual insurance premiums in the EU. Mutual insurers in 1994 accounted for 50% of the UK insurance market, and lack of access to capital was largely seen as the key reason for demutualisation. The small size of the market today means that any further demutualisation in the sector could hasten the entire sector's early demise.

If the Bill goes ahead, mutuals will be able to source external capital without losing their mutual status, and some very specific benefits will follow. They could take part in tactical acquisitions, which will enhance their competitiveness. They could also look at local infrastructure potential. I shall give one example. In 2004, Family Investments friendly society and Brighton Council explored the concept of a city mutual. The idea was that Family would raise a fund from its own capital and via a bond offering to local residents, which in turn would be used by the local council for a range of social housing and employment projects. Your Lordships may remember that on Monday I suggested something very similar for cottage hospitals. In the end, as far as the parties in 2004 were concerned, it was unclear whether the legislative arrangements were in place. This Bill will meet that requirement.

Finally in this area, there are a number of examples in overseas countries of similar mutual shares offerings. Examples from Canada and the Netherlands and across the whole European Union show how mutuals can enlist their members in raising capital through the issuance of new deferred shares. In summary, the benefits offered provide evidence that government support for the Bill would create a viable new opportunity for mutuals to attract new capital and deliver positive outcomes for mutuals and consumers.

The Bill has all-party support. Many colleagues have spoken to me in support of the Bill, and some have been good enough to write, particularly my noble friends Lord Hodgson and Lady Maddock. In the mutual world I have had wonderful support from organisations such as Liverpool Victoria, Royal London, Engage, Family Investments—steered so ably by John Reeve—and particularly Wesleyan Assurance, which is held in such high regard. Add to those the Association of Financial Mutuals, the Association of Friendly Societies and the All-Party Parliamentary Group for Mutuals—chaired by my friend Jonathan Evans MP, who will steer the Bill through the Commons, given the chance—and, above all, Mutuo, with its energetic and knowledgeable director Peter Hunt. I thank them all. I beg to move.

1.59 pm

Lord Kennedy of Southwark (Lab): My Lords, I thank the noble Lord, Lord Naseby, for bringing forward this Private Member's Bill for consideration in your Lordships' House. This is the second time that he has tried to deliver these reforms. I very much hope that his Bill has a smooth and easy passage through your Lordships' House. The co-operative and mutual sectors in the United Kingdom are very grateful to the noble Lord for what he seeks to do. This is a good Bill for a Labour and Co-operative Peer to respond to, and I am delighted to do so.

As the noble Lord said, the Bill in its simplest form will allow mutual societies to raise additional funds while safeguarding their mutual status. Why is that important? As the noble Lord, Lord Naseby, has told the House, the mutual sector faces significant problems in raising additional capital. By their construction they do not have equity shareholders. They were established to serve their members, who would be customers, employees or particular communities. Mutual businesses are strong. They grow patiently over a long time. They are very stable, but can also be said to be a bit risk-averse. It can be said that in some circumstances they struggle to respond to the ever changing needs and demands of their customers.

In large part, mutual organisations have not made major changes to their structures and have quite properly stuck to their founding principles. The Bill will enable them to continue to do so, but also allow them to raise additional capital by creating optional new classes of share through which specified mutuals can raise additional funds, provide defined rights to specified mutual society members and restrict the voting rights of certain members who hold only such shares, so that they cannot participate in any decisions to transfer, merge or dissolve the mutual. That is why the Bill is so important: it modernises the mutual structure, but also safeguards it.

A lot of excellent work has gone on looking at the problems of the mutual sector and also its great strengths. In addition to the noble Lord, Lord Naseby, I pay tribute to my friend in the other place, the shadow Financial Secretary Cathy Jamieson MP, for the work she has done, along with the All Party Group for Mutuals mentioned by the noble Lord, Lord Naseby, which produced an excellent report in September. I also pay tribute to the think tank ResPublica, which, in its report *Markets for the Many*, looked at how we create financial services that support small business and truly serve the needs of our citizens and communities.

It will be useful to look at the financial services scene to see why the Bill is so important and welcome. As the noble Lord, Lord Naseby, said, we have to

[Lord Kennedy of Southwark]
learn the lessons. Following the financial crash there have been significant turbulent times and significant legislation has been passed, not least the Financial Services Act 2012 and the Financial Services (Banking Reform) Act 2013. These pieces of legislation are steps in the right direction, but we need diversity of ownership models in financial services to keep the sector healthy and encourage competition.

To diverge slightly, the rush to demutualise building societies in the late 1980s and early 1990s did not help consumers. All those former building societies either failed in their new-found status or were swallowed up by larger financial institutions. We know the names: Abbey National, The Woolwich, Halifax, Bradford & Bingley and many others. In the UK, building societies account for only 3% of banking assets; in many other parts of Europe co-operative and mutual banks have a much large share of the market.

There is a similar picture in our insurance sector. As the noble Lord, Lord Naseby, said, more than half of the UK insurance market was mutual in 1995, but since then, in fewer than 20 years, it has shrunk to 7.5%. In terms of our European neighbours, mutual insurers have a 50% market share in Holland and a 45% market share in Germany. The insurers demutualised in large part because they needed to raise additional capital and improve the products and services they offered to their customers. This process has not been beneficial to customers. ResPublica found in its research that policyholders often saw falling levels of customer service, higher levels of customer complaints and worse claims handling than was experienced prior to demutualisation. For example, Scottish Widows converted to a plc in 2000 and paid out a £6,000 windfall payment to each policyholder. However, prior to demutualisation it paid out £107,000 in 1998 for a 25 year with-profits policy based on premiums of £50 a month. From statistics posted in 2012, this had plummeted to £28,071, which was more than 34% less than the average mutual was paying out.

I do not intend to go on for much longer but I wish to say that this is a good Bill, a forward-thinking Bill and a Bill that seeks to protect our mutual societies, helping them to grow and compete on a more equal footing. It should have the support of the Government.

The Government should also do more to help the sector in general, as it has the potential to do real good in the UK. I like the suggestion that the Government should look at establishing a mutuals expansion project along the lines of the Credit Union Expansion Project. I think that there is a role for mutuals to help reduce financial exclusion, but they need the Government, the FCA and others to see that role for them and then enable them to deliver more financial products to those on lower incomes.

There are in general some very good Private Members' Bills before your Lordships' House and it is disappointing how so few of them make any progress. They are all committed to a Committee of the whole House but they then struggle to compete with other Bills in making further progress. Therefore, I ask the noble Lord, Lord Newby, to have discussions between the usual channels and also with the Clerk of the Parliaments about points 8.29 and 8.44 of the *Companion*. On my reading of those two paragraphs, there is no distinction between government Bills and Private Members' Bills, and some Private Members' Bills could be referred to a Grand Committee to deal with technical issues and speed up their consideration by this House. Just because we have never done that before does not mean that it cannot be done.

I will leave that point there and conclude by again thanking the noble Lord, Lord Naseby, for bringing this Bill forward. We are all very grateful to him and I hope that the Government help it to get on to the statute book and become law in this Session of Parliament.

2.06 pm

Lord Newby (LD): My Lords, I begin by congratulating my noble friend on his work in this area over a number of years and on securing a Second Reading for this Bill, on which he has done an awful lot of work and which addresses a very important issue.

As the House knows, access to capital and credit is the lifeblood of any company, and the financial crisis and its ongoing impact have served to highlight this point in very stark terms. Mutuals are no different from other companies in that they need capital to extend into new areas, develop new products and services for their members, write new business or increase their financial resilience. However, the inherent design of mutuals can mean that they face difficulties when it comes to access to external capital, as noble Lords have pointed out. Mutuals are designed to serve their members, who will be customers, employees or defined communities, but they were not designed with capital investors in mind.

In broad terms, mutuals access their regulatory capital from retained earnings and by issuing subordinated debt. However, unlike other businesses, they cannot issue shares, which deprives them of access to the equity markets. They therefore tend to be restricted in how they can raise capital. Any capital for growth must be generated internally and that takes time to be built up. This patient and long-term approach is one of the hallmarks of the mutual sector and indeed one of its strengths. However, it can also limit the sector's flexibility in adapting to new market conditions, as well as limiting a firm's abilities to secure maximum investment in the business and to grow through acquisition.

Friendly societies and mutual insurers compete in a highly competitive UK insurance market, and the restrictions on raising external capital can place a limit on their ability to compete on equal terms with their public limited company counterparts. In the recent past, a number of friendly societies and mutual insurers have decided to demutualise, and in some cases the lack of capital was cited as a contributing factor to a mutual contemplating demutualisation. As both the noble Lords, Lord Naseby and Lord Kennedy, pointed out, this has led to a significant contraction of the mutual insurance sector in the UK.

The sector has made the case that current capital constraints are preventing friendly societies and mutual insurers acquiring other businesses that would strengthen the overall offer to members and policyholders. It may also be restricting these organisations in developing new or innovative products, especially if those products

require material amounts of regulatory capital to be held. Growth in these areas would potentially be to the benefit of both with-profits policyholders and other members of the mutual.

The proposals put forward by the noble Lord in this Bill have been carefully drafted to provide these mutual organisations with a means to raise external capital in a way that preserves the mutual status of firms. The Bill addresses access to capital for two sectors: friendly societies and mutual insurers, and co-operative and community benefit societies. It provides that the Treasury may make regulations subject to the affirmative procedure to permit friendly societies and mutual insurers to issue deferred shares and to permit co-operative and community benefit societies to issue redeemable shares. The Government agree that the deferred share capital instrument for mutual insurers and friendly societies is a good way forward, and the mutuals have demonstrated a clear need and demand for this instrument. We therefore support these proposals in the Bill.

In respect of the proposed redeemable share instrument for co-operative and community benefit societies, the Government are unpersuaded about the merit of a redeemable share instrument as these societies already have a means of issuing redeemable shares. The Government do not see a clear need and demand for such an instrument, and as we have heard, in discussion with and the agreement of the noble Lord, Lord Naseby, we propose to bring forward amendments in Committee to delete these elements. But with that caveat, I hope that noble Lords will support the Bill today.

Finally, I should like to comment on the two very specific suggestions made by the noble Lord, Lord Kennedy, in his speech. He said that we should look at a mutuals expansion project to mirror that of the Credit Union Expansion Project. It is an interesting proposal and I will be happy to take it back to my colleagues in the Treasury. One of the challenges is how to recreate the conditions under which individuals feel that they want to invest their money in mutuals, take out policies of various sorts and engage in lending from them. I am a strong supporter of doing that.

As far as the way we deal with Private Members' Bills is concerned, I have a considerable degree of sympathy with what the noble Lord said. I do not believe that the way they are being dealt with is as efficient as the way we deal with government Bills. Although it is far beyond my pay grade to suggest a way forward, I am more than happy to take his comments away. Apart from anything else, there is a real problem at the moment in that many noble Lords can secure a First Reading for their Bills, and then very often they—and more importantly, their supporters—think that those Bills are actually going to make progress. A huge amount of work goes into such legislation. Recently I was involved with a Bill that stood at number 25 or 30 in the list. A poor lawyer had spent months slaving over it. The promoter did not have the heart to tell that lawyer that, as I already knew, it stood zero chance of even getting a Second Reading. That is not sensible, and nor, frankly, are some of the subsequent ways of dealing with these Bills. This is not a matter for the Government but one for the whole House, and I am very willing to take it back, along with his other proposal.

With those comments, and with the caveat I gave earlier, I hope that noble Lords will support the Bill today.

2.13 pm

Lord Naseby: My Lords, I thank all noble Lords who have listened to the debate and I want to pay particular tribute to Her Majesty's Opposition for the support that they gave me during the early stages of the Bill and then right through until today. I will refer to the noble Lord, Lord Kennedy, as my noble friend because he has worked very closely with me on this, and I wish to give him my thanks and appreciation for all the trouble he has taken. Finally, I have to say to my noble friend to whom I have already referred that he is an extremely patient and persistent man. Without that attribute, this Bill would not be before the House today. It remains for me to hope that it will get a fair wind, that people will be conscious of the time limit of five months, and that the processes in both this House and another place—which I know only too well—ensure that this really worthwhile piece of legislation can see the light of day and be put on to the statute book. Without further ado, I hope that the Bill will be given a Second Reading.

Bill read a second time and committed to a Committee of the whole House.

House of Lords (Expulsion and Suspension) Bill [HL]

Second Reading

2.15 pm

Moved by ***Baroness Hayman***

That the Bill be read a second time.

Lord Newby (LD): My Lords, I have it in command from Her Majesty the Queen to acquaint the House that Her Majesty, having been informed of the purport of the House of Lords (Expulsion and Suspension) Bill, has consented to place her prerogative and interest, so far as they are affected by the Bill, at the disposal of Parliament for the purposes of the Bill.

Baroness Hayman (CB): My Lords, I express my gratitude to all noble Lords who are to speak in our debate today. Their commitment reflects the seriousness with which this House views the issues raised in the Bill. It is a brief and straightforward measure and I shall try to be brief and straightforward in what I say. But brevity does not mean that it is insignificant in its content.

I have brought the Bill before the House because I believe that by enacting its provisions we could complete the series of reforms that have been made to the House's conduct, investigative and disciplinary systems

[Baroness Hayman]
since the events of 2008-09, and fill two important lacunae in the sanctions available to your Lordships' House.

Noble Lords who were Members of the House at the time of the expenses and cash-for-questions scandals will remember all too well the public opprobrium heaped upon us—upon the House, its financial support systems, those who misuse those systems, often those who simply use those systems, and on the House's enforcement and disciplinary processes. Some will also remember the conflict and confusion with which the House was faced over the existence or extent of powers to take action in the case of wrongdoing.

I am delighted to see the noble and learned Lord, Lord Mackay of Clashfern, in his place today; the whole House owes him a debt of gratitude for his crucial role at that time in clarifying that the House does indeed have powers to suspend Members found to be in breach of the Code of Conduct in particular circumstances, albeit for a limited period, and obviously it is that limited period with which the Bill deals.

Since those dark days, we have in fact made progress in a number of areas. The system of financial allowances has been radically overhauled and made simpler and more transparent. The Code of Conduct has been amended to make clearer the high standards of behaviour expected of Members. We have appointed an independent Commissioner for Standards to investigate cases of alleged wrongdoing. The role of the Committee for Privileges and Conduct has been clarified, and I am delighted that the chair of the Sub-Committee on Lords' Conduct, the noble and learned Lord, Lord Brown of Eaton-under-Heywood, is to speak in today's debate. Lastly, the House of Lords Reform Act 2014 has itself made provision for the expulsion of Members who fail to attend the House for a Session or more, or who are convicted of a serious offence entailing a prison sentence of at least 12 months.

My Bill seeks to do two things that would, I contend, complete this raft of reforms. One relates to the issue of suspension. The limitation on the length of a suspension to the remainder of the Parliament in which it is in force is set out in the 2009 report of the Committee of Privileges. As I said, it was based very much on the advice of the noble and learned Lord, Lord Mackay of Clashfern. However, although it has proved helpful that that power exists, there remain problems. The basic problem is that a completely different range of sanctions are open to the House to impose at different stages of the parliamentary calendar. Were a Member to be found to have transgressed at the beginning of a Parliament they could in effect be suspended for four years or more. Were the same Member to commit the same transgression at this stage of this Parliament the possible sanction would be limited to four months or less. That is not logical, I contend, nor is it satisfactory for either the House or the person involved.

My Bill would empower the House to make Standing Orders to enable a suspension to be imposed that would run beyond the end of a Parliament and during that time the right to receive a Writ of Summons would be suspended. The House would also be given the power to enact in Standing Orders the ability to expel a Member in circumstances other than the narrow ones set out in the House of Lords Reform Act 2014—non-attendance or being subject to a prison sentence of more than a year.

Expulsion is obviously a hugely weighty and serious step. I profoundly hope that with this Bill on the statute book and the Standing Orders in place this provision would simply lie unused and there would never be conduct that would provoke the possibility of the House being asked to agree to expel a Member. However, it would be irresponsible not to have such a provision in place when all of us can envisage circumstances—it might be repeat offences against the Code or Conduct or sentences for criminal offences that were less than nine months or were suspended—where the House would wish at least to have the opportunity to consider expulsion and to decide whether it would be the right course of action. In such circumstances, I believe that not having that opportunity would provoke significant public disquiet and criticism of the House. That is not just a belief but based on experience. All noble Lords know that the House has come into disrepute and been criticised for that lack of ability. For us simply to throw our hands in the air and say that there was no option of expulsion open to us would not be satisfactory. We have, in this Bill, at this time, the chance—if I can put it that way—to shut the stable door before the horse has bolted; not to be scrabbling around in the midst of a crisis to see what we could do that was appropriate. I hope very much that the House will take that opportunity.

My Bill is enabling, not prescriptive. It does not lay down in detail the circumstances in which these sanctions would be appropriate or specify the processes the House should adopt in its disciplinary proceedings.

We are lucky in this House to have Members with significant and judicial experience to guide the House in the painstaking task of drawing up the appropriate Standing Orders. That in one sense is a lock: getting the Standing Orders right and those being approved by the House, and making sure that we deal fairly and appropriately with the regime. The second lock is the fact that the whole House would again have to agree to a recommendation from the disciplinary committees of the House that such an expulsion should take place.

This is not a new idea. Provisions similar to those in my Bill were included in the Constitutional Reform and Governance Bill of 2010 but lost in the wash-up and therefore not included in that Act, and in the Government's own House of Lords Reform Bill of 2012, from which the provisions of my Bill are taken word for word. Equally, and as another guarantee of draftsmanship, the consequences of expulsion laid out in the Bill are taken from the 2014 Bill that was brought in by Mr Dan Byles in another place.

The view was rightly taken that these processes are for the House to lay down after careful consideration. I have no doubt that the House would behave with its customary sense of justice, its care and responsibility, both in drawing up the relevant Standing Orders and in considering any recommendation for expulsion or suspension brought before it under those orders, as it has in the past with recommendations for suspension.

I return to my original words. This is a brief Bill. It could, with good will and a little support from the Government, become law, even within the short time available in this Session. I hope that the Minister will indicate that support today, because this Bill could contribute a small piece of the jigsaw in the painful work of rebuilding trust in Parliament and its institutions.

I end with the words spoken by the noble Lord, Lord Hill of Oareford, last December when bringing in his own reforms to the Code of Conduct. He said that,

"ultimately, the reputation of this House rests in all our hands, which is why I believe that noble Lords will want to support steps to strengthen the sanctions available to us".—[*Official Report*, 17/12/13; col. 1143.]

I am introducing this Bill as such a step and I commend it to the House. I beg to move.

2.28 pm

Lord Mackay of Clashfern (Con): My Lords, I wish to support the Bill in both its branches. I shall take the suspension provisions first, although they happen to come second in the Bill, because it is out of that consideration that the first part of the Bill arises. As the noble Baroness said, this matter arose rather prominently some years ago. I was invited by the Privileges Committee to consider the position and came to the conclusion that this House had power to regulate what happened in relation to attending the House during a Session of Parliament. However, the obligation to attend the House sprang from a Writ of Summons issued at the beginning of each Session of Parliament. That power and duty of the Crown to issue a Writ of Summons to those entitled could not be interfered with by any kind of internal action of this House. The most that could be said—there was some question whether even this could be said, as your Lordships will remember—was that the House could suspend Members of the House from attendance during the remaining part of the Session in which the matter came up for consideration. Everyone who has looked at this is aware that that is a serious defect in the balance of the action available. As the noble Baroness said, it looks funny that at the beginning of a Session you can have a long suspension, with it gradually shortening until it becomes vanishingly small as you approach the end.

I am absolutely satisfied that the only way in which this House can deal with that matter is by having statutory power to do so, and that Standing Orders, as prescribed in the Bill, are the correct way to do that. Therefore, I warmly support that part of the Bill.

In addition, we have the question of expulsion. As the noble Baroness said, that is a more serious matter in quite a number of ways, but an important matter from the point of view of how the public look on continued membership of this House. We already have provisions in the statute that my noble friend Lord Steel of Aikwood introduced to deal with that in some circumstances, but not all. It is very desirable that powers of expulsion should exist in the House. That obviously requires statutory power to interfere with the right of a Member to receive a Writ of Summons at the beginning of a parliamentary Session. The Bill provides that that should be dealt with by Standing Orders of the House under the statutory authority of the Bill when it becomes law. It is obvious that the grounds on which such expulsion should be possible will need to be set out. Some may think that that should be set out in the authorising statute. On the other hand, I believe that there is enough need for flexibility as our experience continues to allow for a different method, and that is what the Bill allows: that the conditions for expulsion should be settled by Standing Order.

As the noble Baroness said, expulsion is obviously a more serious matter than suspension. It may be that in considering a Standing Order on that, further thought should be given to the procedure necessary in order that such a recommendation could be put to the House. I am glad that the noble Lord who chairs the sub-committee dealing with these matters is here and look forward to hearing what he has to say. We are extremely fortunate in this House in having a very fully qualified sub-committee to deal with questions such as the Bill would raise if enacted. As the noble Baroness said, it is important that any procedures adopted are seen to be fair and just to the House, to the public and to the individual Member concerned.

I strongly support both branches of the Bill and believe that it provides the best mechanism for reaching the necessary conclusion available in the circumstances.

2.34 pm

Baroness Taylor of Bolton (Lab): My Lords, we have had in the two opening speeches every justification that we might need for agreeing to this Bill. It is indeed a very short and significant Bill and I congratulate the noble Baroness, Lady Hayman, on introducing it. I will be brief because, as she says, in one sense it completes one area of change that became necessary in this House in respect of discipline. It is right that we should move in this way and the work that the noble and learned Lord, Lord Mackay, has done has been incredibly helpful to the whole House. I think that is well appreciated by everyone here.

When we talk about these issues, we should not lose sight of the fact that the discipline which became necessary was because of the wrongdoings of a very few individuals. In both Houses of Parliament, the vast majority of Members are doing their job for the right reasons and in an honourable way. My noble friend the noble Baroness, Lady Hayman, said that she hoped that these powers would not be needed; I think that we all hope that and do not expect them to be required in the foreseeable future. The problem that we have, as politicians in both Houses, is that very significant damage has been done to the reputation of politics itself. I hope that measures of this kind can help to restore some confidence that those of us here are keen to put our House in order.

If I may say one other thing, because the Bill should have a speedy passage and we should all be brief in our comments, more can be done to restore the reputation of this House. Other items of modest legislation, in the same vein as what the noble Baroness has introduced, could make some difference. There are

[Baroness Taylor of Bolton]
also procedural agreements that we could reach in the House as to how we conduct our affairs, which would enhance its reputation. I remind the House of the debate that we had on 19 June on the document *A Programme for Progress*. That report, as some may remember, was drawn up by a group of Labour Peers but what was significant about that debate was that the recommendations within that report had support on all sides of the House. There are measures there which could be taken by agreement or with modest amounts of legislation and would do significant good to the reputation of the House. On issues such as appointments, retirements, procedures and conventions I think there is widespread support. We should be considering those more because we could make some serious progress.

I notice that the Minister, who is in his place, is the same Minister who replied to that debate on 19 June. He may recall—if he does not, I have the *Hansard* reference—that he commented in col. 990 on the level of consensus across the House "on the way forward" and responded to a suggestion by saying that "informal, or perhaps … formal" conversations across the Chamber could be undertaken to try to make further progress. Despite the timescale of the next election, there are things that we could do which could move us in the right direction. I hope that the Minister will take that on board. In the mean time, I congratulate the noble Baroness on the Bill. I hope that it can have a speedy passage. I see no reason why it should not.

2.38 pm

Lord Phillips of Sudbury (LD): My Lords, I, too, thank and congratulate the noble Baroness, Lady Hayman, on bringing forward the Bill. I am sure she will not mind my calling it a modest Bill because she herself acknowledged that. Both she and the noble Baroness, Lady Taylor of Bolton, referred to the context within which we are having this debate, which is one of unparalleled public mistrust. There is mistrust generally but, I am afraid to say, mistrust of Westminster in particular. It is idle for us to pretend that all the mistrust relates to the other place when we are caught up in its tentacles.

If one had a jury of good and honest men and women, unrelated to Westminster, who were to consider what the Bill is doing, they would be amazed that it is not already the law. It seems blindingly obvious, I suggest, that it should already be the regime by which we are here. We are here as an extraordinary privilege; I do not think that there is any greater privilege in this land than to be a Member of this place. We are not like Members of Parliament, who scrimp, save, work and year after year commit themselves to winning a seat in Parliament. When here, we do not labour under a set of obligations to our constituents in the way that they do, because we have none. Being here is an absolute privilege, and there comes with that a commensurate duty to police and regulate ourselves with absolute rigour.

Of course it is difficult—the law says impossible—for a man to judge himself, but we have to do our best, and there is no doubt in my mind that we should pass this measure not only without any reservation but with acclamation. My concern, rather, is that we are not going far enough, but I fully understand why the Bill is limited as it is, because we want to get this through before the election.

We also have to face up to the fact that there are some who do not want us to improve our affairs because they want a stronger case for a more radical reform, including election of this place. There is no getting away from it: they do not want accretional ameliorations. So I think self-reform is vital. This is the very least that we can do and it should be the first of many such measures.

2.41 pm

Lord Brown of Eaton-under-Heywood (CB): My Lords, as your Lordships now know, I have the honour of chairing the Sub-Committee on Lords' Conduct, which is a sub-committee of the Committee for Privileges and Conduct. In that capacity I greatly welcome the Bill and the logical and highly desirable increments to the powers of the House that it would bring with it.

It may help if I try briefly to summarise where presently we stand with regard to the House's sanctioning powers. Following the Bill that was variously known as the Bowers Bill and the Steel Bill but was of course the House of Lords Reform (No. 2) Bill, which was passed on 14 May this year, a Member sentenced in the United Kingdom to a term of imprisonment of more than one year—notice that it is more than one year and not, as I think was suggested, at least one year—ceases automatically to be a Member of the House. Provision was also made in that legislation for possible expulsion in the event of a foreign conviction and, again, a sentence exceeding one year's imprisonment.

However, if a Member is sentenced to one year's imprisonment or less or is given a suspended sentence of imprisonment, although now, by amendments that were introduced in June this year and can be found in the third and current edition of the Code of Conduct, such a person is deemed to have breached the code and is therefore subject to sanction, he cannot be expelled or suspended beyond the duration of the current Parliament. That is the position equally with regard to all other breaches of the Code of Conduct, however seriously they may be viewed. In other words—this has already been made plain in other speeches in this House—assuming that in misconduct proceedings later this month it were thought right to suspend a Member, the longest period for which that could be done would be to the end of this Parliament, now some four or five months away.

I should complete the present picture and add that in January this year the House introduced two new sanctions for breaches of the code: first, denial of financial support—that is to say, the daily allowance and any expenses—for a specified period which can extend for longer than a suspension, meaning that it can extend into the following Parliament; and, secondly, for a similar extended period, denial of access to the facilities of the House, such as dining, parking, the Library and so forth. Neither of these fresh sanctions has yet been imposed. Of course, they were not retrospective.

As your Lordships know, this Bill would enable us to provide in Standing Orders for the House to resolve to expel a Member permanently or to suspend a Member beyond the term of the current Parliament. The precise form and scope of such Standing Orders will, of course, require careful thought, and I certainly hope that our sub-committee would be involved in thinking that through.

I suggest that these clearly are powers that the House should have, and that although, like all these possible sanctions, it is greatly to be hoped that there will be very few occasions when they will need to be exercised, they should be available in order to safeguard the reputation of the House. I strongly support the Bill.

2.46 pm

Lord Trefgarne (Con): My Lords, like all noble Lords who have spoken so far, I support the main thrust of the Bill, but there is a small matter that ought to be taken into account, which was accommodated in the Bill passed earlier this year. It is the case of a noble Lord who is, for example, convicted of, say, spying in a distant country when the charge is brought quite speciously and perhaps for political reasons—or perhaps he was indeed spying, but for us. In those circumstances, there needs to be provision to ensure that he is not removed from this House unnecessarily. I hope that that can be accommodated in the Standing Orders that will be drafted when this Bill, as I hope, becomes law. Indeed, there are provisions in the 2014 Act that allow the Lord Speaker, in certain circumstances, to lift the conviction, so to speak. I hope that these matters can be taken into account, if necessary by amendments in Committee—although perhaps that will not be necessary—or when the Standing Orders are drafted.

2.47 pm

Lord Butler of Brockwell (CB): My Lords, I add my voice to those who have supported the Bill. I do so briefly because I know that at this time on a Friday afternoon your Lordships prefer brevity to expansiveness.

This Bill carries forward what the noble Lord, Lord Steel of Aikwood, acknowledged at the Second Reading of what became the House of Lords Reform Act was unfinished business in that Bill. It gives the House more flexible powers to determine the circumstances in which Peers can be suspended or expelled. I can see no reason why the Government should not support and facilitate this Bill. I hope that the Minister will be able to tell us that the Government will indeed support it. If they do not, I think the only reason can be that they are not willing to facilitate any further reform of the House of Lords until more expansive, more ambitious reforms can be introduced. If that is the attitude of the Government, I deplore it. If the Government wish to put a standstill on further measures of incremental reform, they should also put a standstill on making the position of this House worse by more political appointments between now and the general election.

I do not want to personalise this Bill, but the fact that it has been introduced by the noble Baroness, Lady Hayman, a former Lord Speaker of the House, is a particular reason why the Government should give it significance and support it. I cannot resist saying that many of us in this House supported the right of the Leader of the House to be a full member of the Cabinet. In our debates on this matter, she said that even without that status she would support and champion the interests of the House. If there is resistance in the Cabinet to facilitating the Bill, this is an opportunity for her to fulfil that promise to the House, and I hope very much that she will do so.

2.50 pm

Lord Cormack (Con): My Lords, I am delighted to follow the noble Lord, Lord Butler of Brockwell, and entirely endorse what he has said. Much as I respect my noble friend Lord Wallace of Saltaire, who will be responding to this brief debate, I wish that the Leader of the House were here to do so and to give her full authority to what is said from the Front Bench.

I hope that what will be said from the Front Bench is that the Bill will be supported. It meets all the criteria that the Government have laid down. House of Lords reform should come about as a result of consensus. Well, there is a real consensus. This Bill, like that introduced by my noble friend Lord Steel of Aikwood, came about as a result of a group of us who have now been meeting for 12 years, the Campaign for an Effective Second Chamber, convened by my noble friend Lord Norton of Louth. We founded it together all those years ago, and I have the honour of chairing it. We have discussed this matter many times, and there has been no disagreement on it among Members from all political parties and the Cross Benches, just as there was no disagreement over the measure that my noble friend Lord Steel introduced and Dan Byles took on last year. It is incremental and modest reform, designed to ensure that this House goes in for proper "housekeeping measures", as my noble friend Lord Steel called them. It in no way prevents a future Government doing other things with this House. I hope that the House will remain appointed, but whether that is its ultimately destiny or not, there is no argument against the modest proposals made so forcefully and eloquently by the noble Baroness, Lady Hayman.

As the noble Lord, Lord Butler, said a few moments ago, the fact that the Bill is being introduced with the enthusiastic support of the first Lord Speaker of this House ought of itself to commend it to all parts of the House. I was delighted that the noble Baroness, Lady Taylor of Bolton, spoke as she did. She introduced that debate in June and, again, there was an enormous degree of consensus, even though that report had been drawn up by Labour Peers.

We have only four or five months left of this Parliament. There is not time to get through sweeping measures, but there is ample time to get this measure through. There is no reason at all why it should not go through with acclamation this afternoon, without amendment in Committee, and be in another place well before Christmas. I hope that that will happen. If it does, we will collectively be giving all those who care for our constitution and our Parliament a good Christmas present.

2.53 pm

Lord Haskel (Lab): My Lords, I, too, support the Bill. As others have said, in the two debates earlier this year—that on the report of the Labour Peers working group, referred to my by noble friend Lady Taylor, and that on the Steel Bill—many people referred to the fact that House of Lords reform would do better to proceed in small steps. The two Bills which tried to deal with the whole of House of Lords reform were both withdrawn because of the absence of consensus.

There are many things on which we can agree, and by taking them one at a time we may be able to achieve reform by accretional amelioration, as only the noble Lord, Lord Phillips, could put it. This Bill is one such step. As the noble Baroness explained, the Bill deals with the expulsion or suspension of Members of this House who have knowingly broken our rules or fallen below the standards that we have set ourselves.

I think that all of us would agree that a strong state demands high standards in public life. Without it, the capacity of Parliament to govern, and our reputation, diminish. Part of upholding those standards is the ability in any circumstances, irrespective of the parliamentary calendar, for this House to remove or suspend Members who have fallen below these standards. I feel that it is more applicable to us than most, because we are an unelected House and privileged, as the noble Lord, Lord Phillips, put it. It would be best if the Bill became law, because if it does not, we will be accused in the press and in the blogosphere of simply looking after our own—and there might be an element of truth in that. Some say that this is really a housekeeping matter. I do not agree. It is serious enough to be put on the statute book.

I finish by thanking the noble Baroness for the Bill. It takes a lot of work to put a Private Member's Bill through this House; it is time consuming and often frustrating. The workload is also carried by the support staff—my thanks to them. I urge your Lordships to give the Bill a Second Reading.

2.56 pm

Lord Dobbs (Con): My Lords, I support the Bill for many reasons, most of which have already been ably and eloquently put, so I will not repeat them. However, I will spend a minute referring to a wider reason why I support the noble Baroness's excellent Bill.

There are storms on the horizon; constitutionally we have entered a period of extreme turbulence. Since the referendum in Scotland the cry has gone up that we must have change—new ideas, more forms of government, with more powers. Those who began this paperchase have undoubtedly been considering their arguments carefully over many years before bringing them forward. On the other hand, there seems to be a sudden scarcity of cigarette packets. In these circumstances we need to look ever more carefully at what we do.

It is fair to say that we seek to improve rather than to impede legislation; we advise rather than oppose; we do detail rather than demagoguery; and I hope that we more often look to the wider public interest rather than search for narrow party advantage. Surely those qualities will become increasingly relevant, as all these new constitutional proposals and new powers inevitably threaten confusion and unintended consequences. In those circumstances it would be ever more important to find a means of smoothing rough edges. That means that what will be needed more than ever in this devolved new world that awaits us is this House of Lords—or something so like it as to be indistinguishable.

The Bill will help establish our continuing relevance. However, we need more; we need to be fitter, leaner and more transparent, and we need to bring our numbers down quite drastically. That would involve a painful process of self-denial, not only for political leaders, but most of all for ourselves here. One fundamental principle must guide everything we do: every one of us, individually, no matter how long we have perched here, whatever our plumage or pedigree, is here to serve this House. This House does not exist for our benefit, but we for it. The Bill helps to reinforce that fundamental principle. I wholeheartedly support it and congratulate the noble Baroness on her work in bringing it forward.

2.59 pm

Lord Kerr of Kinlochard (CB): My Lords, I support the Bill and will try to be very brief, because it is a very brief Bill and my support for it is very strong—not least because it is very brief. We all owed the noble Baroness, Lady Hayman, thanks for her services to this House before the Bill; we now owe a bit more to her in the light of it.

It is a manifest absurdity that the maximum penalty that can be imposed on somebody who breaks the rules of this place varies in inverse proportion to the length of the Parliament. It is absurd—the scale of the penalty should reflect the scale of the offence, not the remaining period of the Parliament. It is Alice in Wonderland.

I completely agree with the noble Lord, Lord Phillips of Sudbury. His speech was important, because I feared before this debate that we would hear that this was not the only reform that needed to be undertaken and that we would get into the trap of letting the best become the enemy of the good. I, too, believe that we need to have more reforms of this place, but that should not be an excuse for delaying this self-evident correction of a self-evident absurdity.

I am grateful to the noble Lord, Lord Phillips, for warning against letting the best become the enemy of the good. I hope that what has been expressed from the Liberal Democrat Benches will also be expressed from the Government Front Bench. The noble Lord, Lord Cormack, is absolutely right to say that there is no reason at all why this very sensible, long-overdue, necessary little reform should not be on the statute book before the end of this Parliament.

I am also grateful to the noble Lord, Lord Trefgarne, who raised a point that I believe he has raised before, but in terms that indicated that he realised that it did not require an amendment to this enabling Bill and could be dealt with perfectly well in the Standing Orders that would follow.

I am going to deliver on my promise of brevity. I hope that the discussions in this House will be equally brief and that we will bring this Bill to a successful conclusion before the end of this Parliament.

3.01 pm

Lord Norton of Louth (Con): My Lords, I, too, add my support to the Bill. On the last occasion on which I was the last Back-Bench speaker in a Second Reading debate, I used the opportunity to respond to opponents of the Bill. My role today is clearly different in that I am here to add my support to everyone who has spoken.

As the noble Baroness, Lady Hayman, made clear, the provisions of this Bill are based on previous measures. In the last Parliament, I served on the Joint Committee on the Draft Constitutional Renewal Bill, which became the Constitutional Reform and Governance Act 2010. The provisions for expulsion were lost in the wash-up. In this Parliament, I served on the Joint Committee on the Draft House of Lords Reform Bill. The Labour Government supported the former Bill and the present coalition Government supported the latter Bill—in other words, all three main parties have signed up to the provisions embodied in this Bill. The drafting of this Bill follows that of the previous Bills, especially the House of Lords Reform Bill, so no party with any merit can claim that the Bill deviates from the provisions that they have previously supported.

As the noble Baroness, Lady Hayman, said, the Bill extends our current limited powers and brings us into line with the other place. There is clearly a powerful case for bringing us into line with the House of Commons. The two Houses do not necessarily have to march in step but, if there is a difference, there is a more powerful case for this House to have the power of expulsion. After all, MPs do not enjoy security of tenure; they can be removed by their constituents. They may be removed in between elections in exceptional circumstances, if the Recall of MPs Bill before the House of Commons is enacted.

As my noble friend Lord Phillips of Sudbury said, membership of this House is a privilege, but it is also a responsibility. We have to maintain high standards. We have the code of conduct; that is necessary but it is not sufficient. We lack the powers necessary to enforce it in the event of a major transgression. We can suspend Members, but only for limited periods, as we have heard. That is useful and we have made use of it, but we need the ability in exceptional circumstances to suspend for a greater period than is presently possible or even to expel. It is not difficult to envisage circumstances in which a Member brings the House into serious disrepute without breaking the law.

The provisions of this Bill give us the powers that we need. It is up to the House to provide due process for the consideration of cases. The report of the Joint Committee on Parliamentary Privilege, echoing previous committee recommendations, detailed the minimum requirements for fairness in such cases. These should be embodied in Standing Orders and not in the detail of the Bill—otherwise there is the danger of the provisions coming within the purview of the courts. The Bill in my view gets the balance right. It is a modest Bill, at least in length, but it is a necessary one for the reasons that noble Lords have advanced. Like my noble friend Lord Cormack, I see no reason at all why it should not be permitted to proceed to the statute book and do so swiftly.

3.04 pm

Lord Hunt of Kings Heath (Lab): My Lords, in introducing her Bill, my noble friend Lady Hayman was most persuasive and we on the opposition Benches are very happy to support it and to wish it godspeed through this House and the other place. The Bill's provisions are very much reinforced by the comments of the noble and learned Lord, Lord Brown, who gave a very helpful explanation of the sanctions currently available and what is missing from the way in which we deal with these matters. My noble friend Lady Hayman was right to say that expulsion from a Chamber of Parliament is, indeed, a significant and major step. I agree with her that, although we hope they may never have to be used, it is good to have an armoury and the ability to do so if the circumstances should arise.

Of course the expulsion of a Member of Parliament can never be undertaken lightly, so it is important that proper safeguards are in place. My noble friend has reassured me on this point. As she said, the House remains in control. It would have to approve the Standing Orders and have to agree to the expulsion of the Member—the two locks, as she described them. I believe that those are sufficient safeguards. I was much reassured on that by the comments of the noble and learned Lord, Lord Mackay of Clashfern. This Bill could become law with government support and we look to the Minister for a positive response.

My noble friend Lady Taylor referred to other matters that could be agreed by your Lordships' House.

Lord Jopling (Con): I am sorry to interrupt the noble Lord but he has just indicated that, if the Bill is to go through, it is essential that it be given government time. I think it is the first time that that point has been made in the debate.

My colleagues with experience of the House of Commons will recall that it is extremely difficult to get a Private Member's Bill through the Commons procedures. As one who has killed off more Private Members' Bills than most noble Lords who sit in this Chamber, I know that what we need to hear from the Minister is how we can get the Bill through before the general election, if that is what we want. We seem to be totally unanimous on that. The Government support the Bill and we hope that it goes through. However, that is the language of the long grass. The only way that this Bill will go through is if the Minister tells us not only that the Government support it but, more importantly, that government time will be given in another place to get it through.

Lord Hunt of Kings Heath: My Lords, that was an extremely helpful intervention, at least for Members of your Lordships' House. I suspect that there has never been a more elegant assassin of Private Members' Bills than the noble Lord. He certainly speaks from great experience, and I hope that we will receive a positive response. It is absolutely clear that we need the Government to fully support the Bill and make sure that there is time in the other place for it to go through. I also hope that the noble Lord will take note of my noble friend's comments. The report that she produced, which was debated in your Lordships' House, contained a number of very useful suggestions for modest improvements.

[Lord Hunt of Kings Heath]

I agree with what the noble Lord, Lord Dobbs, said about retirements and the number of Members of this House. We have to start to make progress in relation to that. I very much support the Bill. I hope that the Minister will respond positively. It will be disappointing if the Government do not say that they will support the Bill.

3.09 pm

Lord Wallace of Saltaire (LD): My Lords, the Government do, of course, remain committed to a broader scheme of Lords reform, as I trust do the Labour Opposition in their turn. There is a consensus on that, at least officially. The Government have no settled view on the Bill at present. All I can promise, and I do promise, is that I will take back the speeches that have been given around the House and the strong arguments that these are essentially housekeeping measures—although I am not sure that expulsion is entirely a matter of housekeeping. Powerful speeches have been made, and then we will have to see what can be done with the House of Commons between now and the election. Time is very short—

Lord Hunt of Kings Heath: The noble Lord says that the Government have no settled view. That is disappointing but it could be taken as a positive response if it actually meant that the Government generally would be prepared to discuss, maybe through the usual channels, with the noble Baroness whether they are prepared to support the Bill. Can he say that the door is at least open to that?

Lord Wallace of Saltaire: My Lords, I am trying to be as positive as I can be but the noble Lord knows as well as I do, having been in government, that getting consensus inside the Government, even in a single party, is not always entirely simple and straightforward. You have to get Ministers to concentrate on the matter in hand. When it is a matter of Lords housekeeping it is not entirely easy. I will do my best. I will take this back very firmly and we will have to look at the House of Commons dimension, and we might be able to make at least very considerable progress on the Bill. I take everything that has been said, although I repeat that the Government remain committed to a broader scheme of reform.

Baroness Taylor of Bolton: I am listening with great care to what the noble Lord is saying and we all know the pressure that we are under towards the end of this Parliament. Will he bear in mind the fact that in the wash-up at the end of the Parliament it is very often easy to get agreement on measures that are as clear-cut as this one?

Lord Wallace of Saltaire: I also take that point and will take it back. We had rather hoped that with a fixed-term Parliament there would be much less wash-up than before, but I suspect that when it comes we will discover that a number of things have been slid in at the last minute that we nevertheless have not quite managed to agree in either House.

Lord Cormack: If it is less of a wash-up, there is only a very tiny dish.

Lord Wallace of Saltaire: I entirely understood. Unfortunately, some rather larger dishes may yet be introduced, which the Government may wish to try to push through.

We all hope that these powers would not be needed. We all recognise that we will need to look before the Bill is completed at the sort of things that will need to be in Standing Orders, because this Bill is quite a substantial extension to the power of the House, in spite of the wonderful phrase that the noble Lord, Lord Phillips, used—that it is intended to be merely an "amelioration". However, I am very happy to talk further with the noble Baroness, Lady Hayman, and certainly take this back to the Cabinet Office to see what is possible.

Before we depart, I say to the noble Baroness, Lady Hayman, that I look forward to her next proposals on accretion or amelioration. I am happy that I hear around the Corridors a number of noble Lords on all Benches discussing the possibility of retirement at the end of this Parliament. That is another useful way forward. We should encourage it. However, perhaps the noble Baroness will, at the beginning of the next Parliament, produce a Bill that will suggest a retirement age by consensus. I look forward to giving her my support, from wherever I am at that point, on that next stage in amelioration.

Lord Kerr of Kinlochard: My Lords, the noble Lord's tone is encouraging but slightly light-hearted. I regard this as a very important Bill. It may be short but if it is carried by acclamation in this House, as it should be, it will be very odd if the Government do not find government time for it in the other place.

Lord Wallace of Saltaire: My Lords, we appreciate that this is a serious matter. We all understand the question of the House's reputation and of the public reputation of Westminster as a whole. I have previously said in responding to questions that that is one of the strongest lessons of the Scottish referendum and of the disillusionment of opinion across England with Westminster as such. We all understand that. I will take that away. I happen to be a strong believer in a reduction in numbers by accepting that we should all retire at a certain age. That is part of where we are now moving and it is part of our general responsibilities. I strongly believe that to be a Member of this House is a privilege, not a right.

I hope I have said enough to reassure the House. Conversations will continue off the Floor, as they so often do. We will see what we can do.

3.15 pm

Baroness Hayman: My Lords, I am enormously grateful for the support that I have received from all Benches of your Lordships' House and for the seriousness with which Members have addressed the Bill. I was slightly worried on several grounds when the Minister wound up: at one stage I thought that he was inviting

me to retire by the end of the Parliament. I do not think I am minded to do that with so much unfinished business before us, not least in this area.

Lord Wallace of Saltaire: I must congratulate the noble Baroness. She talked about completing a stage of House of Lords reform. What a wonderful phrase—the thought that we might ever complete a substantial phase of House of Lords reform. I suspect I will retire before we have done that.

Baroness Hayman: It is the never-ending story of British politics. However, I turn briefly to two points made by noble Lords. One was made by the noble Lord, Lord Trefgarne. I quite understand his desire that we should not create rules so inflexible that injustices take place. That is less of a difficulty with a Bill that enables the House to make Standing Orders, which can themselves give the degree of flexibility referred to by the noble and learned Lord, Lord Mackay of Clashfern. We then have the next lock of the House itself needing to make a resolution in individual cases. I hope that the noble Lord, Lord Trefgarne, will not feel that it is necessary to try to amend the Bill, but that he will be engaged in the process that several noble Lords have mentioned of drawing up the Standing Orders, the procedures and the processes that would be necessary after enactment, which we all recognise should be taken very seriously.

Several noble Lords referred to the need for other measures of reform. It is well known that I share a desire to reform this House substantially. That does not mean I support an elected House—I do not—but I believe that there is a lot that we can do. I considered bringing the remains of the Steel Bill: an individual Bill on a statutory appointments commission, a cap on the size of the House, and even—dare I say it with the noble Lord, Lord Trefgarne, present—an end to hereditary Peer by-elections. I did not do any of those things because I believed that I should, in these circumstances, bring forward something that was deliverable and that could, in the terms of a Private Member's Bill, become law and make a contribution.

The Minister said that it might be difficult to get people to focus on Lords housekeeping. I, too, take issue with that designation of the Bill. He might find it easier if he put it to colleagues that it was a Bill dealing with the reputation of Parliament, because that is what I believe it is and I think that the noble Lord, Lord Dobbs, and others made that perfectly clear.

I am slightly surprised that the Government have "no settled view", to use the Minister's phrase. They had a settled view when they drew up these proposals and put them in the Bill in 2012. Of course, I am willing to consider and discuss what might be in the Standing Orders but I assume that that work has already been done in government: if it is necessary then it would have been done as the back-up to these proposals when they were put forward in the 2012 Bill.

The advice that the noble Lord, Lord Jopling, gave us was absolutely central. Although the Minister seemed to be willing the ends in a very generalised way, willing the means was not so specific. I shall certainly take up his offer of conversations—he did not say that the door was closed. I hope—and today's debate has given me encouragement for this because I do not think that anyone expressed any doubt about the importance and necessity of the Bill—that we can deliver it up in good time for it to become law if the Government give it time in another place. That is the simple demand that, with the authority of those who have spoken today, I shall be taking into those discussions. I hope that, in a short period of time, the Government will reach the conclusion that it is in all our interests so to do.

Bill read a second time and committed to a Committee of the Whole House.

House adjourned at 3.21 pm.

Written Statements

Friday 24 October 2014

Armed Forces: Housing

Statement

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever) (Con): My right hon. Friend the Minister for Defence Personnel, Welfare and Veterans (Anna Soubry) has made the following Written Ministerial Statement.

The Government remains committed to ensuring that our Service personnel and their families have access to good quality accommodation at a price that is substantially subsidised compared to civilian options. Our programme of investment in Service Family Accommodation has delivered significant improvements since 2010; last financial year alone, we invested £90 million in upgrading existing stock and £150 million buying over 700 new Service homes. We now plan two key changes to the way in which we deliver and manage Service Family Accommodation which together will ensure that the aspects of greatest importance to our personnel continue to improve through further targeted investment.

The first change is a new contract for maintenance and support services. This will effectively incentivise delivery partners to ensure a step-change in the service provided to our personnel. They will significantly improve the customer experience, with an expanded electronic service establishing a one-stop shop for all accommodation issues. We have also imposed far stricter performance targets, demanding a quicker response to problems and repairs with more on-the-spot investment to resolve them and a "fix first time" culture. This contract will come into effect on 1 November 2014 in Scotland and Northern Ireland, and on 1 December 2014 for the rest of the UK.

The second change is a major reform of the charges paid by personnel for the houses in which they live. This is part of the New Employment Model, which aims to put in place an affordable and sustainable package of employment, remuneration and support that will enable the recruitment and retention of sufficient capable and motivated Service personnel.

The current system for determining accommodation charges is no longer fit for purpose. It uses out-of-date methods that are no longer relevant to modern living. It is also so complex and subjective that it is difficult to achieve consistent and regularly updated assessments. As a result, despite the investment in recent years, assessments of a large number of properties have not been updated or graded accurately. More than half of our properties are not being charged at the appropriate rate, meaning that rents have fallen significantly behind the rising standards of military accommodation. Various reviews, both internally and by the Armed Forces Pay Review Body (AFPRB) have strongly recommended reform. This Government will now introduce a modern, objective system that will enable our personnel to see exactly how their charges are calculated and what they get for their money. We will continue to look to the AFPRB for their recommendation on overall accommodation charge rates.

The new charging system will be introduced for Service Family Accommodation in April 2016. Over the next 18 months, a survey programme will provide underpinning data to allow every property's accommodation charge to be reassessed against the new criteria and updated accordingly. This will change charges so that they accurately reflect the quality of the home provided. We are not proposing to increase the top charge rate: indeed, far fewer personnel would pay it. Many of those currently paying charges at the lower end of the scale, particularly where they live in upgraded, better quality properties, would see charges gradually increase over a number of years but will rise at a set annual rate that is scaled according to rank and property type (we expect this to be limited to about £20-30 a month for other ranks).

All additional rental receipts will be reinvested into military accommodation. From April 2016, no Service family living anywhere in the UK will be allocated a property that does not meet the Department for Community and Local Government's Decent Homes Standard. A programme of investment in energy efficiency over the next five years will also mean that every Service family in UK military accommodation should face energy bills significantly lower than the national average.

The new charging system is simpler, fairer and will help to put our Service accommodation on a sound, long-term financial footing that will enable enhanced future investment.

Energy: Shale Oil and Gas

Statement

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Lord Ahmad of Wimbledon) (Con): My hon Friend the Parliamentary Under Secretary of State for Communities and Local Government (Kris Hopkins) has made the following Written Ministerial Statement.

I am today announcing the start of a consultation on draft regulations to implement 100% local retention of business rates on shale oil and gas sites.

We believe shale oil and gas may hold potential for adding to the UK's energy sources, helping to improve energy security, create jobs and meet carbon targets. And to ensure shale development is safe there are robust rules in place to ensure on-site safety, prevent water contamination and mitigate seismic activity and minimise air emissions.

We also believe that local councils and communities should share in the economic opportunities and benefits of shale oil and gas. The draft regulations we are publishing today will ensure that local councils that host shale oil or gas sites can benefit from millions of pounds in business rates paid by site operators. The measure could be worth up to £1.7 million for a typical site and will be funded by Central Government.

The draft regulations define the sites on which 100% retention of business rates will apply and set out the arrangements for sharing that revenue between the different tiers of local government. Consultation will allow us to ensure we have correctly defined shale oil and gas sites and that the regulations, once made, will give local government the certainty they need over future business rates income.

Once we have considered responses to the consultation we will lay the regulations before Parliament with a view to them coming into force by 1 April 2015. I have placed a copy of the consultation document and draft regulations in the Library of the House, and the consultation document is also available at;

www.gov.uk/government/consultations/business-rates-retention-and-shale-oil-and-gas-technical-consultation.

HMS "Victory"

Statement

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever) (Con): My right hon. Friend the Secretary of State for Defence (Mr Michael Fallon) has made the following Written Ministerial Statement.

HMS "Victory", the flagship of Admiral Sir John Balchin, sank in the English Channel in 1744; the wreck site was found in 2008. In 2010 the Ministry of Defence and the Department for Culture, Media and Sport conducted a joint public consultation on options for the management of the wreck site. A summary of the responses and the Government's proposed way forward were published on 19 July 2011:

https://www.gov.uk/government/consultations/hms-victory-1744-options-for-the-management-of-the-wreck-site

Following the consultation, the wreck was gifted to the Maritime Heritage Foundation (MHF) in January 2012. Since then the site, which is at risk of damage from fishing vessel activity, natural erosion, and illegal salvage, has been regularly monitored. In parallel, the Government has worked with MHF to develop a phased approach to the management of the site through a Project Design that conforms with the archaeological principles of the Annex to the UNESCO Convention on the Protection of Underwater Cultural Heritage ("the Annex"), the agreed Key Management Principles, and with the Government's heritage policies. These are set out in the "Protection and Management of Historic Military Wrecks outside UK Territorial Waters" guidance: https://www.gov.uk/government/publications/protection-and-management-of-historic-military-wrecks-outside-uk-territorial-waters

We have been assisted in this work by an Advisory Group, consisting of representatives of the National Museum of the Royal Navy, English Heritage, the Receiver of Wreck, and the Marine Management Organisation (MMO); and the Advisory Group has been supported by an Expert Panel of independent specialists from various fields of the marine historic environment and maritime heritage management. The Government is grateful to all those involved.

Following consideration of the detailed information and assurance provided by the MHF I have given consent for MHF to proceed with the next phase of the agreed Project Design. This decision is supported by the Minister for Culture and the Digital Economy, my hon. Friend the Member for Wantage (Ed Vaizey). Specifically, MHF has been granted permission to recover at-risk surface items from the wreck site in accordance with the Project Design once the necessary licence has been issued by the MMO.

Consideration of any further phases of work would be made in light of progress reported by MHF.

All artefacts recovered are to be declared to the Receiver of Wreck in accordance with existing legislation to determine ownership. Artefacts transferred under the Deed of Gift that are recovered and accessioned from the wreck and the associated archive, including site plans, drawings and photographs, will form the "Victory 1744 Collection", which will be managed and curated in line with the Museums Association's Code of Ethics for Museums.

The Government has previously committed to publishing more information about this project, including the set of Key Management Principles that MHF has agreed to. This information and reports documenting the pre-disturbance work completed as part of Phase 1 and Phase 2 of the Project Design are now available at www.victory1744.org. Additional information will be made available as the project progresses.

The Government is satisfied that the Project will be managed in accordance with best practice and will ensure that important artefacts from this unique part of our maritime history remain together for the future appreciation and education of all.

Written Answers

Friday 24 October 2014

Aspartame

Question

Asked by ***The Countess of Mar***

To ask Her Majesty's Government when they intend to publish the results of the Hull trial on aspartame on the Food Standards Agency website. [HL2094]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe) (Con): The Food Standards Agency (FSA) advise that the paper is still in the peer-review process. Publication in a scientific journal is expected and is the preferable route as it makes the data more readily available to the scientific community. Once this happens the FSA will publish the final report on foodbase, the FSA's open access repository.

Bosnia and Herzegovina

Questions

Asked by ***Lord Hylton***

To ask Her Majesty's Government what assessment they have made of the level of the flood damage in Bosnia-Herzegovina in May 2014; whether they have made an assessment of the proportion of the flood damage covered by insurance; what amount of external emergency funds has been spent; and whether additional European Union assistance is available. [HL2085]

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): A comprehensive needs assessment of the post-disaster recovery requirements stemming from this year's floods was carried out by the authorities of Bosnia and Herzegovina. The EU, the UN and the World Bank supported this process by providing resources and technical support. The assessment reflects damages, effects, impact and needs across a range of sectors including agriculture, education, health, public services, housing, transportation and energy. It estimates that the economic impact of the floods was £1.62bn. A European Commission hosted donors' conference in July raised £810m towards the rehabilitation effort.

The EU assistance to the flood response is currently €42m, plus €1m from the UN Development Programme (UNDP), which has gone to rebuild schools, houses and other community infrastructure. An additional tranche of €43m is due to be released to cover flood prevention and provide more housing assistance.

In addition to a £1.03m commitment for immediate humanitarian assistance, the British Government is due to release a further £1m to the flood response work through the UNDP. We will continue to work closely with the EU, the UN and other international organisations to assess what further help might be given to help Bosnia Herzegovina recover from the impact of the floods.

The British Government has not made an assessment of the proportion of damage covered by insurance.

Asked by ***Lord Hylton***

To ask Her Majesty's Government whether they are encouraging the various elements of civil society in Bosnia to work together with all the religious leaders, and all levels of government, to reconstruct that country. [HL2086]

Baroness Anelay of St Johns: Through its project work and donor coordination, our Embassy is working with stakeholders, including civil society and other citizens' groups, to support Bosnia in dealing with the consequences of this year's devastating floods. This includes building on existing community cooperation. More widely, the UK considers that joining the EU would be the most effective way for Bosnia to progress towards a more united and prosperous country. The UK has consistently demonstrated leadership within the EU in encouraging Bosnia to make progress on meeting the criteria necessary for EU accession.

British Overseas Territories

Question

Asked by ***Lord Ashcroft***

To ask Her Majesty's Government whether they will publish a list of investment protection treaties agreed by all United Kingdom Overseas Territories with another country. [HL2132]

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): The UK has extended a number of Investment Promotion and Protection Agreements (IPPA) to the Overseas Territories when the Territories have provided a case for doing so and the other country agreed. These are the IPPAs currently in force that have been extended to Overseas Territories:

UK-Antigua & Barbuda IPPA (Gibraltar)

UK-Belize IPPA (Cayman Islands, Turks & Caicos Islands)

UK-Dominica IPPA (Gibraltar)

UK-Grenada IPPA (Bermuda, Gibraltar, Turks & Caicos Islands)

UK-Guyana IPPA (Bermuda, Gibraltar, Turks & Caicos Islands)

UK-Hungary IPPA (Bermuda, Gibraltar, Turks & Caicos Islands)

UK-Indonesia IPPA (Bermuda)

UK-Korea Republic IPPA (Turks & Caicos Islands)

UK-Mauritius IPPA (Gibraltar)

UK-Panama IPPA (Cayman Islands)

UK- Philippines IPPA (Turks & Caicos Islands)

UK-Singapore IPPA (Turks & Caicos Islands)

UK-St Lucia IPPA (Cayman Islands, Turks & Caicos Islands)

UK-Thailand IPPA (Turks & Caicos Islands)

UK-Tunisia IPPA (Bermuda, Gibraltar, Turks & Caicos Islands)

Records of all treaties involving the United Kingdom concluded between 1834 and 31 March 2014 can currently be found through the Foreign and Commonwealth Office (FCO)'s UK Treaties Online service at:

http://treaties.fco.gov.uk/treaties/treaty.htm

Details of treaties involving the United Kingdom since March 2014 can be found on the FCO Treaty Section's pages on GOV.UK at:

https://www.gov.uk/uk-treaties

Children in Care

Question

Asked by ***Lord Storey***

To ask Her Majesty's Government what assessment they have made of Action For Children's recent report Too Much, Too Young on the recognition of the emotional needs of young care leavers; and what steps they are taking to improve the emotional well-being of young care leavers. [HL2115]

The Parliamentary Under-Secretary of State for Schools (Lord Nash) (Con): Improving the lives of care leavers has always been a priority for this Government, and the Department for Education has significantly improved the support on offer to this vulnerable group. The Department published the first cross-Government care leavers' strategy in 2013, and will shortly produce a "one year on" report setting out how those commitments have been met. We have tightened the rules so that fewer young people leave care before they are ready. We have also provided an additional £40 million to local authorities, backed by a change in the law, so that looked-after children can remain with their former foster carers until they are 21 years old.

The Action for Children report highlights the importance of mental health and emotional wellbeing.[1] We recognise that there is more to be done, and the Government has established the Children and Young People's Mental Health and Wellbeing Task Force to make recommendations on improving mental health commissioning for young people. This will include a particular focus on the needs of vulnerable groups. The Government recently published a National Prospectus setting out the key activities it wishes to fund at a national level though organisations working with children, young people and families in 2015-16. One of the policy areas we wish to fund through this programme relates to improving the identification of children and young people's mental health issues (including care leavers'), prevention, improved commissioning of support and more effective collaboration between agencies and services.

[1] www.actionforchildren.org.uk/policy-research/policy-priorities/too-much-too-young

Class Sizes

Question

Asked by ***Baroness Jones of Whitchurch***

To ask Her Majesty's Government what is their assessment of the educational impact on infant pupils of being taught in classes of over 30 pupils. [HL2165]

The Parliamentary Under-Secretary of State for Schools (Lord Nash) (Con): The Department for Education has reviewed academic studies on the relationship between class size and attainment. The effect of class sizes on attainment in primary schools has long been contested and complicated by debates about how it can be accurately measured. The most robust studies have been reviewed and suggest class sizes have little effect beyond the early years when smaller classes have some positive impact.

The review "Class size and education in England evidence report" was published on the Department's website in December 2011 and is available online at:

www.gov.uk/government/publications/class-size-and-education-in-england-evidence-report

Children are only permitted to join classes of 30 or more in exceptional cases - if for instance they are in care or from military families and admitted outside the normal admission round. On 12 June, the Department published data that showed the average infant class size currently stands at 27.4, which is well within the statutory limit of 30 pupils per teacher. This is published online at:

www.gov.uk/government/publications/schools-pupils-and-their-characteristics-january-2014

Cyprus

Question

Asked by ***Lord Maginnis of Drumglass***

To ask Her Majesty's Government whether the public support of the Secretary of State for Northern Ireland for the Greek-Cypriot cause reflects the Cabinet's position in respect of Cyprus; and, if not, what action they intend to take. [HL2012]

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): The UK remains committed to supporting the UN's efforts to achieve a settlement based on a bizonal, bicommunal federation with political equality as defined by the relevant Security Council resolutions. We will continue to encourage the leaders of both communities to keep up the momentum on the talks which restarted in February this year.

Doctors: Registration

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government how many doctors were registered to practise medicine by the General Medical Council (GMC) in the last five years; and how many of the first registrations with the GMC in each year were from doctors who gained their primary medical qualification in the European Economic Area, United Kingdom or rest of the world respectively. [HL2126]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe) (Con): The Department does not hold the information. This information is held by the General Medical Council and they have provided the information below for the purposes of answering this question.

The following table shows the number of doctors joining the register for the first time, from 2009 to 2013, by the region of their primary medical qualification and first registration year.

	No. of Doctors				
	2009	2010	2011	2012	2013
EEA	2,368	2,973	2,726	2,899	3,062
Non-EEA	2,579	2,959	2,437	2,222	2,379
UK	6,876	7,010	7,112	7,083	7,451
Grand Total	11,823	12,942	12,275	12,204	12,892

Source:
General Medical Council

The following table shows the number of doctors on the register at the end of each year by the region of their primary medical qualification. The number of registered doctors who hold a licence at the end of each year is also provided. A licence in necessary to work as a doctor in the UK, but holding one does not guarantee that a doctor is working.

	EEA		Non-EEA		UK	
Year	No. of Doctors Registered	No. of Doctors Licensed	No. of Doctors Registered	No. of Doctors Licensed	No. of Doctors Registered	No. of Doctors Licensed
2009	21,177	19,495	64,685	59,857	145,498	139,161
2010	22,757	21,174	66,001	61,422	150,465	144,042
2011	24,032	22,398	66,574	61,892	155,258	148,442
2012	25,529	23,305	67,092	61,297	159,890	151,597
2013	27,114	23,931	67,821	59,893	164,688	154,397

Source: General Medical Council

Notes:

1. Doctors will leave and re-join the register over the course of a year so the difference between each year end total will never be equal to the number of first time registrants in a year.

2. These tables exclude doctors who were registered with a status of "Temporary full registration for special purpose registrations", which allows doctors to be registered for a temporary period in order to treat non-UK nationals within the UK. For example, we had a significant number of doctors who were registered temporarily in 2012 to accompany their national team to the Olympic or Paralympic games. The tables also exclude "Temporary full registration for visiting eminent specialists". These registrations are for doctors visiting the UK for a temporary period to provide specialist knowledge and skills in a particular branch of medicine and cannot exceed 26 weeks in a 5 year period.

General Practitioners

Question

Asked by ***Baroness Royall of Blaisdon***

To ask Her Majesty's Government how many newly qualified general practitioners have started work in (1) the United Kingdom, (2) the South West of England, and (3) Bristol, in the last 12 months. [HL2137]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe) (Con): The information is not held centrally. On 25 March 2014 the Health and Social Care Information Centre (HSCIC) published its annual census on the General and Personal Medical Services workforce, which collects information from general practices in England and reflects the position as at 30 September 2013. The census shows that 2,763 general practitioners (GP) (excluding registrars and retainers) joined the profession between 2012 and 2013. However, the census does not show how many of these joiners were newly qualified GPs.

The census also shows that there were 36,294 full time equivalent GPs working in the NHS in England. More information is available at:

http://www.hscic.gov.uk/catalogue/PUB13849/nhs-staf-2003-2013-gene-prac-rep.pdf

The Government established Health Education England (HEE) to be responsible for delivering a better health and healthcare workforce for England and for ensuring a secure future supply. HEE has published the number of postgraduate medical trainees that enter general practice specialty training at ST1 in each of the last five years, at:

http://gprecruitment.hee.nhs.uk/Portals/8/Documents/Annual%20Reports/GP%20ST1%20Recruitment%20Figures%202009-13.pdf

The provision of health services in the UK is a devolved issue. The contacts for Northern Ireland, Scotland and Wales are available from the links below:

Northern Ireland: http://www.dhsspsni.gov.uk/index.htm

Scotland: http://www.scotland.gov.uk/Topics/Health

Wales: http://wales.gov.uk/topics/health/?lang=en

General Practitioners: Pay

Questions

Asked by ***Lord Lipsey***

To ask Her Majesty's Government what are the (1) average, and (2) median, earnings of a salaried general practitioner in England and Wales. [HL2015]

To ask Her Majesty's Government what are the (1) average and (2) median, earnings of a partner general practitioner in England and Wales. [HL2016]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe) (Con): The information in relation to salaried general practitioners (GP) (HL2015) is recorded in the following table:

Salaried GPs – Income before tax in Cash terms – England and Wales 2012-13

	Mean Earnings			*Median Earnings*		
	Gross Income	*Expenses*	*Income before Tax*	*Gross Income*	*Expense*	*Income before Tax*
England	£64,700	£8,100	£56,600	Data not held		£53,700
Wales	£65,200	£11,100	£54,100	Data not held		£53,300

The information relating to partner general practitioners (HL2016) is recorded in the following table:

Contractor GPs – Income before tax in Cash terms – England and Wales 2012-13

	Mean Earnings			*Median Earnings*		
	Gross Income	*Expenses*	*Income before Tax*	*Gross Income*	*Expense*	*Income before Tax*
England	£289,300	£184,200	£105,100	Data not held		£102,100
Wales	£233,800	£142,800	£91,000	Data not held		£90,700

Source: GP Earnings and Expenses Enquiries

Notes:

The tables are presented in cash terms of income before tax for contractor GPs (partners) and salaried GPs under a General Medical Services (GMS) or Personal Medical Services (PMS) contract and exclude expenses. This is taxable income before pension contributions are deducted, made up of gross earnings less total expenses, also known as net income.

The data covers income from both NHS and private sources where a GP has at least some NHS income. Figures are rounded to the nearest £100.

The median earnings gross income and expenses data is not held, only the income before tax.

Data is for GPs under a GMS or PMS contract only

Health Services

Questions

Asked by ***Baroness Suttie***

To ask Her Majesty's Government what plans they have to implement a national outreach service for diseases such as tuberculosis, HIV and diabetes for areas with high health inequalities. [HL2050]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe) (Con): The Department through NHS England has a legal duty to have regard to reducing health inequalities and this will be reflected in any assessment for the potential development of national services.

Diagnosing, treating and preventing transmission of TB among under-served groups will prevent transmission of infection to the wider population and reduce health and social inequalities. Public Health England and NHS England will launch the Collaborative TB Strategy for England 2015-2020 this year. The strategy sets out the improvements that need to be achieved across 10 key evidence based areas of action to reduce TB in England, and the mechanisms by which these should be delivered. One of the key evidence based areas of action is to reduce incidence of TB in under-served populations by providing specific and targeted outreach interventions (informed by proven models such as "Find & Treat" in London). These include specific services for active case finding for TB of the lungs among homeless people and those attending substance misuse services, use of mobile X-ray units (MXUs) with incentives for people to have chest X-rays, enhanced case management and return to service interventions to prevent loss to follow up.

There are a number of actions being taken to improve access to HIV testing and reduce late diagnosis, especially in areas with high inequalities. These include the Terrence Higgins Trust to manage a national HIV Prevention Contract which the Department funds; information PHE publishes on rates of late HIV diagnoses by LA, socio-demography, and risk group; and joint PHE and DH approaches to increase HIV testing through funding a national home-sampling service that resulted in a large number of the most at-risk getting tested for HIV.

Clinical commissioning groups are responsible for commissioning diabetes services, so they would decide, depending on local needs and circumstances, whether an outreach service was appropriate. The NHS Health Check plays an important role in reducing the risk of diabetes and identifying people earlier who have the disease and plays a key role in tackling health inequalities.

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

To ask Her Majesty's Government what is the nature of the relationship between Ministers, the Prescribed Specialised Services Advisory Group and NHS England in prescribing specialised services under the Health and Social Care Act 2012. [HL2065]

To ask Her Majesty's Government whether they plan to change the scope of specialised services directly commissioned by NHS England. [HL2066]

To ask Her Majesty's Government what assessment they have made of the commissioning of specialised services by NHS England. [HL2067]

Earl Howe: The Secretary of State for Health, in his Annual Assessment of National Health Service England's Annual Report for the last financial year (2013-14), has stated that "[NHS England] must […] ensure that spending controls are effective, particularly around specialised commissioning." A copy of the Secretary of State's Annual Assessment has been placed in the library.

Section 3B(1)(d) of the National Health Service Act 2006, as amended by the Health and Social Care Act 2012, gives the Secretary of State the power to require the NHS Commissioning Board (known as NHS England) to commission prescribed services or facilities in relation to England by making regulations. Using this power, the Secretary of State may require NHS England to commission specialised services for people with rare or very rare conditions. Before deciding whether to make regulations, the Secretary of State must (a) obtain appropriate advice for that purpose and (b) consult NHS England. The Prescribed Specialised Services Advisory Group (PSSAG) is a Department of Health appointed expert committee which was established in 2013 to provide the Secretary of State with this advice. NHS England commissions all the services listed in Schedule 4 of The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012.

The scope of specialised services directly commissioned by NHS England is kept under review.

Hepatitis

Question

Asked by ***Baroness Suttie***

To ask Her Majesty's Government what is their assessment of the impact of the provision of housing on treatment completion for vulnerable populations in the United Kingdom suffering from (1) hepatitis B, and (2) hepatitis C. [HL2049]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe) (Con): Public Health England has not made any formal assessment of the impact of the provision of housing on treatment completion for vulnerable populations in the United Kingdom suffering from hepatitis B, and hepatitis C.

Our estimates of the prevalence of chronic hepatitis B and C infection in the UK population are 180,000[1] and 214,000[2] respectively.

Studies of hepatitis B and C in the UK homeless population are limited but a recent survey of people who inject drugs found that those who had ever been homeless were more likely to have antibodies against hepatitis C (42%) than those that were in stable accommodation (34%)[3].

Notes:

[1] Department of Health. (2002a) Getting ahead of the curve: a strategy for combating infectious diseases (including other aspects of health protection). A report by the Chief Medical Officer. London

2 Hepatitis C in the UK, Annual Report 2014 Public Health England.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/337115/HCV_in_the_UK_2014_24_July.pdf

3 Health Protection Agency, Health Protection Scotland, National Public Health Service for Wales, CDSC Northern Ireland, CRDHB. Shooting Up: Infections among injecting drug users in the United Kingdom 2008. London: Health Protection Agency, October 2009.

Hong Kong

Questions

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

To ask Her Majesty's Government what recent discussions they have had with the Hong Kong Government regarding the progress of the official consultation on plans to implement universal suffrage in 2017. [HL2152]

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): Hong Kong is an important part of the UK's relationship with China. We continue to meet regularly at senior levels with both the Chinese authorities and the Hong Kong Special Administrative Region government.

Earlier this month, the Secretary of State for Foreign and Commonwealth Affairs, my right hon. Friend the Member for Runnymede and Weybridge (Mr Hammond), met the Chinese Ambassador to discuss developments in Hong Kong and to set out the UK position. The Minister of State for Foreign and Commonwealth Affairs, my hon. Friend the Member for East Devon (Mr Swire), also met the Hong Kong government's Secretary of Justice to discuss the importance of the introduction of universal suffrage. The Prime Minister, my right hon. Friend the Member for Witney (Mr Cameron), and the Foreign Secretary also discussed Hong Kong in recent meetings with Chinese Vice Premier Ma Kai.

Mr Swire outlined the UK's position in his Written Ministerial Statement of 13 October, Official Report, Column 12WS.

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

To ask Her Majesty's Government what discussions they have had with the Hong Kong Government regarding the alleged police brutality against protester Ken Tsang. [HL2153]

Baroness Anelay of St Johns: We monitor the situation in Hong Kong closely. The footage shows what looks like police officers using disproportionate force. The Hong Kong authorities have described this incident as inappropriate and are investigating. We welcome this investigation.

Hong Kong is an important part of the UK's relationship with China. We continue to meet regularly at senior levels with both the Chinese authorities and the Hong Kong Special Administrative Region government. We have consistently called on all sides to ensure that the demonstrations are peaceful and in accordance with the law.

Languages: Primary Education

Question

Asked by ***Baroness Jones of Whitchurch***

To ask Her Majesty's Government what resources are being made available to support the implementation of foreign language teaching at primary school level from September 2014; and how this roll-out will be monitored. [HL2046]

The Parliamentary Under-Secretary of State for Schools (Lord Nash) (Con): It is for schools to decide which resources they use to support their teaching. The Government is providing funding of £1.8 million over two years for continuous professional development for primary and secondary teachers to support delivery of the new modern languages curriculum. The training is being funded through nine organisations, whose performance will be monitored against the agreements the Department for Education is making with them.

In addition, links to sources of support that schools can use to support modern languages teaching in primary school are hosted on the website of the Association for Language Learning.

Medical Records: Data Protection

Questions

Asked by ***Lord Warner***

To ask Her Majesty's Government whether, in the responses to their consultation document Protecting Health and Care Information published in June, they have received any representations suggesting that the proposals would (1) have the effect of limiting to a few public bodies the ability to process and analyse publicly held health and care information, and (2) damage the system of accredited safe havens for a wider range of analytical capability. [HL2143]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe) (Con): There were over 250 responses to the consultation, from a wide range of organisations and interests and some covered the issues raised. Through the Department's consideration of those responses, it will seek to ensure that the proposals put forward in due course, move the health and care system in the direction of travel towards:

the minimum necessary level of identifiable information being used to support any particular purpose;

there being a clear lawful basis for all uses of information; and

there being robust controls in place to prevent security breaches or misuse of information.

Asked by ***Lord Warner***

To ask Her Majesty's Government when they will publish the results of their consultation on Protecting Health and Care Information that ended in August. [HL2144]

Earl Howe: There were over 250 responses to the consultation, from a wide range of organisations and interests. The Department is currently working through the responses and aims to publish its response later this year.

Medicine: Education

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government, further to the Written Answer by Earl Howe on 3 June 2013 (HL210), whether they have altered their decision to reduce by two per cent the number of students entering medical schools in 2014; what were the findings of the 2014 review by Health Education England on the question; and whether they plan to expand the numbers significantly from 2015 and in later years. [HL2125]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe) (Con): The Government has not altered its decision to reduce, by 2%, the number of students entering medical school in 2014.

Health Education England (HEE) has not, to date, undertaken a comprehensive review of medical student intake numbers since that undertaken by the Health and Education National Strategic Exchange review published in December 2012.

The requirement for graduate doctors (and the medical student intakes that create this supply) will form an integral part of the 2015 annual workforce planning process undertaken by HEE.

Mental Health Services: Children

Question

Asked by ***Lord Ouseley***

To ask Her Majesty's Government why waiting times for children referred to Child and Adolescent Mental Health Services have increased; and what action they will take to reduce waiting times. [HL2019]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe) (Con): Information on waiting times for Child and Adolescent Mental Health Services is not collected centrally. There is anecdotal evidence of increasing waiting times in some areas. We do not know whether or not this is due to an increase in referrals or the prevalence of mental health conditions but will be seeking further information by commissioning a survey into the prevalence of mental illness in children and young people.

NHS England and the Department have set up a Taskforce to look into the complex system of provision and commissioning of children and young people's mental health services. The Taskforce is considering ways to improve access and create services that are more responsive to children's needs. Additional funding this year is being invested into improving specialised, in-patient mental health services for children and young people. This will help to fund additional bed capacity and case management will also be improved.

Achieving Better Access to Mental Health Services by 2020 announced improvements that will be made to services for patients with emerging psychosis, including setting the first ever waiting time standard in mental health from April 2015. It also sets out a longer term ambition to extend waiting time standards across all mental health services by 2020.

Middle East

Question

Asked by ***The Marquess of Lothian***

To ask Her Majesty's Government what assessment they have made of the impact of ISIL on Christian communities in Iraq, Syria and Lebanon; and what plans there are to protect such communities. [HL2148]

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): The humanitarian reports from Iraq, Syria and elsewhere in the region are deeply concerning. The Islamic State of Iraq and the Levant (ISIL) and associated armed groups continue to commit atrocities against Muslims, Christians, Yezidis, Turkmen and other communities throughout the areas under their control. We condemn any and all abuses of human rights, including those against Christians.

We are working closely with our international partners, including in the region, to try to assist and protect civilians—including Christians—from ISIL through a long-term, comprehensive strategy to degrade and defeat this terrorist organisation.

This strategy is being delivered by a large international coalition, where UK actions complement, and are coordinated with, those of other actors. It has security, political and humanitarian dimensions. For example, in Iraq, we are carrying out airstrikes against ISIL and are providing military assistance to the Kurdish Peshmerga forces so that they can restore control over the areas taken by ISIL. In Syria, we support military action by the US and five Arab states against ISIL; we are supporting the Syrian moderate opposition, who are fighting ISIL; and we continue to work for a political transition: when it comes to tackling ISIL, Assad is part of the problem, not part of the solution. In Lebanon, we continue to press for the election of a President, strengthen municipalities and support the Lebanese Armed Forces reassert state authority in their border regions On the humanitarian front, we continue to provide swift and substantial assistance to those who have fled areas controlled by ISIL, including air drops to deliver aid to those trapped by ISIL. On the diplomatic front, at the Human Rights Council in September we, alongside our international partners, secured a resolution strongly condemning ISIL and stressing the need for accountability.

Obesity: Children

Question

Asked by ***Lord Taylor of Warwick***

To ask Her Majesty's Government what steps they are taking to provide further advice to schools on how to tackle childhood obesity. [HL2262]

The Parliamentary Under-Secretary of State for Schools (Lord Nash) (Con): This Government recognises that through physical education, competitive school sport and encouraging healthy eating, schools can help address the problem of childhood obesity. The PE and sports premium is part of a package of measures to tackle obesity in primary schools. Our research found 96% of schools said that their pupils are now living healthier lives as a result of the funding. In addition, the introduction of universal infant free school meals will ensure that all infants receive a nutritious school lunch.

Pupils: Disadvantaged

Question

Asked by ***Lord Storey***

To ask Her Majesty's Government what steps they plan to take to co-ordinate good leadership with local authorities to improve the attainment levels of disadvantaged pupils. [HL2113]

The Parliamentary Under-Secretary of State for Schools (Lord Nash) (Con): The Department for Education expects local authorities to provide strategic leadership to improve the attainment of disadvantaged pupils in their maintained schools. This was set out in the recently revised guidance to local authorities on *Schools Causing Concern*, which was published in May 2014. Since May 2013, Ofsted has inspected local authority school improvement arrangements which relate to their duty to ensure that, "their education functions are exercised with a view to promote high standards and fulfilment of potential" (Education Act 1996, s13a).

My Rt. hon. Friend the Minister of State for Schools, has met leaders from the nine local authorities that have failed these inspections to date. These discussions have focused on the attainment of disadvantaged pupils. In addition, in his role as Pupil Premium Champion, Sir John Dunford has worked closely with school leaders in 25 local authority areas with the poorest results for disadvantaged pupils during the 2013/14 school year. This work continues.

Peer-to-peer support for school leaders is a highly effective way to tackle poor school performance. The Department is therefore increasing the number of National Leaders of Education (NLEs) and the number of teaching schools. The National College for Teaching and Leadership (NCTL) has designated over 900 NLEs and establish 602 teaching schools to date, and some local authorities use local teaching school alliances and national leaders to provide school improvement.

The Talented Leaders programme and School-to-School Support Fund, both launched on 10 September 2014 by the Minister of State for Schools, will also help drive school improvement through better leadership. The Talented Leaders programme will recruit one hundred talented school leaders and deploy them to take on headship positions in challenging schools, working with local authorities who sign up to the programme. The £13m School-to-School Support Fund will support NLEs and teaching schools to undertake deployment in under-performing maintained schools and academies.

Schools: Governing Bodies

Question

Asked by ***Baroness Jones of Whitchurch***

To ask Her Majesty's Government, further to the Written Answer by Lord Nash on 30 July (HL1619), when the Secretary of State for Education intends to respond to Parliament on the recommendations of the Education Commissioner. [HL2166]

The Parliamentary Under-Secretary of State for Schools (Lord Nash) (Con): This Government is clear that there is no place for extremism in our schools. As my Rt hon. friend the Secretary of State for Education set out in her recent evidence to the Education Committee, a great deal of progress has been made in implementing Peter Clarke's thorough and wide-ranging recommendations. The Secretary of State has appointed Sir Mike Tomlinson as Education Commissioner to work with Birmingham City Council to oversee its improvement. New trust members are in place in the four academies in special measures, and several teachers have been suspended. We have strengthened guidance on governance and set out the importance of promoting fundamental British values. The Secretary of State plans to update Parliament with further progress shortly.

Suicide: Young People

Question

Asked by ***Lord Ouseley***

To ask Her Majesty's Government what assessment they have made of the causes of suicides among young people; and what action they propose to reduce such fatalities by providing more effective and quicker access to mental health services. [HL2020]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe) (Con): The causes of suicides are not currently collected but the National Confidential Inquiry into Suicide and Homicide by People with Mental Illness at the University of Manchester will be setting up a national investigation into suicides by young people under 25, which will be covering antecedents such as bullying, use of social media & contact with services. This investigation will be funded by National Health Service England and is due to begin in April 2015.

NHS England and the Department have set up a Taskforce to look into the complex system of provision and commissioning of children and young people's mental health services. The Taskforce is considering ways to improve access and create services that are more responsive to children's needs. Additional funding this year is being invested into improving specialised, in-patient mental health services for children and young people. This will help to fund additional bed capacity and case management will also be improved.

Turkey

Question

Asked by ***Lord Patten***

To ask Her Majesty's Government what discussions they have had, or intend to have, with President Erdogan over the nature of secular society in Turkey. [HL1995]

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): We and our EU partners regularly engage with the Turkish government on the full range of EU accession matters, including on human rights and freedom of religion and belief. We are encouraged by the progress Turkey has made on these issues. In particular, we welcome the steps taken to protect the interests of religious minorities in Turkey. This includes the freedom granted to hold religious services at the Greek Orthodox Sumela Monastery and Armenian Orthodox Akdamar Church; updated religious textbooks for schools; and the returning of property seized by the state to religious minorities. We are also encouraged by the 'democratisation package' announced by the Turkish government in October 2013, aimed at addressing concerns over minority rights.

Wind Power

Question

Asked by ***Lord Browne of Belmont***

To ask Her Majesty's Government what steps are being taken to protect Areas of Outstanding Natural Beauty and Sites of Specific Scientific Interest from wind turbine development. [HL2106]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Lord Ahmad of Wimbledon) (Con): The National Planning Policy Framework sets out strong protection for the natural environment and valued landscapes and is clear that planning applications for renewable energy should only be approved if the impact is, or can be made, acceptable. In addition our planning guidance makes clear that the need for renewable energy does not automatically override environmental protection and the planning concerns of local communities.

Under the National Planning Policy Framework Areas of Outstanding Natural Beauty have the highest status of protection in relation to landscape and scenic beauty. Strong planning protection also applies to Sites of Special Scientific Interest. Development on land within or outside such sites which is likely to have an adverse effect on the site, either individually or in combination, should not normally be permitted.

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