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House of Lords

Friday, 11 December 2015.

10 am

Prayers—read by the Lord Bishop of Bristol.

Accessible Sports Grounds Bill [HL]

Order of Commitment Discharged

10.07 am

Moved by ***Lord Faulkner of Worcester***

That the order of commitment be discharged.

Lord Faulkner of Worcester (Lab): My Lords, I understand that no amendments have been set down for the Bill and no noble Lord has indicated a wish to move a manuscript amendment or speak in Committee. Unless, therefore, any noble Lord objects, I beg to move that the order of commitment be discharged.

Motion agreed.

Arbitration and Mediation Services (Equality) Bill [HL]

Order of Commitment Discharged

10.07 am

Moved by ***Baroness Cox***

That the order of commitment be discharged.

Baroness Cox (CB): My Lords, I understand that no amendments have been set down to the Bill and that no noble Lord has indicated a wish to move a manuscript amendment or to speak in Committee. Unless, therefore, any noble Lord objects, I beg to move that the order of commitment be discharged.

Motion agreed.

Online Safety Bill [HL]

Committee

10.08 am

Clause 1: Duty to provide an internet service that protects children from adult content

Amendment 1

Moved by ***Baroness Howe of Idlicote***

1: Clause 1, page 2, line 17, after "operator" insert "or provider or operator designated by the Secretary of State under subsection (1)(d)"

Baroness Howe of Idlicote (CB): My Lords, it is a great privilege to have my fifth online safety Bill in Committee, and I thank all noble Lords who have supported me along the considerably long way. Most of the amendments I have tabled to be debated today are in response to the very helpful comments made on the Bill by the Delegated Powers and Regulatory Reform Committee in its fifth report of the Session, published on 20 July.

Your Lordships will know that the purpose of Clause 1 is to provide protection for children and young people from adult content and to provide parents with the tools to do that. I included Clause 1(1)(d) in the Bill to future-proof it for the inevitable growth in the services and devices that will come on to the market and which we do not yet have any concept of. Just to illustrate my point, in November, Ofcom published its annual report on children's media use, which stated that over half of three to four year-olds and three-quarters of 12 to 15 year-olds use a tablet in 2015 and that tablets are now the device most often used for going online among all age groups except 12 to 15. In its equivalent report from 2010, there was no mention at all of the word tablet. Ofcom also highlighted the challenge facing parents in its latest report, saying:

"The move towards smaller screens makes supervision more difficult for parents, and the proliferation of devices increases the need for parents to keep up to date with technology".

The world of online access and devices is moving rapidly, and legislation needs to be able to accommodate those changes.

The Delegated Powers Committee raised two concerns about the way in which the future-proofing provisions were framed. The first was that the defence open to internet service providers and mobile phone operators in Clause 1(5) would not be open to any future, additional category of provider. My Amendment 1 ensures that the defence would be made available. Secondly, the committee was concerned about who would be considered a "provider" or "operator" in the context of the Bill's future-proofing provision. Amendment 2 defines a provider or operator for the purpose of Clause 1(1)(d) of the Bill as a provider of adult content through a medium other than an ISP or MPO.

As with future provision, it is possible in principle that no new technology will develop for relaying adult content beyond ISPs and MPOs, in which case this part of the Bill will remain latent. But in truth, this would seem unlikely, judging by what has happened so far. I should explain that although the Delegated Powers Committee provides a critique of all Bills with delegated powers, I was informed by the chair that it does not provide advice about how to respond. In developing all my amendments in response to the committee, therefore, I have sought the advice of the noble and learned Lord, Lord Mackay, who sadly cannot be here today. His advice was, first, to keep the future-proofing provision and, secondly, that both these amendments address the concerns of the committee as set out in its report. I beg to move.

Baroness Healy of Primrose Hill (Lab): My Lords, I will be brief. I speak in support of Amendments 1 and 2, to which I have put my name. I congratulate the noble Baroness, Lady Howe, on getting to Committee with her important and timely Bill. She was very wise to include a future-proofing provision in the Bill, and the noble and learned Lord, Lord Mackay, has been very wise to advise her to keep it in.

These two amendments address the two points raised by the Delegated Powers and Regulatory Reform Committee report with great clarity. Amendment 1 extends to future forms of providers the same defence

[Baroness Healy of Primrose Hill]
currently afforded to internet service providers and mobile phone operators, thereby upholding even-handedness. Amendment 2 tightens the definition of provider to make it absolutely clear that in this context, we are talking about the provision of adult content in an online context by some actor other than an internet service provider or mobile phone operator.

In acknowledging the rapidly moving world of technology, the noble Baroness should be applauded for her farsightedness, as the amendments further strengthen the Bill, and I very much hope that the Committee will support them.

Lord Ramsbotham (CB): My Lords, at Second Reading, I picked up on "duty", which is the first word in the clause, and suggested that there is nothing more important than the future well-being of our children and the nurturing and developing of their talents. The clause should be very much on the script of the National Security Strategy Committee, because it is up to government to ensure that the points made by my noble friend in moving the amendment, such as evolving technology, are taken into account continually.

I am sure that, in that connection, the whole House, not just this Committee, admires the determination of my noble friend in pursuing this issue over many years, not least following her recent sadness.

10.15 am

Lord Harris of Haringey (Lab): My Lords, I, too, congratulate the noble Baroness, Lady Howe, on getting to this stage. The fact that it has taken her five years demonstrates why the amendments and the clause are so important. If it takes five years—of course, the Bill still has some way to go before it becomes legislation—that gives us some indication of how long it will take to change subsequently. Therefore, it is important that whatever legislation is passed on technology matters, not just on this important issue of online safety of children but in any area, is future proofed. As a Parliament, we are very good at reacting to a crisis which is occurring now or occurred a year or 18 months ago. Our parliamentary processes necessarily take time. On something like this, where it has been necessary for a Private Member to act, it clearly takes even longer.

Unless we future-proof to recognise the rapidly changing nature of technology, all the provisions that I hope we will agree to here today will be of no value. Technology changes much too rapidly, and that is why we need to future-proof legislation. When the Minister gives what I trust will be a positive response to the Bill, she must encourage her colleagues in government departments, when they draft legislation that relates to technology, to include future-proofing provisions.

Lord Framlingham (Con): My Lords, I shall be brief. First, I, too, congratulate the noble Baroness, Lady Howe, on her efforts: she has been amazingly courageous and tenacious to get the Bill as far as this. The noble Lord said that it has taken five years. How many young children have had their lives really altered for the worse in those five years simply because we in both Houses of Parliament have not managed to give them the protection they deserve?

Lord Stevenson of Balmacara (Lab): My Lords, in the film "Groundhog Day", progress cannot be made unless the principal character comes across a moment of self-revelation. I do not think that is necessary in the case of the Bill. As we have heard, five years is a long time, but every year the noble Baroness has brought forward a better and better Bill. This time, we have the additional support of several noble Lords who have not only added their names to amendments but fervently support the Bill, as we have heard, and the Delegated Powers Committee has kindly assisted and provided some amendments. Perhaps that is the point at which Groundhog Day becomes reality and we can make progress. We wish the Bill all the best.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Baroness Shields) (Con): My Lords, I recognise the noble Baroness, Lady Howe, for her unwavering commitment to this agenda, and all those who have spoken and contributed to the Bill thus far. As you know, the Government are absolutely committed to the protection of children online, and we must acknowledge the significant and hugely encouraging progress that has been made in the UK on a self-regulatory and voluntary basis. Without legislation, the UK Council for Child Internet Safety has played a vital role in this process. This multi-stakeholder approach to internet safety draws together government, charities, and the internet and mobile industries, and provides a highly effective approach to internet safety that is the envy of our international equivalents.

This, in and of itself, is a future-proofing strategy. The Family Online Safety Institute, an international organisation based in Washington DC that works globally to drive up internet safety, says that the UK is,

"at the forefront of online safety and best practice",

and that UKCIS is at the core of that.

The first part of this Bill, to which it is proposed to add Amendments 1 and 2, would set out additional duties on internet service providers, mobile phone operators, Ofcom and Ministers in respect of providing a safe internet service for children and information about online safety. This is beyond the self-regulatory regime of family-friendly filters already voluntarily applied by all major ISPs and mobile phone operators in the UK. However well intentioned the drafting of such future-proofing clauses may be, this is, as has been said, a constantly moving target. We have no reason to believe that the successful, voluntary approach led by industry will change in future. Nor do we expect that such an approach would be incapable of addressing these issues as they come up or the arrival of new operators, services and platforms.

Ofcom regularly publishes reports on internet safety measures and a forthcoming report will address the noble Baroness's concerns. We feel that there is no need to set out arrangements in statute to require this at further intervals because they already do it voluntarily. Furthermore, all mobile phone operators provide filters as default-on, with age-verification controls in place before any changes can be made or filters removed. These filters are underpinned by an independent framework provided by the BBFC to define unsuitable content for under-18s, based on its classification guidelines.

However, as my noble friends and colleagues have mentioned, there is always more that can be done, and no filters or technological tools will be 100% successful all the time. It is crucial that parents continue to engage with their children's internet experiences and ensure that they build awareness of and resilience to things they see on the internet which may upset them or cause them harm. It is also vital that we, as the Government, continue our effective and productive relationships with industry and Ofcom to consider how our world-class internet safety protections can be made even better. Great progress has been achieved in the UK through voluntary activity, with industry working together with Government and the charity sector in an effective and collaborative way. We have no reason to expect this effective partnership to change.

Baroness Howe of Idlicote: My Lords, I am very grateful to everyone who spoke in support of the amendment. I am somewhat disappointed by the reply of the Minister, though clearly she approves of the effect of some of what we have achieved along the way. As we tried to make clear, we think the time has come for rather more fat to be added to make rather less of this material available. As has been mentioned, more children could be damaged by it in the run-up to the next meeting, when we have yet another Bill to look at. However, this is Committee and we will no doubt look at coming back to all this on Report. For the moment, I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Amendment 2 not moved.

Clause 1 agreed.

Clause 2: Role of OFCOM

Amendment 3

Moved by ***Baroness Benjamin***

3: Clause 2, page 2, line 33, leave out "user is able to access adult content" and insert "subscriber is able to—

(i) access adult content, or

(ii) change the filtering options set under section 1(3) of this Act"

Baroness Benjamin (LD): My Lords, this is a probing amendment and I very much look forward to hearing what the Minister says in response. Following the net neutrality vote in Brussels, it would seem that if the filtering arrangements negotiated by the Prime Minister—I congratulate him on them—are to continue, the Government must bring forward legislation to make them a reality by April. I very much hope that the Government will use this Bill to rise to this challenge since it not only makes statutory provision for filtering but addresses two serious shortcomings with the current voluntary arrangements.

One of these shortcomings is addressed by Clause 1, which not only mandates adult content filters but states that these cannot be lifted without prior age verification demonstrating that the person wanting to access adult content is indeed an adult. Clause 1(3)(a) requires that the age verification scheme used by the internet service providers, or ISPs, and mobile phone operators, or MPOs, conforms to the standards set by Ofcom in Clause 2. My amendment proposes that the guidance from Ofcom required under Clause 2(1)(b) must cover the age verification procedures not only for the initial set-up of a service but when people seek to change their filter settings, and to make provision for this to be done in a proper way.

Most people would find it very odd that the Government should have encouraged the industry to provide adult content filters but in a way that makes it perfectly possible for children as well as adults to lift them. There are two counterarguments here, as there are concerns about this dangerous situation. First, I fully understand that if a few tech-savvy young people can hack into TalkTalk, they would certainly be able to work out a way around age-verification checks. However, that is not an argument against doing what we can to make sure filters are not lifted by children but an argument against filters per se. Crucially, it is an argument that has failed. No one, least of all the noble Baroness, Lady Howe, or I, has ever argued that filters are the answer or the one and only silver bullet. The point about filters—the reason that the Prime Minister was absolutely right to promote them and that the noble Baroness, Lady Howe, has been so right to pursue them—is not that they make the internet safe but that they make it safer, by acting as a speed bump to slow down access.

Secondly, I am completely aware of the fact that the big four ISPs agreed that if the filter settings are changed the account holder should be emailed, so that if the settings were not changed by them they are made aware. However, this arrangement is completely unsustainable. In the first instance, the whole point about age verification is that it is something you do before, not after, allowing an age-restricted activity. In the second instance, the means of providing retrospective protection through this system is in any event very weak. Even if someone reads their emails very quickly, it will probably take several hours before they can do anything about it. During that time, their children could be freely accessing adult material.

In a poll for the charity CARE, a total of 34% of British adults—some 16.3 million people—said that they would not read an email from their ISP immediately. Some 11% said that they would probably leave the email unread for up to a week, while 9% would be likely to leave it for more than a week and a staggering 14% were unlikely to read any email from their ISP at all. This would leave a significant number of children exposed to adult content for a week or more, and others exposed permanently. We cannot allow that to happen.

In responding to this point at Second Reading, the Minister rather indicated that she was content with this. She said that,

"three-quarters of parents in the UK are confident that children are unable to bypass these tools. But to mitigate any further risk, as has been said today, ISPs email the main account holder when filter settings are set or changed".—[*Official Report*, 17/7/15; col. 860.]

Even if only the children of the remaining 25% of parents attempt to switch off the adult content filters, this can be no justification for exchanging credible age

[Baroness Benjamin]
verification procedures before allowing the user to opt in to access adult content, for an arrangement that comes into effect only after adult content has been accessed and which we know will not be picked up by parents in significant numbers.

I simply cannot believe that the Minister—and I know her well—or the Government are really, truly satisfied with this unsafe arrangement. The Bill before us makes good this significant failing with the current arrangement. It is the purpose of my amendment to highlight that by using language that makes the fact that people change their filter settings more explicit in the Bill. I very much look forward to hearing what the Minister has to say about this very important amendment, and I beg to move.

10.30 am

Lord Morrow (DUP): My Lords, I am very pleased to speak in support of the amendment proposed by the noble Baroness, Lady Benjamin, which makes explicit the fact that decisions about filtering are not just made at the set-up stage. I recall that during Second Reading the noble Baroness, Lady Howe, sought to highlight the fact that, in the context of the current voluntary filtering agreement between the big four ISPs, there is nothing to stop a child lifting adult content filters after they have been put in place. This seems to be a serious design flaw with the voluntary agreement, and one that I am glad this Bill seeks to rectify.

I note that when the Minister was pressed on this point during Second Reading she said that,

"three-quarters of parents in the UK are confident that children are unable to bypass these tools. But to mitigate any further risk, as has been said today, ISPs email the main account holder when filter settings are set or changed".—[*Official Report*, 17/7/2015; col. 860.]

I think that possibly the Minister misread the point. The lack of age verification in the event that after parents select filters at the set-up, their children subsequently—and unknown to them—turn the filters off, is not about bypassing filters.

The point is not that some very technologically able young people who can work out how to bypass filters should be subject to age verification. I am not sure how one would apply age verification to such clandestine activity. The concern relates instead to a larger group of children, with no great technological expertise, being able to switch off the filters in the same way as an adult who has no special technical expertise can do so, because the ISP has provided the user with the facility to maintain or lift filters. This is the process that should be age-verified. The idea that this concern has been sufficiently addressed by the provision of an email sent to the account holder after the filter settings have been changed, informing them of that fact, is deeply concerning.

Age verification should happen before an age-restricted activity is permitted. The idea that it is acceptable to do this after the fact, and by the most flimsy of arrangements, is quite extraordinary, to say the least. As the noble Baroness, Lady Benjamin, has said, even if you live in your inbox and open all your emails as they come in, it will still take you some time to address the problem if you are at work, which leaves the children exposed to harmful content, possibly for some hours. Most of us, however, take a while to get round to opening our emails—half a day, three days or a week. As the ComRes polling eloquently testifies, some people may never open it, leaving children exposed to adult content, unknown to their parents, who will assume the filters are still on indefinitely. I very much hope that when the Minister responds to this amendment, she will at least commit to review the provisions in place to help prevent children lifting adult content filters, after they have been introduced at the set-up, without prior age verification.

The Earl of Erroll (CB): This amendment is quite logical, if the provisions are going to work. It is obvious that, if people can switch off filters, the whole thing is bypassed. I want to speak on the next amendment, about age checking, but this is a logical amendment to have if you want to get this Bill to work. As I said at Second Reading, filters are not quite good enough, because you can block only at the point when you access the page. Filters are quite crude—that is the problem; they tend to block entire websites, or they overblock and then people lift them. So there are a lot of problems around the amendment but it is hugely well intentioned, and I do not have a problem with people using filters. It is a good starter lock and will block a lot of simple things, but we need to go slightly further to block those who are technically savvy from getting round them—or those who persuade their parents that, because they could not get to a particular page on a website, they should override the filter for that website and unblock the whole thing. The convenience of the parent will probably win. How you get this to work is always the problem but that is not to say that we should not try.

Lord James of Blackheath (Con): As a non-lawyer, may I intervene with a query? The phrase "adult" services is a colloquial euphemism. In my understanding, or non-understanding of the law, it is interpreted as to the literal use of the language. Would not it be unambiguous and better if it was just to say "pornographic"?

Baroness Howe of Idlicote: My Lords, I congratulate the noble Baroness, Lady Benjamin, on her amendment, which put the whole theme very effectively. We can all only do our best to re-emphasise all these points, because they are so vital.

We have heard a good deal about age verification in relation to pornographic websites since the publication of the Conservative manifesto, and rightly so. The commitment is of seminal importance, and I very much welcome it. However, we should not lose sight of an entirely different application of age verification in the online world, which the noble Baroness has raised in this debate. Filtering as a child protection mechanism is only really credible if filters are lifted in response to requests from adults. To avoid confusion, let me be clear about what I mean when I talk in terms of lifting filters, and what I do not mean. Having a robust filtering system does not mean guaranteeing that no

one with special expertise will be able to bypass the filters. That is beginning to be made clear—I hope so—because many people have mentioned it to the Minister.

I fully recognise, as do most of us, that quite a number of young people will work out how to do bypass filters. My point has never been that a robust filtering system makes the internet safe—only that it makes the internet safer. What I am talking about here is the facility that an adult, regardless of whether or not they are a computer expert, should be able to access to lift adult content filters if they decide they do not want them anymore. While a robust filtering system cannot be expected to guard against those young people with real computer expertise who can work out how to bypass filters, it must ensure that the mechanism that ISPs make available to their customers to switch off the filters is subject to age verification.

To have filters in place that anyone can lift without age verification is a bit like saying that we are doing our best to promote security by providing doors, even though all the doors are unlocked. In this context, a so-called closed loop system whereby an ISP will send an email to an account holder informing him that the filter settings have been changed is completely unacceptable. As other noble Lords have pointed out, age verification takes place before an age-restricted activity occurs, not after it. As the polling demonstrates, a significant number of people would never open an email from their ISP. The noble Lord, Lord Morrow, made that point, and I could not agree with him more. I very much hope that the Government will start taking note of this aspect of the age verification challenge as well as in relation to web crime.

The Bill, which requires users to decide whether they want to access adult content, subject to age verification checks, would help them rise to this challenge. Clause 1(4)(b) requires that a provider of a service has to have age verification that meets the standards set out in Clause 2. I am grateful to the noble Baroness, Lady Benjamin, for moving her amendment, which makes explicit this very sensible requirement. I hope that on this occasion the Minister will have taken in what has been said and will do something about it.

Lord Stevenson of Balmacara: My Lords, like the noble Earl, Lord Erroll, I think this is a logical amendment which follows the way in which the promoters of this Bill are taking it forward. It fits well into the logic of what we have heard so far, and it should be supported. As many noble Lords have said, age verification lies at the heart of this issue. It is not just in relation to adult content—however it is to be described—but also in relation to things such as gambling access and more generally. As we move into the digital age and as consumers increasingly exercise online purchasing power, there will be other issues where it is important to make sure that age is verifiable. I am not sure that we have got to that point. That makes the Government's response so far rather confusing, and I will be interested to hear what the Minister says on this amendment. They seem quite happy to go with the crowd on populist measures, talking up what should happen here, but they seem reluctant to take the necessary steps to enforce them in a way that will give confidence to those who have to use these systems that they will work. Like the noble Baroness, I am looking forward to what the Minister will say.

Baroness Shields: I thank noble Lords for their comments. This discussion has gone way beyond the scope of the amendment, but I state at the outset that there is no reluctance on the part of the Government to take action here. We are talking not about what is going to be done but about how it is going to be done. We have talked about future-proofing, but the real issue is that by the time legislation is in the public domain, the world will have moved on. We are starting a consultation very shortly on age verification. It is part of our manifesto commitment. We have been seeking the advice of experts for the past couple of months and are going to open that up to the public. There is no wavering in the Government's commitment to online safety. We are talking about how we are trying to do it versus what we are trying do. We all agree that this is an urgent issue that has to be addressed. We have talked about filters. The noble Earl, Lord Erroll, has been very involved in the development of age verification systems and, as he said, filters are a very crude mechanism. We cannot rely on them completely. That said, we believe they are part of the parental toolkit, and we will make sure that by December 2016 we are in compliance with the EU regulations on net neutrality. We will not let that slip through our fingers.

We are trying to legislate about many bits and bobs, if you will. We have to continue the process of co-operating with industry to evolve the regimes that protect children online. That is the only way. If there is something wrong with the way that ISPs are doing this and if there are things that noble Lords want to raise, they should raise them. The ISPs will change their procedures and modify accordingly. They are committed to this agenda. We do not need to legislate here. We just have to continue to work with them through the UK Council for Child Internet Safety and the voluntary mechanisms that we have established and we will accomplish more.

10.45 am

Lord Hughes of Woodside (Lab): I may have misheard the Minister. Will she repeat the date? I thought she said December 2015, but this is December 2015.

Baroness Shields: I said December 2016. As the Prime Minister said in response to this issue, we will make sure that we protect children in whatever way we think is necessary—whether that is law or not, I will not say at this stage—but we will make sure that that remains in place.

Lord Framlingham: Governments always want everything to be perfect, and this is a rapidly moving target in a very modern world. The point has now been made twice, and I make it again, that these amendments are designed not to make the system safe but to make it safer. At this stage, anything we can do to make it safer should be done.

Baroness Shields: I could not agree more with my noble friend.

Baroness Benjamin: My Lords, I am very grateful to all noble Lords who have participated in this debate. I am happy to hear the Minister's passion for and commitment to this issue. I look forward to seeing what the Government put forward for the future because, as we have all said, we have to protect our children. I recently visited Rye Hill prison in Rugby, where there are more than 680 sex offenders. I spoke to some of them and they all said, "Baroness Benjamin, if only I had been protected from seeing adult content material when I was a child I would not have been so traumatised and damaged in the way I am today". Many other children are being traumatised by being able to see adult content material. I am so pleased to hear noble Lords' commitment and what the Government are going to do. Will the Minister meet Peers who have spoken this morning to see how we can all work together to put an end to this incredibly dangerous situation for our children? I am very grateful to the Minister. I beg leave to withdraw the amendment.

Amendment 3 withdrawn.

Amendment 3A

Moved by ***Lord Morrow***

3A: Clause 2, page 3, line 3, after "Assent" insert ", including assessment of—

"(i) filtering of adult content under Part 1 of this Act by providers and operators;

(ii) age verification policies used under Parts 1, 2 and 3 of this Act"

Lord Morrow: My Lords, this is a probing amendment which makes explicit two of the matters that the Ofcom report required by Clause 2(6) should cover: an assessment of the filtering of adult content required by Part 1 and the age verification policies referred to throughout the Bill.

One of the great strengths of Clause 1 is that it covers filtering of adult content by all internet service providers and mobile phone operators. Ofcom's reporting duty should therefore relate to the conduct of all providers. It was very noticeable that in its recent review of filtering by ISPs, Ofcom considered only the big four ISPs that are subject to the voluntary filtering agreement negotiated with the Government. I do not believe that this filtering arrangement is sustainable in the long term unless we are prepared to countenance affording better rights to children fortunate enough to live in households provided for by the big four ISPs than to those living in households serviced by other providers. According to Ofcom's published facts and figures, the market share of the big four ISPs in 2015 was 88%. That is the same percentage as in 2014 with a slightly different distribution between the ISPs: BT had 32%, Virgin Media had 20%, TalkTalk had 14% and Sky had 22%. That leaves 12% of the market, and therein hundreds of thousands of children, beyond the reach of the agreement.

I am of course aware that, although not party to the agreement between the big four providers, a number of the smaller operators provide good filtering options. A survey late last year discovered that of the 14 smaller ISPs that service homes, four were found to be offering something nearly comparable to the big four but 10 were not. Of those 10, two made it clear that they did provide filtering but it had to be applied by the customer separately; it was not an unavoidable choice during the set-up stage. Seven ISPs could not provide any information about filtering. One expressly said that it did not provide filtering. While the conduct of the four smaller ISPs is encouraging, the provision of filtering options by the smaller providers as a whole is concerning, and serves to underline the need for a common statutory approach.

I note that during the Second Reading debate on the Bill, the Minister, when challenged on this matter, responded in the following terms:

"It is important to note that these providers state at installation and on their marketing materials that they do not have child safety credentials".—[*Official Report*, 17/7/15; col. 860.]

The implication of this approach would seem to be that so long as the company makes these statements, it will be okay. This seems rather extraordinary, raising the question: if this approach is sufficient, why can the other providers not do the same? It also jars with the survey that I mentioned earlier where only one of the 10 smaller ISPs clearly stated that it did not provide filtering. I am struggling to believe that this really represents the Minister's position.

So long as some ISPs offer less protection than that provided through the agreement between the big four providers, and so long as we agree that all children are of equal value regardless of which provider services the homes in which they live, the only solution certainly seems the even-handed one proposed by the Bill, which requires the same minimum filtering from all providers, the conduct of which, subject to my amendment, should be reflected in the Ofcom report.

The case for making the changes proposed in Part 1 of the Bill and my amendment has of course been greatly strengthened since Second Reading as a result of the Prime Minister's decision to introduce filtering legislation, which he announced in another place on 28 October. In responding to a question about whether the EU net neutrality vote would jeopardise our approach to filtering, the Prime Minister said:

"Like my hon. Friend, I think that it is vital that we enable parents to have that protection for their children from this material on the internet. Probably like her, I spluttered over my cornflakes when I read the *Daily Mail* this morning, because we have worked so hard to put in place those filters. I can reassure her on this matter, because we secured an opt-out yesterday so that we can keep our family-friendly filters to protect children. I can tell the House that we will legislate to put our agreement with internet companies on this issue into the law of the land so that our children will be protected".—[*Official Report*, Commons, 28/10/15; col. 344.]

The words that struck me particularly in that passage were,

"I can tell the House that we will legislate".

While I do not agree with the EU vote, the fact that it means that Britain will now legislate in this area is very welcome, both because it endorses the statutory approach advanced by this Bill and because it provides an opportunity for addressing the failure of the current approach to cover 12% of the market.

I understand that the Government must have legislation on the statute book by the time the new European provisions come into effect—on, I think,

30 April 2016—so they are very fortunate to have this excellent Private Member's Bill already in Committee. I hope that the Minister can assure me that the Government will give serious consideration to adopting this Bill to protect ISPs from litigation. If the Government insist on bringing forward their own Bill, I impress upon them the need to require filtering, on the basis mandated by the Bill, for all ISPs that service households with children, not just some. This should also be reflected in Ofcom's reporting obligation.

I should say in passing that if the Government are going to bring forward their own legislation that will have to be implemented by April next year, they should do so very quickly. There can be no excuse for rushing this through at the last minute when we have known this since the end of June this year. I beg to move.

Baroness Healy of Primrose Hill: My Lords, I support the amendment from the noble Lord, Lord Morrow. Ofcom should have to report on the compliance of all ISPs, not just the big four, and all ISPs should be subject to the same filtering obligations where they service households with children, as the noble Lord has said. The Government need to ensure that all providers that service households with children have adequate filters. If the Government now need to make legal provision for filtering, in order to protect the big four from litigation on the basis of EU net neutrality legislation, surely the best way forward is to use this excellent Bill.

The Lord Bishop of Bristol: My Lords, I do not want to add too much to the way that the noble Lord, Lord Morrow, has framed his amendment today, but his point is worthy of serious scrutiny, simply because children living in households that are not serviced by the big four ISPs surely require the same level of protection as those in homes whose services are provided by the big four ISPs. Everyone in your Lordships' House agrees that every child matters; I think that it is not at all controversial to say that.

It is a little confusing that the Prime Minister should seem so robust in his statement in the other place on 28 October, suggesting that the Government wanted to introduce legislation, yet the Minister—unless I misunderstand her—seems very happy to continue with a kind of voluntary regulation. I am not quite sure how that squares up. The point—and the noble Lord, Lord Morrow, makes it well—is that whatever we come up with cannot apply only to some children; surely it must apply to them all.

I would have thought we might regard it as good news that there is a need to introduce some legislation to prevent our approach to filtering being caught up by the new EU legislation, which provides us with an opportunity to correct a serious failing in our current arrangements. I hope that the Government—although I am starting to feel doubtful about this—might seize this opportunity with both hands.

I therefore put two questions to the Minister. First, I assume that the big four ISPs are saying to the Government, "We're happy to continue providing filtering on the basis that we agreed, but only if you provide us with the requisite legal cover because we're not prepared to be left vulnerable to litigation once the new EU net neutrality legislation comes into effect". Will the Minister confirm that this is the point of concern, or at least a part of it? Secondly and more importantly, although she may have already dealt with this, I had thought that the deadline at the moment was 30 April but I think she has said that it has now been extended to December. I would be grateful if she could clarify that.

I hope that the Government are not going to produce an entirely new piece of legislation next year that they then rush through at high speed without the proper scrutiny of your Lordships' House. That would be wholly unacceptable, and I would dearly love the Government to adopt the Bill.

The Earl of Erroll: My Lords, I want to say a few things at this point because this amendment refers to age-verification policies, which Ofcom is supposed to be producing. I do not want to say very much about it, but there are things other than direct adult content online. For example, we need to block the sale of pornographic DVDs, which can be supplied through several of the major sites where you can buy all sorts of other stuff that it is perfectly legal to buy. The problem is that you need to block at individual page level for a lot of stuff, otherwise people will get around this fairly easily.

The real problem is that filters do not do anything about the material they are blocking. They work on look-up tables, which are compiled by various people who look at websites, or individual pages on websites, and the filter goes through the list. But a filter is not a magic device that knows when somebody is looking at pornography. If the material is not in the table, the filter does not know about it. Someone has to keep the table up to date and there are organisations that do that, and they do it very well, or at least they do their best. However, we should not think that the filter is a silver bullet that will provide the cure. That is why we need somehow to incentivise the vendors and content providers on the internet—the people who deliver the material over the web—rather than the people giving access to the web. That is probably why there will have to be legislation to incentivise them to behave in the right way. We should have both positive and negative incentives, so that people who behave well get some advantage and people who behave badly have a disadvantage.

11 am

Interestingly, I have talked to some of the adult content or pornographic providers and they are quite keen to have a good, simple age-checking system, if it is cheap enough. They waste a lot of bandwidth on people who buy nothing and who can get into these sites for free. Credit card checks do not work because they arrive too late in the process. There are all sorts of things out there which one would not expect.

One reason I am speaking on this is that I am chairing the steering group on the British Standards Institution's Publicly Available Specification 1296, which is about online age-checking. The idea is that this can be used by organisations and companies to try to do the right thing. It is difficult and complicated but we will probably produce the first draft for the steering group early in the new year. With luck, and if it is

[The Earl of Erroll]
good enough, it will give the Government something they can refer to when they come to make legislation and it will help people to comply with the law. I am talking about this at this point because the requirement for Ofcom to produce age-verification policies is referred to in the Bill, and I hope that the work of the steering group will be of help in that.

I am not against the principle of trying to make sure that things are filtered, as the Bill seeks to do. Filters provide a very good initial lock but they are not the perfect solution—they are not going to cover everything and we need to do better than that. The Bill may cause a lot of chaos in the internet service provider world and it may distract from the much more important issue of making sure that those who run the websites—the only people who really know what they are delivering—have an incentive to behave in the right way.

Lord Framlingham: The noble Earl obviously knows a huge amount about the subject and he is speaking in a way that I do not completely understand. At what stage does he think we should legislate? How long do we wait to get it as right as he would like it to be?

The Earl of Erroll: Being realistic, I suspect that the Minister's timetable in the real world is probably very sensible. You can legislate hastily but then there will be huge arguments about it. It is a bit like the Digital Economy Act, which was rushed through. The measures in that to try to prevent people unlawfully downloading copyrighted material were not going to work in the real world. They caused a lot of chaos and, as a result, nothing happened because it was not possible to produce sensible regulations that would work and satisfy the courts and everyone else. Eventually, something got going but it is not brilliant, and it took the pressure off everyone to produce something that might have been a little better. Therefore, the Minister is probably being very sensible on this.

Lord Framlingham: Does the noble Earl accept that there is a huge difference between the problems that might arise from copyright and those that arise from damaged children?

The Earl of Erroll: I totally accept that. I was just using it as an example of where legislation has gone through in haste with very good intentions but it has not worked because it has not been thought through technically. Checking age is quite complex—for various reasons I prefer the word "checking" to "verification". There are lots of ways of doing it but it is difficult to produce something that is workable in the real world. Credit cards are not the answer, and the net neutrality principle coming out of Europe will also cause problems. All sorts of things like that have to be taken into account. Getting it right in the long term for children's safety is much more important than trying to rush through something that looks good. We should remember the saying "Legislate in haste and repent at leisure".

Baroness Howe of Idlicote: I congratulate the noble Lord, Lord Morrow, on his amendment, which he moved so ably, not least because it highlights one of the key points that has been made repeatedly in debates not only on this Bill but on the many previous online safety Bills.

I have never been persuaded that the voluntary filtering agreement between the big four ISPs is anything other than a very temporary measure. In the first instance, I believe that filtering is sufficiently important to warrant a statutory foundation. In the second instance, I believe it is important for the Prime Minister to press the big four ISPs to introduce a robust filtering regime for the sake of the children in the house that they serve. If it is important for him to agree to do that then, as others have mentioned, it is equally important that he does the same for the children in houses served by other ISPs. Unless we believe that some children are more important than others, surely we must operate on the basis that all children are worth fighting for just as much as those serviced by the big four. If it falls to all of us in this current attempt to bring in an online safety Act to support and speak up for the children in this group, of course we will continue to do so.

In my view, the only sensible way forward here is an even-handed statutory approach, as set out in Clause 1. It should relate, as the noble Lord's amendment proposes, to Ofcom's reporting of filtering as well as to the filtering itself. If the Government now have to make statutory provision for filtering because of new EU legislation, it certainly would be indefensible not to apply the new provision to all providers. With this in mind, and as I and others have said, we would be more than happy for the Government to take aboard and use this part of the Online Safety Bill.

Lord Stevenson of Balmacara: My Lords, I opened my comments this morning by referring to the film "Groundhog Day". I did so in jest and it was not taken seriously but, as we go through the Bill, I am beginning to think that it has more to say to us than I had thought.

Like the right reverend Prelate the Bishop of Bristol, I am quite confused about the Government's position on this. I am sorry to keep going on to the Minister, who I know is in a good place on many of these issues, but what is happening? She said, in a very strong statement, that there was no reluctance to act; on the other hand, she was quite careful to cover herself and said that that did not mean legislation. Yet, as we have heard, the Prime Minister himself—her boss—has jumped in and has said that legislation will be in place by 31 December, even though we think the date will be 30 April next year. I am not an expert on these matters and I certainly do not want to cause the Committee more confusion, because we want to get through this business today and make sure that the Bill goes on its way. However, it would be helpful if, either now or before the end of this Committee, we had a very clear statement.

Like others, I think this whole area needs people who are keen to see movement on it to get round a table and work out what can be done. If the Government are to go ahead with their own agenda, I am sure the promoters of the Bill, and the noble Baroness, Lady Howe, in particular, will want to get behind that and support it. However, as we know, legislation and legislative time is very difficult to arrange, so, if the Government

decided that they had to legislate, it would be completely ridiculous to lose the opportunity available to us here today. We on this side of the House are very willing to support what is necessary to do this—we are not oppositional on this matter—but we are confused.

Baroness Shields: I thank all noble Lords for their comments. I start by addressing the conflation of some issues and the confusion that has been raised. On the confusion regarding the filters regime and its legality in terms of Europe, we must legislate to make our filters regime legal according to the new net neutrality regulations. The date for that is by December 2016. To be clear: we need to do something to keep our existing regime viable and functional under the law. That is the first thing. As the noble Lord, Lord Morrow, so aptly presented in his comments, the Prime Minister said that we would legislate to make sure that our filters regime is legal under European law.

It is not fair to insinuate that by challenging the vehicle we are somehow not supporting or speaking up for children. That is so far from the truth. The noble Earl, Lord Erroll, said that filters are not a silver bullet and explained to us how technically they work. The work being done by the British Standards Institution and the Digital Policy Alliance to define a standard for things such as age verification is vital to staying ahead of this problem. If the result of this work is something that the ISPs can then adopt, we will have an evidence-based technological solution that will support us going forward. That is much better than trying to tell the ISPs how to do it. We are looking to experts and developing an evidence base so that we can do this properly and voluntarily. The ISPs have said that they are willing to take that on board.

When the Digital Policy Alliance reports back to tell us how this can be done effectively, it will take time for these companies to go back to their engineering teams and develop solutions that enable them to implement those recommendations. That all takes time. You cannot legislate for that today. We are not talking about whether we are committed to it or the industry is committed to it.

Lord Harris of Haringey: I do not think anyone is denying that it will take time to implement things. Clearly, the time taken will be the same whether it is a voluntary scheme or written in legislation. But if you have legislation, those timetables become much firmer and the opportunities for prevarication and delay start to disappear. No Member of this House is ignoring the fact that it will take time. It is a question of what degree of urgency is being put on this and the extent to which you are guaranteeing that these things happen.

Baroness Shields: I thank the noble Lord for his intervention. The commitment to this is voluntary and clear. Of course it will take time, but it is evolving. The action of the industry is voluntary and the process has to be consultative. The UK Council for Child Internet Safety meets and provides an evidence base to the ISPs and the industry about what we know and how they should act—it is doing that. We are just talking about the vehicle to get us there, and we think we have a better approach. We will consult on age verification and bring something forward, enshrined in law or in whatever way we think is best, to ensure that the filters regime stays in place.

We have re-opened the conversation about many issues today. This particular amendment was on whether we should specify that Ofcom's reports on filtering content and age-verification policies are set out as a duty. We are way beyond that at this stage. Ofcom is about to produce a report later this month that does just that. Therefore, the Government's perspective is that this is already being done by Ofcom and there is no need to enshrine it in law.

Lord Morrow: My Lords, I am very grateful to all those who have spoken in this debate today. I have listened intently to what has been said by all noble Lords and, in particular, by the Minister. I detect real concern around the Committee on this very important matter. It has been very useful to reflect on the need to engage with all ISPs, both on the filtering regime to help keep children safe online and on Ofcom's reporting role. The Minister has seen that there is a real concern about the issue, and I wonder whether she might be willing to meet concerned Peers to discuss the way forward on this important matter.

11.15 am

Baroness Shields: I would be absolutely delighted to meet noble Lords on this matter. In fact, maybe some noble Lords might want to join us at the UK Council for Child Internet Safety, where many of these issues are raised and discussed, and where evidence-based teams go off and research then report back with excellent suggestions that are taken on board by industry. That is a collaborative approach and ensures that, as issues arise, we can react—as an industry, as government and as NGOs, working in partnership.

Lord Morrow: I thank the Minister for her very positive response and look forward to that meeting in the not too distant future. At the outset, I made it clear that this was a probing amendment. Therefore, for the moment, I beg leave to withdraw my amendment.

Amendment 3A withdrawn.

Clauses 2 agreed.

Clauses 3 to 7 agreed.

Clause 8: Authority to license foreign pornographic services

Amendment 4

Tabled by ***Baroness Howe of Idlicote***

4: Clause 8, page 5, line 5, after "be" insert "—
(a) "

Lord McColl of Dulwich (Con): My Lords, I am very pleased to speak in support of Amendments 4 to 7 from the noble Baroness, Lady Howe, to which my name is attached. No one can read the very important 2014 ATVOD report and not be convinced about the child safety imperative to provide some kind of regulatory

[Lord McColl of Dulwich]
framework for dealing with online pornography, which is projected into this country mainly from websites located abroad.

As the noble Baroness, Lady Howe, will tell us, that report demonstrated that 23 out of the 25 pornographic websites most frequently visited by people in this country are located outside of the UK. To this end, I am of course pleased that this year's Conservative manifesto committed to introducing age-verification checks on all pornographic sites, and I look forward to hearing from the Minister when further details about this proposal will be published. We had been promised a consultation before the end of the year.

The Government are exceptionally well placed to rise to this challenge, having recently introduced the Gambling (Licensing and Advertising) Act 2014 to regulate online gambling websites based beyond the United Kingdom. In the context of gambling, if someone does not have a licence and they seek to conduct transactions with people in the UK, they operate illegally, so financial transaction providers are happy to refuse to facilitate transactions.

ATVOD, however, reports that the same is not true of pornographic websites that service UK customers from other countries. At the moment, such sites break no law. Indeed, the financial transaction providers have pointed out that, if they refuse to conduct illegal transactions between such sites and people in the UK, they would be the ones likely to be taken to court. This difficulty, however, would not obtain if we introduced a licensing system similar to that pertaining to online gambling and the provider in question did not have a licence. The simple proposal in this Bill is that the providers of online pornography from outside the UK must get a licence, a condition of which would be the provision of robust age verification. I hope that the Government will adopt this Bill as it presents a timely means of fulfilling their manifesto pledge.

The Delegated Powers and Regulatory Reform Committee report took the view that it would be better if the body that heard appeals against decisions not to grant a licence or to revoke an existing licence, were not the same body that awarded the licences. The noble Baroness, Lady Howe, through these amendments, has made provision for the designation of a separate body to hear appeals. The amendments, which the noble Baroness wisely asked the noble and learned Lord, Lord Mackay of Clashfern, to assess, clearly have that effect. I hope the Committee will support them.

Baroness Howe of Idlicote: My Lords, I apologise for the delay in finding my papers, particularly to the noble Lord, Lord McColl, who very kindly stepped in.

Amendments 4 to 7 form the second group of amendments that I tabled in response to the Delegated Powers and Regulatory Reform Committee report published on 20 July. They relate to my proposal under Clause 8 to introduce a licensing scheme for foreign pornographic websites in the absence of any robust regulation of these websites.

The Committee may remember that ATVOD, the Authority for Television on Demand, which I am sad to say will cease to exist at the end of the month, published a report in 2014 that found that 23 of the top 25 adult websites visited by UK internet users provide instant, free and unrestricted access to hardcore pornographic videos, some of which would not be available on a British high street.

ATVOD's report explains that it has encouraged the UK payments industry—credit card companies, Paypal and so forth—not to process transactions involving websites showing hardcore pornography that is presented without robust age verification safety checks. However, it also explains that the transaction providers are unwilling to do so because,

"the absence of clear case law on the issue precludes such an initiative".

In short, unless the provider of the material is breaking a law, a financial transaction provider could be taken to court for failing to process the transaction. Setting up a licensing scheme, however, as proposed by Clause 8, would set up clear case law. An organisation would have a licence, or it would not. If the organisation did not have a licence, there would be no legal obstacles if a financial transaction provider was minded not to process the transaction—something that Clause 10 crucially mandates.

Clause 8 would provide a regulatory framework to ensure that these websites are not available to children. Clause 9 makes it an offence not to have a licence and Clause 10 provides a means of ensuring that payments to unlicensed websites would cease—a matter I shall come back to when I speak on Amendments 8 to 13.

The committee was concerned that appeals against decisions on not granting a licence or having a licence revoked would be heard by the licensing body. That is a genuine concern, so I tabled Amendments 4 to 7 to ensure that an independent body be able to review any appeals.

Amendments 4 and 5 ensure that the powers under Clause 8(1) allow the Secretary of State to designate both a licensing body and a separate independent appeals body. Amendments 6 and 7 ensure that the Secretary of State is not able to designate a licensing body without knowing that the independent body has adequate arrangements for appeals. As I have already said, I sought the counsel of the noble and learned Lord, Lord Mackay of Clashfern, about whether these amendments deal with the problems highlighted by the committee and he assured me that they do. I beg to move.

Baroness Thornton (Lab): My Lords, it seems to me that the Government, after so much time has elapsed and so many of our young people have been able to access hardcore pornography, need to take action. I congratulate the noble Baroness for yet again trying to persuade the Government to do that. A voluntary approach has not worked. It is time that the Government offered the same protection to children and young people as they do on gambling—that is, robust age verification. In addition, the Government need to have a licensing system. I cannot think why there is none, particularly given that the Prime Minister has said how much he wants to protect our children from accessing hardcore pornography, and recognises the damage it is doing. Will the Minister accept these amendments and give the Government's support to this Bill? It is time to do so.

The Earl of Erroll: My Lords, we have been talking about payments. I agree entirely that the big challenge is everybody moving offshore, and so the problem becomes foreign websites supplying pornography. The Committee is quite right about that. But I thought I ought to comment on the business of processing payments. One thing became apparent to us when we began discussing online age checking—and we are calling it that rather than age verification, because verification is tied up with identity. We need to separate the two because one is an attribute and the other is identity. I do not want to confuse the two, but I will not give the Committee a long lecture about that.

The point is that we soon discovered that there is an awful lot of stuff out there for free and therefore payment does not come into it. If we want to protect our children, we have to do so when no payment is involved. The very fact that someone can pay proves that they are at a legal age to watch this sort of stuff, but actually the big problem is the stuff that is out there for free. That is what we are really trying to block. The steering group of the BSI has representatives from the identity world, the ISPs, child protection charities, tobacco, e-cigarettes, alcohol, gaming, gambling, and academia, and government observers. The trouble with this issue is its complexity. I want to say briefly that payments are a bit of a red herring. On the other hand, blocking foreign pornographic providers is absolutely right and needs to be done.

11.30 am

Lord Framlingham: I am sorry to keep picking the noble Earl's brain, but for the purposes of today's debate, is there any intrinsic difference between the gambling industry and the pornography industry?

The Earl of Erroll: Yes, there is, interestingly enough. It is to do with the law. Because of anti-money laundering, the gambling industry has to do client checks; it has to behave almost as if it were a bank. As a result, companies have to be able to prove the identity of the person. For various social reasons, it is felt that it is unfair for people to have to declare their identity publicly if they are looking at adult content which it is perfectly legal to watch, or buying alcohol and so on. For instance, if a Muslim buys alcohol and the mosque gets to know about it because their identity had to be declared and retained publicly, they might suffer greatly. Equally, if a Cabinet Minister happens to view some pornography or adult material, that is perfectly legal but, if certain newspapers were to find out, the Minister's career would be destroyed overnight. This is the challenge and the difference. We have to remember that this stuff is legal for the over-18s, but there are social pressures and public opinion, which we may or may not agree with, so I think that we have to protect people's privacy.

Lord Framlingham: I am sorry to ask again. The example that has been given mentions embarrassment, but it is not technically illegal.

The Earl of Erroll: The example I have given is one that is career-destroying. The knock-on effect of that could involve all sorts of family repercussions to do with children in school because Daddy or Mummy has just had their career destroyed. We sometimes forget the effect on a family as the result of something that, while it may be regarded by some as socially unacceptable, is perfectly legal. We need to think about that at the parliamentary level.

Baroness Thornton: My Lords, that is exactly the point. The noble Earl, Lord Erroll, as ever is championing an industry which takes the view that, if you cannot do everything, you do not do anything. This is about doing something.

The Earl of Erroll: No, I am not trying to champion the industry, I am trying to protect children properly. The point is that this Bill is a great idea and a great effort, as long as it does not mess up the field for doing something about it properly. The Bill will not actually cure some of the root problems, but there are elements of it which should go into some proper legislation. I entirely agree with the principles and thoughts behind it, and I have no problem with them, but I want something that works in the real world and which is not going to be bypassed because some of the solutions are too simplistic. That is the challenge, and hence the complexity. I hope we will see legislation on this subject next year that will allow for some real action to be taken which will protect children. I am not trying to champion an industry, but I am trying to draw lines.

The Lord Bishop of Bristol: My Lords, I thank the noble Earl for his explanation. I do not think that anyone in this House actually believes that what we will end up with will be—I think he has used the phrase—the silver bullet. What we want is to try to be as watertight and robust as we can. It is quite right of the noble Earl to point out to the Committee that it is inconceivable that we will be able to cover everything. I think that the issue is this: is what we have in front of us the right way to go ahead in trying to protect our children in the best way we possibly can? I believe that it is.

The Earl of Erroll: Perhaps I may respond briefly. Because I know that the Government fully intend to bring forward legislation next year, I did not want to get too involved in trying to sort out this Bill. I am afraid that I would separate the ISP and the filtering completely. I would put in proper provisions about age checking and vendors at the point of sale, look at the point of access on the internet, and start to construct something that would be future-proofed—that means as far as we can see at the moment. We need to block the loopholes, so I would separate filtering from the responsibility of vendors not to break the law. Vendors are in effect breaking the law at the moment, but the problem is how to stop them. There are websites selling stuff which should not be sold to minors, but the problem is in enforcement because those websites are getting around the rules. We have to write a slightly more complex Bill so that some things are separated out.

The concept behind filters in this Bill is absolutely fine and is there to underpin stuff. I have no problem with that, but I do not want people to think that it is the real solution to the challenge of protecting our

[The Earl of Erroll]
children. We have to stop the websites and prevent access to them. It has to be done at the point of sale much more than just general access to the internet.

Baroness Benjamin: My Lords, I agree with much of what has been said so far, especially by the noble Baroness, but while we are trying to find solutions let us remember that childhood lasts a lifetime. What children see will stay with them for ever. As I said earlier, I visited Rye Hill prison in Rugby, and many of the prisoners told me about what they saw when they were children. We need to move forward as swiftly as possible. We might not get it all right, but we have to do something quickly—just as the gambling industry and others have done. When it comes to children, what is the difference? We need to protect them now.

Baroness Shields: I thank all noble Lords for their contributions, and I state one more time that there is no ambiguity about the Government's commitment to launch the consultation shortly after the new year, and to provide for a robust age verification system to ensure that no one under the age of 18 can access pornographic material in the UK. It is a process that has been going on. We have been seeking advice from experts since the manifesto commitment was announced and we are consulting early in the new year. We are 100% committed to that.

I thank the noble Earl, Lord Erroll, for his contributions and for his extraordinary work in leading the development of solutions that will in fact achieve our goal. Many elements of the Bill are incredibly well thought-out and well intentioned, and they will be taken on board in the resulting legislative approach that we take in the new year. This is about timing. This clause requires that the Secretary of State must identify a licensing authority for non UK-based pornographic services, and the noble Baroness's amendment to the clause specifies that the Secretary of State needs a second independent body to conduct appeals. It is a very good suggestion, but it is a bit premature until we finish the consultation.

Regarding the Ofcom/ATVOD role, there is some confusion about the function of ATVOD continuing, but following an Ofcom review, it was publicly announced in October that from January next year Ofcom will take sole responsibility for regulating video on-demand programme services. As a result, it will not continue its co-regulatory arrangement with ATVOD. Let us be clear on this: it is continuing with the function and the obligation of ATVOD, but that is being brought into the Ofcom portfolio.

Lord McColl of Dulwich: My Lords, I beg leave to withdraw the amendment.

Amendment 4 withdrawn.

Amendments 5 to 7 not moved.

Clause 8 agreed.

Clause 9 agreed.

Clause 10: Prevention of payments

Amendment 8

Moved by ***Baroness Howe of Idlicote***

8: Clause 10, page 6, line 22, leave out "designated person" and insert "person or persons associated with the foreign pornographic service"

Baroness Howe of Idlicote: My Lords, Amendments 8 to 13 constitute the third group of amendments that I have tabled in response to the Delegated Powers and Regulatory Reform Committee's report published on 20 July. This set of amendments, like Amendments 4 to 7, relates to my proposal to introduce a licensing scheme for foreign pornographic websites. Clause 10 allows instructions to be given to the financial industry to block payments to any foreign pornographic website that does not have a licence for content accessed in the UK.

In the ATVOD report which I referred to, ATVOD set out that it has been trying to cut all funds from foreign pornographic websites, but the UK payment industry—credit card companies, PayPal et cetera—has reported that,

"the absence of clear case law on the issue precludes such an initiative".

As I noted during the previous debate, setting up a licensing scheme under Clause 8 would give rise to clear case law: an organisation would have a licence or it would not.

Clause 10 provides another tool to target foreign pornographic websites without a licence. I hope that, under my proposal, this clause would be used rarely because payments would be blocked routinely by financial transaction providers, but it is useful to have another tool to ensure that these websites can be targeted. I based this provision on the precedent of the Treasury's power to instruct that financial payment should not be made to terrorist groups, as set out in Schedule 7 to the Counter-Terrorism Act 2008. I am sure that noble Lords would not read into that comment that I am suggesting terrorism and provision of hardcore pornography are the same, though both are very damaging; rather, this precedent in law provides a reasonable model for my Bill to follow.

Once again, the committee has given helpful suggestions on improving the drafting and operation of the clause. It rightly pointed out that the definition of "designated person" in Clause 10(3) and 10(5) was problematic and left uncertainty about who the clause is really aimed at. My intention was that the blocking should be of payments to an unlicensed foreign pornographic website. I am again very grateful for the advice of the noble and learned Lord, Lord Mackay of Clashfern, who suggested that I replace the use of "designated person" completely with a reference to the foreign pornographic website, which I have done through Amendments 8 to 10 to Clause 10(3). Amendment 12, which removes the definition in Clause 10(5), is consequential on Amendments 8 to 10.

The committee was also concerned that there is no sanction on a "relevant person" who does not comply with a direction under this clause. I have tabled Amendment 13 to make it clear that a relevant person

is one of the group of persons or people listed under Clause 10(2) so that there is no lack of clarity about who should be carrying out the direction. I have also tabled Amendment 11 to set out that anyone who does not comply with a required direction would be liable to pay a fine. This is based on paragraph 20 of Schedule 7 to the Counter-Terrorism Act 2008. Once again, I sought the counsel of the noble and learned Lord, Lord Mackay, on these arrangements to ensure that they properly meet the committee's concerns relating to these three points, as set out in its report. He assures me that they do.

I should also mention that the committee expressed concerns about the idea that a licensing authority should be able to instruct the financial industry. There is, however, legal precedence in Schedule 7 to the Counter-Terrorism Act 2008 and I hope that, given the clarifications of purpose resulting from these amendments, its concerns will be allayed. I will, however, consult the noble and learned Lord, Lord Mackay, further—I have not done that so far—and may well return to this question with a further amendment on Report if necessary. I am grateful for the comments of the committee to ensure that this clause is as robust as possible, and to the noble and learned Lord for his expert advice. I beg to move.

11.45 am

Baroness Benjamin: My Lords, I warmly welcome these amendments, which will help to strengthen further this very important Bill. I agree with the Delegated Powers and Regulatory Reform Committee's suggestion that there is a need to provide a better definition of the designated body in Clause 10. The solution from the noble and learned Lord, Lord Mackay, addresses the problem admirably, through Amendments 8 to 10 and Amendment 12. I also agree with the committee's point about the need to apply a sanction to a relevant person who does not comply with the direction provided under the clause. I believe that the noble Baroness, Lady Howe, has responded very effectively to these points. I support her and congratulate her on her undying quest, commitment and mission to make these amendments and the whole Bill become a reality.

Baroness Shields: I thank the noble Baroness for these amendments and the innovative approach that she has outlined to solving this challenge. I reserve the right to consider these and all proposals that come across as part of our consultation.

Lord Skelmersdale (Con): My Lords, having listened off and on to the debate, it strikes me that my noble friend the Minister has made it clear to all of us that there will be, first, a consultation and then legislation before Easter. I hope that I have that right. In which case, there are roughly 10 sitting weeks between 1 January and Easter. Consultation would normally take between five and six weeks, by the time that you have had responses, understood them and printed a response to them. You are then left with very few weeks in which to legislate. I ask my noble friend: will this legislation be by order, perhaps under the European Communities Act or by another route, or does she really think it possible to get primary legislation through both Houses by Easter?

Baroness Shields: I thank my noble friend for giving me the opportunity to clarify this point. The consultation that will begin just after new year is about age verification for pornographic sites and how we will accomplish the manifesto commitment to stop young people accessing this harmful material. The other matter relates to the legality of our filters regime after the EU directive on net neutrality. The two are separate and distinct in the sense that the second, on filters, has to be acted on as a matter of urgency to keep the filters regime legal. The other is acted on as a matter of urgency to prevent children accessing this material. They are separate matters.

Lord Harris of Haringey: My Lords, I am grateful to the noble Baroness for that clarification. However, will she confirm that the legislation she is talking about is essentially minimalist and will simply deal with the issue that has arisen around the current voluntary age verification scheme, in the light of what has happened in the EU? The hopes which some noble Lords have expressed, that that piece of legislation might be a vehicle for something much broader, are therefore not valid. A minimalist change is being envisaged, rather than something which will address all the issues that noble Lords have raised.

Baroness Shields: I confirm that we have to react to what has happened in Europe. The European net neutrality directive has set us back, so we are getting ourselves back on a stable footing and enshrining in law the fact that we can protect our filters regime. That is not an intentionally minimalist approach; we have to react to the legal situation that the directive has created.

Baroness Howe of Idlicote: I beg leave to withdraw the amendment.

Amendment 8 withdrawn.

Amendments 9 to 13 not moved.

Clause 10 agreed.

Clause 11 agreed.

In the Title

Amendment 14

Moved by ***Baroness Howe of Idlicote***

14: In the Title, line 3, leave out from "require" to the first "to" in line 4 and insert "information to be provided about online safety by internet service providers and mobile phone operators;"

Baroness Howe of Idlicote: My Lords, I think by now your Lordships will be aware that this is the fifth Online Safety Bill that I have brought to your Lordships' House. When it was originally submitted to the Public Bill Office, it had the correct Long Title, but, sadly, in the course of preparing the Bill, somehow that new Long Title was exchanged for the previous Long Title—this was lovely back-to-front stuff. The Public Bill Office staff spotted their mistake. They were very apologetic but explained that by that stage it was too late and the only way to correct it was through

[Baroness Howe of Idlicote]
amendment. Put simply, the Bill currently has the wrong Long Title and Amendments 14 to 16 change it, so that it accurately defines the Bill as it stands.

Amendment 14 would remove the obligation on electronic device manufacturers in the previous version of the Bill, which is not in the current Bill. It puts in its place a description of the obligation placed on internet service providers and mobile phone operators in the Bill to provide information about online safety, as set out in Clause 3. Amendment 16, meanwhile, describes the new proposal to license foreign pornographic websites, as set out in Part 3. I suppose it is fairly amazing that mix-ups like this do not happen more often. I am most grateful to the Public Bill Office for pointing out its error and helping me to correct it.

Given that rather than changing the Bill, these amendments simply restore the correct Long Title to what it should have been all along, I very much hope that these amendments need not detain us. I beg to move.

Baroness Shields: My Lords, the Government have noted the noble Baroness's proposed changes to the Long Title of this Bill, which serve to clarify its content. As I said, there can be no higher priority than keeping children safe online, and to the extent that this measure clarifies the Bill's intentions, we support it.

Amendment 14 agreed.

Amendments 15 and 16

Moved by ***Baroness Howe of Idlicote***

15: In the Title, line 5, leave out "and" and insert ";"

16: In the Title, line 6, at end insert "; introduce licensing of foreign pornographic websites; and for connected purposes"

Amendments 15 and 16 agreed.

Title, as amended, agreed.

House resumed.

Bill reported with amendments.

Constitutional Convention Bill [HL]

Committee

11.55 am

Debate on whether Clause 1 should stand part of the Bill.

Lord Steel of Aikwood (LD): My Lords, I was not able to be present at Second Reading and wish to say a few words on the proposal that Clause 1 stand part of the Bill. I congratulate my noble friend Lord Purvis on introducing the Bill. He is also my House of Lords office mate, so I know how much work he has put into this.

My main point is that those of us who attended the proceedings on the Scotland Bill earlier this week must have been struck by the number of speakers in all parts of the House who regretted the fact that we continue to have piecemeal approaches to constitutional reform, and by the number of noble Lords in all parts of the House who begged the Government to reconsider their rather supine attitude to the whole question of a constitutional commission or convention.

We not only have the Scotland Bill proceeding through the House without knowing what the financial arrangements are between the two Governments but the row in the other place over English votes for English laws. We also have the Constitution Committee of this House, under the chairmanship of the noble Lord, Lord Lang, and the constitution committee of the other House, under the chairmanship of Bernard Jenkin. We have also had the all-party group on further decentralisation, of which my noble friend is a key member, and we have the other all-party group under the noble Marquess, Lord Salisbury, arguing very effectively for a new Act of Union. On top of all that, we await the deliberations of the noble Lord, Lord Strathclyde, on the relationship between the two Houses. And so it goes on and on, piecemeal approaches to constitution making—not to mention all the outside work that has been done by people such as Professor Bogdanor, the UCL Constitution Unit and many others. All the time, the Government seem just to guddle through on constitutional reform. That is a great mistake. Therefore, I strongly support Clause 1 and hope that the Government will give a positive response to it.

Clause 1 agreed.

Debate on whether Clause 2 should stand part of the Bill.

Lord Grocott (Lab): My Lords, I certainly have no intention of trying to remove Clause 2 from the Bill but this gives me an opportunity to seek clarification on what it might involve. I did not speak at Second Reading although I have, of course, read *Hansard*. I am only going to make a few comments that could be construed as a Second Reading contribution. The Bill as a whole has admirable objectives and, I am sure, the best of motives. However, I have severe doubts, to put it mildly, about the practicality of being able to sit down with a rather ill-defined group of people and reach a decision within about 12 months about a document that would effectively stand as the constitution of the United Kingdom and the devolved legislatures.

I will leave that comment aside because I want to concentrate on one area where perhaps there could be some clarity—Clause 2—in which, on my reading of the Bill, there is not clarity at the moment. Clause 2(c) says that the convention must consider,

"the reform of the electoral system".

My question is: which electoral system? In a way, this illustrates the problem with the Bill, that unless there is clarity and a better definition of precisely what the convention is going to look at, the scope for endless debate and discussion is pretty limitless.

Noon

There are, I think, currently seven different electoral systems operating within the United Kingdom. No doubt someone who is more of an anorak on the subject than I am could find some more. But as far as I can tot them up, we have the system that applies in Scotland and Wales for parliamentary elections for the devolved Parliament and Assembly; obviously,

there is first past the post for general elections in the country; there is the European electoral system; there is the Scottish local election system; there are systems for the mayoral elections; and there are different procedures in Northern Ireland. So I think it is legitimate—and I hope not seen as overly critical—to ask: which electoral system are we supposed to be reforming under this clause?

My starting point is that I hope there is no suggestion that there is going to be any attempt within this convention to look again at the electoral system for the United Kingdom Parliament, not just because I happen to be strongly in favour of the present system but because, as we all know, that view is shared by the vast majority of the British people. Asked as recently as three years ago, "Do you favour the first past the post system?", they said by a majority of two to one that they certainly did. The response was in the affirmative for every constituency in the United Kingdom apart from about six; it was certainly in single figures. I do not think anyone would seriously suggest that we should have another referendum on that within a generation. Indeed, I know that the people who took part in that discussion, debate and referendum all acknowledge that it was, to coin a phrase, a once-in-a-lifetime opportunity. I tend to take those commitments seriously, as I do as far as the Scottish referendum is concerned, by the way, but let us not go there at the moment.

If it does not mean the general election system, as it surely cannot—we cannot revisit that two or three years after there has been such a conclusive decision by the British people—which electoral system does Clause 2(c) refer to? Perhaps we could have clarity on that, which would help the clarity of the Bill overall. I look forward to hearing the response to that.

Lord Wallace of Saltaire (LD): My Lords, it is very good to hear the noble Lord, Lord Grocott, reassert yet again how deeply conservative—I hesitate to use the word "reactionary"—he is on all matters constitutional. I had expected him to object to "reform" rather than "electoral system".

Clearly, I appreciate that a Labour Party which pursued in this recent election a campaign based on the idea that it could win a majority with 35% of the vote and was then defeated by a Conservative Party which won a majority of the House of Commons on 37% of the vote should want to have a vested interest in our current electoral system. If we are talking about constitutional reform overall, we need to talk about the balance in different parts of the United Kingdom. Perhaps one might then talk about, as he says, the range of different electoral systems that we now have.

During the AV referendum a very effective no campaign was led by Matthew Elliott, who is now leading the campaign to leave the European Union—with good right-wing credentials and a lot of right-wing funding. I am sure the noble Lord, Lord Grocott, is happy about that. But if we are going to talk about the rapidly changing and moving relationship between the different parts of the United Kingdom—for example, what is happening in local government in England concerns many of us on these Benches and is another dimension of this—we need to look at the overall pattern. That clearly would need to include some question of which electoral systems are appropriate for which levels of elections. That is the only point that I am making.

Lord Grocott: I am very sorry that the noble Lord no longer speaks in an official capacity on the Liberal Front Bench. I do not know whether he has been demoted or has voluntarily moved to the Back Benches or is moonlighting; I am not quite sure what the position is. It is a novel concept from the Lib Dems—I can understand in the light of the recent general election why they may need the odd novel concept—to say that for them it is a reactionary position to respect the views of the British people as expressed in a referendum. I regard that as a very progressive position. Although I do not mind in the slightest being accused of being a reactionary on the constitution from time to time, it might be at least reassuring if we heard occasionally from the Liberal Democrat Benches, whether officially or unofficially, that they do respect the wishes of two-thirds of the British people in a nationwide referendum.

Lord Forsyth of Drumlean (Con): My Lords, I did speak at Second Reading. The main point I made was that I thought the Bill was far too ambitious. I am very disappointed to see that the terms of reference in Clause 2 remain pretty well as they were at Second Reading, although I thought the noble Lord said that he would consider the fact that there might be quite a lot to do.

The Economic Affairs Committee of this House spent four months looking at the single issue of the financial consequences of devolution in the United Kingdom and produced an excellent report, which has had quite an impact in Scotland and beyond in making people aware that it is necessary to agree and know the fiscal framework before you set in place further structures of devolution. I do not quite know how it would be possible for this constitutional convention not only to consider,

"the devolution of legislative and fiscal competence to and within Scotland, England, Wales and Northern Ireland",

but deal with,

"the devolution of legislative and fiscal competence to local authorities within the United Kingdom",

and,

"the reform of the electoral system",

and,

"the reform of the House of Lords",

which we have spent more than 100 years discussing. Furthermore, I looked for the kitchen sink, and the kitchen sink is there, described as,

"constitutional matters to be considered in further conventions, and … procedures to govern the consideration and implementation of any future constitutional reforms".

The convention has to do all this within a year. It is ridiculous.

Who will do this? The convention will be composed of representatives from,

"registered political parties within the United Kingdom".

I think there are about 600 registered political parties in the United Kingdom, a point that was made very eloquently by my noble friend in winding up at Second

[Lord Forsyth of Drumlean]

Reading, but that is what we are still left with in Clause 4, along with representatives of "local authorities" and,

"the nations and regions of the United Kingdom".

In addition:

"At least 50% of the members of the convention must not be employed in a role which can reasonably be considered to be political".

First, finding such people might be difficult. Secondly, there is the experience that we have had with the Smith commission. One has only to read the Committee debate so far on the Scotland Bill to see the mess you get into when you have a group of people working out what they would like to happen without advice and without the ability to translate that into legislation.

It is also quite an impertinence to suggest that issues relating to reform of the House of Lords are matters that should be decided outside this House and outside Parliament. The noble Lord chuckles, but it would be extremely difficult for people to be educated on and understand the procedures of this House and achieve everything within a year. Although I very strongly support the idea of a constitutional convention with the limited purpose of sorting out the mess that we have brought ourselves into because of piecemeal constitutional reform, we have already determined what we think about House of Lords reform. We spent a large slice of the last Parliament discussing it. As for the noble Lord, Lord Grocott, I have always thought of him as a radical and not a conservative, but a radical with common sense, intellect and a practical frame of mind.

It just seems to me that the noble Lord, Lord Purvis, is putting forward a Bill that will discredit the idea of having a constitutional convention and make it very easy for those of us who support having one to be brushed aside by the Government on the basis that what is being proposed in the Bill is unrealistic. I very much hope that Clause 2 does not stand part of the Bill as drafted. If it does, the Bill will have to be consigned to the wastepaper bin, for it does not offer a way forward on determining our constitutional arrangements.

Lord Kerr of Kinlochard (CB): My Lords, I very much agree with the first two points made by the noble Lord, Lord Steel of Aikwood. It was very striking in our Scotland Bill debate how general is the consensus in this House on the need for a convention and how general is the concern that proceeding piecemeal is a very bad idea. It has got us into a lot of trouble.

I oppose Amendment 1, which I think is what we are trying to do. I am against Amendment 1—

Lord Forsyth of Drumlean: We are discussing Clause 2.

Lord Kerr of Kinlochard: The stand part debate? Very good. I support the Bill that the noble Lord, Lord Purvis of Tweed, has put forward, and congratulate him on doing it. I agree with the principle of it, but I do not agree at all with Clause 2, which seems far too long and detailed. We need to stop, reflect and think about principles. We need to start with a long period of reflection. I am also against Clause 3, which sets a timetable. Like the noble Lord, Lord Forsyth, I do not think it a timetable that could possibly work.

I was secretary-general of a convention which sat for 16 months, with four or five months of reflection, four or five months of working groups and then a drafting session at the end. We were overambitious and tried to do too much, and then were shut down by the Governments, who refused to extend our timetable. These were both mistakes. The idea of a period of reflection—which was President Giscard's idea to begin with—was a very good one. That is how conventions should start. Clause 2 is overprescriptive in setting out the tasks that the convention should attempt—we are overdefining here.

My terms of reference would be very simple: "The convention must consider the governance of the kingdom, the relationships between its constituent parts and appropriate devolution of legislative and fiscal competence". I would go back to principles. I do not think it a good idea to consider devolution to local authorities, as Clause 2(b) suggests. That is a secondary issue, and there is no reason in my view why there should be absolutely standardised devolution to local authorities across the kingdom as a whole. It could vary in the constituent parts.

On reform of the electoral system, I echo what the noble Lord, Lord Grocott, said. It seems to me that there is no longer a single electoral system: there are a lot of electoral systems. I have no reason to think there should be a standardised electoral system. It is not necessary for the system for local elections in Scotland to be exactly the same as that for local elections in England, for example—if such was the agreement of a convention starting from principles, Parliament should be invited to devolve generally.

I absolutely do not think that reform of the House of Lords is appropriate to a convention that is looking at principles. The composition of the House of Lords should be a function of the House of Lords: one needs to decide what the House of Lords is for. A constitutional convention ought to fetch up consideration of what cements the union—what are the appropriate ways of holding the union together? In my view, there is a considerable role for the House of Lords in that. But it would be a mistake to consider reforming the House of Lords at the same time as examining the fundamental principles, before you have reported back to Parliament and the country about those principles and discovered whether they are to some extent acceptable. There is too much bottom-up in here. We need to start with thinking about general principles, rather than getting into too much detail.

12.15 pm

The case for the convention gets stronger every day. I agree with the examples that the noble Lord, Lord Steel of Aikwood, gave of the mistakes we are making by proceeding piecemeal, but he was extraordinarily modest in his list of those mistakes. Where was EVEL? EVEL is a major constitutional change made by adjusting the rules of procedure in the other place, ignoring this place's request by a very large majority for consultation on the matter. That is a very odd way to change the constitution of the country.

The noble Lord, Lord Steel, said that it seems that next week, we will receive proposals from the Government—or perhaps it is the Conservative Party, I am not yet quite clear; certainly it is from only one constituent part of those represented here—on how the functions of the House of Lords should be further reduced. On Monday, we are to consider whether it is appropriate to regard the EU referendum Bill on the franchise for a referendum as a financial measure that is therefore not amendable in this House. If the EU referendum Bill is a financial measure, what, among the things we consider, is not? What can we amend? I differ with my friend, the noble Lord, Lord Forsyth, on the substance of the EU referendum Bill, but on the issue of financial privilege, I would be very surprised if he did not on Monday find it hard to accept the new definition of how financial privilege is to be read.

The Scotland Bill, which the noble Lord, Lord Steel, mentioned, is a classic example of what a mistake it is to make constitutional reform on the hoof. I would have been in favour of a devolution max option on the ballot paper in Scotland. There was and is a case for more devolution to Scotland. That option was turned down, deliberately rejected, rejecting the chance for mature reflection and definition of devolution max; instead, it was defined on the hoof with the help of a journalist from the *Daily Mail*, obliging a commission simply to write down the vow and tell us what it means, and then producing a Bill to turn the vow into law which is scissors and paste—taking bits of the Smith commission and simply writing them into law. We know what our Constitution Committee thinks of that; we know what our Economic Affairs Committee thinks of that.

I found the debate this week extremely painful, because it was not clear to me that the Government understood what was wrong with the Bill. I was very sad to see the Opposition Front Bench take exactly the same position—that because it is in the Smith commission, it must be there in exactly these words. It seems that the words of the Sewel convention may not be changed; they must be written into the Bill, even though we all know that if you make what is normal—the "normally" in the wording of the Sewel convention—justiciable you set yourself up for endless debate and difficulty. We need to go back to principles. We need to get out of this habit of making it up on the hoof and then trying to adjust the statute book to match it.

Lord Forsyth of Drumlean: Did the noble Lord notice that this very week, the Scottish Parliament sought to argue that the Sewel convention would apply to the Trade Union Bill? The Presiding Officer took the view that it would not but the First Minister indicated that she plans to have a word with the Prime Minister about this, arguing that because there are trade unions in Scotland, there is a Scottish dimension and therefore there should be some kind of legislative consent procedure. Does that not underline how important it is to define what is meant by the Sewel convention and to have legislation that is clear?

Lord Kerr of Kinlochard: I entirely agree with the noble Lord, Lord Forsyth, and look forward to agreeing with him again on Monday when the issue for debate is financial privilege.

Baroness Hayter of Kentish Town (Lab): My Lords, first, I concur with and emphasise the point made by the noble Lord, Lord Kerr, about the need for this convention. I will not go through that—others made the point much more strongly than I could. I just want to make sure that that is clearly on record.

On the second issue, electoral reform, I think my noble friend Lord Grocott misunderstood whom he was addressing. He obviously thought he was addressing the noble Lord, Lord Wallace of Saltaire, but he will recall that there was another "Lord Wallace" in the Government before the election, and that he was in favour of this House moving to reflect the votes at the last general election—at which the Liberal Democrats got some 8%. Obviously, the fact that my noble friend thinks that the noble Lord, Lord Wallace, has moved is simply because it is a quite different Lord Wallace.

The only other issue is a serious one, touched on by the noble Lord, Lord Kerr, about the one bit of electoral reform that I hope will be considered very considerably: the votes of 16 and 17 year-olds. It seems the Government will play games over whether it is a financial measure, but if this House cannot, along with 16 and 17 year-olds who put their opinions forward, take a view on that, then I want—

Lord Forsyth of Drumlean: Surely the noble Baroness would accept that this matter was decided by the clerk in the other place and not by the Government.

Baroness Hayter of Kentish Town: Indeed, but I understand that the Government were very happy to overturn the votes of this House, which decided that 16 and 17 year-olds should be able to vote in the referendum. There are bits of the electoral system that are worth looking at, if only because the Government seem unable to hear either the will of this House or the views of 16 and 17 year-olds.

The Parliamentary Secretary, Cabinet Office (Lord Bridges of Headley) (Con): My Lords, I will make just a few, short points. First, I again congratulate the noble Lord, Lord Purvis, on this Bill. I always find it interesting to discuss these points. I am grateful to the noble Lord, Lord Steel, for being here and heed what he and the noble Lord, Lord Kerr, said. I will not repeat all the points I made at Second Reading. All I will say, briefly, is that this very short interchange shows that we will probably need a convention about the convention because it is so clear that we cannot quite agree on any of the terms. My noble friend Lord Forsyth called it ambitious. I think that is mandarin-speak for "virtually impossible to agree" on all these points. He said he was looking for the kitchen sink. We have the kitchen sink and, in the next debate, I think we are about to discuss the wiring and plumbing.

Lord Purvis of Tweed (LD): It is probably fair that I respond to some elements of this debate, and in so doing I thank, first, the noble Baroness, Lady Hayter of Kentish Town. It is a pleasure to follow her and I also thank her for the throat pastilles that she gave me. It was a relief to see that this could be a relatively short Committee stage, so my voice can survive it. However,

[Lord Purvis of Tweed]
I can rely on the noble Lords, Lord Grocott and Lord Forsyth, to make sure that it is fully debated, in this "Second Reading in absence" debate that we have just had, in many respects.

I turn to the specifics raised by the noble Lord, Lord Grocott, before turning to some of the wider aspects that the noble Lords, Lord Kerr and Lord Forsyth, raised. It is a fair observation to say that the Bill states the need for reform of the electoral system. The noble Lord, Lord Grocott, is always very welcome to attend the all-party group, which considered the intention behind this. He might attend it as a radical, as the noble Lord, Lord Forsyth, said. There will be political theorists studying *Hansard*, so if the noble Lord, Lord Forsyth, is describing the noble Lord, Lord Grocott, as a radical, I need to go back to my political study books. The all-party group considered the number of systems that we have, including the changes brought forward in the Scotland Bill, whereby the Scottish Parliament will be responsible for its own franchise and mandate—and, in addition, how they all interact.

The fundamental feeling was that it was right that a convention should consider the interaction of all the electoral systems from the point of view of the voter and not from that of the institutions. In many respects, some of the debates on the role of Parliament and the institutions have been from the perspectives of the institutions themselves and not from that of voters. I see that the noble Lord, Lord Grocott, is itching to intervene, and I shall give way in just one moment. It is about that interaction, and how they operate; it is about how voters in my former area, for example, see two Parliaments, one elected on a proportional basis in Scotland and one here, where, as my noble friend Lord Wallace said, the Government were elected on 37% of the vote. The noble Lord asked me whether I referred to the electoral system of the United Kingdom Parliament, but that can only be a partial system, unless he is referring to the by-elections of hereditary Peers in this House.

Lord Grocott: Surely nothing in the noble Lord's proposal is from the perspective of the voter rather than the institution. There is surely no more effective way in which to discover the perspective of the voter than to hold a referendum whereby the voter gives the clearest possible response.

Lord Purvis of Tweed: Clause 4 indicates strongly that the composition of the convention is to be citizen-led. If the thrust of the proposals is to consider how the systems that we operate interact, including the systems of this Parliament—and, if we are moving towards reviewing the functions of this House, how it is subsequently elected—it is legitimate that it is part of a constitutional convention that is citizen-led.

I widen this now to the overall aspect. The noble Lord Forsyth, asked if I had reflected on the Second Reading. I had reflected, first, about those who said that the remit was far too broad and therefore that it was impossible for it to be successful and those who said that it was far too specific and did not even address first principles. I reflected, and I think the broad areas of the terms of reference meet most of the areas where the debates that we have had over the last month have drawn real focus on the need for consideration of how all these reforms are being held together. So yes, for devolution and for legislative and fiscal competence, there is the Scotland Bill, although it needs to make its passage. There is the Wales Bill and there are changes within England—and then, of course, there are the legislative changes to taxation for Northern Ireland. None of the thinking behind this proposal would set any of that back. The whole fundamental reason that the convention is necessary is there is no thread holding everything together. That has been a consistent element of all the debates on the Scotland Bill, for devolution in England, for the Northern Ireland taxation Bill, which this House considered, and with the forthcoming Wales Bill. The fact that there have been considerable delays to the presentation of the Wales Bill shows that there is not that coherence across the whole of the piece.

When it comes to the devolution of legislative fiscal competence in England, it is the same point. Part of the difficulty has been looking at the fundamental principles of the areas to be reserved, what is the right tax balance et cetera. This is again rehearsing the Second Reading debate, but it is necessary—

12.30 pm

Lord Forsyth of Drumlean: On the point about the scope of Clause 2, will the noble Lord tell the House how many hours and how many meetings he anticipates would be required to cover this ground within a year?

Lord Purvis of Tweed: I cannot set that. Legislation cannot set that. Legislation can set what is a reasonable time for these areas to be considered, the political imperative about why they should be considered within 12 months and that the Government should report on them. Fundamentally, we should be going into the next UK general election with more consensus about the constitutional future of our union rather than with it fractured into a piecemeal approach. My noble friend Lord Steel called it a guddle; we will be having five years of guddle. A convention can consider these aspects within 12 months, and it is reasonable that a Government should have a timeframe in which to respond.

Lord Skelmersdale (Con): Before the noble Lord moves on to his next point—I am sure he has many more—does he agree that this convention, this conference, or whatever it is, can talk until the cows come home about one aspect of what we have in Clause 2, namely, the electoral regime for the European Parliament? Surely that is fixed by the European Parliament.

Lord Purvis of Tweed: We can follow two models. It can be very short, like the Smith commission, which perhaps on reflection has been too short and has not considered the wider view of the people, or it can be like the Airports Commission. I would not use the Airports Commission as the model for the constitutional convention. We can do better, and I hope the Government agree on that point.

The noble Lord, Lord Forsyth, tabled an amendment to the Scotland Bill for a convention to review the Bill, but it was late in the day, so he did not move it. I am pleased to see that the wind is back in his sails today at an earlier hour. If we are to have a convention, and it is to be citizen-led, it is not in any way an impertinence, as the noble Lord, Lord Forsyth, said, for the people of this country to consider what this second House does in Parliament. It is not an impertinence to involve the people of our country in considering a revising Chamber's role and how its functions should be set.

Lord Forsyth of Drumlean: I did not plan to interrupt again, but as the noble Lord referred to me, what I said would be an impertinence was for an outside body to tell us how our rules and procedures should operate. The noble Lord, Lord Kerr, made the correct point. The constitutional convention should look at the high level—at the role and function of the House. Procedures are a matter for this House.

Lord Purvis of Tweed: There is nothing in Clause 2 that would prevent that. On that point of broad consensus—

Lord Kerr of Kinlochard: The trouble with overspecifying, as Clause 2 does, is that you require people, before they report, to have considered everything. The first report should be about principles. Perhaps that would be the only report and the convention would never meet again, or perhaps it would, but when it comes to things such as the House of Lords, it should be considering them on the basis of principles that have by that stage, one hopes, been debated across the country, in this place and the other place, and have achieved a degree of consensus. Then it would consider the role of the House of Lords in the union, how can it best discharge that role, and how can it best be composed to do so. If you put on your original shopping list that, before the convention tells us anything it must make sure that it includes proposals to reform the House of Lords, you are making a terrible mistake. You would do much better to stick to the high ground of principle.

Lord Purvis of Tweed: As a Liberal Democrat, I never want to move away from the high ground of principle. The noble Lord seeks to bring me down to lower land.

Fundamentally, I do not believe we are that far apart. Of course a convention will have to start with consideration of what the principles of this union are. I rehearsed that argument at Second Reading and I need not do so again. Equally, though, I know the Government are taking forward a programme of reform, much of it based on cross-party consensus, with legislation and proposals, and I would not wish to set those apart. As I said, the fundamental difficulty is over how all those are being held together under the principles that the noble Lord indicated. I believe that setting a framework of specific areas that the convention should cover, within the overall aim of trying to secure a holistic view of what the union is for, is captured within Clause 2.

Clause 2 agreed.

Amendment 1

Moved by ***Lord Hughes of Woodside***

1: After Clause 2, insert the following new Clause—

"Draft written constitution

The convention shall produce a draft written constitution on the powers and functions of the House of Commons and the House of Lords."

Lord Hughes of Woodside (Lab): My Lords, if ever I had any doubts about the need for a written constitution, the very short debates that we have had on Clauses 2 and 3 stand part have proved the need for it. We have heard in miniature today a repeat of the hundreds of hours and millions of words spent on reform of the House of Lords. The idea that there can be some form of citizen-led consensus is, frankly, nonsense. We are faced with a constant clamour for this Chamber to be an elected House. I have no objection to that in principle—in fact there is much to be said for it—but what has not been discussed by any method is the relationship between the two Houses once we have an elected House. You cannot have two elected Houses without their powers being specifically defined.

As an example of how things seem to have changed, we recently had a little kerfuffle—a stooshie, as I like to call it—over tax credits. This House decided to reject the statutory instrument, and the Government immediately had a knee-jerk reaction and set the noble Lord, Lord Strathclyde, to look at how things should be changed. The fact that the Chancellor of the Exchequer accepted in their entirety the views of this House on tax credits validates the right of this House to reject the statutory instrument. Perhaps the best thing we could do is to say that the noble Lord, Lord Strathclyde, should be stood down.

Much has been said. Constitutions; elections; the number of possible ways of voting, such as first past the post and proportional representation; the possibility that this House might be indirectly elected according to the proportion of the votes cast at the general election—all these have been discussed, and again there has been no consensus. I think that the clamour for election means that it is now inevitable, but one has to realise that the moment when the first elected Member enters this House, the whole dynamic will change. Perhaps it will change even before there is an elected House, because this House will then have the legitimacy to challenge fiercely the House of Commons, in a way that it has never challenged before. The only way to ensure that the supremacy of the House of Commons is maintained is by a written constitution.

Given the earlier debate about the difficulties caused by the number of tasks that this convention has to do, I hesitate to add yet another; nevertheless, I think it is essential. This set of affairs is very interesting but I believe very strongly in a written constitution. Of course, there is no guarantee that it would solve all the difficulties between the two Houses, especially two elected Houses. Implicit in my proposed new clause is the suggestion that, if there is to be a written constitution, there has to be a mechanism for change, and that takes us to interesting places and possibilities.

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It is interesting, for example, to look at the United States constitution, which dates from March 1789. Since then, 37 amendments have been proposed, 27 of which have been ratified. Interestingly, the 27th was first proposed in 1789 but was never actually ratified until May 1992 —200 years later—so I suppose that one could argue that written constitutions are no short-term issue.

Of course, written constitutions can be overturned and manipulated. The most notorious example of manipulation of a constitution was what happened in the old South African Parliament before the end of apartheid. Written into the South African constitution were what we call entrenched clauses, which could be changed only by a two-thirds majority of both Houses of Parliament sitting together. The Government of the day wanted to remove the right of Cape Coloureds to be on the common voters' rolls in Cape Province. They argued that they had a mandate for change and therefore they tried to amend the constitution by a simple majority in each House.

The courts in South Africa—which, by the way, have been seen as a bastion of freedom—ruled that that was not possible, so the Government came up with the wheeze that they would declare that the elected House of Parliament would become a high court of Parliament and would then rewrite the constitution. Not surprisingly, that, too, was rejected. The South African Government then simply increased the size of the Senate, increasing the numbers that could be nominated to it, thereby getting the two-thirds majority that they desired. As a matter of insurance, they increased the size of the Appellate Division of the legal system with their own placement to make sure that the law did not interfere again with what they were doing. In fact, they did not need to do that because the courts accepted that that was possible.

A written constitution is certainly necessary. If you think that the clamour—I call it a citizen-led clamour—for change is bad now, can you imagine what will happen when the second Chamber is elected? There will be incessant demands for change, should there be a clash, so a written constitution is an absolute necessity. I suspect that we are going to get constitutional change sooner rather than later, and when that time comes it is essential that the new, elected House of Lords, for want of a better phrase, and the elected House of Commons do not spend their early days squabbling about constitutional matters—about who has the right to do this and who has the right to do that.

There are far too many cynics around today who denigrate not just our parliamentary and political systems but the whole idea that politics has anything to offer. Nothing would give them more joy than to see a new system involved in arguments about who had the right to do this, that or the other. Although I do not like a written constitution—I gather that the noble Lord, Lord Kerr, has the same view—I am absolutely convinced that it is necessary for the good of the country and the future. I beg to move.

12.45 pm

Lord Kerr of Kinlochard: Americans are always very surprised that we get by without a written constitution. That we could create a Supreme Court and lose the Law Lords from this House without any sort of supermajority or national consultation, merely by votes of these two Houses, baffled them. I have always been against a written constitution and feel that the arguments against it grow with devolution.

The difficulty posed by a written constitution, once you have got one, is that of amending it when new circumstances arise. If we had a written constitution in this country now, with devolution where it now is, we would be like the United States in 1787: we would be obliged to make sure that there was at least a majority of the constituent parts of the kingdom in favour of the change. If the majority was a simple majority, with three to one in favour, we would have a recipe for difficulty in the future. If it was four to zero, we would have a recipe for deadlock in the future. Although I have been inveighing against the Government for being a little over-flexible in their approach to constitutional change, flexibility is a good thing and I am therefore against the amendment.

I served the convention in an official capacity and three Members of this House were genuine members of that convention. They would all have believed that the noble Lord, Lord Purvis, is correct and that we should have a convention on this, so having me working for them did not turn them absolutely off the idea of a convention. The worst mistake we made—I can say that I argued against it—was what we called our product, which was a draft treaty between individual nation states and began with listing the signatories to the treaty, such as the King of the Belgians and so on. On the title page, we wrote that it was a "Draft Treaty establishing a constitution for Europe". That was a great mistake, because it was not; it was a treaty. The idea of a written constitution for Europe was offensive to quite a few people. It was a terrible mistake. Flexibility is, on the whole, a good thing—though it can be carried too far, as recent events in this country have shown. Therefore, I speak against this amendment.

Baroness Hayter of Kentish Town: My Lords, I am not absolutely certain that the Labour Party has a position on this. However, as it has never called for a written constitution, I am going to take it that the Labour Party is against a written constitution—or at least, I am. As I said at Second Reading, I had a lovely cartoon from the *New Yorker* showing bewigged, 18th-century gents writing the American constitution and then putting at the end, "And no one will ever alter this".

I do not support my noble friend on this amendment. However, had he used the word "concordat"—something to get the relationship between the two Houses agreed, which in some sense goes to what the noble Lord, Lord Forsyth, said earlier about function; that we should agree what the role of the two Houses are—I would have thought that this was a brilliant amendment. The idea of us having that serious conversation is one that I absolutely support. There are really big questions about that. It is not just about whether we get to vote on statutory instruments. It is about the relative roles in that and how often it is used. Particularly when we think of our size, if we become smaller and still have no retirement age, we will have an increasingly older and smaller group of people doing that diligent work

on statutory instruments. Those are important discussions. I like one part of the amendment, which is to give some serious thought as to the function of both Houses. But please, while we may not be bewigged we should not be setting in stone the way in which we work in the short term.

Lord Bridges of Headley: My Lords, I do not think it will surprise noble Lords to hear, at 12.50 pm on a grey Friday, that the Government do not support a written constitution. I agree much more with the noble Lord, Lord Kerr. He spoke very eloquently about the need for flexibility. Of course, as noble Lords will know, this country did once try a written constitution—in 1653, if memory serves me right. It lasted for about four years with the Instrument of Government. It was not a particularly happy time in our nation's history and we have survived quite well without one for getting on for 400 years. As the noble Lord, Lord Kerr, says, we have flexibility borne out of various parts of our legislative past—the Magna Carta, the Bill of Rights, the Act of Settlement and the Great Reform Act. Parliament has been adding to that canon, and advancing and evolving the constitution for centuries. That is a fundamental part of our polity.

On the specific clause, as my noble friend Lord Forsyth made clear, this is adding even more to the work of the superhuman convention, manned by the world's constitutional experts, who will be working frantically to get it all done. I would just point out that were this Bill to be passed, there is no detail on the scope or content of the written constitution. As this short debate has highlighted, we are not entirely clear what would be included and what would not—maybe the entire process of the convention itself. Furthermore, it is not entirely clear that the Secretary of State would be able to make any further provision or provide any guidance on this constitution when it was presented, which was a point made so eloquently by my noble friend earlier. The convention would have superhuman powers not only in the sense of its ability to come up with solutions, but in the effect that it would have. Therefore, I fear that the amendment would not enhance the Bill but make it even less feasible.

Lord Wallace of Saltaire: My Lords, I would just reflect on how solid is our base and how flexible is our constitution. From what I have been reading and hearing about the Magna Carta this year, I understand that two clauses of it are still in force and 75 are no longer in force. If one reads the Bill of Rights carefully, there is a very substantial anti-Catholic element, some of which is actually still in force, but has been weakened. The things that we refer back to as the foundations of our constitution are in many ways deeply inappropriate and we get by by ignoring them.

Lord Bridges of Headley: I heed what the noble Lord so rightly draws out. My point would be that these are the foundation stones on parts of which we have been building over the centuries.

Lord Purvis of Tweed: My Lords, I enjoy the interactions with the Minister on this aspect, although we do not see eye to eye. I think he was referring to the previous constitutional history of England when he said "this country". It is worth mentioning that. We often have to reflect on the previous errors of England in the constitutional history of these nations—plural.

I understood the amendment to require, as the noble Baroness, Lady Hayter, indicated, a more codified relationship between the House of Commons and House of Lords, and that it was not a consideration of a wider British written constitution. But I respect the extensive experience of the noble Lord in the other place and in this House, and share many of his views about the need for a more codified relationship in respect of our governance. It is interesting that those who now seem to set their faces against that—primarily the Government—are happy to institute processes that do not necessarily have any end or focus at all.

One example was the debate we had on incremental and gradual change of the House of Lords. Any objective observer of that process would feel that what the Minister said was a criticism of my Bill, but it could be applied exactly, in fact more so, to the process of reform that his own party is putting forward. That is amplified by the fact that the noble Lord, Lord Strathclyde, has proposed that external people should interfere in the procedures of this House, a point made by the noble Lord, Lord Forsyth. It is probably more appropriate for the Government to adopt a slightly different tone, because there is now justification for moving towards a more codified system of relationships between the nations and our governance.

I shall go back to the point made by the noble Lord, Lord Kerr. Incidentally, if the Minister thinks that a superhuman expert is required for the running of such a convention, the more the noble Lord, Lord Kerr, contributes to that debate, the better. Much as he may indicate that he is ruling that out, I cannot think of anyone more qualified or who could give me greater assurance in running this constitutional convention. He pointed out some of the difficulties we have been having without a more codified system that also ultimately seeks a degree of flexibility.

Turning to the amendment, if the conclusion of the convention's deliberations was that our relationship with the legislation we consider needs to be dealt with through a written constitution, that would be one of the benefits of such a convention and a justifiable part of it. I take on board the points made by the noble Lord, Lord Hughes, but I ask him to withdraw his amendment on the basis that the convention should be empowered to consider this issue itself.

Lord Hughes of Woodside: My Lords, I am grateful to all noble Lords who have taken part in the debate. As is often the case in such debates, rather than introduce clarity, I seem only to have introduced more confusion. It is clear that I have not been able to persuade the Committee of the magnitude of the change that will happen if we have two elected Chambers. It is a recipe for clashes all the time, so in my view it is essential that that is taken on board. I appreciate the difficulties of time, but the noble Lord said that it would be a mechanism for changing the written constitution. I said in my opening remarks that there would have to be mechanisms for doing that. If there is no mechanism such as a written constitution, how

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would we adjudicate between two elected Houses? I suppose that there is only one other possibility. Each time there was a failure to agree, it would have to go to judicial review. However, it would be somewhat ironic to abolish a predominantly nominated, unelected House of Lords of whatever number, only to be governed by a small number of unelected, appointed judges. That needs to be considered more deeply than it has been in the past. I also take on board what the noble Lord, Lord Purvis of Tweed, has said. I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Clauses 3 to 7 agreed.

House resumed. Bill reported without amendment.

House adjourned at 12.59 pm.

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