Vol. 773
No. 16

Monday
27 June 2016

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

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The first time a Member speaks to a new piece of parliamentary business, the following abbreviations are used to show their party affiliation:

Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

No party affiliation is given for Members serving the House in a formal capacity, the Lords spiritual, Members on leave of absence or Members who are otherwise disqualified from sitting in the House.

House of Lords

Monday 27 June 2016

2.30 pm

Prayers—read by the Lord Bishop of Chelmsford.

Death of a Former Member: Lord Mayhew of Twysden

Announcement

2.38 pm

The Lord Speaker (Baroness D'Souza): My Lords, I regret to inform the House of the death of the noble and learned Lord, Lord Mayhew of Twysden, on 25 June. On behalf of the House, I extend our condolences to the noble and learned Lord's family and friends.

Universities: Anti-Semitism

Question

2.39 pm

Asked by ***Lord Leigh of Hurley***

To ask Her Majesty's Government what steps they are taking to counter anti-Semitism on university campuses in the United Kingdom.

Lord Leigh of Hurley (Con): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and, in doing so, draw your Lordships' attention to my interests in the register.

Baroness Evans of Bowes Park (Con): There is no place in our society for bigotry, hatred or any form of racism, such as anti-Semitism. Higher education institutions are committed to challenging intolerance on campus. They have a clear responsibility under the Equality Act 2010 to provide a safe and inclusive environment. Universities UK has established a task force to consider further measures to address harassment on campus, and it will report in the autumn.

Lord Leigh of Hurley: I thank my noble friend for her helpful Answer. Will her department consider the basis of the definition of anti-Semitism to be that proposed by Sir Eric Pickles and subsequently adopted by the UK College of Policing and the International Holocaust Remembrance Alliance? It specifies that anti-Semitism manifests itself when double standards are applied to the state of Israel, requiring of it behaviour that is not expected or demanded of other democratic nations. Will the Minister assure us that it cannot be right that British Jewish students in universities should be intimidated by overaggressive anti-Israel activity on their campuses?

Baroness Evans of Bowes Park: My noble friend is right: the definition Eric Pickles used was the EUMC working definition, which provides a valuable description of some of the ways contemporary anti-Semitism is manifested. He is also right that it has been included in operational guidance for the police since 2014. Universities may well want to consider it. One of the issues that the Universities UK task force, which I mentioned in my previous Answer, is looking at is how better training can be undertaken for university staff to help them understand the many different forms that anti-Semitism can take.

Lord Anderson of Swansea (Lab): My Lords, the president of the National Union of Students sets a deplorable example. Is the Minister aware that in the past few days a Jewish law student at the University of York has obtained £1,000 and an apology from the student union? Is it not wrong that an individual student had to take up this case himself? Although I do not know the position in the University of York, does she agree that it is often the weakness of vice-chancellors, who refuse to promote the ideas of toleration and of universities as places of understanding, that is at the root of this problem?

Baroness Evans of Bowes Park: I thank the noble Lord for that question. I am pleased, excepting what Zachary had to go through, that he got an apology and compensation, but I entirely agree that it is unacceptable for students to have to face this. Incidents of anti-Semitism must be taken seriously and investigated swiftly. Many universities do that, but the new Universities UK task force, which I mentioned, is looking at what more can be done. It is considering a number of specific actions in relation to anti-Semitism: an improved need for data collection to ensure that incidents are recorded effectively; the importance of a complaints procedure that protects the identity of students who are fearful of coming forward; and, as mentioned, the need for better training to make sure that university staff understand the different forms that anti-Semitism can take because it is not acceptable on university campuses.

Lord Singh of Wimbledon (CB): My Lords, while sympathising with members of the Jewish community who have been ill-treated, does the Minister agree that they are not alone in frequently being subjected to abuse and discriminatory behaviour in universities and elsewhere? It is the duty of the Government to ensure that all communities are equally protected against irrational hatred and abuse, particularly in today's unpredictable and difficult times.

Baroness Evans of Bowes Park: I agree with the noble Lord. Indeed, the Universities UK task force is looking at harassment on campus and, in particular, at what more can be done by the HE sector to prevent and respond to incidents of violence and sexual harassment against women, hate crimes generally and other forms of harassment, including anti-Semitism and Islamophobia. This task force is looking at a broad array of issues to ensure that the HE sector ensures that students can live and learn safely in a spirit of tolerance and understanding.

The Lord Bishop of Chelmsford: My Lords, in my diocese, a pro-Palestinian student body forced the University of Essex in 2013 to cancel a speech from the Israeli deputy ambassador over concerns about his safety. While, of course, fully supporting what the Government are doing in this area, how can freedom

[The Lord Bishop of Chelmsford]
of speech and extremism be more clearly distinguished so that we can take appropriate action against racism and anti-Semitism of all forms but also maintain academic free speech?

Baroness Evans of Bowes Park: I completely agree that freedom of speech and academic freedom are the bedrock of our higher education system. We fully support universities that show strong leadership in allowing controversial and sometimes offensive ideas to be aired, but most importantly debated, to make sure that universities are doing what they should be doing, which is robustly challenging theories and making sure that students can argue and talk down hatred that is being perpetuated.

Baroness Garden of Frognal (LD): My Lords, the life-changing referendum result indicates a nation which is less tolerant and less accepting of diversity. What dialogue is the Minister having with universities to ensure that a proper complaints procedure is in place so that anyone suffering from anti-Semitism knows exactly where they can go?

Baroness Evans of Bowes Park: As I said in a previous answer, the Minister for Universities and Science has specifically asked the Universities UK task force to consider some specific actions. One is improved collection of data about incidents, so we can make sure we understand the scale of the problem, and another concerns the importance of a complaints procedure that protects the identity of students who are fearful of coming forward. The task force is planning to provide a range of recommendations and actions to Ministers in the autumn. Universities UK is planning a national conference post-the publication of those recommendations, in November, so that there can be a full discussion of the issues that it has found in the evidence it is collecting.

Lord Woolf (CB): My Lords, I disclose an interest as patron of the Woolf Institute, which is devoted to improving interfaith relations, primarily between the Abrahamic faiths. I note the very clear answers that the Minister has given, for which I thank her, and note what is implicit in the questions asked by other noble Lords. But I would like to know whether she agrees that, although Universities UK plays a very important role, it is also very important that the Government should show, in a material way, that they support what others are trying to do?

Baroness Evans of Bowes Park: I hope very much that my answers today show that the Government are taking this seriously. We asked Universities UK to set up this task force and will be listening very carefully to its recommendations. We want to see a tolerant environment where students can learn. We take the seriousness of this issue fully on board, and I hope I have shown today that the Government are indeed making it a priority.

Terrorism: Terminology

Question

2.47 pm

Asked by ***Lord Singh of Wimbledon***

To ask Her Majesty's Government what assessment they have made of whether action to combat the threat of terrorism could be helped by a clearer use of language, for example by explaining the actual meaning of words such as "extremism", "radicalisation" and "fundamentalism".

The Parliamentary Under-Secretary of State, Department for Transport and Home Office (Lord Ahmad of Wimbledon) (Con): My Lords, since 2011, we have introduced the Prevent duty and trained more than 450,000 people, including front-line workers, to spot the signs of radicalisation. We also published the counterextremism strategy last year, which explains how we are working with communities to build an understanding of the threat of extremism and the challenges that it poses.

Lord Singh of Wimbledon (CB): I thank the Minister for the reply explaining the Government's position. However, for years we have had a Prevent programme, as he mentioned, without clearly defining what we are trying to prevent. Words such as "radical", "deradicalise", "fundamentalist" and "extremist" are totally devoid of meaning, while the terms "political Islam" and "Islamist" are considered by many Muslims to be derogatory to Islam. Does the Minister agree that what we are really trying to prevent is the out-of-context use of religious texts that advocate the killing or ill-treatment of people of other faiths? Furthermore, does the Minister agree that to suggest that such behaviour is sanctioned by the one God of us all is the ultimate blasphemy? Finally, will the Government help Muslim leaders to present Islam in the context of today's society?

Lord Ahmad of Wimbledon: Picking up on a couple of the noble Lord's points, I am sure that I speak for everyone across the House when I totally agree that no true religion in any sense sanctions the kind of extremist, and indeed terrorist, activity that we see, and Islam is no exception. Indeed, we have seen Muslim leaders of every denomination condemn unequivocally such heinous actions. In his final point, the noble Lord talked about the understanding of Islam. It is very much for the Muslim community and the leaders within it to have a discourse about Islam. Islam is a religion that is practised not just in this country but by almost 1 billion people around the world, and is practised peacefully.

Lord Paddick (LD): My Lords, the Government maintain that the programme to prevent people being drawn into violent extremism is focused not on the Muslim community but on all types of extremism, wherever it occurs. If that is the case, can the Minister tell the House why the Prevent programme is not implemented in Northern Ireland and why, as part of the programme, the Government are conducting a survey among the Muslim community only?

Lord Ahmad of Wimbledon: Taking the noble Lord's second point, the Government are not conducting a survey with the Muslim communities only. That has been the media speculation, but it is not the case. On his first point about Northern Ireland, he mentioned Prevent, but other initiatives have been taken in Northern Ireland that deal with the quite unique circumstances on the ground there.

Lord Rosser (Lab): The Independent Reviewer of Terrorism Legislation, David Anderson QC, has previously said that elements of the Government's Prevent programme are,

"ineffective or being applied in an insensitive or discriminatory manner",

and that the programme could benefit from an independent review. The programme's intention is to address all forms of terrorism and non-violent extremism. However, the climate of the last few weeks has done nothing to ease the situation that Prevent is intended to address, and unfortunately there is all-too-clear evidence that that climate is continuing in the wake of the referendum result. Do the Government now intend to carry out a full review of the Prevent strategy in the light of David Anderson's comments?

Lord Ahmad of Wimbledon: This Government have focused, as previous Governments have, on the importance of Prevent, which has seen much success. As I said, 450,000 people have been trained. More importantly, what has it delivered? There have been more than 50,000 interventions, and 180,000 pieces of terrorism material have been removed from the internet. Of course, every strategy and policy needs to be reviewed, and the Government continue to do so. I share the noble Lord's sentiments. In any environment, particularly the one in which we currently operate, no extremist and no person who seeks to use an opportunity should build on the fears of communities and society or target any community in Britain.

Lord Tebbit (Con): My Lords, nobody in this House is better equipped than the noble Lord to get people to understand that the present version of the Muslim religion arises largely from a dispute within that religion and that it is a gross perversion of the Muslim religion practised in the 13th and 14th centuries, for example. We should all remember that, just as we should all remember that there are very few places where one can feel safer in the face of extremism in this country than in the company of a large number of Sikhs, who have always shown by their great loyalty and understanding of this society that they have their place here.

Lord Ahmad of Wimbledon: There are many advocates across all faiths who stand up for faith, and indeed for no faith, and they do so for other faiths as well. That is the beauty of our country. I am proud of Britain. I believe that this country is the best place to be a Muslim, a Hindu, a Sikh, a Jew or a person of no faith. That is because it is based not just on tolerance but on understanding and building mutual respect, and long may that last.

Lord Pearson of Rannoch (UKIP): My Lords—

Baroness Butler-Sloss (CB): My Lords—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): Did the noble and learned Baroness give way to the noble Lord? The House was calling for the noble and learned Baroness, but if she has given way she has given way.

Baroness Butler-Sloss: I thank the noble Baroness. I had not given way; I just thought it was polite to sit down. I am the chairman of the Commission on Religion and Belief in British Public Life. Across the country we have discovered the importance of talking to people with whom we do not agree. Will the Minister make sure that the Government talk to groups of whom they do not approve and who have very different views? Communication and dialogue are crucial in these matters.

Lord Ahmad of Wimbledon: I assure the noble and learned Baroness that I am often in conversation with people with whom I disagree. Going back to my earlier answer, I think that our society is based on mutual respect. That is born out of the fact that people may have contrary opinions but we sit down with them, listen to those opinions and find a solution. The Government have been instrumental in building and strengthening partnerships with all faith communities, including the Muslim community of all denominations, to meet the challenge that we currently face.

Air Quality

Question

2.55 pm

Asked by ***Lord Dubs***

To ask Her Majesty's Government what action they propose to take to improve air quality in Britain.

The Earl of Courtown (Con): My Lords, cleaner air is a priority for this Government, and we are taking action at all levels. We are working with local government to implement a new programme of clean air zones, alongside £2 billion committed since 2011 towards cleaner transport and supporting local authority action. We have led EU action to introduce real-world driving emissions testing from 2017, and are working to agree ambitious and fair limits to reduce emissions further in future.

Lord Dubs (Lab): My Lords, the Minister will be aware that some 50,000 people a year die because of diseases connected with air pollution. Does he agree that diesel engines bear particular responsibility for these deaths? Is it not time that we stopped subsidising indirectly the use of diesel cars and had some penal taxation to discourage such vehicles? Given that we are still members of the EU, could we not approach Brussels—the Commission and the Council of Ministers—to ask for some tougher measures to deal with air pollution on a Europe-wide basis?

The Earl of Courtown: My Lords, the noble Lord is quite right that the effects of pollution on the health of our children and families is something that we must

[The Earl of Courtown]
concentrate on. As I said in my opening Answer, we are working with local government to implement a new programme of clean air zones in Birmingham, Leeds, Southampton, Nottingham and Derby.

The noble Lord, Lord Dubs, mentioned diesel vehicles. As he will no doubt be aware, under the clean air zones we are going to be discouraging older vehicles from entering those areas. He also mentioned bringing to the attention of Brussels the issue of the relationship between diesel and pollution. I am sure that they are aware of this matter but we will take that back.

Baroness McIntosh of Pickering (Con): My Lords, does my noble friend agree that the UK Government were willing signatories to the EU air pollution directive and that we will remain committed to its aims and objectives? In addressing issues such as acid rain and air quality, European environmental policy has had a great impact in creating a cleaner environment in the UK.

The Earl of Courtown: My noble friend is quite correct, but she will also be aware that the environment that we have in this great country of ours goes back many years before we joined the EU as well. In fact, the Clean Air Act was introduced in 1956.

Baroness Walmsley (LD): My Lords, will the Minister ensure that the future so-called European deal will contain air quality regulations that are at least as good, if not better than, those that we currently have under the EU regulations? We cannot rely on the World Health Organization standards because they are not enforceable. Is he aware that diesel fumes are carcinogenic and that, under the regime of the last Mayor of London, London schoolchildren have been walking to school along main roads through carcinogenic air? Will he join me in calling upon the new mayor to do a great deal better?

The Earl of Courtown: My Lords, the noble Baroness mentioned the new Mayor of London. No doubt the House is aware that the mayor is responsible for air quality in London. We welcome the commitment of the new mayor to lead the improvement of air quality in the capital, building on plans already in place, but we also look forward to seeing his plans in more detail when publishing his consultation. The noble Baroness is quite right when she refers to, for example, children walking to school. It is right that we improve the environment so that they are not put under undue pressure from pollutants.

Baroness Finlay of Llandaff (CB): In 2008 I had the privilege of chairing a Select Committee on allergy. We reported that atmospheric pollution, particularly by diesel particulates, was increasing allergy-related diseases but also hindering the lung growth of small children, particularly babies and primary school children. It seems sad that we have begun to take that seriously only at this point. Will the Government undertake to work with primary schools in particular so that those schools know the level of atmospheric pollution that their children are subjected to on a daily basis, particularly when they are outside, and therefore at least can take some evasive action while the Government work to decrease the diesel particulate contamination of our air?

The Earl of Courtown: My Lords, as the noble Baroness will be aware, local authorities are responsible for reviewing air quality in their area, including around schools, and assessing the levels of air pollutant concentrates against the objectives set in the air quality regulations. I will take careful note of what she said and I am sure that the department will be aware of it, but I should tell the House that air quality is improving. Between 2010 and 2014, emissions of nitrogen oxides fell by 17%.

Lord Forsyth of Drumlean (Con): Will my noble friend confirm that the EU regulations placed an emphasis on CO_2 emissions, as opposed to nitrous oxide emissions, following lobbying by the German car industry in favour of the turbodiesel engines which it had invented, and that this is an example of how Brussels is subject to lobbying which is against the public interest of the wider community?

The Earl of Courtown: My Lords, my noble friend touches on an area also relating to Volkswagen and refit and recall of cars. In the United Kingdom, Volkswagen will be recalling cars and doing a refit at no cost. My noble friend mentioned a number of other points, but I shall have to write to him with further information.

Baroness Jones of Whitchurch (Lab): My Lords, first, will the Minister join me in congratulating the new Mayor of London, because he has brought forward the previous mayor's proposals on clean air? Secondly, the noble Lord will know that the World Health Organization has said that more than 40 towns and cities in the UK have air quality pollution which is unsafe for health. Can he explain why his Government are introducing clean air zones in only five cities? Is not this a further indication of their failure to take the public health scandal seriously?

The Earl of Courtown: My Lords, the noble Baroness first asked whether I will congratulate the new Mayor of London and of course I will. She also mentioned the five cities already coming under the clean air zone provisions. That does not mean that other cities cannot apply to have clean air zones themselves, and I am sure that we would be able to advise on such, but the point is that we want to start with those five large cities and see what improvement can happen there.

Humanitarian Emergencies: Women's Rights Organisations

Question

3.02 pm

Asked by ***Baroness Hodgson of Abinger***

To ask Her Majesty's Government what steps they are taking to fund women's rights organisations during humanitarian emergencies.

The Parliamentary Under-Secretary of State, Department for International Development (Baroness Verma) (Con): My Lords, we recognise the critical role that women's rights organisations play in achieving lasting transformation in the rights of women and girls. This is precisely why I announced a $1 million fund for the UN-led global acceleration instrument. My noble friend will also be aware that, since 2012, we have increased our humanitarian violence against women and girls programme sixfold, and we are proud to be contributing to the UN trust fund and to Amplify Change. I also pay tribute to my noble friend's work in these matters.

Baroness Hodgson of Abinger (Con): I thank my noble friend for her Answer. I also congratulate the Government on their commitment at the World Humanitarian Summit in Istanbul to give support to women and girls during emergencies. Can she tell me whether the Government will be establishing a funding mechanism for women's rights organisations during humanitarian emergencies, especially conflicts, to ensure that funding gets to those organisations at the grass roots—and, specifically, whether UK funding is getting through to women's rights organisations in Syria, which are desperately trying to look after families and provide support and services to their local communities?

Baroness Verma: My Lords, my noble friend is absolutely right that we need to ensure that women's rights organisations on the ground are properly funded and supported. Therefore, I am proud of the work that the UK is doing. We are trying to encourage our partners and other donors to step up, too, but we need to make sure that the funding is going to support those local organisations on the ground in their capacity-build to be able to respond. On that, the department is doing a lot of work.

Baroness Northover (LD): My Lords, protection of women and girls is clearly absolutely vital, and I would like to welcome Malala and her fellow students, who are here today. Given the Minister's responsibilities within DfID for relations with the EU, what action has she taken to ensure that in future we can work closely with the EU, which has the biggest development budget in the world, to influence it over this and other vital matters?

Baroness Verma: My Lords, the noble Baroness is of course right that we do a lot of our work through the European Union, but we also do it through a number of other large multilateral agencies and organisations. We will continue to work hard, and I am sure that in her Statement my noble friend the Leader of the House will lay out a clearer picture of what the Government will do.

Lord Collins of Highbury (Lab): My Lords, I, too, congratulate the Government on their efforts in terms of financing, but the UN Committee on the Elimination of Discrimination against Women urged that the Sendai framework, which emphasised gender issues, should be taken up by all countries. Can the Minister say what the department is doing to ensure that in disaster-prone countries women are involved in the decision-making processes to reduce risk?

Baroness Verma: The noble Lord is absolutely right that women and girls have to be part of the decision-making process. That was very much felt at the Syrian conference, where I met a number of women who told me, in their own testimonials, how powerless they felt and that they wanted meaningful engagement. The work that we have done and the announcements we made last October demonstrated our further commitments to ensuring that, wherever we have peace conferences and summits, we will have representation of those women's voices at the table. But we have much more to do. I agree with the noble Lord that so much more needs to be done across the board, across all agencies and donor countries, to ensure that those voices are heard and that they make a meaningful contribution. I look forward to Members across this House helping us to ensure that that message continues to be loud and clear.

Baroness Afshar (CB): My Lords, are the House and the Government aware that, unfortunately, men in many Muslim countries work as barriers between Muslim women and their Koranic rights? It is therefore essential that the right help is given to the women to exercise their God-given rights—but it has to be direct, because their male colleagues would not like to accommodate them.

Baroness Verma: My Lords, we advocate very strongly strengthening the voice, choice and control of women's and girls' rights in all settings. The noble Baroness is right that we need to work tougher and harder to make sure that we act as strong advocates for women's voices in countries where they are not being heard.

Baroness Sheehan (LD): My Lords, I spent Friday and Saturday at the refugee camp in Calais. Can the Minister say what dialogue she has had with her French counterparts about the conditions of women and children in the camp there, given that some of them have family reunification rights to the UK?

Baroness Verma: My Lords, as the noble Baroness will be aware, we are in ongoing dialogues with all our partners. Whether in Calais or elsewhere, we need to ensure that we very much support the protection and rights of women and girls in those settings, as they will be the most prone to abuse and violence. It is therefore incumbent upon us to ensure that we, along with our partners, work hard to ensure that. However, the noble Baroness will also be aware that these issues were raised at the last conference we held in London and that all partners gave a commitment to ensure that we are able to put into place as many safeguards as we possibly can. But we do need the grand bargain, which is about bringing together the development and humanitarian pieces in a better-aligned way so that we can deal with both issues at the same time.

Lord Foulkes of Cumnock (Lab): My Lords, if there was an emergency in St Helena, how could we get help to them quickly?

Baroness Verma: My Lords, I think that the noble Lord refers to another Question. I have already asked the noble Lord to take up my offer to come and see

[Baroness Verma]
what the department is doing and talk to officials—and I extend that offer to all noble Lords who are concerned about St Helena.

Bus Services Bill [HL]

Order of Consideration Motion

3.09 pm

Moved by ***Lord Ahmad of Wimbledon***

That it be an instruction to the Committee of the Whole House to which the Bus Services Bill [HL] has been committed that they consider the Bill in the following order:

Clauses 1 and 2, Schedule 1, Clauses 3 to 6, Schedule 2, Clauses 7 and 8, Schedule 3, Clauses 9 to 15, Schedule 4, Clauses 16 to 26, Title.

Motion agreed.

Intellectual Property (Unjustified Threats) Bill [HL]

Second Reading

3.09 pm

Moved by ***Baroness Neville-Rolfe***

That the Bill be now read a second time.

Considered in Second Reading Committee on 15 June

Bill read a second time and committed to a Special Public Bill Committee.

Investigatory Powers Bill

Second Reading

3.10 pm

Moved by ***Earl Howe***

That the Bill be now read a second time.

Relevant documents: Pre-legislative scrutiny by the Joint Committee on the Draft Investigatory Powers Bill, Session 2015–16; 1st Report from the Joint Committee on Human Rights

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, in the digital age, the convergence of the internet with social media, combined with the rise of cheap but sophisticated internet-enabled devices, has given criminals, terrorists and hostile foreign states new means to attack us. Those who engage in organised crime, child sexual exploitation, drug crime and terrorism are resorting to ever-more sophisticated means to avoid detection and prosecution. As we remember today those who died in the horrific attack in Tunisia a year ago, it is worth reflecting on the way that Daesh in particular has exploited the internet and social media to distribute large quantities of often sophisticated online propaganda to radicalise and recruit large numbers of people here and in other countries.

Today's Bill ensures that law enforcement and the security and intelligence agencies retain their crucial powers to intercept communications and obtain communications data. However, it also radically overhauls the framework in which the exercise of those powers is authorised and overseen. It creates a "double lock", introducing for the first time judicial authorisation of the most intrusive investigative techniques, it consolidates oversight into the new strengthened office of the Investigatory Powers Commissioner and it sets a new standard for transparency and accountability in the exercise of covert powers by the state.

The Bill is the culmination of two years' work, and it is worth detailing the lengths to which we have gone to ensure that the Bill is rigorously scrutinised. There have been three independent reviews of investigatory powers, conducted by the Intelligence and Security Committee of Parliament, the independent surveillance review panel convened by the Royal United Services Institute, and the Independent Reviewer of Terrorism Legislation, David Anderson QC. Three committees of Parliament have also examined the Bill: the Commons Science and Technology Committee, the Intelligence and Security Committee, and a Joint Committee of both Houses convened specifically to examine the draft Bill. Their reports all endorsed the principle of the Bill, and the Bill and codes of practice now reflect the vast majority of their recommendations. In total, 14 Commons Public Bill Committee sessions pored over it, with more than 800 amendments considered. Alongside this, we have published draft codes of practice, operational cases, fact sheets, memoranda and detailed responses to the reports on pre-legislative scrutiny. I am very grateful to the noble Lord, Lord Murphy, who chaired the Joint Committee, as well as to the noble Lords who served on the committees. Their work, and the debate in the other place, has strengthened the Bill that reaches us today.

This is a Bill that passed on a cross-party basis with an overwhelming majority. It will provide world-leading legislation setting out in detail the powers available to the police and the security and intelligence services. It will also provide unparalleled openness and transparency about our investigatory powers.

I turn to the detailed provisions of the Bill. The Bill deals with a wide range of issues: privacy; targeted interception; retention of communications data; bulk powers; legislative oversight; and other technical considerations. It is important to emphasise that the Bill brings together existing powers in a clear and comprehensible way, in the process improving transparency, bolstering safeguards and strengthening oversight. It introduces just one new power—the retention of internet connection records—which I will come to presently and which I know the House will want to examine thoroughly.

I will take each area in turn. I begin with privacy. Recognition of the right to privacy is woven into the very fabric of the Bill, so Part 1 deals with the privacy protections that apply to the use of these powers, as well as the offences and penalties for their misuse. That is reflected in Clause 2, dubbed the "privacy clause", which sets out the important principles that underpin the exercise of the Bill's functions. On Report

in the Commons, the Government supported an opposition amendment to ensure that authorisation of interception under the Bill could not be sought for the purpose of interfering with legitimate trade union activity. We will bring back amendments to ensure that this applies to all powers in the Bill.

Part 2 brings us to the use of targeted interception and is worth considering alongside Part 5, which deals with the use of targeted equipment interference. Interception in some form is used in support of the majority of MI5's top-priority counterterrorism investigations. Between 2013 and 2014, interception capabilities played a critical role in law enforcement investigations which resulted in more than 2,200 arrests and the seizure of over 750 kilograms of heroin, 2,000 kilograms of cocaine, 140 firearms and £20 million. Equipment interference under the Police Act 1997 and the Intelligence Services Act 1994 is a vital capability for law enforcement and the agencies and, in the face of increasingly capable hostile actors, is becoming more important as a means of supplementing and, in some cases, replacing interception capabilities.

Both those powers are used to obtain the contents of communications, and so are among the most intrusive available to the state. That is why they are subject to the double lock: a Secretary of State may issue a warrant only after the decision to do so has been approved by a judicial commissioner. There was much debate in the other place about the basis on which judges will review decisions to issue warrants. The Government amended the Bill as a result of that debate. It is now clear that the judicial commissioner must give careful consideration to the matters before them and that the protection of privacy must be central to that consideration.

Parts 3 and 4 deal with the retention of, and access to, communications data. The term "communications data" does not refer to the content of a communication; it relates to when, how and where a communication was made, and by whom. The law already requires the retention of certain types of information data by communications service providers. This is vital. Some 58% of requests for communications data in child abuse investigations are for data that are more than six months old. In a Europe-wide investigation into online child sexual exploitation, of 371 suspects identified in the UK, 121 arrests or convictions were possible; of 377 suspects in Germany, which does not retain communications data, no arrests were made.

Part 4 contains the only new power in the Bill: the ability to require a telecommunications operator to retain internet connection records—ICRs. An ICR is a record of which internet service was accessed. It is not, as is sometimes supposed, a full web-browsing history. Law enforcement faces a growing capability gap. The Joint Committee that scrutinised the draft Bill agreed that ICRs are necessary to close that gap. To take an example, of 6,025 cases relating to the sharing of child abuse imagery referred to the CEOP command of the National Crime Agency, 862—that is 14%—would require the retention of ICRs to have any prospect of identifying a suspected paedophile. During consideration of Parts 3 and 4 of the Bill in the other place, the Government committed to introduce a threshold for access to internet connection records to ensure that they cannot be used to investigate trivial offences. This will complement the other rigorous safeguards restricting the circumstances under which ICRs can be accessed by public bodies. I will bring amendments to this House in the coming weeks and months to give effect to this commitment.

Parts 6 and 7 deal with the bulk powers in the Bill and the retention and use of bulk personal datasets. The powers available to the security and intelligence agencies to acquire communications and other data in bulk are vital to their work. The Government published an operational case for bulk powers alongside the Bill. As that sets out, bulk powers are used to gather large volumes of data. These data are subject to very stringent controls to filter the material and select for examination a small fraction of the material that provides intelligence on known threats and to identify new ones. None of the bulk powers in the Bill is new. The collection of large volumes of data is essential to enable the data which are not of interest to be filtered out and search criteria applied so that fragments of intelligence can be gathered and pieced together in the course of an investigation. These data may not be available by other means. The threat from terrorism and the development of technology is such that the bulk powers will inevitably become more important than ever in the future.

It is right that the safeguards and protections associated with these powers are now a matter for Parliament. However, there is more that can be done to provide the public and Parliament with reassurance that the case that stands behind these powers is clear. That is why the Government commissioned David Anderson QC, the Independent Reviewer of Terrorism Legislation, to examine the operational case for the bulk powers in the Bill. That review will conclude in time to inform this House's consideration of the relevant clauses in Committee.

Part 8 of the Bill deals with the oversight of these powers. At its heart is the creation of a powerful new Investigatory Powers Commissioner. During the Report stage, the Government committed to strengthen the process for appointing that commissioner, so that appointments will be on the joint recommendation of the Lord Chief Justice, his or her devolved equivalents and the Lord Chancellor. We will bring back an amendment to this end. We will also ensure that the Intelligence and Security Committee can refer matters to the Investigatory Powers Commissioner for investigation on behalf of Parliament.

Part 9 of the Bill deals with other general provisions, including technical capability notices and national security notices. We have amended the Bill to ensure that these notices are now also subject to the double lock. Part 9 also provides for the Secretary of State to review the operation of the Bill after five years and to report to Parliament with his or her findings. It is my hope and expectation that the Secretary of State will be assisted in that work by a Joint Committee of Parliament and the Intelligence and Security Committee.

These are all important powers, but this Bill provides for them to be exercised only when it is necessary and proportionate to do so. It does not give free rein to

[Earl Howe]
public bodies to intrude upon the privacy of citizens without proper justification and authorisation. In fact, it strengthens the checks and balances applied, adds safeguards, bolsters oversight and sets out the privacy considerations which must be applied to any application to use the powers. I welcome the constructive and thoughtful debate that has characterised the passage of this Bill to date. It reflects the importance of this legislation and the need for us to get it right. I very much hope that the progress of the Bill through this House will continue in the same vein. There is a long list of Peers who wish to speak, all of whom are experienced in these matters and from whose knowledge and expertise we will undoubtedly benefit. I look forward to hearing them.

But before I conclude, it is important to say this: in the two years that have passed since this House considered the Data Retention and Investigatory Powers Act, the world has become a more dangerous place. There have been attacks in Orlando, in Paris, in Brussels, in Tunisia, in Jakarta, in Turkey and elsewhere in the world. The NSPCC reports that eight offences a day are committed against children via the internet. This month, we saw the prosecution of organised criminals seeking to smuggle into the UK more than 30 machine guns and more than 1,500 rounds of ammunition. All these events remind us of the ongoing risks faced by law enforcement and the intelligence agencies every day. The challenge of this Bill is to balance the need to give the police, the Armed Forces and the security and intelligence agencies the powers they need to keep us safe in a changing and uncertain world while ensuring that those powers are subject to strong safeguards and robust oversight. I believe this Bill strikes that balance. For that reason, I commend it to the House. I beg to move.

3.26 pm

Lord Rosser (Lab): My Lords, the Investigatory Powers Bill seeks to address an issue that, in theory, is simple and straightforward: namely, the appropriate balance between individual privacy and collective security in the digital age. However, what make it in reality a far from simple and straightforward issue are the very different views on where that appropriate balance lies.

The vote in the referendum last Thursday to leave the European Union has, potentially at least, added to the complexity, since it has raised the question of what the implications of that decision might be for the proposals in the Bill and their effectiveness and relevance, bearing in mind the considerable co-operation with what are still, at this moment in time, our European partners over security and intelligence issues and the European arrest warrant in the fight against terrorism and serious crime. What happens if the present level of co-operation is scaled down? If it were scaled down, would it happen only from the day we left the European Union or would it start to happen earlier?

The resignation of our European commissioner does not suggest that our involvement with and influence in the European Union and European organisations will continue at the present level until the necessary negotiations on our withdrawal have been completed. I ask the Minister to make some meaningful comment on this point when he responds at the end of the debate. This question was not discussed during the passage of this Bill through the House of Commons, but it should be considered, and answers sought, in this House.

As the Minister said, the Bill was the subject of extensive pre-legislative scrutiny, including by a Joint Committee of both Houses chaired by my noble friend Lord Murphy of Torfaen. Prior to the pre-legislative scrutiny, there had been extensive scrutiny of our investigatory powers in three independent reviews, including one by David Anderson QC, the Independent Reviewer of Terrorism Legislation. His review and the other reviews stressed that legislation relating to interception and communications data needed to be consolidated and made subject to clear and robust privacy safeguards. This Bill is also intended to replace the Data Retention and Investigatory Powers Act 2014, which contains a sunset clause requiring new legislation to be passed by the end of this year.

Safety and security matter—a point brought home to us all too painfully just over a week ago when one of our much respected and much admired parliamentary colleagues, Jo Cox MP, was brutally murdered in the street in broad daylight in this country.

The current threat level for terrorism is severe. We have also seen major attacks recently in Paris, Brussels and elsewhere. The Bill, though, covers not only terrorism but other serious crimes such as people trafficking, including the trafficking of children, sexual abuse, stalking and harassment. The security and intelligence services, GCHQ, the National Crime Agency and the police must have the powers to deal with these threats in an age when those involved in terrorism and criminality are operating online with a reach and on a scale that has not existed before through exploiting the technological advances now available for their own ends.

Human rights matter, too, including the right to privacy, the right to be left alone, the right to have private data protected and the right to redress when needed. My noble friend Lady Lawrence of Clarendon, who is in her place, and her family were put under surveillance by the Metropolitan Police with no justification at all. Those whose job it is to protect us, and to whom I do not think we always give sufficient credit and thanks for what they do on our behalf, cannot be expected to carry out their responsibilities with one arm tied behind their back. Equally there have to be effective checks and there has to be public confidence among all sections of our diverse community that the arms of those who protect us are not extending into areas where there is neither the need nor the justification.

Safety and security and human rights are not mutually exclusive. The Bill has completed its passage through the Commons. The Labour Party voted for it at Third Reading in the light of both significant amendments made in the Commons to meet our Labour red lines and in the light of undertakings given by Government Ministers to address further issues of Labour concern during the Bill's passage through this House. It is now up to the Government to deliver on those verbal undertakings, now on the record in Commons *Hansard*. They include a commitment to introduce a threshold

for access to internet connection records so that the powers cannot be used in investigating minor crimes—which is what the Bill as presently drafted in effect permits.

On Report in the Commons, the Government Minister, in response to our argument for a general serious crime test for communications data and a higher threshold on top of that for the use of internet connection records—but one which would provide that offences such as grooming, harassment and stalking were still covered—said he was committed to doing what we were seeking, and continued:

"I do so because it is really important that we have a threshold that works, particularly on ICRs".—[*Official Report*, Commons, 7/6/16; col. 1120.]

A further commitment was made in respect of the protection of journalistic sources. We have already secured amendments to the Bill providing that judicial commissioners, when considering a warrant, must give weight to the overriding public interest in a warrant being granted for the use of investigatory powers against journalists, and that they must ensure that it is in keeping with wider and more general privacy points.

However, there are still matters outstanding on this point, including the extent to which the Bill does or does not provide for the same level of protection for journalists as is currently the case under the Police and Criminal Evidence Act. There is also the question of the definition of who is and who is not a journalist now that we are in the digital world. The Government Minister in the Commons accepted that a solution needed to be found and said:

"I am happy to say that we will look at this issue with him"—

the shadow Home Secretary—

"and others in greater detail as the Bill enjoys its passage through this House and the other place",—[*Official Report*, Commons, 7/6/16; col. 1117.]

with the reference to "others" including the National Union of Journalists.

There is also an outstanding issue over legal privilege. The Bill now provides that it is only in exceptional and compelling circumstances that warrants may be issued where one of the purposes is the obtaining of legally privileged communications. Questions about the provisions in the Bill have been raised by the Law Society and the Bar Council, and I understand that the Government are continuing to discuss the concerns raised with the relevant organisations. We will need to know the outcome of the discussions and whether these concerns have been resolved. This is not about preserving the special status of individuals who work in journalism or the legal profession, or indeed as parliamentarians, but about protecting the public and their ability to raise issues through these channels on a secure and confidential basis.

In the Commons, the Government also accepted in principle our amendments relating to appointments to the new Investigatory Powers Commissioner, which would increase the role of the Lord Chief Justice in making recommendations for appointment to the Prime Minister. We will also need to be satisfied that the safeguards around modifications to warrants have been strengthened sufficiently to ensure that major modifications cannot be made by the back door, thus avoiding the provisions laid down in the Bill for obtaining warrants. We are not yet satisfied that this issue has been fully resolved, although we recognise that it is not a straightforward matter and we would be willing to work with the Government on it.

A number of crucial changes to the Bill were secured in the Commons through the approach we, as the Official Opposition, adopted. First, on the powers in the Bill which enable information to be retained in bulk form, the Government accepted our argument that there should be an independent review of the operational case for such powers. These are actually powers which, for the most part, are currently available and being exercised at present, but not on a statutory footing with safeguards. The investigation will be carried out by David Anderson QC, the Independent Reviewer of Terrorism Legislation, and will consider the necessity of the powers and whether the same result could have been achieved through alternative means. He will conclude his work before the relevant clauses in the Bill are reached in this House. This was a fundamental concession as far as we were concerned. While it clearly depends on what conclusions David Anderson reaches, it is quite likely that the findings of his review will prove to be the major issue.

Secondly, we pressed for and achieved an overarching privacy clause in the Bill against which the use of the exceptional powers in the Bill will have to be justified. We believe that it is vital to have this in the Bill so that privacy considerations are at its heart. Thirdly, we secured a provision that makes it clear that legitimate trade union activities are not a sufficient reason for powers under the Bill to be exercised. Fourthly, on judicial oversight of decisions to approve warrants for the exercise of powers under the Bill by the Home Secretary, a judicial commissioner will have to consider necessity and proportionality, and balance that against the overarching privacy clause. The judicial commissioner will not just be scrutinising the process. Fifthly, progress was made on providing protection for whistleblowers when giving information to the Investigatory Powers Commissioner.

The Joint Committee on the draft Bill called for protection for members of the intelligence services who raise concerns about the misuse of investigatory powers with the Investigatory Powers Commissioner. The Bill provides for an individual to be able to give information on a voluntary basis to the commissioner without that individual committing a criminal offence or incurring a civil liability. However, the Solicitor General in the Commons agreed on Report to make it absolutely clear in the Bill that whistleblowers can make disclosures to the IPC without fear of prosecution. The Bill also now provides greater protection over access to medical records, which can be retained and accessed only in "exceptional and compelling circumstances".

I have not referred to all the changes to the Bill secured in the Commons, or to all the undertakings given by the Government in respect of amendments to the Bill tabled in this House. What has been achieved, though, is an indication that, thanks to the persistence, determination and constructive work of the Official Opposition and others, and the willingness of the Government to listen, there are now much stronger

[Lord Rosser]
safeguards in the Bill protecting people's privacy and their human rights than existed in the original Bill or exist under current legislation.

That does not mean that the Bill is perfect—I am sure we will all want to listen to areas of continuing concern that may well be expressed both inside and outside this Chamber as we consider the Bill in detail. Clearly, our position on the Bill has changed since it started its passage through the Commons. We are looking, though, to make further progress during debates on the Bill in this House and, in particular, to hold the Government to the outstanding commitments and undertaking they gave in the Commons and on which the House will expect to be updated as we go through the Bill.

3.38 pm

Lord Paddick (LD): My Lords, this is a very complex Bill dealing with very technical matters in places, but we should not be intimidated by that. Nor should we simply say that we must give the police and the security services all the powers they ask for without scrutiny.

It is the responsibility of the police and the security services to ask government for the powers they believe they need in order to be effective. It is our responsibility—the responsibility of Parliament—to balance those requests against the tests of necessity and proportionality. There will always be a tendency for politicians to accede to the demands of the agencies of the state; should crime rise or terrorist acts be perpetrated, politicians could not be blamed if they had given the police and the security services everything they said they needed. Yet this has not always been the case. When the then Labour Government pressed the case put forward by the police for 90 days' detention of terrorist suspects without charge, Parliament refused. The security services did not ask for such a power. Arguably, it was reasonable to turn down a power that would assist in the prosecution of offenders, provided that it did not affect the security services' ability to prevent terrorist activity. Yet in this Bill, we face a similar demand from law enforcement for a draconian power that the security services say they do not need.

The Liberal Democrats recognise the vital role the police and the security services play in keeping us safe. We also recognise the need for trust between state agencies and the public, not least to ensure the flow of community intelligence—even more vital as the terrorist threat changes in nature and criminals become more sophisticated. In order to be effective, the police and the security services need to have powers to carry out surveillance, including the interception of communications, the retention and acquisition of communications data and equipment interference. This will involve intrusion into people's privacy, but unless there is no other practical means of achieving the objective, intrusion into innocent people's privacy should not be allowed, other than in exceptional circumstances, and even then it should be subject to the highest levels of oversight. Innocent people's privacy should not otherwise be put at risk, let alone intruded into. Internet connection records—the only virgin territory in the Bill—are going to intrude into innocent people's privacy.

I do not believe that anyone in this House believes that we do not have a right to privacy, but perhaps I should declare a personal interest in this area, in the example I am about to give. What about 25 years ago, when I was married to my wife, Mary, but I believed I was gay? Should I have been able to keep that situation private? What if someone today was in that position and wanted to research using the internet to get some help and guidance, for fear of talking to anyone and letting the cat out of the bag, like me in those days? This Bill requires internet service providers to record every website that everyone in the UK visits, to store that data for 12 months and to reveal those details to the police without a warrant if they suspect someone of crime. If someone alleged that I roller-skated into a shop, indecently assaulted someone and roller-skated out again—apparently, one of the allegations made against Sir Cliff Richard—details of every website I had visited in the past 12 months could be handed over to the police without a warrant if we allow this Bill to pass as it stands.

It is not too much of a stretch to think that someone might make an allegation against me, as a reasonably high-profile individual, so it would be not too far a stretch to think that I had better not seek confidential advice on the internet, in case it became public. How could it become public? Homophobia has been encountered in the police service, as has unauthorised disclosure of confidential information. "If you have nothing to hide, you have nothing to fear" is not the same as "If you have done nothing wrong, you have nothing to worry about". Even if the police were to be trusted completely, massive pools—oceans—of data in the custody of private companies such as TalkTalk, one of the internet service providers that will be asked to store such data, would be sitting ducks for hackers, criminals, blackmailers and hostile foreign powers. For example, information that I frequently visited the Age UK and NatWest websites might make me a target for fraudsters trying to trick me into revealing my account details online by claiming to be from the bank, or they might even turn up at my front door, believing me to be frail and easily conned or overpowered.

The RUSI panel set up by Nick Clegg when he was Deputy Prime Minister set out 10 tests for the intrusion of privacy. It is those 10 tests on which our opposition to parts of the Bill is based. Not only should the Bill be measured against the 10 tests, but Liberal Democrat opposition to the Bill should also be measured against them. One of the tests is that there must be transparency: how the law applies to the citizen must be evident. How many people in the UK know that 12 months of their web history—albeit the website that they are looking at rather than any further pages on that website—will be kept in case the police want to see it, as a result of this Bill's provisions?

The intrusion must be necessary in that there are no other practical means of achieving the objective. The security services MI5, MI6 and GCHQ say that they do not need internet connection records because they can get the information they need by other means.

The intrusion must be proportionate to the advantages gained, not just in cost and resources but also through a judgment that the degree of intrusion is matched by

the seriousness of the harm prevented. Internet service providers reckon that this will cost more than £1 billion in set-up costs alone. The measure may not provide the police with the website someone has visited because it is so easy to conceal it. It will not give the police any information about whether, or with whom, someone was communicating without making further inquiry of other companies such as Facebook, because almost all online communication is encrypted. If a serious crime is involved—the Minister listed a range of serious crimes that the Bill is intended to cover, including child sexual exploitation and terrorism—the security services, which do not need internet connection records, are duty bound to assist the police with their inquiries. We therefore need some convincing that internet connection records are both necessary and proportionate.

There are other issues. We believe that the double lock should be only a single lock in the case of law enforcement warrants which need go nowhere near a Secretary of State if there is no political sensitivity, and that there should be a real double lock where there is political sensitivity, not just the application of judicial review principles to the decision of the Secretary of State. How can there be a judicial review process where only one side of the case is presented to the judicial commissioner? Equipment interference is potentially more intrusive than interception and yet law enforcement equipment interference warrants go nowhere near a Secretary of State under the Bill as drafted, whereas security services equipment interference warrants require a Secretary of State's signature.

The oversight arrangements have a few wrinkles as well. How are we supposed to have faith in the independence of judicial commissioners appointed by the Prime Minister—not necessarily the current Prime Minister—including the Investigatory Powers Commissioner being appointed by the Prime Minister? How can the same body authorise warrants and then audit their issue?

Not only do we support many aspects of this Bill, but the Liberal Democrats when in government called for such a Bill. However, aspects of the Bill cause us grave concern and the Government and law enforcement agencies have failed to convince us of their necessity and proportionality. The "request filter", for example, conjures up the spectre of a virtual national database, where government can bring together every piece of available personal data held on an individual into one place. In addition, technical capability notices and national security notices have the potential to inflict serious competitive disadvantage on UK suppliers.

Bulk collection of innocent people's communications is highly controversial and requires the closest scrutiny. But there will not be a call for a blanket ban on bulk collection from this Bench no matter the cost in lives and loss of security; we will take a reasoned and practical approach to these issues. Nor will noble Lords hear the term "snoopers' charter" from this Bench, other than to condemn it as an inaccurate cliché. There is much to commend the Bill, but there are serious issues that must be addressed.

3.50 pm

Lord Pannick (CB): My Lords, I welcome the Bill. The authorities need up-to-date powers to obtain information to address the real dangers that we all face from terrorism and serious crime. The existing law has simply not kept pace with technological developments. The Government, with the support of the Labour Opposition, have included provisions to protect personal privacy against unnecessary intrusion and to ensure judicial control of access to personal information. The adequacy of these safeguards will need to be carefully considered by your Lordships.

One matter that will require particularly careful consideration in Committee and on Report is the protection of legal professional privilege—LPP—which is the right of clients to maintain the confidentiality of what they tell their lawyers in private. This subject was mentioned by the noble Lord, Lord Rosser, and I will concentrate on it in today's debate. In 2002, the noble and learned Lord, Lord Hoffman, explained for your Lordships' Appellate Committee that LPP is,

"a fundamental human right long established in the common law".

The reason for that is that, unless a client knows that the solicitor and counsel will not disclose what they have been told in confidence, the client will simply not be prepared to speak honestly and openly when seeking legal advice. LPP is, therefore, fundamental to the rule of law.

It is important to emphasise that these rights belong to and benefit the client; they are not privileges for lawyers. There is a so-called iniquity exception to LPP. As Peter Carter QC for the Bar Council told the Joint Committee of both Houses on the Bill, LPP does not apply if, for example, the client seeks advice from a lawyer,

"on where the best place is to stash his stolen loot".

Clauses 27, 106, 143 and 179 provide some piecemeal protection for LPP in some contexts. Schedule 7 requires the Secretary of State to issue a code of practice which addresses LPP. These matters were discussed in the other place and, on Report on 6 June, the Solicitor-General, Robert Buckland, said that the Government would be working with the Bar Council and the Law Society to consider introducing, in your Lordships' House, amendments which would,

"recognise the overwhelming public importance of the preservation of legal professional privilege".—[*Official Report*, Commons, 6/6/16; col. 950.]

I suggest that the way forward is as follows. First, as recommended by the Joint Committee, in paragraph 537 of its report,

"provision for the protection of Legal Professional Privilege (LPP) in relation to all categories of acquisition and interference addressed in the Bill should be included on the face of the Bill and not solely in a code of practice".

The Joint Committee rightly accepted the evidence from Colin Passmore of Simmons & Simmons for the Law Society on this point.

Secondly, the Bill must require prior judicial authorisation for the targeting of discussions with a lawyer or if the authorities have reason to believe that they will be intruding on legal advice. Of course, if

[LORD PANNICK]
there is extreme urgency, judicial authorisation needs to be obtained as soon as possible after the event.

Thirdly, the test that the authorities need to meet to satisfy a judge to give authorisation where there is an intrusion in relation to LPP must be a high one. The test should be exceptional and compelling circumstances: that is the criterion set out in Clauses 27 and 106 and it was discussed by the Joint Committee, and those circumstances should indicate a probable cause for believing that the iniquity exception applies. I say probable cause because the authorities cannot know whether the iniquity exception applies unless and until they listen in and examine the results.

My fourth principle for the way forward is that after the authorities have obtained privileged information by listening in or otherwise intruding on legal discussions, they should be prohibited from retaining the fruits of it unless they obtain judicial authorisation that it is within the scope of the iniquity exception.

Much more difficult is that my understanding is that the Government also want to allow the authorities to listen in to legal advice and to use privileged information where there is no reason to think that the iniquity exception applies—that is, that these are perfectly proper legal discussions, with the lawyer giving advice to the client, but there is reason to believe that the surveillance may provide or has provided information of vital importance to preventing serious crime or tracking dangerous people. This is much more problematic. The difficulty is that to allow the authorities access to genuinely privileged information would inevitably mean that clients could no longer be guaranteed confidentiality by their lawyers. This would inevitably deter clients from speaking frankly to their lawyers and therefore undermine the rule of law. Given the fundamental importance of LPP, the Government will need to present a very strong case indeed in Committee and on Report if they seek to persuade noble Lords that such powers are necessary.

3.58 pm

Lord King of Bridgwater (Con): My Lords, I listened with great interest to the noble Lord, Lord Pannick, on LPP and I was absolutely fascinated by that comment about lawyers being told by their clients where the loot was hidden. What a much more exciting job being a lawyer must be than I had appreciated.

I join other noble Lords in welcoming the Bill. I heard the comments about the Bill having been rushed but if ever there was a Bill that had never been rushed, we have it here today. My noble friend the Minister made the point extremely well in his absolutely excellent introductory speech to this Second Reading. Has any other Bill ever had the scrutiny of three Joint Committees and three independent reviews? Given some of its important provisions, there are those of us in this House who wish to see the Bill moving much faster than the timetable we are presently enjoying. We obviously know that we have to have it finished by the end of the year.

My worry about the Bill and the question I will raise, following previous legislation, concerns the challenge to keep up with new technology. I stand here as an avowed ignoramus on many of these amazing technologies, such as WhatsApp, Snapchat, Twitter and Facebook. I see that the latest route that has been used by terrorists is the chat network on PlayStation. That will give Sony a few thoughts about how it organises its business in future and about the requirements that the Bill may impose on it. Without any question, the challenge is that while it might seem to be an amusing paradise for geeks, we know that there is a very dark side to this and that it offers a huge range of opportunities for some very sinister elements, be they terrorists, organised criminals, paedophiles or child abusers. All forms of evil can thrive and operate within this. We have known for some time the use that ISIS—the so-called Islamic State—has made of WhatsApp and the incredibly efficient communication that it has given it. When one hears surprise news that ISIS has attacked some town which people previously thought was safe, one knows that that has been achieved because it has very good communications through the new systems of technology which we are trying to keep up with.

It is against that background that we realise the incredible challenge that the police and intelligence agencies have. The Minister referred to the scale of the threat, which takes so many different forms. I have often talked in this House about how terrorism has changed since the time I was in Northern Ireland. We did not have suicide bombers in Northern Ireland. The challenge they pose to new systems of security is very real. While we have suicide bombers, we also have the willingness to engage in appalling massacres of innocent civilians. We know that some of the very evil people who exist in the world at present no longer have any interest in war crimes, Geneva conventions or anything else.

My noble friend referred to the anniversary yesterday of perfectly innocent people being mown down on a beach in Tunisia. We know that we have every finger crossed in this country against the risk that we could face at any time. In those situations, static guards, sentries and armed police have a role to play, but the core of so much of this is intelligence. If we are to be successful against this, we need access to intelligence. I was very interested to see that in 95% of prosecutions of organised crime, communications data have been vital; and that bulk powers have been significant in every counterterrorism investigation in the seven plots that there have been in the past 10 years, and vital to detecting 95% of the cyberattacks that we have faced in this country. I was not previously aware that 90% of our military operations have been conducted successfully without casualties by access to information under the systems that we are discussing today.

I warmly welcome the last comment of the noble Lord, Lord Paddick. I was about to attack him for the phrase "snoopers' charter", but he managed to get out in time. Part of the problem with the Bill is that people often do not understand the importance of what is happening, because the intelligence agencies in particular and the police are very inhibited in what they can say about why some of this information is so vital to the defence and security of our country, as too often that runs the risk of revealing methods or techniques that it is vital to protect in the interests of the security of

our country. It is still cited as a "snoopers' charter" by some, but that is a cheap, silly and dangerous remark. It is insulting to the police and our intelligence agencies to use such a phrase. As borne out by the comments Dominic Grieve, the current chairman of the ISC, made in another place on this Bill, we know the high sense of responsibility that is generally shown by our intelligence agencies and the police. Of course there can be mistakes, and there are occasions when people do not live up to those high standards, but to suggest that in general the organisations do not seek to observe scrupulously the proper use of these powers is grossly irresponsible.

We will certainly seek proper scrutiny of the legislation as it goes through. The noble Lord leading for the Opposition referred to the substantial changes made in the Commons and the number of important undertakings that have been made which will have to be put into effect here. I welcome that. It is a question of proportionality and of achieving that proper balance between protecting public security and legitimate privacy. It has been claimed that the Bill is a world first in the scale and range of what it seeks to achieve. I could not help being amused today by the comments of Mr Edward Snowden, who finds that the Russians are operating some pretty intrusive activities, and without all the provisions that exist in this legislation, as far as I am aware. I welcome the dual lock that is being introduced, which is important.

I end simply with one comment. As we go through the Bill, I shall look at whether it has the flexibility to cope with the accelerating pace of technical change. We have to make sure that it remains effective as the years go forward. We know that the speed with which new technologies, systems and techniques are coming in poses a major challenge to our agencies. It is our duty as legislators to provide for the introduction of properly scrutinised and properly protective regulations, under which the agencies can protect our country and at the same time properly respect the privacy of its citizens.

4.07 pm

Lord Blunkett (Lab): My Lords, I rise to support the Bill. I was going to wholeheartedly commend the present Home Secretary for being prepared to listen and respond, but I fear it might do her chances of becoming leader of the Conservative Party enormous harm. She has the great merit of having taken responsibility in her life, and acted responsibly and shown a gravitas which others certainly do not.

I reinforce the point made by my noble friend from the Front Bench. We are, at this moment, in a more insecure and uncertain landscape than we have been for some considerable time. It is at moments just like this when your Lordships' House provides the stability needed, and the accumulated experience and wisdom, to ensure that we get things right. I have not always thought so. Back in 2001, when I was piloting the then Anti-terrorism, Crime and Security Bill through the two Houses of Parliament on the back of the terrible attack on 11 September 2001, I often went home extremely aggrieved at amendments that your Lordships' House had passed. However, I came in due course to respect the work that was done in this House, the wisdom that was brought to bear—not least by those with substantial judicial experience—and the ability to find solutions to agreed problems that were better than the ones we had set out in the first place in the Bill. So I come here to speak with some humility this afternoon.

While, as has been explained, much has already been done to improve the original draft of the Bill, I hope that we can speed its passage and ensure that the final touches are put to what is a very important piece of legislation. It obviously combines what was agreed in the past, which, not least in the Telecommunications Act 1984, reinforced what was not necessarily understood publicly. It ensures that there is a right of review, proper openness and scrutiny.

I can be brief because I have had the privilege of giving both written and oral evidence to the Intelligence and Security Committee and to the Joint Committee chaired by my noble friend Lord Murphy. I agree with what has already been said: much has been achieved by having a draft Bill and being prepared to listen to people. I shall make just two or three comments.

I reinforce what the noble Lord, Lord King, said: we are living in an era of enormous technical change. What is happening now through the world wide web and through cyber is completely different from anything that we experienced even 25 years ago, and we need to take account of that. The noble Lord, Lord Paddick, spoke movingly of what might have intruded on him had we been dealing with a circumstance such as the one that he outlined in his private life. It is important that we recognise those personal details but we should also take a 60-year step back and understand how far we have come in terms of privacy and individual rights. Do noble Lords remember the trunk calls that had to be routed through the local exchange? When I was a child, we had party lines with our neighbours, and there was a standing joke that they all knew precisely what we were doing and when we were doing it.

It is also true that we have come a long way in understanding the importance of having the right oversight. I was privileged to ask the noble Lord, Lord Carlile, to take on that initial role many years ago. Eyebrows were raised on my side of the House that I had asked a Liberal Democrat to oversee what I was up to in the Home Office. At the time, it was felt that I was quite a draconian Home Secretary, but we were dealing with extraordinarily difficult times. At such times challenging and difficult measures have to be taken but there always has to be the proportionality that has been spoken about—the balance between security and prevention on the one hand and individual liberty and privacy on the other. I know a thing or two about privacy and intrusion into people's private lives and those of the people around them, not from the state—although who knows?—but from private interests intent on commercial gain. Therefore, I am wholeheartedly in favour of protecting the privacy of the innocent and ensuring that people's private lives are respected, but the most important responsibility of any Government is protecting their people and ensuring that those who would use democracy to abuse liberty and privacy are counterweighted and acted against.

[LORD BLUNKETT]

During the passage of the Bill in the weeks ahead I hope that we can deal with those outstanding items, but I also hope that we can do so with an understanding that our main responsibility to the British people when the threat level is severe is ensuring, in this moment of instability, that we provide the necessary powers to the intelligence and security community and the counterterrorism police, although we expect them to respond in kind. We also need to ensure that we build confidence among the British people that we know what we are doing and are doing it on their behalf.

4.14 pm

Lord Strasburger (LD): My Lords, I, too, welcome the Bill and congratulate the Home Secretary on the good intentions behind it. I have been calling for reform in this area for four years. To start with, I was ridiculed by some Members of this House and patronised by Ministers. But then, in July 2014, the Government finally admitted that RIPA and the other elderly Acts that make up the patchwork of legislation governing this area needed to be replaced by a single new Bill, which is what we have here. But, even with the useful amendments passed by the Commons, as it stands the Bill is very far from fit for purpose, and we in this House have much work to do to knock it into shape.

Two new clauses were added in the other place in response to the ISC's call for a backbone of privacy to be included in the Bill. But the new clauses do not cut the mustard for the chair of the ISC, who has called for them to be clearer about the right of citizens to privacy. There needs to be much better protection in the Bill, as we have already heard, for privileged communications such as those between lawyers and their clients, journalists and their sources and MPs and their constituents. On warrant authorisation, I have sat through endless evidence and debates on the Joint Scrutiny Committee and I have yet to hear a single convincing reason as to why a Minister needs to be involved in day-to-day police warrantry, as the Bill currently provides.

The next topic is the bulk surveillance powers that indiscriminately collect everyone's private data. They are currently under review by David Anderson QC. When a similar review was undertaken in the USA, the bulk powers were found to have made no serious contribution to detecting and preventing crime, and were discontinued. We must ask ourselves why the UK should travel in the opposite direction.

The only new power in the Bill, as has already been said, concerns internet connection records, which are highly intrusive, difficult and expensive to implement and of no interest whatever to the security services. They were abandoned in 2014 in Denmark, the only country that has tried to do this before, because they failed to deliver the expected benefits. It is my view that ICRs need to be deleted from the Bill. The request filter appears to be a classic wolf in sheep's clothing, and it will need careful examination before it can be allowed to remain in the Bill.

Finally, the threat to encryption needs to be removed from the Bill. Strong encryption, as the Government have recognised in this House, is vital to our personal security and the integrity of our finance and commerce sectors. The Government are fond of calling the Bill "world-leading". That is true in some respects, but not necessarily in ways that we would want to celebrate. If it were enacted unchanged, innocent UK citizens would not be far behind their North Korean and Chinese counterparts in a contest to be the most spied-on population in the world. The powers in the Bill are very broad and very intrusive—more so than any of our democratic allies' powers

One of the praiseworthy aspects of the Bill is that for the first time it offers Parliament the opportunity to consider five major surveillance powers that have been in use, without Parliament's knowledge or consent, for many years. It is good that these powers have at last crawled out of their dark cave in the Home Office and into the sunlight of scrutiny, but should we not be asking ourselves how the Home Office could be so contemptuous of Parliament as to believe that it was entitled to create new and highly intrusive surveillance powers without bothering itself with the tiresome niceties of parliamentary democracy? It would be good if the Minister could explain to the House how it came to be that obscure clauses in 30 year-old Acts were used to manufacture these powers and wilfully conceal them from Parliament. Perhaps he could also confirm that there are no other hidden surveillance powers of which Parliament is still unaware.

The lesson we must learn from this disgraceful behaviour over many years is that the Home Office cannot be trusted to comply with the will of Parliament. That means that we must take great care to not leave any further what I call "buffet clauses" or "help-yourself provisions" in the Bill for clever Home Office lawyers to exploit for their own purposes. Your Lordships should know that there are plenty of such loopholes still lurking in the Bill, and we will need to dig them out and deal with them.

It is important to understand the context of the Bill in relation to the various threats to life that we face as a nation. I wonder how many noble Lords know how many people died in the UK in the past decade as a result of terrorism. The answer is that it is far fewer than the 110,000 who died because they were admitted to hospital at the weekend, if you believe the Health Secretary; far fewer than the 95,000 who died in London alone due to air pollution; fewer than the 5,500 who were murdered; fewer than the 1,000 women who were killed by their partners; and even fewer than the 300 people who died accidentally in their bath in the past decade. The number of people who died in the UK in the past decade due to terrorism was in fact three—or perhaps four if you include the murder of Jo Cox MP, which we do not yet know was a terrorist incident.

Of course, we must not forget that each and every one of those deaths was a total tragedy and a continuing nightmare for the friends and families of those victims, but many of us are old enough to remember what it was like in the 1970s, when terrorists took 49 lives in mainland UK, or the 1980s, when it was 307, or even the first decade of this century, when it was 56. My point is that, contrary to what some people assert, the

risk of death from terrorism is not as high as it was 30 or 40 years ago and the risk of dying from more mundane causes, even an accident in your bath, is currently—

Lord Rooker (Lab): Perhaps I may ask the noble Lord, therefore, what his estimate is of the number of people who have not been killed due to terrorist activities because of the action of the security services.

Lord Strasburger: I have no idea, is the answer to that question.

My point is that, contrary to what some people assert, the risk of death from terrorism is not as high as it was 30 or 40 years ago, so we must take care not to surrender the freedoms that our parents and grandparents fought to protect in the Second World War on the basis of alleged unprecedented threats.

Lord Reid of Cardowan (Lab): Since the noble Lord has no idea, I will give just one example, occurring and culminating on 6 August 2006: the attempt to bring down seven airliners—which, were it not for the powers in the Bill, would have resulted in 2,300 deaths on one day alone.

Lord Strasburger: Thank you.

Sometimes, possibly well-meant attempts to improve our safety by treating every citizen as a suspect and collecting everyone's private data could have the unintended consequence of making us less safe. I am thinking of bulk surveillance powers, which some experts say risk hiding data about the bad guys under a tsunami of personal and private data about the 99% of us who will never be terrorists or paedophiles. Furthermore, by storing 12 months of our internet activity at our service providers to derive a debatable security benefit, we would be exposing all internet users to the entirely new and self-inflicted risk of the theft of that very revealing data by thieves, blackmailers and foreign spooks. There is plenty of experience of cyberthefts to tell us that our personal data will be stolen, whatever bland assurances we get from the Government that they will not.

So the Bill has the potential to be a good one, but it is not yet there and we have much work to do to get it there. I look forward to working with my colleagues on these Benches to achieve that—and, importantly, I hope also to work with noble Lords on the Labour, Cross-Bench and Government Benches to make the Bill fit for purpose and the best it can be.

Lord Ashton of Hyde (Con): My Lords, I know that the speaking time is advisory and that the noble Lord has been interrupted, but we have a lot of speakers and a Statement, so if he is willing, it would be good if he could bring his remarks to a conclusion.

Lord Strasburger: I will do exactly that.

The events of the last few days have demonstrated how volatile our politics have become and how quickly ruthless politicians can replace more moderate leaders. That means that we must be even more careful about what powers we give the Government to spy on us. Make no mistake—this is not an exaggeration—as it is currently drafted, and in the hands of an extreme Government, the Investigatory Powers Bill would be a toolkit for tyranny. The powers in it and the data that would be collected on all of us would be a grave threat to our freedom and our democracy if exploited by those who would oppress us.

4.25 pm

Lord Blair of Boughton (CB): My Lords, it is certainly an interesting piece of scheduling for me to follow immediately after the noble Lord, Lord Strasburger. I have much respect for him but I have to say—I do not think I am alone—that I do not agree with almost anything he has just said.

I have been involved in conversations about the kinds of powers with which the Bill is concerned since the turn of the century and even before. I lived with the current legislation—principally the Regulation of Investigatory Powers Act, RIPA—and I have watched its relevance to modern conditions slowly shrivel. This is not surprising, because the world has changed and is changing with ever more speed. The digital age is a singularity: a change on the scale of the invention of printing and the Industrial Revolution.

The powers in the Bill are needed. As I have said before in the House, one of the first instructions from the senior investigating officer in cases of murder and terrorism is to find and check the relevant telephone records. David Anderson, the Independent Reviewer of Terrorism Legislation, has noted that almost all terrorist trials depend for a successful conviction on that kind of evidence. However, what has to be recognised is that new technologies are rendering that kind of evidence simply unavailable. In addition, even if that was not the case, which it is, young people—and I am afraid they will include some future terrorists and murderers—simply do not use as telephones what we at our average age believe to be telephones. They use WhatsApp, Snapchat and all the other things that the noble Lord, Lord King, mentioned, which use the internet as the means of communication over what is known as VoIP—voice over internet protocol. Without the Bill, the abilities of the UK police to protect our people will sharply diminish. As the noble Lord, Lord Rosser, said, that particularly grave position will be made worse if we lose European co-operation on intelligence sharing.

It is said that the defence of the realm is the most important duty of the state. The protection of individual citizens is the next most important duty of the state. Before finishing, I will just turn to the speech of the noble Lord, Lord Paddick. The noble Lord had a distinguished career as a senior police officer. However, while I admire his integrity and his openness about his own personal circumstances, I simply do not believe that any police officer experienced in surveillance, terrorism or organised crime would agree with what he said. We have recently heard a little too much running down of experts. I agree completely with the opening statement of the Minister, in which he made clear what experts in this area have said. To ignore their advice would make this country less safe.

[Lord Blair of Boughton]

Outcome of the EU Referendum

Statement

4.30 pm

Lord Taylor of Holbeach (Con): My Lords, with the leave of the House, it may be helpful if I make a brief business statement regarding our proceedings this afternoon and in the coming days. My noble friend the Leader will now repeat the Prime Minister's Statement on the outcome of the EU referendum. Following discussions in the usual channels, we have made provision for 40 minutes of Back-Bench questions. I have also agreed to consider further extensions if at the end of 40 minutes there is still a significant number of Members wishing to ask questions.

I reassure noble Lords, however, that this will be the first of several occasions for the House to take stock of recent events. There is a European Council meeting later this week, and we intend to arrange a full debate next week—probably on Tuesday, in lieu of the Second Reading of the Policing and Crime Bill, which will be rescheduled to a later date.

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, with the leave of the House, I will now repeat the Statement given by my right honourable friend the Prime Minister in another place. The Statement is as follows:

"With permission, Mr Speaker, I would like to make a Statement on the result of the EU referendum.

Last week saw one of the biggest democratic exercises in our history, with over 33 million people from England, Scotland, Wales, Northern Ireland and Gibraltar all having their say. We should be proud of our parliamentary democracy. However, it is right that, when we consider questions of this magnitude, we do not just leave it to politicians but rather listen directly to the people. That is why Members from across this House voted for a referendum by a margin of almost 6:1.

Let me set out for the House what this vote means, the steps we are taking immediately to stabilise the UK economy, the preparatory work for the negotiation to leave the EU, our plans for fully engaging the devolved Administrations, and the next steps at tomorrow's European Council.

The British people have voted to leave the European Union. It is not the result that I wanted nor the outcome that I believe is best for the country I love, but there can be no doubt about the result.

Of course, I do not take back what I said about the risks: it is going to be difficult. We have already seen that there are going to be adjustments within our economy, complex constitutional issues and a challenging new negotiation to undertake with Europe. However, I am clear, and the Cabinet agreed this morning, that the decision must be accepted and the process of implementing the decision in the best possible way must now begin.

At the same time, we have a fundamental responsibility to bring our country together. In the past few days, we have seen despicable graffiti daubed on a Polish community centre and verbal abuse hurled against individuals because they are members of ethnic minorities. Let us remember that these people have come here and made a wonderful contribution to our country. We will not stand for hate crime or these kinds of attacks. They must be stamped out.

We can reassure European citizens living here and Brits living in European countries that there will be no immediate changes in their circumstances. Neither will there be any initial change in the way that our people can travel, in the way that our goods can move, or in the way that our services can be sold.

The deal we negotiated at the European Council in February will now be discarded and a new negotiation to leave the EU will begin under a new Prime Minister.

Turning to our economy, it is clear that markets are volatile and there are some companies considering their investments. We know that this is going to be far from plain sailing. However, we should take confidence from the fact that Britain is ready to confront what the future holds for us from a position of strength.

As a result of our long-term plan, we have today one of the strongest major advanced economies in the world and we are well placed to face the challenges ahead. We have low, stable inflation. The employment rate remains the highest that it has ever been. The budget deficit is down from 11% of national income and forecast to be below 3% this year. The financial system is also substantially more resilient than it was six years ago, with capital requirements for the largest banks now 10 times higher than before the banking crisis.

The markets may not have been expecting the referendum result but, as the Chancellor set out this morning, the Treasury, the Bank of England and our other financial authorities have spent the last few months putting in place robust contingency plans.

As the Governor of the Bank of England said on Friday, the Bank's stress tests have shown that UK institutions have enough capital and liquidity reserves to withstand a scenario more severe than the country currently faces. The Bank can make available £250 billion of additional funds if it needs to support banks and markets. In the coming days, the Treasury, the Bank of England and the Financial Conduct Authority will continue to be in very close contact. They have contingency plans in place to maintain financial stability and they will not hesitate to take further measures if required.

Turning to preparations for negotiating our exit from the EU, the Cabinet met this morning and agreed the creation of a new EU unit in Whitehall. This will bring together officials and policy expertise from across the Cabinet Office, the Treasury, the Foreign Office and the Department for Business. Clearly, this will be the most complex and most important task that the British Civil Service has undertaken in decades, so the new unit will sit at the heart of government and be led and staffed by the best and brightest from across our Civil Service. It will report to the whole Cabinet on delivering the outcome of the referendum, advise on transitional issues and explore objectively options for our future relationship with Europe and the rest of the world from outside the EU. It will be responsible for ensuring that the new Prime Minister has the best possible advice from the moment of their arrival.

I know that colleagues on all sides of the House will want to contribute to how we prepare and execute the new negotiation to leave the EU, and my right honourable friend the Chancellor of the Duchy of Lancaster will listen to all views and representations and make sure that they are fully put into this exercise. He will be playing no part in the leadership election.

Turning to the devolved Administrations, we must ensure that the interests of all parts of our United Kingdom are protected and advanced. So as we prepare for a new negotiation with the European Union, we will fully involve the Scottish, Welsh and Northern Ireland Governments. We will also consult Gibraltar, the Crown dependencies, the overseas territories and all regional centres of power, including the London Assembly. I have spoken to the First Ministers of Scotland and Wales, as well as the First and Deputy First Ministers in Northern Ireland, and the Taoiseach, and our officials will be working intensively together over the coming weeks to bring our devolved Administrations into the process for determining the decisions that need to be taken. While all the key decisions will have to wait for the arrival of the new Prime Minister, there is a lot of work that can be started now; for instance, the British and Irish Governments will begin meeting this week to work through the challenges relating to the common border area.

Tomorrow I will attend the European Council. In the past few days I have spoken to Chancellor Merkel, President Hollande and a number of other European leaders. We have discussed the need to prepare for the negotiations, in particular the fact that the British Government will not be triggering Article 50 at this stage. Before we do that, we need to determine the kind of relationship we want with the EU. That is rightly something for the next Prime Minister and their Cabinet to decide. I have also made this point to the Presidents of the European Council and the European Commission, and I will make this clear again at the European Council tomorrow.

This is our sovereign decision and it will be for Britain—and Britain alone—to take. Tomorrow is also an opportunity to make this point: Britain is leaving the European Union but we will not turn our back on Europe or on the rest of the world. The nature of the relationship we secure with the EU will be determined by the next Government but I think everyone is agreed that we will want the strongest possible economic links with our European neighbours, as well as with our close friends in North America and the Commonwealth, and important partners such as India and China. I am also sure that, whatever the precise nature of our future relationship, we will want to continue with a great deal of our extensive security co-operation and to do all we can to influence decisions that will affect the prosperity and safety of our people here at home.

This negotiation will require strong, determined and committed leadership and, as I have said, I think the country requires a new Prime Minister and Cabinet to take it in this direction. This is not a decision I have taken lightly but I am absolutely convinced that it is in the national interest. Although leaving the EU was not the path I recommended, I am the first to praise our incredible strengths as a country. As we proceed with implementing this decision and facing the challenges it will undoubtedly bring, I believe we should hold fast to a vision of Britain that wants to be respected abroad, tolerant at home, engaged in the world and working with our international partners to advance the prosperity and security of our nation for generations to come. I have fought for these things every day of my political life and I will continue to do so. I commend this Statement to the House".

My Lords, that concludes the Statement.

On my own behalf and as Leader of this House, I believe there is a particular role for the House of Lords in this period as we deliver on the clear instruction of the British people. We can provide stability by lending our experience, knowledge and expertise to the challenges we face, and add something different to the House of Commons in helping to make this decision work for Britain. Our EU Committee and its sub-committees are well placed to assist the House. As my noble friend the Chief Whip has already indicated, we will facilitate a debate in government time next week which will provide a further opportunity for the views of noble Lords to be heard.

4.40 pm

Baroness Smith of Basildon (Lab): My Lords, I thank the noble Baroness for repeating the Statement and for her additional comments at the end. They are welcome and concur with our own views.

These past few days have been the most difficult and uncertain that we have faced for more than a generation. Despite the massive turnout, whatever one's views on the referendum, there can be no pride or joy in a result that has divided this country across regions, the age divide and ethnicity, and in so many other ways. With such a narrow result, we must find a way to work together.

During the campaign we were shocked and devastated that our much-loved and highly regarded Member of Parliament Jo Cox was murdered by a man who later gave his name as "Death to traitors, Britain first". There can be no pride in a campaign that saw political debate sink to a new low.

The leave campaign told us that £350 million a day was being sent to Europe that would be available for the NHS. Within hours of the result that was being retracted as a "mistake". However, it was never true and is not the only promise now being denied.

We have to understand why concerns are raised about immigration. However, throughout the campaign, the way in which immigration and asylum seekers were demonised to persuade people to vote leave was utterly shameful. I welcome the fact that Nigel Farage's poster of fleeing Syrian refugees was condemned across the political spectrum and I welcome the comments in the Statement on hate crime.

However, we have to look to ourselves. Is there anything in our words and actions that could have led us to the position where anyone would consider that such a poster was acceptable and legitimate campaigning? When the Prime Minister referred in Parliament to migrants as a "swarm", did he consider beforehand the possible consequences? During the London mayoral

[Baroness Smith of Basildon]
campaign, when Theresa May and Michael Gove spoke of security and terrorism, and then attacked Sadiq Khan as a risk, did they ever consider that such comments were reasonable and responsible?

I concur with the noble Baroness's comments and welcome them. As she said, we are all dismayed at the reports over the last few days of targeted attacks on a Polish community and protests outside mosques. There has been an increase in casual and deeply unpleasant racism. We have heard of schoolchildren saying that they are worried about their future and, perhaps the lowest of the low, people wearing t-shirts with slogans such as "We won. Go home". That is the price we are now paying for the tone of the political debate over the past few months.

We need to heal our country and our politics. We need to encourage and provide hope, not hate, but that will not be easy. Our country is desperate for the political leadership that is so sadly lacking at present. The Prime Minister, who said he would see us through the negotiations, is resigning, the Chancellor was invisible for days, and we face three more months of Tory party internal warfare before there is a leader who will even attempt to deal seriously with this crisis. That is shameful. I am not making a cheap party-political point; there are serious issues here.

Noble Lords: Oh!

Baroness Smith of Basildon: Wait and see, because I do not absolve my party leadership from this either. There is a serious issue about the quality of political leadership in our country as a whole. My party is also dealing with internal political problems, largely due to fallout from this result, and our country is crying out for strong, decent, decisive, caring and competent leadership from both Government and Opposition. Our country is entitled to demand such leadership from us at such a challenging time.

So what can we do? Individually and as a House as a whole, we have a responsibility. I believe—the noble Baroness emphasised this point as well—that we have the expertise, judgment and experience in this House to assist and lead in finding a way through. The role of your Lordships' House in working through the referendum decision and in examining the detail will be essential. As we have already shown, the tone in which we conduct our debates and our deliberations must stay as it is, and we should show the way in being measured and honest.

Our excellent European Union Committee, chaired by the noble Lord, Lord Boswell, has already considered and reported on the process and difficulties of withdrawal, referred to by Sir David Edward, a leading—or probably the leading—expert in EU law as the,

"long-term ghastliness of the legal complications",

which he described as "unimaginable". However, we have to imagine them and to work through them.

There are many questions not yet answered and many may not have even been considered, so I shall ask the noble Baroness just three which I think are the most urgent. Today, we are debating the Investigatory Powers Bill. Obviously, the practical implications of such legislation are linked to our co-operation with other EU countries. Given that we shall at some point disengage and have to create a new, separate framework for those countries, what consideration has been given to this and are a rethink and further consideration required?

Secondly, the legislative programme cannot just be business as usual. Paragraph 67 of the EU Committee report states that the Government would need to enact in law everything that they wanted to keep in law which had come from treaties or a directive. Clearly, this cannot be done overnight, but our relationship with the EU is deteriorating by the hour and there is real urgency here. Have the Government considered a timescale for such legislation and will it mean a new Queen's Speech, so that the legislative programme can be withdrawn?

Thirdly, the Statement referred to the devolved Administrations, but there was more about the role of the Civil Service than about the role of Parliament. Parliamentary oversight of the negotiations will be essential and, clearly, we will want to play our part in scrutiny and policy formulation. Can the noble Baroness give an assurance not just on debates but on parliamentary oversight of negotiations?

These past weeks have been challenging. That so many people took part and voted shows real interest and engagement, yet with such a binary choice it was harder to make the case for the complexities of what was involved and what could follow. Many who voted still wonder and worry whether they have made the right decision. There is no route map for what comes next. There is no long-term certainty for our economy or our society, and it is at times such as this that we have to rise to the challenge and ensure that what unites us is bigger, better and stronger than what divides us.

Lord Wallace of Tankerness (LD): My Lords, I, too, thank the Leader of the House for repeating the Prime Minister's Statement and welcome the words she added in respect of what your Lordships' House may be able to contribute. I declare my interest as a Britain Stronger In Europe board member.

As a democrat, I respect the outcome of Thursday's referendum, but—I suspect like many colleagues across the House—I am profoundly saddened by the result. I have a deep anxiety about what the future holds for our country. I am worried about the divisions that have been laid bare across the country during this campaign and echo many of the concerns expressed by the noble Baroness, Lady Smith of Basildon, about the tone of much of the debate and the campaigning. I am fearful for what this means for our outward-looking and tolerant country as well as for the future integrity of the United Kingdom. Many on these Benches are angry that notwithstanding his fine words in the Statement about his vision for Britain, this Prime Minister put party interest before national interest, complacently believing that he could win a referendum primarily designed to settle internal Tory divisions.

The European Union is an institution to which we have belonged and contributed for the past four decades. It has delivered peace, promoted equality, kept us safe and opened the doors of opportunity, but it will no longer be a part of Britain's future. I think too that the

leave campaigners do not appear to have any plausible strategy. We have already seen that they are backtracking on many of the promises they made during the campaign. So the result will change not only the very fabric of our country, it will change Europe and our relationship with the wider international community. Regrettably, the United Kingdom has on many occasions failed to provide leadership in the European Union. As a result, the people of this country have seen Governments play a half-hearted role at best. There has been a failure domestically to make the positive case for the European Union and the benefits it brings. In some ways, therefore, it is not unsurprising that when faced with years of the EU being blamed for everything that is wrong in this country, a majority of people voted to leave.

But I fear that we are only just beginning to realise the adverse impact the vote will have. Since Friday morning we have seen the value of sterling plummet. Some £120 billion was wiped off the markets in the first 10 minutes of trading on Friday, while this morning sterling slipped another 2.6% against the dollar and the pound is at a 31-year low. Surely the leaders of the leave campaign owe it to us to tell us what they think is negotiable with other members of the European Union, what is not negotiable in spite of their many promises, and what the likely consequences will be for the British economy. I welcome the fact that the Chancellor of the Exchequer and the Governor of the Bank of England have tried to steady the markets this morning, but fundamentally it is the uncertainty of the United Kingdom's position which will continue to cause nervousness in the economy. Businesses and the markets like certainty, but certainty would appear to be the last thing we have in the wake of the referendum.

I have a number of questions for the noble Baroness. Can she indicate what the present Government would wish to achieve in negotiations with the European Union? Do they believe that we should seek complete access for the United Kingdom to the single market? Do the Government even have a view? Given that younger voters overwhelmingly voted to remain in, what hope can the noble Baroness and the Conservative Party offer future generations that they will have the same access to jobs across Europe as previous generations?

Of course it is not just the economy that is uncertain, but the very fabric of our constitution. Article 50 states:

"Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements".

I think that the House will be interested to know what the Government's view is as to what our own constitutional requirements are. Are they an Act of Parliament, a resolution of the House of Commons, a resolution of both Houses or an executive decision by Members? That is an important question for the noble Baroness to answer.

Scotland and Northern Ireland both voted strongly to remain in the European Union and the Secretary of State for Scotland has said that, if the people of Scotland ultimately determine that they want a second Scottish independence referendum, there will be one. Can the noble Baroness confirm that that is the position of the United Kingdom Government? Does it mean that if the Scottish Parliament asks for a further referendum, the Government will bring forward an order under Section 30 of the Scotland Act 1998 to transfer the necessary powers for a referendum to take place?

Northern Ireland as we know shares a land border with another EU country. Thousands of people cross it every day in both directions visiting friends and family, while the economy of Northern Ireland relies heavily on the European Union as a pull factor for internal investment, and directly in the form of research and development grants and peace grants. Can the noble Baroness set out the Government's understanding of the operation of the common travel area where one country is an EU member and the other country is not? Can she also say something about mandate—the mandate of a future Prime Minister elected not by the country but by members of the Conservative Party, and what that means in terms of taking back control?

The leave campaigners have now admitted that they cannot do much to reduce immigration, so we need a serious and informed public debate about the long-term challenge of immigration. However, the anti-immigration rhetoric we have seen during the campaign has encouraged a surge of right-wing resentment. Perhaps the noble Baroness will wish to elaborate more on what the Government intend to do to tackle that. Finally, although I very much respect the decision of the noble Lord, Lord Hill of Oareford, to resign his position as a European Union Commissioner, we are still members of the European Union. Can she give an indication of the timescale for Britain to nominate another EU Commissioner so that we do not actually have an empty seat at the table?

We on these Benches firmly believe that it is in the United Kingdom's best interest to stay as closely engaged in European networks of co-operation and joint operation as possible. We will continue to make the case for Britain's future with Europe and to fight for an open, optimistic, hopeful, diverse and tolerant United Kingdom.

Baroness Stowell of Beeston: My Lords, as always I am grateful to the noble Baroness and the noble and learned Lord for their responses and I will seek to provide answers to some of the questions they have put forward this afternoon. I must start by saying that the British people have decided that we should leave the European Union and our priority now must be making this decision work for everybody in the UK, whatever side of the debate we were on. I am proud that this Government promised a referendum and delivered it and that we trusted the people with this very important decision. I voted and campaigned for remain, but a decision has been made, it is a clear one and it is very important that we get on now with implementing that decision and doing so in a successful way for the benefit of everybody who lives here.

I turn to some of the comments and questions put forward by the noble Baroness and the noble and learned Lord. As the noble Baroness knows, I was very shocked, like everybody else, by the death of Jo Cox. On the points she made about racism and some of the things that have been said and done in recent

[Baroness Stowell of Beeston]
times, I do not want to debate again the way the campaigns were conducted, but I want to make some important points. The first is that whatever the result of this referendum and our decision to leave the European Union, this country has not given up on its values. We are still the United Kingdom and our values remain exactly as they were. I would condemn anybody who used the result of this referendum as an opportunity to promote racism. If there is any evidence of that, we should all work together to stamp it out. I certainly urge anybody who has experienced any kind of hate crime or racism to alert the police to that straightaway and to know that they do so with the full support of every decent person who lives in this country.

The noble Baroness referred to the role of this House and to political leadership in this country. As I said in my initial remarks as I concluded the Prime Minister's Statement, this House has an important role to play. It is important for us to demonstrate our value to the democratic process by offering something that is a bit different from the House of Commons. One of the ways I hope we are able to achieve this, through our debates over the next few weeks as we consider the way forward on leaving the European Union, is that we are a little less political than the other House. That is one thing that is important about us, for which we attract a lot of positive response.

On the noble Baroness's question about our current legislative programme—she referred to the Investigatory Powers Bill—the Government were elected on our manifesto commitments. We have a clear mandate and an important legislative programme that we have to continue to deliver. The Investigatory Powers Bill is one of the very important pieces of legislation that will safeguard the security and safety of people here in the United Kingdom. As for the impact on any of our legislation, we are in the European Union until we are out of the European Union and we have not yet triggered the Article 50 process that will put that process in train. We must very much continue with our programme and we have a mandate for that programme from the election of only one year ago.

The noble Baroness asked about the devolved Administrations and the role of Parliament in overseeing the process over the coming weeks and months. The noble and learned Lord also asked about Parliament's role and what opportunity it will have to contribute to the decisions before final exit is made. It is too early for me to say what that might be, but as I hope I have indicated, I see it as an important part of the process that Parliament has a serious opportunity in this House to debate and express its views, and there is a role for our European Union Committee and its sub-committees to play in this process.

The noble and learned Lord asked about a couple of things in addition to the topics that the noble Baroness raised, the main one being Scotland and Northern Ireland. The people of Scotland made a very clear decision only two years ago that Scotland should remain in the United Kingdom. The Prime Minister has made it clear today—I very much echo the point—that in the way we proceed from here, we must work closely with the devolved Administrations. We will continue to do that, because we want to ensure that the way we exit from the European Union is to the benefit of all parts of the United Kingdom and all its people, so our constructive discussions will be a very big part of how we move forward from here.

5.01 pm

Lord Hague of Richmond (Con): My Lords, is it not deeply unfortunate that an inevitable side-effect of this referendum result is that we have lost an outstanding Prime Minister who has given long service to this country and had more to give? Although it was his decision to hold an in/out referendum, we should remind the noble and learned Lord, Lord Wallace, that not long ago, in the general election of 2010, that was the policy of the Liberal Democrats as well, so they should not be too condemnatory about that. But will my noble friend broaden the thoughts rightly expressed in the Statement about bringing the country together to include the need for the economic and foreign policies pursued by a country leaving the European Union to be able to command the support of the millions of people who voted to remain in the European Union? Will that not be an essential attribute of a re-formed Cabinet and of a new Prime Minister?

Baroness Stowell of Beeston: My noble friend is absolutely right and I join him in paying great tribute to David Cameron as Prime Minister: it has been an honour for me to serve in his Government and his Cabinet. He is a remarkable man in the way he carries out his responsibilities as Prime Minister.

My noble friend said that we must ensure that the way we proceed from here commands the support of everybody in the United Kingdom, especially those who did not vote for us to exit. That is absolutely essential, and the next Prime Minister and his Government must give absolute priority to it.

Lord Reid of Cardowan (Lab): My Lords, although I quite understand people complaining about the campaign, we are where we are, and the priority surely should be to try to give some political stability, and through that financial and other stability, at a time when, for all their personal qualities, it is obvious that the present Prime Minister and his opposite number across the Dispatch Box are completely lacking in authority on the subject of Europe.

I therefore want to ask one specific question that concerns the reassurances that nothing much will change in the short term and Article 50 has not been operated. What overtures were made to the British commissioner to persuade him not to resign with immediate effect, particularly given the crucial area of finance and financial services over which he had responsibility? I quite understand his personal position but can the Government assure me that they made every conceivable effort to make sure that the United Kingdom commissioner in charge of finances would be in place for the next few months? If they did not do that, it was another huge omission.

Baroness Stowell of Beeston: I am grateful to the noble Lord for giving me an opportunity to say how much I admire my noble friend Lord Hill, as my

predecessor in this role and also for the work that he has done as a commissioner. He set out his reasons for deciding to step down from his role and the Commission decided to move his responsibilities to another commissioner.

Financial stability is clearly being given huge priority within government. We have heard from the Governor of the Bank and from what the Chancellor said this morning all the steps that have been taken so far to provide stability to the financial markets, and their readiness to go further, should that be necessary. But we must not forget that the reason we are in a strong position to deal with this situation is the progress that we have made over the last few years in ensuring that we have a strong economy and can deal with this situation. I absolutely acknowledge that the situation is uncertain, but we can deal with it.

Lord Boswell of Aynho (Non-Afl): My Lords, I, too, welcome the Leader of the House's repeating of the Statement and the personal postscript that she added in relation to the role of this House, and specifically of the EU Select Committee which I have the honour to chair. Will she therefore confirm to the House that at all stages, however long it takes, in the complex process of withdrawal and the development of a future relationship with the European Union, it is essential—perhaps more than it ever has been before and, to be frank, more than was evidenced during the process of the Prime Minister's now aborted renegotiation bid over the last 12 months—that both Houses of Parliament should be informed and enabled so that they may make a full and constructive contribution to the discussion of these crucial issues? Frankly, this is a moment of crisis. In the interests of both this country and, we should not forget, its immediate neighbours and their economies, too, must not an opportunity be provided to enable the collective wisdom and experience of this House to be heard?

Baroness Stowell of Beeston: My Lords, I certainly acknowledge—as the noble Lord noted—that there is a huge amount of expertise and knowledge in this House that will make a strong contribution to the process. I am not in a position to provide the detail for which he asked. However, I will pick up on an important point that he made: while we have a big task in front of us in negotiating our exit and a new relationship with the European Union, we have strong bilateral relations with other member states within the European Union and, indeed, other countries around the world. We must continue with those relations, and continue to strengthen them, during this process.

The Lord Bishop of Chelmsford: My Lords, some commentators have said that the result of the referendum was a resounding victory for Brexit. I am not sure that I see it that way: 52 to 48 is, to my mind, a rather narrow victory. Where there is no overwhelming consensus, there is an overwhelming need to take account of the views of others. Nobody likes a bad winner. There has been too much hyperbole and spite in this debate. Yes, one side did win, the result is clear and we have to act on it. Those who advocated leave obviously need to take the lead in the negotiations that will take place. But we urgently need the sort of wise leadership that can build consensus. We need some sort of national Government—a coalition of good will where we can work together.

I serve the diocese of Chelmsford, which is, "east London in and Essex out". Yesterday I spoke to a head teacher who said that the children were frightened when they went to school on Friday and that she had seen an increase in race hatred and intolerance. What plans are there to address the lack of unity in our nation and to counter the fear and race hatred that is on the rise? Can we ensure that those who lost this vote, as well as those who won, can be part of the planning going forward?

Baroness Stowell of Beeston: The right reverend Prelate's remarks covered a large amount of ground. Although I said that we could, perhaps, do with a little less politics in this House than in the other place, I would not go quite as far as his proposal for the future. But he makes an important point about us avoiding becoming a divided nation as a result of the referendum. All of us who are involved in politics, or business, or who have other positions of authority and responsibility, have to properly understand what people feel when they express their views. During the campaign and over the last few months, I was interested in comments about people no longer wanting or respecting experts. I do not agree with that analysis but people want to feel, more than they do now, that experts understand why they feel the way they do. People may not feel they have benefited from the turnaround of the economy, or have felt left out of many of the advances we have made over the last 10, 20 or 30 years. As we proceed, we all have a responsibility to keep trying to reassure them that we understand why they feel the way they do and why they voted the way they did. We must now make sure, in the way that we implement the country's decision, that we bring everyone along with us and that everybody in this country feels that they have a proper opportunity to fulfil their potential.

Lord Mandelson (Lab): My Lords—

Lord Lawson of Blaby (Con): My Lords—

Lord Taylor of Holbeach (Con): My Lords, if we go round the House, it is actually the turn of the Liberal Benches.

Baroness Kramer (LD): My Lords, I am very much concerned about some of the complacency that I am currently hearing from the Government. Since the noble Baroness the Leader of the House and others on the Conservative Benches have the opportunity for direct conversation with the collection of MPs, one of whom will be our future Prime Minister, would they convey this? The City is already making its decisions, as are major businesses. Most of them started planning for the contingency of leave months ago. Over the weekend, we have heard very clearly, and the CBI have confirmed, that many major firms have put on a hiring freeze. Others are now reassuring their shareholders that they have plans in place to be able to move significant parts of their operations to continental

[Baroness Kramer]
Europe or Ireland. If they do not hear a clear commitment, a cast-iron guarantee, in a matter of days—possibly weeks, but certainly not months—from that group from which the Prime Minister will come, that we will remain wholly in the single market, the decisions will become irreversible. Many already are and the remainder and many more will happen. Complacency is not safe.

Baroness Stowell of Beeston: I reject the noble Baroness's description of this Government as complacent. What has been evident over the last few days in what was said by the Chancellor this morning, by the Prime Minister today and by the Governor of the Bank of England on Friday is that there are measures in place to provide some stability within the markets. The noble Baroness is of course right that businesses will take decisions now that could affect people. We need, through a range of methods, to make sure that we project to the world outside that Britain is in a strong position to weather this period of uncertainty arising from the referendum decision. We can do that, and do it with confidence, because of the steps that we have taken over the last few years to strengthen our economy and to make sure that we are ready for whatever decision that followed. I also say to the noble Baroness and to the House that we remain a member of the G7 and of the G20, and through those kind of forums we have an opportunity to project that very strong and confident message as well.

Lord Lawson of Blaby: My Lords, as one of the minority in your Lordships' House who warmly welcomes the decision that the people made in the referendum, I also warmly welcome the statesmanlike Statement of the Prime Minister today, which my noble friend repeated. May I suggest, too, that the campaign is over and that we are now in a new phase, and that it would be no bad thing if the campaigning organisations on both sides should shut up shop? I speak as somebody who took a prominent part in one of them. What has happened was implicit in the Prime Minister's speech: the people have spoken and it is now for the Government to implement wisely the decision of the people.

In that context, I welcome the Prime Minister's decision to involve the brightest and the best in the Civil Service in charting the way ahead. I believe that there is a great way ahead. Nobody should be put off by financial market volatility—I knew quite a lot of that when I was Chancellor. Financial markets are by their nature volatile. What matters are the economic fundamentals, which are good now and can get even better if we pursue a sensible policy. I regret the fact that the Treasury for a moment morphed into the office for budget irresponsibility but the Treasury can play a great part. I warmly welcome the approach that was charted in the Statement. Does my noble friend agree that the campaigning organisations should now shut up shop on both sides?

Baroness Stowell of Beeston: I certainly agree with my noble friend that the campaign is over. The public have spoken and we now all have a responsibility to implement that decision—and, as I have said, in a way which means that it is successful and in the best interests of this country. As my noble friend says, it is right that we are using the brightest and most talented civil servants to that end. Indeed, I am sure that we will draw upon a wide range of expertise outside Whitehall as well.

Lord Mandelson: My Lords, for the next two years the United Kingdom is entitled to have a commissioner in Brussels during a time when vital national interests will be considered by the Commission and the other EU institutions. Will the noble Baroness inform the House when that vacancy is going to be filled?

Baroness Stowell of Beeston: I am grateful to the noble Lord for that direct question but, unfortunately, I am not in a position to answer it in a direct way. At some point, I hope very much that I will be able to come back to him and make that information more widely available.

Lord Butler of Brockwell (CB): My Lords, will the noble Baroness confirm that the UK's departure from the EU will not become final until our negotiations over the next two years are complete? Since the terms of our departure will only be known then, will it not be the duty of the Government to give the people a chance to take an informed view on those terms before the UK's departure becomes final?

Baroness Stowell of Beeston: It sounds as if the noble Lord is trying to suggest a second referendum at a later point. This has been a once-in-a-generation decision. The people of this country have been clear. When we trigger Article 50 the clock on the two-year process will start. The Prime Minister has not triggered it now because he believes that it is right that when going into that process the Government are clear on what kind of relationship they want with the European Union in future. That is why he is not doing so himself but is leaving it to his successor.

Baroness Smith of Newnham (LD): My Lords, like the noble Lord, Lord Lawson, I welcome the creation of an EU unit in Whitehall, although one wonders why it did not exist already—I think that in some incarnations, it did. In particular, the idea of bringing together policy expertise is welcome. What provision is there for cross-party and non-party involvement in setting the mandate for those civil servants? After all, Vote Leave was a cross-party thing—it even had a Liberal Democrat on its board—and the remain campaign was also cross-party. Surely in the national interest the new Prime Minister should be looking across the spectrum to get the best input so that whatever deal we get really is the best for the whole of the United Kingdom and not just something that narrow parties can bring about?

Baroness Stowell of Beeston: Clearly the campaigns for leave and remain were cross-party, but there is one party in government. It was elected last year and this elected Government will have the responsibility, albeit very much, as I have already indicated, wanting to

draw on expertise and knowledge from a range of different sources, of deciding what precisely they are going to seek to negotiate with Europe in terms of our future relationship.

Lord Howell of Guildford (Con): My Lords, although in the next few weeks or even months we are obviously in a period of very painful adjustment—that is perfectly obvious—does my noble friend agree that it ought to be perfectly possible to achieve practical and constructive relations with all our European neighbours in the near future? I say that not just because it is a desirable thing for us to do but because the European Union itself is undergoing enormous changes and challenges at this moment and we are required to have a very constructive voice, whatever our status under the treaties. Does my noble friend agree that that approach will at least reassure our many friends all around the world and enable us to contribute to the continuing development of a strong Commonwealth network which will be a great support for us in future?

Baroness Stowell of Beeston: My noble friend is absolutely right. In addition to our relationships with other countries via those established institutions, whether they are the European Union, the Commonwealth, which we are absolutely still part of, the G7 or the G20, we will continue to build and strengthen our relations with other countries.

Lord Anderson of Swansea (Lab): My Lords—

Lord Hannay of Chiswick (CB): My Lords—

Lord Taylor of Holbeach: It is the turn of the Labour Benches. I hope that the Cross Benches will have an opportunity of getting in after that.

Lord Anderson of Swansea: My Lords, the Prime Minister made a very dignified statement on the steps of No. 10 last Friday. He again made a dignified Statement today in the other place. He is a decent and honourable man. Would it therefore not be very sad if future historians were to see his legacy as having made a very powerful statement against referendums a few years ago and then changing his mind because of a will-o'-the-wisp, illusive attempt to find party unity, a legacy which led to Britain leaving the European Union and, potentially, breaking up our own United Kingdom itself?

Baroness Stowell of Beeston: I am grateful to the noble Lord for the positive comments that he has made about the Prime Minister, but I am afraid I disagree with him about everything else that he has said. We were very clear in our manifesto that we wanted to provide the British people with an opportunity to decide on membership of the European Union. As I have already said, I am very proud that we gave people this opportunity and delivered on that clear commitment. We have arrived at a point that, as I was trying to suggest earlier, has been a long time coming. This is not about party unity, this is about giving people the opportunity to decide on something very significant. The people have decided they want change, and we have to respect that. It is not what I campaigned for, but they have decided. We are going to implement that decision, which is the right thing for us to concentrate on now.

Lord Hannay of Chiswick: My Lords, would the Leader of the House agree that the timing of the triggering of Article 50 ought to be a relatively trivial and technical decision? It is entirely reasonable for the Government to say that they do not wish to do it until there is a new Prime Minister and a new Government in place. That is a reasonable point of view. But it would not be reasonable to start using it as a negotiating card and turning it into a bone of contention with those with whom we are going to have to negotiate constructively if we are to get a good outcome. I hope that she can agree that that is indeed the best way forward. The noble and learned Lord and the noble Lord, Lord Mandelson, raised the matter of the appointment of a British commissioner. The noble Baroness says that she will come back on that when she has an answer, but could she not register that it would be completely improper, under the terms of the treaty, for there to be no British commissioner for a period that could exceed two years? That really is not tolerable, either for us or for the Commission itself.

Baroness Stowell of Beeston: On the noble Lord's first point, as I have said, it was a very clear decision by the Prime Minister that Article 50 should be triggered by his successor at the point at which they are clear on the kind of relationship that we are seeking with Europe. It has been reassuring that many other European leaders and senior figures within the European Union have acknowledged that we are right to consider this properly before we trigger Article 50.

Lord Maclennan of Rogart (LD): My Lords, does the Minister not agree that Parliament is the constitutional sovereign power of the United Kingdom and that, consequently, referenda should be seen as advisory in nature? The nations of the United Kingdom did not vote in the same way in support of leaving. The United Kingdom Government have the presidency of the EU in the second half of next year and could therefore put forward procedures for reconsidering the structure of the European Union then.

Baroness Stowell of Beeston: I am grateful to the noble Lord for his comments but I am afraid the situation we are in is very clear. The British people have made their decision, and we are not going to seek to do anything other than implement it.

Lord Forsyth of Drumlean (Con): My Lords, I gently point out that this is an unelected House and that the people have spoken. Instead of identifying threats, we should cheer up and identify the huge opportunities that are now available for Britain outside the European Union. I welcome the Prime Minister's Statement and, in particular, the express promise to work with the devolved Administrations. In meetings with the First Minister of Scotland, can it be gently pointed out to

[Lord Forsyth of Drumlean]
her that she campaigned across the United Kingdom on a question that was decided by the United Kingdom? There was no Scottish question on the ballot paper; it was a United Kingdom question. As such, she and everyone in the United Kingdom should now do everything they can to advance Britain's interests and not undermine them by seeking to do side deals in Brussels, which will make it more difficult for us to get the best deal for the whole of the United Kingdom.

Baroness Stowell of Beeston: My noble friend is right that this decision applies to the United Kingdom as a whole. I very much note the points that he makes but, as I have already stressed, in our involvement with the devolved Parliament and Assemblies we will seek to make sure that the outcome benefits everybody in all parts of the United Kingdom. We will engage in a way that is not just constructive but very positive, because that will be in the interests of the Scottish people.

Lord McConnell of Glenscorrodale (Lab): On that very point about the people of Scotland and the way that they voted last week, it is important for your Lordships' House to note that there was not just a small difference between the vote in Scotland and the vote in England and Wales; every single local authority area in Scotland voted overwhelmingly to remain in the European Union. That creates a significant difference between Scotland and England and Wales—not Northern Ireland, obviously—which has to be reflected in the discussions over the next two years. I welcome the fact that the First Minister of Scotland showed leadership over the weekend and said clearly that her number one objective in these discussions will be not to seek independence for Scotland or a second independence referendum but to secure Scotland's relationship with the rest of the European Union. I should like an assurance from the Government that they will contribute positively to that discussion over the coming months and ensure that the First Minister has a role in the discussions in Brussels, not just in Whitehall.

Baroness Stowell of Beeston: I cannot give the noble Lord the assurance that he is looking for because it is just too early to be able to provide that kind of information. I understand the point that he makes about the difference of view in Scotland but the same can be said for the people of London; it was not just Scotland where a majority voted to remain. I come back to what I have already said: we are now seeking to implement a decision that was taken as the United Kingdom, and that is where we must focus our attention. However, that does not in any way diminish the Prime Minister's commitment to involve all parts of the United Kingdom in the process—and that includes the London mayor and the London Assembly.

Lord Low of Dalston (CB): My Lords, I am afraid that I do not find myself in sympathy with the views expressed by the noble Lord, Lord Lawson; I find myself rather closer to the point of view expressed by the noble Lord, Lord Butler. Does the noble Baroness the Leader of the House not agree that those in the leave campaign won the referendum on an essentially fraudulent prospectus? They said that we could continue to trade with the EU on very similar terms without having to accept freedom of movement. They said that there would be no adverse economic consequences, but we are already beginning to see them. They made completely unrealistic promises as to what could be done with the resources saved from our EU contribution—and, most glaringly of all, with breath-taking cynicism and within hours of victory they were maintaining that they never said that Brexit would enable them to reduce the level of immigration.

Moreover, it is clear that the leaders of the leave campaign have absolutely no plan as to the way forward. In these circumstances, and notwithstanding claims of democracy, does the noble Baroness not agree that the legitimacy of the referendum result is substantially undermined and that there is a very strong case for a second referendum on a more precisely focused question—something that nearly 4 million people have already signed a petition in support of?

Baroness Stowell of Beeston: I am afraid that I do not agree with the noble Lord. I am not going to comment on the different campaign teams and their campaigns. In my view, the people who voted to leave the European Union last Thursday knew that they wanted to leave the European Union. Their decision may have been motivated by a range of different things, but suggesting that they did not know what they wanted and that we should therefore somehow now seek another referendum to ask them, "Are you sure?", is not the right way for us to go from here. I think that the right thing for us to do now is to focus on implementing that decision and to do so in a way that brings success and opportunity to the people of this country. We should make sure that it delivers a future that is good for everybody in this country.

Lord Lester of Herne Hill (LD): My Lords, we are a parliamentary democracy in which Parliament is meant to be supreme. The leave campaign focused on restoring the powers of Parliament as one of its aims. Can the Leader of the House tell the House whether, before triggering Article 50 of the treaty, the Government will seek the approval of both Houses? If not, what do the Government envisage to be the role of Parliament? Will they rely purely on prerogative powers like a medieval king or will they involve our supreme legislature before taking the decision?

Baroness Stowell of Beeston: As I have already said, clearly it is very important that Parliament has a role in this process, but at this time I am not able to specify what that role is.

Lord Cormack (Con): My Lords, does my noble friend accept that an enormous responsibility lies on the shoulders of the members of the Conservative Party in this country? They will be choosing not only a leader of the party but effectively a Prime Minister. Therefore, is it not crucial that they take into account the qualities of those who may be on offer, bearing in mind that we need a steadying hand on the tiller and someone who has the gift of statesmanship, and that the gifts of demagogy are not necessarily the same as the attributes of statesmanship?

Baroness Stowell of Beeston: My noble friend sets out the terms under which he will judge any contenders in the Conservative Party leadership contest.

Baroness Morgan of Ely (Lab): My Lords, in July 2017 the UK is due to take up the presidency of the European Council. Can the noble Baroness tell us whether the UK will indeed take up that position and what on earth it will put on the agenda of that presidency?

Baroness Stowell of Beeston: That is one of the issues that will have to be decided in the next months.

Lord Tebbit (Con): My Lords, is my noble friend aware that on Friday morning I woke not only with a song in my heart but with the words of the "Magnificat"—

"He hath put down the mighty from their seat and hath exalted the humble and the meek"—

in my heart, as we had won the referendum? Can she tell me whether the British Commissioner, whoever may be appointed, is allowed by the terms of his oath of office to pursue the British interest as opposed to the interest of the EU? I thought that the oath was very clear on that matter. Am I wrong about that?

Baroness Stowell of Beeston: I am afraid I am not familiar with the terms of the oath that commissioners take when they are appointed. My noble friend, as always, makes an interesting remark.

Lord Campbell of Pittenweem: My Lords—

Lord Elystan-Morgan (CB): My Lords—

Lord Higgins (Con): My Lords—

Lord Lansley (Con): My Lords—

Lord Davies of Stamford (Lab): My Lords—

Baroness Stowell of Beeston: My Lords, as my noble friend the Chief Whip indicated at the start of this Statement, while we must respect the fact that there are a number of noble Lords who are down to speak at Second Reading of the Investigatory Powers Bill, so I do not want us to go on for too long, I can see that there are still at least four noble Lords seeking to ask a question. I am very happy, even though the clock will go beyond 40 minutes, to finish answering the questions of those noble Lords who have already indicated that they wish to ask one.

Lord Campbell of Pittenweem: My Lords—

Lord Elystan-Morgan: My Lords, will the noble Baroness give a solemn undertaking—

Lord Taylor of Holbeach: Perhaps we can hear from the Cross Benches, then from the Labour, Lib Dem and Conservative Benches.

Lord Elystan-Morgan: My Lords, I am deeply grateful. Will the noble Baroness give an undertaking to the effect that before even contemplating activating the machinery of Article 50, the Government will first of all take into account the solemn voice of the two legislatures, and that failing to do so would be to abrogate and render nugatory the whole concept of parliamentary sovereignty? It is extremely sad and ironic that in the light of the European Union Act 2011 it is necessary for there to be a referendum and a parliamentary resolution before there can be any acquiescence to change. Indeed, it would be very strange that an act so existential as leaving the Union could take place without a parliamentary decision.

Baroness Stowell of Beeston: I am grateful to the noble Lord for his question but I am afraid I have nothing to add to what I have already said. In the interests of time, I will leave my comments at that.

Baroness King of Bow: My Lords, our constitutional role—

Lord Davies of Stamford: I have given way several times right from the beginning.

Baroness King of Bow: So have I.

Lord Taylor of Holbeach: I think the noble Baroness, Lady King, comes first.

Baroness King of Bow: My Lords, our constitutional role in this House is to scrutinise legislation and say to those in power, "Pause, reflect and vote again". It is not a popular role, and I know that I will not be popular saying it here today. None the less, the House of Lords should ask those with power—in this case, the British people—to do the same thing that we ask the Government to do all the time: pause, reflect and vote again. They can vote the same way if they want—the Government do that all the time, don't they?—but let us bear in mind that the British people were asked if they wanted the UK to remain or leave the EU. They were not asked if they wanted to break up the UK. Given that that is just one of the disastrous likely consequences, it is only fair that they should have that opportunity. In light of the petition, will the Government consider setting up a Joint Committee with the Commons simply to weigh the arguments for and against a second referendum, which may be at the end of the two-year process? If the answer is no, what happens if the online petition gets more than 17 million British signatories?

Baroness Stowell of Beeston: The noble Baroness raises an interesting point. I really do not have much to add to what I have already said. On the contribution of this House to our deliberations, I have set out how that should at least start. The people's decision is clear on this matter.

Lord Campbell of Pittenweem: My Lords, the noble Lord, Lord Reid of Cardowan, said that we are where we are. He is quite right. Where we are is a country divided socially, economically and politically, where the very future of the United Kingdom is now at stake and with at least two years of economic uncertainty ahead. Is it not a bit rich that those who are responsible for creating these circumstances, apart from congratulating themselves, seem to want to take no involvement or interest in implementing the very decision for which they are responsible?

Noble Lords: Hear, hear!

Baroness Stowell of Beeston: I am not sure that is quite how I would consider the situation. Clearly what has happened is that this Government believed that the UK should remain in the European Union, and we campaigned for Britain to do so. A decision has been made by the people to leave. The Prime Minister has accepted that decision and said that it has to be for his successor to implement it. That will be the way that we move from here.

Lord Higgins: My Lords, the decision that was taken last week has been widely described as democratic. However, it is not what we in this country have understood to be democracy—at any rate, since the time of Edmund Burke. We believe in a representative system of parliamentary democracy where Members of Parliament are elected as representatives, not as delegates, and therefore can take into account all the arguments and not be misled by the kind of misleading propaganda and lies that we have had in this referendum, which has shown very clearly what the disadvantages of a referendum are.

The fundamental problem with a referendum is that it is the dictatorship of the majority—in this case, a very small majority. It is therefore crucial now that our parliamentary system, in the light of what has been said but taking into account the divisions that are so apparent in society, does all that it can to ensure that the implementation of the result of the referendum takes into account the whole range of opinion across the electorate, not simply of those who happen, by a really rather small majority, to have won the debate.

Baroness Stowell of Beeston: My noble friend is right that in moving from here it will be essential that we do so in a way that unites all parts of the country, particularly those who voted a different way.

There is a point about parliamentary democracy that I have not already made: as I have said, this was in our manifesto. We passed an Act of Parliament to bring forward the referendum, and that piece of legislation went through both Houses. We debated the terms of the referendum. This Parliament decided those terms and they were the ones that applied. We must remember that. We have all contributed to the way in which the rules were set and the way that the people of this country then exercised their democratic right to vote in the referendum.

Lord Davies of Stamford: My Lords, surely the point well made by the noble Lord, Lord Low, about a dishonest prospectus cannot be honestly contested on the facts. The *Daily Telegraph* itself wrote this morning:

"The Leave campaign misled the nation about the full risks of Brexit and what can be achieved without collateral damage to the economy and the unity of",

the UK. In those circumstances, and very much following on from what the noble Lord, Lord Higgins, just said, is it not the responsibility of Parliament to ensure that before we pass a line of legislation on this matter, we assure ourselves that the Government have plans in place that are viable, coherent and genuinely in the national interest and do not have any hidden costs attached to them?

Baroness Stowell of Beeston: I hear very much the points that the noble Lord has made but they are very similar to points that have already been made that I have responded to. I do not have anything more that I can usefully add at this point.

Lord Stoddart of Swindon (Ind Lab): My Lords, I was never in favour of joining the Common Market, and I have always wished to withdraw from the European Union so that we could govern ourselves. I rejoice at the instruction that the people have given us. If those people who are calling for a second referendum had won the existing one, I wonder if they would still be calling for another referendum. I very much doubt it.

I want to ask the noble Baroness a couple of questions. First, is it not necessary first of all to repeal the European Communities Act 1972, as amended? Secondly, if we remain in the single market, will we not still be obliged to agree to free movement of people and will not all of British industry be subject to the rules and laws of the single market?

Baroness Stowell of Beeston: As for as the legal process for exiting the European Union, triggering Article 50 is the only legal process for us to follow. It will clearly be led by another Prime Minister, but I am sure that we as a nation will want to do it responsibly. The noble Lord asks about the repeal of the 1972 Act. That would not occur at this stage, because it would be contrary to our wanting to exit from the European Union in a responsible manner. As for his question about the single market, yes, my understanding is that if we were to remain in the single market, it would require free movement of people.

Lord Pearson of Rannoch (UKIP): My Lords—

Lord Blencathra (Con): My Lords—

Lord Taylor of Holbeach: My Lords, I think I will ask my noble friend Lord Blencathra, who has been trying to get on his feet for the whole period of the Q&A.

Lord Blencathra: My Lords, I have been trying to get on my feet for a few years. As we conclude on the Statement today, as my noble friend the Leader noted, every major elected politician in the other place has said that, while they may not like the result, it must be respected and it must be implemented. Will she therefore caution some of my noble friends and all noble Lords that if we wish to unite the nation after this, this unelected House must not seek to thwart the will of the people by going into endless negotiations on or amendments to the minutiae of any legislation, which would be seen as a direct attempt to sabotage the will of the people?

Baroness Stowell of Beeston: As my noble friend knows, he and I were on different sides of the argument during the campaign, but I absolutely agree that the decision has been made, it must be respected and it should be implemented.

Lord Pearson of Rannoch: My Lords, do the Government agree that it would help to calm the markets and help our informal and later formal

negotiations if our negotiators show now and clearly that they understand the difference between the single market and free trade? They should explain that we are in an irresistible position to maintain our free trade, which is what our businesses really need, because there are more than 2 million jobs, principally in Germany and France, making and selling things to us than we have making and selling things to them. That applies particularly to the motor trade, where we have been threatened with a 10% tariff, but for every car we sell them they sell us 2.4 cars and they own 64% of our domestic market. Can we make the distinction between the single market and free trade and decide that it is free trade we want to keep, so that it is the French and German industries that will keep their politicians in Brussels and elsewhere under control in this vital area?

Baroness Stowell of Beeston: The noble Lord is taking us into a stage which we are not currently at in asking about what we might want to negotiate, so that is something on which I cannot offer any detailed comment at this time.

I am very grateful to everybody, and I think we are about to move on to the next business.

Investigatory Powers Bill

Second Reading (Continued)

5.54 pm

Baroness Neville-Jones (Con): My Lords, I return to the subject of the Investigatory Powers Bill. I support the Bill, which I believe to be strongly in the national interest. The threats against which we need this legal base for our collective protection are, sadly, of indefinite duration and, as other noble Lords have said, the situation is getting more complex, difficult and dangerous and we need the protection of the law behind us. Having said that, at the same time it is very welcome that the legislation will include further protections and safeguards that do not exist at present. That gives reassurance and helps produce the balance that we need in legislation for the future. Finally, it is important to remember that we need to get the Bill through as we have a statute on the books only until the end of the year.

The current Bill is the product of pre-legislative consultation and scrutiny in the other place, with plenty of debate and amendment. It has undoubtedly been improved for that. We should take notice of the fact that a great deal of work has been done there. It is, I think, well balanced and been made more proportionate in the course of that debate and a lot of progress has been made on contentious issues. While the House should give it the serious scrutiny that it deserves, which is one of our jobs, I hope that we can refrain from reopening issues where the other place has already done a good job. We do not need a degree of perfectionism that simply rewrites legislation in a slightly different way when the result we have already attained is good.

The Government have accepted an overarching statement of the privacy protections. That is very important and in the Bill. They have also either given or promised protections for sensitive data sources, Members of Parliament, journalistic sources, legally privileged materials and trade union activities. All of those add to the credibility of the Bill and clearly delineate where the powers apply and where exceptions have to be treated with great care.

There is also the increase in the double lock on forms of warrant, and I believe that any Home Secretary would be putting him or herself in considerable jeopardy were he or she to try to ignore the factual review of the judicial commissioner, so one really cannot argue that the power of the judicial commissioner that has already been put in place is inadequate.

My noble friend has indicated that more government amendments will be introduced as a result of debate in the other place, and our debates here will be made a good deal easier by that welcome development. We should pay tribute to the quality of debate in the other House that has led us to be able to advance the Bill in this House at an early stage.

Many noble Lords have rightly said that the Bill mostly brings together existing powers in one place, but there are some new ones, and one of them is access to internet connection records—so-called ICRs—including, as others have said, in relation to VoIP. The Government describe that power as crucial and I very strongly agree. It is necessary for us to have this technical capability. It is also an example of where previous legislation on the statute book was out of date because of technical developments. The point made by other noble Lords about the need to have legislation that enables us to deal with future technical development is important. Future-proofing is difficult; it is not easily done; but we should not pass legislation that prevents us coping with new situations. Taking a sensible stance on future-proofing is important.

I am sure that we will debate the ICR legislation carefully, and it is right that we should do so. There is the question of the authorisation regime and whether it is tight enough, and we need to know exactly what data can legitimately be regarded as forming an ICR. These are all issues that we need to look at. Among other things, service providers need to know precisely what they have to store. An important point is also to have clarity in the Bill itself over what constitutes third-party data.

I have had plenty of lobbying letters, as I am sure other noble Lords have, which raise some important issues that we will want to look at. Some of the points I have had have certainly been overegged, but in the letters I have had the service providers have generally taken a very intelligent and constructive interest in the Bill. Most of them say they welcome it, and very often they propose quite sensible ideas. Quite a lot of it focuses on whether it is right and adequate simply to have some of these safeguards spelt out in a code of practice or whether they should be in the Bill. In general I tend towards wanting to put the safeguards in the Bill.

I will say just a word about bulk powers. There is widespread questioning of why the British Government consider these powers so essential when other Governments do not think them necessary. We need to look at that carefully. My noble friend Lord King gave us some of the reasons why the Government may well

[Baroness Neville-Jones]
be right. One does not have to believe in the erroneous assertion that collection of bulk material constitutes bulk surveillance—it does not. On the other hand, we need to be cautious about collecting a vast amount of data, which covers large numbers of individuals who are not necessarily involved. However, we do not live in a world where prior intelligence is so good that it is obvious that we can totally dispense with bulk collection in favour of targeted collection. The point is obvious. For me, the question is much more about how many categories of bulk collection are justified in the national interest. The Government have provided an operational case, and I look forward to the view and the assessment that Mr David Anderson will put forward in his forthcoming report, which will be very important to the House.

Finally, I will address something that has not been mentioned in the debate so far, which is the question of information that is outside the jurisdiction of the United Kingdom but which the agencies may need. It is quite possible—in fact, I would say that it was quite probable—that quite a lot of cases will involve data located outside the UK jurisdiction. Once the Bill has been agreed, it will give a considerable degree of confidence in UK standards of authorisation, transparency and oversight of data collection, and will lay a good base for international agreements with like-minded Governments, which would permit UK requests to be directly made to companies rather than through Governments in different jurisdictions. That will be an advance on having to rely on mutual legal assistance agreements. On this issue, I hope that we will build in the Bill a base for the international agreements that have been proposed by Sir Nigel Sheinwald as a way forward, as that will be a constructive and rapid way forward to getting the kind of information the agencies need. It is no good the agencies asking for something which turns up three months later after a legal haggle instead of being able to get at it in a timely way.

This is important legislation, and I hope that, notwithstanding the turbulence in our national politics that we have just been discussing, we will be able to apply ourselves and get it on to the statute book in good time.

6.04 pm

Lord West of Spithead (Lab): My Lords, I first congratulate the many people who have worked so hard to ensure that the Bill is nearly fit for purpose. Interception of communications and civil liberty are uncomfortable bedfellows but we are within a hair's breadth of a sensible compromise. Indeed, I believe—unlike the noble Lord, Lord Strasburger—that this will be a benchmark for security legislation globally. Certainly, on talking with my old counterparts in a number of countries, I found that they also feel the same.

We live in a more dangerous world than at any time in my 50 years on the active list, notwithstanding the Cold War. It is more unstable and more dangerous. We must not forget that all the numerous terrorist plots thwarted in the UK over the last 10 years—the seven referred to by the noble Lord, Lord King, were only last year, and there were 10 while I was a Minister, so the number is a lot greater than that—were initially discovered by intercept. Intercept has kept our people safe. We clearly cannot allow terrorists, such as Daesh, serious organised crime syndicates, murderers, paedophiles and so on to exchange information, plan and operate, safe in the knowledge that law enforcement is unable to monitor or get at their activities.

I also hope—as was mentioned by the noble Lord, Lord Paddick, and the noble Lord, Lord King—that the politically loaded and seriously misleading phrase "snoopers' charter" has been removed from our lexicon. I pay tribute to those of our security services and agencies who work tirelessly to protect our people. I have worked cheek by jowl with them over many years, and they are basically ordinary British men and women doing an extraordinary job. They are not some Stalinist or Gestapo group intent on oppressing our people. My only complaint is that too many of those at GCHQ are *Guardian* readers and seem to dress rather casually. Too many people in the civil liberties field see them as fascist bogeymen: they are not.

The lead-up to this Bill has been tortuous but it is needed urgently, and there was an overwhelming requirement to replace the outdated legislation and ensure the correct safeguards for our civil liberties.

What is absolutely clear is that the Bill is certainly not part of a "dangerously rushed parliamentary process", which is what Amnesty International has said. It is the result of highly detailed scrutiny, over a very prolonged period—I suggest that it has taken longer than two years in its various guises. That was not least as a result, as was mentioned by the Minister, of the report by David Anderson, *A Question of Trust*; the detailed work of the Joint Committee on the Draft Investigatory Powers Bill; the independent surveillance review from RUSI; the ISC study; the work of the Science and Technology Committee; and so on.

The Bill has been pored over in the other place and the Government are to be congratulated on their willingness to accept so many necessary amendments. There are still a number of areas where the Government have promised changes, and we need to wait and see what they come up with. Those include, as has been mentioned, issues that relate to protecting journalists and source confidentiality, and, as the noble Lord, Lord Pannick, mentioned, lawyer-client confidentiality.

The web is transnational and knows no boundaries. Therefore, I ask the Minister whether we are moving towards a more predictable, transparent, usable and coherent legal framework for providers overseas, as was endorsed by David Anderson QC, the Independent Reviewer of Terrorism Legislation; by Sir Stanley Burnton, the Interception Commissioner; and by Nigel Sheinwald in the study that the Prime Minister asked him to do.

I also have concerns about clarity over compliance costs, where I believe businesses will be unable to make the necessary financial planning for storing internet connection records.

From all my experience in this area, I know that equipment interference is absolutely crucial to law enforcement and our security. We need to be very wary and very careful of constraining our agencies too much in this area.

I have concerns also about authorisation and the double lock in certain circumstances, particularly political issues to do with some sort of monitoring overseas. I will be interested to see how that develops over the next few months as we debate this.

Lastly, I know from personal experience how crucial to our people's safety bulk collection is, primarily for terrorist purposes. I await David Anderson's review of all bulk powers with great interest, but hope that he will not try to constrain that too much. It is not about prying on all those data; it is about getting the key little points that enable us to get after the people who wish to do us harm and kill us.

We still have a way to go, but I look forward to hearing the debate in this Chamber over the next few months. We have a lot of people who know a lot about these issues. My initial impression is that this is a timely, valuable and necessary piece of legislation, which gives us the powers we need. It is infinitely better than the flawed legislation that it is replacing.

6.10 pm

Lord Lester of Herne Hill (LD): I, too, like the noble Lord, Lord West of Spithead, and others, welcome this Bill as a significant step towards providing a much-needed clear and transparent basis for the investigatory powers used by the security and intelligence services and law enforcement authorities. I also welcome the safeguards that it contains, some of which need to be strengthened. We must await the expert assistance of David Anderson's report on the key issue of bulk powers. David Anderson is about the last person left in this country that I really trust on some of these issues.

I am grateful for briefing from the Law Societies of all four corners of the UK, the Bar Council of England and Wales, the Chartered Institute of Legal Executives and the NGOs, Liberty and Justice. I shall talk mainly about legal professional privilege, an issue raised some years ago by my noble friend Lady Hamwee.

It is essential that there is a powerful independent body able to ensure that the vital powers of the state and its agents are not misused. David Anderson QC, the wise and manifestly independent reviewer of terrorism, wrote in his report, *A Question of Trust*:

"Trust in powerful institutions depends not only on those institutions behaving themselves (though that is an essential prerequisite), but on there being mechanisms to verify that they have done so. Such mechanisms are particularly challenging to achieve in the national security field, where potential conflicts between state power and civil liberties are acute, suspicion rife and yet information tightly rationed".

The Government's simplification of the oversight system in the Investigatory Powers Commission is welcome. The commission should have the resources needed to improve transparency, efficiency and public trust in the vital work of the security and intelligence services. The commission needs to be properly funded and have the services of an amicus on difficult warrant applications. It is in the interests of public trust and confidence that the judicial commissioners are appointed by the Prime Minister on the recommendation of an independent appointments committee established by the Commissioner for Public Appointments. I hope that the Minister, who, I am delighted to mention, is a member of my chambers, as is the noble Lord, Lord Pannick—it is a curious, triangular situation—will be able to reply positively to these suggestions.

I turn to legal professional privilege, which has been spoken about powerfully by the noble Lords, Lord Rosser, Lord Pannick and Lord Paddick. It is a constitutional right inherent in the rule of law, which protects the individual's right to consult a legal adviser in absolute confidence, knowing there is no risk that information will become known to a third party without the client's clear authority. It is the right to speak safely with a lawyer, and it has been protected by our common law—and I dare say in Scotland, too—since at least the 16th century.

The mere prospect of surveillance creates the risk of a chilling effect on openness of communications with a lawyer. The accuracy of legal advice is an immediate and obvious casualty, but so is the rule of law. Without being able to discuss candidly, defending lawyers might not know about important defences open to a client. Courts may adjudicate cases on a misleading or incomplete basis. When people cannot speak safely with their lawyers, it is not only individual privacy that is affected but the administration of justice as a whole.

There is a danger of miscarriages of justice for individuals in litigation with the state. The Government may respond that there will be no unfair advantage when they monitor individuals' meetings with lawyers, because they can maintain a Chinese wall between spies and prosecutors. But that was not the finding of the Court of Appeal in 2011, when it struck down the convictions of 20 environmental protestors whose conversations with a lawyer had been monitored by an undercover police officer, Mark Kennedy. Nor was it the finding of the Investigatory Powers Tribunal in April last year, when it ordered GCHQ to destroy illegally intercepted communications between a Libyan rendition victim, Abdel Belhaj, and his lawyer. In mishandling those data, GCHQ rightly admitted that it had broken its own rules and had broken the law.

Prohibiting the targeting of legally privileged communications does not impair the ability to bring dishonest lawyers to justice. Legal privilege attaches only to communications between lawyer and client genuinely aimed at obtaining legal advice. If the consultation is a cover for a conversation whose true aim is to further a criminal purpose, it is not protected. The Bill should forbid deliberately targeting legally privileged communications.

This may be an unnecessary academic, technical point, but I still think it worth mentioning. Reference has been made to an iniquity exception, but it is more accurately described as a constraint on the scope of the privilege. For example, Section 10(2) of the Police and Criminal Evidence Act 1984 states:

"Items held with the intention of furthering a criminal purpose are not items subject to legal privilege".

That, I think, is the correct approach.

When compelling evidence suggests that the privilege is being abused, a judicial commissioner should be required to authorise covert information-gathering. There should be no grant or modification of a warrant likely to capture privileged communication unless there

[Lord Lester of Herne Hill]
is prior judicial approval. This protection is written into the Bill in respect of journalists' sources—see Clause 73. Legal professional privilege needs equal protection. There is also a need for safeguards to ensure that any legally privileged communications intercepted accidentally or incidentally are immediately destroyed.

Like the Joint Committee on Human Rights, I recognise the value of thematic warrants, but the Bill's provisions concerning the possible subject matter of targeted interception and targeted equipment interference warrants are too broadly drafted. As the JCHR recommends—and I agree with it—the Bill should be amended to circumscribe the possible subject matter of warrants in the way recommended by the Independent Reviewer of Terrorism Legislation. That will ensure that the description in the warrant is sufficiently specific to enable the person unknown, but who is the subject of it, to be identified and to prevent the possibility of large numbers of people being potentially within the scope of a vaguely worded warrant. One is reminded, for those who are interested in history, of the kind of Entick v Carrington problems that were raised in the 18th century.

The JCHR has said that,

"the power to make major modifications to warrants for targeted interception, without judicial approval, is so wide as to give rise to real concern that the requirement of judicial authorisation can be circumvented, thereby undermining that important safeguard against arbitrariness".

I agree with the JCHR that major modifications to warrants should require approval by a judicial commissioner.

The independent reviewer has said that he knows of no other country in which the Secretary of State holds responsibility for authorising police warrants; judicial authorisation is sufficient. The Home Secretary signs some 1,600 warrants each year, not including national security warrants. If the requirement of her direct approval for police warrants were removed from the Bill, she would have 70% fewer warrants to approve, giving her more time to focus on vital national security interests. That makes good sense.

As I said at the outset, I welcome the Bill and hope that it will be significantly improved, as suggested by my noble friend Lord Paddick and others in the debate. I look forward to the Minister's response.

6.21 pm

Lord Butler of Brockwell (CB): My Lords, it is a great pleasure to follow the noble Lord, Lord Lester of Herne Hill. It brings back the arguments we used to have about the powers of the intelligence agencies on dog walks around Brockwell Park—which, incidentally, is not my personal estate. He was then counsel in the *Spycatcher* case; I was about to be Cabinet Secretary. He did not trust me then and since he says now that David Anderson is the only person he does trust, that situation clearly has not changed.

When I last spoke in the House, on the Motion of the Leader of the Opposition about the powers of Parliament and of this House, I was critical of much of the legislation introduced into Parliament. I do not withdraw that but I do not make those criticisms of this Bill. On the contrary, like others who have spoken, I commend the way in which the Government have brought forward the Bill and the way in which it was debated and scrutinised in the other place.

The Government published a draft of this Bill in the autumn. Despite the fact that preparation of it had been informed by authoritative reports from the Independent Reviewer of Terrorism Legislation, the Intelligence and Security Committee of Parliament and RUSI, the Government produced it when it was, frankly, still in the course of preparation. It was just being baked. But that was a thoroughly good thing to do because it could then be considered by a joint pre-legislative committee—on which I had the privilege of serving, under the noble Lord, Lord Murphy—by the Intelligence and Security Committee and by the House of Commons Science and Technology Committee. That enabled a large number of changes to be made and improvements to be introduced before the Bill was brought before Parliament. At the same time, the Government undertook widespread consultation with interested parties outside Parliament, including the communications service providers, which were able to give evidence to the parliamentary committees. So there was a very transparent method of preparing this Bill, which was necessary in view of its complexity.

I have read in full the debates in Committee, on Report and at Third Reading in another place. Without being patronising, I think that they show the House of Commons at its best. There were no less than 16 Committee hearings. The Government responded constructively to the Opposition and, as has been said, introduced many amendments to respond to their points. As a result, it is remarkable that the Official Opposition did not vote against the Government in a single Division.

Of course, many matters were left over for this House, and I will come on to those, but I would also like to say—seeing as I am to be followed by the noble Marquess, Lord Lothian, who is a member of the Intelligence and Security Committee—that the scrutiny has shown the strength of the mechanisms that Parliament has for considering issues of this sort. In addition to the specialist committees that I have referred to, the Intelligence and Security Committee is able to operate within the ring of secrecy around these highly classified issues, and has shown itself capable of reassuring Parliament in some areas but also of proposing additional safeguards in other areas where oversight of the intelligence agencies needs reinforcement. That has been a very valuable contribution.

None the less, as others have said, there is much work for your Lordships' House to do. There are important issues in the Bill that still need to be determined. Part of the Government's response to criticisms raised in the other place was to promise further consideration in your Lordships' House. That covered such important issues as protection of legal privilege, on which the noble Lord, Lord Lester of Herne Hill, and other noble Lords spoke; further protection of journalistic freedom; the definition of crimes for which access to communications data is justified; and the whole issue of the operational case for bulk powers. On top of

that, although clearly the Home Office has made much progress in discussions with communications providers about the definition of internet connection records, questions remain about both the effectiveness of those and the cost of collecting them. We must remember that hanging over the whole issue is the case brought in the European court by David Davis MP and Tom Watson MP about the retention of communications data, in which there may well be further developments during the passage of the Bill.

The intention is that this House should start Committee before the Summer Recess but not complete it. That makes sense because by the end of the Recess we can expect to have David Anderson's report on the operational case for bulk powers, which will be central to considering Parts 6 and 7 of the Bill. This is a very difficult but very important Bill. I hope that this House can maintain the very thorough but also very co-operative and constructive tone of the scrutiny that has taken place on it so far.

Lord Lester of Herne Hill: I apologise to the noble Lord and the whole House for the hurt I have caused him by suggesting that I trust David Anderson more than anybody else. I trust the noble Lord, Lord Butler of Brockwell, almost as much.

6.28 pm

The Marquess of Lothian (Con): My Lords, I am sure the whole House is relieved to hear of this new-found friendship between their two noble Lordships. It is always a pleasure to follow the noble Lord, Lord Butler of Brockwell. He and I served together on the Intelligence and Security Committee in the last Parliament.

I am particularly pleased to take part in this Second Reading debate today, not least because the ISC—on which, along with the noble Lord, Lord Janvrin, I have the honour to represent your Lordships' House—has over the past three years published two reports on investigatory powers. At the end of the last Parliament, the Intelligence and Security Committee, including the noble Lords, Lord Butler of Brockwell and Lord Campbell of Pittenweem, produced a substantial report entitled *Privacy and Security: A Modern and Transparent Legal Framework*. It covered in detail the gamut of the intrusive powers available to our security and intelligence agencies, and concluded that existing legislation was "unnecessarily complicated", outdated and lacked transparency. It needed to be replaced by a modern, transparent legal framework fit for the internet age. Since that report, as well as the ones mentioned by the noble Lord, Lord Butler of Brockwell, from the Independent Reviewer of Terrorism Legislation and RUSI, the Government introduced the draft Investigatory Powers Bill. This was the subject of the ISC's second report, which made many specific recommendations towards improving the Bill, especially in those areas relating to certain investigatory powers where the legal authorisations were opaque and the safeguards, in our view, insufficient.

This Bill is a significant step forward in clarity, transparency and enhanced safeguards. For the first time, it provides an explicit statutory footing and authorisation procedure for bulk personal datasets, equipment interference and bulk acquisition of communications data. Where authorisations and procedures already existed under RIPA, these have now, thankfully, been set out more clearly in this Bill. They will also now, under the Bill, be subject to the additional protection of judicial commissioner approval.

I readily acknowledge that the Government have engaged constructively with the ISC throughout the passage of this Bill. Several of our recommendations on the draft Bill were incorporated during its passage in the other place. We have also, helpfully and reassuringly, been provided with additional classified evidence regarding other matters raised in our report, most notably on the use of bulk equipment interference and the need for economic well-being as a ground for interception.

On the crucial operational purposes, which regulate the examination of material collected using bulk powers, we suggested that there was insufficient detail in the Bill as to how they would be regulated and managed. The Government have now committed themselves to include further detail on this which I look forward to seeing during the following stages of the Bill.

On bulk personal datasets, the Government have confirmed that they will introduce amendments adding extra safeguards where these contain sensitive data. Already, following changes in the other place, there are now welcome restrictions on the use of powers to investigate legitimate trade union activities and greater restrictions on bulk personal datasets containing medical records. These are welcome.

However, we continue to press for additional restrictions on the use of these powers in relation to sensitive personal data. I hope that we will in due course see government amendments to implement these additional protections.

Turning to thematic interception and equipment interference warrants which concerned the noble Lord, Lord Lester of Herne Hill, they also concern us in that we feel they can be drawn very widely, potentially catching a large number of people in a single warrant. These concerns have still not been completely met by the Government but the Home Secretary has told my committee that she is considering what more can be done to provide further assurance about how these thematic warrants will operate. Again, we look forward to seeing that.

The ISC still has concerns about provisions for criminal offences in relation to the misuse of powers. The Bill refers to already existing offences apparently necessary to avoid a confusing overlap. However, for the misuse of certain powers, the only criminal offence would be misconduct in public office, which, in my view certainly and in the view of others, is an old common law offence which prosecutors are often reluctant to pursue. For other abuses, the only criminal penalties would be fines under the Data Protection Act and the Wireless Telegraphy Act, almost certainly not sufficient for the most egregious cases of misuse.

This Bill has been introduced to this House in clearly better shape than when it was originally published, and for that I congratulate the Government. However, there are further improvements which can and should be made, hopefully by government amendments at the forthcoming stages of the consideration of the Bill.

[The Marquess of Lothian]

At stake is the difficult balance between an individual's right to privacy and society's need for national security. There will, I fear, never be total consensus on that balance. While the ISC has consistently concluded that the agencies' operational techniques are justified, we have equally been insistent on the right constraints being placed on their use. I hope that with the further revision to the Bill which will take place in this House, we will get these constraints right, without undermining the agencies' vital work to keep us safe. That is the balance we seek to achieve. This Bill has the potential to achieve it.

6.34 pm

Lord Murphy of Torfaen (Lab): My Lords, it is a pleasure to follow the noble Marquess. His political path and mine have crossed on a number of occasions over the years, particularly when I had the great privilege of chairing the ISC, of which he was then a member—and still is, of course.

A number of noble Lords have said during the course of the debate—and will continue so to say—that we live in a much more dangerous world, that technologies have developed enormously over the last number of years and, of course, that the security services need new tools to deal with the new world. I pay tribute to the security services in all that they do.

Another theme that has emerged over the last number of hours, and will continue so to do, is the balance that we must have between, on the one hand, the security of the country and, on the other hand, the liberty of the citizen. Certainly I recall, when I was the Northern Ireland Secretary, that every time I had to sign a warrant for intercept—I had to do so many times—I realised that I was depriving someone of their liberty. Sometimes they needed to be deprived of their liberty, but it was in my mind all the time that I was doing a serious thing.

It is certainly the case that since the draft Bill, as it then was, was introduced in November of last year there have been a great number of changes to it. As chairman of the Joint Committee of both Houses on the Bill, I pay tribute to those Members of this House—some of whom have already spoken and some of whom will be speaking in this debate—and the other place who took part in the deliberations of the Joint Committee. I also pay tribute to Mr Duncan Sagar and his parliamentary team, who were absolutely first class in the advice that they gave us, and to the two special advisers, Martin Hoskins and Professor Peter Sommer.

It has been mentioned that some people think the Bill did not receive or is not receiving sufficient scrutiny. I reject that. The Joint Committee worked for over two and a half months, sometimes meeting three times a week. We received 1,500 pages of written evidence and interviewed 59 witnesses. At the end of all that, the committee made 87 specific recommendations to government to improve the draft Bill, the vast number of which were agreed by the Government. The recommendations included the need for codes of practice on internet connection records, on equipment interference and on bulk personal databases; a further role for the ISC; urgent warrants to be reviewed not after five but after two days; the need for the Government to justify bulk powers; and, perhaps most interestingly, that at the end of five years both Houses of Parliament would review how the legislation has worked.

After scrutiny by the Joint Committee the Bill went to the other place, and my noble friend Lord Rosser and others mentioned the changes that were made to it in the House of Commons. When I started my life as a politician a million years ago, changes to Bills were very rare. One would go to a standing committee for up to three months and it was likely one or two amendments would be accepted. I am glad to say that the Government have not taken that attitude with regard to this Bill. I pay tribute to Sir Keir Starmer, who led for the Opposition in the House of Commons, and to Mr John Hayes, the Minister for Security, both of whom worked well together in the House of Commons both in Committee and on Report.

There were substantial changes made to the Bill, as we have already heard, on issues such as legitimate trade union activities, access to medical records, how privacy should be built into the Bill as a substantial issue, and the independent review into bulk powers under David Anderson QC. All those necessary changes were made on the Floor of the House of Commons or in Committee as a consequence of both Front Benches sensibly talking to each other.

Now, further work has to be done. I think that your Lordships' House is the place where detailed scrutiny can take place because of the expertise, the experience and the background of many of your Lordships who are not only speaking today but undoubtedly will speak in Committee and at other stages of the Bill.

We still need to look at some issues. The professions have been mentioned already by a number of your Lordships, with reference made to lawyers and to journalists. There is still work to be done on that. We look forward to David Anderson's review, because that will give this House the opportunity to see what he says and to look further into the question of warrants. Thematic warrants, referred to by the noble Marquess, are important, too.

So there is plenty of work to be done on the Bill, but it is a Bill that is necessary for the security of our people. It needs to strike that essential balance between the liberty of the citizen and the security of the country. It is a much better Bill today than when it was introduced in November last year and I look forward to taking part in the deliberations before and after the Recess.

6.41 pm

Lord Campbell of Pittenweem (LD): My Lords, one of the most well-worm clichés in politics is that the devil is in the detail. On this occasion, I venture to suggest that it is more than apposite, because I cannot remember legislation in my time either in the other place or here which contained so many detailed provisions. I have the misfortune to disagree with several of my noble friends on these details, but I happen to believe that the fundamental principles which underlie the

Bill—of necessity, proportionality and legality—are ones that the whole House would readily accept.

I was struck by a statement made by the Home Secretary at Third Reading in the other place. She said—and I paraphrase slightly—that the duty of government is to protect its citizens and the duty of Parliament is to hold the Government to account for the way in which they exercise that protection. These cannot be absolute values; they are essentially relative. The extent to which one may be emphasised at the expense of the other will always be a decision of fine judgment. It will always be a decision which has to be taken in prevailing circumstances. The kind of legislation introduced in the United Kingdom Parliament in either the First or the Second World War reflected what was thought to be of particular urgency, but we must be clear that what may be proportionate or necessary at one time may not be proportionate or necessary at another.

It is well accepted that the Bill must provide a proper framework with which the judgments to which I have referred can be made, but I thought that the noble Lord, Lord King, who is no longer in his place, made a very sound point about the pace of change. One difficulty about the pace of change is that it is not constant but is always accelerating. When we consider that the iPhone, or rather—I had better be careful that I do not advertise—the mobile phone that we all carry in our pockets now contains a capacity far beyond that of the computers that used to occupy a whole room in the 1960s, it illustrates just how much capability has improved and been changed, and the extent therefore to which legislation has, so far as possible, to keep pace with it.

I am persuaded that this Bill generally provides a proper framework—but, as we have already heard, more amendments have to be made. In the other place, the willingness of both sides of the House to enter into dialogue and discussion helped to produce a Bill which is perhaps not as divisive as it might have been, but has none the less left for your Lordships a variety of issues of importance which will be aired for the first time only during consideration in Committee.

On the double lock, it is still argued by some that approval should be by judge alone. With that conclusion, I respectfully disagree. Parallels with other jurisdictions are dangerous. Sometimes reference is made to what happens in the United States, but it is important to remember that judges in the United States are elected or appointed not just because of their legal ability but because of their political affiliation. That is true in the Supreme Court—hence the controversy which surrounds the choice that Barack Obama may have about the appointment to a vacancy on the Supreme Court Bench.

I am thoroughly convinced that judicial review, or the application of its principles, is more than appropriate. Judicial review is a well-established process both in the common law and in the law of Scotland. Judges are well used to applying its principles and the law, as the Advocate-General will certainly be aware, has developed considerably since the case which gave rise to the Wednesbury principle was decided many generations ago.

My belief that the initiation of approval should rest with the Home Secretary seems entirely justified because there will be occasions when the mere granting of a warrant will have political implications. That may be so particularly if there is any question of activity authorised by a warrant taking place abroad. In those situations, the decision being of a political nature, I feel that no judge would be enthusiastic about the proposition that they and they alone should have responsibility for these matters—it would be entirely inimical to the approach that judges take in our system.

I understand the motive behind the amendment made in the other place which provides that the judicial commissioner has to take particular care to apply the general provisions on privacy which are now a centrepiece of the Bill. I suspect that that is an unnecessary belt when there were already adequate braces, because I cannot imagine any judicial commissioner worth his or her salt who would not, in interpreting a particular section of the Act, take account of all the rest of the terms of the Act—indeed, it is a fundamental principle of statutory interpretation.

As I have said already, the Government have shown remarkable willingness to accept and adopt proposals for amendments, particularly in relation to the activities of journalists and the relationship between lawyers and their clients.

I will finish by saying a word about bulk powers, which have been and remain controversial. I began by thinking that the jury was out, but it would be more correct to say that the independent reviewer, David Anderson, is out and we will have to wait for his report—but I think that there is confidence on all sides of the House in his ability to bring proper forensic application to these issues and to provide a report which will be of great assistance.

The powers that we are talking about already exist; they are not new powers. David Anderson's review will provide a safeguard as to whether it is appropriate to continue with them, but, rather as the chairman of the ISC, Dominic Grieve, said in the other place, there is strong and general acceptance that the powers are necessary and proportionate. Without straining the metaphor too much, people say that it is like looking for a needle in a haystack, but you must first have access to the haystack before you have any opportunity of looking for the needle. I commend the Bill.

6.49 pm

Lord Janvrin (CB): My Lords, as the noble Marquess, Lord Lothian, has mentioned, I am a member of the Intelligence and Security Committee. It is slightly daunting to follow four very senior members, either past or present, of that committee as I am a relative newcomer. I join them and other noble Lords, many of whom have direct experience of intelligence, security and law enforcement matters, in welcoming the Bill before us. It covers ground that is of real and utmost importance in terms of national security and the prevention of serious crime while touching on crucial issues of personal privacy in a digital context, which has been referred to many times; it is not only complex, but very fast-moving. We are also up against a deadline set by the sunset clause in the RIPA Act 2004.

[LORD JANVRIN]

I join others who have spoken, including in particular the noble Lord, Lord Butler, in acknowledging the vast amount of work orchestrated by the Government that has gone into the preparation of the Bill before us. It has been the subject of numerous reports, to which a number of speakers have referred, including two from the Intelligence and Security Committee. This work has led to the Bill now progressing through Parliament with intensive scrutiny, as was referred to in the other place. There is one further external review being done by David Anderson QC of the operational case for the intelligence agencies to have access to bulk investigatory powers. In the last Parliament the ISC considered bulk interception in great detail and was satisfied that that capability was justified, subject to robust safeguards and oversight. Furthermore the current ISC, again after considering a great deal of classified evidence on this subject, reached a similar conclusion for bulk equipment interference, the bulk acquisition of communications data and bulk personal datasets. I look forward to David Anderson's review as an invaluable contribution to further consideration of these bulk powers by this House.

Your Lordships will be aware that a significant number of improvements have been made to the Bill in the other place, including extra safeguards, improved oversight mechanisms and stronger privacy protections. A number of these improvements were made on the recommendation of the ISC and we are extremely grateful for the co-operation shown and helpful approach taken by the Government throughout. That said, as the noble Marquess, Lord Lothian, mentioned, there are still a few aspects of the Bill on which my ISC colleagues have concerns or questions, and I should like to reinforce two of those, both of which have already been mentioned.

The first is the issue of restrictions on the use of class warrants for the retention and examination of the most sensitive personal information within bulk personal datasets. Noble Lords will be aware that the ISC tabled amendments in the Commons that would have restricted this power where a significant amount of the data would be sensitive. We looked to the Data Protection Act 1998 to determine what Parliament had already defined as being the most sensitive personal data. It is the use of generic class warrants in relation to that sensitive data that we have questioned. Our understanding is that the Government have accepted that in principle, but it would be interesting if the Minister could indicate whether he intends to bring forward amendments on this point in Committee.

The second aspect has already been referred to by the noble Marquess, Lord Lothian. It refers to offences for the misuse of investigatory powers contained in the Bill which are scattered throughout various pieces of legislation and common law. While in some cases there are severe penalties for abusing those powers, in other cases, as has been mentioned, the penalty can be described as little more than a reprimand or a moderate fine. Such penalties may be suitable for dealing with honest mistakes or more minor instances of negligence, but there may be a point where the malicious and wilful abuse of intrusive powers could be dealt with more consistently with the use of more severe criminal penalties than are currently available.

Finally, I shall raise a point referred to by the noble Baroness, Lady Neville-Jones, and the noble Lord, Lord West. It is some 18 months after the ISC's *Report on the Intelligence Relating to the Murder of Fusilier Lee Rigby*, but it still seems unclear whether the extraterritorial nature of warrants asserted by the Bill will be honoured by communications companies based overseas. The ISC recommended in the Fusilier Lee Rigby report that access to communications held by overseas-based providers, particularly those in the United States, was a very significant security problem, so I would be grateful if the Minister could comment on the progress of negotiations on that matter, in particular with the Government of the United States.

As your Lordships scrutinise the Bill over the coming weeks, whatever views may be expressed regarding its specific provisions, we should not lose sight of what this new Bill as a whole achieves, as many speakers have already mentioned. In particular it makes significant improvements in terms of transparency by avowing certain intrusive powers for the first time, including equipment interference, bulk acquisition and bulk personal datasets. While the use of those powers previously was legal, they were shrouded in secrecy and obscured behind some fairly impenetrable legal language. Having these powers set out on the face of the Bill is a considerable improvement. We should also welcome the role of the judicial commissioners as an extremely significant safeguard, and while we may debate the detail of their role, once again I urge noble Lords to acknowledge this very welcome additional reassurance.

Based on the recommendations of the ISC, David Anderson and RUSI among others, the Government have recognised the need for a new, modern and transparent legal framework for this crucial and complex area. The Bill is a huge improvement on the legislation it will replace. I look forward to further discussions in your Lordships' House as we scrutinise it in the weeks to come.

6.58 pm

Baroness Liddell of Coatdyke (Lab): My Lords, I draw attention to my entry in the register of interests. Perhaps I may join other noble Lords in welcoming the legislation and take up the point just made by the noble Lord, Lord Janvrin. We now have a much more modern piece of legislation and a more transparent one that will allow law enforcement agencies, security agencies and the judiciary to look more coherently at the necessary activities of safeguarding the well-being of citizens.

I listened with interest to the noble Lord, Lord Strasburger, but I have to say that the greatest human and civil right of all is the right to life. The biggest problem we face at the moment was drawn to our attention by the noble Earl, Lord Howe, at the beginning of the debate when he referred to the fact that we are having to deal with increasingly capable international actors who are prosecuting terrorism against not only us but internationally as well. My noble friend Lord Blunkett also referred to the fact that the cyberthreat is the greatest threat we face at the moment, not least because it is so very difficult to police—it can take

place not just in the boondocks of Syria but in the back streets of Glasgow, London and Manchester as well. We need the protection that this kind of legislation can give us. Yes, it has had a very deep scrutiny, and not just in the other place. I do not remember a piece of legislation that has gone through so many iterations, with different committees of this House and elsewhere. That, in itself, is a very significant check and balance on the powers contained in the Bill.

I do not expect the Minister to provide it this evening, but as we go into Committee there are some areas where we need greater clarification. Sir Nigel Sheinwald, for example, looked at the international implication of parts of the legislation and it seems that only one of the powers has come up in terms of his conclusions in relation to international scrutiny. I may have misread this, but I would welcome clarification from the Minister about how we ensure that this legislation is internationally compliant and that, with our allies, we are able to work within a framework of legislation that does not hinder anyone; it will increasingly be in that area that we will need to share information, not least because of the events of last week. It would be very useful to have some detail on what evidence there is of how compliant this legislation would be with EU regulation; we have to be able to convince people who are no longer our partners of the request for information and for action that will be contained within the powers in the Bill.

I said that we are dealing with increasingly capable international actors. We are also dealing, as noble Lords have mentioned, with an extremely rapidly growing technological capability, both legal and illegal. I would welcome some reassurance from the Minister on the flexibility that is contained within the Bill to enable a response to changing international circumstances and changing technology. The one thing many of us have learned from the most recent cyberthreat is that the threat quite often comes not from organised entities but from clever individuals, some of whom are still at school but who can pose a cyberthreat. It is very important that we have the flexibility and capability to deal with that.

Another area that has been referred to, not least by the noble Lord, Lord Campbell of Pittenweem, is the protection of privilege. We heard a very eloquent speech by the noble Lord, Lord Pannick, about legal professional privilege. The area of Members of Parliament is a significant one but there is also the area of journalists. In the old days it used to be quite easy to define who a journalist was, not least because they would have to carry a National Union of Journalists card—I speak as an ex-journalist. However, nowadays many people portray themselves as journalists because they write a blog that maybe 10 people read. We need to deal with the issue of the protection of sources, because serious journalists get serious information from sources. Journalists themselves have to do a degree of policing, because there has been irresponsible behaviour by journalists in the past and the profession must raise standards. But we will cease to have the kind of free press that is important to our society if we are not in a position to give a guarantee of protection of sources to journalists in appropriate circumstances.

I am very much looking forward to the detail of the rest of the Bill. The issue of bulk powers is a fascinating one. I am no expert; I am neither a lawyer nor a member of the Intelligence and Security Committee. I, like everybody else, am concerned about my personal privacy. I am sure that noble Lords are much too exalted to spend their time shopping online, but I do, and Google and Amazon know more about me than my husband does. We sacrifice our privacy every day. Agencies outside the security services are collecting our data and we turn a blind eye to it. This is a means of collecting data that can save people's lives, not just help them to get a nicer pair of shoes. It is important that we recognise the importance of it and balance it against the need for privacy.

I congratulate the Government on bringing the Bill before the House. It is a modern take on legislation that in the past has lacked transparency and been complex, and I look forward to its early passage on to the statute book.

7.05 pm

Lord Hennessy of Nympsfield (CB): My Lords, I declare my membership of the Royal United Services Institute's independent surveillance review, whose report *A Democratic Licence to Operate* was published last year. Open societies possess huge, enduring and, we hope, ultimately prevailing advantages over closed ones, yet open societies throw up special torments of their own—what one might call duelling desirables. This Bill lies classically in that territory, because it attempts to reconcile two duties to protect; the protection of our people from those who wish them and their institutions harm, and the protection of our people against state power, which involves a loss of liberty that trenches on the private conduct of their lives. John Stuart Mill caught this perpetual dilemma in the mid-19th century in his celebrated work *On Liberty*, when he wrote,

"the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection".

More recently, my colleague on the RUSI review, Sir David Omand, said:

"Without security you cannot protect human rights",

a point made by other noble Lords during the course of this debate.

There is a third element; the technical race between the protectors and the would-be harmers, the collection of pre-emptive intelligence which, in its modern form, has been with us since the early months of the Great War. I have with me a copy of the single-page, handwritten minute penned by the First Lord of the Admiralty, Winston Churchill, and countersigned by Jackie Fisher, the First Sea Lord, on 8 November 1914, instructing that all the decoded signals intercepts of the Imperial German Navy, current and past, should be kept in a locked box, in Churchill's words,

"in order to penetrate the German mind".

To this day, GCHQ regards this little slip of paper as its founding document, which led, in both world wars, to a British signals intelligence capacity on an industrial scale which was crucial to the outcomes to both conflicts.

[Lord Hennessy of Nympsfield]

I am, of course, aware that total wars create different conditions from the spectrum of state and the multiplicity of non-state threats we face today in our own age of anxiety. The RUSI panel was acutely aware of this and of the prospect of leaping technologies, to which I referred a moment ago. As a result, we came up with 10 tests, some of which the noble Lord, Lord Paddick, mentioned earlier, which should be applied in open societies whenever the John Stuart Mill dilemma presents itself anew. I deeply hope that the Minister will be able to accept those 10 tests this evening on behalf of the Government. They are, very briefly, as follows. The first is:

"Rule of law: All intrusion into privacy must be in accordance with law through processes that can be meaningfully assessed against clear and open legislation, and only for purposes laid down by law".

That is our business this evening. Secondly, there is necessity and, thirdly, proportionality. Fourthly:

"Restraint: It should never become routine for the state to intrude into the lives",

of the Queen's subjects. The state must always and everywhere be a reluctant intruder. Fifthly, there must be effective oversight, with arrangements for the independent investigation of complaints. Sixthly, there must be a "recognition of necessary secrecy". The secret state should be treated as a needed protector of the open society:

"It cannot be more than minimally transparent",

to be effective, but it must be accountable to Parliament. Seventhly, the necessary secrecy, however, must be kept to the absolute minimum. Eighthly, transparency: how the law applies to the citizen must be clear and comprehensible. Ninthly, this presupposes legislative clarity, which, of course, is part of our job. Finally, UK Government policy on intrusion should as far as possible be "harmonised" with that of other "like-minded" open societies.

In my judgment, the Bill genuinely seeks to meet those tests, but I shall be listening very carefully to the arguments, especially on legal professional privilege. I take very seriously what other noble Lords have said, and what the Law Society and other liberty and justice-related bodies have said about the crucial ability of individuals to consult their legal advisers in confidence. As a former journalist, I shall take an interest in the degree to which journalists and the confidentiality of their sources are drawn into the Bill.

When I was operational, in the old days of the very old technology—just telephone tapping and a leak inquiry—I used to quite enjoy it, as long as I knew there was a leak inquiry, which I often did. I would plug the phone in on Whit Mondays to "Dial-A-Recipe" or the Test score, just to throw them off the scent. It was a trivial, adolescent thing to do, but those were the days of simplicity, when such things were possible.

The secret parts of the state and the law enforcement agencies wish for and need a new licence to operate in a world of shifting perils and surging technologies. Let us craft one that reconciles as closely as any Parliament can the two duties to protect with which an open society must always wrestle, because only Parliament can set the dials for the work of our secret services.

7.11 pm

Baroness Harding of Winscombe (Con): My Lords, it is humbling to follow so many noble Lords this evening who, if it is not too back-handed a compliment to say it these days, are such experts in this subject. Let me declare my more prosaic interest as the chief executive of TalkTalk, the communications service provider.

Debating the balance between liberty and security is not new. What has changed is the methods people use to threaten our security and to express their freedom. It will not come as a surprise to hear that I think that the internet is a wonderful tool, but just as it can accentuate what is good about the world, it can also accentuate the bad. There is a growing body of psychological evidence that the internet amplifies human behaviour. People shout online in a way they would never do to someone's face, and the internet can connect criminals globally in a way that would be inconceivable in the physical world. The internet did not invent child abuse, terrorism or organised crime, but left unchecked it does allow those crimes to be committed on a much grander scale. Any child abuse is clearly horrific, but the internet takes those crimes to a global audience and allows those criminals to monetise it globally.

We know that ungoverned spaces in the physical world become havens for criminality. The same is true online. I am passionate about the opportunity the digital world can bring for this country—even more so after the events of the last week or so. I see the opportunity for Britain to be a brilliant digital nation, but we need a civilised digital world where the rule of law is clearly established by Parliament, where our law enforcement agencies have clearly articulated powers to act in the digital space, and where there is robust and transparent monitoring of those agencies by the judiciary and Parliament. That is why I am pleased to support the Bill and to play a part in what is clearly a very important debate.

As my noble friend the Minister said, the vast majority of the Bill covers powers that already exist under various disparate Bills. As DRIPA expires, the Government are right to take the opportunity to consolidate those powers into a single Bill, creating simplicity and the very transparency that is one of the ways to ensure that we maintain the right balance between freedom and security.

As a number of noble Lords have said, the Bill also needs to keep pace with technological changes, and I would like to focus my remarks on the most significant new power in it: the use of internet connection records. Whereas once, criminals communicated by phone, like everyone else they are increasingly moving online. For criminals—in fact, for all of us—the boundaries between the digital and the physical world are very porous, but our current legal framework still treats them very differently. Knowing what website someone visits is just the modern equivalent of knowing who they called. Knowing what IP address they are using, I would argue, is very similar to knowing which phone line they are calling from. Yet at present, we create a false legal distinction that artificially handicaps law

enforcement agencies by denying them digital powers equivalent to those they have in the voice telephony world.

From my experience, it is right that police can access communications data. In just the first six months of 2016, nearly three-quarters—72%—of National Crime Agency comms data applications to TalkTalk related to child sexual exploitation. But child abusers definitely do not just use their phones to make calls. The next biggest category, 16%, concerned threats to life. How many of these cases would be resolved, how many lives saved, by extending access to internet connection records as opposed to voice calls only? That is why I welcome the inclusion of internet connection records, and why I believe that access to them is proportionate in a digital world. That does not mean, however, that we should just wave this legislation through. The digital world amplifies all behaviour, good and bad, so it is undoubtedly important that we scrutinise very carefully how these new powers can be used and their use monitored.

I will not even attempt to opine on the legal checks and balances proposed in this legislation. I am not a lawyer—I run a business—and I bow to the considerable legal expertise in this House and the other place on how best to ensure sufficient oversight, so that the various agencies that could access this data do so only when appropriate, and to ensure that individual freedom to roam the internet legally is well protected. But as the great legal minds in this Chamber begin that debate, I would like to add a little practical context on both the feasibility and the associated costs of storing and using internet connection records.

In principle, it is feasible for communication service providers to store internet connection records. It is, however, a non-trivial task, and the Government will have to work closely with them for some time to ensure it is achieved in a proportionate, practical and cost-effective way. Different businesses' networks are configured in different ways, so the flexibility the Bill allows for different approaches is a practical and pragmatic way forward. The combination of obligations on the Home Office to consider the practical implications and costs on businesses before issuing a data retention notice, including the new privacy clause that places an obligation to consider the security of data storage systems, sets out clear safeguards that prevent this legislation being implemented in a way that is unreasonable for businesses, or that places unachievable obligations on industry.

A number of domestic communication service providers, including my own, have questioned the Home Office's cost estimates. While I think it is fair to say that concerns remain about these estimates, I was reassured by the clear commitment from the Home Office that its figures are an estimate based on its expected implementation and do not in any way represent a cap or a budget. The Home Secretary was explicit in the other place that government would cover the costs incurred in the industry, and colleagues of mine across the sector will hope that my noble friend the Minister can reiterate that today.

Let me be clear: there is more work to do. The Government need to work closely with all providers likely to be affected by the legislation in order to understand what these obligations may look like for each provider and how much they will cost. But this is to be expected with new obligations, and the Bill as drafted provides the industry with the right safeguards that businesses need.

This is a hugely important debate. The moral, legal and social scaffolding for the digital world does not yet fully exist. I am a firm believer that the UK is better placed than any nation in the world to take advantage of the digital revolution and, just as we did with the Industrial Revolution, we need to ensure that the digital world is a civilised world where there is the rule of law; where Parliament has set out how we as a society balance individual freedom with security; where we do not tolerate unpoliced no-go areas; and where British liberal democracy flourishes.

I believe that this is an important Bill that helps us in that journey, a Bill that gives the UK the legal framework needed to protect our citizens without infringing on the innovation and creativity that we love about the online world. I am pleased to support it.

7.19 pm

Lord Rooker: My Lords, it is clear that technological developments have greatly enhanced the capacity of Governments, companies and citizens to know more about individuals and undertake surveillance, interception and data collection. As such, the internet has become the front line in the contemporary debate about privacy and security. Such developments, though, as many have said, have created new avenues for serious crime by individuals, gangs and nations on an international basis. This Bill is part of our—I stress "our"—attempt to square the circle between the needs of security and privacy. It is a Bill I welcome and support.

I served on the RUSI Independent Surveillance Review. Our report, *A Democratic Licence to Operate*, showed that we need not abandon the values that are most important to us as citizens in order to protect our society. Current legislation providing the basis for the interception of communications is less than 20 years old, but it predates Google, Facebook and Twitter, so we are right to refresh and update the tools of the state. The threat is clear. First, international organised crime knows no boundaries. Secondly, information and communications technology spans borders, but Governments must be able to protect their sovereign territory. We have to meet a challenge: in an open society the secret part of the state has to remain secret to protect the openness, but it has to be regulated. The state should always be reluctant to invade the privacy of its citizens, and those who do this vital work should do so with a feeling of unease.

The RUSI panel set out the 10 tests, which I shall come to—I will not repeat what the noble Lord, Lord Hennessy, said—which legislation and government should meet. First, I will refer to the private sector. Google, Facebook, Microsoft, Twitter and other internet companies continue to lobby on this Bill. They could never have started up their commercial, profit-making businesses in autocratic societies such as Russia, Iran or China, to name just three. Our open, democratic system, based on the rule of law, which enabled them to start up and operate, is under threat. As such, they

[LORD ROOKER]
should not demand no-go areas for regulated law enforcement officers who seek out serious organised criminals. Law-enforcement agencies should never be in the position of not being able to seek, or ask about, information. This is not the same as having a back door into the servers of companies.

I sincerely hope that as the Bill proceeds—we have a way to go yet—we will explain that we do not conduct mass surveillance in the UK. Indeed, it is not done in the USA. Collection of bulk data, most of which are never even read, does not constitute mass surveillance. In general, I prefer Ministers to be involved in the warrants that are required for interception and surveillance. There is a degree of accountability that I think is an important aspect. But I do appreciate that this is not enough. There has to be a judicial role and oversight has to be strengthened. Indeed, I would want to be convinced that we have oversight of the oversight. We must always ask, "Who watches the watchers?". The Bill attempts to do this. I note that the Government will bring forward amendments that were promised following the debates in the Commons.

It is amazing what is already being done but is never reported. Among our evidence sessions the RUSI panel held a round table with the Information Commissioner, the Intelligence Services Commissioner, the Interception of Communications Commissioner, the Surveillance Commissioner and the Chief Surveillance Inspector. I do not think that any of their published reports make the bestseller lists but they are there for us—parliamentarians and Select Committees—to read and question. That is absolutely crucial.

Unfortunately, however, in the past some public authorities have used powers which many believe they should not even have had access to. When RIPA 2000 went through, nobody raised the prospect of local authorities using it in respect of rubbish collection or access to school places. That has been stopped but it gave the whole thing a very bad, nasty taste. The powers in the Bill should be limited to the most serious issues affecting our society, with very strict rules about the process to be used.

Let us not beat about the bush or sugar-coat the issue: the Bill is about intrusion into privacy. The public have to be convinced that all the actions are legal and are the right actions to take on behalf of the public. This is not easy when some aspects must remain secret. The RUSI panel declared the 10 tests which Parliament, government and the public should apply when considering the conditions under which the police and intelligence and security agencies can intrude upon the privacy of the citizen. They are set out on pages 104 and 105 of our report. The noble Lord, Lord Hennessy, listed the 10 tests. Between now and Committee, will the Minister provide a very short paper on how the Government think that the Bill meets the 10 tests? That will save a lot of time in Committee, because otherwise we will have debates for hours. They are legitimate tests to which the Government should respond. The panel spent a lot of time working on this issue. Such a response would not be too difficult and would considerably ease the Bill's passage.

The Bill itself is a democratic licence from Parliament to government. The report's title is correct: it is a licence to intrude but it is a democratic licence based on regulation and oversight. The Government's role is to protect the nation, its citizens, our way of life and the values we live by. Our tolerance must not be abused by intolerance that seeks our destruction. We have to be careful that we do not allow our tolerance to lead to our own destruction. But, as the RUSI report shows, and as was backed up by other reports, we can maintain the values that are most important to us as citizens in order to protect our society. This Bill makes a very important contribution to this aim.

7.25 pm

Lord Macdonald of River Glaven (LD): My Lords, I start by acknowledging the value of the work of our security services and its contribution to the security, prosperity and maintenance of freedom in our country.

During the five years that I worked closely with them, I found the security services to be well led by men and women who were clearly sensitive to the need to find an appropriate balance between security and liberty and thought deeply about these issues. In particular, I acknowledge the work of GCHQ, which is likely to be more impacted than most by this Bill. It is an extraordinarily important national asset and extremely well led by its director Robert Hannigan. He and his senior team seem sensitive to public concern and eager to find a legal framework that wins public confidence for their work.

I believe that it was a mistake for the Government to connive at a situation where some security programmes, such as Operation Tempora, the GCHQ programme, stretched the legal authorisation scheme then in force under RIPA to breaking point. So I welcome this present Bill as a serious attempt to create a framework of law in which the security services can do what is necessary to protect us, but within the context of a respect for civil liberties that is appropriately robust.

I want to address three areas. First, noble Lords have already spoken about future-proofing. This was a growing problem with RIPA. The speed of technological advance is quite extraordinary. The provisions that will be debated in detail by your Lordships' House need to stand the test of time into at least the medium term, and should be judged against their capacity to do that.

Secondly, I encourage noble Lords to be realistic about the capacity of internet connection records to lay bare the most intimate details of a person's life. This is not like telephone data; wholesale retention for 12 months means allowing access to more than raw data. It allows access to people's lifestyles, beliefs, sexual practices, health and perfectly legal secrets. So we should consider this part of the Bill with that reality closely in mind. For my part, having seen the importance of communications data to serious criminal prosecutions—almost every serious criminal prosecution that was brought when I was chief prosecutor relied on data of this sort—I am inclined to support the clauses which refer to internet connection data. However, in debating these matters, we should recognise the significant concern outside Parliament in so far as this part of the Bill is concerned.

Thirdly, I will deal with protections against abuse. Foremost among these are the judicial commissioners. As someone who has been calling for a judicial role in the area of security practice for very many years, I strongly welcome the proposals in the Bill for judicial commissioners. There is a question as to whether they should be operating a judicial review test or a merit-based one. Some, including the noble Lord, Lord Campbell, say that it is for a politician to judge the merits and that a Secretary of State should be overturned only if his or her authorisation is irrational or unlawful. Others argue that a judicial confirmation of the merits would be an important protection against political abuse of these highly intrusive powers. I am inclined to agree, subject to debate, that security decisions are for the Minister and the lawfulness of the process is for a judge.

In making my final point about the judicial commissioners, I make clear that I yield to no one in my admiration for our retired judges. But it is very important that the judicial commissioners have, within their number, a majority who are active judges, adjudicating routinely, with full public confidence, in other areas of the law at the highest levels. This would encourage and underline a public view that the commissioners are independent and worthy of public confidence in their work. Let us have as many senior, working judges as possible among the judicial commissioners. In that way, we will avoid any hint or suggestion—however undeserved—that they are a club that can be won over by one side or another. Public confidence in the process of authorisation can only be enhanced if we ensure a majority of working judges within that important body of people.

7.31 pm

Lord Birt (CB): My Lords, like the noble Baroness, Lady Harding, I shall focus on crime rather than security. I support the Bill because it will reduce the number of victims of crime. Evidence of location obtained from use of a mobile device can be vital in a rape case, in domestic violence, or where, say, an older man has absconded with a young girl. These are all real examples. The powers defined in the Bill are limited, targeted and proportionate, and the safeguards convincing. However, while welcoming the Bill, I wish only that it went further.

It is a commonplace now to assert that crime is reducing, but I strongly suspect that it is not. Rather, crime is migrating from the physical to the digital world where it mostly remains unrecorded and undetected. The internet offers enormous advantages to the organised, persistent offender. Would-be criminals can readily hide their identity. They can troll and threaten anonymously. They can cast a million flies on the water with a phishing email soliciting PIN codes and account details from the unsuspecting. Paedophiles can operate with impunity in the secure bastion of the dark web. Thousands of credit card details can be purchased in that evil digital marketplace, too, stolen in skilful raids which take advantage of weaknesses in the cyberdefences of major corporations. Anarchists can and do mount denial-of-service attacks on institutions, powered unknowingly by malware secreted onto the computers of thousands of innocent users.

Most attacks are hidden and unreported, but we all recall the attack on TalkTalk, about which the noble Baroness, Lady Harding, has spoken, and which reportedly cost the company £60 million. Last year, malware was lodged within the systems of the Bangladesh Bank, and its internal processes observed over time. Earlier this year, during a public holiday, instructions were given by fraudsters to transfer just under $1 billion out of the bank. This was thwarted because, as is so often the case—we see it in phishing emails which reach the House of Lords—the fraudsters misspelled a word in the order, and the fraud was spotted by Deutsche Bank, though not before $80 million was lost and remains unrecovered.

Until recently, I was chairman of PayPal Europe, where I witnessed at first hand the gigantic scale of online fraud. Much of it is cross-frontier; barely any is investigated by law enforcement agencies, and little is prosecuted. I read a wonderful book recently, by an American historian, about Tombstone, Arizona, in the 19th century, when the discovery of a silver lode created a town virtually overnight in a part of the frontier that had been lawless. The internet is still a wild, untamed frontier with a plenitude of outlaws; and a latter-day Wyatt Earp is yet to emerge to bring us law and order. We do not know the full cost to the UK economy, and others, of online fraud but, from my own experience, I suspect that it runs into tens of billions. During my 10 years at PayPal, I saw multiple attempts to persuade Governments to tackle fraud, and they came to naught. I note that the estimable Sir Nigel Sheinwald has recommended that the UK should lead the way in developing agreements to foster global co-operation in fighting cybercrime. I concur, but at the same time note the terrible irony of that statement as our country prepares to leave the best possible stage for mounting and winning that argument in exchange for a bit-part role.

Although the Bill is a welcome, if small, step towards taking law enforcement further into the digital universe, I urge the Minister to bring due focus and energy, and proportionate measures within government, to fighting the full and value-destructive extent of crime committed by digital means.

7.37 pm

Lord Lucas (Con): My Lords, I could not agree more with the noble Lord, Lord Birt. The Government are inviting us to walk down the digital street, but it is a street which would have frightened Dickens. The Bill misses opportunities to do something about that. The information which the Government are giving themselves access to in the Bill would enable them to help us, as ordinary citizens, to deal with the tide of three-card-trick salesmen, conmen and pimps that assails us every day on the internet. However, there are no proposals in the Bill to do anything, which is quite astonishing. Of course, it is not astonishing because it is a Home Office Bill. We have had this before: noble Lords on the Benches opposite will remember when they tried to get us to take identity cards. That failed because it was a Home Office Bill; there was nothing in it for the ordinary citizen. All the advantages for the ordinary citizen that might have come from an identity card system were neglected. There was nothing there; it was

[LORD LUCAS]
just, "we want to control you". Yet, as others have pointed out, we readily accept an enormous exchange of information and control with the likes of Google and Facebook because they offer us something in exchange.

The Home Office will have to get a grip on this. How are we to deal with open borders, post-Brexit? Presumably we will still have visa-free travel with Europe, as is proposed for Canada and other countries. It would be very odd to introduce visas, so we are going to need some kind of identity system so we can catch up on people after they have got in. This is about the only way one could police a border in Ireland, let alone one with Scotland. We really have to change the Home Office to an organisation which thinks of us as citizens as well as thinking of itself as a controller of citizens. It would be excellent if the Bill could start to do that by making sure that the Home Office at least has the power to use all the information it is gathering to start reducing the level of crime described by the noble Lord, Lord Birt. I also agree very much with the noble Lord and others on the need for international collaboration. That has to be the way forward. I do not share with him and the provisional Opposition opposite—I do not think that, after today's meeting, I can call them the Official Opposition any more—the feeling that disconnecting from Europe will slow this down. This will be an international thing that does not care for other structures: a community that all nations committed to democracy will join, whether or not they are part of any individual organisation.

I have worries, too, that the Bill has not really addressed the question of speed. There are circumstances where the Government need quick access to information. In the course of the London riots, it was really noticeable how slow official processes were in catching up with information as to what was going on but communication service companies have those capabilities. They will perform checks online in real time if someone proposes to do a financial transaction. That is routine but you need access to and collaboration with the computing power that communication service providers have to make good use of it. You cannot seek to have a second-hand flow of information and hope to build government systems that will do the deed in real time, enabling you to get on top of the flow of information taking place among people in the middle of a civil disturbance. In the course of the Bill, we have to look at how to enable the Government to collaborate with the communication service providers when speed becomes of the essence and to make sure that we are not putting any obstacles to doing so in their way.

However, I share some of the concerns about the ICR and what we are creating with the request filter. We are producing a resource there that Francis Urquhart would have loved to have his fingers on: absolute knowledge of everyone's private life. We would have to be so clear that what we are doing will not be abused and is not open to abuse. To have a system which can be accessed without warrant or proper record of what has been done—without proper supervision of those records—really opens us up to abuses of power and of position, in a way we should not do. I am very encouraged by the quality of the debate. This House is clearly full of people who understand these problems a great deal better than I do, so I am confident that we will do something about it. We should take this seriously and I look forward to Committee to do just that.

7.43 pm

Baroness Ramsay of Cartvale (Lab): My Lords, because of time constraint and the long list of speakers, I intend to be as brief as possible in this Second Reading of a vital and very detailed Bill. I hope there will be plenty of opportunity to deal at greater length with issues at the later stages of the Bill.

I speak from a base of my own professional experience in government service, where I spent some time in this precise field of activity, as well as having served in my parliamentary life twice on the ISC and later on the Joint Committee on the National Security Strategy. Today, I would like to make a few general remarks about what are called bulk powers because, over the last decade or so, they have been absolutely essential to the three security and intelligence agencies—SIS, MI5 and GCHQ—and everyone agrees that they are bound to be increasingly important in the future.

Bulk data are information acquired in large volume, as the Minister explained so very well in his opening speech, and are used to provide vital and unique intelligence that is unable to be obtained by any other means. Bulk data are among the most important tools that the agencies have to help them identify security threats inside the United Kingdom and threats to UK interests and citizens abroad, including in the Armed Forces, to find links between targets of interest, to establish behaviour patterns and communication methods, and to monitor attack planning et cetera. The Minister confirmed in his opening speech that the Government are committed to a review by David Anderson to assess whether the bulk capabilities provided in the Bill are necessary. I understand that the review is expected to conclude in time for our consideration of Parts 6 and 7 in Committee, so I look forward to dealing with it all then.

I conclude with one brief personal comment. Like the noble Lords, Lord West, Lord Campbell and Lord Rooker, I have some serious reservations about the so-called double lock, which involves a judicial commissioner in the authorisation process. I am quite content to have judges in oversight and judicial review but I do not feel at all relaxed about letting judges into the authorisation process. Not for the first time in this House, I say with the greatest of respect to any noble and learned Lords here tonight that I really wonder where this cult of judge worship comes from. It seems to grab legislators, especially when they are dealing with intelligence and security affairs. However, I hope we can come back to and elaborate on this at future stages of the Bill. On the whole, it really is an excellent Bill and I wish it a smooth passage through this House.

7.46 pm

Lord Carlile of Berriew (LD): My Lords, it is always a pleasure to follow the noble Baroness, Lady Ramsay, but it is a privilege to follow her on a subject of which she has the theoretical knowledge, and probably more

practical knowledge than almost any other Member of this House—certainly more than most who are prepared to admit it. I know that repetition rarely involves improvement to the decent argument so I propose to make a few points of emphasis rather than repeat what has been said. I can say at the outset that I support the Bill, for the reasons just given by the noble Baroness and by noble Lords including the noble Lords, Lord Murphy and Lord Butler of Brockwell, my noble friends Lord Campbell of Pittenweem and Lord Macdonald, the noble Lord, Lord Rooker, and the noble Marquess, Lord Lothian.

I have some misgivings about the Bill. They are three in number and I can state them briefly. The first is the issue of legal professional privilege. I am not going to repeat a word of what was said so eloquently by the noble Lord, Lord Pannick, and my noble friend Lord Lester. I simply invite the Government to continue to consider that issue and to respond consistent with the advice that has been given in the debate.

My second misgiving relates to the use made of certain types of records. We have to be careful to ensure that, for example, medical records are used only for a legitimate purpose. I can see extreme circumstances in which medical records might be relevant to a terrorism event but the use of such records would have to be extremely carefully controlled, so what I would describe as the principle of legitimacy of use is essential to the Bill.

My third misgiving echoes something that was just said by the noble Baroness, Lady Ramsay, alluded to earlier by my noble friend Lord Campbell and stated pithily by my noble friend Lord Macdonald. It is about judges. I have general reservations, as she does, about the role of judges in what is essentially a ministerial act. It is Ministers who are briefed every day on national security issues and who have been issuing warrants though history. It is senior civil servants, such as some of the retired civil servants who have spoken so well in this House—there may be one or two more to come—who have consistently given advice to Ministers. I do not object to judges being involved in some way, but it must be a legitimate way. If judges are to be involved, it is to be for the verification of what has been done and of whether it has been done in accordance with legal principle. That means by the use of the rules of judicial review. Judges are not trained to authorise warrants. Most judges do not want to be trained to authorise warrants, and they should not be thrust into that role. I agree emphatically with my noble friend Lord Macdonald of River Glaven that it is desirable that serving judges should be included as judicial commissioners. It is not that retired judges do not do the job well—they do their work brilliantly in most cases—but the political optics of this issue are very important. The cohort of judges who act as judicial commissioners should include serving judges who go back from their commissioner role to the courtroom in which they give judgments on issues of fact and law so that they are seen to be not in any way the beneficiaries of political largesse.

Earlier, the noble Lord, Lord Blunkett, referred to a telephone call he made to me on 11 September 2001. It was probably a call I should not have returned because it resulted in my becoming Independent Reviewer of Terrorism Legislation. I did the job from 2001 to 2011. Even in 2011, it was nothing like as complex as it is today, and I pay tribute to my successor David Anderson QC for the brilliant work he has done, the outstanding legal analysis he has brought to his role and his sensitivity to the most difficult political setting in which he has had to carry out his role. It was much easier in the period when there was a Labour Government. Not all the Home Secretaries were entirely consistent in their views, but broadly they were, considering how many there were over those years, including one who is in his place on the privy counsellors' Bench. David Anderson has had a much more difficult task. The House should be extremely grateful to him for what he has done.

I am frankly outraged, and I suspect David Anderson is, too, by the criticism of civil servants in the Home Office by one speaker in this debate. I observed civil servants in the Home Office over nine and a half years carrying out their role without bias, fear or favour, just doing their sometimes very difficult duty. The suggestion that civil servants in the Home Office, or anywhere else in the public service who I have observed at close quarters, have dealt with terrorism issues in a way that is dishonest in any way whatever just fills me with horror, and I hope that Lordships generally will reject that slur on our civil servants. It should not have been made.

Taking a much more constructive point now, I hope, what we have is a changing situation. As I discovered in my nine and a half years as Independent Reviewer of Terrorism Legislation, dealing with terrorism is not science or even art; it is just something that changes day by day. It does not evolve; it simply changes, sometimes suddenly, by mood and disruption in the political and democratic metabolism of the world. Sometimes the changes are unpredicted, and often they are completely unexpected. We should bear that in mind as we look at the detail of the Bill in the weeks to come, and I look forward to playing my part.

7.54 pm

Lord Condon (CB): My Lords, I support the Bill, yet in doing so, I understand all the fears and concerns about privacy that have followed it from inception and through its passage in the other place and which are now central to our discussions in your Lordships' House. As we have heard, your Lordships now have the responsibility to set the balance between the need for privacy and the right of our fellow citizens to live in safety and security.

For seven years, from 1993 to 2000, I was Commissioner of Police for the Metropolis and, as such, during those years I was at the centre of the policing operations to combat terrorism and organised and serious crime. I think the main service I can provide to your Lordships' House today is to emphasise, as other have, but from my personal experience and knowledge, how advances in technology have totally transformed how terrorists, serious and organised criminals and paedophiles prepare for their crimes, conspire together and carry out them out. That is why the provisions in the Bill are essential if we are to protect

[LORD CONDON]
our citizens. In preparing for the Bill, I spent time discussing it with the current director-general of the National Crime Agency and her predecessor, and I spent time with their operational colleagues at all levels in the National Crime Agency.

In 1996, only 20 years ago, and during my watch as commissioner, only 45 million people worldwide had access to the internet, and only 15 million of them were outside the United States of America. Google did not open its first office until 1998. iPhones were launched only nine years ago. Compare and contrast these facts with your own experience. According to Ofcom, 66% of adults in the United Kingdom now have smartphones, 81% of adults send emails and 62% of smartphone users have social media applications. The way that terrorists and criminals plan and conspire to carry out their crimes has been transformed in the relatively short period since I left the service. They have migrated from using mobile phones and meeting each other physically to a web-based and largely non-verbal environment.

The methods deployed by law enforcement agencies to disrupt and detect criminality in all its forms and to protect society must keep pace with these changes. The tradecraft and methods of preventing and detecting crime from my time in policing seem increasingly obsolete and ineffective when faced with the challenges of the digital age and communications data. Law enforcement agencies need to keep pace with the realities of these changes. Analogue-age powers are no match for digital-age terrorists and criminals. Telephone calls are no longer central to how people communicate, and they are certainly not how terrorists and other criminals communicate. As other noble Lords have said, criminals and terrorists now use social media, WhatsApp, internet chatrooms and every opportunity that a rapidly evolving internet world gives them.

Legislation must respond to these changes and, with vital checks and balances, create a framework which allows law enforcement to combat terrorism and serious crime. In most respects, this Bill seeks to consolidate and recalibrate existing powers, but I acknowledge that the extension of powers into the world of internet connection records is controversial and challenging. I believe the extension of powers into internet connection records is essential and is a proportionate response to the real world in which criminality and terrorism are planned and now take place. Communication data are a vital evidential ingredient of virtually every major case dealt with by law enforcement agencies. For example, the House heard earlier about the recent gun smuggling case which was this country's biggest known gun smuggling operation. It was analysis of communications data that provided vital evidence and allowed the attribution of telephones, various other devices and SIM cards, and the identification of key locations linked to the gun smuggling. It should be remembered that similar automatic weapons, from similar European sources, were used in the deadly terrorist attacks in Paris and Brussels. Analysis of recent National Crime Agency cases suggests that in at least 14% of its cases relating to child abuse imagery, it would require the retention of internet communication records to have any prospect whatever of identifying a suspected paedophile. The provisions in the Bill relating to ICRs are not really about extending the boundaries of acceptable law enforcement but are more about retaining law enforcement capacity in the dramatically changing digital world.

I hope we will find ways to assuage the very understandable and reasonable fears that some Members of your Lordships' House have about some or all of the Bill. In particular, I understand the concerns about the proposals for internet connection records, including how they are defined and what they can include. If additional privacy offences are required, let us add them to the Bill; if additional safeguards are required, let us define and incorporate them. But I hope your Lordships will be prepared, after what I know will be robust discussion, to pass the main provisions of the Bill.

8.01 pm

Baroness Chalker of Wallasey (Con): My Lords, it is now some 19 years since I concluded my time of more than 11 years in the Foreign and Commonwealth Office. It was in that time that I became deeply aware of the need for proper legislation to assist the Government to protect our citizens. In the intervening 19 years, technology has changed out of all recognition, as many of your Lordships have already said. The Bill has been most thoroughly prepared, and I support it fully, but it may need some amendment—not major, because most of that work has been done, as has already been described.

Some will be surprised at my intervention in this very erudite debate, and it would be foolish at this hour to repeat the case for the Bill made so well by my noble friend Lord Howe in introducing our debate some hours ago and the detailed remarks that have been made about the different aspects of the service providers. I was very glad to hear from my noble friend Lady Neville-Jones when she spoke of the data outside the UK and the need to establish international agreements as the primary route for UK agencies to obtain data from the communications service providers—I agree with her. What I believe we need to do above all is to make sure that the Bill—the Act that it will become—is a template for other countries.

As noble Lords will know, I am involved in trying to encourage investment into the developing world. There is an urgent need for our legislation to be a template for other countries because no one, apart from the United States, is thinking in the terms that this Bill is thinking about what is needed. British companies, especially those in technology such as BT, are considering major investments overseas. They need to be satisfied that the legislation which will cover their operations in India, South Africa and many other countries is properly drafted. My concern is a little different perhaps from that of other noble Lords. It is that we get the Bill absolutely right, not only for the reasons that have been expressed here but so that we can work with others on security matters on a similar basis. We shall never be able to prevent all the criminal activity or the terrible sexual grooming using only UK measures and UK internet connection networks—we have to have, and set, an international standard. In thinking about the wider effect of the Bill, I suggest to my noble friend Lord Howe that we

will need further amendments to it so that it is worthy of emulation around the world and minimises the risk of retaliatory action against UK communications service providers that are investing abroad.

We need to establish some international agreements as the primary route by which UK agencies obtain that data from overseas CSPs. I believe we should disapply the extraterritorial application of UK law in situations where it is done pursuant to an international agreement, in line with David Anderson's recommendations. We should also ensure that overseas CSPs can bring their concerns to the Investigatory Powers Commissioner without conceding jurisdiction and permit the commissioner to see amicus curiae from effective parties. I hope we can set out the functions and responsibilities of the Investigatory Powers Commission, including a power to hear and respond to petitions from interested parties. I hope, too, that they extend the conflict of laws defence for overseas companies. We should not state in the Bill anything which might be construed as requiring a company to weaken or to defeat its security measures, which are a critical component of efforts to protect users from hackers and from other threats. This is a complicated area on which I have only very limited experience, but I believe we need to set the example for other countries and help to ensure that other Governments have laws with which we can work.

8.07 pm

Lord Beecham (Lab): My Lords, I begin by referring to my interest as an unpaid consultant to the solicitors' firm of which I was for many years the senior partner, but also with an admission of what Members may consider is for me an unusual degree of diffidence. I have to admit to being far from a master of information technology, or indeed any other sort of technology, and therefore that I find the language of the Bill somewhat difficult. As has been stressed on all sides of the debate, here and elsewhere, there is widespread acceptance of the maxim that the first duty of government is the protection of the safety of the citizen; it is also accepted that the second duty of government is the preservation of the citizen's freedom and privacy. Of course the issue before us is the degree to which these duties can best be reconciled.

It was encouraging that, as we have heard and as the JCHR report affirms, debates in the Commons saw changes being made to the Bill and commitments given to table further amendments as the Bill progresses through this House. The concern of Members of all parties to strike the right balance between the claims of security, privacy and liberty was welcome. We await sight of those amendments at as early a date as possible, and I hope that, unlike our experience with the Housing and Planning Bill of unblessed memory, we will be given the opportunity to consider in draft any proposed regulations before the Bill leaves this House. I especially welcome, as others have done, the Government's acceptance that there must be a significant role for the judicial commissioner.

The two main areas which I wish to address are those of legal professional privilege—or as I would prefer to put it, client confidentiality, since it is not the legal professional who benefits as such from the alleged privilege—and freedom of the press, including the protection of journalistic sources, both of which featured in the list of matters identified by the Opposition in the Commons as requiring significant attention.

In relation to client confidentiality, as we heard from the noble Lords, Lord Lester and Lord Pannick, many Members have received the joint briefing from the three UK law societies, the Bars of England, Scotland and Northern Ireland, the Institute of Legal Executives, Justice and Liberty. Seven areas of concern are identified. These range from a bar on the targeted and bulk powers, as defined by the Bill, unless a judicial commissioner is satisfied that communications have been made in furtherance of crime, to protection for material when someone outside the UK communicates with a UK lawyer, the protection of data relating to privileged communications, and the extension of safeguards to the Regulation of Investigatory Powers Act, or RIPA as it is known.

The Joint Committee on Human Rights endorses the calls for change in this area, setting out proposed amendments to Clauses 25 and 100. Can the Minister indicate whether, and when, the Government will bring forward amendments to deal with these issues and indeed what view they generally take of the recent report of the Joint Committee on Human Rights?

In relation to press freedom and the protection of journalistic sources, the NUJ points to the potential impact on both journalists and their sources, in the latter case pointing out the risk to journalists who are in war zones or are engaged in investigating organised crime. While it makes a strong case, which I and others support, it would be enhanced if the conduct of the press itself had been above reproach, as the long-running saga that led to Leveson amply demonstrated. Nevertheless, the NUJ is surely right to aver:

> "To have meaningful and effective protections for press freedom, the bill needs to be amended to offer a shield clause for journalists and this should apply across all of the powers that are specified in the bill".

I recognise that it would be helpful to have a definition of a journalist. Would it, for example, include someone who undertook journalistic work while holding down another, full-time, job—for example, the previous Mayor of London?

The News Media Association joins the National Union of Journalists in calling for enhanced protection, as indeed does the Joint Committee in its proposed amendments to Clause 68, which would extend to journalistic sources the same protection as is currently applied to search and seizure under the Police and Criminal Evidence Act 1984. The committee, at paragraph 7.8, points out that,

> "the applicant for authorisation is not required to give notice of the application to the media"—

an extraordinary departure from due process—while, under the Bill as it stands, the judicial commissioner need find only that there are "reasonable", albeit in the circumstances untested, grounds,

> "for considering that the requirements in the Act are satisfied in relation to the authorisation".

To what extent are the Government prepared to move on these issues?

Different issues are raised in a briefing received at the weekend—I anticipate that other noble Lords will also have received it—from an organisation called

[LORD BEECHAM]
techUK, which raises issues that in its view are likely to cause problems in relation to the storage of data and the costs to the industry, the latter not likely to be resolved by the stated intention that the Government will make an appropriate contribution that must "never be nil"—a remarkable turn of phrase which perhaps the noble and learned Lord can explain after he has been briefed on its meaning. I suspect that neither he nor I quite understand how that phrase managed to get its way into the Government's response. However, more importantly, the organisation raises further questions about conflicting legal obligations, including EU regulations. The latter of course may not last for long for this country, but this is surely an area in which co-operation between jurisdictions needs to be preserved whatever happens following the referendum.

Finally and importantly, techUK asserts that the Bill threatens to undermine trust in the UK's digital economy, with its 1.5 million jobs and 15% of GDP. To what extent, therefore, will the Government, including the Treasury and BIS, engage with the industry and indeed with the EU on these issues, and will they consider bringing forward amendments in these areas?

8.13 pm

Lord Thomas of Gresford (LD): My Lords, many concerns have been expressed in this debate—by my noble friend Lord Paddick and the noble Lord, Lord Blunkett, in particular—about personal privacy and the right to maintain a private life. However, I want to concentrate on legal professional privilege. It has been analysed brilliantly by the noble Lord, Lord Pannick, and my noble friends Lord Lester and Lord Macdonald, and I want to put some sort of colour to it.

Legal professional privilege is concerned with the public interest, not personal privacy, and it has been recognised as such since the 16th century. In criminal law, the individual is set up against the state. We prosecute from time to time and we are familiar with the power of the state to exercise surveillance and intrusion in the interests of arriving at the truth. On the other hand, defence lawyers are equally concerned with arriving at the truth. Something that some lay people fail to realise is that you do not win cases by putting forward defences based on lies. The immediate role of the defence lawyer is to impress upon his client the value of telling the truth, thereby building trust between him and that client.

What a defendant says at the beginning following his arrest may be completely untrue. Sometimes what he says has been suggested to him by other inmates in the prison where he is held on remand, or sometimes he will not tell the truth because of fear and sometimes because of guilt. When talking to defendants, I frequently say that if I were a doctor it would be no use if they had a pain in the head to tell me that they had a pain in their foot. I need to know the truth so that I can do the best for them. My noble friend Lord Lester was absolutely right when he said that defence lawyers might not know of a possible defence, and therefore the court and, particularly in a criminal case, a jury will not know that defence because the defendant, for reasons of his own, has not told his lawyer.

To illustrate that, I vividly recall a case in which I was involved in which the defendant—my client—was alleged to have shot somebody outside a nightclub in the presence of his friend. When, six days later, his friend was discovered also shot and my client had absconded and left the country, he was in trouble. His defence was that he knew that the friends of the person he had shot in the first instance were coming after him and they had shot the wrong person—they had shot his friend instead of him. The trial went ahead and he denied both the attempted manslaughter and the murder. He was convicted of both. We appealed because I did not think the conviction for murder was right. We failed and then, when I went to see him in the cells after the appeal, he told me, "Well, now I'll tell you what really happened". And for the first time I received from him an account that was completely consistent and believable. However, rather like a referendum, you cannot have a trial over again. That was it; that was the end of the case. He served a life sentence—and possibly is still serving it—for murder.

I am more familiar with the problems of client confidentiality in other jurisdictions. I recall one case in particular in a foreign jurisdiction, where the state was the other party, when we felt it was necessary to have our consultations and conferences standing in the middle of the swimming pool at the hotel in which we were staying because it was almost certain that our conversations were being bugged. Even in this country, involving a political issue in a foreign country, I recall that we talked to the wall as though there were people listening when the team met to discuss their tactics—for example, what inquiries were to be made and how we could support our client in the position that he was at that time.

So I am entirely with the noble Lord, Lord Pannick, in saying that when the commissioner is considering exceptional and compelling circumstances, the warrant must require—it must be shown—that there is a probable cause for belief in iniquity. Obviously, if a lawyer is colluding with his client in some shady business, that cannot be subject to legal professional privilege. I recall, in a very far-flung foreign jurisdiction, advising clients in a situation where the previous legal team had been arrested for attempting to bribe the prosecuting officers of that jurisdiction. We felt a little uncomfortable in the first place, but when something equivalent to half a million pounds in cash was put on the table in front of us in a plastic bag, we thought it was time to leave. So iniquity does happen; it is sometimes a temptation that is put in the way of lawyers.

I do not wish to carry on with further legal language such as "I once had a case", so I will draw my remarks to a conclusion. However, I think the provisions in the Bill for legal professional privilege require considerable examination.

8.21 pm

Lord Evans of Weardale (CB): My Lords, as a former head of MI5 and a member of the RUSI panel that reported to the Government last year, I am pleased to welcome the Bill. We in this country have had statutory powers of interception for about 30 years and actual powers of interception for 400 years at

least. Overall the statutory arrangements, which have been updated from time to time, have stood us in good stead. They have been a cornerstone of the work that the intelligence agencies have done since that time. It is largely as a result of that set of powers that the agencies have been able to keep our citizens safe from terrorism and other threats, and I am grateful to the noble Lord, Lord Strasburger, for the data that he provided to that end earlier in the debate.

They have also helped the police to prosecute many crimes, and that has been undertaken on a lawful and accountable basis. It was encouraging, for example, that the various inquiries that followed the revelations made by Edward Snowden, now in Russia, did not uncover any illegal activities by the British agencies. This appeared to be a surprise to some commentators, and in some cases a disappointment, but it should not have been because anyone who has worked in or with the agencies will realise that they set great store by operating on the basis of law.

Technology and public expectations move on, though, and the Bill will therefore propose a number of changes that I believe we should welcome. I suspect we will not need to make significant changes in the light of the referendum result last week. In particular, the Government have recognised the need to lay out more clearly the way in which various powers are actually used; I suspect there was a sharp intake of breath when that was decided, but in fact I think it was the right decision. As David Anderson rightly pointed out, the previous arrangements, though lawful, were, to say the least, opaque.

The powers in the Bill are necessary if the people in this country are to be able to live their lives in security, and I take as an example the use of bulk personal datasets. The use of such datasets has been the most striking development in investigative methodology that we have seen in the past 15 years, and as digital activity and life on the internet has become absolutely normalised, the use of bulk datasets has become a vital capability in enabling the agencies to make sense of the movements, associations and activities of potential terrorists and separate out the truly threatening from the background noise. It is right to make this capability and its existence clear and to ensure that the datasets are accessed on an accountable basis. There is nothing improper or alarming in using data for these ends, but it is better if we all know what is going on.

I also welcome the double lock authorisation model, which was one of the proposals made originally by the RUSI panel. It is important to keep Ministers in the authorisation loop, since the use of these powers is a matter of public concern and often of national security, which is a responsibility of government. But the judicial role can give assurance, if any is required, that Ministers are not abusing their powers. I may say that having been involved in the process of applying for warrants for 30 years at various levels within the security service, I am not aware of any case where Ministers tried to abuse their authority, but at least we will have that assurance.

Finally, it is important that in scrutinising this legislation we bear in mind that it must provide a framework to support fast-moving, complex and sometimes intensive live operations. Those using the powers on our behalf have to be able to move as fast as those who are planning a terrorist attack, importing a drugs shipment or procuring the online abuse of a child. This process cannot be mulled over at great length as operational requirements arise. I can remember in the period after the 21 July attacks in 2005, which was probably the most intensive period of warranted activity that the security service had then experienced, that all authorisations had to go through the deputy director-general for operations, who at that stage was myself. This meant that I was rung at all hours of day and night, 24 hours a day for several days in a row. I am glad to say that that exact procedure has subsequently been amended, but the principle that we are able to respond in real time to events and not to be held up by processes which are intellectually attractive but practically applicable is very important.

Bureaucracy and accountability are not the same thing. There needs to be clear and effective authorisation and oversight of these powers, but it needs to be done in such a way that the powers can still be used quickly and without unduly burdensome process. Thematic warrants may well fall into the category of activities that are needed for this purpose. One of the strengths of the British approach to these issues in the past, which has not always been achieved in other jurisdictions, has been to keep operational realities in mind and to create processes that provide oversight but do not bog the agencies or the police down in unending paperwork.

As we update the legislation governing the use of investigative powers, we should not lose that vital balance between accountability on the one hand and operational realities on the other. I look forward to taking part in the further scrutiny of this legislation in your Lordships' House.

8.27 pm

Baroness Browning (Con): My Lords, I welcome the Bill. The amount of scrutiny it has received has been such a help in producing the Bill before your Lordships tonight. I was pleased to have the opportunity to serve on the Joint Committee, which was so ably chaired by the noble Lord, Lord Murphy. I was particularly pleased—comment has been made about this tonight—by the way in which another place dealt with the Bill. One of my permanent gripes is that we in this Chamber often receive legislation which is imperfect not because nobody at the other end was interested in it but because the iniquitous guillotine fell and huge chunks of legislation passed totally unscrutinised from another place to this Chamber. I opposed this vigorously when it came in many years ago—as Members will remember—but lost. I feel that if we are about anything in this Chamber, we are about scrutiny, but that applies also to another place. So it was not just that they spent a lot of time on it but that they looked at every line. I hope that perhaps future Bills will emulate that procedure.

On the Joint Committee we had the opportunity for a visit to the Metropolitan Police intelligence bureau. One of the things that struck me was that although a lot of our conversation was about how the Bill would help with serious organised crime and terrorism, we saw things in practice there—the noble Lord, Lord Evans, just touched on this—such as how having

[Baroness Browning]
quick and timely access to data can help in ways that had not occurred to me. For example, when the police are notified of somebody who has gone missing who is a potential suicide case, or when a child goes missing and there is concern about them, access to telephones—a lot of children walk around with telephones and electronic devices—to be able to find out in a timely way where they are and who they have called saves lives, apart from the bigger issues that the Bill concentrates on.

Of course, among the people who came before us to give evidence, we heard from the judges. I support the double lock; it is a very good move forward to reassure the public and politicians. It is one of those measures that is perhaps tucked in the pocket just in case, at some point, this country could not rely on its politicians. I believe that we can rely on our politicians but—who knows?—maybe one day we will not be able to.

I was worried about the training of judges. Are these judges really going to get to grips with this subject, which is not something that they are dealing with every day? But I was reassured. I notice that my noble friend Lord Carlile of Berriew is not in his place at the moment, but I will draw to his attention that I said this. The judges reassured us that they would look at each warrant, case by case, and apply the rules of judicial review to give some reassurance on the way that they would approach their side of it.

It is also very important, perhaps more for the other end than for this end, that the Home Secretary can appear at the Dispatch Box and be questioned about individual warrants—something that a judge cannot be required to do. That is such an important part of our democratic process in this House.

Already mentioned is the way that technology moves and the way that our security services have to keep one step ahead all the time. However, there is another ingredient in the mix where our intelligence and security services need to feel that they are always one step ahead, and that is to do with political will. The intelligence and security services need to feel that, in these two Chambers, there is the political will to enable them to be able to access the sort of information and methodology that they need. As former Prime Minister Baroness Thatcher said, back in the 1980s, terrorists only have to be lucky once. It is against that backdrop that our security services need the support of this House to keep things well balanced. We must make sure that we give them every opportunity to keep us safe.

There are measures that have already been mentioned that we will need to look at. I know that my noble friend the Minister will be as forthcoming as he can be on the issues that have been raised about lawyers and journalists.

Finally, another area on which we took evidence in the Joint Committee, which has already been touched on, is the situation with the communications service providers. My noble friend Lady Harding spoke on behalf of what I regard as quite a large service provider. But we also took evidence from some of the smaller service providers, which expressed concern about the capital costs involved in this. So I hope that the Minister will be able to reassure us in Committee. It would not be a satisfactory outcome if, when we were finished with the Bill, it was public knowledge that some small companies were not up to speed and up to the mark in terms of people who might use their services. That would leave a gaping hole in our security. Just think what would happen if we ensured that the larger communications service providers could meet the standards required under the legislation but, somehow, those who wish us harm could go elsewhere.

8.34 pm

Baroness Kennedy of The Shaws (Lab): My Lords, I have to say that I have had one of the greatest surprises in the course of this debate that I have ever had in this House. That was hearing my noble friend Lord Blunkett express humility—humility in relation to his efforts to deal with terrorism and with the efforts of this House to call him to book when he seemed to be going over the line. I did not quite recognise whether there was regret, but certainly he seemed to acknowledge that scrutiny of the efforts to deal with serious crime and terrorism is a very important thing to take place within our parliamentary system.

I welcome the Bill because it places the work of the intelligence and security agencies within a robust legal framework. As others know, I have spent a large part of my professional life dealing with high-level security cases, often involving terrorism, such as the transatlantic bomb plot not that long ago, which was mentioned by the noble Lord, Lord Reid. These were serious cases in which new technology was used by those who stood trial and where being able to intercept was clearly vital to the interests, safety and security of British citizens.

The noble Lord, Lord Rooker, suggested that the RUSI panel's 10 tests might in fact be placed inside a pamphlet or a paper by the Government to show how the Bill complies with them. I strongly support that suggestion and think it would be a very helpful reassurance to many of those who have criticised the steps taken to deal with these sorts of issues.

There is no doubt that we have to be always vigilant when we are dealing with the rights and liberties of British citizens. When private exchanges between individuals are invaded, there are consequences for all of us, not just the individuals involved, because societies that create a dark state, with extensive surveillance powers, have always in the end reaped the consequences: authoritarian abuse, serious miscarriages of justice, the growth of political mistrust which always follows, and ultimately a crushing of the human spirit. I agreed entirely when I heard the noble Lord, Lord Macdonald, describing what this does to the lives of individual people, the way that it invades the creative and intimate lives of people—the stuff of people's souls. So we have to move ahead but with great care because sometimes invasions of privacy are absolutely necessary but they should be rare and under strict regulation.

The areas in the Bill that cause me most concern have already been spoken to. They relate to the protections that there must be for communications essential to the fairness of the legal system and communications essential to freedom of the media. A citizen has to have the right to confer with a lawyer in confidence; I will not repeat the arguments that have been presented to this House by my colleagues in the law. My life as a

practising lawyer doing these sorts of high-level, politically sensitive cases has made me pretty cautious about claims concerning national security because that can be an elastic notion, capable of being harnessed for questionable ends.

I am concerned that the definition of "exceptional and compelling circumstances", and the draft codes of practice that have been put together, set the bar too low. These can be broadly and loosely interpreted and the risk is that the law will enable and encourage the routine acquisition, examination and retention of legally privileged communications. That should concern us. Currently such a practice is deemed unlawful but we know from the Belhaj case in 2015 that at times that has not stopped inappropriate behaviour. We should always remember that codes of practice are not law. They do not have legal force and they can be changed without parliamentary scrutiny.

What should concern us is that when the Government were pressed in Committee in April about what they really intended, and they gave examples, they seemed to say that the purpose was to obtain strategic intelligence. That is just not a justifiable reason for this legal change. It is, I am afraid, dancing to a tune that is not acceptable in a democratic society. We cannot allow it to be used to interfere in privileged communications between lawyers and their clients simply because there might be a possibility of coming up with something. There has to be something more than that. The Law Society, the Bar Council, Liberty and Justice are all pressing for amendments. The Government have said that they will listen and I hope they will.

I am also concerned about journalists and the protection of sources. I agree with the noble Baroness, Lady Liddell. There are problems because of the expansion of journalism into the internet, the arrival of blogging and the ways in which people claim the title of journalist who would not have fulfilled that definition in the past. However, we have to be cautious about enabling journalists to make the public aware of things that are happening in society which has to involve their giving promises of protection to their sources.

I welcome the fact that David Anderson has been invited to review the use of bulk powers. Like the noble Lord, Lord Lester, I think he is a truly honourable man. He has an independent mind and is an invaluable public servant. I am glad that he is responsible for the review and I look forward to hearing what he has to say.

Clause 1 re-legislates the criminal offence of hacking telephones that saw the conviction of the Prime Minister's press secretary for conduct when he was the editor of the *News of the World*. Nine other senior journalists at more than one newspaper—indeed, at more than one newspaper group—were also convicted. There were hundreds, if not thousands, of victims of that criminal conspiracy, many of whom were ordinary members of the public whose privacy was grossly intruded upon in a wholly unacceptable way. It is right that that offence is re-codified in the Bill. It is not only the state that intervenes in people's privacy.

Many victims of phone hacking have taken out civil claims based on the common-law tort of misuse of private information. The old RIPA included in Section 1 a statutory tort but that has not been re-codified in this Bill. Why will citizens not have that entitlement any longer? I hope the Minister will help us with an answer to that question and perhaps the tort may be reinserted in the interests of fairness to those victims.

As we have heard, striking the balance between liberty and security is hard. The best way to do it is with trusted oversight and transparency. I welcome the openness of the Government in seeking to meet the concerns and I look forward to the debate in Committee.

8.42 pm

Lord Oates (LD): My Lords, it is intimidating to follow so many noble and learned friends on my own side, let alone all around the House, but I am grateful for the opportunity to speak in this debate because, over the five years that I worked in the coalition Government, we wrestled with many of the issues that this Bill attempts to address. We recognised that our society faces real threats and that it is the duty of the Government to address them.

The then Deputy Prime Minister for whom I worked took that responsibility extremely seriously. He never had the slightest patience with those who dismissed these threats or opposed necessary proportionate and workable measures to counter those threats for ideological reasons. He was committed to ensuring that the security services had the powers they needed and he supported legislation where there was an evidence-based case for it, such as the Data Retention and Investigatory Powers Act 2014. He opposed legislation, such as the draft communications data Bill, where there was not. He was as impatient with those who were careless of our liberties as he was with those who were careless of our security.

I share the approach that he took. I do not see liberty and security as items to be weighed against each other on opposing scales but as principles essential to reinforcing each other. There is no liberty without security but, equally, no security without liberty. Anyone who has lived in a country where the authorities are constantly monitoring what you do, and where they think that they have the right to interfere with your liberty, will know just how insecure that makes you feel. I have no doubt about the threats we face or of the suffering brought about by terrorism, child exploitation or any of the other heinous crimes that the police and intelligence services have to tackle. I was lucky enough to work alongside members of the intelligence services in the previous Government and I have nothing but admiration for the work they do on our behalf and the way they go about it.

I welcome the fact that the Bill is a considerable improvement on the existing arrangements. It covers previously unavowed powers and contains significantly greater safeguards and oversight than had previously been present. It is particularly welcome that it has dispensed with the proposals in the draft communications data Bill that UK network providers be forced to collect and store third-party data relating to services operated by companies overseas.

At the time of the communications data Bill, we refused to agree to such a proposal because no one could make a credible case for it. In the absence of

[LORD OATES]
evidence or argument, it was simply asserted that if we did not agree to such a proposal, public safety would be put in jeopardy. Without a shred of evidence to support it, people who should have known better—including some Members of this House—went on television to castigate the then Deputy Prime Minister in the most lurid terms, accusing him of putting lives at risk.

Of course, subsequently, the highly respected Independent Reviewer of Terrorism Legislation, David Anderson QC, investigated the issue and could not have been clearer in his report that he found that no operational case had been made for the power and that,

"there should be no question of progressing this element of the old draft Bill until such time as a compelling operational case has been made".

It is with that experience in mind that I am sceptical of demands for powers which are not backed up with evidence and which Ministers seek to push through simply by making an assertion that they are necessary for public safety.

While I welcome many parts of the Bill, it is in that context that I regard the retention of internet connection records as an issue of grave concern. The Home Office failed to make an operational case for it. The Government have not approached the issue by demonstrating where a lack of data is obstructing criminal investigations and then exploring how to tackle it. They have taken a proposal that the Home Office has been pushing unsuccessfully for nearly 10 years—perhaps more—and stated that the data would be useful for the police and intelligence services. That is not evidence-based policy-making; it is policy-based evidence-making and we should not accept it unless we have some much better answers than the Home Office managed to provide in the other place.

As my noble friend Lord Paddick highlighted, the Bill establishes a power for the Government to demand the retention of the internet connection records of every single person in this country for a 12-month period in case the state might wish to interrogate those data at some future date. It allows access to the huge amounts of data that will be collected by designated persons without a warrant. It is a very significant power for the Government to demand, a power which outside Russia is operated by no even nominally democratic country in the world. As my noble friend pointed out, Denmark, which operated such a system, has abandoned it, as its security forces were drowning in information they could not process. The scale of data retention under this proposal will be massive. The storage of such a vast amount of personal and private data will be a honeypot for hackers and risks compromising the privacy of millions of innocent people.

Many noble Lords have rightly made the point that the measures in the Bill have been subject probably to greater parliamentary and independent scrutiny than any similar measures that have come before Parliament, and the Government have made many welcome changes. I note in passing that this scrutiny and these changes have been possible only because people in the previous Government would not accept the imposition of measures without scrutiny and an evidence base and insisted that it be provided.

But despite all the parliamentary scrutiny, the public are almost wholly unaware that when this Bill is enacted it will mean the retention of everyone's often highly personal internet connection records for a period of 12 months, under conditions of security which are unclear. When this power is put to members of the public, the evidence is that they are almost universally horrified by the potential threat it poses to their privacy. We should take that extremely seriously and we should be extremely cautious before we grant such a unique power to our Government. Neither should we lull ourselves into a false sense of security about what security this data can actually provide for us. We should not be naive enough to ignore the fact that those who wish us harm, such as Daesh, are unlikely to be troubled by such a power; they have plenty of ways to mask their activities.

So I hope that we will proceed with caution rather than complacency before we grant the power. In particular I hope that the Government can answer a number of questions. What exactly will ICRs cover? How will the ICR requirements operate in respect of communications on mobile devices via apps? What is the scope of the information they will provide? Where will the data be stored and under what conditions of security? Also, how is it sustainable for the Government to claim that these vast amounts of data can be stored and accessed securely at such a comparatively minimal cost? How is the figure calculated and is it not likely, as it is so often in these cases, to be exponentially more expensive than originally estimated? Lastly, why is the Home Office demanding a power that none of our allies appears to believe is proportional or necessary? We need answers to these questions before we proceed with this part of the Bill.

A number of other important issues in addition to ICRs have been mentioned today, in particular legal and professional privilege, bulk data collection and issues of extra-territoriality. All are areas that we will need to consider carefully during the future stages of the Bill. Finally, we should be wary of creating too cosy a consensus on this Bill lest that dulls our skills of scrutiny when there are very serious issues still to consider.

8.52 pm

Viscount Colville of Culross (CB): My Lords, I declare an interest as a producer at the BBC. I congratulate the Government on bringing this Bill before the House. Like most noble Lords I recognise that the security services need up-to-date powers in their technological battle against terrorism and criminality, and I am pleased that these extraordinary powers of surveillance will now have judicial control. I am sure that the interception of digital communications will help prevent much terrorism and that many criminals will be convicted using the evidence collected.

However, there is a whole area of information gathering which must be safeguarded by privilege. Noble Lords have spoken about the importance of privileged information between lawyers and their clients and between MPs and their constituents, so it is not

surprising that as a journalist I want to put the case for extending the privilege of safeguarding journalists' sources of information. I look forward very much to the debate in this House on defining what is serious journalism, and who and what information should come under journalistic privilege.

I appreciate that the Government inserted an amendment into the Bill in the other place requiring the judicial commissioner to have regard to the public interest consideration for requests to investigate communications data for a source of journalistic information, but I fear that this privilege is far too specific. It applies only to requests to search directly for "journalistic sources" and from only one power in this Bill: that of communications data. But there are many other powers in the Bill which could directly or indirectly identify a source. I should like the Bill to extend the public interest consideration for any request to access journalists' data to cover other methods of surveillance, including the accessing of internet connection records and equipment interference, both of which could identify whistleblowers.

I very much appreciate the powers in the Police and Criminal Evidence Act 1984 which allowed notification to journalists and media organisations of requests to access journalists' notebooks so that they can respond to those requests. I would like the Bill to mirror those powers in some way and to extend that notification to cover some warrants to access journalists' data so that they and the media organisations can make representations to protect their sources. I know only too well from my own experience and that of colleagues how important it is to guarantee protection for sources when uncovering cases of wrongdoing. I am certain that in many cases we would not have the information unless the sources were convinced that they were safe from having their identity revealed to their bosses or other authorities when reporting cases of wrongdoing.

I have been speaking to a number of my colleagues who have been involved in extraordinary investigations whose publication has shocked the nation and led to changes in the law and policy, and huge reforms to the institutions that have been investigated. Two stand out for me: the "Panorama" investigations by my colleagues at the BBC into Winterbourne View care home and the Medway Secure Training Centre, both of which have been mentioned many time in your Lordships' House.

Winterbourne View was a care home, commissioned by the NHS and managed by private providers, to care for adults with learning difficulties. The "Panorama" investigation revealed that a lack of leadership led to a regime of barbarity against the patients. I fear that, unless the programme had been broadcast, nothing would have happened to address this abuse. Margaret Flynn in her report on the home said:

> "There is no evidence that the written complaints of patients were addressed … managers did not deal with unprofessional practices at Winterbourne View Hospital. Absconding patients, the concerns of their relatives, requests to be removed and escalating self-injurious behaviour were not perceived as evidence of failing service. The documented concerns of whistleblowers made no difference in an unnoticing environment".

There were 29 contacts with the police and eight incidents of staff violence on patients were reported, with only one prosecution. The police now admit to over reliance on information from hospital management. For years, nothing was done to deal with the underlying abuse. In desperation, whistleblowers went to my colleagues at the BBC. One was later named, but others have not been to this day. Their determination to remain anonymous is not surprising, as they know that they would never work again in the industry if their names were released—but the information they gave meant that, finally, something was done to change the regime and safeguard the patients. During the "Panorama" investigation, whistleblowers were able to build up a relationship of trust with the journalists. That trust was predicated on the conviction that the authorities would not be able to identify who they were.

Likewise, whistleblowers were essential to uncovering the abuse of young men jailed at the Medway Secure Training Centre, run by a private company for the Ministry of Justice. An independent panel to investigate the centre has revealed that over seven years 35 written warnings about the regime at the centre were not acted on by the National Youth Justice Board. Once again, in desperation whistleblowers contacted my colleagues on "Panorama". Some had previously gone to the authorities to complain and no action had been taken; others contacted the journalists directly. For most of them, and certainly the main whistleblower, whose name is still not known, the only basis on which they went to the journalist was the promise that nobody would ever be able to identify them. Their testimony and the subsequent secret filming revealed a regime of extreme barbarity against the young men at the centre, which brutalised them—the very opposite of what the centre was supposed to do. The mother of one inmate, Billy, said, "My boy is no angel, he is difficult, but this is going to make it worse".

As a result of the Winterbourne View investigation and others into care and disability units across the country, the Care Quality Commission was reconfigured and the charge of corporate neglect entered our statutes. Safeguards for people in these units have been established across the country. As a result of the Medway exposures there have been parliamentary debates, at least 10 arrests, guards have been suspended and the unit director has resigned. G4S has announced that it is selling off its children's services and the centre has been nationalised. These cases are proof of the extraordinary role that whistleblowers can play in revealing wrongdoing and changing our country's landscape. As my colleague Joe Plomin, the journalist behind these stories, told me:

> "We threaten the confidence with which whistleblowers contact me at our peril—how will we as journalists prevent the abuse of children or disabled people or others in future where all authorities including the police have allegedly failed, if whistleblowers feel unable to safely, securely contact us? Our democracy, all of our safety depends on people being able to speak to us where all else has failed".

I ask your Lordships' House to do everything possible to ensure that this Bill guarantees their secrecy and allows journalists to explain to the judge the public interest reason for that secrecy to be continued. This need is reinforced by the many occasions when the authorities, and especially the police, secretly obtained journalists' records. The report of the Interception of

[Viscount Colville of Culross]
Communications Commissioner's Office in 2015 into the use of Chapter II of Part 1 of the Regulation of Investigatory Powers Act to identify journalistic sources showed that police had secretly obtained the phone records of 82 journalists over a three-year period to find confidential sources. It said:

"Generally speaking the police forces did not give the question of necessity, proportionality and collateral intrusion sufficient consideration. They focused on privacy considerations … and did not give due consideration to freedom of speech … The current Home Office Code of Practice (and the recently revised draft Code said to provide protection for sensitive professions) do not provide adequate safeguards to protect journalistic sources or prevent unnecessary or disproportionate intrusions".

I, like all noble Lords, have the highest regard for our forces of law and order. I am sure that they will think that they have compelling reasons for investigating a journalist's records, but I would like a judge to decide whether the reasons are in the public interest. It is important that the judge, deciding on a warrant for journalists' data, should have to notify them so that they can at least put their case for the need for the absolute confidentiality of sources to be maintained.

9 pm

Lord Henley (Con): I support the Bill, and I have to say that, in all my years in this House, I do not think I have ever seen a Bill that has had better and more thorough scrutiny as it has passed through another place and various committees.

I served on the Joint Committee that looked at the draft Bill under the very skilful guidance of our chairman the noble Lord, Lord Murphy, and I thank him for the work he did, particularly given the very difficult time constraints. We only started sitting in November and had to produce a report by February. Others have gone into the amount of time we spent on that Bill, the amount of written evidence we received and the number of witnesses we saw. We can only offer praise to the noble Lord for what he did on that Bill. I hope the Government take note of that.

Others who have spoken in this debate also served on that committee and there is no need for me to add any more; however, I also served on the Joint Committee on Human Rights, along with the noble Baroness, Lady Hamwee. She will no doubt want to say a little more about that in due course, as will I. I should also add that I had the privilege of serving as a junior Minister with my right honourable friend Theresa May, the present Home Secretary—where she will be in a number of weeks or months, we do not know, but I hope she at least sees this Bill through—as did my noble friends Lady Neville-Jones and Lady Browning.

I say in passing—this is not related to the merits of this Bill—that I believe that my noble friend Lord Howe and my noble and learned friend Lord Keen will do the most excellent job in taking the Bill through this House. I would normally like a Bill to be represented by its own Minister as it is taken through, rather than by people who have come in from other departments. This is not simply a question of propriety for propriety's sake, but one that goes to the heart of how this House performs its duties and functions. My noble friend will remember that we served together on the Front Bench, in government and in opposition, for some 20 years. Indeed, he has been in this House on the Front Bench, government and opposition, for some 26 years. He will remember that, particularly in the 1990s, we often had to speak for other departments. Seeing my noble friend Lady Chalker here, I remember on occasion doing Foreign Office Questions for her when she was away on important business, when I was serving in other departments.

However, when it comes to Bills, it is very important that the Minister in question should be properly embedded in that department, so that everyone knows they are a Home Office Minister, for example. It is they who have day-to-day access to the civil servants; it is they who have seen the Bill develop, and probably played a part in that development. They will know better than a Minister from outside exactly what is in the mind of the Secretary of State and what she is thinking. As I said, he is seeing the civil servants on a daily basis. He is no hired gunslinger brought in from outside to get the legislation through but part of the team that has developed the Bill. I hope that my noble friend will not mind my making that brief point as it is important. I hope that whoever the leader will be in the future will take note of that when ministerial posts are allocated.

As I said, I do not want to say anything about the Joint Committee that looked at the draft Bill under the noble Lord, Lord Murphy. However, I wish to comment briefly on the work of the Joint Committee on Human Rights. As noble Lords will be aware—this has been referred to—the Joint Committee managed to produce a report on the Bill before another place reached Report. I think the report was dated 2 June. It made a number of recommendations which influenced the debates on the Bill on Report in another place. I think that various amendments were made. As noble Lords who have had a look at the report will be aware, it proposes that the Joint Committee table further amendments at later stages of the Bill. Certainly, the Joint Committee will be looking at those. Therefore, I would be very grateful to my noble and learned friend Lord Keen if he could say a little more about the Bill's timing when he winds up than did my noble friend in his opening speech. We know that we will have four days in Committee before we break up for the summer. We will then have a further two days in Committee in September, which will allow us to look at the report by David Anderson QC into bulk powers. I take it that we will then come to Report at some point in October—presumably the second half of October. However, it would be useful if my noble and learned friend could confirm that so that we on the Joint Committee can consider those matters in time to produce yet a further report among the many other reports with which both Houses have been burdened—however, those reports have been useful—before this House considers those matters.

9.07 pm

Lord Reid of Cardowan (Lab): My Lords, being the 36th speaker in a Second Reading debate has some advantages and disadvantages. The advantage, of course, is to be able to listen to and, I hope, learn from the substance and detail of the points that have been

made. I have tried to do that this evening—other than when I have been called away to another fraternal Parliamentary Labour Party meeting. The disadvantage, of course, is that almost everything has been said. Therefore, I will confine my remarks to two or three simple points which I freely admit do not arise from my understanding of jurisprudence, expert legal training or philosophical depth but from my experience as a practitioner in government. I admit that I have authorised and used intercepts—I hope for the benefit of the people of this country—and, therefore, I wish to say a few words about necessity and proportionality and perhaps a little about scrutiny.

Why do I think that the Bill as a whole is necessary? Of course, details of it will have to be discussed and debated but in my view it is necessary because I have seen at first hand thousands of British citizens' lives saved not only by intercept but largely by intercept and intelligence based on intercept. Leaving aside when I was Northern Ireland Secretary, when I was Home Secretary I dealt with some 40 to 60 cases of counterterrorism of greater or lesser significance. Almost all of them involved more than one country. I recollect one case where there were almost 20 countries. It is not only the interception of communications, but the global nature of the communications which are now an essential field for interception if we are to protect the lives of British citizens. In one case, which I mentioned earlier to the noble Lord, Lord Strasburger, the potential victims numbered 2,300 to 2,400. There were seven aeroplanes involved in the plot which was foiled in August 2006. Without going into detail, we were watching, at various stages, minor actors in that tragic drama. It was only through intercept, and some of the powers enshrined in this Bill, that, fairly late in the day, we discovered that we were looking at a subset and the main players were actually somewhere else. It is practical experience which has convinced me of the necessity for this type of power, not in every detail but in general.

Secondly, I do not think proportionality can be discussed unless we see it in the context of two things. One is the threat, and the changing nature of it. The other is the changing nature of communications. Both of these have been touched upon today. In other words, the objectives of the intelligence agencies, Ministers and the counterterrorist authorities have not changed; what has changed is the world, and particularly the nature of the threat and the nature of communications. As we know, the threat now stands at the second highest level—severe—which means that a terrorist attack is "highly likely". That is not my view but that of the analysts and the authorities who decide these things. As the noble Lord, Lord King, mentioned at the beginning of this debate, the nature of the threat has changed even from 15 to 20 years ago. The threat from the IRA was big enough but they did not tend to want to blow themselves up or be caught. That change makes it much more difficult and reliant on prevention through previous intelligence. In 2014, some 10,000 Europeans went to Syria as jihadists. It is estimated that about 5,000 of them have returned to Europe. In Britain, the numbers are roughly 800, with 400 returned. Last year, the intelligence services foiled seven major plots here, 13 in France and various others throughout Europe. Where they did not succeed, we saw the tragedies of Tunisia, Brussels and Paris. Proportionality has to be seen against that background.

The world of communications has changed. As several noble Lords have said, we now live in a cyber world. Cyber is not an amalgam of technologies. It is not just a means of communication. Cyber is the first man-and-woman-made environment. It now permeates absolutely everything. It gives unparalleled opportunities for people to reach out for education and information; it has an amazing potential to liberate human beings. However, like all forms of technology, it has an amazing capacity to be used for evil as well. It is the communication method of choice for terrorists who would do evil—I am responding to this only in terms of counterterrorism.

I remember using one of the first digital phones, back in 1985 on a march from Gartcosh to London. I was given it by a press organisation that wanted to cover the march for jobs. It weighed as much as a brick; it looked like a brick; it was as useful as a brick. You had to charge it for 12 hours to get 20 minutes off it. Now, between 3 billion and 4 billion people in the world are using the internet on mobile phones for communication. They are the communication method of choice for the terrorists themselves. Although it brings unparalleled opportunities for good, it also does for bad. We have to empower the intelligence agencies and those trying to counter the use of that internet technology not just for communication purposes but for propaganda, recruitment and radicalisation purposes as well.

While I have no doubt about the proportionality of the generality of the Bill, my final point is about oversight and balance. I am sorry that my noble friend Lady Kennedy is not in her place because she said earlier on that she had been surprised by the humility of my predecessor, my noble friend Lord Blunkett. Well, it is a lucky day as I was going to give her a surprise as well.

Lord Blunkett (Lab): But I am here.

Lord Reid of Cardowan: My noble friend Lord Blunkett is here. I do not think that he heard my noble friend Lady Kennedy's comments but I have a surprise for her. I do not take the view that security overrides everything. I take the view of a need for balance. Various people have mentioned tonight that the protection of our citizens is the first duty of government, but that is a mistranslation. With my O-level Latin, I can tell your Lordships that Cicero's "Salus populi suprema lex esto" does not mean that that protection is the first duty of government but that the welfare of the people is their first duty. That welfare combines the protection of their rights and well-being with the protection of their lives, which is why we are trying to get a correct balance on this.

I am all for examining the Bill in detail in Committee, including legal professional privilege, issues about journalists and so on. But I would plead with your Lordships: I cannot think of anything that I have seen going through Parliament, in my 30 years or thereabouts, that has had quite so much scrutiny. I therefore hope that it will get a fair wind, because of not only that

[Lord Reid of Cardowan]
prior scrutiny but that which is to come from David Anderson as well—and because of our obligation to supply the tools to our intelligence agencies and those trying to protect the people of this country.

Having said that, I have one reservation, which is about the introduction of judges to a greater degree than was previously the case. If the double lock becomes a double decision-making process on the substance of the political decision, I would be very worried. I understand why the Home Secretary did it and the perceptions in certain sections of the public—not what I would call public opinion but certainly published opinion. It therefore became a necessary element of making sure that there was a fair wind behind this Bill. I accept that, but I have some reservations with it. So, with all that, I wish the Bill well and I congratulate the Secretary of State for the Home Office. She has been extremely patient. This has been in embryo not for two years but for almost 10 years, through various people. I wish her well in her present job and in any job that she may be seeking to do in the future.

9.18 pm

Baroness O'Neill of Bengarve (CB): My Lords, as the very last Back-Bench speaker I might not have much to say but I have one thing to say at the start: it seems rather a good day for this Second Reading because the Bill bears on UK national security. I therefore hope that, unlike some current Bills, it will still have adequate government support amid the political disarray. I am not sure whether the UK break-up party, formerly known as UKIP, would agree but there is just a chance that the UK has a future. Your Lordships will understand that I come from Northern Ireland, while several noble Lords here come from Scotland. We are worried that there is no such future. However, even in the event of break-up there will still be an interval after the current legislation expires in December during which the security of the UK remains a proper concern for us in this House and this Parliament—and thereafter, who knows?

The Bill comes to us after extensive preparatory work, which has been much mentioned. I, too, declare an interest as a member of the Royal United Services Institute working party that produced one of the reports before the parliamentary scrutiny began. However, further consideration is still relevant, because these are complex matters.

Like many noble Lords, I think that the fundamental architecture of the Bill is sound. There is good reason why the rights to liberty and security form a single right in the European convention and elsewhere. Liberty and security are inextricably interconnected and are matters that must be specified in ways that are mutually qualifying. It is also good to see the right to privacy—of course another qualified right—taken so seriously.

One of the reasons why it is so hard to draft good legislation in this area—and on this occasion I must congratulate the parliamentary draftsmen on the Bill and the excellent Explanatory Notes, which is something I do not often say—is that so many people start with quite obsolete views of what is at stake. Many people imagine that what has to be controlled and regulated is surveillance or intrusion or spying or, to use a well-known word that has been mentioned already, snooping, hence the populist phrase "snoopers' charter". That view is archaic. Of course there are still episodes of snooping and intrusion, but what we are trying to regulate in the era of big data is inference, and that is much harder. We are trying to regulate moves that enable inferences to be drawn.

It can be helpful to keep three rather simple questions apart. The first question is: are other people actually gaining access to private data about me? That is the sort of question that worries people, and the answer is usually not and, in particular, not to information that those other people are going to know is about me. The question perhaps reveals either a bit of paranoia or a bit of vanity, but it is quite common.

The second question is, "Can people gain access to private information or data about me?", and the answer is that usually they can. They do not, but they can. Mostly, of course, they will not realise the data are about me. They can, and that is true not just of the security services but also of many others, and I will come back to that.

The third question is the one we are dealing with and is: may people gain access to data about me? It is only this third question that the Bill seeks to address, and then only with respect to a limited range of public bodies. It seeks to regulate the investigatory powers of the police and the security services assuming that possibilities of inference, and so of disclosure, have been multiplied by the new technologies. The Bill does not seek to regulate the same activities when undertaken by other parts of the state or by non-state actors, such as internet service providers or the media.

There are therefore parallel questions, and I want to raise one, which other noble Lords have also raised, about the media. Many of us have received briefings from the National Union of Journalists about special protection for journalists so that they do not have to disclose their sources and are protected from investigation. I understand very well the concern that this raises, and my noble friend Lord Colville spoke very eloquently about it just now, but I am worried about whether it can be effectively drafted. The Bill currently provides for two special cases of privileged exemption from investigation: for legislators and for legal professional privilege. Both are quite controlled exceptions. We can tell who is a legislator and who is lawyer and when a lawyer is engaged in the relevant discussions with a client. I expect that a claim for journalistic privilege may be tabled, and I wonder whether Her Majesty's Government have thought about the issues that should be approached and the questions that should be answered. Is every blogger and tweeter a journalist? Other noble Lords have raised that question too. If not, where is the line to be drawn? Secondly, what protection would Her Majesty's Government think appropriate to prevent the use of claims of privilege in cases where, unlike the Winterbourne investigation, there is no source but only fabrication? Does not freedom of public debate depend on the possibility of testing media claims? Does soft power too need to be accountable?

This is not the Bill to address these issues, but they need addressing. There is a need to address parallel issues about intrusion into private matters by non-state

actors, including businesses and the media, that use these new and powerful forms of data analysis. I believe that the new data protection regulation that has finally completed its passage in Brussels is a rather superior document to the data protection directive on which our Data Protection Act is based. It is a pity of course that it does not come into force until 2018 and that we may not have the benefit from it.

My final word is on whistleblowing. Whistleblowing is not a matter of sending poison pen letters: good whistleblowing works when there are proper structures in which there is a confidential intermediary who receives the whistleblower's message. The media are not the people to handle good whistleblowing. We need, on the contrary, to require major institutions to have proper whistleblowing structures. Some do and many do not—it could be done.

9.25 pm

Baroness Hamwee (LD): My Lords, my noble friend Lord Paddick remarked to me the other day that investigatory powers should be intelligible to a 70 year-old computer-illiterate grandmother. I did wonder whether he was talking about me—although I have to say none of those characteristics applies—and was also quite concerned that he thought 70 was old, but I realised that his comment was very apt. Transparency does not mean being able to see through something but means that you should be able to see the thing itself, and know it and understand it in the context we are discussing. Every Bill throws up its own lexicon: transparency is one item in it for this Bill, as is balance, which has been mentioned several times tonight.

I am not sure we should be in the business of "balancing" privacy and security. The term "binary" has become quite common, but for these Benches, privacy and security are not binary or mutually exclusive—a point I think the noble Lord, Lord Rosser, made right at the beginning of the debate—and our aim must be to achieve both. However, we are bound to discuss privacy more than security, not least because of the old dilemma, which my noble friend Lord Oates referred to, of what an Opposition, the public and perhaps also Ministers can say in response to, "If you knew what we know". My noble friend Lord Strasburger made a very big ask of Ministers about unacknowledged knowns and indeed unknowns. I do not want to avoid acknowledging the crucial importance of security, so will say that we are part of what RUSI called the,

"near-consensus in public opinion that there are circumstances in which law-enforcement agencies … and security and intelligence agencies require sensitive capabilities to obtain communications in order to safeguard national security, investigate crimes and protect the public".

But that is the beginning of the story—my words, not RUSI's—not the end.

Ministers must be in an unenviable position. It must be hard to have the agencies saying, "Yes, please", to more and more information—of course they will say that. But does quantity affect quality and workability? I confess I have long had a mental block about these issues. I am not computer-illiterate, but neither am I very computer-literate. My lightbulb moment—or one of them, the other coming when I read the Library Note, which, I should like to put on record, was admirably clear—was when I realised that it was not entirely my fault that the technical language was blocking my thinking about the underlying issues. Language should clarify, not impede, debate and scrutiny. That is not a criticism of the drafting of the Bill, but more of the commentary around it.

There is a consumer rights issue in this as well. It is very odd and disconcerting that after you casually look something up online, you are prompted to pursue it by advertising of the product or service. I say to the noble Baroness, Lady Liddell, that I am not exalted. I appreciate the commercial realities of this, but how many people realise that in the small print, which they did not read, they have consented to information being passed on to third parties? What do you do if you read it and do not like it? Do you cut yourself off from an essential modern tool? Public services, which we are talking about—not commercial services—must be better than that.

It is particularly important to me that the citizen, who is more than a consumer, is made aware of having been subjected to the use of powers. You may be part of a large group targeted—I use the term technically—although not suspected. I say that because the corollary of the right to know is the right to challenge. Those who are entrusted with oversight need the structure and criteria that enable them to make a proper assessment.

I still have a problem with the judicial review principles, and indeed I wonder whether the filter provided by the Bill is just another mechanism to collect information, but we will come back to all that.

In the Commons, the Government made a number of commitments to consider further amendments, including commitments made to the chair of the Intelligence and Security Committee, and the noble Earl referred to several amendments that we may expect. It is important—I hope we can hear this tonight—that the House knows from the Government when they will publish their amendments or, conversely, that they inform us that they will not propose amendments on the issues they have raised and on which they have given assurances that they will consider various matters.

The Joint Committee on Human Rights—like the noble Lord, Lord Henley, I am a member—has also reported. As the noble Lord said, "due course" will bring more comments on that. The committee acknowledged that the Bill represents a significant step forwards in human rights terms, but many human rights are engaged—privacy, freedom of expression, the protection of personal data, and freedom of association, assembly, religion and movement—and any interference must of course be in accordance with the law, not only with a clear legal basis but sufficiently specific to guarantee against arbitrariness. It must also be necessary in the pursuit of a legitimate aim, as well as being proportionate. I agree with my noble friend Lord Campbell and the noble Lord, Lord Reid, that this is not a constant: life changes. That leads me to the adequacy of the safeguards, especially as the regime has not been given the cleanest bill of health by a clutch of UN special rapporteurs or the Council of Europe Commissioner for Human Rights.

However, it is not only the legislation but how the powers are used that is critical. For me, the codes of practice are less important to this debate because, as

[Baroness Hamwee]
has been said, they are not amendable by Parliament, and indeed Parliament is dependent on others to check compliance with them. There is a limit to the Executive's accountability. Accounting for one's actions is empty if the actions themselves are not explained. As I understand the Bill, the Executive's own proposals gag the Secretary of State with regard to that accountability.

The safeguard of and public interest in, as my noble friend Lord Thomas of Gresford put it, legal professional privilege is something that I feel particularly strongly about as a lawyer, although I have never had to get my feet wet in the cause of it. As we are all potential clients, it was predictable that it would receive a lot of attention today, and it will receive a lot in the following stages of the Bill. By some distance, we have not yet dealt with the issues of what my noble friend Lord Lester called the potentially chilling effect.

Similarly, as a politician and a citizen, I am concerned about safeguards for journalists and journalistic material. That may be the definition to pursue, but I acknowledge that there are difficulties around definitions. Journalists' work may not all be in the public interest but much of it is, and there is a clear public interest in protecting journalistic sources. There will be a number of issues to cover, particularly internet connection records, from the point of view of service providers as well as the public. The noble Baroness, Lady Neville-Jones, referred to the intelligent and constructive engagement of the providers, and they still have significant concerns. I was interested in the points they made in briefings about extraterritoriality and the international regime, or lack of it.

And we will have the review of bulk powers, which, as the Minister says, will become more important than ever. The terms of reference for the review make it a matter for the Prime Minister as to whether the review is published. I think it would go against the spirit of the review if it were not. Tributes have been made, and rightly so, to David Anderson. I wonder, who would be David Anderson? What a responsibility we place on his shoulders. It is not for us to comment on Commons procedures, but Members of the House of Commons will not have a chance to propose amendments to the Bill in response to the review of bulk powers unless we amend it and give them that chance.

When the draft Bill was published, I worried that I was not sufficiently worried. Over the years, talking on the phone to a friend whose work has been closer to the security world than mine has ever been, we have joked about some odd interruptions and noises and said things like, "I hope whoever's listening finds this interesting". However, when I realised that the regime extends from what I do to who I am—my legal secrets, as my noble friend Lord Macdonald put it—my concerns fell into place. My noble friend Lord Carlile's phrase "the legitimacy of use" is very helpful here. As I say, we will focus on internet connection records.

I said that our task is about achieving privacy and security. The next few months will be turbulent politically. Where we will end up, who knows? This certainly suggests to me that perhaps we should not wait five years for a review of the Act that this will become. Whatever the turbulence—or "disarray", which was the rather more polite term used by the noble Baroness, Lady O'Neill—we must not be diverted from the task in "the age of anxiety", in the phrase of the noble Lord, Lord Hennessy, and, in that of the noble Baroness, Lady Harding, in the "civilised digital world". It is an important task.

9.38 pm

Baroness Hayter of Kentish Town (Lab): My Lords, we have had a rich stream of expertise today, including from those who have served on the pre-legislative scrutiny committee as well as on the ISC and the Joint Committee on Human Rights. We have heard from colleagues who have operated the powers over security or crime, from colleagues who are expert in the legal world and from others who have reported on these matters, as well as from a couple of spooks. We have been reminded of the challenges we face as a society: to keep us safe and to protect our privacy while maintaining a way of life that we cherish and enjoy.

There have been the cases of Fusilier Lee Rigby; the Jewish grocery and school in France; British tourists just a year ago on Sousse beach; museums in Tunis and Belgium; music cafes and sports arenas in Paris; transport in London; the French police; Charlie Hebdo journalists in Paris; gay clubbers in Orlando; deadly bombers in Brussels airport and the metro; children, sadly even babies, abused; missing children here and abroad; guns and drugs smuggled on to our shores or bought on the internet; people trafficked; and organised crime with international connections.

Women are often harassed and stalked. Lily Allen described the massive and incredibly disturbing impact of that, much of it via social media, while our own much-loved and missed Jo Cox had been harassed by a stream of messages over three months.

So we cover just about everybody. Jews and Christians, Muslims and non-believers, straight and gay, men and women, MPs, journalists, police and clubbers; at work, at play, on holiday, shopping, travelling, at school—all have been targeted by those who mean harm. Unfortunately there are people and organisations who would hurt not only us but even people who are far more vulnerable than us.

So we have an obligation to halt that harm and stop it happening. The problem is not new. As my old supervisor, the noble Lord, Lord Hennessy, reminded us, it goes back to John Stuart Mill's day—that desire to protect our privacy and ensure that the state does not take on intrusion which breaks the precious contract between people and government.

It is for this reason that, in examining the Bill to see whether the balance of security and privacy has been achieved, we welcome the new and overarching Clause 2, which says that in exercising its powers, the relevant authority must consider the issue of privacy. This requirement is even more necessary given how society now functions. Indeed, I sometimes feel that I am watched all the time—and by private companies, as my noble friend Lord Rooker reminded us. My phone records where I am, to whom I spoke, which websites I visited, and even how many steps I take each day. Between that, my credit card and Oyster card, CCTV and my entry fobs, everything I do and every step I take is known to someone.

It was rather different when I was growing up. We used to chat in pubs, at the school gate, at work, in the kitchen, at church, in college, in clubs, at the hairdresser—or I suppose the barber, for some noble Lords. We sent postcards, even Valentine's cards, and telegrams, we kept our appointments in diaries or in a Filofax, and we gossiped on the phone. Today we use social media—web chats, texts, apps—for all that, as if it is a private sphere, and we talk about our loves, fears, dreams, frustrations, job applications and misdeeds, our thoughts and opinions about our friends and neighbours, and even about our politics. Even wider than what we do with our friends, we trust our doctors, lawyers, priests and indeed journalists to keep our secrets safe and secure. So while we rightly demand that our security is safeguarded, we also want and expect what we think of as that private world to be safeguarded.

As we have heard today, in the Commons there was, perhaps unusually, thorough debate, as well as the willingness of the Government to listen and respond. We have all been helped by the expert input from my honourable friend Keir Starmer, the then shadow Home Office Minister, which helped make considerable progress in improving the Bill, such that Labour could support it at Third Reading.

The Government's establishment of the Anderson review of bulk powers, the moves on a higher threshold for medical record access, the double lock for major modification of warrants, the exclusion of normal trade union activity from interference, and the requirement for judicial commissioners to give weight to the overarching privacy clause have all made our task so much easier. We will of course look carefully at what David Anderson, assisted by his expert colleagues, finds regarding bulk powers, and will respond as necessary. There are other issues we will want to finesse and probe before we finally sign the Bill off—in particular the threshold for ICR access and a determination of what is "serious".

We also need to safeguard further the ability of clients to rely on their lawyers' discretion when they talk to them, and we need to refine the protection of journalists' sources. We must give people the ability to speak without fear of identification. It would not be in the public interest for such risk to silence those we want to speak out. We look forward to the outcome of the Government's discussion with the Bar Council, the Law Society and CILEx on the former issue and to their talks with the NUJ and the Society of Editors on the latter, as well as on the definition of who is a journalist. Maybe it is somebody reporting for outlets covered in any way, shape or form by some sort of regulatory system. Of course, that raises the question of whether the Government will ever fully implement Leveson.

However, much has been achieved. We welcome the consolidation of the existing powers in a transparent form, as well as the creation of the IPC and the double lock, and the involvement of the IPC or judicial commissioners not just in decisions but in monitoring and review.

We welcome the recognition of the role played by parliamentarians, journalists and lawyers in giving voice or protection to others, with the confidence for those citizens that the privacy of those exchanges will, with only very rare exceptions, be safeguarded. We will want to test the current wording on these sensitive professions, as the Bill perhaps has not yet achieved the right balance in protecting the privacy of those who need it most.

We welcome the "no prosecution" undertaking for whistleblowers who have used the channels provided. We welcome that urgent warrants will be speedily reviewed and, if necessary, cancelled by a judicial commissioner.

We welcome the involvement of the PM in access to parliamentary material, and the avowal and updating of the Wilson doctrine. Also welcome is the introduction of civil liability for unlawful interceptions—although we also heard views today about whether there is a sufficiently serious offence for anyone who wilfully misuses the powers in the Bill. We may want to return to that.

We need an answer from the Government to the question that my noble friend Lady Smith put to the Leader of the House today, to which she got no response, and which was repeated by my noble friend Lord Rosser at the start of this debate. Given that we will leave the EU, are changes now needed to the Bill to retain the close working relationship we have with those allies, with whom we will now be in a slightly different relationship?

As we have heard, there is rarely a right or wrong balance in the situation that we face. We want security and we want our privacy, civil liberties, respect for human rights and confidentiality. We have still to assure ourselves that this Bill has quite the right answer, although great progress has been made. That is what we will seek to achieve as we scrutinise the fine print in Committee. We look forward to working across the House on that aim.

9.48 pm

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, this has been an interesting and thought-provoking debate, which has benefited from the considerable expertise on all sides of this House. I am grateful to all those who have contributed. In particular, I welcome the contributions from those opposite. This reflects the constructive approach that has been taken to the Bill right across Parliament.

Indeed, I recognise the consensus on all sides of this House that new legislation is needed to make the use of these powers clearer and more transparent. We have an opportunity now to ensure that the security and intelligence agencies and law enforcement have the powers they need, and to strengthen the safeguards and oversight that govern their use. The list of speakers this evening is testament to the importance of this issue.

Mention has repeatedly been made of the need to balance privacy and security. There have been references to the privacy of the innocents, but one must also take account of the protection of the innocents. As the noble Baroness, Lady Liddell, observed, one of the primary human rights is the right to life, and without that the others fade into insignificance.

[Lord Keen of Elie]

A number of issues have been raised in the course of this fairly lengthy debate. If I am short in responding to them at this stage, it is not because I consider those contributions slight but because I am constrained by time.

The noble Lord, Lord Rosser, raised the question of EU co-operation, which has just been revisited by the noble Baroness, and whether that would impact the present Bill. There is, of course, no immediate change to our relationship with the EU and it is not considered that any changes are or will be required to the Bill by virtue of recent developments. Of course, negotiations will take place over the coming weeks and months with regard to our situation and the EU, and these will clearly need to take account of our security and the need for cross-border co-operation in the area of security and the need for further co-operation beyond that. But let us remember that we already co-operate with many countries beyond the European Union in matters of security. Noble Lords will be familiar with the "Five Eyes", which includes the United States, Canada, Australia and New Zealand—none of them connected with the European Union. So it is not considered that that will be an issue for the Bill as it proceeds.

The noble Lord, Lord Rosser, also referred to the undertakings and commitments that have been given in the Commons with regard to the Bill. Of course, we will meet those commitments and undertakings. We fully intend to bring forward a number of amendments. We intend to have those amendments available by 4 July.

There are remaining issues, of course, that will be the subject of further debate. The noble Lord, Lord Rosser, made reference to such issues as the privacy clause, which is now expressed in the Bill and the Bill is improved because of that; the express provision on trade unions—again, the Bill is improved because of that; and the question of dealing with whistleblowers' protection, which the Solicitor-General alluded to in the other place. Again, we will meet our commitments with regard to these matters.

I turn to some of the observations of the noble Lord, Lord Paddick, which were supported to some extent by the noble Lord, Lord Oates. He concentrated in particular on internet connection records and something that he referred to as a draconian power. I noticed that the noble Lord, Lord Condon, alluded to these powers and was at pains to point out that they were not extending any boundaries but maintaining them. I would go further: these powers are actually restoring a boundary that had been lost as people moved away from conventional telecommunications. There was a time when police powers in regard to conventional telecommunications would provide them with the datasets they required, particularly in the context of evidence gathering and prosecution.

I pause on that note. The noble Lord, Lord Paddick, suggested that recourse could be had to the powers of the security services rather than in gathering ICRs. But of course that is neither practical nor effective because many of the powers of the security services produce investigative material that is not admissible as evidence in a court of law. Therefore, one has to be careful about how one confuses the powers of the security services to gather and investigate and the powers that are conferred upon the police in the context of internet connection records.

With regard to the security of that material, the noble Lord, Lord Oates, raised a number of questions, some of which puzzled me a little. What I will say is this: clearly, the data are retained by the service provider and those service providers are bound by various data protection obligations with regard to the security of those data, and that will continue to be the case. As regards the period of retention—12 months—that reflects the requirements of the police in the context of the sorts of investigations that are carried out by reference to these kinds of data; that is, telephonic communications data and the like.

So far as cost is concerned, the noble Lord, Lord Paddick, cited a figure of £1 billion. I know not where that figure came from, but the considered opinion of the Government is that the cost will be in the region of £174 million over 10 years. Of course, that cost is not to the service providers but will be met by the Government where it is reasonably incurred by the service providers when and if they are required to retain the relevant data.

The noble Lord, Lord Paddick, also referred to the request filter as a database and said that it was therefore vulnerable. The request filter is not a database; it is simply a filter. It is a further safeguard because it will operate in such a way that where a mass of data are returned by a service provider they will go through the request filter, and the relevant authority will receive only the data it requested and no additional data, notwithstanding what the service provider may have made available. I hope that answers the points raised by the noble Lord, Lord Paddick.

I will not be able to answer every query that has been raised today. If at the end of this evening there are any points that noble Lords feel I have not responded to and wish me to do so before Committee, they should allow my office to be aware of that and I shall arrange to write to them on the particular topic. I say "my office" in response to an observation from one of my noble friends who said that there was no Home Office Minister here. I had understood that I was here in the capacity of a Home Office spokesperson. If I am not, I want to know why I have been answering all these questions for the past four weeks.

The noble Lord, Lord Paddick, also referred to the RUSI 10 tests, which were alluded to by the noble Lords, Lord Hennessy and Lord Rooker. Professor Michael Clarke, the then director-general of RUSI, gave evidence to the Joint Committee that scrutinised the draft Bill. He said:

> "As Chair of the RUSI panel, I can say that the Bill met most of our expectations in terms of the recommendations that we made".

The noble Lord, Lord Rooker, made the sensible suggestion that we should consider producing a paper in which we set out the Government's response to each of those 10 points. I hope he will understand what I mean when I say that we will take that and give it due consideration.

The noble Lord, Lord Pannick, raised the question of legal professional privilege. He was joined in these observations by the noble Lords, Lord Lester, Lord Beecham and Lord Thomas. I notice that, in his account of his experiences, the noble Lord, Lord Thomas, did not say what happened to the bag of money but surely we can infer that it remained where it was. I fully accept the analysis of legal professional privilege that has been advanced by each of the noble Lords. The present position is this: I am due to meet representatives of the Bar Councils and the Law Societies this coming week to discuss the scope of the provisions within the Bill with regard to legal professional privilege.

The noble Lord, Lord Pannick, was right to observe that there is one problematic area—the question of when and to what extent there should be access to LPP material in circumstances where there is no iniquity. There may be very exceptional circumstances in which it is critical in the context of an immediate investigation that some data should be recovered. That will be addressed and we will bring forward our finalised position in due course.

There was also the question of journalistic privilege. This has been clouded by a misunderstanding on the part of many journalists as to what, if any, privilege they actually enjoy, in particular the belief that whenever security services sought information from a service provider they would be given notice of that. That is not the case. It is not the present law and it is not realistic that that can be law. However, again, this will be addressed going forward.

In addition, of course, we have to address the question of what is a journalist. I believe one noble Lord on the opposition Benches said that could be defined normally by waving an NUJ ticket. That is no longer the case and virtually every blogger on the planet would claim to be a journalist of one kind or another. It is a very serious issue and we will seek to address it.

The noble Lord, Lord Blunkett, mentioned the necessary balance between liberty and privacy and again underlined the need to balance the privacy of the innocent with their protection.

The noble Lord, Lord Strasburger, raised a number of issues. I shall not repeat what I have already said about internet connection records or the request filter. He also questioned whether the provisions of the Bill would somehow threaten, as he put it, encryption. There is no question of that. The provisions of the Bill do not weaken encryption or threaten it. We do not seek what have sometimes been erroneously termed "back doors" into encrypted material. I would seek to dispel any such suggestion.

The noble Baroness, Lady Neville-Jones, raised questions about extraterritorial jurisdiction, as did the noble Baroness, Lady Liddell, and the noble Lords, Lord West and Lord Janvrin. The US Attorney-General recently indicated that discussions are ongoing to address conflicting legal obligations in circumstances where we seek the release by American companies of material. United Kingdom law is perfectly clear that companies providing communication services to users in the United Kingdom, irrespective of where they are based in the world, must comply with lawful requests and warrants from UK authorities. The ultimate power to deal with that would of course be contempt of court proceedings. We maintain that right to extraterritoriality. In response to a further point made by the noble Baroness, Lady Liddell, I should add that we are satisfied that the provisions of the Bill comply with and meet our international legal obligations. Whether it sets a template for others is a different matter, but we are satisfied in that regard.

The noble Lord, Lord Lester, raised the question of legal professional privilege. He also referred to the position of the IPC and to the "commission". I should be clear that in terms of the Bill there is no commission; there is a commissioner. However, the commissioner has the express power to seek independent legal advice as and when required. I believe that another of your Lordships referred to the commission. It is not a commission; it is the commissioner.

Lord Lester of Herne Hill: I am grateful for what the Minister has just said, but will the Government consider, as David Anderson has suggested, that there should be a commission endowed with the kind of powers that he has recommended?

Lord Keen of Elie: I note the observation. The position of the Government is that it is appropriate that there should be a commissioner and that it is not necessary that there should be a commission. Clearly, this matter can be revisited in Committee.

Thematic warrants were mentioned by the noble Lord, Lord Lester, and my noble friend Lord Lothian. Thematic warrants are considered vital to investigate complex and fast-moving threats, and they are currently provided for under RIPA. The Bill simply clarifies and strengthens the safeguards around the operation of thematic warrants but, again, if there are issues as to their scope, they can be revisited in Committee.

My noble friend Lord Lothian and the noble Lord, Lord Janvrin, raised the question of bulk personal data. The Government accepted in principle the argument that we should provide further restrictions on the use of class BPD warrants and should take into consideration some of the detail contained in the ISC's draft clause. The Government intend to bring forward some amendment on this—again, I indicate that it should be available by 4 July.

My noble friend Lord Lothian also mentioned additional offences being incorporated into the Bill. It is considered that the changes made to Part 1 make clear the criminal offences that apply. The Bill also creates a new offence for the acquisition of communications data without lawful authorisation. Beyond that, it is not considered appropriate to introduce further criminal offences into the Bill at this stage.

Questions were raised about the double lock, of course. The position of the Government, and I believe that of the Opposition, is that we have now arrived at a suitable position in this respect, but it is important that the judicial point here should be subject to a test of judicial review. It would not be appropriate for a judge in these circumstances to revisit the merits of a decision, and I hope that that will find wider support in the House in due course. In the end the Secretary of

[Lord Keen of Elie]
State must be answerable to Parliament for the warrants for these intrusive powers, and that is allowed for.

In the context of warrants, the noble Lord, Lord Evans of Weardale, raised the question of speed of operation. There is provision within the Bill for an emergency warrant to be issued by the Secretary of State and then be the subject of review by the judicial commissioner. It is hoped that speed of operation will not be challenged by the terms of the Bill going forward. The noble Viscount, Lord Colville of Culross, mentioned in the context of journalists the matter of notification of warrants. As I indicated, that is not the present law and it is not considered a realistic way forward, but again I anticipate that that may be considered in Committee.

Modern legislation that consolidates and clarifies the powers available to the state to obtain communications and related information is, I believe it is generally acknowledged, badly needed now. That was the conclusion of three independent reviews and three committees of Parliament. The Bill achieves that aim. The threats we face are evolving and the ways in which we communicate are changing rapidly. The capabilities of law enforcement and the security and intelligence agencies must evolve and change too. It is Parliament's responsibility to ensure that those charged with keeping us safe have the powers they need, governed by strong safeguards, strict protections and robust oversight. That is what the Bill provides.

The Government are clear that the Bill must command the support of Parliament and the public. It arrives in this House having been subject to extensive debate and examination in the other place and having received cross-party support and a resounding majority there. As we have done to date, we will continue to listen, to engage and to make changes that improve the Bill or strengthen its safeguards. We have the opportunity here to deliver world-leading legislation that provides robust oversight and powerful privacy protections. It is legislation that is clear, comprehensible and legally sound. It will provide the men and women of our law enforcement and security and intelligence agencies with the powers they need to keep us safe. I commend the Bill to the House.

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

House adjourned at 10.09 pm.

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