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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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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

Wednesday 7 September 2016

3 pm

Prayers—read by the Lord Bishop of Southwark.

Student Visas: Pilot Study

Question

3.06 pm

Asked by ***Lord McConnell of Glenscorrodale***

To ask Her Majesty's Government what criteria they used to select universities for the pilot study on student visas announced on 25 July.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the four universities chosen to participate in the tier 4 visa pilot—namely, Oxford, Cambridge, Bath and Imperial College London—were chosen on the basis of their consistently low visa refusal rates.

Lord McConnell of Glenscorrodale (Lab): My Lords, when he was Home Secretary, my noble friend Lord Blunkett and I agreed the Fresh Talent scheme for Scotland in 2003, which introduced a post-study work visa for students graduating from Scottish universities. That scheme, which helped reverse population decline and increased economic activity in Scotland, was never abused. It was extended to the rest of the United Kingdom in 2008, when it was abused elsewhere, and the Government abolished it in 2012. This new pilot scheme directly discriminates against the Scottish university sector and is a slap in the face for Scottish higher education. I ask the Government first, to review the involvement of the Scottish higher education sector in the pilot project and, secondly, to set a threshold which gives universities a standard to meet—and, if they get above it, to include more than these four elite universities in this discriminatory scheme.

Baroness Williams of Trafford: My Lords, the scheme may be expanded following the pilot; that has not been decided yet. On population decline in Scotland, I would say to the noble Lord that in fact it is projected that the population of Scotland will increase by 3.1% by 2024.

Lord Forsyth of Drumlean (Con): My Lords, does my noble friend not agree that given that, despite having no tuition fees, Scottish universities have failed to perform as well as English universities in attracting students from poorer backgrounds, they should concentrate on British students from poorer backgrounds in order to catch up with England?

Baroness Williams of Trafford: My noble friend makes a very good point. The uptake of places in English universities has increased for people from lower-income backgrounds, and the Scottish system might have something to learn from our excellent universities.

Lord Campbell of Pittenweem (LD): My Lords, as this appears to be a Scottish day, I declare an interest as chancellor of the University of St Andrews. As has already been pointed out, tuition fees are not available to universities in Scotland. Higher education is devolved but, of course, the issuing of visas is not. For universities in Scotland such as St Andrews, therefore, a ready infusion of foreign students who pay enhanced fees is fundamental to their economies. May we have an assurance that when the results of the pilot scheme are available, account will be taken of the special position of Scottish universities?

Baroness Williams of Trafford: My Lords, I commend the noble Lord in his role, because St Andrews is an excellent university. The universities of both England and Scotland want to attract the brightest and best talent from around the world—and they do.

Baroness Gardner of Parkes (Con): My Lords, will student exchange schemes be at all affected by this? They are wonderful schemes—and I declare an interest in that one of my daughters went on an exchange to Monash from Warwick University. Will those people have any problem in future?

Baroness Williams of Trafford: My Lords, student exchange schemes should not be affected by this at all, given that they are in the education system.

Lord Green of Deddington (CB): My Lords, would the Minister agree that what is really important in post-study work is that the students, or rather the graduates, are required by employers? Would she agree that the change that the Government have made focuses on that and creates a much more effective situation?

Baroness Williams of Trafford: I agree wholeheartedly with the noble Lord's point; the students entering into employment are doing so in sectors that require their skills.

Lord Rosser (Lab): My Lords, looking at the location of the four universities involved, can I assume that Oxford and Cambridge are representing the north of England? Against what specific criteria will the outcome of the two-year pilot scheme be assessed, when will that assessment be completed and will the results be made public?

Baroness Williams of Trafford: That will be determined in due course—and I shall let the noble Lord and the House know in due course. As for those universities being representative of the north, they may be in the sense that many students from the north of England attend those universities.

Baroness Brinton (LD): My Lords, two years ago the then Home Secretary cancelled the visas of around 46,000 students based on a false assessment of English language tests. The immigration upper tribunal court ruled earlier this year that Mrs May's decision was based on "multiple frailties and shortcomings" and that investigators were unqualified to assess language levels. In the current guidance for the pilot, there is still a reliance on investigators. What assurance can the Minister give the House that investigators have now been trained properly?

Baroness Williams of Trafford: There are always lessons to be learned from situations such as this, and I give the noble Baroness every assurance that investigators are trained properly.

Lord Foulkes of Cumnock (Lab): I support my noble friend Lord McConnell in what he said earlier. This is exactly the kind of decision where a United Kingdom government department will help towards the break-up of the United Kingdom, and it is an absolute disgrace.

Baroness Williams of Trafford: I am not sure that there is a question in there, but I will answer by saying that I disagree with the noble Lord.

Baroness Afshar (CB): I declare an interest in the University of York, one of the northern universities, where the Erasmus exchange programme has been invaluable in providing an understanding across Europeans and teaching languages to students who may not naturally be given to learning languages. We must consider benefits other than the immediate impact—and can we please include the northern universities?

Baroness Williams of Trafford: I totally agree that the Erasmus programme has been very helpful to students, and certainly that is something that I shall take back for the noble Baroness.

Independent Schools: Teacher Training

Question

3.13 pm

Asked by ***Lord Lexden***

To ask Her Majesty's Government what plans they have to ensure that independent schools are fully involved in the development of improved arrangements for teacher training.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, independent schools are a significant and valued part of the teacher training system, and we are committed to ensuring that they can help to raise standards of teacher training even further. Five independent schools are already designated as teaching schools. Furthermore, we are working with the Independent Schools Council to establish the first school-led training provider for modern foreign languages in Sheffield, with strong involvement from independent schools with expertise in the subject.

Lord Lexden (Con): My Lords, that is immensely encouraging. Is not it the case that independent schools are particularly well placed to help to train specialist teachers in subjects such as foreign languages and sciences? Following what my noble friend said, will he give every possible encouragement to cross-sector partnership in teacher training, so that the skills and experience of the independent sector can be harnessed to the full for the benefit of the education system as a whole?

Lord Nash: I agree with my noble friend's comments. We very much welcome the sharing of expertise between schools across the sector. I am encouraged to see teacher training partnerships working, for instance, in the Crispin School Academy, which is working with a number of independent schools, such as King's Bruton, Millfield and Taunton. The modern foreign languages project to which I referred will give trainees the opportunity to work in schools in both sectors that have outstanding modern languages departments. In addition to the five independent teaching schools to which I referred, more than 150 independent schools are members of teaching school alliances, including a number of special schools.

Baroness Farrington of Ribbleton (Lab): My Lords, can the Minister give an assurance that, in the Government's policy on teacher training, they will ensure that all those unqualified teachers who are currently teaching children in this country are encouraged, and made, to become qualified? I declare an interest as somebody who, many years ago, was employed as an unqualified teacher. I can assure the noble Lord that all children deserve to be taught by teachers who are qualified.

Lord Nash: I agree entirely with the noble Baroness that all teachers should be well qualified. One of the most important things that Sir Andrew Carter's review pointed out was that the most important qualification is qualification in subject knowledge. It is acknowledged across the teaching sector that, of course, you do not become a fully expert teacher after nine months of training. That is not to say that the training is not extremely valuable or that many teachers do not find it valuable. But others—for instance those with PhDs in subjects or perhaps a drama teacher from RADA—may feel that they do not need to go through that training and that they already have some of those basic skills.

Lord O'Shaughnessy (Con): My Lords, my noble friend Lord Lexden is quite right to point out the role that independent schools are playing in teacher training. Another route through which they can get involved in education is that of free schools and academies. How many independent schools are involved in sponsoring free schools and academies?

Lord Nash: I cannot give an accurate figure because that involvement is very varied, but we have many free schools that have been sponsored by independent schools. We have two London Academies of Excellence—one focusing on high-performing pupils in sixth form in the East End, sponsored by Brighton College, and another opening in Tottenham, sponsored by Highgate. We have Haileybury, which is sponsoring a school in Hertfordshire and we have Eton and Holyport College, of course. There are many other examples of independent schools engaged in the free school programme in one way or another.

Lord Addington (LD): My Lords, does the Minister agree that independent schools have a very good record of dealing with such things as special educational needs, probably because of the cost basis of the relationship? Would that be taken on board in any

exercise that looks at teacher training generally? If 20% of your pupils have a special educational need, you should be able to teach them.

Lord Nash: I agree with the noble Lord. Indeed, Andrew Carter's review stated that there was some variability in the quality of course content in relation to SEND training in ITT. Following that review, the Secretary of State for Education commissioned Stephen Munday to take forward an independent expert group tasked with developing a framework of core initial teacher training.

Baroness McIntosh of Hudnall (Lab): My Lords, may I take the noble Lord back to the answer that he gave to my noble friend Lady Farrington? Does he agree with me that, just because one is good at doing something, one is not necessarily good at teaching it? That applies to physics as much as it applies to drama. Therefore, does he further agree that qualifications in teaching are about providing skills in teaching that produce at least a minimum standard that pupils could expect from people who may be very qualified in their subject but not necessarily very good teachers?

Lord Nash: I entirely agree with the noble Baroness, and that is why we have focused teacher training on school-led training. After all, even for the PGCE, 65% of the nine months of training takes place in school. It is acknowledged that in school is the place to learn to teach. As I say, people acknowledge that it takes many years practising in school to become a fully expert teacher.

Baroness Fookes (Con): My Lords, I am all for excellent, first-class training, but what are the Government doing to encourage first-class recruits into the training profession who can fully take advantage of the training offered?

Lord Nash: We have bursary schemes of up to £30,000 for recruits in maths and science and up to £25,000 in modern foreign languages. Since 2010, the number of teachers with a 2:1 or better has gone up from 63% to 75%. This year, we have the highest number of teachers entering ITT with a first than ever before, at 18%.

Lord Watson of Invergowrie (Lab): My Lords, there is no requirement for teachers in the independent sector to have a teaching qualification, although of course many do, often having come from the state sector. I feel that the independent sector would talk with more authority on the question of teacher training if more of them offered an induction year to newly qualified teachers. However, is not the issue here teacher shortages—an issue on which both the Government and the DfE remain in denial? How else can you square the circle whereby a number of teaching establishments have a cap applied to them—an arbitrary national figure—and when that is reached, teaching establishments are not allowed to take on any more trainees, even if they are only half full? Meanwhile the Government have instituted an international recruitment programme to try to attract teachers from abroad. When many head teachers are finding it difficult to fill vacancies, why should there be any cap on teacher training places at all?

Lord Nash: As I have said many times before in this House, the teacher training recruitment situation is no different than it has been on many occasions over the last 20 years, including many years under the Labour Government. It has generally remained very stable. Since 2010, we have 15,000 more teachers and the number of teachers has kept up well with the number of students. We have 14,000 returners this year. To take the point about ITT, we have consulted with the sector and it has become clear that ITT providers would like to have more long-term visibility and stability in their places. That is something we intend to address.

Turkey: Judicial Personnel

Question

3.21 pm

Asked by ***Lord Balfe***

To ask Her Majesty's Government what assessment they have made of the detention and removal from office of judicial personnel in Turkey.

The Minister of State, Foreign and Commonwealth Office and Department for International Development (Baroness Anelay of St Johns) (Con): My Lords, we strongly condemn the attempted coup on 15 July. Subsequently, the Turkish Government have suspended 3,688 judges and prosecutors, of whom 2,847 have been sacked. More than 600 are in pretrial detention. We have urged the Turkish Government to respect due process and the rule of law, including when the Minister for Europe and the Americas visited Turkey in July. The Turkish Government have assured us they recognise the importance of this.

Lord Balfe (Con): I thank the noble Baroness for her Answer. I think we all accept that the judiciary and military in Turkey have played an important part in building the modern state. Having looked at the speed with which these lists were drawn up, many of us question whether they were not drawn up before the coup. Will the Government undertake to press the Turkish Government to justify in all these cases why it is so necessary to lock up such a large number of the middle class?

Baroness Anelay of St Johns: My Lords, we should recall that the attempted coup, which I expect noble Lords may have seen on television, was indeed an extremely dangerous security moment for Turkey and the region. We have, of course, maintained our conversation with the Turkish Government about the importance of having a proportionate response. We continue to call for due process to be followed and human rights respected. However, it was right that my right honourable friend the Minister for Europe and the Americas went as soon as possible after 15 July to offer what support the UK might give to the Turkish Government.

Lord Wallace of Saltaire (LD): My Lords, do the Government think that we will have more effect in attempting to influence the Turkish Government independently or jointly with our European partners? Now that we have decided to leave the European Union, have the Government abandoned their long-term commitment that Turkey should move towards EU membership and should therefore meet criteria set on a European basis for good governance and separation of powers?

Baroness Anelay of St Johns: My Lords, as the noble Lord is aware more than most, we are still a member of the European Union. We also have bilateral relationships with Turkey, which is demonstrated by the way in which our Prime Minister, Foreign Secretary and Minister for Europe have engaged with Turkey in these difficult times. Our view on the accession of Turkey to the EU remains the same. We are committed to supporting security and prosperity across Europe. That means that anybody who wishes to gain access to the European Union has to demonstrate that they are able to meet all the demands of opening and closing the relevant chapters. While we remain a member of the European Union, we have a say in that process.

Lord Collins of Highbury (Lab): My Lords, obviously, maintaining a strong collective international response is vital in this situation, bearing in mind Turkey's strategic position in the fight against ISIS and other extremists. Can the Minister tell the House exactly how we are maintaining a collective response, not just with our friends in the EU but particularly within NATO and with the US?

Baroness Anelay of St Johns: My Lords, the noble Lord is right to raise the point about the importance of Turkey within the security systems across the whole of Europe. It is a valued member of NATO, and I believe that it is the second largest contributor of troops to NATO forces. We maintain that relationship through our work from the Foreign and Commonwealth Office, and it is at as high a level as it ever has been. Turkey is a valued partner.

Lord Robathan (Con): My Lords, can my noble friend tell the House the Government's view on the apparent rapprochement between President Erdogan and President Putin?

Baroness Anelay of St Johns: My Lords, it is true that there are discussions between Heads of State, which vary from time to time. I noted that there were discussions between President Erdogan and President Putin. On the other hand, our own Prime Minister has also met President Putin. One should not read too much into such meetings.

Lord Hope of Craighead (CB): My Lords, I wonder whether the noble Baroness can tell the House what kind of work these judges were doing. I rather think that, following the French system, which I think the Turkish Government do, they are investigating judges rather than the kind of judges we are familiar with, which makes their seizure even more sinister. Do we know how many judges are left in their position, so that we can put it into some sort of proportion?

Baroness Anelay of St Johns: My Lords, I have with me only the figures on the number of judges and prosecutors who have been sacked out of those who were suspended, but I will look specifically to see whether we have those figures. The noble and learned Lord is absolutely right to point out the different, investigatory system that pertains in Turkey. We have represented throughout that any response must be proportionate and that the rule of law has to pertain, which includes having a proper, independent judicial system.

Lord Elton (Con): My Lords, are newspaper reports that the Russian air force is now stationing military aircraft on Turkish territory to be believed; and if so, does that relate to my noble friend's earlier answer?

Baroness Anelay of St Johns: My Lords, the Russians still have a base in Syria and their aircraft are certainly based there. Turkey is a valued partner in the battle against Daesh. Without it, the coalition forces would not be able to have their bases there.

Calais: Refugee Children

Question

3.28 pm

Asked by ***Baroness Miller of Chilthorne Domer***

To ask Her Majesty's Government when they will address the position of the refugee children in the Calais camps who are eligible to come to Britain.

Baroness Miller of Chilthorne Domer (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I declare an interest as a trustee of a charity that works in the Calais camp, among other places.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, we are already working closely with the French to help to identify and transfer children who are eligible and are about to second another UK expert to France to support that work. Over 70 children have been accepted already this year and more arrive almost every week. Transfer requests are now generally processed within 10 days, and children are transferred within weeks.

Baroness Miller of Chilthorne Domer: My Lords, I thank the Minister for her reply, and I read carefully her reply to my noble friend yesterday. However, as she said, some 70 children have been accepted this year, which is about two a week, and yesterday she asserted that her department is working very quickly. Is she satisfied that that is quick enough? Given that the French intend to dismantle the camp by Christmas and that at least 370 children are eligible, that should be more like 20 a week. Further, does she realise that young people seeing the camp dismantled will take greater and greater risks in trying to get on to vehicles coming to the UK? Can the Minister assure the House that her department will be able to up the capacity to at least nearer 20 a week?

Baroness Williams of Trafford: My Lords, on the question of whether we are doing things quickly enough, in an ideal world we would move all the children tomorrow. However, we cannot just take a child out of a country—I tried to make that clear yesterday and I make it clear today. Following due process is in the best interests of any child whom we are concerned about. We have to take account of the laws of the country in question—that is, France. When the child is in France, he or she is under its jurisdiction. We are working very closely with that country to make sure that children are transferred as quickly as possible. The welfare of the child is utmost.

Lord Dubs (Lab): My Lords, first, will the Minister confirm that under the terms of the Immigration Act not a single child has yet reached this country? The ones who have arrived have relatives here and have come under Dublin III. Secondly, will she comment on the news this morning that the Government are apparently advocating the building of a wall in Calais, for reasons which nobody can understand? Is that true and, if so, why?

Baroness Williams of Trafford: My Lords, I do not have the exact figures since the introduction of the Immigration Act but I would certainly like to provide them to the noble Lord. He is an absolute expert in this area, so I am very reluctant to contradict him. It is the case that 120 children have come from France under the Dublin regulations. In the whole of last year, the figure was only 20. However, I will confirm that for the noble Lord in writing.

I know that the wall has received press attention. The measure is intended to further protect the rocade from migrant attempts to disrupt, delay or even attack vehicles approaching the port. I hope that that provides the clarification that the noble Lord seeks.

Lord Tebbit (Con): My Lords, when these unfortunate children come to this country and are given refuge, will they subsequently be joined by their parents, grandparents and wider family, or will we have some system for keeping their parents out? It seems to me that a very large number of people could be involved.

Baroness Williams of Trafford: Certainly the children who are being prioritised have family in the UK. I do not think that I can give a blanket response on whether they will be joined by their parents or other relatives, other than to say that cases will be considered on a family-by-family basis.

Baroness Jowell (Lab): My Lords, what financial and other support is being provided to the local authorities that receive these children? I declare an interest as patron of a charity working with these children in Calais and in other camps across Europe. Many of these children are profoundly traumatised and will need expert care and help for some time so that they can settle with their families. What help are they receiving and who is paying for it?

Baroness Williams of Trafford: The noble Baroness makes a very valid point in saying that the children who arrive in this country will be the most traumatised children that we can imagine. The local authorities which are very kindly receiving them will be fully funded. I expect—and I am sure noble Lords will agree—that these children will need support beyond what is usually required.

Baroness Sheehan (LD): My Lords, will the Minister accompany me on a day trip to Calais, because the remark she made yesterday about there being 130 reception centres available to people in the camp if only they would take them up is way off the mark? The fact is that the reception centres are full and, therefore, only two buses a week come to the camp. People queue all night to get on those buses, and women and children find that very dangerous. Will the Government accept the sad fact that people are desperate to leave the camp but cannot?

Baroness Williams of Trafford: As to whether I will go with the noble Baroness to Calais, I think that I might have to consult the department first. However, if it is allowable, I will certainly accompany her. I fully expect that the information I have been given on the number of reception centres is correct but I will double-check that and, if it is any different, I will let her know. There is some accommodation specifically for women and children at the Jules ferry centre and heated containers have been provided for up to 1,500 people. I also understand that alternative accommodation has been taken up by 5,000 people. However, I will look into the specific points that the noble Baroness makes about people not being able to get on to buses and having to queue at night.

Baroness Sharples (Con): Will my noble friend tell the House whether there is concern that of pupils entering schools at the moment, 16% have English as a second language compared with only 6% a year ago?

Baroness Williams of Trafford: That is why the Government are providing £10 million to help these children learn English.

Grammar Schools

Private Notice Question

3.36 pm

Asked by ***Lord Watson of Invergowrie***

To ask Her Majesty's Government what plans they have to introduce legislation—including secondary legislation—to expand the existing offer of grammar schools to other local authority areas.

Lord Watson of Invergowrie (Lab): My Lords, I beg leave to ask a Question of which I have given private notice.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, the Government are committed to making sure that every child has the opportunity to attend a good or outstanding school that will allow them to go as far as their talents will

[LORD NASH]
take them. As such, we are looking at a range of options to deliver this. We are aware of media speculation on the future of education policy and grammar schools specifically. The Government expect to come forward with proposals in due course.

3.37 pm

Lord Watson of Invergowrie: My Lords, that is a clear non-denial. Yesterday's inadvertent leak—if indeed that is what it was—that the Government are seeking to create new grammar schools has caused widespread alarm. The Minister has not accepted that that is the case. However, something must be afoot. It is not normal for a Permanent Secretary to arrive at the door of No. 10 Downing Street for a Cabinet discussion on a controversial subject without that having been given some considerable consideration in advance. Will the Minister give an assurance that there will be no means, either legislative or non-legislative, to increase the number of grammar schools, so that we are not faced sometime in the not too distant future with further ruses such as the so-called annexe at Tonbridge?

Lord Nash: To comment first on the noble Lord's pun in his first statement, I can assure him that the leak did not originate from anybody in your Lordships' House. I do not think I can add any further to what I have already said. However, we are not interested in any ruses and want the policy to be absolutely clear. The Prime Minister has made it quite clear that she wants a society that works for everyone and all children to have access to a good education. We are exploring our options for delivering this and we want all good schools to help us in this endeavour.

Lord Cormack (Con): My Lords, as one who benefited from a grammar school education and who lives in a county, Lincolnshire, which has excellent grammar schools that do no damage to any children at all, I urge my noble friend to support our right honourable friend the Prime Minister if indeed she is inclined to increase the number of grammar schools in this country.

Lord Nash: My job, of course, is to support the Prime Minister. I am fully aware that most grammar schools do an excellent job. However, this is a long-running argument and there are strong views on both sides. I assure the House that we will not do anything without detailed consideration and consultation.

Lord Storey (LD): My Lords, it is interesting to note that the Chief Inspector of Schools has said that the reintroduction of grammar schools would be disastrous and a retrograde step. Let us consider some facts. As the Minister knows, Kent retains the grammar school system. In Kent, the gap in attainment between free school meals pupils and non-free school meals pupils at key stage 4 is 34%. In inner London, where there are no grammar schools, the gap is only 14%. By those figures, grammar schools are socially divisive. Does the Minister agree?

Lord Nash: The noble Lord referred to Sir Michael Wilshaw's comments. I am a great fan of Sir Michael Wilshaw and he has done an excellent job as chief inspector. He is right to pinpoint the great transformation in London schools, started under a Labour Government through their London Challenge and academies programme, which we have sought to continue. In fact there is no clear evidence to support his views but, as I have said, we are keeping an open mind. We are aware of the strength of grammar schools and would like more free school meals pupils going to them.

Baroness Taylor of Bolton (Lab): My Lords, will the Minister tell the House what representations his department has received for the return of secondary modern schools?

Lord Nash: As I have said, this is a long-running debate. We have had plenty of representations for the return of grammar schools. However, as I have said, we will not make any decisions without deep consultation.

Lord Laming (CB): Does the Minister agree that grammar schools will benefit a minority of pupils? That is well recognised. They will not benefit the majority of pupils because, as I was, they are deprived of the opportunity to go to a grammar school.

Lord Nash: I am fully aware that there is evidence to support the noble Lord's case. There is also evidence to the contrary. We will look at this very carefully. Views are divided. It is obvious from today's discussion that the issue is contentious. We are considering all our options and any decisions we make will be driven entirely by considerations of social mobility and that we have a schools system which works well for everyone.

Lord Framlingham (Con): Does the Minister agree that anyone who is concerned about the great lack of social mobility in recent years will be delighted at any possibility of the return of grammar schools? Their destruction was the major cause of the reduction in social mobility.

Lord Nash: As I say, we will look at all the considerations on both sides very carefully.

Baroness Hollis of Heigham (Lab): My Lords, like many in your Lordships' House I went to a grammar school. My two sons went to local comprehensive schools. Does the Minister not accept that for every grammar school there are consequentially three secondary modern schools—in other words, that comprehensive schools become secondary modern schools—so that one child's social mobility is bought at the expense of the destruction of opportunity for three other children?

Lord Nash: We are keen that all our excellent schools, including grammar schools, help us to expand our school estates. We are committed to allowing all excellent schools to expand. There are many cases of grammar schools now sponsoring other schools. We are particularly interested in encouraging grammar schools to sponsor their feeder primary schools, as, for example, South-East Essex Academy Trust is doing with the Westcliff High School for Girls, an outstanding grammar school now

sponsoring three primary schools, with one of which it has had the remarkable success of doubling its performance. In this way we hope that we can ensure that more pupils from less advantaged backgrounds will be able to achieve going to grammar schools.

Lord Tebbit (Con): My Lords, does my noble friend recollect that in the great Butler Education Act there was provision for a tripartite system—grammar schools, secondary moderns and technical schools? The failure of successive Governments has been to institute a suitable number of high-quality technical schools. That is one of the reasons why we have lagged behind our rivals in Germany in the provision of a skilled workforce for industry and commerce. Could we put that into the system as well, please?

Lord Nash: My noble friend makes an extremely good point. I assure him that that is in the system.

Baroness McIntosh of Hudnall (Lab): My Lords, would the Minister agree that one of the most pernicious things about the way grammar schools work where they are still available is that the selection system allows an extraordinary industry in coaching and tutoring, which is available only to people who can afford to pay for it? Therefore, the social mobility that grammar schools allegedly provides is provided to a very small minority of people, not only in numbers of places but in types of people.

Lord Nash: As always, the noble Baroness makes a very good point, relating to coaching for tests. We are working with the Grammar School Heads Association to see whether we can develop tests that are much less susceptible to coaching. Some 66 grammar schools now prioritise free school meals applications.

Lord Sutherland of Houndwood (CB): My Lords, would the Minister agree that the question of excellence in schools runs the risk of being diverted into the question of whether we have grammar schools? That applies to both sides of the argument. The question of quality in schools is much wider and broader than that. In fact, the advantages given by being able to coach students to go to grammar schools are equally to be found in the leafy suburbs, where the better schools in the comprehensive system have a similar intake because the parents can afford to live there.

Lord Nash: I entirely agree. We are driven by ensuring that as many schools as possible are excellent. Since 2010 we now have nearly 1.5 million more pupils being educated in good and outstanding schools under a tougher inspection framework under Sir Michael Wilshaw. I pay tribute to the help he has given us in driving higher standards in schools.

G20 Summit

Statement

3.47 pm

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, with the leave of the House, I will now repeat a Statement made 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 G20 summit in China. But before I turn to the G20, I would like to say something about the process of Brexit.

On 23 June the British people were asked to vote on whether we should stay in the EU or leave. The majority decided to leave. Our task now is to deliver the will of the British people and negotiate the best possible deal for our country. I know many people are keen to see rapid progress and to understand what post-Brexit Britain will look like. We are getting on with that vital work. But we must also think through the issues in a sober and considered way. As I have said, this is about getting the kind of deal that is ambitious and bold for Britain. It is not about the Norway model, or the Swiss model, or any other country's model; it is about developing our own British model. So we will not take decisions until we are ready, we will not reveal our hand prematurely and we will not provide a running commentary on every twist and turn of the negotiation. I say that because it is not the best way to conduct a strong and mature negotiation that will deliver the best deal for the people of this country. As the Secretary of State for Exiting the European Union told the House on Monday, we will maximise and seize the opportunities that Brexit presents.

That is the approach I took to the G20 summit. This was the first time that the world's leading economies had come together since the UK's decision to leave the EU, and it demonstrated the leading role we will continue to play in the world as a bold, ambitious and outward-looking nation. Building on our strength as a great trading nation, we were clear that we had to resist a retreat to protectionism and we had conversations about how we could explore new bilateral trading arrangements with key partners around the world. We initiated important discussions on responding to rising anti-globalisation sentiment and ensuring that the world's economies work for everyone, and we continued to play our part in working with our allies to confront the global challenges of terrorism and migration. Let me take each in turn.

Trading with partners all around the globe has been the foundation of our prosperity in the past and it will underpin our prosperity in the future. So, under my leadership, as we leave the EU, Britain will seek to become the global leader in free trade. At this summit we secured widespread agreement across the G20 to resist a retreat to protectionism, including a specific agreement to extend the rollback of protectionist measures until at least the end of 2018. The G20 also committed to ratify by the end of this year the WTO agreement to reduce the costs and burdens of moving goods across borders, and it agreed to do more to encourage firms of all sizes, in particular SMEs and female-led firms, to take full advantage of global supply chains.

Britain also continued to press for an ambitious EU trade agenda, including implementing the EU-Canada deal and forging agreements with Japan and America, and we will continue to make these arguments for as long as we are members of the EU. But as we leave the EU, we will also forge our own new trade deals. I am pleased to say that just as the UK is keen to seize the opportunities that leaving the EU presents, so too are

[Baroness Evans of Bowes Park]
many of our international partners, who recognise the attractiveness of doing business with the UK. The leaders from India, Mexico, South Korea and Singapore said that they would welcome talks on removing the barriers to trade between our countries. The Australian Trade Minister visited the UK yesterday to take part in exploratory discussions on the shape of a UK-Australia trade deal. In our bilateral at the end of the summit, President Xi also made it clear that China would welcome discussions on a bilateral trade arrangement with the UK.

As we do more to advance free trade around the world, so we must do more to ensure that working people really benefit from the opportunities it creates. Across the world today, many feel that these opportunities do not seem to come to them. They feel a lack of control over their lives. They have a job but no job security; they have a home but worry about paying the mortgage. They are just about managing but life is hard. It is not enough for Governments to take a hands-off approach. So at this summit I argued that we will need to deliver an economy that works for everyone, with bold action at home and co-operation abroad.

That is why, in Britain, we are developing a proper industrial strategy to improve productivity in every part of the country so that more people can share in our national prosperity through higher wages and greater opportunities for young people. To restore greater fairness, we will be consulting on new measures to tackle corporate irresponsibility. These will include cracking down on excessive corporate pay, poor corporate governance, short-termism and aggressive tax avoidance, and giving employees and customers representation on company boards.

At the G20, this mission of ensuring that the economy works for everyone was echoed by other leaders, and this is an agenda that Britain will continue to lead in the months and years ahead. Together, we agreed to continue efforts to fight corruption—building on the London summit—and do more to stop aggressive tax avoidance, including stopping companies avoiding tax by shifting profits from one jurisdiction to another. We also agreed to work together to address the causes of excess global production in heavy industries, including in the steel market. We will establish a new forum to discuss issues such as subsidies that contribute to market distortions. All these steps are important if we are to retain support for free trade and the open economies which are the bedrock of global growth.

Turning to global security, Britain remains at the heart of the fight against Daesh and at this summit we discussed the need for robust plans to manage the threat of foreign fighters dispersing from Syria, Iraq and Libya. We called for the proper enforcement of the UN sanctions regime to limit the financing of all terrorist organisations, and for more action to improve standards in aviation security, including through a UN Security Council resolution which the UK has been pursuing and which we hope will be adopted later this year. We also agreed on the need to confront the ideology that underpins this terrorism. That means addressing both violent and non-violent extremism, and working across borders to tackle radicalisation online.

Turning to the migration crisis, Britain will continue to meet our promises to the poorest in the world, including through humanitarian efforts to support refugees, and we will make further commitments at President Obama's summit in New York later this month. At the G20, I argued that we cannot shy away from dealing with illegal migration, and I will be returning to this at the UN General Assembly. We need to improve the way we distinguish between refugees and economic migrants. This will enable our economies to benefit from controlled economic migration, and in doing so we will be able to get help to refugees who need it, and retain popular support for doing so. This does not just protect our own people. By reducing the scope for the mass population movements we see today, and at the same time investing to address the underlying drivers of mass migration at source, we can achieve better outcomes for the migrants themselves. As part of this approach, we also need a much more concerted effort to address modern slavery. This sickening trade, often using the same criminal networks that facilitate illegal migration, is an affront to our humanity and I want Britain leading a global effort to stamp it out.

When the British people voted to leave the European Union, they did not vote to leave Europe, to turn inwards or to walk away from the G20 or any of our international partners around the world. That has never been the British way. We have always understood that our success as a sovereign nation is inextricably bound up in our trade and co-operation with others. By building on existing partnerships, forging new relationships and shaping an ambitious global role, we will make a success of Brexit—for Britain and for all our partners—and continue to strengthen the prosperity and security of all our citizens for generations to come. I commend this Statement to the House".

3.55 pm

Baroness Smith of Basildon (Lab): My Lords, I thank the noble Baroness for repeating the Statement today. It was always going to be difficult following the Brexit vote, but as the new Prime Minister, Theresa May appeared confident. She met with most of the other world leaders who were interested to meet her—partly, I think, because they are keen to understand what the post-EU era means for them and their relationship with us in the UK. So this was, by any standards, a crucial summit. We are all aware that the vote to leave the EU has created considerable uncertainty here in the UK, but in paragraph 42 of the communiqué the international uncertainty is also clear. Despite some promising recent manufacturing statistics, the long-term uncertainties remain.

What is clear is that the Government are still thinking through the implications, what our negotiating position is going to be and what outcomes we seek. It is now common knowledge that no advance preparation had been undertaken, which makes the job of the Prime Minister even harder. She had to attend this summit knowing that she would be expected to discuss with other world leaders how the decision would affect them and their relationship with the EU and the UK. Countries such as Japan were seeking some degree of predictability for their investments and businesses in the UK, but she was unable to provide reassurance or

answers—not because she does not want to be helpful or make the best case for the British economy but because we are still in the "don't know" zone. While I appreciate what lies behind the statement "Brexit means Brexit", I have to admit that I do not know what it means—and neither, apparently, do other members of the G20.

Following the Prime Minister's meeting with her old university friend, the Australian Prime Minister, Malcolm Turnbull, I think that we were all left with the impression—I certainly was—of exciting new trade and economic agreements. But the clarification from Mr Ciobo, the Australian Trade Minister, has dampened that excitement. It almost sounded like a "Yes, Prime Minister" sketch as we heard him say on the "Today" programme that a UK-Australia deal could happen only,

"when the time is right".

Sir Humphrey might have added "in the fullness of time" or "in due course".

We cannot sign deals with other countries while we are still in the EU and we do not know when we will be leaving it. Meanwhile, negotiations between Australia and the EU will be completed probably before we even start. To heap humiliation upon embarrassment, the Australian Minister added that because the UK has no trained negotiators of our own, he has offered to lend us Australian experts for the initial talks. Can the noble Baroness confirm that what is really on offer is talks about talks? Will we accept their kind and generous offer to use their experts for our discussions with them?

Is the noble Baroness also able to say anything more about the meeting with the Japanese Prime Minister, following his 15-page memo on Japan's specific concerns, and whether they discussed car manufacturing remaining in the UK whatever the Brexit terms are?

We understand why our allies are uncertain. I fear that there is a danger of us becoming marginalised. Meetings took place without us that in the past we might have expected to be part of, such as President Obama's meeting with Angela Merkel and Francois Hollande. What is encouraging, though, is that these countries are not hostile. I think that they genuinely want to make their economic relationship with us work—but we have to get moving to create the certainty and clarity that they need.

It is not just our international friends who are uncertain. So are we—even, it appears, members of the Cabinet. On Monday, the Secretary of State for Exiting the EU, David Davis, responded to a question from Anna Soubry MP about whether, in light of the concerns raised at the G20 about the impact on the economy,

"the Government are prepared to abandon that membership of the single market".

He told the House of Commons that,

"the simple truth is that if a requirement of our membership is giving up control of our borders, then I think that makes it very improbable".—[*Official Report*, Commons, 5/9/16; col. 54.]

Those were the Secretary of State's words: "very improbable".

Now, I am not clear how he defines,

"giving up control of our borders",

but he was quickly slapped down by No. 10, which said that this was his "opinion" and not "policy". Yet, in your Lordships' House yesterday, the noble Lord, Lord Bridges, responded to my noble friend Lord Wood, that the Government,

"are not in a position to go into detail on this other than to say that we are not looking at an off-the-shelf response".—[*Official Report*, 5/9/16; col. 889.]

I am confused, and I do not think I am the only one. I thought that the Secretary of State was articulating government policy from the Dispatch Box—but apparently not. Can the noble Baroness confirm whether, when Ministers make statements in either House, the statements should be regarded as government policy—or can we now expect to hear private opinion as well? How will we be able to tell the difference?

Finally, the summit also discussed other issues, included terrorism and refugees, as referenced in the Statement. Paragraph 44 of the communiqué deals with refugees. I welcome that the Government signed up to the communiqué quote:

"We call for strengthening humanitarian assistance for refugees and refugee resettlement".

The noble Baroness will have heard the exchanges in your Lordships' House yesterday and again today about the grave disappointment with the Government's actions to date on resettling those unaccompanied children who qualify to come to the UK under family reunification laws yet remain in the camps in Calais—in the Jungle.

Is she aware of the report today from UNICEF, which is highly critical of the UK Government because of the danger that these children are in? They are often traumatised by both the journey from their home country and by what they witnessed or suffered there. As the author of the UN report states, they are,

"at risk of the worst forms of abuse and harm and can easily fall victim to traffickers and other criminals".

What can be more important than ensuring that these children, who are legally as well as morally entitled to safety and refuge in the UK, have that refuge? Does the noble Baroness consider that the Government now need to take faster and more effective action to fulfil both the Dubs amendment on child refugees, passed by this House while Theresa May was Home Secretary, and the agreement reached at the G20 summit?

I hope that the noble Baroness will be able to address these questions and that the Government truly understand how important clarity is and that uncertainty is the enemy of good government.

Lord Wallace of Tankerness (LD): My Lords, I too thank the noble Baroness the Leader of the House for repeating the Statement this afternoon. The Prime Minister's Statement and the G20 leaders' communiqué clearly set out the challenges facing the global economy at this time. As the noble Baroness, Lady Smith, quoted, it goes on to state clearly:

"The outcome of the referendum on the UK's membership of the EU adds to the uncertainty in the global economy".

One wonders whether any of that uncertainty was dispelled by the numerous meetings that the Prime Minister had. She says that "Brexit means Brexit", but I rather suspect that none of the other G20 leaders knows what it means; and as the noble Baroness,

[Lord Wallace of Tankerness]

Lady Smith, indicated, it appears that some members of the Cabinet do not know what it means either. When one hears that Downing Street spokespersons are dismissing a Secretary of State's quotes as being personal rather than a statement of government policy, it suggests that the collective responsibility that we had in the coalition was a model that this Government ought to follow. Perhaps the noble Baroness the Leader of the House will take the opportunity now, and not rely on a No. 10 spokesperson, to make the position very clear with regard to the comments of the Secretary of State for Exiting the EU on Monday.

Since the result of the referendum in June, a number of Conservative Ministers have sought to give the impression that they could agree new trade deals in time for tea. The clear evidence from this summit is that that will simply not be the case. Although a number of world leaders have talked about maintaining good relations with the United Kingdom—which is very welcome—few gave the impression that a trade deal with the United Kingdom was a top priority for them. President Obama made it clear that a trade deal between the EU and the USA was a much greater priority. He was not the only world leader to take that position. The Japanese Government have released a detailed document setting out their concerns. Prime Minister Shinzo Abe has warned the Prime Minister that Japanese companies need more certainty in order to stay in the United Kingdom, and Japan's ambassador to the United Kingdom has highlighted that Japanese companies could disinvest from our country.

The Prime Minister's statement refers to the leaders of Mexico, South Korea, India and Singapore, who said that they would welcome talks on removing barriers to trade between our countries. That is very welcome, but can the Leader of the House give the House some context? What percentage of goods are exported from the UK to these four countries in total, compared with the percentage exported to one country, Germany, with which we would inevitably be raising trade barriers unless we enjoy full membership of the single market? Even Australia, the country from which the Prime Minister had the warmest welcome at the G20, has been clear that any post-Brexit deal with the UK would have to wait until Australia had completed parallel negotiations with the European Union, a process which will not even begin for another two and a half years at the earliest. I fear it is a long time since Britain has stood so alone on the world stage. Can the Leader of the House confirm that, at the summit, the Prime Minister did not hold a single bilateral meeting with any other Europe Union leader?

Will the noble Baroness take this opportunity to end the current uncertainty? Do we not owe it, globally and to companies here at home, to indicate what our position will be with regard to membership of the single market? Does she agree that securing such membership should be the Government's priority rather than burdening British companies with additional red tape and compromising our position as a global economic nation?

We on these Benches are also deeply disappointed that the Prime Minister failed to raise the issue of steel exports with China during her bilateral meeting with President Xi Jinping. Thousands of jobs at Port Talbot, and across our steel industry, are facing an uncertain future because of dumping of steel on the EU market by China, but although it was raised in plenary, it does not appear that the Prime Minister took the opportunity to make the case in a bilateral meeting.

Although there has been much aspirational talk by Ministers of preferential trade deals, one is conscious that the only concrete, substantive trade deal that we have heard about since Parliament returned on Monday is the continuing supply of military equipment to Saudi Arabia. Can the noble Baroness tell the House what discussions the Prime Minister had with Saudi Ministers at the G20 regarding the position in Yemen and international humanitarian law? Will she clarify her Government's definition of a "serious" breach of international humanitarian law?

With regard to other matters, the communiqué states a clear commitment to,

"usher in a new era of global growth and sustainable development, taking into account … the Paris Agreement".

Given the news that China and the USA have now ratified the Paris Agreement, will the noble Baroness commit to the UK ratifying that agreement in line with our international partners? Will she also confirm whether or not it will require parliamentary approval under Section 20 of the Constitutional Reform and Governance Act 2010 and, at the same time, whether the same parliamentary requirement applies to any Brexit agreement with the remaining EU?

The communiqué also states a clear commitment to,

"taking into account the 2030 Agenda for Sustainable Development".

What action are this Government taking to ensure that the sustainable development goals are truly universal and that each government department is working towards these goals?

We on these Benches remain very concerned at the global refugee crisis. Given the attention given at the conference to the refugee crisis, will the noble Baroness be more specific about the Government's objectives at the upcoming high-level meeting on refugees and migrants in New York later this month? Can she also answer the points raised by the noble Baroness, Lady Smith, in relation to the some 380 children eligible to come to the UK who are currently in Calais?

We have heard in recent weeks that Brexit is Brexit, but we seem to be no closer to knowing what it actually means. From the briefings given on the Prime Minister's plane, we know that it does not mean a points-based immigration system or that £350 million a week will be given to the National Health Service—that promise, given by those who are now senior members of the Conservative Government, is no longer worth the bus it was written on. There is much confusion from the Conservative Government, and in the face of that confusion, we on these Benches will continue to fight to keep Britain open, tolerant and united.

Baroness Evans of Bowes Park: I am grateful to the noble Baroness and the noble and learned Lord for their remarks. Before I address some of the specific points, I will touch on some of the key elements of last week's summit. First, as I said, we saw that the UK has, and will continue to have, a leading role in the international community, whether in championing work on antimicrobial resistance or pushing to deliver an

economy that works for everyone. The summit showed that we are shaping the global agenda on many of the important challenges facing the world, and we will continue to do so.

Secondly, we saw that world leaders want to work constructively with us to make a success of Brexit. The Prime Minister outlined her vision for the UK as a global leader on free trade, and it was clear that there is a shared desire to build and maintain strong relationships with our international partners. Our priority now has to be to work through the issues posed by Brexit to deliver on that vision, and to get the right deal for Britain.

The noble Baroness and the noble and learned Lord asked about the shape of this. We are looking at negotiating a new relationship with Britain. Noble Lords are right that the process will not be brief or straightforward, but we are looking to achieve the best deal. What the British people told us with their vote was that it must be a priority for us to regain more control over the numbers of people who come here from Europe, but also that we must allow British companies to trade with the single market in goods and services.

Both noble Lords asked about Japan's approach. Of course we continue to listen to and engage with Japanese business and investors as we plan for our exit. In fact, since the G20 the Japanese ambassador has praised the,

"cautious and very patient",

approach of the Prime Minister, and said that what is needed are,

"well-thought through considerations before you start any negotiations".

That is exactly the approach that the Prime Minister has taken. The relationship between the UK and Japan has gone from strength to strength in recent years, and we believe it will continue to do so. The PM and the Prime Minister of Japan spoke and were both clear that they would work together to build our relationship. As was said in the Statement, as a member of the EU we will continue to support a swift conclusion to the EU-Japan free trade agreement, and co-operation on security with our European and global allies will be undiminished.

The noble Baroness and the noble and learned Lord asked about unaccompanied children. I assure noble Lords that we began to work to implement the Dubs amendment immediately after the Immigration Bill gained Royal Assent. Discussions are happening with local authorities because this is a UK matter rather than a G20 one, but of course we are working with Greece, France, Italy and NGO partners to speed up existing processes and implement new ones where necessary.

The noble and learned Lord commented that the Prime Minister did not meet other EU leaders. As he will be well aware, over the summer she visited France, Germany and some of the key leaders. This was her first opportunity to meet President Obama, for example, so she took such opportunities at the G20 and that was the right approach.

The noble and learned Lord questioned the fact that the Prime Minister did not specifically raise steel with China. In fact she raised it with everyone; this was a key concern of ours, and in fact we were delighted to have secured a commitment from the G20 steel-producing nations to bring forward a global response to address overcapacity, including through the OECD Steel Committee, which will meet next week. That will provide the first opportunity, following the summit, to take stock of response efforts and discuss the feasibility of forming a global forum for dialogue and information sharing on overcapacity.

The noble and learned Lord asked about the Paris agreement. We are fully committed to ratifying it, and of course we were very pleased to see the commitment from both the United States and China during the course of the summit. We are already playing our part in delivering this through our domestic climate framework and we will ratify it as soon as possible, but all necessary work to implement the agreement is under way. I am sure we will refer to some of the other issues that the noble Lords raised later in the debate, but if there is anything else I can add subsequently I will do so.

To conclude, I reinforce what the Prime Minister said in the other place: the best route to prosperity for this country is as a global leader in free trade, but to carry people along with us we must deliver and demonstrate the benefits of that approach for people right across the country. As a Government, that is exactly what we will do. We will act boldly at home so that our economy works for everyone, and we will work with our international partners abroad, shaping an ambitious global role for this country that will deliver prosperity for our citizens and those around the world in years to come.

4.14 pm

Lord Framlingham (Con): My Lords, I thank the noble Baroness the Leader for repeating a very sensible Statement bringing us all up to date. I heard the Australian Trade Minister yesterday discussing his proposal that he should lend us a negotiator. The idea would be that there would be an Australian negotiator on both sides of the table. He described that as a joke—a quip. It is clearly not one that has gone down well with the Opposition.

Baroness Evans of Bowes Park: The one thing I would say in response is that the Australian Trade Minister was setting out the legal position. We can certainly negotiate and discuss the arrangements that we wish to have with the Australians and other international global partners. The Prime Minister had an extremely useful and constructive dialogue with Prime Minister Turnbull, and we look forward to working with him to develop our relationship with Australia more fully.

Lord West of Spithead (Lab): My Lords, the noble Baroness the Leader of the House rightly said how important it is that we trade around the world, and she will know that 95% of that trade is carried by merchant shipping. Sadly, and for surprising reasons, the Conservative Party has never been very supportive of our merchant fleet. We have just completed the

[LORD WEST OF SPITHEAD]
Maritime Growth Study. Will the Government implement its recommendations, which will help reinforce the strength of our merchant fleet with all the benefits that will have, particularly for global trade?

Baroness Evans of Bowes Park: I will have to write to the noble Lord on the specifics of his question. What I can certainly say is that the UK is an outward-facing, global nation and we want to be a global leader in free trade. We set out our determination to achieve that; the Prime Minister reiterated it in her Statement and in response to questions in the other place; we are focused on making sure that we make the best of Brexit for this country and work constructively, as we do now, with other countries around the world.

Baroness Ludford (LD): A majority of those permitted to vote on 23 June voted to depart from the EU, but they were given no help whatever by the leave campaign to know what the destination thereafter would be and have been given no help since 23 June by the Government. We have heard the remarks about the Brexit Secretary being slapped down by the Prime Minister. In her response, the noble Baroness talked about trade with the single market, but that covers a multitude of possibilities. Can she be more specific about what that means? Does it mean membership of the single market or access to it, which is different? Where does it leave the customs union, for instance? Are the Government laying on a series of tutorials for Secretaries of State and Ministers on the difference between all those concepts, because many of them do not seem to understand them?

Baroness Evans of Bowes Park: My Lords, as I think was clear from the Statement, we will not be providing a running commentary on what is happening. We want to get the best deal, and in order to get the best deal, as many noble Lords will know from their careers in business, you do not show your negotiating hand. What I have said is that the priority is to regain more control over the numbers of people coming here from Europe and, as the noble Baroness rightly said, to allow British companies to trade with the single market in goods and services.

Lord Howell of Guildford (Con): My Lords, I do not think I heard the words "Hinkley Point C" mentioned in the Statement; perhaps I missed them. While I personally deplore some of the overhyped fears about Chinese security and threat—there is always a question, but it has been exaggerated—will my noble friend remind her Cabinet colleagues that there are ways forward with this particularly difficult project which will continue to combine the input of the Chinese, whose good will and technology we need, with the needs of the French and of EDF, which is a company in some difficulty, without saddling ourselves with the present prospect of a project of the wrong design at the wrong time that will load our industries and consumers for many years ahead with unnecessarily high energy costs?

Baroness Evans of Bowes Park: My noble friend is right: there was no reference to Hinkley in the Statement but, as the Prime Minister has said, there is more to our relationship with China than Hinkley. She spoke to President Xi about the fact that we are reviewing the Hinkley deal because it is a complex, large-scale infrastructure project. It is only right that we look at the detail and consider all its component parts. The Prime Minister assured President Xi that a decision will be made in a timely manner.

Lord Elystan-Morgan (CB): My Lords, the noble Baroness will appreciate that the Prime Minister said nothing at all at the summit on the position of EU nationals who have settled in the United Kingdom. Many people from all shades of politics are deeply disappointed about that situation because they consider that the United Kingdom Government have given those people a clear undertaking that they could remain in perpetuity if they so wished. Does the Leader of the House, who is very greatly respected, agree that the one thing that you cannot use as a bargaining chip, however great the temptation, is your word of honour?

Baroness Evans of Bowes Park: I assure the noble Lord that the Prime Minister has been clear that she is determined to protect the status of EU nationals already living here, and the only circumstances in which that would not be possible are if British citizens' rights in European member states are not protected in return—and that is something that I find very hard to imagine.

Lord Darling of Roulanish (Lab): My Lords, the noble Baroness said that the Government were not going to provide a running commentary, but in many ways that is precisely what we have had for two months. We have had the Secretary of State for leaving Europe saying something in the House the other day, only to be sharply slapped down—rightly, in my view—by the Prime Minister and No. 10. The problem is that, during the referendum, the alternative to Britain being in Europe was never actually discussed; it was not on the ballot paper. The real problem is that, unless and until this country, led by the Government, works out where it stands on issues such as the single market—or on immigration, if we are not going to have a points-based system—we are never going to get anywhere. I am not one for rushing into things when we do not need to, and I know that the process will be long and tortuous, but can the noble Baroness tell us when the Government intend to set out their stall either in a White Paper or in some other way so that we can have a proper debate in this country, which we rather missed out on two months ago?

Baroness Evans of Bowes Park: The noble Lord is absolutely right: it will take time for negotiations for us to leave the EU. That is why the Prime Minister has been clear that we will not invoke Article 50 before the end of the year. We are focusing on establishing a UK approach and clear objectives for negotiations. As I said, we are well aware that negotiations will not be brief or straightforward and believe that it would be inappropriate to set out timelines for entering a negotiation. We want to get the best deal for Britain, not the quickest one. As noble Lords will be aware with the changes in government, we have a new Department for International Trade, but we also have

the Department for Exiting the European Union, and they will remain in close contact with investors and businesses throughout the process to facilitate a stable and transparent process. We are already engaging widely, and your Lordships' House will of course be involved with our thinking.

Lord Higgins (Con): My Lords, does not this Statement, combined with a highly critical report from the Electoral Commission, demonstrate the very real dangers of holding referendums rather than relying on representative parliamentary democracy? Was there any discussion at the summit with regard to the enormous influx both of refugees and of economic migrants into the European Community area? Why are we continuing to encourage and facilitate traffickers by rescuing—quite rightly—people who are trying to cross the Mediterranean, at the same time aiding the traffickers, who can say, "Don't worry if the boats don't look safe—you'll be rescued by the Royal Navy and arrive in Italy or Greece in due course"? It is highly dangerous, and we ought not to continue this practice, which simply exacerbates the immigration problem.

Baroness Evans of Bowes Park: The G20 summit focused on the need to develop a sustainable framework for the global management of migration. By reducing the incentives to make dangerous secondary journeys and stopping organised immigration crime groups from exploiting the vulnerable, we can achieve better outcomes for migrants. As my noble friend will be aware, the UK is a major contributor to Operation Sophia. We are also looking ahead from the summit to two high-level migration events at the UN General Assembly later this month: the UN Secretary-General's high-level meeting on large movements of refugees and migrants and President Obama's leaders' summit on refugees. They will build on the work that was undertaken at the London Syria conference in February.

Baroness Smith of Newnham (LD): My Lords, the Prime Minister's Statement is a little perplexing. She says that,

"we will make a success of Brexit",

but that follows:

"By building on existing partnerships".

Surely the point of Brexit is that we are leaving our most important partnership—the European Union. Can the noble Baroness explain how we plan to become a global leader in trade when, at the moment, all our trade negotiation is done through that most important partnership of the European Union and we do not have our own trade negotiators?

Baroness Evans of Bowes Park: As I have said, we are not turning our back on Europe. We want to be a global leader in trade and we are negotiating a new relationship with Europe.

Lord Soley (Lab): My Lords, what will be the noble Baroness's role in this? There are a number of European Union committees—I am a member of the Sub-Committee on Home Affairs—which are looking at legislation coming from Europe now. My view is that we will have to make some attempt to put into British law those things that are coming through and then change them later. How will the noble Baroness manage the House's agenda on European legislation that is coming through now and will continue to come through? We cannot assume that we will not put it into effect, in particular on security, policing and terrorism, which is an immensely important area. Does she have any proposals for how we handle this?

Baroness Evans of Bowes Park: The noble Lord is absolutely right: it is critical that the well-respected work of the EU committees should now reflect the new reality that we are in. Certainly, through the usual channels and discussions with other Members across the House, we will be looking to ensure that the way we work here allows us to involve ourselves in the most effective way. We are in early discussions—obviously we have only just come back from Recess—but I assure the noble Lord that it is at the forefront of my mind. I will, I am sure, be involved in a number of conversations with my opposite numbers over the coming weeks.

Lord Cormack (Con): My Lords, does my noble friend accept that among those who are most disillusioned and disaffected following the vote on 23 June are the young people of this country, particularly in our universities? They are our future. What will the Government do to try to convince our university students and other young people, on whom we all depend, that there truly is—I believe it is perfectly possible—a bright future beckoning? They must be convinced that splendid isolation is not the answer and that real co-operation is. Will there be a concerted attempt by government Ministers to put the case across?

Baroness Evans of Bowes Park: I hope my noble friend was reassured by the tone of the Statement I repeated today, because I think it was very clear that we are and want to remain an outward-facing country, and that we want to make the best of the opportunities that the vote has allowed us. There is a lot that we can do in this country ourselves. The Prime Minister has made very clear that the social justice agenda is extremely high in her priorities. That is why, as I have said, we are developing a proper industrial strategy at home so that more people can share in our national prosperity through higher real wages and greater opportunities for young people. We have a lot of initiatives, such as the apprenticeship levy, and we are looking at ways to ensure that, through a strong education system and ensuring that there are job opportunities and new opportunities for us globally, young people can see that this country has an extremely bright future.

Lord Empey (UUP): My Lords, the Prime Minister, the Secretary of State for Exiting the European Union and other leading Cabinet Ministers have all said that they want to see an open border between the Republic of Ireland and the United Kingdom in Northern Ireland. I support that objective. They have also said that they want to see greater control on immigration from the European Union, which is also an objective I support. Does the noble Baroness not see a glaring inconsistency between those two laudable objectives? Has sufficient work been done to drill down into the

[Lord Empey]
detail to see precisely how these conflicting objectives are to be achieved in a way that does not result in the border between the United Kingdom and the European Union being moved to Stranraer?

Baroness Evans of Bowes Park: I certainly assure the noble Lord that we are fully engaging with the Governments of Scotland, Wales and Northern Ireland to ensure a UK-wide approach to our negotiation. As my noble friend Lord Bridges made clear in his Statement on Monday, we have reiterated our determination that there will be no return to the hard borders of the past.

Baroness Crawley (Lab): My Lords, were there any discussions with our European partners during the summit at either ministerial or civil servant level about the unfortunate but significant rise in hate crime since the vote on 23 June?

Baroness Evans of Bowes Park: Certainly, we take this issue extremely seriously, which is why we have produced a new *Hate Crime Action Plan*. This is something of which we are extremely mindful. I believe the latest figures show that the situation is still unacceptable but the spike that was seen has now gone. However, I assure the noble Baroness that this matter is at the forefront of our mind and is certainly something that we all take very seriously in discussions with other colleagues globally. We will focus on it because, as I said, we want to ensure that we are seen to be, and remain, the outward-looking, global international country that we have always been.

Baroness Wheatcroft (Con): My Lords, the country is about to embark on a momentous change of direction that will affect generations. Since, once Article 50 is triggered there is no going back, how does my noble friend the Minister expect the concept of the sovereignty of Parliament to be respected during the process?

Baroness Evans of Bowes Park: Of course Parliament will have a role in making sure that we find the best way forward and the Department for Exiting the European Union will consider the detailed arrangements for that. The referendum result was a clear sign that the majority of the British people wish to see Parliament's sovereignty strengthened, so throughout this process Parliament will be regularly informed, updated and engaged.

Lord Harris of Haringey (Lab): The noble Baroness the Leader of the House elided—inadvertently, I am sure—over the question asked by my noble friend Lord Darling. When can we expect to see a definitive statement from Her Majesty's Government setting out their vision of what a post-EU future for this country will be like, and what they intend will be the prime objectives in their negotiations? When will Parliament see that in a White Paper and when will the British people see it?

Baroness Evans of Bowes Park: As I have said on a number of occasions during these questions, our priority is to regain control of the number of people who come here from Europe but also to allow British companies to trade with a single market in goods and services. We will not give a running commentary on negotiations.

Lord Marlesford (Con): My Lords, I note that the Prime Minister said that we will not shy away from dealing with illegal immigrants. Do the Government now recognise that the rate of immigration into Europe has become wholly unsustainable and that the EU's system of quotas is not working because it has been completely ignored, and that a new approach is needed? Will my noble friend encourage the Prime Minister to take to the UN in America my proposal for having an area of desert, probably in north Africa, designated for the reception of all immigrants, where they can be sorted out and dealt with?

Baroness Evans of Bowes Park: As I have said, the G20 summit focused on the need to develop a sustainable framework for the global management of migration. I am not sure that the President of the United States will particularly listen to me.

Lord Stoddart of Swindon (Ind Lab): My Lords, I have listened to the debate with great interest. A lot of noble Lords do not appear to know what Brexit means. Brexit means leave. That is precisely the question that the electorate answered. They were asked whether they wished to remain or whether they wished to leave. They decided that they wanted to leave. That was an instruction to the Government to get on with it. The great disgrace is that the Government and the Civil Service had not prepared for either alternative. That, of course, is the problem we are facing now.

But it is not all doom and gloom. There is a great future ahead, as there has been a great, historic past. We should take hold of that. We should not be supplicants; we are a great country and we should use our power for the good of this country and the rest of the world.

I found the second paragraph of page 3 very interesting. Does it mean that the Government are moving towards syndicalism?

Baroness Evans of Bowes Park: I certainly endorse the noble Lord's upbeat words. We are not turning our backs on the world. We are the same outward-looking, globally minded, big-thinking country we always have been. We remain open for business; we are negotiating a new relationship with Europe.

Investigatory Powers Bill

Committee (5th Day)

4.36 pm

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; 2nd Report from the Delegated Powers Committee; 3rd Report from the Constitution Committee

Amendment 194H

Moved by ***Lord Rosser***

194H: After Clause 220, insert the following new Clause—

"Technology Advisory Panel

(1) Within six months of the passing of this Act a Technology Advisory Panel shall be established.

(2) The Panel shall be appointed by and report directly to the Investigatory Powers Commissioner.

(3) The purpose of the Panel shall be to advise the Secretary of State and the Investigatory Powers Commissioner on—

(a) the impact of changing technology on the exercise of investigatory powers; and

(b) the availability and development of techniques to use investigatory powers while minimising interference with privacy."

Lord Rosser (Lab): My Lords, first, I express our thanks to David Anderson QC, the Independent Reviewer of Terrorism Legislation, for his independent review of the operational case for the bulk investigatory powers contained in Parts 6 and 7 of the Bill, including the *Operational Case for Bulk Powers* document published with the Bill. The review came about as a result of pressure from the shadow Home Office team during the passage of the Bill in the Commons and is intended to assist in our consideration of the need for the bulk powers in the Bill.

While there had been three preparatory studies, pre-legislative and legislative scrutiny by a number of parliamentary committees, and the Government's presentation in March of the operational case, consideration of the Bill had not included an authoritative, independent analysis of the operational case for the bulk investigatory powers in Parts 6 and 7. This is now the first opportunity we have had to discuss Mr Anderson's report as it was not available either at Second Reading or the days spent in Committee prior to the Summer Recess.

The review by David Anderson, which became available last month, considered the operational case—whether there was one, and the strength or otherwise of any such case—for four of the powers in the Bill, namely: bulk interception, bulk equipment interference, bulk acquisition of communications data and bulk personal datasets. These powers can be used only by MI5, MI6 and GCHQ. It seems that the UK is one of five EU member states, the others being Germany, France, the Netherlands and Sweden, which have detailed laws that authorise the conduct of activities similar to at least some of the powers that Mr Anderson was asked to review.

In chapter 4 of his report Mr Anderson sets out the methodology by which he sought to evaluate the operational case for the powers under review. In paragraph 4.5 on page 72 he states that:

"A frame of reference is needed for the purposes of evaluating the utility or otherwise of the powers under review".

Mr Anderson says that such a framework is not provided by the Government's operational case, to which I have already referred, since it,

"categorises the purposes served by the powers under review in ways which lack coherence and consistency".

He says that he had to ask the security and intelligence agencies to agree a classification against which their claims of utility could be evaluated. Perhaps the Minister can give us the Government's response to Mr Anderson's views on the operational case for the bulk powers he was asked to review.

Each member of the review team was in agreement with the conclusions of Mr Anderson's report and with the single recommendation that he made. The report's conclusion is that there is,

"a proven operational case for three of the bulk powers, and that there is a distinct (though not yet proven) operational case for bulk equipment interference".

Equipment interference in bulk as opposed to a targeted equipment interference warrant is a new power. The report also found that:

"The bulk powers play an important part in identifying, understanding and averting threats in Great Britain, Northern Ireland and further afield. Where alternative methods exist, they are often less effective, more dangerous, more resource-intensive, more intrusive or slower".

Mr Anderson was not asked to reach conclusions as to the proportionality or desirability of the bulk powers, as opposed to the operational case for them, on the grounds that these are matters for Parliament.

David Anderson's report makes a single recommendation, which is covered by this amendment. That recommendation is that a technology advisory panel of independent academics and industry experts should be appointed by the Investigatory Powers Commission to advise on the impact of changing technology and on how MI5, MI6 and GCHQ can reduce the privacy footprint of their activities.

While the report finds that the bulk powers in question have a clear operational purpose, it accepts that technological changes will lead to new questions being raised and that adoption of the recommendation for a technology advisory panel will enable such questions to be asked and answered on a properly informed basis. I hope that, when he responds, the Minister will indicate where the Government stand in relation to the single recommendation in the report. We fully support the recommendation and the case that Anderson has made for the panel, which we believe should be established as soon as practicably possible.

While there is only a single recommendation in the report—and this is our first opportunity to discuss it—other points and issues are addressed. I should like to take the opportunity to raise some of them with the Government and to seek a response on the record prior to making any decisions about what and what not to raise on Report.

Paragraph 2.84 on page 45 of the Anderson report states:

"It has come to my attention that some",

bulk personal datasets,

"may contain material that is comparable to the content of communications, and in rare cases even material subject to",

legal professional privilege.

"In the light of these facts I have already recommended to the Home Office that consideration be given to the introduction of additional safeguards to the Bill and Code of Practice".

Can the Minister say what action the Government have taken or intend to take in the light of what David Anderson has said in the paragraph to which I have just referred?

In paragraph 2.53 on page 36 of his report, Mr Anderson states:

"The Government has expressly acknowledged that targeted thematic EI"—

[Lord Rosser]

equipment interference—

"operations, like their bulk counterparts, can take place 'at scale', and that they may cover a large geographic area or involve the collection of a large volume of data".

He goes on to say that nevertheless the thematic equipment interference power is subject to fewer limitations. He says that, in particular, targeted thematic equipment interference operations,

"can be conducted by a wider range of authorities (including the police) … need not be connected with national security, and … need not be overseas-focused".

In paragraphs 2.56 and 2.57 on page 37 of his report, David Anderson says that he has previously commented that the widely drawn provision for targeted thematic equipment interference in practice introduces an alternative means of performing bulk equipment interference but with fewer safeguards, and that it should be possible to reduce the scope of targeted thematic warrants,

"so as to permit only such warrants as could safely be issued without the extra safeguards associated with bulk".

He goes on to say that that comment relates to the desirable scope of targeted warrants under Part 5 of the Bill and not to the powers that he was tasked to review. Consequently, he says that he has not pursued the matter in his report, apart from noting that it would be particularly important for those authorising and approving warrants to ensure that the thematic powers are kept within strict bounds and not used as a means of avoiding or circumventing the restrictions that are quite properly being placed on the authorisation of bulk warrants.

4.45 pm

David Anderson concludes his report by saying:

"I hope and expect that the IPC will keep a particularly close eye on this".

I do not think it is unrealistic to suggest that if this issue had come within Part 6 or Part 7 of the Investigatory Powers Bill, which he was asked to review, rather than in Part 5, and in the light of the comments he has made in his report, David Anderson might have made some sort of recommendation on the point about the use of targeted thematic equipment interference, rather than simply expressing the hope that the Investigatory Powers Commissioner will keep a particularly close eye on this. Since this is also a matter that Mr Anderson has raised previously with the Government, and in the light of his rejoinder in paragraph 2.56 which shows that he does not appear to have been convinced by the Government's response, what action do the Government intend to take on Mr Anderson's view that excessive weight is being placed by the Government on the discretion of decision-makers and that it should be possible to reduce the scope of targeted thematic warrants so as to permit only such warrants as could safely be issued without the extra safeguards associated with bulk?

The Bill and the terms of reference of the Anderson review are based on a narrow definition of "bulk powers" and are limited to those powers that provide for data in bulk to be acquired by the Government themselves. Powers to require providers of telephone and internet services to collect and retain their customers' data in bulk do not qualify as bulk powers, even when intelligence or law enforcement agencies have the power to acquire those data. Referring to bulk personal datasets in paragraph 2.74 on page 43 of his report, David Anderson says that the power to retain and use bulk personal datasets,

"differs from the other powers under review",

for though, like them, the power in the Bill is exercisable only by the security and intelligence agencies, the reality is that the National Crime Agency, police forces and other bodies also obtain, retain and use bulk personal datasets outside the scope of the Bill, and will continue to do so.

David Anderson goes on to say that,

"it is well known that the analysis of bulk data is already conducted at a high degree of sophistication both within Government and, especially, in the private sector".

Continuing, he says that the searching of bulk personal datasets by the security and intelligence agencies is performed in a way that is analogous to commercial techniques. However, far from claiming to employ searching techniques any more advanced than those available commercially, Anderson says that the security and intelligence agencies see themselves as "catching up" with the commercial sector. It seems that the examples Mr Anderson and his team were shown appeared relatively straightforward and were not indicative of the use of bulk personal datasets to predict in the highly sophisticated manner attributed to some private sector operatives.

The 2015 Intelligence and Security Committee of Parliament report criticised the absence of,

"restrictions on the acquisition, storage, retention, sharing and destruction of bulk personal datasets".

This Bill sets out to address those concerns. But how and when are those concerns about the obtaining, retaining and use of bulk personal datasets by all those outside the security and intelligence agencies, including the private sector, going to be addressed? I would be obliged if the Minister could respond to that question in his reply.

David Anderson refers in paragraph 1.20 on page 8 of his report to the principal safeguards applicable to the powers under review. He goes on to say that it remains to be seen whether further safeguards will be needed in relation to certain capabilities, such as accessing communications data as a consequence of EU law. A footnote at the bottom of page 8 refers to the opinion of the Advocate-General in the case of the Home Secretary v Tom Watson MP, involving a legal challenge to the Data Retention and Investigatory Powers Act 2014 and the principal safeguards pressed by the Advocate-General, including prior independent approval and a ban on use for the investigation of ordinary or non-serious crime. Although the opinion of the Advocate-General does not represent a decision by the court, do the Government take the view that the safeguards pressed by the Advocate-General are already incorporated in all relevant sections of the Bill? I raise this point also in light of the fact that Mr Anderson's terms of reference did not provide for his review to cover the whole range of powers that could be described as bulk powers.

The powers in this Bill which are liable to result in the collection or retention of large quantities of data not relating to current targets but which fall outside the scope of his review include, of course, the proposed new power to require the retention of internet connection records and the power to target equipment interference on equipment in a particular location, for example, which will be covered by the thematic emergency interference power.

In paragraph 2.41(b) on page 33 of his report, David Anderson states that it is not currently envisaged that the bulk acquisition power in the Bill will be used to obtain internet connection records. In a footnote at the bottom of that page, though, Mr Anderson states that he has been told that this is no more than a statement of present practice and intention and that neither the Bill nor the draft code of practice rules out the future use of the bulk acquisition power in relation to internet connection records. Can the Minister say in what circumstances the Government might wish in future to see the bulk acquisition power used in relation to internet connection records, and whether going down this road would necessitate further legislation or a change in the code of practice to which the agreement of Parliament would have to be obtained?

Finally, I come back to the single recommendation in the report for the setting up of a technology advisory panel, appointed by and reporting to the independent Investigatory Powers Commission, to support both the IPC and the Secretary of State by advising them on the impact of changing technology on the exercise of investigatory powers, and on the availability and development of techniques to use those powers while minimising interference with privacy.

Mr Anderson says in paragraph 9.30 of his report on page 128 that he was strengthened in his resolve to make this recommendation by learning of the existence, not publicly disclosed until now, of the scientific advisory committees, or SACs, that give external advice to, respectively, MI5, MI6 and GCHQ. This is not the only matter that has emerged into the public domain in recent months relating to our security and intelligence services and the way in which they function. One only hopes that in future there will be rather harder challenges made about the need to keep information secret which if made public would not constitute a threat to national security or the effectiveness of our security and intelligence services, but which might, if made public, enhance trust over the necessity for the powers that they have, the way in which they are exercised and the safeguards and checks that apply. I move Amendment 194H.

Baroness Hamwee (LD): I hope I am right in thinking that the Government did not table an amendment to this effect at this stage because of time constraints and that they will bring forward their own version. In case I am wrong about that, I will ask the Minister a question which I asked him privately a couple of days ago: what do we have to do to persuade the Government to accept Mr Anderson's recommendation? I can hear the response to a different hypothetical amendment, but David Anderson did not recommend that. So we have the converse being the situation we have now. There is so much confidence in him. We are all aware of the care that he has taken with this report and to stay within the terms of reference, which we, too, would have liked to have been rather wider. His recommendation should be accepted. None of us will be surprised to be told, "Yes, in principle, but not quite this drafting". Nor is it surprising that the answer to the question about the operational case is, "Yes, there is a utility in these powers", even though, as I say, the question is narrower than we would have liked to have seen.

Mr Anderson identified the difficulties of buying in expertise to perform the functions that he has talked about. He said that the experts involved should be "capable of probing" the agencies,

"explaining difficult concepts to lay decision-makers, and generally contributing to the culture of robust challenge that will be essential to the effective operation of the IPC".

He envisaged,

"a mixture of independent academics and individuals with substantial, current experience of industry".

He does not discount moral philosophers. I am sorry that the noble Baroness, Lady O'Neill, just left, because there are Members of this House who could make the case for moral philosophers in this arrangement and who, by their own contributions over a range of issues, continually make the case.

Mr Anderson also quoted a point about the importance of the IPC proactively seeking out and bringing to public attention,

"material legal interpretations on the basis of which powers are exercised or asserted".

I have struggled—as will have been clear enough to other noble Lords—to understand the subject matter of the Bill to get beyond the answer to Polonius's question:

"What do you read, my lord?",

which for me is also, "Words, words, words". Graham Smith, the lawyer who made this point and who is quoted by David Anderson, in evidence to the Joint Committee wrote about the importance of bringing,

"a legal interpretation … to the attention of the oversight body which would have to bring it to public attention".

He said that such mechanisms—bringing legal interpretations into the arena—would enable them to be,

"publicly debated and if appropriate challenged".

He talked about providing,

"not only oversight but insight".

I like that phrase.

These issues of the legal interpretation are inseparable from what is conventionally thought of as technical. I mention them now as it seems useful to try to cover the ground a little. I will try not to repeat the points made by the noble Lord, Lord Rosser, with which, by and large, these Benches completely agree.

David Anderson gave us one example of the technological issues affecting the future use of bulk powers: the continuing trend towards anonymisation. I thought I would share with the Committee an experience I had recently that brought home to me of what general and overwhelming public importance these issues are. I was very startled to find that a play I went to at the Edinburgh Fringe a couple of weeks ago was about RIPA—not perhaps what you want at nine o'clock in the morning of a holiday. It was also primarily

[Baroness Hamwee]
about how easily information about each of us is accessed, used or misused. I hope that Tim Price, the writer, will forgive my quoting him alongside Shakespeare, but I was taken by this. I will not read the whole script. He said that,

"if you believe in freedom of association, if you believe in freedom to protest, if you believe in privacy, then the only way to exercise those freedoms is to be anonymous … If a Government cannot identify you, it cannot surveil you".

From these Benches, we support the amendment.

5 pm

Lord Murphy of Torfaen (Lab): My Lords, I support my noble friend's amendment, which he very ably moved. As he said, it is the only amendment recommended by David Anderson QC with regard to his latest report.

The issue of bulk powers is enormously important and this is the first time that the Committee has had an opportunity to discuss the report on the whole question. It was discussed at some length by the Joint Committee, which I was privileged to chair. The committee took both oral and written evidence and finally came to and made 23 conclusions and recommendations on bulk powers in its report to both Houses of Parliament. We asked the Government to give a fuller justification for bulk powers, which they did. We were worried about the need to ensure that Article 8 of the European convention would be complied with. We said that the Investigatory Powers Commissioner should report within two years on proper safeguards around these powers, that a proper code of practice on equipment interference and indeed on bulk personal databases should be established, and that the ISC should look at the issue of bulk personal databases.

I think that the other place took a wise decision in asking the distinguished Mr Anderson to look in enormous detail at bulk powers, and it seems that he has made an overwhelming case for bulk interception, bulk acquisition and bulk personal databases. The case for bulk equipment interference was less strong, but nevertheless still there. As I say, the operational case for bulk powers was impressive and the report sets out the need for these powers to deal with terrorists, child abuse, cyberattacks on companies, rescuing hostages in Afghanistan and organised crime. What particularly impressed me is the importance of speed in these operations and of the powers to deal with all these problems being used quickly to ensure that proper information can be given to the appropriate agencies.

Mr Anderson inevitably looked at the alternatives to bulk powers, but said that they,

"would often be less effective, more dangerous, more resource-intensive, more intrusive or slower".

Having said all that, there still needs to be a proper regime of safeguards if Parliament finally agrees with the Government about the bulk powers provided for in the Bill. We should look at those proper safeguards. Clearly the use of both a judge and the Secretary of State is important. I believe too that the Intelligence and Security Committee of Parliament should look very carefully indeed at the use of bulk powers in the months and years ahead.

Finally, my noble friend referred specifically to the single recommendation for the setting up of a technical advisory panel. It is worth reflecting on the fact that in his report, David Anderson said that the panel would deal not only with technological changes but with how MI5, MI6 and GCHQ could reduce the privacy footprint of their activities. That is why I support the recommendations and the conclusions of the Anderson report and I urge the Government to ensure that in implementing it there are proper safeguards as we go forward in these hugely changeable technological times.

Lord Carlile of Berriew (LD): My Lords, other noble Lords have taken the opportunity in addressing this amendment to make some general comments about David Anderson's excellent report on bulk powers, so I shall do the same in what I hope will be just a few words. In my view, Mr Anderson has made a powerful case for the need for the bulk powers that he describes. They are very much a part of the fight against terrorism. Similar powers have been used well by the security services and authorities in this country and—touching wood and crossing fingers—that is the reason why we have not experienced, for example, what happened in Nice. I agree entirely with what has just been said by the noble Lord, Lord Murphy, who as we know has considerable experience in dealing with and judging these matters, and I share his view that the safeguards should be as strong in every way as has been recommended by Mr Anderson.

Turning to the question of the technology advisory panel, I have complete sympathy with Mr Anderson's menu but not necessarily with the recipe. With respect to him, I think that we might do rather better than his suggestion of the way in which a technology advisory panel is established. I suspect that he would be the first to agree that what he is concerned with is not the form of the panel, nor to whom it is accountable, but the substance: what it does and what it sets out to achieve.

My suggestion to the Government is that we could broaden the technology advisory panel's scope and make it more acceptably accountable. The suggestion by Mr Anderson is an unusual one, in that the panel should be appointed by, and be accountable and report directly to, the Investigatory Powers Commissioner. That suggests that it has a pretty narrow scope. In my view—obviously, I use my now rather historical experience as the previous Independent Reviewer of Terrorism Legislation—a technology advisory panel would indeed be valuable, but not just to the Investigatory Powers Commissioner. My suggestion is therefore that this panel should exist but that it should be appointed by the Secretary of State and, through them, should be accountable to Parliament, at least in a general sense.

The advice given by the technology advisory panel would of course be available to the Investigatory Powers Commissioner, but he is not the only commissioner. It would also be available, if appointed by the Secretary of State and accountable in that normal way, to parliamentary committees and other commissioners, to which it could give advice. Indeed, my hope is that a technology advisory panel, or something with a similar name and that intent, should, like the Independent Reviewer of Terrorism Legislation, publish not only

annual reports but tasked reports on specific issues raised —of which the Anderson report we are discussing is a very good example.

The technology advisory panel, if appointed on a broader basis with that greater accountability, would help considerably without placing undue burdens on the security services, the police or GCHQ. Indeed, they, too, would be able to turn to it if they wished to; it would be a matter for their chiefs. We have some experience present in this House as we speak.

I hope that we can adopt the spirit of this part of Mr Anderson's remarkable report, but perhaps look at ways of making it even more useful than he had in mind, and with forms of accountability that we in this House and the other place understand more readily.

Lord King of Bridgwater (Con): This is a very limited amendment in one sense, but this has become something of a Second Reading debate on the Anderson report, and I congratulate the noble Lord, Lord Rosser, on the way he introduced it. He made it clear that there is a considerable degree of common ground on the importance of these powers, which have been so carefully scrutinised by Mr Anderson. The whole House will recognise the great debt that we owe him. People not just in this country but in many others will read this report with great interest. As we have said before, there is no doubt that the threat is severe and very real, and we need to ensure that we have all reasonable methods of combating it. We will go further into this issue. I listened with great interest to the comments of the noble Lord, Lord Carlile. I will also be interested to hear what my noble friend the Minister has to say about the panel and the noble Lord's recommendation. Even if it is not identical to what he recommends, something along these lines may well have considerable merit.

Lord Campbell of Pittenweem (LD): My Lords, if this was another forum, I might well say that I concur with the opinion of my noble friend Lord Carlile and say nothing more, but I, too, would like to add a few comments about this remarkable report. It has attracted some controversy. There was a sense at one stage, I think, that Mr Anderson was going up to the mountain and was expected to come down with tablets of stone, and to some extent he has done that.

The point I will direct my brief remarks to is where Mr Anderson says that the review does not,

"reach conclusions as to the proportionality or desirability of the bulk powers … As the terms of reference for the Review made clear, these are matters for Parliament".

My judgment—I do not suggest that my judgment is any better or worse than any other noble Lord's—is that from the point of view of proportionality and desirability, these powers meet those two criteria. I offer in support of that the fact that the continuing threat level in this country is severe, as well as the experience in France and other parts of Europe. In that sense, if we are to reach a judgment about proportionality and desirability, I most certainly am on the side of those who say that those two elements are more than satisfied by the requirements now placed on us all in relation to the security of this country.

Lord Strasburger: My Lords, I would like to put three questions to the Government, which arise from Mr Anderson's latest report. There are not many surprises in the report but one of them—certainly to me and most other people who follow these matters—was the revelation that bulk personal datasets are used by agencies beyond the intelligence agencies. Perhaps the Minister could give us some information about which other bodies use bulk personal datasets.

I also ask the Minister to put on the record the difference between bulk equipment interference and thematic targeted equipment interference. I got the impression from Mr Anderson's report that he was struggling to spot the dividing line, apart from that bulk equipment interference is likely to be required where,

"the Secretary of State and the Judicial Commissioner is not ... able to assess the necessity and proportionality to a sufficient degree at the time of issuing the warrant".

Necessity and proportionality are the golden rules throughout the Bill and their apparent demise in respect of bulk equipment interference seems to alter the relationship between the citizen and the state. My third question is to ask the Minister to comment on this apparent relinquishing of the golden rules of proportionality and necessity in the case of bulk equipment interference.

The Earl of Erroll (CB): My Lords, although I acknowledge that this power may be necessary to try to track down and deal with certain terrorist threats at certain points, the huge danger is that although we may regard the people currently in control of the state as being benign, we do not know that they will always be so. The real problem is privacy and that is why this amendment is particularly important. The moment no threat is urgent, we must get back to a state where privacy is the most important issue, because this power can also be used by organs of the state to protect themselves when they may have done something wrong or there may be someone not so benign within them.

This is a two-edged sword. On the one hand, the data collected may be very useful and may prevent some incidents, although some people challenge that; on the other, this could also mean a great weakness in the system whereby someone could get inside the system and then protect themselves. I would be very careful about assuming that it is always good and the state will always behave in a benign way. Just because I am paranoid, that does not mean they are not out to get me—that is the great saying. I do not think I am being paranoid but at some point in the future we will need to get back to a position where the state does not have the same ability to acquire data about its citizens as totalitarian states did in the recent past.

5.15 pm

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, I am very grateful to all noble Lords who have commented on David Anderson QC's review. I take this opportunity to thank Mr Anderson for undertaking that review and I welcome his comprehensive report. The history of events leading up to the commissioning of that report was well rehearsed by the noble Lord, Lord Rosser. Mr Anderson

[Earl Howe]
was supported by an expert, security-cleared team of his own choosing. The Government, and in particular the security and intelligence agencies, provided Mr Anderson and his team with all necessary information, access and assistance for them to undertake the review effectively. As the report itself makes plain, almost 250 members of the security and intelligence agencies have been involved in the review, dedicating over 2,000 man-hours to support it. This has ensured that Mr Anderson has had the necessary resources to undertake a detailed assessment of the operational case for bulk powers in sufficient time to inform today's debate.

As has been said today, the report sets out in extensive detail the review's working methods and the sources of evidence that have been used to determine whether the operational case for bulk powers has been made. As noble Lords will have observed, these sources of evidence include: 60 detailed and highly classified case studies; internal security and intelligence agency documents considering the utility of bulk powers, which address shortcomings and failures as well as successes; statistical information on the extent of the use of bulk powers; allegations made by Edward Snowden; and a number of previous reviews, including in the UK and overseas. In fact, David Anderson found that previous reviews were either supportive of the need for the bulk powers or that they were in some cases not relevant to the UK context.

In their consideration of all this evidence, the review team critically appraised the need for bulk capabilities, including considering whether the same result could have been achieved through alternative investigative methods. This question has not just been taken on trust. The expertise of the review team has meant that, in the words of Mr Anderson, the security and intelligence agencies have been put,

"to strict proof of what they assert".

In relation to the scope of the review, David Anderson was specifically asked to consider the operational case for bulk powers. The sensitive nature of those powers means that this task rightly had to be conducted by a security-cleared review team. But the safeguards that apply to those powers are, rightly, a matter for Parliament to consider as part of our ongoing scrutiny of the Bill's provisions. The Government are clear that the Bill ensures that robust safeguards and world-leading oversight will apply to the exercise of bulk powers. For example, every bulk warrant will be subject to the double lock; any subsequent examination of material collected must be considered necessary and proportionate for an operational purpose approved by the Secretary of State and a judicial commissioner; and before issuing a bulk warrant, the Secretary of State must consider whether the same result could be achieved through less intrusive means.

The noble Lord, Lord Campbell, pointed out that the review did not specifically consider whether the use of bulk powers is proportionate. That is true; but it is also true that the question of whether alternative methods could achieve the same result was examined in detail. This question is equally important to the consideration of whether these powers are proportionate and necessary. The review has concluded that in the great majority of cases, there will be no effective alternative to the use of bulk powers and that where alternatives exist,

"they were likely to produce less comprehensive intelligence and were often more dangerous … more resource-intensive, more intrusive or—crucially—slower".

I turn now to the conclusions of the review in a bit more detail. Taken together, they show that bulk powers are crucial. The report concludes that these powers,

"have a clear operational purpose",

that they,

"play an important part in identifying, understanding and averting threats in Great Britain, Northern Ireland and further afield",

and that the contributions made by bulk powers could not be replicated by other means. The review also concludes that bulk powers are vital across the full range of security and intelligence agency activity, including counterterrorism, cyberdefence, child sexual exploitation, organised crime and the support of military operations, and that they have been used to disrupt terrorist activity, prevent bomb attacks, facilitate the rescue of hostages, thwart cyberattacks and save lives.

This is a vital point. Mr Anderson is clear that questions of necessity cannot be entirely divorced from questions of proportionality. The noble Baroness, Lady Hamwee, rather neatly brought us into the domain of moral philosophy. The review concludes beyond all doubt that, were it not for the bulk powers, there would be more successful terrorist attacks, more successful cyberattacks, more dead hostages and military personnel, and more abused and exploited children. It is now for Parliament to decide whether the powers that have prevented such atrocities are proportionate, given the threats faced by the UK and our European and other allies around the world, given the extensive safeguards and oversight provided in this Bill, and given the review's conclusions that there are no effective alternatives. The Government firmly believe that they are.

Turning briefly to the individual powers under review, the report concludes that there is a,

"proven operational case for three of the bulk powers",

with reference to bulk interception, bulk acquisition of communications data and bulk personal datasets.

In relation to bulk interception, the report concludes that it is of "vital utility" to the security and intelligence agencies and that alternative methods, alone or in combination, fall short of providing the same results.

The review finds that the bulk acquisition of communications data is,

"crucial in a variety of fields, including counter-terrorism, counter-espionage and counter proliferation".

In addition, the review states that case studies provided to the review team demonstrated that,

"bulk acquisition has contributed significantly to the disruption of terrorist operations and, through that disruption, almost certainly the saving of lives".

On bulk personal datasets, Mr Anderson states:

"I have no hesitation in concluding that BPDs are of great utility to the SIAs. The case studies that I examined provided unequivocal evidence of their value".

He goes on to conclude that in "vital" areas of work, such as pattern analysis and anomaly detection, there is "no practicable alternative".

Mr Anderson's conclusion in relation to bulk equipment interference, which I will come to in more detail in a second, is differentiated from the other powers under review in that he finds that there is a,

"distinct (though not yet proven) operational case",

for its use. The reason for this difference is that bulk equipment interference has not yet been exercised. That is not to say that bulk equipment interference is a new power. While it has not yet been deployed, activity that would be classed as bulk equipment interference under the Bill could be authorised under existing legislation but, to date, GCHQ has carried out only equipment interference operations which would have been authorised under a targeted equipment interference warrant under the Bill. While acknowledging that bulk equipment interference has not yet been used, the review still concludes that,

"an operational case for bulk EI has been made out in principle",

and that there are likely to be cases where,

"no effective alternative is available".

In summary, the conclusions of this detailed and thorough independent review mean that there can now be absolutely no question that the operational case for the bulk powers in the Bill has been comprehensively made out. It now falls to us to decide whether to continue to provide our security and intelligence agencies with these vital powers to counter the threats we face.

Let me turn to some of the specific questions and points that noble Lords have raised. First, I turn to the issue of bulk personal datasets, which a number of noble Lords referred to. A bulk personal dataset is a dataset containing information about a range of people, most of whom are not of interest to the security and intelligence agencies, for example a telephone directory. A list of people who have a passport is another good example of such a dataset. It includes personal information about a large number of individuals, the majority of which will relate to people who are not of security or intelligence interest. Analysis of bulk personal datasets is an essential way for the security and intelligence agencies to focus their efforts on individuals who threaten our national security. The use of bulk personal datasets is not new, and the Bill does not provide new powers for acquiring them; rather, it provides robust transparent safeguards around bulk personal datasets, including a requirement for warrants to authorise the retention and use of them. The safeguards are comparable to those provided in relation to other powers in the Bill, including the double lock, for example.

The noble Lord, Lord Rosser, pursued these issues, and in particular raised the point in the review where Mr Anderson says that some bulk personal datasets may contain,

"material that is comparable to the content of communications",

and, in rare cases, even material subject to legal professional privilege. He went on to say it is imperative that,

"consideration be given to the introduction of additional safeguards to the Bill and Code of Practice".

We are carefully considering whether changes should be made to the Bill and code of practice to address the rare occasions when a bulk personal dataset may contain material comparable to the content of communications or subject to legal professional privilege, and discussions on that are going on at the moment. As David Anderson's report also makes clear, in considering the sources of evidence, the review team specifically questioned whether similar results could have been achieved by other, less intrusive methods, I do not believe that anyone who has read this detailed and comprehensive report in full could come away with the impression that it did not consider hard evidence on that point.

The noble Lord, Lord Rosser, also flagged David Anderson's comment that the Government's operational case for bulk powers,

"categorises the purposes served by the powers under review in ways which lack coherence and consistency".

The Government's operational case for bulk powers was published in response to the recommendation of the Joint Committee that scrutinised the draft Bill, but we acknowledged that there was a need for the operational case to be subjected to independent scrutiny. That is why we commissioned David Anderson's review, and the conclusions of the review are clear that,

"bulk powers have a clear operational purpose".

The question was raised about bulk powers as distinct from targeted thematic powers. As noble Lords will remember, this issue was looked at by the Intelligence and Security Committee, and I will just quote a short passage from the speech of my right honourable friend Dominic Grieve MP, who is chair of the ISC, because it helps to inform this question. He said:

"The second issue concerns the agencies' use of equipment interference. Our concerns focused on the way in which the use of this capability is authorised, rather than on the need for it, which is clear to us. In particular, we were not initially provided with evidence that explained the need for a bulk power, as opposed to a targeted thematic one. That is why we reported in the way we did. Following publication of our report, we received additional evidence from the agencies as to why they need bulk equipment interference warrants to remain in the Bill and they actually made a persuasive case. More importantly, the Committee was reassured that information obtained by such means will be treated in exactly the same way, with exactly the same controls, as data acquired under a bulk interception warrant. The Committee is therefore broadly content that there is a valid case for the power to remain in the Bill, but, just as with bulk interception warrants, we want to see the safeguards and controls in detail and hope to do so in the near future".—[*Official Report*, Commons, 15/3/16; col. 838.]

I hope noble Lords will appreciate that we have been around this course before. There is a need for both powers, as I hope will now be accepted.

5.30 pm

However, I was asked about the difference between big data used by the security and intelligence agencies and data that other parts of government hold, or indeed data collected by business. Data sets compiled or used by different parts of government are used in a huge variety of ways, but they are primarily designed to help to deliver services as effectively and efficiently as possible. In an intelligence context, bulk personal data sets are held expressly for the purpose of helping the intelligence agencies in protecting national security

[Earl Howe]
and counterterrorism, combating proliferation and serious organised crime and safeguarding the UK's economic well-being.

As outlined in David Anderson's report, *A Question of Trust*, commercial companies hold a vast amount of data about individuals, including many that can be bought and sold by data brokers. He states:

"It may be legitimately be asked, if activity of a particular kind is widespread in the private sector, why it should not also be permitted (subject to proper supervision) to public authorities".

I think that is the right way of looking at it. We should remember that the Information Commissioner provides oversight of how other parts of government and business hold and use data under the authority of the Data Protection Act and other legislation but, to state the obvious, the use of data by the private sector is outside the scope of the Bill. Of course it is an important issue but it is not one for us to deal with today.

The noble Lord, Lord Strasburger, asked about bulk equipment interference. It is unique among the powers reviewed by David Anderson in that, while permissible under the existing statutory framework, as I have explained, it has not yet been deployed; however, it is not a new power. Equipment interference operations have always been designed and delivered in line with the legal framework in force at the time. The existing legal framework does not have bulk equipment interference as a bespoke concept. However, all agency operations have been conducted in ways, and with safeguards, that have ensured that they are necessary and proportionate and that they comply with the current legislative framework. The new Bill creates a new bespoke statutory framework for bulk equipment interference that ensures the same strong safeguards across the piece.

The value of bulk interception to find threats overseas, while still enormously important, is of declining value as there is a greater use of encryption. Bulk equipment interference will help the security and intelligence agencies to maintain their ability to understand what is happening in, for example, Syria. A bulk equipment interference warrant will be required when the material that is expected to be acquired needs careful sorting after acquisition to filter out and destroy excess information, whereas thematic equipment interference will be used when the subjects can be more clearly targeted.

I was asked about internet connection records and legislating to acquire ICRs in bulk now. There are no plans to acquire ICRs in bulk at present. To be clear, the safeguards that apply when acquiring communications data in bulk would apply equally to all types of communications data. It would not be right to differentiate between different types of communications data, given the strong safeguards in place for the bulk powers. The point here is that we are seeking to legislate not just for the technologies of today. We have quite purposefully sought to make the Bill technology-neutral.

To seek to legislate for the power to acquire ICRs in bulk in future would highlight a change in the intelligence agencies' requirements. Obviously, highlighting gaps in capabilities and indicating when the powers in the Bill may be used in certain ways can give criminals and terrorists an advantage. It goes without saying that that could endanger national security. It would not be sensible to broadcast to terrorists and serious criminals that we intend to implement a new capability from a certain date, which is exactly what we would be doing if we required the agencies to come back to Parliament every time they needed to update the technologies.

Speaking of technologies, I want to address the contents of the amendment. The Government absolutely agree with Mr Anderson's assessment that those authorising, approving and overseeing the exercise of bulk powers must be alert to the impact of technological change on their utility and impact. I am sympathetic to the amendment, and we are giving very careful consideration to Mr Anderson's recommendation. The noble Baroness, Lady Hamwee, asked what more the Government need. My answer is that what we need and hoped for are the views expressed by the Committee. I listened with particular care to the noble Lord, Lord Carlile, who gave us his views on Mr Anderson's recommendations. I am grateful to him and we will consider very carefully what he said. It is precisely because we did not want to pre-empt today's discussion that we have remained silent on the issue. The review was specifically commissioned to inform our debates. We will listen carefully and respond shortly, when we are in a position to consider in the round both the findings of the review and the subsequent debate in the Committee.

Lord Rooker (Lab): The noble Lord, Lord Carlile, made the case for going a bit wider than the narrow wording of the recommendation. Will the Government have a look at recommendation 6 of the RUSI report? We recommended an advisory council for digital technology and engineering to cover some of these exact points. The recommendation goes somewhat wider—it is probably too wide for the purposes of the Bill—but it met the point about providing research on engineering technology and being answerable to the Secretary of State, so the process is open and we keep abreast of technical measures. Advancing public education is what we get from David Anderson's reports from time to time; that is what they are about. I ask for recommendation 6 of the RUSI report to be considered in conjunction with David Anderson's recommendation to see whether consensus can emerge.

Earl Howe: I am very grateful to the noble Lord, Lord Rooker. We will certainly do that. That is precisely the kind of suggestion that I hoped would emerge from this debate.

Lord Strasburger: The noble Earl spoke at some length about the utility of bulk personal datasets to the intelligence agencies, but he did not answer my question, which was generated by the revelation in Mr Anderson's report that bodies other than the intelligence agencies have access to bulk personal datasets. Which other bodies have access to bulk personal datasets?

Earl Howe: Almost anyone has access to bulk personal datasets. Many of us have a telephone directory. A very wide range of public bodies and commercial organisations have access to bulk personal datasets, because that expression describes a wide range. I cannot be specific to the noble Lord, but if I am able, on advice, I will write to him to elucidate further.

Lord Rosser: Before I wind up—and I shall, of course, withdraw the amendment—does the noble Earl anticipate that the Government will come forward with an amendment on Report on the recommendation in the report on the technology panel, or not?

Earl Howe: I anticipate that between now and Report the Government will have reached a conclusion on Mr Anderson's recommendation. We have not done so as yet, as I have explained but, if we come forward with an amendment, that would be on Report.

Lord Rosser: I thank the Minister for his detailed response and thank all noble Lords who have participated in this debate, as well as thanking the Committee for its indulgence in allowing us to have a general debate on the Anderson report, even though my amendment related only to one specific part of it. It is very useful to have had the debate that we have had. I am sure that other noble Lords will do so, but I shall certainly want to read again in *Hansard* the full details of the Minister's response and the replies that he has given to the questions that have been raised. Once again, I thank him for his detailed response and beg leave to withdraw the amendment.

Amendment 194H withdrawn.

Clauses 127 and 128 agreed.

Clause 129: Power to issue bulk interception warrants

Amendment 194J

Moved by ***Lord Paddick***

194J: Clause 129, page 103, line 2, leave out from "security" to end of line 4

Lord Paddick: My Lords, in moving Amendment 194J in my name and that of my noble friend Lady Hamwee, I shall speak to a cornucopia of amendments—Amendments 194K and 194L, Amendments 201B and 201C, Amendments 210B and 210C and Amendment 223B. These amendments deal with the power to issue bulk interception warrants. The draconian nature of these powers is acknowledged by the fact that the Bill proposes that only the intelligence services can apply for such a warrant and that the warrant gives power only to intercept overseas-related communication and secondary data from such communications.

Clause 129(1)(b) states that the Secretary of State must be satisfied that,

"the warrant is necessary … in the interests of national security, or … on that ground and on any other grounds falling within subsection (2)".

The essence of the first amendment is to probe why subsection (2) is also required, as it states that the,

"warrant is necessary … if it is necessary … for the purpose of preventing or detecting serious crime, or … in the interests of the economic well-being of the United Kingdom so far as those interests are also relevant to the interests of national security".

Amendment 194J deletes subsection (1)(b)(ii) so as to restrict the issuing of bulk interception warrants to cases of national security only. It is relatively easy to envisage a scenario where terrorists are plotting attacks in the UK from a hostile foreign country where the co-operation of the telecommunications operators in that country to target individuals is not possible, and the communications of all individuals in a certain geographic area may be the only option. Can the Minister explain what would happen in a scenario where the prevention or detection of serious crime which is not a national security issue would require bulk interception of overseas data?

Amendment 201B makes similar arguments applying to Clause 146 and the power to issue bulk data acquisition warrants—for example, in Clause 146(1)(a)(i), the power to retain and store telecommunications data about every telephone call made in the UK. It is the same point applied to the other power. Amendment 210B applies the same arguments to Clause 164 and the power to issue bulk equipment interference warrants, and specifically to Clause 164(1)(b)(i), the power to hack into every mobile phone within a geographic area.

Can the Minister also explain what the difference is between the "interests of national security" and,

"the interests of the economic well-being of the United Kingdom so far as those interests are also relevant to the interests of national security"?

If a warrant is necessary in the interests of national security, why is it necessary to state separately that those national interests have their origins in the economic well-being of the UK? The Intelligence and Security Committee found that the distinction was unnecessarily confusing and complicated. The committee had, as far as it was concerned, failed to get a satisfactory response to its question from the intelligence agencies or the Home Office. Perhaps the Minister can have a go.

5.45 pm

As far as Amendment 194K is concerned, bulk interception involves the acquisition of potentially vast amounts of data—mainly innocent communications. Clause 129(1)(d)(i) refers to the "specified operational purposes" that form the basis for the examination of the bulk content or secondary data, basically to concentrate the examination solely on the bad guys. The Secretary of State must be satisfied that each of the operational purposes is—or as the Bill states, "may be"—necessary. We believe that this phrase "may be" is too loose and that "is likely to be" should replace the wider "may be" necessary.

Amendment 201C makes exactly the same argument and applies it to Clause 146, on the power to issue bulk acquisition warrants, specifically subsection (1)(c)(i). Amendment 210C makes similar arguments in relation to Clause 164, on the power to issue bulk equipment interference warrants, specifically subsection (1)(d)(i).

Amendment 194L relates to Clause 129(4), which states:

"A warrant may not be considered necessary … if it is considered necessary only for the purpose of gathering evidence for use in any legal proceedings".

We suggest that the warrant cannot be considered necessary if the purpose is "primarily" rather than "only" for the purpose of gathering evidence. It can otherwise easily be maintained that there is some minor, collateral intelligence gain that means that the

[LORD PADDICK]
warrant is necessary as it is not only for the purpose of evidence gathering. Can the Minister explain why this sub-paragraph is necessary at all? If intercept evidence is not admissible as evidence in UK courts, whether it be from targeted or bulk interception, why would a warrant solely for the purpose of gathering evidence for use in legal proceedings be applied for in the first place?

Amendment 223B relates to Clause 187, on additional safeguards for health records as a subset of bulk personal datasets. Subsection (3) states that:

"The Secretary of State may only issue a warrant if the Secretary of States considers that there are exceptional and compelling circumstances that make it necessary to authorise … retention".

Our Amendment 223B suggests that health records are so sensitive that the exceptional and compelling circumstances should relate only to national security and not, for example, serious crime. I beg to move.

Lord Beith (LD): My Lords, my noble friend has very helpfully referred to the qualification of economic well-being as a justification by reference to national security and he rightly probed why it appears in that form. It gave me some satisfaction, in a sense, that it was qualified in this way because, in my years on the Intelligence and Security Committee, I occasionally thought that the concept of economic well-being was capable of extraordinarily wide interpretation. If it was being interpreted very widely in order to support actions which might in some way touch upon economic well-being, it is appropriate that it should be qualified if the powers engaged are sufficiently wide as potentially to affect the rights and liberties of other people. In this legislation we are talking about powers which can impinge upon the lives and liberties of other people unintentionally or not as part of the purpose but as a necessary consequence of being able to use things such as bulk datasets or equipment interference. Therefore, I hope that the reason that economic well-being is qualified by reference to national security is a recognition that some of the powers given in this Bill require particularly stringent qualification to be permissive and used. If that is so, I welcome it.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I am obliged to the noble Lord, Lord Paddick, for making it clear that these are essentially probing amendments and I respond to them in that light. These amendments relate to the issuing, approval and modification of warrants under Parts 6 and 7 of the Bill.

Amendments 194J, 201B and 210B would remove from the Bill an important safeguard which requires that a bulk interception, acquisition or equipment interference warrant may be issued only if doing so is in the interest of national security. The Bill provides for a warrant under Part 6 to be issued where it is necessary on three statutory grounds: in the interests of national security; for the prevention and detection of serious crime; or in the interests of the economic well-being of the United Kingdom where those interests are also relevant to national security.

Clause 129(1)(b)(ii), Clause 146(1)(a)(ii) and Clause 164(1)(b)(ii), which these amendments seek to remove, ensure that one of those statutory grounds must always be national security. This is clearly an important safeguard which recognises the particular sensitivity of bulk powers and therefore limits their use to the most tightly drawn circumstances. In other words, the Bill says that a bulk warrant provided for in Part 6 of the Bill must have,

"in the interests of national security",

as one of the statutory purposes to authorise collection. However, collection can also be authorised to prevent serious crime and to protect the economic well-being of the United Kingdom in addition to being authorised to protect national security.

The inclusion of the additional statutory grounds relating to serious crime and economic well-being remains vital. There will be circumstances where it is necessary and proportionate to select for examination data collected under a bulk warrant in order to, for example, prevent and detect serious crime, such as to detect and disrupt child sexual exploitation. However, the Bill ensures that the initial collection of data could be authorised only if doing so is necessary to protect national security, albeit that it may be necessary for one of the other two purposes that I have already described. In other words, there is a relationship between the statutory requirements for the bulk warrant and the operational purposes which will be specified in the same warrant application, some of which may relate to the prevention of serious crime or economic interest.

On that last point of economic interest, it has been asked how that can be distinguished from national security. In a sense, it is a matter of emphasis at the end of the day. The ISC looked at this in detail, and at the need to retain it as a statutory purpose in its own right. It took extensive evidence from the agencies and, indeed, from the Foreign Secretary. I believe that Dominic Grieve was the chair at that time. He made it clear during Report in the Commons that the ISC had been persuaded that there remained a need for safeguarding the UK's economic well-being to continue to exist as a statutory purpose for the use of the investigatory powers in the Bill in their own right. Therefore, I accept that it is linked to national security but it is a matter of underlining the need to have in mind the cases in which economic well-being will be the prevailing factor.

Lord King of Bridgwater: I recall that with the noble Lord, Lord Beith, we went round this course a number of times in the ISC trying to work out where the economic well-being issue could be distinguished from national security. Will my noble and learned friend give a few illustrations now or at a later stage of the Bill to show exactly why this is the case? I think we were persuaded on this. My noble and learned friend said that the current ISC and the current chairman are persuaded. However, will he illustrate why they were persuaded?

Lord Keen of Elie: If I had those illustrations to hand, I would, of course, deliver them this very moment. I regret that I do not have them to hand. However, I will undertake to consider the illustrations that were given previously and write to the noble Lord. If it is necessary, I will elaborate on the examples already given by giving further examples. However, I regret that I am not in a position to cite those earlier examples.

I underline that the reference to national security in the context of the clauses to which I referred—that is, Clauses 129, 146 and 164—operates as an important safeguard. That is what has to be emphasised. In these circumstances I invite the noble Lord, Lord Paddick, not to press these amendments.

I turn to bulk personal datasets and health records and Amendment 223B. This amendment would limit the circumstances in which the intelligence agencies can retain and examine a bulk personal dataset which contains health records under a specific BPD warrant. The Bill already requires the Secretary of State and a judicial commissioner to consider whether the retention and examination of a bulk personal dataset is necessary and proportionate for certain defined operational purposes. Following consideration in the other place, the Bill was amended, limiting the test for granting a warrant for the retention and examination of a bulk personal dataset containing health records to cases where there are "exceptional and compelling" circumstances. These are already extremely high tests.

Amendment 223B would limit the Bill even further so that retention and examination is permitted only in exceptional and compelling circumstances related to national security. By their very nature, exceptional and compelling circumstances are very rare. Restricting the use of such datasets to circumstances where national security concerns are engaged would rule out their use for any other statutory purpose, including the prevention and detection of serious and organised crime. If we were to agree to this amendment, we would be signalling, in effect, that in no circumstances do we believe that it could ever be appropriate that such data should be used for serious and organised crime investigations even when the Secretary of State and a judicial commissioner consider this is necessary and proportionate and that there are exceptional and compelling circumstances. We do not consider that this is appropriate. It is long-standing government policy not to comment on intelligence matters. However, as the then Security Minister explained in the other place, in that specific instance only he was willing to confirm that the security and intelligence agencies did not hold a bulk personal dataset of medical records, which illustrates that there would need to be exceptional circumstances for an agency to do so.

However, the Minister and the Solicitor-General rightly emphasised that we would not want to rule out the possibility of there ever being such a scenario. They gave a hypothetical example in which a group of terrorists are involved in an explosion and sustain burns. Medical evidence about where they attended—the fact that they had attended a local A&E, for example—could be relevant to that particular operation and provide the only lead to find the individuals concerned. The same circumstances could arise if criminals were similarly injured in an explosion at, for example, an illegal drugs laboratory. This would not be a matter of national security but would relate to the prevention and detection of serious crime. I therefore emphasise that no Secretary of State or judicial commissioner, who would both have to approve a specific BPD warrant to retain medical records, would underestimate the seriousness of their duty in this regard. "Exceptional and compelling" is a high test to be met; restricting this further is not regarded as necessary. Therefore, again I invite the noble Lord to withdraw this amendment.

6 pm

On operational purposes, Amendments 194K, 201C and 210C seek to limit the circumstances in which the Secretary of State may approve the addition of operational purposes to bulk interception, acquisition or equipment interference warrants. Currently, the Bill requires that an operational purpose may be included on a bulk interception, acquisition or equipment interference warrant only if the Secretary of State considers that it is a purpose for which the examination of material is or may be necessary. These amendments would change this test to a consideration that the purpose is or is likely to be necessary.

We submit that these amendments would have a detrimental operational impact. A bulk interception warrant will normally provide for the interception of communications from the physical cables that carry internet traffic. This will result in the collection of large volumes of communications. This reflects the fact that bulk interception is an intelligence-gathering capability and is essential to enable communications relating to subjects of interest to be identified and subsequently pieced together in the course of an investigation. The nature of these capabilities and the global nature of internet communications means that there will be circumstances where it will not be possible for the Secretary of State to foresee, and therefore to assess, the degree of likelihood that a particular operational purpose will be needed.

For example, if a new terrorist threat was developing overseas with implications for the United Kingdom's national security, it may be necessary to select for examination material collected under a bulk interception, acquisition or equipment interference warrant relating to that threat. However, it could not necessarily be foreseen whether material collected under an individual warrant would be relevant to the threat. This would depend on prior knowledge of, for example, the identities and location of targets or even what cables their communications would pass over. Therefore it is vital that the Secretary of State is able to approve the inclusion of a particular operational purpose on a warrant if they consider that the examination of material may be necessary for that purpose. If this was not possible, bulk warrants would have to omit potentially vital operational purposes.

The Bill already ensures that the use of operational purposes is stringently controlled. As well as considering that each purpose is or may be necessary, the Secretary of State must also be satisfied that every operational purpose on the warrant is necessary on one of the grounds for which the warrant is issued, such as in the interests of national security. In addition, we have now proposed government amendments that will strengthen further the Bill's provisions in relation to operational purposes. These amendments would provide that: the heads of the intelligences services must maintain a central list of all operational purposes; the inclusion of any purpose to that list must be agreed by the Secretary of State; no operational purpose can be added to a warrant unless it is included on the central list; the list

[Lord Keen of Elie]
must be shared on a quarterly basis with the Intelligence and Security Committee of Parliament; and the list must be reviewed on an annual basis by the Prime Minister. Therefore these amendments would result in a degradation of operational capabilities and, in any case, we submit that they are unnecessary. Again, therefore, I invite the noble Lord, Lord Paddick, not to press these amendments.

Amendment 194L is concerned with bulk interception in the context of legal proceedings and would change the test the Secretary of State must apply when considering whether a warrant for the purpose of gathering evidence for use in any legal proceedings may be necessary. Currently, the Bill makes clear that the Secretary of State may not consider a bulk interception warrant necessary on any statutory ground—including in the interests of national security—where the warrant's only purpose is to gather evidence. This reflects the prohibition in Clause 53 on using intercepted material in legal proceedings. This amendment would alter this test and preclude a warrant from being issued with the primary purpose of gathering evidence.

The Bill maintains the general rule that neither the possibility of interception nor intercepted material itself play any part in legal proceedings. This preserves the requirement for "equality of arms" under Article 6 of the European Convention on Human Rights. That is why Clause 53 makes clear that a warrant could not be obtained simply to circumvent this principle. However, to answer the point made by the noble Lord, Lord Paddick, the Bill sets out in Schedule 3 a number of important and tightly drawn exceptions to the prohibition on using intercepted material in legal proceedings. These exceptions include closed material proceedings, terrorist prevention and investigation measures proceedings and terrorist asset-freezing proceedings. There will clearly be circumstances in which it is vital that an interception warrant can be issued for the purpose of gathering evidence in such proceedings on a statutory ground, including in the interests of national security. In many circumstances, this amendment would prevent such warrants being issued and could therefore have a direct impact on the security and intelligence agencies' ability to protect the public. Therefore, it is because of the existence of the exceptions in Schedule 3 that the clause is framed in the manner it is and the prohibition is expressed in these terms. Again, I invite the noble Lord not to press this last amendment.

Lord Paddick: I am grateful to the noble and learned Lord for his explanations. On Amendments 194J, 201B and 210B, I accept what he said. I am grateful for the intervention of the noble Lord, Lord King of Bridgwater, and I look forward to the illustrations. While the Minister has his artistic streak going, perhaps he could also provide an example with regard to some of the other amendments, where, again, an illustration would be helpful.

Lord Keen of Elie: That plea to my artistic streak would require a somewhat abstract response, so perhaps the noble Lord could be a little more specific.

Lord Paddick: Yes, for example, with regard to the health records in Amendment 223B, I did not find the example of criminals engaged in manufacturing drugs an exceptional and compelling circumstance. Perhaps there is a better example than that. The absolutely intrusive nature of health records and the acknowledgement of that by way of the exceptional notification that the intelligence services do not hold any bulk personal datasets of health records tend to reinforce the argument that access to them should be restricted to national security grounds. I would be grateful if a more compelling example could be thought of, although obviously not at the moment.

Lord Keen of Elie: I will be quite content to formulate and intimate a more compelling example.

Lord Paddick: I am grateful. On Amendment 194L and a warrant issued only for the purpose of gathering evidence for use in legal proceedings, I will have to read carefully what the Minister said, as I came to completely the opposite conclusion to the one he gave. However, at this time I beg leave to withdraw the amendment.

Amendment 194J withdrawn.

Amendments 194K and 194L not moved.

Clause 129 agreed.

Clause 130: Additional requirements in respect of warrants affecting overseas operators

Amendment 194M

Moved by ***Lord Paddick***

194M: Clause 130, page 104, line 11, after "requirement," insert—

"( ) the domestic law of the operator's place of business,"

Lord Paddick: My Lords, Amendment 194M stands in my name and that of my noble friend Lady Hamwee. I shall also speak to our Amendment 194N in this group.

Clause 130 relates to the additional requirements in respect of warrants affecting overseas operators giving assistance to UK intelligence agencies to enable bulk interception. Subsection (3) lists matters that the Secretary of State must take into account before issuing a warrant that requires an overseas operator to give assistance. We believe that an important omission to this list is,

"the domestic law of the operator's place of business"—

that is, that the Secretary of State should not require overseas operators to break the law in the country where the request for assistance is being made.

As far as Amendment 194N is concerned, Clause 131 refers to the approval of bulk interception warrants by judicial commissioners. Subsection (1) states that a judicial commissioner must review the Secretary of State's conclusions as to the granting of the warrant. Our amendment suggests that this should go further and that both the Secretary of State's reasoning and their conclusions should be considered.

In previous sessions of this Committee, we heard the view that the judiciary should not make decisions on the issuing of warrants—that is for politicians to decide—but simply review the decisions. But if the judicial commissioner has to decide whether to "approve a decision" and indeed decides not to approve a decision of the Secretary of State, surely the judicial commissioner has made a decision on the issuing of a warrant. Surely a judicial commissioner should review the reasoning behind the Secretary of State's decision and not simply the conclusion. Without knowing the reasons why the Secretary of State came to their conclusion, how can a judicial commissioner decide whether the conclusion is valid? I beg to move.

Lord Keen of Elie: My Lords, these amendments relate to a judicial commissioner's consideration of a bulk warrant that is to be served on an overseas provider and what the commissioner is required to take into account when considering the Secretary of State's decision to issue a bulk warrant. There is also a government amendment in this group which is technical in nature, and I shall address that in a moment.

Amendment 194M seeks to insert a requirement that, where an overseas telecommunications operator is likely to be required to provide assistance in giving effect to a bulk interception warrant, the Secretary of State must—before the warrant is issued—take into account the domestic law of the operator's place of business.

I suggest that this amendment is not necessary. The Bill already provides, at Clause 139(5), that Clause 41, which deals with the duty of operators to assist with implementation, applies in relation to a bulk interception warrant in the same way as it applies to a targeted warrant. Clause 41 makes it absolutely clear that a telecommunications operator may be required only to take "reasonably practicable" steps to give effect to a warrant. It also makes clear, at subsection (5), that for an overseas operator consideration must be given to the law of the relevant country and the extent to which it is reasonably practicable to give effect to the warrant without breaching it. So I suggest that this amendment is not necessary and, in these circumstances, I invite the noble Lord to withdraw it.

Amendment 194N seeks to alter the test that a judicial commissioner applies when considering whether to approve a decision to issue a bulk interception warrant. This topic has been the subject of intense scrutiny by three committees, the other House and, in the context of the targeted powers within the Bill, this House. As a result of that debate, the Government have already made considerable amendments to the Bill.

This amendment would require the judicial commissioner to consider the reasons given for the decision to issue a bulk interception warrant. The amendment is, I think, based on a misunderstanding of how warrants operate. The Secretary of State will receive a detailed application setting out the necessity and proportionality considerations. If he or she agrees, the Secretary of State will issue the warrant. He or she does not have to give reasons for that decision beyond confirming that he or she personally considers that the warrant is necessary and proportionate.

The judicial commissioner will then review the Secretary of State's decision based on the evidence that was provided to the Secretary of State in the application. If the commissioner thinks that the evidence in the application is not a sufficient basis for the decision that has been made, he or she will refuse to approve the decision. In these circumstances, there are no reasons per se to be reviewed by the judicial commissioner. Given that, and given the progress that has already been made on this issue, I invite the noble Lord not to press this amendment.

6.15 pm

Government Amendment 201 is a minor and technical amendment. It simply clarifies the considerations that must be made by a judicial commissioner when deciding whether to approve a decision by the Secretary of State to renew a bulk interception warrant. Currently, the Bill provides that the judicial commissioner must consider the same factors in relation to a renewal as are considered when deciding whether to approve a decision to issue a bulk interception warrant.

While the amendment does not change the position, it introduces one minor exception—that is, the judicial commissioner is not required to consider, in relation to a renewal, any matters taken into account by the Secretary of State in relation to additional requirements for warrants affecting overseas operators. Such matters include the technical feasibility of the relevant operator providing assistance in giving effect to the warrant, and the likely cost.

These matters will have been taken into account by the Secretary of State at the point when the decision was taken to issue the warrant in the first instance. They are not matters that are relevant in the case of a renewal, where the operator concerned will already have been providing assistance in giving effect to the relevant warrant. They are therefore not matters that the Bill requires the Secretary of State to take into account when deciding whether to renew a bulk interception warrant. The amendment simply makes it clear that a judicial commissioner is therefore also not required to consider them when deciding whether to approve the decision about renewal.

Lord Paddick: Again, I am very grateful to the noble and learned Lord for his explanation and for joining the dots, if I may describe it like that, of the relevant parts of the legislation regarding targeted interception warrants. I accept the explanation and indeed the safeguards regarding overseas operators and their need to comply with domestic law, in addition to the assistance being practicable.

I am genuinely grateful for the explanation regarding Amendment 194N. I now understand that reasons would not be given by the Secretary of State; it is more a re-examination of the case made by the security services, for example, and the judgment by the judicial commissioner as to whether the issuing of a warrant is necessary and proportionate. On that basis, I beg leave to withdraw the amendment.

Amendment 194M withdrawn.

Clause 130 agreed.

Clause 131: Approval of warrants by Judicial Commissioners

Amendment 194N not moved.

Amendment 194P had been withdrawn from the Marshalled List.

Amendments 195 and 196

Moved by ***Earl Howe***

195: Clause 131, page 104, line 30, after "must" insert "—

(a) "

196: Clause 131, page 104, line 31, at end insert ", and

( ) consider the matters referred to in subsection (1) with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy)."

Amendments 195 and 196 agreed.

Clause 131, as amended, agreed.

Clause 132 agreed.

Clause 133: Requirements that must be met by warrants

Amendment 197

Moved by ***Earl Howe***

197: Clause 133, page 105, line 10, leave out subsection (4) and insert—

"(4) The operational purposes specified in the warrant must be ones specified, in a list maintained by the heads of the intelligence services ("the list of operational purposes"), as purposes which they consider are operational purposes for which intercepted content or secondary data obtained under bulk interception warrants may be selected for examination."

Earl Howe: My Lords, I shall speak also to Amendments 198, 207, 208, 213, 214, 227, 228 and 223, all of which relate to operational purposes on bulk warrants.

The amendments tabled by the Government add significant detail to the provisions in the Bill on operational purposes—that is, the purposes for which data collected under a bulk warrant may be selected for examination. Operational purposes are an important new safeguard and we are committed to ensuring that the Bill includes as much detail as possible about how they will operate in practice. These amendments respond to amendments tabled in the House of Commons by the Intelligence and Security Committee, and they address concerns raised during the Committee stage in the Commons that operational purposes could be "general".

The amendments would do a number of key things. They would create a requirement that the heads of the intelligence services must maintain a list of all operational purposes. The maintenance of this list would ensure that the security and intelligence agencies are able to assess and review all the operational purposes that are, or could be, specified across the full range of their bulk warrants at a particular time. This would ensure that these purposes remain up to date and relevant to the current threat picture, better enabling the agencies to identify warrants that need to be modified, adding or removing operational purposes. The maintenance of the central list would also make sure that the Investigatory Powers Commissioner is able to oversee, in one place, the full range of purposes for which a bulk warrant could authorise the examination of material.

The amendments would apply robust controls to the addition of an operational purpose to the central list, requiring that any such addition must be approved by the Secretary of State. They make clear that the Secretary of State may approve the addition of an operational purpose to that list only if satisfied that it contains more detail than the statutory grounds on which the warrant was issued, such as in the interests of national security.

The amendments would also enhance the oversight and transparency of the use of operational purposes. As well as the rigorous independent oversight that the Investigatory Powers Commissioner will apply to the exercise of bulk powers, these amendments would also require the following: that the list of operational purposes must be reviewed annually by the Prime Minister; that the list must be provided to the Intelligence and Security Committee every three months; and that the Investigatory Powers Commissioner must publish a summary of the use of operational purposes in each of his or her annual reports.

The amendments would also take out references in the Bill to operational purposes being able to be "general purposes". This provision was inserted in the Bill to ensure that operational purposes do not have to be drawn so tightly that they are operationally unworkable. While it has never been the case that this language meant operational purposes could be vague or lacking in detail, the Government have listened to concerns that this language could be misinterpreted and that is why these amendments would remove it.

These amendments would significantly enhance the Bill's provisions on operational purposes, adding absolute clarity as to how this important safeguard will operate in practice. I hope that the Committee will approve them. I beg to move.

Lord Paddick: My Lords, I am very grateful to the Minister for those amendments. They bring a significant improvement to the Bill and are extremely welcome. We were faced previously with the situation in which operational purposes were to be part of the Bill but we would never know what those operational purposes were. I appreciate that they are not going to become public knowledge, but at least we will now have a review by the Intelligence and Security Committee every three months and the annual review by the Prime Minister as well. Removal of the term "general" is greatly reassuring and we wholeheartedly support these amendments.

Lord Rosser: My Lords, we hold a similar view to that which has just been expressed by the noble Lord, Lord Paddick. These amendments seek to pursue a matter that has been raised by the ISC and accordingly raised during the Commons stages of this Bill. I think that these amendments address the concerns raised by the ISC—I certainly have not heard anything to the contrary—and we share the view that, in doing so, they enhance the Bill.

Amendment 197 agreed.

Amendments 197A and 197B had been withdrawn from the Marshalled List.

Amendment 198

Moved by ***Earl Howe***

198: Clause 133, page 105, line 14, leave out from "issued," to end of line 16 and insert "are specified in the list of operational purposes.

(5A) An operational purpose may be specified in the list of operational purposes only with the approval of the Secretary of State.

(5B) The Secretary of State may give such approval only if satisfied that the operational purpose is specified in a greater level of detail than the descriptions contained in section 129(1)(b) or (2).

(5C) At the end of each relevant three-month period the Secretary of State must give a copy of the list of operational purposes to the Intelligence and Security Committee of Parliament.

(5D) In subsection (5C) "relevant three-month period" means—

(a) the period of three months beginning with the day on which this section comes into force, and

(b) each successive period of three months.

(5E) The Prime Minister must review the list of operational purposes at least once a year."

Amendment 198 agreed.

Clause 133, as amended, agreed.

Clause 134 agreed.

Clause 135: Renewal of warrants

Amendments 199 to 201

Moved by ***Earl Howe***

199: Clause 135, page 105, line 31, leave out "before it would otherwise cease to have effect" and insert "during the renewal period"

200: Clause 135, page 106, line 10, at end insert—

"( ) "The renewal period" means the period of 30 days ending with the day at the end of which the warrant would otherwise cease to have effect."

201: Clause 135, page 106, line 16, at end insert ", but with the omission of paragraph (d) of subsection (1)"

Amendments 199 to 201 agreed.

Clause 135, as amended, agreed.

Clause 136: Modification of warrants

Amendment 201ZA

Moved by ***Lord Paddick***

201ZA: Clause 136, page 107, line 21, at end insert—

"( ) The persons mentioned in subsection (7) must keep under review whether any operational purpose specified in a warrant remains a purpose for which the examination of intercepted or secondary data obtained under the warrant is or may be necessary."

Lord Paddick: My Lords, I beg to move Amendment 201ZA and to speak, I am afraid, to another cornucopia of amendments in this group: Amendments 201ZB, 201ZC, 201ZJ, 210ZB, 210ZC, 217A, 217B, 217C, 231ZA and 231ZB.

Clause 136(9) requires the Secretary of State, or the senior official acting on the Secretary of State's behalf, to modify the warrant if an operational purpose,

"is no longer a purpose for which the examination of intercepted content or secondary data obtained under the warrant is or may be necessary".

The question is: how will the Secretary of State or the official know that there has been such a change requiring the warrant to be modified unless the situation is kept under review? Our Amendment 201ZA requires the Secretary of State, or a senior official acting on behalf of the Secretary of State, to,

"keep under review whether any operational purpose specified in a warrant remains a purpose for which the examination of intercepted or secondary data obtained under the warrant is or may be necessary".

Amendment 217A makes the same point in relation to bulk equipment interference warrants, as dealt with in Clause 172. Amendment 210ZB makes the same point in relation to bulk acquisition warrants, as dealt with in Clause 152. Amendment 231ZA makes the same point in relation to bulk personal dataset warrants, as dealt with in Clause 192.

I turn now to Amendment 201ZB. Clause 138(3) allows the Secretary of State, or a senior official acting on behalf of the Secretary of State, to cancel a warrant if, for example, the examination of the content or secondary data obtained under the warrant is no longer necessary for any of the specified operational purposes. Clause 136(9) requires the modification of a warrant by the Secretary of State, or a senior official, if they consider that,

"any operational purpose … is no longer a purpose for which the examination of intercepted content or secondary data obtained under the warrant is or may be necessary".

But how will the Secretary of State know that, and, therefore, how will the Secretary of State know that the warrant should be cancelled?

6.30 pm

Amendment 201ZB seeks to add the removal of an operational purpose to the list of modifications that should be considered major modifications in order to probe this issue. Amendment 210ZC makes a similar point in relation to bulk acquisition warrants under Clause 149. Amendment 217B makes the same point in relation to bulk equipment interference warrants under Clause 172. Amendment 231ZB makes a similar point in relation to bulk personal dataset warrants, as covered by Clause 195.

On Amendment 201ZC, Clause 136(13) states that despite the main purpose of a bulk interception warrant being the interception of overseas-related content and secondary data, the modification of a bulk interception warrant so that the warrant no longer authorises or requires the interception of communications in the course of their transmission or obtaining secondary data from such interception, does not prevent the bulk interception warrant being a bulk interception warrant. If I understand this correctly—which would be amazing

[LORD PADDICK]
—a bulk interception warrant that no longer allows bulk interception is still a bulk interception warrant. I would be grateful if the Minister could help me with that. Is it that the analysis of the content and secondary data may continue, even if the pool of content and data is not being added to? Can the Minister explain? The amendment seeks to delete subsection (13) to probe these issues. Amendment 217C makes the same points in relation to bulk equipment interference warrants that no longer authorise or require the securing of interference with any equipment under Clause 172(14).

On Amendment 201ZJ, bulk interception warrants are aimed at overseas-focused communications and subsections (3) and (4) of Clause 142 together prohibit the selection of intercepted content for examination that is referable to an individual known to be in the British Isles at the time. Amendment 201ZJ envisages a situation where a known terrorist based overseas, for example, whose communications have been selected for examination, as allowed by the Bill as drafted because he is overseas, then travels to the UK to lead a terrorist attack. Our interpretation of the prohibitions in Clause 142(3) and (4) is that his communications could then no longer be selected for examination once he arrives in the UK, at least not under the powers of this provision. Perhaps a separate warrant would then need to be applied for.

There should be an exemption from the prohibition from selecting intercepted content for someone known to be in the UK in such circumstances. Our amendment therefore seeks to add,

"unless the individual is believed to have arrived in the British Islands within the previous 28 days",

to cover the situation where overseas terrorists arrive in the UK.

I am somewhat disappointed that more noble Lords are not in the Chamber to hear this but, if any noble Lord is puzzled, this amendment seeks to increase the surveillance powers in the Bill and to assist the security services in their work. However, perhaps our interpretation of the Bill as it stands is wrong and the Minister will explain. I beg to move Amendment 201ZA.

Earl Howe: My Lords, Amendments 201ZA, 210ZB, 217A and 231ZA seek to insert a provision into the clauses that enable the modification of bulk interception, acquisition, equipment interference or bulk personal dataset warrants. The amendments would require that persons who can make a minor modification to remove an operational purpose from a warrant must keep under review the operational purposes on each bulk warrant. The intended effect of these amendments, as I understand it, is that such persons will be aware when one of those purposes is no longer necessary and can remove it from the warrant.

These amendments are not necessary because the relevant draft codes of practice, which were published when the Bill was introduced to Parliament, already make clear that the security and intelligence agencies must keep bulk warrants under ongoing review. In addition, the draft codes set out specific requirements in relation to operational purposes. This includes a requirement that the security and intelligence agencies will need to ensure that bulk warrants are relevant to the current threat picture and will therefore need to identify operational purposes that need to be added to or removed from bulk warrants.

Further to the requirements in the draft codes, the government amendments, as I explained earlier, would create a requirement in the Bill that the heads of the intelligence services must maintain a list of all operational purposes. I set out the rationale and utility of that list in the preceding group of amendments. The provisions in the Bill and the detailed requirements set out in the draft codes of practice already make clear that the operational purposes on any bulk warrant will be kept under review. This will ensure that where an operational purpose is no longer necessary on a particular warrant it can be identified and removed. I hope the noble Lord will feel able to withdraw these amendments.

Amendments 201ZB, 210ZC, 217B and 231ZB make a modification to remove an operational purpose from a bulk warrant a major modification. Currently, a modification removing an operational purpose is a minor modification, meaning that it may be made by a Secretary of State or a senior official acting on their behalf. This amendment intends that such a modification would instead be subject to the double lock and must therefore be made by a Secretary of State and approved by a judicial commissioner before taking effect. That would be entirely unnecessary. A modification removing an operational purpose from a bulk warrant reduces the scope of the conduct that the warrant authorises, conduct that will already have been approved by the Secretary of State and a judicial commissioner. Subjecting such a modification to the double lock is superfluous. Accordingly, I invite the noble Lord to withdraw these amendments.

Amendments 201ZC and 217C relate to the modification of bulk warrants for the purpose of allowing examination of material after acquisition has ceased. These amendments would remove important technical provisions from the Bill. The Bill enables a bulk interception or bulk equipment interference warrant to be modified such that it no longer authorises the acquisition of any material but continues to authorise the selection of material for examination. This provision caters for limited circumstances where it may no longer be necessary or possible to continue the collection of data, such as where a communications service provider who is providing assistance in giving effect to the warrant goes out of business but where the data collected up to that point remain pertinent. In such circumstances, it may continue to be necessary and proportionate to examine data that have already been collected under the warrant.

The subsections that these amendments would remove simply clarify that a warrant that has been modified in this way remains a valid bulk warrant in spite of the provisions in Clauses 127(2) and 162(1). This is necessary because these clauses state that one of the conditions of the warrant is that its main purpose is to acquire data, but, of course, a warrant that has been modified in the manner I have described will no longer meet this condition, given that it will no longer authorise the collection of data. I hope the noble Lord will agree that these provisions are necessary and recognise that they serve only to reduce the activity that would have been authorised by the original unmodified warrant.

On Amendment 201ZJ, Clause 142 prohibits the selection for examination of intercepted content using criteria referable to an individual known to be in the British Islands, except where a targeted examination warrant—subject to the double lock—has been issued. I hope it is helpful if I draw the noble Lord's attention to Clause 142(5), because there is one additional exception to this prohibition. That subsection addresses cases where there is a change of circumstances such that a person whose content is being selected for examination enters, or is discovered to be in, the British Islands. The subsection provides that selection for examination may continue in these circumstances for five working days with the approval of a senior official. This is vital to cater for circumstances such as where a member of an organised crime group travels into the British Islands. Any selection for examination after the five-day period will require the issuing of a targeted examination warrant.

I hope and believe that that explanation addresses the query the noble Lord, Lord Paddick, put to me. I understand his amendment as intended to capture the set of circumstances I just outlined, but it would also lead to a diminution in safeguards, given that it would enable selection for examination to continue for what I would judge to be an unnecessarily long period—in the absence of a targeted examination warrant—where there is a change of circumstances and someone has entered or is discovered to be in the UK. I hope that explanation will allow the noble Lord to feel comfortable in not pressing this amendment.

Lord Paddick: I am very grateful to the noble Earl for those explanations. Regarding Amendments 201ZA and that group, I am still concerned that the Minister or senior official is reliant on the security services flagging up to them that they need to withdraw operational purpose or even cancel a warrant. It is trusting the head of the intelligence services to flag that up. I will read very carefully what the noble Earl said about that.

I am grateful for his confirmation of when a bulk interception warrant is not a bulk interception warrant but still is. The only difference between us was that I asked whether it was right that analysis needs to continue after content is not being added to, whereas the correct term was "examination" continues. I think we are on all fours as far as that is concerned.

On Amendment 201ZJ, I accept that if there is a change in circumstances, whether a foreign terrorist or a foreign criminal arrives in the UK, the switch is not immediately flipped in that a five-day grace period is provided by Clause 142(5) for that content to continue to be allowed to be selected, even though the person is in the British Islands. However, it seems an unnecessary hurdle for the security services to have to apply for a targeted examination warrant in those circumstances, if it is a known terrorist coming into the UK. Presumably the five days are simply to allow enough time for a targeted examination warrant to be applied for, but I illiberally suggest that that is unnecessary bureaucracy for the security and intelligence services to go through. However, if the Government, the Home Office and others are content for the intelligence and security services to jump through that particular hoop, who am I to argue? On that basis, I beg leave to withdraw the amendment.

Amendment 201ZA withdrawn.

Amendments 201ZB and 201ZC not moved.

Clause 136 agreed.

6.45 pm

Clause 137: Approval of major modifications made in urgent cases

Amendment 201ZD

Moved by ***Lord Paddick***

201ZD: Clause 137, page 108, line 12, leave out "fifth" and insert "third"

Lord Paddick: My Lords, I apologise; it is me again. In moving Amendment 201ZD in my name and that of my noble friend Lady Hamwee I shall speak to our Amendments 210ZD, 217D and 231ZC.

Clause 137 is about the approval of major modifications made in urgent cases to bulk interception warrants. These urgent requests for modification will be made by the Secretary of State alone. The judicial commissioner must approve any urgent change within a period ending with the fifth working day after the day on which the modification is made. Elsewhere in the Bill, the relevant period within which an urgent request for a warrant that has, for example, been granted by the Secretary of State alone and has then to be approved by a judicial commissioner—for example, in the case of the approval of interception warrants in urgent cases under Clause 24(3)—is the period ending with the third working day after the day on which the warrant was issued.

Our Amendment 201ZD would restore consistency to post-event approval of decisions by the Secretary of State in urgent cases by changing the relevant period within which judicial commissioner approval is needed in urgent cases of modification from five days to three days. Our Amendment 210ZD makes the same point relating to the urgent modification of bulk acquisition warrants in Clause 153; Amendment 217D to the urgent modification of bulk equipment interference warrants in Clause 173; and Amendment 231ZC to the urgent modification of bulk personal dataset warrants in Clause 196.

Will the Minister explain why, in the case of urgent major modifications of bulk interception warrants, the relevant period for judicial commissioner approval is five days and everywhere else in the Bill approval of urgent decisions is three days? I beg to move.

Lord Keen of Elie: My Lords, while we must ensure that judicial commissioners have sufficient time to scrutinise effectively the decisions of the Secretary of State, I am sympathetic to these amendments. Indeed, the Government have already amended the Bill such that when an urgent targeted warrant is issued the judicial commissioner must approve the decision to issue it within three working days, as opposed to five. On this basis, I am happy to commit to take away the amendment for further consideration and accordingly I invite the noble Lord to withdraw it.

Lord Paddick: I am very grateful to the noble and learned Lord for his encouraging words and on that basis I beg leave to withdraw the amendment.

Amendment 201ZD withdrawn.

Amendments 201ZE to 201ZH had been withdrawn from the Marshalled List.

Clause 137 agreed.

Clauses 138 to 141 agreed.

Clause 142: Safeguards relating to examination of material

Amendment 201ZJ not moved.

Clause 142 agreed.

Amendment 201A

Moved by ***Lord Butler of Brockwell***

201A: After Clause 142, insert the following new Clause—

"Offence of unauthorised examination of material

(1) A relevant person who, without lawful authority, knowingly or recklessly fails to comply with the safeguards referred to in section 142 is guilty of an offence.

(2) In this section "relevant person" means a member of the intelligence services.

(3) Subsection (1) does not apply to a relevant person who shows that he or she acted in the reasonable belief that he or she had lawful authority to engage in the activity to which subsection (1) relates.

(4) A person guilty of an offence under this section is liable—

(a) on summary conviction in England and Wales—

(i) to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003),

(ii) to a fine, or

(iii) to both;

(b) on summary conviction in Scotland—

(i) to imprisonment for a term not exceeding 12 months,

(ii) to a fine not exceeding the statutory maximum, or

(iii) to both;

(c) on summary conviction in Northern Ireland—

(i) to imprisonment for a term not exceeding 6 months,

(ii) to a fine not exceeding the statutory maximum, or

(iii) to both;

(d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both."

Lord Butler of Brockwell (CB): My Lords, in moving Amendment 201A I shall speak at the same time to the other proposed new clauses tabled in my name in the group, which have a similar purpose. These proposed new clauses would implement a recommendation of the Intelligence and Security Committee that misuse of the intrusive powers in the Bill should be subject to an adequate penalty. I think that that is a concern that is generally agreed with in the House.

I am aware that before the Summer Recess my noble friend Lord Janvrin moved Amendment 15, which sought to achieve this purpose. It would have done that by creating a single, overarching criminal offence for the misuse of any of the powers in the Bill. In response the noble and learned Lord, Lord Keen, speaking for the Government, argued against that proposed new clause on the grounds that a single overarching offence for the misuse of any of the powers covered by the Bill would not be appropriate since it would be a case of one size fits all.

Of course certain of the activities covered by the Bill have an appropriate offence for their misuse, such as the misuse of the powers of interception and access to communications data. Other activities such as equipment interference are already covered by offences in other legislation such as the Computer Misuse Act 1990. But it is a curious fact that there is a gap in relation to bulk powers, which is the subject we are debating today. Given that these bulk powers have been the cause of such concern in themselves, it is anomalous that the misuse of those powers should not constitute a serious offence and carry a suitably robust penalty. As the Bill stands, the misuse of these bulk powers merely constitutes a relatively minor offence under the Data Protection Act or in some cases it is only an internal disciplinary matter. Neither of those penalties would appear to be appropriate in the case of the misuse of these bulk powers.

It may be argued against these three proposed new clauses that they would have a chilling effect on members of the intelligence agencies, but I draw attention to the drafting, which states that the offence would apply only if:

"A relevant person … without lawful authority, knowingly or recklessly failed to comply with the safeguards",

set out in the Bill, so this is not something that a member of the intelligence services would stumble into accidentally. In those circumstances, this is not something which need deter or prevent the satisfactory operation of the activities of members of the intelligence services. This would apply where there has been serious, knowing and deliberate misuse of the bulk powers in the Bill. It seems appropriate that in those cases a serious penalty should be applied. With that intention, I beg to move.

The Marquess of Lothian (Con): My Lords, I rise briefly to support the noble Lord, Lord Butler, in these proposed new clauses. As a member of the Intelligence and Security Committee I can confirm that we felt very strongly that there was a gap here which needed to be filled. I am conscious of the fact that the major consideration behind this Bill was to create a balance between privacy on the one side and security on the other. The way we did that was by ensuring that the security aspects were well and properly covered, as indeed they are in terms of the bulk powers in this Bill, but equally that confidence on the privacy side was sufficient for people to accept that where they were misused there would be an adequate penalty against that. But looking at the Bill and the other offences that can be committed and the penalties available for them, in the case of bulk powers, which is what most of the public in the evidence we took in the ISC were concerned about, there seems to be a gap that is covered only by minor results of a criminal offence.

I suggest to the Government and to my noble and learned friend that whether or not he agrees completely with the precise criminal penalties suggested in the amendments, the principle of having a stronger set of criminal provisions relating to these powers should be considered very seriously.

Lord Rooker: Perhaps I may put a strictly non-lawyer's question to the noble Lord, Lord Butler. Who decides where the court action takes place? Bearing in mind that these are slightly different circumstances and given that, as I understand it, a conviction takes place in a court, who decides where the person who has been charged should stand trial? I am not clear on that point. They might say, "I would rather go to Northern Ireland, please, because I would get only six months there".

Lord Deben (Con): My Lords, I always believe that these debates should not be carried out only between those who spend their lives discussing whatever the subject is, and this is one of them; it is extremely dangerous to leave it to those for whom security is their bread and butter. I mean that in the most polite way. However, this particular Bill has been the subject of very considerable concern among members of the general public. I was pleased to hear earlier how the Government's amendments, tabled by my noble friend, showed just how carefully the Government have considered people's concerns about the sorts of decisions that we have to make in the circumstances of today.

Also of concern are the remarks of the noble Lord who talked about the desire he always has to make sure that when times are not as they are now, the draconian decisions we have to make today do not automatically continue but are seen always as decisions made in circumstances that we have never faced before.

The amendments put down by the noble Lord, Lord Butler, are also worthy of careful consideration. The reason I suggest that is that they are immediately comprehensible to the public at large. The public want to know that, having struck the sort of balance which they understand has to be reached, we are also concerned that that balance shall be maintained and will not be an excuse for a constant erosion of what people feel to be very precious things. Freedom and privacy are too precious to allow what one might call mission creep. The only way to stop it is by having a clear definition of a crime—of something that has been done which is punishable. I am concerned about this gap in the legislation which I suspect the Government did not intend to be there.

All I want to say to my noble and learned friend is that, for the public as a whole, what the noble Lord, Lord Butler, has proposed will be very attractive. If the Government do not like the wording or if we cannot answer questions such as where a court case might be heard, no doubt it can be rewritten—but I hope that it will not be ignored.

7 pm

Lord Hope of Craighead (CB): My Lords, I should like to add just a few words in support of the amendment proposed by the noble Lord, Lord Butler of Brockwell, drawing attention to the phrase "knowingly or recklessly", which he emphasised in his short speech.

One should perhaps bear in mind that the prosecutor has to prove the case to the criminal standard—that is, to the standard of "beyond reasonable doubt". At one time in my career, I was a prosecutor and I am aware of the significance of the burden of proof on the prosecutor in proving the offence to that standard. So the words "knowingly and recklessly" set a very significant standard that requires looking into the mind of the alleged offender. It would surely be unthinkable for a prosecutor to bring a case before a single judge or a jury without convincing evidence that the standard could be met.

As for the very interesting question of who decides, I believe—the Minister will correct me if I am wrong—that the decision is made by the prosecutor, having regard to the anticipated length of sentence and the gravity of the offence. I would have thought that the structure of the proposed amendment is right: that there ought to be a choice between the two, because some offences could justify only a minor penalty, in which case the summary process would be appropriate, but there could be other, very serious ones where prosecution on indictment would be appropriate. However, the judgment would be that of the prosecutor, having regard to what the sentence would be likely to be at the end of the day.

Lord Janvrin (CB): I, too, rise to support the three amendments tabled by my noble friend Lord Butler. The point here is that he has drawn attention to this gap in offences for the misuse of bulk powers. I moved Amendment 15 earlier in Committee to take account of the fact that there was a gap, suggesting that there was a case for tidying up the misuse of these powers and the offences relating to them in one bundle. However, a better approach may well be to look at my noble friend Lord Butler's suggestion regarding the specific area of bulk powers.

I echo the points made about the nature of these amendments. They are not about an inadvertent mistake in the heat of a fast-moving situation; they refer to someone who, without lawful authority,

"knowingly or recklessly fails to comply with the safeguards".

The argument has been used that we should beware the chilling effect, but I am not sure that I can understand that in the context of the words "knowingly or recklessly".

Secondly, on bulk powers, throughout the Bill we have considered the balance of trust—between the need to reassure the public about the work of our intelligence agencies, and the need to enable the agencies to use investigatory powers with confidence and at pace. It is part of that delicate balance to reassure the public that there is effective deterrence against a rogue operator, a cowboy—someone who misuses these powers "knowingly or recklessly". That is why the Intelligence and Security Committee has been keen to debate this issue and the nature of the criminal offences, and why I welcome these three amendments as perhaps a compromise between the catch-all offence and doing nothing. Far from inducing a chilling effect, in my view, the public reassurance given by these amendments would strengthen the hand of the intelligence agencies, which are entitled to the public support they so richly deserve.

Lord Rosser: We are rather assuming that the Government will oppose the amendments, just as we—wrongly—assumed they would oppose the previous

[Lord Rosser]
group. If they oppose them, we will certainly want to listen to the strength, or otherwise, of their argument, unless they are going to indicate that, in view of the pressure from around the Committee, they will take this issue away and reflect further on it.

A fairly strong argument has been made for being able to take the kind of action envisaged in the amendments. I do not know whether the Government want to argue that getting a conviction might well have to involve the disclosure of, or some information about, sensitive material that is not in the public domain. However, we certainly wish to hear the strength or otherwise of the Government's objection to these amendments.

Lord Paddick: I want briefly to add our support for the amendments tabled by the noble Lord, Lord Butler of Brockwell, and for his compelling arguments. I have never previously had contact with the security services but, in preparation for this Bill, I visited various places where they operate, and I am convinced that it is not simply a question of the high esteem in which James Bond is held: the perceived integrity of the people who work in the security services is a function of reality. These offences are of far more benefit to the public in reassuring them that, in the extraordinary circumstance that they were committed, such offences do indeed exist, rather than their being demonstrably necessary based on experience because the security services operate in this criminal way.

However, as the noble Lord, Lord Butler of Brockwell, has said, it is something of an anomaly that there is no serious criminal sanction for an abuse of the bulk powers provided by the Bill, yet there are significant criminal sanctions in relation to all the other powers. On that basis, I very much support these amendments.

Lord Keen of Elie: My Lords, I am conscious of the strength of feeling that has been expressed about this matter, but let me make it clear that we do not accept that there is what was termed "a gap" in the criminal sanctions with respect to bulk powers. This matter was discussed during earlier Committee sittings, as the noble Lord, Lord Butler of Brockwell, observed, under reference to Amendment 15, which proposed a new offence of unlawful use of investigatory powers. I understand the development that has taken place and the context of the amendments that have now been spoken to. On that earlier occasion, I referred to the civil penalties and criminal offences that apply in respect of the misuse of the powers in the Bill. In particular, I pointed out that a whole series of statutory offences is listed under Clause 1. But over and above that, it is important to bear in mind the availability of the offence of misconduct in public office, which is also referred to. I underline that because that offence would apply to instances of misuse of bulk powers in appropriate circumstances, and would certainly embrace circumstances in which there was a knowing or reckless misuse of such powers.

I also note in passing that, only two days ago, the Law Commission issued a consultation document entitled *Reforming Misconduct in Public Office* so that the matter could go out for further consideration. The Law Commission highlighted that the problem is that, often, there are overlapping offences which obscure the use of the offence of misconduct in public office. I rather fear that the introduction of a further statutory offence would simply create a further overlap with regard to such offences. We are at an early stage. The Law Commission has only just introduced that consultation document, but we will take account of it in this context. Although I quite understand the point that was raised by the noble Lord, Lord Butler, and indeed the ISC, in this context, we consider that misconduct in public office is available to deal with the instances that have been referred to.

Before the summer, in response to Amendment 15, we referred to the "inadvertent operational impact" that the creation of further statutory offences could have. The officers working within our intelligence agencies are entirely committed to the mission of keeping the country safe. They are professional and ethical in the way they conduct their work. We recognise the concerns raised about the potential misuse of investigatory powers but, as I say, the creation of new offences may unnecessarily inhibit agency staff and limit their ability to operate with confidence. We do not disagree that intelligence officers who are exercising these most sensitive and, indeed, intrusive powers should consider their actions carefully before using them, but we have seen no evidence that the dedicated men and women of our security and intelligence agencies give such matters anything less than the most careful consideration.

While deliberate misuse of these data can already incur criminal liability—indeed, we suggest that reckless misuse would be sufficient—the creation of a new offence would send a powerful and potentially damaging message to the men and women of our intelligence services. It may be taken to imply that more is required of them than is already the case and that innocent mistakes will in future result in criminal prosecution; for example, if they are construed as the product of reckless behaviour. I appreciate that it is not the noble Lord's intention that this should occur but we must consider not just the letter of the law but what it will be taken to mean by those on the front line. There is a real risk that this amendment, if accepted, would suggest that they are not trusted to do their jobs, and that it could foster a culture of risk aversion in the agencies at a time when they are dealing with complex and evolving threats. That is certainly the concern expressed by the heads of the intelligence agencies, which I know they have communicated directly to members of the Intelligence and Security Committee.

The Government are clear that if anyone in a public authority were to act contrary to their obligations under the Bill, the matter would be taken extremely seriously. The current commissioners already ensure that they investigate and report publicly on the very infrequent cases of errors that involve serious misuse. These matters are brought into the public domain. In appropriate cases disciplinary action may be taken, up to and including dismissal, or civil or criminal liability incurred. The extent of that criminal liability will be determined by the prosecution deciding what form of offence should be prosecuted, at what level and, indeed, at what level of court for the purposes of penalty. Although misuse is exceedingly rare, intelligence agency

staff are conscious of their obligations; indeed, from time to time they have been dismissed for misusing systems.

When these points are considered together, I hope noble Lords will agree that this puts beyond doubt the severe penalties that would apply in the event of deliberate wrongdoing by a member of a public authority—or, indeed, reckless behaviour. We therefore suggest that new criminal offences are unnecessary and potentially confusing, and, on the face of it, would adversely affect the operation of the agencies. In these circumstances, I invite the noble Lord to withdraw his amendment.

Lord Paddick: If the Government are concerned about overlapping criminal offences, particularly the overlap with misconduct in a public office, why in Clause 56 have they created a new offence of making unauthorised disclosures? That seems to completely contradict the argument that the Minister has just offered the Committee.

Lord Keen of Elie: I do not for a moment accept that it contradicts the argument. The objective is to ensure that we minimise any overlap in the context of such criminal offences.

The Marquess of Lothian: In the interests of public confidence, can my noble and learned friend give an indication of what sorts of penalties there would be for the offence of misconduct in public office? It is important that the public know this is being taken seriously.

Lord Keen of Elie: The extent of the penalty would depend on the level at which the particular offence was prosecuted. I do not think I can give an absolute answer to that but I would be content to write to the noble Lord to set out the scope for such a prosecution.

7.15 pm

Lord Rooker: This is probably a question for the noble Lord, Lord Butler, rather than anyone else. In subsection (2) of the proposed new clause,

"'relevant person' means a member of the intelligence services".

I am pretty certain from the visits we did with the RUSI panel that other people are used for their expertise by the agencies who are not what you might call employees. I am not sure what the definition of "member" would be. When the noble Lord was drafting that or taking advice, did he consider that that covered everybody who was working in, as opposed to being an employee or member of, the intelligence services? I do not quite know; there could be a gap of people who are free riders.

I read David Anderson's report only yesterday, but I did read all of it. On at least three occasions he mentions circumstances where people walked the plank; in other words, under the system operating now people who did something wrong either left the service or were sanctioned. It is not as though nothing is happening. It is not highlighted in there—it is buried away almost as an aside. But there have been at least three occasions where this happened. This is part of the reassurance there has to be for the public: who watches the watchers? That is what we have to sell on the privacy aspect, because we have to have it all secret or as much of it as possible secret. The public are being watched over—who is watching the watchers? If there are examples where incidents have occurred and people have walked the plank, those ought to be sufficient examples that the system is operating. I do not know whether or not new sanctions are needed, and I do not know whether this sanction would apply to everybody within the agency because not everybody there is an employee.

Lord Butler of Brockwell: My Lords, first, I will attempt to answer the questions of the noble Lord, Lord Rooker. The purpose of the reference to the intelligence services is that this is an activity of the intelligence services and it distinguishes that from the activities of the police or others. Only the intelligence services carry out these functions. On his second point, it is absolutely true, and I know from my own experience, that any misconduct of this sort within the intelligence services would be very severely dealt with and would be the subject of disciplinary action, usually leading to dismissal. The problem with that approach is that it is less than the criminal offences that are applied to other types of misuse of these powers. It is difficult to explain to the public why there should be that distinction.

In answer to the Minister, to whom I am grateful for his explanation, if we are providing reassurance to the public, we ought to have an offence that relates directly to the misuse of bulk powers. Other specific offences are referred to in the Bill, such as for the misuse of communications data or under the Computer Misuse Act. Why in the case of the misuse of bulk powers should we rely only on the general power of misconduct in public office? That is an anomaly.

I wish to make it absolutely clear that, like the noble Lord, Lord Paddick, and the Minister, I have complete confidence in the integrity of members of the intelligence services. That is not what is at issue here. What is at issue is having equal treatment for different types of offence—different types of abuse of powers—under this Bill. It seems to me that there ought to be an evenness in the approach to that, which is not at present in the Bill.

My noble friends and I and, I am sure, the Intelligence and Security Committee will consider carefully what the Minister has said, but I must reserve our right to return to this on Report.

Amendment 201A withdrawn.

Clauses 143 to 145 agreed.

Clause 146: Power to issue bulk acquisition warrants

Amendments 201B to 202 not moved.

Amendment 203

Moved by ***Earl Howe***

203: Clause 146, page 115, line 23, at end insert—

"( ) The fact that the communications data which would be obtained under a warrant relates to the activities in the British Islands of a trade union is not, of itself, sufficient to establish that the warrant is necessary in the interests of national security or on that ground and a ground falling within subsection (2)."

Amendment 203 agreed.

Amendment 203A

Moved by ***Lord Paddick***

203A: Clause 146, page 115, line 34, after "obtaining" insert "and excluding third party data not already in the possession of the operator"

Lord Paddick: My Lords, Amendment 203A is in my name and that of my noble friend Lady Hamwee. I shall also speak to Amendments 204A, 204B, 210ZE and 210ZF, which are in this group.

Our Amendment 203A seeks to put into the Bill that a bulk acquisition warrant will not include obtaining third-party data not already in the possession of the operator. We have debated a similar point before and the Minister addressed third-party data in his letter to the noble Lord, Lord Rosser, on 27 July this year. However, can the Minister elaborate on the position of third-party data in relation to bulk acquisition?

Amendment 204A seeks to get it on the record that Clause 146(7), by allowing the warrant to cover,

"data whether or not in existence at the time of the issuing of the warrant",

does not allow for speculative surveillance without suspicion.

Amendment 204B would put into the Bill that,

"A bulk acquisition warrant may not require data which relates to or includes internet connection records".

This was touched on in our opening debate this afternoon on the Anderson review. In footnote 85 on page 33 of his report, Anderson states:

"A 'Bulk Communications Data' factsheet published with the draft Bill on 4 November 2015 stated '*The data does not include internet connection records* …'. I am told however that this is no more than a statement of present practice and intention: neither the Bill nor the draft Code of Practice rules out the future use of the bulk acquisition power in relation to ICRs".

The Committee will recall that we on these Benches oppose the storage of the internet connection records of every man, woman and child in the UK for 12 months, whether suspected of an offence or not, by internet service providers as required by the previous provisions of the Bill. We believe this to be a disproportionate intrusion into privacy, for the reasons that I have already explained at length to the Committee. Law enforcement agencies would, however, be able to access such internet connection records only if someone was suspected of an offence. The Government have introduced additional safeguards in the Bill to specify what sorts of offences would warrant such intrusion, but without this amendment it is open to the Government in the future to allow law enforcement agencies to store and have access to internet connection records. We believe that this is two steps too far.

As far as Amendment 210ZE is concerned, Clause 157 refers to the "Duty of operators to assist with implementation" of bulk acquisition warrants. This amendment seeks to clarify that the person to whom the warrant is issued—the implementing authority—cannot be held liable for a breach of the warrant because of the actions of the operator.

Amendment 210ZF seeks to ensure that, under Clause 158, "Safeguards relating to the retention and disclosure of data", if internet connection records were subsequently stored, no such record could be disclosed unless the individual concerned was suspected of having committed an offence. I beg to move.

Lord Keen of Elie: My Lords, I agree with the noble Lord's intention in Amendment 204 to ensure that communications data can be acquired in bulk and analysed in real time. Indeed, the Bill already permits this. I draw attention to Clause 146(5) and 146(6), which provide for such a scenario as he suggests in this amendment. These subsections specify the conduct which must be described in the warrant and any conduct that it is necessary to undertake to do what the warrant expressly requires. If it was therefore necessary to obtain bulk communications data in real time, these provisions would allow it.

Baroness Hamwee: My Lords, I think that the noble and learned Lord is speaking to Amendment 204, which has not in fact been spoken to.

Lord Keen of Elie: I had understood that the noble Lord, Lord Paddick, also referred to Amendment 204 but if he did not, I apologise.

I turn then to Amendment 203A, which seeks to exclude the ability for a bulk acquisition warrant to require a communication service provider to obtain third-party data where it is not already in its possession. I do believe that the noble Lord referred to that.

Lord Paddick: I did.

Lord Keen of Elie: It will be recalled that the issue of third-party data was discussed during the last Committee session before the Summer Recess, when my noble friend Lord Howe explained that it is absolutely right that where a communication service provider holds or is able to obtain communications data, whether in relation to its own services or those provided by a third party, the data should be available to be acquired under the Bill. Put simply, data that already exist and are held or can reasonably be obtained which could save a life, convict a criminal, prevent a terrorist attack or provide an alibi should not be put out of the reach of law enforcement. The point we would make clear is this: a bulk warrant can require a communication service provider to obtain and disclose third-party data only where it is necessary and proportionate to do so, and where approved by a judicial commissioner. The provider is required to comply with a request to provide communications data in bulk, including third-party data, only where it is reasonably practicable for it to do so. Given these safeguards, I suggest that any further restriction on obtaining third-party data would not be appropriate.

This is of course a separate matter from the retention of third-party data, where the Prime Minister gave a clear commitment when she was Home Secretary that we will not require a telecommunications operator to retain third-party data. We are working on provisions to address that matter in the Bill.

We understand that the purpose of Amendment 204A is to limit the bulk acquisition of communications data to those which are held by the communication service provider only on the day that a warrant is served. The noble Lord, Lord Paddick, indicates otherwise.

Lord Paddick: If I can assist the noble and learned Lord, Amendment 204A is to probe and seek reassurance on the record that this is not simply to allow speculative surveillance without suspicion. I accept that a warrant has to authorise the acquisition of an ongoing stream of content but this would just assure the Committee that it does not mean speculative surveillance without suspicion.

7.30 pm

Lord Keen of Elie: I do not think that there is any suggestion that it would involve speculative surveillance without suspicion but, technically, we should not require the agencies to make repeated applications for a warrant in order to maintain their access to such material. I hope that reassures the noble Lord, and I shall therefore move on. Perhaps I had misunderstood the extent of the noble Lord's amendment, but there would be an unnecessary workload on the agencies if they had repeatedly to apply for warrants in this context. However, I am sure that that was never the noble Lord's intention.

Amendment 210ZE seeks to ensure that the authority implementing a bulk acquisition warrant cannot be liable for a breach of that warrant as a result of an act or omission by the communications service provider on which it has served the warrant. The Bill outlines errors that must be reported to the Investigatory Powers Commissioner, and the draft Bulk Acquisition Code of Practice provides additional detail on error reporting processes. The code draws distinctions between errors made by the requesting agency and those made by a communications service provider on which the warrant is served. We believe it is clear that anyone implementing a warrant is responsible for any error they, and they alone, make, and that they are not responsible for any error made by anyone else. Therefore this amendment is unnecessary.

Amendments 210ZF and 204B would add to the current list of reasons for which it may be necessary to disclose or copy communications data obtained under a bulk acquisition warrant. Such disclosure and copying must, of course, be kept to the minimum necessary for a limited number of purposes. The amendment adds, in the case of internet connection records, a requirement of necessity in respect of an individual having committed an offence.

In tabling amendment 210ZF, I understand the noble Lord is seeking to understand whether a bulk acquisition warrant could require a communications service provider to provide internet connection records in bulk. The Government have been clear that one of the aims of the Bill is to provide technology-neutral legislation—a point referred to earlier by my noble friend Lord Howe—to take into account future changes in the way that we communicate. While we have been clear that internet connection records are not currently acquired in bulk, it is of course worth being clear that current legislation would allow the agencies to acquire internet connection records in bulk, where necessary and proportionate to do so.

I can confirm to the Committee that the agencies do not currently acquire internet connection records in bulk and have no current intention to do so. It is, however, important to ensure that we do not legislate against the possibility of internet connection records being acquired in bulk, should the agencies make a case which demonstrates that this might be necessary and proportionate in the interests of national security in the future.

We strongly believe that it is right that the intelligence agencies have the power to acquire communications data in bulk. Indeed, David Anderson, in his recent review of the utility of the bulk powers within the Bill, said:

> "Bulk acquisition has been demonstrated to be crucial in a variety of fields",

and that,

> "bulk acquisition has contributed significantly to the disruption of terrorist operations and, through that disruption, almost certainly the saving of lives".

Clause 158, which this amendment seeks to alter, outlines the safeguards relating to the acquisition of communications data under a bulk warrant. Any application to obtain communications data in bulk is subject to the strongest of the safeguards in the Bill, which we have discussed at length in relation to other provisions. A warrant to acquire communications data in bulk must be both necessary and proportionate for the interests of national security, must specify the operational purposes, which are the only reasons the data can be selected for examination, and will be subject to the double lock of Secretary of State and judicial commissioner approval.

It is in this context and in the context of these very strong safeguards that we think it right, as is currently the case, that the bulk acquisition power should remain technologically neutral, with the safeguards applying equally to all types of communications data defined by the Bill.

As David Anderson recommends in his report, the Government will also keep the bulk acquisition power under review in order to ensure that it remains necessary and proportionate alongside any other mechanisms which might be developed, such as the request filter. Taking into account the fact that the agencies require such clear authorisation from both the Secretary of State and the judicial commissioner, should they ever consider it necessary and proportionate and in the interests of national security to proceed with such bulk acquisition, I suggest that this amendment is unnecessary and I invite the noble Lord to withdraw it.

Lord Paddick: I am grateful to the noble and learned Lord for his explanation. As far as Amendment 204B and the potential for bulk acquisition of internet connection records are concerned, it is, to us, a rather alarming prospect which I do not think has yet been raised in the public consciousness. It is absolutely certain that we will return to this issue on Report. At this stage, I beg leave to withdraw the amendment.

Amendment 203A withdrawn.

Amendments 204 to 204B not moved.

Clause 146, as amended, agreed.

Clause 147: Approval of warrants by Judicial Commissioners

Amendments 205 and 206

Moved by ***Earl Howe***

205: Clause 147, page 116, line 20, after "must" insert "—

(a) "

206: Clause 147, page 116, line 21, at end insert ", and

( ) consider the matters referred to in subsection (1) with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy)."

Amendments 205 and 206 agreed.

Clause 147, as amended, agreed.

Clause 148 agreed.

Clause 149: Requirements that must be met by warrants

Amendment 207

Moved by ***Earl Howe***

207: Clause 149, page 117, line 1, leave out subsection (4) and insert—

"( ) The operational purposes specified in the warrant must be ones specified, in a list maintained by the heads of the intelligence services ("the list of operational purposes"), as purposes which they consider are operational purposes for which communications data obtained under bulk acquisition warrants may be selected for examination."

Amendment 207 agreed.

Amendment 207A had been withdrawn from the Marshalled List.

Amendment 208

Moved by ***Earl Howe***

208: Clause 149, page 117, line 5, leave out from "issued," to end of line 7 and insert "are specified in the list of operational purposes.

(5A) An operational purpose may be specified in the list of operational purposes only with the approval of the Secretary of State.

(5B) The Secretary of State may give such approval only if satisfied that the operational purpose is specified in a greater level of detail than the descriptions contained in section 146(1)(a) or (2).

(5C) At the end of each relevant three-month period the Secretary of State must give a copy of the list of operational purposes to the Intelligence and Security Committee of Parliament.

(5D) In subsection (5C) "relevant three-month period" means—

(a) the period of three months beginning with the day on which this section comes into force, and

(b) each successive period of three months.

(5E) The Prime Minister must review the list of operational purposes at least once a year."

Amendment 208 agreed.

Clause 149, as amended, agreed.

Clause 150 agreed.

Clause 151: Renewal of warrants

Amendments 209 and 210

Moved by ***Earl Howe***

209: Clause 151, page 117, line 22, leave out "before it would otherwise cease to have effect" and insert "during the renewal period"

210: Clause 151, page 117, line 43, at end insert—

"( ) "The renewal period" means the period of 30 days ending with the day at the end of which the warrant would otherwise cease to have effect."

Amendments 209 and 210 agreed.

Clause 151, as amended, agreed.

House resumed. Committee to begin again not before 8.37 pm.

Homelessness

Question for Short Debate

7.38 pm

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government what plans they have to deal with homelessness.

Lord Kennedy of Southwark (Lab): My Lords, I thank all noble Lords who are going to speak in this short debate. At the start, I declare my interests as an elected councillor in the London Borough of Lewisham and a vice-president of the Local Government Association, and I generally refer Members to my declaration of interests. I also thank the staff of the House Library for their useful briefing and I thank the many organisations that have provided briefing material to help this debate, including the Joseph Rowntree Foundation, the Local Government Association, the Children's Society, Alcohol Concern, St Mungo's and the *Big Issue*.

We live in one of the richest countries on the planet. We are in a palace debating homelessness in one of the richest cities in the world, yet homelessness is right on our doorstep. If you come into the Palace through the entrance in Westminster Tube station you are most likely to be greeted by people sleeping on cardboard near the entrance door. If you arrive by train at any of the mainline stations within a few minutes' walk, such as Charing Cross, Victoria or Waterloo, you are likely to be greeted on your route to the Palace by homeless people sitting on the floor and sleeping in doorways. It is truly shameful that people in this city do not have a roof over their head where they can be warm and safe. I put this Question for Short Debate down because we have to keep raising this issue and pressing the Government

to take effective action to end this scandal. I am sure that noble Lords from all sides of the House will, in future, raise this most pressing cause again and again.

In 2015, the Government estimated that 3,569 people were sleeping rough on any one night in England, a rise of 30% on the previous year and double the number who were on our streets in 2010. In 2011, the Government launched the No Second Night Out service, but despite that, why have homelessness numbers continued to rise? Why do people become homeless? There are a variety of reasons, which can include relationship breakdowns, people fleeing domestic violence, alcohol abuse, drug abuse, mental health problems, loss of employment and the unaffordability of housing. However, not all these people will end up sleeping on the street: some will end up sleeping on the sofas of friends and family members, and then become part of a hidden class of homelessness.

We need an array of strategies to deal with this problem. There is no quick, easy answer, but with national and local government working together along with civil society, this problem can be dealt with. Look at alcohol abuse: it is well established as a cause and a consequence of homelessness. It is almost impossible for someone to address their alcohol addiction problems while they do not have a roof over their head. It is likely that excessive alcohol consumption is a coping mechanism in some cases, with the result of making everything worse.

I do not need all the answers tonight, and I am very happy for him to write to me afterwards, but I have a series of questions for the noble Lord, Lord Bourne. First, how do the Government see the development of strategies for dealing with alcohol abuse among people who are sleeping on the streets, and consuming super-strength lager and super-strength cider among other things, so that dealing with the addiction is central to sorting out their lack of stable housing? Young people, especially those in care, can be particularly vulnerable. Targeted support is needed so that they can develop the confidence to be able to live safely and securely. One possibility is of course to look at what support young people receive and where that support can be improved.

I am sure that the noble Lord, Lord Bourne, will be aware that the Children's Society has been campaigning for young people coming out of care to be able to claim the single bedroom rate housing allowance until the age of 25—an increase of three years from the present cut-off point at 22. At present, these young people transfer to the shared accommodation allowance, which has particular risks for vulnerable young people. The proposals from the Children's Society seem a very good idea. Have the Government given any consideration to these proposals and, if not, why not?

The correlation between mental health and rough sleeping is well established, with four out of 10 people sleeping rough on the streets having a mental health problem. They are likely to spend longer on the street, and getting these people properly assessed and receiving treatment is an important part of getting people back into accommodation that is safe and warm. Can the noble Lord, Lord Bourne, tell the House what work is being done with the NHS to ensure proper treatment is available as part of a plan to get people off the streets? What assessment has he made of the Welsh Assembly's Housing (Wales) Act 2014, as this appears to have had a positive effect, with more focus on prevention and a drop in the number of statutory homeless decisions?

The lack of genuinely affordable housing is a real problem. Affordable rent, which often appears to be seen by the Government as the solution to all housing problems, is in many parts of the country completely unaffordable. Where I live, in Lewisham, rents of £2,000-plus a month are fairly common and do nothing to deal with the need for housing at social rents or to enable people to have a reasonable quality of life. The obsession with this affordable rent policy and the failure to build social housing are things that urgently need to be addressed. Local government has a key role to play but it must be said that it is unable to deliver on a wider range of demands, of which tackling homelessness is a key concern along with other increasing pressures, while having to deal with ever-reducing budgets. It just does not add up; you cannot square the circle.

Can the noble Lord, Lord Bourne, tell me what plans the Government have to review the question of housing incomes and rising rent levels, and the contribution that these worsening figures make to the homelessness crisis? It would also be useful if he could tell the House what mechanisms are used to review the impact of government policy on homelessness and about the prevailing trends. The Mayor of London has made tackling homelessness one of his housing priorities for the capital. In addition to the longer-term plans to boost the supply of genuinely affordable housing, he is setting up a No Nights Sleeping Rough task force. Can the noble Lord tell us how his department is working with the Mayor of London to deal with homelessness in the capital?

The Homelessness Reduction Bill is a Private Member's Bill put forward by the Conservative MP Mr Bob Blackman, which seeks to modernise homelessness legislation. There are some very positive aspects to the Bill and it has cross-party support in the other place and elsewhere, but with new duties, new responsibilities and new requirements come new costs and new funding requirements. The duty in the Bill to provide emergency interim accommodation for people with nowhere safe to stay would have a positive effect in helping homelessness to be addressed at the earliest opportunity, and avoid the danger of people sleeping rough while a longer-term solution is found. The Bill does not have its Second Reading until the end of next month, but I hope the Government will look at it carefully.

I close by saying that I am delighted at the range of speakers we have for this short debate, including: my noble friend Lady Armstrong of Hill Top, who served as a government Minister over many years; the Mayor of Watford, the noble Baroness, Lady Thornhill; the chief executive of the Centre for Social Justice, the noble Baroness, Lady Stroud; and of course the noble Lord, Lord Bird, who has done so much work with the *Big Issue*. I thank them all for taking part in this debate tonight and I look forward to their contributions.

7.46 pm

Lord Porter of Spalding (Con): My Lords, I draw noble Lords' attention to my register of interests again. I am the leader of South Holland District Council and the chairman of the Local Government Association. I am a partner in a very small business that rents out houses privately, and I am the chairman of a community interest housing company that we set up specifically to deal with homelessness.

I will expand a bit on the words of the noble Lord, Lord Kennedy, in terms of not just dealing with this as a rough sleeping issue. We have 70,000 people in council accommodation for the homeless, nearly 1 million people sitting on council waiting lists and only about 1.6 million council houses that are still in council use. This is not just a problem for this Government. It is a historical problem that this Government inherited from their predecessor—of whom they were part—which they in turn inherited from their predecessor, whom they clearly were not part of. Homelessness seems to be a problem despite the best efforts of the best political brains in the country for the last 40 years to tackle it—we seem to have failed. It is probably time now for the Government to take a completely different tack and work closely with the local government family and the third sector to make sure that we give attention to detail that is not driven by people from the Treasury.

Now is probably the time for DCLG to be set free from the Treasury so that it is able to come up with the solution that we all know is the one we need to follow, which is for money to be put towards the supply problem. It is not about the supply of properties; as we know, councils have planning permission for more than 500,000 properties. The private sector, however, for varying reasons, not all of them simple, has failed to deliver those units. Councils have proposed a solution to the Government that would allow 500,000 new units to be delivered in the life of a Parliament, and I again extend the offer from the Local Government Association to work very closely with DCLG on making sure that we try, once and for all, to manage people's expectations that they should be able to live in a decent, safe, secure, warm home.

7.49 pm

Baroness Armstrong of Hill Top (Lab): My Lords, I again refer Members to my interests. I am chair of an organisation called Changing Lives, which is based in the north-east but operates in other parts of the country, too. I was Minister for homelessness—among other things, including local government—from 1997 to 2001, which was when we introduced the real drive around rough sleeping and reduced it by more than two-thirds within two years. We had a very clear strategy during that time, where we worked very closely with local authorities and were very successful in reducing rough sleeping. I used to ring up nearly every day and ask not only how many beds were available but how many detox beds, because unless you offered those, you were not going to crack the problem. That is one of the problems today.

In this very short speech in a debate that I congratulate my noble friend on securing, I want to concentrate on the plight of women. Women have been the hidden group in homelessness, and indeed among people with complex needs. In 2007-08, my last job in government was to return to issues such as this as Minister for Social Exclusion. I set up what we called the ACE pilots, looking in a new way at adults with chronic exclusion—I think that is what "ACE" stood for. The question was how to do that in a more holistic way. However, we did not address it in a gender-based way, and that was a mistake. Now, the charity I chair does much more gender-based work, and it is absolutely critical. We run a programme in Gateshead in Newcastle called Fulfilling Lives, a programme funded by the Big Lottery Fund to look at people with complex needs, and we have a significant number of women with whom we are working in this regard. Every one of them has had significant abuse either as a child or as an adult—in most cases, both. That means they do not talk about it in certain settings, so some of our workers who had worked with them for years but had never worked with them in a gender-based way got a real shock when they began to talk much more about the experiences that had brought them to where they were.

That has convinced me that we must take a whole new look at how we do things and how we address these issues. You cannot leave those women in mixed hostels. Indeed, work came out over the summer from a very good organisation called Agenda, which has been brought together from about 60 charities that work with women in this area, looking at and highlighting the number of women who have to sell themselves as sex objects to get accommodation, food and the drugs and the alcohol on which they may well be dependent. This is simply not acceptable and we have to do something about it.

The DCLG Select Committee report last month acknowledged the real issue of women and that we have not been looking at it effectively. I simply say to the Government that this is about issues of mental health, addiction and abuse. Unless we begin to look at this matter much more carefully, especially at how we collect the figures—we do not really know the extent because we do not collect the figures effectively—family life in the next generation will continue to be blighted. With regard to the lives of these women, I say to Ministers: come and have a look at some of the work we are doing. It is remarkable but, my goodness, it is difficult.

The Government have to look at the housing benefit issue and give us the report quickly, because people need assurance that the refuges and hostels that are funded from housing benefit will be exempt in future. We need that assurance quickly. We need more mental health workers to work with these people, and we need gender-based services and approaches. There is much more that I would like to say, but my time is up. I hope we will keep coming back to this, and I hope Ministers will engage with folk like me because we really want to address the issues.

7.54 pm

Baroness Thornhill (LD): My Lords, I declare my interests as the directly elected mayor of Watford and deputy chair of the LGA.

I was heartened to learn that the House of Commons Communities and Local Government Committee published its homelessness report last month. It stated quite boldly that,

"the scale of homelessness in this country is such that a renewed, cross-Departmental Government strategy is needed".

Hurrah—that is good news. However, will this be a strategy that leads to swift action and real change?

As we all know, homelessness legislation provides the real safety net to protect some of the most vulnerable people in our society. We know this, but we also know that the holes in the net are getting bigger. It has been evident to those of us in local government that this crisis has been coming for some time and has been exacerbated in recent years by the culmination of the rise in the number of people struggling to pay private rents, which are rising far faster than their incomes. There are fewer homes being built than are needed: a conservative estimate is that over 230,000 homes a year are needed, versus the 130,000 actually built last year. The number of social houses available has halved since 1994. Combine all that with the cumulative impact, which I am sure we are all getting through our constituency doors, of the recent welfare changes. Do the Government believe that the eventual strategy will reverse these trends?

In my own authority, homelessness has quadrupled in five years and we are having to find significant sums of money to house people in temporary accommodation. We have now accepted that the level of homelessness will never go back to the steady levels that we had five or six years ago, which we could accommodate, albeit with a squeeze, and I prided myself that we never needed to use bed and breakfast. Now we could not cope without local hotel provision on a permanent basis. We have recognised that we must build more temporary accommodation, at an estimated cost of millions of pounds. Our residents are now in temporary accommodation for up to three years, on average for 15 to 18 months—a Watford statistic that I am not proud of.

Why is that? The point I want to make tonight is that, quite simply, there are not enough affordable and social homes available, and pushing families back into the private sector, which we can legally do, is increasingly not an option. This is because they will usually be low-waged households, and the gap between housing benefit levels and private sector rents is growing exponentially. That is why getting your hands on a social housing tenancy in Watford is like winning the lottery. This is all happening at a time when local authority budgets are being cut year on year. How will the Government ensure that the new burdens are fully funded? Local government wants to work to solve this crisis. It believes it can be an active partner—that is the key word—in working towards sustainable solutions. However, simply extending the duties on to councils without the financial resources and powers to do the job may allow the Government to feel that they have done something, but in reality it will be a sticking plaster on an arterial wound.

The current system really is unfair to the single homeless. The plans to take away the current distinction between priority need, which usually means families, and non-priority need, usually single persons, are to be welcomed, but not if we do not have the means to house them. That will only make rationing the incredibly small cake of available housing more difficult.

The noble Lord, Lord Kennedy, is right when he says that the system does not take into account the hidden homeless—those who are indeed homeless but not included in the official statistics. The current system makes the local authority act as a gatekeeper of a scarce resource, which is a miserable role for council officers—finding reasons to turn people away when in their hearts they want to help.

Any changes to alleviate these issues will be welcomed from this side, but be assured that we will be analysing these measures with a massive dose of realism, based on hard evidence from the Local Government Association and partners. At the heart of the problem is the need for more social, affordable and specialist supported homes. The current method of providing these homes by the planning system is simply not working. Any legislation or strategy that fails to address this fundamental issue will simply mend holes in the net, when in fact I reckon we need a new net.

7.59 pm

Baroness Morgan of Drefelin (CB): My Lords, I congratulate the noble Lord, Lord Kennedy, on securing this important, albeit short, debate, and on his comprehensive opening remarks, which captured the broad nature of the challenge before us. Homelessness is undoubtedly one of the most important and pressing social issues of our time, and I greatly appreciate the opportunity to discuss it in the Chamber. While I do not have a string of interests to declare, I am personally passionate about this issue.

Homelessness is, by its nature, a complex issue, as we have already heard. The causes can vary from person to person and, unsurprisingly, there is no panacea—but this complexity must never lead us to view homelessness as something that cannot be addressed: an unavoidable feature of modern society. It is not; it is something that we can tackle. Homelessness is avoidable and doing something is firmly within our control. Indeed, there are many tools at the disposal of the Government for both tackling and, importantly, preventing homelessness, and I believe that they have an obligation to use these tools as effectively as possible. Given the short time available, I will focus particularly on one of these tools, which has been touched on.

Last year, the Chancellor announced a four-year freeze on rates of local housing allowance—that is, housing benefit paid to those living in the private rented sector. Almost 400,000 working families in England receive local housing allowance, and they contain almost 750,000 children. Local housing allowance is a lifeline for those families. It provides support to bridge the gap between wages and the essentials of living. For many, it is the difference between keeping the roof over their head and homelessness.

Analysis from the housing and homelessness charity Shelter shows that if the freeze continues, by 2020, families in four-fifths of the country could face a gap between the support they need to pay their rent and the maximum support they are entitled to. This could

[Baroness Morgan of Drefelin]
affect 330,000 working families. Furthermore, this gap is likely to be significant. We are not talking about a few pounds here. In almost a third of the country, working families will face a gap of more than £100 a month between the support available and the rent due.

What does this mean? Private tenants could be at risk of homelessness if they cannot find the money to meet the shortfall. Families will be put at increased risk of homelessness if they are evicted because of arrears or they cannot find an affordable property when their tenancy ends. Let us think about that. That means that rents are detached from the support available. Landlords will potentially view households on housing benefit as a far riskier prospect because of this, further reducing the pool of properties available to lower-income households. We therefore find ourselves in the bizarre situation where a government policy designed to help people meet their housing costs not only fails to do so but may even increase their risk of homelessness in the process.

Local housing allowance rates should reflect the real cost of renting in each area to ensure the availability of affordable properties and prevent shortfalls and therefore homelessness, just as they were intended to. I therefore urge the Minister through his good offices to think very carefully about the freeze on local housing allowance. If we are looking at a cross-departmental strategy, that should be part of it.

I am of course not alone in calling for this. The problem has been highlighted on numerous occasions, most recently in the CLG Select Committee report, which urged the Government to review local housing allowance levels so that they would more closely reflect market rents.

I hope that with the new Government, this issue will be thought about. I certainly admire the Prime Minister's commitment to make Britain a place that works for everyone, including these families.

8.05 pm

Baroness Stroud (Con): My Lords, I start by adding my thanks to the noble Lord, Lord Kennedy, for calling this debate on such a crucial issue. I declare my interest as CEO of the Centre for Social Justice, where we are currently undertaking a piece of work looking at eradicating homelessness, focused particularly on the area of rough sleeping. This work is chaired by Brooks Newmark, the former MP for Braintree.

For the past decade, we have sought to tackle the root causes of poverty in Britain, focusing on family breakdown, failed education, addiction, debt and worklessness. Through my work on the front line, running a night shelter and hostel for many years, I saw at first hand the devastating impact that those dynamics have on an individual's life when they converge and how all these factors interact to entrench disadvantage, potentially even resulting in the loss of a home. The London CHAIN rough sleeper database found that 43% of rough sleepers had an alcohol support need and just over three in 10 had a drugs support need.

As we all know, a secure, stable home is fundamental to the life chances of all of us, but particularly to the life chances of the poorest. Without it, adults can struggle to maintain employment or provide the sort of home that is crucial for the nurture and flourishing of children. I therefore strongly welcome the Government's commitment to a robust social justice agenda which focuses on early intervention to prevent issues spiralling out of control. This approach has two main advantages: first, it generates significant longer-term financial savings, but it also saves people from years of personal pain.

It is because of the focus on early intervention and prevention that I strongly welcome the Government's commitment, made just before Christmas, to consider better ways to prevent homelessness, including how legislation could be improved. As the noble Lord, Lord Kennedy, mentioned, over the past five years, Wales and Scotland have introduced new legislation to tackle these problems. The Housing (Wales) Act 2014 brought in stronger prevention and relief duties for eligible homeless households, regardless of priority need status. Although it is early days, statistics from the Welsh Government show that the new model is working, with the number of households who lose their home falling by up to two-thirds. Any programme achieving this sort of impact needs to be closely examined for lessons that we could learn here.

I therefore ask my noble friend the Minister to consider supporting Conservative MP Bob Blackman's Private Member's Bill, which, reflecting the principles of the Welsh legislation, would: place a stronger duty on local authorities to prevent homelessness; extend the definition of "threatened with homelessness" from 28 to 56 days; require local authorities to take reasonable steps to help to secure accommodation for all eligible homeless households; and entitle single people to access emergency accommodation if they have nowhere safe to stay that night.

Drawing on lessons from Wales, it has been estimated that such a law could have up-front costs of about £44 million, but almost immediate savings of £47 million. Thanks to the Government's protection of homelessness spending in the most recent Budget, resources are available to help with those potential up-front costs. Could we consider this?

As well as taking an early-intervention approach, we need to ensure that robust support is provided for people who are already homeless. This is particularly the case for people who have complex needs, as we have already heard in the Chamber tonight. Homeless Link found that 76% of homelessness accommodation projects have had to refuse access to people whose needs were too high—a situation that needs urgent attention. Therefore, I strongly welcome the Government's commitment in the Budget to doubling the funding for the rough sleeping social impact bond from £5 million to £10 million, to drive innovative ways of tackling entrenched rough sleeping, including Housing First approaches.

Housing First provides someone with immediate permanent accommodation and wraparound support to help them maintain their tenancy. It covers areas of alcohol, drugs, mental health and historic abuse. The service is highly personalised and an individual will work with a key worker who will co-ordinate the support that they need, rather than having to work with a range of different agencies. There is strong evidence to show that the Housing First approach is

very successful in moving people with complex needs away from street homelessness. This has to be our objective.

I commend the Government for their focus on this important issue and ask that they consider the twin approach of early preventive action to prevent homelessness and Housing First for those who have fallen through the net.

8.11 pm

Lord Cashman (Lab): My Lords, I, too, have a declaration, which is not in my register of interests: that is, I could be homeless. Any single one of us could be homeless, because homelessness often affects people in circumstances beyond their control. That is why I welcome this debate tonight and congratulate my noble friend Lord Kennedy on a debate on what has become a crisis issue, which is worsening at the very time that the construction industry has started to go into decline.

I was fortunate to be born and brought up in a council flat in London's East End at the height of the post-war housebuilding boom. That would now be considered a luxury. Homelessness is all around us; it is not only among those whom we see sleeping rough in ever-increasing numbers. There are people who are homeless who work, and whose families and friends have no idea that they are homeless. They are the people who we see travelling to work with us on trains, who serve us in the service industries and who often work alongside others; they have no permanent fixed abode. They sofa surf, find cheap hotels and last-minute deals; they are in squats, or staying with friends until their friends tire of them. Others are in temporary accommodation or living in shelters. As the noble Lord, Lord Kennedy, said, that this happens in the fifth-largest economy in the world is as shocking as it is shameful.

And it is getting worse, with rising rents and room rates now out of the reach of most people on an average wage, and as we see housing as a commodity rather than a basic necessity. Therefore, we need a huge increase in real affordable accommodation. I have been fortunate indeed to see the work of some of our homeless charities, such as Crisis, especially at Christmas. They are dealing with women and men whose lives could be turned around if they had a home—a permanence in their lives. Often these are people who, because of their experiences, deal with mental health problems and general health issues because of and compounded by homelessness. People are at risk, too, not only in their health but from sexual and other physical abuse. The fact that among the homeless are those who have left the armed services is inexcusable and indefensible. Women and minorities and young people are particularly vulnerable.

From the Local Government Association briefing, it is clear that councils are doing their best, but they are facing significant financial challenges. Therefore, any extension of legal duties on councils must be accompanied by sufficient powers and funding from the Government—and in this respect I look forward to the Minister's response.

Let me deal now with another particularly vulnerable group—young LGBT people. A 2014 LGBT youth homelessness report by the Albert Kennedy Trust found that 4,800 young LGBT people in the UK were currently homeless or living in hostile environments. That is 24% of the youth homeless population in this country. Some 69% of LGBT homeless youth are highly likely to have experienced familial rejection, abuse and violence, and 77% believe that their sexuality or gender identity was the overriding factor in their rejection from home. Homeless LGBT young people are less likely to seek out help than non-LGBT homeless people. When they do, a limited understanding of the experience of LGBT homeless youth and an assumption of heterosexuality by some service providers poses further risks of discrimination. The findings from that report have led the Albert Kennedy Trust to conclude that homeless LGBT young people are one of the most disenfranchised and marginalised groups within the UK.

Finally, only this week as I left my home, I was approached by a young woman who wanted cleaning work. She was desperate; she needed to clean so that she could raise £19.50 to enter a homeless shelter that night. That should not be happening—but it is happening, and in ever-increasing numbers. No work, no home, no future: that is the barren reality.

8.16 pm

Lord Bird (CB): I thank the noble Lord, Lord Kennedy, for raising the issue of homelessness and ask the Government to put their mind to the problem. It is something that every Government in the last 25 years since I started the *Big Issue* have dealt with; every Government have had their favourites and particular twists on the situation of homelessness. I declare an interest in that I am a person who makes a living out of homelessness; if it was not for the homeless, I might well be homeless. Twenty-five years ago, I started something to help the thousands of homeless people who were sleeping in the West End of London. We are not back there. If you listened to politicians in opposition today you would think that we had arrived there already, but you must be aware of the fact that we could arrive there—so it is a very good idea for us to enter the fray again and say, "Let's not return to 1991".

One of the reasons why there were so many homeless people in 1991 was that at the end of the Thatcher Administration the social security laws had been changed and children of parents on social security from the ages 16 to 17 were refused social security. So social security was withdrawn, and the noble Lord, Lord—sorry, I have forgotten your name, forgive me.

Lord Young of Cookham (Con): Young.

Lord Bird: When the noble Lord, Lord Young, was Sir George Young, as he will remember, there were thousands of young people filling our streets, because of the change in government policy. When I look at what has happened with homelessness over the years, I am probably in a minority, in that I do not believe that Governments are capable of making major changes by one policy followed by another and another. In a way, that is avoiding the major issue, which in Britain today is the fact that we fail 30% of our children in school—and those 30% of our children become 70% to 80% of our prison population and become 60%,

[LORD BIRD]
70% or 80% of the people on social security. You get a situation where families are broken, where our children are not given places of safety, where social security is not used as a place of security, and so what happens is you produce another generation of people who become homeless.

The noble Lord, Lord Cashman, says that we could all be homeless—we could be—but the chances are that, if you were failed at school, if your parents are on social security, if you live in a council flat on social security, you are more likely not to go to university and you will in fact have to rely on the university of the streets or the university of the social security office. Most of the people I have worked with over the past 25 years, 95% of them—with some notable exceptions, such as the man who went to school with Prince Charles—come from the same social background as those people who were failed in school.

After 25 years of the *Big Issue*, I have come into the House of Lords to help to dismantle poverty, not to make the poor comfortable, not to parry with the Government over this, that and the other; I have come into the House of Lords to find methods of changing the way in which we produce another generation of people. I am sorry, but all my knowledge leads to the fact that we spend £19 billion a year on education when we should actually be spending £50 billion a year on education. We should be breaking open the issue of those 30% of children who will go on to fill our prisons, our hostels, our streets and our social security queues.

8.22 pm

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, I am very pleased to answer this Question for Short Debate; it has been a debate of considerable import and great passion. I thank the noble Lord, Lord Kennedy, for securing a discussion on such an important issue and I thank the noble Lords, Lord Bird and Lord Cashman, the noble Baronesses, Lady Morgan, Lady Thornhill and Lady Armstrong, and my noble friends Lord Porter and Lady Stroud for their contributions.

Before I address specific issues that have been raised—any I do not cover in the time available I will write on—I will make a number of points. People who find themselves homeless are some of the most vulnerable in our society, which is a point that has already been made, and this Government remain committed to ensuring that they always have a roof over their heads. Homelessness affects all parts of our community: youths, women, members of the LGBT community, families, single people—they all deserve attention in this regard, not just some of them.

Since 2010, we have invested more than £500 million in enabling local authorities—who are key partners, as the noble Baroness, Lady Thornhill, rightly acknowledged—to help prevent or relieve more than a million cases of homelessness. Homelessness acceptances are now less than half of the 2003-04 peak, but just one person without a home is one too many. A diverse range of needs displayed by different groups of people means that, despite the efforts of successive Governments—and, as my noble friend Lord Porter said, it has been successive Governments—homelessness remains a significant problem in this country. There are multifarious reasons behind this, as have been set out by many noble Lords during this debate, but ably set out by the noble Lord, Lord Kennedy, in opening.

That is why the fight against homelessness must continue. My noble friend Lady Stroud was right to stress the importance of prevention and prevention funding; the Government have protected homelessness prevention funding that goes to local authorities—a total of £315 million by 2020—and have increased funding for homelessness programmes to £139 million over the course of the Parliament. The noble Baroness, Lady Morgan, rightly said that funding is vital, which I readily acknowledge; I also thank her for her kind comments about the Prime Minister's commitment to this issue and to the vulnerable.

In the most recent Budget we set aside £115 million to tackle rough sleeping and homelessness. This includes £100 million for 2,000 accommodation places for rough sleepers and domestic abuse victims. An extra £10 million has been used to support innovative projects. That includes the social impact bond in London, which is one measure where we are working with the Mayor of London. The funding was doubled to £10 million, as my noble friend Lady Stroud set out, which helps London. We are also conscious that many of the London boroughs—Westminster, Hackney, Tower Hamlets and others—are doing great things.

I will quickly set out the Government's approach in three different areas: preventing homelessness; helping people move on from homelessness; and the action we are taking across Whitehall. Prevention is often the key, as my noble friend Lady Stroud said. Homelessness is not just a housing issue. There are underlying issues, many of which have been touched on, such as drink and drugs, raised by my noble friend Lady Stroud, the noble Baroness, Lady Armstrong, and the noble Lord, Lord Kennedy; a lack of education, set out by the noble Lord, Lord Bird; and sexuality, mentioned by the noble Lord, Lord Cashman. Many factors come into this; it is not a simple issue. Tackling homelessness therefore requires a collective response at national and local levels and an unrelenting focus on prevention. Effective prevention requires a strong legislative framework, quality housing advice services, effective partnership working and funding.

The Government have taken action to meet those requirements. We have funded the National Homelessness Advice Service, delivered by Shelter and Citizens Advice—I acknowledge the important role of third sector organisations, as mentioned by the noble Lord, Lord Cashman, in the context of Crisis—which ensures that frontline housing advisers have access to the best-quality professional advice to help vulnerable people.

We have provided £2 million for the Gold Standard scheme, delivered by the National Practitioner Support Service, to help local authorities deliver more effective and cost-efficient homelessness prevention. We know how important it is that, when people are faced with a homelessness situation, they have somewhere to go and experts to talk to—so front-line staff need to be equipped to provide this service. Getting the right

training is part of that. The National Practitioner Support Service—which is I think currently provided through the London Borough of Hounslow—has enabled areas such as Greenwich and Wigan to improve their services and achieve Gold Standard status to help other local authorities.

Our efforts to prevent homelessness are supported by legislation, which provides a strong safety net for families with children and vulnerable people who become homeless through no fault of their own. I pick up on two specific issues that were mentioned. The first is the Wales position; as somebody who has spent a lot of my life learning lessons from Wales, I am open to learning more. In this role I am very keen to learn from the devolved Administrations and I have already spoken to my counterpart in Wales to ensure that we share lessons, data, best practice and so on. We are looking at what Wales is doing; it is early days yet but there are certainly some encouraging signs there.

This brings me on to the Homelessness Reduction Bill, sponsored by the Conservative MP for Harrow East, Bob Blackman, which has been mentioned by many noble Lords, including the noble Lord, Lord Kennedy, my noble friend Lady Stroud and the noble Baroness, Lady Thornhill, by implication. We are certainly looking closely at that—we support its aims but obviously the detail needs to be looked at, but I reassure the House that we are very keen on its aims and we are looking closely at it, as we should.

While we prioritise preventing homelessness, we are also helping people to move on from a life on the streets. We are supporting innovative new approaches to address the most difficult cases, such as expanding on the success of the world's first homelessness social impact bond, which we funded in London. So far, more than half of those who have taken part in that have achieved positive outcomes. I am aware of one rough sleeper who had been sleeping rough for five years. He was a victim of childhood sexual abuse and violence and became self-abusing with drugs and alcohol. Previous support had focused on his substance misuse issues, but the social impact team convinced him to undertake a psychological assessment. He is now housed in a one-bedroom flat and, through engaging with a GP, he can access healthcare and medication to help deal with his anxiety and mood problems—a very positive situation. We have also invested more than £1 million in StreetLink, a national telephone line, website and app that enables the public to alert services when they suspect that someone is sleeping rough.

I move on to supporting people to move on from homelessness. To help single homeless people to move from homelessness to independent living—the noble Lord, Lord Kennedy, raised this issue, I think, in the context of mental health—we are working with the Department of Health and with local authorities and health authorities. This is clearly an important issue.

We are also providing accommodation, education, training and jobs for around 1,600 of our most vulnerable young homeless people through the £15 million DCLG Fair Chance Fund scheme. I am aware of a case where a young person became homeless due to a relationship breakdown with his mother. He was referred to the fund, where he was supported into accommodation and secured his own tenancy. He became settled and gained confidence, attended college, achieved a qualification in plumbing, found a job and has been reconciled with his mother, so there are success stories out there.

We have helped homeless people into jobs by improving their basic English, maths and IT skills. We have also helped more than 10,000 vulnerable people access privately rented accommodation through the £14 million access to the private rented sector programme run by Crisis. Again, I pay tribute to the work it does, as was also mentioned by the noble Lord, Lord Cashman. I am aware of the difference this scheme made for someone whose marriage had broken down and who lost his home. He was helped through this by Crisis. He was at first sceptical of the help that he was offered but it has turned out well and he is now in work and is properly housed.

Mental health is an issue, as I mentioned, and this has been touched on by many noble Lords. I am very keen that we address it, as we are doing with local health authorities, through the Department of Health and, of course, with local authorities.

I very much applaud the work of social enterprises that support those experiencing homelessness. I do not think anybody could have done more in this context than the noble Lord, Lord Bird. On behalf of all of us, I place on record our admiration for the success that he has had. Through this debate I urge everybody, wherever they have an opportunity, to speak to the people who are selling the *Big Issue*, buy a copy and perhaps give a little extra to them because that is something concrete that everybody can and should do.

On the cross-government response across Whitehall, the Ministerial Working Group on Homelessness, chaired by my honourable friend the Minister for Local Government, Marcus Jones, is ensuring that every area of government plays its part too. This year it will focus on addressing the underlying issues of homelessness, supporting better responses from mental health services and improving accommodation for ex-offenders. Very importantly, we are also focusing on housebuilding and trying to ensure that we have affordable housing in the social sector.

I shall deal with a couple of specific issues that have been raised. The noble Baroness, Lady Armstrong, referred to the importance of doing something for women. We recognise that the needs of female rough sleepers can be different from those of male rough sleepers. She was right to mention the sexual exploitation of female rough sleepers. I pay tribute to Westminster City Council, which has provided a female-only shelter, the Marylebone Project. That is certainly worth looking at, as is the Women at the Well project based in King's Cross. However, we are looking at this area and are certainly open to looking further at it. If the noble Baroness wishes to speak to us further on this issue, we can perhaps take it further.

The noble Baronesses, Lady Thornhill and Lady Morgan, both raised the issue of the local housing allowance caps and the 1% social rent reduction. The Government have been clear that the most vulnerable will be protected and supported through welfare reforms. I think the Prime Minister touched on this in a specific area in relation to refuges in Prime Minister's Questions

[Lord Bourne of Aberystwyth]
today, and I would like to underline that. The Government expect to make an announcement on the way forward for supporting housing in the autumn.

The noble Lord, Lord Cashman, rightly expressed concern about this issue affecting the LGBT community in many ways, and referred to the work done by the Albert Kennedy Trust. We are very keen to look further at the work of the Albert Kennedy Trust. We welcome the work it has done and, indeed, the work that Stonewall Housing has done. This issue affects all parts of the community and we must ensure that all parts of the community are taken on board in relation to it.

In closing, I thank noble Lords immensely for their contributions. The Government are aware of the importance of this issue. I am sure there are points that I have not covered and I will ensure that they are picked up in correspondence and copied to everybody who has contributed to the debate. I will also place a copy in the Library. I am sure that we will come back to this issue. As noble Lords appreciate, it is a very complex issue with many different strands. However, we take it seriously and I am very grateful for noble Lords' contributions to the debate.

8.34 pm

Sitting suspended.

Investigatory Powers Bill

Committee (5th Day) (Continued)

8.45 pm

Amendment 210ZA

Moved by ***Baroness Hamwee***

210ZA: Clause 151, page 118, line 8, leave out subsection (5)

Baroness Hamwee (LD): My Lords, my noble friend and I decided that I would be the one to confess how difficult I find it to understand Clause 151(5), so this is a probing amendment. I managed to make some progress in following the trail between different clauses and subsections this morning, but it involved something like copying and pasting chunks of wording in my head. I would therefore be grateful if the Minister could explain straightforwardly what follows from modifying a bulk acquisition warrant so that it no longer authorises or requires telecoms operators to do what is listed in Clause 146(5)(a). We are told to disregard Clause 151(2)(a), but the same criteria are then brought in by reference to Clause 146(1)(a) and Clause 146(2). I am sorry to be dim, but we decided that this probably justified seeking a short explanation.

I have complimented the draftsmen of the Bill—and I do not resile from that—as it is very helpful to have references to where definitions are to be found and so on, but given the complexity of the subject matter, this is a plea for the Bill to say, for example, "If a warrant is modified so that there is no requirement on a telecoms operator, then, in the case of renewal, the following". That would have caused slightly less of a scrambled brain. I beg to move.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, as the noble Baroness has explained, Amendment 210ZA relates to the modification of a bulk acquisition warrant for the purpose of allowing examination of material after acquisition has ceased. Here, we come back to the issue that we debated earlier in relation to Amendments 201ZC and 217C, which covered bulk interception and bulk equipment interference warrants. The amendment would remove important technical provisions from the Bill—a point that I made in that earlier debate.

The Bill enables a bulk acquisition warrant to be modified such that it no longer authorises the acquisition of any material but continues to authorise the selection of material for examination. The circumstances catered for here are limited to a situation where it may no longer be necessary or possible to continue the collection of data, such as where a communications service provider goes out of business, but the data collected up to that point under a warrant remain pertinent. In circumstances such as those, it may continue to be necessary and proportionate to examine data that have already been collected under that warrant.

Clause 151(5), which the amendment would remove, simply clarifies that a warrant that has been modified in that way remains a valid bulk warrant if the Secretary of State considers that examination of the acquired data remains necessary and it is approved by a judicial commissioner. That is necessary because Clause 146(5) states that one of the conditions of the warrant is that its main purpose is to acquire data. But, of course, a warrant that has been modified in the manner I have described will no longer meet that condition because it will no longer authorise the collection of data.

I hope that that explanation clarifies any uncertainty in the noble Baroness's mind and that she will agree that these provisions are necessary.

Baroness Hamwee: My Lords, that is extremely helpful, and I got an example without asking for it. I beg leave to withdraw the amendment.

Amendment 210ZA withdrawn.

Clause 151, as amended, agreed.

Clause 152: Modification of warrants

Amendments 210ZB and 210ZC not moved.

Clause 152 agreed.

Clause 153: Approval of major modifications made in urgent cases

Amendment 210ZD not moved.

Clause 153 agreed.

Clauses 154 to 156 agreed.

Clause 157: Duty of operators to assist with implementation

Amendment 210ZE not moved.

Clause 157 agreed.

Clause 158: Safeguards relating to the retention and disclosure of data

Amendment 210ZF not moved.

Amendment 210ZG had been withdrawn from the Marshalled List.

Clause 158 agreed.

Clause 159 agreed.

Amendment 210A not moved.

Clauses 160 to 163 agreed.

Clause 164: Power to issue bulk equipment interference warrants

Amendments 210B and 210C not moved.

Clause 164 agreed.

Clause 165: Approval of warrants by Judicial Commissioners

Amendments 211 and 212

Moved by ***Earl Howe***

211: Clause 165, page 128, line 23, after "must" insert "—

(a) "

212: Clause 165, page 128, line 24, at end insert ", and

( ) consider the matters referred to in subsection (1) with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy)."

Amendments 211 and 212 agreed.

Clause 165, as amended, agreed.

Clause 166 agreed.

Clause 167: Failure to approve warrant issued in urgent case

Amendment 212A

Moved by ***Lord Paddick***

212A: Clause 167, page 129, line 10, at end insert "and is reported to the Judicial Commissioner"

Lord Paddick: My Lords, I rise to move Amendment 212A standing in my name and that of my noble friend Lady Hamwee. Clause 167 deals with the situation in which a judicial commissioner fails to approve a decision to issue a bulk interference warrant in urgent cases. When this happens, under Clause 167(2) the person to whom the warrant is addressed,

"must, so far as is reasonably practicable, secure that anything in the process of being done under the warrant stops as soon as possible".

Our Amendment 212A adds a requirement that the actions taken to stop activity under the warrant are reported back to the judicial commissioner to confirm that his decision has been complied with. I beg to move.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, as the noble Lord, Lord Paddick, has indicated, Amendment 212A seeks to mandate that in the event that a bulk equipment interference warrant is issued in an urgent case and the judicial commissioner later refuses to approve the decision to issue the warrant, the relevant security and intelligence agency must report any activity carried out under that warrant and any steps being taken to stop the activity to the judicial commissioner.

This amendment is not necessary. Clause 167(4) grants the judicial commissioner the power to require representations where they have refused to approve the decision to issue a bulk equipment interference warrant which was issued urgently. Under this provision, security and intelligence agencies may be required to set out what material has been acquired under the warrant as well as other details of the interference, and it will be for the judicial commissioner to determine exactly what information they require to make their decisions on a case-by-case basis. This provision as drafted ensures that the commissioners will have all the necessary information to determine how material should be handled and if any further interference is required to stop the activity. Therefore there is a reporting function in order that the judicial commissioner can make the appropriate directions under Clause 167(3).

In these circumstances, I invite the noble Lord to withdraw the amendment.

Lord Paddick: I am grateful to the noble and learned Lord for that explanation. I will carefully consider his response and look at the Bill, but at this stage I beg leave to withdraw the amendment.

Amendment 212A withdrawn.

Clause 167 agreed.

Clause 168 agreed.

Clause 169: Requirements that must be met by warrants

Amendment 213

Moved by ***Earl Howe***

213: Clause 169, page 130, line 22, leave out subsection (5) and insert—

"(5) The operational purposes specified in the warrant must be ones specified, in a list maintained by the heads of the intelligence services ("the list of operational purposes"), as purposes which they consider are operational purposes for which material obtained under bulk equipment interference warrants may be selected for examination."

Amendment 213 agreed.

Amendment 213A had been withdrawn from the Marshalled List.

Amendment 214

Moved by ***Earl Howe***

214: Clause 169, page 130, line 26, leave out from "issued," to end of line 28 and insert "are specified in the list of operational purposes.

(6A) An operational purpose may be specified in the list of operational purposes only with the approval of the Secretary of State.

(6B) The Secretary of State may give such approval only if satisfied that the operational purpose is specified in a greater level of detail than the descriptions contained in section 164(1)(b) or (2).

(6C) At the end of each relevant three-month period, the Secretary of State must give a copy of the list of operational purposes to the Intelligence and Security Committee of Parliament.

(6D) In subsection (6C), "relevant three-month period" means—

(a) the period of three months beginning with the day on which this section comes into force, and

(b) each successive period of three months.

(6E) The Prime Minister must review the list of operational purposes at least once a year."

Amendment 214 agreed.

Clause 169, as amended, agreed.

Clause 170 agreed.

Clause 171: Renewal of warrants

Amendments 215 to 217

Moved by ***Earl Howe***

215: Clause 171, page 131, line 13, leave out "before the end of the relevant" and insert "during the renewal"

216: Clause 171, page 131, line 34, at end insert—

"( ) "The renewal period" means—

(a) in the case of an urgent warrant which has not been renewed, the relevant period;

(b) in any other case, the period of 30 days ending with the day at the end of which the warrant would otherwise cease to have effect."

217: Clause 171, page 132, line 8, at end insert—

"( ) In this section—

"the relevant period" has the same meaning as in section 170;

"urgent warrant" is to be read in accordance with subsection (3) of that section."

Amendments 215 to 217 agreed.

Clause 171, as amended, agreed.

Clause 172: Modification of warrants

Amendments 217A to 217C not moved.

Clause 172 agreed.

Clause 173: Approval of major modifications made in urgent cases

Amendment 217D not moved.

Clause 173 agreed.

Clauses 174 to 181 agreed.

Clause 182: Bulk personal datasets: interpretation

Amendment 218

Moved by ***Earl Howe***

218: Clause 182, page 140, line 36, leave out "section" and insert "Part"

Earl Howe: My Lords, this is the first group of amendments specific to Part 7, which relates to bulk personal datasets. In moving Amendment 218 I shall speak also to Amendments 219, 226 and 232.

The Government agreed in the other place that we should provide further restrictions on the use of class BPD warrants, and the new clause provided by Amendment 219 and the consequential changes made by Amendments 218 and 232 honour that commitment.

This builds on Clause 187, "Additional safeguards for health records", previously introduced in the other place. That clause states that a dataset that includes health records can be retained under a specific BPD warrant only if there are exceptional and compelling circumstances to do so.

9 pm

The proposed new clause introduced here makes clear that a class BPD warrant cannot be used if the dataset consists of health records or if a substantial proportion of the dataset consists of sensitive personal data. Nor can a class BPD warrant be used if a dataset raises novel or contentious issues that ought to be considered by the Secretary of State and a judicial commissioner. It is right that the Bill offers the strongest protections to the most sensitive datasets that the agencies hold; this new clause and consequential amendments in this grouping, and indeed the subsequent grouping, reflect that.

This proposed new clause responds to the constructive engagement we have had with the Intelligence and Security Committee and in the other place. I therefore commend these amendments to the Committee.

Amendment 226 is separate to these amendments. It is a minor technical amendment to bring the drafting of Clause 189 into line with wording in other equivalent provisions in the Bill. I commend that amendment to the Committee. I beg to move.

Lord Paddick: My Lords, I will speak to our Amendments 218A, 218B, 219A, 223A and 223D, and question whether Clauses 185 and 186 should stand part of the Bill. The purpose of Amendments 218A and 218B, and of the question whether Clauses 185 and 186 should stand part of the Bill, is to ensure that each bulk personal dataset is separately authorised by the

Secretary of State and a judicial commissioner, and to exclude class bulk personal dataset warrants. It is our intention not to disallow specific bulk dataset warrants, but to remove class bulk personal dataset warrants from the Bill.

Both the Joint Committee on the Bill and the Intelligence and Security Committee recommended that class bulk personal datasets should be removed from the Bill, yet they remain part of it. The Intelligence and Security Committee reported that the acquisition, retention and examination of any bulk personal dataset is sufficiently intrusive that it should require a specific warrant. I accept what the noble Earl said on working with the ISC to try to meet it half way by adding these additional safeguards, but we maintain that it still does not go far enough, because bulk personal datasets containing private information on a large number of people are of no relevant or legitimate interest to the agencies.

I appreciate that the amendments we have proposed do not make every amendment necessary to completely remove the provision of class bulk personal datasets from the Bill, but at this stage we believe it is sufficient to raise the point of principle. I ask the Minister to justify going against the recommendations of the Joint Committee and the ISC.

Amendment 219A is an amendment to government Amendment 219. It would require the head of the intelligence service to consult the judicial commissioner when deciding whether the nature of a bulk personal dataset acquired through a class bulk personal dataset warrant requires a separate warrant. It would require consultation with the judicial commissioner where there is a sense from the head of the security services that a particular bulk personal dataset requires separate authorisation.

Amendment 223A relates to Clause 186(6), which states that a separate warrant is not required to retain and examine a bulk personal dataset that may reasonably be regarded as a replacement for a bulk personal dataset for which a warrant already exists—for example, the latest edition of the electoral roll. The amendment would exempt from this automatic authority for a replacement dataset—

Earl Howe: It may be for the convenience of the Committee to appreciate, as I understand it, that the noble Lord would like to put this group with the group that I think was originally separated out; that is, the group beginning with government Amendment 221. Is it his wish that we should deal with everything comprehensively in one go or shall we split the groups as originally proposed?

Lord Paddick: I do apologise; perhaps I have an out of date list. It would be helpful if we could deal with all these matters together if that is possible. The noble Earl indicates that it is and I am grateful.

Amendment 223A refers to Clause 186(6), which states that a separate warrant is not required to retain and examine a bulk personal dataset that may reasonably be regarded as a replacement for an updated bulk personal dataset for which a warrant already exists. The amendment seeks to exempt from this automatic authority a replacement dataset which contains new and additional information that was not included in the original bulk dataset. For example, if a new electoral roll was to contain the email addresses of voters as a new category of information, a new warrant would be required even though it might be considered a replacement for a bulk personal dataset that was already in existence.

Amendment 223C refers to Clause 187 and the definition of "health record" under subsection (6)(c). It states that a,

"'health record' means a record, or a copy of a record, which … was obtained by the intelligence service from a health professional".

Should this not be "would be obtained" to cover the situation where the authority to obtain the record was not given? Whether something is a health record or not should not depend on whether it has or has not been obtained by the intelligence service.

Amendment 223D requires that the judicial commissioner who approves bulk personal dataset warrants, in addition to those matters contained in Clause 188(1)(a), should also consider in the case of health records the additional safeguards set out in Clause 187(3); that is, that there are "exceptional and compelling circumstances". Following on from our previous amendment, we would say exceptional and compelling,

"circumstances 'relating to national security'".

Earl Howe: My Lords, given that we are grouping everything together in the way we have agreed, perhaps it would be appropriate if I complete my remarks on the government amendments before addressing the noble Lord's amendments. The amendments that I have not yet spoken to are government Amendments 221 and 222. These are related to and consequential on the government amendments introducing restrictions on the use of class warrants that I have already spoken to. They are part of a set of amendments that honour the Government's commitments in the other place that we should provide further restrictions on the use of class BPD warrants. Amendments 221 and 222 amend Clause 186, which makes provision for specific BPD warrants. In particular, Amendment 221 adds to the circumstances in which an agency may apply for a specific BPD warrant the situation in which it is prevented from relying on a class BPD warrant by the new clause placing restrictions on the use of those warrants that we debated earlier. Amendment 222 builds on this by placing an obligation on the agency in such circumstances to include an explanation of why it cannot rely on a class BPD warrant in its application for a specific BPD warrant. These amendments thus ensure that the provisions in the Bill setting out the circumstances in which class and specific BPD warrants should be used will operate coherently together. These amendments thus also respond to the constructive engagements we have had with the ISC and the other place.

Turning to the amendments of the noble Lord, Lord Paddick, I understand that the intention behind Amendments 219A and 218B and the stand part debate is to remove the provisions allowing for class BPD warrants. Perhaps it is worth reminding ourselves that class BPD warrants provide an appropriate means of authorising the retention and use of datasets that are similar both in nature and in the level of intrusion that

[Earl Howe]
their retention and use would result in. This would, for example, allow the Secretary of State to authorise a class of dataset relating to travel covering datasets that are similar in nature but refer to different travel routes, or perhaps where they were provided by different sources. The decision to issue a warrant for a particular class of data would be subject to approval by a judicial commissioner before being issued.

Removing class warrants would increase bureaucracy without increasing safeguards. It is also unnecessary because such warrants are subject to the "double lock" authorisation process by a Secretary of State and judicial commissioner. If they considered that a class bulk personal dataset warrant was too broad, they would not issue it.

It is quite true that the ISC and the Joint Committee which scrutinised the draft Bill did not endorse class BPD warrants in their original reports on the draft Bill, but the ISC's view on this has changed. As the chair of the ISC said at Third Reading of the Bill in the other place,

"we then had further evidence—as has happened in the dialogue with the Government and the agencies—in particular from the Secret Intelligence Service, about the rationale for retaining class warrants in the Bill. In particular, the evidence highlighted the fact that many of these datasets covered the same information or type of information. In those circumstances, we considered that a class warrant would be appropriate, as the privacy considerations were identical".—[*Official Report*, Commons, 7/6/16; col. 1063.]

He then made additional comments on restrictions on their use. The Government accepted in principle the ISC's arguments for restrictions on the use of class BPD warrants, and we have already discussed amendments brought forward by the Government to reflect this. So I hope that, on reflection, the noble Lord will want to think further about those amendments that seek to excise class BPD warrants.

Amendment 219A adds to Amendment 219—the government new clause on restricting use of class bulk personal dataset warrants—that the judicial commissioner must be consulted before a decision is taken. This is an unnecessary amendment. The Secretary of State and judicial commissioner double lock will apply not only to new class and specific BPD warrants, but also to renewals of both types of warrants. This gives them effective oversight of the datasets that appear under each type of warrant. These decisions will also be subject to retrospective oversight by the Investigatory Powers Commissioner. To add another pre-consultation is not necessary or efficient. Moreover, the draft code of practice includes detailed guidance on when a specific BPD warrant should be sought. It also makes it clear, for example, that if required in an individual case, the security and intelligence agency can seek guidance from the Secretary of State or a judicial commissioner on whether it would be appropriate for a specific BPD warrant to be sought. So again, I hope that the noble Lord will want to reflect further on that amendment.

Amendment 223A would restrict the extent to which a specific BPD warrant could extend to replacement datasets. In effect, it would mean that only absolutely identical datasets could be covered by these provisions. The provision for a replacement dataset would be relevant only where a specific BPD warrant has been authorised and is already in place. The provision is a pragmatic and sensible approach to situations where a dataset is regularly or continually updated; for example, a particular dataset may be updated weekly or monthly. These updates would, by definition, include additional information, but in these cases the necessity and proportionality case and operational purposes would not alter. To require repeated new warrants in this scenario would not be proportionate; the notion of a replacement dataset allows the agencies to use these amended and updated data in line with the existing authorisation. Again, I hope the noble Lord will find that acceptable.

9.15 pm

Amendment 223C would amend the definition of health records in the context of the bulk personal dataset provisions so that, instead of it covering a health record that "was obtained" by an intelligence service, it becomes a health record that "would be" obtained by the SIA. The requirement for a warrant in Part 7 of the Bill is engaged only after a bulk personal dataset is physically acquired, and the tense in the definition reflects this. Part 7 of the Bill does not provide any powers to the security and intelligence agencies to acquire bulk personal datasets. The agencies acquire such datasets through the exercise of various existing statutory powers, notably the "information gateway provisions" in the Security Service Act 1989 and the Intelligence Services Act 1994.

The only purpose of Part 7 is to ensure that, where the agencies retain, or retain and examine, bulk personal datasets, those datasets are subject to robust privacy safeguards. These safeguards are comparable to those provided for in relation to other powers under the Bill. They include introducing a double-lock so that warrants for the retention and examination of bulk personal datasets by the agencies will in future be subject to approval by both a Secretary of State and a judicial commissioner, and oversight by the Investigatory Powers Commissioner. In addition, the Bill makes it clear that an intelligence service must state on a specific BPD warrant application if a purpose of the warrant is to authorise the retention and examination of health records, and that the Secretary of State can issue such a warrant only if there are exceptional and compelling circumstances that make this necessary. All these safeguards remain applicable. The tense used in the definition is not indicative of when or how the dataset was obtained, which is not part of the Bill. Rather, the purpose of this definition is to explain what a health record is for the purposes of this clause. I hope that that explanation is helpful.

Turning to Amendment 223D, Clause 188 outlines what factors the judicial commissioner must review when deciding whether to approve a decision to issue a class or specific BPD warrant. Clause 188(1)(a) states that it must be necessary on grounds falling within the relevant clauses on specific and class BPD warrants. The amendment seeks to add a specific reference to Clause 187(3), which refers to additional safeguards for health records. Any such dataset could be held only under a specific BPD warrant; it is not a separate type of warrant in itself. These safeguards are therefore already covered by the references in place, which apply

to all warrants relating to bulk personal datasets. I hope the noble Lord will feel comfortable in not moving the amendment.

Amendment 218 agreed.

Clause 182, as amended, agreed.

Clause 183: Requirement for authorisation by warrant: general

Amendments 218A and 218B not moved.

Clause 183 agreed.

Clause 184 agreed.

Amendment 219

Moved by ***Earl Howe***

219: After Clause 184, insert the following new Clause—

"Restriction on use of class BPD warrants

(1) An intelligence service may not retain, or retain and examine, a bulk personal dataset in reliance on a class BPD warrant if the head of the intelligence service considers—

(a) that the bulk personal dataset consists of, or includes, health records, or

(b) that a substantial proportion of the bulk personal dataset consists of sensitive personal data.

(2) An intelligence service may not retain, or retain and examine, a bulk personal dataset in reliance on a class BPD warrant if the head of the intelligence service considers that the nature of the bulk personal dataset, or the circumstances in which it was created, is or are such that its retention, or retention and examination, by the intelligence service raises novel or contentious issues which ought to be considered by the Secretary of State and a Judicial Commissioner on an application by the head of the intelligence service for a specific BPD warrant.

(3) In subsection (1)—

"health records" has the same meaning as in section 187;

"sensitive personal data" means personal data consisting of information about an individual (whether living or deceased) which is of a kind mentioned in section 2(a) to (f) of the Data Protection Act 1998."

Earl Howe: I beg to move.

Amendment 219A (to Amendment 219) not moved.

Amendment 219 agreed.

Clause 185: Class BPD warrants

Amendment 220

Moved by ***Earl Howe***

220: Clause 185, page 142, line 23, at end insert—

"( ) The fact that a class BPD warrant would authorise the retention, or the retention and examination, of bulk personal datasets relating to activities in the British Islands of a trade union is not, of itself, sufficient to establish that the warrant is necessary on grounds falling within subsection (3)(a)."

Amendment 220 agreed.

Clause 185, as amended, agreed.

Clause 186: Specific BPD warrants

Amendments 221 to 223

Moved by ***Earl Howe***

221: Clause 186, page 142, line 38, after "but" insert "either—

(i) the intelligence service is prevented by section (Restriction on use of class BPD warrants)(1) or (2) from retaining, or retaining and examining, the bulk personal dataset in reliance on the class BPD warrant, or

(ii) "

222: Clause 186, page 142, line 45, at end insert—

"( ) Where subsection (3)(b)(i) applies, the application must include an explanation of why the intelligence service is prevented by section (Restriction on use of class BPD warrants)(1) or (2) from retaining, or retaining and examining, the bulk personal dataset in reliance on a class BPD warrant."

223: Clause 186, page 143, line 22, at end insert—

"( ) The fact that a specific BPD warrant would authorise the retention, or the retention and examination, of bulk personal datasets relating to activities in the British Islands of a trade union is not, of itself, sufficient to establish that the warrant is necessary on grounds falling within subsection (5)(a)."

Amendments 221 to 223 agreed.

Amendment 223A not moved.

Clause 186, as amended, agreed.

Clause 187: Additional safeguards for health records

Amendments 223B and 223C not moved.

Clause 187 agreed.

Clause 188: Approval of warrants by Judicial Commissioners

Amendment 223D not moved.

Amendments 224 and 225

Moved by ***Earl Howe***

224: Clause 188, page 144, line 39, after "must" insert "—

(a) "

225: Clause 188, page 144, line 40, at end insert ", and

( ) consider the matters referred to in subsection (1) with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy)."

Amendments 224 and 225 agreed.

Clause 188, as amended, agreed.

Clause 189: Approval of specific BPD warrants issued in urgent cases

Amendment 226

Moved by ***Earl Howe***

226: Clause 189, page 145, line 5, leave out "believed" and insert "considered"

Amendment 226 agreed.

Clause 189, as amended, agreed.

Clauses 190 and 191 agreed.

Clause 192: Requirements that must be met by warrants

Amendment 227

Moved by ***Earl Howe***

227: Clause 192, page 147, line 8, leave out subsection (5) and insert—

"(5) The operational purposes specified in a class BPD warrant or a specific BPD warrant must be ones specified, in a list maintained by the heads of the intelligence services ("the list of operational purposes"), as purposes which they consider are operational purposes for which data contained in bulk personal datasets retained in reliance on class BPD warrants or specific BPD warrants may be selected for examination."

Amendment 227 agreed.

Amendment 227A had been withdrawn from the Marshalled List.

Amendment 228

Moved by ***Earl Howe***

228: Clause 192, page 147, line 12, leave out from "issued," to end of line 17 and insert "are specified in the list of operational purposes.

(6A) An operational purpose may be specified in the list of operational purposes only with the approval of the Secretary of State.

(6B) The Secretary of State may give such approval only if satisfied that the operational purpose is specified in a greater level of detail than the descriptions contained in section 185(3)(a) or (as the case may be) section 186(5)(a).

(6C) At the end of each relevant three-month period, the Secretary of State must give a copy of the list of operational purposes to the Intelligence and Security Committee of Parliament.

(6D) In subsection (6C), "relevant three-month period" means—

(a) the period of three months beginning with the day on which this section comes into force, and

(b) each successive period of three months.

(6E) The Prime Minister must review the list of operational purposes at least once a year.

(6F) In this Part, "the specified operational purposes", in relation to a class BPD warrant or a specific BPD warrant, means the operational purposes specified in the warrant in accordance with this section."

Amendment 228 agreed.

Clause 192, as amended, agreed.

Clause 193 agreed.

Clause 194: Renewal of warrants

Amendments 229 to 231

Moved by ***Earl Howe***

229: Clause 194, page 147, line 43, leave out "before the end of the relevant" and insert "during the renewal"

230: Clause 194, page 148, line 21, at end insert—

"( ) "The renewal period" means—

(a) in the case of an urgent specific BPD warrant which has not been renewed, the relevant period;

(b) in any other case, the period of 30 days ending with the day at the end of which the warrant would otherwise cease to have effect."

231: Clause 194, page 148, line 27, at end insert—

"( ) In this section—

"the relevant period" has the same meaning as in section 193;

"urgent specific BPD warrant" is to be read in accordance with subsection (3) of that section."

Amendments 229 to 231 agreed.

Clause 194, as amended, agreed.

Clause 195: Modification of warrants

Amendments 231ZA and 231ZB not moved.

Clause 195 agreed.

Clause 196: Approval of major modifications made in urgent cases

Amendment 231ZC not moved.

Clause 196 agreed.

Clauses 197 and 198 agreed.

Clause 199: Initial examinations: time limits

Amendment 231ZD

Moved by ***Baroness Hamwee***

231ZD: Clause 199, page 152, line 41, leave out subsection (3)

Baroness Hamwee: My Lords, I shall speak also to Amendment 231ZE. These amendments are tabled in my name and that of my noble friend Lord Paddick. They are both probing amendments.

Clause 199 provides for time limits on certain examinations. I accept that the first of our amendments is technically not a good one—but it is a probing amendment. It would take out the subsection that states that the "permitted period"—I do not think I need for this purpose to spell out what it is—

"begins when the head of the intelligence service first forms",

certain beliefs. My noble friend and I were intrigued as to how it could be established and recorded that someone had formed a belief—and, indeed, had first formed a belief. I am not sure about "first formed",

because once a belief is formed, it is established, so it is not going to be formed a second time. But that is not the question, really. We felt that there was a danger that acknowledging the formation of the belief, which triggers the start of the period, could be delayed so that the period itself did not begin to run. So it is a question of safeguarding.

Amendment 231ZE would reduce the time before the permitted period comes to an end. It would make it one month rather than three months. The permitted period is the period in which the head of the intelligence service has to take certain steps—having, in effect, discovered that information which has been obtained includes data relating to individuals who are not, in fact, of interest to the service. So, overall, a good safeguarding clause would properly ensure that information which is not needed is dealt with in an appropriate way. Our concerns are that, having got as far as acknowledging the need for all of this, there are a couple of points at which the arrangements might not be applied as rigorously as one would expect. I beg to move.

9.30 pm

Lord Keen of Elie: My Lords, Clause 199 explains the process of, and sets the time limits for, the initial examination of a dataset. The noble Baroness, Lady Hamwee, has explained the purpose of Amendments 231ZD and 231ZC, and I am obliged to her for indicating that these are probing amendments. I make no point about the technicalities of the proposed amendment, and understand the underlying rationale for making these probing amendments.

Although there may be occasions when a security and intelligence agency knows exactly what it has received, that is clearly not always the case. To give a simple example, an agency may receive a USB stick that it believes contains files relating to an organisation engaged in terrorist activity. This might, or might not, be a bulk personal dataset, and needs to be subject to an initial examination to determine whether it is a bulk personal dataset. To be absolutely clear, this initial examination process can only establish what the data are: in particular, whether this is a bulk personal dataset or not, and whether there is a case for retaining it. They cannot be searched or selected for examination without a warrant, so delaying applying for a warrant is not a way for the intelligence agency to work round the system provided for in the Bill.

It is not in anyone's interest to delay the process. The agency cannot start using the data until a warrant is issued, and the agencies will therefore want to get warrants in place as quickly as possible, particularly as there may be concerns about whether threats and opportunities will be missed by reason of any delay. More generally, the Bill places an obligation on the agency to apply for a warrant,

"as soon as reasonably practicable",

meaning that if it is possible to apply for a warrant sooner than the deadline set out in Clause 199 the agency would do so. The time limit here is just what I would term the "hard stop" provision within the clause. Amendment 231ZD is therefore unnecessary and indeed, in a sense, unhelpful.

From the point where the intelligence agency believes a dataset created in the United Kingdom includes personal data, as the noble Baroness, Lady Hamwee, noted, it has three months to complete the initial examination and apply for a warrant to retain and, if necessary, select data for examination from the dataset. Amendment 231ZE seeks to reduce this period from three months to one month.

The Government do not think this is appropriate. The structure and format of some bulk personal datasets can be highly complex, even if created in the United Kingdom. In some cases, it can take considerable time to be confident that the structure is sufficiently understood. Only then can the intelligence agency accurately describe the information contained in the dataset and know whether it is necessary and proportionate for it to be retained. There may be other factors that require time to resolve, including, for example, technical difficulties such as formatting, compression and encryption. Indeed, there may be language issues: the dataset, even if created in the United Kingdom, may be in a foreign language. In addition to that, the size of the dataset can be a factor. Three months is therefore considered the appropriate time limit for this initial examination. However, I underline the point that this is an outer limit—this is the hard limit for that.

Again, I emphasise to the noble Baroness that this three-month time limit does not provide a way for the agencies somehow to circumvent the safeguards within the Bill. The dataset in question cannot be used for intelligence purposes until a specific BPD warrant is in place or until the provisions set out in chapter 6 of the draft code of practice, which relate to authorising retention and use of a dataset fitting within a class warrant, are met. In these circumstances, I invite the noble Baroness to withdraw the amendment.

Baroness Hamwee: I am grateful for that explanation. It has helped me to understand the process but it has also made me wonder whether in Clause 199(3) the term "belief" is the correct one. The way that the Minister has described it, it is more of a suspicion—I do not mean that in any negative way—or a concern. A "belief" suggests that there has been a thought process arriving at a conclusion. I do not expect him to respond to that now unless he wants to but I am left wondering, and he might want to look at this again, whether this wording quite describes the completely cogent explanation about the clause that we have just heard. For the moment, though, I beg leave to withdraw the amendment.

Amendment 231ZD withdrawn.

Amendment 231ZE not moved.

Clause 199 agreed.

Clause 200 agreed.

Amendment 231A not moved.

Clause 201 agreed.

Clause 202: Part 7: interpretation

Amendments 232 and 233

Moved by ***Lord Keen of Elie***

232: Clause 202, page 155, line 3, at end insert—

""personal data" has the meaning given by section 182(2);"

233: Clause 202, page 155, line 7, at end insert—

""the specified operational purposes" has the meaning given by section 192(6F);"

Amendments 232 and 233 agreed.

Amendment 234 had been withdrawn from the Marshalled List.

Clause 202, as amended, agreed.

House resumed.

House adjourned at 9.36 pm.