Vol. 774
No. 46

Monday
17 October 2016

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

Lords wishing to be supplied with these Daily Reports should give notice to this effect to the Printed Paper Office.

No proofs of Daily Reports are provided. Corrections for the bound volume which Lords wish to suggest to the report of their speeches should be clearly indicated in a copy of the Daily Report, which, with the column numbers concerned shown on the front cover, should be sent to the Editor of Debates, House of Lords, within 14 days of the date of the Daily Report.

This issue of the Official Report is also available on the Internet at
https://hansard.parliament.uk/lords/2016-10-17

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

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

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

House of Lords

Monday 17 October 2016

2.30 pm

Prayers—read by the Lord Bishop of Chester.

St Helena: Airport

Question

2.36 pm

Asked by ***Lord Foulkes of Cumnock***

To ask Her Majesty's Government when they now expect commercial flights to start at the airport in St Helena.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, scheduled commercial flights will begin when the conditions are considered safe to do so and the St Helena Government are able to contract an airline with the right aircraft and regulatory approval so that St Helena can develop its tourism industry and become less dependent on UK financial support.

Lord Foulkes of Cumnock (Lab): My Lords, I warmly welcome the noble Lord back to the House—

Noble Lords: Hear, hear.

Lord Foulkes of Cumnock: I understand he has raised a huge amount of money for charity, which we all commend him for. I also welcome him to the Front Bench. It gives me hope—and I hope it will not be shattered. I want to help him today. Is he aware that Atlantic Star Airlines is willing to start a commercial air service with British Aerospace Avro RJ100 jets—a British company with British jets? It is sending a test plane this week and it reckons it can start the service within weeks. Will the Minister look into it and, if it is possible, get the service started as quickly as possible?

Lord Bates: First, I thank the noble Lord for his warm welcome. As he is a distinguished alumnus of the Department for International Development, as a Minister in that department, I particularly appreciate his praise. I know he has taken a great interest in the specific point he raised, and we are grateful for that. He mentioned Atlantic Star Airlines. We are aware that that flight is heading out from Zurich and is due to arrive on Friday this week. It is a kind of test flight, I suppose. The contracting of the commercial arrangements is a matter for the St Helena Government, but Her Majesty's Government have made it very clear that we want to find an operator as soon as possible so that the airport can begin commercial flights and improve tourism on that island which we both care so much about.

Lord Forsyth of Drumlean (Con): My Lords, I welcome my noble friend back to the Front Bench and to the service of the House. I suggest to him that, given the assiduous nature of the noble Lord, Lord Foulkes, on this matter, it might be a good idea to arrange for him to be sent to St Helena on the first commercial flight.

Lord Bates: I think that exile is a matter for the Foreign and Commonwealth Office and negotiated through the usual channels.

Lord Shutt of Greetland (LD): My Lords, I, too, welcome the noble Lord to his new role. It is now nearly six months since the announcement that the airport was not going to open. It has been a disastrous six months for St Helena, not knowing about the airport or whether the sea service was going to continue. Bearing in mind that the first call on the overseas aid budget is to look to the overseas territories, does the Minister agree that it would be right for some of those extra resources for overseas aid to be used to assist people who are trying their best in the tourism industry in St Helena, which was bereft of tourists this summer, so that those businesses can be kept afloat?

Lord Bates: Those specific points about compensation are a matter for the St Helena Government, and representations should be made there. But the Government are committed to this. That is why, when asked about the flight, I said Her Majesty's Government would be looking to provide a subsidy during the initial period to ensure that that flight can operate. That is why we have also said that we are committed to ensuring that the Royal Mail Ship "St Helena" continues in service until June next year and why we have also commissioned these additional pieces of research to look particularly at the issue of wind shear—which, of course, is stopping some of those flights from coming in. I totally agree with the noble Lord on the importance of this.

Lord Collins of Highbury (Lab): My Lords, a fully functioning airport is absolutely vital, but there is an important lesson to be learned here. I asked the previous Minister about the contract for the airport and what risk assessments were undertaken. We were assured originally by the last Government that the contract would shift all the risk to the private contractor. It is important for the future that we learn the lessons from this huge and important investment so that we do not make the same mistakes again. Can he assure us that that will happen?

Lord Bates: I have read the remarks that the noble Lord made in the debate in, I think, June 2014, about the contract with Basil Read. It is important to say that the problem is not necessarily with the airport—the structure is good, strong and sound—but with the wind shear. It is important, particularly in areas of international development, that we ensure that British taxpayers' money is spent wisely. That is why the Major Projects Authority and now the Infrastructure and Projects Authority have undertaken gateway reviews every year. The noble Lord may also be aware that the National Audit Office looked into this airport in June

[LORD BATES]
this year and published a report to say that the business case put forward by the previous Labour Government was in fact sound.

Lord Spicer (Con): My Lords, if they can build a runway on St Helena in the wrong place, why can we not build one over here in the right place, at Heathrow Airport?

Lord Bates: Discuss the term "the right place".

Lord Anderson of Swansea (Lab): My Lords, I join in the chorus of praise and welcome for the noble Lord. He actually tries to answer questions, which is a major benefit. In respect of the contract, a major mistake has potentially been made. Everyone knew that the winds were extremely fierce around the islands, so why was nothing done? What lessons have been learned and was anyone held responsible for what clearly was a failure of preparation?

Lord Bates: The noble Lord says that, but the wind was tested by the technical advisers and advice was taken from the Met Office. The issue came to light only when flights attempted to land in April, and of course we have to have the highest regard for public safety. It has been approved by Air Safety Support International as a category C airport, which is the same as London City Airport or Gibraltar Airport, for example. It is possible to see that it is used. Lessons need to be learned, of course, which is one of the reasons why, at the instigation of the noble Lord, Lord Foulkes, we are having a meeting for all interested Peers on 25 October between 1 pm and 2 pm in Committee Room 10A. I am very happy to extend that invitation to the noble Lord.

Sharing Economy

Question

2.43 pm

Asked by ***Lord Holmes of Richmond***

To ask Her Majesty's Government what action they are taking to ensure that the United Kingdom becomes a global centre for innovation and growth in the sharing economy.

The Minister of State, Department for Business, Energy and Industrial Strategy (Baroness Neville-Rolfe) (Con): The Government commissioned an independent review on how to unblock the value of the sharing economy. Debbie Wosskow reported in 2014 and we have implemented many of her recommendations. The Government will consider whether further steps can be taken to support innovation in this area in their industrial strategy.

Lord Holmes of Richmond (Con): My Lords, growth in key areas of the sharing economy, not least transport and housing, is to rise from 5% in 2014 to over 50% in 2025. Could my noble friend write to all relevant departments to ask what plans they have to make sure that we capture all the benefits of the sharing economy? In addition, how are things going with the two proposed hubs in this area which were announced in the 2015 Budget?

Baroness Neville-Rolfe: Part of the process of developing the industrial strategy is of course to bring in information from other departments on how major changes in the economy are affecting them. One of the things that we ensure when consulting business is that we always include the sharing economy element in those discussions. I will write to my noble friend about the hubs.

Lord Clark of Windermere (Lab): My Lords, it is 60 years ago today that Britain became a world pioneer when Her Majesty the Queen opened the nuclear power station at Calder Hall. Nuclear power has plugged our energy gap for the past 60 years. When will the Government try to have some extra innovation and look at wave power so that we can plug the gap in the energy demands of the future?

Baroness Neville-Rolfe: As the new Energy Minister, I have been struck by the range of opportunities in energy. On nuclear, we have made the decision to go ahead with Hinkley and a potential whole new generation of nuclear power stations. We are looking at all these other areas and we have innovation expenditure. We will be sharing our thoughts further in due course—for example, in the context of the contract for difference decisions that are due in the coming weeks.

Baroness Burt of Solihull (LD): In her Answer, the Minister claimed that the Government are protecting our global position as a world leader in innovation and growth. Could she then explain why, in the race for Brexit, they are shutting the door on the very global talent that we need—particularly for tech start-ups—to come to this country from Europe and the rest of the world?

Baroness Neville-Rolfe: The noble Baroness is right that skills—especially digital skills—are important to our economy. We are extremely aware of that, including in the context of the Brexit discussions. I am sure she knows about all that we have done to ensure that we can get diverse digital skills from abroad, where that is appropriate, and to develop digital skills here in the UK, both through lifelong learning education and, more importantly, in schools, with computing now being part of the curriculum from five to 16.

Lord Stevenson of Balmacara (Lab): My Lords, in the last Administration the noble Baroness was a Minister not just in BIS but in DCMS—a post that she has now had to give up, although I in no sense cast any aspersions on her very successful successor. Since that Administration, the creative economy has been moved back to DCMS and higher education has been carved out and sent back to DfE. Given that she talked about the industrial strategy that is coming,

and that we are all looking forward to, what arrangements are going to be made to ensure that the work on that will not be restricted to BIS?

Baroness Neville-Rolfe: I can give the noble Lord that assurance. Obviously an industrial strategy has to be wide-ranging and, as I have said, key things such as the development of the digital economy and skills have to be at the heart of that. There is a Cabinet committee under the Prime Minister looking at the development of the industrial strategy, and that is bringing together the strands of work across Whitehall. There have been departmental changes; we have gathered energy—a major and important area—and I am trying to get to grips with its important challenges.

Lord Ashdown of Norton-sub-Hamdon (LD): My Lords, on the subject of the industrial strategy, I draw noble Lords' attention to the situation in Yeovil, which is the last integrated site capable of designing, manufacturing and assembling helicopters. As a result of the Government's short-sighted decision to grant the order for the Apache to the United States without any tendering whatever, the Italian owner, Leonardo, has now concluded that we do not seem interested in producing helicopters on a stand-alone site and is now shipping all the work on assembly back to Italy. What is needed now is the Government's clear statement that they wish to see helicopters made in Britain, of British manufacture, for our Armed Forces, as they have been for nearly 50 years now. Does the Minister realise what will happen if that should vanish or be in doubt as the Government's intention?

Baroness Neville-Rolfe: Helicopters are some way from the sharing economy, which is the subject of this Question. We are looking at the procurement rules on the sharing economy and in other areas to make sure that we get the best deal for Britain. We will be looking at all the issues regarding the industrial strategy. Coming from the West Country, I look forward to talking to the noble Lord further on the subject of Yeovil.

Lord Geddes (Con): My Lords, reverting to the subject of wave power, I opened my account in your Lordships' House 40 years ago on the subject of marine power. Will my noble friend concentrate rather more on tidal power than wave power, because I do not think any manufacturer has yet produced a machine that could withstand the forces of waves—but tidal power is another story altogether?

Baroness Neville-Rolfe: My noble friend is right: some innovative demonstration work is going on in Scotland and we are awaiting a report from Mr Hendry on a possible tidal lagoon in Swansea—and elsewhere.

Lord Haskel (Lab): As the Minister knows, much of the investment and work in the sharing economy is intangible. What progress are the Government making on measuring that work, as recommended in the Bean report?

Baroness Neville-Rolfe: I think that the noble Lord is talking about the work by the ONS on a subject we have talked about before: how you measure the sharing economy. He will be glad to know that on 12 October the ONS produced a progress report on how we advance measurement, how we sample and how we collect data. It is difficult because a lot of sharing economy transactions are non-financial and do not always involve business. The answer is that the good questions that he has previously asked have now been reflected in the work of the ONS. I look forward to seeing the results—I hope in higher growth figures for the UK economy.

Homelessness

Question

2.51 pm

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

To ask Her Majesty's Government what assessment have they made of the level of hidden homelessness in England.

Lord Kennedy of Southwark (Lab): My Lords, I beg to ask the Question standing in my name on the Order Paper. In doing so, I refer Members to my entry in the register of interests. I am a councillor in the London Borough of Lewisham and a vice-president of the Local Government Association.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, measuring hidden homelessness is inherently difficult, as there is no agreed definition or reliable method of data collection. Therefore, the Government have made no assessment of hidden homelessness.

Lord Kennedy of Southwark: My Lords, we live in one of the richest countries in the world. Does the noble Lord agree that the increase in homelessness over recent years is nothing short of a national disgrace? What assessment have the Government made of the Homelessness Reduction Bill introduced by Bob Blackman MP in the Commons, which seems very welcome and deserves cross-party support?

Lord Bourne of Aberystwyth: My Lords, I share the noble Lord's feeling that homelessness is something that we need to take action about. He will know that it is a very high priority for the Prime Minister and the Government. I agree with him that the Bob Blackman Bill is worth serious consideration. He will know that it has gone through pre-legislative scrutiny by the Communities and Local Government Select Committee, and the Government are considering it closely.

Baroness Gardner of Parkes (Con): My Lords, will the noble Lord tell us what he defines as homelessness, and particularly hidden homelessness? Does he include all these young people who are forced to remain in the family home who would dearly love to move on and have property, or at least a small dwelling, for themselves?

Lord Bourne of Aberystwyth: My Lords, my noble friend has put her finger on the nature of the problem. As I said, it is difficult to define hidden homelessness for the reasons that she just gave. Many people may be staying with friends or relations for six months, perhaps having come down from a village or town to London, before finding permanent accommodation, for example.

The Earl of Listowel (CB): My Lords, does the Minister deplore the fact that 100,000 children are living in homeless accommodation—temporary, insecure accommodation—in this country, the highest level since the early 2000s? When do the Government anticipate that the number of homeless children will begin to decline?

Lord Bourne of Aberystwyth: My Lords, the noble Lord is right: young people being homeless is a matter of concern. The Government have contributed a significant amount of money to the positive pathways framework—two-thirds of local authorities are benefiting from that—and £15 million has gone into the fair chance fund, helping 1,900 homeless young people with complex needs. Yes, there is a challenge; the Government are rising to it.

Lord Watts (Lab): My Lords, can the Minister explain the increase in people living in our streets over the past few years? What does he think is the driving reason for it?

Lord Bourne of Aberystwyth: My Lords, the last figure taken was taken on a night in the autumn of 2015, when 3,569 people were found to be sleeping rough in England. That is a serious position, there is no doubt; it has been at that sort of level over a period of time. The noble Lord will no doubt be pleased about the £40 million worth of assistance announced today in relation to helping with housing.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, there has been an increase in the number of direct access hostels, resulting in waiting lists. There is a logjam because there is no supported accommodation for people to move on to; even when people manage to find accommodation, it cannot be sustained, because there is no support for them. That results in increased rough sleeping. Does the Minister have statistics for the numbers of people affected?

Lord Bourne of Aberystwyth: My Lords, the noble Baroness will be aware that there is a sum of money—£100 million in this Parliament—to help vulnerable people to move on from hostels and refuges into low-cost permanent accommodation. We are pursuing that with a vengeance, with a view to getting those unacceptable numbers down.

Lord Bird (CB): If the Government are not looking into hidden homelessness, could they look into the predictability of homelessness? There is a situation whereby people are coming out of care, out of the Army and out of prisons. It would be a very interesting exercise to head off homelessness before it becomes entrenched in the lives of our young people.

Lord Bourne of Aberystwyth: My Lords, the noble Lord is right. He will no doubt be pleased that £20 million of the £40 million package that has been announced was specifically for homelessness trailblazer areas, which include Southwark, Greater Manchester and Newcastle, to deal with people who are in danger of losing their homes and ensuring that we do it in a preventional way, which is clearly the best way in which to tackle the problem.

Lord Grocott (Lab): The Minister said that dealing with this problem had a high priority, but will he explain to the House precisely what is meant by "high priority"? In conjunction with his colleagues in other departments, will he put a list in the Library of all those issues considered by the Government to be a high priority?

Lord Bourne of Aberystwyth: The noble Lord is in danger of appearing like a Dickensian undertaker praying for a severe winter. I have indicated that £40 million worth of assistance, which I would think that most people would welcome, has just been announced. That indicates that it is a high priority to deal with the homelessness issue. It is clearly a complex issue—nobody is suggesting that it will be solved overnight. But the £40 million worth of assistance announced by the Prime Minister today is something that we should all welcome.

Baroness Royall of Blaisdon (Lab): My Lords, will the Minister join me in congratulating Shelter on a brilliant new report, published today, entitled *Living Home Standard*? Will he undertake to meet Mr Campbell Robb, the chief executive, to discuss the specificities of the report?

Lord Bourne of Aberystwyth: My Lords, the noble Baroness is right to address our attention to the excellent and helpful role that Shelter performs; we work very closely with it, and of course we will take up the report with it and have an early meeting to pursue its findings.

Baroness Farrington of Ribbleton (Lab): My Lords, will the Minister please take back to his colleagues in government the fact that one of the major problems of underachievement by children is the underachievement of those who do not live in settled homes, who move around and whose education is disrupted? Returning to the 11-plus will not help at all, because those are precisely the children who have failed because the Government of the day have not given a high priority to providing housing, particularly in areas such as seaside towns, where children move all the time and have their education disrupted because there is no permanent accommodation.

Lord Bourne of Aberystwyth: My Lords, the noble Baroness asks something of a pantechnicon of a question, encompassing many different areas—but I can certainly share with her, in relation to housing, that it is clearly vital and that the lack of housing contributes to social problems, ineffective education and health problems. There is no doubt of that.

Housing: Under-occupancy

Question

2.59 pm

Asked by ***Baroness Quin***

To ask Her Majesty's Government what recent meetings have taken place between ministers and citizens affected by the under-occupancy charge.

The Minister of State, Department for Work and Pensions (Lord Freud) (Con): My Lords, we met with an extensive group of stakeholders during the development of this policy and continue to do so on all policy areas. However, no recent meetings have taken place on the underoccupancy charge. Citizens and stakeholders are able to keep Ministers informed of their views through correspondence. The overall funding for discretionary housing payments has been increased: £870 million has been provided for the next five years to help those who are vulnerable.

Baroness Quin (Lab): Having recently become involved with a charity in the north-east of England which helps and speaks up for people with learning disabilities, I have been struck by the number of cases in which the bedroom tax has greatly increased the problems that some of these people are facing. Will the Minister agree to meet with me and some of those affected? Also, will the Government look urgently at new ways of helping the people who have been hardest hit by this policy?

Lord Freud: The problem that I have in answering the noble Baroness right now is that, as she will be aware, we are currently awaiting a judgment from the Supreme Court on groups of people affected by the spare room subsidy policy. During this time, it is not appropriate for Ministers or officials to meet with particular groups. We had the hearing at the end of February, so we are expecting to hear the outcome of the case quite soon. After that, I will engage with the noble Baroness.

Lord Naseby (Con): Is it not extraordinary that the previous Question was, rightly, about homelessness—indeed parts of the Shelter report addressed major problems—yet in this Chamber we have consistently heard disagreements and challenges to, and non-acceptance of, the very idea of underoccupancy? Would it not be a nice change if people recognised that most of the underoccupancy challenges do not have much validity? The people in those homes should think about downsizing appropriately or, if not, paying the relevant rent for overoccupying them.

Lord Freud: The number of those affected by the policy has now come down by 21%. Some have downsized; many others have got jobs. In the last years, the number on waiting lists has now come down very appreciably—by nearly half a million—as councils are able to manage those waiting lists more flexibly.

Lord Blunkett (Lab): My Lords, the problem with the previous question is that the bedroom tax does not apply to the retired. It is actually the retired—well represented in your Lordships' House—who have more accommodation available than younger people bringing up families, where their home should be their castle. Does the Minister concur that, if we were looking in that area, it would be an incentive to older people to downsize, not younger people with families?

Lord Freud: The policy is clearly directed at people who have a spare room. These tend not to be people with families; in many cases, they are empty nesters. They would be a typical group—people who have had a larger place but some of the people living in it have then moved on and they now have spare rooms. There is a point in time at which one should address the issue to get the downsizing. This policy looks to make sure that that time is during working age and not later.

Lord Stoneham of Droxford (LD): My Lords, I declare my interest as chair of Housing & Care 21. As the Minister will be aware, there is a major problem coming down the road on retirement housing, particularly the imposition of a cap on housing benefit, which will impose itself on people in retirement housing where rents and the cost of housing are higher—often higher than the proposed cap on housing benefit. How are the Government going to address, beyond just using discretionary funds, the needs of these retired people who will be disadvantaged and also stop the undermining of future development of retirement housing in this country?

Lord Freud: We put out a Ministerial Statement in September outlining our approach to supported housing, including sheltered housing, which looks to divide the support into two, with one element coming out of the housing benefit bill up to the limit of the LHA amount in each area, which is then topped up by local authorities through a fund. This will help them drive the commissioning of the appropriate level of housing, and supported housing, for the people in their area.

Baroness Hollis of Heigham (Lab): My Lords, given the harsher council tax support scheme, it is estimated that one in three of those affected is in arrears and debt. Of the people affected by the bedroom tax, two-thirds are estimated to be in arrears and debt. Of UC claimants for housing allowance, it is estimated that more than three-quarters are in arrears and debt. These debts are manufactured by government policy and will blight lives for some in deep debt for many years to come. We have a new Government and I am sure that neither the Minister nor the Prime Minister wishes this state to continue. What are the Government going to do about it?

Lord Freud: There is a lot of complexity around the arrears issue, which we are looking at. The overall figures on arrears are much lower than some of the dramatic specific figures that the noble Baroness mentioned. The overall position is that housing association

[Lord Freud]
rent collection is running at 99% on average, and the bulk of housing associations—92% of them—say that they are outperforming their business plans on levels of arrears. There are specific issues, but there are a lot of definitional problems—I have said that to the House before—about what is an arrear and whether, if you are a day late, you go into arrears. We are trying to separate out what one could call book arrears from genuine arrears of the kind about which the noble Baroness is concerned.

Investigatory Powers Bill

Report (2nd Day)

3.07 pm

Clause 58: Power to grant authorisations

Amendment 96

Moved by ***Earl Howe***

96: Clause 58, page 46, line 40, leave out "to disclose it" and insert "or capable of obtaining it—

(i) to obtain the data (if not already in possession of it), and

(ii) to disclose the data (whether already in the person's possession or subsequently obtained by that person)"

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, I shall speak also to the other government amendments with which this is grouped.

This group contains the government amendments in relation to the acquisition of communications data under Part 3 of the Bill. Starting with Amendments 96 to 100, a designated senior officer may believe that a communications service provider has the communications data he or she requires and grants an authorisation or issues a notice to that provider for disclosure of the data. However, in such a case the provider may not actually have the data but is able to obtain it. The Bill already provides for an authorisation or notice in respect of such data. These amendments simply make it clear that a second authorisation or notice for the same data and for the same purposes is not required in these circumstances. I trust the House will agree that these are sensible amendments, ensuring that neither the public authority nor the communications service provider is unnecessarily burdened.

Amendments 101 to 103 update Schedule 4 in two ways. The first is through minor and technical amendments to the description of the minimum rank for authorising communications data requests within the Competition and Markets Authority and the Police Investigations and Review Commissioner in Scotland. These amendments correct an error and reflect an organisational restructure in the respective organisations. Secondly, they add the Department for Communities in Northern Ireland to the list of public authorities which may acquire communications data for the purpose of preventing or detecting crime or preventing disorder. Communications data are of course a vital tool in investigations to detect, prosecute and prevent benefit fraud, providing vital investigative leads that would not otherwise come to light. These amendments ensure that the Department for Communities in Northern Ireland has the same powers as its English counterpart, the Department for Work and Pensions. They will allow it to continue to investigate crimes, such as organised attacks on the benefits system.

On Amendments 104 to 106 and 109 to 114, the collaboration agreement provisions in this part of the Bill are intended to ensure that, where necessary and appropriate, one public authority can make use of another public authority's authorising and single point of contact expertise. They will bolster the strength of the regime by allowing for the sharing and use of best practice and experience. These minor and technical amendments will ensure that public authorities can enter into collaboration agreements and benefit from them without any unintended consequences. For example, they would ensure that two public authorities could collaborate with each other, even though the purposes for which they can each acquire communications data are different. They would also ensure that restrictions, such as the requirement for local authorities to seek magistrate approval for their requests for communications data, operate properly under collaboration agreements.

Similarly, the amendments make clear that single points of contact in a public authority can themselves obtain the communications data from communications service providers on behalf of the authorising officer in the collaborating public authority, as well as provide their advisory function. The single point of contact already performs this role in respect of requests authorised within the same public authority, and this amendment was needed to ensure that nothing in the collaboration provisions casts doubt on their ability to perform that role. I hope the House will agree these amendments to improve the regime.

Finally, on Amendment 259, it has always been the case under RIPA that a public authority can request data that may reasonably be obtained by a communications service provider as well as data which it holds. This fact has been reflected in the telecommunication definitions in the Bill, which make clear that communications data includes data which are, are to be or are capable of being held or obtained by a telecommunications operator. This amendment does no more than ensure that the definition of communications data in the postal context is consistent in this respect. I beg to move.

Amendment 96 agreed.

Amendments 97 to 100

Moved by ***Earl Howe***

97: Clause 58, page 46, line 42, leave out paragraph (c)

98: Clause 58, page 47, line 5, leave out "to disclose the data" and insert "or capable of obtaining it—

(a) to obtain the data (if not already in possession of it), and

(b) to disclose the data (whether already in the operator's possession or subsequently obtained by the operator)"

99: Clause 58, page 47, line 8, leave out sub-paragraph (ii)

100: Clause 58, page 47, line 28, leave out ", (c)"

Amendments 97 to 100 agreed.

3.15 pm

Amendment 100ZA

Moved by ***Baroness Jones of Moulsecoomb***

100ZA: Clause 58, page 48, line 9, at end insert—

"( ) An authorisation may be considered necessary on the grounds falling within subsection (7)(b) or (f) only where there is a reasonable suspicion that a serious criminal offence has been or is likely to be committed and it is reasonably believed that the communications data sought will be relevant to the criminal investigation."

Baroness Jones of Moulsecoomb (GP): My Lords, with this amendment I make a further attempt to introduce into the Bill a requirement on the authorities to demonstrate reasonable suspicion of a serious crime and a nexus between the communications data that are sought and the crime suspected before a targeted surveillance warrant can be authorised.

As I pointed out previously when speaking to Amendment 20, one of the greatest problems with the Bill is the lack of a requirement for reasonable suspicion in order for surveillance powers to be authorised for the purpose of preventing and detecting a crime. At the moment, intrusive powers can be authorised to prevent and detect serious crime, but this general purpose is left wide open to very broad interpretation, and therefore to abuse, without requiring the authorising authority to verify the existence of reasonable suspicion of criminality. A requirement of reasonable suspicion when the purpose of preventing and detecting serious crime is invoked would prevent the potential abusive surveillance of law-abiding citizens, which we have seen in the past, without unduly limiting the legitimate use of surveillance powers.

The threshold of reasonable suspicion has long been an important safeguard for both citizens and law enforcers against the risk of the arbitrary use of police powers. The "necessary and proportionate" standard invokes an important assessment of the extent of the intrusion but does not necessitate a threshold of suspicion. Although would one expect that in practice targets of surveillance would meet this very modest burden of proof, in my view it is a great mistake not to include the threshold of reasonable suspicion in the Bill, and it leaves these powers ripe for abuse. Therefore, I make no apology for returning to this issue once again.

The amendment simply requires, first, a threshold of reasonable suspicion that a serious crime has been planned or committed and, secondly, a factual basis for believing that the targeted communications data will contain information relevant to the criminal investigation. This would reassure the public that intrusive targeted surveillance could be used only where there was reasonable suspicion of a serious crime. To that end, I hope the Government will accept the amendment. I beg to move.

Lord Rosser (Lab): This amendment relates to Clause 58, which some people, although not the noble Baroness, Lady Jones, have referred to in the context of a recent opinion by the ECJ Advocate-General in the case involving Tom Watson MP. We do not support the amendment but I want to make it clear that the fact that we are opposed to it does not mean that we have decided that the clause as it stands meets the opinion of the ECJ Advocate-General in the case now before the European Court of Justice involving Tom Watson MP and relating to retaining and accessing communications data, should that opinion be reflected in the judgment of the court when it is delivered. I want to make that statement as there may be those who, for some reason or another, have come to the conclusion that the fact that we have not tabled any amendments to Clause 58 means that we believe that the clause will cover the position of the Tom Watson case if the judgment of the court proves in line with that of the opinion of the ECJ Advocate-General.

Lord Beith (LD): My Lords, I applaud any attempt to make the definitions precise but there comes a point when there is a negative consequence. I am slightly worried that the wording of the amendment—certainly as drafted—could inhibit the activities of law enforcement in establishing a pattern in the development of criminal behaviour and activity, particularly in the area of organised crime, if it were to be interpreted as strictly as its wording invites. Although the intention of the amendment is good, I am not yet persuaded that it can safely be included without an undesirable inhibition of a particularly important area of activity at the moment—namely, establishing whether groups with well-suspected criminal intent might be planning something worse.

Baroness Hamwee (LD): My Lords, the noble Lord, Lord Rosser, has set perhaps the hardest task for the Minister today in asking him to comment on what was perhaps not a coded speech but simply one inviting speculation.

Turning to the amendment itself, as on the first day of Report we are sympathetic to where the noble Baroness is coming from. Indeed, I think we had an amendment on "reasonable suspicion" at an earlier stage. However, perhaps again I should phrase what I have to say as a request for confirmation, as my noble friend Lord Paddick did last week. Reasonable suspicion is encompassed by the necessity and proportionality test. The way the noble Baroness has expressed it is that there is a moderate-sized hurdle to be got over and then a higher hurdle to be surmounted, by having "reasonable suspicion" and then the necessity and proportionality test. To keep up the athletic metaphor, you will not get over the higher hurdle even if you get over the lower one, so it seems to us that you might as well just have the higher hurdle. Perhaps we can be given some more assurances about how the different criteria will bite.

Earl Howe: My Lords, I listened carefully to the noble Baroness, Lady Jones of Moulsecoomb, and I am grateful for the case she has put. However, I cannot agree with it, and I will explain why that is.

[Earl Howe]

As the noble Baroness explained, this amendment seeks to provide that certain communications data authorisations can be approved only where there is a reasonable suspicion that a serious criminal offence has been, or is likely to be, committed. In short, the amendment would undermine the ability of law enforcement and other public authorities to catch criminals and to keep the public safe. I will now set out why I believe that is so.

I shall start with the requirement for reasonable suspicion. As we discussed and agreed in this House last week, the necessity and proportionality test is established and well understood. It is difficult, therefore, to see what benefit would be derived from inserting a different test. Indeed, in order to approve an authorisation for communications data for the purpose of preventing or detecting crime, a sufficiently compelling case will always be required—a speculative authorisation would never be approved. Therefore, I suggest that the amendment responds to a concern that is fundamentally misplaced.

Turning to the serious crime threshold that this amendment would insert, assuming that the noble Baroness intends the threshold to be equal to that currently used to authorise the interception of communications, I believe once again that the amendment is inappropriate and damaging. Taking effective action against serious criminals often requires the investigation of, if I may use the phrase, lower-level individuals for activities that are not considered serious crimes in order to build a case against higher-ranked criminals. It may also include the investigation of minor offences where stopping an offender at this point may prevent an escalation of their criminal activities, such as in stalking and grooming cases.

It might be helpful if I expand on that. Placing this additional restriction on the acquisition of communications data would disrupt police investigations of online grooming and linked crimes, such as the sending of sexual communications to a child. This is because where such activity does not meet the high threshold proposed, which will often be the case if the child is over the age of 13, it may be impossible to identify perpetrators who may go on to be involved in child sexual exploitation. As such activities increasingly take place online, law enforcement agencies will rely heavily on communications data and the new power in relation to internet connection records in order to investigate this.

The amendment would also reduce the ability to investigate online fraud, which affects everyday internet users who shop or bank online, but which could, depending on the value of the fraud, fall below the serious crime threshold proposed here. Equally, the Department for Work and Pensions, for instance, investigates false tax credit claims which can result in the collective overpayment of millions of pounds of taxpayers' money, but these false claims may not individually reach the threshold of serious crime. Communications data are currently used to investigate such activity.

I also believe that these amendments are unnecessary given the strict safeguards that already apply to the use of communications data. Data can be accessed only on a case-by-case basis and only where judged necessary and proportionate by a senior officer of a rank specified by Parliament and who is independent of the investigation. Strong judicial oversight will also be provided by the Investigatory Powers Commissioner.

I was grateful to the noble Lord, Lord Rosser, for qualifying his party's position on this part of the Bill. We maintain that our existing regime and the proposals in the Investigatory Powers Bill are compliant with EU law, but whatever the final judgment, given the importance of communications data to preventing and detecting crime and safeguarding national security, we will ensure that plans are in place so that the police and others can continue to acquire such data in a way that is consistent with our obligation. I hope that that is helpful.

Lord Rosser: The Minister appears to be saying that the Government's position is the same as ours, and that you cannot express a view on whether the law as it stands, as reflected in the Bill, meets the judgment of the European Court of Justice until we have seen and read what that judgment is.

Earl Howe: Indeed, but until we have seen and read what that judgment is, our view is that the Bill is compliant.

In view of the very significant impact that would flow from this amendment, I invite the noble Baroness to withdraw it.

Baroness Jones of Moulsecoomb: I thank all noble Lords who have given me some support: it is something that I feel very strongly about. I thank the noble Earl for his full reply. Needless to say, I am not convinced because all of the issues that he talked about are in fact potentially serious crimes, so the threshold would be satisfied.

If the noble Earl had spoken to some of the people who had been blacklisted, for example, and whose lives were basically destroyed because of illegal surveillance and co-operation by the police with various organisations, it is possible that he would have been influenced in the same way that I have been. However, in view of the noble Earl's answer, I beg leave to withdraw the amendment.

Amendment 100ZA withdrawn.

Amendment 100A

Moved by ***Baroness Hamwee***

100A: Clause 58, page 48, line 13, at end insert—

"( ) Communications data obtained for any of the purposes listed in subsection (1)(b)(ii) may not be used or disclosed other than for those purposes and must be destroyed as soon as possible after the data has been used for the purposes for which the data has been obtained."

Baroness Hamwee: My Lords, I move this amendment in my name and that of my noble friend Lord Paddick. The issue of destruction of material was raised by the Government last week in respect of legal professional

privilege. In that case, the Minister proposed and the House agreed that when an item subject to legal privilege is intercepted and obtained, the Investigatory Powers Commissioner can impose conditions as to its disclosure or direct destruction. We proposed a further safeguard about destruction, which the Minister is considering—he said that he would like to return to it at Third Reading—but which he thought was essentially a good idea, and we recognise the Government's approach as something that we want to build on.

Amendment 100A is in the same area. There are destruction requirements elsewhere in the Bill. Clause 58(1) deals with what is necessary and proportionate for a targeted authorisation for obtaining data. It is necessary in one of the cases set out in subsection (1)(b),

"for the purposes of testing, maintaining or developing equipment systems or other capabilities relating to the availability or obtaining of communications data".

The amendment would provide that data obtained for any of these purposes may be used only for such purposes. The Minister may say that that must be so and critically that,

"it must be destroyed as soon as possible after the … purposes",

have been fulfilled. We believe that it must be the case that data obtained for testing systems should be subject to such a safeguard because, by definition, they are not required for a specific investigation and are therefore not necessary in the interests of national security or any of the other purposes set out in Clause 58(7). If data are required for a specific investigation, then those other provisions will kick in.

The destruction requirement that we are seeking is confined to the very narrow situation of the testing of systems. I hope that the Minister will agree to this, but if not that he will at least explain how data obtained in that situation are to be destroyed so that they do not hang around, as it were—which is probably not a technical phrase. I beg to move.

3.30 pm

Earl Howe: My Lords, I hope that I can reassure the noble Baroness. Amendment 100A is unnecessary since the use, retention and destruction of all personal data held by public authorities, including communications data, are already regulated by the Data Protection Act 1998. That means that, once communications data have been obtained, there must be a lawful purpose for their use and ongoing retention, and they must be destroyed when they are no longer held for a lawful purpose. I would draw the attention of noble Lords to Chapter 11 of the *Communications Data DRAFT Code of Practice*, which sets out detailed requirements, consistent with the Data Protection Act, on public authorities about the use, disclosure, protection and destruction of the communications data they hold.

In addition, the amendment would unnecessarily, and in some cases very damagingly, require a public authority to destroy communications data it had obtained once they had been used for the purpose for which they were acquired, but other legitimate and important purposes for holding data may still exist. For example, a public authority is obliged by law to retain material it holds that has been used in evidence to support a conviction in case of appeal or to overturn a potential miscarriage of justice. It is also obliged to retain any material that is potentially exculpatory, even if it considers that it no longer requires the data for the original purpose for which it was acquired. This amendment would cut across those important tenets of our criminal justice system and I cannot imagine that that is what the noble Baroness wants to see.

I hope that, in combination, what I have been able to explain will reassure her sufficiently to enable her to withdraw the amendment.

Baroness Hamwee: I should obviously have included something like the words "except as otherwise required by law". I am grateful for that explanation and I am sympathetic to the Government trying to get everything into the Bill, but here we find yet another example of another piece of legislation that we need to look at. However, it is helpful to have the explanation, and I beg leave to withdraw the amendment.

Amendment 100A withdrawn.

Clause 59: Restrictions in relation to internet connection records

Amendment 100B

Moved by ***Lord Rosser***

100B: Clause 59, page 49, line 23, leave out "6" and insert "12"

Lord Rosser: My Lords, when the Bill was going through the House of Commons, the Government made a commitment to introduce a clear and appropriate threshold for accessing internet connection records. The concern was that access should not be available in connection with non-serious crime. The threshold for serious crime that the Government came up with in Committee appeared workable and appropriate.

But last April, the then Home Secretary told the then shadow Home Secretary that restricting internet connection records to serious crime would hamper the ability of the police to investigate online stalking and harassment; disrupt police investigations of online grooming or the sending of sexual communications to a child; reduce the ability to investigate online fraud; hinder the ability to identify and disrupt the sale and distribution of illegal material online, including illegal weapons, counterfeit medicines or illegal drugs; and prevent the police progressing investigations where there may be a threat to life but where it is unclear whether a crime is involved—for example, locating a missing or suicidal child—because many of these activities would not meet the serious crime threshold.

While we welcome the fact that specific offences such as stalking and harassment have been addressed and can lead to access to internet connection records, we have continuing concerns around the definition of "other relevant crime", which is too broad and could still lead to the use of internet connection records in relation to crimes that would not be regarded as serious.

Currently the Bill defines "other relevant crime", with some caveats, as,

"an offence for which an individual … is capable of being sentenced to imprisonment for a term of 6 months or more".

The Government have recently stated that this threshold rules out the use of internet connection records for a large number of minor crimes, including those which

[LORD ROSSER]
are not subject to a custodial sentence and those which are subject to only a one-month or a three-month custodial sentence. The Government have also indicated a number of offences in respect of which the use of internet connection records would be excluded if the threshold in respect of "other relevant crime" was increased from six months to a sentence that is capable of attracting a custodial sentence of 12 months or more. Those offences which would then be excluded include motoring offences such as joyriding, driving while disqualified and failure to stop or report an accident; an offence of criminal damage under £5,000; some sections of the Public Order Act which do not amount to violence; and certain immigration offences and some offences relating to the supply of intoxicating substances or controlled drugs.

Our amendment would increase the qualifying term of imprisonment from six months to 12 months or more. This would exclude the kind of offences to which the Government have referred. One accepts that such offences can have significant consequences, but we do not regard them as serious in the context of the purpose for which access to internet connection records is required—and nor do we think that raising the threshold to 12 months' imprisonment in respect of other relevant offences makes it difficult to pursue matters related to the kind of offences to which the previous Home Secretary drew attention and to which I referred earlier.

I hope that the Government will feel able to give a helpful response to this amendment, which seeks to address concerns that access to internet connection records could be used in inappropriate circumstances for which the Bill is not intended—notwithstanding the fact that any such access to internet connection records must meet the necessity and proportionality requirement, which some might argue should exclude much low-level offending. I beg to move.

Baroness Hamwee: The noble Lord made a very persuasive case for this amendment and I do not think that he will be surprised to be supported by these Benches, given our concerns about internet connection records—so any further constraint on them is something that we would welcome. But he went into far more detail than that and we support him.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, the Government have consistently recognised that care must be applied to the acquisition of internet connection records and, importantly, that they should not be acquired for trivial purposes. That is why we brought forward amendments in Committee to put in place a number of restrictions to provide reassurance that the powers to acquire internet connection records would only ever be used proportionately. These amendments included a threshold which would mean internet connection records could only be used to investigate certain crimes which could attract a sentence of at least six months' imprisonment.

This amendment raises the threshold for offences which are sufficiently serious that an offender can be sentenced to at least 12 months' imprisonment, rather than six. The amendment rightly leaves unchanged the important exceptions in the Bill to the crime threshold. The House has recognised the need to ensure that internet connection records can be obtained for the investigation of certain specified types of crime—for example, those relating to cyberbullying and harassment, and those relating to a breach of a person's privacy—which, for whatever reason, carry a lower sentencing limit.

We recognise that this amendment will provide further reassurance and ensure public trust in the use of these vital powers, whose value and importance have been widely recognised and acknowledged. In these circumstances, we are therefore content to accept the amendment.

Amendment 100B agreed.

Amendment 100C

Moved by ***Lord Paddick***

100C: Clause 64, leave out Clause 64

Lord Paddick (LD): My Lords, I shall also speak to Amendments 100D and 100E in my name and that of my noble friend Lady Hamwee. The effect of these amendments would be to remove the request filter from the Bill. No doubt, the name "request filter" has been chosen for its potential to be beneficial in terms of limiting intrusion into privacy, while at the same time I believe it conceals its true nature and the considerable downsides that such a thing would have. I am struggling to find a word that describes something that does not exist and which the Home Office is unable to describe except in terms of its proposed positive outcomes. When I visited both the law enforcement and security agencies in preparation for the Bill they could throw no more light on the detail of this proposal or give any reassurance as to its security. What we know is that it is something akin to a Google search engine, a system built and possibly operated by the private sector on behalf of the Home Secretary. The request filter will act as the go-between between law enforcement and security agencies and the communications providers.

We have had lots of debates in the course of the Bill on the trustworthiness of the police and the security services. Perhaps it would not be too unkind to say that the security services have come out on top, with law enforcement agencies trailing slightly. When we consider the Government's failure to implement such measures already in legislation, such as the Privacy and Civil Liberties Board and the Leveson recommendations, one might not be too severely criticised for putting the Government a poor third in this line-up of trustworthiness. The request filter would give the Government, in the guise of the Home Office, unfettered access to communications data, including internet connection records. Of course, having unfettered access would also mean that, if security were to be breached, it would provide criminals and hostile foreign Governments with similar unfettered access to private and confidential information of every subscriber to UK communications and internet services.

At present, as noble Lords will be aware, almost every request for communications data—of course, that does not include internet connection records, because these are not part, yet, of communications data—is made by investigators to a single point of contact in their own organisation. The SPOC, as they are known, assesses the validity of the request and, if satisfied, passes it to the communications provider, which again assesses whether it is a valid claim. There is, in effect, a double lock: an independent and specially trained SPOC and an independent and specially trained person in the communications company, both of whom can block unnecessary and disproportionate requests.

As far as anyone can understand such a vague concept as the request filter, it appears that it would be linked into the communication providers' databases and be able to search and retrieve data with no independent check. The Government may say that the people operating the request filter will be the independent check, but they will be Home Office officials or staff of a private company working on behalf of the Secretary of State. Not many of us, and certainly very few members of the public, would rest assured that their sensitive personal information was in the hands of politicians or those acting on their behalf.

3.45 pm

Although details are not contained in the Bill—or anywhere else, really—section 9 of the draft communications data code of practice states:

"The request filter will be operated on behalf of the Secretary of State by the Home Office. In practice the service will be provided by one or more third parties under contract".

"One or more third parties" does not provide any more reassurance that the data will be kept safe or that the filter will be operated on an ethical basis. We know of numerous cases—some in the security services; many more in the police service—where databases have been misused and unauthorised searches undertaken, despite the rigorous scrutiny and auditing these systems are under. To create another virtual database, through which government officials and those acting on their behalf can carry out limitless searches of commercial company databases containing sensitive personal information, should make us all pause to think, "What sort of monster are we creating here?". Unlike the current situation, if the Government get their way this communications data will include every website everyone in the UK has visited in the previous 12 months—presumably, after the system has been operating for 12 months, and then it will be 12 months of data on a rolling basis thereafter.

How many in this House—perhaps excluding the Ministers opposite—honestly believe that the Government should be given unfettered access to highly sensitive personal information? This is not the first time the Home Office has tried to introduce such a filter. It first made an appearance in the draft Communications Data Bill in 2012. The Joint Committee of both Houses that looked at that Bill concluded that the request filter,

"can be equated to a federated database".

I had some difficulty convincing the noble and learned Lord about a virtual database, so perhaps he will accept the description of the Joint Committee on the 2012 Bill.

Of course, collateral intrusion can be reduced by use of the filter; indeed, the Minister referred to an example in Committee. That example, where a murder suspect is believed to have been responsible for three deaths at three different crime scenes and the police want to know whether the same mobile phone was present at each crime scene, is a valid one in terms of limiting collateral intrusion. Currently, the police would have to ask for every mobile phone registered in each location at the relevant time, and look themselves for any common numbers. The request filter could simply return only the numbers that were in all three locations at the relevant time, but there are two issues with this argument. First, is it really such an intrusion into people's privacy that someone's mobile phone number is found to have been operating in the vicinity of a murder scene, and when it is present at only one of those scenes, the record is immediately destroyed? Secondly, while it might save the police a couple of minutes because they would not have to compare three lists of numbers to find those common to each list, by downloading such information on to a spreadsheet, it would only take a few seconds to identify the phone number or numbers of interest.

Contrary to the view that the filter would reduce collateral intrusion, the London internet exchange LINX described the request filter as,

"the functional equivalent of building communications data profiles on every user, which will contain everything within the definition of communications data, including time and geolocation data".

That may not be the intention but it would certainly be a possibility, and an alarming one at that. The temptation not to use such a valuable—but grievously damaging to privacy—resource would be irresistible.

The Government will again reassure the House that that is not the intention and that it will not be used in this way. However, it is only a few years ago that the Government revealed that the security services had been recording the details of every landline telephone call made in the UK and that they had been doing so for decades. The kind of search that could be undertaken using this request filter—I think of the case cited by the noble Baroness, Lady Jones of Moulsecoomb, although she is not in her place—might be to list all the people whose mobile phones were registered at Trafalgar Square on the date and time of a political rally and who have accessed a list of radical websites. The subscriber information could then be obtained and the identities of those individuals secured.

It is not only the security of the request filter that poses a threat to sensitive personal information. As James Blessing, the chair of the Internet Service Providers' Association and chief technology officer of Keycom, explained to the Joint Committee on this Bill:

"In theory, the filter is being described as a way of restricting the information recovered. That means that an automated system must be doing the requesting of the data capture from the service provider and then presenting them to an individual. That means we have to allow third-party access to our systems, which is a potential risk".

[LORD PADDICK]

The Joint Committee on the previous Bill had serious misgivings and the Joint Committee on this Bill said:

"The proposals are very similar to those in Clauses 14 to 16 of the Draft Communications Data Bill 2012, which also proposed a Request Filter. The key change from the earlier Bill is that the Secretary of State must now consult the Investigatory Powers Commissioner about the principles on the basis of which the Secretary of State shall establish the filter";

that is: the substance has not changed.

This is an extremely powerful concept—I cannot call it any more than that—which is open to misuse by the Government, third-party operators and those criminals and hostile foreign powers which will inevitably be keen to get their hands on it, or them, depending on how many people run it. The Government say:

"The request filter is available to all public authorities to assist in obtaining the communications data that they are permitted to use, subject to individual authorisations".

This is not restricted, as with most other intrusive powers, to only the security services or cases of serious crime. Even the Food Standards Agency could access it. Of course, if there was a fully worked-up proposal with a proper operational case for such provision, and with clear reassurances about how it would operate and how data would be safeguarded, noble Lords could make an informed decision on whether a request filter was necessary and proportionate, but there is not, and so we cannot. It is simply a vague idea of something that might be useful, for which a one-sided and I believe misleading case has been put forward by the Government. I beg to move.

Lord Carlile of Berriew (LD): My Lords, I regret that I cannot support my noble friends' attempts to remove these clauses from the Bill. I say with great respect to them that it is a misconceived attempt and displays a misunderstanding of what the authorities do, have done and can do. In my judgment, for what it is worth, the removal of these clauses would reduce the capacity of the authorities legitimately to interdict what could be extremely serious crime and catch those guilty of it.

We have heard terms such as "limitless", "monster" and "unfettered". At the risk of repeating what has been said earlier on Report, it is grossly exaggerated to suggest that unfettered, monstrous or limitless power is being given to the authorities. There can never have been a Bill on subjects such as these that has had so many fetters on the authorities and that has placed so many limits on what they can do. Indeed, if it has created a monster at all, it is a monster of regulation, not of unregulated activity.

I saw a briefing on these amendments earlier today. They are founded on the proposition that the authorities—the police and the security services—have the time to go on fishing expeditions. If that is what is being said, I can think of at least two kinds of fishing expedition. One is the sort of fishing expedition where you stick a worm on the end of a line and dangle it into water not believing that there is anything in there, and the other involves casting a sprat to catch a mackerel. If there is a fishing expedition here, it is the kind in which the authorities would know that there is very likely to be a mackerel beneath the water into which they cast their well-fattened sprat.

These amendments would inhibit current practice in the courts and in investigations. I can think of two murder cases in which I appeared as leading counsel—one as a prosecutor, the other as a defender—in which a conviction resulted from exactly the kind of activity being permitted in the Bill. In each case, it is certainly possible—I do not want to exaggerate—that there would have been no conviction if not for the availability of this kind of activity. At the time of each of those cases, the activity was nothing like as well-controlled or scrutinised as is proposed in the Bill. The sort of activity that I am describing can and has been used to catch murderers, paedophiles and money launderers as well as terrorists. It is a necessary tool of a responsible state.

The issue is whether the Bill allows this information to be obtained in a responsible way by the state. I believe the Government have gone a very long way to ensure that everybody can be confident that in future such material will be obtained by a responsible state and that these clauses are a necessary part of that activity.

Lord Strasburger (LD): My Lords, I rise to speak to Amendments 100C, 100D and 100E which have been very ably explained by my noble friend Lord Paddick.

When vague and non-specific legislation comes before us, it is perhaps because its authors are unable to be more precise because they have not thought it through or because they choose to not share the details with us. Whichever reason applies in the case of the request filter, there is no doubt that Clauses 64, 65 and 66 are notable more for what they do not say than for what they do. Despite the best efforts of both the Joint Committees on which I had the privilege of sitting—the one on this Bill and the one that examined the draft Communications Data Bill in 2012, in which the request filter first appeared—we are none the wiser about the request filter architecture, how it will work, who will develop it and who will operate it.

We have only to look at an obscure section in an elderly piece of legislation—the Telecommunications Act 1984—to see how overbroad drafting can lead to unintended consequences. Years ago, Section 94 of that Act was used by the Home Office secretly to create a brand new, highly intrusive power—namely, bulk acquisition of communications data—which the Government, to their credit, are now bringing in from the cold in this Bill. For a long time, however, the existence and use of this power carried on without the approval, or even the knowledge, of Parliament. Quite by chance, just a few hours ago, the Investigatory Powers Tribunal ruled that this very powerful secret power of bulk acquisition of communications data, which was created out of that vague section in the Telecommunications Act 1984, has been used illegally by the intelligence and security services for 10 years. We must guard against carelessly passing clauses so vague as to be open to misuse.

4 pm

As for the concept behind the request filter, it is described by the Home Office as a safeguard, designed to reduce the collateral intrusion produced in searching for small, specific information in a large dataset. Although this is true, the request filter would also allow automated complex searches across retained data from all telecommunications operators. This has the potential for population profiling and composite fishing trips. It is bulk data surveillance without the bulk label, and without any judicial authorisation whatever. The Food Standards Agency, for example, as has already been mentioned, will be able to authorise itself to cross reference your internet history with your mobile phone location and landline phone calls, and search and compare millions of other people's records too.

The Government like to reassure those who are very concerned about the bulk collection of every citizen's personal data that the vast majority of them will never be used. But the request filter shoots down in flames the entire notion of passive retained records that will lie unexamined. Totally innocent people's communications history will be repeatedly used and processed by the request filter. Furthermore, that private data, and the request filter itself, will be vulnerable to attack and theft by bad actors of all kinds. The request filter in the wrong hands would be a devastating security risk for individuals and for large organisations, including government.

Before the Minister seeks to reassure the House that such illicit access to the request filter technology would be impossible, I would point out that just 12 days ago a gentleman by the name of Harold Thomas Martin III was charged with theft of US government property and hoarding it at his house for 10 years. Mr Martin is a contractor with a very high security clearance working for the National Security Agency, which is the equivalent in the States of GCHQ. The government property in question includes top-secret hacking tools used by the NSA to infiltrate computers, networks and phones worldwide, which were recently published on the internet and are now available to hackers worldwide. A similar breach of security is very possible in the case of the request filter and is made much more likely by the attractiveness of the data for criminal or espionage purposes.

In summary, the request filter in the Bill is so vague and unspecified as to be a blank cheque for officials to fill in later if they wish. There are virtually no controls over how it would be used and who can use it. It will create a federated database about every citizen in the UK, and its existence will attract probably successful attempts to gain control of it by all sorts of people who would do us harm. Clauses 64, 65 and 66, which create the request filter, should be left out of the Bill. If the Government wish to make a case for this power, they should come back to Parliament in the future when it is a properly designed and specified power with proper controls on its use and a proper operational case to support it.

Viscount Brookeborough (CB): My Lords, I hesitate to enter the debate on the Bill at this stage because I have not been involved until now, but as I listened, I compared this in my mind with what occurred in Northern Ireland over 40 years of terrorism. I cannot support this amendment for the very reasons given by the noble Lord, Lord Carlile.

During the Troubles in Northern Ireland, when nothing was on the internet because it did not exist, every bit of information was in hard copy or personal contact. We in the security forces had the right to look at every single bit of information on a person, in their car or indeed in their home if we entered it for a specific reason. That information was held for a very long time. It is amazing how much of it, how many little bits of information, one day tied up with something else and became of extreme interest. Noble Lords who are aware of what happened in Northern Ireland, especially the noble Lord, Lord King, will support the fact that in many cases people's lives—including in part, I have to say, my own—were protected by snippets of information that at the time were of no particular value and were simply filed away, because they led to associations between people or to intelligence that people were passing to each other. Anyone who has been near to a bomb in Northern Ireland will understand that it is worth while attempting to save people's lives by the best method.

I have followed the Bill from the point of view of the restrictions on holding information. I do not support the tightness of that; our problems went on for 40 years but the problems that this country is facing at the moment are relatively short-lived. We must create the right security environment by allowing people to get information, which is no longer held in hard copy, on cigarette packets or bits of paper in their homes but is now on the internet. People involved in terrorism or civil crime, including paedophilia, are going to areas either that we cannot get to or where we are wilfully restricting our access to what amounts to very important intelligence.

I apologise again for entering proceedings at this stage, but I could not support such an amendment that would yet again restrict our Security Service and police from gaining and keeping intelligence that one day might be vital to any one of your Lordships. I know these matters seem a long way away when they are outside, in different cities or different parts of the country. If noble Lords lived in Northern Ireland, they would understand how important it is that some sort of connection is kept with leads about what is going on. That information is not in hard copy but up there in the cloud, and while we stay down here we are not going to get it.

Baroness Harding of Winscombe (Con): My Lords, I oppose the amendment, purely from a position of practicality. I have an interest as chief executive of TalkTalk, one of the communications service providers. If we are to legislate to create a tool to be used, it needs to be effective. My business involves consuming large amounts of data and trying to analyse them, and you cannot do that without a filter. There are other elements of the Bill on which we can debate whether we have the appropriate legal checks and balances, and I defer to the many noble and learned Lords in this House who are debating them, but surely it cannot make sense to withdraw completely the tool that would make those checks and balances effective.

Lord Oates (LD): My Lords, I support Amendments 100C, 100D and 100E. I am not at all naive about the threats that are faced by this country and the need to provide the tools to the security forces to deal with them. However, as the Independent Reviewer of Terrorism Legislation has made clear, the fact that powers might be useful is not in itself a justification for granting such powers; they must be proportionate, properly scrutinised and properly constrained. I agree with my noble friend Lord Paddick that the phrase "request filter" has a benign ring to it that is perhaps lulling some of us into a false understanding of what it is really about.

As my noble friend recalled, when we discussed this matter previously, the noble and learned Lord, Lord Keen, disputed the idea that the request filter would create a virtual database. He seemed to suggest that it cannot be described as a database simply on the grounds that the data will not be held by the Government. The data accessed by the request filter will be held by commercial entities, not by the Government, that is true, but it will be held on the instruction of the Government in the form that the Government determine, and it will be accessible by agencies of the Government by a means that the Government will determine. I make no claim to be an etymologist, but that seems to me pretty much the definition of a virtual database.

The House may wonder why the Government are going to such an effort to make this distinction between a database and a request filter, when it seems self-evident that they are effectively one and the same. The reason is simple: because they do not want people to realise that they are in the process of legislating into existence the power to create a vast virtual database of information on every person in this country.

As my noble friend mentioned, the Joint Committee on the draft Communications Data Bill stated at paragraph 113 of its report, which dealt with the request filter:

> "The difference is that instead of one database there are many and they are privately owned. Although they are privately owned the Government can stipulate what should be held on them, for how long, and in what format it should be supplied. The differences therefore are not as great as the Home Office suggests".

As my noble friend said, it concluded that,

> "the Request Filter can be equated to a federated database"—

a database which will be accessible not only to the security services in the tireless work that they do on our behalf to keep us safe from terrorism, law enforcement authorities in their vital work tackling serious crime, or the police in dealing with crime in general. As my noble friends have said and the Government have confirmed, this vast, federated database will be available to all public authorities to assist in obtaining the communications data that they are permitted to use, subject to individual authorisation.

I do not think that the public have any idea of the sweeping powers that we are contemplating granting to the Secretary of State to establish this vast virtual database. I imagine that they will be horrified when they do, just as they were by proposals of previous Governments to create national databases, before this Government cleverly came up with a new name for it that sounds so eminently and hypnotically reasonable, but is as far from describing what it actually is as it is possible to conceive.

I hope that this House will not allow itself to be misled by the Government's creative use of the English language, but, rather, aware of the practical reality of what is being proposed, will support the amendments in the names of my noble friends.

Lord Rosser: My Lords, we do not share the major concerns expressed in support of the amendment, in view of the Bill's provisions. As I understand it, neither did the committees which considered the Bill, including the Joint Scrutiny Committee on the draft Bill. There are also downsides which would arise from the amendment, to which reference has already been made.

In Committee, we asked the Government to clarify that the general provisions in relation to privacy in Clause 2 affected every power in the Bill, in the light of the letter written by the noble Earl, Lord Howe, to me on 14 July stating that the new overarching privacy clause set out the privacy obligations which constrain the use of the powers in the Bill—which therefore must include necessity, proportionality and the protection of privacy. In their response, the Government confirmed that that was the case. For those reasons, we will oppose the amendment.

4.15 pm

Earl Howe: My Lords, I feel that I have to begin by saying to the noble Lord, Lord Paddick, that he has got this one wrong—indeed, very wrong. I am grateful to the noble Lord, Lord Carlile, the noble Viscount, Lord Brookeborough, my noble friend Lady Harding and the noble Lord, Lord Rosser, for the contributions that they have made.

The amendments seek to remove Clauses 64, 65 and 66 from the Bill, which provide that the Secretary of State may establish, maintain and operate filtering arrangements for communications data—colloquially referred to as the "request filter"—and detail the appropriate safeguards and restrictions around its use. Throughout the passage of the Bill we have repeatedly highlighted the many misconceptions and misrepresentations around the filtering arrangements, and we have demonstrated how the provisions in fact provide an important safeguard in the acquisition of communications data. It is therefore perplexing that the noble Lord, Lord Paddick, has given notice that he remains opposed to the clauses providing for the filtering arrangements to stand part of the Bill. It may therefore be helpful if I set out again what the filtering arrangements will actually do and not do.

Public authorities currently need to receive all the communications data disclosed by communications service providers in response to specific requests. In certain circumstances this amounts to more data—sometimes much more data—than are relevant to their investigation, and they will then need to determine which specific pieces of communications data are relevant. Perhaps I could illustrate with an example. The police may need to make a complex query, such as asking multiple communications service providers for data to identify an unknown person who is suspected of having

committed a crime, such as armed robbery, at three different places at different times. Currently, public authorities might approach communications service providers for location data to identify all the mobile phones used in those three locations at the relevant times to determine whether a particular phone and a particular individual is linked to the three offences. This means that the public authority may acquire a significant amount of data relating to people who are not of interest but who just happened to be in the location at the time of the robbery.

The significance of the request filter is that, when a police force makes such a request, they will see only the data that they need to. Any irrelevant data about people who are not suspects will be deleted and not made available to the public authority. That is why I maintain that the filter acts as a vital safeguard, protecting privacy by ensuring that the police see only the data they need to. These amendments would remove that important safeguard—so it is perplexing, as I say, that the noble Lord wishes to do this.

To further reassure the House, I remind noble Lords of what the Joint Scrutiny Committee on the draft Bill stated about the filtering arrangements. It stated:

"We welcome the Government's proposal to build and operate a Request Filter to reduce the amount of potentially intrusive data that is made available to applicants".

The Joint Committee believed that the requirement upon law enforcement to state the operational purpose of accessing data through the filter and the oversight of the Investigatory Powers Commissioner will ensure the appropriate use of the filter.

The noble Lord, Lord Paddick, said that the Bill provided for unfettered access to private and confidential information. But access is not unfettered—and nor does the Bill permit fishing expeditions, as the noble Lord, Lord Carlile, rightly emphasised. The filtering arrangements can operate only in response to a specific, necessary and proportionate authorisation for the acquisition of communications data. That request must already have gone through all the existing communications data safeguards, such as authorisation by a designated senior officer of a rank specified by Parliament, who must be independent of the investigation.

I noted with some dismay the aspersions cast by the noble Lord on the likely integrity of those individuals actually retrieving the data—including, to my surprise, the integrity of the police. I am pretty shocked by the language that he used. The noble Lord also described the filter as a "database". A database has to contain data. The filter will not hold any communications data. Once a request has been processed by the filter, any data—that is to say, all data—will be discarded. I hope that that does clear some of the fog.

The request filter will act as an important safeguard. It will ensure that police officers and others will see only the information they really need to in those cases where it is used. Accordingly, I respectfully request that the noble Lord, Lord Paddick, withdraws his amendment.

Lord Paddick: I thank the Minister for his remarks, and other noble Lords who have contributed. I acknowledge the great experience of my noble friend Lord Carlile of Berriew both as a lawyer and as a former Independent Reviewer of Terrorism Legislation. However, it is clearly untrue for him to say that, in his judgment, excluding the request filter from the Bill would reduce the capacity of the authorities to investigate cases. The request filter does not exist at the moment, so it cannot possibly reduce the capacity. It may restrict the capacity of the agencies in the future, but it will certainly not reduce it, because the authorities do not have a request filter at the moment. The "monster" that I alluded to is nothing other than the mechanism—the request filter—that these clauses and this amendment are all about.

My noble friend described two murder cases where convictions could not have happened were it not for the sort of data that we are talking about here. Those two convictions were obtained in the absence of a request filter, because the filter does not exist. So it is clearly nonsense for my noble friend to say that excluding the request filter from the Bill was likely to have impacted on convictions that relied on something that does not even exist at the moment.

I acknowledge the experience of the noble Viscount, Lord Brookeborough, in Northern Ireland. As the Minister said, this is not a database. It is not intelligence information that is gathered and stored. It is a mechanism—a piece of kit, if you will—that reaches out into databases held by private companies, such as the internet service provider led by the noble Baroness, Lady Harding of Winscombe, retrieves data and brings it back. As the noble Earl said, it is not about a real database but a virtual or federated one. In other words, the tool will effectively act as a database rather than being an actual one. I am sorry that, in the number of times that I have used this expression—at Second Reading, in Committee and now on Report—I have not been able to get my message across about the difference between a virtual database and a real one. But I think that it is time I stopped flogging that horse.

The noble Lord, Lord Rosser, is reassured that Clause 2, the overarching privacy clause, applies to every power in the Bill. This is not a power: it is a piece of kit, a search engine. The Government have said nothing in their response to this amendment to reassure us that Clause 2 applies to this, because it is not actually a power. The Minister used the example which I spoke to, almost exactly, when I moved the amendment. To use his word, it is "perplexing" that the noble Earl did not hear my objections to that as a good example.

The unfettered access that I am talking about is not unfettered access to data by the police and the security services, and I never suggested that it was—but there will be unfettered access by those who operate the request filter because the request filter will have direct access to the databases operated by the communications providers. So I am not saying that there would be unfettered access to data by the police and security services; what I am saying is that government officials, or those acting on behalf of the Secretary of State, would have unfettered access to these databases were the request filter to come into existence. So I, too, am perplexed that the Government have not responded positively to this amendment and I wish to test the opinion of the House.

4.25 pm

Division on Amendment 100C

Contents 78; Not-Contents 314.

Amendment 100C disagreed.

Division No. 1

CONTENTS

Addington, L.
Adebowale, L.
Ahmed, L.
Bakewell of Hardington Mandeville, B.
Barker, B.
Beith, L.
Benjamin, B.
Bowles of Berkhamsted, B.
Bradshaw, L.
Brinton, B.
Bruce of Bennachie, L.
Burt of Solihull, B.
Chidgey, L.
Clement-Jones, L.
Cotter, L.
Dholakia, L.
Doocey, B.
Fearn, L.
Featherstone, B.
Foster of Bath, L.
Fox, L.
Garden of Frognal, B.
German, L.
Glasgow, E.
Goddard of Stockport, L.
Griffiths of Burry Port, L.
Hameed, L.
Hamwee, B. [Teller]
Harris of Richmond, B.
Humphreys, B. [Teller]
Hussain, L.
Hussein-Ece, B.
Janke, B.
Jolly, B.
Jones of Cheltenham, L.
Jones of Moulsecoomb, B.
Kennedy of The Shaws, B.
Kirkwood of Kirkhope, L.
Kramer, B.
Lester of Herne Hill, L.
Low of Dalston, L.
Ludford, B.
Maclennan of Rogart, L.
McNally, L.
Marks of Henley-on-Thames, L.
Morris of Handsworth, L.
Newby, L.
Oates, L.
Paddick, L.
Pinnock, B.
Purvis of Tweed, L.
Razzall, L.
Redesdale, L.
Rennard, L.
Roberts of Llandudno, L.
Scott of Needham Market, B.
Sharkey, L.
Sheehan, B.
Shipley, L.
Shutt of Greetland, L.
Smith of Newnham, B.
Stephen, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Taverne, L.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Tonge, B.
Tope, L.
Tyler of Enfield, B.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walmsley, B.
Willis of Knaresborough, L.
Wrigglesworth, L.

NOT CONTENTS

Aberdare, L.
Ahmad of Wimbledon, L.
Anelay of St Johns, B.
Arbuthnot of Edrom, L.
Arran, E.
Ashton of Hyde, L.
Astor of Hever, L.
Attlee, E.
Baker of Dorking, L.
Balfe, L.
Bassam of Brighton, L.
Bates, L.
Berkeley of Knighton, L.
Berridge, B.
Bichard, L.
Blackstone, B.
Blackwell, L.
Blencathra, L.
Blood, B.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bourne of Aberystwyth, L.
Bowness, L.
Brabazon of Tara, L.
Bradley, L.
Brady, B.
Bridgeman, V.
Bridges of Headley, L.
Brookeborough, V.
Brookman, L.
Brougham and Vaux, L.
Brown of Eaton-under-Heywood, L.
Browne of Belmont, L.
Buscombe, B.
Butler of Brockwell, L.
Caithness, E.
Callanan, L.
Campbell of Pittenweem, L.
Campbell-Savours, L.
Carlile of Berriew, L.
Carrington of Fulham, L.
Carter of Coles, L.
Cathcart, E.
Cavendish of Furness, L.
Chadlington, L.
Chalker of Wallasey, B.
Chester, Bp.
Chisholm of Owlpen, B.
Christopher, L.
Clark of Windermere, L.
Clarke of Hampstead, L.
Collins of Highbury, L.
Colwyn, L.
Condon, L.
Cooper of Windrush, L.
Cope of Berkeley, L.
Cormack, L.
Corston, B.
Courtown, E. [Teller]
Couttie, B.
Cox, B.
Craig of Radley, L.
Craigavon, V.
Crawley, B.
Crickhowell, L.
Crisp, L.
Cumberlege, B.
Davies of Stamford, L.
De Mauley, L.
Deighton, L.
Denham, L.
Dixon-Smith, L.
Dobbs, L.
Donaghy, B.
D'Souza, B.
Dunlop, L.
Dykes, L.
Eaton, B.
Eccles, V.
Elton, L.
Elystan-Morgan, L.
Empey, L.
Evans of Bowes Park, B.
Evans of Watford, L.
Fairfax of Cameron, L.
Falkland, V.
Fall, B.
Farmer, L.
Farrington of Ribbleton, B.
Faulkner of Worcester, L.
Faulks, L.
Feldman of Elstree, L.
Fellowes, L.
Fink, L.
Finkelstein, L.
Flight, L.
Fookes, B.
Foulkes of Cumnock, L.
Framlingham, L.
Freeman, L.
Freud, L.
Gadhia, L.
Gale, B.
Gardiner of Kimble, L.
Gardner of Parkes, B.
Garel-Jones, L.
Geddes, L.
Gilbert of Panteg, L.
Glendonbrook, L.
Goodlad, L.
Gordon of Strathblane, L.
Goudie, B.
Gould of Potternewton, B.
Grade of Yarmouth, L.
Greengross, B.
Greenway, L.
Griffiths of Fforestfach, L.
Grocott, L.
Hague of Richmond, L.
Hamilton of Epsom, L.
Hannay of Chiswick, L.
Harding of Winscombe, B.
Harries of Pentregarth, L.
Harris of Haringey, L.
Harris of Peckham, L.
Harrison, L.
Hay of Ballyore, L.
Hayman, B.
Hayter of Kentish Town, B.
Hayward, L.
Healy of Primrose Hill, B.
Helic, B.
Henig, B.
Henley, L.
Hennessy of Nympsfield, L.
Higgins, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Hollick, L.
Holmes of Richmond, L.
Hooper, B.
Hope of Craighead, L.
Horam, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Howells of St Davids, B.
Howie of Troon, L.
Hughes of Woodside, L.
Hunt of Kings Heath, L.
Hunt of Wirral, L.
Hutton of Furness, L.
Irvine of Lairg, L.
James of Blackheath, L.
Janvrin, L.
Jenkin of Kennington, B.
Jones, L.
Jordan, L.
Judd, L.
Judge, L.
Kakkar, L.
Keen of Elie, L.
Kennedy of Southwark, L.
Kerr of Kinlochard, L.
King of Bridgwater, L.
Kirkham, L.
Kirkhope of Harrogate, L.
Lang of Monkton, L.
Lansley, L.
Lawrence of Clarendon, B.
Lawson of Blaby, L.
Lee of Trafford, L.
Leigh of Hurley, L.
Lennie, L.
Lexden, L.
Liddell of Coatdyke, B.
Liddle, L.
Lindsay, E.
Lingfield, L.
Lipsey, L.
Liverpool, E.
Livingston of Parkhead, L.
Lothian, M.
Lucas, L.
Luce, L.
Lupton, L.
McAvoy, L.
McColl of Dulwich, L.
MacGregor of Pulham Market, L.
McGregor-Smith, B.
McInnes of Kilwinning, L.
McIntosh of Hudnall, B.
McIntosh of Pickering, B.
Mackay of Clashfern, L.
Mackenzie of Framwellgate, L.

McKenzie of Luton, L.
MacLaurin of Knebworth, L.
Magan of Castletown, L.
Maginnis of Drumglass, L.
Mancroft, L.
Manningham-Buller, B.
Manzoor, B.
Marland, L.
Marlesford, L.
Masham of Ilton, B.
Mawhinney, L.
Mawson, L.
Maxton, L.
Mobarik, B.
Montrose, D.
Morris of Aberavon, L.
Morris of Bolton, B.
Morris of Yardley, B.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
O'Cathain, B.
O'Neill of Clackmannan, L.
Oppenheim-Barnes, B.
O'Shaughnessy, L.
Palmer, L.
Patel, L.
Paul, L.
Pidding, B.
Pitkeathley, B.
Popat, L.
Porter of Spalding, L.
Prashar, B.
Prosser, B.
Quin, B.
Ramsay of Cartvale, B.
Rawlings, B.
Redfern, B.
Reid of Cardowan, L.
Ridley, V.
Risby, L.
Robathan, L.
Rogan, L.
Rosser, L.
Rowe-Beddoe, L.
Royall of Blaisdon, B.
Ryder of Wensum, L.
Sassoon, L.
Scott of Bybrook, B.
Seccombe, B.
Selsdon, L.
Shackleton of Belgravia, B.
Sharples, B.
Sheikh, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Sherlock, B.
Shields, B.
Shinkwin, L.
Simon, V.
Skelmersdale, L.
Smith of Basildon, B.
Smith of Gilmorehill, B.
Smith of Hindhead, L.
Somerset, D.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stern of Brentford, L.
Stirrup, L.
Stoddart of Swindon, L.
Stone of Blackheath, L.
Stowell of Beeston, B.
Strathclyde, L.
Stroud, B.
Sugg, B.
Suri, L.
Sutherland of Houndwood, L.
Swinfen, L.
Taylor of Blackburn, L.
Taylor of Bolton, B.
Taylor of Holbeach, L. [Teller]
Tebbit, L.
Temple-Morris, L.
Touhig, L.
Trefgarne, L.
Trenchard, V.
Trimble, L.
True, L.
Tugendhat, L.
Tunnicliffe, L.
Uddin, B.
Ullswater, V.
Vere of Norbiton, B.
Wakeham, L.
Warsi, B.
Watkins of Tavistock, B.
Watson of Invergowrie, L.
Watts, L.
Waverley, V.
Wei, L.
Wellington, D.
West of Spithead, L.
Wheeler, B.
Whitby, L.
Williams of Baglan, L.
Williams of Trafford, B.
Wilson of Tillyorn, L.
Woolf, L.
Young of Cookham, L.
Young of Hornsey, B.
Young of Norwood Green, L.
Younger of Leckie, V.

4.44 pm

Clause 65: Use of filtering arrangements in pursuance of an authorisation

Amendment 100D not moved.

Clause 66: Duties in connection with operation of filtering arrangements

Amendment 100E not moved.

Schedule 4: Relevant public authorities and designated senior officers

Amendments 101 to 103

Moved by ***Earl Howe***

101: Schedule 4, page 222, line 16, leave out "and" and insert "or"

102: Schedule 4, page 222, line 19, at end insert—

"Department for Communities in Northern Ireland	Deputy Principal	All	(b)"

103: Schedule 4, page 223, line 10, leave out "Investigations" and insert "Operations"

Amendments 101 to 103 agreed.

Clause 71: Requirement to be party to collaboration agreement

Amendments 104 and 105

Moved by ***Earl Howe***

104: Clause 71, page 57, line 1, leave out first "a" and insert "the"

105: Clause 71, page 57, line 2, after "agreement" insert "with the result that officers of the local authority are permitted to be granted authorisations by a designated senior officer of a subscribing authority"

Amendments 104 and 105 agreed.

Clause 73: Use of a single point of contact

Amendment 106

Moved by ***Earl Howe***

106: Clause 73, page 58, line 44, at end insert—

"( ) Nothing in this section prevents a person acting as a single point of contact from also applying for, or being granted, an authorisation or, in the case of a designated senior officer, granting an authorisation."

Amendment 106 agreed.

Amendment 107 not moved.

Clause 74: Commissioner approval for authorisations to identify or confirm journalistic sources

Amendment 108

Moved by ***Earl Howe***

108: Clause 74, page 59, line 35, leave out subsection (8)

Amendment 108 agreed.

Clause 75: Collaboration agreements

Amendment 109

Moved by ***Earl Howe***

109: Clause 75, page 60, line 25, at end insert—

"( ) this Part has effect as if the designated senior officer of the supplying authority had the power to grant an authorisation to officers of the subscribing authority, and had other functions in relation to the authorisation, which were the same as (and subject to no greater or lesser restrictions than) the power and other functions which the designated senior officer of the subscribing authority who would otherwise have dealt with the authorisation would have had, and

( ) section 72(1) applies to the authorisation as if it were granted by a designated senior officer of the subscribing authority."

Amendment 109 agreed.

Clause 77: Police collaboration agreements

Amendments 110 to 114

Moved by ***Earl Howe***

110: Clause 77, page 61, line 24, after "agreement" insert "for the purposes of a collaborating police force's functions under this Part"

111: Clause 77, page 61, line 27, leave out "a" and insert "the"

112: Clause 77, page 61, line 29, leave out second "a" and insert "the"

113: Clause 77, page 61, line 30, leave out "a" and insert "the"

114: Clause 77, page 61, line 46, at end insert—

"(c) this Part has effect as if the designated senior officer of force 1 had the power to grant an authorisation to officers of the collaborating police force, and had other functions in relation to the authorisation, which were the same as (and subject to no greater or lesser restrictions than) the power and other functions which the designated senior officer of the collaborating police force who would otherwise have dealt with the authorisation would have had."

Amendments 110 to 114 agreed.

Clause 84: Powers to require retention of certain data

Amendment 115

Moved by ***Earl Howe***

115: Clause 84, page 66, line 5, after "notice")" insert "and subject as follows,"

Earl Howe: My Lords in moving this amendment I will speak to the other amendment in this group. They provide for the introduction of judicial approval for data retention notices given under Part 4 of the Bill. This is an important new safeguard. It means that such notices given, authorised or varied by the Secretary of State, including those requiring the retention of internet connection records, will in future also require the approval of a judicial commissioner.

The Secretary of State must already consider whether it is necessary and proportionate to issue a data retention notice to a telecommunications operator. This amendment would mean in future that the decision to give a notice would be reviewed by a Judicial Commissioner, in line with the authorisation procedures for other powers in the Bill. I hope that the House will welcome this additional safeguard and, accordingly, I beg to move.

Baroness Hayter of Kentish Town: My Lords, we take this opportunity to thank the Government for listening to us, to the service providers and, in this case, also to the human rights monitors—everyone is in agreement. We are happy to support the amendments.

Amendment 115 agreed.

Amendments 116 and 117

Moved by ***Earl Howe***

116: Clause 84, page 66, line 6, after "if" insert "—

(a) "

117: Clause 84, page 66, line 9, at end insert ", and

(b) the decision to give the notice has been approved by a Judicial Commissioner."

Amendments 116 and 117 agreed.

Amendment 117A not moved.

Amendment 117B

Moved by ***Baroness Hamwee***

117B: Clause 84, page 66, line 18, at end insert—

"( ) A retention notice may not require a telecommunications operator to retain or disclose third party data unless the operator retains it for its own business purposes.

( ) In this section "third party data" means communications data processed by the operator for the purposes of routing communications within an electronic communications network."

Baroness Hamwee: My Lords, Amendment 117B is grouped with government Amendments 118 and 130. It aims at the same thing, but I think that the Government's aim is better than ours in Amendment 117B. The amendments are about the retention of third-party data, so in order to move the business on we are very happy to support the government amendments in this group. I beg to move.

Lord Keen of Elie: My Lords, I do not understand why the noble Baroness wishes to insist on Amendment 117B.

Sorry, I am getting a great deal of advice from around the Chamber, and it is all immensely helpful.

Perhaps I may explain the purpose of government Amendments 118 and 130. As I said in Committee, we have been making good progress on drafting a clause that could put into the Bill the Government's clear commitment that we will not require a telecommunications operator to retain third-party data.

It is important to be clear exactly what we are referring to as third-party data. Where one telecommunications operator is able to see the communications data in relation to applications or services running over its network but where it does not use or retain that data for any purpose, then it is regarded as third-party data. For example, if you use an internet access provider such as a home broadband provider to use the internet to log into a separate email provider in order to send an email, the broadband service might be able to see your access communications data in relation to the email service. If that information was not used or retained for any purpose by the broadband provider, the data would be considered to be third-party data.

I am pleased to say that we have now produced a clause that prohibits the retention of third-party data. We have tested this drafting with operational partners and with those telecommunications operators likely to be affected by the legislation and we are confident that it delivers the desired effect. That being so, the Bill essentially replicates the current position in RIPA, which is that data that already exist and could save a life or convict a criminal and so on can be accessed, but we are not insisting that data should be retained.

In these circumstances and in light of the opening observations by the noble Baroness, I commend government Amendments 118 and 130 in the event that we proceed.

Baroness Hamwee: I am sorry to have confused the noble and learned Lord. I was simply trying to explain that we are seeking to achieve the same thing, but that the Government have done better than we have. I beg leave to withdraw the amendment.

Amendment 117B withdrawn.

Amendment 118

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

118: Clause 84, page 66, line 29, at end insert—

"(3A) A retention notice must not require an operator who controls or provides a telecommunication system ("the system operator") to retain data which—

(a) relates to the use of a telecommunications service provided by another telecommunications operator in relation to that system,

(b) is (or is capable of being) processed by the system operator as a result of being comprised in, included as part of, attached to or logically associated with a communication transmitted by means of the system as a result of the use mentioned in paragraph (a),

(c) is not needed by the system operator for the functioning of the system in relation to that communication, and

(d) is not retained or used by the system operator for any other lawful purpose,

and which it is reasonably practicable to separate from other data which is subject to the notice."

Amendment 118 agreed.

Amendment 118A

Moved by ***Lord Paddick***

118A: Clause 84, page 67, line 26, leave out "therefore includes, in particular," and insert "does not include"

Lord Paddick: My Lords, the effect of Amendment 118A, tabled in my name and that of my noble friend Lady Hamwee, would be to remove internet connection records from any notice requiring the retention of communications data by telecommunications operators.

It is important to look back over the history of internet connection records. The initial argument put forward by the Government and law enforcement agencies was that, with so many communications now being via the internet rather than via fixed line or cellular communication, it was essential to keep a record of every attempt to access the internet by everyone in the UK in the past 12 months, so that the same data that are currently available from an itemised phone bill—the who called who from where and when—would also be available if someone used the internet to communicate instead. If that is what ICRs were, and if ICRs provided that information, we might be more relaxed about them, but the parallel with itemised phone bills is clearly false. After the Joint Committee's scrutiny of the Bill, the Government acknowledged that they wanted more than just the itemised phone bill data. They wanted to be able to see, for example, whether a suspected terrorist had accessed a travel agent's website or a paedophile a particular file-sharing website.

Noble Lords will be relieved to hear that I do not intend to go over every objection to internet connection records—we would be here until the early hours if I did. Let us look just at itemised phone bill data. My internet connection records will show that about 10 different apps on my mobile phone that I can use to communicate with other people, including my Facebook app, my WhatsApp and iMessenger apps—which are end-to-end encrypted messaging apps—my Facebook Messenger app and my Twitter app, are all connected to the internet all the time. There will be no ICR data that tell law enforcement agencies where I was at a particular time, whom I was communicating with or whether I was communicating with anyone at all while these apps were connected to the internet.

If I was communicating with someone, the ICR data would contain no information about when I was communicating. Even if I was a simple soul and communicated using only WhatsApp, law enforcement would not be able to go to WhatsApp and say, "On this day and at this time, he was using WhatsApp. Who was he communicating with?" That is because the app is connected to the internet all the time and they would not be able to narrow it down to a particular date and time from the ICR data. They would have to ask for all my communications data over an extended period—an enormous volume of data that WhatsApp might consider a disproportionate request, save in the most serious cases.

Knowing someone's internet connection records is just the start of the problems facing law enforcement agencies. I have another app on my phone. It is a

[LORD PADDICK]
virtual private network app. This app allows me to traffic all my connections to the internet through one secure server. If I engage it, my internet connection records will not show anything other than connection to the VPN server. Choose a VPN service provider whose server is in a non-co-operative foreign country and law enforcement will not be able to find out what connections have been made through the VPN server.

My point is that ICRs do not give law enforcement agencies the equivalent of itemised phone bill data. The agencies would have to go to each communications platform operator, most of whom are in the United States of America, and ask them for more information. They might not be inclined to give up those data except in very serious cases. If one simply used a VPN, law enforcement would not know to which operator to go to ask for more data. Even if it did, it would have to ask for vast quantities of data that would be difficult to process—and, in any event, the overseas operator would be likely to say that the request was disproportionate and refuse to hand over the data.

Noble Lords will notice that I keep emphasising law enforcement and serious cases. In cases of serious crime, including child sexual exploitation, GCHQ can assist law enforcement agencies. In a case affecting national security, agents representing MI5 have told me, face to face, that they do not need or want internet connection records; agents representing MI6 have told me face to face that they do not need or want internet connection record; and agents representing GCHQ have told me face to face that they do not need or want internet connection records.

If we strip away criminals who will soon get wise and use VPNs, if we strip away crimes that are not considered by US operators to be serious enough to hand over the data and if we strip away crimes that are so serious that GCHQ's help can be sought—GCHQ can secure the necessary data without the need to store ICRs—we are left with very little. For that very little gain, everyone in the UK's web histories will be stored for 12 months at enormous cost, and with enormous potential for intrusion into privacy and enormous risk of vast quantities of sensitive personal information being hacked into by criminals and hostile foreign Governments. The only valid conclusion anyone can come to in such circumstances is that the storage for 12 months of everyone's ICRs is both unnecessary and disproportionate.

5 pm

Some people will say, "That's all well and good, but GCHQ cannot produce intelligence that can be given in evidence in court. Law enforcement needs evidence". Some intelligence produced by GCHQ can be given in court, has been given in court and will continue to be given in court—intercept evidence being the exception, along with intelligence that might risk national security—but by no means all. We have no objection to internet connection records being retained and examined from the moment intelligence shows that there is a reasonable cause to suspect the subject of being involved in serious crime or terrorism, to make sure that the evidence that is needed for court is available. That would be proportionate.

I understand that many noble Lords do not understand, and feel that they do not need to understand, the technical detail; they would rather rely on the pre-legislative scrutiny, as the Minister did in response to our amendment on this issue in Committee. I remind the House that the Joint Committee said this about ICRs:

"While we recognise that ICRs could prove a desirable tool for law enforcement agencies, the Government must address the significant concerns outlined by our witnesses if their inclusion within the Bill is to command the necessary support".

To those noble Lords relying on pre-legislative scrutiny, I would highlight that,

"could prove a desirable tool for law enforcement agencies",

is not the level of proof we should be requiring here. "ICRs have proved to be essential to defeat serious crime and secure national security" is what we should be looking for.

The Joint Committee said that,

"the Government must address the significant concerns outlined by our witnesses".

The Government have not addressed those concerns. I do not believe that detailed arguments that clearly demonstrate the futility of such a provision should simply be swept aside by saying, "Well, you may not understand this stuff, and I certainly don't, but I think that you should abide by the pre-legislative scrutiny. Others have looked at it, they say it is okay, so it should be okay with you". I am asking fundamental questions that raise serious doubts about the practicality of what is being proposed here—and unless the Minister can answer them we will not support this provision.

Fear not, though; noble Lords are not alone. When I asked a former GCHQ chief whether ICRs would work in practice, he said, "I don't know but that shouldn't stop us trying". That simply is not good enough. There are numerous other technical issues that I could raise about ICRs giving false positives that show ICRs to websites that the individual is completely unaware his computer is accessing, for example. Or I could cite the experience of Denmark, where attempts to introduce such measures have failed. I could ask why no other European Union or Five Eyes country has such a facility. I could raise the fact that David Anderson's conclusion was that such provisions would be ruled unconstitutional in both Canada and the United States of America. This is a classic case of, "This looks like a good idea", where the consequences have not been properly thought through. I beg to move.

Lord Harris of Haringey (Lab): My Lords, I am sure that the entire House is grateful to the noble Lord, Lord Paddick, for giving us a comprehensive list of ways in which we can try to keep our communications secret and away from prying eyes. I am sure that every Member of the House is grateful for that tutorial, but the noble Lord does rather elide the question of those people who perhaps have not had the benefit of his tutorial. I realise that the whole world of terrorism and organised crime is listening with intent to every word that he says on these matters, but there will be such. He gave a specific example, saying that communications data in the past would have demonstrated that X had contact at a travel agent. When I book train tickets, I usually do not use WhatsApp or a VPN—I simply go online and connect to the relevant

train company. So if somebody wanted to find out whether I had been booking a train ticket, my internet connection record would provide that information. I therefore do not quite understand the argument that, because there are ways that you can avoid the state knowing what you have done if you are really determined, you should therefore prevent it knowing what you have done if you are not really determined.

My understanding is that not all terrorists and not all organised criminals are terribly good with this stuff—that they make mistakes—so the horrifying consequences that the noble Lord describes therefore might not actually occur, and instead, a lot of very nasty people will be caught, because they do not have the noble Lord's encyclopaedic grasp of ways of keeping communications secret.

Lord Strasburger: Amendment 118A seeks to prevent the creation and collection of internet connection records. My noble friend Lord Paddick has explained why ICRs are of little security value, and that they would be very difficult and expensive to collect and make use of. The only democracy to try was Denmark, which gave up after years of fruitless effort. It tried again at the beginning of this year with a project almost identical to the one planned by the Home Office, but quickly abandoned it when independent auditors confirmed that it would be prohibitively expensive.

I wish to draw the House's attention to two other serious drawbacks that would arise from creating and storing internet connection records. The first is the serious impact on the privacy of every user of the internet in this country. We must remember that internet connection records do not currently exist, and until quite recently—say, 25 years ago—all the electronic data that would have to be collected together to create ICRs did not exist, either. In those days, our private interactions with those close to us left no trace. A conversation over lunch, a cash purchase at a shop, a visit to a library to do some research, attendance at a political meeting, a romantic assignation—all left no record of having happened. They were ephemeral. What happened between your four walls was between you and your God.

Fast forward to today, and we find that all the interactions I have just mentioned now leave an electronic trail behind them. A combination of credit card records, location services on our phones, our emails and text messages and records of every website we visit will give the whole game away—including the identity of whom we met at our assignation. If internet connection records are created and kept by our service provider, all these electronic trails will be available to hundreds of public authorities, not just the police and security services, on demand and simply by self-authorisation.

The Government have given this data the name "internet connection records", which is technically accurate, but what they really are is private activity records: a log of everything we do and when and where we do it. The problem is not that the surveillance can occur at all, but that it happens indiscriminately to all of us, all the time. My second topic is the ironic fact that ICRs will actually reduce our security, rather than improve it, because of the virtual certainty of thefts of some of that private and personal data about every internet user in the country. If you do not believe me, consider just a few of the thousands—and I mean thousands—of recent data thefts from high-security establishments. I mentioned in Committee that SWIFT, the fulcrum of the global financial payments system, has had $81 million stolen from it by hackers. Last week, it emerged that it has been penetrated a second time. A gang of five eastern Europeans is believed to be behind the theft of 3 billion sets of customer data worldwide from many of the world's leading tech companies, including the data of 500 million Yahoo! customers. As I mentioned earlier, powerful hacking tools belonging to the NSA, the American equivalent of GCHQ, suddenly appeared on the internet in August having been stolen from it, and two Israelis and an American stole 100 million people's records from 12 US financial institutions. Those are just a few examples—as I say, there are many more—of thefts from sites which, dare I say it, were seemingly far more secure than those of UK service providers.

Internet connection records, or private activity records, will be stolen and the consequences will range from embarrassment to blackmail and fraud for the unfortunate victims. In the case of people in positions of responsibility, including government officials, the consequences could be catastrophic. Far from making us safer, ICRs would compromise our security and, as I have explained, seriously intrude on our citizens' privacy. We should have nothing to do with them.

Baroness Harding of Winscombe: My Lords, I rise to speak against this amendment. As the chief executive of a telecoms company, I clearly cannot profess a lack of understanding of the technology. I am a little confused by noble Lords' concern that internet connection records can be got round and are not perfect because telephony is exactly the same. If I make a telephone call and am really smart, I know how to make sure that you do not know what number or where in the world I am calling from. Without needing to be that smart, I can buy a temporary SIM card and throw the phone away as soon as I have made the call. Organised crime and nation states have been able to use plenty of ways to obfuscate the existing ability for us to track telephony. That does not mean we think it a bad idea to be able to track people's telephone calls.

I argue that exactly the same is true of internet connection records and their use by law enforcement agencies. It would not be perfect; no piece of technology ever is. It needs very careful scrutiny, which the Bill has had in both Houses. But I want to live in not just a civilised physical world but a civilised digital world, and when all our law enforcement agencies say that their ability to hunt down criminals is seriously hampered by the world moving to the digital space, we should take that very seriously and make sure that we arm them with the best possible tools. I believe that access to internet connection records is practically possible and desirable to create a civilised digital world.

Viscount Brookeborough: Briefly, this brings up the principle of what society is prepared to sacrifice—in this case, a little privacy—to get what it needs to fight criminals and terrorism. I am sorry to go back to

[Viscount Brookeborough]
Northern Ireland but everybody was stopped daily and their lives were infringed on the whole time there. But they were happy enough because the fight, which was against terrorism in our case, was succeeding. By the end, 95% of all incidents planned by the IRA never took place because of intelligence activity. We know that it is intrusive to do this but if we had stopped stopping cars, when 99.9% of those cars held the innocent and the unassociated, it would have enabled those we were up against to operate freely across everything. The very fact that people were prepared to sacrifice some of their freedom meant that it was more difficult for those who wanted to kill, maim and commit crimes. If we do not push them out of normal day-to-day activity into the more complicated part, we will never succeed in fighting them.

5.15 pm

Lord Oates: My Lords, I will not detain the House too long and certainly do not want to repeat all the eloquent arguments that my noble friend Lord Paddick has outlined on this matter. I want to say two things about the previous two interventions. The utility issue—the fact that people may be prepared to give up their liberties—does not necessarily come into play here. I do not think that the vast majority of people have any idea whatever of what the Government are planning. I do not think they have any idea that regardless of whether they are regarded as innocent, suspect or anything else, every single person's website visits will be held on databases on the instruction of the Government. Nobody is aware of that. They are not making a decision about whether they are prepared to accept that infringement, and I think they will be horrified when they understand it.

A number of noble Lords have said that the fact that the law can be evaded is not a reason not to have a law. If a law can easily be evaded and that law requires a massive invasion of the privacy of people throughout this country, that has to be weighed in the balance. It has to be taken very seriously.

We have to be clear about what is proposed. The Government intend to take the power to compel the creation of databases of every single website that every single person in this country visits over a 12-month period. That is a huge amount of data, and it puts a vast amount of power in the hands of the Government. More to the point, it is a vast amount of power in the hands of whoever might manage to hack those databases. This is not some vague threat made up or exaggerated by opponents of these ICR powers to make a point. It is a real and present danger and a massive threat to the privacy and security of every single person in this country. We are all aware of the spate of state-sponsored and other hacking that has been taking place in the United States and elsewhere around the world. Every day, systems come under serious attack and none is entirely immune. If the US Pentagon can be hacked, then who on the Government Front Bench can say hand on heart that this vast new store of information that the Government are demanding be created cannot be hacked?

When I talk to people around the country about the powers that the Government are proposing to take in relation to ICRs they are almost universally shocked. They do not have any faith that such data will be held securely, and they cannot understand why the Government would put at risk their privacy and security unless holding such information was critical to the prosecution of the most serious crimes. As my noble friend Lord Paddick has pointed out, the security and intelligence agencies have consistently been clear that they do not need ICRs. There are very simple ways to evade the collection of ICRs, so those committing serious crimes are unlikely to be troubled. The strongest case cited for these powers is in relation to identifying and prosecuting paedophiles, and there is no doubt we should listen and consider this case very carefully because the protection of children from such people must be regarded as an absolute priority for every one of us. However, as my noble friend Lord Paddick has pointed out, in those serious crimes, including child exploitation, GCHQ can assist law enforcement and there is a joint unit for those purposes. Perhaps more to the point, the sort of people involved in the criminal activities we are discussing would easily be able to avoid their ICRs being captured.

The power the Government are claiming is extraordinary. It is a power that none of the other "Five Eyes" countries has. Indeed, to my knowledge, no even nominally democratic Government in the world have it. It is such an extraordinary power that my noble friend Lord Carlile, who is unfortunately no longer in his place and who is no slouch on counter-terrorism measures, wrote an article in the *Mail on Sunday* on 26 May 2013:

> "I, Lord Reid, Lord West and others of like mind have never favoured the recording of every website visited by every internet user, though we have been accused of that ambition".

Granting the Government a power to order the retention of the details of every website visited by every person in the country over a 12-month period will give us, at best, only false comfort. It may make some of us feel more secure, but it will not make us more secure. In fact, it will put at risk the security and privacy of every person in this country. I support the amendment in the names of my noble friends.

The Lord Bishop of Chester: My Lords, I was a member of the Joint Committee conducting pre-legislative scrutiny of the Bill, along with the noble Lord, Lord Strasburger—I am not sure whether anyone else in the Chamber was. I remember a discussion which was genuinely open and uncertain about the practicality of this above all. The issue of privacy has been raised very powerfully by the noble Lord, Lord Oates, and others from the Liberal Democrat Benches. We thought at the end of the day that the whole Bill was about reaching a balance, with a degree of compromise over issues of privacy alongside the really quite robust safeguards which are in the Bill, such as the role of the judicial commissioners, as all set out in Clause 86. Our real issue was over practicality and cost. When the Minister comes to respond, it would be helpful if we could have a bit more guidance as to what this is going to cost. The cost will not fall on the companies; it will fall upon the Government, who will have to fund it.

However, we were persuaded that under Clause 84, the retention notice may be more specific than has been suggested in the speech from the Liberal Democrat Benches. It is not necessarily every connection to every

website: the provision could be targeted to particular websites, for example, which is all set out in Clause 84. We should also emphasise that these records would not be of the content of what was happening: it would be where you had made contact, not the content of the connection as such. That is an important factor which has not been mentioned in the contributions.

That said, a representative from Denmark came and explained to us why the Danes had given up on this, simply on the grounds of cost and practicality. It is the practicalities that I would like to hear about most from the Minister when he speaks, alongside of course acknowledgement of the points that have been made by others in the debate.

Baroness Jones of Moulsecoomb: My Lords, I did not intend to speak on this amendment, which I strongly support, so I will be brief. Even I understand the need to balance civil liberties and national security, but comparing this with stopping a few cars simply does not hold water and is not a comparison that we can make—and, personally, I am totally in favour of stopping cars, so that is not an issue.

It is almost as if the Government went to the intelligence and security services and said, "What do you want? What can you imagine wanting to keep us safe?", and they came up with a huge list. It is like asking children what they want for Christmas: they want a huge list of things and it is not always good to give them everything they want. In this instance, it is certainly not good to give the intelligence services what they want. Indeed, they do not even want some of what the Government are offering them, so the Government have actually gone one step further and offered them more, which to me is totally counterintuitive.

There is also the issue of practicality. When you have this much information coming through, it is incredibly difficult to pick out the vital points and the important things. This could be counterproductive and make us less safe as a nation than we are already. I feel very strongly about this amendment and deeply regret that there is not more support in the House.

Lord Rosser: The effect of this amendment, as has been said, would be to leave out internet connection records from the definition of "relevant communications data" in Clause 84, which covers powers to require the retention of certain data. The Bill has had extensive pre-legislative scrutiny, including by a Joint Committee of both Houses, and we supported it at Third Reading in the Commons subject to, among other things, amendments being made which addressed the issue of access to internet connection records not being used in relation to minor crimes. Our amendment on the definition of "other relevant crime", which raised the threshold from six months to 12 months, has been accepted by the Government. We will be opposing an amendment that now appears to weaken the effectiveness of the provisions relating to internet connection records, at least under Part 4 of the Bill, specifically Clause 84.

Lord Keen of Elie: My Lords, the amendment would prevent the Government being able to require telecommunications operators to retain internet connection records. The noble Lord, Lord Paddick, tabled exactly the same amendment in Committee, and he will not be surprised to know that the Government still cannot support such an amendment. As the noble Lord, Lord Harris of Haringey, and the noble Baroness, Lady Harding, observed, these provisions may not give rise to a perfect system of record recovery but it is preferable to a dark hall where criminals move unseen and with impunity.

The noble Lord, Lord Paddick, talks of observations from the Security Service and the Secret Intelligence Service, but be it noted that it is not for them that these records are so essential; it is for the police forces and the enforcement agencies in respect of crime. I have spoken at length to the National Crime Agency, which has underlined to me the critical nature of these records now that telecommunications data are so often routed through the internet, not by means of normal telephony.

Earlier today this House recognised the importance of the use of internet connection records, subject to strict safeguards, as noted by the noble Lord, Lord Rosser. I do not think this House will want to prevent internet connection records being retained with the result that they are not available for any form of criminal investigation. Indeed, we have just discussed the government amendment to require judicial approval before a data retention notice can be given, which, as I said at the time, puts in place a significant new safeguard before a telecommunications operator can be required to retain the data.

There has been considerable debate on this topic, not just today but as the Bill has progressed through Parliament. However, in relation to this amendment, I should perhaps reiterate why internet connection records are so essential for law enforcement. As communications increasingly take place via the internet, information that used to be routinely available to law enforcement from telephone-based communications data is increasingly unavailable—for example, the identity of an individual suspected of sharing indecent images, or people with whom a missing person was last in contact. Internet connection records are essential because they will ensure that the type of communications data that were previously available to law enforcement will remain available in future, not perfectly but generally. It will help to ensure that terrorists and criminals cannot evade detection simply because they choose to communicate online.

The noble Lord, Lord Paddick, observed that there may be applications or social media apps on a device that maintain a persistent connection to a service. That is true, but even in such cases the relevant ICR will signpost the service access by the device, enabling a public authority to make further inquiries with the service provider, which is identified through the ICR. ICRs will allow law enforcement to approach online service providers to acquire communications data where it is known that a specific device has accessed their service. So it is not the case that simply because you have open or permanent connections, the use of ICRs is rendered useless; that is simply not accepted.

The alternatives available to the security and intelligence services are not available to the police, and certainly cannot be adduced in a court of law. The police can

[Lord Keen of Elie]
acquire communications data only on a case-by-case basis where necessary and proportionate, and where they have made strong operational cases as to why they need to retain these records. Equally, the intelligence agencies may acquire data only for their own statutory purposes, which are far narrower than the criminal types investigated by the police. It is also the case, as I mentioned before, that intercept material from the agencies may not be used as evidence in court, a position that has been upheld by numerous independent inquiries over the years, most recently by a panel of the Privy Council in 2014.

Giving evidence to the Public Bill Committee, the noble Lord, Lord Reid, and Charles Clarke, previous Home Secretaries, were asked whether ICRs were a key part of updating legislation to the current world, and they both definitely agreed. Indeed, one could go further. The noble Lord, Lord Paddick, alluded to the observations of the Joint Committee on the draft Bill. Let us look at its conclusion:

"on balance, there is a case for Internet Connection Records as an important tool for law enforcement".

The Government recognise the sensitive nature of internet connection records, which is exactly why we had our earlier debate concerning the safeguards that must surround their recovery. The point has already been made that those records will not give access to the content, it is the record of connection that will be recovered.

I appreciate that the noble Lord, Lord Paddick, still has concerns about internet connection records, and I fear that nothing I say will convince him otherwise, but I again reassure him that we have all the right safeguards in place. Data can be retained only when necessary and proportionate and following authorisation and approval by the Secretary of State and a judicial commissioner. We have mechanisms in place to ensure that data are held securely, including audit by the Information Commissioner. Once the data are retained, they can be accessed only on a case-by-case basis, and only when judged necessary and proportionate by a senior officer at a rank specified by Parliament who is independent of any investigation being carried out. Strong judicial oversight will be provided by the Investigatory Powers Commissioner and, thanks to the changes made by this House, internet connection records cannot be acquired for minor offences, an amendment we discussed earlier.

In summary, internet connection records are a vital power. As to their cost, I believe that the figure given at a previous stage was £174 million over a period of 10 years. That is a not inconsiderable sum, but a manageable figure in the context of what we face with police powers. Accordingly, I invite the noble Lord to withdraw the amendment.

5.30 pm

Lord Paddick: My Lords, I am grateful to noble Lords who have contributed to this debate. Leaving his heavy sarcasm to one side, I must tell the noble Lord, Lord Harris of Haringey, that it is very easy to find out how to evade these measures. A simple Google search will tell a seven year-old all about VPNs; I am not giving away any trade secrets. He talked about terrorists and nasty people. If those nasty people are involved in serious crime or terrorism, the police and the National Crime Agency can enlist the help of GCHQ. Therefore, internet connection records will not be required.

I say to the noble Baroness, Lady Harding of Winscombe, that, yes, it is not a perfect system, but she is wrong to say that the security agencies say that it is people moving to communication via the internet that is making us less secure. Encryption is the real problem making us less secure. Why, otherwise, would GCHQ and the other security agencies say that they do not need internet connection records?

The noble Viscount, Lord Brookeborough, mentioned the vital question: is it reasonable, is it proportionate and where should the balance lie? However, as the right reverend Prelate the Bishop of Chester pointed out, there are other real questions which the noble and learned Lord failed to address about whether ICRs would in practice deliver what the law enforcement agencies want. My noble friend Lord Oates re-emphasised that this is a massive intrusion into privacy; that is why we oppose it. As he pointed out, in a child exploitation case, there is a joint operations unit between GCHQ and the National Crime Agency to deal with the issue.

Where I part company with the right reverend Prelate is on the suggestion that ICRs could be more targeted. There is nothing in the Bill to suggest that they will. On the content of websites, if someone accesses a domestic violence, gender reassignment or marriage guidance website, it is immediately apparent what they are looking into and it is a massive intrusion into privacy even if the record is only of the website they are looking at.

The noble and learned Lord has spoken to the National Crime Agency at length. I have been twice to the National Crime Agency, so I have spoken to it at length twice, and I still, as a former senior police officer, failed to be convinced.

I spent 30 years in the Metropolitan Police Service and ended up as a senior officer at Scotland Yard. If I thought that the balance here was right between invasion of privacy and the benefits that accrue to law enforcement, I would not be expressing these views.

I am a lousy politician. I cannot stand here and say things that I do not believe just because they are my party's policy. I am opposing this because I genuinely oppose the disproportionate invasion of privacy that ICRs represent. That is why I wish to test the opinion of the House.

5.35 pm

Division on Amendment 118A

Contents 75; Not-Contents 293. [The Tellers for the Not-contents reported 293 votes, the Clerks recorded 292 names.]

Amendment 118A disagreed.

Division No. 2

CONTENTS

Addington, L.	Bakewell of Hardington Mandeville, B.
Adebowale, L.	Barker, B.
Alton of Liverpool, L.	Beith, L.

Benjamin, B.
Bonham-Carter of Yarnbury, B.
Bowles of Berkhamsted, B.
Brinton, B.
Bruce of Bennachie, L.
Burt of Solihull, B.
Chidgey, L.
Clancarty, E.
Clement-Jones, L.
Cotter, L.
Dholakia, L.
Doocey, B.
Fearn, L.
Featherstone, B.
Foster of Bath, L.
Fox, L.
Garden of Frognal, B.
German, L.
Glasgow, E.
Goddard of Stockport, L.
Hamwee, B. [Teller]
Harris of Richmond, B.
Humphreys, B. [Teller]
Hussain, L.
Hussein-Ece, B.
Janke, B.
Jolly, B.
Jones of Cheltenham, L.
Jones of Moulsecoomb, B.
Kennedy of The Shaws, B.
Kirkwood of Kirkhope, L.
Kramer, B.
Lester of Herne Hill, L.
Loomba, L.
Ludford, B.
McNally, L.
Marks of Henley-on-Thames, L.
Morgan, L.
Newby, L.
Oates, L.
Paddick, L.
Pinnock, B.
Purvis of Tweed, L.
Redesdale, L.
Rennard, L.
Roberts of Llandudno, L.
Scott of Needham Market, B.
Sharkey, L.
Sheehan, B.
Shipley, L.
Shutt of Greetland, L.
Smith of Newnham, B.
Stephen, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Taverne, L.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Tyler of Enfield, B.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walmsley, B.
Wigley, L.
Wood of Anfield, L.
Wrigglesworth, L.

NOT CONTENTS

Aberdare, L.
Ahmad of Wimbledon, L.
Ahmed, L.
Anelay of St Johns, B.
Arbuthnot of Edrom, L.
Armstrong of Ilminster, L.
Arran, E.
Ashton of Hyde, L.
Astor of Hever, L.
Attlee, E.
Baker of Dorking, L.
Balfe, L.
Bassam of Brighton, L.
Bates, L.
Berkeley of Knighton, L.
Berridge, B.
Blackstone, B.
Blackwell, L.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Boothroyd, B.
Borwick, L.
Bourne of Aberystwyth, L.
Bowness, L.
Brabazon of Tara, L.
Brady, B.
Bridgeman, V.
Bridges of Headley, L.
Brooke of Alverthorpe, L.
Brookeborough, V.
Brookman, L.
Brougham and Vaux, L.
Brown of Eaton-under-Heywood, L.
Browne of Belmont, L.
Buscombe, B.
Caithness, E.
Callanan, L.
Carrington of Fulham, L.
Carter of Coles, L.
Cathcart, E.
Cavendish of Furness, L.
Chadlington, L.
Chalker of Wallasey, B.
Chester, Bp.
Chisholm of Owlpen, B.
Clark of Windermere, L.
Collins of Highbury, L.
Colwyn, L.
Condon, L.
Cooper of Windrush, L.
Cope of Berkeley, L.
Cormack, L.
Courtown, E. [Teller]
Couttie, B.
Craig of Radley, L.
Craigavon, V.
Crickhowell, L.
Cumberlege, B.
Davies of Stamford, L.
De Mauley, L.
Deben, L.
Deighton, L.
Denham, L.
Desai, L.
Dixon-Smith, L.
Donaghy, B.
Donoughue, L.
D'Souza, B.
Dunlop, L.
Dykes, L.
Eaton, B.
Eccles, V.
Eccles of Moulton, B.
Elton, L.
Elystan-Morgan, L.
Emerton, B.
Empey, L.
Evans of Bowes Park, B.
Evans of Watford, L.
Fairfax of Cameron, L.
Falkland, V.
Fall, B.
Farmer, L.
Farrington of Ribbleton, B.
Faulkner of Worcester, L.
Faulks, L.
Feldman of Elstree, L.
Fink, L.
Flight, L.
Fookes, B.
Ford, B.
Foulkes of Cumnock, L.
Framlingham, L.
Freeman, L.
Freud, L.
Gadhia, L.
Gardiner of Kimble, L.
Gardner of Parkes, B.
Garel-Jones, L.
Geddes, L.
Gilbert of Panteg, L.
Glendonbrook, L.
Goodlad, L.
Gordon of Strathblane, L.
Goschen, V.
Goudie, B.
Grade of Yarmouth, L.
Green of Hurstpierpoint, L.
Griffiths of Fforestfach, L.
Grocott, L.
Hague of Richmond, L.
Hailsham, V.
Hamilton of Epsom, L.
Harding of Winscombe, B.
Harris of Haringey, L.
Harris of Peckham, L.
Harrison, L.
Haskel, L.
Hay of Ballyore, L.
Hayman, B.
Hayter of Kentish Town, B.
Helic, B.
Henley, L.
Hennessy of Nympsfield, L.
Higgins, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Hollick, L.
Hollins, B.
Holmes of Richmond, L.
Hooper, B.
Hope of Craighead, L.
Horam, L.
Howard of Rising, L.
Howe, E.
Howe of Idlicote, B.
Howell of Guildford, L.
Howie of Troon, L.
Hunt of Chesterton, L.
Hunt of Kings Heath, L.
Hunt of Wirral, L.
Inglewood, L.
James of Blackheath, L.
Janvrin, L.
Jenkin of Kennington, B.
Jones, L.
Jordan, L.
Judd, L.
Judge, L.
Keen of Elie, L.
Kennedy of Southwark, L.
Kerr of Kinlochard, L.
King of Bridgwater, L.
Kirkham, L.
Kirkhope of Harrogate, L.
Lang of Monkton, L.
Lansley, L.
Lawrence of Clarendon, B.
Leigh of Hurley, L.
Lennie, L.
Lexden, L.
Liddell of Coatdyke, B.
Liddle, L.
Lindsay, E.
Lingfield, L.
Lipsey, L.
Listowel, E.
Liverpool, E.
Livingston of Parkhead, L.
Lothian, M.
Lucas, L.
Luce, L.
Lupton, L.
McAvoy, L.
McColl of Dulwich, L.
MacGregor of Pulham Market, L.
McGregor-Smith, B.
McInnes of Kilwinning, L.
McIntosh of Hudnall, B.
McIntosh of Pickering, B.
Mackay of Clashfern, L.
MacLaurin of Knebworth, L.
Magan of Castletown, L.
Maginnis of Drumglass, L.
Mancroft, L.
Manningham-Buller, B.
Marland, L.
Marlesford, L.
Masham of Ilton, B.
Mawhinney, L.
Mawson, L.
Maxton, L.
Mobarik, B.
Montrose, D.
Morgan of Huyton, B.
Morris of Aberavon, L.
Morris of Bolton, B.
Morris of Handsworth, L.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Norton of Louth, L.
O'Cathain, B.
O'Neill of Bengarve, B.
O'Neill of Clackmannan, L.
Oppenheim-Barnes, B.
O'Shaughnessy, L.
Patel, L.
Patel of Bradford, L.
Pidding, B.
Popat, L.
Porter of Spalding, L.
Prosser, B.
Ramsay of Cartvale, B.
Rawlings, B.
Redfern, B.
Reid of Cardowan, L.
Renfrew of Kaimsthorn, L.
Risby, L.
Robathan, L.
Rogan, L.
Rooker, L.
Rosser, L.
Rowe-Beddoe, L.

Royall of Blaisdon, B.
Ryder of Wensum, L.
Sassoon, L.
Scott of Bybrook, B.
Seccombe, B.
Selborne, E.
Selsdon, L.
Shackleton of Belgravia, B.
Sharples, B.
Sheikh, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Sherlock, B.
Shields, B.
Shinkwin, L.
Skelmersdale, L.
Smith of Basildon, B.
Smith of Gilmorehill, B.
Smith of Hindhead, L.
Soley, L.
Somerset, D.
Spicer, L.
Stedman-Scott, B.
Stoddart of Swindon, L.
Stone of Blackheath, L.
Stowell of Beeston, B.
Strathclyde, L.
Stroud, B.
Sugg, B.
Suri, L.
Sutherland of Houndwood, L.
Swinfen, L.
Taylor of Blackburn, L.
Taylor of Bolton, B.
Taylor of Holbeach, L.
[Teller]
Tebbit, L.
Temple-Morris, L.
Trefgarne, L.
Trenchard, V.
Triesman, L.
Trimble, L.
True, L.
Truscott, L.
Tugendhat, L.
Tunnicliffe, L.
Uddin, B.
Ullswater, V.
Vere of Norbiton, B.
Verma, B.
Wakeham, L.
Warwick of Undercliffe, B.
Wasserman, L.
Watson of Invergowrie, L.
Watts, L.
Waverley, V.
Wei, L.
Wellington, D.
Wheeler, B.
Whitby, L.
Williams of Trafford, B.
Young of Cookham, L.
Young of Norwood Green, L.
Younger of Leckie, V.

5.52 pm

Amendment 119

Moved by ***Earl Howe***

119: After Clause 85, insert the following new Clause—

"Approval of retention notices by Judicial Commissioners

(1) In deciding whether to approve a decision to give a retention notice, a Judicial Commissioner must review the Secretary of State's conclusions as to whether the requirement to be imposed by the notice to retain relevant communications data is necessary and proportionate for one or more of the purposes falling within paragraphs (a) to (j) of section 58(7).

(2) In doing so, the Judicial Commissioner must—

(a) apply the same principles as would be applied by a court on an application for judicial review, and

(b) 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).

(3) Where a Judicial Commissioner refuses to approve a decision to give a retention notice, the Judicial Commissioner must give the Secretary of State written reasons for the refusal.

(4) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, refuses to approve a decision to give a retention notice, the Secretary of State may ask the Investigatory Powers Commissioner to decide whether to approve the decision to give the notice."

Amendment 119 agreed.

Clause 86: Review by the Secretary of State

Amendments 120 and 121

Moved by ***Earl Howe***

120: Clause 86, page 68, line 14, leave out "the Investigatory Powers" and insert "a Judicial"

121: Clause 86, page 68, line 31, at end insert—

"(10A) But the Secretary of State may vary the notice, or give a notice under subsection (10)(b) confirming its effect, only if the Secretary of State's decision to do so has been approved by the Investigatory Powers Commissioner."

Amendments 120 and 121 agreed.

Amendment 122

Moved by ***Earl Howe***

122: After Clause 86, insert the following new Clause—

"Approval of retention notices following review under section 86

(1) In deciding whether to approve a decision to vary a retention notice as mentioned in section 86(10)(a), or to give a notice under section 86(10)(b) confirming the effect of a retention notice, the Investigatory Powers Commissioner must review the Secretary of State's conclusions as to whether the requirement to be imposed by the notice as varied or confirmed to retain relevant communications data is necessary and proportionate for one or more of the purposes falling within paragraphs (a) to (j) of section 58(7).

(2) In doing so, the Investigatory Powers Commissioner must—

(a) apply the same principles as would be applied by a court on an application for judicial review, and

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

(3) Where the Investigatory Powers Commissioner refuses to approve a decision to vary a retention notice as mentioned in section 86(10)(a), or to give a notice under section 86(10)(b) confirming the effect of a retention notice, the Investigatory Powers Commissioner must give the Secretary of State written reasons for the refusal."

Amendment 122 agreed.

Clause 89: Variation or revocation of notices

Amendments 123 to 129

Moved by ***Earl Howe***

123: Clause 89, page 69, line 26, after "unless" insert "—

(a) "

124: Clause 89, page 69, line 28, leave out from "58(7)" to end of line 29 and insert ", and

(b) subject to subsection (5A), the decision to vary the notice has been approved by a Judicial Commissioner."

125: Clause 89, page 69, line 34, at end insert—

"(5A) Subsection (4)(b) does not apply to a variation to which section 86(10A) applies."

126: Clause 89, page 69, line 38, after "84(3)" insert ", (3A)"

127: Clause 89, page 69, line 42, at end insert "(and, accordingly, the references to the notice in section 85(1)(a) to (e) are to be read as references to the variation)."

128: Clause 89, page 69, line 42, at end insert—

"(8A) Section (Approval of retention notices by Judicial Commissioners) applies in relation to a decision to vary to which subsection (4)(b) above applies as it applies in relation to a decision to give a retention notice (and,

accordingly, the reference in subsection (1) of that section to the requirement to be imposed by the notice is to be read as a reference to the requirement to be imposed by the variation)."

129: Clause 89, page 70, line 3, at end insert—

"(9A) Section (Approval of retention notices following review under section 86) applies in relation to a decision under section 86(10) to vary or confirm a variation as it applies in relation to a decision to vary or confirm a retention notice (and, accordingly, the reference in subsection (1) of that section to the requirement to be imposed by the notice as varied or confirmed is to be read as a reference to the requirement to be imposed by the variation as varied or confirmed)."

Amendments 123 to 129 agreed.

Clause 91: Application of Part 4 to postal operators and postal services

Amendment 130

Moved by ***Earl Howe***

130: Clause 91, page 71, line 14, at end insert—

"(de) for section 83(3A) there were substituted—

"(3A) A retention notice must not require an operator who provides a postal service ("the network operator") to retain data which—

(a) relates to the use of a postal service provided by another postal operator in relation to the postal service of the network operator,

(b) is (or is capable of being) processed by the network operator as a result of being comprised in, included as part of, attached to or logically associated with a communication transmitted by means of the postal service of the network operator as a result of the use mentioned in paragraph (a),

(c) is not needed by the network operator for the functioning of the network operator's postal service in relation to that communication, and

(d) is not retained or used by the network operator for any other lawful purpose,

and which it is reasonably practicable to separate from other data which is subject to the notice.""

Amendment 130 agreed.

Amendment 131 had been withdrawn from the Marshalled List.

Independent Inquiry into Child Sexual Abuse

Statement

5.53 pm

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, with the leave of the House, I shall now repeat in the form of a Statement the Answer given in another place by my right honourable friend the Home Secretary on the Independent Inquiry into Child Sexual Abuse.

"I know the whole House agrees with me when I say that the work of this inquiry is absolutely vital. Victims and survivors must have justice, and we must learn the lessons of the past.

The inquiry's remit is to examine whether institutions in England and Wales have failed to protect children from sexual abuse. It is an independent body, established under the Inquiries Act 2005. The Home Office is the sponsor department. I am responsible for the terms of reference, appointing the chair and panel members, and providing funding. Last year the inquiry had a budget of £17.9 million and underspent by more than £3 million. The appointment of staff and the day-to-day running are matters for the chair.

I appointed Professor Alexis Jay as chair of the inquiry on 11 August, following the unexpected resignation of Dame Lowell Goddard on 4 August. I am aware of questions around the reasons for her resignation. Let me spell out the facts. On 29 July, the secretary to the inquiry met my Permanent Secretary and reported concerns about the professionalism and competence of the chair. My Permanent Secretary encouraged the inquiry to raise those matters with the chair. He reported this meeting to me the same day. My Permanent Secretary also met members of the inquiry panel on 4 August. Later that day, Dame Lowell tendered her resignation to me, which I accepted. Less than a week elapsed between concerns being raised with the Home Office and Dame Lowell's resignation. My Permanent Secretary's approach was entirely appropriate for an independent body.

The second issue relates to my evidence to the Home Affairs Committee. I was asked why Dame Lowell had gone. Dame Lowell had not spoken to me about her reasons, so I relied on the letter she had sent to the committee. In her letter she said that she was lonely and felt that she could not deliver, and that was why she stepped down. Dame Lowell has strongly refuted the allegations about her. The only way we could understand properly why she had resigned would be to hear from Dame Lowell herself. To echo any further allegations, which are now likely to be the subject of legal dispute, would have been entirely inappropriate.

We now owe it to the victims and survivors to get behind the inquiry in its endeavour. My own commitment to the inquiry's work is undiminished. I invite the House to offer its support in the same way".

5.55 pm

Lord Rosser (Lab): My Lords, I thank the Minister for repeating the response to the Urgent Question, which frankly gives very little further information, apart from telling us that a chair of the inquiry, appointed by the previous Home Secretary, had been the subject of concerns about professionalism and competence, expressed by the secretary to the inquiry to the Home Office Permanent Secretary on 29 July. Does that not raise questions about the judgment of the previous Home Secretary in making the appointment concerned? We are now on the fourth chair and it is two years since the inquiry was established, yet little evidence has been taken and there has been a series of resignations among the senior staff of the inquiry. Why do the Government now think the position will change? Are there to be any changes in the remit, structure, staffing or financing of the inquiry? When is it anticipated it will complete its work? What steps are the Government taking to reassure victims who held

[LORD ROSSER]
high hopes of the inquiry and whose confidence and trust have now been severely shaken by recent events, including the apparent helplessness of the Government to do anything to sort out this highly unsatisfactory situation over the progress of the inquiry?

Baroness Williams of Trafford: My Lords, the inquiry has made good progress since it was established. It is not appropriate for me or the Home Secretary to be briefed in detail on the activity of an independent inquiry while it is under way. However, the inquiry has indicated that it is making good progress in all 13 investigation strands. Preliminary hearings have taken place, evidence has been called for, and the inquiry has received more than 47,000 documents. A research project has been established to support the inquiry's existing investigations, assist to scope and define future investigations, publish original research on child sexual abuse and analyse information that the inquiry receives from victims and survivors. In addition, sessions have been arranged for hundreds of victims and survivors to come forward and share their experiences with the inquiry. Noble Lords may have seen a statement made earlier today by the chair on her view of the terms of reference. She says that she believes that the terms of reference for the inquiry are necessary and deliverable. She had previously undertaken that an interim report would be with the inquiry before the end of this financial year.

On financing, as I said, the inquiry had a budget of £17.9 million last year. It underspent on that by some £3 million.

Lord Paddick (LD): My Lords, we on these Benches are concerned that lessons of past child sex abuse cases should be learned and applied as quickly as possible. Can the Minister reassure the House that immediate steps to address obvious weaknesses in the way such cases are dealt with will not be deferred pending the outcome of this inquiry?

Baroness Williams of Trafford: My Lords, I understand that an internal review of the inquiry will take place. The noble Lord talked about consideration of current cases. Sorry, will he repeat the final bit of his question?

Lord Paddick: The concern that we have is that because this inquiry is taking such a long time, there might be some obvious weaknesses in the way that these cases are currently being dealt with that could be addressed but are being put off because the inquiry is still ongoing.

Baroness Williams of Trafford: That would be a matter for the inquiry to consider. It is an independent inquiry and it is not for us to try to micromanage or dictate what it does. It is independent. But I take the noble Lord's point and I am sure the inquiry will be mindful of that.

Lord Morris of Aberavon (Lab): My Lords, on 13 September, in view of the concerns of Judge Goddard, I asked the Minister that the terms of reference be amended. This was refused point blank. The Home Secretary told the Commons committee that the only reason that she knew of for Judge Goddard's resignation was her loneliness et cetera. Her Permanent Secretary, sitting beside her, and officials, may have had much longer knowledge of concerns about Judge Goddard. Could this be clarified? Would it not be better for there to be a pause for reflection so that all involved, including the victims, could be satisfied that we are now on the right course—including having the right terms of reference?

Baroness Williams of Trafford: My Lords, the terms of reference were drawn up by the chair in consultation with the Home Secretary. The chair has made a statement today expressing her satisfaction with the terms of reference. As regards Judge Goddard, I understand that no concerns were raised formally and that my right honourable friend the Home Secretary had both a letter from Judge Goddard and what was presented to the Home Affairs Select Committee. Pausing for reflection is a matter for the independent inquiry. It is for the inquiry to decide whether it wishes to do that; it is not for us to tell it what to do.

Viscount Hailsham (Con): My Lords, I suggest to my noble friend that the purpose and scope of the inquiry is hopelessly flawed and that it would be better now to scrap it entirely rather than waste any more money on it. If that is wholly impossible, can we have a much tighter remit as to procedure, purpose and timescale? That needs to be given immediate thought.

Baroness Williams of Trafford: My Lords, judging by today's statement by the chair, I do not think that there is any intention of scrapping the inquiry. As I said earlier, an internal review of the inquiry is going on and an interim report is due out before the end of the financial year. I have outlined some of the things that the inquiry has achieved to date. But I must reiterate that it is independent and therefore we cannot dictate what it should do.

Baroness Newlove (Con): My Lords, while I welcome the Statement, I agree that there is very little in it that clarifies what the inquiry is achieving, especially for the victims of this crime. As Victims' Commissioner, I am a little concerned about where their voice is. This inquiry was set up to hear their voices, both historic and present. I spoke to some victims recently who were very worried and concerned about when their voices would be listened to, where their voices would be and how they would effect change through this inquiry.

While I welcome Professor Jay's announcement today that there will be an interim report in November, my concern is about communication with the victims. I have seen huge gaps in the communications sent to them. This does not raise confidence throughout the country to encourage victims to come forward. Indeed, we have heard today that some victims want to sue the inquiry for causing them further trauma because of the up and down rollercoaster that it has started with. As Victims' Commissioner, I am concerned that their voices are being missed. Will the Minister look at what

support is being given? The Statement makes a good point about the underspend of £3 million. As Victims' Commissioner, I would like that money to be used to support the victims while we get everything sorted, because the bureaucrats will go on but the victims are still suffering as we speak.

Baroness Williams of Trafford: My noble friend makes a very valid point about the victims, because they are at the heart of the inquiry. If she wishes to raise any specific concerns with me, I will certainly take them up. If she believes that there are deficiencies in funding for the inquiry and victim support, again, I would like her to raise them with me. But the underspend tells me that funding has not been the issue here, and Alexis Jay herself said that she wants the inquiry to proceed with clarity and pace so that the victims from the past can be heard and we can all learn lessons for the future.

Lord Faulks (Con): My Lords, of course we all want the victims to be heard and for there to be, as the chair herself said, a thorough examination of these issues—but how is it possible to have a thorough examination that is fair to the victims and to those who may be incriminated by any finding within any reasonable timescale so that lessons can truly be learned before so much time has elapsed that we will simply be left to treat this as a matter of history?

Baroness Williams of Trafford: Alexis Jay said today that,

"the concerns that our terms of reference cannot be delivered are founded on an assumption that we must seek to replicate a traditional public inquiry in respect of each of the thousands of institutions that fall within our remit. We will do so for some, but we would never finish if we did it for all".

I understand from that statement that the inquiry intends to look at some things in more depth than others. I hope that that results in a thorough inquiry, and I am sure that it will.

Lord Beith (LD): My Lords, I support the point made by my noble friend, which I think the Minister missed—namely, that this inquiry will take a very long time and that some pretty glaring lessons for the police and the Crown Prosecution Service can already be learned. We should not argue that nothing can be done by those bodies because we are waiting for the result of the inquiry.

Baroness Williams of Trafford: The noble Lord is absolutely right. Perhaps I did the noble Lord, Lord Paddick, a disservice by slightly getting the wrong end of the stick as regards his question. Of course those inquiries must go on as the independent inquiry proceeds.

Lord Harris of Haringey (Lab): My Lords, the noble Baroness referred to the meeting on July—

The Earl of Courtown (Con): I beg the noble Lord's pardon but I understand that 10 minutes are allowed for questions on an Urgent Question. That time has now elapsed. I apologise to the noble Lord.

Community Pharmacy

Statement

6.07 pm

Baroness Chisholm of Owlpen (Con): My Lords, with permission, I will repeat an Answer given by my honourable friend the Parliamentary Under-Secretary of State to an Urgent Question in the other place on community pharmacy. The Statement is as follows:

"Members of the House will have seen there has been media coverage over the weekend about our consultation on the community pharmacy contractual framework. I will now set out the current position, the process going forward and how the final decision will be announced to the House.

In December 2015, 10 months ago, the Government set out a range of proposals for reforming the community pharmacy sector. Our intent was to promote the movement of the sector towards a future based on value-added services together with much stronger links to the GP sector. We also proposed ways to make a reduction to the £2.8 billion currently paid to the sector. Part of the rationale for this was the increase of 40% in the budget and 18% in the number of establishments over the past decade or so.

Each establishment now receives an average of £220,000 of margin over and above the cost of drugs disbursed. Many of these establishments are in clusters. The 2015 spending review reaffirmed the need for the privately owned community pharmacy sector to make a contribution to the publicly owned NHS efficiency savings which we need to deliver. We are confident that the changes proposed will not jeopardise the quality of services required or patient access to them. Some services will be delivered differently, which is why we have set aside £112 million to recruit a further 1,500 pharmacy professionals to be employed directly by the NHS and GP practices.

The Government have been consulting on these reforms since December 2015. On 13 October this year the PSNC rejected our proposed package and sent a list of remaining concerns. We are now in the process of considering its final response and expect to be in a position to make an announcement to the House shortly".

6.10 pm

Lord Kennedy of Southwark (Lab): My Lords, I thank the noble Baroness for repeating the Answer to the Urgent Question that was given in the other place earlier today. It is much appreciated by me and other Members. The stated aim of the Government has been to put pharmacies at the heart of the NHS. However, the proposals here will have serious and far-reaching consequences for patients, local communities and the NHS. Can the noble Baroness tell the House when we can expect to see the full impact assessment of these proposed cuts? What steps have been taken to ensure that the pharmacy access scheme is available to all community pharmacies based on the size and need of the population they serve? Does the noble Baroness see the contradiction in claiming to put pharmacies at the heart of the community while implementing

[Lord Kennedy of Southwark]
arbitrary cuts? Finally, what steps is she taking to prevent the closure or the reduction of opening hours of community pharmacies?

Baroness Chisholm of Owlpen: I thank the noble Lord for those questions. The decision on the impact assessment has obviously not been made yet because the Government are thinking about the problems that have just arisen due to the PSNC not accepting the decisions that we thought had been made. There is no reason why this package should in any way affect the efficiencies of pharmacies at the moment. It is important to remember that the Government fund community pharmacies to the tune of £2.8 billion, and the average pharmacy receives £220,000 per year in NHS funding. We believe that the sector, which is made up of private companies that are often densely clustered together, can withstand this, and that the quality of services provided to patients will not be affected as a result. We know that 40% of pharmacies are in clusters of three or more, which means that two-fifths of pharmacies are within 10 minutes' walk of two or more other pharmacies.

Lord Rennard (LD): My Lords, the Minister will be aware of the report, commissioned for the Pharmaceutical Services Negotiating Committee and published last month, which showed that in 2015 community pharmacies provided 75 million minor ailment consultations and 74 million medicine support interventions. Does she not think that reducing the provision of community pharmacies may make it even harder for many people to see their GP and will add to the already considerable problems at many A&E units?

Baroness Chisholm of Owlpen: The Government are modernising the pharmacy sector and are investing £112 million to deliver a further 1,500 pharmacies in general practice by 2020. We are ensuring that no area is left without access to community pharmacy due to the pharmacy access scheme, and as the Minister for Community Health and Care announced on 13 October we are also introducing the pharmacy urgent care programme, a pilot scheme which will embed pharmacy into the urgent care pathway by expanding the service already provided by community pharmacies in England for those who need urgent repeat prescriptions and treatment for urgent minor ailments and common conditions. The move means that, in pilot areas, patients who need urgent repeat medicines will be referred from NHS 111 directly to community pharmacies. NHS 111 will develop and evaluate a new approach that will ultimately enable the service to refer patients with urgent minor ailments such as earaches to community pharmacies.

Lord Higgins (Con): Does my noble friend agree that the link between individuals and the pharmacy can be important, particularly for the elderly and those with long-term illnesses? On the whole, this may well be easier to facilitate in the case of small pharmacies rather than large ones in a larger shop that is engaged in other operations, not to in any way denigrate the important role which those shops may play. Does my noble friend agree that it is important that, in the course of this change, the position of the smaller pharmacies should not be undermined?

Baroness Chisholm of Owlpen: I absolutely agree with my noble friend. There is no reason why that should be the case. At the moment, as I am sure he is aware, there are sometimes up to three or four pharmacies on one high street. It is not necessary to say that with these proposals the pharmacies will close, because the majority of them are privately owned, but it is important to try to modernise the system as it is now. The integrated care fund is very much working towards joined-up thinking on this.

Lord Blencathra (Con): Will my noble friend take a message back to my right honourable friend the Secretary of State to say that if the reports are true that we could end up losing 1,500 or 1,400 small, independent pharmacies, these plans are barking mad and should have no part of Conservative government policy? It is right to save money on drugs, but can we target the big pharmas which rip off the Department of Health and have been doing so for years, and call the dogs off the little, independent pharmacies, which are vital for rural areas and are important small businesses? I do not want to see only Lloyds, Boots and the supermarkets on the high street—we need the little independents as well.

Baroness Chisholm of Owlpen: There is no reason why this should stop that happening. As I mentioned, the pharmacy access scheme absolutely ensures that no area will be left without access to community pharmacy, and that targets the rural areas in particular.

Lord Lansley (Con): My Lords, I know that my noble friend will agree that community pharmacy has a tremendous reach in that 1.6 million people every day visit a community pharmacy. It can play a vital part in enhancing care in the community, particularly, as my noble friend said, looking after those who are older and/or with chronic conditions. It tries to ensure that people are diagnosed and looked after, and that their needs are met in the community, not defaulting to costly hospital admissions. In that respect, my noble friend said that value-added services are key to this. They are, and for years we have wanted pharmacies to be able to diversify out of reliance wholly on dispensing fees and the allowable profit margin, to raise resources themselves by services provided to the NHS locally. Can my noble friend say to that extent how far clinical commissioning groups themselves use the opportunity of local pharmacies to offset what would otherwise be the pressures of demand upon NHS services?

Baroness Chisholm of Owlpen: I thank my noble friend for that question. On the last part, I may have to get back to him, because I do not know the answer to that. It is important to remember that the proposals that the Government have been consulting on are part of a wider package of reforms to ensure that the NHS funds are allocated in the most efficient way possible, while promoting a high-quality community pharmacy

service which is fully integrated with primary and urgent care and which makes better use of pharmacies' valuable skills.

Lord Low of Dalston (CB): Does the noble Baroness agree that one of the most valuable services provided by pharmacies is the delivery of medicines to people who are elderly and housebound, and that it is vital that the funding proposals that the Government come up with do absolutely nothing to undermine that service?

Baroness Chisholm of Owlpen: The noble Lord is absolutely right. That service will not be undermined and it is extremely important that it carries on—again, particularly in rural areas.

Viscount Hailsham (Con): My Lords, I echo the remarks made by my noble friend Lord Blencathra. Both of us represented rural constituencies: in my case for 31 years and in his case I think for nearly 30. The truth is that local pharmacies are terribly important in rural areas. I hope that my noble friend will have that in mind when the policies are addressed.

Baroness Chisholm of Owlpen: My noble friend is absolutely right. As I mentioned earlier, that is the point of the pharmacy access scheme, which is intended in particular to ensure that the right number of rural pharmacies are available in those areas.

Lord Brooke of Alverthorpe (Lab): I know that my local chemist is very upset about what may happen to him. He talks about areas where money is wasted by the NHS and where efficiencies could be effected. Has the Minister had discussions with the representatives of pharmacists who have opposed this proposal, to see whether they can come up with ideas on how efficiencies can be achieved?

Baroness Chisholm of Owlpen: Certainly everybody was consulted during the process and that is why we were very disappointed with the attitude that has been taken. We took particular care to endeavour to work collaboratively and we listened to their suggestions and proposals over quite a long period.

I have just been passed something by my inspiration, who is not far from my left-hand side. As I am on my feet, I hope that noble Lords will not mind if I answer the question put by my noble friend Lord Lansley. Roughly 50% of local areas currently commission community pharmacies to provide minor-ailment services. As the Minister announced last week, we are committed to increasing the coverage to all areas by April 2018. This shows how valuable a resource pharmacies are for patient care.

Baroness Oppenheim-Barnes (Con): Does my noble friend accept—

The Earl of Courtown (Con): I apologise to my noble friend but the 10 minutes for questions have now passed.

Investigatory Powers Bill

Report (2nd Day) (Continued)

6.21 pm

Clause 205: Investigatory Powers Commissioner and other Judicial Commissioners

Amendment 131A

Moved by ***Lord Paddick***

131A: Clause 205, page 161, line 11, at end insert—

"( ) There shall be a body corporate known as the Investigatory Powers Commission comprising—

(a) the Investigatory Powers Commissioner;

(b) Judicial Commissioners; and

(c) staff to support the Commissioners."

Lord Paddick (LD): My Lords, this amendment stands in my name and that of my noble friend Lady Hamwee. It introduces to the Bill a body corporate known as the investigatory powers commission that comprises the Investigatory Powers Commissioner, judicial commissioners and staff to support the commissioners. I am relying heavily on, and am very grateful to, the Interception of Communications Commissioner's Office in this matter.

At present the Bill creates only a chief judicial commissioner and a small number of judicial commissioners. The commissioners will be responsible for approving approximately only 2% of the applications falling within the remit of the oversight body. Most of the applications made under the Bill are likely to be for communications data, for example, individual applications for which are not subject to prior approval by a judicial commissioner. The remaining 98% will be subject only to post-facto oversight.

The post-facto oversight will be carried out predominantly by specialist inspectors, investigators, analysts and technical staff working to the Investigatory Powers Commissioner, and it is important for those individuals to have a delegated power to require information or access to technical systems. According to the Interception of Communications Commissioner's Office:

"The creation of a Commission is crucial to achieve a modern, inquisitive oversight body that has the expertise to carry out investigations and inquiries to the breadth and depth required and the intellectual curiosity to probe and challenge the conduct of the public authorities".

I shall expand on what IOCCO means by that.

First, it means that the specialists do not have to wait to be tasked by the commissioner but can use their initiative and expertise to follow the evidence and conduct post-facto scrutiny where they believe it is most needed. Secondly, other commissions, such as the Independent Police Complaints Commission, are bodies corporate whose investigators have all the powers of their commission. This prevents police officers saying, "I'm not talking to you, Mr Investigator. I am only going to talk to a commissioner". The Government may say that there is no direct parallel here but they would be wrong.

[LORD PADDICK]

The Intelligence Services Commissioner was asked by the then Home Secretary, Theresa May, to carry out an investigation into what the security services knew about those involved in the murder of Fusilier Lee Rigby. In his supplemental report to his 2015 annual report, Sir Mark Waller, at paragraph 5.3(4), talks about his attempts to have counsel, Mr Sanders, who was carrying out the investigation on the commissioner's behalf, present during the interviews of some of those involved:

"Prior to these interviews taking place, SIS told me that Desk Officer 1 and Intelligence Officers 1 and 3 objected to Mr Sanders being present and so he did not attend. I have since been told by SIS that this objection in fact came from its senior management. I very much regret that this was not made clear to me at the time as I would have challenged it" ″

The fact is that, unless those carrying out post-facto scrutiny are part of a body corporate, as in the case of the IPCC, those whom they are supposed to be scrutinising can refuse to co-operate with them and demand that they deal with the Investigatory Powers Commissioner alone.

The IOCCO says:

"Putting the oversight Commission on a statutory footing will be a huge step towards guaranteeing independence, capability and diversity within the organisation which will inspire public trust and confidence".

It goes on to say:

"Creating an oversight Commission would also help make a distinction between the approval and post-facto audit elements of the oversight body, addressing a concern raised by a number of witnesses to the Joint Committee that the Judicial Commissioners should not be perceived to be 'marking their own homework'".

This of course refers to the fact that in the 2% of cases where a warrant was approved by a judicial commissioner, without the establishment of a commission it could understandably be perceived by the public that the judicial commissioners were post-facto auditing the decisions of other judicial commissioners. Although this may be an accepted practice in the legal profession—in the courts and so forth—it is likely to be lost on the general public. The Interception of Communications Commissioner's Office concludes:

"We urge the Government to implement this recommendation which was also made by the RUSI Independent Surveillance Review, David Anderson QC and the IP Bill Joint Committee".

The amendment seeks to implement that recommendation. I beg to move.

Baroness Hayter of Kentish Town (Lab): My Lords, we are satisfied that the speedy and effective establishment of the office of Investigatory Powers Commissioner will provide the staff, expertise and structure to implement the Bill. As the noble Earl will know, we have queried whether the resources will be made available and we will continue to keep an eye on that. However, we see no rationale as to why a body corporate, with all the governance, other requirements and bureaucracy, would be better at achieving the balance that we seek, which is the timely, appropriate and thorough oversight of the powers in this Bill, taking full account of civil liberties and the need to prevent or apprehend crime, and dealing with threats from those who wish us harm.

It is possible that I have misunderstood what the noble Lord, Lord Paddick, said, but it seemed that he wanted the staff to have some of the commissioner's authority. For ourselves, we have relied very much on the judicial commissioners, with the powers given to them under the Bill, and the IPC himself or herself to do this, and we would certainly not want to detract from their authority in any way.

6.30 pm

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, Amendment 131A seeks to provide in the Bill for an investigatory powers commission in addition to a commissioner. I listened with care to the noble Lord, Lord Paddick, and I understand how strongly he feels about this issue. The Government have been clear throughout the passage of the Bill that the Investigatory Powers Commissioner will lead a powerful new body—the noble Lord and I are, I think, in agreement on that principle. However, the Government have been equally clear that there is no need to create that body in statute. Our principal reason for adhering to that view is that doing so would not confer any new powers, duties or responsibilities on those working for the commissioner, nor would it affect their ability to audit, inspect and oversee public authorities.

I am the first to recognise the importance of public perception. However, as to whether it would benefit public perception to create a commission, I cannot see what advantages an anonymous quango holds over a senior, independent judge. The oversight and authorisation of investigatory powers are vital tasks that need to be performed and need to be performed well. Therefore, in my submission, it is right that an identifiable individual is ultimately responsible for them.

It is the difference between having a person with a public face and a body that risks being seen by the public as faceless. Since the oversight powers and duties are ultimately placed on the Investigatory Powers Commissioner, we logically expect that commissioner to be the public face of the body. It is the commissioner who will be called on to lead the public debate on these issues and to give his or her expert and considered legal view on the matters in the Bill. If, for example, someone receives a notification of an error under Clause 209, or if a report is made under Clause 212, it is better that such communications should come from a senior, named judicial figure rather than a faceless organisation.

Of course, it is necessarily the case that the commissioner will rely on the work of an extensive staff of expert inspectors and advisers. Again, though, I argue that that does not necessitate the creation of a commission in statute. When an inspector walks into a public authority, the fact that they are an employee of an investigatory powers commission would not give them any greater powers than if they are a representative of the Investigatory Powers Commissioner. I agree with one element of what the noble Lord, Lord Paddick, said: it is right that, in such circumstances, those employees should wield appropriate authority. The Government have listened to concerns expressed on this point and tabled amendments, which we will come to later, to make clear that the commissioners can

delegate powers under the Bill to their staff. That will make absolutely clear that when the experts and inspectors employed by the commissioner go about their work, they do so with the full force of the commissioner behind them.

Moreover, creating a new body in statute would require the establishment of a board to run that body, complete with at least three non-executive directors. I was grateful to the noble Baroness, Lady Hayter, for her remarks on this point. In the eyes of many, this would muddy the waters of accountability and introduce considerable new bureaucracy into the work of the commissioner. It is much better that the commissioner's resources and attention should be focused on overseeing the work of public authorities and providing public assurance, rather than on servicing a burgeoning bureaucracy.

Lord Paddick: Can the Minister reassure me that the circumstances that the Intelligence Services Commissioner found himself in—that is, with one of his investigators effectively being excluded when he was involved in investigating what the intelligence services knew prior to the murder of Fusilier Lee Rigby—could not happen in the absence of a body corporate being set up, as this amendment suggests? There are concerns that people in the security services might not acknowledge the authority of the inspectors if it is not the case.

Earl Howe: I fully believe that the amendments we have tabled will give inspectors the authority that is equivalent to that of a judicial commissioner. Although I was not aware of the case that the noble Lord cites, I think the government amendments will put the situation beyond doubt, if ever there was any. I do not believe that the problem the noble Lord refers to has ever impacted more widely on the ability of inspectors to do the job that is required of them; I like to hope that that was a one-off problem. However, with the benefit of the government amendments, it simply should not be an issue.

I hope I have reassured the noble Lord. Certainly, we cannot overlook the point that the creation of a new body would come at significant financial cost that would be of no gain in terms of public reassurance or effective oversight. As I have argued, it might risk making the oversight regime less clear. For a bunch of reasons, I hope the noble Lord will feel comfortable in reconsidering his amendment.

Lord Paddick: I am very grateful to the Minister. I am not sure that he is entirely reassured that the government amendments will deal with this issue, but I accept that that is because he did not have sight of my example prior to the debate. I regret not giving him notice that I would be bringing it up. However, given all the circumstances, I beg leave to withdraw the amendment.

Amendment 131A withdrawn.

Amendment 132

Moved by ***Earl Howe***

132: Clause 205, page 161, line 37, leave out paragraph (b)

Earl Howe: My Lords, I will speak to Amendment 132 and the others in the group. The government amendments in this group address the fact that the Northern Ireland Assembly has not provided legislative consent for this Bill. Only a small number of provisions in the Bill engage devolved responsibilities in Northern Ireland. These relate to oversight and to the proposal that the role of the Investigatory Powers Commissioner for Northern Ireland, who is responsible for overseeing the exercise of devolved powers, should be subsumed into the Investigatory Powers Commissioner that we are creating under the Bill.

In the absence of legislative consent, the existing office of the Investigatory Powers Commissioner for Northern Ireland will not be abolished. Consequently, the Bill need no longer provide for the First Minister and Deputy First Minister to be consulted on the appointment of the IPC. Similarly, the Prime Minister will no longer be under a statutory duty to send them a copy of the Investigatory Powers Commissioner's annual report.

Additionally, appeals arising from the Investigatory Powers Tribunal under Clause 220 will no longer be heard by the Court of Appeal in Northern Ireland. It will be for the Investigatory Powers Tribunal to decide whether the Court of Appeal in England and Wales or the Court of Session in Scotland should hear the appeal instead. Although this is obviously not the most desirable appeal route for individuals from Northern Ireland, our hands are tied by lack of legislative consent from the Northern Ireland Executive.

Included in this group of government amendments are regulation-making powers allowing the Secretary of State, with the consent of the Northern Ireland Assembly, to reverse these amendments. Therefore, if legislative consent were given at some point in the future, the IPC could reasonably quickly take on the functions of the Investigatory Powers Commissioner for Northern Ireland and appeals could be allowed to go to the Court of Appeal in Northern Ireland. It is our hope that both these powers can be used in the near future. Accordingly, I hope noble Lords will support these amendments. I beg to move.

Lord Rosser (Lab): My Lords, I want to make reference to the amendment that we have in this group. Clause 205 provides for the appointment of the Investigatory Powers Commissioner and judicial commissioners.

As currently drafted, Clause 205(5) requires the Prime Minister to consult Scottish Ministers and the First Minister and Deputy First Minister in Northern Ireland about the appointment of these commissioners. However, there appears to be currently no duty to consult Welsh Ministers about these appointments, with the result that Wales does not feel that it is being treated equally with the other devolved Administrations in this respect.

Under the Wales Bill before the House, Welsh devolution will take a constitutional form that is much closer to that for Scotland and Northern Ireland. The First Minister of Wales considers that the mutual respect between Administrations means that drawing unnecessary distinctions in legislation between devolved

[LORD ROSSER]
Administrations should be avoided unless strictly necessary. He regards the provision in this Bill—the Investigatory Powers Bill—as at the very least constitutionally discourteous to Wales. In speaking to this amendment, I invite the Government to take the necessary steps in relation to consultation under Clause 205 to address the concern raised by the First Minister on which I have just sought to reflect.

Lord Murphy of Torfaen (Lab): My Lords, I add my voice to what my noble friend just said. Initially, in the list of government amendments the Minister seemed to be saying that it was no longer a requirement for the First Minister and Deputy First Minister in Northern Ireland to be consulted on the appointments of the IPC and the judicial commissioners. That is a retrograde step and I hope that the Government will rethink it. I will explain why in relation to my noble friend's amendment with regard to the First Minister of Wales.

When the Joint Committee considered this part of the Bill, it added its own recommendations that when the Prime Minister looked at the appointment of the IPC and the judicial commissioners, he or she should consult the First Minister of Scotland and the First and Deputy First Ministers in Northern Ireland. Both jurisdictions of course are different from England, particularly in Scotland, and it seemed the right thing to do. There was unanimity among members of the Joint Committee on making that recommendation.

Since the Joint Committee met, as my noble friend said, a new Bill has been introduced to this House, the Wales Bill, that will considerably alter the constitutional relationship between Wales and the United Kingdom. For example, it will confer reserve powers on the Welsh Assembly, much of criminal law will be devolved, Wales will be a distinct jurisdiction and there is the possibility in years to come that even justice might be devolved to the Welsh Assembly. It is not at the moment, but certainly the Assembly is arguing that there may be a case in the future for that to happen.

This afternoon, I met with the First Minister for Wales on this very issue. As my noble friend said, the Welsh Government and the Welsh Assembly are very concerned that Wales should be part of the consultation process. No one is arguing that the First Minister of Wales, the First and Deputy First Ministers in Northern Ireland or the First Minister of Scotland should make the appointments: it is a question of courteous consultation. I speak as a former Welsh and Northern Ireland Secretary in saying that devolution has matured over the last dozen years. It is important to respect that maturity and respect the constitutional relationships. On a simple matter of consultation, the Government should rethink the position of the First and Deputy First Ministers of Northern Ireland in this respect and should add the Welsh First Minister as a consultee in this important process. I support the amendment spoken to by my noble friend.

6.45 pm

Earl Howe: My Lords, the Investigatory Powers Commissioner will be taking on the responsibilities of the three existing statutory commissioners in this area. I contend that Amendment 132A is unnecessary and indeed inappropriate because it would create an inconsistency across the Bill.

The appointment of commissioners to one of those existing bodies—the Office of Surveillance Commissioners—is currently a matter for the Prime Minister, following consultation with Scottish Ministers. Scottish Ministers also have the power to appoint surveillance commissioners for the purpose of overseeing the exercise of powers under the Regulation of Investigatory Powers (Scotland) Act 2000, or RIPSA.

Under the Bill, the IPC will take on responsibility for overseeing the exercise of powers under RIPSA. As a consequence, the Bill will remove the power of Scottish Ministers to appoint surveillance commissioners. To be consistent with the current position, the Bill therefore requires that Scottish Ministers must be consulted by the Prime Minister prior to the appointment of the IPC or a judicial commissioner. Similarly, the Bill currently requires the Prime Minister to consult the First Minister and Deputy First Minister of Northern Ireland on the appointment of a commissioner. This again reflects the fact that Northern Irish Ministers currently have a role in the appointment of the Investigatory Powers Commissioner for Northern Ireland, which the Bill had originally proposed to subsume into the office of the IPC.

In the event, as I have just said, the Bill has not received legislative consent from the Northern Ireland Assembly. Consequently, the amendments that I have already spoken to in this group would remove the requirement for consultation with Northern Irish Ministers. The noble Lord, Lord Murphy, said that that was a retrograde step, but without legislative consent for the Bill from the Northern Ireland Assembly, the Government have no alternative. In contrast, Welsh Ministers currently have no statutory role in the appointment of the existing commissioners. As the Bill will not affect the competence of Welsh Ministers, I do not consider it necessary to introduce a new right of consultation. Indeed, doing so would create an inconsistency between the treatment of Welsh Ministers and their counterparts in Northern Ireland.

The appointment of judicial commissioners is an important matter, which is why the Government have strengthened the Bill by requiring that appointments must be on the recommendation of the Lord Chief Justice of England and Wales, and that of his devolved counterparts. So Welsh interests will undoubtedly be represented by the Lord Chief Justice of England and Wales. Indeed, I note that the current Lord Chief Justice was in fact born in Wales. I do not consider that further changes to this process are necessary, particularly when they would serve to create inconsistencies within the Bill, as I have explained. On that basis, I hope that the noble Lord will agree not to press his amendment.

Lord Rosser: I thank the Minister for his response. The spirit of the amendment, frankly, is that in the light of the thrust of the Wales Bill the Government ought to be prepared to consider making the change sought in the amendment, which after all is about consultation. However, I note the response that has been received, which clearly indicates that the Government

are not prepared to go down that road. I am sure that the First Minister will read the Government's response carefully even though it will probably be without any enthusiasm.

Amendment 132 agreed.

Amendment 132A not moved.

Amendment 133

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

133: Clause 205, page 162, line 7, at end insert—

"(8A) Subsection (8) does not apply to the function of the Investigatory Powers Commissioner of making a recommendation under subsection (4)(e) or making an appointment under section (Members of the Panel)(1).

(8B) The delegation under subsection (8) to any extent of functions by the Investigatory Powers Commissioner does not prevent the exercise of the functions to that extent by that Commissioner.

(8C) Any function exercisable by a Judicial Commissioner or any description of Judicial Commissioners is exercisable by any of the Judicial Commissioners or (as the case may be) any of the Judicial Commissioners of that description.

(8D) Subsection (8C) does not apply to—

(a) any function conferred on the Investigatory Powers Commissioner by name (except so far as its exercise by any of the Judicial Commissioners or any description of Judicial Commissioners is permitted by a delegation under subsection (8)), or

(b) any function conferred on, or delegated under subsection (8) to, any other particular named Judicial Commissioner."

Lord Keen of Elie: My Lords, this group contains a variety of government amendments relating to oversight arrangements.

Amendments 133 and 149 clarify the delegation of functions by the Investigatory Powers Commissioner or judicial commissioners. They make clear that certain judicial functions of the IPC or judicial commissioners cannot of course be delegated to staff. The amendments also make clear that, where the Bill requires a judicial commissioner to undertake a task, any of the judicial commissioners can perform that duty. However, the IPC can still delegate a function or functions to an individual judicial commissioner in order to create a de facto deputy, should he wish to do so. Delegation of certain functions is sensible and allows for a flexible and efficient working environment. Of course, it would be inappropriate if the IPC could delegate to a judicial commissioner the ability to recommend individuals to be appointed as judicial commissioners and so this function is reserved to the IPC.

Amendment 149 puts beyond any doubt that the inspectors and expert advisers who work for the Investigatory Powers Commissioner or a judicial commissioner will be working with their full delegated authority. This responds to concerns raised by the noble Baroness, Lady Hamwee, in Committee. We have been clear that the Investigatory Powers Commissioner will lead a powerful new oversight body which will rely on the work of inspectors and technical experts alongside the commissioners themselves. Those working under the authority of the commissioner will have the same right to access and interrogate information that the commissioners themselves would have. This amendment puts that beyond doubt. It makes it clear that commissioners can, formally and in accordance with statute, delegate some of their functions to the staff working for them.

However, it is right that not all functions should be capable of delegation. There are some activities and decisions, such as decisions to approve the use of powers, that should rightly be undertaken by judges. Therefore, this amendment also prevents those types of activities and decisions from being delegated to members of staff. These amendments strike the right balance between allowing members of staff to claim the full authority of the commissioner while reserving key judicial functions to those who are appropriately qualified to undertake them. I hope that that brings some satisfaction to the noble Lord, Lord Paddick, who was concerned to anticipate whether these amendments would go as far as he hoped; I believe that they do.

Amendment 135 is intended to provide further clarity about when a commissioner does not need to consider the duties set out in Clause 207(6) and (7). I hope that the House will agree that while the Investigatory Powers Commissioner and the judicial commissioners who will be working for him or her will be performing vital functions, it is important that the actual performance of those functions does not damage the public interest. Subsections (6) and (7) set out a number of duties on the commissioner: for example, that they should not act in a way that in their own opinion is prejudicial to national security, nor should they act in a way that they consider would compromise the safety of those involved in a security operation.

When the Joint Committee on the Draft Investigatory Powers Bill considered the first incarnation of this clause, it expressed concern that the duty placed on the commissioners as set out in these subsections was too broad. The Government then carefully considered this clause and agreed that there should be occasions on which a commissioner was not caught by these additional duties. For example, we put it beyond doubt that a commissioner could refuse to approve the decision to issue a warrant without worrying that they were breaching their duties in relation to national security. This amendment goes further still along that same path. It increases the list of circumstances in which a judicial commissioner will not be subject to the duty contained in subsections (6) and (7). The amendment expands the list to include all circumstances in which a judicial commissioner could be said to be exercising a "judicial function" or taking a judicial decision. I hope that this provides the House with further reassurance that we do not intend subsections (6) and (7) to be unduly limiting upon the important work of the commissioners.

Clause 223 provides for membership of the Technical Advisory Board, a non-departmental public body that advises the Secretary of State on cost and technical grounds if a notice given under Parts 4 or 9 of the Bill is referred by a telecommunications operator for review. Membership of the board must include a balanced

[Lord Keen of Elie]
representation of those on whom obligations may be imposed by virtue of notices and of those persons entitled to apply for warrants or authorisations under the Bill. At present, subsection (2)(a) of this clause requires that the membership of the board must include persons on whom obligations could be imposed by virtue of a data retention notice or technical capability notice—namely, telecommunications operators. Government Amendment 177 makes a minor change to this provision to add persons on whom obligations could be imposed by a national security notice. The amendment will not change the scope of the persons who must be represented on the board; indeed, a national security notice may only be given to a telecommunications operator. However, this minor change will make the meaning of the provision more clear.

Amendment 136 is a minor amendment to Clause 207, clarifying the policy intention that the Investigatory Powers Commissioner should be able to review the decisions of other judicial commissioners should this be necessary.

Amendments 137, 263 and 274 move the definition of a "statutory function" to Clause 239 alongside other definitions.

I turn now to Amendment 146. In Committee, the noble Baroness, Lady Hamwee, sought further clarity as to precisely who is covered by the definition of a "member" of a public authority. Having reflected on the matter, I can see that perhaps this definition is not as clear as it could be. Therefore, the Government have introduced this amendment to be clear that everyone who works for a public authority or who has worked for a public authority in the past will have to provide the IPC with all necessary assistance. I hope that that gives the House reassurance that the IPC will be able to hold those public authorities properly and clearly to account.

Amendment 147 is intended to put beyond doubt the fact that the Investigatory Powers Commissioner will have access to advisers, be they legal, technical or of any other nature, that the commissioner feels is necessary to undertake their statutory functions. This amendment provides that the Secretary of State, after discussion with the IPC, must provide the commissioner with services as well as with staff, accommodation, equipment and facilities. I would like to be clear, though, that the commissioner will be entirely free to choose their own advisers and that the Secretary of State will merely supply the resources to pay for those advisers. This will allow the commissioner flexibility to "buy in" whatever advice they need at whatever time.

Amendments 154 to 156 are technical amendments providing additional certainty around the definition of the chief and other surveillance commissioners who are being abolished by the Bill and replaced by the Investigatory Powers Commissioner.

Clause 221 already makes a number of amendments to Sections 65, 67 and 68 of RIPA in relation to the functions of the Investigatory Powers Tribunal. Amendments 163 to 175 are further technical amendments simply updating the relevant provisions of RIPA to ensure that it is clear that the Investigatory Powers Tribunal has the jurisdiction to investigate any claims or complaints relating to the provisions of the Investigatory Powers Bill. I beg to move.

Baroness Hamwee: My Lords, we welcome the amendments in this group. The provisions on delegation are indeed extremely helpful, as we were concerned about the chain of command and chain of responsibilities. I am glad to see the little amendment about being a "member" of a local authority—or HMRC, which I think was the other example I used. I had thought I was maybe going a bit too far in raising that point, but I am glad that I did. I am also glad to see the insertion of the reference to services for the IPC, which we were also concerned about. Having said that, we are happy with these amendments.

Amendment 133 agreed.

Clause 207: Main oversight functions

Amendment 134

Moved by ***Earl Howe***

134: Clause 207, page 164, line 23, at end insert "or the Investigatory Powers Commissioner for Northern Ireland."

Amendment 134 agreed.

7 pm

Amendment 134A

Moved by ***Baroness Hamwee***

134A: Clause 207, page 164, line 26, at end insert—

"( ) The Investigatory Powers Commissioner may publish material expressing views as to or recording legal interpretations of the provisions of this Act."

Baroness Hamwee: My Lords, my noble friend Lord Paddick and I also have Amendments 178A, 178B and 178C in this group.

We mentioned in Committee how inextricably intertwined are technical and legal matters in this area. I doubt that either Minister would disagree with that, having lived with this Bill as they have. Whether and how the Act will apply will be a matter of legal interpretation in the context of the technology that we have at the time. Our Amendment 134A would give the Investigatory Powers Commissioner power to publish material regarding legal interpretations. It is clear that he would keep the interpretations under review, so this amendment is simply a matter of having the power to publish them.

We welcome government Amendment 178 and its consequential amendments providing for a Technology Advisory Panel. We have three minor amendments seeking either clarification or adjustment. Subsection (1)(a) of the new clause provides for the panel to give advice on,

"the impact of changing technology on the exercise of investigatory powers".

We would insert there a reference to the safeguards on the exercise of powers. That may be implicit, because the exercise of powers is to be subject to safeguards,

but we think it should be explicit. After all, safeguards have been very much a feature of debate on the Bill in both Houses, and the Bill has changed quite a lot in spelling out what safeguards there are.

Similarly, Amendment 178B would insert advice on the interpretation of the law in the light of technological advances and necessary amendments to legislation. It is, if you like, a first cousin to Amendment 134A.

On Amendment 178C, given that the Investigatory Powers Commissioner and Ministers will be required to consider the privacy implications when exercising powers relating to new technology, it would be helpful for the Technology Advisory Panel to be required to have regard to those same matters—that is, those matters set out in the privacy clause, Clause 2. That would be not only helpful but appropriate. After all, as an advisory panel, it must have regard to how those exercising the powers would be constrained in exercising them. I beg to move.

Lord Rosser: I appreciate that I may be speaking prematurely since the Government have not moved their amendment on the Technology Advisory Panel. On the basis that they are not about to stand up and withdraw it, I thank the Government for the amendment establishing a Technology Advisory Panel, which reflects the recommendation by David Anderson QC in his report on the bulk powers provisions in the Bill, a report that we had secured during the passage of the Bill in the Commons and a recommendation on which we had an amendment in Committee in this House.

Lord Keen of Elie: I am obliged to the noble Lord, Lord Rosser, and will resist the temptation that he laid in my path. As he observed, the government amendments have been tabled to give effect to the recommendation of David Anderson's bulk powers review.

The review demonstrated that the bulk powers are crucial. Mr Anderson's report concludes that the powers,

"have a clear operational purpose",

and,

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

and that, where alternatives exist to their use,

"they were likely to produce less comprehensive intelligence and were often more dangerous (for example to agents and their handlers), more resource-intensive, more intrusive or – crucially – slower".

The review also concludes that bulk powers are vital across the full range of security and intelligence agency activity, including counterterrorism, cyberdefence, combating child sexual exploitation and organised crime, and supporting 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.

Mr Anderson's report included a single recommendation, which was:

"The Bill should be amended to provide for a Technology Advisory Panel, appointed by and reporting to the IPC"—

that is, the Investigatory Powers Commissioner—

"to advise the IPC and the Secretary of State 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".

Following careful consideration of this recommendation, we 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 those powers' utility and impact. These amendments therefore give effect to Mr Anderson's recommendation in full.

The amendments provide that a Technology Advisory Panel must be established by the Investigatory Powers Commissioner and, in line with Mr Anderson's recommendation, members of the panel would be appointed by, and clearly accountable to, the commissioner. They also provide that the role of the panel is to advise the Investigatory Powers Commissioner, the Secretary of State and Scottish Ministers on precisely those matters set out in David Anderson's recommendation —namely, the impact of changing technology on the exercise of investigatory powers, and the availability and development of techniques to use such powers while minimising interference with privacy. The Investigatory Powers Commissioner would have the power to direct the panel to provide advice on any issue relevant to these matters.

While David Anderson's review was in relation specifically to the bulk powers in the Bill, we agree with his view that there is no reason to restrict the scope of the Technology Advisory Panel just to those powers. Indeed, the panel giving advice in relation to the targeted powers could be just as valuable. As such, the amendments make clear that the panel's role would extend to providing advice on all investigatory powers whose exercise is subject to review by the commissioner, which of course includes all the investigatory powers under the Bill.

To ensure that the panel would be able to undertake its role effectively, the amendments also make clear that its members would have the same right to access information as judicial commissioners. This means that any relevant person, such as any member of a public authority, must disclose or provide to a member of the panel all such documents and information as that member may require in order to carry out their functions.

We also agree with David Anderson that it should be mandatory for the Technology Advisory Panel to produce an annual report on the exercise of its functions. The amendments would therefore require that the panel make such a report to the Investigatory Powers Commissioner as soon as reasonably practicable at the end of each calendar year. At the same time as providing the report to the commissioner, a copy would also need to be sent to the Secretary of State and to Scottish Ministers where the report related to matters for which Scottish Ministers are responsible. To ensure sufficient transparency about the panel's work, the amendments would require the Investigatory Powers Commissioner to include information about the work of the panel in their annual report.

I turn to the opposition amendments that have been tabled to the new clause establishing the Technology Advisory Panel. The first of these amendments would expand the role of the panel explicitly to provide advice to the commissioner on safeguards. While I appreciate what is intended by the amendment, I do not think it is necessary. The panel's role is to advise on the impact of changing technology on the exercise

[Lord Keen of Elie]
of investigatory powers. Therefore, if technology changes in a way which means that existing safeguards are no longer appropriate or if new safeguards are needed to protect privacy, the panel can provide such advice to the commissioner and the Secretary of State. The panel must provide advice when asked to do so, but may also provide advice as it considers appropriate. While I appreciate the intent behind the amendment, I believe that the clause as drafted already provides for such advice to be given by the panel. Therefore, I do not believe that the noble Baroness's amendment is necessary.

The second amendment to which she referred would expand the role of the panel to provide advice on an additional matter, namely,

"the impact of changing technology on the interpretation of the law and any amendments to legislation required to ensure the application of the provisions of this Act to changed technology".

This amendment is neither necessary nor desirable. The role of the panel would, rightly, be squarely to provide advice on the impact of technology on the exercise of investigatory powers. This clearly defined role will ensure that members of the panel will be exactly what we need them to be: technical experts. David Anderson's recommendation was designed to fill a gap. He was conscious that the Investigatory Powers Commissioner and judicial commissioners will be senior judicial figures. So, while they will be experts in the law and the interpretation of the law, they will not necessarily be experts in technology. What he felt was needed, and what the Government agree is needed, is technical experts to provide technical advice. In seeking to expand the panel's remit to provide legal advice as well, I strongly fear we would end up with lawyers rather than technical experts. Indeed, David Anderson specifically warned that,

"the technological expertise of the TAP should not be unduly diluted".

I pause to wonder whether one could ever dilute something with a lawyer, but I continue. That is exactly what this amendment would do, and that is why we firmly believe that it should be resisted.

This brings me to the amendment, which would permit the commissioner to make a report on his or her views about the legal operation of the Bill but would not place a duty on the commissioner to do so. I appreciate the sentiment behind the amendment, but I believe it is unnecessary. Clause 212 already gives the Investigatory Powers Commissioner a very wide remit to report on any matter relating to the functions of the judicial commissioners. That will, of course, permit the IPC, as he or she thinks fit, to report on the legal interpretation of the Bill. However, I hope that the IPC will not feel it necessary to do so, or at least to do so often. That is because the Bill serves to put beyond doubt the powers available to the state and the safeguards that apply to them. In the words of David Anderson, the Bill,

"restores the rule of law and sets an international benchmark for candour",

but if the commissioner felt the need to report on the legal operation of the Bill, he could already do so.

Finally, Amendment 178C would require the panel to have regard to the same matters which a public authority must have regard to, as set out in Clause 2, which is referred to as the privacy clause. I appreciate the spirit of this amendment, but I believe it is unnecessary. Clause 2 is already clear that whenever exercising certain powers, such as to authorise warrants, all public authorities must have regard to the issues outlined in the privacy clause, but of course the Technology Advisory Panel will not be exercising such powers, so the amendment does not, in that context, make sense. If the intention is that when the panel gives advice it should bear in mind the various privacy considerations contained in Clause 2, then the amendment is also unnecessary, since the requirement, contained in government Amendment 178, that the panel advise on,

"the impact of changing technology on the exercise of investigatory powers",

already includes advising on the ability to exercise those powers within the statutory framework and subject to all the safeguards contained in the privacy clause. Of course, the whole point of the Technology Advisory Panel, as specified in the government amendment, is to advise on techniques to "minimise interference with privacy". So I really think that this amendment is unnecessary.

I invite the noble Baroness to withdraw the amendment.

Baroness Hamwee: My Lords, with the leave of the House, I recognise that this is Report stage. I was aware, of course, that the panel will not be a public authority, and that is why I framed Amendment 178C as I did: the Technology Advisory Panel would need to,

"have regard to the matters",

in Clause 2, rather than be bound by them. I suggested the amendment because subsection (1)(b) of government Amendment 178 talks about, "minimising interference with privacy", and that seemed to me not nearly as strong as the privacy clause, Clause 2, which we took to bits but welcomed earlier in the passage of the Bill. I beg leave to withdraw Amendment 134A.

Amendment 134A withdrawn.

Amendments 135 to 137
Moved by ***Earl Howe***

135: Clause 207, page 164, line 40, leave out from "to" to end of line 2 on page 165 and insert "any of the following functions of a Judicial Commissioner—

(a) deciding—

(i) whether to serve, vary or cancel a monetary penalty notice under section 7 or paragraph 16 of Schedule 1, a notice of intent under paragraph 4 of that Schedule or an information notice under Part 2 of that Schedule, or

(ii) the contents of any such notice,

(b) deciding whether to approve the issue, modification or renewal of a warrant,

(c) deciding whether to direct the destruction of material or how otherwise to deal with the situation where—

(i) a warrant issued, or modification made, for what was considered to be an urgent need is not approved, or

(ii) an item subject to legal privilege is retained, following its examination, for purposes other than the destruction of the item,

(d) deciding whether to—

(i) approve the grant, modification or renewal of an authorisation, or

(ii) quash or cancel an authorisation or renewal,

(e) deciding whether to approve—

(i) the giving or varying of a retention notice under Part 4 or a notice under section 228 or 229, or

(ii) the giving of a notice under section 86(10)(b) or 233(9)(b),

(f) participating in a review under section 86 or 233,

(g) deciding whether to approve an authorisation under section 200(3)(b),

(h) deciding whether to give approval under section (Additional safeguards for items subject to legal privilege: examination)(4),

(i) deciding whether to approve the giving or varying of a direction under section 203(3),

(j) making a decision under section 209(1),

(k) deciding whether to order the destruction of records under section 103 of the Police Act 1997, section 37 of the Regulation of Investigatory Powers Act 2000 or section 15 of the Regulation of Investigatory Powers (Scotland) Act 2000,

(l) deciding whether to make an order under section 103(6) of the Police Act 1997 (order enabling the taking of action to retrieve anything left on property in pursuance of an authorisation),

(m) deciding—

(i) an appeal against, or a review of, a decision by another Judicial Commissioner, and

(ii) any action to take as a result."

136: Clause 207, page 165, line 7, after "tribunal" insert "(but does not include a Judicial Commissioner)"

137: Clause 207, page 165, leave out lines 14 and 15

Amendments 135 to 137 agreed.

7.15 pm

Amendment 137A

Moved by ***Lord Paddick***

137A: After Clause 208, insert the following new Clause—

"Notification by the Investigatory Powers Commissioner

(1) The Investigatory Powers Commissioner shall notify the subject of a warrant ("P") which is—

(a) a targeted interception warrant issued under Part 2,

(b) a targeted examination warrant issued under Part 2,

(c) a targeted equipment interference warrant issued under Part 5, or

(d) a targeted examination warrant issued under Part 5,

that P has been so subject, in accordance with this section.

(2) Notification shall not be given if—

(a) P is suspected of being involved in terrorism-related or other criminal activity,

(b) it might prejudice any continuing or anticipated investigation concerning P or any other person, or

(c) the Investigatory Powers Commissioner determines that it is in the interests of national security or the public interest in preventing or detecting serious crime that it is not given;

and in any event notification may be given only if the investigation to which the warrant relates has concluded and there is no suspicion that P is engaged in any unlawful activity.

(3) The notification—

(a) shall inform P of the provisions for the authorisation or warrant, but

(b) shall include no details of the methods used or any other matter which might hinder any future investigation into P or any other person, and

(c) shall be given in writing within 90 days after—

(i) the conclusion of the investigation (subject to subsection (2));

(ii) cancellation of the authorisation or warrant;

(iii) a determination that it may be given having regard to the matters referred to in subsection (2)(c)."

Lord Paddick: My Lords, I shall also speak to Amendments 137B to 137F in my name and that of my noble friend Lady Hamwee. We return to the issue of informing innocent people when they have been subjected to targeted surveillance by law enforcement or the security and intelligence agencies. The European Court of Human Rights said in 2007:

"As soon as notification of targeted surveillance can be made without jeopardising the purpose of the surveillance after its termination, information should be provided to the persons concerned".

When we raised the issue in Committee, the Minister raised a series of quite reasonable objections, which we have tried to address in this new amendment.

In Committee, the Minister said:

"It would not be practical, for example, for the commissioner to make everyone whose data were subject to a data retention notice aware of that fact".

Of course, we agree. We therefore restrict the notification requirement to targeted interception warrants, where a person's communications are intercepted, and targeted examination warrants, where communications are acquired in bulk and a UK citizen's communications are among those acquired in bulk and the security and intelligence agencies wish to examine those communications. The provisions would also apply where a targeted equipment interference warrant is used. This would ensure that only when the specific individual's communications are intercepted or equipment interfered with would notification have to be considered.

In Committee, the Minister said that,

"we would need to notify suspected criminals and terrorists that they have been under investigation just because a specific ongoing investigation had stalled or, indeed, had concluded with evidence of wrongdoing but with insufficient evidence to bring a prosecution".

We have therefore written into the amendment that notification shall not be given if the person is suspected of being involved in terrorism-related or other criminal activity.

In Committee, the Minister said that,

"suspected criminals and terrorists will often appear on the radar of the police and the security services at different times in the context of different investigations. It would clearly not be appropriate to inform them that investigatory powers had been used against them in a particular case".

Of course, we agree. The amendment now states that notification shall not be given if it might prejudice any continuing or anticipated investigation concerning the subject of the surveillance or any other person.

The Minister said in Committee that our amendment,

"would put unreasonable burdens on all public authorities covered by this Bill to require them constantly to need to make a case to the commissioner as to whether it would hamper national security or serious crime investigations if subjects were told that investigatory powers had been used against them".

We do not agree. We hope that the number of occasions when completely innocent people are targeted will be small and the amendment now includes the provision that notice should not be given if the Investigatory

[Lord Paddick]

Powers Commissioner determines that it is in the interests of national security, or the public interest in preventing or detecting serious crime, that it is not given. In most cases, this will be obvious and require no further justification from the public authorities.

The Minister in Committee further objected that notification would,

"not just run contrary to the long-standing policy of successive Governments of neither confirming nor denying any specific activity by the security and intelligence agencies, but would essentially require the techniques the agencies use in specific cases to be made public".—[*Official Report*, 5/9/16; col. 858.]

It has not been the long-standing policy of successive Governments to deny that the security services kept a record of the details of every phone call made in the UK until recently and it is not a reasonable argument simply to say, "That's what we've always done". However, we have taken on board the Minister's other criticisms and included in the amendment that notification,

"shall include no details of the methods used or any other matter which might hinder any future investigation".

Having, I believe, dealt with all the objections the Minister raised in Committee, I hope the Minister responding will reconsider whether post-event notification could, in the circumstances I have described, be allowed, and that the Government will accept the amendment.

Amendments 137B to 137E are related to Amendment 137A, to the extent that they seek to tighten up on error reporting. Amendment 137B deletes the phrase "the Commissioner considers that" from Clause 209(1), so that the commissioner must report a serious error whether or not they consider it so. Whether the error is serious should be an objective test, not a subjective consideration by the commissioner. Amendment 137C deletes the condition that,

"it is in the public interest for the person to be informed".

Surely, if the error is serious it should be reported—or, to put it another way, surely it must always be in the public interest if the error is serious.

Amendment 137D would delete the provision stating that notification should be given only if the error has caused "significant" prejudice or harm to the person concerned, and adds wording so that the clause would state that they should be notified if the error,

"has caused or may cause prejudice or harm to the person concerned".

The argument here has echoes of an amendment that the Government rejected earlier on Report—that asking a commissioner to make a decision on whether the prejudice or harm is significant muddies the waters.

Amendment 137E would delete Clause 209(9)(b), which defines a relevant error. There appears to us to be no need to describe in regulations the kind of error to which these provisions relate. We believe that the definition in Clause 209(9)(a) is sufficient.

Amendment 137F relates to the final paragraph of Clause 209, which states that the Investigatory Powers Commissioner should,

"keep under review the definition of 'relevant error'".

We have added a requirement that any recommendations should be included in reports made under Clause 212, which covers annual and other reports required from the Investigatory Powers Commissioner.

I beg to move Amendment 137A.

Lord Rooker (Lab): Can the noble Lord explain proposed new subsection 3(b)? Could the subject of a warrant challenge that subsection using other legislation —on the fact that there are "no details", for example? Is it open to challenge by that person, using any of the other laws on the statute book?

Lord Paddick: I am grateful to the noble Lord, Lord Rooker. I have absolutely no idea whether they could or could not.

Lord Rooker: I submit that they could. The lawyers will find a way to fill the courts with challenges from the crooks and spivs we are trying to protect the British public from. But I will wait for the Minister's technical answer, rather than the one I gave.

Lord Beith (LD): To pose a legal challenge which is not based on any instance or evidence of the basis on which such a challenge could be made—I certainly cannot think of a basis on which someone could require the production of knowledge of the means used for interception, based on existing legislation.

Lord Keen of Elie: Amendment 137A seeks to insert a provision into the Bill that would require the Investigatory Powers Commissioner to notify the subject of a targeted interception or equipment interference warrant in certain circumstances. The amendment tries to tightly draw those circumstances, and I am grateful to the noble Lord, Lord Paddick, for recognising in drafting it that a significant number of factors should rightly preclude such notification from taking place. Nevertheless, I still think the amendment could threaten to undermine the capabilities that law enforcement and the security and intelligence agencies rely on to pursue the most serious wrongdoers. The amendment recognises that notifying a person that they have been the subject of surveillance may have an immediate impact on an investigation—or it may have damaging effects on the public interest or national security more broadly.

That being the case, it is extremely difficult to envisage a scenario where notification could responsibly be allowed to occur. Notifying a person that their communications have been intercepted, irrespective of whether that notification included any further details about the methods used, would necessarily risk hindering a future investigation. For example, there will be circumstances where a terrorist or serious criminal who was previously the subject of a warrant will no longer be an active suspect in an investigation. Advising that individual that they have been the subject of interception may help them to evade detection if they were minded to return to or resume criminal activity.

On one reading, then, the amendment would not provide for disclosure other than where a person has been the subject of deliberate wrongdoing or a serious error. If that is the intention behind the amendment—and

I fear it is not—it is redundant, because there is already provision in the Bill to notify people who have been the subject of serious errors.

The alternative, of course, is that the amendment should provide for individuals to be notified in a wider range of circumstances. I find that prospect troubling. As I say, it is never possible to know whether an individual will return to criminality in the future. Even if they do not, revealing the fact that they were the subject of a warrant may provide some small insight into the techniques and capabilities used by law enforcement and the security and intelligence agencies. That, in turn, would provide an avenue for the most determined and capable actors to piece together a picture of the agencies and how they work, handing an advantage to those we are working hard to pursue—let alone the prospect that they might seek disclosure by way of a review of the conduct of the authorities in order to determine exactly what methodology had been employed. For all these reasons, I hope the noble Lord will be prepared to withdraw this amendment.

I turn to Amendments 137B to 137F, which, as the noble Lord indicated, are in a sense consequential on his primary amendment, and which deal with error reporting as provided for in Clause 209. Clause 209 is of the utmost importance. It provides that if a person has been the subject of a serious error, and it would not be contrary to the public interest, the commissioner must inform that individual of the error and their right to apply to the Investigatory Powers Tribunal. The judicial commissioner must provide such details as considered necessary for the person to bring a claim.

Clause 209 seeks to maintain a very delicate balance between two important but competing interests. On one hand, there is the right of the individual who has suffered harm as a result of the error to seek some sort of redress. On the other, there is the long-standing security and intelligence agency principle of neither confirming nor denying that an individual has been the subject of investigatory powers. This principle is vital to the security and intelligence agencies, as it prevents those who would wish to do us harm launching spurious complaints and claims in order further to understand the agencies' most sensitive capabilities. I hope the noble Lord will agree that, given the fine balance between these two principles, it is right that the decision be taken on a case-by-case basis by the commissioner, a senior member of the judiciary who will have full access to the facts on which to base their decision.

Amendments 137B and 137C would remove the commissioner's discretion to make that judgment. He would no longer be able to consider how the wider public interest would be best served, and would instead be compelled to tell an individual if they had been the subject of a serious error, regardless of the consequences and the harm that might be caused. I do not think that is right. It is, for example, conceivable that an investigation into a dangerous criminal gang may result in action mistakenly being taken against an innocent associate of one of the gang members. That would be unfortunate, and the commissioner would undoubtedly want to ensure that remedial action was taken at an appropriate time. But before doing so, it is right that the commissioner should consider the public interest in informing the person, balanced against the risk of undermining an ongoing investigation, and that is what the clause as drafted provides for.

Amendment 137D seeks to require notification where the error has not caused serious harm or prejudice but may do so in the future. I do not think it necessary or appropriate, given the difficult balance that has to be struck here, for persons to be informed when there is such an error. This would put the commissioner in the difficult position of speculating on potential future consequences. Additionally, the commissioner does not get only one opportunity to assess the harm that has occurred. We would of course expect the commissioner to keep under review the consequences of an error and, if it resulted in harm at some point in the future, it would be open to the commissioner to inform the individual at that point. This seems a more sensible approach than putting the commissioner in the position of second-guessing what potential future consequences may one day occur or not occur.

7.30 pm

Amendments 137E and 137F seek to amend the definition of "relevant error" and to place an obligation on the commissioner to report annually on any recommendations that he or she makes about that definition. To be clear, in respect of the first of these amendments, the provision in Clause 209(9)(b) is intended to ensure that members of the public can be absolutely clear about what constitutes a relevant error. It does so by requiring that such errors are described in the statutory codes of practice to be made under the Bill, which will be subject to a full, public consultation and debated and agreed by Parliament. In respect of Amendment 137F, it is of course the case that the commissioner will report publicly on the definition of relevant errors as he or she sees fit. I do not see that there is any benefit in making this a statutory requirement. I hope that has provided some important assurance on these important provisions and I invite the noble Lord to withdraw this amendment.

Lord Paddick: I am very grateful to the noble and learned Lord for his explanations, which I will take time and care to read particularly in relation to Amendments 137B to 137F, the latter amendments. Regarding Amendment 137A, I am still concerned at what might happen should somebody bring an action before the European Court of Human Rights, bearing in mind what it has said about the importance of informing people who have been the subject of targeted surveillance. However, at this stage I am prepared to leave that to the courts rather than to the House this evening and on that basis, I beg leave to withdraw the amendment.

Amendment 137A withdrawn.

Clause 209: Error reporting

Amendments 137B to 137F not moved.

Clause 210: Additional functions under this Part

Amendment 138

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

138: Clause 210, page 167, line 21, at end insert—

"(3A) In addition to consulting the Secretary of State under subsection (3), the Judicial Commissioner must also consult the Scottish Ministers if it appears to the Commissioner that providing the advice or information might be prejudicial to—

(a) the prevention or detection of serious crime by a Scottish public authority, or

(b) the continued discharge of any devolved functions of a Scottish public authority whose activities include activities that are subject to review by the Investigatory Powers Commissioner.

(3B) In subsection (3A)—

"devolved function" means a function that does not relate to reserved matters (within the meaning of the Scotland Act 1998), and

"Scottish public authority" has the same meaning as in the Scotland Act 1998."

Lord Keen of Elie: My Lords, I shall speak to Amendment 138 and the other amendments in this group, which would ensure that the Scottish Government are provided with appropriate means to engage with and support the work of judicial commissioners relating to devolved powers in Scotland.

Clause 210 allows a judicial commissioner to provide advice and information to any person. It requires the judicial commissioner to consult the Secretary of State first where providing advice and information might be contrary to the public interest. It is clearly appropriate that Scottish Ministers are similarly consulted if the provision of advice and information by the judicial commissioner may be prejudicial specifically to activities that fall under those Ministers' responsibility. Accordingly, Amendments 138 and 139 would require the judicial commissioner to consult additionally the Scottish Ministers when providing information and advice that may be prejudicial to the prevention or detection of serious crime in Scotland, or the continued discharge of any devolved functions of a Scottish public authority.

Clause 216 sets out the funding arrangements for the Investigatory Powers Commissioner and the judicial commissioners. Amendment 148 would grant the Scottish Ministers the power to make such payments as they consider appropriate to judicial commissioners for work relating to the exercise of devolved functions by public authorities in Scotland. This simply maintains the current position, as the Scottish Government currently have the power to pay surveillance commissioners who carry out their functions wholly or mainly in Scotland such allowances as the Scottish Ministers consider appropriate. The surveillance commissioners will be abolished by the Bill, and their functions taken on by the Investigatory Powers Commissioner and the judicial commissioners. Accordingly, I beg to move Amendment 138.

Baroness Hamwee: My Lords, the noble and learned Lord may have answered one of my questions about Amendment 148. It was about whether this sort of arrangement is in place elsewhere because, on reading it, it seemed that there might be scope for some squabbles as to who should be responsible for paying how much. However, I think he said that this is already working satisfactorily under the current arrangements. My other question is about the term "allowances", which in normal language means less than paying salaries. It does not address payment for facilities, infrastructure and so on. It seemed a curious term to use but that is probably because I do not understand quite how the system will work. Allowances, to most of us, sounds like more like an ex gratia arrangement.

Lord Keen of Elie: Might I be permitted to respond briefly to the noble Baroness on these points? First, these amendments have been agreed with officials in the Scottish Government and reflect an existing arrangement whereby the allowances of surveillance commissioners are determined by the Scottish Ministers in that context. "Allowances" is used there, as I understand it, because we are not relying upon them for payment of certain standing charges incurred in setting up the commissioners, for example.

Amendment 138 agreed.

Amendment 139

Moved by ***Earl Howe***

139: Clause 210, page 167, line 22, leave out "Subsection (3) does" and insert "Subsections (3) and (3A) do"

Amendment 139 agreed.

Clause 211: Functions under other Parts and other enactments

Amendment 140

Moved by ***Earl Howe***

140: Clause 211, page 168, line 35, after second "Commissioner" insert "or the Investigatory Powers Commissioner for Northern Ireland"

Amendment 140 agreed.

Clause 212: Annual and other reports

Amendment 141

Moved by ***Earl Howe***

141: Clause 212, page 169, line 33, at end insert—

"( ) information about the operation of the safeguards conferred by this Act in relation to items subject to legal privilege, confidential journalistic material and sources of journalistic information,"

Amendment 141 agreed.

Amendment 142

Moved by ***Lord Janvrin***

142: Clause 212, page 169, line 33, at end insert—

"( ) information about the following kinds of warrants issued, considered or approved during the year—

(i) targeted interception warrants or targeted examination warrants of the kind referred to in section 17(2),

(ii) targeted equipment interference warrants relating to matters within paragraph (b), (c), (e), (f), (g) or (h) of section 96(1), and

(iii) targeted examination warrants under Part 5 relating to matters within any of paragraphs (b) to (e) of section 96(2),"

Lord Janvrin (CB): My Lords, I shall speak to Amendments 142 and 145 to Clause 212. These are in my name and I speak as a member of the Intelligence and Security Committee. This clause deals with the annual reports to be made by the Investigatory Powers Commissioner to the Prime Minister on the functions of the judicial commissioners.

The subject of Amendment 142 concerns those targeted warrants which relate to groups of people engaged in a common activity or sharing a purpose, commonly referred to as thematic warrants. The Intelligence and Security Committee has considered that thematic warrants have the theoretical potential to intrude upon the privacy of a great many people and there have been concerns as to the widespread intrusion they might theoretically be used to authorise. In the committee's report on the draft Bill, we recommended that such warrants should be subject to greater constraints. In seeking to address this in the other place, the chairman of the ISC explored, first, whether the duration of these warrants could be limited or, secondly, whether the grounds on which they could be authorised could be drawn more narrowly.

In response, the Government presented the committee with convincing classified evidence regarding the use of these forms of warrants across a number of real operations, involving serious threats to our security. This evidence was reassuring in demonstrating that these operations, enabled by the so-called thematic warrants, intruded only on small and defined groups of people, not on the hundreds or even thousands of people that some perhaps feared might be the case. Nevertheless, the ISC believes that some form of additional constraint is justified and has therefore been exploring options with the Government over recent months. The conclusion is that we might best achieve this aim by strengthening the scrutiny given to these warrants. This is the aim of Amendment 142 to Clause 212.

The amendment places a specific requirement on the commissioner to report on thematic warrants, thereby exposing them to increased scrutiny by the commissioner, audit by the commissioner's staff and, through the commissioner's published reports, debate and scrutiny by Parliament, the media and public. I am most grateful for the Government's co-operation in finding a solution to this issue relating to thematic warrants, and I hope the Minister will be able to support this amendment.

If that is the case, it would be helpful if it were possible for the Minister to outline in his comments the degree of disclosure about thematic warrants that he might expect to see in those reports. The ISC's assumption is that it would include the number of thematic warrants applied for and issued, but it hopes that it might also include an indication of the number of people covered by the warrants. It would improve transparency and public reassurance if it can be demonstrated in this manner that these warrants are not as broad as some have feared.

Amendment 145 to Clause 212 relates to the referral of cases to the Investigatory Powers Commissioner. This is an issue I raised in Committee. In its report on the draft Bill, the Intelligence and Security Committee recommended that it should be able to refer matters to the IP Commissioner so that the commissioner can undertake detailed investigations or audits about concerns raised by the ISC. This enables the oversight mechanisms to complement one another, with the ISC considering the strategic issues and overall policies and the commissioner focused on specific authorisations and warrants for individual operations. Noble Lords will note that the power of referral from the ISC to the IP Commissioner has already been introduced into the Bill at Clause 214, and we are grateful for the Government's assistance in its inclusion.

This further, very small, amendment now picks up the point I raised in Committee that any report the commissioner might make to the Prime Minister as a result of a referral from the ISC should also be shared, as appropriate, with the committee. This will strengthen the oversight community as a whole, and I hope the Government will feel able to support the amendment. I beg to move.

7.45 pm

Earl Howe: My Lords, as we have discussed in previous debates in this House and in the other place, the use of thematic warrants is crucial to our law enforcement and security and intelligence agencies, but we welcome these amendments, which will provide reassurance that these warrants will be subject to specific scrutiny by the Investigatory Powers Commissioner and enhance transparency about their use.

The noble Lord, Lord Janvrin, invited me to comment on the degree of disclosure I would expect to see in the commissioner's report. In my view—and I hope the noble Lord will understand this—it would not be appropriate for the Bill or indeed government to fetter the independence of the commissioner by specifying the detail of what he may choose to publish in relation to the use of thematic warrants. In due course the commissioner will wish to consider whether his duty to publish information about the use of these warrants is best satisfied by the publication of data such as the number of thematic warrants issued during a limited period or other information relating to the way in which thematic warrants are used in practice. These decisions will rightly rest with the Investigatory Powers Commissioner. However, I welcome the amendment which imposes a very clear duty on the commissioner to ensure that these warrants are subject to particularly robust scrutiny and that information is regularly put in the public domain about their use. Indeed, I would expect the commissioner to ensure that his report serves to illuminate any areas that cause him particular concern.

The process by which the Intelligence and Security Committee of Parliament can refer issues to the Investigatory Powers Commissioner was previously discussed in this House. It is right that the committee

[Earl Howe]
can bring issues that merit further investigation to the attention of the IPC, who may then decide whether to take further action. In addition, it is important that the right balance is struck between the independence of the IPC on the one hand and respecting the remit of the committee on the other hand. By requiring that the Prime Minister provides a copy of any IPC report that follows an investigation, inspection or audit carried out following a committee referral in cases where the report falls within the remit of the committee, this amendment finds that balance. Accordingly, I am happy to accept both these amendments.

Lord Janvrin: I thank the Minister for his helpful response. I take his point about the importance of the independence of the Investigatory Powers Commissioner.

Amendment 142 agreed.

Amendments 143 and 144

Moved by ***Earl Howe***

143: Clause 212, page 169, line 36, at end insert—

"( ) information about the work of the Technology Advisory Panel,"

144: Clause 212, page 170, line 25, leave out from "Ministers" to end of line 30 and insert "and the Scottish Ministers must lay the copy report and statement before the Scottish Parliament."

Amendments 143 and 144 agreed.

Amendment 145

Moved by ***Lord Janvrin***

145: Clause 212, page 170, line 33, at end insert—

"(11) Subsection (12) applies if the Prime Minister receives a report from the Investigatory Powers Commissioner under subsection (1) or (4) which relates to an investigation, inspection or audit carried out by the Commissioner following a decision to do so of which the Intelligence and Security Committee of Parliament was informed under section 214(2).

(12) The Prime Minister must send to the Intelligence and Security Committee of Parliament a copy of the report so far as it relates to—

(a) the investigation, inspection or audit concerned, and

(b) the functions of the Committee falling within section 2 of the Justice and Security Act 2013."

Amendment 145 agreed.

Clause 213: Investigation and information powers

Amendment 146

Moved by ***Earl Howe***

146: Clause 213, page 171, line 10, leave out "member of" and insert "person who holds, or has held, an office, rank or position with"

Amendment 146 agreed.

Clause 216: Funding, staff and facilities

Amendments 147 to 149

Moved by ***Earl Howe***

147: Clause 216, page 172, line 2, after "facilities" insert "and services"

148: Clause 216, page 172, line 4, at end insert—

"(3) The Scottish Ministers may pay to the Judicial Commissioners such allowances as the Scottish Ministers consider appropriate in respect of the exercise by the Commissioners of functions which relate to the exercise by Scottish public authorities of devolved functions.

(4) In subsection (3)—

"devolved function" means a function that does not relate to reserved matters (within the meaning of the Scotland Act 1998), and

"Scottish public authority" has the same meaning as in the Scotland Act 1998."

149: Clause 216, page 172, line 4, at end insert—

"(5) The Investigatory Powers Commissioner or any other Judicial Commissioner may, to such extent as the Commissioner concerned may decide, delegate the exercise of functions of that Commissioner to any member of staff of the Judicial Commissioners or any other person acting on behalf of the Commissioners.

(6) Subsection (5) does not apply to—

(a) the function of the Investigatory Powers Commissioner of making a recommendation under section 205(4)(e) or making an appointment under section (Members of the Panel)(1),

(b) any function which falls within section 207(8), or

(c) any function under section 55(3) or 125(3) of authorising a disclosure,

but, subject to this and the terms of the delegation, does include functions which have been delegated to a Judicial Commissioner by the Investigatory Powers Commissioner.

(7) The delegation under subsection (5) to any extent of functions by the Investigatory Powers Commissioner or any other Judicial Commissioner does not prevent the exercise of the functions to that extent by the Commissioner concerned."

Amendments 147 to 149 agreed.

Clause 218: Abolition of existing oversight bodies

Amendments 150 to 156

Moved by ***Earl Howe***

150: Clause 218, page 172, line 19, leave out paragraph (c)

151: Clause 218, page 172, line 29, leave out paragraph (c)

152: Clause 218, page 172, line 33, leave out paragraph (e)

153: Clause 218, page 172, line 37, at end insert—

"(2A) The Secretary of State may by regulations, with the consent of the Northern Ireland Assembly, provide for the abolition of the office of the Investigatory Powers Commissioner for Northern Ireland.

(2B) The power to make regulations under subsection (2A) (including that power as extended by section 242(1)(c)) may, in particular, be exercised by modifying any provision made by or under an enactment (including this Act).

(2C) Regulations made by virtue of subsection (2B) may, in particular, repeal—

(a) section 61 of the Regulation of Investigatory Powers Act 2000 (the Investigatory Powers Commissioner for Northern Ireland), and

(b) the words "or the Investigatory Powers Commissioner for Northern Ireland" in section 207(4)(f) of this Act."

154: Clause 218, page 172, line 38, at end insert—

""the Chief Surveillance Commissioner" means the Chief Commissioner appointed under section 91(1)(a) of the Police Act 1997,"

155: Clause 218, page 172, line 44, at end insert—

""the other Surveillance Commissioners" means—

the Commissioners appointed under section 91(1)(b) of the Police Act 1997, and

the Assistant Surveillance Commissioners appointed under section 63(1) of the Regulation of Investigatory Powers Act 2000,"

156: Clause 218, page 173, line 2, leave out "that Act" and insert "the Regulation of Investigatory Powers (Scotland) Act 2000"

Amendments 150 to 156 agreed.

Amendment 157 had been withdrawn from the Marshalled List.

Schedule 7: Codes of practice

Amendments 158 and 159

Moved by ***Earl Howe***

158: Schedule 7, page 231, line 13, at end insert—

"( ) the Technology Advisory Panel,"

159: Schedule 7, page 231, line 23, at end insert—

"(1A) A code about the exercise of functions conferred by virtue of Part 2, Part 5 or Chapter 1 or 3 of Part 6 must also contain provision about when circumstances are to be regarded as "exceptional and compelling circumstances" for the purposes of any provision of that Part or Chapter that restricts the exercise of functions in relation to items subject to legal privilege by reference to the existence of such circumstances.

(1B) The Investigatory Powers Commissioner must keep under review any provision included in a code by virtue of sub-paragraph (1A)."

Amendments 158 and 159 agreed.

Amendment 160

Moved by ***Baroness Hamwee***

160: Schedule 7, page 231, line 26, after "profession" insert "or in the case of personal records, is held by a health authority,"

Baroness Hamwee: My Lords, Amendment 160 is a probing amendment, and the debate should be short. Schedule 7 provides for codes of practice. Our debates on the previous day of Report on journalistic material, which is referred to in paragraph 2(2) of Schedule 7, made me have a look at the personal records which are also referred to in that paragraph as being "relevant confidential information". I was concerned about health records, because the information is described as that, "which is held in confidence by a member of a profession". I wanted to check that health records would fall within this. A health authority obviously does not cover all of this. There are health records which are held for entirely proper purposes but not by people that one might describe as being professionals—or certainly not members of a profession. So I decided, even at this late stage, to table this amendment in order that we could understand precisely what is meant by confidential information when it consists of personal records. I beg to move.

Earl Howe: My Lords, Amendment 160 would amend Schedule 7 to the Bill to require that every code of practice made under the Bill must provide guidance in relation to personal records held by a health authority. I hope I can convince the noble Baroness that this amendment is unnecessary. Schedule 7 already requires that the codes of practice must make provision relating to personal records held by a member of a profession, which would include health records held by a medical professional.

The Government do not believe that it is necessary to impose a similar requirement for personal records held by a health authority, as that is a discrete issue which will not be relevant to all of the codes of practice. For example, it will not be relevant to communications data. Of course, that does not mean that the codes cannot include such material should it be necessary to do so. There is already a reference to a health service body in the draft personal datasets code, for example.

The codes of practice have been published in draft to help facilitate parliamentary scrutiny of the Bill, but they will be subject to consultation and separate further scrutiny by Parliament after Royal Assent. That will provide noble Lords and others with the opportunity to consider the detail contained in the codes, including to argue the case for the inclusion of particular issues in particular codes of practice. On that basis, I invite the noble Baroness to withdraw the amendment.

Baroness Hamwee: My Lords, that is helpful and it has enabled me to make my point, which may of course be one that we will come back to, depending on how we view the codes when we come to deal with them. I thank the Minister and beg leave to withdraw the amendment.

Amendment 160 withdrawn.

Clause 220: Right of appeal from Tribunal

Amendments 161 and 162

Moved by ***Earl Howe***

161: Clause 220, page 173, leave out line 23

162: Clause 220, page 173, line 23, at end insert—

"( ) The Secretary of State may by regulations, with the consent of the Northern Ireland Assembly, amend subsection (3) so as to add the Court of Appeal in Northern Ireland to the list of courts mentioned there."

Amendments 161 and 162 agreed.

Clause 221: Functions of Tribunal in relation to this Act

Amendments 163 to 176

Moved by ***Earl Howe***

163: Clause 221, page 175, line 33, after "system;" insert—

"(bb) the issue, modification, renewal or service of a warrant under Part 2 or Chapter 1 of Part 6 of the Investigatory Powers Act 2016 (interception of communications);"

164: Clause 221, page 175, line 36, leave out "the Investigatory Powers Act 2016" and insert "that Act"

165: Clause 221, page 175, line 40, leave out "or varying"

166: Clause 221, page 175, line 41, after "or" insert "the issue, modification, renewal or service"

167: Clause 221, page 175, line 49, after "Act;" insert—

"(czd) conduct of a kind which may be required or permitted by a warrant under Part 5 or Chapter 3 of Part 6 of that Act (equipment interference);

(cze) the issue, modification, renewal or service of a warrant under Part 5 or Chapter 3 of Part 6 of that Act;

(czf) the issue, modification, renewal or service of a warrant under Part 7 of that Act (bulk personal dataset warrants);

(czg) the giving of an authorisation under section 200(3)(b) (authorisation for the retention, or retention and examination, of material following expiry of bulk personal dataset warrant);

(czh) the giving or varying of a direction under section 203 of that Act (directions where no bulk personal dataset warrant required);

(czi) conduct of a kind which may be required by a notice under section 228 or 229 of that Act (national security or technical capability notices);

(czj) the giving or varying of such a notice;

(czk) the giving of an authorisation under section 143(5)(c) or 179(5)(c) of that Act (certain authorisations to examine intercepted content or protected material);

(czl) any failure to—

(i) cancel a warrant under Part 2, 5, 6 or 7 of that Act, or an authorisation under Part 3 of that Act;

(ii) cancel a notice under Part 3 of that Act;

(iii) revoke a notice under Part 4, or section 228 or 229, of that Act; or

(iv) revoke a direction under section 203 of that Act;

(czm) any conduct in connection with any conduct falling within paragraph (c), (czb), (czd) or (czi);"

168: Clause 221, page 175, line 49, at end insert—

"( ) in subsection (6) (limitation for certain purposes of what is conduct falling within subsection (5))—

(i) after "on behalf of" insert "an immigration officer or", and

(ii) after paragraph (d) insert—

"(dza) the Competition and Markets Authority;"

( ) after subsection (6) insert—

"(6A) Subsection (6) does not apply to anything mentioned in paragraph (d) or (f) of subsection (5) which also falls within paragraph (czd) of that subsection.""

169: Clause 221, page 175, line 49, at end insert—

"( ) in subsection (7) after "if" insert "it is conduct of a public authority and","

170: Clause 221, page 176, line 8, leave out "(5)(cza) or (czc)" and insert "(5)(bb), (cza), (czc), (cze), (czf), (czg), (czh), (czj), (czk) or (czl) or (so far as the conduct is, or purports to be, the giving of a notice under section 49) subsection (5)(e)"

171: Clause 221, page 176, line 14, after "Act;" insert—

"(bb) a direction under section 203 of that Act;

(bc) a notice under section 228 or 229 of that Act;"

172: Clause 221, page 176, line 24, after "Act;" insert—

"(azb) an order quashing or revoking a direction under section 203of that Act;

(azc) an order quashing or revoking a notice under section 228 or 229 of that Act;"

173: Clause 221, page 176, line 31, after "2016" insert "or under section 228 or 229 of that Act or direction under section 203 of that Act"

174: Clause 221, page 176, line 41, after second "section" insert "228 or"

175: Clause 221, page 176, line 48, after "Act" insert "or a notice under section 228 or 229 of that Act"

176: Clause 221, page 177, line 12, at end insert "or the Investigatory Powers Commissioner for Northern Ireland."

Amendments 163 to 176 agreed.

Clause 223: Technical Advisory Board

Amendment 177

Moved by ***Earl Howe***

177: Clause 223, page 177, line 27, after "Part 4" insert ", national security notices under section 228"

Amendment 177 agreed.

Amendment 178

Moved by ***Earl Howe***

178: After Clause 223, insert the following new Clause—

"Technology Advisory Panel

(1) The Investigatory Powers Commissioner must ensure that there is a Technology Advisory Panel to provide advice to the Investigatory Powers Commissioner, the Secretary of State and the Scottish Ministers about—

(a) the impact of changing technology on the exercise of investigatory powers whose exercise is subject to review by the Commissioner, and

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

(2) The Technology Advisory Panel must provide advice to the Investigatory Powers Commissioner about such matters falling within subsection (1)(a) or (b) as the Commissioner may direct.

(3) Subject to this, the Panel may provide advice to the Investigatory Powers Commissioner about such matters falling within subsection (1)(a) or (b) as it considers appropriate (whether or not requested to do so).

(4) The Panel may provide advice to the Secretary of State or the Scottish Ministers about such matters falling within subsection (1)(a) or (b) as it considers appropriate (whether or not requested to do so) but such advice to the Scottish Ministers may only relate to matters for which the Scottish Ministers are responsible.

(5) The Panel must, as soon as reasonably practicable after the end of each calendar year, make a report to the Investigatory Powers Commissioner about the carrying out of the functions of the Panel.

(6) The Panel must, at the same time, send a copy of the report to the Secretary of State and (so far as relating to matters for which the Scottish Ministers are responsible) the Scottish Ministers."

Earl Howe: My Lords, I beg to move Amendment 178.

Amendments 178A to 178C (to Amendment 178) not moved.

Amendment 178 agreed.

Amendment 179

Moved by ***Earl Howe***

179: After Clause 223, insert the following new Clause—

"Members of the Panel

(1) The Investigatory Powers Commissioner must appoint such number of persons as members of the Technology Advisory Panel as the Commissioner considers necessary for the carrying out of the functions of the Panel.

(2) Subject as follows, each member of the Panel holds and vacates office in accordance with the member's terms and conditions of appointment.

(3) A member of the Panel must not act in a way which the member considers to be contrary to the public interest or prejudicial to—

(a) national security,

(b) the prevention or detection of serious crime, or

(c) the economic well-being of the United Kingdom.

(4) A member of the Panel must, in particular, ensure that the member does not—

(a) jeopardise the success of an intelligence or security operation or a law enforcement operation,

(b) compromise the safety or security of those involved, or

(c) unduly impede the operational effectiveness of an intelligence service, a police force, a government department or Her Majesty's forces.

(5) Section 213(2) and (7) (information powers) apply to a member of the Panel as they apply to a Judicial Commissioner."

Amendment 179 agreed.

Consideration on Report adjourned.

Disability: Premature Deaths

Question for Short Debate

7.55 pm

Asked by ***Baroness Hollins***

To ask Her Majesty's Government what progress has been made in tackling the rate of premature deaths among people with a learning disability.

Baroness Mobarik (Con): My Lords, this debate will be time limited to 90 minutes instead of 60 minutes. The speaking time for Back-Bench speakers will be eight minutes instead of four.

Baroness Hollins (CB): My Lords, this is our first opportunity since his death in August to celebrate the extraordinary contribution of Lord Rix. He was of course a household name in the 1950s and 1960s for what became known as the Whitehall farces, and was then involved in more than 90 television shows. In 1951, his daughter Shelley was born with Down's syndrome, and Brian and his wife Elspet were shocked when they were told to "put her away in a home and start again". Brian used his growing popularity to try to make things better for Shelley and for thousands of others and their families.

Brian Rix joined the House of Lords in 1992 as Baron Rix of Whitehall and Hornsea and spoke tirelessly in parliamentary debates, still fighting for the rights of people with a learning disability until December last year, at the age of 91. I will miss my noble friend's advocacy and friendship, as will so many in this House. I thank the Royal Mencap Society and Professor Pauline Heslop, the programme lead for the learning disabilities mortality review, for providing me with up-to-date information in preparing for today. I also welcome the maiden speech of the noble Baroness, Lady Fall.

Since the 1990s, there have been a number of reports and case studies that have consistently highlighted that people with learning disabilities die younger than people without. My own research first highlighted this problem in articles published in the mid-1990s showing that adults with a learning disability were 58 times more likely to die before the age of 50, and were significantly more likely to die of respiratory disease than the rest of the population. Twenty years later, CIPOLD, the Confidential Inquiry into Premature Deaths of People with Learning Disabilities, found that this was still the most common immediate cause of death in 34% of cases. Recent data from the Clinical Practice Research Datalink showed that more than three times the number of people with learning disabilities in England die each year than would be expected from general population mortality rates, after allowing for their age and gender profile.

Why is this proving so difficult to change? The practice issues which emerge time and again in studies and inquiries on this issue include worrying findings of professional indifference and discriminatory attitudes, with healthcare professionals still relying inappropriately on their own estimates of a person's quality of life—attitudes that inspired Brian and Elspet Rix in 1951 and Sally Philips in 2016. A frequent complaint is that health and social care professionals do not listen to those who know the person well when they voice concerns about the person's health. Cases referred to the ombudsman repeatedly show that professionals do not understand how to apply the Mental Capacity Act. This was echoed by the post-legislative scrutiny committee on the Mental Capacity Act, of which I was a member, which reported in February 2014.

There is also insufficient attention paid to making reasonable adjustments to support the delivery of equal treatment, and a failure to provide the annual health checks that every adult with a learning disability should be offered. In 2013-14, only 44% of eligible people with a learning disability received an annual health check. There are also delays in diagnosis and treatment, and difficulties in accessing assessment and

[Baroness Hollins]
treatment of general health problems. There are also a number of system-level issues, such as a lack of learning from reviews of deaths and a failure to identify that a person has a learning disability in their healthcare record, meaning that the specific health needs of people with learning disabilities are invisible not only to health professionals but to researchers and public health practitioners.

What are the Government doing to improve our knowledge and understanding of the needs of this vulnerable group, for which comprehensive and accurate identification is an essential prerequisite? If we do not know which of our patients has a learning disability, how can we make the reasonable adjustments? I will come back to that. It is important that we keep monitoring these issues for evidence of improvement.

Following the CIPOLD report in 2015, the first three-year National Learning Disabilities Mortality Review programme, LeDeR, was set up at the University of Bristol. Its aim is to drive improvement in the quality of health and social care service delivery for people with learning disabilities, and to reduce premature mortality and health inequalities. It supports local agencies to conduct reviews of the deaths of people with learning disabilities between the ages of four and 74, and to learn from these reviews to improve services.

The programme supports reviews of all deaths, regardless of the cause or place of death—so not just deaths in hospitals but, for example, deaths at home. It is supported by family carers and people with learning disabilities, who all act as advisers. The case reviews are expected to identify and advise on action over the avoidable contributory factors leading to premature deaths in this population.

The establishment of LeDeR is hugely welcome, but a key question is how the NHS and the Government will use the data from the case reviews to implement a national strategy to tackle this continuing scandal. Will the Minister commit that the Government will regularly inform Parliament of progress in achieving improvements in outcomes for people with learning disabilities?

The programme has developed a website, training for reviewers, and illustrated guides and factsheets, and each NHS region is now introducing the review process by training local reviewers, piloting case reviews and offering learning and sharing events. But, unlike the child death review process and many other inquiries, the learning disability deaths programme is not mandatory. Agencies can choose to contribute to reviews of deaths of people with learning disabilities or not and, unlike the child death review, it is time limited, not permanent.

In my opinion, the most important change that is needed is a change in culture within all responsible services at all levels, and this includes making learning disability a sustained priority. But saying that it is a priority is not the same as acting to end the discrimination that we all know exists. Is it not time to mandate reviews into all deaths of people with learning disabilities on an ongoing basis, and for the CQC to scrutinise the implementation of local learning from such reviews at its inspections?

To have any chance of success, the programme requires multiagency sign-up and commitment from all agencies and services that provide support for people with learning disabilities, so that a comprehensive review of the circumstances leading to the death of an individual can be thought about fully. Can the Government give a clear message to local authorities and social care agencies that their staff must be released to contribute to reviews of deaths?

We already know a lot about contributory factors to premature deaths, but we need to move beyond just identifying what has gone wrong into making changes to practice. There is no point in reviewing deaths if subsequent changes to reduce premature deaths are inadequately resourced. What can people with learning disabilities and their families expect from the Government in terms of additional resources to prevent premature deaths, and when can they expect it?

There are some urgent actions that could be implemented immediately. I would like us to empower people with learning disabilities by ensuring that they have a better understanding of the health issues that affect them personally. I spoke about this in the excellent debate secured by the noble Lord, Lord Bird, on the role of libraries and independent bookshops; along with others, I mentioned the importance of reading for health understanding. The difference for people with learning disabilities is the need for accessible information, as set out in the information standard, but also for visual methods of communication to be used as part of enabling the person to demonstrate their understanding, wishes and capacity to consent, and making it easier for health professionals to be able to use the Mental Capacity Act.

Sometimes understanding can lead to better outcomes, just as it can in those people who are literate, through an improvement in quality of life and mood, as found in a recent study at the University of Hertfordshire using a wordless book about epilepsy that is currently in press. Having addressed their own need to understand, these self-advocates can deliver training as experts by experience. Good communication skills and positive non-discriminatory attitudes should be assessed in our universities and trusts because they are the core skills and attitudes needed by all staff—not just doctors and nurses but dentists, opticians and receptionists as well. These skills will be acquired only through direct contact with people with learning disabilities.

The learning disabilities core skills education and training framework, developed by Health Education England and Skills for Care, is hugely welcome, as is the work of the GMC, which has been developing tools for doctors. I have contributed to some of this work personally. Mencap has developed training within the core skills framework, which is co-delivered with people with a learning disability—and the courses are oversubscribed already.

I end my remarks by asking: how will the Government, the Department of Health and Health Education England make sure that training is an absolute priority for trusts and universities?

8.06 pm

Lord Addington (LD): My Lords, what first led me to put my name down for this debate was the simple fact that when it comes to any minority group that is

interacting with a public service, particularly the health service, if there is a communication problem you suddenly see problems in the results. If they cannot access the system, you suddenly find that they are not getting the best out of it.

The fact is that most forms of healthcare are based on a doctor talking to a patient. The noble Baroness stole some of the thunder from my speech by pointing this out, but all the groups that have problems with what we would regard as normal conversational communication suffer in terms of healthcare and when interacting with virtually all other structures of the state, and indeed goods and services. Extracting information from the patient to ensure appropriate treatment is bound to be more difficult. If you know you are going to interact with this group, you have to have some way of correcting that situation otherwise you are guaranteeing a level of failure. There are various bits of legislation coming through at the moment, and if everything was working correctly I am sure the noble Baroness would not have bothered tabling this debate. However, it is quite clear that it is not.

There are contributing factors—for instance, lifestyle. We know it is very difficult to get people with learning disabilities into activities like sport because there is no structure for them, and that leads to other health problems later on. However, if we are talking simply about the interface with a GP or a nurse or receptionist—the noble Baroness was right to mention those who are the gatekeepers to the service—unless there is training in this area, we are going to have problems.

If an employee does not have generalised training, they must at least have some awareness that means they know when they should back off and call in the experts. We need it to be acceptable to say, "I need help and support", without it going against that employee. Think about it: if you are in a job where you are supposed to deal with a person in this situation, you should be able to think, "Do I have the authority and the right to ask for extra help to deal with the situation?". In many situations, to do so fundamentally undermines your professional competence. Unless we allow that, we will not get the best outcomes, because people bluff to get through the situation—it is a natural reaction and we have all done it in our own worlds. You want to cover up the fact that you are having problems with something you are expected to be able to do. Unless you can call in expertise, and know that that is okay, you will have problems.

I could go on for a considerable time giving more examples, but at this time of night and with a maiden speech on its way which is probably much more interesting than mine, I will cut my remarks off here. Unless we embrace the idea of preparation to call in expertise and making it acceptable in the work environment so to do, we will continue to have these problems. What we are talking about here is only one manifestation of the problem. It is not just within the health service, it is within all services. It involves continuing conditions and stress, and mental health comes in later. Setting a good example from the Department of Health would be a simple step forward. It would be good to hear tonight an assurance that it is acceptable—indeed, required—to have that flexibility.

8.10 pm

Lord Wigley (PC): My Lords, before addressing the Question before us tonight, I join the noble Baroness, Lady Hollins, and say a few words about our dear colleague who would most certainly have been participating tonight were he still with us. The House is very much poorer for having lost a tireless campaigner, Lord Rix of Whitehall, who, as many will remember, last spoke here in December, during the passage of the then welfare reform Bill, despite his frailty at the time. Tonight it is indeed appropriate to remember the campaigning work of Brian Rix on these issues. His daughter Shelley, who, as we heard, had Down's syndrome, inspired his life of activism, particularly for the Royal Mencap Society, in which I declare an interest as its vice-president.

As we all know, Brian was a much-loved actor. He used that popularity to raise millions of pounds for the Royal Mencap Society, becoming its general-secretary in 1980 and later its chairman and president. After becoming a member of this House in 1992, he focused attention on the rights of people with learning disabilities and their families, drawing on his experience and that of tens of thousands of people whom he met and helped. He was particularly concerned by the matters covered by this Question for Short Debate.

Lord Rix spoke in parliamentary debates on more than 300 occasions, and his focus was always on giving a voice to those too often ignored. He leaves three much loved children, Louisa, Jamie and Jonathan—his wife Elspet passed away in 2013. Noble Lords may wish to note that there will be a tribute event in the new year celebrating his life and achievements.

I now turn to the important issues raised by the noble Baroness, Lady Hollins, in her excellent opening speech—issues on which I know that Brian would have wanted to speak. The noble Baroness has been a trailblazer over many years on these matters. It is clear that there is still much progress to be made, and I look forward to the Minister providing us with an update on progress made in tackling the premature death of people with a learning disability.

I speak to highlight the importance of training for healthcare professionals to improve outcomes for people with a learning disability. This is also of critical importance to us in Wales, and I have served on investigatory panels on the issue in both Wales and England. Overcoming the national scandal of premature death among people with a learning disability requires a significant improvement in both the quantity and quality of training among doctors, nurses and other healthcare professionals. Workforce development, minimum standards for healthcare support and guidance for commissioners are lacking, and the Government must address that.

I am pleased that some progress is being made. In July, Health Education England, Skills for Health and Skills for Care launched a learning disabilities core skills education and training framework—that is quite a mouthful. The framework provides the knowledge and skills needed for those delivering training to health and care professionals. Mencap has adopted the framework to develop training currently being co-delivered by people with a learning disability, which is being

[LORD WIGLEY]
piloted with the NHS. This is welcome and underscores both the capability of people with a learning disability and the vital importance of including them in the delivery of services. This training focuses on identifying learning disability, developing communication skills and highlighting the importance of reasonable adjustments, such as longer appointment times and accessible information.

I congratulate the noble Baroness, Lady Hollins, on her work chairing a group supported by the General Medical Council, the Nursing Midwifery Council and Health Education England, which is looking at how good practice can be promoted so that all medical students and current staff receive the training they need better to equip them to support people with a learning disability.

I call on the Minister in her response to commit to ensuring that this framework is widely adopted and best practice spread. Without all health professionals receiving appropriate training, people with a learning disability will continue to be let down and premature deaths will continue to occur. This is a very serious matter and requires a serious response.

8.15 pm

Baroness Fall (Con) (Maiden Speech): My Lords, growing up in Moscow during the Cold War, this Parliament was a beacon of hope, freedom and democracy in a world struggling against totalitarianism and war. I could never have imagined that I would be part of it one day. It is an honour to address your Lordships for the first time, and I congratulate the noble Baroness, Lady Hollins, on bringing this very important matter to your Lordships' attention this evening.

Although introduced to your Lordships' Chamber last year, I was not permitted to speak until now and, while I see the attraction of a fully voting but silent Peer from the Whips' point of view, I stand before you today with those days firmly behind me. I am deeply indebted to both my sponsors, my noble friends Lady Rawlings and Lord Feldman of Elstree, for their support, wisdom and friendship over many years. I want to pay tribute to my wonderful mentor, my noble friend Lord Sherbourne, and to the officials of this House, as well as to your Lordships on all sides of the Chamber, for the kindness and patience you have shown me over these past months.

My first political memory was of the Falklands War when I was 10 years old. My father was working for the then Foreign Secretary, my noble friend Lord Carrington, a much-loved and respected member of this House. His resignation taught me my first lesson in politics—that political lives, even of the best of us, are precarious things. The resignation of another good man brings me to this Chamber today. I am immensely proud to have served David Cameron for six years when he was Prime Minister and five years as leader of the Opposition, and I pay tribute to all that he achieved for our country: in mending our broken economy; in creating many new good schools; in meeting our commitment of 2% to our NATO allies while not turning our back on the world's poor; and, most of all, in helping so many back to work in this country on a fair wage.

Being part of the legislature is certainly a whole new thing for me. Now that I am able to see at first hand how your Lordships shape and improve legislation, as well as inform our country's debate, I am still more honoured, and I very much look forward to playing my part in the future work of this House.

I am a daughter of an American mother and a British diplomat. I admit to being a hereditary Atlanticist, and I dedicated some of my early career to the transatlantic relationship, working as the founding director of the bipartisan think tank, Atlantic Partnership. My father's generation were the "Cold War warriors", many of whom sit on all sides of this House today. So my upbringing taught me something else: that we must fight for the values that we hold dear, that they can never be taken for granted, and that it falls to each and every generation to safeguard what is precious to us—otherwise, we will have failed in our duty. For there is nothing that reflects more truly on the values of a society than how we treat our most vulnerable, which is why I am pleased to speak briefly in this debate today.

There are some among us who dedicate their lives to the care of those with learning disabilities, such as my wonderful sister, and so many other mums, dads, siblings and carers, as well as teachers in specialist schools, such as Fairley House, where I was a governor for years. We owe them our respect and gratitude. We take great pride as a nation in our National Health Service, that it is available to all and free for all, and we hope that everyone is treated with kindness and humanity—and treated as equals. Yet the tragedy of the original Mencap study that prompted this debate today is that there is not always equality of care, at least not for the six men and women with learning disabilities whose deaths were judged premature in the original report.

At the crux of the problem, there seems to lie a simple truth. Those with learning disabilities often struggle with the system when they most need it, often because they are afraid or confused, cannot explain what is wrong and have many medical problems in the first place. So there are issues with the diagnosis, then with the treatment—and sometimes, let us face it, the assumptions made about what sort of care they should or should not receive. These problems, taken together, put those with learning disabilities at a serious disadvantage. Sir Jonathan Michael, the chair of the independent inquiry, put it very well when he said:

> "I have learned that 'equal' does not mean 'the same' and that 'reasonable adjustments' that are needed to make services equally accessible to people with learning disabilities are not particularly difficult to make".

Those are simple adjustments to save lives.

I commend the work of all those who seek progress in this area, and ask that we do not take our eye off the ball. We owe it to the vulnerable among us, to their families and friends, and to our society as a whole, to be the best we can.

8.21 pm

Baroness Rawlings (Con): My Lords, the honour and great pleasure of following my noble friend Lady Fall falls to me, on these Benches, to welcome her warmly in the name of the whole House and congratulate

her on her remarkable maiden speech. It was outstanding, by any standards—from Moscow to the Lords. This does not come as a surprise to anyone who knows the noble Baroness, as her curriculum vitae hardly begins to do her justice. Early on in her career, after having excelled at Oxford, she steered me through many difficult negotiations after the fall of the Berlin Wall, the accession of Austria, Finland and Sweden into the European Union, extending the Fulbright/Monnet scholarships programme and much more. However, it is not just her dedication which distinguishes her, but also her other special qualities of loyalty, humility, astuteness, style, intelligence and genuine care for others. These qualities were revealed between the lines in her excellent and interesting maiden speech. We all hope that she will play a prominent part now in your Lordships' House and that we shall hear a great deal more from her in the future on this and many other subjects.

Before making my modest contribution, I too would like to thank the noble Baroness, Lady Hollins, for introducing this debate. I started my career working for the London County Council in Stepney, Bow and Poplar, for the children's care committee, then trained as a nurse with the Red Cross—hence my interest in this debate.

As we have heard, people with learning disabilities experience significantly worse results than the rest of the population. Bristol University's confidential inquiry, which the noble Baroness, Lady Hollins, mentioned earlier, into the deaths of 247 people with learning disabilities from 2010 to 2012, discovered that men with learning disabilities died, on average, 13 years sooner than men in the general population, and women with learning disabilities died 20 years sooner. These studies show the urgent need to improve practice within the National Health Service. I therefore welcome all efforts that the NHS is making to tackle premature mortality among people with a learning disability.

I will mention two initiatives from which I hope we can learn lessons about how to improve on these results. The clinical commissioning group improvement and assessment framework was launched in March. It includes two indicators on learning disability: reliance on specialist in-patient care and the proportion of people on GP learning disability registers receiving an annual health check. I hope this will enable us to see clearer how clinical commissioning groups are performing. In March 2015, NHS England commissioned the Learning Disabilities Mortality Review programme. This programme aims to support local and regional areas, conduct reviews of deaths of people with learning disabilities and implement the recommendations and plans of action.

I hope the Minister will be able to address these few points and so contribute to alleviating the unhappiness and stress that this causes families.

8.26 pm

Baroness Tyler of Enfield (LD): My Lords, I congratulate the noble Baroness, Lady Hollins, on securing this debate and on being such a tireless champion for the rights of people with learning disabilities to receive the same access to and quality of healthcare that the rest of the population takes for granted. I also congratulate the noble Baroness, Lady Fall, on her excellent maiden speech. I am sure we will be hearing much more from her. I associate myself with the fulsome tributes paid, rightly and movingly, to our late colleague Lord Rix.

As we have already heard from the noble Baroness, Lady Hollins, the 2013 Confidential Inquiry into Premature Deaths of People with Learning Disabilities was set up to investigate the avoidable or premature deaths of people with learning disabilities through a series of retrospective reviews. I hope noble Lords will forgive me for repeating several statistics. I know that those in the Chamber tonight will be familiar with them, because they are passionately concerned with this issue, but the statistics bear repetition because, in a way, they say it all. We have already heard, from the noble Baroness, Lady Rawlings, the shocking statistics that men with learning disabilities die, on average, 13 years sooner than men in the general public and women with learning disabilities die 20 years sooner. Overall, 22% of those people were under 50 when they died. These are not just dry statistics, they are deeply shocking and nothing short of a national disgrace. Perhaps the most shocking statistic of all is the confidential inquiry's finding that 37% of deaths were potentially avoidable if good quality healthcare had been provided.

As so often happens when you start to delve into statistics, the situation across the country is very variable. An independent review of deaths of people with a learning disability or mental health problem in contact with Southern Health NHS Foundation Trust between 2011 and 2015, commissioned by NHS England, found a number of serious failings. These included the trust having no effective way of reporting, investigating and learning from deaths. It also found that, while 30% of deaths in adult mental health services were investigated, only 1% of those of people with learning disabilities were investigated. What are we to make of the statement made by the former chief executive of Southern Health? She said:

> "We believe that Southern Health's rate of investigations into deaths is in line with that of similar NHS organisations".

I leave noble Lords to draw their own conclusions from that.

As we have already heard from the confidential inquiry, one of the 18 key recommendations was the establishment of a national learning disability mortality review. A key part of the review programme, commissioned again by NHS England, is to support local areas to review the deaths of people with learning disabilities and take forward the lessons learned to improve services. I am sure we all think that is what should happen. So far, so good. However, as has already been referred to by the noble Baroness, Lady Hollins, participation in the programme is not mandatory, so, unlike the child death review process, and, indeed, many other inquiries, agencies can choose whether or not to contribute to the review of deaths of people with learning disabilities. In the current financial climate, I guess it is understandable that many organisations choose to do only what they have to. In my view, giving this issue mandatory status would undoubtedly raise the profile of the work and show that the lives and deaths of people with learning disabilities are valued. That is the crux of what we are talking about tonight.

[Baroness Tyler of Enfield]

I know there are also serious concerns over the sustainability of local reviews of deaths of people with learning disabilities once the review programme ends. Therefore, in responding, will the Minister update the House on the review's overall progress? Does she agree that if we really want to stop people with learning disabilities dying prematurely because they are not getting good-quality healthcare, the mortality review should have a mandatory rather than an optional status?

Finally, on a related issue of sustainability, the Public Health England Learning Disabilities Observatory, set up in the wake of the independent inquiry chaired by Sir Jonathan Michael, was established to keep watch over the health of people with learning disabilities and the healthcare they receive. It also provides data, information and advice to commissioners, families and people with learning disabilities about good practice and local performance in achieving improvement. Current funding for the observatory is guaranteed only until March 2017. Therefore, what assurances can the Minister give that funding will continue to be available for the vital work that the observatory is carrying out?

8.32 pm

Baroness Redfern (Con): My Lords, I add my thanks to the noble Baroness, Lady Hollins, for introducing this debate on inequalities faced by individuals with learning disabilities and the need to ensure that we continually have one aim—to make sure that disability should not be a barrier to health. An able-bodied person such as myself should ensure that we highlight at every opportunity the necessity for everyone to be able to access the same health benefits.

I congratulate my noble friend Lady Fall on her thoughtful and eloquent maiden speech. I also declare my interests as set out in the register of interests—leader of North Lincolnshire Council and chair of its health and well-being board, vice-chair of the Specialised Healthcare Alliance and a member of the NHS Sustainability Committee.

The noble Baroness, Lady Hollins, spoke about the experience of people with learning disabilities. Sadly, we have read that, overall, 22% of people with a learning disability were under 50 when they died. Therefore, I welcome NHS England's goal to "close the health gap" of health inequalities as a whole by 2020. A "must" is that we continue to maintain a skilled workforce and welcome back experienced social workers. Training and education are so very important to give staff the competence and confidence to manage complex and challenging behaviour with good partnership working and to reduce admissions to hospitals as they support individuals—not forgetting their families—on the journey from childhood to adulthood and into older age.

I am pleased that the Government have said that they want to build on the achievements and skills of the current public health workforce. So far, we can maintain a well-trained and, as I said, motivated workforce to the highest standard of professional conduct in their work. The saying is, "Make it happen"—stop bad practice and strive for excellent practice. Unfortunately, there are gaps where too many people with learning disabilities can be found in inappropriate patient settings and stay longer than necessary. The Winterbourne View hospital abuse, which we do not wish to read about or witness again, is still in our minds. Possibly we have relied too much on in-patient care. As good and necessary as some in-patient care can be, disabled people, like able-bodied people, want and desire the same thing: they want homes, not hospitals.

The Government's aim must be for everyone with a learning disability to have an annual health check with a personal plan, but there is still a long way to go. However, I am pleased that now more people are in receipt of a direct payment or personal budget to enable them to have greater choice and control over how they live their lives and to be more creative as individuals: a light touch for support, but equal outcomes. By helping individuals to have access to activities and employment, I am pleased to say that in north Lincolnshire we have seen a 5.3% increase of people with a complex learning disability in paid employment as well as opportunities to engage with a larger circle of friends. We have also seen our new purpose-built housing scheme, partnering with our local housing association and private sector, supporting people who in many cases have lived far from their families to move from a residential setting and live a transformed independent life in a home of their own.

I wish to highlight Mary's story, Mary has a learning disability, lives with her elderly parents and has a voluntary work placement one afternoon a week. She was unhappy and felt isolated from her community, and wanted to make friends and build her confidence. The service listened to what Mary said she wanted to do and supported her goals. Mary had never applied for any benefits, and with supported help worked to apply for them. She attended a healthy cook and eat session at one of our local health and well-being hubs and attended a music group within her area. Mary is now going to local activities independently and, more importantly, is making friends.

I am pleased that my council, with other local authorities, has joined the Changing Places national campaign to improve access to public toilet facilities for people of all ages with a profound disability, as access to toilet facilities for disabled people is a key barrier to their participation in community life.

We are building the right support to make sure that young people and adults with learning disabilities and autism have the same opportunities as everyone else to live satisfying and valued lives and are treated with dignity and respect. All of us, as well as the Government, have acknowledged that we have more to do to raise the bar. I therefore welcome the Government's increased support to achieve those better outcomes and look forward to further updates from my noble friend Lady Chisholm.

8.38 pm

Lord Adebowale (CB): I thank the noble Baroness, Lady Hollins, for introducing the debate and I pay tribute to the inspirational late Lord Rix. I will share some observations on the healthcare experience of the people we support at Turning Point. I declare my interest as chief executive of that learning disabilities service provider, which for over 25 years has supported

over 450 people with learning disabilities across England. Our experience is that the healthcare and well-being experience of the people we support varies greatly around the country. The following are anecdotal but representative examples from our services, which show that while some progress has been made, more still needs to be done—a kind of reality check, I guess.

The people we support with a learning disability rarely see a learning disability nurse during a hospital visit. We find that we still have to question "do not attempt resuscitation" orders for some people we support. The people we support find that community healthcare provision varies greatly across the country and that there are gaps in specialist support for more complex and behavioural needs. The people we support struggle to gain reasonable adjustments, such as fixed-time GP or clinical appointments, which are particularly important for anxious people with autism or behavioural challenges. With regard to integrated health and social care, the people we support find their well-being needs filtered by assessors using expressions such as "health wants" and "health needs" in their assessments and reviews. At the end of their life, the people we support experience delays in being assessed for additional support as their palliative needs change.

We were very pleased to join Warwickshire County Council in launching a well-being service for people with learning disabilities that will give information and advice around health and well-being and help to improve access to health and well-being services. But, to our knowledge, a provision like this is fairly unique.

We are also noticing the impact of funding cuts for social care. These have been compounded by increased costs of delivery due to the national living wage, although we support that. Commissioners continue to be forced to retrench budgets almost annually and, as a result, face difficult decisions about services for those whom we are here to support. While the funding debate continues, people requiring support continue to be those who bear the brunt. In modern-day Britain, the increasing reality for many people with a disability is that they will be provided for to be deemed safe, fed and hydrated—that is deemed enough in many areas.

People with learning disabilities must receive the same standards of care as everyone else, and they must also receive the same level of determination from the Government to lead the improvements that are needed. The recent experiences of the people we support show that change needs to happen faster to improve healthcare for people with learning disabilities everywhere. More funding for social care is needed to ensure that disability services are able to offer more than the bare minimum. I thank the House for allowing me to speak in the gap.

8.41 pm

Baroness Walmsley (LD): My Lords, like the noble Baroness, Lady Hollins, all of us on these Benches very much miss the late Lord Rix. We miss his expertise on subjects such as the one we are talking about tonight; we miss the inspiration that he gave all of us because of that work; and we miss his wonderful sense of humour. Therefore, I thank the noble Baroness, Lady Hollins, for what she said about him. Of course, we all agree with her.

I also wish to thank the noble Baroness for initiating this debate. She has been consistent in her scrutiny of this issue, having raised the matter every year since the Confidential Inquiry into Premature Deaths of People with Learning Disabilities reported in 2013. That this is necessary demonstrates the enormity of the challenge of ensuring that people with a learning disability have equal access to healthcare that caters to their particular needs and ensures that the reasonable adjustments that should be made for them are made.

I congratulate the noble Baroness, Lady Fall, on her excellent maiden speech and particularly on her use of the word "equality". As she rightly said, "equal" does not mean the same. Equality of opportunity to enjoy good health and good treatment is what we should aim for. Progress has been too slow, and steady headway is now required from the Minister and her Government.

I would like to raise, in particular, the need to reverse the trend of falling numbers of learning disability nurses. The Royal College of Nursing's *Connect for Change* report claims that the total number of learning disability nurses in the NHS has fallen by nearly a third since 2010—a reduction of 1,726. An equally worrying trend is that more senior nurses have been lost in this discipline than any other, with a 40% reduction. We need nurses in all disciplines to be seasoned and expert, particularly in this discipline. The current Government have presided over a reduction in both expertise and quantity. Can the Minister say how her department is planning to correct that?

Learning disability nurses provide much-needed advocacy and support and are a key tie-in to social care. They speak out in the interests of people with a learning disability, provide assistance to carers and family members, and give much-needed advice and support to doctors. The case studies in the report, which I found extremely moving, show clearly what happens when this help is not available.

It cannot be right that with 1.4 million people with a learning disability, more of whom are now diagnosed earlier in life, live longer and possess complex needs, support available only five or six years ago is now no longer available. This fall in the number of professionals also means that people with a learning disability face a lottery as to hospital coverage.

In 2014, the Royal Mencap Society found that few hospitals have full-time cover and some none at all. This sometimes means that people with learning disabilities are unable to make their pain known to those who are treating them. They may not have a traffic light card or a hospital passport-type document, which have proved so useful to many—there are several examples of that in the CIPOLD report—they often become confused in a strange environment and among people who are not known to them; their care home may not be able to send somebody with them because of pressures faced. That is why we need the specialist nurses.

Although learning disability nurses are important, so too, as several noble Lords have mentioned, is the training of other health and care staff. We cannot and should not leave everything up to learning disability nurses, not least because of their dwindling numbers. All doctors, nurses and other care professionals need

[Baroness Walmsley]
an understanding of learning disability and conditions such as autism and mental health problems, which might also be a barrier to communication. Understanding how to communicate in both directions is vital to ensuring that patients understand procedures, diagnosis and, importantly, what to do following operations and consultations about their own care and medicines. I am heartened to hear about the good work going on at St George's, and look forward to hearing how the Government and NHS England will spread and promote that good practice.

People with a learning disability need more support and a proactive policy to ensure that they lead healthy lives. Annual health checks can uncover underlying conditions, yet, as we have heard, less than half of people with a learning disability receive them. Accessible information can empower people with a learning disability to take control of their health; we need that, sometimes with pictures, to help the understanding. The NHS accessible information standard launched this summer could not be timelier, and I wish it well.

Urgent action is needed to ensure that no more people with a learning disability die due to avoidable circumstances. The noble Baroness, Lady Hollins, has been a champion in standing up for people with a learning disability and for access to healthcare. I hope to hear much better news the next time that she raises this issue.

8.47 pm

Lord Hunt of Kings Heath (Lab): My Lords, I warmly welcome this debate and thank the noble Baroness, Lady Hollins, for her excellent introduction. I also very much congratulate the noble Baroness, Lady Fall, on her maiden speech. I hope that she will make up for her earlier enforced silence by speaking more often in your Lordships' House. Perhaps she will also look a little more kindly on noble Lords in her current position than she did in her previous post.

What can one say about the late Lord Rix? What an extraordinary man and humanitarian he was. Above all, his passionate advocacy on behalf of people with learning disabilities is surely a beacon to us all. I hope that tonight constitutes a small tribute to him for all that he did for so many.

The noble Baroness, Lady Hollins, was very telling when she talked about too many people in health and social care not listening to people with learning disabilities or those who know about people with learning disabilities. When one looks at the issues that have been raised—the statistics mentioned by the noble Baroness, Lady Rawlings, or the issue of the Southern Health NHS Foundation Trust, mentioned by the noble Baroness, Lady Tyler—what is most striking is the failure of so many health and social care bodies to treat people with learning disabilities with a sense of equality and respect.

The Mazars report is shocking in relation to the Southern Health Foundation Trust. It identified the lack of leadership, focus and sufficient time in the trust spent on carefully reporting and investigating unexpected deaths. That was followed up by the Care Quality Commission, which found that the trust failed to mitigate the significant risks posed by some of the physical environments in which it delivered mental health and learning disability services. It did not operate effective governance arrangements to ensure robust investigation of incidents, including deaths.

Following those two reports, we had the saga of the former chief executive being offered an opportunity to stay on the staff, on the same salary. She has now left. I cannot help wondering whether underlying this was a board that did not accept those reports. I do not know whether the Minister is able to say a little more about that, but it seemed to me that it encapsulated the problem that the noble Baroness, Lady Hollins, suggested. Although I am sure that many parts of health and social care do their very best by people with learning disabilities, the cold statistics would suggest that we have an awful long way to go before we can be satisfied that attitudes, policies and procedures are right for these vulnerable people.

In the time available, I do not want to say very much more, but I want to ask the Minister three questions. The first relates to the 18 key recommendations from the CIPOLD review of deaths. Of course she cannot go through all 18 recommendations tonight, but can the Minister write to noble Lords who have spoken in this debate to set out how the Government consider that the health and social care system—and the Government—are responding to those 18 recommendations? In particular, will she pick up the point raised by the noble Baroness, Lady Tyler, about whether the local action that NHS England has instituted, which is not mandatory, can be seen to be a response to the recommendation of a national learning disability mortality review body? I do not think that it can be unless there is a proper mandating of the NHS to take part in it.

The second question comes back to the point made by the noble Baroness, Lady Hollins, about a national strategy. Do we have a national strategy? If not, will the Minister say how the Government intend that there should be a proper national strategy, nationally led, that will ensure that the kind of changes that need to happen will take place?

Finally, I do not think that funding is the only problem: attitudes are much more important. But no one can deny the funding challenges in health and social care at the moment—nor that, despite the Government's intention that more money should be spent on mental health, it is quite clear that clinical commissioning groups will not do that because they are under intense pressure to balance the books. It has become clear that balancing the books is trumping any other policy. So my final question for the Minister is, essentially, what will happen to protect the funding of those services, which impact directly on people with learning disabilities?

8.53 pm

Baroness Chisholm of Owlpen (Con): My Lords, I congratulate the noble Baroness, Lady Hollins, on securing this debate on an issue of great importance that is rightly of concern to your Lordships and indeed to the Government. I begin by paying tribute to the noble Baroness for her unfailing commitment to highlighting the inequalities, experiences and poor outcomes that people with learning disabilities and

their families have faced for many years. I echo her and other noble Lords' tributes to Lord Rix, who we are certainly going to miss enormously.

I also take this opportunity to congratulate my noble friend Lady Fall on an excellent maiden speech. My noble friend will be a great addition to this House and I greatly look forward to her contributions in the future. Also, let me thank all noble Lords for their contributions this evening.

We know that there are people young and old who die from what are often referred to as avoidable and premature deaths—which, I think we would all agree, need not happen if care, safety and the way in which people are treated were consistently good across the whole of the healthcare system. The Government are clear that the lives of people of all ages with learning disabilities matter. We are working with partner organisations, professionals and people with learning disabilities and their families to respond to issues that are important to, and have a big impact on, people's lives.

As my noble friend Lady Rawlings mentioned in her speech, we know that people with learning disabilities experience significantly worse outcomes than the rest of the population. Our activity therefore extends beyond health and care and must also encompass the education of healthcare professionals, employment and housing. To this end, NHS England has a wide-ranging programme of work on learning disability designed to transform care and improve outcomes, driving up the quality of clinical and nursing care and reducing health inequalities. The *NHS Five Year Forward View* highlighted the need to improve learning disability services, with the NHS driving improvements in culture and behaviours towards people with learning disabilities.

The NHS published shared planning guidance in September with the aim of improving learning disability services, including reducing premature mortality, one of only nine "must dos" in the guidance. As my noble friend Lady Rawlings also mentioned in her speech, the clinical commissioning group improvement and assessment framework was launched in March. This Ofsted-style assessment will allow us to see how clinical commissioning groups are performing in key areas. It includes two indicators on learning disability: reliance on specialist in-patient care and the proportion of people on GP learning disability registers receiving an annual health check.

The noble Lord, Lord Hunt, and the noble Baroness, Lady Tyler, both spoke about NHS foundation trusts, and my goodness there are lessons to be learned. The Government have asked whether the issues raised in the Mazars report might be found in other providers across the country. The Care Quality Commission's review into the investigation of deaths includes a sample of all types of NHS trusts in different parts of the country and will assess whether opportunities for the prevention of death have been missed—for example, by late diagnosis or physical healthcare problems. We expect the Care Quality Commission to publish its findings in December.

The noble Baronesses, Lady Hollins and Lady Tyler, asked what the Government were doing to provide full information on an ongoing basis on trends in the age of and causes of death of those with learning disabilities, and how those trends can be monitored. In answer, I can say that the Department of Health is working with Public Health England and NHS Digital to address the lack of reliable data, which are so important to ensuring that the right decisions can be made by healthcare professionals. A number of approaches are being considered, but the lack of progress has been frustrating. Noble Lords will be aware, however, of the wider issues surrounding the safe and secure use of health and care information, and here I cite the work undertaken by the National Data Guardian for Health and Care, Dame Fiona Caldicott, to ensure that the public can make informed choices about how their data are used. The Department of Health ran a public consultation on those proposals and is currently analysing the responses received. In addition, the department sponsored a study in this area undertaken by Public Health England, and the findings were published by the *Journal of Intellectual Disability Research* in July. They indicate the extent of premature mortality and its major causes.

As noble Lords have mentioned, people with learning disabilities have a life expectancy on average approximately 20 years less than other people. Public Health England also publishes a digest of the most up-to-date mortality statistics in *People with Learning Disabilities in England*. The 2016 edition of this will appear later this year.

The noble Baronesses, Lady Hollins and Lady Rawlings, asked whether it was time to mandate reviews into the deaths of all people with learning disabilities. Several other noble Lords mentioned this, too. In March 2015, NHS England commissioned the learning disability mortality review programme, which aims to support local and regional areas conduct reviews of deaths of people with learning disabilities and implement any recommendations and plans of action. Every NHS region is testing the review process and by March 2019 we expect every area to have established a mortality review process.

On the important matter of drugs, excessive use of psychotropic medication is known to be a specific factor in the premature death of people with a learning disability. Several royal colleges have signed a pledge to stop overmedication and have developed plans to deliver on the pledge, including issuing guidance for pre-registration nurses and psychiatrists; producing accessible information on medication for people and their families; and publishing guidance for prescribers. NHS England will also look regularly at primary-care prescribing of psychotropic drugs to monitor progress nationally.

As I mentioned earlier, the NHS mandate includes a requirement to reduce health inequalities for people with a learning disability. The noble Baronesses, Lady Redfern and Lady Hollins, mentioned annual health checks, as did the noble Baroness, Lady Walmsley. A key objective of this work is to increase the number of people on primary care registers and to ensure that as many of those people as possible get an annual health check. The ambition is for 75% of people on GP registers to receive an annual health check by 2020. Specific work under way includes: standardised letters to improve advice and guidance on health checks; pre-health check questionnaires; health check templates

[Baroness Chisholm of Owlpen]
linked to people's care records; and health action planning, including a focus on key issues that need to be followed up.

NHS England is working to improve how people with a learning disability access health services. This includes: developing care pathways for health conditions affecting people with a learning disability such as diabetes, epilepsy, heart disease and dysphagia; improving patient experience and outcomes; and sharing good practice to reduce variation in quality and make reasonable adjustments to services.

Education is hugely important and was mentioned by virtually every noble Lord. We have recognised that there needs to be a significant improvement in education of healthcare professionals. Health Education England, together with Skills for Health and Skills for Care, launched in July 2016 the learning disabilities core skills education and training framework, which was mentioned by several noble Lords. The framework provides the knowledge and skills needed for those delivering training to health and care professionals.

The noble Lord, Lord Addington, and the noble Baroness, Lady Hollins, mentioned the difficulties in communicating. Some universities such as St George's, with the help of the noble Baroness, Lady Hollins, lead the way. Here, students receive training from training advisers who themselves have learning disabilities.

We are also taking steps to help people understand and access the right care and support, including by trialling the idea of "named social workers", and, as part of the transforming care programme, establishing the role of "care and support navigators". These will also support the aims of integrated and personalised care.

The provision of accessible information and people's ability to communicate with staff have a key impact on their care, experiences and outcomes. In July 2015, NHS England published the accessible information standard for the NHS and social care services to help organisations identify and meet an individual's communication and support needs.

As the noble Lord, Lord Addington, and the noble Baroness, Lady Fall, mentioned—the noble Baroness, Lady Hollins, mentioned it in the debate last Thursday on libraries and again tonight—the provision of books beyond words for those who have visual learning but difficulty with words can make a real difference. It is important that every possible healthcare professional has this at their side whenever they are dealing with people with learning disabilities.

I want to make sure that I cover all the questions, because, as always, I am running out of time.

The noble Baroness, Lady Hollins, asked what the Government are doing to improve our knowledge and understanding of the needs of this vulnerable group. GPs, under the quality and outcomes framework, have to maintain a register of their patients who have learning disabilities. The new Care Quality Commission arrangements for inspections for acute hospitals explicitly examine how patients with particular needs, such as learning disabilities or dementia, are identified. As the noble Baroness, Lady Hollins, also mentioned, the Government will regularly inform Parliament of the progress that has been made. I think the noble Baroness, Lady Tyler, also mentioned this. Public Health England's Learning Disabilities Observatory team review each year and are covered in local and health authority joint strategic needs assessments. This team will continue, funding will continue for this team and the Secretary of State for Health reports annually to Parliament his assessment of NHS England's progress.

The noble Baronesses, Lady Tyler and Lady Hollins, also wanted to know whether the Government can give a clear message to local authorities and special care agencies about their expectations that staff will be released to contribute to lead reviews of deaths. We agree that there should be the local capacity to undertake high-quality reviews which will yield the best possible learning. However, we have no plans to legislate to make such participation a statutory duty. There is already a strong expectation in the CQC guidelines that providers will participate in relevant clinical audits. Additionally, there is participation in the NHS England-commissioned audit and outcome review programme, which the Learning Disabilities Mortality Review programme is carrying on.

I will have to write to the noble Lord, Lord Hunt, on the 18 recommendations, if that is all right, and on the funding attitudes.

There is work in progress which will, in time, have a positive impact on the safety and quality of care.

Baroness Walmsley: I am sorry to interrupt, but when she is writing her letters will the Minister please also reply to my questions about learning disability nurses?

Baroness Chisholm of Owlpen: Yes. I am so sorry—I had the answer and I will make sure that I get it to you.

We give thanks to the noble Baroness, Lady Hollins, and people like her who keep pushing the barriers facing this vulnerable group. The Government are focused on making changes happen, stopping variation in care and championing those with learning disabilities being able to live full and happy lives, knowing that support is there when needed. Once again, I thank all noble Lords for taking part tonight. I am sorry that I have not had time to answer all the questions, but I will make sure that the letters get to noble Lords.

House adjourned at 9.08 pm.