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House of Lords

Wednesday 9 November 2016

11 am

Prayers—read by the Lord Bishop of Salisbury.

India: UK Ex-Servicemen

Question

11.06 pm

Asked by Lord Beith

To ask Her Majesty’s Government what discussions they have had with the authorities in India about the continued imprisonment of six United Kingdom ex-servicemen who had been working on an anti-piracy ship.

Baroness Goldie (Con): My Lords, Her Majesty’s Government have repeatedly raised this case with the Indian Government at the highest levels. In fact, this week the Prime Minister raised it with Prime Minister Modi, making clear the importance of seeing progress on the case. However, this is a legal process and we cannot interfere with the Indian legal system. We shall continue to raise their case with the Indian Government and we shall urge the Indian authorities to bring the case to an early conclusion.

Lord Beith (LD): My Lords, the thoughts of many of us will be with the uncertain implications of the US election result but for six families in Britain, their focus remains entirely on bringing home the six men who were legitimately engaged in fighting piracy and have been trapped in India for three years. I welcome the fact that the Prime Minister raised this issue with Prime Minister Modi and that he appeared to indicate that when the appeal process is over, he would if necessary be prepared to look further at it, but since administrative delays in the appeal process are part of the problem, can the Minister assure me that the pressure will be kept up?

Baroness Goldie: Yes, and I thank the noble Lord for making a very important point. Our thoughts are with the men and their families. These men come from all parts of the United Kingdom, from communities familiar to many of us. As the noble Lord will be aware, the British Government, through the Diplomatic Service, have been engaging consistently with the Indian Government and the Diplomatic Service has also ensured that charitable agencies have been involved so that there is other support such as food supplies and access to medical advice.

Baroness Northover (LD): My Lords, the Government have apparently raised this case over 30 times since 2013. Is it not time to refer it to the Secretary-General of the Commonwealth, or to urge the Indian Government to agree to allow complaints of human rights breaches to be referred to the UN Human Rights Committee?

Baroness Goldie: The Commonwealth may have a locus in this. The United Kingdom Government have been more concerned with being directly focused on the specific situation of the six British nationals. As I said earlier, to that extent, the United Kingdom Government, through the Diplomatic Service, have been responsible for greatly assisting the men with matters such as visitation and support within the prison, and ensuring that charitable agencies can also lend support. The United Kingdom, through the Diplomatic Service, has been the facilitator for these improvements.

Lord Cormack (Con): Following those last points, is my noble friend reasonably satisfied with the conditions in which these men are being held? Can she say something about that?

Baroness Goldie: I understand that the conditions are acceptable—indeed, better than those available to many Indian nationals. I understand that they do not share cells and there is a right to exercise and to have visits. Indeed, when families or friends have visited from abroad, these visits have been extensive, affording quality time with the prisoners. As I said to the noble Baroness on the Liberal Democrat Benches, the Diplomatic Service has also ensured that charitable agencies have been involved so that there is other support such as food supplies and access to medical advice.

Lord West of Spithead (Lab): My Lords, going back to my noble friend’s question, there is no doubt that the people who are put on board merchant ships have caused the greatest drop in piracy in that region. No ship that has had these armed guards has ever been taken by pirates, so this has been very effective. There have always been great complexities associated with floating armouries and the rules they operate under, but they have been to the great benefit of global shipping and we should really support them—indeed,
Baroness Goldie: Although I understand the substance of the point made by the noble Lord, as a matter of principle it is important to distinguish between the extent to which the Foreign and Commonwealth Office can control the decisions of individuals who decide to work abroad—in any arena—and the extent to which we have to accept that individuals have to make judgments for themselves. As the noble Lord says, it is important to try to address and reduce piracy. It is of course also incumbent on the companies operating in that arena to comply with international law and ensure they do not engage in activity, or find themselves in circumstances, which breach that law. In this case, I understand that the nationals consider they have a defence. The matter is before the Indian courts. We must respect that and leave the Indian legal process to dispatch that obligation.

Baroness McIntosh of Pickering (Con): My Lords, will my noble friend explain to the House whether we have made common cause with countries such as Denmark, which is even more dependent on moving goods by sea? I should declare an interest, in that I am half-Danish. It has suffered great losses and many merchant navy seamen have been imprisoned. Have we made common cause with other European countries, such as Denmark, to combat piracy?

Baroness Goldie: I cannot say specifically what activity the United Kingdom Government have engaged in with Denmark, but my noble friend will understand that this is an area before the Foreign and Commonwealth Office. The United Kingdom Government are constantly assessing the situation and trying to ensure, if British nationals are involved, that their employers respect and observe international law and think of their employees, so that they do not engage in activity which may cross the line of breaching international law.

**NHS: Cancer Patients**

**Question**

11.14 am

*As asked by Lord Sharkey*

To ask Her Majesty’s Government what assessment they have made of the latest NHS data on timely diagnosis and treatment of cancer patients.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, the NHS is meeting six out of eight cancer waiting times standards, with the other two being missed by less than 3%. This is against a backdrop of a more than 90% increase in urgent referrals—that is more than 800,000 more people—and treating nearly 50,000 more patients following a GP referral compared to 2010, an increase of 20%.

Lord Sharkey (LD): Why are the regional variations in early cancer diagnosis so very large? For example, the worst is Lincolnshire West at 33% while the best is West Sussex at 61%. Does the Minister agree with Cancer Research UK and the Royal College of Radiologists that an important factor in the NHS missing early diagnosis targets is the shortage of staff to actually do scans, procedures and lab tests?

Lord Prior of Brampton: The new cancer dashboard has given us much more transparency around the country, so at least we now know where the problems are. The noble Lord is absolutely right that the critical area is early diagnosis, which is why one of the targets coming out of the new cancer strategy is that everyone should have a definite diagnosis within 28 days of an urgent referral. He is also absolutely right that one of the major constraining factors is workforce. We will be training an extra 200 non-medical endoscopists over the next couple of years, which should help considerably, but it remains an issue and Health Education England is due to report back in March 2017.

Baroness Gardner of Parkes (Con): My Lords, can the Minister tell me whether we are now widely using the form of radiotherapy for cancer which is much less invasive? I think it is called IMRT and we have discussed it in this House before. Is it widely in use now in the National Health Service?

Lord Prior of Brampton: My noble friend is right; the use of IMRT has increased from around 10% to about 40% in the past year—so it is increasing greatly. There is much less collateral damage with IMRT. We have also, as my noble friend will know, commissioned two proton beam centres, at the Christie and UCLH, which will also make a difference. We have just announced a £130 million investment in new linear accelerator machines. Those three developments will, I think, greatly improve our ability to deliver world-class radiotherapy.

Lord Hunt of Kings Heath (Lab): My Lords, is it not time for a bit of honesty on this? The two targets the Government are missing are the crucial ones of the 62-day cancer treatment waiting time and the two-week wait for referral for patients with suspected cancer. The Government have said that early diagnosis and quick treatment are essential, but those two targets relate exactly to those key points. The Minister knows that, in the mandate for this year, the Government said to NHS England that this must be a priority. But, given the huge funding and staffing pressures on the NHS, is it not time for the Government to come clean and admit that they cannot deliver this?

Lord Prior of Brampton: I think I was being honest, actually. I have never hidden the fact that these targets are very tough and difficult to meet. But we have increased activity enormously. We accept that early diagnosis is critical and probably as important as the 62-day referral for treatment target, which is why the 28-day target from urgent referral to diagnosis is so critical and will be one of the four key targets that will
be in the CCG assurance framework. I accept what the noble Lords says; early diagnosis is critical. We are making progress and Sir Harpal Kumar, who developed the cancer strategy a year ago, is overseeing performance and progress towards meeting those targets.

Baroness Masham of Ilton (CB): My Lords, is it not the case that many patients have their cancer picked up in an A&E department, having been sent away from their GP several times?

Lord Prior of Brampton: The noble Baroness is right. In 2006 one in five of all new cancers was picked up in an emergency setting. That has reduced to one in four. We are making progress. I think we all accept that our performance on cancer outcomes has lagged behind the best in Europe. The strategy developed by Harpal Kumar is designed to address that. We are making progress but we have some way to go.

Lord Cotter (LD): My Lords, what is being done, additionally, towards the prevention of cancer? There is a lot of feeling that the food chain is adulterated through the use of pesticides and such like. Will the Minister consider doing work in the direction of prevention and investigating possible causes?

Lord Prior of Brampton: My Lords, considerable research is going on into precisely the area that the noble Lord refers to. He talked about prevention, which is a hugely important area. Early awareness is also very important. We are running these Be Cancer Aware campaigns; at the moment there is a campaign going on around lung cancer to get early detection. I will investigate further and see what we are doing to investigate the root causes of cancer—whether there is any link to pesticides, for example.

Lord Dykes (CB): Further to the opposition spokesman’s comments, will the Minister confirm that in terms of prevention, treatment and cure, we are well behind the coefficients of most other advanced countries?

Lord Prior of Brampton: There are lies, damned lies and cancer statistics. It is extremely difficult to make comparisons on survival rates with other countries. There is evidence that we are behind the best in Europe on five-year survival rates. There is also considerable evidence that we are making good progress—but, of course, other countries are making good progress at the same time. If we implement the cancer task force recommendations, it is estimated that we will save an extra 30,000 people’s lives per annum. We have a very ambitious programme to improve cancer outcomes, but I accept that we are starting from some way back from the best performance in Europe.

Baroness Pitkeathley (Lab): My Lords, does the Minister accept that early diagnosis depends on patients or potential patients recognising the symptoms? Notwithstanding the pressure on services, are the Government continuing to encourage patients to recognise potential cancer symptoms?

Lord Prior of Brampton: The noble Baroness makes a very good point and the answer is yes, we are. Public Health England has a big awareness campaign. As I mentioned, a campaign on lung cancer has just finished. I think that there have been 11 campaigns to raise awareness over the past six years. The National Screening Committee is constantly modernising and updating our screening processes, and has introduced new screening processes that can be done at home—both bowel cancer screening and the HPV screening process for cervical cancer.

Saudi Arabia: Migrant Workers

Question

11.22 am
Asked by Lord Hylton

To ask Her Majesty’s Government what discussions they have had with the government of Saudi Arabia about the recent withholding of wages due to migrant workers by large and medium-sized companies.

Baroness Goldie (Con): My Lords, the Government take the rights of migrant workers very seriously, as the Prime Minister made very clear in her speech at this year’s United Nations General Assembly in September. Where we have concerns over legislation or regulatory protections for migrant workers, we raise these with Governments. However, we cannot intervene in specific labour disputes, including investigating reports of third-country migrant workers not receiving payments due to them.

Lord Hylton (CB): I thank the noble Baroness for her reply, but does she agree that this issue is a British one, as a British doctor working at the Saad hospital in Khobar has lost wages? It is also a Commonwealth issue because hundreds, if not thousands of migrant workers from the Indian subcontinent have also lost their pay. Will the Government arrange the strongest possible protest to Saudi Arabia, which I note is able to wage two wars at the same time in neighbouring countries?

Baroness Goldie: I must apologise to the noble Lord; with some difficulty, due to the background noise, I heard only part of his question. If I may deal with the first issue, which I think concerns British nationals, I can confirm that officials in the British embassy in Riyadh have been in contact with the British nationals in Saudi Arabia who are in a similar situation as third-country migrant workers not receiving payment. The advice of the British embassy, which I encourage anyone experiencing problems to follow, is to seek legal advice by engaging an independent lawyer qualified in local law who can advise on rights and methods of redress. That is not something that the Foreign and Commonwealth Office can intervene upon.

I think the latter part of the noble Lord’s question concerned the role of the Commonwealth. He makes the point that there may be migrant workers in Saudi Arabia from Commonwealth countries. With respect,
it is for these Commonwealth countries to determine how they wish to address these issues and what steps if any they wish to take on behalf of their citizens who are in the position of being in Saudi Arabia and may not have been paid their due wages.

Lord Wallace of Saltaire: My Lords, if the major construction companies in Saudi Arabia, including the Binladin group, cannot afford to pay their workers, is the Government’s strategy to replace European markets with new export markets in countries such as Saudi Arabia perhaps not going to be very successful?

Baroness Goldie: I have to apologise: I simply could not hear the question. I am going to have to ask the noble Lord to write to me. I do not know what is going on outside but it is, to say the least, distracting.

The Countess of Mar (CB): My Lords, perhaps we should consider suspending proceedings until the noise has stopped because it is impossible to hear what we are doing.

Lord Taylor of Holbeach (Con): My Lords, I believe that what has happened is that, because we are sitting early for a Wednesday, the builders who normally have a free run of the place are cleaning some of the stonework outside. I think we should adjourn the House for five minutes while this matter is sorted out.

11.25 am
Sitting suspended.

11.31 am
Lord Wallace of Saltaire: My Lords, some of the major construction companies in Saudi Arabia, including the Binladin group, are unable to pay the wages of their construction workers. Does this not suggest that the Saudi economy is now in such a poor state that the Government’s hopes that we can replace sales to the European market by sales to markets such as Saudi Arabia perhaps are a little overoptimistic?

Baroness Goldie: I must thank the noble Lord for a question which I could hear, articulated so succinctly. No one is disguising that there are challenges for the Saudi Arabian economy. It is however the case that the United Kingdom has a long history of friendship, understanding and co-operation with Saudi Arabia based on a number of areas, including defence, security, trade and investment. It is also the case that Saudi Arabia is recognising the need to diversify its economy. That is why it recently conceived something called the 2030 vision, in which the UK has been invited to play a part. I suggest to the noble Lord that if an economy is facing challenges, it is important that international partners do what they can to support it.

Baroness Donaghy (Lab): I am sure the noble Baroness is aware of the dreadful circumstances in which some of these workers are housed and their conditions in the workplace. Some of them have their fare paid for to get to Saudi Arabia, but they do not have it paid for when they are sacked without notice. The condition of their housing is absolutely disgraceful. They cannot afford to seek legal advice; they cannot afford to go home; they are virtually kidnapped in that country. I underscore to her that if we can do anything on a humanitarian basis, through whatever channels the Foreign and Commonwealth Office has, I very much hope that the Government will do it.

Baroness Goldie: I know that the noble Baroness echoes a sentiment which will strike a chord with all of us. I suggest that it is for third countries and their Governments to determine how best to protect the interests of their citizens, whether at home or abroad. As I indicated to the noble Lord, Lord Hylton, the United Kingdom Government can try to assist the position of British nationals. That is what we endeavour to do by consular engagement and by engagement with the British embassy in Riyadh. At the end of the day, when it comes to internal issues about whether workers are due money, that is a matter for Saudi Arabian law, and they need to involve suitably qualified lawyers to give advice.

Lord Collins of Highbury (Lab): The noble Baroness may recall that the previous Government withdrew core funding from the UN’s International Labour Organization. Does not this case—and others—underline that we should review that decision and work with other global organisations, such as the International Trade Union Confederation, to protect workers wherever they are?

Baroness Goldie: I thank the noble Lord, Lord Collins, for his question. Saudi Arabia, as he is aware, is a member of the International Labour Organization, as is the United Kingdom. Indeed, as long ago as 1975, the ILO adopted a migrant workers recommendation which specifically detailed provisions to protect migrant workers, including enjoyment of effective equality of opportunity and treatment with nationals of the member country. I would say to the noble Lord that this is a locus for the United Nations and the International Labour Organization within the UN, and I am sure that all member states would be interested in looking at it.

Lord Green of Deddington (CB): My Lords, I support the thrust of the original Question, having seen at first hand how people can get caught in a very difficult situation. Does the Minister agree that the best way of tackling this with the Saudis is to address the situation of British citizens, for which we have a clear and unarguable locus? They are quite capable of drawing the conclusions from the representations that we will make.

Baroness Goldie: I thank the noble Lord for his contribution. I emphasise that we do have a responsibility for British nationals—we are very cognisant of that. We do everything we can at international level to represent our concerns. We have been doing that consistently, and that is a message that we constantly
will reflect fully on how best we can support them. Where we can intervene with any form of support for British nationals who find themselves in an unwelcome and difficult situation, we will reflect fully on how best we can support them.

Lord Lamont of Lerwick (Con): My Lords, further to the Minister’s comments about the Saudi economy, although it is one thing to co-operate on security and intelligence, is it really wise—in a region that is absolutely brimming full of armaments—to continue to sell them on such a large scale to Saudi Arabia?

Baroness Goldie: I thank my noble friend for his question. The United Kingdom Government take their arms export licensing responsibilities very seriously. As he will know, we operate one of the most robust arms export control regimes in the world. The test we apply is simple: whether there is a clear risk in relation to international humanitarian law that those items subject to the licence might be used in a serious violation of international humanitarian law. That is kept under careful and continual review.

Turkish HDP Party

Question

11.37 am

Asked by Lord Balfe

To ask Her Majesty’s Government what action they are taking following the detention on 4 November of Selahattin Demirtas and Figen Yuksekdag, the co-chairs of the Turkish HDP party.

The Earl of Courtown (Con): My Lords, we continue to follow developments in Turkey closely and underline the importance of the rule of law and protection of freedom of expression. My right honourable friend the Foreign Secretary raised these issues during his visit to Turkey on 25 and 27 September, as have America and the Minister for Europe with Turkey’s Minister for Europe, Ömer Çelik, most recently in a phone call on 7 November. The European Union issued a statement on 8 November.

Lord Balfe (Con): I thank the Minister for his reply. I represent the Council of Europe on the Venice Commission, which has called for the restoration of parliamentary inviolability of MPs. Far too many members of the middle class are now being locked up, and the Turkish Government have overstepped the line—in so far as there is a line—between what is acceptable and what is unacceptable. It is quite a long time since the coup. Will the Minister, in co-operation with other friendly embassies in Ankara, make arrangements for the European Union Ministries and the British Government to be represented, as appropriate, at all the court hearings held in this regard, and for regular reports to be send back to the chanceries of Europe?

The Earl of Courtown: My Lords, my noble friend makes important points and is quite right in what he says. My right honourable friend the Minister for Europe has emphasised these points on human rights, freedom of the press and the rule of law in his conversations. We work with other like-minded embassies to monitor particularly the highest-profile cases. We will look carefully at what the noble Lord has said.

Viscount Waverley (CB): My Lords, is there any suggestion that the independence of the judiciary is compromised in this matter, or that the process is not being conducted in accordance with Turkey’s national legislation? Is HDP’s affiliation in conflict with the EU and US designated list?

The Earl of Courtown: The noble Viscount’s point about the judiciary has been made very plain in the many bilaterals that are taking place with the Turkish Government. We urge the HDP to sever any links with PKK and renounce violence and, more importantly, urge that all parties in Turkey return to the peace process.

Lord Wallace of Saltaire (LD): My Lords, after the referendum campaign the current Foreign Secretary promised that Turkey was about to join the European Union and gain free movement. Is that now the official view of the Foreign Office, or is it now switching gear, as one hopes it might, to consider whether there will be Kurdish refugees coming from Turkey to join the substantial Kurdish population in London, and that we need to co-operate with our European partners in preparation for that?

The Earl of Courtown: My Lords, the position of the Foreign Office has not changed, so the UK remains committed to driving reform, embedding stability and addressing shared challenges, such as security and migration in Turkey. I underline the fact that our bilateral relations with Turkey are very good.

Baroness Royall of Blaisdon (Lab): My Lords, I declare an interest in that Selahattin Demirtas, the leader of the HDP who has been imprisoned, is a political friend. He is not a terrorist sympathiser; he is an elected representative of his people. While I understand Turkey’s sensitivities about terrorism, does the Minister agree that the President is using the coup, which we wholeheartedly condemn, to purge liberal and secular opponents, and to attack the principles of human rights, democracy and the rule of law?

The Earl of Courtown: The noble Baroness, Lady Royall, makes important points. They are foremost in the conversations between Her Majesty’s Government and the Turkish Government.

Lord Anderson of Swansea (Lab): My Lords, does the Minister agree that this is part of a wider purge in removing checks and balances to the authoritarian rule of the President, and reversing much of the Kemalist secular tradition? Does this not mean that the prospect, however dim, of Turkey joining the European Union must be put back even further, particularly because, even after Brexit, Turkey is losing one of its major advocates for its entry to the European Union?
The Earl of Courtown: The noble Lord, Lord Anderson, as usual, makes some very valid points. On the European aspect of his question, the annual enlargement package—the annual report on those countries wishing access to the European Union—was published earlier today. We welcome the publication of this communication and we will carefully study the detail and recommendations of the Commission’s report in the coming days.

Operation Midland

Private Notice Question

11.43 am

**Baroness Miller of Chithorne Domer**

To ask Her Majesty’s Government what urgent steps they will take to restore confidence in the Metropolitan Police following the conclusions of Sir Richard Henriques report into Operation Midland.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, allegations of sexual offences are among the most serious to be investigated by the police. The police have a responsibility to investigate such allegations, thoroughly, sensitively and with rigour, so that the facts can be established. Sir Bernard Hogan-Howe was right to ask Sir Richard Henriques to carry out this independent report, and it is now for the Metropolitan Police to address the findings and take action where necessary.

**Baroness Miller of Chithorne Domer** (LD): I thank the Minister for her reply. An initial reading of the report suggests that the operation fell short on a number of issues of natural justice. I want to ask the Minister about one: will she make sure that her department issues guidance that people under investigation should remain anonymous until the police are in a position to bring charges?

**Baroness Williams of Trafford**

My Lords, we had a very good debate on this in the last couple of weeks and there is a general principle: people should remain anonymous before charge, but there are circumstances in which names may be released and it is in order for victims to come forward. I must say to the noble Baroness that victims’ groups support that principle.

**Lord Lamont of Lerwick** (Con): My Lords, is the Minister aware that some of us saw at first hand the suffering of Lord Brittan, who died before his name could be cleared? Can the Minister explain why the text of this report, which appears an appalling indictment of the Metropolitan Police, cannot be published absolutely in full? Secondly, why could a copy of it not have been given to Lady Brittan before it was made public? Why could she not see the full report? Lastly, is it correct—as reported in some newspapers—that the search warrant for Lord Brittan’s house after he died was made out in the name of Lord Brittan, which, if true, would surely be improper procedure?

**Baroness Williams of Trafford**

I am sure my noble friend will understand if I do not talk about individual cases, but I certainly concur with his point: suffering arises when people have their names released and are guilty of nothing. However, by the same token, victims often do not come forward because they are frightened, but they need to feel that they can in these situations. The report was commissioned by the Metropolitan Police Commissioner, and therefore its publication arrangements and whom he distributes it to are matters for him to decide.

**Lord Morris of Aberavon** (Lab): My Lords, since manifest injustice results from the publication of names before charge, is it not a matter of urgency that the whole law and practice should be reviewed independently at the highest level and should not rely solely on the views of the police?

**Baroness Williams of Trafford**

My Lords, it is the view of the Government that there should be a presumption of pre-charge anonymity, unless it is for victims who previously felt unable to come forward to do so. I must stress that victims’ groups are very supportive of some situations where it is right that names are released.

**Lord Cormack** (Con): Was Lord Bramall given a copy of this report prior to publication in full? Two Members of your Lordships’ House, one tragically dead, the other still alive, have been traduced in the most vile and improper way. The reputation of a former Prime Minister has been trashed. A former Member of Parliament, who was certainly not guilty of the appalling things with which he was charged, has also had his life ruined. We must, I suggest to your Lordships and my noble friend, have a further debate on this. Can we please have copies of the report in the Library before we have such a debate?

**Baroness Williams of Trafford**

My Lords, there will be a debate later today, if my noble friend would care to sit through the Committee stage of the Policing and Crime Bill. My noble friend and I do not disagree that there should be a presumption of anonymity, but it is important, in certain cases, for the police to be able to release names. The publication arrangements for the report are, as I have said, a matter for the commissioner to decide on.

**The Lord Bishop of Leeds**: My Lords, can the Minister comment on the criteria for deciding which names should be divulged and which should not? To use the language of victimhood, we are creating victims as well as defending victims.

**Baroness Williams of Trafford**: Could the right reverend Prelate repeat the last bit of that question?

**The Lord Bishop of Leeds**: My point was that we are creating victims as well as defending them; we are creating new ones. What are the criteria—that was the essential question—for deciding when anonymity ought to be breached and names put out?
Baroness Williams of Trafford: The criterion is generally that it should be in the public interest for a name to be released. We can all think of examples where names have been released and somebody has been found not to have committed any crime at all. However, it is important in law to balance that with the importance of victims coming forward and not being frightened to do so.

Lord Rosser (Lab): My Lords, we note that, by remarkable coincidence, this report appears to have come out on the same day as the American presidential election result, which is very interesting. The Government’s reply to the Question appeared to be that it is for the Metropolitan Police to act. Does that mean that the Government will not even ask the Metropolitan Police what they are doing, including, for example, ensuring that at least in future there are adequate internal systems for regularly reviewing such major investigations to determine, among other things, whether there is still a case for continuing with them? Surely the Government do not intend just to sit back, do nothing and say that this is purely a matter for the Metropolitan Police.

Baroness Williams of Trafford: My Lords, it was the commissioner who asked Sir Richard Henriques to carry out the independent report. It is now for the Metropolitan Police to address the findings of that report, and to take action where necessary.

Lord Dear (CB): My Lords, running throughout this report are two palpably obvious issues: the quality of officers at the top of any police service in this country and leadership. I spoke on this matter in Committee on the Policing and Crime Bill last week, as did the noble Lords, Lord Condon and Lord Blair, two former Commissioners of the Metropolitan Police. We raised very grave concerns that the requirements for training and selection of senior officers had been allowed to diminish to a point almost of invisibility, one example of which was the sale of the Police Staff College, which has not been replaced. Given that I am to have a meeting at the Home Office next week, will the Minister reassure your Lordships’ House that the issues of quality and leadership will be elevated to a point of prime concern in the Home Office, and will not remain almost invisible, as they are at the moment?

Baroness Williams of Trafford: My Lords, I preface my comments by saying that the sale of a building is not, in itself, the most important aspect of those issues. However, what the noble Lord says about the quality of leaders and officers in the Metropolitan Police, and the police in general, is very important. We will have further debates on this. Certainly, the training and leadership of police forces that protect the public are of the utmost importance.

Baroness Butler-Sloss (CB): My Lords, it is patently unsatisfactory that the full report is not produced for the public to read. Should not the Home Office urge the commissioner of police to make it public?

Baroness Williams of Trafford: My Lords, policing is independent of government. It is entirely up to the Commissioner of the Metropolitan Police whether he releases an independent report.

Policing and Crime Bill Committee (4th Day)

11.54 am

Relevant documents: 3rd and 4th Reports from the Delegated Powers Committee and 3rd Report from the Joint Committee on Human Rights

Clause 112: Firearms Act 1968: meaning of “antique firearm”

Amendment 203A

Moved by Baroness Chisholm of Owln

203A: Clause 112, page 128, line 40, leave out from beginning to end of line 2 on page 129 and insert—

“(a) either the conditions in subsection (2AA) are met or the condition in subsection (2AB) is met, and
(b) if an additional condition is specified in regulations under subsection (2AC), that condition is also met.
(2AA) The conditions in this subsection are that—
(a) the firearm’s chamber or, if the firearm has more than one chamber, each of its chambers is either—
(i) a chamber that the firearm had when it was manufactured, or
(ii) a replacement for such a chamber that is identical to it in all material respects;
(b) the firearm’s chamber or (as the case may be) each of the firearm’s chambers is designed for use with a cartridge of a description specified in regulations made by statutory instrument by the Secretary of State (whether or not it is also capable of being used with other cartridges).
(2AB) The condition in this subsection is that the firearm’s ignition system is of a description specified in regulations made by statutory instrument by the Secretary of State.
(2AC) The Secretary of State may by regulations made by statutory instrument specify either of the following conditions for the purposes of subsection (2A)(b)—
(a) a condition that a number of years specified in the regulations has elapsed since the date on which the firearm was manufactured;
(b) a condition that the firearm was manufactured before a date specified in the regulations.”

Baroness Chisholm of Owln (Con): My Lords, Great Britain has some of the toughest gun control laws in the world. However, as matters stand, the Firearms Act 1968 exempts antique firearms held as a “curiosity or ornament” from the scope of firearms legislation, which means they can be held without a firearms certificate. The problem with the current situation is that “antique” is not defined and it is this ambiguity that Clause 112 is designed to address. The law as currently constituted places too much emphasis on how the firearm is possessed—as a curio or ornament—and not on the characteristics and
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definitions of what constitutes an antique firearm. To resolve these difficulties we propose to define an antique firearm by reference to functionality and will do this in two ways: first, if its chamber is capable of being used only with a cartridge of a specified description and, secondly, if its ignition system is of a specified description.

However, concerns have been raised that instead of bringing the desired certainty to this area of firearms legislation, our definition could create further uncertainty about the status of old firearms because it would be difficult, if not impossible, to rule out the possibility that some antique firearms may be capable of being used with cartridges other than those for which they were originally designed. This would mean that a significant proportion of antique firearms currently regarded as exempt would not be covered by the new definition and in consequence could become prohibited. The amendment therefore sets out that antique firearms should be defined by reference to the chamber they had when manufactured, or an identical replacement chamber, which will allow them to be subject to the exemption. If the chambering has been altered in any way to accommodate ammunition which would otherwise be a loose or imprecise fit, then the firearm will not be subject to the exemption. A firearm may still also achieve antique status based on its ignition system.

The amendment also creates a further regulation-making power to enable the Secretary of State to specify a number of years since the date of manufacture which must have elapsed for a firearm to be antique, or that the firearm must have been manufactured before a specified date. This will guard against modern reproductions benefiting from antique firearms’ exemption from the controls in the legislation. I beg to move.

Amendment 203A agreed.

Amendments 203B to 203E

Moved by Baroness Williams of Trafford

203B: Clause 112, page 129, line 3, leave out “(2A)” and insert “(2AA), (2AB) or (2AC)”

203C: Clause 112, page 129, line 6, leave out “(2A)” and insert “(2AA), (2AB) or (2AC)”

203D: Clause 112, page 129, line 9, leave out “(2A)” and insert “(2AA) or (2AB)”

203E: Clause 112, page 129, line 20, leave out “(2A)” and insert “(2AA), (2AB) or (2AC)”

Amendments 203B to 203E agreed.

Clause 112, as amended, agreed.

Clause 113 agreed.

Clause 114: Controls on defectively deactivated weapons

Amendment 203F

Moved by Earl Attlee

203F: Clause 114, page 130, line 43, at end insert—

“(3A) Subsection (1)(b) does not apply if the weapon is transferred by means of inheritance.”

Earl Attlee (Con): My Lords, I will also speak to Amendments 203G and 203H. The Committee is pressed for time so I shall try to avoid wearying it with too much detail. At Second Reading I raised the issue of deactivated firearms covered by Clause 114 and declared my interest as an owner of one deactivated firearm. Unfortunately, despite the best efforts of Vicky Ford MEP and our Home Office officials, the EU is understandably hell bent on a knee-jerk reaction to the tragic events in Paris. The EU proposals are technically weak and difficult to understand, partially because of the technical terms used. I understand that a significant proportion of the briefing against Ms Ford’s position has come from the Liege proof master. Apparently that official is now being investigated regarding serious criminal matters involving firearms. If these EU provisions come into effect they will have a very serious impact on collectors, the trade in deactivated firearms and the film industry throughout the EU, which could be badly affected because it will be harder to make action films safely.

The Minister has no shortage of expert advice available to her and I am grateful to her for making her officials available to brief me. She has an excellent lead technical official in the Home Office, to whom I pay tribute, as well as access to the London and Birmingham proof masters. As a result, for many years we have had an excellent regime for deactivating firearms.

Noon

My Amendment 203F is a probing amendment that looks at inheritance, while Amendment 203G is an anti-forestalling suggestion that looks at the possible use of companies to get around the Bill’s provisions. Perhaps the best way for the Minister to respond to these two issues is to write to me, copying in the rest of the Committee.

My Amendment 203H is designed to expose the weaknesses in the EU regulations if implemented without the current UK regulations being in place as well. However, it may be more profitable to suggest a solution to the problem rather than explore it in detail. Rather than the Bill directly referring to EU legislation, would it not be better for the Minister to take an order-making power to make regulations to replace the effect sought from new Section 8A(4)(c) of the 1988 Act? Initially the regulations might be based on the EU legislation in order to keep us compliant with our EU obligations. If and when Brexit happens, the regulations under the order can easily be changed so that we revert to solely the UK deactivation regime, which will still keep us completely safe.

Bearing in mind our time constraints, it may be for the convenience of the Committee if we allow the Minister to speak now to her amendments, which cover somewhat different issues, and then to comment on my suggestion about taking an order-making power under the Bill. I have a great deal of material to put before the Committee but I hope that will not be necessary at this stage of the Bill. I beg to move.

Lord Kennedy of Southwark (Lab): My Lords, Clause 114 concerns deactivated weapons. As we have heard, we have some of the toughest firearms laws in the world, and I am very pleased about that.
In this grouping the noble Earl, Lord Attlee, has given notice of his intention to oppose Clause 114 standing part of the Bill, although he did not speak to that. However, I do not agree with his opposition to the clause. I think that we would want deactivated weapons to be sold or gifted to people only when they met the highest standards available. If people want to sell these weapons within the EU, they should be certified to the appropriate standard. That is the answer to the problem—not to delete the whole clause.

However, the noble Earl's amendments raise important points that need to be considered carefully and responded to by the Government. My general position on firearms is that our legislation has had a positive effect and we should always keep matters under review, with a view to seeing where updates or amendments can be made, so that we never relax our tough approach. Having said that, I see the point the noble Earl is making—if you inherit a weapon, potentially an offence can be committed. We need to look at that, although I am not sure that we should do as he suggests.

The noble Earl also made an important point about transfers to a body corporate, which can be used as a way of getting round legislation. I am not sure what effect the last amendment in the group would have, but he has raised some very important points and I look forward to hearing what the Minister says.

Baroness Hamwee (LD): My Lords, when the Minister introduces Amendment 203K, which is about extending the period for considering an application for the renewal of a certificate, can she say whether this is being proposed because there are problems generally or in particular forces? In other words, are there just a few difficulties or is this a widespread issue, in that the police do not find eight weeks sufficient? I raise this because of the concern that 16 weeks might easily become the norm, given the opportunity to extend.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I am grateful to my noble friend for outlining his amendments. As he suggests, I will first explain the government amendments in this group.

Amendments 203J and 203K respond to amendments tabled by Geoffrey Clifton-Brown at Commons Report stage. They seek to make two improvements in the operation of the licensing arrangements under the Firearms Act of 1968. Amendment 203J would remove some of the unnecessary administrative requirements that currently apply to the possession of expanding ammunition.

Expanding ammunition is designed to expand predictably on impact and was prohibited initially in relation to pistols in 1992. In 1997 the ban was extended to all such ammunition, even though it is in universal use for pest control and is required for deer-stalking under the Deer Act and Deer (Scotland) Act.

The current legislation does allow for expanding ammunition to be possessed, in order to carry out specific activities such as the lawful shooting of deer, estate management, the humane killing of animals or the shooting of animals for the protection of other animals or humans. However, the legislation also requires that the individual possess a suitably conditioned firearm certificate for these activities.

The amendment would allow for the possession, purchase, acquisition, sale or transfer of expanding ammunition for rifles where the individual is in possession of a valid firearm certificate or a visitors firearm permit. The effect is—and I hope this goes some way toward answering the noble Baroness's question—that the police will no longer have to include additional conditions on a certificate or permit, thereby removing some of the administrative burden that the current regime places on them.

Amendment 203K is intended to address the issues that currently arise with an application for the renewal of a firearms certificate that has been made prior to the expiry of the certificate but has not been determined by the police in time. Police forces have developed two different approaches in these cases. The first is to allow the applicant to remain in possession of the firearm, shotgun or ammunition, which means the applicant is in breach of Section 1 or Section 2 of the 1968 Act until the application has been processed. The second is to issue a temporary permit using the power in Section 7 of the Act.

I am sure noble Lords will agree that it is not appropriate for certificate holders to be at risk of arrest and prosecution for an offence under Section 1 or Section 2 because the police have failed to process applications in time. Equally, it is not appropriate for the police to issue temporary permits to individuals whose substantive applications may subsequently be refused. The issuing of such permits also places an increased administrative burden on the police.

Amendment 203K will bring greater clarity in such circumstances by automatically extending the validity of firearm and shotgun certificates past their expiry date for a limited period of up to eight weeks. This will apply only where an application for renewal has been received by the police at least eight weeks prior to the date of expiry of the certificate.

The noble Baroness, Lady Hamwee, asked whether the problems were widespread or localised to particular forces. There were different levels of performance across different forces, and performance varies across some forces, meaning that some are better that others—so this is force-led.

Amendments 234A and 234B are consequential amendments to the extent clause.

I trust the Committee will agree that the two new clauses make sensible changes to the firearms regime and in doing so reduce the administrative burdens on the police without compromising public safety.

As my noble friend explained, his amendments relate to Clause 114, which strengthens the controls on deactivated firearms and thereby enhances public protection. I was pleased to meet my noble friend to discuss his concerns about this clause and I know that he has had a useful follow-up meeting, as he explained, with officials and one of the proof houses.

My noble friend has pointed to some of the difficulties that have been identified with the EU deactivation standards. The UK has some of the toughest gun laws
in the world and some of the most robust deactivation standards in Europe. The need for consistent, robust deactivation across member states has been the driving force for EU implementing regulation.

While the new EU deactivation specifications have been introduced, we have recognised that we need to strengthen deactivation measures for certain firearms. We now require additional measures that will align the EU standards with the exacting standards for deactivated weapons already in place in the UK. We have agreed this position with the European Commission. Moreover, the Commission has set up a small group of technical experts to help interpret and, if necessary, revise the standards, and the UK is represented on this group.

Some noble Lords may argue that, following the referendum result, we should drop this provision from the Bill. However, on leaving the EU we will still want to ensure that individuals comply with the relevant deactivation standards that we have in place. To that end, I am ready to explore future-proofing the definition of a defectively deactivated weapon as used in the clause.

I hope I have been able to reassure my noble friend that the offence in Clause 114 is necessary to strengthen our firearms controls, and that, having aired this important issue, he will be content to withdraw his amendment and support Clause 114 standing part of the Bill—and the Government’s amendments in this group.

**Lord Kennedy of Southwark:** I should have said in my earlier contribution that of course we fully support the government amendments in this group. However, I saw that they will cover only England, Scotland and Wales, and not Northern Ireland. Is that because Northern Ireland already has other provisions? The other parts of the Bill will of course cover all parts of the United Kingdom.

**Baroness Williams of Trafford:** I did know the answer to that but I have forgotten it. Rather than give the noble Lord the wrong answer, I will double-check that and write to him and the Committee in due course.

**Earl Attlee:** My Lords, I am grateful for the Minister’s response, and in particular for her final words, when she agreed to have a look at how we future-proof the arrangements. I hope that that will mean that in due course a Government will future-proof it, and then we will be able to do what we want. In the meantime, we can comply with our EU obligations, which of course we have to comply with. Although Brexit means Brexit, we have to comply at the moment. We will get a good solution—we are in a good place on this, and of course there is no question that I will oppose Clause 114. In the meantime, I beg leave to withdraw my amendment.

Amendment 203F withdrawn.

Amendments 203G and 203H not moved.

Clause 114 agreed.

**Amendments 203J and 203K**

Moved by Baroness Williams of Trafford

203J: After Clause 114, insert the following new Clause—

“Controls on ammunition which expands on impact

(1) The Firearms Act 1968 is amended in accordance with subsections (2) and (3).

(2) In section 5 (weapons subject to general prohibition), in subsection (1A), for paragraph (f) substitute—

“(f) any ammunition which is designed to be used with a pistol and incorporates a missile designed or adapted to expand on impact.”;

(3) In section 5A (exemptions from requirement of authority under section 5), in subsection (8)(a), after “which”, in the first place it occurs, insert “is designed to be used with a pistol and”.

(4) In consequence of the amendment made by subsection (2), omit section 9 of the Firearms (Amendment) Act 1997.”

203K: After Clause 114, insert the following new Clause—

“Limited extension of firearm certificates etc

(1) After section 28A of the Firearms Act 1968 (certificates: supplementary) insert—

“28B Certificates: limited extension

(1) This section applies where—

(a) an application is made for the renewal of a certificate on or before the day which falls 8 weeks before the day at the end of which the certificate is due to expire, but

(b) the chief officer of police does not determine whether or not to grant the application before the certificate is due to expire.

(2) The certificate continues in force by virtue of this subsection until whichever of the following events occurs first—

(a) the chief officer determines whether or not to grant the application;

(b) the extension period ends.

(3) In subsection (2), “the extension period” means the period of 8 weeks beginning with the day after the day at the end of which the certificate was due to expire.

(4) If the event mentioned in subsection (2)(a) occurs first, and the chief officer grants the application, any period for which the certificate continued in force under subsection (2) is to be treated for the purposes of section 28A(1) as part of the period for which the renewed certificate is in force.

(5) This section does not apply in relation to the renewal of a certificate granted or last renewed in Northern Ireland.”

(2) In consequence of the amendment made by subsection (1), in section 28A of that Act (certificates: supplementary), after subsection (1) insert—

“(1A) Subsection (1) is subject to the provision made by section 28B for circumstances in which a certificate may continue in force after the period of five years from the date when it was granted or last renewed.”

Amendments 203J and 203K agreed.
Clause 115: Applications under the Firearms Acts: fees

Amendment 204

Moved by Lord Rosser

204: Clause 115, page 131, line 33, leave out from “specify” to end of line 34 and insert “that the fee charged must be equal to the full cost to the public purse of issuing the certificate.”

Lord Rosser (Lab): My Lords, I will at least attempt to be concise. The Bill deals with relatively narrow issues around Home Office licensing fees for firearms, but I will also talk about police licence fees for guns. These amendments seek to ensure that the full costs of licensing are recovered. In the previous Parliament we argued for full cost recovery in the light of a current taxpayer subsidy for gun ownership of some £17 million a year. The police have estimated that the cost of licensing a firearm is nearly four times the fee charged. A higher fee was introduced just prior to the last general election following negotiations with the British Association for Shooting and Conservation—rather than following an independent review—but it was still less than half the cost of licensing a firearm based on the police figures. These amendments require the Secretary of State to set the cost of a licence fee for prohibited weapons, pistol clubs and museums at full cost to the taxpayer, but we expect the Government to extend this requirement of full cost recovery to Section 1 firearms and the police.

12.15 pm

When this matter was debated in the Commons, the Government said that once the new police online system, e-commerce, was introduced, fees would recover the full cost of licensing. Can they say when the new online system will be introduced, whether the full costs of licensing will be charged from the day it comes in, and what they consider the fees for police licences will have to be increased in order to cover the full costs? Can they also say why it is necessary to await the introduction of the new online system? The fees were increased in April last year but still left a significant taxpayer subsidy; why can they not be increased now to cover the full cost of licensing, and, if necessary, subsequently reduced accordingly if the new online system does reduce the cost of licensing a firearm? Why should scarce police financial resources have to be spent on subsidising gun ownership rather than on fighting crime?

In respect of the Home Office licence fees, the Government said in the Commons that, “the authorisation and licensing of prohibited weapons, shooting clubs and museums costs the taxpayer an estimated £700,000 a year.”—[Official Report, Commons, 12/4/16; col. 259.]

However, the Government then said that the Bill, “will create a consistent set of charging powers across all Home Office firearms licences and authorities. The Government’s intention is that licence holders, and not the taxpayer, should pay the full cost.”—[Official Report, Commons, 12/4/16; col. 259.]

When do the Government intend that Home Office licence holders will start to pay the full costs of licensing, and by how much do they estimate fees will have to be increased to cover these costs? Why is there a need for any extended delay in raising Home Office licence fees to a level which eliminates any taxpayer subsidy. I beg to move.

Lord Paddick (LD): My Lords, I support the amendments of the noble Lord, Lord Rosser, to which my noble friend Lady Hamwee and I have added our names. My argument is quite simple: when we were discussing the Immigration Act, the Government proposed a philosophy of full cost recovery for visa applications and the Immigration Service generally. On 18 March this year, they increased the fees for visa applications, in some cases by 25%. Family and spouse visas are now £1,195, adult dependent relative visas are £2,676, and settlement applications have increased to £1,875. British citizen naturalisation certificates are now £1,156 for adults and £936 for children.

There is currently a government consultation on immigration appeal fees, which proposes an even greater increase to ensure full cost recovery. The consultation suggests a fee for an appeal on the papers to the First-tier Tribunal should increase from £80 to £490, and from £140 to £800 for an oral hearing. If the Minister is not going to agree with these amendments to ensure full cost recovery for the issuing of firearms certificates, will she explain why a different approach is being taken to the principle of full cost recovery when it comes to immigration? In particular, can she refute the obvious allegation that the Government are discriminating against foreign nationals as set against those who go hunting with guns for sport?

Earl Attlee: My Lords, I have some sympathy for the position articulated by noble Lords opposite. However, it needs to be remembered that shooters have to buy their guns, ammunition and facilities and that they pay value added tax at 20%. There is actually huge government revenue from the shooting fraternity, as 20% of everything they spend on shooting comes back to the Government. I can see the noble Lord, Lord Harris, getting very excited. It must be a very powerful argument. I have expressed sympathy for the noble Lords’ position but I give a note of caution: we should not forget the tax revenues from shooting.

Lord Harris of Haringey (Lab): My Lords, the noble Earl has goaded me into intervening in this debate, which I would otherwise not have done. It is a spurious argument to say that because gun owners have to pay VAT, which we all have to pay on most goods and services except that very narrow range which is specifically exempted, they are therefore making their contribution to the costs. My noble friend Lord Rosser and the noble Lord, Lord Paddick, have pulled their punches on this issue. What is actually happening is that the Government have selected one hobby and decided to subsidise it. I would like the Government to explain what other hobbies they intend to subsidise in exactly the same way. If noble Lords opposite, or anybody else, choose to argue that gun ownership is not a hobby then presumably they intend to use the guns for some perhaps less than satisfactory purpose. Again, I wonder why the Government choose to subsidise that activity as opposed to any other.
Earl Attlee: My Lords, I can give the noble Lord an example. I collect classic military and commercial vehicles but there is no road fund tax on them. They are zero rated; that is a subsidy from the Government to people who collect such vehicles. My point is that owners and shooters of firearms pay tax like everyone else. If they did not have their guns, they would not be paying any value added tax on them. It is a simple little point that we should not forget.

Lord Harris of Haringey: Presumably the noble Earl pays VAT on those purchases.

Baroness Williams of Trafford: My Lords, the Government agree that fees for firearms licences should be set on a cost-recovery basis. We have already increased the fees for civilian firearms and shotgun certificates issued by the police in line with this objective. Clause 115 addresses licences issued by the Home Office and the Scottish Government. They therefore concern fees for licences to possess non-civilian prohibited weapons, and for shooting clubs and museums. Currently, most of these types of licence do not attract a fee. Where a fee is charged, it is set at a level well below the cost of administering an application.

Amendments 204 to 206 would require the Government to set all fees at a level that would achieve full cost recovery. The administration of these licences, including assistance from the police, costs the taxpayer an estimated £700,000 a year. The Government agree that licence holders, not the taxpayer, should pay for this service. Clause 115 therefore provides a power for the Home Secretary to set fees for these licences. As the then policing Minister, Mike Penning, explained when similar amendments were debated in the House of Commons, we intend that the fees should be set at a level that will achieve full cost recovery. We will then set out the proposed fees in a public consultation, which we intend to publish shortly.

The consultation will invite views on the implementation of these measures and we welcome responses. The noble Lord, Lord Rosser, asked when the Section 5 fees are planned to be introduced. It will be in April 2017, subject to the planned consultation. I do not want to pre-empt the outcome of the consultation. However, there might be good reasons not to set fees to achieve full cost recovery levels, either for a transitional period or for certain categories of licence holder. We will consider the responses to the consultation on these matters before deciding on the level that should be set. In doing so, we will be guided by the principle to which I referred above: that the costs of licensing should fall to the licence holder rather than to the taxpayer.

Amendment 207 relates to the fees charged by the police for shotgun and civilian firearms certificates and for registered firearms dealer licences. In 2015, we increased fees for those certificates substantially. This was the first increase in the licence fee since 2001. The increase reflected the fact that the cost of the licences had fallen far below the cost to the police of their administration. Fees increased between 23% and 76%, depending on the type of certificate.

When we consulted on the fee levels for certificates issued by the police, we were clear that the cost of licences should reflect the full cost of licensing once a new online licensing system was in place. Work is under way to secure that system. In the meantime we are committed to undertaking an annual review of the fees. There will be a comprehensive review of police licensing fees in five years’ time. I hope that the noble Lord will be reassured that it is indeed this Government’s intention that firearms fees should reflect the full cost of licensing and that on this basis he will be content to withdraw his amendment.

Lord Paddick: My Lords, what consultation was there before the Government implemented full cost recovery for immigration visas with those groups that represent immigrants or those who might be applying for visas?

Baroness Williams of Trafford: May I write to the noble Lord on that? I do not have the answer on timing to hand. I apologise.

Lord Rosser: I seek clarification of one or two points. Did the Minister say that as far as Home Office licence holders are concerned, they will be paying the full cost of licensing from April of next year? As far as the police are concerned, there was no real commitment at all. I asked when the new online system would be introduced. I do not think that I got an answer. I asked whether the full costs of licensing would be charged from the day the new online system came in. I do not think that I got an answer. I also asked by how much the Government considered the fees for police licences would have to be increased to cover the full costs of licensing. I believe that the Minister referred to a review of police licences and costs in five years’ time. Is this suggesting that the new online system will not be coming in for five years? If the Minister is unable to give me a firm date as to when that online system will be operational, can she give a commitment that in the meantime those fees will be raised to cover the full costs and that we shall not be in a situation in which the police, who are already short of money, are in fact subsidising gun ownership in this country with money desperately needed for main police activities? Could I please have some answers? If they are not available now, I shall as always accept a subsequent letter responding to these questions.

Baroness Williams of Trafford: My Lords, in terms of the online system, the current fees are intended to cover the cost of the licensing once the online system is introduced. The police, supported by the Government, are currently developing the online system. An implementation date has not yet been determined. We plan to introduce the Section 5 fees and the increased fees for museums and clubs in April 2017, subject to the planned consultation. The level of fees will therefore be determined subject to that consultation. There is no suggestion that the new online system will take five years to implement. There will be an annual review of licence fees. I hope that I have not completely confused the noble Lord.
Lord Rosser: I do not know that the Minister has completely confused me. She has said that we do not know when the new online system is coming in, which presumably means that it has not reached the testing stage at which the Government know that it will actually deliver, yet the Government are adamant that it will not take five years. If the Government know that it will not take five years, they must be in a position to say now when they expect the system to come in. They can also say why in the meantime they will not increase the fees as far as the police licences are concerned to cover the full cost to the police. Not doing so means that the police, who are short of financial resources, are subsidising gun ownership.

12.30 pm

Baroness Williams of Trafford: My Lords, the noble Lord is right in that the taxpayer should not subsidise gun ownership. The new fees will be subject to consultation, although that was not the question he asked. He asked whether it will take five years to implement the online system. I will write to him on how long we think implementation of the online system will take, if that is okay.

Lord Rosser: I thank the Minister for her response and other noble Lords, in particular the noble Lord, Lord Paddick, and my noble friend Lord Harris, who participated in this short debate. I am grateful to the Minister for saying that she will write to me on this, because the question of when the Government are gearing up to introduce the online system is crucial. I sense it will not be within the next few months—to put it bluntly, the Government do not know when it is coming in. They are not even prepared to give an estimate of the timescale, unless that will be in the letter that is to be sent. We will need to reflect further on this in the face, apparently, of a government stance that means they are quite happy, if the online system does not come in very shortly, to see the police subsidising gun ownership in this country, at a time when the police themselves are desperately short of financial resources. However, I beg leave to withdraw the amendment.

Amendment 204 withdrawn.

Amendments 205 and 206 not moved.

Clause 115 agreed.

Amendment 207 not moved.

Amendment 208

Moved by Lord Harris of Haringey

208: After Clause 115, insert the following new Clause—

“Firearms: revocation of firearms certificate

(2) After section 4 (conversion of weapons) insert—

“4A Revocation of firearms certificate

Any person who has through negligence lost a firearm or through negligence enabled a firearm to be stolen shall have all firearms certificates in their name revoked and shall be banned from holding a firearms certificate for the rest of their life.””

Lord Harris of Haringey: My Lords, this amendment in my name raises the issue of people who, through negligence, have allowed their firearm to be lost or stolen. This seems to me something that should be taken much more seriously than it is at present. I do not want to bore the House with too many statistics, but roughly half of all recent terrorist plots that have been disrupted have involved situations in which those alleged to be the perpetrators have sought to obtain firearms.

In an average year, 800 registered firearms are lost or stolen. That means there is a seepage of firearms, most likely into the illegal economy. Whether those firearms are obtained by criminals or terrorists seems almost irrelevant. These are firearms that in many instances could kill or harm people, and certainly terrify them. In those circumstances, if an owner has negligently allowed their firearm to be lost or stolen, it seems there should be significant consequences. That is why this amendment proposes not only that they should have all firearms certificates in their name revoked but that they should be banned from holding a firearms certificate for the rest of their life.

Those who might argue that that is a draconian penalty just need to think about what an unlicensed, stolen firearm in the hands of a criminal or a terrorist might do to somebody else’s life. This seems a punishment that fits the crime. I hope the Minister will accept that this is a serious matter and agree to take this away and tidy up whatever inadequacies there are in my drafting of the amendment, because it seems a no-brainer that we should take firm action against those who, through their negligence, allow dangerous firearms to get into the illegal economy. I beg to move.

Lord Paddick: My Lords, I support the amendment moved by the noble Lord, Lord Harris of Haringey, although perhaps not quite in the terms he suggested. This is a very serious problem. Any firearm that is lost or stolen will almost inevitably find its way into the hands of criminals, whether terrorists or not. It is an extremely serious problem. Because we have world-class controls on firearms, stealing firearms is one of the few ways in which criminals or terrorists can arm themselves. Clearly, there would have to be some investigation to establish whether negligence was involved or not. I understand that, at the moment, when a firearms licence is up for renewal the police will consider what the security arrangements are to store firearms and, indeed, whether any firearms have been lost or stolen by that certificate holder. I agree with the noble Lord, Lord Harris, that this is not taken seriously enough at the moment, that there are very serious potential consequences and that this definitely needs further consideration.

Earl Attlee: My Lords, while I am grateful to the noble Lord for moving this amendment, I am curious about what he means by “negligence”. He talked about the problem of firearms being stolen. If a gun owner has properly kept his firearms in the storage facilities that have already been approved by the police and a burglar comes in and successfully and quite quickly gets into the gun cabinet and steals the firearms, has the firearms owner been negligent or not?
Lord Harris of Haringey: My Lords, part of the process of enacting this would be to make quite clear what qualifies as negligence. In my view, this should not apply if the gun owner has followed all the prescribed procedures, which should be quite onerous. In my understanding, gun owners are extremely careful, particularly about the storage of their weapons. I am concerned about guns that are left in the boot of a car, not necessarily in very adequate containers, or even on the back seat of a car or in circumstances where the gun owner has not locked them away in the approved fashion. Those are certainly cases where this should apply, and I hope that the threat of this action being taken would mean that all gun owners became much more responsible and acted in the way the noble Earl has suggested.

Baroness Williams of Trafford: My Lords, as the noble Lord, Lord Harris, has explained, Amendment 208 would provide that:

"Any person who has through negligence lost a firearm or through negligence enabled a firearm to be stolen shall have all firearms certificates in their name revoked and for the rest of their life,

As the noble Lord indicated, this was one of the recommendations in his report for the Mayor of London on London's preparedness to respond to a major terrorist incident, which was published last week.

It is clear that the loss or theft of firearms presents a potential risk to public safety. However, the number of firearms and shotguns that are lost remains extremely small. Any loss or theft is, of course, a cause for concern and it is right that we should take appropriate action in the case of owners who lose or enable the theft of a firearm or shotgun through negligence. I therefore considered carefully the noble Lord's proposed amendment to the Firearms Act 1968.

When a firearm or shotgun certificate is issued, conditions are automatically included requiring the certificate holder to store their firearms securely to ensure the safe custody of the firearm. A condition also applies in circumstances where the firearm or shotgun has been removed from secure storage for cleaning, repair or testing or during transit. In these circumstances, all reasonable precautions must be taken to ensure the safe custody of the firearm. A condition is also placed on the certificate requiring the holder to notify the police within seven days of the theft, loss or destruction of a firearm or shotgun. It is an offence not to comply with these conditions, and the maximum penalty for this offence can be up to six months in prison, a fine or both.

Section 38 of the 1968 Act provides for a firearm or shotgun certificate to be revoked if the chief officer of police is satisfied that the holder is, “otherwise unfit to be entrusted with a firearm”, or can no longer be permitted to have a firearm in their possession without danger to the public's safety or to the peace. Section 30C makes similar provision for the revocation of shotgun certificates. In the year ending March 2016, the police revoked just under 400 firearms certificates and almost 1,350 shotgun certificates. I assure the noble Lord that when the loss or theft of a firearm or shotgun is reported to the police, the matter is taken very seriously. In such cases the chief officer should consider whether to prosecute the certificate holder for breach of a condition on their certificate, and whether the certificate should be revoked under Sections 30A or 30C of the 1968 Act.

Noble Lords may also be reassured to know that the police intend to set minimum standards in respect of the investigation of lost or stolen firearms. This will provide a consistent national approach to the call-taking, initial response, investigation, assessment of risk and consideration of firearms licensing issues such as revocation. If a person whose certificate has been revoked applies for a new certificate at a later date, the chief officer will consider all the circumstances of the application and, if the reasons for the previous revocation can be determined, in some circumstances a user certificate might be granted. In cases where a firearms offence has been committed, the courts will consider the sentencing options available under the 1968 Act. Depending on the sentence handed down by a court, a lifetime ban may automatically be imposed on a certificate holder. Generally, persons who are sentenced to three years or more are never allowed to possess a firearm again.

The 1968 Act provides for a five-year ban where someone has been sentenced to a period of imprisonment of three months or more but less than three years. Persons who are subject to a suspended sentence of three months or more are also not allowed to possess firearms, including antique firearms, for five years. The amendment could therefore lead to a situation whereby an individual who has been imprisoned for less than three years does not receive a lifetime ban while an individual whose firearm has been lost or stolen receives a ban for life. While I fully agree that we must have robust firearms laws to preserve and maintain public safety, including safeguards to help to prevent their misuse, I am sure noble Lords will agree that our laws must be proportionate.

The inclusion on certificates of conditions governing safe storage means that firearms and shotgun certificate holders understand their responsibilities in respect of keeping their weapons secure. I am also satisfied that police forces already have the powers they need to revoke firearms or shotgun certificates in cases where the owner has lost or enabled the theft of a weapon through negligence. I hope that, having aired this important issue, the noble Lord will feel that he can withdraw his amendment.

Earl Attlee: My Lords, I do not know if my noble friend the Minister has satisfied the noble Lord, Lord Harris——

Baroness Williams of Trafford: I think he looks satisfied.

Earl Attlee: He does look satisfied; he always does. If he chose to come back with this at a later stage, and I hope he does not, he would need to consider disassembly. In the case of a bolt-action hunting rifle for taking deer, for example, if someone lost the rifle but kept the
12.45 pm

Lord Harris of Haringey: My Lords, I am grateful to all noble Lords who contributed to this debate, and in particular to the noble Earl, Lord Attlee, for raising complications about bolt-action and dealing with deer and so on—which, as he knows, are way beyond my understanding and experience of firearms matters.

I am particularly grateful to the Minister for her response, but I was concerned—and no doubt it was just a slip in the way she responded, and I might have misheard her—when she said that it was a very small number of firearms that disappear and go missing each year. In my view, 800 firearms going missing or being stolen each year is a significant number and a significant problem.

I am grateful to her also for outlining the various options available to deal with breaches of conditions and so on. I am partially reassured, but it would be interesting to know how robust and satisfactory the systems are for ensuring that, if a firearms certificate were revoked in one police force area and the same individual were to apply for a certificate in another firearms area, the information would automatically be available to the chief constable when they considered it. I rather suspect, given my experience of the way in which these matters are communicated, that there is no guarantee that the information would be available. I would be interested if the Minister would look into this matter—perhaps not today—and respond to it. I will consider very carefully what she said in her response, but, certainly for today, I beg leave to withdraw the amendment.

Amendment 208 withdrawn.

Clause 116 agreed.

Amendment 209

Moved by Baroness Chisholm of Owlpen

209: After Clause 116, insert the following new Clause—

“Possession of pyrotechnic articles at musical events

(1) It is an offence for a person to have a pyrotechnic article in his or her possession at any time when the person is—

(a) at a place in England where a qualifying musical event is being held, or

(b) at any other place in England that is being used by a person responsible for the organisation of a qualifying musical event for the purpose of—

(i) regulating entry to, or departure from, the event, or

(ii) providing sleeping or other facilities for those attending the event.

(2) Subsection (1) does not apply—

(a) to a person who is responsible for the organisation of the event, or

(b) to a person who has the article in his or her possession with the consent of a person responsible for the organisation of the event.

(3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 51 weeks (or, in relation to offences committed before section 281(5) of the Criminal Justice Act 2003 comes into force, 3 months), or to a fine not exceeding level 3 on the standard scale, or to both.

(4) In this section, “pyrotechnic article” means an article that contains explosive substances, or an explosive mixture of substances, designed to produce heat, light, sound, gas or smoke, or a combination of such effects, through self-sustained exothermic chemical reactions, other than—

(a) a match, or

(b) an article specified, or of a description specified, in regulations made by statutory instrument by the Secretary of State.

(5) In this section, “qualifying musical event” means an event at which one or more live musical performances take place and which is specified, or of a description specified, in regulations made by statutory instrument by the Secretary of State.

(6) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.”


The amendment is in response to one tabled by Nigel Adams on Report in the House of Commons. The misuse of fireworks, flares and smoke bombs at festivals and other live musical events by members of the public is an increasing and deeply concerning problem. Fireworks and other pyrotechnic articles covered by the amendment are dangerous when misused. Fireworks can burn at in excess of 2,200 degrees centigrade; flares can reach temperatures of 1,600 degrees centigrade and can burn for as long as an hour. Smoke bombs also burn at high temperatures, and in enclosed or crowded spaces the thick smoke that they release can cause breathing difficulties, particularly for asthma sufferers.

In the 1980s, it was recognised that the misuse of pyrotechnic articles in crowded football stadia posed a specific public order risk. As a result, the Sporting Events (Control of Alcohol etc.) Act 1985 provides for an offence of possession of fireworks and flares at a football match. However, current firework and explosives legislation does not provide the police or prosecutors with an appropriate offence to tackle the possession of pyrotechnic articles at music festivals. While the majority of festival organisers have their own rules banning festivalgoers from bringing fireworks and other pyrotechnic articles on to festival premises, no statutory regulation exists. There is no offence for the use of a firework, flare or smoke bomb in a crowd on private property unless it can be proved that it was used with the intent to cause injury or that its use was likely to endanger life or seriously damage property.

Amendment 209 therefore makes it an offence for a person to be in possession of a pyrotechnic article at a qualifying musical event in England. The offence has been so constructed as to apply also where a person is in possession of such articles at a point of entry into, or exit from, the place where a qualifying musical event is taking place, or at a campsite provided for those who are attending the event.

A qualifying musical event will be defined in regulations, subject to the negative procedure. The amendment itself provides that such musical events must involve
[Baroness Chisholm of Owlpen] live musical performances and, in defining a qualifying event, we will want to further target the offence at those events where there is evidence of harm being caused by the misuse of fireworks, flares or smoke bombs. The maximum penalty for the offence is three months’ imprisonment, which is the same as that applicable to the existing football-related offence.

The effect of Amendment 234 is that the offence extends to England and Wales. As I indicated, it applies to England only. However, we are considering further its territorial application in consultation with the Welsh Government. Amendment 245 makes a consequential amendment to the Long Title.

This offence will help prevent the harm that can come from the misuse of such dangerous articles and allow everyone to enjoy live music events safely. I beg to move.

Baroness Hamwee: My Lords, I am grateful to officials for explaining the origin of the amendment to me. They commented that the Government’s view is that we should not extend the criminal law unless there is a well-founded case for doing so. I agree with that, but I have instinctive concerns about this proposal. First, what consultation has there been with the entertainment industry? This must be a matter of widespread interest. I cannot say that I go to musical events usually held in the open air—I go to rather staid events—but a lot of people will feel that they are being targeted by the measure. What consideration has been given to, first, whether there should not be a focus on the venue organiser rather than the individual, as this seems to be a matter of crowd control? Secondly, and perhaps more importantly, is there no other way than creating a new specific offence? If fireworks and flares are dangerous—I accept that they are—is this not about the misuse of fireworks rather than the place or event where they may be misused? As for it being a musical event, which is to be determined by regulations, that seems to raise all sorts of problems.

I appreciate that this comes from legislation about football matches, although the 1985 Act cited by the Minister seems a little narrower, unless I have misunderstood it, because the places where the person is found to be in possession are very closely defined, including an area, “from which the event may be directly viewed”. When looking up that section, I came across a petition to Parliament to legalise the use of pyrotechnics at football grounds. I could not find its date, but it was rejected on the basis that it was, “a matter for individual Local Authorities”. That confused me even more, but I wonder what relation that point has to the amendment.

I am sorry to throw a number of questions at the Minister, but I am sure that the Government considered them before proposing the amendment.

Lord Harris of Haringey: My Lords, I am not sure whether the thrust of the comments of the noble Baroness, Lady Hamwee, was to broaden or narrow the scope—

Baroness Hamwee: It was to inquire.

Lord Harris of Haringey: As ever, it was a quest for information. I also have a quest for information. It seems to me unduly restrictive to apply the clause simply to musical events. What about theatrical or other events which draw large crowds? The danger of either panic or direct harm from fireworks or similar things in such large, crowded places seems quite high. There is this careful definition of, “sleeping or other facilities for those attending”, a musical event. Surely concerns about someone possessing a pyrotechnic article in a general campsite or some other facility are just as great.

It would therefore be helpful to understand. The purpose is clear and valuable in terms of musical events and festivals but I wonder why similar consideration has not been given to other events where there will be large gatherings of people.

Lord Kennedy of Southwark: My Lords, this new clause is in general most welcome and I am happy to support it from these Benches. It seeks to ban the possession of fireworks, smoke bombs and flares by those attending live musical events. As we have heard, these are extremely dangerous and can burn at more than 2,000 degrees, as the noble Baroness, Lady Chisholm, outlined. There have been a number of injuries, and perhaps we may hear more about that when she responds.

I was surprised to learn that while these items are banned at football matches, it is not the case at musical events. A valid point has been made about widening the ban to other events. That should be considered, too, rather than just picking one area of a problem that may be more widespread. If I am correct, the amendment does not stop the organisers of the event using these articles but just protects the people attending, and prevents people putting them in their bags and setting them off recklessly in the crowd.

The other amendments are consequential. I am generally supportive of them but the noble Baroness, Lady Hamwee, made valid points that require a response from the Government.

Baroness Chisholm of Owlpen: I thank noble Lords who have taken part in this short debate and hope that I can answer their questions.

On the point regarding consultation, the proposed new offence is supported by the music industry. The national policing lead for festivals, Assistant Chief Constable Andy Battle of West Yorkshire Police, who is in charge of dealing with these sorts of events countrywide, has also welcomed the proposed legislation. Therefore, we have indeed consulted. In fact, organisers have already made it clear that fireworks should not be brought into festivals but feel that an offence is needed to provide better and greater deference to this understanding and to concentrate people’s minds.

Why does this apply only to music events? The data gathered by the crowd management organisation Showsec on behalf of Live Nation recorded 255 incidents involving pyrotechnic articles at live music events in 2014. This covered seven music festivals and other, smaller venues. This new offence is being created to target the specific problem of pyrotechnics at live music events. There is
no evidence to suggest that pyrotechnic articles are a problem at other kinds of events, with the exception of football stadiums, which are covered under sporting events control.

The noble Baroness, Lady Hamwee, also asked about extending the ban outside the event. Extending the offence to include travel to a music event or festival would not only widen the scope of the offence considerably but put it at odds with current legislation on the possession of fireworks and flares. There are also practical considerations regarding how such an extension could be enforced. Police officers would need reasonable grounds to believe that individuals were travelling to a musical event with pyrotechnic articles in order to search them. In our view, this would be an onerous demand on police time. The national policing lead for music festivals, Andy Battle of West Yorkshire Police, agreed that any provision around travel would not be helpful and be problematic to enforce.

A noble Lord asked why fireworks could be included in the general celebration of the event by the organisers. We accept that pyrotechnic articles are often used as part of a performance, and we would not want to restrict that. The new offence will maintain the distinction between pyrotechnics authorised for use as part of a festival or event and those misused by the public. I hope that that has covered everything.

1 pm

Baroness Hamwee: I did not express myself very well. I was not concerned about travel to the event. I was comparing the amendment with Section 2A of the Sporting Events (Control of Alcohol etc.) Act 1985, under which the offence applies when a person, “is in any area of a designated sports ground from which the event may be directly viewed”.

I was comparing the two matters. That probably highlights the fact that musical events are different.

After hearing the response, I cannot help thinking that this is a matter of how people may use or misuse fireworks and flares in a much more general way. Does the noble Baroness know whether the regulations will address the definition of a qualifying musical event, or will they actually list particular events? She referred to the national policing lead for musical events; I had not realised there was such a post. By definition, that officer will not have given comments about events that are not musical events. If the noble Baroness has no further information—I appreciate that she may not, as we are becoming quite detailed—perhaps it is a matter for another day. But they are not invalid questions.

Baroness Chisholm of Owlpen: I might have inspiration from over my left shoulder. The offence will apply to a campsite adjacent to a festival and the regulation-making power will include a generic definition of a live musical event.

Amendment 209 agreed.

Clause 117: Meaning of “alcohol”: inclusion of alcohol in any state

Debate on whether Clause 117 should stand part of the Bill.

Lord Brooke of Alverthorpe (Lab): My Lords, I beg to move that the clause do not stand part of the Bill and, in short, that it be deleted. If carried, the clause means that the definition of alcohol will be extended to cover all forms in which it might be presented. Specifically, it will cover powdered alcohol and vapourised alcohol, and it follows that they will then become regulated for sale in the UK under the Licensing Act 2003.

Yesterday we had a short debate on the action the Government are taking to address reports of increasing violence in prisons. The Minister replying referred to the White Paper, Prison Safety and Reform, in which there is a section on reducing the supply of and demand for illicit items. If I had been able to get into the debate yesterday, I would have asked the Minister to explain to the House how permitting for the first time in the UK the sale of powdered and vapourised alcohol will help to reduce the problems in prisons. I would be grateful if the Minister endeavoured to respond to that point. How can this change be justified against the background of the Government’s announcement last week that no-fly zones are to be imposed over jails in England and Wales to stop drones being used to smuggle drugs into prison grounds? It is against a background of numerous initiatives costing £1.3 billion that we are trying to tackle rising violence, drug use and other problems in prisons.

The Home Office may have consulted the drinks industry on this change, but did it consult its own Ministry of Justice, which is responsible for prisons, and the health authorities on how they view the proposals? I have tabled a whole range of Written Questions asking the Government about this topic and they have answered a fair number recently. I particularly asked if they would define the benefits of this change to the public. I have had no reply, so I should be grateful if the Minister told the House today what benefit the Government see from authorising the sale of powdered and vapourised alcohol.

Powdered alcohol has been around in some countries for quite a while—not vaping alcohol, which is a new development to which I will come back shortly. The production and marketing of powdered alcohol started to take off in the USA about two years ago—March 2015—when its sale was authorised by the federal bureau on drugs and drinks. This has been controversial in the States. Powdered alcohol can be consumed with fruit juices, water and other soft drinks. It can be mixed with other alcoholic drinks to double or treble their strength. It can be taken to and consumed in places where ordinary liquid alcoholic drinks cannot because they are prohibited, such as sporting and musical events, public places and on public transport. Powdered alcohol can be taken there because it cannot be detected. It can be baked, put into ice cream, and so on. A whole range of things can be done with it.

There has been an outcry in the States about the attempt to market and sell it. Opposition has grown over the months, and I understand that 27 states have banned its sale. The opposition has been such that there have been disputes about its legality, and the main producer of the main powdered alcohol—Palcohol—is having to take a different stance entirely

Amendment 209 agreed.
[Lord Brooke of Alverthorpe]
to the one it adopted previously. It is interesting to note, too, that this year, Russia is banning the sale of powdered alcohol. Yet here we are in the UK contemplating legitimising its sale. It is true that it is not yet on sale here but as I pointed out to the Home Office, websites are already set up waiting to sell it online as soon as it is legalised for sale.

As the Home Office has conceded, alcohol in vaping form is already here. It is true that it is being presented as a novelty item, but how long will it remain as such? Indeed, is it being used as a novelty item? I do not think it will stay like that for long. The cigarette manufacturers are already moving big time into vaping. The CEO of Philip Morris, which has the big selling brand, Marlboro, and commands 30% of the market outside the USA, selling 847 billion cigarettes last year alone, said that he is on a mission to get millions more people vaping. He says he can see the day when Philip Morris stops selling cigarettes entirely, and will be totally into vaping.

So a big change is taking place—we will have a vaping future. Of course, it will not just be nicotine. Last week, I went to one of my local vaping shops in Battersea, which has 50 different vaping items on sale. As yet, they do not have alcohol, but when I talked to them about the possibility, they said, “Yes please, could you tell us when we can get our hands on it?” The items they are already selling come from all different parts of the world, in all different concoctions. There must be a question from a health point of view about what people will be vaping and the effect over time on their health—even from what is currently available for sale.

Make no mistake: when we look at the future of vaping, what we are seeing is just the start of a major development and we should be aware of it—if indeed the Government intend to proceed with this measure. I hope they are prepared to think again. The truth is that powdered ethyl alcohol and vaping alcohol are mind and mood-altering substances little different to class C prohibited drugs, while those classified in the recently passed Psychoactive Substances Act 2016 will in due course cause the same kind of problems as the substances which have been previously been banned, if not more, particularly if vaping takes off on a big scale.

The Government should withdraw Clause 117 and to help them, I oppose its standing part of the Bill. To help them clarify the legal position—which is ostensibly their concern and why they are taking this action—I suggest they have a look at class C prohibited drugs and the Psychoactive Substances Act 2016 to see whether these substances should be so classified. If not, they should simply and straightforwardly be banned.

Lord Paddick: My Lords, I rise to pay tribute to the noble Lord, Lord Brooke of Alverthorpe, and his persistent campaign against powdered alcohol and vaping. I accept what he says about these things being mind-altering substances, but surely that is because they contain alcohol, which is an accepted mind-altering substance—no more, no less than that. I understand the concern about the way you take the alcohol. Vaping, I understand, gives a very instant hit, unlike drinking alcohol, where you get a delayed reaction. However, have we not learned lessons from the past about prohibition and, in particular, prohibition of alcohol, not being an effective way of dealing with these issues? On these Benches, we would say it is far better to regulate, license and control the use of these new substances, rather than trying to ban them.

Baroness Finlay of Llandaff (CB): My Lords, my name is on this amendment and we are coming on to a whole series of amendments relating to alcohol. With all due respect, I do not agree that alcohol in these alternative forms should be looked at in the same way as alcoholic drinks consumed in a social context.

The great difficulty for us and the country already is the size of the problem. In 2014 there were 8,697 alcohol-related deaths. That was an increase on the previous year and alcohol-related harms are already estimated to cost the country £21 billion a year. We know that around 9% of adult men and 4% of adult women are not taking alcohol for social consumption, but because they have alcohol dependence. Sadly, only around 7% of them are accessing any kind of treatment, so we have a huge problem. When we look at the amount of alcohol-fuelled crime and at what victims have said, over half of all victims of violence felt that the offender was under the influence of alcohol, and that is without ways of boosting the potency of the alcohol that they might be taking.

When we look at young people in particular and alcohol-related harms among those aged under 25 from 2002 to 2010, alcohol-related hospital admissions increased by 57% in young men and by 76% in girls and young women. We have a massive, looming problem of alcohol addiction and harms. The consequences of that may be handed down to the next generation, given that we know that among 15 and 16 year-olds, 11% had sex under the influence of alcohol and almost one in 10 boys and one in eight girls had unsafe sex while under the influence of alcohol. Of course, unsafe sex leads to pregnancy.

It is also important to look at children who were excluded from school, because almost half of those were regular drinkers. This is nothing to do with people’s freedom to consume alcohol socially. This is pure alcohol harm. I do not see how a school will be able to differentiate powdered alcohol from sugar or any other substance, such as sherbet that a child has in their pocket. I do not see how prison services or others will be able to differentiate alcohol vaping devices from the other types of nicotine-related vaping devices or how they will be able to have any control over the consumption of these. I have a real concern, and the reason I put my name to this amendment is that these kinds of products fuel alcohol addiction and do nothing to enhance social interaction within our society; they specifically fuel dependence and all the harms that go along with dependence. I have yet to be convinced of any benefit whatever, given that other countries that have major problems with alcohol consumption have decided that these products are too dangerous. I suggest that we should follow their lead and not risk taking these substances which we will be unable to detect or
police. By allowing them for sale, they can be used to spike drinks and increase the cost to the country of alcohol-induced harms.

1.15 pm

Baroness Williams of Trafford: My Lords, Clause 117 amends the definition of alcohol in Section 191 of the Licensing Act 2003. The current definition of alcohol covers:

“Spirits, wine, beer, cider or any other fermented, distilled or spirituous liquor.”

The clause adds the words “in any state” to this definition. The purpose of this is to ensure that all alcohol, no matter in which form it is sold, is covered by the requirements of the 2003 Act.

In recent years novel products have appeared for sale in licensed premises, such as vapourised alcohol, which is designed to be inhaled either directly from the air or via an inhalation device. To our knowledge, those who have sold this form of alcohol have done so under a premises licence and there have not been problems.

However, in America there is a suggestion that a new product—powdered alcohol—may come on to the market in the near future. We wish to put it beyond doubt that alcohol, whatever form it takes, may be sold only in accordance with a licence under the 2003 Act. It is important that we make this legislative change before powdered alcohol comes on to the market. This clause will ensure that any form of alcohol sold to the public is properly regulated with relevant safeguards in place.

The current system of alcohol licensing, as provided for in the 2003 Act, seeks to promote four licensing objectives. These are: the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm. The 2003 Act also contains a number of criminal offences, including selling alcohol to a child under the age of 18 and selling alcohol without a licence.

This amendment to the definition of alcohol will ensure that the four licensing objectives continue to be met despite innovations in alcohol products, and that the public, especially children, continue to be protected from irresponsible sales of alcohol. The clause will mean that there is no legal ambiguity over whether new forms of alcohol are covered by the Act and need an alcohol licence to be sold.

I recognise the concerns of the noble Lord and the noble Baroness, Lady Finlay. All we know about powdered alcohol is that it is alcohol in a powdered form. There is no evidence on whether it is more harmful than liquid alcohol, and we do not know whether it could be used in more harmful ways. The Government share the noble Lord’s concern that children may be attracted to this product. These are legitimate concerns. However, removing this clause from the Bill will expose an ambiguity in the law that could be exploited by those who seek to argue that these novel forms of alcohol may be sold without a licence. The Government have not sought to ban powdered alcohol because the licensing system contains safeguards to prevent the sale of alcohol to children and to protect the public from irresponsible sales of alcohol.

Powdered alcohol was authorised for sale in the USA in March 2015, although as far as the Government are aware, it is not yet on sale in the USA or elsewhere, including online. A number of states in the USA have banned powdered alcohol amid concerns about underage drinking. If powdered alcohol does come on to the market, the Government will monitor what happens in the USA and the UK, and keep our position under review. We are currently aware of only one company developing this product. It is designed to be mixed with water or a mixer such as orange juice or Coke to make a drink of the normal strength, for example, a single shot of vodka. While the licensed trade and licensing authorities are currently treating vapourised alcohol in the same way as liquid alcohol, the Government wish to ensure that there is no doubt about the legal position.

In considering this change to the definition of alcohol, the Home Office consulted key partners at two workshops held last summer. One included representatives from the Local Government Association, the Institute of Licensing, the police and PCCs, as well as licensing officers from seven licensing authorities. The second workshop included industry partners such as the British Beer and Pub Association, the Association of Convenience Stores, the Wine and Spirit Trade Association and the Association of Licensed Multiple Retailers. In these workshops there was agreement that the legal position of new forms of alcohol should be put beyond doubt. The police and local authorities were keen that licensing and enforcement decisions should be clear, while the industry representatives were keen to see clarity in the law so that alcohol licences continue to operate effectively and efficiently. In conclusion, removing the clause from the Bill would have the opposite effect to the one the noble Lord, Lord Brooke, seeks.

He asked about prisons. It may be helpful to mention that the legislative change does not affect the use of alcohol in prisons, which is prohibited. He asked what consultation we have carried out with health authorities. Home Office officials have discussed powdered alcohol with the Department of Health and Public Health England. No one has raised specific concerns about the potential harm of powdered alcohol and there is no evidence to suggest that this form of alcohol is more harmful than liquid alcohol. However, we will keep this under review if the product enters the market.

Baroness Finlay of Llandaff: Does the noble Baroness agree that the question is not whether the form of alcohol—that is, powder or liquid—is more dangerous; it is the quantity of the chemical C₂H₅OH that is the problem? The higher the concentration, the greater the harm, so an ordinary drink spiked with powdered alcohol will be much more harmful than the drink itself because it is a question of dose-related harms.

Baroness Williams of Trafford: I cannot disagree with the noble Baroness’s comments about the powdered form of alcohol. However, this obviously depends on what one compares the powder to. Some fairly lethal drinks are available. I am thinking of things such as absinthe, which was banned for years in this country.
Baroness Williams of Trafford:

Every form of alcohol has the potential to do harm. As the relevant product is not yet on the market in this country, we will keep the situation under review.

Lord Brooke of Alverthorpe:

My Lords, I am grateful to noble Lords who have contributed to the debate. I am particularly grateful to the noble Baroness, Lady Finlay, for her support. As noble Lords might expect, I am disappointed with the Minister's response. Alcohol in its present form is very badly regulated in a number of areas. A Health Minister is present who knows about the major problems we experience with alcohol. We need to look constantly at the Licensing Act 2003 to try to improve the situation.

Alcohol will be presented in quite a different form from anything we have experienced previously. Make no mistake—it will come. The Home Office seems to be way behind on this all the time. There is a manufacturer of this form of alcohol in Japan, where it is available, and a Dutch producer. I believe that some has been produced in Germany as well, so it is coming on to the market. The existing Licensing Act will not be able to hinder this product’s portability. That is what has changed. You can hide it and move it anywhere, whereas beer in a bottle or glass is visible. That is the distinction and that is why this new form of alcohol is so different.

When we see the difficulties in places such as prisons, and the steps we are taking to reduce violence in them and stop illicit drugs going into prisons, to say that the Government will meet what is primarily the drinks industry’s requirement to have the legal position clarified, in which it has a vested interest, is the wrong way to go.

There is a solution to this problem. My proposal would not legalise this product. We could ban it. We could also for the first time consider classifying it as a class C drug. That would frighten the drinks industry, and stop illicit drugs going into prisons, to say that the Government will meet what is primarily the drinks industry’s requirement to have the legal position clarified, in which it has a vested interest, is the wrong way to go.

Clause 117 agreed.

Clause 118 agreed.

House resumed. Committee to begin again not before 2.10 pm.

Hospitals: Unsafe Discharge

Question for Short Debate

1.26 pm

As asked by Baroness Wheeler

To ask Her Majesty’s Government what response they have made to the Parliamentary and Health Service Ombudsman’s Report of investigations into unsafe discharge from hospital, published in May.

Baroness Wheeler (Lab):

My Lords, this very shocking report of nine deeply disturbing cases showing what happens to patients when hospital discharge goes wrong was published in May. Since then we have had a plethora of reports from the National Audit Office, the Public Accounts Committee and now, more recently, the CQC itself, which underline the wider context in which these cases cited by the health ombudsman have happened, and the increasingly desperate situation in many hospitals and in social care.

The ombudsman’s report came just over a year after Healthwatch England’s extensive Safely Home report on hospital discharges. This did not cover just nine case examples, but was the result of an extensive, in-depth inquiry led by people experiencing unsafe hospital discharge, with a particular focus on mental health and homelessness. The ombudsman’s cases all involved vulnerable, frail, elderly people, some with dementia, who were either discharged before they were clinically ready to leave hospital; were not properly assessed before discharge, with neither they nor their carers being consulted or even informed about discharge arrangements; and where no care plan was in place for how they might cope at home. Alternatively, patients were kept in hospital much longer than necessary due to poor co-ordination across services, or, in reality, no provision or support being available in the community.

Vulnerable, desperate, homeless and mentally ill people are covered in the Healthwatch inquiry. The failure to consider the full range of their needs before discharge from hospital or a care setting means for the homeless that no support housing or benefits structures are in place to enable patients to recover, leading to what the St Mungo’s charity cites as “revolving door” readmissions to hospital and huge anxiety and suffering for the individuals concerned. As regards mental healthcare, poor communication and co-ordination between different services and lack of desperately needed community support services so often resulted in patients being unnecessarily kept in hospital settings for months.

The National Audit Office report shows that overall the number of delayed hospital transfers has risen by a third in the past two years to 1.15 million, with two-thirds being a result of delays caused by the NHS and one-third caused by problems of non-availability of social care. Age UK’s estimate is that 184,000 nights are lost to the NHS on patients who cannot be cared for at home, or for whom no affordable residential care can be found, costing the NHS £820 million a year, a 70% rise in the last two years. The NAO’s comparable cost figure of care in the community for those patients is about £180 million.

Extended stays in hospitals demoralise older people, cause institutionalisation and dependency and put them at serious risk of losing mobility, muscle strength and the ability to do everyday things, such as bathing and dressing. There is also an increased risk of infection. The fact that there are almost twice as many people in hospital beds unnecessarily as a result of the NHS failing to get its act together rather than through lack of social care provision in the community is particularly striking.

Moreover, the PAC report clearly shows the huge variations and range across the country. In 2015-16, for example, there were 10 bed days lost in Northumbria and nearly 18,000 days in Lincolnshire. Many areas are getting it right under difficult and challenging circumstances. The NHS itself needs to do much, much more to get its own house in order, and that is
why national leadership and action are so important. In response to this situation, the PAC’s comments are very telling. It accuses the Department of Health and NHS England of relying too easily on differing local circumstances as a catch-all excuse for not securing improvement in NHS performance. The PAC says: “Those areas which are doing best are the ones where all the local system owns all of the problem but this practice is all too rare”. In other words, it is not enough to wring one’s hands over the variability problem.

The Healthwatch report points to guidance aplenty having been issued over the past decade including from NICE, the Department of Health and the recent transition quality standard. However, as it says with all this, “it is not clear why further individual initiatives will make a difference without something more fundamental changing in the system”.

The crying need for national and local leadership and system-wide ownership, action and change brings us on to the strategic and transformation plans—about which we know little real detail but are told are NHS England’s only show in town. Some 44 “footprints” are to plan for a health service focused on people living with long-term conditions in the community. The Minister has underlined his optimism about the plans, most of which are “genuinely local” and are being drawn up by “collaboration” between hospital trusts, CCGs and local authorities.

The deadline for STPs is now upon us, so can Minister tell us more about how NHS England will be evaluating, assessing and analysing the plans at national level to ensure that they meet the vision set out in the NHS forward view for integrated health and social care? Is he confident that they will focus on better care rather than on just reducing finance? He said earlier this week in response to my Question on carer support that plans, “will include radically improved out-of-hospital care through stronger integration and improved access to primary care”.—[Official Report, 7/11/16; col. 889.]

From the STPs we know about to date this looks to be funded by cuts to acute services—such as accident and emergency and maternity services—which we know will be difficult to make and will be vigorously opposed both locally and nationally. In this regard, the King’s Fund assessment is worth repeating, namely that STPs, “will not be credible unless they demonstrate how money and staff”, for services outside hospital will be found. Does the Minister acknowledge this? Are the Government ensuring that STP outcomes are focused on long-term sustainability rather than on short-term savings and cuts? How are the 44 footprints to be made into a coherent national forward journey?

On social care funding, the latest CQC report must surely have set alarm bells ringing right across government. Drawing on 20,000 inspections of hospitals, care homes, A&Es and mental health services, the CQC tipping-point warning on the sustainability of adult social care is surely a game changer for the Government. The chief executive David Behan was reported as saying he was more worried than at any time in his 40-year career about council care for the elderly—200,000 more people than five years ago are being denied everyday help with basic tasks of washing and dressing and the number of care home beds is continuing to fall, with council-funded places in care homes falling by 26%. In A&E, there were 1 million more visits than five years ago, with half a million more emergency hospital admissions of people aged over 65.

The CQC is reinforcing what stakeholders, staff, campaigners, social care voluntary organisations, think tanks and patient organisations have been telling the Government at every opportunity, particularly during the passage of the Care Act, ahead of every government financial statement and Budget, and ever since they postponed the Dilnot social care funding proposals until 2019. Yesterday we saw the joint letter to the Chancellor from the Nuffield Trust, the Health Foundation and the King’s Fund pleading for urgent action in the Autumn Statement. Surely the Government must finally acknowledge the extent and the scale of the crisis in social care funding and take the action that is needed now.

We are nearly into 2017, less than two years to go until the promised action on Dilnot agreed under the Care Act is due to commence. I remind the Minister that nearly £6 billion of Government funding was committed to its implementation, the substantial part of which has never been spent on social care. Can the Minister reassure the House that the Government are not trying quietly to abandon Dilnot and most of the rest of the provisions of the Care Act that have ongoing financial costs?

I conclude with raising again the Carers UK Pressure Points report which echoed the ombudsman’s finding that growing demand on the NHS is forcing people to be discharged from hospital too early, often without proper support at home and without proper consultation or notice given to their carers. As a carer myself, and someone who speaks to a lot of other carers as a trustee of our local carer support group, the discharge process can often be the most traumatic experience you face, next to the shock of almost overnight becoming a carer of a person with long-term needs and all the uncertainty and anxiety of how you are going to cope with the huge change in your life and of course, in the person you care for. The Government’s long-awaited updated national carer strategy must surely tackle this crucial issue of improved communications between hospitals and carers head on so that carers are fully involved and get the vital support they need. I hope the Minister will be able to reassure the House that this will be so.

1.36 pm

Baroness Masham of Ilton (CB): My Lords, I thank the noble Baroness, Lady Wheeler, for bringing this most worrying matter before your Lordships today. The Parliamentary and Health Service Ombudsman’s report and its follow-up should be acted on by everyone responsible for the NHS and, by Members of Parliament who are responsible for helping their constituents, as well as by voluntary organisations and the public. Unsafe discharge from hospital can happen throughout the country. Pressure on most hospitals throughout
the country has reached a tipping point. Better communication throughout the NHS is absolutely vital.

I want to bring to your Lordships’ attention the case of Mrs F, one of the cases illustrated in the report:

“A woman in her 80s was discharged from hospital to an empty house, in a confused state with a catheter still inserted”.

She had been,

“admitted to hospital with a urinary infection. She was seen by a consultant who decided she should stay in hospital for three days so that the infection could be treated and staff could monitor her. Despite this, and for reasons that are unclear, Mrs F was discharged later the same day to an empty home and in a confused state. She had been given no medication and still had a catheter inserted”.

A neighbour,

“contacted the ward sister at the hospital who said that Mrs F should not have been discharged”.

The report concluded that:

“It was wrong to discharge Mrs F against the consultant’s instructions. There was nothing in Mrs F’s medical notes to explain why the consultant’s instructions had been changed or who had changed them. This went against recognised standards about record keeping. The hospital accepted that Mrs F’s discharge was inappropriate, and that there was no documentation about the discharge or who arranged or authorised it. However, it failed to get to the bottom of what had happened”.

Is this not a clear example of a cover-up? I wonder how many such cases across the country never come to the notice of the ombudsman.

I must mention the unsafe discharge from hospital of people apart from the elderly. A baby died after being sent home from hospital with paracetamol when he had meningitis. His mother said:

“To lose your child to an illness that is both preventable and treatable is a tragedy. By sharing our story we hope to save lives in the future as people become more aware of the symptoms and of the impact this horrible disease can have”.

Another baby was sent home from a hospital department which had a warning poster about meningitis but the mother was told the baby had gastroenteritis. A schoolgirl of 16 was sent home from A&E after being told she had a migraine. She later returned to hospital with a rash but died. Waiting for a rash can be fatal. I wonder how many people have died in the past year from meningitis and sepsis due to misdiagnosis.

I have a friend whose son became mentally ill at the age of 18. He went berserk one afternoon, brandishing an air gun. As the situation was out of control, the police were called. They took him to Northallerton, where it was realised that he was seriously mentally ill. He was admitted to the local hospital’s one ward for mentally ill patients and was later transferred to a more secure ward at Middlesbrough, where he remained for six months. The consultant then told his parents that he could be discharged home. They said that they would not be able to cope, and they feared for his safety and that of the community. He was then sent to the first hospital, where the consultant told the parents that it would have been a disaster if he had been sent straight home. How many unsafe discharges of mentally ill patients will there be when the pressure on beds becomes insurmountable, with no slack in the system?

With the elderly population increasing and with complex conditions, the local population in North Yorkshire are dismayed at the closure of the Lambert Memorial Hospital in Thirsk. This hospital has taken the pressure off the local district hospital when people need 24-hour care but not acute surgery. Too much pressure on hospitals means too many unsafe discharges.

I am pleased to see that Healthwatch England has been involved in the safe discharge of patients. In 2014-15 it conducted its “safely home” inquiry, highlighting the impact on patients and their families when discharge goes wrong and identifying good practice where things go right. It also welcomed the publication of the Parliamentary and Health Service Ombudsman’s report and its role in highlighting the continued importance of ensuring that discharge is undertaken safely, effectively and respectfully.

The purpose of Healthwatch England and the 152 local Healthwatch organisations is to understand the needs, experiences and concerns of those who use health and social care services, and they were granted the statutory powers to speak out on their behalf. Healthwatch needs to stand up and be counted by helping uncover cover-ups, supporting patients and promoting good practice in both NHS and social care. The combination of services is important.

The Royal College of Nursing stresses the vital contribution of the community nursing workforce in relieving pressure on the system and delivering care in the community. The RCN is clear that any poor care is unacceptable and that action must be taken when breaches of the Nursing and Midwifery Council code occur. It is important—so that solutions can be found—that these cases are viewed within the wider context of the pressures facing the health and care systems.

I am pleased that the BMA supports the conclusions of the ombudsman’s report and welcomes the committee’s follow-up inquiry. It states that it is of paramount importance for patients, as well as their families and carers, that they are discharged from hospital in a safe, appropriate and timely manner that is co-ordinated and centred on their needs. There are extra needs for people with dementia and their carers. I hope that the Government, too, will do their very best to make the discharge of patients safer and better. This is not only a local matter; it is a matter of national concern.

1.44 pm

Baroness Walmsley (LD): My Lords, I congratulate the noble Baroness, Lady Wheeler, on submitting the same Question for Short Debate as the one that I submitted myself, but clearly she was in front of me in the queue.

This is a very important topic, impacting, as it does, both on the health of individual patients and their families and on the sustainability of the health and social care services. As usual, we see in the PHSO report evidence that we will never achieve sustainability in the health service until we address the shortfalls in budgets and provision in the social care service. Only recently we heard about more social care providers handing back local authority contracts because they are unable to make a reasonable profit while providing an adequate standard of care. One of my colleagues,
who is a local councillor, told me that, in fulfilling its statutory duties relating to social care, her council now has to spend 33%—and rising—of its budget and that, if this carries on, the council will soon run out of money.

Care providers are not fat cats who do not think that they are making enough money; on the whole they are caring companies which have reluctantly had to admit that they cannot go on as they have recently been forced to do and deliver the standard of care they want to give. We have also had media stories about the fact that those who are self-funding in care homes are paying a premium of up to £400 per week to subsidise the home’s budget and compensate for the shortfall in local authority payments for publicly funded patients in the setting. From every point of view, this is an unsatisfactory state of affairs, which threatens to get worse, and it backs up the call by my right honourable friend Norman Lamb MP for an independent or cross-party commission on how the health and care systems can be sustainably funded.

I turn to the detail of the report. When I asked an Oral Question about this on 15 June, the Minister’s first Answer was to the effect that the sustainability and transformation plans would integrate health and social care, fill the black hole in funding and solve all our problems. So my first question to him today is to ask him to follow up on that Answer. We have heard in the news recently that STP boards must delay making their draft plans public for two weeks because of the concerns of some Conservative MPs that the plans may involve controversial hospital closures. Is that the case?

That is not the only concern I have heard. I am told that the development of the plans has been very top down and has been led by the acute hospitals, despite the fact that one of their main purposes is to plan how patients can be treated in primary and community care rather than in expensive hospitals. I have also heard that local authorities and community groups have not been involved in developing the plans but have been told that they can comment after the plans are complete. Once the ink is dry on the paper, people can do no more than tweak the plans. Given that these plans need to fundamentally reform the way that care is delivered, and given that the most successful change is imposed on them. Every manager knows that the best changes, and those that are easiest to implement, come from the staff suggestion box.

Also, I have heard that “sustainability”, not “transformation”, has become the over-riding objective. In other words, boards have been told that the books must be balanced, and this has resulted in outrageously unrealistic plans. The Government were wise to call these plans “sustainability and transformation” because, through transforming how services are delivered, we might achieve savings. However, it cannot be the other way round. I also heard a health economist make the very valid point last week that in mental health there has been a transformation from in-patient care to care in the community, but this has taken 20 years. The point he was making was that the timescale for the Government’s STPs is quite unrealistic.

If ever there was a demonstration that this process needs to be carried out properly, it is to be found in the PHSO report on unsafe discharge. The point that I made in my supplementary Oral Question in June, quoting examples from the report, was that there are problems on both sides of the discharge cliff edge: problems in the hospital and problems with the care to which the patient should be discharged. The Minister answered:

“My Lords, there are millions of interactions between patients and consultants and doctors every day of the year, and there will be some mistakes. We cannot draw conclusions from one or two desperate situations. In so far as they reveal systemic problems, it is valid to draw attention to individual cases of this kind, and there are some systemic issues lying behind the PHSO’s report. In particular, it states:

“We are aware that structural and systemic barriers to effective discharge planning are long standing and cannot be fixed overnight. ...health and social care ... have historically operated in silos”.

I agree with the Minister that there are millions of satisfactory—nay, exemplary—interactions every day, but the report quoted specific examples only where the ombudsman felt that they did demonstrate systemic issues. That was made very clear in the report. But common sense tells us that mistakes are more liable to be made when people are under great pressure. The Minister also acknowledged that these historic barriers to safe discharge cannot be fixed overnight. So why are the STPs expected to fix them in the health service equivalent of overnight, which is in three or four years?

No doctor or nurse wishes to discharge a patient into unsafe circumstances, but mistakes will be made when the pressure on the service is so great and there is such a shortage of hospital beds, according to the briefing from the BMA. In its submission to the Public Accounts Committee inquiry on this very same subject, the Royal College of Physicians revealed that 40% of advertised consultant vacancies remain unfilled, mostly due to the lack of suitably qualified candidates. At the same time, the Government are telling us that they do not want to bring in doctors from abroad. This is quite unrealistic in the timescale quoted. The RCP says that the,

staffing crisis is impacting on physicians’ ability to swiftly assess patients… to tailor their care plans and to work across disciplines to achieve safe and timely transfers of care”.

The RCP also emphasises that more needs to be done to prevent unnecessary admissions, and quotes examples where early access to multidisciplinary assessment led to a reduction of up to 24% in hospital admissions. Patients were given care in more appropriate settings and pressure on hospitals was reduced. That is what we should be seeing across the board.

It also makes the point that better integration between hospital and community settings is fundamental in preventing patient readmission to hospital. That was one of the regrettable consequences of unsafe discharge, according to the report. To be fair, this
integration is one of the major objectives of the STPs. Why, therefore, in too many cases, is one partner producing the plan and then showing it to the other for comment?

The Royal College of Nursing, in its briefing for this debate, accepts that poor care is unacceptable, and agrees with many of the findings of the report. It mentions the problems with recruiting and retaining nurses in the NHS and shows a link between shortages and poor patient experience. Can the Minister tell us what impact the Government expect the change in funding for student nurses to have on this situation and what effect this will have on the availability of nursing homes?

The RCN also points out that discharge targets mean little if the resources in social care are not there to meet them. What do the Government plan to do about this? They must surely accept that the small precept for social care which has been allowed to local councils to cover the cost of the increase in the national minimum wage will not do—and by the way, I refuse to call it the national living wage because no one could live on it. We also know that in the areas where most is needed for social care, because of the predominance of publicly funded patients, the ability to raise extra cash from the precept is the lowest. This is a topsy-turvy policy that the Government are labelling a legitimate solution to the problem.

I ask the Minister what plans the Government have to address the shortfall in funding for social care and the shortage of doctors and nurses, the main causes of unsafe discharge? There are problems with communications and poor interoperability of IT systems, but—although they should be addressed—they are not the great big elephant in the room. We all know what that is. When will the Government address it and stop burying their head in the sand? Even Simon Stevens and a Select Committee in another place have questioned the Government’s claim that they have given the NHS all it asked for. They have not, and the five-year forward view remains an aspiration and not a plan.

Without a properly funded plan, the crisis in health and social care, of which unsafe discharge is very sad evidence, will continue as demand continues to rise. Instead of picking fights with junior doctors and community pharmacists, the Secretary of State would be better advised to tackle this with his usual energy. If he did so, his name would go down in history as the right one.

The noble Baroness, Lady Walmsley, raised the issue of homelessness. That illustrates the complexity of the discharge process. I have seen a homeless person at UCLH in London who has nowhere to go. The issue is finding somewhere for that person to go. Otherwise, as the noble Baroness said, he ends up back under the arches, then back in A&E, and the whole revolving door syndrome goes on. The noble Baroness, Lady Masham, mentioned the situation with someone who is mentally ill. Such discharges are very complex, so we should be careful not to oversimplify how difficult some of them are.

There has been a lot of talk in this debate about STPs. I will come to them, but I say to the noble Baroness, Lady Walmsley, that they are bottom up and are done locally. Of course, the acute hospital is going to have a major impact on the local STP: it would be strange if it did not. Some STPs, however, are run by the local authority and others by the chief executive of the local acute trust. That varies around the country, depending on the local leadership. They are not top down: these are bottom-up organisations, and they are increasingly in the public domain for discussion locally. One of the issues is that the NHS and the care system are so complex and so difficult that exceptional leadership is required to get lots of people together in the same room and come up with a plan that can be executed.

There has been a lot of talk in this debate about STPs. I will come to them, but I say to the noble Baroness, Lady Walmsley, that they are bottom up and are done locally. Of course, the acute hospital is going to have a major impact on the local STP: it would be strange if it did not. Some STPs, however, are run by the local authority and others by the chief executive of the local acute trust. That varies around the country, depending on the local leadership. They are not top down: these are bottom-up organisations, and they are increasingly in the public domain for discussion locally. One of the issues is that the NHS and the care system are so complex and so difficult that exceptional leadership is required to get lots of people together in the same room and come up with a plan that can be executed. Somehow, we have to move to a system in which you do not have to be exceptional to achieve results, in which average people can make progress. It is very difficult.

The noble Baroness, Lady Masham, mentioned Northumbria, where there is good local leadership that has worked in a consensual way with other partners in the system for many years. That way, you can get progress. The noble Baroness, Lady Walmsley, said it took 20 years to make the changes in mental health from the old, big, acute asylums to much greater community provision. It does take time, and you have to put the resource into the community before you can take it out of the acute sector. She talked about the difference between transformation and sustainability. Transformation means change, and change is difficult. It means people changing the way they have delivered care for many years. It does mean closing some acute activities in order to put resources into the community—there is no getting away from that. The Five Year Forward View was a view, not a plan. The STPs are, in a sense, transforming the view into a plan. We should not be surprised if there are some difficult messages in that. If we run away from those difficult messages, we will not put the Five Year Forward View into practice. I think everyone in this House feels that at least the direction of travel in the Five Year Forward View is the right one.

I do not want to sound in any way complacent because, as we heard in the story of Mrs F, when these discharge processes go wrong they are catastrophic for the individual concerned and their families. To put it in context, however, reported incidents of discharges going wrong account for less than 0.1% of the 15 million discharges made every year from hospital. Of that 0.1%, 96% are categorised as “no harm” or “low harm”. It is important to have that context. In fact, the PHSO makes it clear that the cases set out in its...
report should not be considered as representative of practices across the NHS and social care. However, it says:

“We are aware that structural and systemic barriers to effective discharge planning are long standing... these include the need for better integration and joint working of health and social care services, which have historically operated in silos”.

That was also acknowledged by the Public Administration and Constitutional Affairs Committee, which said that,

“discharge failures identified by the PHSO report are not isolated incidents but rather examples of problems”, experienced “more widely”.

It, too, draws attention to the lack of integration between health and social care. It is therefore right that in this debate we have focused largely on these structural problems, which are not just between health and social care but within the health service itself.

The experience of these patients supports the strong case that this Government have made—and indeed the past Government—for closer working between health and social care and between different organisations and the NHS. We have to resist resorting to yet another major structural change in the NHS. Just as this last lot is settling down, there is a temptation to say that we should radically look at the whole structure of health and social care again, in which case the whole thing will be pushed up in the air for another few years. We therefore need to be careful before we resort to that.

I will repeat the figures that were given by the noble Baroness, Lady Wheeler. In August of this year about 60% of delays were attributable to the NHS—so it is not just the interface between the NHS and social care—33% to social care, and the remaining 10% or so to both social care and healthcare.

In December, 44 health and care systems across England were asked to come together to create their own local blueprints, called sustainability and transformation plans. STPs are designed precisely to tackle the barriers to improved patient care—the silos that were mentioned—by better alignment across organisations. This could have been done on a statutory basis, but we would have been here discussing that until kingdom come. The STPs have evolved; they are local and not top-down. They were not put out there by Jeremy Hunt: this has been done by the NHS and by social care on a local basis.

To some extent this builds on the Government’s £5.3 billion better care fund and upon the vanguard schemes—the various models of care that were described in the NHS Five Year Forward View. This is a logical evolution of those two developments. If I had more time, I could give examples of a number of the new care models in the NHS Five Year Forward View that are getting some considerable traction.

We are clear that in some areas, rising delayed transfers of care are placing considerable financial and operational strain on the NHS. However, we are equally clear that delays in themselves can prove particularly dangerous to older patients. There is a growing body of evidence on the harms associated with long hospital stays for older people. A pretty staggering statistic is that 10 days lying in a hospital bed can lead to the equivalent of 10 years of ageing in the muscles of people over 80. Therefore, delayed discharges are not fundamentally about saving money, although of course they would save money. They are about how we provide better care for vulnerable, usually elderly people with comorbidities.

NHS England and NHS Improvement have taken action to establish a number of work streams across community services and acute hospitals, because that is often where the delays occur. This will identify and deliver a series of interventions to help deliver system-wide transformation of community services, supporting timely discharge from hospital.

The decision to discharge remains a clinical one, but ensuring all discharges are safe and timely requires a multidisciplinary effort from clinical and nursing staff, allied health professionals, and community and social care workers. The imperative to discharge as quickly as possible must be balanced against the needs of each patient. I acknowledge fully that when a hospital is full and there are ambulances queueing outside in the car park to get people to A&E, the pressure to discharge patients is huge. We can pick out examples where it has gone wrong, but if you put yourself in the place of the nurse on the ward, who is told, “We’ve got to find three beds by 8 o’clock because we’ve got people in A&E who are about to breach the four-hour target”, you can understand the pressure there sometimes is in hospitals to make discharges earlier than they should be.

When the NHS was founded in 1948, 48% of people died before they reached the age of 65. In 2016, this figure is only 12%, and the fastest-growing age group is the over 85s, for whom the discharge process is inevitably the most difficult. Some 80% of this group will suffer from two or more chronic conditions, which adds to the complexity in discharging patients today.

I want to dwell on two issues related to safe discharge. First, the whole thrust of the seven-day NHS is to ensure that urgent and emergency care patients have access to the same level of consultant assessment and review, diagnostic tests and consultant-led interventions, whatever the day of the week. The problems of discharge are the same on a Saturday or Sunday as they are on a Monday, Tuesday or Wednesday. Other work includes the new discharge planning guidelines published by NICE, which cover transitions between care settings for adults with social care needs.

There is absolutely no doubt that the structural difficulties of the NHS are quite profound and exceptional people are required to overcome those barriers. We are bound to see considerable variability in some of the STP plans when they are published over the next couple of weeks. However, we can also improve operational issues within hospitals: making sure that the drugs and transport are ready; that there are multi-disciplinary teams, including social workers as well as care workers; and that everyone who comes into hospital gets an estimated date of discharge, so that everything can be brought together around that discharge process.

I end by paying tribute to NHS staff, who are working under huge pressure and with people with complex conditions. I think we all recognise that the structure of the NHS means that things are not as easy for them as they might be.
Baroness Wheeler: I asked the Minister about the national carers strategy. Could he please write to me on that?

Lord Prior of Brampton: I will certainly do that. I should just say that the theme that comes out of the carers strategy is better communication. When half of carers say that they feel that a hospital admission could have been avoided or that the discharge could have been easier if only there had been better communication, that is clearly a critical area.

2.08 pm

Sitting suspended.

**Policing and Crime Bill**  
Committee (4th Day) (Continued)

2.10 pm

Relevant documents: 3rd and 4th Reports from the Delegated Powers Committee and 3rd Report from the Joint Committee on Human Rights

Clause 119: Summary reviews of premises licences: review of interim steps

Amendment 209A

Moved by Baroness Chisholm of Owlpen

209A: Clause 119, page 134, line 34, at end insert—

“and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.”

Baroness Chisholm of Owlpen (Con): My Lords, these amendments relate to alcohol licensing. In particular, they introduce two new provisions into the Bill which reform the late-night levy and place cumulative impact policies on a statutory footing.

Amendments 209D and 214D relate to the late night levy, which was introduced in the Police Reform and Social Responsibility Act 2011 and under which licensing authorities are able to charge a levy to those who are licensed to sell alcohol late at night in their areas, as a means of raising a contribution towards the costs of policing the late-night economy. The licensed trade plays an important part in our economy, and the Government's Modern Crime Prevention Strategy makes it clear that we want to create a night-time economy that people may enjoy safely, without the fear of becoming a victim of crime; that in turn will help businesses to thrive. It is right that businesses which benefit from the late-night economy should pay towards its management when it is creating an additional burden on policing in that area. However, to date, only seven licensing authorities have implemented a late-night levy; that is fewer than anticipated when the levy was introduced in 2012.

Licensing authorities, the police and the licensed trade feel that the levy in its current form is inflexible. Currently, licensing authorities must apply the levy to the whole licensing authority area, and businesses which are not in night-time economy areas feel they are being unfairly charged. These amendments will allow licensing authorities to specify the geographical area, or several separate areas, where they will charge a levy because the night-time economy places a burden on policing, and they will be able to decide whether to include premises licensed to sell late-night refreshment in their levy. The provision of late-night refreshment is defined in the Licensing Act 2003 as hot food and drink sold to the public between 11 pm and 5 am. Such premises are often linked to alcohol-fuelled crime and disorder; for example, fast-food shops are often premises at which late-night drinkers congregate.

PCCs have told us that they would like a formal role in relation to the levy, and we think this is appropriate as 70% of the revenue raised must go to them. The amendment will allow a PCC to request that a licensing authority formally propose a levy, thereby triggering a consultation on whether to implement one in its area. It will need to set out its reasons for doing so with reference to the cost of policing incurred as a result of the night-time economy.

Finally, Amendment 214D requires licensing authorities to publish information about how the revenue raised from the levy is spent. Some licensing authorities do this already, but one of the key concerns of the licensed trade is that there is a lack of transparency about this.

2.15 pm

Amendment 209C fulfils the Government’s commitment in the Modern Crime Prevention Strategy to put cumulative impact policies, or CIPs, on a statutory footing. CIPs help licensing authorities to limit the number or type of licence applications granted in areas where the number of licensed premises is causing problems. Such problems typically include crime and disorder or public nuisance caused by large numbers of drinkers being concentrated in one area. The CIP scheme is set out in the guidance issued under Section 182 of the Licensing Act 2003, and there are around 215 in place in England and Wales. However, they have no statutory basis and not all licensing authorities are making effective or consistent use of them. The licensed trade also has concerns about the transparency of the process for putting a CIP in place and the quality of evidence used as the basis for some. Putting CIPs on a statutory footing will provide greater clarity and legal certainty about their use.

These provisions allow a licensing authority to publish a cumulative impact assessment if it considers that the number of licensed premises in an area is such that existing or emerging problems mean that granting further licences would be inconsistent with its duty to promote the licensing objectives. These objectives are the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. To publish a cumulative impact assessment, the licensing authority must publish the evidence for its opinion and consult the same list of persons as when developing its statement of licensing policy. A licensing authority will be required to consider, at least every three years, whether it remains of the
opinion set out in the cumulative impact assessment and, if so, publish updated supporting evidence as to why this is the case.

Publication of a cumulative impact assessment will not automatically prevent the authority granting new licences or variations of licences in the area in question. As with all applications under the 2003 Act, anyone wishing to challenge an application will need to make a relevant representation on the likely effect on the promotion of at least one of the four licensing objectives. If no representations are made and the application is made lawfully, the licensing authority must grant the licence.

Amendments 209A and 209B make technical refinements to the provisions in Clauses 119 and 120 relating to summary reviews and personal licences. I apologise for taking a little time to explain these new provisions but I hope the Committee will agree that they are valuable contributions to the strengthening of the alcohol licensing framework. We remain open to considering other proposals with a similar objective and, in this regard, look forward to the report of the Select Committee on the Licensing Act 2003 when it is published next spring. I assure noble Lords that there is no intention of pre-emption: these reforms were announced in the Government’s Modern Crime Prevention Strategy, which was published in March, some two months before the Select Committee was established. The Government are keen to take the opportunity afforded by this Bill to legislate on these matters so that they can be enacted as soon as possible. I also assure noble Lords that when considering the implementation of the alcohol-related measures in the Bill, we will take into consideration the request that the cumulative impact and late-night levy provisions are not implemented until after the Select Committee has reported next March. I emphasise that we will look very carefully at the findings of the committee before coming to any final conclusions. I beg to move.

Baroness McIntosh of Pickering (Con): My Lords, I welcome the Minister to her place and thank her for the manner in which she introduced the amendments. I rise to raise the concerns of the committee to which the Minister has rehearsed but I would like to ask a question on the coordination of concerns have been raised about Home Office consultations and the evidence that we have heard. Can the Minister explain how the consultation has been on the provisions in this little group of amendments and how many responses have been received? Is it possible for the House, and indeed the committee, to have access to those responses? At this stage, I would like to focus more on the procedures and processes being followed rather than the merits, with which we are occupying ourselves on a weekly basis between now and the end of March.

I would like to go further than the Minister has said in the letter that I received, and which was brought to the attention of the committee at 9 am today. In my noble friend’s words, the Government will take into consideration the recommendations and conclusions of the committee in due course, and they and the Home Office will consider carefully what additional changes, if any, should be made to the Act and through connected legislation. Perhaps I may press the Minister this afternoon. I would like to obtain a commitment from my noble friend not to implement any of what will become the Policing and Crime Act before the committee has reported to the House—and therefore not before the end of March. That commitment would be welcome and it would be a matter for the House to take note of. I am sure it is one on which the Government would wish to be held accountable.

I repeat that we are in the middle of what we take to be very important work. An important task has been set for us by the House to scrutinise the provisions of the 2003 Act. We are still receiving evidence and have not yet reached a position on which we will form a view. This is also the first occasion I have sat on such a committee, let alone had the honour and privilege to chair one, so I would like to be clear whether this is the normal procedure for a Government to follow in these circumstances.

I also alert the Government to the fact that while we do not wish to quote any of the evidence—it is there as a matter of record on the committee’s website—it is true that some of the evidence we have received, both written and oral, conflicts with the position that the Government have set out to the Committee this afternoon. I would certainly welcome a concession from the Minister that it would be sensible to wait until such time as the committee has had the chance to hear and consider all the oral and written evidence received, and that we will be able in due course to reach our conclusions and recommendations—and that only then will the Government, if necessary, proceed to implement this policy. A commitment from the Minister that the Government will keep an open mind and revise the policy as set out in these amendments would be most welcome.
Baroness Henig (Lab): I rise to support the noble Baroness, Lady McIntosh of Pickering, and to put on record how excellently she is chairing this committee. I am possibly one of the “keen” members of this body, as she puts it to the Committee. We are reviewing the Licensing Act and looking at a whole range of issues; clearly, it is not just the issues in this set of amendments. We are looking at how the whole Act has operated in the 11 or 12 years since it was brought in. Members of this House will remember the high hopes that people had of this Act and the things that were said about it. It is therefore obviously timely that the Act should be reviewed, which is what the members of the committee are presently engaged in.

As the noble Baroness said, the committee has taken a lot of evidence, written and oral, covering among other things the slow introduction of late-night levies, which the Minister mentioned, and the effect of cumulative impact assessment. I say to the Minister that not much of the evidence we have presently accumulated in fact supports what the Government are putting forward in these amendments. I find it rather unsettling that we are engaged in this exercise on behalf of the House of Lords and then the Government suddenly come forward with amendments which cut across the review. It has rather unsettled the committee because it introduces elements that we did not realise were ongoing.

The Minister said that there was evidence supporting these changes. I do not want to go into detail at this stage or to quote selectively, which could be misleading at this stage and could give a partial view of the issues at stake. It is right that the committee should be allowed to conclude its review, come to a considered decision and present its report and proposals for change—if any—to the Government. All that should happen before any of these changes are brought forward. I listened with great care to what the Minister said and appreciate that she said that these changes would not be brought in before we made our recommendations. However, I hope that this is not just the Government going through the motions of letting the committee do its work and then coming forward with the amendments that they have set their heart on anyway. I hope that the Government will look carefully at what we propose—perhaps even to the extent of modifying their approach if the evidence justifies it.

The evidence in these cases should be paramount. It might well suggest that these amendments will not achieve their objective. In fact, I would go so far as to suggest that that may well be the case. It might suggest that, despite the Government’s impatience to get on with these matters, what they are doing may not be as effective as some other way of proceeding. That surely is the job we have been asked to do—and which I hope we will in fact carry out. So my hope is that our review will help the Government in the longer term. That is what we are trying to do. In a way, by coming forward with these amendments the Government are pre-empting our efforts to get a good outcome from the review of the Act. That is why I seriously hope that the Government will not just stay these amendments but listen carefully to what the review comes forward with, before deciding how to move forward.

Baroness Grender (LD): My Lords, I, too, back the words of our able chair on this Select Committee, the noble Baroness, Lady McIntosh of Pickering. I support what she has said and I note from the letter which we, as members of the Committee, received only at 9 am today that the Leader of the House said:

““I am, however, pleased to hear that members of the committee are likely to be bringing their live insights into the policy to bear when the amendments are considered”—so I would hate to let her down. I would therefore like to address in particular the issue of the late-night levy, which, as the Minister said, was introduced in 2011 and has had only seven local authorities take it up—seven, out of all the possibilities. There must be a reason for that. Of all of those, I shall examine Cheltenham, where the council withdrew the late-night levy. It did so because it raised less than 39% of the projected first-year income of £199,000.

2.30 pm

I fully support the arguments about not going into the detail, but this is important because of the significance of the 70:30 split: the police receive 70% of income raised without any level of accountability and the licensing authority gets 30%. Already, most licensing authorities have said that it is too expensive for them to go to the bother of raising this money when they receive only 30% of the income, and that it does not cover their costs. Yet nowhere in these amendments can I see anything that deals with the issue of the 70:30 split. There are many other arguments surrounding the late-night levy, but the 70:30 split is a central one to which I should like the Minister to respond. If the Government do not, I think that committee members will believe that there are flaws in the current approach.

I completely appreciate—again, as was in the letter that we received only at 9 am today—that some of these policies were laid out by the Government in previous publications such as the Modern Crime Prevention Strategy—but it still begs the question of why these specific amendments were tabled as recently as September.

That was after this committee was set up.

I have an interest that I have to declare every time that I speak in this committee. As the holder of a temporary event notice every summer and winter for a school fair, I am a user of this system. I therefore know in some detail just how confused local authorities already are by the multitude of changes that have been made to this Act. We are very much in favour of one change, on live music, that was introduced by my noble friend Lord Clement-Jones. However, I note that although this was introduced some time ago, the local authority with which I deal is still asking me out-of-date questions about my temporary event notice regarding this area.

One overwhelming factor on which this committee has heard from a lot of witnesses is that there are too many changes and that local authorities do not understand these changes sufficiently rapidly. Again, that begs the question: why change? Why introduce these amendments with assurances that you will change things back if the committee concludes that they do not work? Without pre-empting the decision of our committee, I am fairly sure that we shall conclude that they do not work on the 70:30 split that I talked about earlier.
This is my central question. I accept that the Government have published papers on this prior to the setting up of this ad hoc committee. However, they then took a decision to publish the amendments in September. Why, given that this committee is meeting? Secondly, why do they not deal with the 70:30 split? From what I can work out from the evidence that has come to us, that is the reason that most local authorities or licensing authorities see no need to take this up and see no bang for their buck if they do.

Baroness Hamwee (LD): My Lords, I had assumed when I saw these amendments that there must be quite a degree of urgency to the matter, given that they were being introduced at quite a late stage in the Bill. I had not appreciated that the House had set up a Select Committee to look at the issue. I can well understand that a lot of points will have been raised. I remember the debates about the 70:30 split. I remember debates about whether that was the correct split: whether it should be 50:50 between the police and the local authority or indeed 70:30 in favour of the local authority. I am pretty certain that I moved some of those amendments.

The noble Baroness, Lady McIntosh, is being mild in her request to the Government not to implement these changes before the committee reports. Any amendments must pre-empt the committee’s decisions. Given the degree of confusion to which my noble friend referred and which I well accept, to have further changes to the regime on the statute book but not commenced cannot make the matter any easier for any of those involved. The proper approach would be for the Government not at this stage to proceed with the amendments unless there is a degree of considerable urgency—and I have not picked up that that is the case.

Lord Brooke of Alverthorpe (Lab): My Lords, briefly, I am also one of the members of the Select Committee under the great guidance and wisdom of our chairman. I share the views that have been expressed and I shall not repeat them. Why was this particular area selected from the document on modernising the police? Why have a host of other amendments not been tabled to pick up the other recommendations that the police want to see implemented? There is almost enough here for a package rather than picking out individual bits. Why were other recommendations not acted on?

Lord Rosser (Lab): The issue of the cumulative impact assessments was one that we pursued when the matter was discussed in the Commons. It is for the Government to say why they brought the amendments forward now. But, unless I am misreading the position, at least some of these amendments have some support. Unless I have misread the briefing from the Local Government Association, it supports Amendment 209C, which seeks to ensure that licensing authorities give regard to cumulative impact assessments, and Amendment 209D on late-night levy requirements.

Baroness Chisholm of Owlpeth: My Lords, I thank all noble Lords who have taken part in this short debate. First, to answer my noble friend Lady McIntosh on whether there was any public consultation, in the summer of 2015 the Home Office held workshops with key partners. One workshop included the Local Government Association, the Institute of Licensing, licensing officers from several local authorities and representatives of the national policing lead on alcohol and the PCC lead on alcohol. The second workshop included industry partners such as the British Beer and Pub Association, the Association of Convenience Stores, the Wine and Spirit Trade Association and the Association of Licensed Multiple Retailers. A survey was sent to all licensing authorities. The Home Office received 32 responses, including one from the PCC working group on alcohol. There is no trade body that represents late-night refreshment providers.

We have heard today from many members of the committee. All I can do is reiterate what I said in my speech: we shall of course look carefully at the findings of the committee before coming to any final conclusions and before implementing the provisions. We will wait for the Select Committee’s report next March. As I said, these reforms were announced in the Government’s Modern Crime Prevention Strategy that was published this March, some two months before the Select Committee was established. The Government are keen to take the opportunity afforded by the Bill to legislate on these matters so that they can be enacted as soon as possible. But that does not change the fact that we shall wait for the findings of the Select Committee.

The 70:30 split was mentioned. This can be amended by secondary legislation, so there is no need to make provision in the Bill. As I have said, we will consider any recommendation the Select Committee may make on this issue.

The Government believe it is right to proceed with these amendments now, as alcohol provisions were included in the Bill on its introduction to the Commons in February—so this is an appropriate vehicle to legislate on the new measures. As the noble Lord, Lord Rosser, said, the Opposition tabled amendments on cumulative impact policies in the Commons and these government amendments respond, in part, to those Commons amendments.

Baroness McIntosh of Pickering: I am most grateful to the Minister for her reply, but can I just press her on the semantics? Could she give the House and the committee a commitment that the Government will look at our recommendations and consider revising the wording of the amendments that she has put before the Committee today if they conflict with the recommendations and conclusions that the committee reaches?

Baroness Chisholm of Owlpeth: I cannot go further than I already have in saying that we will of course look very carefully at the findings of the committee before coming to any final conclusions. That is as far as I can go. Everything else is rather hypothetical at the moment.

Baroness Hamwee: My Lords, perhaps the noble Baroness can assist this Committee with the timing. I imagine that the Select Committee will probably be required to report in February, but this Bill is likely to
have concluded its passage before then. As a result, I am unclear how recommendations from the committee can affect the content of the Bill, but she may have information about the relative timings that could help this Committee.

Baroness Chisholm of Owlpden: We will not pre-empt what the committee is going to say, so we have to wait until we hear from it.

Baroness Grender: The Minister has said we cannot deal in hypotheticals, and yet we are about to accept some amendments which may well, in the light of the conclusions of our committee, be hypothetical. It seems to me that the most sensible solution is to not currently have amendments in this area, because those very amendments may be hypothetical.

Baroness Chisholm of Owlpden: I think I explained that the reason we proceeded with the amendments was because the alcohol provisions were included in the Bill on the Commons introduction in February, so this is an appropriate vehicle to legislate on the new measures. That is why we have brought them forward now. This was discussed in the Commons, and these government amendments respond, in part, to the ones that were tabled in the Commons.

Baroness McIntosh of Pickering: Can my noble friend confirm that these amendments were not discussed in the Commons? I do not believe that their content was discussed. Just for the sake of greater clarity, all we are asking is that these amendments be stayed until such time as we have concluded our report. In the words of the noble Baroness, Lady Henig, we are trying to help the Government. We want to have good legislation that works, but clearly, at the moment, late night levies appear not to be working.

Baroness Chisholm of Owlpden: We want good legislation as well of course and, as I think I said, we will look carefully at the findings of the committee before coming to any final conclusions. I think that is really as far as I can go.

Amendment 209A agreed.

Clause 119, as amended, agreed.

Clause 120: Personal licences: licensing authority powers in relation to convictions

Amendment 209B

Moved by Baroness Chisholm of Owlpden

Clause 120, page 136, leave out lines 23 to 29

Amendment 209B agreed.

Clause 120, as amended, agreed.

Clauses 121 and 122 agreed.
(b) the duties in section 5(6D) and (6E) and subsection (7) of this section cease to apply in relation to the assessment.

(10) If the licensing authority remains of that opinion, it must revise the cumulative impact assessment so that it—
(a) includes a statement to that effect, and
(b) sets out the evidence as to why the authority remains of that opinion.

(11) A licensing authority must publish any revision of a cumulative impact assessment.

(12) In subsection (7), “relevant period” means the period of three years beginning with the publication of the cumulative impact assessment or a revision of the cumulative impact assessment.”

Amendments 209C and 209D agreed.

2.45 pm

Amendment 210

Moved by Baroness Deech

210: After Clause 122, insert the following new Clause—
“General duties of licensing authorities
(1) Section 4 of the Licensing Act 2003 (general duties of licensing authorities) is amended as follows.
(2) After subsection (2)(d) insert—
“(e) compliance with the provisions of the Equality Act 2010.””

Baroness Deech (CB): Amendment 210 is in my name and the names of the noble Baronesses, Lady Thomas, Lady Pitkeathley and Lady Campbell—all former members of the Lords Select Committee on equality and disability, which reported in March this year. The report found many areas of transport, employment, education, communication and law enforcement failing in their impact on disabled people. We made recommendations that were carefully crafted to be cost neutral, or very inexpensive, and that would ensure a fair deal for the growing number of disabled people. Very few of our recommendations involved changing the law, but this is one of them. It is a simple, economic and transformative amendment, central to our recommendations, which would go a long way to adjusting our living environment to the needs of disabled and elderly people.

Licensing authorities have a duty, under Section 4 of the Licensing Act 2003, to promote, in their duties of inspection and licensing,
“the prevention of crime and disorder ... public safety ... the prevention of public nuisance; and ... the protection of children from harm”.

Amendment 210 would add a fifth enforceable duty, namely compliance with the Equality Act. In taking evidence from disabled people and those involved with them, the Select Committee uncovered a weakness in enforcing existing duties, and at the same time found a way to improve life for disabled people and all of us as we get older. In their response to our report, the Government said that since the Equality Act already applied to businesses and employers, no more was needed, and that they were holding discussions with the hospitality industry to promote increased accessibility for disabled people. It is true that equality law applies across the board, but the issue is enforcement where equality is being denied. Sadly, it is clear that mere guidance and good will do not do the trick.

With this amendment, licensing authorities could require, for example, old and existing buildings to be made accessible. When they are out inspecting and find disabled facilities not being provided as they should be, they could review the licence. They could issue a warning or, in the last resort, remove a licence from an entertainment premises that refused customers because of their disability—or indeed sexuality or race—or charged extra to disabled visitors. At the moment, the licensing authority can only remind owners of premises of their duties under the Equality Act, and they have no teeth. Where the situation is not remedied, this amendment would shift the enforcement burden away from the individual disabled person or the person discriminated against—who, under existing law, have to take legal action on their own—to the local authority. It is self-financing. The functioning of this amendment would not depend on taxpayers’ money.

This extra condition in the Licensing Act would give local authorities in every sphere the power to say, “We are not going to licence you unless we see the premises are fit, or as fit as they can be, for disabled persons’ use”. The Select Committee learned that the National Association of Licensing and Enforcement officers would support this. Businesses that already comply would have nothing to fear from it. Indeed, some already behave as we would all wish. For example,
Newham Council denied planning permission unless all new stations in Newham were step-free. By way of contrast, the committee heard evidence that new shared spaces and pedestrianised shopping areas were designed sometimes without regard to accessibility by disabled people. It is no answer to say, as Ministers tend to, that guidance to the authorities is all that is required. Guidance is no substitute for enforceability.

The United Nations Committee on the Rights of Persons with Disabilities carried out an inquiry into the condition of the UK’s disability programmes and reported on 6 October. The United Nations committee condemned the lack of cumulative assessments of the impact of cuts and other recent policies affecting disabled persons. It called on the UK to ensure that in the implementation of legislation, policies and programmes, special attention is paid to the most vulnerable disabled people and it requires the UK to report back on the steps taken to comply with the United Nations Convention on the Rights of Persons with Disabilities. That report is not out of date, it is bang up to date. Amendment 210 would not only go a long way to achieving the aims of the Lords Select Committee but would assist the Government in making a decent response to the United Nations committee and avoiding international opprobrium. I beg to move.

Baroness Thomas of Winchester (LD): My Lords, my name is also on Amendment 210 which, as the noble Baroness, Lady Deech, has said, is one of the recommendations of our committee. I am particularly speaking about how the amendment would apply to existing, rather than new, premises. Before I go any further, I should say something about the Select Committee on the Licensing Act. I do understand what is being said but my mind goes back to the words of a pop song of the 1960s:

“Catch a falling star and put it in your pocket
Save it for a rainy day”.

This might be, “Catch a passing Bill and put it in your pocket”. That is an important point: maybe some Members do not quite appreciate how difficult it is to get Bills into the legislative programme.

The vague terms used by the then Secretary of State for Education and Minister for Women and Equalities in her evidence to the committee about spreading good practice rather than legislating in this area simply will not do, as it does not work. The licensing solicitor at Sheffield Council, Marie-Claire Frankie, was clear when she gave evidence to our committee:

“What could strengthen the licensing authority and give them the ability to enforce it is to make a fifth objective related to equality”.

She said specifically that a friendly word in somebody’s ear at the premises, even if followed up by a letter from the local authority, just did not work. She went on:

“For old and existing premises that transferred over before the Licensing Act, there is not anything that we can go back and revoke licences on or anything that we can add conditions on. Because of the licensing objectives, there is no way of getting it before a committee because they are not breaching crime and disorder; they are not committing public nuisance; they are not publicly unsafe; and they are not endangering children. If there was an additional objective relating to equality, there would be a mechanism to get it before a committee, to enable the local authority and the licensing authority to do something”.

We are talking only about reasonable adjustments, not a mandatory lift, say, if a small club, restaurant, pub or other entertainment venue is entirely upstairs. No one wants premises closed down, but what those of us who are disabled want is as much accessibility as possible, and we do not want to have to go to court to get such access. I hope the Government will accept the amendment.

Baroness Campbell of Surbiton (CB): My Lords, I am also very pleased to add my name to Amendment 210 in the name of my noble friend Lady Deech, who I must say not only ably chaired the Select Committee on how disabled people are faring under the Equality Act but has become a passionate leader for access.

There is a recurring theme in responses to calls for statutory enforcement of disabled people’s access rights, which is that guidance and awareness is much better. This is clearly exemplified in the recent rejection of my amendment to the Bus Services Bill and the lacklustre response to the Select Committee’s report on how disabled people are doing under the Equality Act, as my noble friend Lady Deech has powerfully said. If guidance works so well, why, 21 years after the passing of disability discrimination legislation, are disabled people still denied access to so many pubs, clubs, restaurants and entertainment venues because they are inaccessible? Is it because we cannot enjoy ourselves? I do not think so. I believe there are two major reasons.

First, many service providers who operate from licensed premises are either unaware of their duties under the Equality Act or think they can ignore them with impunity—from the local publican to the London club owner. To most, it is a remote piece of legislation, and only a few understand its relevance. It does not touch the general day-to-day running of the business, so little thought is given to disabled people’s access needs unless these are brought to their attention, usually by a very frustrated and angry disabled person who cannot get in. However, if their licence to trade from those premises was in jeopardy of being withdrawn on the grounds of inaccessibility, the importance of the duty would be so much clearer and change would happen.

Secondly, disabled people, as has been said already, have borne the sole burden of enforcing their rights to social inclusion for years. These are the people least likely to have the resources to challenge a barrier-ridden society, especially when access to justice has become so difficult. So, venues and facilities are likely to remain inaccessible. Our Select Committee received a lot of evidence from witnesses illustrating this. In fact, while waiting to speak today I have received 21 tweets from disabled people telling me of pubs, restaurants and facilities in their area that they cannot get into—21 tweets in just over an hour.

The Government need to buck a more proactive enforcement stance. Compliance with the Equality Act should be added to the objectives of the Licensing Act to ensure that it is followed. When the Select Committee visited a local centre for independent living in Tower Hamlets, I was struck by the similarities of people’s experiences and frustrations with my own
25 years ago, when I was actively campaigning for the Disability Discrimination Act. They told me about the general reluctance to make reasonable adjustments, and the excuses are the same now as they were then: “no money”, “burden on business”, “more advice and guidance needed”. You name it, disabled people have heard it, year on year. Two weeks ago I was having a similar exchange with the Minister, the noble Lord, Lord Ahmad, over my amendment to require accessibility policies as a condition of granting a bus operator’s licence. Today is Groundhog Day, this time over empowering local authorities to withdraw a licence to trade or impose conditions if the Equality Act is ignored. This would not add duties—they are already in place—but it would help to enforce them. What is offered? More guidance. The status quo prevails.

No wonder disabled people are worn down and cynical. No wonder the UN Committee on the Rights of Persons with Disabilities believes the Government are failing in their duty to progress disability equality. This is not my idea of “a society that works for everyone”. I really hope the Government will break the mould today and seriously consider Amendment 210.

3 pm

Lord Clement-Jones (LD): My Lords, I shall speak to Amendment 214A, which I believe is in the same group. I had rather assumed that the noble Lord, Lord Brooke, was going to speak to his amendment, and I am quite happy to wait and let him do so now, as he is in the Chamber.

Lord Brooke of Alverthorpe (Lab): My Lords, that is very kind of the noble Lord; I apologise for not being in my place. I shall speak to my Amendment 211. In doing so, I declare my interest as a patron of the British Liver Trust and several other charities related to health issues that arise from alcohol abuse. In particular, as I said earlier, I declare my membership of the House’s Select Committee on the Licensing Act 2003. One of the questions that we have posed in our call for evidence is:

“Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?”

We have received a lot of evidence on this and continue to do so in the oral hearings that we are currently running, and I do not want to trespass much on the committee’s continuing review.

I know it could be argued in light of what happened in the debate relating to the previous amendments that maybe this should be left until the committee’s deliberations come out. Alternatively, the Government might argue that as Scotland already has a fifth objective relating to health and well-being, we might wait and see what develops with the Scottish position. However, given that I have seen the Government decide that they can put an amendment through and then stay their hand until such time as they receive the report from us, I think I am perfectly in order to move this amendment today and, I hope, persuade them that there is a case for it to be adopted. Maybe then we could wait until spring to see what comes out of the Select Committee’s review; and if the recommendation in its report is in accord with what I am putting before the House we could then implement it.

There are more pressing reasons why this needs addressing, even more than the earlier amendment about the conduct of affairs relating to alcohol at night. First, the noble Baroness, Lady Finlay, enumerated this morning a range of the problems that we continue to have with alcohol. However, the second and more pressing issue is that the topic on which this amendment has been brought forward is not a new one; I brought forward a Private Member’s Bill on it about two years ago, supported by the Local Government Association. We can go back quite some time to 2010, when the then Government were looking at the difficulties that had arisen then. They had recognised a problem with the 2003 Act. They then consulted on the addition of a specific prevention of health harm objective in the 2010 Rebalancing the Licensing Act consultation. Some 38% of the respondents were supportive, 37%—primarily the drinks industry—were against, and 25% were neutral. The Government decided not to legislate at the time but did not really explain why. They simply stated that they saw,

“merit in the proposal to make the prevention of health harm a material consideration in the Licensing Act 2003. We ... will consider the best way to do so in the future”.

So we have been at this now since around 2010.

The reason why this is now becoming more imperative is that as time has gone by, while I concede that in many respects we are getting evidence that the 2003 Act has worked quite well in certain areas—we have seen less alcohol being drunk than was the case in 2003, though whether that is related directly to the Act is questionable, and there are fewer violent incidents and less crime associated with alcohol than perhaps was the case originally—on the other side of the coin we have seen a dramatic increase in the deleterious effects of alcohol on the health of the nation. We saw about 400,000 people being admitted to hospital in 2003 with health difficulties related to alcohol but the figure is now in the order of 1.2 million and is getting worse. The charity I am associated with, the British Liver Trust, is seeing an increasing number of people dying from liver disease, mostly associated with alcohol consumption and abuse, with increasingly a number of younger people being affected in that way. We now have 9 million adults drinking at levels that increase the risk of harm to their health, while 1.6 million adults show signs of full alcohol dependency. Alcohol is now the third biggest risk factor for illness and death.

I am speaking entirely personally here, not representing anything of the Select Committee’s view, but I believe that in many respects the 2003 Act is now out of date. It was designed in 2003 primarily to deal with the on trade, relating to pubs, clubs and fixed premises, where people in the 1990s and at the turn of the century drank. However, we have seen a complete shift over the last 10 or 12 years in the growth of the number of licences being granted—almost like confetti, in my view—to supermarkets, mini markets, small shops and even petrol stations. Almost everywhere you go now, you will find alcohol on sale. In a sense, alcohol has become an ordinary commodity. In supermarkets it is being sold no differently from soap powder or a tin of beans. It has become normalised in our community and has changed the culture. This needs to be examined
to see whether it is moving in the right direction, in the same way as I argued earlier when noble Lords proceeded to pass the legislation regarding “will do” on introducing powdered alcohol into the community. Anything goes, we move towards liberalisation, and it gets worse in health terms.

In my opinion, the 2003 Act does not adequately deal with what is happening on the off side of the licensing trade. We now see big developments taking place online that were not envisaged when this legislation was laid before us. Amazon has a most amazing array of products. Noble Lords who like drinking a lot and cheaply should go on Amazon and see just what is on offer to them. It can be delivered in hours on any day of the week, any week of the year. It is available very cheaply right through the year. Before long, no doubt, we will have Uber doing similar deliveries as quickly as possible. In no way is that touched by the Licensing Act; it is a different world entirely.

People will argue that you cannot do anything with the existing Licensing Act because it relates solely to premises—“What does that have to do with health?” “How do you prove it is damaging health?” and so on. In my view, there are changes ahead. Most of the major supermarkets, apart I think from Morrisons, have plans to increase the number of convenience or metro mini markets around the country, moving away from big premises to smaller ones. They have plans to extend these around the country and I am certain, sure as night follows day, that they will all have a licence to sell alcohol. If we go in there and queue to pay at the till, we will find that alcohol is piled up to the ceiling all around us, not just in our full view but in the view of children. This is changing an attitude generally so that the commodity of alcohol is normalised and just becomes part of our way of life, but it is damaging health and we are doing nothing about it.

There is an opportunity, I believe, if we are prepared to consider what I am putting before us, to explore ways in which we could at least start to pull it back a little bit. That does not mean to say that we stop issuing licences, but we should attach conditions to those licences that would stop alcohol being sold at the front of the supermarket in everybody’s face. Asda managers have tried to do it voluntarily, but when they saw that their competitors were not doing it, they said, “Well, why the hell should we bother?” and they went back to putting it at the front. The voluntary approach is not working.

We now have demands from the police, from the police commissioners, from the health authorities, from the BMA and from almost anybody you can mention who has an interest in the health side that a change is needed. It should not be attached solely to the way in which we have run the Act up to now based on the premise that we should look to do something on a cumulative basis. If there are far too many people selling alcohol in a particular area, there should not be further licences; or if further licences are given, there should be more stringent conditions that would be related to the changes in the health of the area affected. They are doing it in Scotland and they are making progress; it is high time that the UK should do the same.

Sarah Wollaston, the chair of the Health Select Committee in the Commons, is in full agreement on this, and wanted to table amendments herself for this change, so there is some good support in the Commons for it. If the wording is wrong, I offer the Minister my willingness to talk about a change in the wording to a form that would be more acceptable. If the noble Baroness, Lady Williams, is responding, I make a further suggestion, particularly because she comes from Manchester. That city will be the first test-bed area, where it will not only be responsible for health and care and well-being but have total control over its funding. I suggest we consider whether, in conjunction with Manchester, we might run an experiment in the north-west to see what we can do. Manchester would be up for it, and all the responsible bodies would welcome it. Accordingly, I would be happy to consider drafting an amendment to the Bill. We could then review the provision after, perhaps, two years.

I am open to a conversation on this, but we must do something. We cannot just leave it as it is, making all the excuses under the sun, saying that it is too difficult, and listening to the drinks industry—which, understandably, says, “We can’t do it; we shouldn’t do it; we don’t want to go near it”. For the sake of the health of the nation, and for the sake of the harmed, cash-strapped National Health Service, which has great problems ahead of it, alcohol is one of the major problems that we have to tackle. We should do it forthwith, without delay.

Lord Lester of Herne Hill: My Lords, during the Second World War, Archbishop William Temple once said:

“Whenever I travel on the underground I always intend to buy a ticket, but the fact that there is a ticket collector at the other end just clinches it”.

The reason why I strongly support Amendment 210, moved so powerfully already, is that it just clinches something that ought not to need an amendment of that kind. What it clinches is the need for licensing authorities to perform their duty by complying with the terms of the Equality Act 2010.

The noble Baroness, Lady Howe of Idlicote, when she was deputy chair of the Equal Opportunities Commission, and the noble Lord, Lord Low, with regard to the Disability Rights Commission, will both remember how those two commissions carried out strategic law enforcement functions effectively. The problem at present is that the Equality and Human Rights Commission, which has far too broad a mandate, especially in terms of human rights—it lacks needed resources and having priorities determined—is not carrying out the kind of duty in the way that was done by the previous equality bodies. It is not giving effective, strategic law enforcement. Therefore, there is no use relying on the admirable Equality Act 2010 by itself if it is not going to be translated into practical action.

3.15 pm

The great advantage of Amendment 210 is that it seeks to translate into practice in this Bill the need for compliance with the Equality Act 2010 in relation to disability discrimination in a way that no general
guidance or mere verbiage can do. Therefore, I very much hope that this amendment—or something very much like it—will find its way on to the statute book.

**Lord Wigley (PC):** My Lords, I apologise that I have not been able to take part in earlier discussions on this Bill. When you are a member of a party with one representative here, it is a little difficult at times. I am very keen to support Amendment 210, which relates to a matter very close to my heart. I declare my interest as a vice-president of Mencap.

In 1981, I was fortunate enough to introduce legislation—there are some Members in the Chamber now who were in the other place at that time—that became the Disabled Persons Act 1981. That provided for access to places for disabled people—buildings, places of entertainment, et cetera—that required a provision to be made. However, as the noble Baroness, Lady Deech, has said, the trouble is that there is no comeback. There were not enough teeth in that Act and there have not been enough teeth in successive pieces of legislation over the 35 years that have gone on since then. There needs to be the sort of provision built in here to ensure that what is agreed as public policy actually does take place. I press the Minister to seriously consider accepting this or bringing in equal provisions to ensure that this happens.

**Lord Brooke of Alverthorpe:** My Lords, I now speak to Amendment 212, which is on placing child protection as a statutory consultee for statements of licensing policy. The background is that, if we come back to the Licensing Act 2003, this is a modest attempt to add another objective. We have the protection of children from harm as one of the existing four.

Despite the existence of this objective, and the fact that Section 13(4)(f) of the Act recognises child protection as the body responsible for this objective, Section 5(3) does not include child protection as a statutory consultee in respect of statements of licensing policies—SLPs, as we know them. Every local authority is required to produce SLPs outlining how it aims to uphold the licensing objectives in its specific area. SLPs are important local documents and should be taken into account in all licensing decisions. As such, they are important in the way in which child protection issues relate to licensing, and should be highlighted and acted upon.

Under the present arrangements, statutory consultees are,

“(a) the chief officer of police for the licensing authority’s area,
(b) the fire and rescue authority for that area, (c) such persons as the licensing authority considers to be representative of holders of premises licences issued by the authority, (d) such persons as the licensing authority considers to be representative holders of club premises certificates issued by that authority, (e) such persons as the licensing authority considers to be representative of holders of personal licences issued by that authority, and (f) such other persons as the licensing authority considers to be representative of businesses and residents in its area”

The fact that no child protection body is included in that list of statutory consultees is a clear legislative gap, one that could easily be closed by this modest amendment. The greatly increased focus on safeguarding within licensing as a result of the Rotherham child sexual exploitation case suggests that there is now a pressing need for this.

**Lord Clement-Jones:** My Lords, this is a fascinating group of amendments, full of variety and suggestions of all kinds to the Minister. My amendment is no different: it adds yet another suggestion to her, which I am sure she will consider carefully.

I speak to Amendment 214A. The primary measurable success of reforms such as the Live Music Act 2012 and entertainment deregulation is that they have reduced costs and complexity for small-scale events, as well as tidying up primary legislation and how it interacts with guidance. I hope it is common ground that that is welcome.

However, despite these positive changes, the 2% dip in the music industry’s overall GVA performance in 2015, as reported in UK Music’s annual *Measuring Music* report, is attributable to a decline in concert revenue from grass-roots music venues. They provide an important mechanism for talent development and a means for artists to cultivate skills and access audiences. There are myriad examples of major stars who have had their beginnings in such grass-roots venues.

In 2015, there were 5.6 million visits to UK small venues, generating £231 million in spend in the process. More widely, the number of operating grass-roots music venues has declined by 35% in the past decade in London. However, the problem is not unique to the capital, with venues in Birmingham, Manchester, Edinburgh, Glasgow, Bristol, Plymouth, Newport and Swindon—to mention just a few—having either closed or had considerable threats of closure placed on their businesses in recent years.

Although not the sole cause of venue closures, restrictive licensing laws are often cited as a contributing factor. The existing licensing objectives under Section 4(2) of the Licensing Act 2003 reinforce perceptions that entertainment regulated under the Act is something to be controlled rather than enabled. The Act does nothing specifically to encourage cultural participation and enjoyment, for instance. This is a missed opportunity, given the importance of the Act in making events and activities happen. The lack of a positive licensing objective to support provision for entertainment can maintain prejudices between licensing authorities and licensees about their respective motivations. This is unhelpful in creating a licensing environment that works for live music. It is time for a change of approach.

As the noble Baroness, Lady McIntosh, and my noble friend Lady Grender reminded us, the House of Lords is currently conducting a post-legislative scrutiny inquiry into the operation of the Licensing Act 2003. UK Music, the umbrella body for the commercial music industry, argued during the inquiry that consideration should be given to the introduction of a new licensing objective,

“the promotion of cultural activity and inclusion”.

This would sit alongside the other licensing objectives and assist local authorities when discharging their functions.

The amendment would introduce a fifth licensing objective to address,

“the promotion of cultural activity and inclusion”.

It would sit alongside existing objectives and assist licensing authorities when discharging functions. Simple licensing conditions can lead to additional cost to the
At the very least, if the Minister cannot accept the amendment, I hope she will follow her previous practice in being prepared to speak to proponents of it and listen to the evidence that they put forward about the impact of licensing laws on grass-roots music venues. Her ministerial colleagues have been very helpful in amending planning guidance in this respect, which has helped somewhat in change of use for premises near live music venues. I hope that Ministers, having shown themselves sympathetic to grass-roots music venues, will continue in that vein and meet UK Music and the Music Venues Trust to discuss the issues further.

The Earl of Clancarty (CB): My Lords, in particular, I support the amendment of the noble Lord, Lord Clement-Jones, Amendment 214A. He does not define cultural activity, but it would clearly include, at least in part, the night-time economy. There has in recent years been a perfect storm of circumstance for our night-time economy. Rising rents and business rates, property developments, noise complaints, complaints about anti-social behaviour and more have conspired to devastate our night-time cultural landscape. London alone has, in the past five years, lost 50% of its clubs and more than 40% of its music venues, but the same problems are afflicting towns and cities everywhere in the UK, and some cities abroad.

Having said that, closures often hinge on a single concern, which might have been avoided given a wider, more constructive approach. This problem has implications at many levels. As an economy, we will suffer in the long term, as the night-time economy is hugely important to the country. In 2014, it was worth up to £26.3 billion. It is part of what makes London, in particular, an international cultural city. Under the amendment, licensing authorities would see it as part of their remit to address head-on the problems facing their local communities in this provision. We risk parts of our towns and cities becoming night-time dead areas, which is not good for their safety or social fabric. We risk taking the heart out of many of our cities.

The closure of live music venues does not reflect decreasing demand from the public. Witness the protest against the closure of Passing Clouds, a live music and community venue in Dalston, earlier in the year. Events manager Gudrun Getz said that, “property developers are seeking to cash in on the huge popularity of Dalston which we ourselves were instrumental in helping to establish”.

She also says that there is, “a huge … fear in the community at the moment that we are going to lose all of our space and there will be nowhere for musicians to play”.

This would of course be a terrible loss for London and elsewhere in the country.

3.30 pm

I heard an interview broadcast on Thursday on the BBC World Service with Amsterdam’s counterpart to our new night tsar Amy Lamé—night mayor Mirik Milan, the first one anywhere and now with two years’ experience in the job. His concern has been not just with the clubs and music venues that are his background
but the public space of which they are a part—space shared by the local businesses, restaurants, tourists and local residents. He is as concerned with the lighting outside a club in the public space, and with finding a way to deal with residents’ complaints, as the clubs themselves. His remit is clearly broad. He says:

“You have to get all the stakeholders to the table to solve these tough issues”.

But he also goes on to say, about attitudes to the use of that space, that,

“change will only come from investing in communities. It will never come from stricter rules”.

In this country, we urgently need a more co-ordinated approach to this problem, and a broader, more positive and inclusive outlook from our licensing authorities would be a significant step in the right direction. This amendment would shift the attitude in the Licensing Act from one of control and limiting—from simply making rules—to one of enabling. This can only be to our benefit. Our cultural venues are hugely important. This is a chance for the Government to show that they believe that our night-time arts and culture are not add-ons but necessary parts of the social fabric of our towns and cities, and are, importantly, part of the building of that fabric.

Baroness McIntosh of Pickering: My Lords, I congratulate noble Lords who have tabled and so eloquently moved and spoken to the amendments before the Committee.

Speaking in a personal capacity, I seek guidance from the Minister, who now has a wish list of an additional three or more objectives that could be included in the amendments. In her response, can she explain what original criteria were used to establish the original objectives, as set out in the Licensing Act 2003? More particularly, what is the distinction from what has been achieved by a piece of legislation from an earlier Conservative Administration, of which I am extremely proud, the Disability Discrimination Act? How is that different from Amendment 210?

I was struck by the words of the noble Baroness, Lady Thomas, about catching a falling star. I revert to the earlier theme of why this falling star has been snatched when we have a history over the past 10 or 15 years—possibly even 18 or 20—of every 18 months considering a police and crime or justice Bill that have changed in the past 20 years. He also made important points on the duty of authorities to look after young people and protect them from harm.

As regards the promotion of cultural activity and inclusion, the noble Lord, Lord Clement-Jones, has an impressive record in this House of standing up for live music and other cultural activities. He is right to stand up for grass-roots music venues, which have launched many a career in the entertainment industry. I agree with the noble Lord that music and other activities should be helped and supported where possible through the licensing system, rather than just regulated. I recall a debate on a different subject in the Moses Room, when we talked about a range of regulations that sometimes affect people going about their lawful business and allowing them to busk and so on. Decisions on this are being taken by officials of local authorities, rather than elected members, which is worrying. It is a slightly different but similar point. I also agree with what the noble Earl, Lord Clancarty, said about the industry.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, Amendments 210, 211 and 214A in this group seek to add to the list of licensing objectives under the Licensing Act 2003. In answer to my noble friend Lady McIntosh’s question, there are currently four such objectives. These are: the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm. The promotion of the licensing objectives is of paramount importance when authorities make licensing decisions, and each one carries equal weight.

Amendment 210 seeks to add, “compliance with the provisions of the Equality Act 2010”, to the list of licensing objectives. As we have heard, the amendment flows from a recommendation made by the Equality Act 2010 and the Disability Committee, which reported in March. I was pleased to be able to
Baroness Williams of Trafford: The committee recommended that the Licensing Act 2003 be amended to make failure to comply with the Equality Act 2010 a ground for refusing a licence. In their response published in July, the Government argued that, as employers and businesses were already under a duty to comply with the statutory obligations imposed by the Equality Act not to discriminate against staff or customers, the Act offered sufficient protection. Accordingly, it would be inappropriate for the 2003 Act to duplicate the requirements of the 2010 Act, just as it would be inappropriate to make express reference to other legislation—such as the Health and Safety at Work Act 1974 or the Noise Act 1996—all of which places requirements and responsibilities on licensing authorities and licensees.

Moreover, if we were to apply the logic of Amendment 122 more broadly, we should also be amending the Gambling Act, and indeed many other statutes, to place analogous obligations on those undertaking other forms of regulated activity. To single out the operators of businesses licensed under the 2003 Act could be taken as downgrading the obligations on all other businesses to similarly comply with the requirements of the Equality Act. I am sure that noble Lords would not wish to give that impression.

This is not to say that those running licensed premises should not be doing more to facilitate access by disabled people. Earlier this year the Minister for Disabled People held a round table event with disabled people and the hospitality industry to lead to a better understanding by service providers and businesses and a commitment from them to improve access and attitudes. Organisations represented at the round table made pledges to improve accessibility to their premises and improve their customer service for disabled people. For example, the British Beer and Pub Association pledged to update and promote its guidance on accessibility in pubs. This gives pubs advice on easy changes they can make to improve their service to disabled customers. These are very practical steps which will help to improve the day-to-day experiences of disabled people.

Amendment 211, tabled by the noble Lord, Lord Brooke of Alverthorpe, seeks to add an additional licensing objective, to promote the health and wellbeing of the locality and local area.

The Government are not unsympathetic to those who believe that there should be a greater role for public health within the licensing system, and we of course acknowledge the health harms attributable to alcohol. However, decisions under the Licensing Act have to be proportionate and made on a case-by-case basis. Unless it can be demonstrated that an application for a new licence is likely to undermine one or more of the licensing objectives, the licensing authority must grant the licence. The Government believe that any new licensing objective would need to be capable of standing alongside the existing objectives and function in the same way. Any new objective must therefore enable licensing authorities to determine whether it is appropriate to grant or refuse new applications, review licences and attach conditions or revoke licences.

Previous work has shown that it is difficult to establish direct causal links between alcohol-related health harms such as chronic liver disease and particular premises. Difficulties also remain with putting in place the necessary processes to enable the collection of such evidence—without which decisions based on health grounds would be unlikely to stand up to challenge. Work to date has established that the types of health data that are more readily accessible and most suited to use in a licensing context tend to relate to acute harms such as violent assaults and alcohol-related injuries. These harms, as well as most factors affecting well-being, such as crime levels and the welfare of children, can already be addressed through the existing licensing objectives, as demonstrated by the achievements of areas such as the Kensington area of Liverpool, Newcastle and Middlesbrough.

The Government will therefore continue working with Public Health England to facilitate access to local health data to inform decision-making within the current framework and to help public health teams play a role within licensing. Public Health England has also been testing a support package to assist with the development of local data collection and analysis based on lessons learned from the evidence-based work carried out in 2014-15. I assure the noble Lord that the Government continue to look at this matter seriously and will consider the findings of Public Health England.

Amendment 214A seeks to add, “the promotion of cultural activity and inclusion”, to the licensing objectives. This would require licensing authorities to consider the character of licensable activities, rather than purely protect against the potential harm caused by licensable activity. The existing licensing objectives seek to reduce harm that can be evidenced, and licence conditions which are intended to reduce the level of harm can be easily understood—for example, a requirement to restrict noise levels to prevent public nuisance.

It would be difficult to replicate this for “cultural activity and inclusion”, since this is quite a subjective matter and may be interpreted in different ways. For example, would a festival of Hindi films or Irish dance be considered good or bad in terms of cultural activity and inclusion? Making this a licensing objective could place licensing authorities in a censorious position, whereby licensees organising events might be obliged to explain what additional cultural value their entertainment might generate, and the licensing authorities would be required to evaluate that information.

The final amendment in this group, Amendment 212, seeks to add child protection bodies to the list of statutory consultees for statements of licensing policy. Each licensing authority is required to publish a statement of licensing policy and to revise it at least every five years. The statement sets out the general approach to making licensing decisions and managing the evening and night-time economy in the area.

Section 5(3) of the 2003 Act sets out a list of organisations and individuals who must be consulted when the statement is reviewed. The list includes the...
police, the fire and rescue authority and the public health body, but it is not intended to be exhaustive and therefore does not include all the responsible authorities. The 2003 Act does not prevent licensing authorities from consulting other bodies or persons as they see appropriate.

3.45 pm

A selected competent body representative of those responsible for child protection in an area has a statutory role as a responsible authority under the 2003 Act. This may be the local authority social services department, the Local Safeguarding Children Board, or another competent body. The protection of children from harm is one of the four licensing objectives, and as such is taken into consideration in all licensing decisions. Further, the statement of licensing policy must set out the licensing authority’s approach to promoting each of the licensing objectives. In practice, the work of licensing authorities with child protection services to ensure that the protection of children from harm is given appropriate consideration.

It is of paramount importance that children and young people are protected from harm. Harm takes different forms in different areas and we have to make sure that local licensing authorities are taking the right steps for that area to ensure the best protection of children and vulnerable individuals, including from the risk of sexual exploitation. Tackling child sexual exploitation is a top priority for this Government and we will continue the urgent work of overhauling how our police, social services and other agencies work together to protect vulnerable children, especially from the kind of organised grooming and sexual exploitation that has come to light in Rotherham, Rochdale and other towns and cities across the UK.

Given the ongoing work of the Licensing Act 2003 Select Committee, of which the noble Lord, Lord Brooke, is a member, this has been a timely debate. That committee is due to complete its work by the end of March. I have no doubt that the committee will consider the issues raised in this debate today as part of its deliberations, and we look forward with interest to studying the committee’s report. The Government will, naturally, consider very carefully the conclusions and recommendations put forward by the committee on these and other issues relating to the operation of the 2003 Act.

I will answer rather belatedly a question from my noble friend Lady McIntosh. The Licensing Act 2003 was passed by the previous Labour Administration. We believe that its focus on preventing alcohol-related crime and disorder and protecting children is the right one. There is a real danger that adding new and potentially conflicting licensing objectives will render the licensing regime unworkable. However, we will, as I have said, consider carefully any recommendation put forward by the Select Committee.

We have already had the benefit of the report from the Equality Act committee, chaired by the noble Baroness, Lady Deech. The Government have considered the recommendation from the committee in relation to the 2003 Act. I know that the noble Baroness will be disappointed by the Government’s response, but I hope that she and the co-signatories of this amendment will understand the reasons for it and that she will be content to withdraw the amendment.

Lord Clement-Jones: My Lords, I am not quite sure that the Minister has answered anything to do with Amendment 214A.

Baroness Williams of Trafford: My Lords, I did. It may be that it was so dull a response that the noble Lord did not catch it. Shall I put it in writing and send it to him?

Lord Clement-Jones: I shall read her response, but it was very short.

Baroness Deech: My Lords, I am grateful to the noble Lords who supported our Amendment 210, but clearly I am disappointed with the Government’s answer, which has not moved from the response issued several months ago, before the change of Administration. I thought that we were convinced: given that this Government have a target of halving the unemployment rate of disabled people and that the Prime Minister said in her first statement on taking office that this Government should work for everyone and allow everyone to reach their potential, surely they must move on this.

I have not heard a single argument to undermine the thrust of Amendment 210. The background is that disabled people gave evidence that the Disability Discrimination Act was a much better tool than the Equality Act, because the latter puts all the protective characteristics together and thus, although well-meaning, does not give sufficient weight to the needs of disabled people, who need a bit more than just equality.

Moreover, I take issue with the Minister’s saying that the amendment would simply duplicate the Equality Act. It does no such thing. First, it shifts the burden of enforcing away from the individual who is discriminated against to the local authority. That is the main aim. A pledge, I am sorry to say, is insufficient. If the entertainment industry gives a pledge, or if we all pledge to pay tax or obey immigration law, I do not think any Government would say, “A pledge, that’s just fine”. As has been proven, there are areas where one needs the teeth of the law. I appeal to the Minister: this Government should not appear hard-hearted. The Select Committee is offering them a way to respond to the United Nations’ inquiry which has so severely criticised this country’s approach to the needs of disabled people.

I have heard no reason why Amendment 210 should not pass. I cannot believe that the Licensing Act 2003 Committee, thorough though it is, will unearth any more than the Select Committee on equality and disability did. Once more, I appeal to the Government to accept the amendment and if they do not, I will emulate the advice given by the noble Baroness, Lady Thomas, and pursue this star all the way to the other end of the rainbow.

Lord Brooke of Alverthorpe: My Lords, when I was speaking, the Minister was nodding so much that I thought she was agreeing with everything. I now realise...
she was trying to lend off her cold, but I was pleased to hear that the Government are not unsympathetic to the health objective in Amendment 211, and I am aware of the difficulties of putting this in place; it is not easy. I am also aware of the work being done by Public Health England and others in association with the Home Office. I look forward to that materialising and hope it will be presented to the Select Committee.

I did not get an answer to my point about Manchester, to which I thought she was nodding. May I speak to her separately about that away from the Chamber, when we might try to explore using that new initiative for something quite different? I will look carefully at what she had to say on the children’s amendment and decide what further action, if any, I can take.

**Lord Clement-Jones:** My Lords, I may have blinked and missed the extended response I am sure the Minister gave. However, as I recall, it was simply that we do not need another licensing objective. Will she consider more carefully the question of whether other things could be done to encourage licensing authorities to take cultural matters into consideration in licensing, and in particular offer to meet those with an interest in this area, such as UK Music and the Music Venue Trust?

**Baroness Deech:** I beg leave to withdraw the amendment.

**Amendments 210 withdrawn.**

**Amendments 211 and 212 not moved.**

**Amendment 213 had been withdrawn from the Marshalled List.**

**Amendment 214**

*Moved by Lord Beecham*

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

“Premises licence under Gambling Act 2005: gaming machines

(1) After section 172 of the Gambling Act 2005 insert—

“172A Gaming machines: conditions on availability and use

(1) The conditions which a licensing authority may attach to a premises licence under section 169 include a condition—

(a) that no gaming machines for which the maximum charge for use is more than £10 may be made available for use on the premises, or

(b) that the number of gaming machines of that description which may be made available on the premises must not exceed the number specified in the licence.

(2) The conditions which a licensing authority may attach to a premises licence under section 169 also include conditions relating to the use of gaming machines; in particular, the conditions may include—

(a) a condition that a person may not use a gaming machine unless he establishes his identity by the means and in the manner specified in the licence;

(b) a condition that each payment for the use of a gaming machine must be made by the means specified in the licence and must be processed or approved by a person who, when the payment is made, is on the premises where the machine is situated and is acting in the course of the business carried on there.

(3) The number of machines which may be specified for the purposes of subsection (1)(b) must be lower than the number of machines which is at that time authorised under section 172(8); but where the number of machines so authorised is subsequently varied—

(a) the number of machines specified (or treated as specified) for the purposes of subsection (1)(b) is to be treated as varied by the same amount, and

(b) the licence is to have effect accordingly.

(4) A condition of the kind set out in subsection (2) may apply to gaming machines generally or only to gaming machines of a description specified in the condition.

(5) In deciding whether to attach a condition of the kind set out in subsection (1) or (2), or whether to exercise the power under section 187 or 202 to add, remove or amend a condition of that kind, a licensing authority may give particular weight to the impact of the following on the promotion of the licensing objectives—

(a) the number of other premises in the locality where the premises concerned are situated in which gaming machines are available for use,

(b) the levels of crime and disorder in that locality,

(c) the extent of social or economic deprivation in that locality, and

(d) the proximity of the premises concerned to places habitually attended by children or other vulnerable persons.

(6) In the case of a betting premises licence in respect of premises in Scotland other than a track, the licensing authority may add, remove or amend a condition of that kind set out in subsection (1) only if the licence was issued before 23 May 2016 (the day on which section 52 of the Scotland Act 2016 came into force).”

(2) In section 172 of the Gambling Act 2005 (gaming machines), after subsection (11) insert—

“(12) Subsections (8) and (10)(a) are subject to section 172A.”

**Lord Beecham (Lab):** My Lords, this amendment stands in my name and that of the right reverend Prelate the Bishop of St Albans and the noble Lords, Lord Clement-Jones and Lord James of Blackheath. There are also two slightly different amendments in the group in my name and that of the right reverend Prelate.

Fixed-odds betting terminals are gambling machines housed up to four at a time in betting shops in high streets and other streets, especially in poorer areas. Here people have been able to wager up to £100 on a machine every 20 seconds. While this has now been reduced to £50, unless the gambler in question has opened an account with the gambling company, if different machines are used it is still possible to stake as much as that in such a short time. Moreover, Ladbrokes alone revealed in its last half-year report that it had given away £3.7 million in free plays on fixed-odds betting terminals in just six months, nearly twice as much as for over-the-counter betting, clearly using this device to promote this particularly addictive form of gambling.

These terminals were authorised, I regret to say, by the Labour Government in 2005 and, by 2013, there were more than 33,000 machines, generating profits to bookmakers of £1.5 billion a year. Ladbrokes alone
declared a profit of more than £1,022 per machine per week. In January 2014, my right honourable friend Ed Miliband sought to promote legislation giving councils the power to reduce the number of machines in shops, and increase the time between bets. At this point I should refer to my interest as a councillor in Newcastle and an honorary vice-president of the Local Government Association. Despite expressions of sympathy and concern at the time by David Cameron, a Labour Motion on the issue was defeated by 314 votes to 282 in the Commons. During the debate, the then Minister, Helen Grant, said that the Government were waiting for the findings of a study into how the machines were used and the real impact on players before deciding whether action was needed. We are approaching the third anniversary of that statement.

There are now 35,000 machines, with a concentration in less well-off areas, to the extent that the 55 poorest boroughs have, in proportion to population, four times as many as the best-off 115. Newham, whose council is in the forefront of calling for action and is one of the most deprived boroughs in the country, has no fewer than 87 shops with these terminals. Together with 92 other councils, Newham applied two years ago to secure, under the Sustainable Communities Act, the power to license gaming premises of this kind. I understand that the Government are woefully behind schedule with a determination of that appeal, indicative perhaps of their failure to address problems occasioned by this form of gambling. Perhaps the Minister could inform us, if not today then in writing, when they will publish their decision on that application—these applications arise under legislation enacted by the coalition Government.

In addition to the economic impact on households that can least afford it, there are other troubling issues associated with this essentially exploitative industry. Betting shops take up prominent space in high streets and, even more troublingly, in addition to the impact on the finances, health and well-being of their customers and their families, they have led to a significant increase in crime. The number of times police were called to incidents in betting shops rose by 51% in 2014 from the previous year. In Newham, police are called out, on average, once every day in the year.

I raised the issue of crime in these shops in an Oral Question on 5 September, pointing out that betting shops accounted for 97% of all police calls to gambling establishments and, even more alarming, for 40% of serious crimes against all businesses. I pointed out that no fewer than 7,000 machines a year in these premises are destroyed by gamblers, and that violent assaults on staff are increasing.

In that context, it is telling that in some shops with fixed-odds terminals the staff member—it is usually only one person now in many of these shops—is not permitted to leave what is called his or her “cage” until 6.30 pm. They are confined to that space. That is supposed to enhance their security. Your Lordships may think it is a peculiar way of doing so, and an unsatisfactory one.

It is significant that, as I have been informed today, Ladbrokes is now purchasing chairs to go into these shops weighing 35 kilogrammes, making them too heavy to be used by customers to damage the premises or injure the staff. To some extent it is recognising in that particular and rather—one might have thought—peculiar way that there is a risk of violent crime on the premises.

4 pm

I asked the Minister what was happening about the training or review which is supposed to take place and in particular whether the Government would require at least two members of staff to be present at all relevant times in order to enhance the safety of those who run the shops, all too often on their own.

In the Minister’s reply to my noble friend Lord Rosser, who reminded her that she had not answered my questions in relation to those two aspects, the Minister averred that the Government would, “consider the triennial review and take action if necessary.”

She referred somewhat obscurely to one of the measures, “that gambling establishments and betting shops are taking to have more staff”. [Official Report, 5/9/16: col. 848.] Can she update us on the state of the review and can she confirm that, given its clear recognition of the staffing issue, the Government will accept Amendment 214CA, which requires there to be at least two members of staff on the premises at all material times?

Amendment 214 in the name of the right reverend Prelate to which I and the noble Lords, Lord Clement-Jones and Lord James, have subscribed our names, seeks to amend the relevant provisions of the Gambling Act 2005 by empowering the licensing authority to impose a range of conditions, most notably restricting the maximum charge for using a machine to £10—in line with the noble Lord’s Private Member’s Bill which, of course, did not reach the statute book—together with determining the number of machines that might be deployed and conditions as to their use.

Importantly, proposed new subsection (5) allows the licensing authority to adopt as criteria for the grant of a licence all the conditions that must be applied for major considerations. These are, “the number of other premises”, with machines in the locality, “the levels of crime and disorder”, and, “social and economic deprivation in that locality, and … the proximity … to places … attended by children or other vulnerable persons”.

The industry claims that it adheres to three principles—honesty, keeping crime low and protecting the vulnerable from harm. I am, to put it mildly, as is occasionally my wont, somewhat sceptical. As to honesty, premises that present themselves as betting shops designed to allow punters to pop in and lay a bet, are, in reality, increasingly devoted to these fixed terminals, which are extensively advertised and all too frequently induce customers to spend more than they originally intended. This also gives the lie to the notion that the industry is actively engaged in protecting the vulnerable. As to crime, I have already indicated the high levels of crime associated with this business. The industry makes another risible claim that it contributes to the local economy. On the contrary, it takes vast amounts of money out
of economies up and down the country, which in all probability would otherwise be spent in high streets, on other useful services or in the local economy.

I hope the Minister will recognise the need for much better regulation in what many will regard as a problematic industry contributing little to, but extracting much better regulation in what many will regard as a probability would otherwise be spent in high streets, burden of dealing with crime associated with this industry, and often imposing unnecessary criteria, as well as imposing unnecessary strain on services, such as the police, who have more than enough to contend with without the additional burden of dealing with crime associated with this industry. I beg to move.

The Lord Bishop of Salisbury: My Lords, I thank the noble Lord, Lord Beecham, for moving the amendment. I stand in place of my colleague the right reverend Prelate the Bishop of St Albans, who is unable to be here today, in support of Amendment 214, which would grant new powers to local licensing authorities in regulating gaming machines on gambling premises. As the noble Lord, Lord Beecham, has already made clear, there is a strong case for measures that will help local authorities tackle gambling-related crime to be included in the Policing and Crime Bill.

The figures on the rise of gambling-related crime are startling. From 2014 to 2015 there was a 50% increase in the number of incidents on gambling premises that required police assistance. The right reverend Prelate the Bishop of St Albans recently submitted a freedom of information request to the Metropolitan Police which found that there had been a 68% increase in the number of violent criminal offences at London betting shops between 2011-12 and 2015-16. It has recently been reported that around 40% of commercial robberies in London target betting shops.

There is likely to be a range of factors driving this increase in violence. Opportunity arising from the single staffing of betting shops is surely one of them. Another is the increasing reliance of high-street betting shops on fixed-odds betting terminals, or FOBTs. A report from Landman Economics put it:

“It seems clear that violent behaviour in betting shops is on the increase and an increased proliferation of FOBTs—with increased numbers of players incurring losses from gambling on B2 machines—is a likely reason for this trend.”

There are countless recorded examples of so-called “FOBT rage”, in which customers destroy machines or assault staff after losing large sums of money. What is more, we know that a great number of these incidents go unreported by betting shops.

It is not just violent crime that is increasingly associated with FOBTs. In 2015, 633 instances of suspected money laundering were reported to the Gambling Commission by betting shop staff, and there is no way of knowing the full extent of the problem. Several local councils, including Hounslow, have also raised concerns that the anonymous nature of FOBTs lends itself to underage gambling. These concerns have led several local authorities to call on Her Majesty’s Government to grant them greater powers when it comes to imposing conditions on a gambling premises licence. This amendment therefore comes with the support of the Local Government Association, as well as with endorsements from the councils of Westminster, Brighton and Hove, Brent and Leeds.

The current licensing arrangements allow licensing authorities to impose a range of conditions on betting premises in order to ensure that the licensing objectives of preventing crime and protecting the vulnerable are upheld. However, licensing authorities are prevented from imposing conditions that affect the number or operational method of the gaming machines permitted under the licence.

Given that FOBTs now contribute well over 50% of the profits of high-street betting shops, that restriction seems like an outdated anomaly. Amendment 214 would either allow licensing authorities to limit the number of FOBTs permitted on a premises or allow them to impose conditions on the method of operation for gaming machines more generally—for example, by requiring account-based play or by requiring customers to confirm their identification with staff prior to play. By removing the possibility of anonymous play, not only would conditions such as these prevent money laundering and underage gambling but they would be likely to reduce the number of violent and aggressive incidents towards staff, while facilitating more effective implementation of self-exclusion.

Amendment 214 would also make it clear that licensing authorities do not have to assess licensing applications in isolation but can take into account the cumulative impact of a range of local factors in making a decision, whether they be social deprivation, local crime rates, the proximity of local schools or addiction treatment centres, or the presence of a betting shop cluster. Currently the legislation is not clear on this point, so the amendment would also provide licensing authorities with clarity and confidence about the options open to them. If Her Majesty’s Government are not willing to accept an amendment in primary legislation on this matter, I hope that they will issue clear guidance, particularly on the potential for licensing authorities to use cumulative impact assessments, through the Gambling Commission.

I should emphasise to the Committee that the amendment is not an attack on the gambling industry; it seeks only to give licensing authorities the tools they require to better enforce the existing licensing objectives. Licensing authorities would not be able to impose these conditions on a whim. They would have to show that conditions were proportionate and reasonable in protecting the licensing objectives. These new powers would make a real difference, not just in reducing crime but in protecting the vulnerable, and I hope that Her Majesty’s Government will consider them carefully.

Lord Clement-Jones: My Lords, having put my name to this amendment, I support Amendments 214 and 214CA in the name of the noble Lord, Lord Beecham—and endorse the argument so eloquently put forward both by the right reverend Prelate the Bishop of Salisbury and by the noble Lord, Lord Beecham.

We on these Benches have long advocated a reduction in the stakes of fixed-odds betting terminals—FOBTs—and the Government’s review is a welcome step, but it should not delay other forms of action to address the social harm caused by these machines. For years, local authorities of all political persuasions have implored the Government to allow them to tackle the blight on communities caused by FOBTs.
As we know, FOBTs can swallow £100 every 20 seconds, and bookmakers open multiple shops in deprived areas to facilitate as many machines as possible. There are double the number of betting shops in the 55 most deprived boroughs in England as in the 115 most affluent. This clustering of outlets significantly contributes to crime and anti-social behaviour, as both the right reverend Prelate and the noble Lord, Lord Beecham, mentioned.

That is why I and my colleagues back Newham and its 92 local authority supporters, representing 23 million people across the country, who have been calling for the dangerously high FOBT stakes to be reduced to £2, in line with other high street gaming machines. We hope that this will be the outcome of the belatedly announced triennial review.

FOBTs are highly addictive gaming machines, as we have heard, found in bookmakers across the country. The machines allow users to place bets of up to £100 every 20 seconds on electronic casino games. In 2015 gamblers lost £1.7 billion on FOBTs, and, as we heard from the right reverend Prelate, FOBTs now account for more than half of betting shop profits.

As we know from evidence from, for example, charities seeking to help people with gambling addiction, these machines are directly harming the young and vulnerable in our society, whom we have a duty to protect. Those who can least afford it are often losing vast sums of money. This is driving them towards mental health problems. We have even seen young men taking their own lives because of their addiction to these machines.

The impact of such losses—again, as we have heard—is leading to increased crime on Britain’s high streets. In a recent evidence session of the FOBT all-party group, Sir Robin Wales, the Mayor of Newham, noted that in Newham Borough there is one police call-out to a bookmaker per day, most commonly associated with a FOBT-related incident. In 2013 one of Newham’s 84 betting shops reported 112 incidents of anti-social behaviour to enforcement teams.

To date, the measures introduced to regulate these machines have been ineffective at best. Last year the Government introduced the Gaming Machine (Circumstances of Use) (Amendment) Regulations, which were implemented on 6 April. They require FOBT customers to authorise stakes of £50 or more via account-based play or over-the-counter staff authorisation. However, a study by Landman Economics in April 2016 demonstrated that the DCMS, in its evaluation of the impact of the regulations, was unable to determine whether the regulations on the £50 stake had in fact led to an increase in player control, let alone a reduction in the number of problem gamblers. Further, the bookmakers’ own industry code of conduct was found, in a report by the Responsible Gambling Trust, to be ineffective.

Calls for the regulation of these machines have been widespread, from parliamentarians, faith groups and mental health campaigners. Apart from the questions of lowering the stakes and reducing the spin rate, do the Government accept that local authorities have inadequate planning and licensing powers to address high-stake machine gambling on their high streets, to protect the most vulnerable, to tackle crime and to address the damage to local economies?

The Prime Minister, Theresa May, raised the issue back in 2005 of the harm caused by FOBTs. More than a decade later, she finally, as Prime Minister, has the power to take action. She has the opportunity now to protect the most vulnerable from exploitation by controlling high-stakes gambling on our high streets. These amendments would be extremely valuable additions to available regulation of FOBTs. I urge the Government to accept them.

4.15 pm

Baroness Howe of Idlicote (CB): My Lords, I support Amendment 214, in the name of the right reverend Prelate the Bishop of St Albans, who sadly, as we know, is not able to be with us today. Noble Lords will no doubt be aware that I have spoken in previous debates outlining my concerns about category B2 gaming machines—or FOBTs, as they are more commonly known. The right reverend Prelate’s amendment is a good step in the right direction and I hope the Government will feel moved to support it.

There are clear associations between problem gambling and FOBTs that cannot be ignored. A study conducted by Orford et al showed that 26% of the days spent playing on FOBTs were attributable to problem gamblers and 23% of all time spent on FOBT machines was attributable to problem gamblers. Likewise, according to GamCare’s 2014-15 statistics, 26% of the calls to GamCare in 2014-15 were made for help with issues associated with FOBTs. Problem gambling and FOBTs go together hand-in-hand, and we have a duty to do more to help those who are struggling and the communities blighted by the proliferation of betting shops.

On top of this, betting shops with FOBTs have also been associated with anti-social and criminal activity on local high streets, which has also been mentioned. A 68% increase in violent criminal offences at betting shops between 2011-12 and 2015-16, identified in a FOI request made by the right reverend Prelate to the Metropolitan Police is simply not good enough. We must do more both to protect employees, as the noble Lord, Lord Beecham, seeks to do with Amendment 214CA, and to safeguard communities. Those stories which make national headlines—punters smashing up machines in betting shops after losing significant amounts of money—only scratch the surface of what is experienced by employees and communities on a daily basis.

In approaching this amendment, which is about the licensing regime for FOBTs, it is important to say a word about the history of the licensing of betting shops. In 2001, the then Government’s Gambling Review Report concluded that the system at the time—or considering likely demand for gambling provision when issuing premises licences—had the effect of stifling competition and allowing larger firms to monopolise control of the gambling market. The subsequent Gambling Act 2005, which came into effect on 1 September 2007, abolished the so-called demand test, replacing it with an “aim to permit” clause.
[Baroness Howe of Idlicote]

This effectively placed local authorities in a situation where, on receipt of an application, their starting point had to be to look for a reason not to grant it, rather than to consider a reason to grant the application. The burden shifted to consideration of commercial interest first, rather than consideration of the impact on the consumer and the community.

Indeed, in evidence supplied to the Commons Culture, Media and Sport Select Committee for its 2012 report, *The Gambling Act 2005: A Bet Worth Taking?*, the London Borough of Haringey said there now seemed to be, “almost no restriction on how many gambling premises”, could operate in an area. Local authorities need help, therefore I particularly welcome Amendment 214, which would add a new Section 172A to the Gambling Act 2005. Proposed new subsection (5) would allow licensing authorities to take account of factors beyond simple commercial interest, such as proximity to schools, addiction centres or even existing betting shops.

With betting shops allowed four FOBT machines in one shop, there is clearly an advantage to opening several shops in an area to maximise revenue. Bookmakers made £1.7 billion on gaming machines between October 2014 and September 2015, of which category B2 machines—FOBTs—accounted for 99.7%. I reference page 1 of Ladbrokes’ own 2014 annual report, which has been mentioned. In Ladbrokes’ own words:

“Gaming machines and self service betting terminals drive growth”.

Proposed new Sections 172A(1) and 172A(2) provide sensible solutions by allowing licensing authorities to impose conditions on gambling premises, permitting them to have as few as zero FOBTs. They also allow licensing authorities to impose conditions requiring customer identification prior to play in an effort to address FOBT-related crime. The situation with FOBTs has been allowed to get out of hand and it is time the Government took a firmer grasp of it. Reducing the prevalence of harmful machines is a good thing and will make an important difference, but we can and should do even more, and I welcome the recent call for evidence issued by the Government on aspects of the gambling industry, including FOBTs.

I am also encouraged by the focus on reviewing stakes, which for B2 machines are far too high. Making machines less dangerous by reducing the B2 stake from £100 to £2, as the Bill of the noble Lord, Lord Clement-Jones, sought to do, should be our priority. I certainly will continue to advocate for such a change.

I strongly endorse Amendment 214, which represents a tangible opportunity for positive change which can be implemented now to help problem gamblers and their families, as well as communities and employees. I very much hope the Minister will support the amendment, as I, and clearly many Members in this Chamber, do.

Lord James of Blackheath (Con): My Lords, in speaking to Amendment 214I should declare two interests. First, I ran a chain of casinos in the Mediterranean at an earlier stage of my life, and I am therefore very familiar with the function of a roulette wheel. Secondly, I was chairman of the Jockey Club’s racing interests in the UK, so I was heavily dependent upon the profits coming from the bookmakers’ levy.

The Bill of the noble Lord, Lord Clement-Jones, was tabled several months ago and I am sorry that it has not gone further. In many ways, it is, as an entity, better than this amendment, and the Minister should give serious consideration to incorporating it into the Bill.

The points I need to make relate to the deep suspicions I raised at Second Reading about the honesty of the electronic roulette wheel in the FOBTs in reflecting the function of a roulette wheel, as I know it to be. I have probably done more analysis on this than anyone alive today, and I would like to do a lot more. I suspect two things are wrong with the wheels at present. First, they do not fulfil either of the two functions which I require as a standard for any honest roulette wheel. An honest wheel should result in 28 different numbers occurring in any sequence of 40 spins—that statistic is astonishingly accurate—and every number on the wheel should come up within a maximum of 121 spins. I have tested these theories over thousands and thousands of spins. For example, I tested the latter over sequences as high as 4,400 and found that there were 44 occasions on which each number came up a minimum of once, which confirms that theory.

As for the former theory, I cannot remember the name but I think it was the Gambling Commission that set up the original licensing arrangements for casinos years ago. It was an extraordinary commission because it went to the extent of installing a roulette wheel in its meeting room and having two croupiers spinning it all day long to observe what happened. As a result, it laid down very strict rules for roulette wheels. I can see no reason whatever why bookmakers should not accept the validity of the same rules for their electronic machines as for the metal and wood wheels in casinos. As things are, they produce very different results.

As a result of my criticisms, two days after our last debate I got a very angry letter from the bookmakers’ association. It said that I was a liar telling an untruth, was wholly wrong and was being offensive. I said, “I may be offensive but can you prove that I am wrong on the matters of fact? I want you to prove to me that you have a 28-number cycle in every 40 spins and that your whole wheel comes up in 121 spins. If you can’t prove that, then you are in fact dishonest in what you present as a functioning electronic roulette wheel”.

I do not believe they can do that but I would like the support of Parliament for this. I want them to give me a 5,000-number sequence for every electronic computer programme that they are running—and they have lots of them, as we have heard. They have so many different terminals that they cannot allow one programme to run so as to establish a pattern, because you could adopt the pattern from one and go and bet on it. You might be able to switch it down to your advantage and they will not do that. If they have six different betting shops, they will have six different programmes and I want those programmes to be subject to audit. I would like to audit them by matching with my own matrix, which I have developed. If they can give me 5,000-spin...
sequences certified by an accountant or a lawyer, it will take me six hours to say whether they have an honest wheel or not. I will do that for free for the whole industry, if it wants. If your Lordships think it sounds as though I need to get a life, you are probably right but I am obsessed with these numbers and I would love to do it.

In this case, I am so certain that it is wrong that after the previous debate I went on a betting shop crawl in Chichester, my nearest local town. I went round each of the main betting shops in it and sat down to watch what was happening on the electronic wheel. The first one that I watched was simply frightening. The man who had switched the machine on appeared to have £100 in folding money, well concealed in his pocket. He was pulling it out one £20 note at a time and feeding it in to charge it up. He had decided to bet on five numbers: 32, 15, 19, four and 21. These are the five numbers adjacent and to the immediate right of zero on the wheel. Effectively he should have had a six to one chance, as it is five numbers out of 37, but of course he was having to put a £1 chip on each of the five numbers. If he won, he got only £1 back for it and lost £4, so he was actually betting at 5.2 to one against in real odds. He would have had to have six successive wins spins in a row just to break even on his £100—an impossible characteristic—yet the man was sitting down to give away £100, without any possible benefit coming to him.

The betting shop quickly moved in and asked me what I was doing. I said that I was doing social studies and I was told, “You don’t do them here—get out”. So I went off to the next betting shop and lasted about five minutes there as well. Eventually I went to six shops. What I found was a horrendous change that has occurred since the noble Lord, Lord Clement-Jones, brought his excellent Bill in. The spin cycle we were worrying about then was running at, I think, two minutes; it has now gone to 10 seconds. This is so fast that you cannot even think what your name is, let alone what you are betting on. At 10 seconds a spin, it is simply draining a man of money without any way of him knowing what he is doing. My great proposal to your Lordships today is: whatever we do with this clause or with the Bill of the noble Lord, Lord Clement-Jones, we should write in a demand to go back to a minimum of two or three minutes, or whatever it was to be. Any betting shop which does not do that should be summarily closed and will not be allowed to open until they have demonstrated the accuracy of their data in the form that I have dictated. They would be closed until further notice.

However, what I think is happening is that the bookmakers read our Hansard and decided to make a firm commitment to a betting cycle which would be better than the figure they were allowing. They have therefore decided to cut it to 10 seconds now, so that they will have more to negotiate and give away when the crunch comes. Let us put it in now and start closing them. We should get some authority in to stop this nonsense. Wherever there is a 10-second cycle going on in a betting shop, close it down now. We should do it urgently and make an example of them. I rest my case.

Lord Paddick (LD): My Lords, I shall take a slightly different approach from that of the noble Lord, Lord Ashton of Hyde, and just say—I am sorry, I meant the noble Lord, Lord James of Blackheath: I am reading the wrong name on the annunciator. I do apologise. I do not know how the Minister can sit here hour after hour and hear the overwhelming evidence of the damage that these machines are causing and not do anything about it. This is an opportunity to do something about it. The Minister should grab it with both hands.

4.30 pm

Lord Rosser: I thank the noble Lord, Lord James of Blackheath, for his contribution. I do not go into betting shops, but he has confirmed that I have only a marginally smaller chance of winning than those who do. My noble friend Lord Beecham and the right reverend Prelate the Bishop of Salisbury in particular have already set out the background to and concerns behind this group of amendments: concerns about the increase in reported criminal offences linked to betting shops, which has coincided with the proliferation of fixed-odds betting terminals. These criminal offences relate both to violence towards staff and to damage to property arising from losses incurred from gambling on these terminals.

There is a link between the use of fixed-odds betting terminals and their anonymity for user and money laundering, with one major firm fined some £800,000 by the Gambling Commission this summer over inadequate protection against money laundering. At present, licensing authorities can lay down a series of conditions on betting premises to help ensure that the licensing objectives of preventing crime and protecting the vulnerable are delivered and maintained. However, licensing authorities cannot limit the number of machines below the maximum of four per betting premise, and neither can they lay down requirements for the operation of gaming machines including fixed-odds betting terminals.

This group of amendments would, among other things, achieve these objectives by allowing licensing authorities to place conditions which could limit the number of fixed-odds betting terminals permitted under a gambling premises licence. Fixed-odds betting terminals now contribute, as I understand it, well over 50% of the profits of high street betting shops. These amendments would also allow licensing authorities to place conditions on gambling premises which would restrict the operation of gaming machines including fixed-odds betting terminals to people who have established their identity with the gambling premises concerned. This would assist in addressing money laundering and also help to reduce the incidence of violent disorders, including aggression towards staff, and the risk of under-age gambling. In both instances the licensing authority would have to show why these conditions were necessary to ensure that the licensing objectives to which I have already referred were delivered.

A further amendment in this group would also mean that licensing authorities did not have to determine each licence application in isolation. Instead, the amendment would make it clear that such authorities could take account of the cumulative impact on a range of local factors in making a decision—factors...
such as social deprivation and local crime rates, the creation of a betting shop cluster and the proximity of local schools or centres for other groups of vulnerable people. Such a provision in the relevant amendment in this group would better enable licensing authorities to protect areas that they considered at real risk of gambling harm.

The purpose of these amendments—as has already been said, Amendment 214, the main amendment, has the support of the Local Government Association—is to give local authorities a much-needed wider range of measures to enforce the existing licensing objectives. I hope that the Government will respond favourably. Surely local authorities are in the best position to know what is and is not needed in their own community. They should now have the necessary powers to deliver the existing licensing objectives.

Baroness Chisholm of Owlpen: My Lords, as the noble Lord, Lord Beecham, and the right reverend Prelate explained, these amendments would have the effect of devolving power over licence conditions for gaming premises and gaming machines to local authorities. The number of gaming machines authorised under a gambling premises licence is regulated by the Gambling Act 2005. Licensing authorities do not currently have the power to change this limit, and cannot impose licence conditions on gaming machines that relate to stakes or prizes. However, they do have licensing powers in respect of gambling premises. These include powers to reject an application for a licence and powers to impose other conditions, for example around opening hours. They can also review and revoke licences. The Department for Communities and Local Government also brought in new planning laws last year that ensure that applications to change, for example, a disused shop into a bookmaker’s office will need planning consent.

In looking to introduce this new clause, the right reverend Prelate is seeking to limit the number of fixed-odds betting terminals in bookmakers and casinos. The Government understand the concern that such gaming machines could fuel problem gambling and are committed to reducing the risks of potential harms associated with such machines. Indeed, last year, we introduced new regulations to ensure that players staking over £50 on these machines either had to open an account or had to interact with staff. Evaluation shows that there has been a significant decrease in players staking above £50. The Gambling Commission also introduced new social responsibility requirements last year, including measures that force customers to make an active choice on whether to set time and money limits while playing these machines.

In addition, the noble Lord, Lord Beecham, is seeking to enable licensing authorities to impose minimum staffing levels on premises with such machines. The noble Lord may have in mind a number of tragic incidents in high street bookmakers over the last few years. The Association of British Bookmakers’ Safe Bet Alliance provides specific guidance on staffing security in bookmakers, which was drafted with the input of the Metropolitan Police. Members of the Association of British Bookmakers operate single staffing only when a risk assessment has been undertaken.

Sections 167 and 168 of the Gambling Act 2005 empower the Secretary of State for Culture, Media and Sport to set mandatory and default conditions on premises licences via secondary legislation, which could include a condition setting staffing levels. This would be the preferred route to make such a change. In addition, I must emphasise that the Government believe that the appropriate mechanism for reviewing stakes and prizes, and gaming machine numbers, is the review announced on 24 October by the Minister responsible for gambling, which will consider these issues in a more holistic and comprehensive context.

My noble friend Lord James mentioned statistics about roulette wheels. I have to say that I got slightly lost in all the various numbers, which is not surprising considering that I was unable to add the 45 minutes when it came to the lunchtime break—but I certainly take his point and I listened with interest.

The noble Lord, Lord Beecham, talked about the Sustainable Communities Act. The Government are engaging with the LGA on this issue. The review announced on 24 October is the right mechanism to consider all these issues, and the Government invite Newham Council to take part in that review.

The Government are alive to the concerns about the dangers posed by fixed-odds betting terminals. As I have set out, we have already taken steps to tighten the controls on these machines and have set out our plans for the review of gaming machines, gambling advertising and social responsibility, which will include stakes on fixed-odds betting terminals. I am sure that the right reverend Prelate, the noble Lord, Lord Beecham, and other noble Lords will want to contribute to that review, and I encourage them to do so. The review will include a close look at the issue of B2 gaming machines—more commonly known as fixed-odds betting terminals—and specific concerns about the harm that they cause, be that to the player or the community in which they are located. The call for evidence period will close on 4 December, following which the Government will consider proposals based on robust evidence provided to assist in our decisions.

Given that this process is in train, I invite the noble Lord, Lord Beecham, to withdraw the amendment.

Lord Beecham: I thank the noble Baroness for her reply, so far as it goes, which I fear is not very far at all. If the Government are relying on the industry to come forward with proposals, many of us would be somewhat sceptical about a satisfactory result emerging.

I am not, as some of your Lordships will be aware, an enthusiast for secondary legislation but it seems to me that it would be sensible for the Government to take the power, at least, to regulate in some of the areas we have discussed, even if they do not want to incorporate the specific details of the amendments we have been discussing today in primary legislation. It would be a wasted opportunity, it seems to me, if, as I suspect, the gaming industry will not come up with satisfactory answers to the many questions which have been raised today, to then expect a further Bill to come forward. The legislative timetable, many of us will imagine, will be dominated by things of a rather more international flavour for the next few years, whereas,
giving the power to regulate on issues of the kind we have identified here would be a much simpler parliamentary process and one which is quite appropriate.

I do not think that many of us in your Lordships’ House have any great confidence in the gaming industry’s willingness to address the problems that have been identified across the House this afternoon. While at this point I will obviously not be asking the House to divide, this is a matter that I hope the Government will consider in a constructive way before Report. I would be tempted, and will discuss this with other of your Lordships, to embody in resolutions on Report a power to deal with matters as I have suggested by way of secondary legislation, but it would be better if the Government took that step. No doubt the noble Baroness will be willing to discuss this with interested Members before Report, but as matters stand I beg leave to withdraw the amendment.

Amendment 214 withdrawn.

Amendment 214A not moved.

Amendment 214B

Moved by Lord Moylan

214B: After Clause 122, insert the following new Clause—

“National anti-doping provisions

(1) Subsections (2) and (3) apply to—

(a) all persons participating in sport in the United Kingdom who are members of a governing body of sport or an affiliate organisation or licensee of a governing body of sport, including national governing bodies of sport, regional governing bodies, sports associations, clubs, teams, associations or leagues (a “relevant body”);

(b) all persons participating in such capacity in sporting events, competitions or other activities in the United Kingdom which are organised, convened, authorised or recognised by a relevant body;

(c) any other person participating in sport in the United Kingdom who, by virtue of a contractual arrangement or otherwise, is subject to the jurisdiction of a relevant body for the purposes of preventing doping; and

(d) any other person in the United Kingdom whether or not such a person is a citizen of, or resident in, the United Kingdom.

(2) An athlete is guilty of an offence if he or she—

(a) knowingly takes anywhere in the world a prohibited substance with the intention of enhancing his or her performance in any sports competition where there is a reward on offer, whether monetary or in terms of prestige, promotion or protection from relegation; or where that is one of his or her intentions; or

(b) has been banned or suspended from participation in any sporting activity, or has been a member of any organisation which has been banned or suspended from participation in any sporting activity anywhere in the world, at any time either before or after the day on which this Act is passed; and

(i) participates in any sports competition in the United Kingdom where there is a reward on offer, whether monetary or in terms of prestige, promotion or protection from relegation; and

(ii) does not have a prohibited substance certificate dated not more than 14 days earlier than the date of the sports competition.

(3) In subsection (2) “prohibited substance certificate” means a certificate from a medical practitioner in the United Kingdom appointed by the General Medical Council for the purpose of testing athletes for prohibited substances, confirming that in the practitioner’s opinion—

(a) the athlete does not have any prohibited substance in his or her body, and

(b) the athlete’s body does not retain any advantage in sporting performance by reason of the athlete having taken a prohibited substance at any time either before or after the day on which this Act is passed.

(4) A person in the United Kingdom is guilty of an offence if he or she, with the intention of enhancing the performance of an athlete, encourages, assists or hides awareness of an athlete taking a prohibited substance with the intention of enhancing the athlete’s performance, or with that being one of the athlete’s intentions.

(5) A medical professional commits an offence if, in the United Kingdom, he or she prescribes a prohibited substance to an athlete and believes, or ought reasonably to believe, that the substance will be used by the athlete with the intention of enhancing his or her performance, or if the professional fails to report any approach for a prohibited substance by such an athlete to the General Medical Council.

(6) A member of an organising committee is guilty of an offence if he or she has not taken all reasonable steps to ensure that all athletes permitted to compete in a World or European Championship which he or she is involved in organising, convening, or authorising—

(a) have not taken a prohibited substance with the intention of enhancing their performance; and

(b) have not been banned or suspended from participation in any sporting activity, or been a member of any organisation which has been banned or suspended from participation in any sporting activity anywhere in the world, during the two years prior to the World or European Championship.

(7) In subsection (6), “organising committee” means a Committee established in the United Kingdom on behalf of any international federation of sport, which is recognised by the International Olympic Committee.

(8) For the purposes of this section a “prohibited substance” is as defined by the World Anti-Doping Agency or such other agency as shall be designated by the Secretary of State for this purpose.

(9) Any person guilty of an offence under subsection (2), (4) (5) or (6) shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum or imprisonment for a term not exceeding six months, or both; or

(b) on conviction on indictment, to a fine not exceeding the statutory maximum or imprisonment for a term not exceeding two years, or both.

(10) In order to assist with the prevention of offences under subsections (2), (4) (5) or (6), UK Anti-Doping shall discuss the following issues with the World Anti-Doping Agency annually—

(a) the effectiveness of Annex I of the International Standard for Testing and Investigations (athlete whereabouts requirements) and its harmonisation with the European Convention on Human Rights;

(b) the effectiveness of the international work of the World Anti-Doping Agency; and

(c) progress on the development of a United Kingdom roll-out of athlete biological passports.

(11) UK Anti-Doping shall submit the results of the annual discussions under subsection (7) to the Secretary of State, who shall—
(a) lay before both Houses of Parliament an annual report documenting—
(i) whether the athlete whereabouts requirements are effective in combating doping in the United Kingdom and are in compliance with the European Convention on Human Rights, and
(ii) the performance of the World Anti-Doping Agency in general in relation to its effectiveness in preventing offences under subsections (2), (4) (5) or (6); and
(b) determine whether the Government should remain a member of and continue to support the World Anti-Doping Agency, in the light of that effectiveness.”

Lord Moynihan (Con): My Lords, Amendment 214B is the product of some 30 years of discussions I have had with successive Governments, numerous reviews and ministerial answers, during which time many countries have now overtaken us and introduced legislation to criminalise the worst effects of doping in sport. So at least I am confident that the Minister will not be seeking more time to consider this very important subject.

I thank Her Majesty’s Opposition for the work they did in another place. My amendment follows the amendments tabled by Christina Rees, the Labour MP for Neath, who was supported on 24 April this year by Shadow Home Secretary Andy Burnham who said: “People need to be able to trust that what they are seeing on the pitch, on the track or in the pool is real endeavour and not artificially enhanced. If you are using performance-enhancing drugs, you are not just cheating the other athletes but you are perpetrating a fraud against the paying public. For that reason, there is a clear case for it to be a criminal offence. We must send the strongest possible message that it will not be tolerated in sport.”

The amendments tabled today have also been actively discussed in informal conversations with the noble Baroness, Lady Grey-Thompson, from the Cross Benches and the noble Lords, Lord Campbell of Pittenweem, Lord Addington, and others, who have campaigned for many years on this subject. I am grateful to them for the interest they have shown and to colleagues on my side of the House for their expressed support. The Government should be in no doubt of the depth of support for these measures, both in the press and the country as a whole, not least in the wake of the banning of the Russian athletics team from the Rio Olympic Games this year.

The effect of the amendment is set out in proposed subsection (2). It seeks to deal with nothing less than fraud in sport. Those athletes who knowingly take performance-enhancing drugs from the World Anti-Doping Agency’s prohibited list with the intention of enhancing his or her performance to the detriment of the clean athlete—thus potentially denying the clean athlete selection, the prestige of winning or financial gain for professional athletes—would, if the amendment is passed, be guilty of a crime under the legislation.

4.45 pm

The bar in the legislation has been set very high in the draft amendment, since it is intended to be principally one of deterrence. In recent years many countries, ranging from New Zealand, Austria, Italy, France, Holland and Sweden to Mexico and China, have either criminalised the use of performance-enhancing drugs in sport or enacted legislation that criminalises the trafficking of such drugs. Germany is the most recent country to introduce legislation. Under its new law earlier this year, athletes found guilty of doping face fines or prison sentences of up to three years. The German Interior Minister stated: “The law was overdue, important penal provisions now come into effect”.

He added: “I am convinced that we can tackle doping in sport and the criminal structures behind it more effectively with this anti-doping law.”

Under the law, athletes who test positive for performance-enhancing drugs or are found guilty of possession of performance-enhancing drugs can face prison terms of up to three years. Those who provide them with the substances can face sentences of up to 10 years.

We in this country are behind the curve, and the amendment addresses fraud in sport. Sadly, the existing legislation lacks the sport-specific requirements to deal with fraud caused by doping in sport. There is no intention whatever to criminalise an athlete who simply makes a mistake—for example, innocently eating a steak that has been imported from a farm where cows were injected with steroids. The bar of proof needs to be set very high for those athletes who knowingly take a cocktail of drugs with the intention of enhancing their performance and cheating a clean athlete out of a career or out of selection.

I turn to proposed subsection (3). At present an athlete serves a ban usually for four years for a serious offence, with many serving less time. The amendment seeks to make a connection between the drugs taken and how long the benefit lasts. Where some drugs are out of the human system within a matter of days, others stay for life. For example, when taken in the teens, human growth hormone can deliver a substantial increase in height and the beneficiary is unlikely to shrink back to his original height in years to come. As a result, there is a proposed requirement on any previously banned athlete to provide a certificate from a medical practitioner in the UK, appointed by the General Medical Council for the purpose of testing athletes for prohibited substances, confirming that the athlete no longer has the prohibited substance in his or her body and that their body does not retain any advantage in sporting performance by reason of the athlete having taken a prohibited substance in the past.

It has been the press, not our own or indeed the world anti-doping agencies, who have led the way on this subject, and they should be congratulated. That position should be reversed, though; it should be the anti-doping agencies that lead the way. Earlier this year the Sunday Times led a campaign to empower the United Kingdom Anti-Doping agency, in the light of its lack of sanctions, to deal with a certain Dr Bonar, who is alleged to have provided performance-enhancing drugs to dozens of British athletes. Under current legislation, UKAD has no powers to deal with any doctors unless they are affiliated with a British governing body of sport. My amendment would work to ensure that a medical professional would commit an offence...
if he or she prescribed a prohibited substance to any athlete with the intention of enhancing that athlete’s performance in contravention of the World Anti-Doping Agency. In framing legislation, it is as important to address the athlete as it is the entourage that supplies them.

It is proposed that the UK organising committee of any European or world championship has to take all reasonable steps to ensure that the athlete it accepts through the entry process, which is mandated as part of its function by the international federation, are clean. This is important in the context of the Russian athletics team, which was banned from Rio as a team but among which there were few athletes who had individually tested positive. At present there is nothing to stop that team being reaccepted into the International Amateur Athletic Federation and competing next year in the world championships to be held here in London. The amendment would put an onus on the UK organising committee members to work with the anti-doping agency to ensure that no international drug cheats came to London to compete in the world athletics championships without demonstrating that they were clean. I then have two sections that address the relationship between UKAD and the World Anti-Doping Agency and their accountability here in Parliament.

In summary, there is no redemption for the clean athlete denied selection or winnings by a competitor who knowingly cheats. What is worse, the cheat with a chance of a long-lasting benefit derived from performance-enhancing drugs knowingly shreds the dreams of clean athletes with every needle that they inject. The director-general of the World Anti-Doping Agency reflected last year:

“I want to pose the question: should doping be a criminal matter? It is in Italy, and we think—some of us—that the real deterrent that cheating athletes fear is the fear of going to prison, not the fear of being stood down from their sport for a year, two years, four years, but a fear of going to prison”.

He is right. Over the years, many British Olympic athletes—and I declare my interest of not only having competed in two Olympic Games, but having had the privilege of being the Chairman of the British Olympic Association during Beijing and London—have taken a firm and uncompromising stance that those guilty of cheating should never again be selected to represent their country. These amendments go nowhere near as far as that objective, but they signal a clear intention to clean athletes that Parliament will act and will act now.

Lord Rossier: My Lords, the noble Lord, Lord Moynihan, has explained the purpose of this amendment and the extent of its provisions. It is a very timely amendment: the Olympic Games in Rio were overshadowed by doping scandals. Russia was banned from the Paralympics, but did not receive a blanket ban from the main Olympics, despite the state-sponsored doping that had been exposed.

Now, a recent report from the World Anti-Doping Agency independent observers has highlighted failings in the anti-doping checks and procedures at Rio, which the report indicates put an almost unmanageable strain on drug testing during the Olympics. The result was that on Sundays, up to half of all drug tests did not take place because athletes could not be found at the athletes’ village or competition venues due to lack of support, training and information given to chaperones, whose job it was to notify athletes of testing.

Apart from management failings, the report also blamed the failings on budget and operational cutbacks. About 500 fewer drug tests were carried out at Rio than were planned, albeit failing a drugs test at the Games themselves suggests a competitor or their aides who are not particularly conversant with the ways of covering up the taking of drugs. In addition, more than a third of athletes competing in Rio were not subject to drugs testing before the Games in 2016, and of these, nearly 200 were competing in one of the 10 high-risk sports. Despite this report, the International Olympic Committee stated a day later that the report showed that it had been a successful Olympic Games with a successful anti-doping programme.

Doping issues are not, of course, confined to the Olympic Games. The Tour de France has not exactly been immune from them, and neither has tennis or football in this country, to give just three other examples. I suspect that most of us, including, not least, myself, just do not appreciate the full extent and breadth of prohibited substance-taking across different sports.

Prohibited substances, as the noble Lord, Lord Moynihan, has said, are taken to gain an advantage in sport over fellow competitors. They are taken to produce a false result which is not determined purely and solely by the skill and unaided effort of each competitor. That false result will at the very least be influenced—and at the worst determined—by the taking of a substance that improves performance unrelated to the skill or effort of the competitor concerned. It is a form of fraud. It is cheating—cheating not just fellow competitors but the public who paid to come watch the sporting event in the belief that they would see a fair competition with competitors competing on a level playing field.

The purpose of the amendment is, through a series of measures—including the creation, as in some other countries, of a criminal offence carrying, in exceptional circumstances, a custodial sentence—to throttle the deliberate and intentional use of drugs in sport by any person in this country or by any person in this country who,

“knowingly takes anywhere in the world a prohibited substance with the intention of enhancing his or her performance”;

or by any person, deliberately and intentionally, among other things, providing or administering to an athlete prohibited substances with a view to enhancing the performance of that athlete. The amendment also lays a responsibility on an organising committee.

The amendment would also require the Secretary of State to submit an annual report to Parliament which would include documenting the performance of the World Anti-Doping Agency in general in its effectiveness in preventing the offences provided for in the amendment, together with a requirement on the Secretary of State to determine whether the Government should remain a member of and continue to support the World Anti-Doping Agency.

The events before and during the Rio Olympics and the ever-increasing range of sports apparently affected by the use of prohibited substances suggest that doping in sport, including state-sponsored doping, is still not
being taken sufficiently seriously by those at the most senior level who are in a position to stamp it out. The amendment is intended to toughen up our approach to the serious problem of doping, including by people from this country competing, or assisting those combating, elsewhere in the world. We most certainly support it and hope that it will find favour with the Government.

Baroness Wheatcroft (Con): I support the amendment. I cannot claim to be an expert on sport, but my noble friend Lord Moynihan most certainly is. His sporting legacy to this country is extraordinary, not least the performance of our team in the London Olympics, which was engineered by his work as chairman of the British Olympic Association, but also the extraordinary performance of our team in Rio. At first glance, the amendment appeared to be radical but, having heard the argument, I understand that we are lagging behind on this important front. That is not the right position for this great sporting nation to be in.

Beyond that, I fear that by not taking strong action against the use of drugs in sport, we are sending the wrong message to our youngsters, who look on sport as a career opportunity and wonderful thing, and to those who play sport as their great heroes. If people are banned from sport for a year or two and then come back, that seems to be acceptable. A prison sentence would be in a different league. That would send a message to our youngsters that this is something that they should not tolerate, and certainly not toy with. That is a very important message for this House to send. I support the amendment.

Lord Harris of Haringey (Lab): My Lords, I, too, support the amendment. Like the noble Baroness, Lady Wheatcroft, I do not claim to be an expert in or have anything much to do with sport under most circumstances, but the amendment moved by the noble Lord, Lord Moynihan, is extremely important. This is about the confidence of the public and the importance to them of feeling that the sporting events they watch or participate in are genuine and not distorted in the way described. It therefore sends a powerful signal and if it indeed brings us back into line with other countries around the world, it is an extremely important thing for us to do.

My question—the noble Lord may have answered it in his remarks but if so I did not catch it—is: how broad are the sporting activities which the amendment covers? He talked about international sporting events, and we all have memories of what happened in the recent Olympics, in particular with the Russian team. However, as I understand it, the amendment covers all competitive organised sporting events where they are subject to a governing body. I should be grateful for that clarification and the extent to which it extends right the way through, because the governing bodies of the sports of which I have some knowledge are increasingly seeking not only to arrange the high-profile events but to encourage more people to participate at a lower level in local, regional or county events. It may be less likely that performance-enhancing drugs are used in those environments. However, I assume that this legislation is intended to pick up on those issues as well. It would be helpful if we had that clarity because it is important for people to have confidence in all sporting activities in this country, not just those at the highest level.

5 pm

Baroness Chisholm of Owlpen: I am grateful to my noble friend Lord Moynihan for raising the important issue of tackling doping in sport.

This has been a difficult year for sport and those fighting doping—namely, the World Anti-Doping Agency, the International Olympic Committee and the International Paralympic Committee. We must recognise that these are global issues that cannot be solved by legislative action in any one country, although we must play our part. We are not complacent and continue to do all we can to protect the integrity of sport in this country, particularly where there is strong evidence that calls for government intervention.

As my noble friend mentioned, the Sunday Times allegations against UK Anti-Doping were disappointing to read. UK Anti-Doping immediately launched an independent investigation, the outcome of which recommended a number of actions to be implemented, all of which have been accepted by that organisation. Such action reflects the tough stance that the Government and UK Anti-Doping take on doping in the fight to provide a level playing field for our athletes to compete on.

My noble friend raises a valid point in saying that those athletes who dope are defrauding our clean athletes. We recognise that the desire to dope can be driven financially, and financial penalties are likely to be as damaging to those who cheat as a ban would be. However, the Government believe that rather than tackling this through legislation, it should be a matter for sports bodies. We recognise that a sanction in this regard could well act as a strong deterrent to doping cheats who represent the UK or compete in our events.

The UK Government and UK Anti-Doping have a reputation for taking a tough, measured stance on doping. To maintain that, we need to ensure that there is a strong evidence base before any consideration or commitment is given to taking forward any possible legislative options. In order to have that evidence base, the Department for Culture, Media and Sport is currently conducting a cross-government review of the existing anti-doping legislative framework and assessing whether stronger criminal sanctions are required. The relevant government departments and agencies, such as the Home Office, the Ministry of Justice, the National Crime Agency and the Serious Fraud Office, are contributing to the review. We expect the outcome of the review to be published before the end of the year.

In conclusion, I ask my noble friend to be patient for a little longer. The Government are very much alive to the issues he raised and are actively examining what more needs to be done. In fact, the Minister for Sport and Tourism, during a debate on 6 July on doping and the Olympics, said:

“The review is currently under way and, should it become clear that stronger criminal sanctions are needed, we will not hesitate to act.”—[Official Report, Commons, 6/7/16; col. 365WH.]
I hope, therefore, that my noble friend will be happy to withdraw his amendment.

Lord Moynihan: My Lords, I thank all those who have participated in the debate and shall comment briefly on the questions and points that have been raised.

First, the interpretation by the noble Lord, Lord Harris, of the reach of the amendment is correct and is set out in proposed new subsection (1). There is a real problem in the perception, for example among athletes and in the world of rugby, that the time to bulk out is when they are at university age or college age so that they can move on to the professional ranks. There are serious issues of doping in sport at that age, and I believe very strongly that when this is passed, as I hope it will be at some stage in the parliamentary process, it will be a very strong deterrent to those young people not to take performance-enhancing drugs.

The noble Lord, Lord Rosser, in a strong and comprehensive speech, focused on Rio. I would reflect on this one point about testing at the Olympic Games. If you test positive at the Olympic Games, you come into the category of the dopey dopers, because the chances are that if you are on drugs at that point, you will get caught. If you want to knowingly cheat fellow athletes out of selection, you take drugs now—in the winter months—and go to countries of the world were testing is non-existent and where you can be pretty sure you can spend four or six weeks enhancing your performance doing six circuits a day as opposed to a normal person's three, and then retain the benefit of that muscle bank as you move into the summer season, having lost any trace of the drugs in your system. Indeed, you can take a range of drugs that act as a curtain in front of a play, reducing the chance that you will be caught as you move into the season. The huge amount of money that the World Anti-Doping Agency put into testing at the Olympic Games is effectively to catch the dopey dopers, not those who spend a lot of time and effort to enhance their performance during the winter months, and thus cheat fellow athletes out of selection.

I am very grateful to the noble Baroness, Lady Wheatcroft, for her overgenerous words. She was an outstanding member of the advisory board that helped to design and implement the work that the British Olympic Association did to ensure the success of London 2012—so she is being overmodest in saying that her knowledge of the world of sport is not as great as she might like. It is outstandingly good.

I am also grateful to the Minister. I absolutely agree with her starting point that the World Anti-Doping Agency needs to work in tandem with individual countries, working closely together to put in place an effective legislative framework to deal with this issue. However, it is not correct to say that leaving it completely to the World Anti-Doping Agency and to the sporting bodies will solve this problem, which is the reason why so many countries are now legislating. Although they need to立法 in harmony, reflecting their own national interest, they have to legislate together, which is exactly what they are doing. In framing the legislation today, I have taken the example of the Germans, the Italians and the Dutch, who have focused on the fact that it is not just the athlete but the entourage who need to be criminalised. The deterrent effect in those countries of putting legislation on to the statute books has already been very effective.

Finally, on the end-of-year review, I said at the outset that I have been working on this since the Copenhagen declaration exactly 30 years ago, since when there have been so many reviews that it would take me a while to go through them all on Google. However, I always welcome further research and reflections from the Government. I note that they talk about the end of the year, which seems to be very close to our consideration of this legislation on Report. I therefore urge the Minister to see whether the review can be completed in time for Report so that we can take it into consideration. Even if it cannot, I would very much hope that, on Report, we can reflect on what my noble friend the Minister has said, as well as on the speeches made today from both sides of the House. We can then see whether we should send a legislative framework down to the Commons, so that in the new year, which is the likely date, Members can take into account the review to which the Minister alluded and, if necessary, amend the legislation at that point. We can consider any further amendments.

I believe there is widespread support for this provision both inside and outside the House and across parties. I very much hope this work will continue between now and Report, with further consideration on Report. In the light of that, and with my thanks to the Minister for her speech, I beg leave to withdraw the amendment.

Amendment 214B (in substitution for Amendment 213) withdrawn.

Amendment 214C

Moved by Baroness Berridge

214C: After Clause 122, insert the following new Clause—

“Prescribed limit of alcohol

(1) In section 11(2) of the Road Traffic Act 1988 (interpretation of sections 4 to 10), the definition of “the prescribed limit” is amended as follows.

(2) For paragraph (a) substitute—

“(a) 22 microgrammes of alcohol in 100 millilitres of breath,”.

(3) For paragraph (b) substitute—

“(b) 59 milligrammes of alcohol in 100 millilitres of blood, or”.

(4) For paragraph (c) substitute—

“(c) 67 milligrammes of alcohol in 100 millilitres of urine,.”.

Baroness Berridge (Con): My Lords, in moving Amendment 214C, I shall speak also to Amendment 214CB, both of which relate to drink-driving law. Let us imagine a world where you can pop to your GP and get a prescription for cocaine. If you want to lose weight, you not only have the choice of the 5:2 or the Atkins diet, but amphetamines are also prescribed by your doctor. On television there are advertisements of the health benefits of smoking cigarettes. Welcome to the United Kingdom in 1956, the year in which we set
[Baroness Berridge]
The level of alcohol you can have in your body and still drive legally. The law in England and Wales has remained unchanged since then. I hope these brief examples show how the greater understanding of the effect of drugs in the human body has changed laws in these areas and that we are well overdue a change to the drink-drive law.

I note at the outset that our law applies to all drivers: HGV's, taxis and bus drivers. For everyone, it is 80 milligrams in 100 millilitres of blood. Although for many years deaths and injuries caused by drink-driving have fallen, this is due to strong enforcement and other factors. In 1956, most cars did not even have brake discs, let alone servo-assisted brakes. You did not have to wear a seatbelt and airbags were still the stuff of fantasies. Your Lordships just have to cast your mind back to the series “Heartbeat”, and think of what the emergency services looked like then—the arched top of the ambulance, the canvas stretchers, the siren. There were no air ambulances, no fire crews cutting open the roof of your car, no fluids at the scene, no heart surgery by cracking open the chest at the roadside and there were no breathalysers at the roadside either.

We have much to be thankful for today. The police do a great job of enforcement, but they want the limit changed and it is high time we listened to them. Changing human behaviour, which changes in the law can bring about, is much more effective and cheaper in terms of human lives—most importantly—as well as financially, than relying on enforcing the law.

All other European countries have the lower limit outlined in Amendment 214C of 50 milligrams or below. All other common-law jurisdictions that I can find have done so as well. England and Wales stands alone. Scotland has changed the law to 50 milligrams and, as of 1 January of next year, Northern Ireland will have as well.

I have not owned a car for 10 years. I am an occasional driver and I am thankful that I have no direct personal experience of drink-driving accidents affecting my family. I am looking at this evidence as a lawyer and I am concerned that deaths from drink-driving have been static since 2010. We need something to prompt a further decline.

I note briefly three pieces of evidence that illustrate that these amendments are part of the answer. First, on reviewing all the available evidence, NICE in 2010 concluded:

“There is sufficiently strong evidence to indicate that lowering the BAC limit changes the drink-driving behaviour of all drivers at all BAC levels”.

The arguments here do not only revolve around those drivers who would fall within the new limit—those between 50 milligrams and 80 milligrams. This change is about all drivers and reducing drink-driving at all levels.

I have to stop here to note that only last night two teenagers lost their lives in Aldershot and a serving soldier has been arrested on suspicion of drunk-driving. This is about affecting the behaviour of all drivers in relation to alcohol. On the specific limit that is outlined in the amendment of 50 milligrams, the NICE report quotes a scientific review that states:

“Lowering the BAC level from 0.8 to 0.5 is effective”.

Secondly, on that specific reduction to 50 milligrams, which is something that Switzerland did in 2005, there was then a reduction in the number of those injured in alcohol-related crashes, according to the Swiss Council on Accident Prevention.

Thirdly and finally, 13% of all those who were breathalysed in 2014 in the UK following any road traffic collision were between the 50 milligram limit in the amendment and the current 80 milligram limit. In 40% of fatal accidents, the driver has alcohol in their system below the current legal limit of 80 milligrams. Around 240 families each year lose someone due to drink-driving.

We know that alcohol affects people’s driving. We have to think of how many collisions would be avoided completely if we reduced the limit. There is a roll call of organisations that are supporting the lowering the limit. These include the RAC, the RAC Foundation, the AA, Brake, the Institute of Advanced Motorists, the Parliamentary Advisory Council for Transport Safety, the Police Federation, the Royal College of Emergency Medicine, the College of Paramedics, the Fire Brigades Union, the British Medical Association, the Royal College of General Practitioners, the Royal Society for Public Health, the Alcohol Health Alliance and the Institute of Alcohol Studies. In fact, I not aware of a single similar organisation that is against reducing the drink-driving limit after 60 years.

5.15 pm
Amendment 214C mirrors the law in Northern Ireland and would reduce the limit further to 20 milligrams for those who hold a provisional licence, those who have a full licence but have had it for fewer than two years, and, importantly, for those who drive professionally. It accords with the previous change in the law for probationary drivers that the Government have introduced, who can now accumulate only six penalty points, not 12, before losing their licence in the first two years they have a full licence. It has been recognised that there are clearly specific risks during that probationary period of driving such that the lower level of points is permitted. However, we need a lower level of alcohol during that period to embed the best behaviour.

I am grateful that my noble friend the Minister took the time to meet interested Peers, even before today’s Committee stage, and hope that we will receive a favourable response from her today. However, there is one final matter to consider carefully. This issue has come late to the Bill. Organisations such as those I have mentioned stand ready to try to mobilise the Commons, even at this late stage. The key factor in any such approach is those who have had direct experience of this issue—perhaps a relative killed by a driver who had 63 milligrams of alcohol in his or her blood. Some relatives will ignore the calls from these groups to see their MP and speak to the press. Some will feel that they want just to grieve in peace and quiet. Others will feel that coming forward is cathartic and helps them to do something to prevent anyone else suffering as they have. However, some will just want to be left alone and not have the burden of even considering whether they should come forward at the request of these organisations. I am instinctively uncomfortable about this reality of our politics—namely, the necessity of taking action to
I first chaired an EU sub-committee in 2001 that recommended we should fall in line with what was happening in Europe and go down to 50. I moved a Private Member’s Bill—this year or last year, I forget—that ended up going through Committee stage and everything. It cleared the Lords so your Lordships, I hope, have not changed your minds and are still in favour of this—as on the previous occasion when an amendment was tabled. However, there was no shift from the Government.

The noble Baroness, Lady Berridge, raised a very interesting point about how we come here with evidence and everybody seeks the change, yet the change does not take place and the deaths continue. She mentioned that there has been a plateau in the number of deaths. There was a decline from 2000 to 2010 but there has been little shift, other than last year when it went marginally up. When I concluded my last contribution on this I forecast—I cannot remember the number—the number of deaths that would take place over 2015, 2016 and 2017. In fact, I think I probably underforecast because of the rise last year.

The simple reason for that is that the Government do not have any initiatives of any importance that are going to change the course of events. It is bits and tiny pieces here and there when we should be looking at the policy that has been proven to work in Scotland. We ended up with the Minister last time saying he would have conversations in Scotland. The Minister for Transport at the other end also said that he would have conversations in Scotland and look at the evidence there, but I have had no further reports from the people I know on the outturn of those conversations and I do not even know if they have been held.

Perhaps the Minister will be kind enough to advise us on what is coming out of Scotland. The initial evidence there was certainly compelling enough to indicate that the change was working and that it had effected a cultural change—people were not even driving the following day. One of the problems you get with drink-driving is that people still drive the following morning when they are intoxicated. That had changed in Scotland to a fair extent. I hope it is being maintained.

I hope the Government are taking this seriously and that at some stage we are going to get a lower limit—even Malta, the last remaining European country with a higher limit, is committed to fall in line down to 50; we alone remain. Ireland has changed. Northern Ireland is changing. Wales wants to change. Yet England alone holds out, wanting to be convinced. The evidence of the deaths is there and it is time we did something about it.

Earl Attlee (Con): My Lords, I wonder whether the Committee will permit me to speak even though I did not hear the start of my noble friend’s speech—for which I sincerely apologise to the Committee.

I am disappointed that some time ago I tabled a Written Question, to be answered by my noble friend Lord Ahmad for the Department for Transport, asking when we expected to get useful statistics from the experience of Scotland. Although noble Lords have pointed to positive changes in compliance in Scotland, we really need to see from Scotland figures relating to...
[Earl Attlee]

the number of drivers who are far in excess of the legal limit. The statistics for England are very interesting—I found them compelling when I had to answer on this issue at the Dispatch Box. If the Minister cannot tell me now, perhaps she can write to the Committee, but I should like to know when we will get useful statistics from the Scottish experience. That will be very important in informing the Government’s decision on whether we should go to 50 or remain at 80. It is the persistent, unregulated drinkers who have very serious accidents—but without the statistics from Scotland I think we would be making a premature decision.

Baroness Jones of Moulsecoomb: What does the noble Earl mean by “serious accidents”? People are being killed and seriously injured by those who have had a drink. A lot of the time those accidents are caused by people who have had far too much to drink but sometimes they are caused by people who have had a small amount to drink—but their faculties and ability to drive are lessened. So it is not just a question of drinking a lot; it is a question of drinking at all.

Earl Attlee: My Lords, I absolutely agree with the noble Baroness. Any alcohol whatever will to some extent cause a reduction in driving capability and increase the risk of having an accident. I am saying that we need to be careful and take advantage of a full range of statistics from the Scottish experience. I was disappointed with the Department for Transport because it could not tell me at what point it thought it would get useful statistics from Scotland.

Lord Paddick: My Lords, I am generally supportive of the amendments put forward by the noble Baroness, Lady Berridge. From my recollection of what she said, there was evidence of people involved in accidents who were not above the current legal limit but were above the proposed limit, and therefore there was some evidence that reducing the drinking limit would be beneficial. Am I wrong?

Baroness Berridge: If I remember correctly from the statistics provided by the Minister at the meeting, 3% of the fatalities are occurring within the 50 to 80 milligram limit. So there will be fewer deaths and correspondingly fewer injuries if we reduce the limit. There is then the added effect—and thus, one hopes, an exponential benefit—of changing everybody’s behaviour in relation to alcohol.

Lord Paddick: I am very grateful to the noble Baroness for that explanation. To some extent, although it does not provide evidence of the Scottish experience, it shows that reducing the limit could have an effect by reducing the number of accidents that cause fatalities.

There are a couple of things that I am concerned about. One is the extent to which a change in the law would have a deterrent effect in the absence of increased enforcement by officers involved in roads policing. We know how much police forces have had to reduce their budgets and reduce the number of officers. My experience is certainly that roads policing is one of the first areas on the list when it comes to reductions. Does the Minister have any information about the deterrent effect of roads policing in relation to drink-driving that we need to consider in addition to the reduction in the drink-driving limit?

The other thing that I am concerned about is the increasing amount of drug-driving—that is, people who drive under the influence of illegal drugs—with a potentially even worse impact on their ability to drive than if they had taken a drink. I wonder whether a lower alcohol limit would cause people to move to taking drugs rather than alcohol for fear of being detected as being above the new alcohol limit, with such a change therefore having a negative impact or an unintended consequence. I would be very grateful if the Minister had any information on whether that has been the effect in Scotland.

5.30 pm

Lord Harris of Haringey: I sometimes wonder about the priorities of this House and of government in considering these sorts of issues. I think most of those who know me recognise that I am fairly hawkish on counterterrorism, but the number of people in this country who have died as a consequence of terrorist acts since 2005 is less than the number of people who die in a single year because of drunk-driving between the limits that are currently against the law and those proposed by the noble Baroness.

Let us go back over all the legislation since the current limit was introduced—the noble Baroness, Lady Berridge, took us back to what it was like in those times when we were all much younger—and consider how many pieces of legislation, full Bills, have been brought forward by the Home Office to deal with the threat from terrorism. It is usually about one a year, sometimes more—full Bills containing lots of new offences. Yet there is clear evidence that these new limits would reduce the number of deaths, they are fairly straightforward to administer and yet we keep waiting and putting off the decision. That seems to me an issue that we should all address, and we should be conscious that sometimes we have double standards. I will continue to argue for stronger counterterrorism, but it is rather striking that we do not resolve something like this, which would make a real difference, and would stop the wrecking not only of the lives of the families of those who have died but also of the lives of those who cause the deaths.

Lord Kennedy of Southwark: My Lords, Amendment 214C, moved by the noble Baroness, Lady Berridge, and supported by the noble Baroness, Lady Jones of Moulsecoomb, and my noble friend Lord Brooke of Alverthorpe, reduces the legal alcohol limits in England and Wales to match the limits introduced by the Scottish Government on 5 December 2014.

My noble friend Lord Harris made a particularly powerful point in respect of deaths caused through drink-driving. I am very supportive of this amendment, as I think we need tough laws on drinking and driving that are effectively enforced.

I also think that it would be quite good to have the same limit across the whole of Great Britain, and ideally the whole of the United Kingdom. This would
make it much easier to understand for everyone concerned. I am also not against having a lower limit for commercial drivers and novices.

There is clear evidence that a reduction in the drink-drive limits would save lives. No one has said that is not the case. We have the highest limits in Europe. Only Malta has the same drink-drive limit we have in this country. The limit introduced by the Scottish Government is the same one that is in force in Austria, Belgium, Croatia, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Luxembourg, the Netherlands, Portugal, Slovenia and Switzerland. So the case is powerful. In none of these countries is there a problem with the limit being effective.

The second amendment in the group, again in the name of the noble Baroness, Lady Berridge, and my noble friend Lord Brooke, seeks to create a lower limit for novice and professional drivers. Again, I think that this is something we should consider. Many countries have this. That is certainly the case in many of the countries I read out, including Ireland and North Ireland. I think that it is important, if you are a professional or a novice driver, to have a lower limit.

I passed my driving test 36 years ago. I remember getting my first car—you are let loose and you are in there on your own. If you think about it, you are not very experienced at that point. Therefore it would be a good to enforce a lower limit. The fact is that our limits are comparatively high. I hope the Minister will respond to the amendment moved by the noble Baroness, Lady Berridge. It is very good, and I hope that we will get a positive response from the Government. If not, I hope that the noble Baroness will bring it back on Report. I assure her that if she wants to test the opinion of the House at that point, we will support her.

Baroness Williams of Trafford: My Lords, I know that these amendments relate to concerns around the Government’s approach to drink-driving limits, particularly in light of changes in the law in Scotland and Northern Ireland, and, more recently, with a proposed change in Malta to lower the drink-drive limit. First, I emphasise that tackling drink-driving is a priority for the Government and that, together with the police, we continue to take robust enforcement action against this reckless behaviour.

Other countries may have a lower alcohol limit, but they do not necessarily have a better record on reducing drink-drive casualties. While it is difficult to make direct comparisons, some stark contrasts clearly exist between ourselves and our European neighbours, Estonia, for example, with a population of 1.3 million, has a limit of 20 milligrams per 100 millilitres of blood and carries out 10 times more breath tests than we do in Great Britain. Yet 160 people died there in 2014 as a result of drink-driving. That rate is 30 times greater per head than in Britain. Closer to home, we can look at France. With a similar population to us, it suffers nearly four times the drink-drive fatalities that we do. Even taking into account those cases that fall between its limit and ours, we perform significantly better.

In many of these countries a first drink-drive offence gets you a fine and some penalty points. Indeed, in Northern Ireland they intend to bring in a fixed penalty notice regime. They will hand out penalty points to those offenders found to be over the new limit but under the old one. There is no appetite amongst the public or road safety groups in England and Wales to reduce the penalties and not disqualify offenders who flout the law. Nor would we wish to create in the minds of potential offenders the thought that they might get only a fine and penalty points and so encourage them to drink and drive.

In England and Wales, the success we have had in tackling drink-driving has been down to the severe penalties, rigorously enforced and backed up with hard-hitting campaigns, which now make this behaviour utterly socially unacceptable. Our roads continue to be amongst the safest in the world because we crack down on those who break the law. Last year we made it a requirement for those convicted of drink-driving offences to undertake medical tests to ensure they are not still dependent on alcohol before they are allowed to drive again.

The same legislation, the Deregulation Act 2015, also made an important change to drink-driving laws by removing the so-called “statutory option”, which allowed drivers who provided a breath test that was slightly in excess of the prescribed limit to demand a blood or urine test back at the station. By removing this provision, individuals have been denied the chance to sober up and so drop below the prescribed limit while waiting for a blood or urine sample to be taken.

Yes, there is always more to be done, but harmonisation with other countries with a poorer record of tackling drink-driving is not a reason in itself to lower the limit.

Lord Kennedy of Southwark: In this debate no one has said that we want to lower the penalties—just to lower the limits. We have a good record in this country, and I give credit to our police service for that. The noble Baroness’s amendment is asking only to reduce the limits. She did not talk about penalties or enforcement, and, of course, as my noble friend Lord Harris said, if we looked at the number of deaths caused under the limit enforced now and above the proposed limit, we could save more lives.

Earl Attlee: My Lords, the arguments proposed by noble Lords are ones we have heard for many years. The arguments have not changed. Why, therefore, did the party opposite not lower the limit when they were in government? The reason is that it is a tricky issue.

Baroness Jones of Moulsecoomb: My Lords, we are not talking about the past but about now. We have an opportunity to do something now: to save lives and prevent serious injuries. I do not understand this reluctance to face facts. As the noble Lord said—is he a friend?

Lord Kennedy of Southwark: Yes, I am.

Baroness Jones of Moulsecoomb: As my noble friend said, we are not talking about comparing ourselves with other countries, and nor are we arguing for any other changes. We are not talking about drug-driving but specifically about drink-driving and the damage it does to innocent lives.
Lord Harris of Haringey: Since we are having open season during this intervention in the Minister’s speech, could we also deal with why other countries’ records are worse although they have tighter limits? This debate is not about behaviour in France, or in Estonia, and I do not want to get into a pre-Brexit rant about the behaviour of foreigners, or anything like that. If those countries felt that the problem was so bad that they needed to take even tougher measures, that is a matter for them. We are talking about proposals that would save lives in this country at the present time. That is what these amendments are about.

Earl Attlee: I hope the Minister will finish by saying that when we get the statistics from Scotland she will study them carefully and possibly review the policy. But claiming that lowering the limit will reduce fatalities is an assertion, and it is not necessarily the case. We need to wait for the evidence, particularly relating to fatalities caused by those people who are far over the limit. I do hope the Minister will say something useful about how she will take full account of the statistics we will shortly get from Scotland.

Lord Harris of Haringey: My Lords, we are in Committee and we can do what we like. The noble Baroness, Lady Berridge, put the argument very clearly in relation to the number of deaths that occur as a result of people who have more drink in their blood than the limit she is proposing but less than the current limit. If those deaths could be prevented that would be a net gain.

Earl Attlee: My Lords, I understand the argument but the difficulty is that those offences could just be caused by people making a stupid mistake and I am not sure that lowering the limit would solve the problem.

Baroness Williams of Trafford: My Lords, can I intervene on myself? I totally understand what noble Lords are saying. I am not trying to compare us to other countries but to demonstrate that where there is a combination of factors, such as enforcement and type of penalty regime, different results are thrown up. It is not just the drink-drive limit that has an effect, albeit that we have, of course, reduced ours —our enforcement is also very strong. I hope I have made it clear that it is not just the limit that is important but other factors, too. I am now going to provide a bit more detail, which noble Lords will be relieved to hear.

The Department for Transport collects coroners’ data. Of drivers killed on the road, over 72% have had little or no alcohol in their systems —and I am talking here about 0 to 9 milligrams of alcohol, which must be less than a sip of a glass of red wine. So, the vast majority of drivers killed on the road have no or little alcohol in their system; I will leave noble Lords to conclude why. Just over 3% have a blood alcohol content between 20 and 50 milligrams per 100 millilitres of blood, while a similar proportion, just under 3%, were found to have between 50 and 80 milligrams. However, the proportion of drivers killed jumps significantly to 17% for those with above 80 milligrams in their systems. This is the evidence that shows us where the risk lies and therefore where we should target our efforts. But I emphasise that statistic about drivers killed on the road who have virtually no alcohol in their systems —perhaps their deaths are a result of being elderly or less able to react to what is happening around them, but noble Lords will reach their own conclusions.

We do not, however, tolerate drug-impaired driving, which I think the noble Lord, Lord Paddick, asked about. That is why we introduced the new drug-driving offence in March 2015, setting specified limits for 17 drugs. The police are having success in taking these dangerous drivers off our roads and we are on target to convict over 7,000 drug drivers in 2016 compared to 879 in 2014. Indeed, 20% of drug-drivers convicted between 2009 and 2014 had previous drink-driving convictions. Our evaluation of the new drug-driving law has also highlighted just how dangerous these drivers are: 63% of those convicted in 2015 under the new Section 5A law had a previous conviction; 22% were serial offenders with more than 11 offences to their name. It means that we will be taking more than 1,500 drug-driving offenders who are also serial offenders off our roads this year.

5.45 pm

We think that the drink-driving limit for England and Wales strikes an important balance between safety and personal freedom. By retaining the present drink-driving limit, we are not criminalising those who drink a small amount a long time before driving, but targeting the most dangerous individuals. Meanwhile, our advice remains unchanged: do not take the risk by driving after you have had a drink.

My noble friend Lady Berridge talked about the report on whether lowering the limit will change the behaviour of all drivers. The report showed that opinion is split on whether a lower limit would actually deter drink-drivers. Indeed, the majority of those who would like the limit to be lowered —66% —think that it would not have an impact anyway because a change in the law is unlikely to deter habitual drink-drivers. We therefore consider it a much better use of resource to prioritise enforcement efforts to identify and deal with those dangerous individuals.

The noble Lord, Lord Brooke of Alverthorpe, and the noble Earl, Lord Attlee, asked about Scotland. The law in Scotland was not changed until the very end of 2014 and the stats from 2015 will become available in the summer of 2017. There was also a question —I am sorry that I cannot remember which noble Lord asked it —on whether the real reason to maintain the higher limit is not that the Government are putting the pub trade before saving lives. That is not the case at all. It would, however, have been helpful if the Scottish Government had carried out a full assessment and evaluation of the wider impacts, as a lot of noble Lords have asked for today, which would be required before we changed the law in England and Wales. We are aware that some of the Scottish media and some stakeholders have pointed to sports clubs seeing a 70% reduction in bar takings but the timing of the evaluation is a matter for the Scottish Government.
I think we share a common objective, especially in the run-up to Christmas, of wanting to see a reduction in the number of people killed and injured on our roads as a result of drink-driving. However, I put it to noble Lords that the most effective way to achieve this is not through this amendment but through the continued robust enforcement of the current law.

**Lord Kennedy of Southwark:** The Minister said that the statistics on what is happening in Scotland will be available shortly. Is she telling the Committee that the UK Government will evaluate them when they become available?

**Baroness Williams of Trafford:** My Lords, the UK Government will look at them with great interest. There may be compelling evidence that comes out of them. Basically, the Government will look at them when they come out.

**Earl Attlee:** My Lords, it seems that we will have to wait a very long time for these statistics, until summer next year. It is possible that I am wrong in my position and that the statistics will tell us so. Is there nothing that can be done to speed up the production of the statistics? Perhaps the Minister would like to write to me on that point rather than answering straightaway.

**Baroness Williams of Trafford:** My Lords, we do not really have any jurisdiction to tell Scotland what to do about getting the statistics. I hope that they will be ready as soon as possible.

**Baroness Berridge:** My Lords, I am grateful to the noble Baroness, Lady Jones, and the noble Lord, Lord Brooke of Alverthorpe, for putting their names to the amendment—and for noble Lords making the most of the generous rules in Committee for debating this issue. I agree with my noble friend the Minister that changing the law will not change anything if we do not then support it with a campaign to make people aware. Clearly, we now have a cross-border issue anyway. We need to make people aware that there is a difference in the law as they drive over the border from Cumbria or Northumberland into Scotland.

I agree with my noble friend that it is clear from the statistics that risk increases exponentially over the 80 milligram limit. However, that is not to say that under that limit there is not a risk with which we need to deal. To say that we are just targeting the most dangerous individuals does not give any reassurance to an affected family member. We need to look at this again.

My noble friend outlined the figures from coroners about drivers killed on the roads. Because of the complex factors that I outlined on the law, enforcement and the safety of vehicles, 60% of the people who are now injured or killed are not the driver of the vehicle concerned. People should be able to walk or cycle down the street and not be concerned that there are people with an amount of alcohol in their blood that affects their safety. That is why we do not look at the limit over which risk rises exponentially for train drivers and airline pilots. We say that they cannot drink. Why, then, do we have a different attitude on the roads? That is not sustainable.

As a lawyer, I do take into account the argument of my noble friend Lord Attlee who asks whether we can prove beyond reasonable doubt that taking this limit down from 80 to 50 will definitely save lives. I cannot prove this to an absolute certainty, but on at least the balance of probabilities. Reducing the limit from 80 to 50 in Switzerland—and the Swiss are known for being compliant people—produced evidence of a reduction in injuries and deaths. There is evidence out there to say that if we reduced the limit along with maintaining compliance, telling people and promoting messages, we would, with very little effort, stand an incredibly good chance of reducing the number of deaths on our roads.

This is an amendment for which the Police Federation are asking. The police are our enforcement. I commend their enforcement as well as the amazing medical care that is all part of this picture. However, we now need to play our role. Therefore, I hope that my noble friend the Minister will go away and reflect. Although the Chamber is not well populated and we have not heard from the often influential Cross-Benchers on this matter, the feeling in this Committee is that this is something that we could do and that at this stage we have enough evidence to change the law. Now is the right time of year.

I thank my noble friend the Minister. I hope that we shall hear of a change of position but at this stage I beg leave to withdraw the amendment.

**Amendment 214C withdrawn.**

**Amendments 214CA and 214CB not moved.**

Clauses 123 to 137 agreed.

**Amendment 214D**

Moved by Baroness Williams of Trafford

214D: Before Schedule 16, insert the following new Schedule—

**“SCHEDULE 15A**

**LATE NIGHT LEVY REQUIREMENTS**

1 Chapter 2 of Part 2 of the Police Reform and Social Responsibility Act 2011 (late night levy) is amended as follows.

2 (1) Section 126 (“relevant late night authorisation” and related definitions) is amended as follows.

(2) In subsection (2)—

(a) for "Relevant late night authorisation" substitute "Relevant late night alcohol authorisation";

(b) after “licensing authority” insert “, a late night levy requirement”;

(c) at the end of paragraph (b) insert "(whether or not it also authorises the provision of late night refreshment at a time or times during such a period)".

(3) After subsection (2) insert—

"(2A) "Relevant late night refreshment authorisation", in relation to a licensing authority, a late night levy requirement and a levy year, means a premises licence which—

(a) is granted by the authority,
(b) authorises the provision of late night refreshment at a time or times during the late night supply period on one or more days in the related payment year, and

(c) does not also authorise the supply of alcohol at a time or times during any such period.”

(4) After subsection (3) insert—
“(3A) Where a licensing authority decides under section 125(2) to apply a late night levy requirement in respect of both relevant late night alcohol authorisations and relevant late night refreshment authorisations, the licensing authority may determine under section 132(1)—
(a) a single late night supply period that is to apply in respect of both kinds of authorisations, or
(b) two late night levy periods, one of which is to apply in respect of relevant late night alcohol authorisations and the other of which is to apply in respect of relevant late night refreshment authorisations.”

(5) In subsection (5), for “The late night supply period” substitute “A late night supply period”.

(6) In subsection (8)—
(a) for “the late night levy requirement” substitute “a late night levy requirement”;
(b) omit “in its area”.

3 (1) Section 127 (liability to pay late night levy) is amended as follows.

(2) In subsection (1)—
(a) for “the late night levy requirement” substitute “a late night levy requirement”;
(b) after “the area” insert “or part of the area”;
(c) for “a relevant late night authorisation” substitute “a late night authorisation to which the requirement relates”.

(3) In subsection (2), for “a relevant late night authorisation” substitute “a late night authorisation to which the requirement relates”.

(4) After subsection (2) insert—
“(2A) In addition, if the requirement relates to a late night authorisation that is a relevant late night alcohol authorisation that is not liable to pay the late night levy for a levy year if only hot drinks are supplied (or held out for supply) in reliance on the authorisation during the levy year.”

(5) In subsection (3), for “in its area” substitute “in relation to the late night levy requirement”.

4 (1) Section 128 (amount of late night levy) is amended as follows.

(2) In subsection (1) after “For” insert “any levy requirement and”.

(3) In subsection (2), for “a relevant late night authorisation” substitute “a late night authorisation to which a late night levy requirement relates”.

(4) In subsection (3)—
(a) in the opening words, for “the late night levy requirement” substitute “a late night levy requirement”;
(b) in those words, omit “in its area”;
(c) in paragraph (a)—
(i) in sub-paragraph (i), after “period” insert “or periods (as to which see section 126(3A))”;
(ii) in sub-paragraph (ii), omit “in its area”;
(iii) in sub-paragraph (iii), omit “in its area”.

5 (1) Section 129 (payment and administration of the levy) is amended as follows.

(2) In subsection (1), in the closing words, for “the late night levy” substitute “a late night levy”.

(3) In subsection (2)—
(a) for “the levy” substitute “a levy”;
(b) for “relevant late night authorisations” substitute “a late night authorisation to which a late night levy requirement relates”.

(4) In subsection (4)—
(a) in paragraph (a), for “a relevant late night authorisation” substitute “a late night authorisation to which a late night levy requirement relates”;
(b) in paragraph (b), for “a relevant late night authorisation” substitute “a late night authorisation to which a late night levy requirement relates”;
(c) in paragraph (c), for “the relevant late night authorisation” substitute “a relevant late night alcohol authorisation to which a late night levy requirement relates”;
(d) in the closing words, for “the levy year” substitute “the levy year in question”.

(5) In subsection (5), for “the late night levy” substitute “a late night levy”.

(6) In subsection (6), in the closing words, for “the late night levy” (in both places where it occurs) substitute “a late night levy”.

6 (1) Section 130 (net amount of levy payments) is amended as follows.

(2) In subsection (1), after “In this Chapter” insert “, in relation to a late night levy requirement,.”.

(3) In subsection (3), for “the late night levy requirement” substitute “a late night levy requirement”.

(4) In subsection (5), in the opening words, at the beginning insert “In relation to a late night levy requirement,.”.

7 (1) Section 131 (application of net amount of levy payments) is amended as follows.

(2) In subsection (1), at the beginning insert “In relation to a late night levy requirement,.”.

(3) After subsection (4) insert—
“(4A) The licensing authority must publish information as to how it applies the remainder of the net amount mentioned in subsection (2)(b).

(4B) The information must be published at least once in each calendar year during which any part of the remainder is applied.

(4C) It is for the licensing authority to determine the manner in which the information is published.”

(4) In subsection (6)(b), for “in respect of the levy” substitute “in respect of a levy”.

8 (1) Section 132 (introduction of late night levy requirement) is amended as follows.

(2) In subsection (1)—
(a) in the opening words, for “the late night levy requirement” substitute “a late night levy requirement”;
(b) in those words, omit “in its area”;
(c) in paragraph (b)—
(i) in sub-paragraph (i), after “period” insert “or periods (as to which see section 126(3A))”;
(ii) in sub-paragraph (ii), omit “in its area”;
(iii) in sub-paragraph (iii), omit “in its area”.

9 (1) Section 133 (amendment of late night levy requirement) is amended as follows.
(2) In subsection (1)—
(a) in the opening words, for the words from the beginning to “section 125,” substitute “Where, in consequence of a decision by a licensing authority under section 125, a late night levy requirement applies,”
(b) in paragraph (a), omit “in the area”;
(c) in paragraph (c), for “in the area” substitute “in relation to the late night levy requirement”.

(3) After subsection (1) insert—
“(1A) Where the late night levy requirement is in respect of both relevant late night alcohol authorisations and relevant late night refreshment authorisations, the power conferred by subsection (1)(b) includes—
(a) where a single late night levy period applies, power to decide that two late night levy periods are to apply instead;
(b) where two late night levy periods apply, power to decide that a single late night levy period is to apply instead.”

(4) In subsection (4)—
(a) in paragraph (b), omit “in the area of a licensing authority”;
(b) in that paragraph, after “relevant decision” insert “by a licensing authority”;
(c) in the closing words, omit “in its area”.

10 (1) Section 134 (introduction or variation of late night levy requirement: procedure) is amended as follows.

(2) In subsection (1)—
(a) in paragraph (a), for “the late night levy requirement” substitute “a late night levy requirement”;
(b) in that paragraph, omit “in the area of the licensing authority”;
(c) in paragraph (b), for “the late night levy requirement” substitute “a late night levy requirement”;
(d) in that paragraph omit “in the area of the licensing authority”.

(3) In subsection (2)—
(a) in paragraph (a)(iii), for “relevant late night authorisations” substitute “late night authorisations to which the levy requirement in question relates or would relate”;
(b) in paragraph (c)(i), for “so as to cease to be a relevant late night authorisation before the beginning of the first levy year” substitute “so that it is not a late night authorisation to which the levy requirement relates at the beginning of the first levy year”.

(4) In subsection (3)—
(a) for “the late night levy requirement” substitute “a late night levy requirement”;
(b) omit “to the area of a licensing authority”.

(5) In subsection (4)—
(a) for “the late night levy requirement” substitute “a late night levy requirement”;
(b) omit “in its area”.

(6) Omit subsection (5).

11 (1) Section 135 (permitted exemption and reduction categories) is amended as follows.

(2) In subsection (1)—
(a) in paragraph (a), for “relevant late night authorisations” substitute “relevant late night alcohol authorisations or relevant late night refreshment authorisations”;
(b) in that paragraph, for “the requirement to pay the late night levy is not to apply” substitute “no requirement to pay a late night levy is to apply”;
(c) in paragraph (b), for “relevant late night authorisations” substitute “relevant late night alcohol authorisations or relevant late night refreshment authorisations”;
(d) in that paragraph, for “the levy” substitute “a levy”.

(3) In subsection (2), omit “in its area”.

(4) In subsection (4)—
(a) in paragraph (a), for “the levy” substitute “a levy”;
(b) in paragraph (b), for “the levy” substitute “a levy”;
(c) in the closing words—
(i) for “the late night levy” substitute “a late night levy”;
(ii) after “the same” insert “, in respect of all late night levy requirements,”;
(iii) for “relevant late night authorisations” substitute “relevant late night alcohol authorisations or relevant late night refreshment authorisations”;
(iv) omit “for a levy year”.

12 After section 136 insert—
“136A Late night levy: requests by relevant local policing bodies

(1) The relevant local policing body in relation to a licensing authority may request the licensing authority to make a proposal for a decision under section 125(2) that a late night levy requirement of a kind described in the request is to apply.

(2) In deciding whether to make a request, the relevant local policing body must consider the matters mentioned in section 125(3).

(3) A request must be accompanied by any evidence the relevant local policing body has in support of its request.

(4) In deciding how to respond to the request, the licensing authority must consider the matters mentioned in section 125(3).

(5) The licensing authority must publish—
(a) the request, including the evidence accompanying it, and
(b) its response to the request.

(6) The response must include reasons, including an explanation of the outcome of the authority’s consideration of the matters mentioned in section 125(3).

(7) It is for the licensing authority to determine the manner in which it publishes the request and its response under subsection (4).”

13 (1) Section 137 (interpretation) is amended as follows.

(2) For “the late night levy requirement” substitute “a late night levy requirement”.

(3) At the appropriate place insert—
“late night refreshment” has the same meaning as in the Licensing Act 2003 (see Schedule 2 to that Act).”

(4) In the definition of “levy year”—
(a) for “the late night levy requirement” substitute “a late night levy requirement”;
(b) omit “in the area of the authority”.

(5) In the definition of “payment year”, for “a relevant late night authorisation” substitute “a late night authorisation to which a late night levy requirement relates”.

Amendment 214D agreed.

Schedule 16 agreed.

Clauses 138 and 139 agreed.
Clause 140: Requirement to produce nationality document

Amendment 214DA

Moved by Baroness Hamwee

214DA: Clause 140, page 154, line 17, after “citizenship” insert “, or where a person is not in possession of such a document, alternative documents which are sufficient to provide that such a document would normally be issued by the relevant authorities”

Baroness Hamwee: My Lords, Clause 140 provides for a requirement to produce a nationality document in the case where, “an individual has been arrested on suspicion of the commission of an offence”; and, “an immigration officer or constable”, gives, “the individual a notice requiring the production of a nationality document”.

This amendment comes from the Joint Committee on Human Rights, of which I am a member. The committee regarded Article 14—the anti-discrimination article—as being engaged. The organisation Liberty has argued that if these powers, “are to operate in a similar fashion to powers in the Immigration Bill”, which a number of us will recall, “immigration checks would become a routine aspect of every police engagement with a suspect. It is difficult to think how suspicion”, which is required, “will be generated if this is not the intended model, short of the police making assumptions about an individual’s status on the basis of an appearance or accent”.

The committee noted the risk in this provision that requirements to confirm nationality could have a differential impact on BAME UK citizens. As our report says:

“We also questioned whether a person asked to produce a passport or other nationality document should instead be entitled to supply documentation sufficient to demonstrate an entitlement to such a document”, since not everyone has a passport. We contacted the then Minister for the subject, who told the committee in the summer:

“Before deciding to issue a notice requiring a nationality document to be produced, as a matter of operational best practice, officers should check whether or not there is an immigration interest with Home Office Immigration Enforcement. If, having undertaken these checks, it is confirmed that the individual is not a UK national (or it is suspected the person may not be), it is a proportionate response to require the production of a document in order to properly establish identity. Should a UK national not possess a passport but are able to produce evidence (documentary or otherwise) that they are entitled to one under the terms of published guidance, it is reasonable that officers should take that into account. We”—

the Government—

“do not consider it necessary that such eventualities are set out on the face of the Bill, but will instead issue guidance to officers in that regard”.

The Joint Committee made the following point:

“If the Government accepts that alternative documentation may be required in circumstances where an individual does not possess a passport or driving licence, it is not clear why this fact should not be stated on the face of the Bill”.

This is a safeguard, after all, and something more than operational guidance would be appropriate. I beg to move.

Baroness Chisholm of Owlpen: My Lords, I am grateful to the noble Baroness and the other members of the Joint Committee on Human Rights for their consideration of the Bill. It is accepted that there may be situations where a UK national does not possess a passport and should be able to produce other documentary evidence to satisfy an officer that they are entitled to one under the terms of published government guidance.

The Government’s view is that this matter can properly be addressed through guidance, but in the light of the Joint Committee’s recommendation, I am content to take this amendment away and consider it further in advance of Report. I trust that, on that basis, the noble Baroness would be content to withdraw her amendment.

Amendment 214DA withdrawn.

Clause 140 agreed.

Clauses 141 and 142 agreed.

6 pm

Amendment 214E

Moved by Lord Sharkey

214E: After Clause 142, insert the following new Clause—

“Posthumous pardons for convictions etc of certain abolished offences

(1) A person who has been convicted of, or cautioned for, an offence specified in subsection (3) and who has died before this section comes into force is pardoned for the offence if two conditions are met.

(2) Those conditions are that—

(a) the other person involved in the conduct constituting the offence consented to it and was aged 16 or over; and

(b) any such conduct at the time this section comes into force would not be an offence under section 71 of the Sexual Offences Act 2003 (sexual activity in a public lavatory).

(3) The offences to which subsection (1) applies are—

(a) an offence under section 12 of the Sexual Offences Act 1956 (buggery) or under section 13 of that Act (gross indecency between men);

(b) any offence under any of the following provisions (which made provision similar to section 12 of the Sexual Offences Act 1956)—

(i) 25 Hen. 8 c. 6 (1553) (an Act for the punishment of the vice of buggery);

(ii) 2 & 3 Edw. 6 c. 29 (1548) (an Act against sodomy);

(iii) 5 Eliz. 1 c. 17 (1562) (an Act for the punishment of the vice of buggery);

(iv) section 15 of 9 Geo. 4 c. 31 (1828) (an Act for consolidating and amending the law relating to offences against the person);
(v) section 61 of the Offences against the Person Act 1861;
(c) an offence under section 11 of the Criminal Law Amendment Act 1885 (which made provision similar to section 13 of the Sexual Offences Act 1956).

(4) The references in subsection (3) to offences under particular provisions are to be read as including offences under—
(a) section 45 of the Naval Discipline Act 1866,
(b) section 41 of the Army Act 1881,
(c) section 41 of the Air Force Act 1917,
(d) section 70 of the Army Act 1955,
(e) section 70 of the Air Force Act 1955, or
(f) section 42 of the Naval Discipline Act 1957,
which are such offences by virtue of the provisions mentioned in subsection (3).

(5) The reference in subsection (2)(b) to an offence under section 71 of the Sexual Offences Act 2003 is to be read as including a reference to an offence under section 42 of the Armed Forces Act 2006 which is such an offence by virtue of section 71 of that Act of 2003.

(6) The following provisions of section 101 of the Protection of Freedoms Act 2012 apply for the purposes of this section and section (Sections (Posthumous pardons for convictions etc of certain abolished offences) and (Other pardons for convictions etc of certain abolished offences): supplementary)(1) (so far as relating to this section) as they apply for the purposes of Chapter 4 of Part 5 of that Act—

(a) in subsection (1), the definitions of “caution”, “conviction”, and “sentence” (and the related definition of “service disciplinary proceedings”);
(b) subsections (2) and (5) to (7).”

Lord Sharkey (LD): My Lords, I shall also speak to Amendment 214F. Both amendments are in my name and those of the noble Baroness, Lady Williams of Trafford, and the noble Lords, Lord Lexden and Lord Black of Brentwood. These amendments each do one simple thing. Amendment 214E grants posthumous pardons to those men, now deceased, who were convicted under the dreadful Labouchere amendment and other homophobic legislation, for acts that would now not be crimes. Amendment 214F provides that a pardon is granted to those living who were similarly convicted and who have, or will have, obtained a disregard under the Protection of Freedoms Act. I am very glad to say that the Government have said they will support these amendments and I thank the Minister for her help and encouragement.

If these amendments pass, it will be the culmination of a long campaign to put right a historic injustice. Some 65,000 men were convicted under the Labouchere amendment and other anti-gay statutes. Of these, 16,000 are still alive and 49,000 are dead. When we passed the Protection of Freedoms Act in 2012 we made provisions for the living 16,000 to have their convictions disregarded. That is, for all practical purposes, the convictions would no longer have any effect. That was a great step forward. We recognised a terrible injustice and did something to make amends and to put things right. At the time it seemed to me that the 49,000 men convicted but now dead deserved exactly the same treatment. It seemed a straightforward argument. The disregard for the living acknowledged the wrong done to them and should provide some comfort to their relatives, their friends and their memory.

I tried, with other noble Lords, notably the noble Lords, Lord Black of Brentwood, Lord Lexden and Lord Faulkner of Worcester, to amend the Protection of Freedoms Act to do exactly that—to extend the disregard posthumously. I tried via the LASPO Bill in March 2012 and via the Criminal Justice and Courts Bill once in July 2014 and again that October. During this process the Government’s position began to shift. The initial and rather blunt refusal to take action became a willingness to discuss and, eventually, a willingness to help. I was encouraged to persevere and to promote a posthumous pardon for Alan Turing. There was a feeling that, if Turing were pardoned, it would be morally impossible not to extend that pardon to all those others similarly convicted but now dead. So it would prove, if these amendments now pass. If they do, we will finally be putting right a cruel and unjust historic wrong—a wrong that has wrecked the lives of thousands of gay men. I urge your Lordships to support these amendments and I beg to move.

Baroness Williams of Trafford: I intervene on the noble Lord to say that not only do the Government support this amendment, we strongly support it. I thought that might be helpful to the debate in Committee.

Lord Lexden (Con): My Lords, it is a pleasure and, indeed, an honour to support the amendments tabled by my noble friend Lord Sharkey. They represent the culmination of work done over several years by my noble friend to secure as much redress as is practicable for victims of grave injustice, including those who are no longer alive—gay men who suffered great wrong simply for giving expression to the love that for far too long dared not speak its name but has thankfully found its full and authentic voice in our times. My noble friend kept the issue before successive Ministers and their officials. It is in part due to the polite but enduring pressure that he applied that commitment to action was included in the Conservative Party manifesto at the last general election. As my noble friend Lady Williams of Trafford has already made clear, these amendments will be accepted by the Government. It is a day of great importance for gay people, a view shared by my noble friend Lord Black of Brentwood, who has also put his name to these amendments but has had to leave the Chamber.

I turn to Amendments 214H to 214L, 235A and 239C in my name. My amendments have two aims. The first is to extend the pardons for iniquitous former offences, now abolished, that will be available to living and deceased persons in England and Wales to their counterparts in Northern Ireland. The second aim is to extend the disregard scheme now in operation in England and Wales to Northern Ireland, where at present it does not exist. The first of the amendments relating to pardons, Amendment 214H, includes provision for legislation that is specific to Northern Ireland. Through this amendment and the two that follow, pardons could be granted in the same manner as in England and Wales.
LORD LEXDEN

Because there is no disregard scheme, the foundation on which pardons will rest in Northern Ireland, Amendment 214L, is vital. It will insert a new clause in the Bill that would make a number of amendments to the Protection of Freedoms Act 2012, changing the scope of Chapter 4 of Part 5. As a result, application could be made to the Secretary of State for Northern Ireland to have a conviction or caution in respect of an abolished offence in Northern Ireland disregarded. Since justice and policing are now transferred matters in Northern Ireland, the responsibility for designing and implementing a disregard scheme would in practice be expected to rest with the Northern Ireland Executive. Exactly how the system would work may need further consideration; it must clearly be fully acceptable in all its details to the Executive.

The impetus for the extension to Northern Ireland of the arrangements proposed in England and Wales has come from Northern Ireland itself. I am merely the spokesman and agent of courageous campaigners for full gay rights in the Province who are working to achieve complete equality with the rest of the UK. No one has done more to create support for the amendments I have put forward than Councillor Jeffrey Dudgeon MBE, who in 1981 paved the way for the decriminalisation of homosexuality in Northern Ireland through a successful case at the European Court of Human Rights.

The five main parties in the Northern Ireland Assembly have all pledged support for the principles embodied in the amendments. I am in the fortunate position of being able to tell your Lordships’ House that yesterday the Minister of Justice in Northern Ireland, Claire Sugden, announced that a legislative consent Motion would shortly be introduced in the Assembly enabling these amendments, after any revision that may be needed, to become law in Northern Ireland.

LORD CASHMAN (Lab): My Lords, I support the amendments from the noble Lord, Lord Lexden, extending the provisions to Northern Ireland, and I shall speak to the amendments in my name. I congratulate the noble Lord on the success he has had with these amendments in relation to the announcement from the Justice Minister Claire Sugden. The noble Lord’s record on seeking to achieve equal rights in Northern Ireland, not least on equal access to marriage, is unblemished and should be celebrated because at its very heart is the concept that we should have equality and access to equal rights across the United Kingdom, not based on where we live.

I will quote from two organisations in Northern Ireland. A Northern Ireland-based LGBT organisation replied to the announcement that the measure would go before the Northern Ireland Assembly by saying:

“This is the first time that the Northern Ireland Assembly has made positive moves in respect of LGBT legislation and we are hopeful that with cross-party support the pardons will be applicable to convictions made against... men living in Northern Ireland”.

I also join the noble Lord in celebrating the work and success of LGBT people and their allies and NGOs in Northern Ireland. Quite rightly, this is their success; and not the least of them is Councillor Jeff Dudgeon MBE, who has been a pioneer, affecting so positively the lives of so many across the United Kingdom and beyond.

Before I speak specifically to my two amendments—214S and 214R—I need to pay tribute to the noble Lord, Lord Sharkey, for his exemplary work over the years in pressing the case for equality, even when some have not wanted to listen to the arguments, noble and right though they are. My only difference with him on my amendments are on two major elements. My Amendment 214S differs from the amendment of the noble Lord, Lord Sharkey, and others in two key respects. First, it would grant a pardon to any person convicted of or cautioned for a now abolished offence, providing that they meet certain conditions, regardless of whether they are living or dead.

I disagree with the need to create two different systems for pardoning people in respect of these offences—one for the living and one for the dead. I cannot honestly see the logic of saying to a living person, “You must apply to have your conviction or caution disregarded to be eligible for a pardon,” while at the same time saying, “If you have died, you will get a pardon automatically.” That is not logical, and I am afraid that it appears to confuse the purpose of a pardon and the purpose of the disregard scheme. My amendment makes it abundantly clear that any person, subject to the specified conditions, who suffered a conviction or caution under these offences is pardoned. For those living with an historic conviction or caution, the disregard scheme is available to address any negative consequences caused by a police or other record.

The second way in which my amendment differs from that of the noble Lord, Lord Sharkey, and others, is that it would extend pardons to those convicted or cautioned under Section 32 of the Sexual Offences Act 1956 and its corresponding earlier provisions in the Vagrancy Act 1898. Let me be absolutely clear: this would not grant a pardon to any person convicted or cautioned for soliciting. My amendment makes it clear that anyone convicted or cautioned for any conduct that would now constitute the offence of soliciting under the Sexual Offences Act 2003 would not be pardoned; nor would a pardon extend to a person whose conviction or caution was the result of conduct involving any other person under 16. What my amendment would do is grant pardons for all those persons who were convicted or cautioned for what was once called “importuning for immoral purposes”. The immoral purposes, in many cases, amounted to nothing more, as the Home Office report Setting the Boundaries recognised in 2000, than one man chatting up another man. That report recommended the repeal of the offence, and that was carried through.

On a personal note, I lived through that campaign of hate and fear. I was a 16-year-old gay man when the age of consent was set at 21 and homosexual acts in private were decriminalised. I still had no protection for someone wanting to exercise his attraction and love for others. I, too, suffered the threat of coming out of a bar or a pub in places such as Earl’s Court, where a lot of homosexual and bisexual men gathered. We felt safe together, but coming out of such a pub or a club and looking at another man and smiling at him could have possibly got me arrested for soliciting for an immoral purpose.
6.15 pm

It is important to recognise that Section 32 of the Sexual Offences Act 1956 created a wide offence, used to regulate gay men in ways that we would now rightly find horrifying. Let me give your Lordships two brief examples. The first is from 1979. A man, James Gray, was said to have persistently importuned for an immoral purpose in a public place, contrary to Section 32 of the Sexual Offences Act 1956. The evidence against him was as follows:

“A police officer in plain clothes was waiting in a doorway in the Earl's Court district of London at about 11.30 pm. when many male homosexuals were congregating outside a public house on the other side of the road, as was frequently so at that place and time of day”.

Mr Gray, “was sauntering around and smiling at people outside the public house … Then he smiled at the officer, whom he clearly believed was a homosexual and, after a short conversation, invited him back to his nearby flat where, he said, there was whisky and they could both spend the night. Shortly after this the officer revealed his identity”.

Mr Gray was arrested and convicted and the conviction was upheld on appeal.

In a more recent case, someone wrote to me and to their Member of Parliament, Matthew Pennycook. He has been investigating the case of a constituent who experienced a similar situation in 1995, with a plainclothes officer arresting him outside a gay bar under Section 32. It ended with the police persuading him to sign a caution to avoid being dragged into court, despite his protests that he had done nothing wrong. He applied for a disregard and it was rejected because the Protection of Freedoms Act 2012 has no provision to disregard the unjust use of this law against gay and bisexual men. We can close this loophole in the Act if your Lordships support my amendment. That was in 1995, 21 years ago, probably involving a man in his early 20s whose life has now been ruined.

I believe it is right to extend justice to men such as Mr Gray and the constituent I mentioned—living and dead—who have suffered under a law that operated on the presumption that a man asking another man to go on what might now be called a date was immoral. For this reason, my amendment, Amendment 214R, would amend the Protection of Freedoms Act to enable any person with an historic conviction or caution under Section 32 of the Sexual Offences Act 1956 or corresponding earlier legislation to apply to have that conviction or caution disregarded. The same conditions that relate to pardons would have to be met, and I stress again that no disregard would be granted to a person convicted of or cautioned for an offence that would now constitute soliciting.

For the avoidance of doubt, my amendments change the approach of the noble Lord, Lord Sharkey, the Government and others in only two respects: pardons granted to the dead shall be granted to the living; and I extend the pardons to those convicted or cautioned under Section 32 of the Sexual Offences Act 1956 and the corresponding earlier provisions in the Vagrancy Act 1898. Nothing more.

If it is good enough for the dead, why is it not good enough for the living? There is no blanket pardon or disregard. A pardon is granted only if certain conditions are met, and those conditions ensure that no person would receive a pardon if there was a victim—it is the same for the disregard scheme. Pardons and disregards will only ever apply to people who, if they committed the acts today, would be innocent of any offence.

In closing, I find this deeply personal and germane to how we have treated people for so long in this country based on difference. I have never heard a cogent, logical or coherent case for why we should not adopt the approach I outline: the approach of equality, fairness and justice. Therefore, I ask the Government to right the historic wrongs now. To be dragged unwillingly to do so or to hesitate unnecessarily would be, in the eyes of many, to compound the wrongs already visited on so many.

Earl Attlee: My Lords, I rise briefly to support the general thrust of these amendments because the underlying legislation and the policy behind it was so fatally flawed. I am just sad that it took me and many others so long to realise that the whole policy was 100% flawed and caused unnecessary problems.

Lord Kennedy of Southwark: My Lords, this has been an important debate and I am pleased to be able to respond on behalf of the Opposition.

I can support all the amendments in this group as far as they go, although some go further than others. I was particularly pleased to see the amendments of the noble Lord, Lord Lexden, which extend posthumous pardons to Northern Ireland. However, further rights need to be won for LGBT people and women in Northern Ireland, as well as on the mainland. We must return to them at a later date.

I join my noble friend Lord Cashman in paying tribute to the noble Lords, Lord Lexden and Lord Sharkey, for their tireless campaigning. I also pay tribute to my noble friend Lord Cashman for his tireless campaigning to deliver equality for LGBT people. There has been tremendous progress in the past 20 years in particular, and my noble friend has been there, standing up, making the case and challenging prejudice, hate and injustice. We are all grateful to him. The most comprehensive amendments in the group are those in the name of my noble friend and they have my full support. I very much agree with him that granting a pardon to any person convicted of or cautioned for a now-abolished offence, providing they meet certain conditions, and regardless of whether they are living or dead, is the way to proceed. His amendments go further in that they extend pardons to those convicted or cautioned under Section 32 of the Sexual Offences Act 1956 or the Vagrancy Act.

My noble friend made it clear that nothing in his amendments would grant a pardon to any person convicted or cautioned for soliciting. Nor would the amendments grant a pardon to anyone convicted or cautioned in respect of conduct involving a person under the age of 16. My noble friend gave an important illustration of the effect of Section 32 of the Sexual Offences Act 1956, and I agree that it is important to right this wrong for both those who are living and those who are dead. Treat them equally. This is the
right thing to do. No one would be pardoned for anything that is still an offence. I hope your Lordships’ House will accept my noble friend’s amendments.

Baroness Williams of Trafford: My Lords, I am pleased to be able, on behalf of the Government, to warmly welcome Amendments 214E, 214F, 214G, 239A and 246, and I congratulate the noble Lord, Lord Sharkey, on bringing them forward, as well as the noble Lord, Lord Cashman, who spoke so movingly.

As the noble Lord, Lord Sharkey, explained, these amendments broadly do two things. First, they confer an automatic pardon on deceased individuals convicted of certain consensual gay sexual offences that would not be offences today. Secondly, they confer a pardon on those persons still living who have a conviction for such an offence that has been disregarded under the terms of the Protection of Freedoms Act 2012. It is important to note that for the pardon to apply, the conduct in question must have been consensual and involved another person aged 16 or over, which is the current age of consent. The conduct must also not involve an offence of sexual activity in a public lavatory, which is still illegal today.

This historic step is momentous in righting wrongs suffered by thousands of gay and bisexual men. It is a tragedy that people were criminalised over a shamefully long time for something that society regards today as normal sexual activity. It is time to right the wrongs of the past and I am pleased to support the noble Lord, Lord Sharkey, in putting forward these amendments.

It is important that we link the pardons for the living to the disregard process so that the necessary checks can be carried out to identify whether the individual in question engaged in activity that constitutes an offence today. Since the disregard scheme under the Protection of Freedoms Act came into force, eight disregard applications that concerned non-consensual activity have been rejected. It is therefore crucial that a pardon for the living should only follow a successful disregard application. This mitigates the risk of individuals claiming to be cleared of offences that are still crimes today. It takes into account and protects the rights of victims and ensures that children and vulnerable people are safeguarded from potential risks. This is extremely important and an objective with which I am sure noble Lords would agree. It is for these reasons that the Government cannot commend to the Committee Amendment 214S in the name of the noble Lord, Lord Cashman.

The amendments in the name of my noble friend Lord Lexden seek to make corresponding provision for Northern Ireland. The Committee will be aware of the established convention that the UK Parliament legislates on devolved matters in Northern Ireland only with the consent of the Northern Ireland Assembly. Subject to observing that convention, the Government are ready to look favourably at amendments at a later stage of the Bill along the lines proposed by my noble friend.

I understand that on Monday of this week, the Ministry of Justice tabled an amendment to a legislative consent Motion before the Northern Ireland Assembly seeking its consent to the UK Parliament legislating on this matter. If the proposed legislative consent Motion can make sufficient progress over the next two to three weeks, I would anticipate that the Government will be able to work with my noble friend to come to an agreement before the Bill leaves this House. I should add that the Scottish Government have separately announced their intention to bring forward legislation in the Scottish Parliament.

I turn to Amendment 214R, which is again in the name of the noble Lord, Lord Cashman. The amendment seeks to extend the disregard scheme to include convictions for the soliciting offence in the now-repealed Section 32 of the Sexual Offences Act 1956. Under the current disregard scheme, for the now-repealed offences of buggery and gross indecency between men, it is a relatively straightforward matter to establish whether the relevant statutory conditions are met; namely that the other person involved in the conduct consented and was aged 16 or over, and the conduct would not now constitute the offence of sexual activity in a public lavatory. In contrast, the soliciting offence in Section 32 of the 1956 Act covered a broad range of behaviours and, as such, it is not a straightforward matter to formulate additional conditions to ensure that behaviour which would still constitute an offence today cannot be the subject of a disregard. It is likely that any such conditions would entail more than simply establishing facts—for example, whether the other person was aged 16 or over—and require a shift to making judgments as to whether an activity would be captured by a range of different offences today. This creates some practical challenges in accessing records in sufficient detail to make that judgment.

Lord Cashman: I have listened with great interest and have two points to make. First, a pardon does not remove a conviction from a record. The criminal activity remains on the record, so any employer making a heightened check can find what the conviction was for. I see no way in which, if we issued a pardon, it would put anyone at risk. Secondly, if there is a victim in any of these cases, and if we have managed to weed it out in the discharge process in relation to gross indecency and buggery, we should have the wit and wherewithal to approach this and find out how to apply exactly the same provisions and the same terms to the immoral purposes Section 32. Will the Minister commit at least to sitting down with me and the likes of Paul Johnson, from the University of York, and Stonewall, who have had great input into this, so that instead of protracting discussion of the problem, we can seek the solution?

Baroness Williams of Trafford: The noble Lord reminds me of a conversation that we had the other day. I quite happily undertake to meet him, Paul Johnson and other members of Stonewall to discuss this further. I was going on to say that, despite the challenges, I am ready to consider Amendment 214R further ahead of Report.

I conclude by congratulating the noble Lord, Lord Sharkey, but I also signal my happiness at finishing the work started by the coalition Government in recommending a pardon for Alan Turing. As a Mancunian,
the situation he faced, and the fact that he ultimately took his own life, has saddened me for many years. Legislating in this Bill will speed up the delivery of a similar pardon for the thousands of gay and bisexual men convicted of now-abolished sexual offences. I look forward to the day—perhaps in a little over a month’s time—when this Bill is enacted and these provisions come into force. That will be a day we will all be able to celebrate. I commend the noble Lords’ amendments to the House.

6.30 pm

Lord Sharkey: My Lords, I thank all those noble Lords who have spoken in favour of Amendments 214E and 214F, and all noble Lords who have spoken in this brief debate. I also want to claim some fellowship as a Mancunian with the Minister. Wigan is only 17 miles from Manchester, and while I was at the University of Manchester as a mathematics undergraduate, I was taught by a man called Robin Gandy who was the only doctoral student that Alan Turing ever had. Robin Gandy was full of stories about Alan Turing and I knew these from a very early age.

In closing, I thank the noble Lords, Lord Lexden, Lord Black of Brentwood and Lord Faulkner of Worcester, who have been supporters of these amendments in their current form and in all their previous forms. It is also appropriate to thank my noble friend Lord McNally and the noble Lords, Lord Bates, Lord Faulks, and their officials for listening to the case we have made and for helping to arrive at a solution.

Amendment 214E agreed.

Amendments 214F and 214G

Moved by Baroness Williams of Trafford

214F: After Clause 142, insert the following new Clause—

“Other pardons for convictions etc of certain abolished offences

(1) This section applies to a person who has been convicted of, or cautioned for, an offence mentioned in section 92(1) of the Protection of Freedoms Act 2012 and who is living at the time this section comes into force.

(2) If, at the time this section comes into force, the person’s conviction or caution has become a disregarded conviction or caution under Chapter 4 of Part 5 of the Protection of Freedoms Act 2012, the person is pardoned for the offence.

(3) If, at any time after this section comes into force, the person’s conviction or caution becomes a disregarded conviction or caution under Chapter 4 of Part 5 of the Protection of Freedoms Act 2012, the person is also pardoned for the offence.

(4) Expressions used in this section or section (Sections (Posthumous pardons for convictions etc of certain abolished offences): supplementary) (a) so far as relating to this section) and in Chapter 4 of Part 5 of the Protection of Freedoms Act 2012 have the same meaning in this section or (as the case may be) section (Sections (Posthumous pardons for convictions etc of certain abolished offences): supplementary) as in that Chapter (see section 101 of that Act).”

214G: After Clause 142, insert the following new Clause—

“Sections (Posthumous pardons for convictions etc of certain abolished offences) and (Other pardons for convictions etc of certain abolished offences): supplementary

(1) A pardon under section (Posthumous pardons for convictions etc of certain abolished offences) or (Other pardons for convictions etc of certain abolished offences) does not—

(a) affect any conviction, caution or sentence, or

(b) give rise to any right, entitlement or liability.

(2) Nothing in this section or in section (Posthumous pardons for convictions etc of certain abolished offences) or (Other pardons for convictions etc of certain abolished offences) affects the prerogative of mercy.”

Amendments 214F and 214G agreed.

Amendment 214H

Tabled by Lord Lexden

214H: After Clause 142, insert the following new Clause—

“Posthumous pardons for convictions etc of certain abolished offences: Northern Ireland

(1) A person who has been convicted of, or cautioned for, an offence specified in subsection (3) and who has died before this section comes into force is pardoned for the offence if two conditions are met.

(2) Those conditions are that—

(a) the other person involved in the conduct constituting the offence consented to it and was aged 16 or over, and

(b) any such conduct at the time this section comes into force would not be an offence under section 75 of the Sexual Offences (Northern Ireland) Order 2008 (sexual activity in a public lavatory).

(3) The offences to which subsection (1) applies are—

(a) an offence under section 11 of the Criminal Law Amendment Act 1885 (gross indecency between men),

(b) an offence under section 61 of the Offences against the Person Act 1861 (buggery),

(c) an offence under either of the following provisions (which made provision similar to section 61 of the Offences against the Person Act 1861—

(i) 10 Cha.1 Sess.2 c.20 (1634) (An Act for the punishment of the vice of Buggery);

(ii) section 18 of 10 Geo. 4 c.34 (1829) (An Act for consolidating and amending the Statutes in Ireland relating to Offences against the Person), or

(d) an offence under Article 19 of the Criminal Justice (Northern Ireland) Order 2003 (buggery).

(4) The references in subsection (3) to offences under particular provisions are to be read as including offences under—

(a) section 45 of the Naval Discipline Act 1866,

(b) section 41 of the Army Act 1881,

(c) section 41 of the Air Force Act 1917,

(d) section 70 of the Army Act 1955,

(e) section 70 of the Air Force Act 1955, or

(f) section 42 of the Naval Discipline Act 1957, which are such offences by virtue of the provisions mentioned in subsection (3).

(5) The reference in subsection (2)(b) to an offence under section 75 of the Sexual Offences (Northern Ireland) Order 2008 is to be read as including a reference to an offence under section 42 of the Armed Forces Act 2006 which is such an offence by virtue of section 71 of the Sexual Offences Act 2003 (corresponding offence of “sexual activity in a public lavatory” in England and Wales).

(6) The following provisions of section 101 of the Protection of Freedoms Act 2012 apply for the purposes of this section and section (Sections (Posthumous pardons for
convictions etc of certain abolished offences: Northern Ireland and (Other pardons for convictions etc of certain abolished offences: Northern Ireland): supplementary](1) (so far as relating to this section) as they apply for the purposes of Chapter 4 of Part 5 of that Act—
(a) in subsection (1), the definitions of “caution”, “conviction”, and “sentence” (and the related definition of “service disciplinary proceedings”);  
(b) subsections (2) and (5) to (7).”

**Lord Lexden:** My Lords, I am grateful for the support that has been expressed by—for this purpose—my noble friend Lord Cashman and my noble friend the Minister. I shall not press the amendments, with a view to returning to the matter on Report.

**Amendment 214H not moved.**

**Amendments 214J to 214L not moved.**

**Amendments 214M to 214P had been withdrawn from the Marshalled List.**

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**Amendment 214Q**

Moved by Lord Paddick

214Q: After Clause 142, insert the following new Clause—

“Vagrancy Act 1824

In section 8 of the Criminal Attempts Act 1981 (abolition of offence of loitering etc with intent) at end insert—

“(2) A person who has been convicted of, or cautioned for, an offence under those provisions is pardoned for the offence.  

(3) For the purposes of subsection (2) it is irrelevant whether the person has died before subsection (2) comes into force.  

(4) A pardon under this section does not give rise to any right, entitlement or liability.”

**Lord Paddick:** My Lords, with the leave of the House, I cannot let the opportunity go past without congratulating my noble friend Lord Sharkey on what is a phenomenal achievement. I am very grateful to the Government for the support that they have finally given to his amendment.

I turn to another contentious issue. Amendment 214Q stands in my name and that of my noble friend Lady Hamwee. As we have just discussed, with government support my noble friend Lord Sharkey has moved amendments—and we have just passed those amendments—to grant pardons to those convicted of offences that only gay men could commit and that are no longer on the statute book because they were considered discriminatory. These offences are symbolic to the gay community and it is striving to ensure equality in law and in society as a whole.

There is another offence that is symbolic to another minority, which is no longer an offence on the statute book and is considered by many to be another example of what amounts to an historic injustice. Parliament repealed the offence because it was accepted that it was being used in a discriminatory manner by the police; it is the offence of being a suspected person loitering with the intent to commit what was originally an indictable, and later, an arrestable offence. Although the term “sus” has recently been more widely used to describe the use of police “stop and search” powers, it was originally confined to the criminal offence of being a suspected person under Section 4 of the Vagrancy Act 1824. The offence required the evidence of two witnesses, usually two police officers patrolling together. The usual evidence was of a suspected person being seen to try three car door handles, in an attempt to steal the car or from it, or the suspect putting his shoulder to the doors of three homes, with the intention of committing burglary.

The difficulty with the offence was the absence in almost every case of any corroboration, either from witnesses other than police officers, or any physical or forensic evidence. Both the police officers and, usually, young black men, who were almost exclusively the target under sus, knew that it was the word of two police officers against a young black man with no other witnesses or evidence or any other corroboration. This allowed unscrupulous police officers to invent evidence against those who had, at least on that occasion, done nothing wrong.

Of course, some will say that a miscarriage of justice did not occur on every occasion of someone being convicted of being a suspected person and, of course, I cannot say that that was the case. However, I can say—I hope that Members of this House agree with this—that thousands of innocent young black men were convicted, which caused huge pain and distress, destroying the trust and confidence between the community and the police.

I was a police officer—a bobby on the beat, a patrol officer—at the height of the use of that aspect of Section 4 of the Vagrancy Act. In 1975 and 1976, the year I joined the Metropolitan Police, more than 40% of those arrested for sus were black people, when at the time black people accounted for only 2% of the population. It was because by the end of the 1970s you were 15 times more likely to be arrested for sus if you were black than if you were white, far more than the disproportionality in stop and search, that in 1980 the Home Affairs Select Committee recommended the repeal of the legislation. It also threatened to introduce a Private Member’s Bill if the Government did not take action, but the Government did not.

There was a great deal of concern, even among police officers at the time—me included—over the use of the offence, in that we knew about the claims of the black community that it was used as a tool to oppress black people. If there was evidence of another offence—for example, attempted theft of or from a motor vehicle or attempted burglary—not only were these offences less likely to be open to question but the penalties were more severe. In other words, if there had been substantive evidence, physical or forensic evidence, which in those days would have been simply fingerprints, then the much safer, more acceptable and far less contentious route was to arrest and charge for the substantive offence rather than sus.

My second comment is anecdotal. I was at Highbury Corner Magistrates’ Court with someone I had arrested. The stipendiary magistrate, Toby Springer, would want to hear from the arresting officer in every case except for those of being drunk and incapable. The case just before me was an arrest made by a colleague for whom
Baroness Williams of Trafford: My Lords, as the noble Lord, Lord Paddick, has explained, Amendment 214Q seeks to confer a pardon on persons living and deceased who were convicted under Section 4 of the Vagrancy Act 1824. The noble Lord has explained that Section 4 was used to persecute young black men and this amendment deals with a separate matter to the one that we have just debated. It is, however, also the case that Section 4 was used to prosecute some gay and bisexual men, so there is a read-across to the earlier debate.

In relation to consensual activity between men over the age of consent, Section 101 of the Protection of Freedoms Act 2012 makes it clear that the disregard scheme covers not only the offences of buggery and gross indecency but attempts to commit such an offence, and an attempt to commit such an offence includes conduct covered by Section 4 of the Vagrancy Act 1824. Someone with such a conviction may also apply for that conviction to be disregarded and, if successful, will also receive a pardon under the terms of the new clauses in the name of the noble Lord, Lord Sharkey.

As to other conduct unrelated to homosexuality, the Government do not believe that it is appropriate to introduce a pardon for those convicted of an offence just because that offence has now been repealed and the behaviour in question is no longer regarded as criminal. Pardoning is exceptional by nature. The persecution of gay and bisexual men through the criminal law was a clear historical wrong that we should undoubtedly right through a pardon. There is a special and compelling moral case to try to redress the wrongs done to gay and bisexual men in the context of the Government’s commitment to equality. The amendments from the noble Lord, Lord Sharkey, would, like the pardon for Alan Turing, remove a real and particular stigma that is suffered by the living and still attaches to the recently deceased.

The circumstances the noble Lord has described are quite different and, without looking at the facts of individual cases, it is impossible to know whether the conduct in question would still be an offence today.

In terms of the numbers, I was looking for inspiration but we have no data, I am afraid. On that note, I invite the noble Lord, Lord Paddick, to withdraw his amendment.

Lord Kennedy of Southwark: Does the Minister mean that she has no data here or no data at all?

Baroness Williams of Trafford: No data at all, my Lords.

6.45 pm

Lord Paddick: My Lords, from the Minister’s response I do not think she has quite grasped the essence of what this amendment is about or the misuse that has been made of this legislation. The Home Affairs Select Committee put pressure on the Government to repeal that particular part of Section 4 of the Vagrancy Act. It is a very wide piece of legislation, criminalising all sorts of activity, much of which is still on the statute book. This is specifically about being a person suspected...
of loitering with intent to commit an indictable offence, the evidence of which I described when I moved the amendment.

I will of course look very carefully at what the Minister has said but I do not believe that it will give me sufficient grounds not to return to this matter on Report. However, at this stage, I beg leave to withdraw the amendment.

Amendment 214Q withdrawn.

Amendments 214R and 214S not moved.

Clause 143 agreed.

Amendment 215

Moved by Baroness Chisholm of Owlpen

215: After Clause 143, insert the following new Clause—

“Anonymity of victims of forced marriage: Northern Ireland

(1) After Part 4 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c.2 (N.I.)) insert—

“Part 4A

PROTECTION OF VICTIMS OF FORCED MARRIAGE

24A Anonymity of victims of forced marriage

Schedule 3A (anonymity of victims of forced marriage) has effect.”

(2) Insert, as Schedule 3A to that Act, the following Schedule—

“SCHEDULE 3A

ANONYMITY OF VICTIMS OF FORCED MARRIAGE

Prohibition on the identification of victims in publications

1. (1) This paragraph applies where an allegation has been made that an offence of forced marriage has been committed against a person.

(2) No matter likely to lead members of the public to identify the person, as the person against whom the offence is alleged to have been committed, may be included in any publication during the person’s lifetime.

(3) In any criminal proceedings before a court, the court may direct that the restriction imposed by sub-paragraph (2) is not to apply (whether at all or to the extent specified in the direction) if the court is satisfied that either of the following conditions is met.

(4) The first condition is that the conduct of a person’s defence at a trial of an offence of forced marriage would be substantially prejudiced if the direction were not given.

(5) The second condition is that—

(a) the effect of sub-paragraph (2) is to impose a substantial and unreasonable restriction on the reporting of the proceedings, and

(b) it is in the public interest to remove or relax the restriction.

(6) A direction under sub-paragraph (3) does not affect the operation of sub-paragraph (2) at any time before the direction is given.

(7) In this paragraph, “the court” means a magistrates’ court, a county court or the Crown Court.

Penalty for breaching prohibition

2. (1) If anything is included in a publication in contravention of the prohibition imposed by paragraph 1(2), each of the persons responsible for the publication is guilty of an offence.

(2) A person guilty of an offence under this paragraph is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(3) The persons responsible for a publication are as follows—

<table>
<thead>
<tr>
<th>Type of publication</th>
<th>Persons responsible</th>
</tr>
</thead>
<tbody>
<tr>
<td>Newspaper or other periodical</td>
<td>Any person who is a proprietor, editor or publisher of the newspaper or periodical.</td>
</tr>
<tr>
<td>Relevant programme</td>
<td>Any person who—(a) is a body corporate engaged in providing the programme service in which the programme is included, or (b) has functions in relation to the programme corresponding to those of an editor of a newspaper.</td>
</tr>
<tr>
<td>Any other kind of publication</td>
<td>Any person who publishes the publication.</td>
</tr>
</tbody>
</table>

(4) Proceedings for an offence under this paragraph may not be instituted except by, or with the consent of, the Director of Public Prosecutions for Northern Ireland.

Offence under paragraph 2: defences

3. (1) This paragraph applies where a person (“the defendant”) is charged with an offence under paragraph 2 as a result of the inclusion of any matter in a publication.

(2) It is a defence for the defendant to prove that, at the time of the alleged offence, the defendant was not aware, and did not suspect or have reason to suspect, that—

(a) the publication included the matter in question, or

(b) the allegation in question was made.

(3) It is a defence for the defendant to prove that the publication in which the matter appeared was one in respect of which the victim had given written consent to the appearance of matter of that description.

(4) The defence in sub-paragraph (3) is not available if—

(a) the victim was under the age of 16 at the time when his or her consent was given, or

(b) a person interfered unreasonably with the peace and comfort of the victim with a view to obtaining his or her consent.

(5) In this paragraph, “the victim” means the person against whom the offence of forced marriage in question is alleged to have been committed.

Special rules for providers of information society services

4. (1) Paragraph 2 applies to a domestic service provider who, in the course of providing information society services, publishes prohibited matter in an EEA state other than the United Kingdom (as well as to a person, of any description, who publishes prohibited matter in Northern Ireland).

(2) Proceedings for an offence under paragraph 2, as it applies to a domestic service provider by virtue of sub-paragraph (1), may be taken at any place in Northern Ireland.

(3) Nothing in this paragraph affects the operation of any of paragraphs 6 to 8.

5. (1) Proceedings for an offence under paragraph 2 may not be taken against a non-UK service provider in respect of anything done in the course of the provision of information society services unless the derogation condition is met.

(2) The derogation condition is that taking proceedings—

(a) is necessary for the purposes of the public interest objective,
Interpretation

9. (1) In this Schedule—

“domestic service provider” means a service provider established in England and Wales, Scotland or Northern Ireland;


“information society services”—

(a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and

(b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”;

“non-UK service provider” means a service provider established in an EEA state other than the United Kingdom;

“offence of forced marriage” means an offence under section 16 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c.2 (N.I.));

“programme service” has the same meaning as in the Broadcasting Act 1990 (see section 201(1) of that Act);

“prohibited material” means any material the publication of which contravenes paragraph 1(2);

“publication” includes any speech, writing, relevant programme or other communication (in whatever form) which is addressed to, or is accessible by, the public at large or any section of the public;

“recipient”, in relation to a service, means a person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible;

“relevant programme” means a programme included in a programme service;

“service provider” means a person providing an information society service;

“transmission” includes any transmission (in whatever form) which is addressed to, or is accessible by, the public at large or to a section of the public.

(b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to that objective, and

(c) is proportionate to that objective.

(3) “The public interest objective” means the pursuit of public policy.

6. (1) A service provider does not commit an offence under paragraph 2 by providing access to a communication network or by transmitting, in a communication network, information provided by a recipient of the service, if the service provider does not—

(a) initiate the transmission,

(b) select the recipient of the transmission, or

(c) select or modify the information contained in the transmission.

(2) For the purposes of sub-paragraph (1)—

(a) providing access to a communication network, and

(b) transmitting information in a communication network, include the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.

(3) Sub-paragraph (2) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

7. (1) A service provider does not commit an offence under paragraph 2 by storing information provided by a recipient of the service for transmission in a communication network if the first and second conditions are met.

(2) The first condition is that the storage of the information—

(a) is automatic, intermediate and temporary, and

(b) is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request.

(3) The second condition is that the service provider—

(a) does not modify the information,

(b) complies with any conditions attached to having access to the information, and

(c) if sub-paragraph (4) applies, promptly removes the information or disables access to it.

(4) This sub-paragraph applies if the service provider obtains actual knowledge that—

(a) the information at the initial source of the transmission has been removed from the network,

(b) access to it has been disabled, or

(c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.

8. (1) A service provider does not commit an offence under paragraph 2 by storing information provided by a recipient of the service if—

(a) the service provider has no actual knowledge when the information was provided that it was, or contained, a prohibited publication, or

(b) on obtaining actual knowledge that the information was, or contained, a prohibited publication, the service provider promptly removed the information or disabled access to it.

(2) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.
Baroness Chisholm of Owlpen: My Lords, Clause 143 provides for lifelong anonymity for all alleged or proven victims of forced marriage in England and Wales, from the point of investigation onwards. At the request of the Minister of Justice in Northern Ireland, Amendments 215, 237 and 241 now extend this protection to cover victims in Northern Ireland.

We know that forced marriage can be hidden, and this measure will help to ensure that victims have the confidence to come forward so that they get the support they need and so that perpetrators are brought to justice. The protection mirrors the anonymity we introduced last year for victims of female genital mutilation. It will mean that the anonymity of victims of forced marriage can be protected from the time an allegation is made and that the publication or broadcast of any information likely to result in their being identified to the public is prohibited. Breach of the prohibition will be an offence punishable by a level 5—that is, £5,000—fine.

I will respond to Amendment 219CA once the Committee has had the opportunity to hear from my noble friend Lady Berridge. For now, I beg to move.

Baroness Berridge: My Lords, I rise to speak to Amendment 219CA. This lengthy amendment, which at the outset I accept will need recrafting on Report, seeks to deal with a simple problem that has cropped up in our law. It has done so accidentally, I think, but if not sorted out it will cause injustice. Although it is late, a short description of the law and the problem is necessary by way of background.

Successive Governments have sought to tackle forced marriage, beginning with the Forced Marriage (Civil Protection) Act 2007 and with further criminalisation in the Anti-social Behaviour, Crime and Policing Act 2014. To make these remedies effective, the law incorporated—for the first time, I believe—a definition of marriage that included marriages that were not at that time valid under UK law. I quote from the Crown Prosecution Service guidelines on the definition of “marriage”. It states that，“‘marriage’ means any religious or civil ceremony ... recognised by the customs of the parties to it, or the laws of any country in which it is carried out, as constituting a binding agreement, whether or not it would be legally binding according to the law of England and Wales”.

So a relationship that UK law does not currently define as marriage can now, for very good reason, count in our criminal courts and some of our civil courts, for forced marriage purposes, as a marriage. However, this leaves a gap.

A party to a forced marriage that is not valid under UK law cannot use that conviction as evidence of the marriage in the family courts to gain financial remedies. If you have entered into a marriage under duress—a forced marriage that is valid under UK law—that can be the subject of a crime or a civil protection order. You can then, because it is valid under UK law, go to the family courts and say, “I was forced into this marriage under duress”. It is then voidable and it can be annulled. This opens the door to financial relief and the distribution of the matrimonial property.

If under duress in our law you are forced into a religious marriage, it is valid for the purposes of our law in the criminal courts for a criminal offence under the civil protection forced marriage regime, but you are not then entitled to then take that conviction to the Family Court to obtain matrimonial remedy. This is a very different situation from the marriages valid under UK law, as I have outlined, for which you can get an annulment or, of course, a divorce. So if our law has accepted this small number of relationships as marriage for the purpose of the law on forced marriage, why can they not be used for other purposes, such as gaining financial remedy? Not allowing them to be used in this way is a real injustice to those victims of forced marriage who come forward to the Crown Courts but are left with the doors of the Family Courts shut to them in terms of matrimonial property.

I am not seeking for the law to see this small number of relationships as marriages for all purposes or to foist this on a person who, even after there is a conviction for forced marriage, wishes it to be viewed for all other purposes as the religious marriage it was but under duress. Surely, however, that person, in a forced marriage under duress that was a religious marriage, should have a choice—leave it as a religious marriage or take the conviction and be allowed to claim financial remedy under the Matrimonial Courts Act and other such remedies as he or she may on occasion need.

Many of those who have spoken to me on this issue are practising barristers and solicitors. There are many women who, some practitioners believe, do not come forward after years in a forced marriage that is valid only as a religious marriage under our law, as they know that our law leaves them without means to claim matrimonial property. They know they risk the only recourse being welfare benefits, particularly if their children are now adults and they have no claim for maintenance based on caring for the children. Their view is that many of these women would come forward to the Crown Court but are reluctant to do so because they do not want to leave themselves financially vulnerable and unable to access financial remedies. We have an anomaly created by the entry of a different definition of marriage into our law.

Surely it would be just for these people and for the taxpayer to allow someone who is the victim of a forced marriage of this nature to claim, if they wish, the matrimonial property as well. By analogy, we do not retry domestic violence convictions in our Family Courts after the Crown Courts convict a husband or wife. The conviction is accepted as evidence and used by the Family Courts. Why can a forced marriage conviction not also be used in such a simple procedural way to unlock the discretion to redistribute the property and bring justice and consistency in this regard across all our courts—civil, family and criminal?
I hope that my noble friend the Minister might have time to meet with the interested groups that are concerned about this problem in our law. I raised this matter at the time with the anti-social behaviour Bill, and it has come back because there are concerns around the gap we have left for victims of forced marriages that are religious marriages which are not fully accepted under our law. The amendment is a pre-emptive strike to try to avoid this injustice happening and potentially encourage a larger number of women to come forward because they will not risk their property rights, and they will be able to claim the matrimonial property as well as get a conviction in the Crown Court. I beg to move.

Lord Kennedy of Southwark: My Lords, as the noble Baroness, Lady Chisholm, told the Committee, this clause confers lifelong anonymity on the victims of forced marriage in England and Wales. The first amendment, in the name of the noble Baroness, Lady Williams of Trafford, extends that provision to cover Northern Ireland as well. I understand that this is at the request of the Justice Department in Northern Ireland. That is welcome, and we on these Benches support these amendments. Amendment 215 is the main amendment, while Amendments 237 and 241 are consequential and would bring the provision into effect.

Amendment 219CA is in the name of the noble Baroness, Lady Berridge. She makes a powerful case to right an injustice that leaves the victim unable to seek redress. That is not right, and the Government should come forward to correct this. I will be interested to hear what the Minister will say in her response to this amendment. She made a persuasive argument; I hope that we will get a positive response from the noble Baroness, Lady Chisholm, and that the Government can deal with it, either now or on Report.

Baroness Hamwee: My Lords, we on these Benches very much support the noble Baroness’s amendment. She has obviously been working at this for some time—I see from her face that she has—and her explanation is clear and obviously based on the experiences of which she is aware. So we give her our support.

Baroness Chisholm of Owlpen: I was not suggesting that, just that there are difficulties—other reasons why it could be more difficult to bring in. That is not to say that we are not keen to look further at this issue. However, because we want to consider the findings of the sharia law review, I ask my noble friend to withdraw her amendment so that we have a chance to do that.

Lord Harris of Haringey: I understand the point the Minister is making about consent, difficult precedents, cohabitation and so on. But we are talking about a specific circumstance here, which is about coercion. These are not proper arrangements, because somebody has been forced into marriage against their will. That is the context we are talking about. We are not talking about a sort of touchy-feely cohabitation relationship which then breaks down, but about somebody who has been forced into an arrangement of this sort, which is totally inappropriate and wrong in law.

Baroness Chisholm of Owlpen: The law is about forced marriage—we did not call it “forced cohabitation”. In addition, it does not cover every arrangement that people are forced into: the CPS definition that I outlined says that you have to fall into a religious arrangement that is a binding agreement. By calling the arrangement “forced marriage” we gave those people coming to the criminal courts—at great risk—the expectation that their arrangement
Baroness Berridge: would, for that purpose, be treated in our law as a marriage. But we did not go on and fulfil our obligations to ensure that they were safeguarded financially and received the anonymity that they need to come forward. I am grateful that my noble friend has said that we will consider this further and I hope that there will be a meeting with interested parties.

I also want to state that I am very disappointed with this debate. I specifically did not put this into the sharia review, because it is about religious marriages. The law does not say that coercion and force come under that umbrella but suddenly we have entered that realm. This is about religious marriages, and I have come across instances of these issues in all kinds of religious settings. We need to be incredibly careful, on a day like today when British Muslims are upset by the news, about putting something that is about legal rights, technicalities and procedure under that banner. I was so careful to ensure that this could not be badged like this and I am disappointed that that is what has happened and that it has not been considered along with other issues. This is much wider than that. I beg leave to withdraw the amendment.

Amendment 215 agreed.

House resumed.

House adjourned at 7.03 pm
Grand Committee

Wednesday 9 November 2016

Arrangement of Business

Announcement

2 pm

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): My Lords, if there is a Division in the House, the Committee will adjourn for 10 minutes.

Economic and Monetary Union

(EUC Report)

Motion to Take Note

2 pm

Moved by Baroness Falkner of Margravine


Baroness Falkner of Margravine (LD): My Lords, I thank all members of the committee who participated in the inquiry. I took over the chairmanship of the committee some 15 months ago. It was a daunting prospect to be chairing a committee comprising a former Chancellor of the Exchequer, a former Cabinet Secretary, a biographer of John Maynard Keynes, as well as several others with a thorough grasp of financial and economic affairs. During the year, we lost the noble Lord, Lord Lawson, as the Brexit campaign made a greater call on his time. The noble Earl, Lord Caithness, and the noble Lords, Lord Davies of Stamford and Lord Borwick, stayed with us through the inquiry, leaving us only at its end. This benefited us greatly, due to their expertise, and I am very much looking forward to hearing from the noble Earl in this debate today.

I also wanted to put on record my gratitude to our specialist adviser, Professor Iain Begg, from the London School of Economics, whose knowledge of EMU is objective, deep and thorough. We are lucky to have that level of expertise in our higher education institutions, given that we are not in EMU. I also take the opportunity to thank our small secretariat—our clerk, John Turner, who like me was new to the committee and had a baptism of fire, and our now departed policy analyst, Katie Kochmann, as well as Victoria Rifaat and Susan Ryan, who were our administrative assistants during the inquiry. All rose to the challenge with admirable speed and professionalism.

In undertaking this inquiry, I was conscious of an irony: that a national parliament of a country not in the eurozone and unlikely at that time to ever join, which is now confirmed through Brexit, was looking at how the situation within the eurozone would evolve, as that was the primary focus of the five presidents’ report. I believe that our committee is the only national parliamentary committee to have produced this level of scrutiny, and I am happy to report that it has been well received in the institutions that have been the subject of our attention.

Our inquiry was a response to a report in June 2015 from five EU presidents: the president of the European Commission, the president of the euro summit, the president of the eurogroup, the president of the European Central Bank and the president of the European Parliament. The report, Completing Europe’s Economic and Monetary Union, to which I shall refer throughout the rest of the debate as the five presidents’ report, was published against the backdrop of the Greek financial crisis after a period when the future of the euro itself seemed under threat. The report sought to build on a range of new institutions and reforms aimed at strengthening economic policy co-ordination, its convergence and of course eurozone solidarity, and to set out what future economic governance was needed to build the eurozone into an optimal currency and fiscal area.

Our starting point was that while we looked at the euro from a position of distance, we wished it well, as the then Chancellor George Osborne had said, as it was in the UK’s interest that the eurozone become a prosperous and competitive currency zone. Our interest was that, as far-reaching institutional changes came about, this would have an impact on the UK’s own economic governance and regulatory environment—hence our taking a more granular look at the proposals set forth in the five presidents’ report. One of the overarching questions that we were attempting to answer was about the future of the euro. It is widely accepted that the eurozone is not an optimal currency zone even at this point in time, and the question was whether the speed and depth of convergence after the financial crisis was adequate to ensure its survival. While several of our witnesses could fault the institutional architecture and balance, it became evident fairly quickly that all believed that so much political will was invested in the project that it would eventually muddle through. I am often asked a similar question in Brussels and Berlin relating to the UK and Brexit. My answer is similar: we too will muddle through.

Among the institutional developments we looked at were: whether the stability and growth pact was being implemented as originally intended; the extent to which fiscal rules were adaptable to shocks; the creation of an advisory fiscal board and the impact of it on fiscal rules; the extent to which fiscal rules were implemented as originally intended; the extent to which fiscal rules were adaptable to shocks; the creation of an advisory fiscal board and the impact of it on the balance between national policy and euro-wide convergence; and banking union, with the ongoing debate between risk aversion and risk sharing.

Lying above all this was the very real concern we had about the distinction between what was needed at a technical level to make the eurozone function better, which was more easily identifiable for us, and the issue of sovereignty and democratic accountability. This was described in the paradox identified by the then Harvard, now Princeton, economist Dani Rodrik, where global markets, state sovereignty and democracy cannot coexist, and policymakers have to pick two of them—any two, as he put it, but he thinks it is not possible to have all three.

We came up against the Rodrik trilemma, as it is known in the economic world, in this inquiry in the
Baroness Falkner of Margravine] judgments as to how far economic, fiscal, financial and political integration could go in the context of what are still sovereign states in terms of their budgets, fiscal policy and democratic accountability. We did not come up with a definitive answer, as too much of the detail of what is needed to move towards those integrations was not spelled out by the five presidents. The key document that will seek to flesh out that detailed institutional structure will come in the form of a White Paper around spring next year, with stage 3 of deepening economic and monetary union to commence from 2025. We look forward to its publication, conscious that the Brexit decision has changed the context quite dramatically for the UK economy and financial services, and therefore our own assessment of those developments.

So what did we find? There have been substantive changes to the stability and growth pact since 2005, particularly since the financial crisis, with the implementation of the six pack and the two pack, involving greater requirements for states to stick to domestic commitments to fiscal discipline, using deficit and debt criteria as metrics, with the Commission needing to improve states' budgets. Needless to say the measures, while necessary in technical terms, have been implemented within a political perspective. For example, by 2009, most EU countries were under the excessive deficit procedure. Financial sanctions that therefore should have been deployed were not.

The majority of our witnesses saw this as undermining the system. Professor Erik Jones from Johns Hopkins University said that the fiscal framework applied in the eurozone was “completely optional” due to the political calculations employed. Megan Greene from Manulife Asset Management told us that fiscal rules in these circumstances should be set not as binding fiscal rules, but on a case-by-case basis. She gave us the example of Spain’s deficit, which had been 5% in 2014, as opposed to the requirement under the rules to keep it under 3% of GDP, but she thought that Spain was right and needed to run a larger budget deficit to emerge from the recession, as it eventually did.

Another issue was the procyclicality of fiscal rules and their amplification of austerity on growth. Christian Odendahl, from the Centre for European Reform, picked out an omission from the five presidents’ report, in so far as it did not even attempt to suggest that fiscal policy should try to achieve a strong countercyclical stance in a downturn. The report did, however, signal an intention to establish an advisory European Fiscal Board to, inter alia, advise on the prospective fiscal stance appropriate for the euro area as a whole, based on an economic judgment. I quote:

“Where it identifies risks jeopardising the proper functioning of the Economic and Monetary Union, the Board shall accompany its advice with a specific consideration of the policy options available under the Stability and Growth Pact”.

Our witnesses’ concern centred on the extent to which this board would be independent and the extent to which it would be advisory. The board has since been established. Its composition is interesting. The chair is Danish, one of the five members is Polish and the remaining three are from France, Italy and the Netherlands, so 40% of the composition of the board designed to facilitate the functioning of the eurozone is from outside the eurozone—a sign of inclusivity on the part of the eurozone, perhaps.

The other large part of our work was to do with eurozone steps towards risk reduction and risk sharing. Again, it was evident that both entail the pooling of sovereignty. If the emphasis was on risk reduction, inevitably national fiscal stances and national budgetary oversight by the Commission, as well as other surveillance measures, needed to be tightened. On the other hand, if risk sharing was to prevail, there would inevitably be fiscal transfers from some states to others, creating moral hazard. Our witnesses were clear that there needed to be both technical and political progress. European Commissioner Dombrovskis described risk sharing and sovereignty sharing, saying a balance would have to be struck between the two. Sir John Cunliffe, deputy governor for financial stability at the Bank of England, saw this balance as a prerequisite for a further pooling of sovereignty.

The core disagreement between member states is a hindrance to completing banking union. The example of the single resolution fund as a common fiscal backstop is a case in point. Professor De Grauwe of the LSE thought that because you would eventually need very deep pockets to resolve large failing banks in a crisis, you need the fiscal capacity to raise taxes. In effect, fiscal union was a prerequisite for a backstop to work.

Likewise the question of how much sovereignty to pool was central to the success of the European deposit insurance scheme. At the heart of the five presidents’ report is the ambiguity about what is meant by fiscal union. It was obvious from our witnesses that overall they interpreted it as implying a very high degree of integrated policymaking. Several saw it as a means of transferring more power to a super euro Commissioner or, in the words of German Finance Minister Wolfgang Schäuble, a eurozone Finance Minister.

It is evident that the greater centralisation envisaged in deepening EMU will involve a significant pooling of sovereignty. We could not see a commensurate focus on measures to improve democratic accountability, and this is the greatest weakness of the five presidents’ report. The steps that currently exist in this regard, such as the European Parliament’s oversight of EMU, the economic dialogues between the Commission, the eurogroup, the Council and the European Parliament, and the European parliamentary week when national parliaments are brought together, are inadequate, and if they are inadequate in the current form they will be more so as integration deepens. The European Parliament cannot be seen in the same light as national parliaments in terms of accountability to a citizen who, first and foremost, sees his national representatives as the accountable individuals who will respond to him. The European Parliament plays as good a role as it can, but there is a danger, as moves towards a state emerge in the eurozone, that the disconnect will deepen.

I shall conclude with the words of one of our witnesses, Phillippe Legrain, who, in summarising the problems facing the eurozone, said:

“We have election after election in the eurozone in which voters reject the outgoing Government, and the first thing that happens is that voters are told that they have to stick to the
old policies of the government they have just rejected because EU rules say so, and I do not think that is desirable or sustainable”.

I have managed, on this rather significant day of American elections, to avoid talking about the American election result. In concluding, however, my one word of advice — were they willing to accept it — on behalf of our committee to those forming the new architecture of the eurozone, would be that it is important to put in place the democratic structures and accountabilities that are needed to respond to citizens’ concerns that still exist at national level. I beg to move.

2.15 pm

The Earl of Caithness (Con): My Lords, we are all extremely grateful to the noble Baroness for introducing this Motion, and I also thank her for the way she chaired the committee. It was a great honour and privilege to serve on the committee; we certainly learned a lot and, I think, produced a very worthwhile report, although the circumstances in which we made the report were slightly different from what they are now. I also thank Professor Iain Begg for his advisory work and our clerk and his team for their support.

We are having an unusual debate today: I do not think I have ever taken part in a debate on an EU report where most of it is now under changed circumstances. None the less, I was a little disappointed by the Government’s reply; more could have been written on the back of a postage stamp than what they gave us, and the Commission’s reply was not as detailed or specific as I would have hoped.

Despite the Brexit vote and the fact that the UK is going to leave the EU, the euro is of huge importance to us: the EU is our next-door neighbour and the eurozone is the second most important currency in the world after the American dollar. What happens, therefore, across the 22 miles of the English Channel is as relevant to us in the UK today as it was six months ago. To put this report into context, we should remember that it is the second report on EMU in the past four years: in 2012 we had the Genuine Economic and Monetary Union report, and I sat on the committee that produced the report on that. Three years later we have the report we are discussing today: next year we will have the White Paper; and I have no doubt that there will have to be further reports on EMU in the fullness of time.

Turning to the report, I start by taking up a point mentioned by the noble Baroness, about fiscal rules. There is no doubt that it is a weakness within the eurozone that fiscal rules are not followed in a fashion that most of us would comprehend. Too much is done on an ad hoc basis and, since we wrote the report, both Spain and Portugal have missed their deficit targets under the stability and growth pact and have not been fined by the Commission. Does that give us more confidence in the eurozone? I do not think that it does; it leaves us still wondering where that strength and consistency in fiscal rules—which is so much needed—is going to come from. In paragraph 54 of our report we welcomed the recently set up European Fiscal Board, but can the Minister tell us why it took so long for the Commission to set it up? They normally set these boards up quite quickly, but this one was rather long in gestation, for not very good reasons.

I move on to paragraph 143 of our report, where we talked about the European deposit insurance scheme. That is an old friend, part of banking union, which fell by the wayside, so perhaps it is second time lucky for the Commission on that. I hope so: when we wrote our report on genuine economic and monetary union those of us taking part were disappointed that the three-legged stool on which banking union was going to be based had become a rather wobbly two-legged stool, and EDIS is badly needed if there is to be a strong structure in banking union, albeit that the UK opted out of it.

Moving on, we looked at fiscal union. We were surprised by the number of definitions there were of that. I looked forward to the Commission’s response to our report to see what it might say to enlighten us, but I did not think its reply was terribly constructive. It did not help us—and there is a big weakness here in the EU. Until fiscal union is defined in a structured and sensible way that everybody can agree, there will always be areas for doubt and manoeuvre, which will lead to continued weaknesses.

The noble Baroness, Lady Falkner, also mentioned in opening the debate the need for, “appropriate and accountable eurozone-level decision-making structures”.

We use those words in paragraph 194 of our report; they are increasingly important, given what is happening in many developed countries and the reaction by large groups of people to how Governments have behaved.

The noble Baroness refused to comment until the last moment on the USA election and I shall get in a little before the last moment. It was depressing to read today that the French ambassador tweeted:

“A world is collapsing before our eyes. Dizziness”.

That shows a view that is totally out of touch with what real people voted for and the change they want. For the German Foreign Minister to say that it was not the result that he or Germany wanted equally shows a disconnect with his own people.

Let us return to accountable and eurozone-level decision-making structures. These need to be altered and strengthened. At present, the House of Lords is considerably more democratic than the European Commission. We have 90 elected hereditary Lords, of which I am proud to be one. We are distinctly more democratic than the European Commission, and that needs to change for credibility in future.

To conclude, there is the recommendation we made in paragraph 205, concerning member states in the EU that are not part of the eurozone. I am sorry for them that the UK is coming out of the EU as that will make their lives much harder. I hope that they will not be subject to caucusing by the eurozone members. The fact that the president of the eurozone group was a signatory to this report gives me cause for concern.

However, another aspect to this is perhaps more worrying for the future of Europe. We all know about majority voting, but not many people understand that you can have a minority blocking vote as well. Britain not being a member of the eurozone was an instrumental partner in that blocking vote when things headed in the wrong direction. Without our vote, it will be much
That, when my noble friend sums up, he will say that we are still members of the EU and I hope he will say that, when my noble friend sums up, he will say that we will still play an active role to the moment that we sign on the dotted line and get out.

2.24 pm

Lord Giddens (Lab): My Lords, I speak not as a member of the committee but as an errant outsider who wandered in here. I congratulate the noble Baroness, Lady Falkner, on introducing this debate effectively. You cannot not mention the American election. The events in the US last night make the EU even more important as a bastion of cosmopolitan values in a world which seems bent on abandoning them. It clearly is threatening to the EU because it will further stimulate the rise of far right populism. Its consequences for the eurozone and the non-eurozone members. Germany will have to take a much more proactive line to get a better balance and stop some of the mad extremes that were suggested. We are still members of the EU and I hope that, when my noble friend sums up, he will say that we will still play an active role to the moment that we sign on the dotted line and get out.

The five presidents’ report is right to point out that the euro thus far has been salvaged through firefighting, in an essentially democratic way, dominated by the dreaded troika of the Commission, ECB and IMF. The report rightly recognises the need for what it calls genuine democratic accountability. As noble Lords note, however, there is little in the report showing how this might be achieved on the transnational level that would be necessary. There are huge vacant lots, as it were, in the document.

Much of the five presidents’ report is about setting out a road map as to how the eurozone might move from short-term crisis management to structural solutions for the deficiencies of the existing system. However, as the committee’s commentary notes, not much is said in practical terms about how these successive stages that are mapped out will actually be implemented. Given the series of crises that the EU faces in addition to the problems with the euro, the document reads too much like a fair-weather set of proposals, rather than one where the innovations noted might face serious problems of political legitimacy.

The limitations of the proposals contained in the five presidents’ report seem pretty obvious. If they are not addressed, it is surely in part because no one can quite see how they could be dealt with politically. Beyond a certain point, the constituent nations see their interests differently and have contrasting approaches from the point of view of economic theory. Joseph Stiglitz sets things out pretty well in his book on the euro. A common monetary system cannot function effectively without a countercyclical promotion of demand and without at least some degree of mutualisation of debt to protect against shocks.

Looming over the whole document but, of course, unstated therein, is the dominant position of Germany within the eurozone and within the EU as a whole. Ideological differences are involved because of the role of—forgive the term—ordoliberalism in current German thinking. Ordoliberalism is essentially the German version of austerity. One prominent German theorist has pronounced that the bailouts enacted at the height of the crisis have allowed, “reckless Mediterranean countries to get away with minimal reforms and only limited fiscal discipline”.

It is a view that resonates strongly with the German public.
Germany is in denial of its own dependence on the euro for its competitiveness, and hence for its surplus. That surplus has the effect of dampening demand in the countries of the south that most need it. Some level of proactive investment is essential if the eurozone is to achieve longer-term stability. When even the IMF has turned against austerity as actively counterproductive, it is time for European leaders to take note. We will have to wait for the Italian referendum of Mr Renzi’s Government and for the French and German elections to see if those leaders are able to respond.

2.32 pm

Lord De Mauley (Con): My Lords, like the noble Lord, Lord Giddens, I was not a member of the sub-committee at the time this investigation was carried out—though I have joined it subsequently—so I will keep my contribution brief. This was an important piece of work, so I am extremely grateful to the noble Baroness, Lady Falkner, and the then members of the committee.

The five presidents’ report proposes routes to achieving not only sustainable economic and financial union but fiscal union—whichever definition you may choose—by as soon as 2025. Despite the fact that this weighty report from the five presidents was not exactly gripping reading for the layman, and did not, so far as I recall, form a major part of the argument in the pre-referendum debate, I have a feeling that, had the British public focused on it, it would have been unlikely to have changed the result. Not that most, if they stopped to think about it, would have objected to putting in place the very necessary reforms to reduce the risk of further financial and sovereign debt crises, and to increase democratic accountability. Indeed, many would have applauded such reforms, especially to achieve the latter aim. In fact, I suspect that many of those who voted to leave did so precisely because of the perceived absence of democratic accountability from much of the EU paraphernalia of government. So they should welcome the sub-committee’s strong urging that the issues raised in the report, particularly those relating to democratic accountability, be addressed—something that the noble Baroness, Lady Falkner, emphasised. They should also welcome the fact that, in issuing their report, the five presidents at least recognise that more needs to be done to ensure the long-term sustainability of the eurozone.

As the sub-committee’s report says, no one should underestimate the complexity facing eurozone national Governments, which will have to deal, among many other things, with tensions between what is appropriate for the eurozone as a whole and what is appropriate for the individual member state. It is indeed axiomatic that the effectiveness of this attempt at co-ordination will ultimately depend on political will at member state level, as will, for example, the operation of the European Fiscal Board. The sub-committee is unconvinced of the existence of enough such political will. Indeed, cynics will be unsurprised by the fact that the sub-committee’s report is littered with doubts about the ability or willingness of member states to make all this work. For example, it observes that member states’ adherence to the rules is patchy and liable to be influenced by domestic political pressures, and that they have an undesirable tendency to procyclicality in the exercise of fiscal policy.

In the context of strengthening the macroeconomic imbalances procedure and fostering long-term structural reforms at the member state level, the sub-committee points to a tension between ensuring member state ownership and creating an effective enforcement mechanism at the EU level. It expresses scepticism that financial sanctions under the MIP are any more likely to be used in the future than hitherto and opines that macroeconomic imbalances in the euro area are likely to continue to be a source of instability.

The sub-committee refers to several things which need to be put in place on the route to fiscal union: a stabilisation function, procedures for the transfer of funds and an unemployment reinsurance scheme. There are challenges, too, to the perhaps less-ambitious objective of financial integration, including a potentially ambitious risk-reduction agenda before risk-sharing through the European deposit insurance scheme takes place, and uncertainty surrounding the long-term common backstop to the single resolution mechanism.

The sub-committee quite rightly warns that plans for strengthening the eurogroup, although speculative, mean that our Government must keep a weather eye on the impact a formalised eurogroup might have on our position and do all they can to ensure that the UK is protected. It also sounds a warning note for citizens of eurogroup countries about the effects on them of the pooling of sovereignty and the potential results for democratic accountability.

The proposal for representation externally has been included by the five presidents among their plans for strengthening democratic accountability but, ironically, the sub-committee points to the very real conflict between democratic accountability and unified representation of eurozone interests at the international level, for example, at the IMF.

The sub-committee points out that it is foreseen that the terms which we hope are to be negotiated between the UK in its new settlement with the EU will be incorporated into the treaties at their next revision. The five presidents’ more fundamental proposals also require treaty change. While acknowledging that to achieve the latter by 2025 may be a tall order, this could provide a negotiating opportunity for the Government as they hammer out the UK’s new settlement.

Although the five presidents’ report will still be relevant to us, assuming Brexit proceeds, it will be less so afterwards than it would otherwise have been and, crucially, our ability to influence the drivers it refers to, if we miss this opportunity, will be considerably reduced or removed entirely. So an important message for the Minister is that there is the possibility of a useful negotiating point here which the Government would do well to keep in mind.

2.38 pm

Lord Butler of Brockwell (CB): My Lords, as a neophyte member of the sub-committee in the Lords structure of Europe Select Committees, I found the preparation of this report very interesting. I add my congratulations to the noble Baroness, Lady Falkner, who chaired a not always compliant committee with firmness and skill. I add my thanks to our adviser Professor Iain Begg and the clerks who put together an excellent programme of witnesses.
Nevertheless, the subject matter of report created, in this member of the sub-committee at least, a sense of unreality. It is right that the sub-committee should have produced this report because the UK, although not a member of the euro, not only has an interest in the effect of the euro on the economies of our major trading partners, but is, for as long as we remain a member of the EU, directly affected by some of the proposals in the five presidents’ report.

An example is the proposal for the capital markets union, an initiative which, with the UK’s leadership in financial services, offers important potential benefits for us. One of the many reasons for being worried about our prospective departure from the EU is the prospect that this important initiative will be developed without us, as the noble Lord, Lord De Mauley, said.

The authorship of the five presidents’ report, by the presidents of the European Commission, the euro summit, the eurogroup, the ECB and the European Parliament, certainly gives it weight but not force, in my view. It is a list of aspirations, not decisions. It skirts details where it is known that some of the details of its proposals would be controversial in the lead-up to the French and German elections in 2017. These matters are left to be addressed in a White Paper but, since the stated date for that is the spring of 2017—before the elections—one may doubt how much progress it will make towards specific measures.

The five presidents’ report amounts to a road map for the survival of the euro. Whatever doubts some of us may have about the wisdom of the euro project, and whatever anxieties we may have about its economic and social consequences, there can be no question about the strength of the resolve of the members of the eurogroup. That has already been demonstrated over the last few years. As the noble Baroness, Lady Falkner, said, we asked all our witnesses whether they expected the euro to survive the strains that now exist and that lie ahead. The answer was that they expected the euro to muddle through because of the political will that has been invested in it.

Two main fault-lines run through the way ahead for the euro. One is fiscal, the other financial, and they are of course connected. Both are characterised by the tension between collective action and national sovereignty. Let me take the financial issue first. Can depositors in eurogroup banks be given reassurance that their deposits are secure, and thus prevent a flight to banks in stronger countries at times of strain? Such a flight could produce catastrophic collapses not only for the eurogroup but for the international system as a whole. One answer is that all banks in the eurogroup should build up sufficient capital to withstand any crisis. The second is that depositors should be given a guarantee of the safety of their deposits in the event of bank failure. It would have to be the Germans who gave such a guarantee in present circumstances, and understandably they are reluctant to be a party to such a guarantee, unless and until they are satisfied that other members of the eurogroup have taken steps to ensure that their banks are sufficiently capitalised to make a collapse unlikely. The proposal for the European deposit insurance scheme is therefore unlikely to make progress until that point is reached.

The second fault-line is the fiscal one. It is generally recognised that a single currency requires a single authority with effective control over fiscal policy. In the absence of that, the EU has sought to set fiscal rules for member countries but these fiscal rules have been widely ignored, not least by the principal members of the eurogroup. One reason for that is that the fiscal rules are not necessarily appropriate for all stages of the economic cycle, but their breach in major economies inevitably makes it harder to enforce them in weaker ones.

A section of the five presidents’ report is entitled “Towards Fiscal Union”, but the report is vague about what fiscal union means in practice and the Committee found that our witnesses were no clearer. The report proposes boards on various aspects of the economic convergence necessary for the successful working of a single currency: competitiveness boards in each member country to improve the operation of the real economies; a single fiscal board to review the fiscal policies of member countries; and a strengthened role for the eurogroup with unified external representation. These are all only advisory. We must doubt whether they will in practice amount to more than a fifth wheel on the euro-country members. The Select Committee report concludes that, in view of national autonomy, the goal of completing economic and monetary union by 2025 is unlikely to be achieved.

What are we to make of the five presidents’ report? Is it simply a programme of bureaucratic measures unlikely to achieve their stated goals, and which will consume resources and simply divert recognition from the fact that the euro is ultimately a doomed project? Is it, in other words, a road map on a road that leads over a cliff? Or is it a list of steps that, though they are unlikely to achieve their stated objectives in the short term, are none the less a necessary further stage in the progress towards greater European integration and shared identity? Only time will tell the answers to those questions but it is clear that the five presidents’ report, like the UK’s referendum, is not the end of European history but simply a further stage in its tortuous development.
of banking for not just European monetary union but eurozone stability. Thus, the creation of the banking union, following the proposals put forward by the four presidents in 2012, is likely to be beefed up with additional powers and regulatory capabilities for all banks trading within the single market and especially those that clear euros.

It currently comprises a single supervisory mechanism in which the ECB has overall responsibility for the supervision of banking union banks and a single resolution mechanism run by a single resolution board. The upcoming negotiations will see whether the UK is able to maintain the financial passport, which effectively guarantees the rights of UK-based banks to clear euro-denominated trades and all the lucrative related deals.

In my view, there are two ways for the UK to maintain this access. The first way is to remain within the single market. This would be a Norway-style deal that would allow us full access to the single market. However, I fear this would be impossible, given the nature of restrictions on free movement and regulation that the Prime Minister wishes to make.

The second way would be more complex. The UK should stay within the banking union and then continue to trade as it does normally. The real issue with this is that the UK would then be under the auspices of the European Central Bank. This would not be in keeping with the mantra of the Brexiteers to take back control, but it may be the only way to safeguard a significant proportion of our lucrative trade with the EU. The ball will rest with the EU, but it is worth remembering this.

The eurozone is in a terribly fragile state. Greece’s problems are not yet fixed and the unresolved saga of Italian banks will be perilously hard to manage for any technocrat. If the EU disrupts this, there is likely to be significant knock-on effects for all members, including Germany, as the recent turmoil at Deutsche Bank has shown. For the single currency to survive, further significant fiscal integration will be required. There will need to be eurobonds and a Finance Minister who can raise funds in Germany and spend them in Greece.

It is in the interests of the UK to have a strong, well-functioning EU. Indeed, a prominent Brexiteer put it to me like this: we must be like Canada, a sovereign, free-trading country working efficiently with a far larger, federalised southern neighbour. Now that we are out of the way and our veto and influence will no longer be heard in Brussels, the EU can get on with the job of federalisation, which now falls to the current crop of continual politicians. I wish them well.

2.53 pm

Lord Dykes (CB): My Lords, it is a pleasure to speak in the gap. I congratulate the chairman of the sub-committee on her great work in the task of producing this report. I try to read all European reports, which is a daunting task because there is so many of them, but this report—I am not saying this deliberately to embarrass anyone—is one of the best I have read. It is very thorough indeed, and I agree with most of the points and recommendations made in it.

I shall be brief in enunciating a couple of thoughts which give more of an optimistic background to the growth of the euro. I acknowledge that this is referred to in the report and in some of the speeches and comments that have been made. The development of the euro has been an astonishing achievement in international terms—the noble Earl, Lord Caithness, referred to this in his remarks. It was never expected that it would be so rapid in the days when it first started. I looked up the figures. The most important statistic for measuring these matters around the world is the international daily banking payment transactions figures. The figures I looked at were from about four weeks ago and showed that the euro was responsible for about one-third of all world transactions in reserve currencies and currencies in general. The United States dollar was responsible for 40% of them. So with 33% and 40%, the euro is getting closer to the US dollar.

However, we can consider the aggregate debt figures. Donald Trump kept referring to the nightmare figure for US federal debt—not the debts of the cities or states but just the US federal debt—quoting, quite rightly, a figure of $19 trillion. The aggregate debts of all the member states of the European Union—you need not include the European budget, by the way, because it is a virtuous budget with no debt and its receipts more or less equal its payments—is of the order of $13 trillion. With 300 million people, the US has a debt of $19 trillion, while the debt of the EU, with 500 million people, is $13 trillion. Furthermore, if you look at the way in which growth is taking place and where, the enormous amount of corporate issues in the eurozone has been an astonishing phenomenon, which was not unexpected by people in the City originally. In contrast, our own currency, the pound sterling, has recently seen its eighth devaluation since the War. There were three devaluations by government action in the post-war period and five by market action, including a significant devaluation when the Brexit result was announced after the referendum.

The choice, therefore, for monetary instrument executives in government and central banks in any country is to determine the better choice between the high currency, strong currency, disciplined currency system that the deutschmark has always represented, which encourages the growth of assets and net domestic capital formation and is long term, lasts longer and is stronger and bigger in percentage terms, or the easy devaluation route, which has been the UK habit from time to time whenever there has been somewhat of a crisis. My answer is that if you have in the eurozone the deutschmark but at a low level under the euro than if it was the deutschmark on its own, that is the virtuous choice between the two. I was glad that the noble Lord, Lord Butler, sounded an optimistic note when he allowed that the eurozone might take a bit longer to develop than originally intended but that it is certainly on the way. The message for us in Britain is that we must overcome the psychological trauma and the fears and anxieties that we experienced in 1992 when we were driven out of the exchange rate mechanism in very humiliating circumstances and consider returning to the euro philosophy in the future.
Lord Kerr of Kinlochard (CB): I, too, am grateful for the opportunity to make a couple of quick points in the gap, and to congratulate the noble Baroness, Lady Falkner, on the report. I used to be a member of the committee in days of yore, and I note that the standard of reports has not fallen since I left—I note that with great regret and deep sadness.

I shall make two short points. One concerns the lapidary, crystalline beauty of the Government’s response to this report, about which I thought the noble Earl, Lord Caithness, was a little harsh. What it lacks in length it has in quality. It is boiled down into crystalline form and includes one excellent sentence. There are eight sentences in all, in reply to 266 paragraphs, but I single out one sentence in particular:

“Regardless of our relationship with the EU, the euro area is a key trading partner for the UK, and a stable and prosperous euro area clearly remains in the interest of all European countries.”

That sentiment needs to be more widely bruited about. It is not generally perceived in continental Europe that our policy is to leave the EU but not to leave Europe and to remain as close as possible to our former partners in the EU. It would be highly desirable and helpful to our negotiations if that were made clear. Their reading of the Birmingham speeches led them, on the whole, to take a different view. They noted that some senior members of the leave campaign argued that the euro would collapse; others argued that the euro should collapse, and that it would be in everyone’s interest if it did. It is very important that they understand that that is not the view of Her Majesty’s Government and that we genuinely see a continuing interest in the health of our largest market.

My second point is smaller, a sort of footnote. This report ends with a sad historical footnote, with the suggestion that the gains made in Mr Cameron’s renegotiation might be written into EU law at a convenient opportunity, which might be provided by action on the five presidents’ report. Alas, the fact is that, because Mr Cameron decided not to follow his Bloomberg prescription and not to propose Europe-wide reforms but simply to concentrate on concessions specific to the United Kingdom, the reforms extinguished themselves the moment when we voted to leave the European Union. It was integral to the deal that they would; they concerned only our relations with the European Union, and they no longer exist. Therefore, there is nothing from their ghost to be written into the treaties at a future treaty negotiation. That is an academic point, because there will be no treaty amendments in the year of the French and German presidential elections.

Lord Tunnicliffe: Well, my Lords, it is rather difficult to take that view as an outsider coming to the report for the first time, because it mentions the stability of the euro at the very beginning and then goes on to discuss a whole series of measures designed to make the euro stable. From my reading of it—and you can disagree with that—on each point that it brings up to make the euro more stable, it then analyses and notices that it is probably not going to work. If the report was about euro stability, I apologise, but I read it as such, and as soon as I finish my speech I shall offend you less. I also note that the noble Earl, Lord Caithness, seemed to have an underlying pessimism in his speech about it—although, probably correctly, he did not address it directly. The noble Lord, Lord Giddens, also made a pessimistic speech, although he brought out the paradoxical relationship that Germany has with the euro, whereby it is absolutely crucial to its economy in pulling down the effective value of the currency without it accepting that at the end of the day some sort of wealth transfer is necessary from its overall surpluses. The noble Lord, Lord Butler, as well, who must have misread the report slightly, said that it was a road map for the survival of the euro. Indeed, it was a road map that could be leading to a cliff.

So I do not feel alone in my pessimism, and it took the noble Lord, Lord Dykes, who is ever optimistic about Europe—I wish his optimism had had more impact on 23 June—to introduce optimism. I would have been interested to hear from the impressive array of witnesses that the Select Committee spoke to about how likely they felt another euro crisis is, how much it would affect the UK banking system and, leading on from that, what resources the UK Government and Bank of England have to manage such a crisis. We have an order in front of us in about four weeks’ time that goes to the whole issue of managing crisis. I will repeatedly, at every opportunity, bring up just how fragile the banking systems are in Europe and how important that is to the United Kingdom.

Whatever the outcome of the Brexit negotiations, and whenever that may be, these are questions we cannot afford to overlook. We saw last week how
sensitive markets are to any decisions relating to Brexit. Given that, I would have thought that it would be in the Government’s best interests to consider all scenarios. It is evident that there is a lack of institutional planning on the euro’s future across Europe. We must all do better and challenge that conventional thinking.

That being said, I reaffirm my thanks to the Select Committee for undertaking this investigation. I would not wish the noble Baroness and the other members of the committee to take my remarks as a reflection of my views on the entirety of the report. It was a detailed and considered analysis of the challenges that Europe and monetary union face: for example, the continued procyclicality of the European financial policy, the concerns about the effectiveness of the capital markets union in a crisis—an issue I know the committee highlighted in a number of recent reports—and the lack of detail surrounding key interpretations and accountability. Indeed, one thing that came out as an amateur reading through the report was the avoidance of seeking common definitions of important issues.

However, the issue I wish to pick over in more detail—before turning to the implications of Brexit in our interpretation of the report—is chapter 3. This sets out the immense set of challenges associated with marrying two seemingly contradictory concepts: risk reduction and risk sharing. As paragraph 99 of the report states, “the suggestions in the Five Presidents’ Report propose a means of pooling the risks facing certain Member States, but that resistance to them reflects others’ concern that they would face an unreasonable burden of responsibility for those risks”.

It is clear that the European Union ideal would be a balance between the two—but is that possible? At present it certainly does not seem that there is a desire to share risks across the eurozone. The report notes that: “Germany, the Netherlands and Finland, have supported more risk reduction measures before any risksharing begins”.

The report hits the nail on the head when it states that, “large macroeconomic imbalances in the euro area will ... continue to be a source of instability”. For as long as the reluctance to transfer wealth across the European continent remains. This remains a fundamental weakness of the euro and the key reason I am less confident than the committee or the EU. It would be naive to ignore the possibility of more uncertainty surrounding the European Council.

I finish by addressing the unprecedented climate we now face. I noted at the beginning that, because of the decision of the British public to leave the European Union, it is even more important that we take heed of the warnings this report identifies and the conclusions it makes. While it could be said that European and monetary union is no longer our business because we have no long-term influence over it, it is our business because it will still influence us. I am wary about bringing up the negotiations on Brexit in fear that I get the same stock answer from the Minister as the rest of my colleagues: “There will be no running commentary”. However, it is simply not possible to fully engage in the report today and do justice to the hard work put into producing it without considering what our future relationship with Europe will look like. For example, will we remain part of the single market? We do not have enough time today to go into the detail, but there is little doubt that single market access is strongly favoured by businesses of all sizes across the country. However, if the decision is taken to stay in the single market, how can we be sure that we have a strong voice advocating British interests?

We also have to consider that the better deal we secure for the City, the more exposed we will be to shocks. Whereas now we have the ability to direct and advise, without guarantees and safeguards Brexit could leave us powerless. I will give just one example from the report which highlights the point I am making. Commenting on the banking union, the completion of which was a key component of the five presidents’ report, Andrew Bailey, the then deputy governor of the Bank of England, noted the relationship between the banking union and the UK banking system as follows:

“Where a bank branches from a country in the euro area to the UK, as it can do under the passporting regimes in the single market, the deposit protection for the depositors in that branch in the UK comes from the home state, which is wherever it is branching from ... the solvency of a national deposit protection scheme depends upon the solvency of the sovereign of that country. They are inevitably inextricably linked. We have had incidents where the solvency of the banking system of the home country is a direct product of the solvency of the sovereign, and when both of those are called into question, you then get a situation where you say, ‘Do the depositors in the UK really understand where their deposit protection is coming from?’”

Taking passporting as a particular issue, the same problem remains: membership and influence. Can Ministers say whether the Government plan to ensure passporting rights for the UK-based banking sector? If full compliance with EU financial regulations is the price required to retain passporting rights, in accepting that price, how do the Government propose to influence the direction and detail of future regulations?

In this short debate, we have barely scratched the surface of what the report touches on or its wider implications. But from the range of questions raised, one cannot help but be seized by the sheer scale of the task ahead of us in the Brexit negotiations and our relationship with economic and monetary union within the EU.

3.12 pm

Lord Young of Cookham (Con): My Lords, I begin, as others have begun, by complimenting the committee on its comprehensive analysis of the five presidents’ report. This is a fantastically complicated and politically sensitive area, and we have before us a very thorough and interesting report, to which Members have quite rightly paid tribute. As someone who has not had any interface with the EU institutions for some 20 years—since we left government in 1997—I have found it very helpful to be brought up to date and, indeed, to identify a pathway through the thicket of acronyms, which take up five pages in the glossary at the end of the report.

I hope that the report will be read in the rest of Europe as well as here. I was interested to hear the noble Baroness, Lady Falkner, say that it is on the reading list of those in Europe, because it is essentially about the future health not just of the eurozone but of...
the longer-term relationship between those who are in the eurozone and those who are not. As I said, it is of relevance not just to this country but to those on the other side of the channel.

Since the publication of the report and the Government’s response, we have seen a seismic shift in the relationship between the UK and the EU. The terms of trade—if I can use that expression—between the UK and the EU have changed dramatically following the vote on 23 June. We have already set to work to identify the challenges and opportunities ahead as we enter a new relationship with the EU and, indeed, with the rest of the world in a new era for the UK.

Following the outcome of the referendum, some of the issues covered in the report are now of less significance to the UK as we negotiate our new relationship with the EU. However, our exit from the European Union does not alter our commitment to its success, and the strength and stability of the eurozone is clearly at the heart of that. That was a point made during the debate by the noble Lord, Lord Kerr, and the noble Earl, Lord Caithness, among others. A sensible way of maintaining the prosperity I just referred to is to make the economic, financial and fiscal reforms required to bolster the eurozone’s ability to withstand any crisis that lies ahead. This is important not only for those countries that have adopted the euro but for other EU member states, and indeed for other European countries. That is why we have taken a keen interest in these reports. I thank the noble Baroness, Lady Falkner, for securing the debate, and all noble Lords who have contributed.

Given the outcome of the referendum, the new context for any consideration of the relationship between the euro area and non-euro-area states, and the need to provide the new Prime Minister and her Cabinet with space to develop their negotiating position for the UK’s exit from the EU, the Government judged in July that it would not be appropriate to provide a full response to the report. The Government instead responded by a letter, referred to in the debate, noting these changed circumstances. I hope the committee understand the reasons behind that approach, which I agree departs from usual procedure. I assure the committee that no discourtesy was intended, but I hope to set out some of the Government’s thinking.

It is clear that the fundamental economic challenges facing the euro area have been well known and anticipated since its very inception. One of the themes running through the report is the tension referred to in the debate between, on the one hand, the imperative of a common monetary policy for the eurozone, and on the other the often countervailing pressure from the democratic institutions within the member states, as paragraph 182, for example, shows. If one looks at the conclusions of the report, one can see that paragraph 4 on page 61 makes the same point. Implied loss of sovereignty was certainly a central factor in the UK’s decision not to join the euro, a point referred to by the noble Lord, Lord De Mauley. However, those who chose to join have certainly been working hard to introduce the institutional and policy reforms to make the euro work better. At Maastricht, for example, member states agreed on common fiscal rules through the stability and growth pact, designed to prevent member states from running unsustainable fiscal positions that could cause problems for other member states.

However, the eurozone showed quite clearly that the reforms had not gone far enough, although the noble Lord, Lord Dykes, reminded us of the currency’s achievements since its inception some time ago. While the subsequent agreement on the six-pack and two-pack measures undoubtedly strengthened the EU’s fiscal rules, and though the banking union addressed certain financial issues, none the less I think it is broadly recognised, as came through in the debate, that some of the key issues behind the eurozone’s problems still need to be addressed. So now we have the five presidents’ report, which makes an important contribution to doing so and drives forward the debate on how to improve economic governance within the euro area.

As I said a moment ago, this is of real importance to the UK, regardless of our membership of the EU. While many of the conclusions of the committee’s report referring to the relationship between the euro-ins and euro-outs in the longer term are now of less relevance to the UK, it is still quite simply in our interests that the eurozone is a strong currency area, working successfully in the wider European Union, a point made a moment ago by the noble Lord, Lord Kerr. To achieve this, the eurozone will likely need to pursue closer economic and fiscal integration. Clearly, this is fundamentally a matter for the Governments of the eurozone countries to determine themselves. We know it is not an issue for us to decide, but I will briefly highlight some of the main points in the committee’s comprehensive report, which the Government support.

First, it is most certainly the case that the fiscal policies of an individual country can have a significant spillover effect on other countries. It is for that reason that there are calls for a much greater degree of economic and fiscal co-ordination than we have at the moment. But as the report again makes clear we must be alive to the fact that, when we talk about a fiscal union, this is a broad concept indeed. I read with some interest the exchange between the committee and the then Financial Secretary to the Treasury on the subject of fiscal union. At points it read a little like an Oxford tutorial on a philosophical concept.

It again came out in the discussion that it would be wrong to overlook the wide range of views among the euro area members themselves on how best to proceed. There are important debates among the euro area member states on the precise level and type of integration that is needed to make the euro work as a source of stability of jobs and growth. It is a live and sensitive debate. The report outlines this, for example, in the section about risk reduction and risk sharing, to which a number of noble Lords have referred. Clearly it is down to the euro area to decide on the reforms to be taken and the timetable of implementation.

Secondly, we agree entirely with the committee’s assessment that the drive towards improving competitiveness in the euro area should focus on enhancing productivity. As noble Lords will know, this challenge affects all the economies in the euro area to a different degree, including the UK, and the Government are working hard to address it through our national
productivity plan. I can see the case, as is suggested in the five presidents’ report, for the creation of national productivity boards to support competitiveness across the euro area and the wider European Union. They can provide an independent assessment of where further reform, including structural reform, is required.

Thirdly, we support the view of the importance of the macroeconomic imbalances procedure—the MIP—as a surveillance mechanism, particularly for the euro area. This would aim to identify potential risks early on, prevent the emergence of harmful macroeconomic imbalances and then correct any imbalances already in place. However, as the Commission’s report says, consideration of how to reform this process is as yet limited in the five presidents’ report and we need to see the appetite of member states to take this forward. Again, the issue of political will was mentioned during the debate, particularly by the noble Lord, Lord De Mauley.

Lastly, the committee is right to raise the important issue of democratic accountability, a point well made in paragraphs 222 and 223 of the report. What mechanism is chosen to achieve this will ultimately depend on the measures for economic and fiscal integration which are eventually agreed. Those reforms will, of course, primarily be down to the eurozone member states to determine for themselves. Given the emergence of political parties throughout Europe which are hostile to the EU, this is one of the biggest challenges facing the eurozone and the EU. The issue of democratic accountability raised during the debate, as I said, is one of the most critical issues and I was interested to hear what the noble Baroness, Lady Falkner, said on this subject.

Perhaps I may briefly touch on some of the points raised during the debate. If I do not deal with all of them, I shall write. The noble Earl, Lord Caithness, asked why it took so long to set up the European Fiscal Board. The gestation periods in the European Union are notoriously long and the timing of appointments was a matter for the Commission. I note that the board will be in place in time for the 2017 European semester process.

A number of noble Lords mentioned the EDIS, the EU deposit guarantee scheme. I see this as a final element in delivering an effective banking union, although the noble Lord, Lord Butler, made the point that this was a necessary rather than a sufficient condition if one is to get the kind of stability he was talking about.

On the question of CMU, which again was touched on, we welcome the Commission’s approach to the project. The UK will continue to contribute to the CMU, and the need remains for Europe’s firms to access capital-based finance in order to grow.

As the noble Lord, Lord Butler, mentioned on the question of the White Paper, the timetable has slipped a bit. The recently published 2017 work programme confirms that the proposed White Paper will now be broader in scope, setting out steps on how to reform an EU of 27 rather than just economic governance in the euro area. We will need to see how the political uncertainties inherent in the elections in 2017 are addressed. He also raised the key question about the future of the euro. As someone with an Oxford college background he left the question—which of the two options we would end up with: a flourishing currency, or going over the cliff—unanswered.

This report has come at an interesting time in our relationship with the European Union. We are very much at the start of a new chapter, and one which, at this stage, largely remains to be written. Many of the conclusions in the committee’s thorough report refer to the longer-term relationship between those EU member states that are part of the euro area, and those that are outside. As I have said, following the outcome of the referendum these issues will now be of less significance to the UK as we negotiate our new relationship with the EU. However, as we forge ahead to create a new relationship and a new role for the UK, we will also continue to support and take a keen interest in the closer economic and fiscal integration of the eurozone countries. A stable and prosperous eurozone is in the interest not just of those countries themselves, but of all their European neighbours.

We will therefore consider closely any changes that are proposed, and act to protect the UK’s interests where necessary. The noble Lord, Lord Tunnicliffe, asked about the single market and passporting. I will not irritate him and the committee by reading out the line to take on this subject. The country voted to leave the European Union, and it is the duty of the Government to make sure that we do just that, but up to the point of leaving we remain a member of the EU, with all the rights and obligations that membership entails—a point made by the noble Earl, Lord Caithness. While we remain a member of the EU we will continue to play a role representing the interests of the British people. In particular, we will ensure that we protect the UK’s interests as the process for completing Europe’s economic and monetary union continues.

3.26 pm

Baroness Falkner of Margravine: My Lords, I thank all noble Lords who have spoken in this debate. I am particularly impressed by the diligence of noble Lords who were not members of the Select Committee because the report cannot be described as a light read. I also acknowledge, in particular, the interest of the noble Lords, Lord Dykes and Lord Kerr. As chair of this sub-committee, my regret is that the noble Lord, Lord Kerr, is not there to enrich our deliberations. I have heard much about the time he was there, and I am very sorry not to have experienced it.

I cannot pick up all the very valid and rich points made, but I start by thanking the Minister for his response, which is quite comprehensive. I did not bring up the Government’s response in my opening remarks because the political situation has evolved so much since our report came out a good six months ago and since the referendum of 23 June that the committee as a whole decided to let it go. We knew that circumstances had moved on. Like the noble Lord, Lord Kerr, I am extremely relieved that the Minister has reiterated the Government’s engagement with developments that will take place.

The noble Lord, Lord Giddens, highlighted the central role of the German surplus, and it is worth picking out one fact from our evidence: the German surplus in terms of the eurozone is now only €6 billion
Baroness Falkner of Margravine: I noted the comment of the noble Lord, Lord Giddens, on the missing sixth president, in terms of the number of presidents. It is also interesting that the missing sixth president is a woman, on a day that women are doing rather badly in political life generally.

I also want to pick up the point made so eloquently by the noble Lord, Lord Dykes, on the speed, in a historical perspective, with which the 19 countries have come together to embark on this endeavour. There was a tone of pessimism beyond my own pessimism, which was echoed by the noble Lord, Lord Butler, and several other noble Lords. I have no electronic gadget that is charged or that seems to work in this room, so I was trying to work out from memory when the United States became a single currency zone. If I remember correctly, it was in the early years of only the last century.

Lord Dykes: In 1910.

Baroness Falkner of Margravine: I am told it was in 1910. That is when I thought it was, but I was afraid to say so in case I was wrong. Not having a reliable electronic gadget to tell me whether I was right or wrong made me feel quite insecure, so I am very glad the noble Lord, Lord Dykes, confirmed that. If you look at the span of time from when the United States became a federation to this stage, what is happening in Europe is truly remarkable. With all of us expressing doubts, as the noble Lord, Lord Butler, did, about whether this is a road map with a road that leads over a cliff, my feeling is that it will not lead over a cliff, but a core group will move at a different, faster, speed, to the rest of the 19 countries.

I turn now to the comments by the noble Lord, Lord Tunnicliffe, who seems to be most pessimistic about the whole thing. When he asked whether the Government thought that the eurozone was liable to survive another banking crisis, he must have had in mind Deutsche Bank and the parlous situation of Monte dei Paschi di Siena. I remind him that it is not the eurozone and its regulatory structures alone that are responsible for stability in our banking sector now, because the Basel rules, which were incorporated into the eurozone, are, of course, the backdrop. We have had stress tests, and we have backstops now. Obviously these are extremely large and indebted banks, but, on the whole, the tools we now have to cope with financial crises within the eurozone are very different and much stronger than they were some years ago.

I conclude by reminding the committee of one thing that I did not touch on: the title of our report. It was deliberately chosen to echo the comments of Mario Draghi, president of the European Central Bank, in the context of the Greek financial crisis and the lack of confidence of the financial markets in the eurozone. He said that it would do whatever it takes. The United Kingdom should will it to do whatever it takes in its interest and ours. We would all be better served if the eurozone survived and thrived because the consequences of it not doing so would not be good for us either.

Motion agreed.

Online Platforms and the Digital Single Market (EUC Report)
Motion to Take Note

3.34 pm

Moved by Lord Whitty


Lord Whitty (Lab): My Lords, this is an important and complex subject and I will get out of the way the obvious elephant in the room immediately: it was produced two months before the Brexit vote and clearly a lot of the recommendations, as with many of our reports, are directed at a situation that no longer is likely to exist. Indeed, the report was obviously triggered by a proposition from the Commission, which was looking at the digital single market as a whole and in particular at the issue of large platforms from the point of view of their effect on business and social life within Europe as a whole, in both the protection side of it and the issue of industrial policy, if I can put it that way. Nevertheless, the same conclusions apply to British authorities as those that are directed at the Commission. Issues there have already been taken on board in the responses from the Government and, in particular, the Competition and Markets Authority.

I suppose it is the timing of this debate just before we all go off on a brief holiday that limits the number of people here—which I regret—but it could also be that it takes some time to get your head round this rather complex subject. It certainly did for my committee and its chairman. Some of the committee, including the chairman, did not initially think that they used platforms but of course we all do. We use Google every day as a sort of public service to access information. We do our shopping via Amazon and we book our holidays through Booking.com or one of the other platforms. They have hugely improved the quality of life in many respects, in their rapidity and range of access for doing business and organising our lives.

Of course, they are—in the best as well as in the negative sense—hugely disruptive technologies. Digital technology as a whole is the biggest disruptive technology of my lifetime. The operation and dominance of digital platforms in our lives disrupts not only the way we do business—in particular the relations between producers and consumers, which is at times quite blurred now—but also issues such as intellectual property and employment. It has changed how contract law and other aspects of life operate.
One reason we looked at the Commission’s proposals in detail was that there was a proposition—an option from the Commission—that there should be a particular regulatory framework to govern platforms. As the report shows, in a little table at the beginning of the document, thresholds vary from the massive dominance of online platforms to one that operates to organise your dog walks in Battersea Park. A single regulatory framework seemed a bit ambitious. Nevertheless, the development of platforms has been disruptive not only to the way we do business and organise our lives but also to various regulatory frameworks. Those regulatory frameworks vary from the European level in aspects of competition policy right down to the local level—for example, in the effect of Uber on the municipal regulation of taxi cabs in various European cities. They are hugely disruptive and if we look at the various frameworks, they hit contract law, competition and merger law, employment law, consumer law, data protection, copyright and taxation.

Some of those we decided we would not take on. We took the early decision that overall, for all platforms, a comprehensive, omniscient, regulatory framework was not an acceptable proposition in this respect. However, we said that many of these regulatory frameworks need updating. They need to improve their speed and to catch up with technology in quite a heavy way. Just to make it clear, the aspects we did not cover are issues such as intellectual property, employment rights, taxation and so forth. That is for another day because there are important implications in those areas, as we have seen in recent court cases. Therefore, we concentrated on competition law, mergers, consumer protection and data protection. We also looked at the issue of what I call industrial policy—it is probably an old-fashioned term—to answer the question of why there is not a European or a British Google.

I shall say just a word on defining platforms. Broadly speaking, we found that all platforms shared one thing in common—they used the internet to connect consumers and businesses and drastically reduce transaction costs in the process. That aspect means that they are also subject to what the economists call the network effect. The more consumers and businesses that they connect, the more useful they become and the bigger they get. We concluded that, while defining online platforms is an insufficient basis on which to build a case for specific regulation, it helps us to highlight the importance of scale and the ability to achieve scale quite rapidly, the control of data, and the informal traditional relationships between consumers and businesses. They are all significant factors when considering the effectiveness of existing regulations.

The issue of scale takes me on to the first area of the regulatory framework for competition and merger law. It raises important questions. Overall, we found that while competition law was flexible enough to identify different forms of abuse of a dominant position, it was too slow to respond to our extremely fast-moving markets. We recommended that competition authorities increase their use of interim measures so as to require a firm to amend its alleged anti-competitive practices before an investigation has concluded, and that time limits can be imposed on the process through which the accused business can table commitments to change its behaviour. The exemplar of this in a negative sense is the ongoing problem between the Commission and Google, which has been covered in the press again this very week.

We also recommended that the EU merger regulation should be modified to take into account the acquisition of small digital firms whose revenues fall below current thresholds. This is an important aspect of this market. The scale of the largest online platforms means that they can rapidly become the main provider in a specific sector or, indeed, a wide range of sectors, so that they become an unavoidable trading partner for businesses and consumers. If you are a small bookseller, for a long time it has been inevitable that you have to use Amazon, which covers a huge range of products for businesses and consumers. Small hoteliers are almost bound to use Booking.com or TripAdvisor, or one of the other dominant platforms. We therefore also recommended that codes of practice should be developed by the competition authorities where asymmetries of bargaining power between the platform and those who use it could result in unfair terms and conditions being imposed on the trading partners. This was not the only example, but we had the most evidence on the practices of online travel agents, which force hotels to offer them their best price through price parity clauses and were alleged to have dropped hoteliers up and down their ranking approval ratings if their results did not comply.

A key recommendation of our report was that the CMA in Britain, at national level, should investigate those practices. We are delighted that the Government and the CMA have picked up the recommendation in that area, and that the CMA is currently investigating the practices of online travel agents. Can the Minister provide us with an update on that investigation, in terms of its timescale, and so on?

On the question of mergers and takeovers, our inquiry found that the largest dominant online platforms were able to acquire smaller technology business without the oversight of competition regulators at the European level. We found that the UK was very far advanced and the best country in Europe for small technology companies growing up—particularly in the fintech area—but that once they had reached a certain level of presence in the market, because their assets were pretty small, they were rapidly taken over by large, dominant platforms, either in the fintech area or more generally. There are a lot of examples of European companies being taken over in that way. Beyond changes in the law, I wonder whether the Minister might provide some assurance that the CMA and, for the moment, the Commission are able to investigate mergers that run the risk of reducing competitive pressure on larger firms and dominant platforms for the long run.

Another aspect is the collection and use of data by these large platforms. Many of us think that Google is free. It is not; none of these platforms is free. We give them our data and they use those data in various ways, some of which are completely sealed from consumers and others which are pretty evident because of the adverts they get in return. Through advertising, selling on the data and the reuse of the data we manage to provide them, through complex and completely
[**Lord Whitty**] incompressible algorithms, with the basis of their operation through our data, as individuals or as small businesses.

Since data protection is the life-blood of these platforms, and it provides the connection between them and the multisided relationship with consumers and businesses, we find that data protection regulation is also an important regulatory area. We were concerned to find that consumers’ knowledge of how their data were being used was pretty low. Consumers’ trust in how they were being used, even if they knew it, was also pretty low.

It is true that online platforms have developed some codes of practice under the existing data protection directive, which is 20 years old now and therefore not fit for purpose. However, our inquiry recognised that we are about to move into, or have just moved into, the area where the forthcoming general data protection regulation will apply. It will make all businesses, including online platforms, liable for ensuring that users are informed about how their data are collected and used. The regulation also provides room for businesses to innovate through the use of, for example, privacy seals.

There was a recommendation from the Science and Technology Committee in another place for a traffic light system to inform consumers of the efficacy of platforms’ and other organisations’ data policy. We hope that is being pursued. However, we also have to recognise that, following 23 June, the way the implementation of the general data protection regulation will play in this country is in question. It would be helpful if the Minister would confirm that the Government plan to implement the GDPR in full or, if we are outside the European Union or the EEA, that they will seek to gain a certificate of equivalence for the UK’s data protection policies so that data can continue to flow freely between the UK and the EU.

There is overlap between data protection issues and general consumer protection issues, so while online platforms provide great benefit for consumers—there are some pretty positive stories in some areas of the collaborative economy relating to protecting consumers—we felt that online platforms could be more transparent about how they operate, for example, their ranking system and how they present their search results when you look for a holiday, an airline or a Christmas gift, and then how they undertake personalised pricing and price discrimination, which is a very dark art and one on which there is little detailed information. As quite a lot of this becomes consumer-to-consumer transactions, are they protected under existing consumer law?

All these questions are an indication that the consumer protection regulatory framework also needs updating to keep pace with modern technology. There is an update from the Commission on the application of the unfair commercial practices directive, but we need to take that further. Again, on the hotels example, it is not only in Britain and Europe that this is an issue; we have had some discussions with Mr Pascal Lamy, who these days is the chair of the UN World Tourism Organization, who has picked out that this is an issue globally in the way the tourism industry operates. I wonder whether the Minister can give us some general insight on how the Government see these issues and on what steps they are taking to address these concerns, whether through best practice or information as well as through direct regulation.

Finally, I turn to developing this technology faster within the UK. We have felt for a long time that in terms of completing the single market within Europe, the digital single market is a very important prospect. That is now receding as far as the UK is concerned but nevertheless it is important that the Government put in the negotiating portfolio—I do not expect them to say a lot about it today—the importance of ensuring that Britain continues to be in some way a member of the digital single market. That has an implication for the development of companies because a company’s success in this area is dependent on an ability to develop scale, and you will operate at scale only if, like the American or the Chinese, you are in a very large market. Europe is a big enough market for that to develop. There are reasons why it has not developed, one of which is the fragmentation of previous regulatory structures. We were hoping that the digital single market provisions would take us away from that so that we would have a genuine single market in this area, but with the absence of Britain’s participation in that, we clearly have a problem. There is a real issue about start-up companies. If they get off the ground here and begin to operate, they are taken over by large, usually American-owned, concerns. Part of that is also a question of access to finance for such companies here.

There is a wide range of questions here. This was a fascinating new area for me and some other members of the committee, although my colleagues here have greater expertise than me and will no doubt add questions. We have had a response from the Commission and the Government, and I thank the Government for their response, but we need to take these things further in the new context. I beg to move.

3.52 pm

**Lord Aberdare (CB):** My Lords, I am a member of your Lordships’ European Union internal market subcommittee, ably and affably chaired by the noble Lord, Lord Whitty, with outstanding support from our clerks. It is a great pleasure to follow the noble Lord, although I fear that I am going to reiterate many of the points he has made much more tellingly and elegantly than I shall be able to do.

I shall address two questions: should we be concerned about platforms from a regulatory point of view and what sorts of regulatory action might be needed? No single definition can cover the huge variety of digital online platforms, extending to search engines, such as Google, online marketplaces, such as Amazon and Booking.com, music and video platforms, such as Spotify and YouTube, payment systems, such as PayPal, social networks, such as Facebook, LinkedIn and Twitter, shared economy platforms, such as Airbnb and Uber, and a vast range of more specialist platforms.

Generally accepted features of platforms is that they are multi-sided, enabling two or more different groups to come together and interact, such as advertisers and consumers, buyers and sellers and drivers and passengers, and they often exhibit network effects, whereby the more users they have, the more useful they become, thereby attracting yet more users.
Online platforms play an increasingly important part in commercial activity and people’s daily lives. There can be no question that they provide services that people want by giving consumers access to a wide range of new or improved services and products easily accessible online and by giving providers, including smaller business providers, much wider scope to reach potential markets, including by creating new forms of provision, as Airbnb and Uber do, with disruptive effects on existing services.

Online platforms represent an enormous opportunity to develop new and better ways of doing things to create new marketplaces and forms of commerce and to generate economic and social benefit. A key regulatory requirement is not to close off those opportunities but to ensure that platforms can continue to be developed, to grow and flourish. In any case, because of their huge variety in scale, type, nature of services, target users and so on, as we have heard, it would be virtually impossible to come up with any “one size fits all” regulatory approach. We shared the conclusion of the European Commission that it would be inappropriate to try to devise a specific overarching regulatory system aimed at platforms in general.

However, there are some platforms which, because of those network effects, have grown to a point where they have a dominant position in their own fields and wield substantial market power—a winner-takes-all situation. Examples include Google in search, Booking.com in travel and leisure and Amazon in online retail. It is these that any regulatory approach should focus on to ensure that they are not abusing their strength to disadvantage their users or competitors, many of whom may be their users as well.

The report focuses on three main areas of potential concern: competition issues, whereby platforms may use their market power to reduce competition via unfair pricing or preventing market access; data protection issues, arising if platforms use the vast quantities of personal and other data that they collect in inappropriate or illegal ways; and consumer protection issues, relating to the transparency and completeness of information given to users and to the remedies available when problems occur.

I will briefly outline—reiterate is probably a better word—some of our conclusions in relation to these three areas before suggesting some general principles for regulation and oversight of platforms. Not all of these were addressed in the Government’s four-page response to our report, and I hope that the Minister may be able to expand on that response today.

We felt that the existing framework of competition law is generally flexible and robust enough to address issues that may arise in relation to online platforms. However, some enhancements would be desirable to improve its agility and efficacy in tackling this very fast-moving sector. Our recommendations included more frequent use of interim measures and time limits to speed up competition cases; the development of codes of practice to discourage unfair trading activities; and amendments to merger regulation thresholds to address the problem of innovative new entrants being acquired by large online platforms for their own competitive advantage—what the Economist calls “shoot-out” acquisitions.

We were particularly concerned about some pricing practices, notably the use of price parity clauses which require sellers on a given platform always to offer their lowest available price on that platform, therefore taking away the opportunity to offer better deals to, for example, people who come into a hotel off the street. There was evidence that this could act as an obstacle to competition—for example, in the online travel agents’ sector, which is dominated by two major platform suppliers. As the noble Lord has told us, one of our specific recommendations was for the Competition and Markets Authority to look into that sector. Another concern is the possibility of personalised pricing, when different prices may be charged based on data held about an individual’s habits, interests or past activities.

Platforms gather large quantities of data about their users, including much personal data. Users may not be fully aware of, or happy with, how those data may be used. Consumers clearly tend to value the convenience of using platform services over the privacy of their personal information, which makes it still more important that there should be clear guidelines about what data are held and how privacy and security are assured. We were attracted by the idea of a privacy seal—a sort of kite mark but with gradings or traffic lights—to encourage competition between platforms on the basis of their privacy features.

The EU general data protection regulation, which comes into force in May 2018, should address many of these data-related issues—for example, through its provisions on making data portable between platforms, as long as they are clear, practical and properly enforced. However, there is of course the question of whether the UK will sign up to them.

Consumer trust in platforms is low. Consumer protection law may need updating to require platforms to be more transparent about their obligations to their users, which may be less than in normal business-to-consumer transactions, and how they present information such as search results or reviews and ratings.

In the report, we emphasise the need for a consistent and concerted approach at European level, to avoid regulatory fragmentation between member states, which could undermine the goal of creating a digital single market. This may present a challenge to the UK in its Brexit negotiations, not least because the UK is seen by many as having most to gain from the digital single market and as one of the most promising breeding grounds outside the United States for future large-scale online platforms—the European Google that the noble Lord, Lord Whitty, mentioned.

In summary, I suggest three key principles for government in considering platform regulation. The primary aim should be to encourage and support innovation in the development of platforms, and to prevent obstacles to their growth: avoid over-regulation; promote access to markets; find ways of stimulating investment and access to capital; and recognise the strategic importance of innovation.

Secondly, government should ensure that existing laws and regulations are properly applied and enforced in relation to platforms and that, when they fall short, appropriate adjustments are made to address specific
issues arising from the nature of online platforms. Regulatory activity should be strongly focused on platforms whose size and market power make them particularly likely to distort markets and competition. And we should support bodies such as the Competition and Markets Authority and the Information Commissioner’s Office, which are already doing a good job of ensuring that platforms operate fairly—not forgetting the courts, as in current cases involving Uber and Deliveroo.

Thirdly, government should be vigilant for new issues arising from the fast-moving world of online platforms. We suggested that the Commission set up an independent panel of expert advisers to serve as a channel for emerging concerns, to assess their significance, and make policy recommendations.

I end with some specific questions to the Minister arising from the points I have covered. What plans do the Government have to look at changes to the competition regime to make it faster and more effective in relation to platform-related concerns? Will the Government look into the merits of developing codes of practice for platforms, perhaps based on the experience of the groceries code? Will the Government look at the idea of a graded privacy seal to increase public focus on how platforms protect the personal data they amass? What is their response to the suggestion of an independent expert panel to advise on platform-related issues requiring possible action, which might be relevant for the UK as well as, or instead of, the Commission? Finally, what specific support will they offer, not least to SMEs and start-ups, to encourage the development of new and ambitious UK-based platforms?

Digital platforms can be a force for good for our economy and society, provided that Governments are vigilant in ensuring that they remain open to competition and fair, transparent and secure for their users and consumers.

4.02 pm

Baroness Donaghy (Lab): My Lords, I am grateful for the opportunity to contribute to the consideration of this report, which was published seven months ago. It is fair to say that the committee was aware that it was taking on a huge task. For me, at least, it was a very steep learning curve. My noble friend Lord Whitty steered us through the depths and shallows of multisided platforms and the internet of things. He deserves credit for the quality and balance of the report. We were privileged to have an excellent secretariat in Alicia Cunningham and Kilian Bourke—I still do not know how they managed to crystallise the definitions and analyse the benefits and challenges of the digital economy in the way they did. I mention also those who gave confidential or publicly available evidence in writing or as witnesses. The submissions were from tiny organisations and global ones; I thank them for contributing to a weighty and important subject and helping us to build this foundation of knowledge.

My comments on the report and the Government’s response are personal and an attempt to be forward-looking and positive. First, it is clear that the UK is ahead of the pack in relation to other European countries. We identify more easily with the dynamism and creativity of the American market, and less so with protectionist approaches.

We need to do two things to maintain and accelerate our progress. We need to invest in the industries and to solve the conundrum that the minute a UK company develops an idea, brand or new area, it is immediately snapped up by the American giants. Our report states:

“In 2010 early stage investment in the US was valued at $20 billion, whereas Europe in the same period saw investment of approximately €3.8 billion”.

United States venture capital funds were behind more than 50% of London start-ups; 70% of global venture capital heads to the United States. Our report drew attention to the lack of investment being “a major obstacle to generating economic growth across the Union”.

We urged the Government to look at the United States’ Jumpstart Our Business Startups Act, or JOBS Act, as an example of scaling up. I have to say that the Government’s response was disappointing. On that recommendation, they recognised the value of learning from best practice, which,

“cannot necessarily be imported wholesale into the UK”.

That is going through the motions, and gives no reassurance that active consideration is being given or that action will be taken—and I ask the Minister whether the Government have updated the consideration since their letter of 20 July.

Again going back to the letter of 20 July, on investment, the Government were, “helping facilitate and build a market”, for equity finance, and mentioned the figure of £219 million to be contributed to,

“UK high growth SMEs at the end of December 2015”.

High-growth SMEs presumably cover a wide range of companies and skills, and we must assume that the share of the £219 million for UK digital start-ups is much smaller. This is simply not good enough and shows that the Government are relying on individual initiative to build a digital economy. The danger is that this will enrich the individual and the United States of America, but not the UK. Lack of start-up investment opportunities and ongoing support may well explain the pattern of selling UK talent to USA global companies.

The Government must scale up their scale-up.

One feature that we encountered was how fast-moving this area is, where last year’s winner can quickly become this year’s nobody. The Competition and Markets Authority called it a “disruptive cycle of innovation”. As a former trade unionist, to me the word “disruptive” meant either a go-slow or a strike, so I found it quite a re-education to be involved in this report, because to be disruptive in this sense was used by a lot of witnesses as an entirely positive thing. So re-education has taken place.

Professor David Evans reminded us that only eight years ago,

“MySpace was the dominant social network; it was not Facebook at all”. 
Trying to cope with that fast-changing scene made it extremely difficult to deal with subjects such a monopoly and regulation, which I believe our report dealt with very well.

One slight niggle is that the CMA—and this applied to all the equivalent European competition bodies that we met—was of the view that any inquiry on allegations of abuse of power would take as long as it takes. So it recognises disruptive cycles of innovation but seems not to have any sense of urgency about dealing with allegations of abuse. I think that that leaves consumers in a vulnerable position, and I ask the Minister whether he agrees.

The report makes an important contribution to such areas as transparency, restrictive pricing practices and bargaining power, but data protection is a subject where consumers are potentially most vulnerable. As our report says, the complex ways in which online platforms collect and use personal data mean that the full extent is not sufficiently understood by consumers. We pointed out the lack of trust in how online platforms collect and use consumers' data. Trust was worryingly low, which is a barrier to future growth.

As the noble Lord, Lord Aberdare, said, the irony is that that lack of trust goes side by side with many consumers sharing more personal data with online platforms than they share with their own spouse. The majority of consumers have no idea of the value of their personal data—how they are and will be used in future. It is vitally important that the Government ensure that data protection is as strong as reasonably practical, public awareness is raised and we aim to have the same or higher standards as the rest of Europe, particularly after we leave the EU.

Finally, as a former chair of ACAS, it is not surprising that I should mention the issue of dispute resolution. The report refers to the Commission's launch three years ago of a dispute resolution platform to enable consumers and traders to settle disputes over both domestic and cross-border online purchases. It was hailed as easy, fast and inexpensive. The concern is that it has not been properly implemented, which makes the prospect of a business-to-business dispute resolution platform appear a long way off. I identify strongly with the report's recommendation that the Commission's first priority should be to ensure the effective implementation of the online dispute resolution in its current form.

This is an exhilarating field that offers our economy huge benefits and the consumer great potential. It is our job to ensure that, alongside that, there are the protections and transparency that the individual deserves.

Viscount Waverley (CB): My Lords, I have been developing for the past three years an online platform, so really wish to congratulate the committee for all that I have learned. One message that applies to what I have now heard is about consumer education. I find in the site we developed that some consumers put their personal passwords as part of their data into the site. This is their own personal email information, which I happen to know from friends is their personal protection. The committee might care to take note of that point.

4.12 pm

Lord Stevenson of Balmacara (Lab): My Lords, I thank my noble friend Lord Whitty for a very interesting report and for introducing it so well this afternoon. Other members of the committee reflected on his style, which I can understand would translate into a very effective and interesting committee. I am glad we were able to get an insight into how it worked.

As I have said before and am sure I will say again, the committee system is the jewel in our crown. It is good that we have yet again a fine example of its work. It may seem a little odd to noble Lords that I was so taken by the report that I took it to bed with me last night and read it while waiting for the result sequence to start on the American election. I will not say which I enjoyed more, but I was still reading it at two o'clock so it obviously weighed heavily.

Like my noble friend Lady Donaghy, I was a bit disappointed by the response from the Minister. It may be that she was deflated by the recent referendum result and felt that she could not therefore rise to the full exercise of responding to such a fine report because it dealt so well with the UK dimension and also a presumed continuing European Union relationship. Obviously that was not the case. As my noble friend Lord Whitty said, the report was published before the referendum. I do not think the response did justice to the report. I hope the Minister, who is standing in for the noble Baroness, Lady Neville-Rolfe, who is on other duties—I left her at it in the Select Committee upstairs—will be able to extend a little bit some of the points that were made. On reflection, as I am sure has come through in the speeches we have heard so far, much of what was said in the report, although it may have been focused on systems that will not be in operation after 2019, is still relevant to the way we will deal with online platforms in future. It is worth spending a bit more time on this issue than has been the case.

The main point that comes out of the report, which does not need to be said too often but is rather important, is that these new disruptive technologies are a good thing and are to be supported wherever we can, but they will cause really big problems for our competition area, data protection and for our broader legislative task of seeing how they affect how we operate as a society and therefore how and when they need to be regulated. They will also bite deep into some of the current regulatory structures. I will refer a couple of times to a recent experience I have been having, which is well known to your Lordships' House and will come back in the Digital Economy Bill. Secondary ticketing arrangements, which are often made relating to big sporting and recreation events, are a very good example of the dangers that can happen if we do not have the right regulatory framework. If we do not have even the right definitions for some of the things that have been happening relating to this part of the consumer space, we will end up in trouble.

The noble Lord, Lord Aberdare, in his well-shaped presentation, gave us four main points under which he wanted to address the issues. I have a couple more that I want to add, but I will broadly follow him in what he said, which is not too difficult. The first point is whether we have the right competition law in place for
Thirdly, on pricing, the committee rightly raises issues about personalised pricing and the way in which market access will be affected by that pricing. Again, with the secondary ticket arrangement, the ability to buy all available tickets and then resell them immediately at a much higher price is a completely novel view of the way in which markets operate. This is something that needs to be addressed.

Fourthly, on data protection, the issues raised were about the lunacy that most consumers—I include myself in this—are happy to surrender all their personal information to these online platforms, in which they trust, while at the same time expressing considerable disquiet and unhappiness about the way in which they operate. We have got to get ourselves right. The noble Lord, Lord Aberdare, was right to make the point about consumer education because it is crucial. We need to think much harder both as a Government and more widely in society about how we are going to get people to realise the risks they run if they do not operate sensibly in this space.

Transparency is an issue that I want to add. Points were made about the need for companies to be more open about their algorithms and about how they deal with individuals in the process. It is fine to call for that, but unless we have a regulatory approach or there is the threat of legislation, it will not happen. They are the private IP of the companies concerned and obviously they will not give it up, but it is completely wrong for consumers to be operating in a knowledge vacuum. That point was well made by the committee, but we need to be able to back that up, possibly through revisiting the Consumer Rights Act.

For the future, the report tries to bring us up to date to what the situation was in early 2016, and we are grateful for that. Things are moving on now, obviously, with Brexit and other things. My noble friend Lord Whitty made the plea that we consider, within our UK dimension—and, I presume, within the post-Brexit scenario—how we would regulate, because the digital single market, on which a lot of this is based, is a good idea, even though we will be outside the EU. It is very hard to see how we will operate. Indeed, the figures reflected in the excellent Library report, showing the proportion of online sites that operate within Europe, based in Europe and based in America, show that there is a huge imbalance already away from Europe. That needs to be addressed. It is not 50-50. When we are outside, how will we manage an arrangement under which we can trade effectively with those new corporations in Europe, but also create and develop our own unicorns—that is their technical term—which are going to be able to operate across Europe and indeed worldwide, because that is what the digital market can do?

This really is an excellent report. It allows us to think very carefully about what this new world will look like, and it will send some very good signposts of where we want to go. As I said, much of what has been discussed and recommended will be applicable post-Brexit, although the circumstances will be very different. We will not get a commentary. I am sure, from the Minister about whether these points will be taken forward, but we all assume that they will be. I hope that it will be
done in a way which is a bit better than the initial response from the Government, and I hope that on reflection they will realise that some of the issues raised here need to be dealt with. It will not be sufficient to bat off some of the bullet points made to the CMA or to the data protection area because they are important. They will be the key to regulatory action in the future, and we need to deal with them.

The noble Lord is standing in for the IP Minister, and I know that it is a bit of a stretch for him. I am sure that he enjoyed the report as much as I did and that he will be able to respond in exactly the same way.

4.24 pm

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, I shall start at the end of noble Lords’ contributions with the point made by the noble Lord, Lord Stevenson, which is that this is a bit of a stretch. I was glad to note the point made by the noble Lord, Lord Whitty, at the beginning of the debate when he said that he felt that the weeks and months that he spent on this report were an education for him. I have had slightly less time than him, so I will start by saying that there will be some questions that I will have to write to noble Lords on. I hope to address some of the points in my speech and to answer some of the questions.

I am very grateful to all noble Lords for their contributions. I take on board the point made by the noble Lord, Lord Stevenson, that these are very important issues that we must not back away from or try to kick into the long grass. Issues of the digital economy and the digital single market are critical, and they are things that we will have to address post-Brexit. I hope to give some reassurance on that in a minute. I am very grateful to the committee, and especially to the noble Lord, Lord Whitty, for his work chairing the committee and for leading today’s debate.

As well as considering how government should cultivate this new and burgeoning sector, the report makes a number of helpful recommendations. Some of those recommendations have been raised in the debate, and I will address them in my response. As the noble Lord, Lord Stevenson, said, some of these points have been addressed in my noble friend’s reply, which was not completely to the noble Lord’s satisfaction. I ran through it and noticed that there were many points of agreement with the committee’s report. The tone of the response overall was that we agree on many of the points that the committee made and accept that there are points that we can expand on.

Today I shall specifically talk about the benefits of online platforms, the impact these businesses are having on the UK economy and how we should consider issues of regulation, competition and market power for platforms. While we must make sure that consumer protection remains high, online platforms are often subject to existing regulatory rules in areas such as competition, consumer protection and data protection, so we should not rush to overregulate the sector.

First, I shall address the broader picture of the EU’s competitiveness and growth agenda and, in particular, the digital single market. As noble Lords will know, this package of measures, outlined in the Commission’s DSM strategy in May 2015, aims to bring new opportunities to businesses and consumers through increased digitisation of the economy and to create a regulatory framework fit for the digital age in areas such as consumer protection and e-commerce, data flows, copyright protection and electronic communications.

This agenda matters and will continue to matter greatly to the UK. While we remain a member of the EU, we will continue to play a role and represent the interests of the British people. This includes taking an active part in and influencing negotiations regarding the DSM and ensuring that British views are heard in the debates. We have received messages from the Commissioner’s cabinet outlining its desire to continue a close working relationship with the UK on the digital agenda.

Platforms are at the heart of the digital economy. The report rightly recognises the huge benefits that platforms can bring to consumers and businesses. These benefits extend beyond increased convenience and greater choice to include reduction in geographic barriers to services which allow products and services to be accessed by wider markets at reduced costs. The huge variety of benefits arises because platforms provide a broad range of services to consumers. Platforms include everything from search engines and social media to sharing economy platforms that encourage the use of underutilised assets.

We also need to be clear of the specific benefits that online platforms bring to the UK economy. The Government’s ambition is for the UK to be one of the world’s leading digital nations. When you walk around Parliament Square, you see people absorbed in the content of their smartphone. They may be playing games such as Candy Crush Saga, shopping online on ASoS or finding their way around with Citymapper. All these are home-grown platforms. British platforms are also driving innovation in cutting-edge technologies, such as augmented reality firm Blippar. This is an area where the UK has a lot to offer not just in Europe but to the rest of the world.

As the Committee’s report notes, the UK leads the way in Europe on producing unicorns—$1 billion-valued tech companies. According to a report from June 2016 by the tech investment bank GP Bullhound, the UK leads the way in Europe, with 18 out of 47 European unicorns. The Government are committed to maintaining the right environment to ensure that these businesses can thrive in the UK and across the world.

The UK has one of the leading tech sectors in Europe and our citizens are among the most avid online shoppers. The UK therefore stands to gain more than most from the development of the digital single market and a competitive framework for online platforms, and stands to lose the most from a fragmented and disjointed regulatory picture. The UK is inextricably linked to a global market, which should not be fragmented.

Platforms are notoriously difficult to define, as the report outlines, although we can identify a number of characteristics that they share. These include the ability to create and shape new markets, the use of the internet to foster interactions between different groups
The debate around platforms has a tendency to revolve around problems, but let me highlight some of the issues that platforms have sought to answer. Through networks, platforms are offering new solutions to many issues that Governments have previously looked to regulation to resolve. The Government want to empower consumers to find the best deals. Platform-based services like peer-to-peer reviews or price comparison websites have helped to achieve this without the need for regulation.

These new models may challenge existing ways of doing business, and we of course must make sure that we maintain appropriate rules. However, we should also remember that online platforms are often subject to existing or forthcoming regulation. The general data protection regulation, for example, which comes into force in May 2018, will give consumers more control over how their data are to be used. I should make it clear that the UK will implement the regulation; that was announced by the Secretary of State in the other place, and we are currently working on how best to implement it.

Industry-led alternatives to regulation are also helping to set standards for platforms. Sharing Economy UK, the representative body for the collaborative economy, has developed a trustmark to promote best practice for platforms and their users, as well as identifying where vital features such as insurance policies are in place when using collaborative economy platforms. The noble Lord, Lord Aberdare, and the noble Baroness, Lady Donaghy, referred to the issue of trust in platforms and websites. Such innovative solutions present a challenge to government to consider whether regulation is the proportionate response and whether existing regulation remains fit for the modern age. While we must be careful to make sure that consumers are adequately protected, our starting point should see the development of online platforms as an opportunity to be embraced and not a threat to be regulated.

One area that the committee’s report looks at is the issue of competition and market power. Accelerated network effects, resulting from increased connectivity and very low marginal costs for rolling out services to additional consumers, mean that platforms can often obtain a dominant market position more quickly than in traditional markets.

Nevertheless, we must acknowledge the different dynamics in play. It is important to note that the disruptive innovation, which the noble Lord, Lord Whitty, clearly explained, is more likely in online platform markets due to the low barriers to market entry, such as the low upfront infrastructure investment typically required for an online platform, which tends to be lower than with traditional business models. As a result, high market share in online platform markets is not necessarily an indicator of market power. It is easy to think of online platforms that appear to hold a dominant market position that did not even exist a few years ago. We must therefore think carefully before regulating in this area. Regulation could raise fixed costs and necessitate a larger minimum scale to be viable, increasing barriers to market entry and potentially decreasing competition, resulting in exactly the opposite effect of what we hope to achieve.

In the time available I shall try to answer some specific questions asked by noble Lords. The noble Baroness, Lady Donaghy, mentioned exclusive access to data which may confer competitive advantage, and the fact that people are paying using data. We agree that issues relating to data are of concern, and that robust enforcement of competition, consumer protection and data protection law is important in addressing this, and I accept that there need to be adequate resources to do that.

The noble Lord, Lord Whitty, talked about codes of practice which should be introduced in the online travel and other sectors. The CMA will continue to use its range of market powers where there are risks to consumers in markets, including creating codes of practice if appropriate in the circumstances. We encourage consumers and businesses, if they have concerns, to contact the CMA to make sure it can address them, albeit independently of government.

The noble Lord, Lord Whitty, also asked whether the Competition and Markets Authority should make greater use of interim measures. We agree that interim measures are a powerful and effective means of avoiding significant harm while the CMA investigates underlying concerns, so we support greater use of them where appropriate, although, as I say, that is up to the CMA, which is independent.

The noble Lord also asked whether EU merger regulations should take account of low turnover being acquired by large firms in vertical integration. In this context, the UK’s voluntary merger regime has a share of supply test that allows the CMA to investigate such cases, but this should not necessarily be transposed to the EU or other jurisdictions with different legal systems and, typically, compulsory merger regimes.

On consumer protection, several noble Lords raised issues about whether consumers are properly protected in dealing with platforms under current law. There are several methods of legal protection in place for UK consumers in their dealings with online platforms which, together, we think are adequate. Many existing legal protections apply to platforms as well as other business models. For example, under the consumer rights directive platforms have a legal obligation to provide transparent information about the identity and locality of traders. The unfair commercial practices directive requires them to provide truthful and accurate information about issues such as payment procedures. Platforms have to act in accordance with professional diligence in relation to unfair commercial practices engaged in by traders on the platform, as long as they are not a mere hosting provider: this might include removal or notification of content and placing transparency requirements on third-party sales. I do,
however, acknowledge that there may be some cases where we need to ensure that the legal toolkit is correctly applied. The point has been made by several noble Lords that this is a very fast-moving market and we cannot just sit and wait and do nothing, because things move very fast indeed.

Overall, we are very conscious of the fact that following the 23 June decision on Brexit there is a very different outlook, but we are concerned that in the two years—or whatever it is—until we leave, we will continue, as I said before, to engage strongly. Thereafter we are aware of the need for adequacy within Europe and we understand the implications of leaving, but we hope that when we come to that we will be absolutely up to date with current EU standards, and that should help.

The noble Baroness, Lady Donaghy, also asked about helping these digital businesses and start-ups. We are obviously keen to make sure that we continue to be a leading nation for tech start-ups. We are a world leader in this. The digital single market proposals to update copyright law and to ensure data flow will help address this. It is also about infrastructure, including superfast broadband, to ensure start-ups are connected to global markets. As my noble friend Lady Neville-Rolfe said in her reply, through the British Business Bank’s angel and venture capital programme, £219 million in equity funding was contributed to UK high-growth SMEs at the end of December 2015.

The noble Lord, Lord Whitty, asked about the timescales of the CMA’s market study. The CMA opened the market study into digital comparison tools on 29 September and the final report will be published before 28 September next year. The study focuses on the following sectors in particular: broadband, home insurance, credit cards and flights. It will also take evidence from other sectors, including online travel.

As I said, there were several other questions on which I will write to noble Lords. In conclusion, the committee’s report and this debate provide valuable insights into online platforms and the digital single market. We will continue to carefully examine the evidence on the development of this new market. I look forward to working with noble Lords to make sure we support online businesses to grow and harness the potential of the UK digital economy. I certainly look forward to engaging with many noble Lords in the Digital Economy Bill later this year.

4.41 pm

Lord Whitty: My Lords, I thank the Minister and everybody who took part in the debate. I thank the Minister for a very full reply, particularly since he has come off the substitutes’ bench today to do this. He clearly had a rapid learning curve, not having had the several months that we in the committee had with very expert evidence provided.

I thank my fellow members of the committee who participated this afternoon, and indeed those who were unable to do so. My noble friend Lady Donaghy mentioned something I had clearly written in my notes but failed to say: my thanks also to the staff of the committee for making sense of a lot of stuff which frankly, when we first looked at it, left us all fairly glazed—even though some of us were more experienced in this field than others, including my colleague the noble Lord, Lord Aberdare.

I thank the Minister for updating us on the situation with the CMA and other aspects of government policy, and giving us a fair degree of reassurance on the Government’s intention post-Brexit for the digital single market. Frankly, without something like the digital single market, we will not be able to maximise either the benefit to the users of the technology and platforms or the huge potential there is for developing British-based talent and companies in this whole field.

A number of important points were made and I will not respond to all of them. I must respond to my noble friend Lord Stevenson’s remark that perhaps we were too soft about competition law. Maybe he is right about the way that was expressed. The Minister and my noble friend Lord Stevenson are quite right that competition law needs to be seriously updated to take account of moving technology and the definitions of abuse of dominance. It is quite easy, even in this field, to prove at least a threat of dominance; it is quite difficult to use traditional measures but dominance is pretty clear to most of us. Yet, in looking for remedies, you must also prove abuse of dominance. If there is abuse of dominance, it is quite difficult to find out without a prior signal. That is something where competition policy and the procedures and metrics whereby the competition authorities have historically worked need some serious updating.

There is the question of speed. The Google issue with the Commission has gone on for at least 15 years and is still ongoing. It covers only a small part of what could be the problem in that area. We need to speed it up; we need new measures; and we need to recognise the necessity for an update of the remedies and the definitions involved.

Another issue I wish to pick up on is the use of personal data. People are aware of this, but not sufficiently aware to complain about it. As I have said, we all notice that the adverts directed to us are closer to our buying habits than we would like; nevertheless, we do not know the totality of how our data are being used. To some extent, neither do the companies themselves, or at least their broad management. When ranking orders and search priorities are determined by extraordinarily complicated algorithms, probably no one in the company knows how that works, let alone any regulatory authority or poor, humble small business trying to work out why it has suddenly slipped down the rankings. It is important that there is a measure for doing that and it is important, as the noble Viscount said, in relation to consumer and small business education in these areas.

In certain sections of law we look at the outcome even if we do not know the reason. In equality law, for example, if the outcome is hugely and irrationally discriminatory, there is a problem without necessarily knowing the reason for it. Sometimes in this area the outcome of ‘algorithms and the interplay of different people’s algorithms can lead to discrimination against certain companies or certain classes of consumers in terms of price or ranking. If there is that degree of discrimination as an outcome, the regulatory authorities ought to do something about it.
[LORD WHITTY]
The noble Lord, Lord Aberdare, mentioned a point which I did not mention and which would need transferring into British terms post-Brexit—that, because this is an esoteric and rapidly moving area, we needed to provide to the Commission, in a pre-June context, an independent panel or some kind of arm’s-length body which would keep government, policymakers and regulators up to date with what is happening in this market technologically, practice-wise and consumer-wise. The traditional bureaucracies would not be able to keep up with that and we felt that something new was needed in that context at Brussels. It is also needed at a UK national level generally.

I thank everyone who has participated—particularly the Minister for taking this on. I underline that, since the formation of the new Administration, the department on whose behalf he is speaking today includes within its title “industrial strategy”. To some of us that sounds a bit rust belt but the need for a strategy in this area, in order to bring on what are undoubtedly a skilled workforce and dynamic, innovative companies, requires a framework of industrial policy from the new department. I hope its list of priorities includes this area as one to which the new positive approach to intervention and industrial strategy will address itself.

Again I thank everyone who has participated in both the production of the report and this afternoon’s debate.

Motion agreed.

Committee adjourned at 4.48 pm.
Special Public Bill Committee

Wednesday 9 November 2016

Intellectual Property (Unjustified Threats) Bill [HL]
Committee

1.30 pm

The Senior Deputy Speaker (Lord McFall of Alcluth): My Lords, before the start of today’s proceedings on the Intellectual Property (Unjustified Threats) Bill, it may be helpful if I say a word about the procedure that we will follow. In nearly all respects, our proceedings will be identical to those of a Grand Committee. Any Member of the House may attend and speak, Members should stand when speaking and Members may speak more than once to each amendment or Motion. I will ask the Committee to agree to each clause standing part of the Bill.

The main difference from a Grand Committee is that the Committee may vote on amendments or on the question that clauses stand part of the Bill. If, when I collect the voices, it is clear that there is no agreement, I will call a Division, which will take place straightaway. Only Members of the Committee may vote; the Clerk will call out each name in alphabetical order and Members should reply, “Content”, “Not Content”, or “Abstain”. I will then announce the result and call the next amendments or Motion. If there is a Division in the Chamber while we are sitting, the Committee will adjourn as soon as the Division Bell rings and resume 10 minutes thereafter. Do any Members wish to declare any interests that have not already been declared?

Lord Lucas (Con): Since this is a recorded proceeding, I think that I should declare that I own a trademark, which I defend from time to time with entirely justified threats.

The Senior Deputy Speaker: The noble Lord, Lord Lucas, has reminded the Committee that we are sitting in public and it is being recorded.

Lord Lucas: Before we begin, do I understand that we will follow the standard rules; that is, if we make an amendment here, the Government would not seek to reverse that amendment on Report—and that there is a full Report stage on the Floor of the House after this?

The Senior Deputy Speaker: Yes, there will be a full Report stage on the Floor of the House and I think that it needs a unanimous vote. Are there any other comments?

Lord Stevenson of Balmacara (Lab): Could you repeat that? Are you saying that even if there is a Division and an amendment is passed, it will not go forward to Report unless it is a unanimous vote?

The Senior Deputy Speaker: It will go forward to Report, but an amendment in this Committee will not be completely reversed unless there is unanimity.

Lord Stevenson of Balmacara: Sorry, I appreciate that this is new and uncharted territory, but we might as well get it right, otherwise we will tie ourselves up in knots. If it were an ordinary Bill and we were in Committee and passed an amendment by vote, the amendment would be inserted in the Bill and would be unlikely to be challenged by the Government on Report. But you have added that it would follow that arrangement only if it were a unanimous vote of this Committee, which does not seem to square with the idea that we stand in our places and provide—

The Senior Deputy Speaker: I will try to be as precise as possible—and so early on. I have the Companion to the Standing Orders and Section 8.133 says: “An amendment agreed to on a vote in committee may not be reversed on report except with the unanimous agreement of the House”. Is that clear now?

Lord Stevenson of Balmacara: As mud. So it goes through to Report stage and would not be challenged, but it could be challenged if it were unanimous on Report. That is what you read out.

The Senior Deputy Speaker: There is a difference between changing something and reversing it. Is that clear?

Lord Stevenson of Balmacara: You put me on the spot. No, it is not, but I think that I will live with it for the moment and we can work it out later.

The Senior Deputy Speaker: We could maybe provide tutorials hereafter. I ask Members to speak sitting down, because the cameras are not coping.

Clause 1: Patents

Amendment 1

Moved by Baroness Bowles of Berkhamsted

I: Clause 1, page 2, line 9, at end insert—

“(c) commissioning a product for disposal.”

Baroness Bowles of Berkhamsted (LD): Let me redeclare my interests, as this is a recorded and public hearing, that I am a retired chartered patent attorney, a former fellow of the Chartered Institute of Patent Attorneys, a member of the European Patent Institute and a representative before the European Patent Office and European trademark and design office. My husband still has residual income from the practice, which we have sold on, and I am a co-proprietor of a registered trademark. For the avoidance of doubt, I should also say that I took no part in any of the discussions that the Chartered Institute of Patent Attorneys had concerning its submissions to the Law Commission or indeed to this Committee.
I move amendment 1 and will speak to all the amendments in this group. All the amendments except Amendment 20 are the same content and are about commissioning, or causing another person to do something, and for the person doing the causing to be treated the same as a manufacturer that they commission to make a product according to the commissioner’s specification. There are nine amendments in this set, because I had two goes at positioning the same point in Clause 1—so the same point appears in two different places, in Amendments 1 and 4, whereas in the three design clauses it is in the Amendment 1 position. Amendment 2 and its counterparts in the other clauses are just consequential numbering changes.

These amendments have been made in respect of patents and the three design types. They are not made in respect of trademarks, because such provision already exists. For trademarks, a person is a primary infringer if they cause the mark to be applied, which is what someone commissioning a product is doing. This point—that it only appears in trademarks—has been discussed in evidence sessions, for example with the representative from the IP Federation; there is a brief reference on page 4 of the transcript of our meeting with them. It is a well-known concept in the field of intellectual property and I would argue that, without this amendment, there is not the consistency on the different rights that is being sought by this Bill.

But it is not about neatness. The scenario that concerns me is that of the SME, especially the “S”—the small manufacturer who gets a new commission, possibly from a large company or even a large retailer, to make some products. They may be told that the specification is the large company’s own particular design. It is possible that the manufacturer may manage to include indemnities for themselves in the contract, but it is often the case that small manufacturers get “take it or leave it” contracts. In the event that the product turns out to be an infringement of a patent or a design, the commissioner—the manufacturer is in the direct firing line. I am saying that it only appears in trademarks—has been discussed in evidence sessions, for example with the representative from the IP Federation; there is a brief reference on page 4 of the transcript of our meeting with them. It is a well-known concept in the field of intellectual property and I would argue that, without this amendment, there is not the consistency on the different rights that is being sought by this Bill.

But, when it comes to the trademark, I have caused it to be applied, so you can write to me as a primary infringer. Indeed, you might do that and say nothing about the design or patent infringement, which might come as a nasty surprise later on—who knows?

There is an unfair situation that the manufacturer always gets dragged into it and any letter to the commissioning party concerning infringement is limited to trademarks. When it comes to litigation on the merits of the infringement, the commissioner—the causer—can be brought into it, but there is always the possibility that, by then, the threats trap has somehow been triggered and the rights holder has to contend with the additional problem of a threats action, potentially including the loss of right of initiative as the plaintiff in the action.

To close on the causing point, for better consistency with the existing placement of the wording in the section on trademarks—where it appears on page 5, line 24—the provision for patents sits best where I have put it in Amendment 1, rather than where I first put it in Amendment 4, which is the amendment that I think the noble Lord, Lord Stevenson of Balmacara, supports. If need be, the wording could also be adjusted to reflect more closely the “causing another” language that is used in the section on trademarks.

I will briefly move on to Amendment 20, but I will not say much other than that I support it in principle. This is not a new point to be drawn to our attention; it appears in the first consultation response to the Law Commission from the Chartered Institute of Patent Attorneys, on page 9 of its first submission, where it says:

“For example there is case law in relation to the criminal offence of trade mark infringement that ‘applying’ the mark means physically affixing it to the goods, and does not include selling the goods, for example on an Internet web site, by reference to the mark, even where the Internet ‘branding’ is the first time that the mark is used in relation to the goods”.

This goes against what we have been told by the Minister in response to the point about whether you need something to deal with electronic marking.

I further note that, in respect of registered designs, Clause 27 of the Digital Economy Bill—in Part 4, page 27—introduces the notion that an internet link constitutes marking of a product. Therefore, it seems eminently reasonable that the marking of a product electronically should be clarified in this Bill and not merely be a matter for an Explanatory Memorandum.

1.45 pm

Viscount Hanworth (Lab): I shall speak to Amendment 20, which has already been spoken to by the noble Baroness, Lady Bowles. This is a residue of an amendment to new Section 21A(2) proposed by CIPA, the Chartered Institute of Patent Attorneys. Its concern, shared by other witnesses, is that the Bill does not make adequate provision for infringements of rights that are common in e-commerce.

It was agreed that CIPA’s amendment was opaque and misplaced within the text of the Bill. The witnesses from the BBC, which is involved in such commerce, have offered alternative amendments that I have undertaken to propose. The noble Baroness, Lady Bowles,
has proposed similar amendments, which I think we more or less agree are interchangeable. Those amendments are in the fourth group and I shall speak to them later.

Amendment 20 declares that a threat is not actionable if it relates to the kind of infringements that are common in e-commerce. It is a counterpart to later amendments that deal with permitted communications and provides a necessary link to them. That is why I have tabled Amendment 20.

**Baroness Wilcox (Con):** This is the point in the Bill where I think I can best make a contribution. The Intellectual Property (Unjustified Threats) Bill is legally satisfactory, but its difficulty lies in how it will operate in the real world. Specifically, for the many good changes that it contains to operate effectively, businesses must be fully aware of them and confident about their application. This is a problem particularly for SMEs, which often struggle to understand the complex law in the field of intellectual property. In the area of threats, it comes down to exactly what they can and cannot do and why.

The lack of engagement by SMEs with the Bill, especially an absence of written evidence, is a concerning indication of the difficulties that they face in the area. I have had my own SME and have personal experience of what it is like to receive an unexpected telephone call from a large company telling me that what I am doing is not quite right and that they would be happy to help me out and even to give me a payment for my trouble. So I understand the fact that most people running a small business are not reading all sorts of bits of paper to see what comes next for them. They cannot afford secretaries or legal fees while they are getting their businesses going. It is important for us to get small businesses going and up to that medium size where they are more secure and able to take the advice that they need.

I have one or two potential solutions that the Minister might like to think about. First, I would insert an amendment before Clause 7 reading: “Communication. The Intellectual Property Office shall take steps to ensure that the changes to the law relating to unjustified threats made by this Act are communicated to businesses in the United Kingdom, with a particular focus on communicating them to small and medium-sized enterprises in the United Kingdom”. This would be helpful, for example, in notifying businesses that professional advisers should no longer ask for indemnities to carry out a specified primary act cannot trigger a threats action. Commissioning infringing goods is to carry out a specified primary act cannot trigger a threats action.

A second solution might be the appointment of a champion for small businesses—we did this with the ombudsman for the grocery business. I am sure that the Minister does not want to find herself having to invent something, but if there is not good representation on the face of the Bill, the chances are that very little of it will feed down to small businesses. The appointment of a champion for small businesses in the field of intellectual property would be welcome. Such a champion could ensure that SMEs are fully aware of their rights and what they can and cannot do in the area of threats, and that big business could not exploit its superior understanding of intellectual property law to gain unfair advantages over SMEs.

Thirdly, a designated lead in the IPO to offer advice to small businesses about approaching and dealing with the threats provisions, while stopping short of offering actual legal advice, would also be welcome. I worked with the Intellectual Property Office when I was a Minister for Intellectual Property. Prior to that, back when I was running a small business, it was one telephone call I made to the Intellectual Property Office when I was told, “Sign nothing. Say nothing. We’ll send someone”. That is exactly the sort of help I would hope for. A small business that is approached or attacked by a large business would find that they could make a phone call and somebody would be there to answer.

**Lord Stevenson of Balmacara:** My Lords, I support the amendments introduced so well by the noble Baroness, Lady Bowles of Berkhamsted. There is very little that I need to add in terms of the general case—she made it very well. In the context of the remarks that we have just heard, a broader concern about the role of SMEs should carry weight in these debates. The anomaly of the omission of those commissioned by others who perhaps should know better is a point strongly made—the Lego example is rather a good one, even though we perhaps should not put it around too much in case people get ideas. The fact that such provision already exists elsewhere in statute suggests that, if we are trying in this Bill to level things up, this amendment and those consequential on it are very important. The amendment in the name of my noble friend Lord Hanworth is also worthy of consideration, although we will need to hear him speak to the other amendments in later groups to get a full picture of where he is coming from.

**The Minister of State, Department for Business, Energy and Industrial Strategy (Baroness Neville-Rolfe) (Con):** My Lords, on interests, I am the Intellectual Property Minister, and I have the pleasure today of speaking on behalf of the Government.

I am very grateful to the noble Baroness, Lady Bowles, for her comprehensive introduction to this large group of amendments. I am also grateful to my noble friend Lady Wilcox for her support for the Bill as whole and for the good work done by the Law Commission.

It is common ground, I think, that Section 70A and its equivalents set out the definition of an actionable threat. The sections replicate the existing exception whereby a threats action cannot be brought if the threat refers to a primary act of infringement. The existing statutory definitions of what is an infringing act lie at the heart of the threats provisions.

The amendments in this group would mean that threats to someone “commissioning” another person to carry out a specified primary act cannot trigger a threats action. Commissioning infringing goods is not an infringing act within the meaning of any of the existing statutory definitions. This is a key point. Treating commissioning as if it were infringement, for the purposes of the threats provisions, would be a
highly significant change to the law. It would introduce a novel concept and create confusion in the law of threats and more generally.

Unjustified threats are those threats which are made in respect of invalid rights, or where there has been no infringement. Amendment 1 and its equivalents would remove any protection from unjustified threats for a particular class of people who are not actually infringers at all—that could easily include the SMEs we are concerned about, on which I will come back to my noble friend’s comments at the end—and, to me, that cannot be right.

The amendment would also have other unwelcome consequences. For example, there is the defence which is available to the threaten, if they can show that the infringement did in fact occur. That defence is made unworkable in these circumstances.

I am concerned that, as with Amendment 3, there is a risk that the amendment would have unintended consequences on the interpretation of IP provisions more widely—specifically, the provisions which define infringement. Furthermore, the meaning of what amounts to “commissioning” a primary act would only become clear after a substantial body of case law had been built up. I do not think that that would be acceptable or welcome to business.

I shall now move on to Amendment 20—with many thanks to the noble Viscount, Lord Hanworth, for his explanation—which relates to use of trade marks in an online environment. I do not agree that there is an inconsistency in the threats regime. The noble Baroness, Lady Bowles, suggested that infringement law could be aligned better for the rights, but that is a wider question, as we discussed, that relates not just to threats or this particular Bill. If the amendment is intended to ensure that “applying” a trade mark in an online environment is covered more explicitly as a primary act, then in my view this is unnecessary when the threats provisions are read in the wider context of the parent Act.

This Bill will insert the individual threats provisions into the existing framework for the relevant rights. While the provisions appear in isolation in this Bill, they must be read—as I have just said—in their wider context.

The relevant sections of the Trade Marks Act 1994 do not expressly require a sign to be in physical form. It is accepted that services may be offered online under a sign in electronic form, and this applies whether the sign is included in a listing or as an AdWord. Nor do they require that the sign must be physically applied to physical goods or their physical packaging. Where goods themselves are electronic, then it follows that the sign applied must also be electronic.

That is a long way of saying that changing the provisions in the Bill to set out expressly that the online application of a sign is covered is unnecessary and, as we discussed in some of the hearings, could cast doubt on an already settled view.

I turn finally to the position of small businesses, which was so well expounded by my noble friend Lady Wilcox. I do not think that a champion is a matter for this Law Commission Bill, although she and I had a good discussion about it. I believe, as I have said several times, that this will benefit smaller-sized businesses by helping them to gain access to justice at reasonable cost in order to enforce and make best use of their IP in the sort of circumstances that she was talking about.

I hope noble Lords will allow me to enlarge a little on the measures that government has taken to help SMEs, as I think that might help my noble friend. We heard in the evidence sessions from Mr Justice Birss about the benefits to SMEs of using the Intellectual Property Enterprise Court. Recent reforms made to the IPEC—in particular, the small claims track—help to level the IP playing field for SMEs that previously struggled with cost. The Government are fully supportive of the IP pro bono initiative, launched last month, which is designed to help small businesses and individuals who are involved in a dispute about IP. The IPO also undertakes a wide range of activities that are aimed at SMEs—partly as a legacy of the time when my noble friend was Minister—and geared to promote understanding, such as: the government-funded IP audit programme; the IP for business tools; and the IP finance toolkit. I make no apology for taking this opportunity to explain that.

Regarding the guidance on the Bill, the IPO has committed to publish business guidance 12 weeks before the new provisions come into effect. In addition, the IPO will implement a full communications plan, update the online tools, make presentations at outreach events—many of which are aimed at SMEs—update stakeholders who have signed up to receive updates and use social media channels to try and ensure that we take this opportunity to raise awareness of the changes. Actually, this is a good opportunity to expound the importance of IP. The IPO works tirelessly to increase awareness of IP and to provide guidance and education at every level. I am happy to commit the IPO to communicating to SMEs in a helpful way about the changes and benefits that will be brought by the Bill.

An important point is that we will ensure, as we did for the Consumer Rights Act, that the material is pitched at the right level. I have asked the IPO to road-test the guidance in draft with small business representatives. So we will have material suitably targeted for SMEs, but also communicate to the people who provide advice and support to these businesses, such as the patent library network, growth hubs and professional IP advisers. As IP Minister, I have tried to make sure that people understand IP a bit more and, with my noble friend’s assistance, I think that this Bill is an opportunity to do a bit more of that.

Coming back to the amendments, I believe that they would in fact complicate what is currently, as drafted, a clear and consistent definition, developed by the Law Commission, of what is and is not an infringing act. I therefore ask the noble Baroness to withdraw the amendment.

Lord Lucas: My Lords, I apologise for being backward when it comes to IP law, but I am surprised that the “commissioner” is not committing anything actionable. In this internet world, if I commission a product that infringes a patent, it is easy to get it made somewhere
that is hard for the patent owner to get at and then arrange to sell it over the internet so that the importer is actually the final customer, rather than anyone who can be got at. That leaves the patent owner with no sensible place to go to enforce their patent. Is it really the case that “commissioning” a manufacturer to infringe a patent is not in itself actionable, or did I misunderstand the Minister?

Baroness Neville-Rolfe: These are quite fine points of law, but that is a fair question. Are there any other points, while we try to ensure that we answer your question accurately?

Lord Lucas: I thought that the Minister was saying to the noble Baroness, Lady Bowles, that she was seeking to introduce something new by saying that “commissioning” was not an infringement and, therefore, one could not make a justified threat to someone who was not doing anything that was actionable.

2 pm

Baroness Bowles of Berkhamsted: If I may, I think that in the kind of scenario where there is a commissioning person and a manufacturer and you can find them both, you would take action and the commissioner could be brought into it as a joint tortfeasor. If the commissioner was the big guy and the manufacturer was the small guy and you could take action just against the commissioner, as you could with a trademark, you might leave the small guy out of it. They become the prime person in the action, with the other person potentially joined in, but the issue is that you cannot write to the source of the problem.

It is true, as the Minister said, that there is a missing link in “causing” in everything except trademarks. When the Law Commission started its review in preparation for this Bill, it asked whether the law was working properly in various places and was told that it was not working as well as it could, including in relation to the amendments that had been made to Section 70 of the Patents Act following the Cavity Trays case. That has been rolled out with no change, not taking account of suggestions of areas where there could be improvement. Given that such suggestions have been made, it is appropriate that policy discussions and decisions take place. I can accept that the Law Commission does not have that power, but the legislature does. Therefore, I lay those points before the legislature.

I must quibble slightly with the suggestion that the point about unjustified threats is about getting at people who try to threaten you under an invalid patent or where there is obviously no infringement. Those are actions that, by and large, cannot be caught with a threats action; that is what the more blanket tort is needed for, or you have to go to different things, such as declarations of non-infringement or declarations of invalidity, because the threats action is not there. The law says that if you are the manufacturer or the importer anyway, you can threaten to your heart’s content.

If I may paraphrase Judge Pumfrey, as he then was, in the Quads 4 Kids case, he said that unjustified threats actions are about a rights holder who tries to keep enforcing their rights with the threat of going to court but never intending to go to court. That is why you are not allowed to threaten the customers, because that would be a soft option for doing that. However, that does not mean that people who are selling things are not infringers; they are—you do infringe if you are selling, but one is supposed to go for the person at the core of it, the manufacturer.

What I am saying, and have been supported in, is that in this day and age the notion of causing is far more relevant. Historically, it was always relevant for trade marks, because you got somebody else to mark the carton—that is where it all started—but now that we are into remote access, commissioning in one country and selling over the internet, there is definitely a missing link that is being made use of, particularly in respect of designs as well as trade marks, and probably patents to some extent as well.

That is where I stand on this. I think that I would like to test the level of support in the Committee.

Baroness Neville-Rolfe: Before the noble Baroness sits down—I say that for the cameras—I should say to her that this is obviously a Law Commission Bill. The extent of that has been explained to us as a Committee from day one. We are getting here almost into a treatise on the general law of infringement. The threats Bill needs to match the existing law, which it does. I have explained why I think the amendments go beyond that and have potentially perverse consequences.

The noble Lord, Lord Lucas, was essentially right in what he said, so I thank him for that. I think that the right thing for us to do is to stick with this wording, which the Law Commission has spent a lot of time clarifying, rather than move into these new areas.

Baroness Bowles of Berkhamsted: I would still like to test the opinion of the Committee. We do not have to do it for all the amendments; we can test on Amendment 1.

2.07 pm

Division on Amendment 1

Contents 4; Not-Contents 6.

Amendment 1 disagreed.

Division No. 1

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2.09 pm

Amendment 2 not moved.
Baroness Bowles of Berkhamsted: My Lords, as well as moving Amendment 3, I shall speak to all the other amendments in the group. Although this group involves another load of 10 amendments, there are two basic amendments, which would be applied in the five relevant clauses.

The amendment in what I might call the Amendment 3 family of amendments is similar to suggestions made by CIPA in the form of “purports to do”, to which the Minister has already responded in writing. The Law Society, in its most recent evidence, supports the idea that one who holds themselves out as a primary infringer should not be able to rely on that misrepresentation. I can share a little of the concern expressed by the Minister in her written response on the CIPA suggestion that ambiguous statements should not lead to threats, but I am not so naïve as to think that the retailers always overclaim their role by mistake; it can be done to gain commercial advantage over other retailers by making a product out to be special or exclusive.

However, “purports” is perhaps a word that carries with it suspicions that it is not necessarily true, rather than that you are being wholly taken in. But a clear “holding out”, a positive claim, should not lay traps. For that reason, I suggest the stronger, assertive wording of “claims to do”. I would be happy with the Law Society’s alternative wording of “holding out”, if that were felt to be better. So the relevant provision would then say that a threat is not actionable “if the threat is made to a person who has done, or intends to do, or claims to do, an act mentioned in subsection (2)(a)”, and so on.

In his oral evidence, Sir Robin Jacob thought that the “purports” amendment was acceptable, and in their subsequent written reply Sir Robin and Sir Colin Birss said that they did not consider satellite litigation a risk, which was another point that had been made in the Minister’s earlier written response. Sir Robin and Sir Colin did say that the amendment—here they were talking about the vaguer “purports” wording—could risk blurring the distinction between primary and secondary infringers. That line, if it is blurred, is less blurred, or blurred less often, using the stronger formulation of “claims”—or, if you prefer, “holding out”.

In the event that the claim is false, the true status of the retailer is soon revealed, because the letter that would be written on behalf of the rights holder would indicate the basis on which they thought the person was the manufacturer or importer. Including such a statement is desirable for the letter to make sense as well as for guarding your back. After saying who you are—and, if you are a professional adviser, who has instructed you—the letter would then say, “We understand that you are the manufacturer/importer of the product”, and it would quite probably cite the reason for making that assertion, which might be simply because it is what it says on the tin. The reply letter might then say, “Well, actually, we don’t really make it—we got it from so and so”, and the line is then no longer blurred. In my view, a letter exchange like this is fairer than the innocent, misled rights holder also being on the receiving end of a threats action. Indeed, you can imagine circumstances—I have come across it once—in which some devious operatives might suggest to the retailers that they could say it was their own product.

It is important to recognise that the amendment does not change what happens to the retailer. The fact is that the first letter from the rights holder will be sent if there is a clear claim by a retailer that they are the manufacturer or the importer. It will be sent with the law as it is now and with the law as proposed in this Bill. The retailer, being a retailer, will still be concerned. They will still reply saying, “Oops, sorry, it’s not really like that”, or something stiffer if the letter in reply is from their lawyer. The difference that this amendment makes is not blurring; it is the false claim that makes the blurring.

2.15 pm

All that happens with this amendment is that it prevents a further step of unfairness—however infrequent that may be—of a rights holder then finding that, having been misled or even entrapped, they are on the receiving end of a threats action, which may well be used against them not by the retailer but by the true primary infringer when they are located, because they count as a person aggrieved who can bring the action. Again, you could find that the rights holder is in the unfortunate position of having the prerogative of being the plaintiff taken away from them. Surely stopping spurious and unfair actions is at the heart of this Bill.

The Bill has already added, for primary infringement, the category of “intends to do” an act, which is something that is picked up possibly from advertising or from claims. So it is no greater a leap to accept advertising or claims “holding out” to manufacture a product to be any different from claims and advertising that you are “intending” to make a product. Possibly the Minister could tell me how she would distinguish one from the other?

I shall now speak to the second family of amendments—the family of Amendment 5—which would add clarifying wording to the end of the subsection that allows a letter to a primary infringer to reference secondary infringing acts by that same person. This section concerns text that was added for patents following the Cavity Trays case and which is being rolled out to the other intellectual property rights.

The problem revolves around one word—the word “that”, as it appears for the patents and designs clauses, and “those”, as it appears for trade marks—which seems to imply that you can mention only current acts, such as “that article” or “those goods”, and not future acts. This may be satisfactory, possibly, for a first letter, but in the subsequent exchanges, especially those about settlement and settlement out of court—any of which can constitute a threat if the wording is wrong—it is normal to seek undertakings to refrain from future infringement. After all, that is what you ask for from the court in the form of a restraining order. It is also quite normal to draft undertakings to cover infringing products or actions that are fundamentally similar to
the infringement that has been identified. Phrases such as “or colourable imitation thereof” spring to mind.

The fact is that you can say all that with regard to the manufacture, and you can now say, “Don’t sell the product”, but you cannot go on to say, “Don’t sell colourable imitations thereof”, or words to that effect. The fact that some future acts could not be referenced was brought to the attention of the Law Commission by the Chartered Institute of Patent Attorneys, and subsequently to us, together with amendment suggestions. This is another instance of where the amendment to the Patents Act made in 2004 has been discovered not to work as had been expected. It may stem, inter alia, from a 2009 FNM Corporation case where the fact of what you can and cannot say in such an undertaking was decided by, I think, Mr Justice Arnold.

So we have got the situation currently that, if you are trying to settle, you cannot write what you want to in order to settle the case. This leads you to precisely the problem that has previously existed where, in order to obtain the wording of the undertaking that you need from the infringer, you will file a case at the court, because then you cannot threaten and you can say, “In return for not continuing, or withdrawing, this case, I will have such-and-such an undertaking”—you can say whatever you like about that undertaking and you will get it signed. So the amendment to the law that was intended to make things simpler and reduce the need to rush to court—as Sir Robin Jacobs said, you can pull the knife out but you have got them at more of a disadvantage when you have the knife stuck in—does not work properly, and therefore the rollout to everything does not work.

One should always bear in mind that, although in this subsection we are talking about secondary infringement, it is secondary infringement being done by the person who is the primary infringer. So it is not a random secondary infringer from off the street.

In her response, the Minister also made the point that this could not be relevant to all kinds of IP. The answer to that is, well, yes it can. I challenge the underlying thought process that says that something having as much cost, worth and importance to research and industry as a patent should not be protected in a relevant way just because it does not transpose to, for example, a trade mark. That seems like a very bad start to an industrial strategy.

For patents, there are a myriad changes that can be made to a product that have no bearing on the fact that there is still infringement. I can give the simple example of changing the handedness of an article—that could equally well apply in a design case. The words used in the amendment are “having the same features so far as is material to the alleged infringement”, so it is tied back to the alleged infringement and it must still be material. Those are generic points that transpose across all IP.

It can also apply to trade marks. For example, you might try to change the typeface, the colour, the framing of the mark or sometimes the spelling—putting a double letter in or taking a double letter out—and so on. I am certain that the phrase “no colourable imitation thereof” will continue to be well used in threatening letters concerning passing off and in the undertakings sought in settlement. In fact, it is normal to try to stop an infringer from using the trade mark in respect of any of the goods for which it is known or registered, even if the whole range had not been provided by the infringer.

I am sorry to have gone on at length, but this is yet another example of where, after asking in the consultation process whether there were any problems with the law that was intended to be rolled out, and after having been provided with example where it does not quite work, those seem to have got lost in the process. Therefore, I think that it is right that we consider them and consider the merit of them. I beg to move.

Lord Lucas: I want to ask a question, so that I understand things better. In the case of a box of Tesco own-brand cornflakes, is Tesco the primary infringer, or must the person who thinks that their patent is infringed write to Tesco to ask who the manufacturer is? In other words, must they ask who Tesco has commissioned to make the cornflakes for it?

Lord Stevenson of Balmacara: Luckily, I do not have to answer that, but we have expertise beyond parallel at the Minister’s end of the table.

I just want to support the points made by the noble Baroness, Lady Bowles of Berkhamsted. The question here is not so much whether this is an issue that we should take into account ab initio, which was slightly the case with the previous amendment, although I supported that as well, the support here comes because there was clear evidence from those whom we consulted that this issue needs further attention, and the noble Baroness has made that case very well. If we have gone to the trouble of taking evidence but then do not consider it and take it forward, that seems to be a slightly casual way of approaching things. I hope that we will take this point very seriously.

I also take the noble Baroness’s point that, if we were to amend the Act in the way that she suggests, this would reduce the impact on small and medium-sized enterprises and other organisations, because there would be fewer court actions and more such matters would be dealt with in the right way, which is directly between the participants. So I support these amendments.

Baroness Neville-Rolfe: My Lords, I am grateful to the noble Baroness, Lady Bowles, for her comments which, it is fair to say, were wide-ranging. I will explain how I see things and then discuss the various amendments, to use her words, on their merits—I should say her “family” of amendments, which is a good new collective term that she has invented today.

It is crucial that the threats provisions encourage rights holders to communicate with the trade source of an infringement—that is agreed—and provide much-needed protection for secondary actors, such as retailers and customers. To facilitate this, the Bill sets out a clear statement of primary acts. Threats in respect of these primary acts, namely the manufacture or import of a product, in the case of patents, will not give rise to a threats action. To answer the point made by my noble friend Lord Lucas, the manufacturer of the
cornflakes—to use his example—is the primary actor. The point has been made by my advisers that this assumes that they are patented cornflakes; I am not sure how likely that is in reality, but it is a fair point. I think that there are people, as we discussed during the evidence session, who are in both the primary and secondary markets.

As we have discussed in this Committee, the provisions make a distinction between primary actor, such as the manufacturer, and secondary actor, such as the distributor, and retailer, or the person with that hat. This provides protection for secondary actors from being exposed to threats. They are less likely to be able to make an informed decision on whether the threat is actually justified. Secondary actors are more vulnerable to threats because of the fear that they will become embroiled in an infringement action that they cannot afford. As a consequence, mere threats can—and do—persuade secondary actors to move their custom elsewhere.

This group of amendments would introduce circumstances where threats in relation to secondary acts would not give rise to a threats action. This clearly starts to undermine, to my mind, the protection for those who should rightly be protected by the provisions before us. The first set of amendments, concerning where a person presents themselves as doing a primary act when they are not, would mean that a threat sent to a person who claims to do a primary act could not be the subject of a threats action. The rationale for the proposed amendment is that the rights holder may not find out that the recipient is not a primary actor until after the letter has been sent, and then only if the recipient draws back from previous statements.

The amendment introduces an exception to secondary actor protection that is based on a new concept—as the noble Baroness explained—of “claiming” to be a primary infringer. This is an inherently vague concept not found elsewhere in the main Acts for the rights concerned. It would be complex and very difficult to bring evidence to prove in court. A significant body of case law would be required before businesses would have clarity about what amounts to “claiming” to be a primary actor. There may be different views to the one that I took on whether satellite litigation might result, but it certainly seems possible and unfairness could result in any case. Critically, the amendment would undermine protection for retailers who inadvertently use ambiguous language. If a secondary actor somehow implies, even accidentally, that their product was made by them, then under this amendment they lose all protection from unjustified threats, which also seems unfair. Under the current drafting, rights holders can make threats that refer only to primary acts. These are not actionable, so that is one solution. If a rights holder is uncertain about whether a retailer is also a primary actor, they can use a permitted communication to seek clarification of the identity of the primary infringer, without the risk of a committing an actionable threat.

I turn to the second group of amendments, which extend what is a primary act—for example, the manufacture of a hair dryer whose patent is owned by the threatener—to include any products or processes having the same features. To continue the example of a hair dryer, it would be one which is not the same but is similar in all material respects. Where threats are made to a primary actor in respect of one product, it is correct to approach them. They are potentially the greatest risk to trade and the source of the alleged infringing. But if threats are made in relation to equivalent or similar products, where the same business is only a secondary actor, it should be possible—in my view—to bring a threats action. To remove this option would chip away at the principle of protection for the secondary actor, which is at the very heart of the threats provisions. Mark Bridgeway noted in his evidence session that asking secondary actors for undertakings to cease doing something for commercial purposes is expressly excluded from being a permitted purpose. Yet the effect of the amendment would be to allow this to happen.

The amendment would also make the provisions more, not less, complex. It would blur what is intended to be a clear line between what is and what is not actionable. In addition, the concept of “the same features” is very vague and I can foresee great uncertainty for business. The noble Lord, Lord Stevenson, rightly mentioned SMEs. For the reasons that I have stated, I believe that including the amendments would reduce clarity and, therefore, make the provisions more complex and advice potentially more expensive for SMEs. In reducing the protection for secondary actors, I fear that the amendment could open up SMEs to unjustified threats. I know that it is a very complex area but, for these reasons, I ask the noble Baroness to consider not pressing her amendments.

2.30 pm

Baroness Bowles of Berkhamsted: Thank you. I am sure that the Minister will not be surprised to learn that I do not quite agree with her summary. I think we have to go back again to what threats actions are all about, which is stopping the rights holder from being unfairly oppressive about their rights. They are not about protecting secondary infringers at all costs—in particular, they are not about protecting secondary infringing acts simultaneously performed by somebody who is a primary infringer.

The relevant section that we are talking about is not about a secondary infringer; it is about a primary infringer who makes something for disposal—previously, prior to Cavity Trays, you would be in this rather stupid position where you could say, “You can’t make that anymore”, but you could not tell them not to sell it. This is a rather difficult letter that you have to write when trying to sort out the case and make sure all the ends are tidied up. If somebody holds themselves out, or claims—“purports”—to be something, that is very strong; maybe it is accidental. Actually, retailers should have a certain amount of clarity about whether they are telling the truth about their product. If they claim that they are making it and they are not, that is probably wrong under descriptions. I do not see why they should mislead somebody and then avail themselves of an action that was really meant to stop the rights holder being unfair. You end up with the situation where a primary infringer is able to have a
bite back at the rights holder through the unfortunate accident of the relevant clause relating to the secondary acts done by the primary infringer. That is a situation that is no better than the situation prior to the Cavity Trays case.

If I talk about, “having the same features so far as is material to the alleged infringement”: you may think that it is vague but it will be in every undertaking that is ever agreed to and that has gone through the court, or that is done when agreeing not to go through the court but to withdraw the action. Therefore, to force things to go to the court in order to get a satisfactory undertaking will not make things any better. It will make things very bad for SMEs, in particular. I do not think the wording is vague at all. It talks about, “so far as is material to the alleged infringement”—that is very tight. But if you wanted it that, having pursued somebody, they could paint it blue instead of red and you have to go all the way around the loop again, it will not resolve the action. It is not saying a completely different product; it is essentially—as far as the court would perceive it—exactly the same infringement. I just think it is wrong that one cannot utilise again these sorts of letters.

Again, I would like to find out what level of support there is—there is perhaps a bit more support verbally than there might be in a vote. We only need to test on one amendment.

Lord Stevenson of Balmacara: The noble Baroness is making some very good points on this issue, but I am sure that she is aware of the situation—if we vote on this amendment and she is unfortunate enough to lose it, she will not be able to bring this back on Report. Might she reflect on that before she pushes the amendment and she is unfortunate enough to lose it, she will not be able to bring this back on amendment.

Baroness Bowles of Berkhamsted: I hear what the noble Lord says; if he is advising that it might be better to think about my wording a little more carefully, then I may be prepared to accept his advice.

Lord Stevenson of Balmacara: I think on this occasion that may not be sufficient. You will need to withdraw it, I think.

Baroness Bowles of Berkhamsted: Okay, I will withdraw the amendment.

Amendment 3 withdrawn.

Amendments 4 and 5 not moved.

Amendment 6

Moved by Baroness Bowles of Berkhamsted

6: Clause 1, page 2, line 29, leave out “contains information that”

Baroness Bowles of Berkhamsted: In moving Amendment 6, I will speak to all the amendments in this group, and will try to plot a careful course through them. They interrelate with one another to some extent, so it makes sense to talk about them all at once. They all concern how permissively or not various parts of the wording in the sections on permitted communications should read. There are four places in each of the relevant clauses where minor adjustments to the language are proposed. In two of those places, there are alternative wordings.

I will start with the first position, which is new Section 70B(1)(a). It states that, “the communication, so far as it contains information that relates to the threat, is made solely for a permitted purpose.” Amendments 6 and 7, and their counterparts, can go together, although each makes sense standing alone. They suggest respectively the deletion of the words, “contains information that”, and the deletion of “solely”.

The word “solely” was first brought to our attention in evidence by the Law Society and others, so I will start with that. I find myself in a slightly strange position because it was argued that “solely” brings in the state of mind of the writer of the communication, although in their written response the Government suggest that it does not.

I am somewhat in favour of the state of mind or intent being an issue, as it would be in a wider tort in order to limit abuse. I think that including the word “solely” has a ring of that. So, why am I suggesting deleting it? I also found myself so tied up in words in this whole subsection and the one following it, which seemed to repeat itself more than once, and that is confusing. Repetition leads to inventing reasons why something is said more than once—that it must mean something different or extra, but the main thing that we want in this whole threats actions arena is clarity.

Thus it seems to me that subsection (1)(a) should be left simply as saying, “the communication, so far as it ... relates to the threat, is made ... for a permitted purpose”. There is no need for “solely”, nor for the words, “contains information”. I am not sure in this context what a communication without information is, or whether a communication without information can be seen as a threat, although we did have a client who was threatened in Texas with six shots fired into the ceiling and the taunt, “That’s what we are going to do to you in Scotland”. I suppose that is a communication, and, I think, a threat, although I am not so sure about the information.

I am also quite partial to the engineer’s definition that information is initial ignorance minus final ignorance. Apart from giving counsel lots of potential entertainment opportunities in court, I concluded that there were a few too many words here that were confusing, so I sided with the IP Federation suggestion to go for maximum simplicity. I think it is best to have both deletions.

The Law Society and others have suggested or agreed with deleting “solely”. We did not put to them the deletion of the words, “contains information”, because that came in with the last batch of evidence as a late suggestion, but it seemed to me sensible.

I shall now speak to the Amendment 8 family. This refers to the subsection which reads, “all of the information that relates to the threat is information that ... is necessary for that purpose (see subsection 5)”.

Baroness Bowles of Berkhamsted: In moving Amendment 6, I will speak to all the amendments in this group, and will try to plot a careful course through...
Rather as with “information”, I began to dislike the word “necessary” in this whole section because every time it came up I felt it needed some qualification. It comes up again in subsection (3) and again in subsection (5). In each instance I found the direction and reason for wanting qualification to be different.

As it is used in this first instance, it sets a high standard for what can be put in the communication, and I have no problem with it in that context. But here we are talking about letters to retailers which may be for a variety of reasons. If the purpose is to try and find the primary infringer is it right to send a communication to every single retailer, for example? That might be an effective deterrent to them continuing to sell and is just the sort of thing that threats actions are about preventing. Or should you deliberately select the weakest retailer and make an example of them? So I felt that the word, “necessary” here needed to have some qualification, and that the information should be both “necessary” and “proportionate”. There are other words that could have been used, such as “appropriate”, but proportionate and disproportionate are words well used in the context of legal actions.

If I am completely honest about the occurrence of “necessary”, I think it should also say “sufficient”. Those are the usual ways to define something mathematically; for example, the conditions that are necessary and sufficient to define a positive, real and rational function—we could do with a few more of them in some of this legislation. The word “necessary” does not mean you have said everything that is needed to be said but choosing to include “proportionate” helps out a little with saying the things that should be said.

In a way, the problem is similar to what comes later in subsection (3), where we had more discussion about the court being able to have flexibility. The wording of subsection (3) allows extra things to be treated as a “permitted purpose” and it might, possibly, allow them to be discounted as was suggested by Professor Sir Robin Jacob when he was before us. We get into that again in the context of the word “may” in subsection (5).

Amendments 12 and 13 relate to subsection (3) that I have just referenced, which allows the court to treat “any other purpose” as a “permitted purpose” if it considers it in the interests of justice to do so. We had a discussion during the session with Professor Sir Robin Jacob, led by the noble Lord, Lord Stevenson, on whether the word “necessary” in this position was too strong. In that discussion and in follow-up written comments, Sir Robin and Sir Colin Birss put forward the wording, “reasonable in all the circumstances.”

I am content that this is a good suggestion. As an alternative, just the word “necessary” could be deleted to leave it as saying, “in the interests of justice”, but I take the comments made by Sir Robin that it may not be clear at different stages what is meant by “the interests of justice”. So I prefer the language of Amendment 13 and its corresponding family of amendments in the other clauses, but if the Minister is looking for something that looks smaller, there is the possibility of Amendment 12, which just deletes “necessary” as an alternative, because it still makes sense.

Finally in this group we come to the Amendment 14 family, which suggests that after “that”, the words, “prima facie” should be inserted. This concerns the use of the word “may” in subsection (5) which states:

Examples of information that may be regarded as necessary for a permitted purpose.

We have to recall that this also references back to “necessary” used in subsection (1), where I thought the word, “proportionate” should also go in.

The discussion that we got into during the evidence sessions was whether something in the list in subsection (5) might sometimes not be allowed, and that that went against the grain of seeking a safe harbour, as expressed, for example, in the last submission from the IP Federation. However, Sir Robin and Sir Colin thought that it did mean “may” and that sometimes everything might not be “necessary”, which is in keeping with the notion of flexibility that they expounded. Furthermore, if it is changed to “shall”, to give safe harbour, as the IP Federation suggested, it makes it look like you always have to say everything that is in the list, rather than there being options that you might wish to say but it is not always desirable or appropriate to say. For example, why go into details about the patent infringement if all you wanted to know was who the manufacturer was and where they were?

In trying to overcome this dilemma, I thought that if we inserted, “prima facie”, in front of “may”, it would have the sense of, “Well, in all normal circumstances, it is okay to say this, but if you find some extraordinary and egregious way to utilise it, then the court might decide that it takes a dim view of it, so it is best not to do it”. I apologise for using Latin, but I felt that it had the flavour that I wanted. I have to say, looking at it now, it might be better if the words, “may be” had been changed to “are”. I hope that that has cleared up the problems that we came across in looking at the language of that subsection. I beg to move.

Lord Stevenson of Balmacara: My Lords, I pay tribute to the noble Baroness, Lady Bowles of Berkhamsted, for her ability to expand such a wide range of interests within one group. The grouping has been necessary, but possibly not in the best interests of a focused series of discussions. It rebounds on the Minister to try to respond in like mind to whichever one of the very large number of points we could have picked up on. I am sure she is well prepared, but I will not trouble her too much because I will not range very widely on this. I do not need to repeat what has been said so eloquently.

I wanted to focus my remarks on Amendment 13, which, more by luck than good judgment, I managed to get my name down to. I support what was said here in the context of the evidence we had. If the Committee will recall, a lot of what we talked about with one or two colleagues who came and gave evidence was the question of whether the Bill could be seen as evolutionary
in any sense, leading to a broader understanding of the nature of the regulatory structure within which business in the UK should be conducted. I do not wish to put words into the Minister’s mouth, but I think she is not unsympathetic to the idea that we should instil good ethics in the business community. I hope for her support later on, perhaps, on this point.

The narrow issue here is that the decision of the Law Commission after much discussion was to accept that, while there was a teleological approach to this area of law in the sense that, in time, a wider tort could be introduced because it would encompass this and other areas, and in the process allow us to engage more directly with the Paris convention—which is where we might have to seek a wider international relationship post Brexit—it was not the time to do that and it had not carried out the necessary consultations it would wish if that was indeed where Parliament wanted to go. If we are not going the whole way, was there a midpoint?

It was interesting to hear the evidence from Sir Robin Jacob in particular that new Section 70B(3), if he read and interpreted it correctly, provided a little bit of breadth of discretion to the courts when approaching the issues that the noble Baroness, Lady Bowles, mentioned. I am keen that there should be the case. I align myself entirely with the noble Baroness’s remarks on this. It would be unfortunate if the wording as it currently stands, with the word “necessary”, was seen by some as a barrier to the sort of thing we think is currently stands, with the word “necessary”, was seen by some as a barrier to the sort of thing we think is

Baroness Neville-Rolfe: You learn a lot from the mistakes of the Romans in terms of public policy. I shall start with Amendment 6 and its equivalents. One of the requirements for a permitted communication is that the specific part of the communication which relates to a threat is made for a “permitted purpose”. The phrase, “so far as it contains information that relates to a threat”, is there to limit properly the scope of the provision about permitted purposes. We believe that deleting the words “contains information that” would risk the test being read as meaning that the entire communication had to be made for a permitted purpose—even the parts which were not a threat. The current drafting was inserted precisely because stakeholders—the Law Society and CIPA—expressed concern about that result. The amendment would mean that the permitted communications provisions might not apply if a communication happened to contain harmless, extraneous material. The hurdle would be so onerous that the protection offered by the permitted communications provisions would not, or might not, be used. Those less experienced would also easily be caught out by adding additional material.

I move on to Amendment 7. For a communication to be permitted, the part of the communication which relates to a threat must be made solely for a permitted purpose. The term “solely” ensures that the part in question cannot also be made for a non-permitted purpose. We heard that the Law Society and others have been concerned that the word “solely” somehow imports a need to look at the motives of the sender, but I do not really see how that would come about. The motives of the sender are not a consideration under either the current law or the new provisions. I think that the noble Baroness disagreed but my view is that that is right. As Professor Sir Robin Jacob said when he gave evidence, litigating over what someone thought that that is right. As Professor Sir Robin Jacob said when he gave evidence, litigating over what someone believed, “just leads to applications for discovery and claims for privilege”.

That is a bit of a red light to me because it could mean more costly litigation.

The “permitted purposes” in the Bill are based closely on the current patent exceptions. The law in this regard is unchanged—it remains an objective test—and, in legal terminology, making a threat will remain a strict liability tort. The requirements clearly relate to assessing the purpose of the communication itself, based on its wording alone. The amendment therefore seeks to resolve an issue which simply does not exist.

Turning to Amendment 8, to my mind the non-exclusive list of examples of information which are necessary for a permitted purpose provides valuable clarity. It gives stakeholders the certainty they desire, making it possible for disputing parties to know how and what they may communicate effectively without risking litigation. The amendment seeks to undermine that certainty by adding a requirement that not only must the information be necessary but it must also be “proportionate”. The term casts doubt on whether a
business can rely on the examples listed. This decreases the value of the guidance that paragraph (5) is meant to provide and which stakeholders asked to be spelled out.

Amendment 14 has a similar effect by saying that the examples given are only “prima facie” to be regarded as necessary information. In other words, these examples can be regarded as necessary information, which it is safe to convey, only until it is proven otherwise. Noble Lords can see that this will introduce considerable doubt for business about whether the examples can be relied on.

Both amendments raise many possibilities for how to assess whether a particular communication can safely be made. They risk both confusion and even satellite litigation, and the resulting uncertainty about what information can be communicated risks encouraging a return to the “sue first, talk later” approach, which we are trying to avoid. That goes against the direction of the Bill as a whole.

Finally, I will address Amendments 12 and 13. The noble Lord, Lord Stevenson, spoke to the latter. As I said, the Bill provides a list of permitted purposes in order to give the much-needed clarity and certainty that stakeholders have asked for. However, consultees also warned against being too prescriptive. For this reason, the courts have discretion to treat other purposes as permitted, but only if necessary in the interests of justice.

The requirement for something to be necessary in the interests of justice is in fact intentionally high, and it is expected that the discretion will be used sparingly. “In the interests of justice” is a familiar and steady concept to shape how the law develops. A new test of “reasonable in all the circumstances” could make it difficult to ensure that the law provides the required level of guidance and certainty. These amendments could provide the courts with a wider discretion to treat other purposes as permitted, and that could create uncertainty for users over what communications can safely be made. That is undesirable both for those wishing to enforce their rights and for secondary actors in receipt of a threat. It would make legal advice more complex and perhaps more costly and it could risk the erosion, over time, of the valuable protection for secondary actors which is at the heart of the threats provisions.

The noble Lord, Lord Stevenson, was making a wider point, but I do not think that we can tackle business ethics in this Bill. However, I agree that being responsible in business leads to better business, not only in the long term but in the shorter term.

I have listened to the debates about “solely” and “necessary”—we have now debated this over five sessions—and I can see that noble Lords share the same objective that we have, which is to ensure that this key area of the law operates in the best possible way and that these permitted communications work well. I cannot promise anything today but I, along with perhaps other noble Lords, will look at the Hansard report of the debate and I will consider carefully the various detailed points that have been made today. On that basis, I hope that the noble Baroness will feel able to withdraw the amendment.

Baroness Bowles of Berkhamsted: I beg leave to withdraw.

Amendment 6 withdrawn.

Amendments 7 and 8 not moved.

3 pm

The Senior Deputy Speaker: I call Amendment 9 next.

Viscount Hanworth: I wish to speak not to Amendments 9 and 10, or to the other amendments of the same nature that are replicated for the series, but to my own amendments, which are more or less equivalent. They are Amendments 11, 28, 46, 64 and 80. They relate to permitted communications, namely—

The Senior Deputy Speaker: Somebody needs to move Amendment 9.

Amendment 9

Moved by Viscount Hanworth

9: Clause 1, page 2, line 42, at end insert—

“(d) take-down from a digital platform by a notice of an infringement sent to or by the platform.”

Viscount Hanworth: I shall move Amendment 9. To continue, Amendment 11 relates to permitted communications, namely,

“giving notice to or by an information society service provider of the infringement of a patent”.

The amendment has been provided by the BBC and by BBC Worldwide Ltd at the instance of the Committee. The problem that it addresses was also recognized by the Chartered Institute of Patent Attorneys. It provided an amendment to new Section 21A(2), which had the same purpose as the present amendment. However, it was agreed that the text of its amendment was tortuous and that amendments to the same end were required in other places in the Bill, which is why we find them in five places. To that end, the BBC has provided five amendments that are to be placed throughout the Bill. They concern, respectively, patents, trademarks, registered designs, design rights and community designs. The wording of these amendments is virtually identical and so it is appropriate for me to speak to all of them together. As we proceed through the list of amendments, it should be clear which ones these are.

I should briefly describe what the problem is. It arises when a rights holder contacts an internet service provider, such as eBay, to assert that there has been an infringement of its rights. Someone may be advertising goods for sale using its trademark or infringing its goods for sale using its trademark or infringing its brand. An example that was provided by the BBC concerns the sale of bespoke “Doctor Who” birthday cards, but there are many other similar cases that one can imagine. The action of the brand owner or the rights holder would be to contact the internet company—eBay, for example—requesting that it takes down the offending advert. The internet company would do so, while contacting the party responsible with information
concerning the putative infringement and providing it with an opportunity to contest the action. In a contested case, it would encourage the parties in dispute to open negotiations.

A point that has to be stressed concerns the huge volume of such incidents. They have to be handled in a routine manner by dedicated teams within internet companies, which would be severely constrained if they were liable to the charge of making unjustifiable threats. Moreover, it is unclear in many cases whether the putative infringer would be regarded as a primary infringer, to whom it is legitimate to send a threatening letter, or a secondary infringer, to whom it would not be legitimate to send the letter. The Bill makes an allowance for this in cases where all reasonable steps have been taken by the claimant to determine whether the infringer is a primary infringer or a secondary infringer. However, in the cases that we are considering, which concern high volumes of low-value trades, the requirement to take all reasonable steps to determine the matter seems to be excessively onerous. We will come to this point on a later amendment.

The question of whether a notice issued by the complaining rights holder or by the internet company can constitute an unjustifiable threat is still undecided in law. These amendments attempt to clarify the matter. There has been some pushback from the Law Commission, which seems to be loath to allow any interference with its handiwork. Its comments have been addressed to the amendment of the Chartered Institute of Patent Attorneys rather than to the offerings of the BBC, which it may not have seen. It has made two arguments. First, it has suggested that the matter can be dealt with adequately in the Explanatory Notes that accompany the Bill. It has also proposed, more generally, that any outstanding matters can be settled by case law. I do not regard these as adequate responses to the genuine difficulties that are arising. I beg to move.

Lord Lucas: I am very sympathetic to these amendments. The internet is an international community, it has developed an international and agreed method of dealing with infringements and it would be daft of us to try to insist on a separate method of dealing with them just for the UK, even if we may be in that sort of law as it stands, we would still be faced with having to look at the policy intent for the world we live in.

Relevant to that are also the bits of law that are being taken away by the Bill. It removes the right a rights holder has at the moment that mere notification of a trade mark or design registration or design right is not a threat. Of course, as soon as you put the word “infringement” into the notification, you bring in the notion that it might be a threat, although in the context of a take-down notice, it is not a threat of litigation because take-down avoids there being litigation most of the time. EBay told us that it happens some 97% of the time, and even the other 3% does not all go to court, as that figure includes when counterproposals are made.

I am trying hard not to get into arguing the case that has not gone to full trial, but the situation is that platforms are not liable for infringements until they are put on notice of an intellectual property right—that is the effect of the e-commerce directive. At the moment, you can put a platform on notice, at least for trade marks and designs, without using the word “infringement” using the safe harbour mere notification provision. That was the case for patents as well prior to the 2004 revisions.

When it comes to take-down notices as they are being used, to make the procedure sensible, the notices use infringement terminology, but in general platforms do not feel that they are being threatened. At least, that is what eBay said in evidence. It said that threats were more likely to arise in the few cases where there is further correspondence. However, as the BBC pointed out, threats and the suggestion that a take-down notice is a threat have been raised and have twice been considered to be a substantive point that would need a fair trial. In the Quads 4 Kids case, Judge Pumfrey, as he then was, said it was an arguable case needing full fair trial. In the Quads 4 Kids case, Judge Pumfrey, as he then was, said it was an arguable case needing full trial, and that precedent of leaving it for a full trial—which did not happen—was followed in the Cassie Creations case.

However, to stop being liable, once they have been put on notice, platforms take action and take down infringements without the matter going to litigation or even the threat of litigation—unless the take-down notice constitutes a threat, which has not been decided. You also need to consider which leg is a threat. Is it both legs, the first leg from the rights holder to the platform, the second leg from the platform to the vendor or a pass-through transmission from the rights holder to the vendor via the platform? All this is going to go on and be uncertain until there is a judgment in a yet-to-come case that makes it beyond the interim stage. Often there are other things that enable a decision to be made, so this point still does not get decided.
Meanwhile, the Bill is taking away the mere notification right, which is at least theoretically useful as a defence in such instances—and some say that it is more than that—and replacing it with the all reasonable steps defence and permitted communications, but permitted communications have new limitations as well as new possibilities. There is nothing quite so broad as the existing right under mere notification when you are saying is, “This is the patent number”, “This is the design number” or “This is the trade mark number”—I should correct myself as it was taken away for patents, but some people have said it should come back. We have something here where a safe harbour right is being taken away and a less comprehensive defence is being put in its place. In the context of a digital platform, that may be a very significant change, so the basic suggestion in all these amendments is that a take-down notice should be a permitted communication.

3.15 pm

Of course, the other side of it is: what do you do if there is overaggressive use of notices? We had mention of bad-faith notices in the evidence from Chris Oldknow, the former chair of the Anti-Counterfeiting Group, although he said that is at a low level. What do we do about overaggressive and covetous enforcement is still a sore point. It is not captured in threats action, and I do not think the Bill makes any difference to that unless its purpose is to hinder take-down notices in general. However, there is one safeguard in the permitted communications route, which is a requirement for the person making the communication to reasonably believe that it is true. That is a useful provision. So-called bad-faith notices would fall foul of that. They could not describe themselves as a permitted communication and would still constitute a threat, so I do not think we are opening the door to bad-faith notices.

We also heard evidence that in China there is now strong push-back against take-down notices from vendors. That will potentially come to haunt us even more. Aggressive action might be taken against vendors in this country if this take-down situation is not decided. Of course, is to encourage a conversation to resolve a dispute. If an online form is used, rightly or wrongly, and the product listing is taken down, then the rights holder has prevented further trade in the item, so that closes the door to bad-faith notices.

My first amendment, Amendment 9, and its counterparts are quite simple. They just make a take-down notice to or from a digital platform a permitted communication. Amendment 11 proposed by the noble Viscount, Lord Hanworth, does the same thing with different language and covers more than digital platforms, which one might want think about.

After some thought, I tabled an alternative version of Amendment 9, Amendment 10, in which I import the language of the reasonable steps defence in an enabling provision to make it a permitted communication. In effect, it switches the burden of proof. I have suggested that the take-down notice is a permitted purpose only when it is impracticable to identify or communicate with anyone who is the primary infringer. I have made it into a right rather than a defence, and I have taken away “all”, so you have to find a mechanism to say, “We searched but didn’t find”.

We have to think about these things quite carefully. What would be the effect of my reversed burden of proof? If I advertise the sale of product X made by Y, the implication is that you have to communicate with Y. However, if Y is a hard-to-pin-down entity and communication is impractical, you can send the notice. That is exactly the situation envisaged in the defence in the Bill. There is some justification to say that if the mere notification right is being deleted, it should be replaced with a right, not a defence. There is also an interesting secondary effect in that it might encourage more vendors to say the source of their product, which is highly desirable for safety, supply-chain knowledge and all kinds of other things.

If something like this is not made into a permitted communication, it is not right that we should remove the mere notification right. That is something I would want to revisit by way of amendment at a later stage to reintroduce it. This is a serious point. Taking away a right and replacing it with a defence reduces the options of the rights holder.

Baroness Neville-Rolfe: I am grateful to the noble Viscount, Lord Hanworth, for his clear explanation of these amendments. I liked his example of the Doctor Who birthday cards, which I look forward to researching.

It is true that the internet is growing. It is increasingly international and it is very important, but I am not sure that that necessarily means that we should be changing the Bill. The amendments seek, in various ways, to include the sending of an online infringement notice in the list of permitted purposes, the result being that such notices can be used to communicate with an online secondary actor, without fear of a threats action being brought. Unfortunately, such amendments would completely undermine the protection for secondary actors provided by the Bill. Noble Lords will remember that Mr Justice Birss was clear in his oral evidence that these forms should not be made an automatic exception from the law of threats. He noted that he was aware of the notification process being used in exactly the way the threats provisions aim to prevent. Furthermore, the amendments would distort the policy behind permitted communications, which, of course, is to encourage a conversation to resolve a dispute. If an online form is used, rightly or wrongly, and the product listing is taken down, then the rights holder has prevented further trade in the item, so that closes the door to discussion.

Amendment 11 defines the new permitted purpose in relation to the e-commerce regulations 2002. These regulations do not specify how the notification must be made or what it should contain. There is no conflict, as we see it, between the Bill provisions as they stand and these regulations. It is possible to send a communication which fits within both the requirements of the regulation and the permitted purposes. Given the undefined nature of an e-commerce notice, the range of communications exempted by this amendment would potentially be large. That could create a gap in the protection for secondary actors.

Amendments 9 and 11 in particular would allow malicious and unjustified threats to be made to a secondary actor simply because a particular online
form is used. The parties damaged by that threat would have no form of redress. That cannot to my mind be the right outcome. A rights holder facing a threats action as a result of using such a form can take advantage of the defences set out in the Bill. One defence available is that “all reasonable steps” have been taken to find the primary infringer. What is reasonable in the case of high-volume online infringement, to which the noble Viscount referred, is very likely to be a lower hurdle than in other situations. If a step is reasonable, then I see no problem in expecting a rights holder to take it. In light of this, the permitted purpose set out in Amendment 10, with its explicit reference to the impracticality of finding a primary actor, is not necessary. A suitable defence already exists.

The other defence for a rights holder facing a threats action is that the right has in fact been infringed. As the BBC noted in its evidence, it is very well aware, before it makes contact, of who is permitted to use its brand, and therefore whether others are infringing. The provisions as drafted in no way prevent rights holders from legitimately enforcing their rights. Sir Colin Birss says about not including standardised/online letters in his evidence:

“I would not include them in the exemption. That kind of thing can cause real damage. … I would be wary of a draft that went too far the other way and simply excluded that kind of thing altogether. That would be unfortunate. It is a place where SMEs can get damaged”.

Finally, I will try to pick up a couple of the points made by the noble Baroness, Lady Bowles. As I am sure she knows, the list of permitted purposes is based on the current threats provisions where it is permitted to notify a recipient of a right or, for patents only, to give factual information about the right or make inquiries to find out if a right is being infringed and by whom. That is not changing. Also, mere notification, to which the noble Viscount referred, is very likely to be a lower hurdle than in other situations. If a step is reasonable, then I see no problem in expecting a rights holder to take it. In light of this, the permitted purpose set out in Amendment 10, with its explicit reference to the impracticality of finding a primary actor, is not necessary. A suitable defence already exists.

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“I would not include them in the exemption. That kind of thing can cause real damage. … I would be wary of a draft that went too far the other way and simply excluded that kind of thing altogether. That would be unfortunate. It is a place where SMEs can get damaged”.

Finally, I will try to pick up a couple of the points made by the noble Baroness, Lady Bowles. As I am sure she knows, the list of permitted purposes is based on the current threats provisions where it is permitted to notify a recipient of a right or, for patents only, to give factual information about the right or make inquiries to find out if a right is being infringed and by whom. That is not changing. Also, mere notification, to which she referred, is the first of the permitted purposes, and notification is not a threat to the platform.

These are complex matters. They have obviously been discussed at length with the Law Commission. I hope that, on reflection, the noble Viscount will feel able to withdraw his amendment.

**Viscount Hanworth:** I shall consider carefully what the Minister has said, as recorded in Hansard. Therefore, I beg leave to withdraw my amendment. I wish to give notice that I may bring it back on Report, in collaboration, I would expect, with the noble Baroness, Lady Bowles.

Amendment 9 withdrawn.

Amendments 10 to 14 not moved.

**Amendment 15**

Moved by Viscount Hanworth

15: Clause 1, page 3, line 29, leave out “person who made the threat (T)” and insert “person (T) who made the threat”

**Viscount Hanworth:** Amendment 15 is a trivial amendment. It says, “leave out ‘person who made the threat (T)’ and insert ‘person (T) who made the threat’”.

I have observed that, in the subsequent text, T denotes a person rather than a threat. It occurs to me that it would have been better to denote the person in question by a capital P instead of a capital T. Even a capital C might be used to denote the complainant who makes the threat. This is a rather clumsy piece of illogic in the text, and I think it brings it somewhat into disrepute. These remarks apply also to Amendments 32, 50, 68 and 84, which are absolutely identical in their content. It is not the threat T that is instanced in the subsequent text; it is the person T that is instanced, and therefore there is a piece of illogic in the Bill. I think that should be expunged. I beg to move.

**Baroness Bowles of Berkhamsted:** I agree with the noble Viscount. I think it would have been less ambiguous if you had used P for person, but that might be used in another part. However, I observed that in the Digital Economy Bill, where there was the same kind of phrasing, they put the person, followed by a letter, who did something or other, so I think that the noble Viscount, Lord Hanworth, is right.

**Viscount Hanworth:** I have to say that mathematicians instantly spot this, so there are three of us who hold that opinion rather strongly. Others, who are of a different culture, cannot see what we are driving it.

The other amendment in the group is Amendment 16, which is replicated in Amendments 33, 51 and 85. We have already been over this ground, but I repeat that the amendment seeks to leave out “all”. This amendment relates to the requirement that the person T, who has made the threat, should take all reasonable steps to identify those who are ultimately responsible for the infringement, before they can claim that their threat is justifiable. It is argued that this places an onerous burden on a rights holder, who is subject to an infringement of e-commerce. Therefore, the word “all” should be deleted. We have been here before because it has been suggested that, instead of the phrase “all reasonable steps”, we should allow only steps that are practicable. I think the basic point is that the onus falls too heavily upon the claimant, in the case of e-commerce, of infringement.

**Lord Saville of Newdigate (CB):** I entirely agree that the word “all” sets too high a test and should be removed.

**Baroness Bowles of Berkhamsted:** I also agree that the word “all” should go. As regards new Section 70C and new Section 70C(3), a lot of technical people agree that it should be looked at again, so I ask the Minister to do so.

3.30 pm

**Baroness Neville-Rolfe:** New Section 70C and equivalents set out remedies in the case of a successful threats action and the defences available to those who have a threats action brought against them. Subsection (4) sets out a defence if it has not been possible for the threatener to identify the primary actor.
As has been said, the first amendment would amend the subsection to reflect a drafting preference by moving the location of the reference letter T. That may relate to the person who made the threat, which begins with T, but I will discuss the wording with parliamentary counsel in the light of the Digital Economy Bill to see whether we feel that it is right. I do not think that anybody thinks that it is a material point.

The second group of amendments under discussion relate to the defences available for someone who is faced with a threats action. The 2004 patents reform introduced a defence for a person making a threat to a retailer or the like. The defence applies if their efforts to find the trade source of the infringing patented goods were unsuccessful. The Bill extends this limited but useful defence to trade marks and designs. The provisions clarify that the person making the threat must have used “all reasonable steps” to find the importer or manufacturer of the product in question before they are safe to approach the retailer.

The phrase “all reasonable steps” was carefully chosen in response to stakeholder feedback, discussions with the Law Society and the Law Commission’s working group. Stakeholders thought that the previous phrasing used in the patents defence, “best endeavours”, carried too much legal baggage, as it has a special meaning in commercial contract law. In addition, it was felt that this could require disproportionate efforts by a rights holder attempting to identify a primary infringer. “All reasonable steps” therefore strikes the right level. It requires the person making the threat not just to do something which is reasonable but to do everything which is reasonable. The wording is fair; it does not require the person making the threat to go beyond what is reasonable.

Amendments 18 and 19 and equivalents seek to deal with pending rights. It is well established that threats to sue for infringement of an IP right, when an application for that right is still pending, are nevertheless subject to the threats provisions. New Section 70E for patents, and equivalents for other rights, ensure that infringement works for pending patents.

Lord Lucas: My Lords, I would be grateful if, between now and Report, the Minister could write to me with some examples of cases decided on the basis of “all reasonable efforts”, so that I can get a real grip on what that means. It is a very uncertain phrase in English. If I wrote to Tesco asking, “Who made the cornflakes?”, and it said, “It’s not our policy to divulge that information”, would that be “all reasonable efforts”, or should I ask five or six times? If I cannot find a way on the website to communicate with somebody who appears to be selling products off a platform, are no efforts “reasonable efforts”? Particularly in the context of being asked to give way on Amendment 11 or whatever comes back on Report, knowing that, for example, the things that we are asking the BBC to do in defence of “Doctor Who” are actually reasonable and are not a ridiculous burden in defence of a 20p commission on a Doctor Who birthday card is something that we as a House should do. I would be grateful for an opportunity to see the sort of evidence that a court will see, against which it will judge whether a particular course of action involves all reasonable actions rather than just reasonable actions.

Viscount Hanworth: Yes, indeed, in my perception, “all reasonable” goes far beyond reasonability. I think that is a substantial point, although we are talking about just one word. I beg the Minister to take this matter away and consider it. I shall withdraw the amendment, but assure her that I shall raise it on Report if we cannot find any better way of phrasing this onerous demand.

Amendment 15 withdrawn.

Amendment 16 not moved.

Amendment 17

Moved by Baroness Bowles of Berkhamsted

17: Clause 1, page 4, leave out lines 1 to 3 and insert “statutory regulatory bodies or entitled to legal professional privilege.”

Baroness Bowles of Berkhamsted: This is the last group to move, and I can be relatively brief. The amendment speaks for itself. I have harvested suggestions from the chartered institute and the Law Society with the intention of making this wording a bit less clunky but also international. During hearings we looked at what duties regulators had when people were behaving badly. I have not gone so far as to name just the club of advisers envisaged in the CIPA amendment, but I thought it would be good to say that they should be
Baroness Neville-Rolfe: I am grateful to the noble Baroness, Lady Bowles, for her very brief introduction. We have debated this issue through the oral evidence. Not least for the benefit of people who feel strongly about this, I will set out why we are not inclined to accept these amendments.

The tactic of suing a professional adviser for making a threat has been used to disrupt negotiations and hamper the legitimate client-adviser relationship. We heard that convincingly from several people who gave evidence. Exempting professional advisers from the threats provisions has long been called for, because it stops game-playing.

The Bill delivers an exemption in a carefully limited way. The amendment seeks to restrict the protection available for professional advisers to just those who are regulated by statutory regulatory bodies or entitled to legal professional privilege. It is right that a professional adviser should not become personally embroiled in a threats action, when they were acting only on behalf of their client. I do not agree that this principle should apply to only a limited category of particular professional advisers. Neither should the law on threats be the place to define which regulatory bodies are considered appropriate to oversee exempted advisers. As we were discussing, it is an increasingly global market. The definition must capture the different types of foreign and domestic IP legal practitioner, who may risk facing a threats action under UK law. The current draft does that.

The first limb of the amendment would seek to restrict protection to those whose services are regulated by a “statutory” regulatory body. The term is unclear, leading to uncertainty about the exact scope. In addition, the requirement of statutory regulation would exclude international lawyers with a system of professional self-regulation, such as the American Bar.

The second limb provides that, as an alternative to being regulated by a statutory regulator, professional advisers might fall within the exemption only if they are entitled to legal professional privilege. We all know that the law on privilege is complicated and inconsistent in different jurisdictions. An adviser may not be able to be sure whether they can rely on legal professional privilege in particular circumstances. Again, that could restrict options available to business and advisers might therefore—this is always the problem—continue to seek the indemnities we heard about in our evidence sessions.

Baroness Bowles of Berkhamsted: I beg leave to withdraw the amendment.

Amendment 17 withdrawn.
Amendments 18 and 19 not moved.
Clause 1 agreed.

Clause 2: Trade marks
Amendments 20 to 36 not moved.
Clause 2 agreed.
Clause 3 agreed.

Clause 4: Registered designs
Amendments 37 to 54 not moved.
Clause 4 agreed.

Clause 5: Design right
Amendments 55 to 70 not moved.
Clause 5 agreed.

Clause 6: Community design
Amendments 71 to 88 not moved.
Clause 6 agreed.
Clauses 7 to 9 agreed.
Title agreed.

Lord Saville of Newdigate: My Lords, as the former Chairman of the Committee, I thank all Members of the Committee and the Law Commission, which put a lot of thought into this exercise.

The Senior Deputy Speaker: My Lords, that concludes proceedings on the Bill.