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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

House of Lords

Tuesday 28 March 2017

2.30 pm

Prayers—read by the Lord Bishop of Winchester.

Oaths and Affirmations

2.35 pm

Lord Colgrain took the oath, following the by-election under Standing Order 10, and signed an undertaking to abide by the Code of Conduct.

Recycling: Plastic Bottles

Question

2.36 pm

Asked by ***Baroness Jones of Whitchurch***

To ask Her Majesty's Government whether they have any plans to introduce a deposit return scheme to reduce plastic bottle waste and increase recycling.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble): My Lords, we are determined to reduce litter on our streets, roads and beaches as part of the Government's litter strategy, which we will launch shortly. The strategy will focus on education and awareness, better enforcement and improving cleaning and litter infrastructure. We recognise that there is more to do and will continue to work with business, WRAP, local authorities and campaign groups to increase rates of recycling across the board.

Baroness Jones of Whitchurch (Lab): I thank the Minister for that reply, but why is the department not prepared to show more leadership on this issue? After all, we know the scale of the problem. In the UK, we are using 35 million plastic bottles a day, 16 million of which end up being dumped on our streets, in our rivers, in the sea and in landfill. We know the scale of the problem, and we also know that there are solutions. Other European countries have already introduced bottle deposit schemes with great success. We know that, when we introduced the 5p plastic bag levy, it cut the number of single-use plastic bags considerably. Such measures can work. Is this not just a question of leadership? Why does the department not take a stronger line on this issue?

Lord Gardiner of Kimble: My Lords, I certainly intend to take a very strong line and am looking forward to the launch of the litter strategy. The reason that these matters are so important is that they affect everyone in this country, whether it is litter or the importance of recycling resources. That is why the Chancellor said in the Budget that by 2020 targets for overall packaging recycling would increase to 75.4% and for recovery to 82%. This Government are very ambitious in their desire to improve our environment.

Baroness McIntosh of Pickering (Con): My Lords, does my noble friend agree that the scheme that operates in Denmark works very successfully? It is not government led; my understanding is that it is led by industry and that the work is done by the supermarkets, which pay to put the facilities in. Is this not the type of leadership that we should look to—that is, leadership from the industry, where it saves money in the process as well?

Lord Gardiner of Kimble: My Lords, I want to express my thanks to business across the piece for being involved in the litter strategy. One thing to come across strongly is the importance for its reputation that business sees in assisting us with recycling and with avoiding litter. I want to endorse what my noble friend has said: business is key to the success of this.

Baroness Parminter (LD): My Lords, the Minister mentioned the welcome but ambitious packaging recycling targets set in the recent Budget. Given that household waste recycling targets are going backwards, how do the Government expect to meet them?

Lord Gardiner of Kimble: My Lords, the noble Baroness is right that there was a slight drop, and that is why we absolutely need to do more. That is why I think the work of WRAP will be very important. But let me give some examples of where recycling is working tremendously well: South Oxfordshire District Council has achieved 66.6% household waste recycling; East Riding has achieved 66.1%; and Rochford District Council has achieved 66%. We want to raise the bar where local authorities are doing very well. That is what we want across the country.

Lord Dubs (Lab): My Lords, I hope the Minister will not think I am being discourteous, but his first Answer could have come straight out of "Yes Minister". His subsequent answers were similar to those the Government gave when we talked about putting a tax or some penalty on the excessive use of plastic bags. We are getting nowhere in this. Surely we must do something—it is an environmental scandal. Could we not have some action instead of these platitudes from civil servants?

Lord Gardiner of Kimble: My Lords, I have never taken the noble Lord to be anything other than courteous, and I do not take what he said in any untoward sense. On what he said about the plastic bag charge, there are 6 billion fewer plastic bags in circulation and the 5p charge has raised £29 million for good causes. These are good examples. I am sure that when the litter strategy is launched, as I hope it will be soon, the noble Lord will agree that we are trying to be—and will be—ambitious.

Baroness Jenkin of Kennington (Con): My Lords, I declare an interest as a member of the WRAP board. My noble friend will be aware of WRAP's consistency framework, which should help drive up recycling rates of not just plastic but other commonly collected waste streams. Although the framework was launched only in September, can my noble friend update the House on how it is going with local authorities?

Lord Gardiner of Kimble: My Lords, my noble friend is right. WRAP is currently working on seven local authority partnerships across 49 local authorities. This is to review the impact of greater consistency for household recycling, and I am sure that savings efficiencies and increased recycling will be had from that. It is early days, but I think the local authorities I mentioned show success. We want to raise the bar so that local authorities can see there is business sense in working together to improve recycling.

Baroness Jones of Moulsecoomb (GP): My Lords, could the Minister give us a list of the worst-performing councils?

Lord Gardiner of Kimble: My Lords, I had better put that in the Library. Of course I wanted only the positive news, but I am afraid that, absolutely, there are local authorities that we want to encourage and need to do better. It is also in their business interests to ensure that they are recycling well and are litter-free places to work in and do business. The whole purpose of the consistency framework is to raise the level of those authorities that are not doing as well as they should.

Baroness O'Cathain (Con): My Lords, is there consistency in the new litter strategy? Certain council areas encourage you to put the bottles in a certain box and others do not. I have lived in the same house for nearly 30 years and we have had six different types of instructions about litter. If there was consistency throughout the country, I am sure it would benefit everybody.

Lord Gardiner of Kimble: My Lords, what my noble friend said is precisely part of the work of this consistency framework, to make it easier for people to recycle and to make better understood what can be recycled. I very much hope that, as we proceed, ever more can be recycled from products.

Lord Lexden (Con): Does my noble friend have any plans to set forth from his office with a plastic bag in his hand and a camera crew in tow to pick up litter in and around Westminster, and set a fine example to the nation?

Lord Gardiner of Kimble: My Lords, if my noble friend had been with me in Ipswich for the national spring clean, he would have been with the honourable Member for Ipswich and the Labour leader of the borough council. We picked up an enormous amount of litter from around Ipswich. I should say—my officials will not like this—that we visited a fast-food store not too far away with a bag of litter and presented it to the very agreeable manager, who realised that more needed to be done.

East Jerusalem: Access to Emergency Care

Question

2.44 pm

Asked by ***Baroness Sheehan***

To ask Her Majesty's Government what assessment they have made of the impact of back to back transfers between ambulances at checkpoints on the health of Palestinians seeking to access emergency care in East Jerusalem hospitals.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, the Palestine Red Crescent Society reported in 2015 that 84% of transfers from West Bank to East Jerusalem hospitals underwent back-to-back transfers. The UK has consistently called on the Israeli Government to ease restrictions that reduce access to medical care for Palestinians.

Baroness Sheehan (LD): I thank the Minister for his reply. A number of noble Lords have asked me about back-to-back ambulance transfers. Basically, when somebody in the West Bank is critically ill—it is an emergency case—there are no tertiary hospitals in the West Bank and the referral is made to one in East Jerusalem, which is on the other side of the barrier. So the person will get into an ambulance in the West Bank but then be made to get out at the checkpoint and either be wheeled or have to walk through, regardless of whether he is having a heart attack or she is in a difficult labour. They will then have, on average, a 27-minute wait at the checkpoint, before transferring to an ambulance on the Israeli side to be taken, finally, to the hospital. This is an enormous barrier to the coexistence funding programme that DfID has announced to ensure better outcomes for Palestinians needing emergency care. Will the Minister confirm that he will make the strongest possible representations to his counterparts?

Lord Bates: We will certainly continue to make our representations. More importantly, we fund the UN Access Coordination Unit, which helps in this area. We agree that the waiting times are unacceptable. Of course, the long-term solution lies in the resumption of peace talks.

Lord Polak (Con): My Lords, does my noble friend the Minister agree that the first responsibility of a Government is to protect their citizens? Sadly, ambulances have been used by terrorists a number of times in the region. As we understand only too well, difficult decisions have to be made. Is my noble friend also aware that in 2015 more than 190,000 Palestinians entered Israel from the West Bank to receive medical treatment in Israeli hospitals?

Lord Bates: That latter point is well worth underscoring, but it does not take away from the distress that is caused to people who have to transfer from ambulance to ambulance at the border, with these three distinct medical areas: the West Bank, Gaza and East Jerusalem. We think there is a way forward. If the same spirit that has been shown in the offer of medical services by the State of Israel could be addressed to this issue, I am sure that a way could be found.

Baroness Deech (CB): Does the Minister agree with me that Israel deserves praise for organising a system of volunteers who help the injured people in the ambulances get to Israeli hospitals? Moreover, those hospitals are treating thousands of injured Syrians. They deserve praise for ensuring that there is a safe haven at least somewhere in the Middle East for wounded Syrians.

Lord Bates: A tremendous amount of work is going on with Syrians, not least that which DfID is supporting through its work with the UNRWA. We support 22 clinics which are providing essential medical treatment. This situation, in any circumstance, cannot be justified, but it needs to be resolved in a peaceful, constructive way which recognises the legitimate security concerns of the State of Israel.

Lord Anderson of Swansea (Lab): Of course it is distressing and the people of the West Bank and Gaza deserve the very best medical treatment, but will the Minister confirm the point that has already been made—that on many occasions in the recent past, ambulances have been used to convey terrorists and explosives for use in Israel?

Lord Bates: We recognise that and of course we acknowledge the absolute right of the State of Israel to defend itself against terrorist attacks. We believe that with good will on both sides, it will be possible to come to a situation where innocent patients are not ending up as the victims of terrorist activities being perpetrated in Gaza or elsewhere.

The Lord Bishop of Winchester: My Lords, we have heard how the people of the Occupied Territories continue to face challenges accessing emergency care. The diocese of Jerusalem provides hospitals and health centres across this area, but many of the vital facilities and services are not fully operational because the equipment cannot be calibrated and staff lack accreditation. What conversations have Her Majesty's Government had with the Israeli Government to facilitate the necessary inspections to ensure that these and similar facilities become operational and therefore reduce the reliance of Palestinian people on reaching hospitals in East Jerusalem?

Lord Bates: We tend to raise these issues whenever we meet officials. My colleague Rory Stewart was in the Occupied Territories last weekend. It is a constant issue that we raise with them. We think there are legitimate concerns about the use of some materials, but we believe that there is a way forward on this to make sure that innocent people do not suffer.

Lord Collins of Highbury (Lab): My Lords, DfID provides substantial budget support to the Palestinian Authority. Picking up the point made by the right reverend Prelate, when giving that budget support, how much pressure does DfID put on the Palestinian Authority to ensure that money is spent properly on medical care and hospitals?

Lord Bates: The noble Lord makes a valid point. The Secretary of State has taken a leading role in this by changing the way in which we do that. The £25 million that we provide to the Palestinian Authority now needs to go to vetted individuals for specific programmes that have been announced. We work with our EU partners through the PEGASE arrangement to ensure that it ends up in the right hands, but more could be done, and I am happy to undertake to make those representations to ensure that it happens.

Lord Wallace of Saltaire (LD): In situations like this Palestinian, Israeli and international non-governmental organisations play a very important role. Is DfID satisfied that the Israeli Government make life sufficiently easy for non-governmental organisations to play a role in assisting Palestinian healthcare and other areas like that?

Lord Bates: We would like to see more. We do not think that the NGO Bill which is currently before the Knesset goes down that route. We think we need to do more.

Housing: Letting and Managing Agents

Question

2.52 pm

Asked by ***Baroness Hayter of Kentish Town***

To ask Her Majesty's Government whether they will make membership of a client money protection scheme mandatory for letting and managing agents.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, I thank the noble Baroness and the noble Lord, Lord Palmer of Childs Hill, for their time and commitment to the client money protection review. I am pleased to announce that the Government intend to make client money protection mandatory in line with the recommendation of the review chaired by the noble Baroness and the noble Lord, Lord Palmer of Childs Hill. This will ensure that every agent is offering the same level of protection, giving tenants and landlords the financial protection that they deserve. The Government will consult on how mandatory client money protection should be implemented and enforced.

Baroness Hayter of Kentish Town (Lab): Well, that has taken the wind out of my sails. Will the Minister accept my thanks? The House will recall that we put into the Housing and Planning Act the reserve power to do this but at that point the Government were not quite convinced. However, as the Minister said, along with the noble Lord, Lord Palmer, we did the report, and the recommendation was published only yesterday. Today's news is really good for tenants and landlords. It means that if any letting agent goes bust or makes off, the client's money is safe. I hope the Minister will accept my thanks.

Lord Bourne of Aberystwyth: My Lords, I certainly will. That was a typically gracious response from the noble Baroness. It was a very well-reasoned report. Many people had been called to give evidence, so it was very strongly evidence-based. As I say, we will be consulting on implementation and enforcement. I am sure that we can talk about it in the meantime.

Lord Palmer of Childs Hill (LD): My Lords, I have had a little more time to get some wind in my sails. I thank everybody who took part in this review: my

[Lord Palmer of Childs Hill]
co-chair, the noble Baroness, Lady Hayter, the ministry and the civil servants, who were incredibly helpful. However, the review raises ongoing questions for the Government to tackle. For instance, enforcement is a key to success. Will the Minister tell us what he intends to do about the recommendation in the report that the Government consider,

"authorising a prime authority for enforcement, recognising CMP schemes and providing up to date information"?

Without that, the mandatory scheme will not have teeth.

Lord Bourne of Aberystwyth: My Lords, once again I thank the noble Lord for the part he has played in this. He asked specifically about one aspect of the consultation. As I say, we will be consulting on enforcement and implementation. He rightly draws attention to the fact that on occasion there has been a prime authority in this sort of area supervising the enforcement—Powys was an example used in the review, although in this instance, because it is England only, it cannot be Powys. A strong case has been made out, but of course we will be consulting on it.

Baroness Gardner of Parkes (Con): My Lords, is it not essential in producing this final scheme that it should be as fair and as protected as the deposit protection schemes which exist for tenants' deposits at present? In particular, there needs to be some kind of recognition that estate agents have to receive money in order to get the security checks, references and other things they need. They have to be carefully considered as well. It has to be fair to all parties.

Lord Bourne of Aberystwyth: My Lords, it certainly does need to be fair to all parties. The evidence from the consultation was that about 85%, if I am not mistaken, backed the need for enforcement in this area, so that obviously was a key factor. I agree with my noble friend that the consultation will need to ensure that it is fair and equitable across a wide variety of people.

Lord Best (CB): My Lords, I declare my interest as the chair of the council of the Property Ombudsman, which deals with complaints about managing and letting agents. I congratulate the noble Baroness, Lady Hayter, on her persistence in pursuing this matter and congratulate the Government on yielding to that persistence. Would the Minister agree that the value of this is not just about protecting landlords if agents go off with the money but about weeding out the more dubious and dodgy managing and letting agents because they will not be able to get the insurance that will now be mandatory?

Lord Bourne of Aberystwyth: My Lords, I agree with the noble Lord. First, yielding to persuasive argument always seems to be the best and most sensible course to pursue, but I also agree with him about the importance of taking account of all those views and ensuring in the consultation that we act equitably and fairly across the piece.

Aviation: Large Electronic Device Ban

Question

2.57 pm

Asked by ***Baroness Randerson***

To ask Her Majesty's Government what were the reasons for their decision to ban large electronic devices from aircraft cabins on flights from certain countries.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Ahmad of Wimbledon) (Con): My Lords, the safety and security of the travelling public will always be our primary concern, and this Government will not hesitate in putting in place any measures that we believe are necessary, effective and proportionate. The whole House will recognise that we face a constantly evolving threat from terrorism and we must respond accordingly to ensure the protection of the public against those who would do us harm.

Baroness Randerson (LD): My Lords, I agree wholeheartedly with the Minister that the security and safety of our people must be our priority, so I am concerned about the shortcomings of this decision. As we discovered so tragically here last week, terrorism can emerge from the most unlikely places, so why have only six countries been selected for this ban and how can it work if it does not apply to all flights, wherever their origin? I believe Germany, Spain, Switzerland, Australia and New Zealand have already decided not to implement a ban. How can it work across the world if not every country is co-operating?

Lord Ahmad of Wimbledon: My Lords, first, the events of last week were a stark reminder to us all of the nature of the challenge we face. Indeed, there was a Question on this very subject scheduled for that day, which we could not take. On the specifics of the noble Baroness's question, how our European partners act is very much a matter for their respective Governments. We have acted in accordance with what we believe is the best interests of the United Kingdom, and Her Majesty's Government will continue to act in that manner.

Viscount Ridley (Con): Can my noble friend explain why a laptop in the cabin is dangerous if a laptop in the hold is not?

Lord Ahmad of Wimbledon: My noble friend asks a specific question on the new measures which have been implemented. I am sure that he will respect the fact that I cannot go into the specific detail behind the reasons why we have taken these measures. However, we keep all aviation security measures under constant review and have acted in accordance with that review. On the matter of laptops now being pressed into the hold, the CAA is also issuing specific advice to carriers dealing with that.

Baroness Corston (Lab): My Lords, the Minister must know that the success of this policy decision depends on airports in other countries. How confident is he about that?

Lord Ahmad of Wimbledon: I assure the noble Baroness—indeed, the whole House—that the Government have acted from the very top. There has been engagement at ministerial level. I have engaged with several host countries, as has the Secretary of State and other Ministers, including the Secretary of State for Foreign Affairs and the Minister for Foreign Affairs responsible for some of those countries. We have also dealt directly with the airlines from some of those host countries as well as British carriers, and I can assure all Members of your Lordships' House that all are co-operating fully.

Lord Pannick (CB): Can the Minister explain what is the point of this decision if, as will be the case, these devices can be flown to Brussels or Paris and then flown to London?

Lord Ahmad of Wimbledon: It will apply to transiting passengers as well, if the flight is scheduled for London. As I said in response to a previous question, if those flights are going to other European capitals from the countries that we have listed, that is very much a matter for those European Governments.

Lord Paddick (LD): My Lords, a recent change in airline policy means that on many occasions, if there is a stopover flight, you cannot check your hold luggage through to your final destination. What is to stop someone concealing a laptop bomb in their hold luggage in one of the six countries affected by the ban and then, when they collect their bags at the stopover airport, taking that laptop bomb and putting it in their hand luggage in a country where the laptop ban does not apply?

Lord Ahmad of Wimbledon: If a person is coming through on transfer, the same rules will apply to them. Let me be absolutely clear that this is a measure that we have taken for six countries, as I am sure the noble Lord is aware. Anyone transferring through to any UK airport will be subject to the same restrictions.

Lord Skelmersdale (Con): My Lords, using an iPhone, you can turn on your central heating from some distance. Surely the same could be done with a bomb. Why are not iPhones included in the ban?

Lord Ahmad of Wimbledon: As I already said, I will not comment on the specifics of the reasoning for this action. We monitor all issues of security and evolving threats and will continue to do so.

Lord Rosser (Lab): My Lords, the Minister did not deal with a previous question. I ask him for an assurance that he personally, as Aviation Minister, is satisfied with the reasons he has been given why the electronic devices in question present a threat if carried in the cabin of the aircraft but not if they are carried in the hold. Can he give us his personal assurance that he is satisfied with the reasons that he has been given, as Aviation Minister, why in one scenario there is a danger and in the other there is not? I will pursue another question that has already been asked, and ask for very firm assurances: can the Minister confirm that the Government are satisfied with the security arrangements and standards at the airports in the six countries concerned from which the inbound flights to the UK affected by the new arrangements are departing? Can he provide that unequivocal assurance?

Lord Ahmad of Wimbledon: First, on the noble Lord's specific questions about providing assurances, our intelligence agencies, which are some of the best among the world, provide the advice on the evolving security threat that we monitor. As for giving a personal assurance as the Aviation Minister responsible, of course we look to our security and intelligence agencies. This is an evolving threat and we continue to monitor it and, based on that, we have put in additional security measures. On the second question, of course I can also give the noble Lord the assurance that on the additional security measures, as I have said, we are working specifically with the carriers, British and foreign. I have spoken to them directly myself. Officials are working with them and, equally and most importantly, we are working with those countries and airports that have been identified and continue to receive full co-operation to ensure that those embarking on a visit to those countries, and indeed returning from those countries, are safe and secure.

Lord Dykes (CB): My Lords—

Lord Marlesford (Con): My Lords—

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, it is the turn of the Cross Benches.

Lord Dykes: Does not the Minister realise that the implication of all the previous questions—including the Question asked by the noble Baroness, Lady Randerson—is that this policy will not work unless it becomes universal, because the public internationally have to be reassured that flying is going to be safe in future? These devices are getting more and more sophisticated and a universal ban will be necessary in the end, so that people can resume using their smartphones and tablets when they land but not while planes are in the air.

Lord Ahmad of Wimbledon: Let me again assure the noble Lord and the whole House that Her Majesty's Government act in the best interests of our citizens. We do not take these issues lightly, as all previous Governments have not, and we have acted in exactly the same manner. We will continue to put the interests of the UK travelling public first. As to a universal ban, as I have said already this is a matter for individual Governments, but of course we talk to our European partners. This is very much a matter for each sovereign Government to make in accordance with how they see fit.

Lord Marlesford: In view of what my noble friend has been saying about being satisfied with airport security in some of these countries, and given that Egypt has been put on that list, will he now accelerate the resumption of flights to Sharm el-Sheikh in Egypt by British carriers—German carriers are allowing it? It is wrecking the Egyptian tourist industry, which is

[Lord Marlesford]
doing huge damage to the Egyptian economy, when Egypt is one of the countries that is very much on our side and is trying to inject an element of real stability and prosperity into the Middle East.

Lord Ahmad of Wimbledon: My noble friend raises the specific issue of Sharm el-Sheikh. As he will be aware, Her Majesty's Government—indeed, officials from my department—work specifically with the Egyptians on the ground. Yes, indeed, measures have been improved in Sharm el-Sheikh, but I remind him and your Lordships' House that even though the tragic events on the Metrojet flight were well over a year and a half ago, in October 2015, we have not yet seen the final report from either the Egyptians or the Russians relating to that incident.

Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Bill

Order of Commitment Discharged

3.07 pm

Moved by ***Baroness Gale***

That the order of commitment be discharged.

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

Motion agreed.

Northern Ireland: Political Developments

Statement

3.08 pm

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Dunlop) (Con): My Lords, with permission I shall repeat a Statement made by my right honourable friend the Secretary of State for Northern Ireland in the other place. The Statement is as follows:

"Since the Northern Ireland Assembly election on 2 March, I have been engaged in intensive talks with the political parties and the Irish Government, in line with the well-established three-stranded approach. There has been one clear purpose: to re-establish an inclusive, devolved Administration at Stormont in accordance with the 1998 Belfast agreement and its successors.

Progress has been made on a number of issues. These include on a budget, a programme for government and ways of improving transparency and accountability.

We have seen further steps forward on agreeing a way to implement the Stormont House agreement legacy bodies to help provide better outcomes for victims and survivors of the Troubles. In addition, progress was made around how the parties might come together to represent Northern Ireland in our negotiations to leave the EU, which is so important in the context of Article 50 being triggered tomorrow. That said, it is also clear that significant gaps remain between the parties, particularly over issues surrounding culture and identity.

Throughout this process, the Government have been active in making positive proposals to try to bridge those gaps and help the parties to move things forward. In law, the period allowed to form an Executive from the date of the first sitting of the Assembly after an election is 14 days. That 14-day period expired at 4 pm yesterday with no agreement and therefore no Executive. This is a source of deep disappointment and regret to me and I know there is widespread dismay across the country. From all my extensive engagement across Northern Ireland, with business, civil society and members of the public, I am in no doubt that inclusive, devolved government is what the overwhelming majority of the people want to see: working for them, delivering on their priorities and continuing the positive progress we have seen in Northern Ireland over recent years, with devolved institutions up and running and serving the whole community.

Yet following the passing of yesterday's legal deadline, Northern Ireland has no devolved Administration. This also means that other elements of the Belfast agreement, including the north/south bodies, cannot operate properly. The consequences of all of this are potentially extremely serious. The most immediate is the fact that we are rapidly approaching the point at which Northern Ireland will not have an agreed budget. From tomorrow, a civil servant—the Department of Finance Permanent Secretary—will exercise powers to allocate cash to Northern Ireland departments. This is an interim measure designed to ensure that services are maintained until such time as a budget is agreed. We are keeping in close contact with the head of the Northern Ireland Civil Service on these matters and I understand that the Department of Finance will be setting out more details today. But let me be very clear: this situation is not sustainable and beyond a short period of time will have an impact on public services. What we are talking about here is the health service, schools, voluntary groups and services for the most vulnerable in society. This is not what people voted for on 2 March.

During the course of the past 24 hours I have spoken to the leaders of the five main Northern Ireland parties and the Irish Government. I am encouraged that there remains a strong willingness to continue engaging in dialogue with a view to resolving outstanding issues and forming an Executive, but the window of opportunity is short. It is essential therefore that the intensity of discussions is stepped up with renewed intent and focus. To that end I will continue over coming days to work closely with the Northern Ireland parties and the Irish Government as appropriate. I will need to keep the situation under review, but if these talks are successful it would be my intention quickly to bring forward legislation after the Easter Recess to allow an Executive to be formed, avoiding a second Assembly election, for which I detect little public appetite.

I am also determined to take forward the legacy bodies in the Stormont House agreement in accordance with our manifesto commitments. I will be involving a range of interested parties, including the victims' commissioner. However, in the absence of devolved government, it is ultimately for the United Kingdom Government to provide for political stability and good governance. We do not want to see a return to direct rule. As our manifesto at the last election stated,

'local policies and local services should be determined by locally elected politicians through locally accountable institutions'.

But should the talks fail in their objectives, the Government will have to consider all options. I therefore want to give the House notice that, following the Easter Recess, as a minimum, it would be my intention to bring forward legislation to set a regional rate to enable local councils to carry out their functions and to provide further assurance around the budget for Northern Ireland.

It is vital that devolved government, and all the institutions under successive agreements, is returned to Northern Ireland as soon as possible, and the Government's unrelenting focus is on achieving that objective. Northern Ireland needs strong devolved government to deliver for teachers, doctors and nurses, businesses, industry and the wider community; to ensure that it plays a full role in the affairs of our United Kingdom while retaining its strong relationship with Ireland; and to continue the work of the past two decades to build a stronger, peaceful and prosperous future for all. That needs to be the focus of everyone as we approach the crucial next few days and weeks. I commend this Statement to the House".

3.15 pm

Lord McAvoy (Lab): My Lords, I thank the Minister for repeating the Statement. In keeping with past tradition and practice of a consensus between all the parties regarding Northern Ireland, he and I have a strong relationship which is invaluable in this situation. Bearing in mind that close relationship, I know it will be a great disappointment to him that he must stand before this House again today to inform us that the talks to re-establish an inclusive, devolved Administration at Stormont have not been successful.

On 2 March, the people of Northern Ireland turned out to vote for their representation and for a devolved Assembly that will serve the needs of the whole community. If anyone has any doubt about the expectations, hopes and aspirations of the whole of the people of Northern Ireland, they may find it useful to speak to my noble friend Lady Blood, who is well tuned into opinion. A number of noble Lords throughout this House, especially those from Northern Ireland, will be able to testify to that need of the whole community. We need all the political parties in Northern Ireland collectively to live up to those expectations.

Communities and public services in Northern Ireland are suffering the day-to-day realities of this impasse. The Minister made mention of the health service—a service which is struggling with waiting lists while waiting for political leadership to be back in place. We thank the Minister for notice of the interim measures in place to allocate resources to Northern Ireland departments. We agree with his own statement that this is not sustainable.

I would like to ask the Minister about the talks moving forward. What fresh initiatives will be employed to ensure that the next round of talks are dynamic and make progress? We must ask: what will be different about these talks? Can we encourage, in the strongest possible terms, the importance of prime ministerial involvement in this process? History shows us how important this can be. I am aware of the answer the Secretary of State gave to my honourable friend the Member of Parliament for Blaydon in the other place, that the Prime Minister is involved and is conducting business through the Secretary of State. This is absolutely no reflection on the hard-working attitude of the Secretary of State, but does the Minister agree that we need greater leadership to be shown in the weeks ahead? Is he able to tell us what plans the Government have to ensure that the Prime Minister is even more actively engaged in the process?

We must also ensure high-level, direct engagement from the Irish Government in their role as a guarantor of the Good Friday agreement. Can the Minister update the House on the continuing intervention that the Irish Government have had, and will have, in the process? What options have the Government looked at in dealing with the specific issue of the renewable heat incentive scheme? Has the Secretary of State looked at the financial burden that the scheme placed on the people of Northern Ireland, and are there any options for how this may be more appropriately dealt with?

We in this House are under no illusion that this is easy. But this does not stop us—or, more importantly, the people of Northern Ireland—having high expectations of what must be achieved. We need all engaged parties, including the UK Government and the Irish Government, to ask not "What do we want?" but "What can we give to this process moving forward?".

Baroness Suttie (LD): My Lords, I, too, will start by thanking the Minister for repeating the Statement to your Lordships' House this afternoon. I will also say that it is with a very deep sense of regret—despite the very genuine efforts by some—that we have reached this impasse.

Let us be clear: the consequences for Northern Ireland of the failure of the political parties to reach agreement to establish an Executive are very serious. We are days away from the end of the financial year, and yet—as has been said—there is no budget. There has been no vote to set next year's regional rates. There is no programme of government. This will lead to increased uncertainty for key public services in Northern Ireland such as health and education, and in the voluntary and community sectors.

It is particularly to be regretted that the ordinary people of Northern Ireland find themselves without a voice through an Executive at Stormont at such a critical time. With the triggering of Article 50 tomorrow, this is the very time when the particular needs of Northern Ireland deserve to be clearly heard. There are very real and as yet unresolved concerns for Northern Ireland, not least about how to maintain the open border in the context of the UK leaving the customs union. Can the Minister say what mechanisms the Government intend to put in place to ensure that the views of all political parties in Northern Ireland are

[Baroness Suttie]
heard during the Brexit negotiations? Does he agree that the joint ministerial committee will have a greater role to play in the context of Brexit, and that a more balanced representation of MLAs is needed to reflect the views of Northern Ireland?

Does the Minister further agree that, in the event of the current impasse continuing, a mechanism needs to be found to keep Assembly Members in place and to engage them and their party leaders in discussions on Brexit and other issues? Will he confirm that any such mechanism would require primary legislation?

Given that the RHI scandal was one of the immediate causes of the current crisis, will the Minister confirm that it is his understanding that the inquiry chaired by Judge Coghlin could take as long as six months to complete? Is he confident that Judge Coghlin has the necessary resources to enable a rapid conclusion to the inquiry? However, it is clear that there are deeper problems than the specific issues surrounding RHI. It will therefore be necessary to do things differently in order to secure a deal and to move forwards.

We on these Benches believe that there is no alternative to devolution, but that to achieve agreement will require a renewed commitment on the part of all participants to the talks. We believe that all parties now need to take stock of their position and come back to the negotiating table in a frame of mind to reach an agreement. Does the Minster agree that it is necessary to have a renewed sense of momentum, with clear leadership and full engagement by all political parties? What concrete action are the Government taking to provide the necessary leadership at the highest level at this time?

As former President Bill Clinton said last week, making peace work is an "endless process". It requires compromise, a cool head, leadership and a desire to put the best interests of all the people of Northern Ireland ahead of narrow political advantage. We sincerely hope that such an attitude will be forthcoming in the next few weeks.

Lord Dunlop: First, I thank the noble Lord and the noble Baroness for their comments. I agree with many of the sentiments they expressed. I think that the whole House will agree that the people we should have in the forefront of our mind today are the people of Northern Ireland. In the recent Assembly elections they voted overwhelmingly for strong, stable and inclusive devolved government, and it will be a matter of great disappointment to them—as it is to the Government—that the parties have been unable to reach agreement within the statutory period to enable an Executive to be formed.

This has real and practical implications. From tomorrow, a civil servant rather than elected representatives will be allocating cash for public services. This is not sustainable beyond the short term. Northern Ireland wants and needs effective, devolved government delivering on an agreed set of priorities and providing strong public services for all the people of Northern Ireland.

Turning in particular to the process going forward and who is involved in it, I say clearly that the UK Government take their responsibilities very seriously. However, it is important to say that the Northern Ireland parties also need to take their responsibilities seriously, to provide leadership and solutions to the current issues. My right honourable friend the Northern Ireland Secretary has been actively involved in supporting and facilitating the discussions between the parties over the last few weeks, and making proposals to bridge the gaps. As he said in the House of Commons, the Prime Minister has been fully engaged. She has held a number of conversations with the Taoiseach and will remain fully engaged as we go forward. However, it is worth noting that high-level interventions have not always worked in the past, as the early 2000s showed, and the circumstances today are very different, with 10 years of unbroken devolved government behind us. But of course we accept that this is a window of opportunity, and the discussions need to be intensified and inclusive. The Secretary of State will be discussing in the coming hours and days with the parties and the Irish Government the process for taking matters forward. We are working closely with the Irish Government and Irish Foreign Minister Charlie Flanagan in accordance with the three-stranded approach.

On some of the other issues, clearly Brexit is a hugely important matter, and it is absolutely vital that the interests and priorities of Northern Ireland are reflected as we prepare for the negotiations to come. That is of course why we need to get a fully functioning Executive up and running as quickly as we can. Of course, the UK Government and the Northern Ireland Office will continue to engage with stakeholders right across Northern Ireland and to represent those interests. However, it would be much more effective if the Executive were in place. There has been progress with the parties in the discussions we have just had in establishing how they can come together to represent the interests of Northern Ireland going forward.

On the RHI inquiry, I think everybody wants to see a rapid reporting of that. Clearly, the procedures are a matter for the inquiry itself, but we want the facts on this issue as quickly as we can.

3.27 pm

Lord Kilclooney (CB): My Lords, as one of those involved in the Belfast agreement, I am delighted at the Statement and the Government's determination to try to help get devolution restored to Northern Ireland. However, the Statement says:

> "But should the talks fail in their objectives, the Government will have to consider all options".

Is direct rule an option, and is joint rule of Northern Ireland not an option?

Lord Dunlop: Our focus is on this period ahead—the window of opportunity the Secretary of State talked about—and I do not want to speculate about alternatives. Clearly, if we do not get agreement within this limited period, we need to consider all the options. However, it is fair to say that nobody wants to see a return to direct rule, which is why we need to intensify the discussions over the coming days and weeks.

Baroness Blood (Lab): My Lords, in reading the Statement, a couple of things worried me. First, we are told in the Statement that we are rapidly approaching a point where there is no real budget. The civil servants

will be able to allocate funds for a very short period, but that is not sustainable. I worry about that, because that is the realm of life I live in. While I agree that the Irish language legacy issues are very important, they are not what makes the world go round, but the talks have figured mostly on those things. That worries me greatly, because I see work all around me coming to a halt because of the budget. Can the Minister say whether all the parties have been at a round table, and if not, why not? Are some elected representatives more important than others? With regard to the future of Northern Ireland, I do not consider that to be the case. The Minister talked about going on to future talks. What will be different about the next set of talks?

Lord Dunlop: There has been progress in the talks over the last period. Progress has been made on setting a budget, implementing a programme for government and improving transparency and accountability, and these have been part of the round-table talks that have been convened. But clearly, as we go forward, we need to step up the intensity and inclusivity of the discussions, and that is what the Secretary of State will be working towards over the coming days and hours.

Lord Lexden (Con): My Lords, my noble friend Lord Kilclooney asked the Minister about joint rule but he did not comment on it in his reply. Will he now rule that out firmly?

Lord Dunlop: I have been asked that question in this House before and I will give the same reply that I gave then. We are committed to the Belfast agreement and the principle of consent. Northern Ireland remains a full part of the UK and joint authority would be incompatible with that principle of consent.

Lord Rogan (UUP): My Lords, the Minister mentioned in the Statement public services, the community and the voluntary sector. What is his assessment of the uncertainty that the present situation places on those vital services, which are often accessed by the most vulnerable in our Northern Irish society?

Lord Dunlop: The funding of these voluntary bodies and the public services is absolutely at the heart of why we need to make quick progress and why this process cannot go on indefinitely. Measures are in place that allow the Permanent Secretary of the Department of Finance to allocate cash, but political choices need to be made and that is why we require a fully functioning Executive to be in place.

Lord Hain (Lab): My Lords, I support the Secretary of State in avoiding—almost at all costs—direct rule, because it would be a massive and possibly irreversible setback. Equally, I support there being no second election, because everybody agrees that that would solve absolutely nothing. In common with my noble friend Lord Murphy of Torfaen, who is unable to be here this afternoon, I remain puzzled as to why there has been no direct prime ministerial involvement—a point raised by my noble friend Lord McAvoy. The Minister hinted that the times are very different. They may be in one sense but in another they are not. The truth is that at times in the past the Prime Minister's direct involvement, calling a summit at Hillsborough Castle or wherever it may be together with the Taoiseach, has been crucial in breaking the gridlock and bringing parties together, enabling them to find a solution they were not able to find on their own. I put that again to the Minister. The Prime Minister may be busy on other things such as Brexit but I suggest that there is nothing more important on her agenda than keeping the peace process in Northern Ireland moving forward. If it stalled and in any sense went into reverse, that could be very dangerous.

Lord Dunlop: First, I agree with the noble Lord about the importance of maintaining the forward momentum of the peace process. As the Statement says, and as the Secretary of State said in the House of Commons, we do not detect any appetite for a second election—the issues would remain to be resolved and it would merely prolong a period of uncertainty and disruption. On the involvement of the Prime Minister, as I have already said, she is actively involved and engaged, dealing directly with the Taoiseach. She and the Taoiseach have mandated my right honourable friend the Northern Ireland Secretary and the Irish Foreign Minister to take forward supporting and facilitating the discussions with the parties. That will happen over the coming hours and days as we seek a resolution to these issues.

Lord Alderdice (LD): My Lords, I want to emphasise the importance of both the Prime Minister and the Taoiseach being seen to be working together with the parties. The symbolism of that, as well as the practicality, is extremely important. I put to the Minister again the question that my noble friend Lady Suttie put. In the preparations for whatever outcome there is post-Easter, will the noble Lord and his colleagues at the Northern Ireland Office consider the possibility of the Assembly continuing even if the Executive Ministers are not in place? In that way there would be an elected body with which Northern Ireland Office Ministers and other Ministers could consult, with Members duly elected and their leaders, particularly about the question of Brexit as well as that of general devolution.

Lord Dunlop: As the Statement sets out, the focus and priority are seeking to get the Executive up and running. Of course, should that not succeed, we will look carefully at all the options as we go forward.

Lord Trimble (Con): My Lords, I welcome the announcement by the Minister that he will be bringing forward legislation after Easter. I suggest that that legislation should be fairly comprehensive in providing for a number of scenarios. It might also be a good idea to do something unusual or a little different—the suggestion mentioned by the noble Lord, Lord Alderdice, is worth considering. The Minister might like to consider that the joint ministerial council is not a creature of statute and that it could operate with a slightly different membership than it has done hitherto.

Lord Dunlop: I will certainly reflect on what my noble friend has said. As is clear from the Statement, our focus is on getting the parties round the table to

[LORD DUNLOP]
agree the outstanding issues so that we can form an Executive at the end of this window of opportunity. That must be the focus of our efforts at present.

Lord Bew (CB): My Lords, one of the few positive elements that the Minister was able to give us this afternoon was his reference to progress on accountability and transparency in government, the absence of which played a role in the generation of the scandal that has been so damaging to the institutions. Will he say a little more about what the parties have agreed, or may be in the process of agreeing, to enhance the accountability and transparency of the work of the Executive should they return, as we all hope that they will?

Lord Dunlop: As the discussions are ongoing I do not want to talk about what must necessarily be confidential discussions. However, I know of the noble Lord's long-standing interest in this subject and would merely reiterate that there has been progress on these issues in the immediate preceding period.

Lord Howell of Guildford (Con): My Lords, the Statement spoke about the parties coming together to deal with the Brexit situation. Is it, as a matter of fact, the position that the people of Northern Ireland still have the statutory right to organise a referendum on their constitutional position, unlike Scotland which does not have that right unless it is granted? Is that now the legal position? I declare an interest as a Minister who took the original Northern Ireland referendum Bill through the House of Commons in 1972.

Lord Dunlop: Under the Belfast agreement, arrangements are set out for the circumstances in which a border poll could be held. However, the Secretary of State has made it clear that the conditions for such a poll are not currently satisfied.

Lord Dubs (Lab): My Lords, will the Minister remind us how long the Secretary of State has to go on negotiating, as is highly desirable? Is there a point at which he is obliged to bring that to a halt and go for one of the other options?

Lord Dunlop: The Secretary of State has made it clear that there is a period between now and Easter—when obviously the House of Commons will be in recess. What determines the timescale is the very clear statement that, if we can get agreement, when the House returns legislation can then be introduced, as set out in the Statement.

Lord Empey (UUP): The Statement was most regrettable and unfortunate but not surprising. It may be useful for the House to know that at no point during the three-week period of negotiations were all parties invited to the table at the same time—not a single meeting of all the parties took place. As far as agreements are concerned, there are no agreements because nothing is agreed until everything is agreed. There has certainly been some progress, but not enough. Will the Minister keep an open mind when it comes to the steps that may have to be taken at the end of this period, whatever that period is—probably the end of April? The Government must use their imagination to ensure that the institutions survive with the north-south and east-west bodies that are attached to them, which is particularly significant in terms of the implications for Brexit and our relationship with the Irish Republic at this difficult time. Will the Government keep an open mind and look at examples of things that could be opened up to make sure that our number one priority is the maintenance of the institutions?

Lord Dunlop: I say to my noble friend that, as the Statement said, should the talks fail in their objectives, the Government will have to consider all options. It would be right to keep an open mind at this point on those.

Lord Rooker (Lab): Who is taking the day-to-day decisions that would have been taken by Ministers? They are not all long term: many of them are day to day. It must self-evidently be civil servants, who are not elected and not accountable. They cannot be accountable to the Assembly and that is a mistake. That is not in the interests of the people of Northern Ireland. My experience is limited to one year and that was 10 years ago, but direct rule is not a threat to some people in Northern Ireland. I drew the distinct impression at the time I was there, just for a year with my noble friend, that many people were quite happy with direct rule because it locked Northern Ireland into the UK in a very solid way. If we were to go back to direct rule, the chances are, as my noble friend said, we would never get out of it. It should not be contemplated and some other innovative way should be found. The fact is that someone is taking decisions over people's lives at the moment, whether they are on planning, benefits or whatever, that Ministers would take on a day-to-day basis. Who is doing that?

Lord Dunlop: I agree with the noble Lord. I have the highest regard for the Civil Service, but I am sure that we would all agree that elected politicians should be taking decisions about public services and public spending. With regard to direct rule, our experience in the past has been that, when the institutions are suspended and we move into a period of direct rule, we have not come out of that period quickly. We have seen huge progress made in Northern Ireland with 10 years of unbroken devolved government, and that is why the people of Northern Ireland voted so overwhelmingly in the last election to see those strong and inclusive devolved institutions continue.

Baroness O'Loan (CB): My Lords, there seems to be no appetite for direct rule. There is no appetite for an Assembly under the current terms, and there is no appetite for the parties to get together around a table. So in those circumstances, is two weeks long enough or do we need to go well beyond Easter in terms of negotiations before we move to direct rule? I must contradict the noble Lord, from the Cross Benches—that is not a good idea.

Lord Dunlop: We have been able to create this window of opportunity, but it is only a window. This cannot drag on indefinitely, for the reasons that I have said. Decisions need to be taken about the budget and

the allocation of the budget. As the Statement says, there is a need to set a regional rate and that binds the time period in which we are operating.

Lord Cormack (Con): My Lords, while I accept up to a point what my noble friend has said, having seen it at first hand, can I stress that a prime ministerial presence in Belfast can be of enormous importance in bringing the parties together? I was shocked by what the noble Lord, Lord Empey, said about the parties not having been brought together. Could not the Prime Minister be urged to invite all the relevant parties to Hillsborough? If we do not get this right, it could be a disaster for the union.

Lord Dunlop: I understand what the noble Lord, Lord Empey, said. It is a matter of fact that there have been round-table discussions on issues like the Programme for Government and budget setting which were chaired by the head of the Northern Ireland Civil Service. As regards the process going forward, that is something which my right honourable friend the Secretary of State is actively exploring with the parties and no doubt he will make further statements on that.

Lord Elystan-Morgan (CB): My Lords, can the noble Lord confirm that if no acceptable compromise is reached over the next few weeks and if the situation seems to be such that we are spiralling towards direct rule, would Her Majesty's Government, in conjunction with the other interested parties, consider inviting a statesman of international renown such as Senator George Mitchell or indeed former President Bill Clinton to intercede in the hope that this perilous impasse can be avoided?

Lord Dunlop: I do not want to speculate on what might happen afterwards. Our focus is on the talks that we want to hold in the hours and days ahead.

Lord Hay of Ballyore (DUP): My Lords, I welcome the Statement but I have to say that it is extremely disappointing that an Executive in Northern Ireland has not been formed so that eventually we could have a strong and stable government. We see former Secretaries of State here in this House. These are complex issues and they have been challenging parties in Northern Ireland for about 20 years. Sometimes there is a belief among Peers that these issues have been around for only the past five or 10 years. That is not the case, they go back 20 years. However, there is an opportunity for the Prime Minister to get involved. I know that she has been actively involved behind the scenes, but I think that her presence in Northern Ireland at this time would help the process. The Prime Minister had agreed to visit the other regions of the United Kingdom before she triggers Article 50, so I would ask the Minister whether the Prime Minister still intends to come to Northern Ireland before doing so. I think that such a visit could help the process. Her presence in Northern Ireland would do that.

Lord Dunlop: I do not want to repeat what I have said already about the Prime Minister's involvement and I am afraid that I am not privy to her forward diary, so I cannot answer the noble Lord's question directly.

Criminal Finances Bill

Committee (1st Day)

3.47 pm

Relevant documents: 22nd Report from the Delegated Powers Committee

Clause 1: Unexplained wealth orders: England and Wales and Northern Ireland

Amendment 1

Moved by ***Lord Hodgson of Astley Abbotts***

1: Clause 1, page 1, line 13, after "satisfied" insert "beyond reasonable doubt"

Lord Hodgson of Astley Abbotts (Con): My Lords, this is a modest amendment that is grouped with around 58 other amendments which deal with unexplained wealth orders, a new form of legislation in this country. Those 58 other amendments have been proposed by a bevy of talent, including several by my noble friend on the Front Bench, so after a few introductory remarks I propose to focus on the narrow issue which is the subject of my particular amendment. Before doing so, I should remind the Committee of my interests as declared in the register. I understand that it is now no longer approved procedure just to make a general reference and that we are supposed to be more specific. I should also remind the Committee that, while I am no longer an authorised person under financial services legislation, I remain the chairman of two companies that provide services to the financial industry.

At Second Reading I said that I strongly support the direction of travel of this Bill. I am well aware of the impact and the deleterious effect of the worm of corruption on society as a whole. However, I pointed out then and I point out now, as we begin Committee, that new regulation is by no means always the answer. Better use of existing regulation may well be equally effective, as encouraging and rewarding better behaviour to create the right climate may be. We need sticks but we also need carrots. The most important carrot is that people believe that what they are being asked to do is proportionate, fair and worth while, and that the information they are being asked to provide will be used and used effectively.

That should not be taken as my being in any way lukewarm about what we are discussing in the Bill and its purpose, but I shall want to be reassured now and as we go through Committee on three things: that the new powers being sought are required and required in the form it is proposed they should take; that those powers will be used, will be used effectively and will not sit on the shelf; and that they are likely to have a proper impact on the reduction of financial criminal activity.

With those introductory remarks, I turn to my amendment. As I said, this first part of the Bill is concerned with the introduction of an entirely new power for the authorities to obtain a court order to investigate what is called in the Bill "unexplained wealth". I am no lawyer, but that seems a fairly broadly

[Lord Hodgson of Astley Abbotts]
drafted phrase capable of quite a varying range of interpretations. I accept, however, that such broad phrasing may be necessary to cover the many forms that criminal financial activity may take, but equally, when I read that the provision will involve a reversal of the burden of proof—that is, under an unexplained wealth order I will have to explain why I should have this wealth, rather than the authorities explain why I should not—I wonder whether the right balance has been struck in the drafting.

In particular, in the group of amendments that we shall discuss, government Amendment 8 in the name of my noble friend on the Front Bench proposes to reduce the amount above which an unexplained wealth order may be sought from £100,000 to £50,000. If the Committee was minded to accept this amendment, quite small sums and probably quite legally unsophisticated individuals may be swept up in the new regime. It could be argued that such people need and deserve a higher level of judicial protection. With my amendment I seek to redress and improve the balance by imposing an additional duty on the court in the case of unexplained wealth orders. Clause 1 requires the court, under new Section 362A(1) merely to be,

"satisfied that each of the requirements for the making of the order is fulfilled".

My amendment would raise the evidential bar a little by requiring the court not merely to be "satisfied", but to be satisfied "beyond reasonable doubt" by inserting those three words in line 13 of page 1.

In summary, I argue that, if the authorities want the burden of proof reversed, the citizen is entitled to a high degree of protection from the court against possibly vexatious activities by regulators. My noble friend on the Front Bench may argue that government Amendment 6 would achieve the same purpose. Again, I am no lawyer, but the Government's phrase,

"there is reasonable cause to believe",

seems a good deal weaker than my phrase in Amendment 1, "beyond reasonable doubt". I will await reaction from other Members of the Committee who have more legal experience than me as to whether my fears are justified or groundless. My noble friend may also argue that I should have tabled a similar amendment to deal with Scottish unexplained wealth orders under Clause 4. She would be absolutely right but my response is that, for today at least, this is a probing amendment to enable a broad discussion on the point to take place.

Other noble Lords will no doubt wish to discuss the practicalities of how the UWOs will work and whether the target category of politically exposed persons will be able to be dealt with effectively because of personal and functional immunity—we have had quite a lot of briefing on these matters. My amendment is about trying to achieve the right balance.

Before I sit down, I want to ask my noble friend one last question. It is about legal privilege and client confidentiality under the new unexplained wealth order legislation. As I understand it—again, I say that I am no lawyer—legal privilege does not exclude a legal adviser from the provisions of the suspicious activity, or SAR, regime. If a legal adviser becomes aware as a result of discussions or communications with his or her client that activities that would be capable of being caught by the SAR regime are occurring, they are obliged to report them and to do so without informing their client—indeed, informing their client would be an offence. Can my noble friend in due course make clear what the position is on a legal adviser whose client becomes the subject of a UWO? Is the construction of legal privilege changed in any way? I do not think that unexplained wealth orders or the suspicious activity regime will necessarily walk hand in hand. I beg to move.

Lord Davies of Stamford (Lab): My Lords, the noble Lord has said that his amendment is merely probing. Clearly, the purpose of a probing amendment is above all directed at trying to influence the Government, but the other purpose is to see whether anyone else in the Committee rather agrees with the line of it, which may also be useful information for Ministers when they are taking final decisions on what the shape of the Bill should be.

The noble Lord made a very good case. We all know that legislation of this kind is essentially a matter of balance. On the one hand, we are imposing on people constraints and breaches of privacy and liberty. We are also imposing on them costs, because it is likely that to be able to respond to orders such as these they will have to pay accountants to do work. As the noble Lord said, we may be talking about amounts of wealth that are a substantial portion of the portfolio of the individual citizen being investigated. To respond to the investigation, the individual may need to spend significant amounts of money on accountancy or other professional advice. We should be very careful and aware of the costs of doing such things. We should also be aware that there is always a temptation for an authority, if it has a power, to use it and say, "There's no downside. Let's just put in a request to the High Court to have one of these investigations". The noble Lord is therefore right to emphasise the need to protect the citizen to make it absolutely clear that an authority before making such a request, or a court before acceding to it, must be really convinced that there is a case for doing something quite exceptional—the state asking an individual to declare his or her private affairs. I therefore agree with the sense of the noble Lord's amendment and I hope the Government take it seriously.

Lord Blair of Boughton (CB): My Lords—

Lord Faulks (Con): My Lords, my name is on a number of amendments. I wonder whether the noble Lord will allow me to expand on them a little.

My noble friend Lord Hodgson suggests in his amendment that the High Court should be satisfied beyond reasonable doubt in relation to the requirements before making an unexplained wealth order. For reasons that I will come to, I do not support the amendment, but I think my noble friend seeks to provoke, understandably, a debate about the scope of UWOs and to understand how the Government intend to use them and what sort of evidence the agencies will obtain before seeking one.

The Government are absolutely right to bring forward these provisions in relation to unexplained wealth. Indeed, it is an exciting and significant new development. There is a precedent, provided principally by Ireland and Australia. I had the opportunity to read an extremely lengthy worldwide overview of the use of these orders, *The Comparative Evaluation of UWOs* by Booz Allen Hamilton, and a useful selection of essays from the White Collar Crime Centre dated January 2017 and edited by Jonathan Fisher QC of Bright Line Law Services Ltd. The main questions appear to be: who can UWOs be appropriately aimed at; how effective will they be; and, are there adequate safeguards? The other way of putting the last question is: do they have the potential to be unfair?

4 pm

It is important to stress that UWOs survived extensive judicial scrutiny in both Australia and Ireland. Furthermore, they are a much more modest response to the problem than what is sometimes proposed in this context, namely an actual criminal offence of illicit enrichment. Of course, a UWO is not a criminal offence and thus there is no risk of subverting what is often referred to as the golden thread—that is, the burden of proof resting upon the prosecution. The burden of proof here on the respondent is contrary to the normal burden in criminal cases but it is important to note that even the European Court of Human Rights has been very slow to criticise reverse burdens in a civil context.

The provisions in the Bill allow recovery without conviction of assets subject to various conditions. One is the incorporation in the Bill of the privilege against self-incrimination, referred to by my noble friend. This can be found in new Section 362F. With the inclusion of those provisions, Transparency International was happy with the burden shifting. It is also significant that a High Court judge will be involved in the process. I understand that the Government intend to publish a statutory code of practice and I hope this will be available before Report.

My concern is not in relation to the lack of safeguards but rather to ensure that this potentially important weapon is as effective as it reasonably can be. That is the basis of a number of amendments that I and others have put forward in this group. My view is that UWOs have the potential to deter the sort of activity that we are all concerned about. There is of course a risk that effective use of UWOs may tend to divert respondents rather than deter them but they need to be used.

As to the specifics of the amendment of my noble friend Lord Hodgson, the use of the words "is satisfied' normally mean on the balance of probabilities. No doubt the Minister will clarify the Government's intention in this area but the words "is satisfied' are also used in new Section 362B under the requirements for making the UWO. It seems that what is provided there and in new Section 362A is a balance of probabilities approach, albeit that there are clearly opportunities for a respondent who does not consider the order fair to have it varied or discharged, or even—as per the recent proposed amendment from the Government—to be compensated.

It is significant that the application for a UWO can be made without notice and that it can be accompanied by an interim freezing order. This is critical to prevent the door of the stable being locked after the horse has bolted. The Minister said in summing up the Second Reading debate that the use of these UWOs will be ultimately a matter for the agencies, which are operationally independent. However, if we are to approve the provisions in this Bill, I at least would like to be confident that not only will there be sufficient resources—on which my noble friend provided some reassurance at Second Reading—but also that there is the will, capacity and understanding of UWOs to make them as effective as they should be.

My amendments in this group are Amendments 2, 5, 7, 16 and 18. I degrouped Amendment 11 because it concerns specifically the London property market. A number of the amendments concern the use of the word "holds" and what that meant. Whether it was in response to those amendments or otherwise, a substantial amendment dealing with the point has been tabled by the Government, so I do not propose to expand on that now. Certainly, "holds" in the context of Section 84 of the Proceeds of Crime Act requires the respondent to have an interest in the relevant property.

New Section 362C provides that if there is no reasonable excuse for the failure to respond to a UWO in respect of any property, it is presumed to be "recoverable property"; that is, civil proceedings may then follow. At Second Reading I asked my noble friend the Minister to say a little more about what was meant by "purported compliance"—the words that are used in the Bill. She said that if there was,

"compliance or purported compliance, the rebuttable presumption that the property is recoverable does not arise",

but that law enforcement would still have "valuable information" and could pursue an investigation. She also pointed out:

"If the purported compliance is false or misleading, it will be an offence".—[*Official Report*, 9/3/17; col. 1517.]

I have to say that I was not greatly reassured by those comments. We must surely face the reality that UWO respondents who have invested the proceeds of tax evasion or bribery in specific property would be unlikely to choose to be frank about their conduct; nor would they be keen to hand over evidence to the authorities which would result in enforcement proceedings. This therefore begs the question: what sort of information would constitute purported compliance with a UWO? What if the answer is something of a stonewall?

As I said at Second Reading, we should not underestimate the role that lawyers may play in these proceedings. My understanding of the provisions relating to self-incrimination in new Section 362F is that they do not constitute an excuse for not complying with a UWO; rather, they simply restrict the circumstances in which statements provided in compliance or even in purported compliance can be used in criminal proceedings against the respondent. I find it difficult to envisage what would be purported compliance. Surely a respondent either complies with a UWO or he does not. I ask my noble friend the Minister: what is a "reasonable excuse", as provided for in the Bill, for a failure to comply with the requirements of a UWO?

[Lord Faulks]

One of the problems encountered in Australia was a loophole that the UK enforcement authorities should take particular note of. Australian courts have considered it sufficient for respondents to point to gambling and/or racehorse winnings, gifts or inheritances received from relatives abroad as a lawful source to explain wealth. This is apparently attributable to the fact that the Australian tax regime does not require funds acquired through gambling or overseas inheritance or gifts to be recorded for tax purposes. I am concerned that the same situation might arise in the United Kingdom if an individual subject to UWO proceedings said that their unexplained wealth was the result of a number of successful trips to William Hill or some rival bookmaker.

I fear that it will be too easy to brush these UWOs aside by relying on a rather limited response, cleverly lawyered, and giving little by way of valuable information. For these orders to be effective, they need teeth. Hence my Amendment 5, which suggests that among the powers that should be given or incorporated in the order is a requirement that the respondent answers questions on oath. I look forward to hearing the Minister's reasons for not including such a provision. After all, not dissimilar provisions are available in investigating companies, and if someone refuses to answer questions on oath, it may be appropriate to draw adverse inferences from that refusal. This should help in the process of recovering money.

The legislative opportunities are going to be rather few in the next few years because of the predominance of Brexit-related legislation. We have an opportunity here to deal with the cancer of fraud that threatens the stability and reputation of our country. Let us ensure that we do not miss it.

I see that the noble Baroness, Lady Hamwee, has responded to the Government's proposal to reduce the value of property from £100,000 to £50,000 by raising the figure to £500,000. No doubt she will explain her reasoning, but at present I do not support that. If there is, for example, a drug dealer who happens to have three or four cars and no obvious means of support but who does not come over the £500,000 limit, it would simply be impossible to get a UWO. At the moment, I think the Government's proposals are correct.

There are a number of issues to discuss, and I look forward to hearing what other noble Lords have to say about them.

Baroness Hamwee (LD): My Lords, I was instinctively drawn to the amendment tabled by the noble Lord, Lord Hodgson of Astley Abbotts. However, for many of the reasons that the noble Lord, Lord Faulks, gave, and because this is a preventive provision, after thinking about it for a little while on Sunday, and rather to my surprise, I put a tick next to the Government's amendment which states,

"that there is reasonable cause to believe"—

even though, like the noble Lord, I read that as reducing the threshold.

Our amendment to raise the threshold to £500,000 was tabled not in response to the proposal to lower it to £50,000 but because I wanted to explore whether £100,000 or £50,000 was the right amount. In this context, £50,000 is a pretty small amount, so I hope the Minister will share with the Committee the evidence behind the proposal to reduce the figure from £100,000 to £50,000. In evidence to the Public Bill Committee, the gloriously entitled prosperity director of the NCA, when asked about the amount, said that that was a reasonable value. The officer from the counterterrorism unit of the Met said that it was reasonable,

"when we are dealing with a higher end".—[*Official Report*, Commons, Criminal Finances Bill Committee 15/11/16; col. 8.]

UWOs are not included in Part 2, where smaller amounts would be more relevant. In the debate concerning the amount, the Minister said that the Government,

"will be going for people worth £20 million, £30 million or £40 million and all the way down".—[*Official Report*, Commons, Criminal Finances Bill Committee 17/11/16; col. 87.]

That was in response to an amendment to reduce the amount to £50,000. He said that £100,000 would catch serious criminals. The amendment in question arose from the value of property in Scotland, but the comments are still relevant.

Our concern is quite simply that if the amount is low the agencies might be tempted to go for the low-hanging fruit and fail to pursue those who commit grand corruption. It is a matter of human nature to do that. Although there is no direct read-over, the application of POCA has not been an entirely successful experience. I know that having a lower limit will not restrict going for the higher amounts, but practice and theory may not be the same thing.

We will come later to registers of beneficial ownership, both domestic and for the overseas territories, but I wonder whether UWOs can be administered effectively without a register of beneficial ownership.

We have other amendments in this group, some of which simply repeat the first amendment at different points in the Bill. Amendment 26 is the same as Amendment 54. It would change "must" to "may"—it is usually the other way round in this House, is it not? This is intended to probe why we would be restricted to the same proceedings in the paragraph that I would amend. In this context, does "same proceedings" mean the same case but allow for separate hearings? That would be sensible so that there can be a later application for a freezing order without starting new proceedings.

4.15 pm

Amendment 27 suggests extending the exception for "reasonable living expenses" to the reasonable living expenses of the person's dependants, for reasons which I think must be entirely obvious. The Minister of course will introduce Amendment 28 shortly, which deals with compensation and will require there to have been a "serious default" on the part of the enforcement authority. In Amendment 29, I suggest changing "serious" to "significant". What is significant to an applicant may not be serious in an objective sense, and I would like to understand precisely what is intended there.

We probably have other amendments in this group, but I think that I have dealt with them. However, I should just mention government Amendment 14, which deals with connected persons. Is there a definition of "connected"? It seems a very wide phrase. It is in a clause where the term "close associate" is used, and to be connected is much wider than being simply a close associate.

Lord Brown of Eaton-under-Heywood (CB): My Lords, in common with the noble Lord, Lord Faulks, I too oppose Amendment 1. These unexplained wealth orders, in my submission, are to be welcomed and we must do nothing to dampen them at their outset. However, to put the criminal burden of proof into the very first provision would, I suggest, do just that. This provision surely should be based on the balance of probabilities.

Government Amendment 6 will introduce into new Section 362B(2) being inserted by the Bill, as the test of satisfaction,

"that there is reasonable cause to believe".

Your Lordships will notice that new subsection (3) sets out a different test, that of being,

"satisfied that there are reasonable grounds for suspecting that the known sources of the … lawfully obtained income would have been insufficient",

while new subsection 4(b) says there should be,

"reasonable grounds for suspecting that … the respondent is, or has been, involved in serious crime",

and so forth. To "suspect" something is merely to suspect that it may be the case; to "believe" something is to believe that it is the case. These tests therefore differ. I do not know, but perhaps the one under new subsection (3) could be tightened. Rather than trying to introduce the criminal burden in the first provision, those who would like to make these orders more difficult might at least want to consider whether "reasonable grounds for suspecting" should be uplifted to the requirement the Government are introducing in amended new subsection (2): that there is "reasonable cause to believe". For my part, I would introduce as the first provision a balance of probability test and leave the others essentially where they stand.

My only further thought is that if the House—to my mind, unwisely—were to raise the threshold remotely as high as the amendment in the name of the noble Baroness, Lady Hamwee, suggests, you would want the lowest test to be enshrined in the Bill; whereas with a lower sum in question, you might want a correspondingly higher test. Those are thoughts, because this, after all, is at an early stage and these are essentially probing amendments.

Lord Blair of Boughton: I am glad that I did not interrupt the noble Lord, Lord Faulks, because he and the noble and learned Lord, Lord Brown, approach this matter from long knowledge of the law. I would like to consider the amendment of the noble Lord, Lord Hodgson, in relation to the investigative process. UWOs are effectively a search warrant. That is the test, and that is not beyond reasonable doubt. You have a search warrant because you think something might be happening. When you have executed the search warrant, you know whether it has happened or not and at that point, you might charge someone with a criminal offence, for which the test would be "beyond reasonable doubt". From an investigative point of view, that amendment would put at the front of the operation a test which is almost impossible to pass unless you issue the order and effectively use a search warrant on the individual's bank balances.

Lord Phillips of Worth Matravers (CB): My Lords, I speak in harmony with the previous two speakers. I have some experience of this area, having wrestled in a judicial capacity with more than one appeal in relation to the Proceeds of Crime Act, and I have also recently taken the chair of the board which supervises more draconian legislation than the Bill for the confiscation of unexplained wealth in Mauritius. These unexplained wealth orders are designed to deal with the very real difficulty of proving facts which are likely to be in the exclusive knowledge of the holder of wealth. It would be simply contrary to the policy to impose the criminal rather than the civil burden of proof in respect of matters such as the value of property in which a person has an interest or the very question of whether he has an interest in that property at all.

Lord Sharkey (LD): My Lords, I will speak to Amendments 10, 13, 20 and 22 to 25 in this group, all of which are probing amendments. Amendment 10 modifies subsection (4) of the newly inserted Section 362B of the Proceeds of Crime Act 2002. The subsection sets out one of the three conditions that must be satisfied before an unexplained wealth order may be made:

"The High Court must be satisfied that … the respondent is a politically exposed person, or …there are reasonable grounds for suspecting that … the respondent is, or has been (whether in a part of the United Kingdom or elsewhere), or … a person connected with the respondent is, or has been, so involved".

As I read it, it means that simply being a politically exposed person satisfies the condition. That is enough for the High Court: it does not need,

"the reasonable grounds for suspecting involvement in serious crime",

to be satisfied as well. That seems unnecessarily and dangerously broad.

It is probably unnecessary to remind the Committee that we are all PEPs. So are our families and our close associates. As the Government have made clear, and as the FCA is about to say in guidelines, most Back-Benchers, their families and associates should not require additional due diligence. Given that, we or our equivalents abroad should not be exposed to a harsher, more extensive and more intrusive regime. By replacing "or" with "and", and by qualifying the definition of PEPs by inserting,

"who merits additional due diligence according to Financial Conduct Authority guidelines",

my amendment removes this harsh, special treatment of non-EEA PEPs. For the condition to be fulfilled, the amendment requires that the PEPs are not ordinary PEPs but merit this additional due diligence and that there should be reasonable grounds for suspecting involvement in serious crime.

Amendment 13 removes the exemption of UK and EEA PEPs from the conditions in subsection (4) of new Section 362B, in order to give the Minister the opportunity to explain why UK and EEA PEPs should not be treated exactly as all other PEPs.

Amendment 20 gives the Minister an opportunity to clear up an apparent anomaly. On page 5, subsection (2)(b) of the newly inserted Section 362E sets out the penalty for failure to respond properly to an unexplained wealth order. For summary conviction in England and Wales—and later, we see, in Scotland too—the penalty is imprisonment for a term not exceeding 12 months, or a fine, or both. However, on the very next page, in subsection (2)(c), the penalty on summary

[LORD SHARKEY]
conviction in Northern Ireland for exactly the same offence is set at imprisonment for a term not exceeding six months, or a fine, or both. So in England and Wales and Scotland, you can go to prison for up to 12 months, but in Northern Ireland it is up to six months. Why? I would be grateful if the Minister could explain.

Lord Faulks: Before the noble Lord goes on to the next amendments, could he help the Committee with one point? He points to the position of PEPs and describes the potential vulnerability that quite ordinary people might have to these orders, but does he not think that subsection (3) of new Section 362B is a sufficient protection? It provides that the High Court,

"must be satisfied that there are reasonable grounds for suspecting that the known sources of the respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property".

That provides a hurdle that has to be surmounted, as well as establishing that someone is a PEP.

Lord Sharkey: If it were absolutely clear that you cannot obtain an unexplained wealth order without satisfying that condition, I would be happy, but I am not entirely sure that it is, and I would welcome the Minister's confirmation that the noble Lord is correct.

Amendments 22 to 25 will allow the Minister to point out—if other noble Lords do not do so beforehand—where I have entirely missed the point. They refer to page 7 and subsections (2), (3) and (4) of new Section 362H. These subsections allow rules of court to provide for the practice and procedure to be followed relating to unexplained wealth orders before the High Court in Northern Ireland. There are similar but not identical subsections later in the Bill dealing with the same matter in Scotland. However, the Bill seems to be silent on how these matters are to be dealt with in the English and Welsh courts. I am sure I have missed something obvious here and would be grateful for enlightenment from the Minister.

There is another apparent anomaly in the sections dealing with the variation or discharge of an unexplained wealth order. I notice that the provision in Scotland is significantly different from that in Northern Ireland. On page 18, line 43, to line 1 on page 19, the Bill allows applications for variation or discharge to be made by "Scottish Ministers" or by,

"any person affected by the order".

That is not the case for Northern Ireland, where application can be made only by the enforcement authorities or the respondent. Why is there this difference between Scotland and Northern Ireland? My Amendment 24 makes the process in Northern Ireland the same as in Scotland but, again, what about England and Wales? I look to the Minister to put me right on all this.

Lord Leigh of Hurley (Con): My Lords, I welcome the legislation on UWOs. I have a number of declarations of interest, and I own residential and commercial property in the UK. I do not think that I have any unexplained wealth, but I have some experience—admittedly, some 30 years ago—of working as a tax adviser. It was quite common in those days for the Inland Revenue, as it was then, to demand explanations of what it thought was unexplained wealth from various taxpayers. That was quite common practice, so the concept of the state seeking an explanation of wealth is not new in practice.

We have a situation where, certainly in central London, a shocking number of multimillion pound properties lie dormant and are owned by overseas parties. To the extent that this goes some way to change that situation, it must be very welcome. It would also be quite welcome if the Government were to take a more holistic approach, perhaps using this Bill to address that problem as well as considering other solutions, outwith this legislation, including penal rates for dormant properties owned by overseas people. None the less, the UWOs are likely to make a significant change in helping our law enforcement agencies to investigate money laundering in the London property market and, in particular, recovering proceeds of crime.

4.30 pm

We also need to ensure that lawyers, estate agents and other professionals are complying with their obligations under the Money Laundering Regulations. The HMT consultation on the new regulations is a good opportunity to highlight the importance of this work, and I welcome the Treasury's proposals for a new supervisory body which will improve the regulation offered by the non-statutory regulators.

On the amendments before us, I particularly welcome the attempt to capture property owned by trusts—I declare an interest as a non-beneficial trustee of property trusts—and I can see that the intention to reduce the level down to £50,000 must make sense where there would otherwise be aggregation. It is tempting to restrict this to real estate, but "property" could mean all sorts of other things, such as jewellery, diamonds, gold and so forth, where individual units of £50,000 can quickly accumulate to a much higher amount.

As a PEP, I was keen to support Amendment 10, in the name of the noble Lord, Lord Sharkey. I also had a chap from the Royal Bank of Scotland come round to see me and ask me what my first salary was in 1982—bizarrely, I remember that it was £4,900—and he spent a lot of time going through records that I had long forgotten about. I am not convinced that there is the protection that the noble Lord, Lord Faulks, specified earlier. One particular concern is that the provision talks about income, not capital. In any event, I am not sure why it should not be absolutely clear-cut that the Government's intention is not to attack PEPs in this House or in the other place.

Lord Kennedy of Southwark (Lab): My Lords, the Bill was welcomed by all sides of the House at Second Reading. Unexplained wealth orders are a device to give law enforcement agencies powers to require a person suspected of involvement in or association with serious criminality to explain the origin or source of assets which appear disproportionate to their income.

Amendment 1, in the name of the noble Lord, Lord Hodgson of Astley Abbotts, seeks to insert the words, "beyond reasonable doubt" after the word "satisfied", when requiring a person to comply with an order.

This raises an important point, but I am not convinced that introducing this higher test is needed here. It would make it more difficult for law enforcement agencies to get permission to seek the source of the wealth which has led them to suspect that the person's lawfully obtained income would be insufficient for the purposes of obtaining their assets. I agree with the remarks made about this amendment by the noble Lord, Lord Faulks, who said that the higher evidential test would not be welcome in this regard. I also agree with the comments made by the noble and learned Lords, Lord Brown of Eaton-under-Heywood and Lord Phillips. I also agree with the comments by the noble Lord, Lord Blair of Boughton, on the investigatory role—the test and procedure would be difficult there as well.

Amendments 2 and 7, in the name of the noble Lord, Lord Faulks, give a better definition in relation to a person's connection to a property, and the Government should reflect carefully on this during the passage of the Bill and possibly bring an amendment forward on Report.

Amendment 5, also in the name of the noble Lord, Lord Faulks, would provide an additional power to require a person to answer questions under oath. Again, that seems a reasonable additional power to take, which could be used at the discretion of the court. I very much take the point that the noble Lord made about the William Hill defence in terms of how one acquires assets and wealth. We need to look at that important point.

On Amendments 8 and 9, I thought that the £100,000 value in respect of a property was about right, that the £50,000 figure proposed by the noble Baroness, Lady Williams of Trafford, was too low, and that the figure proposed by the noble Baroness, Lady Hamwee, was far too high. However, having sought advice from law enforcement agencies, I understand the motivation behind the amendment of the noble Baroness, Lady Williams of Trafford, and I am content that the figure she proposes may well be right.

There is a whole series of government amendments in this group which I am content with, as they seek to prevent a person subject to one of these orders seeking to circumvent it through complicated financial means and transactions.

This has been a very useful debate, with some well-informed contributions that posed a number of questions for the noble Baroness. I am sure that she will reflect on those as we may want to come back to some of those points on Report.

The noble Lord, Lord Leigh of Hurley, made important points about property and the problems associated with it. I think that we shall debate an amendment in the name of the noble Lord, Lord Faulks, in the next group which concerns property.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I thank all noble Lords who have taken part in this excellent debate. We have had some very good contributions from noble Lords from around the Committee on the significant new powers of the unexplained wealth order. I will do my best to respond to all the points that were made. I apologise in advance if I take some time to do so.

As noble Lords will know, the measures in this Bill are largely focused on serious and organised crime, but it also provides important new powers to tackle terrorist financing. Last week's horrific attack reminds us all of the very real nature of this threat. I would like to take a moment to pause and think about the families of those who have been killed and those who still lie injured in hospital. I again pay tribute to the men and women of the police and other law enforcement and intelligence agencies who are so committed to keeping us safe—to PC Keith Palmer, but also to his many colleagues who work in Parliament and across the country. We must ensure that they have the powers they need to investigate and disrupt terrorists and terrorist groups. The powers in Part 2 of the Bill, which we will come to later, will do just that.

I return to the amendments in this group on unexplained wealth orders—or UWOs. The UK is a world leader in the fight against global corruption and the UWO is a substantial new power that will assist UK law enforcement agencies to do so. I welcome the continued cross-party support for these measures. I remind noble Lords that a UWO is a court order that requires a person to provide information which shows that they obtained identified property legitimately. If the person provides information in response to a UWO, the enforcement authority can then decide whether to investigate further, take recovery action under POCA or, if they are satisfied, take no further action. If the person does not comply with a UWO, either by not responding or not responding fully to the terms of the order, the property identified in the order is presumed to be recoverable under any subsequent civil recovery proceedings.

There are a number of government amendments in this group and I turn to them first. These are, by and large, technical changes to the provisions to help them function most effectively, but I will highlight a few for the benefit of noble Lords. As regards trusts, we have tabled government Amendments 3, 4, 6, 12, 14, 15, 17, 19, 21, 30 to 32, 36, 38 to 40, 52, 53, 174 and 175. Perhaps the biggest addition to the provisions made by the government amendments are the measures to ensure that a UWO can be served in situations where property of interest is held in trust or involves corporate structures. This, I believe, picks up some of the concerns raised by my noble friend Lord Faulks. The amendments will also allow subsequent UWOs to be obtained on additional individuals such as trustees in complex cases where this is necessary. The amendments are not a silver bullet in cases where trusts and corporate entities are involved. However, they are a significant improvement and will close a potential gap.

UWO thresholds are addressed by government Amendments 8 and 33, which would reduce the threshold for a UWO to be obtained from £100,000 to £50,000. Noble Lords rightly questioned how we settled on the balance. It followed representations from authorities in Scotland—including from the SNP during Commons consideration of the Bill—and Northern Ireland. It reflects the fact that the higher threshold could disadvantage law enforcement agencies in certain parts of the country where financial returns may not be as high or may be spread more evenly across criminal groups, and where property, in particular, has a lower value.

[Baroness Williams of Trafford]

The threshold, however, is still an important safeguard, together with the other qualifying criteria that must be met before a UWO can be made by the court. It remains our view that the orders should be used in the most complex cases, where obtaining evidence has proved difficult, and this will be reflected in the supporting guidance.

The noble Baroness, Lady Hamwee, tabled a related amendment to push the threshold up rather than down. She helped us to reflect on the balance that must be struck in circumscribing the new power. However, based on our consultation with law enforcement agencies, I suggest that her proposed threshold of £500,000 would be prohibitive. It would stop the agencies using this power in significant cases involving serious and organised crime, and noble Lords have been clear that they want to see the most effective use of UWOs. I hope that the noble Baroness will be satisfied that our approach strikes the appropriate balance.

Baroness Hamwee: I could repeat my question about the temptation to get at the low-hanging fruit and not use the orders to deal with grand corruption, as I understand it.

Baroness Williams of Trafford: The noble Baroness is right that both ends of the scale should be tackled, so I hope that law enforcement agencies will use the orders in a proportionate way to tackle criminal activity at both ends of the scale. I hope that that will satisfy the noble Baroness. She looks satisfied.

Lord Faulks: When questions were raised at Second Reading about the scope of the orders and how many might be issued, I referred to an assessment that was provided—with some difficulty—by the Government that only about 20 might be sought during the year. The Minister understandably said that that was only an estimate, based on general experience of civil recovery. However, does it not indicate that, rather than grasping low-hanging fruit, if anything this will be considerably resource-heavy and will probably be directed only at cases where the amount of wealth is significant enough to make the expenditure of time and money worth while?

Baroness Williams of Trafford: My noble friend and the noble Baroness have made the case for both ends of the threshold. My noble friend talked about resources generally. One thing that came from the law enforcement agencies was that the issue was not resources but the tools to be able to tackle criminals. Also, law enforcement agencies do benefit from a proportion of the money recovered, so they are incentivised at both ends of the scale—and it will be up to legislators in this House and the other place to decide on the right balance to strike. But that was our rationale for the lower amount—and I know that the Government originally suggested £100,000.

The point about compensation is covered in government Amendments 28 and 56, and Amendments 29 and 57, in the name of the noble Baroness, Lady Hamwee. Amendments 28 and 56 introduce a compensation scheme in relation to the interim freezing orders that can support a UWO. Other powers to freeze property in POCA have connected compensation provisions. It is absolutely right that a person who has genuinely suffered a loss should have the ability to seek compensation where there has been serious default on the part of the enforcement agency. The "serious default" test is already used in POCA and is applicable here too. I hope that on that basis, the noble Baroness will agree that her amendments probably are superfluous in this instance.

4.45 pm

Lord Thomas of Gresford (LD): In support of my noble friend, the experience of POCA has been that the amount recovered has been very little more than the cost, so that the question of resources is very germane. In practice, both sides are anxious to come to an agreement early on to avoid the expense of a lengthy hearing, never mind the lengthy investigation. Therefore, setting the level at a high point is a very sensible thing to do and will ensure that resources are properly used.

Baroness Williams of Trafford: Is the noble Lord talking about the high point with regard to the UWO triggering point? The Government have considered all options; they have suggested £100,000. The point was made that £50,000 was more appropriate, particularly in some of the devolved Administration areas, where property prices are generally lower, and the noble Baroness, Lady Hamwee, has made an argument for setting the bar higher. However, my noble friend also made the point that by setting the bar lower we might end up having more success, reaching not only the low-hanging fruit but the high-hanging fruit as well. I therefore hope that the noble Lord accepts that explanation. It is an objective consideration, but there are obviously many views about where the threshold should be set.

On Amendments 2, 5, 7, 16 and 18, tabled by my noble friend Lord Faulks, Amendments 2 and 7 seek to replace the term "holds" with "has a financial interest in" as the test for the High Court to consider. It is only fair that in serving a UWO the respondent must have some direct connection with the property that is of interest. "Holds" is a well-established concept in civil law, including in the Proceeds of Crime Act 2002, and we believe that requiring a person to "hold" property is a proportionate approach. It is also our view that "holding" property includes holding an interest in that property. I hope that noble Lords are reassured by that assessment.

Lord Faulks: I am sorry to interrupt the Minister. I thought that the answer to this point was provided by the Government's Amendment 21, therefore there is no need to refer to the provisions of POCA, because there is an internal reference to what "holding" means.

Baroness Williams of Trafford: That is correct, but I thought I might go through it. I am just being thorough.

Amendment 5 seeks to add the ability to interview a person "under oath" as a possible requirement of a UWO. It would already be a criminal offence for the respondent to knowingly or recklessly provide false or misleading information. We must also remember that

this is only an investigative power; if the case leads to criminal proceedings, it would be subject to the usual rules of giving evidence and allow for interviews "under caution".

Amendments 16 and 18 address the issue of "purported compliance". If a person does not comply with a UWO, their property is presumed to be recoverable under civil recovery proceedings. Given the severe consequences of not complying, it is right that this rebuttable presumption should not apply to a person who purports to provide a response. This avoids any legal ambiguity as to when the presumption will apply. However, where that individual provides responses that do not satisfy the enforcement agency, he or she then runs the risk that the poor quality of the responses will encourage the agency to take further action, and in those circumstances the burden of proof switches back to law enforcement, as is normal.

Purported compliance applies to a scenario where all the requirements of a UWO have been met but where the response is less than satisfactory. The agency is able to tailor the request for information very specifically, so will have some control over this. We do not want to get into arguments before the courts as to whether the presumption should apply and whether the individual has complied.

Finally, the UWO provisions will allow the enforcement authority to make very specific requests for information, reducing the risk of a low-value response being provided. I hope that my noble friend will feel that this addresses the point he has so expertly raised. He also raised a point about gambling. With regard to the Ladbrokes test or the William Hill defence, we would expect a high level of evidence to prove that, and we would expect it to meet the requirements of the UWO. The UWO will have achieved its purpose by flushing out information.

My noble friend also asked whether we would publish the code of practice before Report. The answer is yes. I undertook to discuss publication of the update to the relevant code of practice with my officials and ministerial colleagues, and it is my intention that the draft code will be available to noble Lords prior to Report.

I now turn to Amendment 1, moved by my noble friend Lord Hodgson of Astley Abbotts. This would require the High Court to be satisfied "beyond reasonable doubt" with regard to each of the requirements before issuing a UWO. This is an investigative power, as the noble Lord, Lord Blair, said, so the test of "reasonable suspicion" is quite normal and consistent with existing law, including Part 8 of POCA. The balance of probabilities applies here, as the noble Lord, Lord Blair, and my noble friend Lord Faulks said, and I hope that my noble friend will agree that it would not be appropriate to impose a criminal law standard in such cases.

My noble friend Lord Hodgson asked about the reversal of the burden of proof. We accept that there is a reversal of the burden of proof but it is in very specific and narrow circumstances. There has to be a link to a PEP or a serious criminal. This is a proportionate use of operational need. As an investigation power, there is the opportunity to address this issue in any subsequent proceedings. As my noble friend said, Transparency International has approved this approach.

My noble friend also asked about the use of legal advisers if a client is subject to a UWO, but we do not consider that an amendment is required to the laws on legal privilege. The lawyer role is unchanged, and the lawyer has the same responsibility to file a SAR if he has a relevant suspicion. It will be a question of the facts in each case.

I now turn to Amendments 10, 13, 20, 22, 23, 24, 25, 35 and 37, tabled by the noble Lord, Lord Sharkey. I think that these broadly separate out into two topics: first, the application of UWOs to PEPs, and, secondly, the court process in Northern Ireland. UWOs can be made either where there is suspicion of involvement in serious crime or in relation to non-EEA politically exposed persons. In that sense, I want to make it clear that politicians and senior officials in the UK and the EEA are covered by the first element of this power where they are suspected of being involved in serious criminality.

The reason for the second limb is to plug a gap experienced by law enforcement agencies when they investigate politically exposed persons. The issue arises in cases where critical evidence is available only in the PEP's home country, which lacks the capabilities necessary to gather it itself. Conversely, in relation to UK PEPs and those across the European Economic Area, if the evidence exists it will be obtainable, so the same issues do not arise. There is no gap in these cases. That means it should be possible to evidence suspicion of involvement in serious crime.

On the noble Lord's point about the FCA guidelines, these relate to the regulatory obligations of banks and other institutions. UWOs are not to do with the regulatory burden and responsibilities of the financial industry, so reference to the FCA is not strictly relevant here.

On increasing the sentence on summary conviction in Northern Ireland to 12 months, the current provisions reflect the approach taken to sentencing for other "either way" offences in the Bill, and which also correspond to offences in POCA already. The 12-month point for England and Wales arises from an amendment to the approach to sentencing in the magistrates' courts which derives from Sections 281 and 282 of the Criminal Justice Act 2003. Those amendments did not extend to Northern Ireland. In relation to the ability to make rules of court and other procedures in the High Court, including the variation or discharge of a UWO, specific provisions are not required in the Bill for England and Wales. However, express provision is required for the High Court in Northern Ireland to put them on the same footing.

The noble Lord also asked about Scotland. There is a constitutional division of powers between Scottish Ministers and the Lord Advocate, which is obviously specific to Scotland. We need to be certain that there is an ability of the Scottish Minister to disclose information onwards. The provisions presume that if a response is made to a UWO, this information could be disclosed onwards for consideration of a criminal investigation and/or prosecution. Therefore, in the Scottish context, Scottish Ministers apply for UWOs so that they will receive any information in response to such. If they consider that this information suggests that a criminal investigation and proceeding may be appropriate, they would need

[Baroness Williams of Trafford]
to refer the material to the Lord Advocate. The amendments provide that Scottish Ministers can disclose the information to the Lord Advocate for this very purpose. They also make certain that there is no suggestion that Scottish Ministers are tasking the Lord Advocate, merely that the material can be referred for independent consideration by the Lord Advocate. That is important due to the constitutional structure in Scotland.

Amendment 24 provides for any person affected by a UWO to apply for its variation or discharge, and not just the applicant and respondent. As a specifically focused investigation order, only the applicant and respondent are directly affected by the UWO. This is because the UWO requires the respondent to provide information, but does not itself affect any other interests in the property.

Finally, we reach the other amendments from the noble Baroness, Lady Hamwee. Amendments 26 and 54 would provide that the application to freeze property need not be made at the same time as the application for a UWO. It is right that all matters relating to the person and property should be dealt with in one hearing. This also gives certainty to the respondent. Should the enforcement agency wish to freeze the property at any other time, it will be able to do so under the main freezing order provisions in POCA, provided that the relevant test can be met.

With reference to UWOs, the noble Baroness asked about the need for the ownership register. Open source material that already exists can be of assistance; for example, the Land Registry, public accounts and records at Companies House. Other countries may already have public registers of ownership and income. In these circumstances, our law enforcement agencies would have access to them. We should also note that the UK has public registers of beneficial ownership.

I turn finally to the point raised by the noble and learned Lord, Lord Brown of Eaton-under-Heywood. He talked about altering the threshold but still having the safeguards. On the threshold, it must be remembered that the High Court has to be satisfied that there is still a link to serious crime or that someone is a PEP. That is a significant test. It focuses the use of the power in relation to the amount, and that is dropped by our amendments. The court has to show not only the value of the property but that the respondent does not have any obvious legitimate income.

5 pm

I also make a clarification. In my response to Amendment 1 from my noble friend Lord Hodgson, I suggested that the comparable test in respect of POCA was on the balance of probabilities. I did of course mean reasonable suspicion, but my noble friend swayed me to thinking that he must be right. I wanted to clarify that.

On Amendments 27 and 55, property that is frozen can be made subject to exclusions to allow the release of funds for reasonable expenses. That is in line with other existing powers in POCA and I understand that the position of dependants is already included in the consideration for the release of funds for the person subjected to other freezing powers in POCA, such as a restraint order obtained during a criminal investigation. I have detained the Committee for quite some time, but I hope that I have provided a reasonable explanation and I ask my noble friend to withdraw his amendment.

Baroness Hamwee: My Lords, on that last point, I was not clear whether the Minister was saying that defendants' living expenses were covered or not. I would be happy to discuss that with her after today. I raised it because I was aware that they are specifically referred to in other legislation.

Baroness Williams of Trafford: The noble Baroness is right: they are provided for because they are in line with existing powers in POCA.

Baroness Hamwee: The Minister said that it would be right to have everything dealt with in the same hearing. I questioned whether "proceedings" meant "hearing" because to me they are not the same thing. Did the Minister say "hearing"? That might require a tweak.

Baroness Williams of Trafford: I did say "hearing".

Lord Hodgson of Astley Abbotts: My Lords, we began with my modest amendment an hour and 40 minutes ago, and we have obviously ranged pretty widely. That is not surprising with nearly 60 amendments in this group. I asked in my opening remarks for reassurance that the government amendment,

"that there is reasonable cause to believe",

provided adequate protection and we did not need "beyond reasonable doubt". I asked for more experienced legal expertise than I have to provide me with that reassurance. I got not one but two noble and learned Lords to provide that in the shape of the noble and learned Lords, Lord Brown of Eaton-under-Heywood and Lord Phillips of Worth Matravers, for which I am very grateful.

I was slightly surprised that the noble Lord, Lord Blair, was dismissive of what I put in my amendment but will, I imagine, accept government Amendment 6, which provides a slightly lower level of inhibition to police activity, but that is as it may be. I was grateful to my noble friend on the Front Bench for her reassurance that there was no change to the issue of legal privilege. I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Amendment 2 not moved.

Amendments 3 and 4

Moved by ***Baroness Williams of Trafford***

3: Clause 1, page 2, line 10, at end insert—

"(c) where the property is held by the trustees of a settlement, setting out such details of the settlement as may be specified in the order, and

(d) setting out such other information in connection with the property as may be so specified."

4: Clause 1, page 2, line 18, leave out "to provide information, or"

Amendments 3 and 4 agreed.

Amendment 5 not moved.

Amendment 6

Moved by ***Baroness Williams of Trafford***

6: Clause 1, page 2, line 35, after "satisfied" insert "that there is reasonable cause to believe"

Amendment 6 agreed.

Amendment 7 not moved.

Amendment 8

Moved by ***Baroness Williams of Trafford***

8: Clause 1, page 2, line 37, leave out "£100,000" and insert "£50,000"

Amendment 8 agreed.

Amendments 9 and 10 not moved.

Amendment 11

Moved by ***Lord Faulks***

11: Clause 1, page 3, line 5, at end insert—

"(c) the respondent has a financial interest in land or property in England and Wales which is registered in the name of an overseas company."

Lord Faulks: My Lords, a walk around the centre of London after dark reveals that large parts of the city are wholly unilluminated. Why are the lights off? Is it that most Londoners are getting an early night? I think not. The fact is that many high-end properties are unoccupied and are used as investment vehicles by those who regard London as a safe haven for their money, often unlawfully acquired. In September 2016 the Mayor of London, Sadiq Khan, launched an inquiry into the impact of foreign investment flooding into London's housing market. Lest my submission be considered too London-centric—I declare an interest as a resident of central London—such investment has also been going on in Manchester, Liverpool and Birmingham, among other cities. Mayor Khan said on launching the inquiry that we all need to be reassured that dirty money is not flooding into the property market.

Property that is the subject of a UWO does not have to be real property, but real property has the advantage of being less easy to dispose of informally and quickly. Your Lordships have already heard me and others discuss the importance of tightening up the provisions in relation to compliance with UWOs to deal with the potential for evading the orders. In this context, I am particularly concerned about property owned by overseas companies. On 17 March 2016, the Land Registry published the fact that it had registered 100,000 freehold and leasehold properties in the name of overseas companies. I should make it clear that the list excludes private individuals, UK companies, UK companies with an overseas address and charities. Noble Lords may be aware that unlike in most countries, there are absolutely no restrictions on foreign ownership of residential property in the United Kingdom.

Do we really think that all this property is being acquired with clean money? Are solicitors and agents complying with anti-money laundering provisions? I know that tightening up those provisions is the subject of later amendments. I read last week in the *Times* that only five people have been convicted of money laundering in the 10 years since the legislation was apparently tightened. The Law Society is on record as saying:

"Compliance with money laundering obligations is one of the greatest challenges for solicitors in the UK today".

What about the obligations of estate agents? Of these properties owned by overseas companies, how many are polluted by dirty money? I mentioned at Second Reading the envelope tax. This was a reference to the super-rich being prepared to pay something like £218,000 a year in tax rather than identify who owns property. I asked the Minister whether the Government were happy with this state of affairs. Her answer was that UWOs will,

"make it easier for our law enforcement agencies to investigate money laundering in the London property market and recover the proceeds of crime".—[*Official Report*, 9/3/17; col. 1519.]

She also mentioned the importance of ensuring that lawyers, estate agents and other professionals comply with their money laundering obligations. Apparently the Treasury will in due course publish its findings in relation to the supervisory regime.

The noble Lord, Lord Rooker, referred to his kleptocracy tour in his speech at Second Reading, while the noble Baroness, Lady Kramer, cited the report of the All-Party Parliamentary Group on Anti-Corruption, which takes the view that more than £4 billion-worth of properties have been bought with suspicious wealth. My noble friend Lord Patten endorsed all the comments that were made at Second Reading about the devastating effect of dirty money on the occupancy of London properties. The Minister said that,

"the Government intend to publish a call for evidence, seeking views on a new register of overseas companies that own property in the UK".

She said that the Government,

"hope to do so shortly and will then introduce the relevant legislation when parliamentary time allows".—[*Official Report*, 9/3/17; col. 1519.]

As I have explained in relation to other amendments, I do not think that parliamentary time is likely to be available in the foreseeable future, so we must seize the legislative opportunity as it now presents itself.

London is in danger of becoming a safe haven for dirty money. This is partly because of our reputation for maintaining the rule of law and because we are generally regarded as a good home for foreign investment. I certainly would not want to deter investment, particularly in the uncertain economic times that lie ahead, but I deprecate this assault on the London property market, the effect it is having on Londoners and how it is adding to the pressure that exists in the London property market, which falls particularly harshly on those seeking to acquire their first properties. We should do everything we can to make these provisions effective.

[LORD FAULKS]

The legislation currently provides that the court must be satisfied that a respondent is a PEP, has been involved in serious crime, or that there is at least a reasonable suspicion of involvement. The amendment in my name and that of the noble Lord, Lord Anderson of Swansea, who unfortunately is unwell, would add to that,

"the respondent has a financial interest in land or property in England and Wales … registered in the name of an overseas company".

This would make it easier for the agencies to obtain a UWO in circumstances where they do not have much evidence of involvement in serious crime or the respondent is not a PEP, but they have suspicions about the source of money used in the acquisition of property. My noble friend Lord Leigh referred to his familiarity with questions being posed by the Revenue. The High Court would still have to be satisfied that there are reasonable grounds for suspecting that the respondent's lawfully obtained income would have been insufficient, but this should not be too high a bar to surmount.

Would this create any unfairness? I do not see why. If the property has been acquired with honest money, an explanation could be provided that would comply with the order. I ask the Minister: how, if at all, will UWOs be used to get at the problem that has been identified by me and a number of other noble Lords? Will she explain why she objects, if she does, to this amendment, or at the very least explain what improvements will be made to deal with this very real problem? Her answer may be partially to rely on the very recently proposed government Amendment 21. I am not sure that that does the trick. This a very important point and a real opportunity. I beg to move.

Lord Rooker (Lab): My Lords, I had not intended to speak on this amendment, but it gives me the opportunity to raise the point that I wanted to raise today anyway following Second Reading. I agree with everything that the noble Lord just said. From memory, I think the figure is that 9.3% of the properties in Westminster are owned by overseas companies from jurisdictions that maintain secrecy. That is a huge percentage of the properties in one local authority area.

The issue I want to raise is that the money comes into this country from somewhere. Basically, it must come through the banks. At Second Reading I made the point:

"As far as I know, no bank has ever been prosecuted in the UK for laundering corrupt wealth from another country".—[*Official Report*, 9/3/17; col. 1487.]

The Minister responded by saying:

"The noble Lord, Lord Rooker, talked about fines on banks in the UK. He raised the issue of banks in the UK not being penalised for laundering funds from overseas. I have a huge list of fines, which I will not read out today, because it would take up valuable time in responding … I will send it to him … and place a copy in the Library".—[*Official Report*, 9/3/17; cols. 1520-21.]

When the noble Baroness wrote to Members who had participated at Second Reading, she neglected to mention anything about that exchange, so I contacted her office just to remind them. I was sent a letter, which I presume others would have had, dated 21 March. Attached to it were details of some of the most significant fines imposed in recent years on financial institutions with a presence in the UK. They related to tax fraud, money laundering and financial crimes. The vast pile of papers that the Minister said she had at Second Reading amounts to four sheets, but only three banks in the UK are mentioned: Barclays, Deutsche Bank and Sonali. Not one of them has been prosecuted for money laundering. They have had fines levied on them by the Financial Conduct Authority, but not one has been found guilty of money laundering.

5.15 pm

My question is simple and goes back to the one which I asked originally: given that this money is coming into the country in huge amounts, why has no bank in the UK been prosecuted for laundering corrupt money here? The Minister implied at Second Reading that they had. It turns out that they have not—or are there other papers that we have not seen? Those are questions that need to be answered. The noble Lord spoke of the number of properties that the Land Registry had registered. Others have looked at the square footage. Millions of square feet of London homes are owned by these secret companies—owned by money from abroad. That must have come through the banks. The estate agent doing the selling has a duty to look only at one party in terms of the money; it does not have a duty to look at the others. The solicitors and the banks are all involved. How come no bank appears to have ever been prosecuted and why has the Minister obviously been given duff advice in answering questions?

Lord Deben (Con): My Lords, I support the amendment because I have been for many years concerned about housing. This issue is a matter not just of corrupt investment but of investment in housing for purposes which are other than housing. This is a very serious social issue in London and other cities. If the Government do not take it seriously, they will reap the whirlwind.

The number of such houses and flats—real estate—in London in particular, causes considerable resentment among those unable to buy their own home. It is no good any party any longer ignoring it. All parties have to admit that they have not solved this problem. This is not a party-political comment, but it is an increasingly serious matter because it is creating divisions in our society which are greater than they have ever been. I ask Members of your Lordships' House to remember when it was possible for them as young people to buy a house or a flat in London, now to think about their children or grandchildren unable to do so and to recognise the divisive effect of that. It is against that background that this amendment should be considered.

The second issue is simply that most of us are fed up with the intrusive questions asked by people with whom we have banked for most of our lives, including being asked to send one's utility bills to a bank with which one has had an account that has been in reasonable order for 60 years because it has to meet the perfectly understandable anti-money laundering arrangements. The second resentment is that normal, ordinary British people have to go through this amazing series of hoops to bank money or get money out if they wish to do anything which is slightly out of the ordinary, yet they know perfectly well that the banks must have been involved in the transmission of money in situations which are, at the very best, dodgy.

I, too, sought some figures about who has been prosecuted for this. It actually beggars any kind of belief that no bank of any kind has ever helped anybody to buy, with improperly gained foreign money, property in London. I am sorry but that does not stand up. So the second disillusion that comes is that decent people in this country go through this kind of unbelievable series of hoops knowing both that they must accept them because of the security that we properly wish to impose and that others avoid this to the tune of millions and millions of pounds.

The third reason this amendment is so important is that there is a real concern in this country, with the atmosphere of Brexit, about attitudes to foreigners. I am an absolute and continuous remainer and will not be pushed off that by anybody's arguments, so I am biased. However, I do not like the society we are building in circumstances of antagonism to foreigners of all kinds. That makes it even more important that where dishonourable activities take place and money earned dishonourably elsewhere is invested in this country that is dealt with clearly and transparently, so that the kind of accusations that are and have been made against people who invested here honourably are totally distinct from that which has been unacceptable.

My fourth reason—and last, as the House will be pleased to note—is that we recently, honourably, passed the Modern Slavery Act. We are beginning to be serious about the way in which people are exploited and the benefits of that exploitation coming to people in this country. People are serious about this, the Government have been serious about it and it has all-party support. If we are serious about the Modern Slavery Act, we must also be serious about the proceeds of crime and often of exploitation being brought into this country and used in the real-estate world. That is why I beg my noble friend to take this amendment very seriously. It addresses some deep disillusion in our society and also some deep injustice in the society of the world. This is not just a passing amendment to tease out the Government's position here and there but a fundamental amendment that challenges the whole of our society to behave in a way that we can be proud of, rather than one that facilitates activities we should condemn.

Lord Brown of Eaton-under-Heywood: My Lords, I start with a very pedantic point. If this amendment is to go ahead, it needs to begin with an "or". As the noble and very clever though not technically learned Lord points out, this is a further alternative to the two already listed in new Section 362B(4). The next point is that of course the property here envisaged, registered in the name of an overseas company in which the respondent has an interest, is not—I repeat, not—the same property as referred to in subsection (1), in respect of which one seeks to have an unexplained wealth order made. It is a different property altogether.

I have great sympathy with the amendment and the policy underlying it. Like the noble Lord, Lord Deben, I deplore the extent to which London properties are in foreign ownership nowadays. But I respectfully wonder how far the amendment would go—if any distance—in actually dealing with that problem and with money laundering. Surely with regard to most of the people who buy and own these London properties—if they are not already PEPs, or politically exposed persons, and we know that a lot of them probably are—nobody questions how much money they have. But would it not then be rather difficult to satisfy the earlier requirement—which, again, has to be satisfied to make one of these orders—in new subsection (3)? Each of the various requirements set out in proposed new subsections (2), (3) and (4) has to be satisfied. First you have to show that they hold property of the relevant value; then, in new subsection (3) you have to be satisfied that,

"there are reasonable grounds for suspecting that the known sources of the respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property".

The property there being referred to is not property in London registered in the name of an overseas company, it is the property in respect of which you are seeking a UWO.

Those points need to be borne in mind before one goes down this particular road. It is not going to be the panacea that some who have contributed to the debate thus far seem to think it is likely to be.

Baroness Kramer (LD): My Lords, I do not pretend for a moment to have the drafting skills of the noble and learned Lord, Lord Brown of Eaton-under-Heywood, but I associate myself with all the other comments that have been made on the amendment. Rather than repeat the issues that have been so well described, I want to pick up the point that the noble Lord, Lord Faulks, made—that this Bill is a real and rare opportunity to tackle this problem, which, as he will have heard, exercises Members on all sides of the Committee and is essentially a non-partisan series of concerns.

When I had the privilege of sitting where the Minister is sitting, I brought a Bill through this House which was fondly and informally known as the "Dump it in here" Bill. It is perfectly possible, even at this stage, for the Government to come forward with some well-drafted language that would achieve the goals that have been described by various noble Lords today and by others who have been concerned about this issue. The Government have been looking at it for a long time. Given the fact that it will be difficult to get new legislation through in the next couple of years, I urge the Government to look at drafting that language—they have the capacity to do it and would be in a position to do it—that would bring into the Bill the kinds of remedies that would require the public register of beneficial interest for property ownership that presently we do not have in the UK. I met representatives of the British Virgin Islands the other day. The British Virgin Islands actually has such a register and would be delighted to provide mechanisms and recommendations to the British Government if they felt they needed advice in this area.

Lord Leigh of Hurley: My Lords, I have touched on this subject already. As president of Westminster North Conservative Association, I have spent many long evenings tramping along the streets of Westminster North, knocking on doors of properties that are clearly unoccupied and turn out to have no registered voters so are probably owned by offshore companies. While I am not convinced that the amendment, placed where

[LORD LEIGH OF HURLEY]
it is, achieves the effect that the noble Lord, Lord Faulks, wants, I echo the remarks of the noble Baroness, Lady Kramer, that this might be an opportunity to seek to make progress.

The point made by the noble Lord, Lord Deben, about not wanting to be xenophobic is well taken, not least because of the concerns that some people have that the actual beneficial owner of these overseas companies is in fact a person in the UK who might well allegedly be the tenant. The fact that it is an overseas company does not mean that it has an overseas owner. Noble Lords ask whether their children will be able to afford to live in the house that they live in. Invariably, the answer is no.

5.30 pm

Lord Hodgson of Astley Abbotts: My Lords, I support this amendment and the sentiments that have been expressed. Like other noble Lords, I am not sure whether it will do anything other than send a signal that this is something we are very serious about. An important aspect of not allowing it to become too London-centric—the darkened squares that my noble friend referred to in his opening remarks—is the ripple effect. What happens in central London ripples out through the country. I think the Lloyds Bank review says that Oxford is now the most unaffordable town in the country in terms of local wages to local house prices. If we can stop the ripple, or at least inhibit the ripple, that will have an effect much wider than merely the darkened squares to which my noble friend referred. As my noble friend Lord Deben said, if we take this further out, there are implications for social cohesion, as some of our less well-off and less well-resourced fellow citizens are finding themselves squeezed out by gentrification in an increasingly wide range of towns and cities across the country.

Lord Kennedy of Southwark: My Lords, Amendment 11 is tabled in the names of the noble Lord, Lord Faulks, and my noble friend Lord Anderson of Swansea. My noble friend was taken ill yesterday, and I am sure we all wish him a speedy recovery. This amendment would add a new paragraph to subsection (4) which clearly specifies that where,

"the respondent has a financial interest in land or property ... which is registered in the name of an overseas company",

which could be being used as part of a complicated financial arrangement to hide from the authorities their unexplained wealth, the court can make an unexplained wealth order. I support the aims of this amendment. It highlights another way that a person can seek to avoid having to explain their wealth. This amendment seeks to address that in a very clear way. My noble friend Lord Rooker raised some important points, and I am sure the Minister will respond to them in her remarks.

Like the noble Lord, Lord Deben, I have had a bank account for 38 years. I have only ever had one—I opened it when I was 16. I went into the bank at Camberwell Green and have kept it in pretty reasonable order for those 38 years. All the things you have to do—saying who you are and having to give your mother's maiden name—are very irritating, but there are clearly issues with funds travelling backwards and forwards that must have gone through a bank somewhere. If they are ever to be brought to account for things, that is something we must address in these debates.

A lot has been said about the London housing market. Any suggestion that it could be a safe haven for corrupt money should be of concern to us all. What a terrible thing that we even have to contemplate that. It contributes to the housing crisis in London. I referred to the Transparency International report in my contribution at Second Reading. It did some work in 14 developments and found that 1,616 companies and individuals bought properties and that only 450 were registered to people who were living in the UK. Forty per cent of purchases in London, totalling £1.6 billion, were bought by investors from countries with a high risk of corruption. We do not want any suggestion of our capital city being seen as a safe haven for corrupt money, as that must concern us all. The noble Lord, Lord Faulks, made the point that whole parts of central London are in darkness. Ten per cent of Westminster is owned by faceless companies. Properties with an abnormally low use of electricity suggests that they are not lived in on a regular basis. Transparency International also found that 140 properties with a value of £4.2 billion have been bought by investors who represent a high money-laundering risk. My friend the Mayor of London, Sadiq Khan, has launched an inquiry into the impact of foreign investment flooding into London's housing market. The noble Lord, Lord Faulks, referred to this.

The other problem is the trickle-down effect. It causes property prices to be abnormally raised and is putting whole sections of the capital out of the reach of ordinary law-abiding citizens. That must worry us all, and very regrettable it is. About a year ago, I was standing at this Dispatch Box discussing with the Minister the Housing and Planning Bill—the cost of rents, how we get people living in safe, warm, dry properties, how people can afford to buy property and whether starter homes are the right answer. The way money has come in has made it more difficult for families, which must be of regret to us all. That is something we need to address in this Bill. The noble Lord, Lord Faulks, made the point that there may well be very little legislative time in the next Session, so we should take the opportunity that this Bill gives us.

The noble Lord, Lord Deben, talked about housing. I am happy to accept that all parties have failed in the past. There is no question about that—we all need to do very much more about it. I live in Lewisham. The noble Lord was the Member of Parliament for Lewisham at one time; I am a councillor in his old constituency. It is a great area to live in, not the most expensive part of London, but I could not now afford to buy the house that I live in. I have lived there for 13 years and the rent the people in the house next to me pay is more than my mortgage. It is ridiculous. If corrupt money has led to that, it is a bad situation.

This amendment raises important issues, and the Minister should reflect on them very carefully. If we can find some way forward before the Bill becomes law, we should do that.

Baroness Williams of Trafford: I thank all noble Lords who have taken part in this short debate. I am grateful for their contributions. As we have already covered, the court may issue a UWO in cases where either there is a link to serious criminality or the respondent is a politically exposed person from outside the European Economic Area. Amendment 11 seeks to add a third limb to those covered by UWOs. This amendment would mean that a UWO could also be served on a person who has a financial interest in land or property which is registered in the name of an overseas company. This would be quite a significant step, and I encourage noble Lords to consider it carefully. The UWO has been specifically designed as a reaction to the real operational difficulties that law enforcement agencies have had in individual cases.

First, there are those who are known to have a link to serious criminality, such as there being known links to organised criminal groups. The senior criminal, if I can call them that, is often able to keep themselves distant from any actual individual instance of criminality. The UWO will force them to explain their wealth. Secondly, there are non-EEA PEPs. PEPs are targeted in this way because they are widely acknowledged to be a high corruption risk. The ability to get evidence from certain countries—

Lord Lea of Crondall (Lab): I hesitate to intervene, but this is a point of general relevance to the Bill. The Minister referred to us being a member of the European Economic Area. I take it that nothing will happen to this Bill when it goes on to the statute book, but this question is germane and substantive. The Bill refers to the European Economic Area, of which we are a member. Would we require legislation to stop being a member? Does that bear on the substantive issues in the Bill?

Baroness Williams of Trafford: I do not entirely understand what the noble Lord said.

Lord Lea of Crondall: Will the Minister make sure that this question is looked at? Otherwise, we will have on the statute book something that depends upon us being a member of the European Economic Area.

Baroness Williams of Trafford: I am much clearer about this. Obviously negotiations will be conducted as the Brexit negotiations go on. I did a debate the other week about the co-operation around law enforcement; we are absolutely committed to continue that co-operation—if that gives comfort to the noble Lord—in fighting crime, corruption, fraud, slavery, people trafficking and all that sort of thing. We are a world leader at this point in time.

I did not initially get where the noble Lord was coming from, so I apologise. I was talking about the non-EEA PEPs—those outside the European Economic Area at the moment—who are targeted in this way because they are widely acknowledged to be a high corruption risk. The inability to get evidence from certain countries has rendered action against those persons almost impossible in some cases, even though they have obvious unexplained wealth and there are other suspicions relating to them. In both cases, there are clear reasons to justify the use of this novel investigative power. Based on clear evidence, we judge it to be proportionate in these cases to reverse the burden of proof, which is a major departure from the normal operation of our law, and to put their property at risk of recovery purely on the basis that they do not respond to a UWO.

I fully recognise that those in the third grouping proposed by noble Lords—those with a financial interest in property owned by an overseas company—have given rise to concerns relating to corruption. However, very importantly, it must be remembered that the vast majority of people with a financial interest in an overseas company are law-abiding. Many of them are British citizens, for whom there will, if relevant, be other avenues to progress an investigation. I am not satisfied that the situation relating to this third suggested group of persons is so stark, or that a real operational need has been identified. As I said earlier, there is nothing inherently suspicious about having a financial interest in an overseas company.

Despite that, I take on board the points that noble Lords have made and am very grateful for the amendment, which highlights a very important area. My officials will, of course, liaise with law enforcement colleagues to ensure that they have the tools that they need to investigate cases of this type, but I assure noble Lords that they have not indicated a gap in their existing powers that would justify extending UWOs in the way that is proposed.

I will go through some other points that noble Lords have made. My noble friend Lord Faulks—I thought he was noble and learned, and it has quite shattered my illusions to learn that he is not—talked about the "envelope tax", which he also brought up at Second Reading. I undertake to discuss it with colleagues at the Treasury and come back with a response, either on Report or by letter to him. He also talked about UWOs and the London property market, and what they will do to help with empty properties—which I see every night on my way back to my small flat in north London. In terms of how a UWO will be used against property held by foreign companies, it must be noted that the UWO provisions can be used against legal persons—companies—wherever they are located, subject to international law on service. In addition, it will be possible to focus on the individual if he holds an interest. Our new amendments will mean that foreign-owned property is not excluded from the UWO provisions.

My noble friend also talked about the supervisory regime and the obligations of regulated bodies with respect to the London property market. The Government consulted on reforms to the anti-money laundering supervisory regime in the autumn and have considered the responses. The Treasury published the outcome of that review on 22 March and is currently conducting further consultation on the creation of a new office for professional body anti-money laundering supervision, which will be overseen by the FCA and is expected to be fully operational by the start of 2018.

The noble Lord, Lord Rooker, asked about the latest available data on prosecutions, convictions and sentencing, broken down by offence from 2015. In 2015,

[Baroness Williams of Trafford]
2,307 defendants were proceeded against for money laundering offences in the magistrates' court; 1,336 defendants were found guilty at all courts for money laundering offences; and 1,300 were sentenced. Where a bank's anti-money laundering regime is found to have failed, significant fines can be, and have been, applied. I think that is the chart that he was referring to. Banks are also required to fix their regimes, and banks operating in the UK have been fined for failures in their anti-money laundering regimes.

5.45 pm

Lord Rooker: The Minister is missing the point, although I am sure she is not doing so deliberately. No bank has been prosecuted. That is the background to the question I asked. I did not ask about cosy deals with the Financial Conduct Authority—like those reported today with Tesco and the one with Rolls-Royce, which I referred to at Second Reading—to have deferred prosecutions, so that they pay but do not get prosecuted. I asked about banks being prosecuted. The one way to stop or curtail this, as the noble Lord, Lord Deben, said, is to get them where it hurts, not with cosy deals. These fines are not the result of prosecutions. If she is implying that, she is wrong, and is close to misleading the Committee. I am not asking about deals; I am asking about prosecutions which take place in court, not through cosy deals and a fine from the Financial Conduct Authority.

Baroness Williams of Trafford: I hope the noble Lord does not think that I have ever tried to mislead the House. I talked about fines, but where a bank was found to have committed a criminal offence, a prosecution could be undertaken. Investigations and prosecutions are a matter for law enforcement agencies and prosecutors. I take the point that he is making, but this is open to law enforcement. Last month, a £163 million fine was issued to Deutsche Bank, and I would suggest that hitting them where it hurts probably involves hitting them in their pockets. It is open to law enforcement to prosecute banks, but I take the noble Lord's point in that, today, I know of no prosecutions of banks. But the fines regime is in place.

I am very grateful for the amendment but hope that my noble friend has been assured that there is not a gap in existing powers that would justify extending UWOs in the way proposed. I hope he will feel content to withdraw his amendment.

Lord Faulks: My Lords, I am grateful to all noble Lords who took part in the debate and for the general support for what lay behind this amendment, which is a widespread concern about the London property market in particular and the degree to which it is clear that corrupt money has entered it. The noble and learned Lord, Lord Brown, made a number of important points—particularly that I am not learned. He was also correct to say that the word "or" was missing from the amendment, and made some other drafting suggestions. He was also right to suggest that this is not a panacea, but it was not designed to be. The amendment was intended to provoke the sort of debate we have had and to ask the Government whether they are truly satisfied that the evil we have identified is being answered, and in particular whether anything in the Bill can be used to deal with the problem.

My noble friend the Minister has said that the provision covers those who are PEPs within the definition of the Bill or those suspected of serious criminality. But what, I ask, about those who may not easily be defined as being "suspected of serious criminality" but are in fact gangsters? What of those who have high office but do not come within the definition of PEPs? With many of the properties, it will be difficult to determine precisely who owns them. All that we ask for is an unexplained wealth order—it is not a criminal offence; it is a civil procedure which results, if there is no adequate explanation, in civil recovery. That, I suggest, will help deter the incursion of corrupt money. The provisions contain safeguards on self-incrimination and compensation. Let us not be too pusillanimous about this. My noble friend said that she had received my request for information about the envelope tax at Second Reading and she has again, but she has not yet replied. On the face of it, that is in stark contradiction to the policy that underlies the UWOs.

We will miss a legislative opportunity if we do not do something through the Bill to sort out the problem we have identified. I hope that my noble friend will speak to her officials and be satisfied that there is no gap, no lacuna, in this approach.

Lord Rooker: Perhaps through the noble Lord, as the Minister talks to her officials, I can invite her to watch two films: "From Russia with Cash" and "From Ukraine with Cash". They are on the same CD. If she does not have access to them, I will provide her with a copy. They spell out that there is a serious problem.

Lord Faulks: I am very grateful for that intervention, which supports the point that these effective owners may not be PEPs within the definition and it may be difficult to pinpoint serious criminality. We must do something about this. I look to the Minister to provide a better solution than exists at the moment. If not, we will be letting the country down and letting Londoners down, particularly young, aspirant Londoners. However, at this stage, I beg leave to withdraw the amendment.

Amendment 11 withdrawn.

Amendment 12

Moved by ***Baroness Williams of Trafford***

12: Clause 1, page 3, line 23, at end insert—

"(e) where the property is an interest in other property comprised in a settlement, the reference to the respondent obtaining the property is to be taken as if it were a reference to the respondent obtaining direct ownership of such share in the settled property as relates to, or is fairly represented by, that interest."

Amendment 12 agreed.

Amendment 13 not moved.

Amendments 14 and 15

Moved by ***Baroness Williams of Trafford***

14: Clause 1, page 3, line 30, at end insert—

"(d) otherwise connected with a person within that paragraph."

15: Clause 1, page 3, line 39, leave out "subsection (4)(b)" and insert "this section"

Amendments 14 and 15 agreed.

Amendment 16 not moved.

Amendment 17

Moved by ***Baroness Williams of Trafford***

17: Clause 1, page 4, line 29, at end insert—

"(5A) Subsections (5B) and (5C) apply in determining the respondent's interest for the purposes of subsection (3) in a case where the respondent to the unexplained wealth order—

(a) is connected with another person who is, or has been, involved in serious crime (see subsection (4)(b)(ii) of section 362B), or

(b) is a politically exposed person of a kind mentioned in paragraph (b), (c) or (d) of subsection (7) of that section (family member, known close associates etc of individual entrusted with prominent public functions).

(5B) In a case within subsection (5A)(a), the respondent's interest is to be taken to include any interest in the property of the person involved in serious crime with whom the respondent is connected.

(5C) In a case within subsection (5A)(b), the respondent's interest is to be taken to include any interest in the property of the person mentioned in subsection (7)(a) of section 362B."

Amendment 17 agreed.

Amendment 18 not moved.

Amendment 19

Moved by ***Baroness Williams of Trafford***

19: Clause 1, page 5, line 35, leave out "other provisions of"

Amendment 19 agreed.

Amendment 20 not moved.

Amendment 21

Moved by ***Baroness Williams of Trafford***

21: Clause 1, page 7, line 1, at end insert—

"362GA Holding of property: trusts arrangements etc

(1) This section applies for the purposes of sections 362A and 362B.

(2) The cases in which a person (P) is to be taken to "hold" property include those where—

(a) P has effective control over the property;

(b) P is the trustee of a settlement in which the property is comprised;

(c) P is a beneficiary (whether actual or potential) in relation to such a settlement.

(3) A person is to be taken to have "effective control" over property if, from all the circumstances, it is reasonable to conclude that the person—

(a) exercises,

(b) is able to exercise, or

(c) is entitled to acquire,

direct or indirect control over the property.

(4) Where a person holds property by virtue of subsection (2) references to the person obtaining the property are to be read accordingly.

(5) For further provision about how to construe references to the holding of property, see section 414."

Amendment 21 agreed.

Amendments 22 to 25 not moved.

Clause 1, as amended, agreed.

Clause 2: Interim freezing orders

Amendments 26 and 27 not moved.

Amendment 28

Moved by ***Baroness Williams of Trafford***

28: Clause 2, page 12, line 34, at end insert—

"362PA Compensation

(1) Where an interim freezing order in respect of any property is discharged, the person to whom the property belongs may make an application to the High Court for the payment of compensation.

(2) The application must be made within the period of three months beginning with the discharge of the interim freezing order.

(3) The court may order compensation to be paid to the applicant only if satisfied that—

(a) the applicant has suffered loss as a result of the making of the interim freezing order,

(b) there has been a serious default on the part of the enforcement authority that applied for the order, and

(c) the order would not have been made had the default not occurred.

(4) Where the court orders the payment of compensation—

(a) the compensation is payable by the enforcement authority that applied for the interim freezing order, and

(b) the amount of compensation to be paid is the amount that the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances."

Amendment 29 (to Amendment 28) not moved.

Amendment 28 agreed.

Clause 2, as amended, agreed.

Clause 3 agreed.

Clause 4: Unexplained wealth orders: Scotland

Amendments 30 to 33

Moved by ***Baroness Williams of Trafford***

30: Clause 4, page 14, line 15, at end insert—

"(c) where the property is held by the trustees of a settlement, setting out such details of the settlement as may be specified in the order, and

(d) setting out such other information in connection with the property as may be so specified."

31: Clause 4, page 14, line 23, leave out "to provide information, or"

32: Clause 4, page 14, line 32, after "satisfied" insert "that there is reasonable cause to believe"

33: Clause 4, page 14, line 35, leave out "£100,000" and insert "£50,000"

Amendments 30 to 33 agreed.

Amendments 34 and 35 not moved.

Amendment 36

Moved by ***Baroness Williams of Trafford***

36: Clause 4, page 15, line 20, at end insert—

"( ) where the property is an interest in other property comprised in a settlement, the reference to the respondent obtaining the property is to be taken as if it were a reference to the respondent obtaining direct ownership of such share in the settled property as relates to, or is fairly represented by, that interest."

Amendment 36 agreed.

Amendment 37 not moved.

Amendments 38 to 53

Moved by ***Baroness Williams of Trafford***

38: Clause 4, page 15, line 27, at end insert—

"(d) otherwise connected with a person within that paragraph."

39: Clause 4, page 15, line 36, leave out "subsection (4)(b)" and insert "this section"

40: Clause 4, page 16, line 29, at end insert—

"(5A) Subsections (5B) and (5C) apply in determining the respondent's interest for the purposes of subsection (3) in a case where the respondent to the unexplained wealth order—

(a) is connected with another person who is, or has been, involved in serious crime (see subsection (4)(b)(ii) of section 396B), or

(b) is a politically exposed person of a kind mentioned in paragraph (b), (c) or (d) of subsection (7) of that section (family member, known close associates etc of individual entrusted with prominent public functions).

(5B) In a case within subsection (5A)(a), the respondent's interest is to be taken to include any interest in the property of the person involved in serious crime with whom the respondent is connected.

(5C) In a case within subsection (5A)(b), the respondent's interest is to be taken to include any interest in the property of the person mentioned in subsection (7)(a) of section 396B."

41: Clause 4, page 16, line 41, leave out from "must" to "in" in line 42 and insert "—

(a) consider whether the Lord Advocate should be given an opportunity to determine what enforcement or investigatory proceedings, if any, the Lord Advocate considers ought to be taken by the Lord Advocate in relation to the property, and

(b) determine whether they consider that any proceedings under Part 5 (civil recovery of the proceeds of unlawful conduct) or this Chapter ought to be taken by them"

42: Clause 4, page 16, line 43, at end insert—

"(2A) If the Scottish Ministers consider that the Lord Advocate should be given an opportunity to make a determination as mentioned in subsection (2)(a), the Lord Advocate must determine what enforcement or investigatory proceedings, if any, the Lord Advocate considers ought to be taken by the Lord Advocate in relation to the property."

43: Clause 4, page 16, line 44, leave out "(2)" and insert "(2)(b) or (2A)"

44: Clause 4, page 16, line 46, leave out "determination under subsection (2) is" and insert "determinations under subsections (2)(b) and (2A) are"

45: Clause 4, page 16, line 46, after "that" insert "no further proceedings under Part 5 or this Chapter and"

46: Clause 4, page 17, line 1, leave out "that fact" and insert "the nature of the determinations"

47: Clause 4, page 17, line 5, leave out from "determine" to "in" in line 7 and insert "whether they consider that any proceedings under Part 5 or this Chapter ought to be taken by them"

48: Clause 4, page 17, line 7, at end insert ", and

(b) the Lord Advocate may (at any time) determine what, if any, enforcement or investigatory proceedings the Lord Advocate considers ought to be taken by the Lord Advocate in relation to the property."

49: Clause 4, page 17, line 8, after "take" insert "no further proceedings under Part 5 or this Chapter or"

50: Clause 4, page 17, line 9, at end insert "any"

51: Clause 4, page 17, leave out line 30

52: Clause 4, page 17, line 31, leave out "other provisions of"

53: Clause 4, page 18, line 37, at end insert—

"396GA Holding of property: trusts arrangements etc

(1) This section applies for the purposes of sections 396A and 396B.

(2) The cases in which a person (P) is to be taken to "hold" property include those where—

(a) P has effective control over the property;

(b) P is the trustee of a settlement in which the property is comprised;

(c) P is a beneficiary (whether actual or potential) in relation to such a settlement.

(3) A person is to be taken to have "effective control" over property if, from all the circumstances, it is reasonable to conclude that the person—

(a) exercises,

(b) is able to exercise, or

(c) is entitled to acquire,

direct or indirect control over the property.

(4) Where a person holds property by virtue of subsection (2) references to the person obtaining the property are to be read accordingly.

(5) For further provision about how to construe references to the holding of property, see section 414."

Amendments 38 to 53 agreed.

Clause 4, as amended, agreed.

Clause 5: Interim freezing orders

Amendments 54 and 55 not moved.

Amendment 56

Moved by ***Baroness Williams of Trafford***

56: Clause 5, page 24, line 32, at end insert—

"396QA Compensation

(1) Where an interim freezing order in respect of any property is recalled, the person to whom the property belongs may make an application to the Court of Session for the payment of compensation.

(2) The application must be made within the period of three months beginning with the recall of the interim freezing order.

(3) The court may order compensation to be paid to the applicant only if satisfied that—

(a) the applicant has suffered loss as a result of the making of the interim freezing order,

(b) there has been a serious default on the part of the Scottish Ministers in applying for the order, and

(c) the order would not have been made had the default not occurred.

(4) Where the court orders the payment of compensation—

(a) the compensation is payable by the Scottish Ministers, and

(b) the amount of compensation to be paid is the amount that the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances."

Amendment 57 (to Amendment 56) not moved.

Amendment 56 agreed.

Clause 5, as amended, agreed.

Clauses 6 to 8 agreed.

Clause 9: Power to extend moratorium period

Amendment 58

Moved by ***Baroness Hamwee***

58: Clause 9, page 29, leave out lines 10 to 13

Baroness Hamwee: My Lords, Amendments 58 and 59 deal with the same provision in the Bill. We have now come to the chapter on money laundering.

Under new Section 336B(6), the Bill provides that the court must direct the exclusion from the hearing of an application of,

"the interested person to whom that application relates",

and "anyone representing that person". The second of my amendments would make that discretionary for the court, but the principal amendment would remove the provision, because it would be appropriate for the Committee to hear the Minister's justification for excluding from the hearing without alternative arrangements on their behalf the suspected person and his representatives. I acknowledge that I missed a similar provision earlier in the Bill, but the point remains.

I appreciate that there is concern not to tell that person what evidence the police have when they seek to extend the moratorium period, but it is serious to restrict arguments and representation when the person is likely to be subject to an extension of the moratorium. It is part of the whole landscape of innocence until guilt is proved. As far as I understand it, that person will have no opportunity to object to the extension—or perhaps will have an opportunity but no real target to aim at because neither he nor his representatives will have heard the arguments.

6 pm

Amendment 60 would amend Clause 10. This is less significant but still significant. In dealing with a disclosure request, on the information requested the words are "ought to be disclosed". That seemed to me unusual terminology in a Bill, as "ought" has an element of judgment in it. There are conditions to be applied, and I am not sure whether "ought" refers to those conditions; the criteria for this provision should be made clear.

Amendment 61 takes us to our old friend, breaches of obligations of confidence and the common-law duty of confidentiality and, in particular, legal professional privilege. The Bill overrides the common-law duty of confidentiality and, as far as I can see, legal professional privilege is not dealt with, although in this complex forest—I think that is the noun—of legislation, it may well be somewhere else and I have not seen it. I raise the point partly because intrinsically it is important but also to ask whether the professional organisations have commented on this issue. There is an equivalent provision elsewhere in the provisions about terrorist property; why not in Part 1 of the Bill? I hope the Minister can help me on that matter; I am sure she can. I beg to move.

The Deputy Chairman of Committees (Viscount Ullswater) (Con): I must advise the Committee that if this amendment is agreed to, I shall not be able to call Amendment 59.

Lord Rosser: My Lords, I have Amendment 72 in this group. The Bill provides for extensions to the suspicious activity reports regime under which private sector companies report suspected money laundering—or, at least, they are meant to. The extensions or enhancements enable the moratorium period during which the relevant law enforcement agencies can gather evidence to be extended and provide a power enabling the UK Financial Intelligence Unit in the National Crime Agency to obtain further information from suspicious activity reporters. The enhancements also create a legal basis for sharing information between companies in order that they can build up a clearer picture of suspected money laundering.

Amendment 72 would provide for a procedure, through the National Crime Agency, for prioritising the most serious suspicious activity reports to target effectively the use of scarce law enforcement resources. Private sector companies and professionals, such as accountants, are required by law to make a suspicious activity report every time they become aware that a person might be in possession of the proceeds of crime, and that applies equally even if the amounts involved are small or if the information is far from conclusive or far from being considered fully reliable. The same duty to report applies whether the suspicion relates to a theft of a few pounds from petty cash or to what could be serious organised crime.

[Lord Rosser]

At present there appears to be no means by which information may be quickly screened or sifted to determine which are likely to prove the most significant or important reports requiring full investigation. There were just over 380,000 individual suspicious activity reports in 2015, and considerable time must be spent processing essentially very minor crime reports, which can only be at the expense, resource-wise, of the investigation and detection of crimes at the serious end of the scale. This amendment seeks to address that situation by providing for priority levels based on the intelligence value of each report, or a similar kind of categorisation, which would give an appropriate risk-based approach to determining which economic crimes should be tackled as a matter of urgency.

At Second Reading, the Government said that the issue raised in this amendment on suspicious activity report reform was lacking in the Bill, even though reform of the SARs regime was a crucial part of the Government's own action plan for anti-money laundering and counterterrorist finance. The Government went on to say that they had established a programme to reform the SARs regime, and were seeking improvements in the short, medium and long term. They then went on to say that, during the review of the SARs regime that the Home Office ran in 2015, a number of regulated-sector companies suggested that suspicious activity reports should be prioritised, which is what this amendment is about. Despite this, they went on to say at Second Reading:

"We will consider this as part of the SARs reform programme".—[*Official Report*, 9/3/17; col. 1518.]

However, the review was two years ago, in 2015, and a number of companies affected raised the issue addressed in this amendment in response to the review. Why, two years after the review, cannot the Government make a decision to do something to address this matter of prioritising reports rather than continue to put off making a decision? Surely, in all the discussions that would have taken place on this Bill before it was brought to Parliament and during the debates on the Bill so far in Parliament, prioritising SARs reports, which had after all been raised in the 2015 review, could and should have been considered, since it is directly relevant to the content of the Bill?

I hope that the Government will recognise this reality, and give a positive response to this amendment and, if that is not possible—and I would like to know why, if that is the case—accept that Report is now likely to be another four weeks away, with Third Reading being five weeks away, and agree to bring back a government amendment on Report or at Third Reading to address the issue raised in the amendment.

Lord Brown of Eaton-under-Heywood: I want to address only Amendments 58 and 59, both of which I oppose, to new Section 336B on page 28 of the Bill. That section deals with an application under the previous section to extend the moratorium period, which has to be dealt with as soon as is practicable. New subsection (3) says that the court,

"may exclude from any part of the hearing … an interested person",

or "anyone representing that person". We see that formulation again in new subsections (4) and (6). They are the people whose presence or otherwise at the hearing is in question.

New subsection (4) allows for a particular application, that certain specified information may be withheld from the interested person or representative, but that order can be made only under new subsection (5), if the court is,

"satisfied that there are reasonable grounds to believe that if the specified information were disclosed",

something bad would happen—that either,

"evidence of an offence would be interfered with or … the gathering of information …would be interfered with",

or somebody would be injured, or,

"the recovery of property … would be hindered, or … national security would be put at risk".

In that situation, new subsection (6) comes into play. Unlike new subsection (3), which we looked at earlier, where the court "may exclude", in this instance—because it relates to an application under new subsection (4)—the court inevitably "must" direct that the interested person or his representative be excluded. With the best will in the world, I cannot see how we could sensibly leave out new subsection (6), which puts a requirement on the court which is not to be found in new subsection (3), which deals with the general position. Nor would it make any sense whatever to substitute "may" for "must". You have already got "may" in new subsection (3), but for this situation, "must" is the appropriate direction to the court for the order to be made. I respectfully oppose those amendments.

Lord Hodgson of Astley Abbotts: My Lords, I support Amendment 72, in the name of the noble Lord, Lord Rosser. It has been common ground in our discussions this evening that the volume of SARs is rising all the time. There are now over 1,500 a working day and it slightly defies belief that those are all getting anything like the attention that they should. Those of us who have had experience of this find that the National Crime Agency is extremely reluctant to allow any inhibition on its ability to call for SARs at every level. It should be possible to have discussions about automatically asking for a time limit—not that the information could not be asked for subsequently—of 25 or 50 years. One of my most recent PEP inquiries involved events 53 years ago. I simply cannot believe that collecting that sort of information is a good use of my time or the bank's. There would be a great deal of virtue in my noble friend trying to persuade the NCA that some focus was a good idea. Getting the focus that is badly needed, and things like time and a de minimis figure, would make the whole system much more effective. The amendment tabled by the noble Lord, Lord Rosser, is a first step towards that and is worthy of serious consideration.

Baroness Williams of Trafford: My Lords, these amendments cover measures in Chapter 2 of Part 1 of the Bill. I thank noble Lords who have taken part in the debate. As the *Action Plan for Anti-money Laundering and Counter-terrorist Finance* set out, the Government see public/private partnership as central to tackling money laundering and terrorist financing. A major

part of this approach is to provide support for the effective exchange of information, both within the private sector, and between the public and private sectors, to increase our collective knowledge of threats and vulnerabilities; to help the regulated sector to protect itself, and to improve the quality of the UK's financial intelligence. The provisions in Chapter 2 assist this approach, and our amendments will enhance their ability to do so.

I hope noble Lords will agree that the government amendments in this group are technical and uncontroversial. Clause 11 permits the UK Financial Intelligence Unit—or UKFIU—hosted in the National Crime Agency, to request further information in relation to a suspicious activity report, or following a request from a foreign authority, from any member of the regulated sector. Clause 35 allows the police to do the same in relation to terrorist finance. At present, the clause will allow the NCA and police to direct that further information is provided through issuing a further information notice. If the information is not provided in accordance with the direction, the NCA will be able to apply to a court for a further information order to require the person to provide the information requested. However, following further consultations with operational partners, we have concluded that a further information notice is not required, as the NCA can already request information to be provided voluntarily under existing powers. Government Amendments 64 to 69, 130 to 137 and 173 will therefore remove further information notices. If the regulated sector entity declines to provide information on a voluntary basis, the NCA or police can still apply to a magistrates' court for a further information order.

6.15 pm

Amendments 62, 63, 128 and 129 relate to the information-sharing provisions at Clauses 10 and 34. As the Bill is currently drafted, if the requesting party does not notify the NCA or police correctly of their intention to share information, the requested entity would not receive the legal protections intended. This introduces a degree of uncertainty, which may deter companies from exchanging vital information. These amendments will provide the legal certainty that firms need if they are to make best use of these provisions.

Amendments 58 and 59, tabled by the noble Baroness, Lady Hamwee, seek to amend the provisions relating to the extension to the moratorium period for suspicious activity reports. They seek to remove the provision, or amend it to make it discretionary. These amendments would allow a court to include the owner of the property or their representatives in the hearing of an application. I hope that noble Lords will see that it is essential that the court must exclude the owner of the property from a hearing to determine whether information should be withheld from that person. It would fatally undermine the mechanism for withholding information from that person if they were able to attend the application where the reasons given for withholding this information are heard.

Amendment 60 proposes that the information-sharing request from one regulated-sector entity to another should be determined on the basis of whether the request meets the conditions set out in the clause to permit the sharing of data. Where a regulated-sector entity is asked to provide information it should, of course, meet the conditions set out in the Bill for doing so. The Bill already provides for that. However, we also want to be clear that the entity should determine for itself that the information ought to be disclosed. It is not just the case that the conditions are met, but that the entity is satisfied that the information should be provided. This is a common-sense approach that allows the owner of the information to make an informed assessment.

Amendment 61 proposes that the provision removing liability for regulated-sector entities for the sharing of information in good faith should be removed. As I said at the outset, we want to encourage the sharing of information between regulated-sector entities, to tackle money laundering and the financing of terrorism. In doing so, we do not want those entities to be held liable for any breaches of confidence where, in good faith, they share information. We therefore believe that this provision is essential to allow regulated-sector entities to share information and that, if it were not included, those entities might not feel able to do so.

Finally, Amendment 72, tabled by the noble Lord, Lord Rosser, proposes that the National Crime Agency should be required to designate a qualifying report as a high-priority investigation. This was, of course, an issue that the noble Lord raised at Second Reading. A suspicious activity report, or SAR, is not in itself an investigation, but can help to inform a decision on whether to initiate such an investigation, when taken with other sources of intelligence. In 2015, the Home Office reviewed the SARs regime. One of the issues raised in that review, and mentioned by the noble Lord, was whether the regime could be focused more effectively, including through the prioritisation of SARs. A number of regulated sector entities made this suggestion, and we have been considering it carefully, as part of the ongoing SARs reform programme. This programme has been set up to improve the regime as a whole, and it will actively consider this issue. As the noble Lord knows, the SARs regime is complex and changes to it would affect a significant number of sectors. It is therefore right that we consider the changes very carefully.

Lord Rosser: Is the noble Baroness satisfied that this matter has been dealt with as expeditiously as possible bearing in mind that the review was in 2015 and we now have a Bill in front of us to which the SARs regime is directly relevant? However, when we put forward proposals to try to make the regime more effective by prioritising matters, we were told that the Government were still considering the situation. The difficulties in finding space for legislation over the next couple of years have already been raised, so could the noble Baroness address that point and reflect further that we are four weeks away from Report? If the Government really put their mind to it, surely they could come forward with an amendment of their own on this issue.

Baroness Williams of Trafford: My Lords, I recognise that the issue was considered in 2015. It is now 2017. I totally take on board what the noble Lord says. This issue is complex but I will go back to the department

[Baroness Williams of Trafford]
to see what is in the art of the possible before Report. I cannot promise anything at this stage other than that I will try to expedite it if possible.

Prioritisation and the allocation of resources are operational matters. The NCA already has processes in place to take tasking decisions and allocate its resources. It is very unlikely that a SAR would be the only factor taken into account when deciding whether to open an investigation. Putting this matter into legislation could, if anything, impose additional restrictions on law enforcement agencies, which already have the type of flexibility to prioritise cases that the noble Lord's amendment seeks to achieve.

I hope that he is at least partly satisfied with my explanation. I invite the noble Baroness, Lady Hamwee, to withdraw her amendment.

Baroness Hamwee: My Lords, as regards the bad things in subsection (5), I would feel more comfortable if these were a matter of discretion for the court. However, if a court has to be satisfied about something, the provision goes against my instincts—of course, I do not have the experience of other noble Lords in this area—as it would not be in a position to hear arguments on the other side. I specifically mentioned there being no alternative provisions because, in another part of the landscape, we are accustomed to there being special advocates, although that may not be a perfect system and I am not sure that I want to go down that route.

I will have to read the Minister's response on legal professional privilege. It did not immediately answer my questions. Clearly, we are not going to make further progress on that today but it may well be something that I would like to come back to on Report, which, as I understand it from the provisional arrangements, will be very inconveniently held on the day after the day that we return from the Easter Recess. Therefore, I may disturb somebody's holiday. I am sorry about that. I beg leave to withdraw the amendment.

Amendment 58 withdrawn.

Amendment 59 not moved.

Clause 9 agreed.

Clause 10: Sharing of information within the regulated sector

Amendments 60 and 61 not moved.

Amendments 62 and 63

Moved by ***Baroness Williams of Trafford***

62: Clause 10, page 36, line 4, at end insert—

"(3A) Subsection (1) applies whether or not the conditions in section 339ZB were met in respect of the disclosure if the person making the disclosure did so in the reasonable belief that the conditions were met."

63: Clause 10, page 36, line 6, leave out "under" and insert "in compliance, or intended compliance, with"

Amendments 62 and 63 agreed.

Clause 10, as amended, agreed.

Clause 11: Further information notices and orders

Amendments 64 to 69

Moved by ***Baroness Williams of Trafford***

64: Clause 11, page 37, line 4, leave out from beginning to end of line 35 on page 39 and insert—

"Further information orders

339ZH Further information orders

(1) A magistrates' court or (in Scotland) the sheriff may, on an application made by a relevant person, make a further information order if satisfied that either condition 1 or condition 2 is met.

(2) The application must—

(a) specify or describe the information sought under the order, and

(b) specify the person from whom the information is sought ("the respondent").

(3) A further information order is an order requiring the respondent to provide—

(a) the information specified or described in the application for the order, or

(b) such other information as the court or sheriff making the order thinks appropriate,

so far as the information is in the possession, or under the control, of the respondent.

(4) Condition 1 for the making of a further information order is met if—

(a) the information required to be given under the order would relate to a matter arising from a disclosure made under this Part,

(b) the respondent is the person who made the disclosure or is otherwise carrying on a business in the regulated sector,

(c) the information would assist in investigating whether a person is engaged in money laundering or in determining whether an investigation of that kind should be started, and

(d) it is reasonable in all the circumstances for the information to be provided.

(5) Condition 2 for the making of a further information order is met if—

(a) the information required to be given under the order would relate to a matter arising from a disclosure made under a corresponding disclosure requirement,

(b) an external request has been made to the National Crime Agency for the provision of information in connection with that disclosure,

(c) the respondent is carrying on a business in the regulated sector,

(d) the information is likely to be of substantial value to the authority that made the external request in determining any matter in connection with the disclosure, and

(e) it is reasonable in all the circumstances for the information to be provided.

(6) For the purposes of subsection (5), "external request" means a request made by an authority of a foreign country which has responsibility in that country for carrying out investigations into whether a corresponding money laundering offence has been committed.

(7) A further information order must specify—

(a) how the information required under the order is to be provided, and

(b) the date by which it is to be provided."

65: Clause 11, page 39, line 45, at end insert—

"( ) Schedule 9 has effect for the purposes of this section in determining what is a business in the regulated sector."

66: Clause 11, page 39, line 46, at end insert—

""corresponding disclosure requirement" means a requirement to make a disclosure under the law of the foreign country concerned that corresponds to a requirement imposed by virtue of this Part;

"corresponding money laundering offence" means an offence under the law of the foreign country concerned that would, if done in the United Kingdom, constitute an offence specified in paragraph (a), (b) or (c) of section 340(11);

"foreign country" means a country or territory outside the United Kingdom;"

67: Clause 11, page 40, leave out lines 11 to 19

68: Clause 11, page 40, line 21, leave out "a further information notice, or"

69: Clause 11, page 41, line 18, leave out "a further information notice, or"

Amendments 64 to 69 agreed.

Clause 11, as amended, agreed.

Amendment 70

Moved by ***Baroness Hamwee***

70: After Clause 11, insert the following new Clause—

"Anti-money laundering supervision

The Secretary of State must by regulations made by statutory instrument amend the Money Laundering Regulations 2007 to require the supervisory authorities to—

(a) publish annually their enforcement statistics;

(b) publish annually details of individual cases of enforcement; and

(c) report to HM Treasury such information as it requests, including information regarding failures of compliance and a lack of understanding of compliance requirements."

Baroness Hamwee: My Lords, this amendment would provide a new clause on anti-money laundering supervision, requiring supervisory authorities to publish certain information. When the Bill started its passage through this House, briefings to noble Lords from a number of organisations made similar points about supervision, including that there are too many supervisors, there is inconsistency, and there are conflicts of interest since enforcement does not lie very comfortably with promotional activity. The term "a dysfunctional system" also was used. There was also quite a lot of comment about lack of transparency and accountability in the supervisory system, a matter which formed part of Transparency International UK's analysis of the weakness in the rules. Its report was entitled *Don't Look, Won't Find*.

I am aware of the Treasury's work and the current call for information but it seemed to me that it was worth pausing particularly on transparency and accountability. As Transparency International explains, these are,

"fundamental components to an effective supervisory regime".

TI also quotes the Macrory report:

"Transparency is something that the regulator must provide to external stakeholders, including both industry and the public, so they have an opportunity to be informed of their rights and responsibilities and of enforcement activity. However, it is also important for the regulator itself, to help ensure they use their sanctioning powers in a proportionate and risk based way".

My Amendment 70 is based directly on Transparency International's report in the light of the recent government announcements.

The supervisors do not necessarily seem comfortable with the system. The Solicitors Regulation Authority comments that the draft regulations—the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017—fall short of requiring the supervisors of anti-money laundering to be fully independent of any representative body. The authority is keen to see where the weaknesses in the system can be addressed ahead of the Financial Action Task Force review next year. It asks us to raise in the context of the Bill the issue that the underlying legal position is in need of clarification to ensure explicit recognition that supervisory bodies should be fully independent from representative ones. I dare say that the Minister, or at any rate her officials, will have seen that briefing. Having focused on transparency and accountability, I beg to move.

Lord Rosser: We have Amendment 73 in this group, which is on not dissimilar lines to the amendment moved by the noble Baroness, Lady Hamwee. Amendment 73 would require the Secretary of State to,

"lay before each House of Parliament an annual statement on the money laundering supervision regime and any plans the Government has to amend it".

At Second Reading, we raised questions about the effectiveness or otherwise of our anti-money laundering system in the light of the billions of pounds in corrupt money that comes into this country each year. Reference has already been made to that point in our earlier debate on the London property market. According to the National Crime Agency, the figure could be as high as £90 billion. The Government's impact assessment says that this country is unusually exposed to the risks of international money laundering, which is made even more serious by the reality that money laundering is also a key enabler of serious and organised crime, including terrorist financing. The social and economic costs of this are estimated in the Government's impact assessment at some £24 billion per year. However, despite this far from satisfactory state of affairs, there are, as I understand it, some 27 supervisory bodies in the relevant sectors, which must surely lead to a fragmented approach in the identification and mitigation of risks, and in the approach to enforcement.

6.30 pm

There are also concerns about whether some of the 27 or so supervisory bodies have conflicts of interest, because 15 or so are also lobby groups for the sectors they supervise. The Bill does not seem to address the issue of the effectiveness or otherwise of our anti-money laundering system—hence the amendment.

At Second Reading the Government said that they had consulted on reforms to the anti-money laundering supervisory regime and had considered the responses.

[Lord Rosser]
They went on to say that the Treasury intended to publish the outcome of the review in the coming weeks in order to ensure the most effective possible supervision of the regulated sector. I do not know whether the Government were referring at Second Reading to the Treasury document on the response to the consultation on the anti-money laundering supervisory regime dated this month, or whether they were referring to a future Treasury document, since the March 2017 document includes a call for further information, with a return date for comments of 26 April 2017.

The fact that a consultation has taken place suggests that the Government have some doubts about the current arrangements. However, as with the suspicious activity reports, the Government's answer at Second Reading was again that they had undertaken a review and were considering their position in the light of the responses. So I have to ask again: why, in all the discussions on the Bill that took place before it was even brought to Parliament, let alone in the discussions in Parliament, was the issue of the effectiveness or otherwise of the present anti-money laundering regime not resolved and determined, when it is surely a crucial aspect of the issues that the Bill seeks to address?

Saying that a key issue such as this is still being considered by the Government suggests that Parliament will not have the same level of scrutiny and debate, or the same ability to amend any changes to the current system, that it would have if those changes were incorporated in the Bill. The closing date for comments of 26 April indicates that the Government are set against Parliament considering any changes as part of the consideration of the Bill. However, the Government's *UK National Risk Assessment of Money Laundering and Terrorist Financing,* published in October 2015—so not recently—found that the effectiveness of the supervisory regime in this country was inconsistent and that there was room for improvement across the board, with the number of professional body supervisors in some sectors risking inconsistencies of approach. One would have thought that, by now, bearing in mind that the risk assessment was published in October 2015, the Government might have got round to making some decisions that could have been included in the Bill and debated properly by Parliament. However, unfortunately that will not be the case.

I am sure that a number of noble Lords will have received a communication from the Solicitors Regulation Authority—I think that the noble Baroness, Lady Hamwee, referred to this document—which states that anti-money laundering supervisors should be fully independent of interference or control by any representative body because of the obvious conflict of interest.

There is clearly a feeling that the current anti-money laundering supervisory regime needs changing, albeit that the Government do not intend to involve Parliament in the process and decision-making through the Bill—hence the amendment requiring the annual statement to Parliament from the Secretary of State.

I hope that the Government will accept the amendment—or, if not, will put down one of their own with a similar objective. Parliament needs to be involved and, unfortunately, by accident or design, this will not be achieved through the legislation we are discussing today—and concerns have already been expressed today about the difficulty of finding time for legislation in the next two years. I hope that the Government will give a positive response and that we may receive some assurances on this—albeit that, with the closing date for comments of 26 April, I am probably being unrealistic in expressing the hope that the Government may come back on this matter by Report or Third Reading.

Lord Sharkey: My Lords, Amendment 108 seeks to help the FCA to ensure meaningful compliance and right behaviour in the banking sector, which has not been entirely a stranger to money laundering. Work done by the New City Agenda think tank, of which I am a director, has shown some progress in changing the culture within banks—but has also shown that there is still a need for much more change.

Last week's report by the Banking Standards Board also had interesting things to say about banks acting in an honest and ethical way. For example, its very comprehensive survey found that 12% of employees had seen instances where unethical behaviour had been rewarded; 13% saw it as difficult to get ahead in their careers without flexing ethical standards; and 18% had seen people in their organisation turning a blind eye to inappropriate behaviour.

Since the FCA under its previous chief executive abandoned its promised inquiry into the culture within banks, it has relied heavily on financial penalties to punish misbehaviour and as a control mechanism. Since 2013, the FCA has levied an absolutely staggering £3 billion in penalties on firms. The latest, which the Minister mentioned, was a settlement in January with Deutsche Bank. The proposed penalty was £230 million, which was discounted to £163 million. This was a settlement. In fact, almost all the penalties imposed have been settlements. Typically, the FCA proposes a financial penalty and then agrees a discount if the firm settles—as almost all do. The discount is normally 30%. Since 2013, that amounts to a total of £1.2 billion awarded in discounts.

My amendment proposes to put this gigantic discount mechanism to better use. It would enable the FCA to have direct sight of the improvements in process and behaviour agreed in any settlement. It would enable it to see that appropriate disciplinary action had been taken against those responsible for the transgressions. It would give the settling firms a powerful incentive to fulfil any settlement conditions. It would do this by making part of any discount withholdable until the settling firm had satisfied the FCA that all appropriate disciplinary actions had been taken. Only then would the full discount be realised.

This is a simple proposal. It would give the FCA more power, more say and more insight into how transgressors had modified their behaviour and addressed individual and structural culpability. It would give the firms involved a powerful incentive to take proper remedial action—which, unfortunately, still seems to be needed.

Lord Hodgson of Astley Abbotts: My Lords, I have Amendments 126 and 127 in this group. They impose duties on the National Crime Agency regarding the

performance of its duties and the way it supervises the bodies that report to it. I tabled the amendments to address my concern that the country's anti-money laundering regulations, which were and remain a critical part of the fight against financial crime, are not as effective as they should or could be.

There are three related issues. The first is that the regulations lack focus. Far too much unnecessary information is collected, which serves to distract rather than to illuminate the task of the regulator. We have heard tonight from my noble friends Lord Deben and Lord Leigh, and every Member of your Lordships' House could produce evidence of the collection of superfluous information. They also lack effectiveness and follow-through. I was astonished to read in the debate on Second Reading in the House of Commons that Sir Edward Garnier, experienced lawyer that he is, said that many certification orders, having been granted, are never enforced. I therefore put down a Parliamentary Question—which is due for answer the day after tomorrow, sadly, but I am sure that my noble friend can chase up her officials—in which I asked,

"in each of the last three years for which figures are available, how many confiscation orders were … authorised by the courts … put into effect; and how much money was recovered".

I hope that my noble friend will be able to give us those figures when she winds up.

However, it is not just about confiscation orders. My noble friend Lord Faulks talked about the report in the *Times* last week, according to which between 2007—when we introduced the last set of money-laundering regulations—and 2012, there were no convictions at all:

"There have been four convictions since and five more proceedings, according to a freedom of information request by the London law firm Howard Kennedy".

Of course, as I said at Second Reading, the asset recovery by the NCA can only be described as trivial: £26.9 million for an agency that costs some half a billion pounds to run, and which tells us that billions of pounds of illegal money passes through London every year.

Lastly, and most importantly, the regulations do not enjoy general public confidence. Too many members of the public regard them as a paper-pushing exercise. As a result, they do not feel committed to their success or to ensuring that they work well. In my experience, having from time to time chaired risk and compliance committees, attempts to get the regulators to explain how valuable their work is are not greeted with great approval; they tend to say, "This is our business—you mind yours". That is very different from the approach of the security services, which have publicly praised the public for their help.

At that point, some people may be tempted to say, "He works in the City, so he is a tainted witness". However, I was interested to read the briefing from Transparency International—an NGO about which I know very little. It said:

"At the heart of the problem is the fact that",

there are,

"27 Supervisory Bodies in relevant sectors … This leads to a fragmented approach:

...Failure to identify where the risks are and mitigate against those risks…The approach to enforcement is inconsistent and not transparent or effective…Many of the supervisors have serious conflicts of interest"—

we have already discussed that this evening—

"which we believe prohibits the bodies from doing a good job".

I could hardly have put it better myself.

Compliance remains the great growth industry. Noel Coward may have said to Mrs Worthington,

"Don't put your daughter on the stage",

but you could do a great deal worse than putting her into compliance. Regulators seek more powers, so more returns are needed, compliance officers see a chance to build their empires, professional firms seek commercial opportunities in checking and rechecking the records, and Ministers can attend conferences and refer to all the efforts being made and the money being spent.

While the money being spent is considerable, both directly in maintaining the supervisory bodies, and by the firms who have to comply with their requirements, there is another cost which is much less frequently referred to: reputational cost, which arises from a process known as "de-risking". When you de-risk, you remove from a group of people or a set of companies their financial ability to transact. Noble Lords will be aware of my interest in the charity and voluntary sector. Charities which operate in "difficult"—sensitive—areas find it almost impossible to get the financial services of British banks; it is not worth their time or trouble. It is not about borrowing money but just checking facilities—day-to-day operations—and the smaller the charity, the more difficult they find it. It affects not just organisations but individuals as well. Thirty years ago I worked in the City with a Pakistani who has a British passport and who is as Anglophile as you would like him to be. He worked in Hong Kong, and now lives in Lahore. He has just been told that all his bank accounts have been closed. Is there anything wrong with the accounts? There is nothing wrong with them—it has just been done. It is clear that the pressure on the banks to close down these accounts is coming from the regulators.

6.45 pm

Do we really want to demonise charities which work in the war-torn corners of the world, or people who live in countries said to be "risky" but who are nevertheless great friends and supporters of the United Kingdom? In case Members of your Lordships' House think they may be immune from this, PEPs—politically exposed persons, which every Member of your Lordships' House is—could well be a category due for de-risking. I do not think it will happen, because too big a row would ensue, but it could and will happen to people who do not have the ability to fight back that Members of your Lordships' House possess.

My Amendment 126 is designed to do something to redress this imbalance. It imposes a duty on the National Crime Agency to follow best regulatory practice and says that,

"regulatory activities should be proportionate, accountable, consistent, transparent and"—

[Lord Hodgson of Astley Abbotts]
last but not least—
"targeted only at cases in which action is needed".
Because the NCA is only half the story, as it has to carry out its work through regulated firms, Amendment 127 imposes a further duty on it "to ensure enforcement": that,
"persons or bodies that are required to exercise due diligence … are doing so responsibly and effectively".

I conclude as I began. I wholeheartedly support attempts to root out and punish financial crime. However, we need to strip this system down and re-engineer and refocus it to ensure that it is properly effective. The present approach, which piles yet more regulatory responsibilities on a flawed system, is not working well enough.

Baroness Williams of Trafford: My Lords, the amendments in this group have raised some important points around regulation and supervision of the regulated sector. I am also pleased to able to update noble Lords on some of the recent developments in this area.

Amendment 108, in the name of the noble Lord, Lord Sharkey, would require the FCA to withhold a proportion of any discount to a penalty applied to a financial firm until that firm has completed any internal disciplinary actions agreed in the settlement. We agree with the principle that such firms should be held accountable for their actions, or lack of them. The Government already have in place, through the FCA, powers to increase a penalty that it would otherwise impose on a firm in light of a range of potentially aggravating factors, including,
"disciplinary action against staff involved".
A firm that had, by the time the FCA imposed its relevant penalty, failed to take such appropriate action, could therefore already have that penalty increased as a result.

The Financial Services and Markets Act 2000 allows the FCA to impose requirements on such firms. If the FCA considers that a firm needs to take disciplinary action—if appropriate and following all due employment process—after a penalty is imposed, the FCA can require that the firm properly and fully considers doing so. If the firm then fails to do so, that would become misconduct in respect of which the FCA could, subject to all other relevant factors, impose an additional penalty. Therefore, we believe that we already have in place powers to take action in the way the proposed amendment suggests.

Lord Sharkey: Does the Minister accept that there is a big difference between having the powers to do something in addition and having an automatic system of withholding, which makes it directly in the interests of the firms to take the action that they are supposed to take, rather than have the FCA make an assessment later and come back to discuss whether it ought to impose an additional penalty? One is automatic, giving an immediate incentive for the firms to do something, while the other requires additional supervision.

Baroness Williams of Trafford: I take the noble Lord's point that one is perhaps much simpler, but of course each case is different. One firm might be a lot more compliant and it might not take much effort; another might take a lot more effort. However, I take his point.

I move on to Amendments 126 and 127 in the name of my noble friend Lord Hodgson of Astley Abbotts. These relate to the role of the NCA. The NCA leads, co-ordinates and supports the national law enforcement response to money laundering. The prosperity command of the NCA houses the UK Financial Intelligence Unit, or UKFIU, and receives suspicious activity reports, or SARs, from the regulated sector. The intelligence gathered from these is used to support investigations into both money laundering and the predicate offences.

The amendments seek to require the NCA to act in a regulatory manner by ensuring that the provisions of the Money Laundering Regulations, such as customer due diligence and monitoring of transactions, are implemented effectively, and to ensure that the NCA acts with regard to the principles of regulatory best practice. The NCA can and will act where there is criminal activity relating to money laundering. However, it does not have a regulatory remit, and to require it to have one would deflect it from its purpose of tackling serious and organised crime.

My noble friend also asked me for some figures on the moneys recovered. I can tell him that in 2015-16 £255 million was recovered under the Proceeds of Crime Act, of which £208 million was in confiscation. However, I will write to him with further details on that.

Finally, I turn to Amendment 70, moved by the noble Baroness, Lady Hamwee, and Amendment 73, tabled by the noble Lord, Lord Rosser.

Lord Hodgson of Astley Abbotts: I thought I heard the Minister say that the NCA is not a regulator, but I do not understand why it cannot abide by regulatory principles in executing its duty as an enforcer on money laundering regulations. I do not understand why the two are mutually exclusive. If I heard my noble friend aright, she appeared to say that it could not abide by regulatory principles because it is an enforcer.

Baroness Williams of Trafford: That is correct.

I now turn to Amendment 70, moved by the noble Baroness, Lady Hamwee, and Amendment 73 in the name of the noble Lord, Lord Rosser. I can update the Committee on the significant action that the Government are taking to improve the effectiveness of anti-money laundering regulation by strengthening the obligations on all supervisors through the new Money Laundering Regulations 2017. The Treasury published a consultation on these regulations shortly after Second Reading and it is open until 12 April.

The Government set out in a Treasury publication earlier this month their proposals for the new office for professional body anti-money laundering supervision. However, it would not be right for the Government simply to legislate without proper public consultation on the detail of this proposal, and I hope the noble Lord will recognise that that is the appropriate way forward.

We have also recognised the need for more co-ordination between regulators and supervisors of the regulated sector in relation to tackling money laundering. The new office for professional body anti-money laundering supervision will therefore work with professional bodies to help, and ensure, compliance with the regulations. The office will be hosted by the FCA and will liaise with other bodies across the regime to discuss and share best practice to help ensure consistent high standards across supervisors—especially where statutory and professional body anti-money laundering supervisors monitor the same sectors—and to strengthen collaboration between professional body anti-money laundering supervisors, statutory supervisors and law enforcement agencies.

The Government will consult on the draft regulations that will underpin the office over the summer, and they will be finalised and laid before Parliament in the autumn. The Government expect the office to be fully operational by the start of 2018.

The new arrangements will also support the enforcement capability of the supervisors. The supervisors can take a range of actions in relation to failings identified in the areas they supervise. Professional bodies have sanctions specific to their supervisory population—for example, the ability to expel firms from membership. The removal of professional accreditation in this way can incentivise compliance.

HMRC and the FCA have powers under the regulations to require information, enter and inspect premises, and administer monetary civil penalties to their supervised population. The UK is leading the way in improving transparency and accountability in anti-money laundering supervision by publishing an annual report on money laundering supervision on GOV.UK.

The Treasury's annual report, which is now in its fifth year, sets out how the UK's supervisors are contributing to the fight against money laundering and terrorist financing. The most recent report shows that supervisors are increasingly focusing on educating businesses on how to meet their anti-money laundering obligations, and ensuring that systems and controls are effective and proportionate to the risks. The actions that supervisors are reporting help to ensure that the UK's financial system is a hostile environment for illicit finance.

The report shows the positive collaboration between the Treasury and the supervisory authorities, which include the FCA, HMRC, the Gambling Commission and the professional bodies. As set out in the Government's response to the review of the supervisory regime, the annual report will be strengthened with a new requirement for supervisors to provide relevant information to inform the annual report. This will be expanded to include two new questions on enforcement activity.

I hope that noble Lords will recognise and commend the considerable government activity in relation to the anti-money laundering regime. On that basis, I hope that the noble Baroness will withdraw her amendment.

Lord Rosser: For clarification, the Minister referred to the Government's intention to create a new office for professional body AML supervision, hosted by the FCA. If my memory serves me right, she said that it would be in existence in early 2018. That of course is still out for consultation, is it not? That is the document where responses were called for by 26 April. It may be that all the responses about the proposed body were negative, in which case presumably the Government may wish to think again. Does that mean that setting up this new office will not require any legislation and that there will not be a need for legislation, for example, to define its powers and responsibilities?

Baroness Williams of Trafford: It may be helpful to the noble Lord if I reiterate the point that I made. The Treasury published the outcome of the review on 22 March and is now conducting further consultation on the creation of the new body, which will be overseen by the FCA and will be up and running by the start of 2018.

On his question of whether legislation—secondary or otherwise—will be required, perhaps I may write to him. I think that it will be secondary legislation but I cannot be certain.

Lord Rosser: Is the Minister saying that setting up a new body that will have powers over other bodies can be done through secondary legislation—by a statutory instrument?

Baroness Williams of Trafford: I do not know, which is why I will write to the noble Lord, if he is happy with that.

Baroness Hamwee: That will be helpful. As I understood it, the proposal was for regulations, and the further consultation has a limited number of questions to flesh out the earlier work. The Minister obviously has some more information.

Baroness Williams of Trafford: I have just had an answer from the Box. It will in fact be secondary legislation that is laid before Parliament.

Baroness Hamwee: My Lords, perhaps I should accept that it will be up to us to ensure that transparency and accountability are included in those regulations. I will set myself some more homework. I am grateful for the Minister's responses. The story is obviously not ending here but I beg leave to withdraw the amendment.

Amendment 70 withdrawn.

7 pm

Amendment 71

Moved by ***Baroness Kramer***

71: After Clause 11, insert the following new Clause—

"Whistleblowing

(1) The Secretary of State must by regulations made by statutory instrument establish an Office of the Whistleblower.

(2) The functions of the Office shall be the administration of arrangements to facilitate whistleblowing in respect of corrupt or suspected corrupt practices in systematically important financial institutions including in particular with regard to fraud, tax evasion, money laundering or miss-selling.

[BARONESS KRAMER]

(3) The Office shall have powers—

(a) to give directions as to the records kept by each institution and to check compliance with its directions including by audit;

(b) to award financial compensation to any person voluntarily providing information to—

(i) the Financial Conduct Authority;

(ii) the Prudential Regulation Committee of the Bank of England;

(iii) the Serious Fraud Office; or

(iv) any other organisation designated by the Secretary of State;

leading to enforcement action against the institution sanctioned by way of penalty of not less than £500,000; and

(c) to set the level of compensation awarded in each case between 10% and 30% of the total collected.

(4) The Secretary of State must by regulations made by statutory instrument make provision with regard to retaliatory action against whistleblowers.

(5) For the purposes of this section a "systematically important financial institution is an institution" designated by the Bank of England in consultation with the Financial Stability Board and the Basel Committee on Banking Supervision."

Baroness Kramer: My Lords, this amendment is designed to strengthen the protection for whistleblowers but also to provide for mandatory compensation for them following the example of the United States in this area, most recently under Dodd-Frank. It also proposes an office of the whistleblower, both to enshrine the importance of whistleblowing and to provide the necessary oversight of the broader regime. It is a probing amendment and I hope that the Minister will not waste her time in discussing drafting issues, when the core issue of whistleblowing and how we support it is so critical to making the financial system clean and fair and to rebuilding public trust.

Being realistic, so much money swirls though the financial system that the potential for ill-gotten gains from misbehaviour is huge. My amendment mentions fraud, tax evasion, money laundering and mis-selling, but ingenuity in this area is boundless, as evidenced by the fixing of the LIBOR benchmark rate, which involved many banks over several years distorting billions of dollars of transactions, for which very few have paid the price, and those who have are primarily junior staff. With money on this scale, no regulator or enforcement agency can begin to tackle these issues without inside information. That means a positive culture of whistleblowing, which in itself then becomes a deterrent.

We do this notoriously badly. The recent RBS GRG scandal is an example. I have spoken to only two of the whistleblowers but they have both been treated atrociously by RBS and the regulators and face an end to their careers and personal disaster. This is despite endless warm words from the banking industry, individual banks, the regulators and the Government on how important the whistleblower is and promises of protection. It is why I am calling on the Government in subsection (4) of the proposed new clause to act much more directly to stop retaliatory action.

I was a member of the Parliamentary Commission on Banking Standards. Among our work, we looked at the whistleblowing regime and recommended some enhancements. To be fair, those have, for the most part, been adopted, but they were modest changes: for deposit takers, PRA-designated firms and insurers a non-executive director or senior manager is required to be named as responsible for whistleblowing under the senior managers regime; a system to protect employees is required to be in place in each institution; the rules are to be disseminated; and employment tribunals are meant to provide protection. The banking industry is very satisfied with this approach. Indeed, it has always been satisfied with its approach and, in the evidence and testament we took, it was very satisfied with the prior approach, even though rarely was whistleblowing taking place even under the most egregious circumstances, and whistleblowers were receiving little, if any, protection. It is clear the industry was shocked that, with all of its whistleblowing measures in place, no one came forward to tell the authorities about money laundering, LIBOR or mis-selling.

The revised system appears to be fraught with problems. In an email from the charity WhistleblowersUK, I heard that a few days ago a staff member called to speak to the whistleblowing champion at a major bank only to be told that they did not exist. When the caller persisted by providing the name from a letter, the bank told them that that person did not exist. Whistleblowers themselves complain that the regulators provide them with advice and then renege, and that they have no comeback against the regulators, whom no one can compel to respond to FOIs or subject data access requests.

In March this year the Financial Conduct Authority confirmed that the number of whistleblowing reports has fallen for the second year in a row, down to 866, of which just over 100 were of "significant value". That is not a successful system. In the United States, by contrast, whistleblowers are far more appreciated. They are a core tool for exposing wrongdoing, whereas in the UK they are merely incidental. The key difference is reflected in compensation, which underscores the complete cultural difference in the attitude towards whistleblowers. In my amendment I have essentially lifted the simple principles of compensation available under Dodd-Frank and drafted them into UK law. Compensation is mandatory for those providing original information leading to a sanction, and the compensation is a hefty 10% to 30% of the sanction paid. This is a recognition that for most people whistleblowing puts a career, lifestyle and family at risk.

Let me quote the evidence of Erika Kelton, a US lawyer dealing with whistleblowing cases, describing the impact of US whistleblowing incentives schemes to the Parliamentary Commission on Banking Standards. She said:

"Tens of billions of dollars otherwise lost to illegal practices that cheat the public fisc have been recovered as a direct result of whistleblower information. But the impact and importance of whistleblower matters goes far beyond the large dollar amounts recovered for US taxpayers. Whistleblowers have exposed grave wrongdoing, leading to changes that promote integrity and transparency in financial markets. Whistleblowers have helped stop massive mortgage frauds, gross mischarging practices, commodity price manipulation, and sophisticated money laundering schemes, among other misdeeds".

She argued that,

"meaningful, non-discretionary financial incentives are critical to establishing robust and successful whistleblower programs".

In the UK, the objection of the regulator to such incentives is one of "moral hazard"—that whistleblowing is simply somebody doing his or her job and deserves no special reward. I simply look at the lack of whistleblowing and the situation for whistleblowers in the UK and disagree. The Parliamentary Commission on Banking Standards directly called on the FCA to research the impact of financial incentives in the US in encouraging whistleblowing. I have yet to hear any substantive report on that issue; perhaps somehow I have missed it and the Minister has seen it.

I fully accept that issues around whistleblowing extend beyond financial services and impact many other business sectors and areas of our lives. But we could start here with financial services. We need action that is game-changing, not tinkering around the edges. It is vital that we use every reasonable tool to increase our chances of keeping the financial sector clean, protect the public and restore trust in an industry that is key to the functioning of our economy. I beg to move.

Lord Phillips of Worth Matravers: My Lords, I support this amendment. I suggest that whistleblowers need to be both protected and rewarded in order to encourage them. The Mauritian legislation of which I spoke earlier makes provision for rewards to be paid to whistleblowers whose information leads to the confiscation of unexplained wealth. Indeed, the board that I chair has the function of making such awards. In my view this is a salutary provision as one of the weapons in the fight against crime and corruption. Therefore, I support in principle this amendment, but as a starting point because I suggest that it is a principle that should be applied much more widely in the case of action taken that leads to the recovery of the proceeds of crime.

Lord Faulks: My Lords, I am sure the whole House shares the concern that the noble Baroness has expressed about whistleblowing and its importance generally. However, I respectfully submit that this amendment is a pretty substantial response to that. It seeks to set up a whole department—the office of the whistleblower. I accept that this is something of a probing amendment and therefore bears the standard for what the noble Baroness may hope to come, but it is little short of a job-creation scheme. The proposed functions of the office of the whistleblower are extensive and it would have powers. Of course, if an office is created, those who are given that office will appoint others to work for them and powers will be exercised. If they are not exercised it would be suggested that they were not doing their job. Before we know where we are, we will have a substantial bureaucracy that runs the risk of having the same problems that exist in other areas of bureaucratic supervision of financial institutions.

The question of incentives is interesting. I accept that that they have had some success in the United States and, as we heard from the noble and learned Lord, in Mauritius too. But as to the question of "retaliatory action against whistleblowers", a whistleblower has remedies in civil law in any event. When she comes to respond to the Minister, will the noble Baroness give us some idea what is meant by the provision with regard to "retaliatory action against whistleblowers"? The criminal law exists and civil remedies exist for employees and I wonder whether that is not inviting something rather too much. Of course, she rightly acknowledges that whistleblowers are not entirely based in the financial institutions; they exist in the NHS and have recently been considered by Sir Robert Francis and in all other government departments.

The real question is whether the establishment of this no doubt expensive bureaucracy will deter and whether it will result in the detection of what would otherwise not have been detected. While I applaud the general thrust of the amendment, I wonder whether it is something of an overreaction.

Lord Kennedy of Southwark: My Lords, the noble Baroness, Lady Kramer, raised the issue of whistleblowing in her contribution at Second Reading and now proposes this new clause today with the noble Baroness, Lady Hamwee. As we have heard, it would establish an office of the whistleblower. The purpose would be to offer much-needed protection to whistleblowers who expose criminality, corruption, fraud and other illegal activity. The price that whistleblowers often pay for alerting the authorities to illegal and criminal activity is to lose their jobs and have their careers ruined and destroyed.

The noble Baroness is right to highlight that we need to do more to offer protection and compensation to people who come forward and alert the authorities to the illegal activity. The noble and learned Lord, Lord Phillips, supported action and I agree. However, I agree with the noble Lord, Lord Faulks, that setting up an office may not be the right way to go about that. What is definitely needed is further protection in statute and regulation. It may not need an office to be established. I will be interested to hear the response from the noble Baroness, Lady Williams of Trafford, to this amendment. I entirely accept that it is a probing amendment and I think that we should take the opportunity that this Bill affords us to do something to address the issue of whistleblowers and the precarious position that they can find themselves in, which the noble Baroness, Lady Kramer, has highlighted to the House today. I accept that whistleblowing goes across a variety of sectors, but we are dealing with the financial services sector and this would be a good place to start.

Baroness Williams of Trafford: My Lords, I am grateful to the noble Baroness for allowing us to debate this important issue. Whistleblowers play a valuable role in society by bringing wrongdoing to light that could otherwise go unchallenged. Individuals should be able to report malpractice in the workplace without fear of reprisal; and employers should be prepared to work with staff to resolve concerns, particularly by means of effective internal procedures.

The Employment Rights Act 1996, as amended by the Public Interest Disclosure Act 1998 and subsequently, provides employment protection for workers in all sectors who have blown the whistle. It enables them to seek redress if they are dismissed or suffer detriment at the hands of the employer because they have made a "protected disclosure" about wrongdoing that they have witnessed at work. To qualify for the protections, a worker must generally make their disclosure either

[Baroness Williams of Trafford]
to their employer or the relevant "prescribed person". "Prescribed persons"' are typically regulatory bodies for the sector in which the whistleblower works or the type of wrongdoing involved.

I assure noble Lords that, over recent years, the Government have taken steps to support a cultural change in relation to whistleblowing in all sectors, including financial services. A number of statutory and non-statutory improvements have been made. This includes guidance for whistleblowers on how in practice to make disclosures while preserving their employment protections; and guidance for employers including a non-statutory code of practice which we will review this year. We have fulfilled the commitment to keep the prescribed persons list up to date with annual reviews, and we now have guidance in place for prescribed persons. The next update will require prescribed persons to report annually on the number of whistleblowing disclosures they have received and broadly the action that resulted.

7.15 pm

Amendment 71 takes a creative approach to these issues: seeking to establish a new office of the whistleblower—as my noble friend Lord Faulks said, effectively a whole new department. The Government believe that the right body to investigate the concerns of a whistleblower is the body that regulates the issue about which concerns are being raised. That body is in the best position to see the disclosure in context—for example, to judge the seriousness of the allegations and to make connections with any related investigations under way—and to consider whether some regulatory action is appropriate to prevent occurrence.

The FCA is a prescribed person in relation to the sector that it regulates. It actively promotes the whistleblowing framework to employees and employers in this sector so that prospective whistleblowers know where to turn and firms have appropriate internal whistleblowing policies in place. Other prescribed persons related to financial services include the Bank of England, the Serious Fraud Office, the Financial Reporting Council and the Prudential Regulation Authority. To each of them, whistleblowers will be one of several sources of information and intelligence about potential malpractice in support of their regulatory activities. The Government are not therefore persuaded that we need a new office of the whistleblower, either to facilitate whistleblowing or to give directions on record-keeping and monitor compliance.

The amendment would also introduce a power to award compensation to any worker voluntarily providing information on wrongdoing to organisations in the financial sector. The Government's call for evidence on the whistleblowing framework in 2013 looked into the question of financial incentives. Any financial rewards for whistleblowing could create a perverse incentive and suspicion about the motivation for whistleblowing. We do not think that money is actually the main motivator for genuine whistleblowers. The FCA and the Prudential Regulation Authority published research on financial incentives for whistleblowers in July 2014. The research showed that introducing financial incentives would be unlikely to increase the number or quality of the disclosures received.

The noble Baroness also talked about the UK's response on compensation being a moral hazard and that people are just doing their jobs. The Government appreciate the risks that people take when they choose to make disclosures in the public interest. That is why they have legal protection against dismissal or detriment at the hands of their employer with the possibility of unlimited compensation, whether or not the information provided to the regulator actually results in enforcement action. Under the UK system, compensation is linked to the loss actually suffered by the whistleblower.

I hope that noble Lords and the noble Baroness are reassured that the Government are taking action to address barriers to people coming forward to whistleblow, and she will feel able to withdraw her amendment.

Lord Kennedy of Southwark: I agree with the Minister that the office is not the right way forward, but is she saying that everything is fine?

Baroness Williams of Trafford: I am saying that the Government looked at this in 2014, certainly in terms of the financial incentives, and there are various mechanisms in the different sectors for whistleblowers to come forward. The ultimate sanction for employers is unlimited compensation, depending on the type of wrongs that that employer engages in.

Lord Kennedy of Southwark: I am sorry to come back on this, but I take it that the Government do not think that anything further needs to be done on this at the moment.

Baroness Williams of Trafford: The Government are never complacent in any area of law they introduce; I would never say that everything is perfect.

Baroness Kramer: My Lords, obviously I am going to withdraw the amendment, but I want first to make a couple of points. I am not going to give up on this issue. Let me point out that a moment ago the Minister talked about an office for money laundering to be set up within the FCA. As far as I am concerned, that is an ideal pattern to follow. The notion that this proposal would create an extraordinary and hefty bureaucracy is not credible because, frankly, the entire bureaucracy would probably be paid for by one whistleblower revealing one scandal on the scale that we have seen in recent years. I reject the idea that this is onerous. There are plenty of templates to follow that would allow us to do this sensibly.

On the financial incentive, I do not believe for a moment that whistleblowers do it for the money. The money is a recognition that they have destroyed their future. There may be some protection within the company they work for which ensures that they are not dismissed, but neither I nor anyone else can be persuaded that people do not look at whistleblowers and decide that they are not quite right for this promotion, that project or opportunity. If they try to change companies they go with what is almost a black spot on their hand, marking them out as someone it is perhaps better not to take a risk on. That is a reality which the Government have never faced up to.

When dealing with detriment, I would recommend the Minister and others who are interested to connect with the charity Whistleblower.co.uk, which would be delighted to provide them with a great deal of detail. I hesitate to mention individuals without their specific permission, but all the protections have turned out to be completely useless for them. People's lives have been wrecked. Frankly, even the regulator would agree that despite all the systems that are in place, people's lives have been wrecked, and there has only been some tinkering at the edges. Nothing has happened to bring about fundamental change. All this comes together in the poor statistics that I set out when moving the amendment. Very few people are coming forward and blowing the whistle on substantive issues that can affect our absolutely massive financial services sector. This allows the industry to be rather complacent, and that is exceedingly dangerous.

I hope that the Minister will recognise that while I will withdraw the amendment, we are nowhere near coming to the end of this issue.

Amendment 71 withdrawn.

Amendments 72 and 73 not moved.

Clause 12: Unlawful conduct: gross human rights abuses or violations

Amendments 74 to 79 not moved.

Clause 12 agreed.

Clause 13: Forfeiture of cash

Amendment 80

Moved by ***Baroness Vere of Norbiton***

80: Clause 13, page 43, line 42, at end insert—

"(h) betting receipts,"."

Baroness Vere of Norbiton (Con): My Lords, we now come to two proposed changes that the Government are seeking to make to the seizure and forfeiture powers set out in Chapter 3 of Part 1 of the Bill. In the House of Commons we introduced amendments to allow law enforcement agencies to seize casino chips and gaming vouchers where they had the suspicion that they were either the proceeds of crime or would be used to commit further offences. The Government were also asked to consider whether similar provisions could be introduced to allow the seizure of betting slips. Government Amendments 80, 82, 83 and 138 to 140 make such provision. If law enforcement agencies suspect that the funds used to place a bet are the proceeds of crime, they will be able to seize the betting slip. These provisions will be subject to the same safeguards as for cash seizure and we will be working with bookmakers and their trade associations to ensure that they are used effectively.

At present, Clause 14 allows for the seizure and forfeiture of moveable stores of value but makes no allowance for deductions for legal expenses on the part of the person the item was seized from. Government Amendments 88, 90 to 101 and 142 to 155 will therefore allow for a deduction to meet legal expenses from recovered sums following the forfeiture of the item. Where appropriate, the court will determine whether legal expenses should be paid and will provide for that as part of the forfeiture order. These amendments make similar provisions in Schedule 3 in relation to items seized where there is a suspicion of terrorist financing. I beg to move.

Lord Kennedy of Southwark: I am happy to support these amendments, which are both sensible and proportionate. Ensuring that betting slips can be seized is a sensible move, as indeed is the whole series of amendments.

Lord Stevens of Kirkwhelpington (CB): My Lords, I also support this group of amendments. I declare an interest as my son is the head of the financial recovery unit of the Metropolitan Police. This is one area of the Bill that had an immense weakness. To ensure that the provisions work properly as far as officers working on the front line are concerned, these amendments must be inserted into the legislation.

Amendment 80 agreed.

House resumed. Committee to begin again not before 8.27 pm.

Medical Research

Question for Short Debate

7.27 pm

Asked by ***Lord Sharkey***

To ask Her Majesty's Government what plans they have to help maintain the United Kingdom's position in medical research.

Lord Sharkey (LD): My Lords, I declare an interest as chair of the Association of Medical Research Charities, whose members spend more than £1.4 billion a year on medical research. The UK is a world leader in medical research. We have discovered and developed 25 of the top 100 prescription medicines globally. We produce around 20% of the world's most cited academic publications in the life sciences. The UK life sciences industry generates for the UK a combined estimated annual turnover of £61 billion. This is a timely debate. Tomorrow, the Prime Minister will trigger Article 50. There are significant implications for UK medical research in exiting the European Union, and I will speak to these. I will also speak to the implications of the recently announced changes to the funding of NICE-approved drugs and technologies and to the funding of medical research by government.

Let me start with the changes to the drug approval process announced on 15 March by NICE. In simple terms, up until now, once NICE had approved a drug, the NHS was obliged to supply it within three months. The new regime means that from 1 April the NHS may not supply some newly approved drugs for up to three years. This has very serious and worrying implications. Some recent technologies that have been approved by NICE would breach the new budget impact threshold and could be delayed for three years. For example, abiraterone, a breakthrough treatment for the advanced stages of prostate cancer, might not have been available to patients if the new regime had been in force.

[Lord Sharkey]
Many medical research organisations including Prostate Cancer UK, Cancer Research UK, Breast Cancer Now, Alzheimer's Research UK and the MS Society are deeply concerned about the consequences of the NICE changes both for research and patients.

There are three principal areas of concern. The first is the potential harm to patients. For those with life-threatening and other serious conditions, waiting three years to receive a life-enhancing or transforming technology is not acceptable. For instance, ocrelizumab, the first treatment for the primary progressive form of MS, is soon to undergo an appraisal. As it stands to be the first disease-modifying licensed treatment for this type of MS, it is unlikely to come cheap and its introduction may well be delayed under the new arrangements.

Secondly, innovative research and scientific breakthroughs matter only if patients are able to reap the benefits. This new regime make the benefits of research difficult to forecast and could make investment in research in the UK less attractive. Delaying patient access by three years could make England a less attractive place to do clinical trials.

Thirdly, medical research is a complex ecosystem bringing together charities, a variety of industries, academia and public bodies. This decision sends the wrong signal to the life sciences sector at a time when we are preparing to negotiate Brexit, and is contrary to the thrust of the industrial strategy. The Association of the British Pharmaceutical Industry has warned that these new plans will prevent patients receiving NICE-approved, cost-effective medicines. The BioIndustry Association has called it a "lose/lose/lose" situation for rare disease NHS patients, the UK life science sector and the union, given the different regime that obtains in Scotland.

Clearly the NHS is under significant financial pressure, but this new regime is not an appropriate solution to the affordability of medicines issue. Instead, an improved dialogue and early negotiations with industry are needed. That is what the accelerated access review recommended and that is what we should do, rather than taking this arbitrary approach that puts at risk people with serious health conditions and our research infrastructure.

The new regime will come into effect from 1 April—in less than a week's time. The potential impact on patients must be given immediate consideration. I urge the Minister to persuade her colleagues to think again. If they do not, they risk patients' lives and our attractiveness as a location for medical research.

I now turn to Brexit. The UK's decision to leave the EU has the potential to impact greatly on medical research. The priorities for science are shared across the medical research community. They include continued participation in Horizon 2020 and future funding programmes. Not only is the UK the second biggest beneficiary of Horizon 2020, but the collaborations that arise from these programmes are significant and highly valued by the UK medical sector. However, there is already anecdotal evidence that recruiting and retaining researchers from the EEA is becoming more difficult. Right now we need the Government to clarify the situation and give certainty to EEA nationals working in the UK. In the longer term we will need an immigration system that reflects the intrinsically collaborative and international nature of science and research.

The Minister will know that there are a number of EU regulations for dealing with medical research, including the clinical trials directive, which is soon to be replaced by the clinical trials regulation. Shared regulatory frameworks enable cross-border collaboration, which is critical for medical research, particularly research into rare disease. The larger EU population makes research on rare conditions possible and the European Medicines Agency's single approval process for medicines for rare conditions makes it cost effective for manufacturers to bring new treatments to patients. We do not want to be outside this process. We need to remain part of the larger research test bed. To uphold our position as a leader in medical research, I urge the Government to seek ongoing regulatory co-operation with the EU. The UK must remain part of the scientific processes at an EU level.

I shall now touch briefly on UKRI and the role it will play in maintaining the UK's position as a global leader in medical research. I very much welcome the appointment of Sir Mark Walport as UKRI's CEO. UKRI will, I hope, provide strong leadership for the medical research and broader research sector throughout the Brexit negotiations, but I want to register my disappointment that the quality-related research funding for universities will remain flat in 2017-18. This funding is critical to maintaining and growing medical research in our university sector. I urge UKRI, with its future funding role, to examine the support provided to researchers and universities.

In particular, I highlight the charity research support element of QR funding, known as the charity research support fund. The CRSF supports the indirect costs of research that charities cannot fund. It has been fixed at £198 million per annum since 2010—a real-terms decrease of nearly £40 million over the six years since then. To repeat a point I made earlier, medical research charities are an important part of the UK's unique medical research environment. I strongly recommend that UKRI commits to increasing the CRSF in real terms.

Finally, there is the NHS itself as an important research institution and test bed. NHSE's 2016-17 business plan promised a research strategy for 2016-17. That period ends in two weeks and there is still no published research strategy, and nor was there one for 2015-16. We need the NHS to take seriously its mandate to promote and support research in the service. Will the Minister say when we can expect to see an NHS England research strategy?

To conclude, the UK has a medical research sector to be proud of. It contributes to the health of people in our country and across the world. It is a provider of jobs and investment. Our medical research sector is a genuine world leader. The Government must not only consolidate this position but use any opportunities, and any opportunities created by Brexit, to build upon it. I look forward to hearing how they plan to do exactly that when the Minister responds.

7.36 pm

Lord Patel (CB): My Lords, I shall speak about regulation relating to data privacy in medical research. The UK should have a vision to make an internationally competitive legal framework to support the use of personal data in health research—fully connected law and governance that is easy to navigate, pragmatic and risk proportionate, and regulation that ensures public confidence and trust in the use of personal data in research.

I have five recommendations to achieve this vision. The first is to ensure that movement of research-relevant data between the UK and the EU is not restricted. The UK is a world leader in genomics and research using longitudinal cohorts, medical informatics and data linkage. Research relies on international collaboration and sharing of data across borders. To maintain this position it is important that UK law allows free exchange of data with the EU after Brexit. The most straightforward option is for the UK framework to be considered adequate by the EU through implementing the general data protection regulation or equivalent rules. If adequacy is not achieved, the UK should seek to establish as simple a mechanism as possible for data transfers across Europe.

My second recommendation is to simplify and clarify the UK's legal framework. The UK's legal framework for the use of personal data in health research strikes a good balance between permitting research and protecting individuals, but it is highly complex and confusing. The legal framework should be simplified by providing a clear public interest legal basis for research by private and public organisations, and by bringing standards of consent and safeguards for health research in data protection law and the common law duty of confidentiality closer together. Following Brexit and the great repeal Bill, the Government should use the flexibility to review and revise data protection law to ensure it is clear and simple.

My third recommendation is to maintain the UK's proportionate and pragmatic approach to regulation and governance. The Information Commissioner's Office takes a pragmatic and risk-proportionate approach to regulation. This is a strength that must be maintained for the UK to be competitive. In particular, the ICO takes a proportionate and context-dependent approach to what is considered personal data.

My fourth recommendation is to ensure that the right governance is in place to manage data flows across the system. The Department of Health should implement the proposal for a national data guardian for health and social care.

My fifth recommendation is to develop an innovative framework for the regulation of data-driven technology. The UK has an opportunity to be a world leader in such regulation. This should allow access to the volume and quality of data required for machine learning to be effective, while ensuring public confidence and accountability. This requires regulating both the release of data and the novelty of a product that self-updates. I hope the Minister can assure us that the Government are looking at this and will work with research organisations and regulators to make sure that our regulation of data privacy in research is a world leader.

7.40 pm

The Earl of Dundee (Con): My Lords, I thank the noble Lord, Lord Sharkey, for enabling this debate. Very briefly, I will mention three aspects: first, the aim for health strategies and their deliveries to become much better co-ordinated internationally than at present; secondly, the current role and future prospects of product development partnerships; and thirdly, the priority of medical research into neurological diseases.

Pneumonia is the principal cause of death in children worldwide. It kills an estimated 1.1 million children under the age of five every year—more than AIDS, malaria and tuberculosis combined. For the same age group of children, diarrhoea is the second biggest killer, each year accounting for 760,000 deaths. Globally, there are nearly 1.7 billion instances every year of diarrhoeal disease, which is also chiefly responsible for malnutrition.

Arising from viruses, bacteria or fungi, pneumonia can be mainly prevented by vaccines and enough food, yet only 30% of children with pneumonia receive antibiotics. Equally, while diarrhoea can be controlled through safe drinking water and adequate sanitation and hygiene, largely due to poor co-ordination among different healthcare deliveries, these simple measures are still far too neglected.

I recently chaired the Council of Europe's health committee, and our emphasis was upon the urgent need for an integrated approach and for this to become the standard for the international healthcare policies of the affiliation's 47 states. For his contributions to that consensus, I pay tribute in particular to the achievements and memory of Jim Dobbin, who was a professional microbiologist and in another place the Member of Parliament for Heywood and Middleton from 1997 until his death in 2014. Does my noble friend the Minister agree that integrated healthcare solutions should feature prominently within the current sustainable development goals framework and that the Government should seek to persuade other UN member states accordingly?

If competent deliveries should thus provide vaccines and hygiene together, rather than just the one without the other, product development partnerships have already assisted improved outcomes overseas in low and middle-income countries. Advancing R&D to serve those countries, PDPs are non-profit organisations and partnerships between academia, industry, the public sector and multilateral agencies. They have facilitated effective and affordable technologies and products, also encouraging the pharmaceutical industry to work on the diseases of poverty. Can the Minister say in what ways DfID and our Government will support the further work and diversification of bodies such as PDPs?

Research into neurological afflictions—to which the noble Lord, Lord Sharkey, has already referred—including Alzheimer's and Parkinson's, lags behind that into cancer, heart disease and infectious diseases. What plans, therefore, do the Government have to redress this imbalance and to persuade our international partners to do the same?

[The Earl of Dundee]

In summary, timely adjustments, as necessary, in medical research also reflect those required in poorer countries, such as of integrated medical delivery. Not least will the maintenance of the United Kingdom's reputation and position depend on its ability to lead in these useful directions.

7.43 pm

Baroness Morgan of Drefelin (CB): My Lords, I thank the noble Lord, Lord Sharkey, for securing this debate and congratulate him on his thoughtful opening remarks. I declare an interest as chief executive of Breast Cancer Now and chair of the National Cancer Research Institute.

We will surely maintain the UK's position at the forefront of global medical research through a focus on securing the best talent, intelligent regulation and strong investment. We must continue to attract, secure and keep the best scientific talent in the UK, including those EU nationals who populate our excellent research centres around the UK. Those people need to know that their position in this country is secure.

Alongside this, we need a regulatory framework, aligned with the new EU clinical trials regulation that will enable us to collaborate. Collaboration is at the heart of successful research, so we need to be able to collaborate with partners across borders for the benefit of UK patients and the UK life sciences sector.

Underpinning this is the need for investment and the support that charities give. Government and industry investment secures patients' access to the most cost-effective modern treatments while allowing our economy to thrive. On the one hand, we have heard much about the Government's commitment to research funding, not least in the Autumn Statement and the recent industrial strategy, but on the other, the reality of what is happening on the ground can feel very different.

As the noble Lord has explained, despite it being extremely difficult for drugs to be approved under the NICE cost-effectiveness appraisal process, NICE and NHS England are about to introduce a cap that could restrict access to treatments that cost more than £20 million for up to three years. In some cases, that could be even longer. Millions of patients could face major delays in accessing the life-saving and life-extending treatments they need which have already been deemed by our system to be clinically and cost effective by NICE. If this test comes into effect, as we are advised it could do shortly, it could cost the lives of patients, particularly those with incurable conditions. Not only could the proposals have devastating implications for patients but they run counter to the Government's own ambitions for the UK as a global hub for research and innovation. As we have heard, such drugs need to be accessed by patients through the NHS for us to see our life sciences industry joined up with the NHS and thriving.

One in five new treatments would be likely to be affected by the new cap, so can the Minister explain the legal basis for it, as I understand that NICE is established in statute? I, too, urge the Minister to do what she can to encourage NICE and NHS England to think again.

7.47 pm

Lord Willis of Knaresborough (LD): My Lords, the noble Lord, Lord Sharkey, has already demonstrated just how important it is to continue government investment in UK medical research and in so doing recognise significant contributions from the charity and industrial research sectors.

The £7.2 billion annual investment in UK research has delivered spectacular results: beta blockers, cardiac pacemakers, CAT and MRI scans, DNA sequencing, and monoclonal antibodies, with a few having long-term human and commercial impact.

While the MRC leads much of this work, the increasing importance of NIHR in delivering research near to bedside is also impressive. Thanks to the foresight of Sir David Cooksey in 2006 and the continued support of successive Governments, NIHR is building a research capability within the NHS which is truly impressive. Part of that success is due to the outstanding work of the 13 CLAHRCs, which are responsible for building clinical/academic research capacity across the country and which tackle issues affecting today's patients. I declare an interest as the chair of the Yorkshire and Humber CLAHRC. We have in two years levered £13 million in matched funding from commercial, charity, NHS and academic organisations, doubling our resource to £26 million. This in turn has helped us to deliver on 164 projects, produce 49 peer-reviewed publications and train 56 PhD students. Crucially, we have been able to effect real improvement in health outcomes.

Our "towards smoke-free mental health services" survey has informed NICE guidance on smoking cessation in secondary care for mental health patients previously denied access to smoking cessation programmes, while an electronic frailty index, using existing electronic record data to enable GPs to identify the frailest people in their practice, is now used by 90% of GPs in the country.

As in most parts of the UK, the cost and effectiveness of emergency and urgent care pose real challenges. Here, we have developed the largest regional dataset of emergency and urgent care patient episodes in the country, linking data from the very first call to discharge. With the support of the Health Research Authority, this database provides a unique resource to help deliver more appropriate care and reduce avoidable attendances and admissions to hospital.

CLAHRCs provide an environment for exploring novel technologies where commissioners, providers and local authorities require rapid evaluations to inform decision-making and service planning. They pioneer new models of evidence-based practice for the delivery of health and social care. They work in tandem with the Clinical Research Network, academic health science networks and nationally with the other 12 CLAHRCs. In the new, post-Brexit world, what plans are there to continue CLAHRCs beyond their current period?

7.50 pm

Baroness Masham of Ilton (CB): My Lords, there needs to be safe regulation of medical trials. The Government must ensure that they have appropriate

scientific advice during the Brexit negotiations. Have they decided to have a chief scientific adviser in the Department for International Trade?

Nervousness about immigration and nationality persists in the scientific community. The delay in solid reassurances and mixed messages from senior Ministers is having a corrosive effect on the UK research base. At this difficult time and with growing anxiety about global antimicrobial resistance—an alarming threat—the UK must not lose its place as a leader in medical research. The UK-based leading scientific journal *Nature* notes that European research generates more highly cited research publications than the USA. The European Research Council is a major supporter of scientific research in the UK and the UK needs to safeguard its lead in the growth areas of science and technology through a bilateral science collaboration treaty with Brussels, similar to those currently operated by non-EU countries.

The recent reduction in federal funding for US scientific research will further reduce external sources of collaborative research funding for UK research centres. To maintain Britain's leading role in translational outcome-driven research, HMG must act swiftly and strategically to create and underwrite a new collaborative research environment. How will the Government ensure that the best research talents—those with enthusiasm, intelligence, interest and drive—and the most innovative organisations stay in the UK after we leave the European Union? We will be competing globally so we must encourage the people we need to come here. They should feel welcome and barriers should not be put in their way. Without research, there cannot be progress.

7.52 pm

Lord Ryder of Wensum (Con): My Lords, I, too, thank the noble Lord for initiating this debate with his opening speech. We listened to that with great attention and I congratulate him on it.

I used to be chairman of the Institute of Cancer Research but the views expressed today are my own. I make one point only: there is a pressing need to reform the 2007 European paediatric regulation which hampers cancer medicine for children by denying them access to the latest drugs. Pharmaceutical companies use a loophole in the EU legislation to avoid trialling cancer drugs in children, despite evidence that they could benefit patients. In fact, an analysis of data from the European Medicines Agency over the past five years shows that the loophole prevented no fewer than 33 new cancer drugs being evaluated in children.

Children's cancers are rare. There is little financial incentive for pharmaceutical companies to develop drugs for children. The 2007 loophole enables these companies to ignore children by trialling drugs only on adults. In particular, children miss out on treatments that target genetic causes in cancer. As we know, cancer drugs are now more targeted on specific mutations. This means that an adult's cancer drug could also combat the same mutation in children's cancer.

The Institute of Cancer Research is at the forefront of paediatric research in Europe. We must enable its scientists and others around the United Kingdom to use their expertise to the maximum. Innovation should not be suppressed by the 2007 regulation. While we remain in the European Union, the Government must put pressure on the Commission to revise the 2007 regulation. Likewise, after we leave the European Union, the Government must giver freer rein to our own outstanding scientists and medical researchers so that they can do everything possible to vanquish childhood cancers.

7.55 pm

Lord Kakkar (CB): My Lords, I join others in thanking the noble Lord, Lord Sharkey, for securing and introducing this important debate so effectively. I declare my own interests as chairman of University College London Partners, professor of surgery at University College London, director of the Thrombosis Research Institute and UK business ambassador for healthcare and life sciences.

As the noble Lord indicated, medical research is a great national success story. Its application has been responsible for improving human health over recent decades, advancing clinical outcomes and ensuring that the workforce is healthier and therefore more productive. The life sciences sector, after financial services, represents one of the most important in our country. As we heard, this is because, over decades, our nation has built a unique ecosystem of our fine National Health Service, four of the top 10 biomedical universities in the world, two major pharmaceutical companies based here in the United Kingdom, more than 3,500 small and medium-sized enterprises in the life science and med-tech sectors, and countless very effective medical research charities. There is also the capacity for our nation to collaborate internationally in medical research and seek funding to support those efforts, and the ability to attract international talent to come and contribute to our national medical research outputs.

In the current context there is some concern because there is much change on the horizon. We already heard about the potential impact of Brexit on a national medical research strategy. There is the creation of UK Research and Innovation. This new and important structure will result in differences in the way that dual support for medical research is applied in future. Of course, cost pressures in the NHS will have an impact on potential NHS contributions to medical research in future.

Going forward, how will this delicate but finely structured ecosystem be co-ordinated with all these new challenges? Will these issues be addressed as part of the life sciences section of the industrial strategy? For more than a decade we have had the Office for Strategic Coordination of Health Research. Will it continue, and will it be responsible for ensuring that the funding available in UKRI for medical research is appropriately co-ordinated with the substantial funding now available in the National Health Service through the National Institute for Health Research? That type of strategic co-ordination was an important objective of the Office for Strategic Coordination of Health Research and should be maintained in future once UKRI is established.

Finally, what assessment is being made of the delivery of the obligation set on the Secretary of State for Health and all other elements of the NHS to promote

[Lord Kakkar]
research in the National Health Service? This is a vital element of the Health and Social Care Act 2012. What assessment has been made of the ability of the NHS to deliver on that particular objective and obligation, and how will that be monitored and protected in future?

7.59 pm

Lord Crisp (CB): My Lords, I congratulate the noble Lord, Lord Sharkey, on securing this debate and raising such important questions. I will touch briefly on three areas.

First, as other noble Lords have said, the UK is a world leader in medical research and the international recruitment of researchers is of paramount importance to maintaining that position. I will reiterate that point by using the bold words of the Science and Technology Select Committee in its recent report that,

"it is not enough to allow talented scientists from around the world to work in the UK: we must attract them vigorously".

Are the Government going to do this—vigorously?

Secondly, as my noble friend Lord Kakkar has just said, there is a vital symbiotic relationship between medical research and the NHS. The NHS, as the largest integrated health system in the world, is an essential platform for medical research and the biomedical and life sciences that spring from it. At the same time, medical research contributes to the constant improvement of the NHS in everything from drug discovery and the development of therapies to health informatics and patient engagement. This in turn contributes to a healthier, better-educated population, which can improve productivity and bring economic as well as social benefits. We know that this vital two-way relationship does not work perfectly at the moment and the recent decision by NICE that the noble Lord, Lord Sharkey, referred to makes this matter even worse. What, therefore, are the Government doing to strengthen the NHS as a platform for science and technology and to ensure that the products of science and technology benefit the NHS and its patients?

Thirdly, and taking medical research as a proxy for wider health-related research, I want to speak about research on the impact of nursing. The All-Party Parliamentary Group on Global Health recently published a report on nursing globally. Here I pay tribute to the noble Lord, Lord Willis, who was part of that group and has done so much personally to strengthen nursing in the UK. There are three relevant issues here. First, nurses are half the health workforce globally and what happens with them and how they are developed will impact on how health systems develop in this country and elsewhere. Secondly, our interviewing of nurses revealed that nurses feel they are systematically undervalued and underutilised. It is less of a problem here in the UK but nevertheless there is a strong feeling that nurses could do more, were they enabled to do so. The third and most relevant point is that there is very little quality research on the impact of nursing and the sorts of questions Ministers and planners might ask, such as: when is it appropriate to have specialist nurses? Where is it effective to replace doctors on on-call rotas? How can we measure the impact of trained nurses on different diseases? What more could nurses do?

We need decent evidence on these questions. At the moment we simply do not have it. This is relevant to the UK's role both at home and in development abroad. Therefore, I ask the Minister: do the Government recognise the importance of research on the impact of nursing? If so, what are they doing to promote it?

8.02 pm

Baroness Walmsley (LD): My Lords, I congratulate my noble friend Lord Sharkey on introducing this debate, which has actually been quite worrying for those of us who believe that unless we maintain the UK's position in medical research, UK patients will continue to lose out. Only this morning we heard in the news about how our performance in diagnosing and treating cancer is well behind that of our neighbours in Europe, so this is no time to be imposing further restrictions on the availability of new oncology medicines for UK patients.

My noble friend Lord Sharkey has outlined his concerns, which I share, about NICE's new affordability cap. As the noble Baroness, Lady Morgan, said, 20% of all medicines would fall within the £20 million cap—these are proven, effective drugs—which makes me think that the cap is far too low. Have the Government assessed the impact of this on patients who have already waited too long for medicines that could benefit them? I am very concerned about patients dying while they wait for NICE to decide to allow them the medicines they need. The current 90-day accessibility obligation is reasonable but is to be increased to three years and, given all the delays in the application process and 12 weeks for consultation, it could easily turn out to be four years.

It is the most innovative medicines that would have reached the new price threshold if it had been in place in the past, and it is those same cutting-edge medicines that will be affected by it in the future. If companies inventing and developing these medicines cannot find a market in this country of a size to make it worth licensing them here, they will just go to other markets and UK patients will lose out.

This is yet another example of rationing in the NHS, and we are getting to the point where patients' rights under the NHS constitution are being breached. But instead of being honest about it and having a national debate about what should be funded, the Government are hiding behind NICE and restricting its freedoms. Only this morning we heard about banning prescriptions for gluten-free foods and other medicines, which will affect the poor and vulnerable, who normally get free prescriptions. This is arbitrary rationing.

The UK currently gets a disproportionate amount of the EU's R&D and clinical trials, and Brexit threatens that. I agree with every word my noble friend Lord Sharkey said but, since I have said the same words myself in your Lordships' House at least five times since last June, I will not bore your Lordships by repeating it. He expressed it much better than I could, anyway. But is this really the time to be putting in place further deterrents to companies making cutting-edge medicines available here? The industrial strategy said a lot of the right things about the Government's intention to promote scientific research, yet their actions do not match their words.

So I ask the Minister: how soon does the DoH plan to assess the impact of the new NICE cap? I have heard that the Government plan to leave it for three years, which is far too long. I suggest that an impact assessment should be carried out on the first five medicines affected to ensure that the impact on patients is no greater than the Government predict. Will the Minister agree to do that?

8.06 pm

Lord Hunt of Kings Heath (Lab): My Lords, first, I declare an interest as a trustee of the Royal College of Ophthalmologists, which of course has a keen interest in medical research. The noble Lord, Lord Sharkey, has made a very powerful case for the importance of medical research in the UK. This is very much under threat at the moment. No doubt the Minister will be tempted to read out a list of initiatives being undertaken by the Government to support research in the life sciences sector. Welcome though those initiatives are, I hope that she will focus her response on what seems to me to be the core issue, which is the imperfect relationship between the scale and quality of medical research in this country and the uptake and outcomes of that medical research.

The evidence is that the record of the NHS is very poor in actually adopting proven new medicines, treatments and devices. Of course, it is NHS patients who lose out. As noble Lords have already said, this is now being exacerbated by the unprecedented level of rationing that is taking place, both locally and nationally, in our National Health Service. A fairly recent report by the leading charities Breast Cancer Now and Prostate Cancer UK showed that NHS cancer patients are missing out on innovative treatments that are available in any comparative country in the world.

We then come to NICE. When the previous Labour Government set up NICE, it was actually designed to speed up the introduction of innovative new treatments. We are now seeing the Government develop NICE as, in essence, a rationer of treatments. I ponder whether the restrictions being brought in really are true to the legal position of NICE as established, and certainly to its moral position. We have already heard about the impact of the new £20 million cap. That will have a devastating impact on patients. At the heart of the problem of medical research is this: we rely hugely on the pharmaceutical sector for investment in R&D. How long can we expect that investment to continue with the incredibly poor take-up of the results of that investment by our National Health Service? That is the core question that the Minister has to answer. I believe that our medical research and life sciences sector is at risk. The Brexit issue has been well documented, but at the heart of this is that unless the National Health Service changes gear and is consistently seen to welcome and embrace the uptake of new medicines, the Government can talk about medical research and the life sciences sector, but all will come to naught unless they sort out the National Health Service and the incredibly debilitating rationing that we are now seeing take place.

8.10 pm

Baroness Buscombe (Con): My Lords, noble Lords will appreciate that in the past however many minutes I have been asked a lot of questions. I may not be able to answer them all, in which case, I hope noble Lords will accept a letter. I will write in detail in reply. I thank all noble Lords, particularly the noble Lord, Lord Sharkey, for their valuable contributions to this important debate.

"The Government is committed to building on the UK's world-leading science base—including more Nobel Laureates than any country outside the United States—and making the UK the go-to nation for scientists, innovators and investors in technology".—[*Official Report*, 23/3/17; col. 310.]

That was quoted by my noble friend Lord Prior last Thursday in a debate on EU withdrawal and science. Our focus this evening is on the importance and value of medical research to this country as part of our science.

I am sure all those present would agree that the UK research base is world-class. With just 0.9% of the global population and 4.1% of researchers, the UK accounts for 11.6% of citations and 15.9% of the most highly cited articles. *Times Higher Education* ranks three UK universities in the top 10, and 12 in the top 100, with the University of Oxford in first place overall.

We have an enviable track record in medical research, and we want to keep it that way. How will we do that? We have to do it by continuing to strive to improve our knowledge in this area. That is why this Government have been, and will continue to be, so dedicated in supporting research, both research in general and specifically medical research. Our support for research overall can be seen in the 2015 spending review announcement, where we protected the science resource budget in real terms for the rest of the Parliament at its 2015-16 level of £4.7 billion. In the 2016 Autumn Statement we went even further and committed to substantial real-terms increases in government investment in R&D, rising to an extra £2 billion a year by 2020-21 to help put Britain at the cutting edge of science and technology. This is an increase of around 20% of total government R&D spending and more than any increase in any Parliament since 1979.

What funding has been provided for medical research in particular? Noble Lords have referred to some of the numbers this evening. In 2015-16, the MRC's gross research expenditure, funded through the budgetary allocation of the Department for Business, Innovation and Skills and contributions from other bodies, was £927.8 million, providing support for world-class medical research to improve human health and enhance the economic competitiveness of the UK. Through the Department of Health, the Government are investing more than £1 billion a year in health and care research through the National Institute for Health Research. Funded by the Department of Health, NIHR benefits the future of health by: funding high-quality research to improve health; training and supporting health researchers; involving patients and the public in health research; providing facilities for research funded by other organisations; and working with the life sciences industry to benefit patients.

Through the NIHR, we have this year announced record funding to support our leading NHS and university partnerships. This includes the largest ever investment in health research infrastructure: £816 million over the next five years for 20 new NIHR biomedical research centres in our leading NHS and university partnerships

[Baroness Buscombe]
across England. Each of these 20 biomedical research centres will translate lab-based discoveries into new cutting-edge treatments, technologies, diagnostics and other interventions in clinical settings for patients in a wide range of diseases, such as cancer and dementia. Through the NIHR, the Government are also investing £112 million over the next five years in 23 clinical research facilities for experimental medicine to help speed up the translation of scientific advances for the benefit of patients through dedicated and purpose-built facilities in the NHS with specialist clinical research and support staff. The NIHR has created a national clinical research network which co-ordinates and supports the delivery of industry, charity and other publicly funded research across the NHS in England. Annual recruitment to clinical trials and studies by the NIHR clinical research network has reached more than 600,000 people. To make it simpler for researchers to apply for funding, while retaining our commitment to research excellence, the NIHR will be rolling out a streamlined and faster application process from May. We are very encouraged by what the noble Lord, Lord Willis, said about improving outputs, but the important thing is talking about issues, such as linking data to discharge.

The contribution of charities is hugely important to this and it would be inappropriate to neglect that contribution to medical research. Noble Lords referred to it this evening. REF 2014 demonstrated the outstanding contribution to clinical medicine and to the world-leading position of the UK in biomedical science and clinical/translational research, and it highlighted that much of this work was underpinned by the vast charitable investment made in clinical medicine in the UK, with more than a third of the income over the period derived from UK-based charities. Members of the Association of Medical Research Charities have together invested more than £1 billion into UK medical research in each of the past seven years. We of course want to encourage this investment to continue, which is why the research councils and NIHR work closely with charities on many large projects. For example, noble Lords will know of the Francis Crick Institute, which is a partnership between the Medical Research Council, Cancer Research UK, the Wellcome Trust, UCL, Imperial College London and King's College London. In addition to funding the cost of building the institute, the founders will provide ongoing research support. The Wellcome Trust will fund interdisciplinary research spanning biology, chemistry and bioengineering. The world's largest health imaging study—UK Biobank—is jointly funded by the MRC, the Wellcome Trust and the British Heart Foundation. It will create the biggest collection of scans of internal organs and transform the way scientists study a wide range of diseases, including dementia, arthritis, cancer, heart attacks and strokes.

Many charities are greatly appreciative of the Charity Research Support Fund, part of the quality-related research funding administered by the Higher Education Funding Council for England. HEFCE determines how much to provide for this fund from within its overall allocation from BEIS, and has maintained it at £198 million per annum through to 2016-17. Once UKRI is established, decisions on the priorities for funding and how much to allocate for this will be a matter for Research England.

My noble friend Lord Dundee asked questions regarding product development partnerships, but they are more within the scope of DfID, so I will write to reply on that point. He also asked about neurological research for Alzheimer's. As part of the Government's 2020 dementia challenge, they are increasing research funding for dementia. This includes the Dementia Research Institute—which is being co-funded by the MRC, the Alzheimer's Society and Alzheimer's Research UK—the new Dementias Platform UK and the NIHR Dementia Translational Research Collaboration, which has been set up to catalyse dementia research across world-leading NIHR biomedical research centres.

Our position post the EU referendum was of concern to all noble Lords taking part in this debate, quite rightly. Leaving the EU allows us to make fresh choices about how we shape our economy and presents an opportunity to deliver a bold, long-term industrial strategy that builds on our strengths and prepares us for the years ahead. The Green Paper we launched in January marks the beginning of a dialogue to develop this strategy and to make sure the UK remains one of the very best places in the world to innovate, carry out research and do business. We are putting the UK's strengths in science, research and innovation at the heart of our industrial strategy. We have highlighted the life sciences industry as a key area of future success for the UK. We are delighted that Professor Sir John Bell has agreed to lead the development of a new strategy for the long-term success of UK life sciences, and we hope this can lead to an early sector deal.

Funding is hugely critical, as the noble Lord, Lord Sharkey, mentioned in his opening speech. The Government have made a series of announcements to provide assurance and certainty to stakeholders in the research community since the referendum. The Treasury has made it clear that it will underwrite all successful bids for Horizon 2020 funding that are approved by the Commission, even when specific projects continue beyond our departure from the EU. This gives British participants and their EU partners the assurance and certainty needed to plan ahead for projects that can run over many years. It is too early to speculate on the UK's future relationship with Horizon 2020 and successor programmes, but noble Lords can be assured that the UK Government are committed to ensuring that the UK remains a world leader in international research and innovation.

Another important issue was referenced by the noble Baronesses, Lady Morgan and Lady Masham. As noble Lords have said, attracting talent is absolutely key. We are in a strong position but it is important that we attract the best talent, and stakeholders have made clear that funding on its own is not sufficient. A lot has been said, some of it perhaps in a hurry, post the EU referendum, and I appreciate that there has been a misconception that the UK is no longer welcoming to overseas researchers. This is simply not true. As David Davis has said:

"We will always welcome those with the skills, the drive and the expertise to make our nation better still".

In the Budget, we announced that over £100 million will be invested in global research talent over the next four years to attract the brightest minds to the UK and help maintain the UK's position as a world leader in R&D. This includes £50 million of NPIF funding ring-fenced for fellowship programmes to attract global talent in areas that align with the industrial strategy, and over £50 million of existing international funds to support fellowships that attract researchers to the UK from emerging research powerhouses such as India, China, Brazil and Mexico. We have also provided assurance about postgraduate support through the Research Council studentships, which will remain open to EU students starting courses in the 2017-18 academic year. The funding support will cover the duration of their course, even if the course concludes after the UK has left the EU.

As the Government have made clear previously, there has been no change to the rights and status of EU nationals in the UK or of British citizens in the EU as a result of the referendum. The Prime Minister has been clear that during negotiations she wants to protect the status of EU nationals already living here. The only circumstances in which that would not be possible is if British citizens' rights in European member states were not protected in return.

I know I am running short of time but I want to speak briefly about collaboration and very quickly refer to some of the questions. We have taken no final decisions on our future relationship with the EU on research. The White Paper made it clear that we would welcome an agreement to continue to collaborate with our European partners on major science, research and technology initiatives. The noble Lord, Lord Kakkar, talked about the ecosystem, which is quite complex—believe me, I have been on something of a learning curve here—and it is critical that we collaborate. We are considering a number of options, but I stress that international collaboration is nothing new.

We are thinking through how UK researchers can best be able to continue to work with the best of their international counterparts, both European and more widely. As long as we continue to be a research powerhouse, other nations will continue to collaborate with us. As I have set out, the Government are working hard to ensure that we continue to build on our reputation.

The noble Lord, Lord Patel, talked about regulation and data privacy.

Lord Hunt of Kings Heath: The noble Baroness is clearly not going to respond on the NHS. Does she not realise that none of this means anything unless the NHS uptakes these new medicines? This is the core argument that we are putting to her, but she is not responding to it.

Baroness Buscombe: If I may, this debate is about how we maintain medical research.

Lord Hunt of Kings Heath: And the NHS is crucial to that.

Baroness Buscombe: Please do not point at me.

Lord Hunt of Kings Heath: Then perhaps the Minister will answer the point.

Baroness Buscombe: I am trying to get to the point, if I may, but perhaps it would be better if I write to the noble Lord in detail specifically on the new proposals for NICE and the cap. I think that would be better in the circumstances.

The noble Lord, Lord Patel, talked about regulation, data privacy and data transfer post Brexit. We will take seriously his wise recommendation to work with researchers and regulators to ensure that our data privacy is a world leader, proportionate and pragmatic. My noble friend Lord Ryder talked of the pressing need to reform the 2007 paediatric regulations, whereby there is an avoidance of trialling cancer drugs for children. I will certainly take that back to the department.

There was reference to NHS England's research plan. It will be published in the next few weeks. Publication of the plan and monitoring of progress on its delivery is one of the deliverables on research in the Government's mandate to NHS England for 2017-18, published on 20 March. The research plan will be followed by development of a comprehensive research strategy. NHS England will engage with its stakeholders during the spring and summer to support development and plan delivery of the strategy. The implementation of the AAR and the industrial strategy includes talking to industry about the changes. Positive features include a fast-track process and a threshold weighted by gain.

There were a number of other questions that I wish I could answer quickly. The noble Lord, Lord Willis, asked about CLAHRCs. Collaborations for leadership in applied health research and care are funded by NIHR with £120 million. There are more than 13 of them around England. The Department of Health is currently examining options for future funding after the current contract. This includes asking current CLAHRCs about what is working and what could be done better to support applied health research.

To conclude, it is clear from what we have heard this evening that the UK's medical research is world-class and something that we should be proud of. Retaining and building on our science and research base remains a top priority for this Government. We will continue to work with stakeholders and parliamentarians to achieve it. I again thank the noble Lord, Lord Sharkey, and all noble Lords who have taken part in the debate this evening.

Criminal Finances Bill

Committee (1st Day) (Continued)

8.27 pm

Amendment 81

Moved by ***Baroness Hamwee***

81: Clause 13, page 43, line 42, at end insert—

"(h) money or assets in any form which may be used as currency,"."

Baroness Hamwee (LD): Amendment 81 extends the debate we had immediately before the break with regard to the assets that may be liable to forfeiture. I understand the extension in Clause 13, which we have discussed, but I wonder why there should be any limits on what falls within the forfeiture provisions, because life changes. Items that come into common use change. Who had heard of bitcoins 10 years ago? That is the thinking behind my Amendment 81, which would extend cash, and Amendment 84, which would extend listed assets. The Minister in the Public Bill Committee in the Commons said of what is now Clause 14 that the Government did not want to use the power in new Section 303B(2) "indiscriminately". I am puzzled what that term means. I can see that they would want to be careful about that use, but I do not see the relevance of discrimination.

In her letter of 17 March to noble Lords following Second Reading, the Minister referred to a balanced approach and said that allowing seizure of any type of property would not be proportionate. Again, that term puzzles me. Balance and proportion are relevant to the circumstances in which property can be forfeited—the conditions which have to be met, and so on—but are they relevant to the type of asset? We are in danger of allowing the owner of an asset to apply criminal ingenuity to remain a step ahead, finding new categories of property in which the proceeds of crime can be held. At Second Reading, the Minister said:

"As criminals adapt, so must we".—[*Official Report*, 9/3/17; col. 1476.]

We should—but it would be even better if we were to anticipate and be a step ahead, not a step behind, because it is very hard to be in step precisely.

8.30 pm

Those are the most significant comments that I want to make on the group of amendments, but I have quite a number of others. I have expressed quite a hard line but, swinging the pendulum back a little, I want to probe the criteria for sizable assets and to ask what the legislation intends by including in three places that there should be "reasonable grounds" for suspecting that property is intended for unlawful use, not simply that it is intended for unlawful use, and also to probe how property intended for unlawful use or use in unlawful conduct is assessed. Is it something less than a firm plan? Does it mean that the intention must be proved, or is it in the eye of the beholder? That is why "reasonable grounds" for suspicion are within my amendments.

Amendment 86 takes us to codes of practice. New Section 303G refers to the Secretary of State proposing,

"to issue a code of practice",

but the code is not optional, so why does the Bill say:

"Where the Secretary of State proposes to issue a code of practice"?

Does where mean when, or—I am not trying to be clever about this—are there other codes of practice that may be applied?

Amendment 87 is about the retention and storage of property while proceedings take their course. The Bill requires property seized to be "safely stored", but I am looking for an assurance that the conditions of storage will be appropriate. Artistic works, stamps and I dare say other assets may require a certain temperature or humidity if they are not to deteriorate. So my probe is as to whether safe storage just means that they go into a cardboard box on a shelf or whether it means something more sophisticated than that.

Amendment 102 probes why it is necessary for someone who applies to have property released to him to demonstrate that he was deprived of it by unlawful conduct. What if it was the subject of a loan, or if there was an error?

Amendment 103 is about compensation, which under the Bill will be payable only if the circumstances are exceptional. Can the Minister explain why—and is that fair? It must mean that generally, when property is seized but has to be returned, there is no compensation for loss. I stress that compensation would be payable, leaving aside the exceptional circumstances, only for loss—it is not compensation, period. So why is it only in exceptional circumstances?

The Secretary of State can amend the regulations about the source of compensation. Amendment 104 would provide that the Secretary of State cannot amend the actual payment. I think that that is what the clause means, but I would be glad of assurance. Amendment 105 goes back to a point I raised on an earlier provision: exclusion from freezing for living expenses should, in my view, extend to the living expenses of dependants. I beg to move.

Lord Stevens of Kirkwhelpington (CB): My Lords, I support Amendments 81, 82 and 83. I pay tribute to the Minister and her team, who have listened to the officers who are actually on the front line as well as to others. In general terms—and I know these are probing amendments—if there are direct links between money assets and anything that may be used as currency, can consideration be given to those links being widened? Pursuing that would be of great help to the agencies which are enforcing these laws. I stress my tribute to the Minister and her team for listening to those who have to enforce these laws.

Lord Kennedy of Southwark (Lab): My Lords, the amendment proposed by the noble Baroness, Lady Hamwee, has merit and widens the Bill so that assets which can be used as currency can be included for the purposes of the forfeiture of cash. In some parts of the world, mobile phone credits are traded as cash and it would not be impossible to see situations where large quantities of these credits could be traded, hold the proceeds of crime and be used as currency. There will be other items that will be used in similar circumstances in the future.

However, I am not persuaded by Amendment 84 in the name of the noble Baroness, Lady Hamwee. I understand the arguments about what is included in this broad definition but believe that what is shown in the Bill as "listed assets" is better. However, I would want the regulations which may amend subsection (1) to use the affirmative procedure because it is important that we have a discussion about it at that time.

Amendments 85, 89, and 106 add the words "reasonable grounds for suspecting". Those are proportionate clarifications which the Minister should

adopt. I am not convinced that Amendment 87 is necessary. I see the point which the noble Baroness, Lady Hamwee, is seeking to address but hope that the Government will confirm that the words "safely stored" will cover this point and that valuable goods will be stored appropriately.

I am not persuaded of the merits of Amendment 102, although I do support Amendments 103 and 104 in the name of the noble Baroness. If the court is satisfied that the person has suffered a loss then they should be compensated for that loss and it is important that regulations made under this section are not used to restrict the payment of compensation. Amendment 105 is also a sensible addition, unless the Minister says very clearly today that a person's reasonable living expenses include them providing for their dependants. Amendment 106, bringing in the term "reasonable grounds", in respect of forfeiture is also a welcome provision.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): I thank noble Lords for their contributions, and particularly the noble Lord, Lord Stevens, for his kind words. The noble Baroness, Lady Hamwee, has—as always—scrutinised the provisions in some detail and I am grateful to her for the points she raised. Her Amendments 81 and 84 seek to broaden the scope of the seizure and forfeiture powers at Clauses 13 and 14 so that they can essentially be used to seize any items deemed to be the proceeds of crime. However, these will create a number of issues. The test that the property "may be used as currency" is legally ambiguous and untested, and it could complicate the use of these powers. The effect of Amendment 81 would also be to include a wide range of property in the cash forfeiture procedure which is not easily severable, as would be required for these provisions.

The noble Baroness referred to bitcoin at the beginning of her speech. There are difficulties in defining what we would seize. While we would not include this in the Bill, we are continuing to work with law enforcement agencies to determine how we should approach this issue more generally, and specifically to determine whether there is a gap in law enforcement capability that requires legislative change.

In respect of the noble Baroness's Amendment 84, I am sure she would agree that we must take a proportionate approach to ensure that there is clarity regarding what can and cannot be seized. The items listed in the Bill are there based on clear justification that they may be used to move or hide the proceeds of crime, and we drew on the advice of law enforcement practitioners in developing this list. Her amendments would move away from the principle of clarity, eroding the careful circumscription that the Bill provides for these provisions. We can add to the list when the need arises, subject to parliamentary approval. As we have demonstrated through our amendments during the Bill's passage, we will do so where a clear case arises. This gives us and the police the flexibility and balance we need while ensuring that this is not a sweeping seizure power. I am very grateful to the noble Baroness for allowing me to emphasise how seriously the Government take these issues, particularly the need for stringent safeguards on the use of such powers. I trust that she will feel inclined not to press these amendments.

I turn to the other amendments tabled by the noble Baroness. Amendment 85 seeks to insert the principle of "reasonable grounds for suspicion" into the definition of a listed asset. However, this appears to insert this test in the wrong place in the Bill. We consider that the inclusion of the "reasonable grounds to suspect" test in the sections relating to the operation of the seizure powers is more appropriate, and this approach mirrors the existing provisions for the recovery of cash.

Amendment 86 seeks to require the Secretary of State to take the actions relating to the issuing of the code of practice for searches for listed items before it is issued. The provision in the Bill is consistent with existing wording in the Proceeds of Crime Act relating to codes of conduct. I assure the noble Baroness that all the relevant actions will be taken before a code is issued.

Amendment 87 seeks to require that items seized under these provisions should be stored in appropriate conditions. The agency seizing such property is liable for its storage, and would be liable for damage to such property if due care were not taken. Therefore, we believe that the agency responsible would take such action in any case.

Amendment 102 seeks to remove the provision allowing the release of the listed item if the victim was deprived of it through unlawful conduct. The provision is one of three principles that the court must consider when the victim applies to the court for the item to be returned. The removal of this provision would remove the requirement on the victim to show that they had lost the property through unlawful means. This is an important test that the court must satisfy itself on, and which already applies to the well-established system for the forfeiture of cash, and we believe that it should be retained.

Amendment 104 seeks to prevent the Secretary of State restricting the payment of compensation through regulation. The intention behind the power in the Bill is to ensure that the appropriate agency can be held responsible for any compensation that may be paid. It allows the Secretary of State to add to the list of those who are liable for paying compensation where appropriate. The provision already exists for cash forfeiture, and I see no reason not to replicate it here. It should be noted that the circumstances in which compensation would be payable are set out elsewhere in new Section 303W, and that the Secretary of State's power does not extend to amending these provisions.

The noble Baroness asked why exceptional circumstances are required. This is modelled on the cash provisions. The seizure power applies to a limited number of assets. It is not anticipated that, in normal circumstances, seizure would result in loss being sustained. The items are not likely to change in value during the timeframe for seizure.

I turn to provisions relating to Clause 15. Amendment 105 seeks to extend the exclusions to an account-freezing order to include the living expenses of a person's dependants. The provision for exclusions relates to the actions on the account and the owner's ability to use the contents of the account to meet reasonable living expenses. I fully appreciate that there may be dependants of the account owner who would be adversely affected

[Baroness Williams of Trafford]
if no provision were made for the account to be used to meet their living expenses. That is why we have included this provision. The living expenses will be determined by a court and, if there are dependants, the court will take them into consideration.

Amendment 106 would include a provision that, where forfeiture is sought on the grounds that it will be used for unlawful conduct, the officer must have reasonable grounds for suspicion that this is the case. The existing provisions already require the officer to be satisfied that the property may be recoverable or may be used for unlawful conduct, and we do not want to lower that threshold.

I thank noble Lords for their patience. I hope that I have addressed the issues that the noble Baroness raised and that she will be happy to withdraw her amendment.

8.45 pm

Lord Kennedy of Southwark: When I spoke about listed assets, on page 44 of the Bill, I said I preferred what was in the Bill to the amendment of the noble Baroness, Lady Hamwee. I mentioned regulations being made by the affirmative procedure. Of course, it does not say that here, so I am assuming that they are not—that they will be made by the negative procedure or in some other way. Perhaps the Minister could write to me on this.

Baroness Williams of Trafford: I am looking for a yes or a no, but I do not think that I will get it, so I will write to the noble Lord.

Baroness Hamwee: My Lords, I am grateful to the noble Lords, Lord Stevens and Lord Kennedy. Mobile phone credits for cash? I have led a very sheltered life.

The Minister said that the problem was in the phrase "may be used as currency". But it seems to me that one can know that only through experience. That is why betting receipts, gaming vouchers and so on have now been included. I am really not sure that I follow the argument, although I will think about it after this evening.

I mentioned bitcoins not because I was suggesting that they should be included but simply as an example of how some time ago we did not know what was coming.

One's living expenses include the expenses of dependants—I think that is what the Minister said. She is nodding. It is not quite within the normal meaning of the words, but I will accept that, and I am glad that it has been confirmed.

I do not think that I adequately followed the argument about the term "exceptional circumstances". The Minister said quite a lot about the rest of the clause and of course I shall look at that after this evening. For now, I beg leave to withdraw the amendment.

Baroness Williams of Trafford: Perhaps I may intervene to say that the regulations will be affirmative.

Lord Kennedy of Southwark: I thank the Minister very much, but it does not say that in the Bill—it just refers to the regulations—and I think it needs to say that.

Amendment 81 withdrawn.

Amendments 82 and 83

Moved by ***Baroness Williams of Trafford***

82: Clause 13, page 43, line 46, leave out from "machine" to second "that" in line 1 on page 44

83: Clause 13, page 44, line 4, at end insert—

"( ) "betting receipt" means a receipt in physical form that represents a right to be paid an amount in respect of a bet placed with a person holding a betting licence.

( ) In subsection (7A)—

"bet"—

(a) in relation to England and Wales and Scotland, has the same meaning as in section 9(1) of the Gambling Act 2005;

(b) in relation to Northern Ireland, has the same meaning as in the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (S.I. 1985/1204 (N.I. 11)) (see Article 2 of that Order);

"betting licence"—

(a) in relation to England and Wales and Scotland, means a general betting operating licence issued under Part 5 of the Gambling Act 2005;

(b) in relation to Northern Ireland, means a bookmaker's licence as defined in Article 2 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985;

"gaming machine"—

(a) in relation to England and Wales and Scotland, has the same meaning as in the Gambling Act 2005 (see section 235 of that Act);

(b) in relation to Northern Ireland, has the same meaning as in the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (see Article 2 of that Order).

( ) In the application of subsection (7A) to Northern Ireland references to a right to be paid an amount are to be read as references to the right that would exist but for Article 170 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (gaming and wagering contracts void).""

Amendments 82 and 83 agreed.

Clause 13, as amended, agreed.

Clause 14: Forfeiture of certain personal (or moveable) property

Amendments 84 to 87 not moved.

Amendment 88

Moved by ***Baroness Williams of Trafford***

88: Clause 14, page 54, line 12, at end insert—

"(3A) An order under subsection (3) made by a magistrates' court may provide for payment under section 303U of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of—

(a) the proceedings in which the order is made, or

(b) any related proceedings under this Chapter.

(3B) A sum in respect of a relevant item of expenditure is not payable under section 303U in pursuance of provision under subsection (3A) unless—

(a) the person who applied for the order under subsection (3) agrees to its payment, or

(b) the court has assessed the amount allowed in respect of that item and the sum is paid in respect of the assessed amount.

(3C) For the purposes of subsection (3B)—

(a) a "relevant item of expenditure" is an item of expenditure to which regulations under section 286B would apply if the order under subsection (3) had instead been a recovery order;

(b) an amount is "allowed" in respect of a relevant item of expenditure if it would have been allowed by those regulations;

(c) if the person who applied for the order under subsection (3) was a constable, an SFO officer or an accredited financial investigator, that person may not agree to the payment of a sum unless the person is a senior officer or is authorised to do so by a senior officer.

(3D) "Senior officer" has the same meaning in subsection (3C)(c) as it has in section 303E."

Amendment 88 agreed.

Amendment 89 not moved.

Amendments 90 to 101

Moved by ***Baroness Williams of Trafford***

90: Clause 14, page 55, line 43, at end insert—

"(5A) An order under subsection (1) made by a magistrates' court may provide for payment under subsection (9) of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of—

(a) the proceedings in which the order is made, or

(b) any related proceedings under this Chapter.

(5B) A sum in respect of a relevant item of expenditure is not payable under subsection (9) in pursuance of provision under subsection (5A) unless—

(a) the person who applied for the order under subsection (1) agrees to its payment, or

(b) the court has assessed the amount allowed in respect of that item and the sum is paid in respect of the assessed amount.

(5C) For the purposes of subsection (5B)—

(a) a "relevant item of expenditure" is an item of expenditure to which regulations under section 286B would apply if the order under subsection (1) had instead been a recovery order;

(b) an amount is "allowed" in respect of a relevant item of expenditure if it would have been allowed by those regulations."

91: Clause 14, page 56, line 9, leave out from "of" to end of line 11 and insert "any provision of this section only if the person is a senior officer or is authorised to do so by a senior officer.

"Senior officer" has the same meaning in this subsection as it has in section 303E."

92: Clause 14, page 56, line 13, at end insert—

"(za) first, it must be applied in making any payment of legal expenses which, after giving effect to subsection (5B), are payable under this subsection in pursuance of provision under subsection (5A);"

93: Clause 14, page 56, line 14, leave out "first" and insert "second"

94: Clause 14, page 56, line 18, leave out "second" and insert "third"

95: Clause 14, page 56, line 43, at end insert—

"(3A) An order under subsection (3) made by the High Court may include provision of the type that may be included in an order under section 303O(3) made by a magistrates' court by virtue of section 303(3A).

(3B) If provision is included in an order of the High Court by virtue of subsection (3A) of this section, section 303O(3B) and (3C) apply with the necessary modifications."

96: Clause 14, page 58, line 7, at end insert—

"(1A) Where an order under section 303Q is made by a magistrates' court, any party to the proceedings for the order (including any party to the proceedings under section 303O that preceded the making of the order) may appeal against a decision to include, or not to include, provision in the order under subsection (5A) of section 303Q."

97: Clause 14, page 58, line 8, leave out "subsection (1)" and insert "this section"

98: Clause 14, page 58, line 12, leave out "subsection (1)" and insert "this section"

99: Clause 14, page 58, line 33, at end insert—

"(aa) second, they must be applied in making any payment of legal expenses which, after giving effect to section 303O(3B)(including as applied by section 303R(3B)), are payable under this subsection in pursuance of provision under section 303O(3A) or, as the case may be, 303R(3A);"

100: Clause 14, page 58, line 34, leave out "second" and insert "third"

101: Clause 14, page 58, line 38, leave out "third" and insert "fourth"

Amendments 90 to 101 agreed.

Amendments 102 to 104 not moved.

Clause 14, as amended, agreed.

Clause 15: Forfeiture of money held in bank and building society accounts

Amendments 105 and 106 not moved.

Clauses 15 and 16 agreed.

Schedule 1: Powers of members of staff of Serious Fraud Office

Amendment 107

Moved by ***Baroness Hamwee***

107: Schedule 1, page 120, line 12, at end insert "of such minimum level of seniority as may be designated by the Secretary of State"

Baroness Hamwee: My Lords, we have had groupings which have covered half a dozen big issues; Amendment 107 would amend the definition of SFOs—serious fraud officers—in Schedule 1, where we are told that an SFO officer is,

"a member of staff of the Serious Fraud Office".

[Baroness Hamwee]

My amendment would add to that,

"of such minimum level of seniority as may be designated by the Secretary of State".

Realistically, of course, this aims to exclude a very junior member of staff who has perhaps simply administrative duties and so on—I seem to remember the noble and learned Lord, Lord Keen of Elie, saying, "It wouldn't mean the janitor". I want to make sure that it does not mean the janitor. The SFO officers are referred to for various purposes, and after all, staff include civilians. I hope that whoever is to reply to this from the Front Bench—it seems that it will be the noble Baroness, Lady Vere—will be able to reassure the Committee as to just what is meant in this context and why there is no obvious limit: or perhaps there is one somewhere else as regards what level of officer we are talking about. I beg to move.

Lord Kennedy of Southwark: The noble Baroness's amendment is obviously a probing amendment, and I hope that we will get a response from the Government Front Bench that clarifies the situation.

Baroness Vere of Norbiton (Con): My Lords, I am grateful to the noble Baroness, Lady Hamwee, for her scrutiny of these provisions. Her Amendment 107 seeks to require the Secretary of State to define the seniority of SFO staff so that not all have access to POCA powers. I appreciate her concern at the extension of the powers conferred by POCA but I hope I can reassure her by explaining our reasons for extending powers to SFO officers.

As the noble Baroness is undoubtedly aware, the SFO is responsible for investigating some of the most serious cases of fraud, bribery and corruption. To effectively combat complex crime, it is vital that SFO officers have access to the most effective legislative tools. Currently, only SFO officers who have accredited financial investigator status have access to POCA powers. This is at variance with other agencies such as the police, the NCA, HMRC and Immigration Enforcement, whose officers have direct access to these powers whether or not they are financial investigators.

It is logical and appropriate that these powers are made available to all SFO officers, both to ensure consistency of approach across agencies and to ensure that non-accredited SFO officers have access to POCA powers when investigating complex crimes, which may include investigating the proceeds of crime.

I hope I can further reassure the noble Baroness that all agencies adopt a process whereby applications made under POCA are considered and approved by an appropriate management chain before they are submitted to court. This ensures that all officers, of whatever grade or rank—even the janitor—are required to consider the necessity and proportionality of any application they make.

I am grateful to the noble Baroness for allowing me to explain the rationale for this position—particularly the need to make powers available to a wide range of officers involved in the investigation of complex, acquisitive crime. I trust that she will feel inclined not to press this amendment and, accordingly, I invite her to withdraw it.

Baroness Hamwee: My Lords, I understand the need to broaden the scope but I cannot help but think that we have been told that there are a lot of organisations that could give responsibilities to their janitors. The point is that decisions on who is given responsibility to do what can be made by senior officers of the day in an inconsistent fashion. In most organisations that would be entirely reasonable but we are talking about very serious powers, so my amendment and my comments are not intended to be frivolous.

Of course, I shall not pursue this matter tonight, and indeed after two or three mentions of thanks for my careful scrutiny and, reading between the lines, thoughts of "I wish the noble Baroness would shut up", I think that I probably will for tonight. As I said, it is not a frivolous point but I beg leave to withdraw the amendment.

Amendment 107 withdrawn.

Schedule 1 agreed.

Clauses 17 and 18 agreed.

Clause 19: Financial Conduct Authority

Amendment 108 not moved.

Clause 19 agreed.

Clause 20 agreed.

Amendment 109

Moved by ***Lord Rosser***

109: After Clause 20, insert the following new Clause—

"Report to Parliament on impact on enforcement authorities

(1) The Secretary of State must, within 18 months of the day on which this Act is passed, lay before both Houses of Parliament a report on the implementation of this Act and the impact on enforcement authorities.

(2) The report must include an assessment of—

(a) what, if any, additional resources are required by enforcement authorities in order to carry out their functions and powers under this Act;

(b) what, if any, additional resources have been provided to enforcement authorities to support them in carrying out their functions and powers under this Act;

(c) what additional training has been provided by enforcement authorities to staff members in order to allow them to effectively carry out their functions and powers under this Act;

(d) to what extent enforcement authorities have used the powers provided under this Act.

(3) In this section "enforcement authorities" means—

(a) the National Crime Agency;

(b) Her Majesty's Revenue and Customs;

(c) the Financial Conduct Authority;

(d) the Serious Fraud Office; and

(e) the Director of Public Prosecutions (in relation to England and Wales) or the Director of Public Prosecutions for Northern Ireland (in relation to Northern Ireland)."

Lord Rosser (Lab): This amendment requires the Secretary of State, within 18 months of the day on which this Bill is passed, to lay before both Houses of Parliament a report on the implementation of the Act and its impact on enforcement authorities.

At Second Reading, it was pointed out that, if the measures provided for in the Bill are to be made to bite, the necessary resources will need to be provided. New offences and powers are created in the Bill, together with extensions of existing powers, which will require further resources, both financial and staff.

In response at Second Reading, the Government referred to the sums of money that have been invested in law enforcement agencies since 2006 and under the asset recovery incentivisation scheme over the past three years. I am not sure that that response really addressed the potential concern that had been expressed about the future and the implications for resources if the changes in the Bill in respect of new offences, powers and enhanced powers were to be effectively introduced and applied.

One's concerns were not helped by the response from the Government to the question asked at Second Reading about the few unexplained wealth orders that were predicted—20 per year. The response was to the effect that it was a conservative estimate—presumably in more senses than one—as opposed to being a definitive indication of how often the unexplained wealth orders would be used. Has that been the basis on which other new and enhanced powers in the Bill have been assessed by the Government, and has it been done in this way to try to dampen down calls for additional resources in the quest to save money?

The Government said at Second Reading that they were already engaging with law enforcement authorities and prosecutors to encourage the use of all the new powers being introduced by the Bill. However, they went on to say that ultimately it would be for the enforcement authorities, which are operationally independent, to decide when and how often to use the new powers in the Bill. That may be true but the extent to, and thoroughness with which, enforcement authorities use the new and enhanced powers in the Bill must ultimately be determined by the level of resources they are given to carry out their new and enhanced role and responsibilities. The issue of the resources that are going to be made available to implement the provisions in the Bill, and about which we have heard very little, is a matter for government.

9 pm

In their impact assessment, the Government said that the 2013 serious and organised crime strategy and the 2015 strategic defence and security review set a clear goal of making the UK a more hostile place for those seeking to move, hide or use the proceeds of crime or corruption. Delivering that will not come cheaply, particularly as the Government have already said that this country is unusually exposed to the risks of international money laundering and will, presumably, want the new powers in the Bill to be fully deployed by the enforcement agencies.

The Government said at Second Reading that they would carefully monitor and review the use of unexplained wealth orders once they are introduced. Is it not the Government's intention to do that in respect of all the new and enhanced offences and powers in the Bill, not least in relation to the resources available? Is it not the Government's intention to do it in a way that ensures Parliament is directly involved? That is the purpose of this amendment, which requires a one-off report from the Secretary of State to Parliament on the implementation of the Act covering the issues of additional resources provided and required, based on experience of seeking to implement the provisions of the Act—rather than, as now, on conjecture—the training of staff and the extent to which the enforcement authorities have used the powers provided in the Bill. I beg to move the amendment and await the Government's response.

Lord Hodgson of Astley Abbotts (Con): My Lords, the noble Lord, Lord Rosser, is talking about post-legislative scrutiny arrangements. I quite favour post-legislative scrutiny but think that the amendment has some serious weaknesses. Essentially, it is a list of requests, in the sense that proposed new subsection (2)(a), (b) and (c) asks for additional resources and training. When you tie that in with the list of enforcement authorities overleaf in proposed new subsection (3)(a) to (e), there are some extremely serious and bulky authorities there that could come up with a pretty large list of what they might want. While I entirely support what is said in proposed new subsection (2)(d)—

"to what extent enforcement authorities have used the powers provided",

which is an extremely good point to inquire about—nowhere does the report require any assessment of what has been achieved. It seems to me that the critical aspect of the Bill is what is achieved. I worry that what we have here is a shopping list for more resources but without any need to justify the money that has been spent or to what extent it has proved effective in various ways; for example, by inhibiting crime or by seizing drugs or other forms of assets.

Finally, 18 months would be a very short time in which to make this sort of assessment. By the time this begins to build as an organisation, it will be longer than that. We are in danger of taking a snapshot in which we get only half the picture—that is the asking half and not the delivery half—and of looking at it before it is fully fledged and developed. I hope that my noble friend will resist this amendment, in this form at least.

Baroness Williams of Trafford: My Lords, I thank the noble Lord, Lord Rosser, and my noble friend Lord Hodgson of Astley Abbotts for speaking to the amendment. As with all powers introduced in legislation, it is crucial that the necessary resources are available to law enforcement and prosecution agencies so that they are used effectively. As he mentioned, ARIS is essential to this work. Under this scheme, half of all assets recovered go back to the law enforcement and prosecution agencies involved. Put simply, the more they recover, the more they get back. I am pleased to say that £764 million has been raised since 2006, and over £257 million in the last three years has been invested in law enforcement agencies under this scheme. The new powers will ensure that there are even more efficient ways of recovering assets and that they will be

[Baroness Williams of Trafford]
cheaper. Indeed, senior law enforcement officers gave evidence to the Commons Public Bill Committee that the powers will help agencies achieve more with the resources that they have. We have not downplayed the estimates in the impact assessment. These are provided subject to all the standard guidance based on input from law enforcement, the banks and others.

In addition, the Home Office share of ARIS is invested in front-line capabilities, including the regional organised crime units, which have received over £100 million in direct funding from the Home Office since 2013-14. Further to this, £5 million has been set aside from ARIS every year until the end of this Parliament to fund key national asset recovery capabilities, and we are fulfilling a manifesto commitment to return a greater percentage of recovered assets back to policing by investing all the Home Office share of the scheme's money—above a certain baseline—in the multiagency regional asset recovery teams.

All the agencies listed in this amendment already report on their resources and results through departmental annual accounts and reports. As my noble friend said, this is about what they have achieved. They are subject to examination by the National Audit Office and Public Accounts Committee. The Criminal Finances Board, which is co-chaired by the Security Minister and the Economic Secretary to the Treasury, closely monitors resourcing, performance and support mechanisms such as training, to ensure that agencies are achieving results with the powers that Parliament imparts to them.

Finally, the Government have protected the NCA's budget. In addition, new capital investment of over £200 million will be available over the period 2016 to 2020, to transform the NCA into a world-leading law enforcement agency, with new digital and investigative capabilities to tackle cybercrime, child exploitation and the distribution of criminal finances. The noble Lord, Lord Rosser, asked how many UWOs would be used and why so few were predicted. I said before—and the noble Lord said—that it was a conservative estimate, but we will encourage their use from day one. We are already actively engaging with law enforcement and prosecutors to encourage the use of all the new powers being introduced by the Bill. I hope with those words that the noble Lord is satisfied with my response. I know that we will keep an eye on this in the future but, for now, I hope that he will feel happy to withdraw his amendment.

Lord Rosser: I thank the Minister for her response and the noble Lord, Lord Hodgson of Astley Abbotts, for his contribution. The noble Lord's main criticism of the amendment—not the only one—was that it did not provide for the authorities mentioned to say what they had achieved. I would have thought it was for the Government to say what they expected the authorities concerned to achieve in the light of the provisions of the Bill and the new offences and enhanced powers that they were giving the agencies. As yet, however, I have not heard anything from the Government about what they expect the agencies to achieve as a result of the Bill. There is some difficulty in requiring the agencies to report when the Government have not set them any targets that they are meant to attain. I do not know whether it is the Government's intention to tell noble Lords at some stage what they think the agencies should be able to achieve in respect, for example, of a reduction in money laundering or the number of people who are arrested as a result of carrying it out. What do they expect the agencies to achieve in relation to the additional powers in the Bill? I do not know if this is something on which the Minister is prepared to write and tell me. What are the goals that the Government think these additional powers, and the resources that they say they are going to put in, will be achieved by the agencies? That is what is missing.

We have been having debates about the new powers and the noble Baroness has reminded us of the amount of money that has been provided so far, but what we are not getting is what the Government think the Bill will achieve to improve the situation. Is the Minister, either now or at some stage in the future, able to give me any idea of what the Government are expecting as a result of the new and enhanced powers in the Bill?

Baroness Williams of Trafford: My Lords, as the noble Lord will know, the Government have not been fixated on targets, but we most certainly will have expectations of what can be achieved and they will be laid out in due course.

Lord Rosser: How will they be laid out? Are they to be set out in regulations or will the Government be making a Statement?

Baroness Williams of Trafford: I would guess that they will be laid out in regulations and they will be revealed in due course.

Lord Rosser: We await the regulations with interest.

Baroness Williams of Trafford: Perhaps I may intervene once more. I will confirm in writing to the noble Lord that they will be laid out in regulations. I do not want to make misleading statements at the Dispatch Box, but I can let him know in due course.

Lord Rosser: I would be happy for the noble Baroness to write to me, but whether the letter will set out what she has just said remains to be seen. However, I am happy for her to write to me on this issue; it would be very helpful. With that, I beg leave to withdraw the amendment.

Amendment 109 withdrawn.

Clauses 21 to 23 agreed.

Clause 24: Obstruction offence in relation to immigration officers

Amendment 110

Moved by ***Baroness Vere of Norbiton***

110: Clause 24, page 78, line 43, leave out "6 months" and insert "1 month"

Baroness Vere of Norbiton (Con): My Lords, this set of amendments makes a number of minor changes to the Proceeds of Crime Act 2002 so that the powers in the Bill work as they were intended. As noble Lords will be aware, POCA is a complex piece of legislation and inevitably, as we have consulted further with key partners and parliamentary counsel, additional issues have arisen that require attention. Given their technical nature, I will not detain your Lordships for long, but I will highlight a few key points about these amendments.

They are primarily about ensuring consistency across the Bill. First, we are ensuring that penalties and fines mirror those already in POCA and elsewhere in statute. We will also provide that cash already being detained under terrorist forfeiture powers is not also liable for confiscation; this avoids double counting. These amendments will also extend existing powers for the courts in Scotland and Northern Ireland to order the payment of a criminal's cash to settle an outstanding confiscation order. The Bill already provides for this in the English magistrates' courts. We will provide that confiscation orders that have been discharged can be revisited if the criminal is found to have further assets. Finally, we are amending the Civil Jurisdiction and Judgments Act 1982 to allow for civil orders issued in one part of the UK to be recognised and enforced in another. I beg to move.

Amendment 110 agreed.

Clause 24, as amended, agreed.

9.15 pm

Clause 25: Seized money: England and Wales

Amendments 111 and 112

Moved by ***Baroness Williams of Trafford***

111: Clause 25, page 79, line 36, leave out ", subject to subsection (9),"

112: Clause 25, page 80, leave out lines 2 to 4

Amendments 111 and 112 agreed.

Clause 25, as amended, agreed.

Clause 26: Seized money: Northern Ireland

Amendments 113 to 115

Moved by ***Baroness Williams of Trafford***

113: Clause 26, page 80, line 24, at end insert—

"( ) In subsection (2), for paragraphs (a) and (b) substitute—

"(a) has been seized under a relevant seizure power by a constable or another person lawfully exercising the power, and

(b) is being detained in connection with a criminal investigation or prosecution or with an investigation of a kind mentioned in section 341."

( ) After subsection (2) insert—

"(2A) But this section applies to money only so far as the money is free property."

( ) Omit subsection (3).

( ) In subsection (5)(as it has effect before and after its amendment by section 36 of the Serious Crime Act 2015), for "bank or building society" substitute "appropriate person".

( ) In subsection (5A), at the beginning insert "Where this section applies to money which is held in an account maintained with a bank or building society,".

( ) In subsection (7A), after "applies" insert "by virtue of subsection (1)"."

114: Clause 26, page 80, line 25, leave out subsection (2) and insert—

"( ) For subsection (8) substitute—

"(8) In this section—

"appropriate chief clerk" has the same meaning as in section 202(7);

"appropriate person" means—

(a) in a case where the money is held in an account maintained with a bank or building society, the bank or building society;

(b) in any other case, the person on whose authority the money is detained;

"bank" means an authorised deposit-taker, other than a building society, that has its head office or a branch in the United Kingdom;

"building society" has the same meaning as in the Building Societies Act 1986;

"relevant seizure power" means a power to seize money conferred by or by virtue of—

(a) a warrant granted under any enactment or rule of law, or

(b) any enactment, or rule of law, under which the authority of a warrant is not required.""

115: Clause 26, page 80, line 30, leave out "In subsection (8)(a)" and insert "In the definition of "bank" in subsection (8)"

Amendments 113 to 115 agreed.

Clause 26, as amended, agreed.

Clause 27: Seized money

Amendments 116 to 118

Moved by ***Baroness Williams of Trafford***

116: Clause 27, page 81, line 12, leave out from "seized" to end of line 23 and insert "under a relevant seizure power by a constable or another person lawfully exercising the power, and

(b) is being detained in connection with a criminal investigation or prosecution or with an investigation of a kind mentioned in section 341.

(3) But this section applies to money only so far as the money is free property."

117: Clause 27, page 81, line 37, after "applies" insert "by virtue of subsection (1)"

118: Clause 27, page 82, line 9, leave out from "person"" to end of line 18 and insert "means—

(a) in a case where the money is held in an account maintained with a bank or building society, the bank or building society;

(b) in any other case, the person on whose authority the money is detained;"

Amendments 116 to 118 agreed.

Clause 27, as amended, agreed.

Clauses 28 to 30 agreed.

Amendment 119

Moved by ***Baroness Williams of Trafford***

119: After Clause 30, insert the following new Clause—

"Reconsideration of discharged orders

(1) The Proceeds of Crime Act 2002 is amended as follows.

(2) In section 24 (inadequacy of available amount: discharge of order made under Part 2), after subsection (5) insert—

"(6) The discharge of a confiscation order under this section does not prevent the making of an application in respect of the order under section 21(1)(d) or 22(1)(c).

(7) Where on such an application the court determines that the order should be varied under section 21(7) or (as the case may be) 22(4), the court may provide that its discharge under this section is revoked."

(3) In section 25 (small amount outstanding: discharge of order made under Part 2), after subsection (3) insert—

"(4) The discharge of a confiscation order under this section does not prevent the making of an application in respect of the order under section 21(1)(d) or 22(1)(c).

(5) Where on such an application the court determines that the order should be varied under section 21(7) or (as the case may be) 22(4), the court may provide that its discharge under this section is revoked."

(4) In section 109 (inadequacy of available amount: discharge of order made under Part 3), after subsection (5) insert—

"(6) The discharge of a confiscation order under this section does not prevent the making of an application in respect of the order under section 106(1)(d) or 107(1)(c).

(7) Where on such an application the court determines that the order should be varied under section 106(6) or (as the case may be) 107(3), the court may provide that its discharge under this section is revoked."

(5) In section 174 (inadequacy of available amount: discharge of order made under Part 4), after subsection (5) insert—

"(6) The discharge of a confiscation order under this section does not prevent the making of an application in respect of the order under section 171(1)(d) or 172(1)(c).

(7) Where on such an application the court determines that the order should be varied under section 171(7) or (as the case may be) 172(4), the court may provide that its discharge under this section is revoked."

(6) In section 175 (small amount outstanding: discharge of order made under Part 4), after subsection (3) insert—

"(4) The discharge of a confiscation order under this section does not prevent the making of an application in respect of the order under section 171(1)(d) or 172(1)(c).

(5) Where on such an application the court determines that the order should be varied under section 171(7) or (as the case may be) 172(4), the court may provide that its discharge under this section is revoked."

(7) The amendments made by this section apply in relation to a confiscation order whether made before or after the day on which this section comes into force but do so only where the discharge of the order occurs after that day."

Amendment 119 agreed.

Clause 31 agreed.

Clause 32: Confiscation orders and civil recovery: minor amendments

Amendments 120 to 125

Moved by ***Baroness Williams of Trafford***

120: Clause 32, page 84, line 43, after "Wales)" insert "—

( ) in subsection (2), after paragraph (e) insert—

"(ea) paragraph 3(2), 6(2), 10D(1), 10G(2), 10J(3), 10S(2) or 10Z2(3) of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001;";

( ) "

121: Clause 32, page 84, line 44, at end insert—

"( ) after subsection (3)(c)(as inserted by paragraph 22 of Schedule 5) insert—

"(d) it has been forfeited in pursuance of a cash forfeiture notice under paragraph 5A of Schedule 1 to the Anti- terrorism, Crime and Security Act 2001 or an account forfeiture notice under paragraph 10W of that Schedule;

(e) it is detained under paragraph 5B, 5C, 9A or 10G(4) of that Schedule."

122: Clause 32, page 85, line 1, after "Scotland)" insert "—

( ) in subsection (2)—

(i) omit "or" at the end of paragraph (e);

(ii) after that paragraph insert—

"(ea) paragraph 3(2), 6(2), 10D(1), 10G(2), 10J(3), 10S(2) or 10Z2(3) of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001, or";

( ) "

123: Clause 32, page 85, line 2, at end insert—

"( ) after subsection (3)(c)(as inserted by paragraph 24 of Schedule 5) insert—

"(d) it has been forfeited in pursuance of a cash forfeiture notice under paragraph 5A of Schedule 1 to the Anti- terrorism, Crime and Security Act 2001 or an account forfeiture notice under paragraph 10W of that Schedule;

(e) it is detained under paragraph 5B, 5C, 9A or 10G(4) of that Schedule."

124: Clause 32, page 85, line 3, after "Ireland)" insert "—

( ) in subsection (2), after paragraph (e) insert—

"(ea) paragraph 3(2), 6(2), 10D(1), 10G(2), 10J(3), 10S(2) or 10Z2(3) of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001;";

( ) "

125: Clause 32, page 85, line 4, at end insert—

"( ) after subsection (3)(c)(as inserted by paragraph 27 of Schedule 5) insert—

"(d) it has been forfeited in pursuance of a cash forfeiture notice under paragraph 5A of Schedule 1 to the Anti- terrorism, Crime and Security Act 2001 or an account forfeiture notice under paragraph 10W of that Schedule;

(e) it is detained under paragraph 5B, 5C, 9A or 10G(4) of that Schedule."

Amendments 120 to 125 agreed.

Clause 32, as amended, agreed.

Amendments 126 and 127 not moved.

Clause 33 agreed.

Schedule 2 agreed.

Clause 34: Sharing of information within the regulated sector

Amendments 128 and 129

Moved by ***Baroness Williams of Trafford***

128: Clause 34, page 90, line 44, at end insert—

"( ) Subsection (1) applies whether or not the conditions in section 21CA were met in respect of the disclosure if the person making the disclosure did so in the reasonable belief that the conditions were met."

129: Clause 34, page 91, line 1, leave out "by virtue of" and insert "in compliance, or intended compliance, with"

Amendments 128 and 129 agreed.

Clause 34, as amended, agreed.

Clause 35: Further information notices and orders

Amendments 130 to 137

Moved by ***Baroness Williams of Trafford***

130: Clause 35, page 92, line 3, leave out from beginning to end of line 42 on page 94 and insert—

"Further information orders

22B Further information orders

(1) A magistrates' court or (in Scotland) the sheriff may, on an application made by a law enforcement officer, make a further information order if satisfied that either condition 1 or condition 2 is met.

(2) The application must—

(a) specify or describe the information sought under the order, and

(b) specify the person from whom the information is sought ("the respondent").

(3) A further information order is an order requiring the respondent to provide—

(a) the information specified or described in the application for the order, or

(b) such other information as the court or sheriff making the order thinks appropriate,

so far as the information is in the possession, or under the control, of the respondent.

(4) Condition 1 for the making of a further information order is met if—

(a) the information required to be given under the order would relate to a matter arising from a disclosure made under section 21A,

(b) the respondent is the person who made the disclosure or is otherwise carrying on a business in the regulated sector,

(c) the information would assist in—

(i) investigating whether a person is involved in the commission of an offence under any of sections 15 to 18 or in determining whether an investigation of that kind should be started, or

(ii) identifying terrorist property or its movement or use, and

(d) it is reasonable in all the circumstances for the information to be provided.

(5) Condition 2 for the making of a further information order is met if—

(a) the information required to be given under the order would relate to a matter arising from a disclosure made under a corresponding disclosure requirement,

(b) an external request has been made to the National Crime Agency for the provision of information in connection with that disclosure,

(c) the respondent is carrying on a business in the regulated sector,

(d) the information is likely to be of substantial value to the authority that made the external request in determining any matter in connection with the disclosure, and

(e) it is reasonable in all the circumstances for the information to be provided.

(6) For the purposes of subsection (5), "external request" means a request made by an authority of a foreign country which has responsibility in that country for carrying out investigations into whether a corresponding terrorist financing offence has been committed.

(7) A further information order must specify—

(a) how the information required under the order is to be provided, and

(b) the date by which it is to be provided."

131: Clause 35, page 95, line 7, leave out from "who" to "may" in line 8 and insert "is a constable, a National Crime Agency officer or a counter-terrorism financial investigator"

132: Clause 35, page 95, line 10, at end insert—

"( ) Schedule 3A has effect for the purposes of this section in determining what is a business in the regulated sector."

133: Clause 35, page 95, line 11, at end insert—

""corresponding disclosure requirement" means a requirement to make a disclosure under the law of the foreign country concerned that corresponds to a requirement imposed by virtue of this Part;

"corresponding terrorist financing offence" means an offence under the law of the foreign country concerned that would, if done in the United Kingdom, constitute an offence under any of sections 15 to 18;

"foreign country" means a country or territory outside the United Kingdom;"

134: Clause 35, page 95, line 12, leave out from "officer"" to end and insert "means—

(a) a constable,

(b) a National Crime Agency officer authorised for the purposes of this section by the Director General of that Agency,

(c) a counter-terrorism financial investigator, or

(d) a procurator fiscal;"

135: Clause 35, page 95, leave out lines 19 to 27

136: Clause 35, page 95, line 29, leave out "a further information notice, or"

137: Clause 35, page 96, line 27, leave out "a further information notice, or"

Amendments 130 to 137 agreed.

Clause 35, as amended, agreed.

Clause 36: Forfeiture of terrorist cash

Amendments 138 to 140

Moved by ***Baroness Williams of Trafford***

138: Clause 36, page 96, line 42, at end insert—

"( ) betting receipts,"."

139: Clause 36, page 97, line 4, leave out from "machine" to end of line 5

140: Clause 36, page 97, line 9, at end insert—

"( ) "betting receipt" means a receipt in physical form that represents a right to be paid an amount in respect of a bet placed with a person holding a betting licence.

( ) In sub-paragraph (5)—

"bet"—

(a) in relation to England and Wales and Scotland, has the same meaning as in section 9(1) of the Gambling Act 2005;

(b) in relation to Northern Ireland, has the same meaning as in the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (S.I. 1985/1204 (N.I. 11)) (see Article 2 of that Order);

"betting licence"—

(a) in relation to England and Wales and Scotland, means a general betting operating licence issued under Part 5 of the Gambling Act 2005;

(b) in relation to Northern Ireland, means a bookmaker's licence as defined in Article 2 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985;

"gaming machine"—

(a) in relation to England and Wales and Scotland, has the same meaning as in the Gambling Act 2005 (see section 235 of that Act);

(b) in relation to Northern Ireland, has the same meaning as in the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (see Article 2 of that Order).

( ) In the application of sub-paragraph (5) to Northern Ireland references to a right to be paid an amount are to be read as references to the right that would exist but for Article 170 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (gaming and wagering contracts void).""

Amendments 138 to 140 agreed.

Clause 36, as amended, agreed.

Clause 37 agreed.

Schedule 3: Forfeiture of certain personal (or moveable) property

Amendments 141 to 155

Moved by ***Baroness Williams of Trafford***

141: Schedule 3, page 132, line 6, at end insert—

"(2A) An order under sub-paragraph (2) made by a magistrates' court may provide for payment under paragraph 10N of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of—

(a) the proceedings in which the order is made, or

(b) any related proceedings under this Part of this Schedule.

(2B) A sum in respect of a relevant item of expenditure is not payable under paragraph 10N in pursuance of provision under sub-paragraph (2A) unless—

(a) the person who applied for the order under sub-paragraph (2) agrees to its payment, or

(b) the court has assessed the amount allowed in respect of that item and the sum is paid in respect of the assessed amount.

(2C) For the purposes of sub-paragraph (2B)—

(a) a "relevant item of expenditure" is an item of expenditure to which regulations under section 286B of the Proceeds of Crime Act 2002 would apply if the order under sub-paragraph (2) had instead been a recovery order made under section 266 of that Act;

(b) an amount is "allowed" in respect of a relevant item of expenditure if it would have been allowed by those regulations;

(c) if the person who applied for the order under sub-paragraph (2) was an authorised officer, that person may not agree to the payment of a sum unless the person is a senior officer or is authorised to do so by a senior officer."

142: Schedule 3, page 132, line 19, at end insert—

"(6) For the purposes of sub-paragraph (2C)(c), a "senior officer" means—

(a) in relation to an application made by a constable or a counter-terrorism financial investigator, a senior police officer;

(b) in relation to an application made by an officer of Revenue and Customs, such an officer of a rank designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that of a senior police officer;

(c) in relation to an application made by an immigration officer, such an officer of a rank designated by the Secretary of State as equivalent to that of a senior police officer.

(7) In sub-paragraph (6), a "senior police officer" means a police officer of at least the rank of superintendent."

143: Schedule 3, page 134, line 3, at end insert—

"(5A) An order under sub-paragraph (1) made by a magistrates' court may provide for payment under sub-paragraph (8) of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of—

(a) the proceedings in which the order is made, or

(b) any related proceedings under this Part of this Schedule.

(5B) A sum in respect of a relevant item of expenditure is not payable under sub-paragraph (8) in pursuance of provision under sub- paragraph (5A) unless—

(a) the person who applied for the order under sub-paragraph (1) agrees to its payment, or

(b) the court has assessed the amount allowed in respect of that item and the sum is paid in respect of the assessed amount.

(5C) For the purposes of sub-paragraph (5B)—

(a) a "relevant item of expenditure" is an item of expenditure to which regulations under section 286B of the Proceeds of Crime Act 2002 would apply if the order under sub- paragraph (1) had instead been a recovery order made under section 266 of that Act;

(b) an amount is "allowed" in respect of a relevant item of expenditure if it would have been allowed by those regulations."

144: Schedule 3, page 134, line 13, leave out from first "of" to end of line 14 and insert "any provision of this paragraph only if the person is a senior officer or is authorised to do so by a senior officer.

"Senior officer" has the same meaning in this sub-paragraph as it has in paragraph 10G(2C)(c)."

145: Schedule 3, page 134, line 16, at end insert—

"(za) first, it must be applied in making any payment of legal expenses which, after giving effect to sub-paragraph (5B), are payable under this sub-paragraph in pursuance of provision under sub-paragraph (5A);"

146: Schedule 3, page 134, line 17, leave out "first" and insert "second"

147: Schedule 3, page 134, line 21, leave out "second" and insert "third"

148: Schedule 3, page 134, leave out lines 26 to 39

149: Schedule 3, page 135, line 15, at end insert—

"(3A) An order under sub-paragraph (3) made by the High Court may include provision of the type that may be included in an order under paragraph 10G(2) made by a magistrates' court by virtue of paragraph 10G(2A).

(3B) If provision is included in an order of the High Court by virtue of sub-paragraph (3A) of this paragraph, paragraph 10G(2B) and (2C) apply with the necessary modifications."

150: Schedule 3, page 136, line 32, at end insert—

"( ) Where an order under paragraph 10I is made by a magistrates' court, any party to the proceedings for the order (including any party to the proceedings under paragraph 10G that preceded the making of the order) may appeal against a decision to include, or not to include, provision in the order under sub-paragraph (5A) of paragraph 10I."

151: Schedule 3, page 136, line 33, leave out "sub-paragraph (1)" and insert "this paragraph"

152: Schedule 3, page 136, line 37, leave out "sub-paragraph (1)" and insert "this paragraph"

153: Schedule 3, page 137, line 42, at end insert—

"(aa) second, they must be applied in making any payment of legal expenses which, after giving effect to paragraph 10G(2B)(including as applied by paragraph 10J(3B)), are payable under this sub-paragraph in pursuance of provision under paragraph 10G(2A) or, as the case may be, 10J(3A);"

154: Schedule 3, page 137, line 43, leave out "second" and insert "third"

155: Schedule 3, page 138, line 1, leave out "third" and insert "fourth"

Amendments 141 to 155 agreed.

Schedule 3, as amended, agreed.

Clause 38 agreed.

Amendment 156

Moved by ***Lord Empey***

156: After Clause 38, insert the following new Clause—

"Assets owned by persons involved in supplying arms to terrorist organisations

(1) Where assets based in the United Kingdom are frozen under the Anti-terrorism Crime and Security Act 2001 or European Union Council Regulations adopted by virtue of Chapter 2 of Title V of the Treaty on European Union, and the assets meet the requirement in subsection (3), the Treasury must take all actions necessary to prevent the release of the frozen assets until the circumstances in subsection (5) are met.

(2) The actions referred to in subsection (1) may include putting in place such domestic asset freezing measures, under the Terrorist Asset-Freezing etc. Act 2010, as are necessary to ensure the effective implementation of this section.

(3) The requirement in subsection (1) is that the assets are owned by persons who are or have been involved in supplying terrorist organisations in the United Kingdom with arms, including explosive materials.

(4) A person is deemed to be or have been involved in supplying terrorist organisations in the United Kingdom with arms if—

(a) the United Nations Security Council has made a Resolution to that effect; or

(b) the Treasury reasonably believes that the person is or has been involved in supplying terrorist organisations in the United Kingdom with arms.

(5) The circumstances in subsection (1) are that a settlement has been reached in respect of compensation to be paid to United Kingdom citizens affected by the supply of arms referred to in subsection (3).

(6) In this section—

"terrorist organisations in the United Kingdom" means organisations which are based in the United Kingdom, and that the Treasury reasonably believes are or have been involved in terrorist activity, within the meaning of the Terrorist Asset-Freezing etc. Act 2010; and

"United Kingdom citizen" has the same meaning as in the British Nationality Act 1981."

Lord Empey (UUP): My Lords, Members may be familiar with this theme, to which I have returned on a number of occasions, including via a Private Member's Bill. It follows the principle that persons who have been engaged in criminal activity, persons who have been engaged in activities contrary to human rights and persons who have been involved in terrorism and who have attacked this country consistently over a long period should not have access to their assets without the opportunity for victims of the activities of those individuals, organisations or, in this case, the state to have those assets forfeited to the extent of the injuries inflicted.

The position is very simple: for many years, the state of Libya supplied terrorists with material, primarily in the form of Semtex. It provided training and logistical support. It provided boatloads—literally—of weapons. It provided the arms, training and logistics for a terrorist organisation. Many persons in the United Kingdom were injured and suffered great loss as a direct result of that activity. If we are contemplating a Bill which has a section in it dealing with terrorism, that seems the perfect opportunity for Her Majesty's Government to deal with this matter.

I know that the Minister will say, "Oh, but there's a United Nations resolution, and there are resolutions of the European Union"—I am sure I could read out her reply blindfold. However, the United Kingdom is a permanent member of the Security Council. We are a member of the European Union. At this point in time, after years and years, we have not even asked our European partners or the United Nations for any variation whatever on the asset-freezing resolutions to take account of the humanitarian needs of our own citizens. Other countries—the United States, France, Germany and Italy—have all had compensation paid to their citizens as a result of terrorist activity. We are the glaring exception, despite the fact that more people have suffered in this country than in any other—there is no argument about that.

[Lord Empey]

I have been writing to government since 2002. My first letter was to Tony Blair; it was replied to by Mike O'Brien, at that time in the Home Office. I have had letters from Prime Minister Cameron. We had letters from the noble Baroness, Lady Warsi, when she was at the Foreign Office, the noble Lord, Lord Howell of Guildford, and other Ministers in Administrations of all parties. The Minister may be aware that a group of us from all parties is pursuing this issue in both places. Even today, I know that efforts have been made by an all-party group of Back-Benchers in the other place to go to the Backbench Business Committee to see whether they can get support for a debate. I know that the honourable Member for Poplar and Limehouse, Jim Fitzpatrick, whose patch includes the site of the London Docklands bomb, is active in this and introduced a debate in Westminster Hall early last year.

There is a broad swathe of support for the measure in your Lordships' House because it passed my Private Member's Bill, the Asset Freezing (Compensation) Bill, last year. That has unfortunately been stalled for three solid months in a row using the procedural device of objecting in the other place. It is now scheduled to come up on 12 May but I have no doubt that it will be blocked again. The reason is that last summer we went to see Treasury and Foreign Office officials and we challenged them. I also went to the Northern Ireland Affairs Select Committee to hear evidence from former Foreign Secretary Jack Straw. That was very revealing. His reaction was, "These people were compensated". That is technically true but they were compensated by the British taxpayer, not the people who perpetrated the acts or provided the material to attack them. That was a perverse position. It seems that there has been the most bizarre attitude over the last 15 to 20 years. Where would you get a situation in this day and age where another country would conduct a proxy war against you, injure your citizens, and you ignore it?

We happen to know that there are £9.5 billion of assets attributed to the Libyan regime headquartered in London. We should ask our colleagues in the United Nations and the European Union to see if we can even take a lean against part of those assets to help our own citizens who were injured as a result of this activity. The Bill is another vehicle where this is consistent with the principles behind it. It is consistent with justice and with the fact that the people who supplied that material were in severe breach of all human rights legislation that you could imagine. Some of the most terrible injuries were inflicted by these people. Part 2 of the Bill would extend the measures such as disclosure orders to apply to terrorism investigations. We see it talk about gross human rights violations, and seizure and forfeiture powers. The principles are all there in the Bill. We should use the scope of this legislation to deal with one of the most significant and long-running major injustices that has afflicted our people.

Also, Her Majesty's Government should make some serious effort—I see no sign that it has been made heretofore—in the United Nations and European Union to get our partners to help us. I am all for asset-freezing and resolutions, and I understand that the Government cannot just act unilaterally. However, they have not even bothered to lift a finger for nearly 20 years. I find that unacceptable. The Bill provides a vehicle whereby we can seriously address and right a great wrong. I beg to move.

Baroness Williams of Trafford: My Lords, I am grateful to the noble Lord for highlighting this issue. I pay tribute to his many years of work on counterterrorism matters. I am very pleased to be able to respond.

As we heard, Amendment 156 would impose a duty on the Treasury to prevent the release of assets of an individual that have been frozen under various legislative regimes by using "all action necessary", including considering the use of a designation under the Terrorist Asset-Freezing etc. Act 2010. The Terrorism Act 2000, or TACT, already includes a number of criminal offences under Sections 15 to 18 for terrorist financing, including the use, possession or funding of assets in support of terrorist activity. Specifically, Section 23 of TACT provides for the forfeiture of money and/or property following a conviction for these and other terrorism offences. This means that assets can be frozen by way of a restraint order during the investigation and prosecution of such offences, and subsequently forfeited upon a successful conviction, ensuring that they are not available to terrorist organisations.

The element of the noble Lord's amendment relating to compensation is also covered by paragraph 4A of Schedule 4 to TACT, which allows for the proceeds of the forfeiture of property to be paid as compensation to the victims of terrorism.

9.30 pm

Finally, the Bill is amending the Anti-terrorism, Crime and Security Act 2001 to allow for the freezing and subsequent forfeiture of funds held in bank accounts that are terrorist cash or property. A court may forfeit the funds in a frozen account if it is satisfied that this is or represents terrorist cash or property. There are therefore already a considerable number of powers available to the police in these situations.

The Government are also concerned that, as drafted, the amendment raises human rights implications. In particular, it does not make sufficient provision for due process for individuals to challenge the action taken by the Treasury, and the threshold for the Treasury taking such action may not be sufficiently robust when compared with the standard applied under the provisions of ATCSA and TAFA.

On this basis, I hope the noble Lord will see that his proposed approach is not the right one in this situation. I will take back his point about the European Union and what could be done to that end, and I will get back to him on that. I hope he will feel able to withdraw his amendment.

Lord Empey: I thank the Minister for her reply. She referred to a number of powers in the Bill. I am all for those but they do not deal with the specific issues that I am trying to get at, where a state, or a representative of a state, has assets in this city, on a massive scale, that are frozen because of the United Nations resolution, which was followed by a European Union agreement, which, incidentally, was revised substantially in January

last year. We have not addressed those issues. I am grateful that the Minister is going to take that back but dare I use the phrase, "I haven't gone away, you know"? In the event that the Minister is unable to satisfy me on this matter, I reserve the right to bring it back on Report. With that, I beg leave to withdraw the amendment.

Amendment 156 withdrawn.

Schedule 4 agreed.

Clause 39 agreed.

Clause 40: Offences in relation to counter-terrorism financial investigators

Amendment 157

Moved by ***Baroness Williams of Trafford***

157: Clause 40, page 104, line 45, after "fine" insert "not exceeding level 3 on the standard scale"

Amendment 157 agreed.

Amendment 158

Moved by ***Baroness Vere of Norbiton***

158: Clause 40, page 105, line 5, at end insert "or Part 1 of Schedule 5A (terrorist financing investigations in England and Wales and Northern Ireland: disclosure orders)"

Baroness Vere of Norbiton: My Lords, today's final group of amendments also concerns Part 2 of the Bill on the financing of terrorist-related activity.

Government Amendment 158 will extend the existing assault and obstruction offences in respect of counterterrorism financial investigators—CTFIs—to include assault or obstructing CTFIs who are exercising powers in relation to the disclosure order power introduced in Clause 33. This power is comparable to ones in Schedule 5 to the Terrorism Act 2000.

Amendment 160 would insert provision into the Terrorism Act so that court orders made in one part of the UK for the purposes of or in connection with the investigation of terrorist financing can be enforced in another. This power is comparable to powers in Schedule 5 to the Terrorism Act 2000.

Amendment 160 inserts provisions into the Terrorism Act so that court orders made in one part of the UK for the purposes of, or in connection with, the investigation of terrorist financing can be enforced in another. This power is being provided to ensure that the new powers in this Bill—for example, disclosure orders and further information orders—can be enforced more effectively. We are also taking the opportunity to ensure that existing provisions in the Terrorism Act—for example, production orders—can be enforced in the same way. The power to enforce orders across UK borders is already available for equivalent orders made under the Proceeds of Crime Act. I beg to move.

Amendment 158 agreed.

Amendment 159

Moved by ***Baroness Williams of Trafford***

159: Clause 40, page 105, line 33, after "fine" insert "not exceeding level 3 on the standard scale"

Amendment 159 agreed.

Clause 40, as amended, agreed.

Amendment 160

Moved by ***Baroness Williams of Trafford***

160: After Clause 40, insert the following new Clause—

"Enforcement in other parts of United Kingdom

Enforcement in other parts of United Kingdom

After section 120B of the Terrorism Act 2000 (inserted by section 40 above) insert—

" 120C Enforcement of orders in other parts of United Kingdom

(1) Her Majesty may by Order in Council make provision for an investigatory order made in one part of the United Kingdom to be enforced in another part.

(2) In subsection (1)"investigatory order" means any of the following kinds of order—

(a) an order under section 22B (further information orders);

(b) an order under paragraph 5 of Schedule 5 (production orders: England and Wales and Northern Ireland) that is made in connection with a terrorist investigation in relation to terrorist property;

(c) an order under paragraph 13(1)(b) of that Schedule that is made in connection with material produced or made available as a result of an order within paragraph (b) of this subsection;

(d) an order under paragraph 22 of Schedule 5 (production orders: Scotland) that is made in connection with a terrorist investigation in relation to terrorist property;

(e) an order under paragraph 30(1)(b) of that Schedule that is made in connection with material produced or made available as a result of an order within paragraph (d) of this subsection;

(f) an order under paragraph 9 of Schedule 5A (disclosure orders: England and Wales and Northern Ireland);

(g) an order under paragraph 19 of that Schedule (disclosure orders: Scotland);

(h) an order under paragraph 1 of Schedule 6 (financial information orders);

(i) an order under paragraph 2 of Schedule 6A (account monitoring orders).

(3) An Order under this section may apply (with or without modifications) any provision of or made under—

(a) an Act (including this Act),

(b) an Act of the Scottish Parliament, or

(c) Northern Ireland legislation.

(4) An Order under this section—

(a) may make different provision for different purposes;

(b) may include supplementary, incidental, saving or transitional provisions.

(5) Rules of court may make whatever provision is necessary or expedient to give effect to an Order under this section.

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

Amendment 160 agreed.

Clause 41 agreed.

House resumed.

Bus Services Bill [HL]

Returned from the Commons

The Bill was returned from the Commons agreed to with amendments. It was ordered that the Commons Amendments be printed. (HL Bill 120)

House adjourned at 9.36 pm.