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HOUSE OF LORDS

OFFICIAL REPORT

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

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

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

House of Lords

Monday 30 October 2017

2.30 pm

Prayers—read by the Lord Archbishop of Canterbury.

Retirement of a Member: Baroness Paisley of St George's

Announcement

2.36 pm

The Lord Speaker (Lord Fowler): My Lords, I should like to notify the House of the retirement, with effect from today, of the noble Baroness, Lady Paisley of St George's, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House, I thank the noble Baroness for her much-valued service to the House.

Health: Flu

Question

2.37 pm

Asked by ***Baroness Wheeler***

To ask Her Majesty's Government what preparations are being made to deal with the anticipated rise in flu cases this winter.

The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con): My Lords, it is too early to predict the impact of flu this winter. As part of the Government's preparedness, every trust has developed plans for the coming winter season. The seasonal flu vaccination has been offered to those at particular risk of flu, and to all health and social care workers. A nasal spray vaccine will be offered to all children aged two to eight years old to help to protect them and their families.

Baroness Wheeler (Lab): I thank the Minister for his response. Last week's Healthwatch report showed an alarming increase in the number of hospital readmissions, which have risen by nearly a quarter in four years. The survey also showed a rise of 29% of people readmitted to hospital as emergencies within 24 hours. Does not this raise huge concerns about patients being discharged unsafely and before they are medically fit in order to meet the Government's empty beds targets, not to mention the trauma and upset caused to the patients themselves and their carers and families? Do the targets take account of readmissions? What additional funding and contingency plans are in place across NHS trusts and local authorities, if there just are not enough beds to cope with the winter flu crisis? Is not the Government's flu preparedness in urgent need of review?

Lord O'Shaughnessy: The NHS has never been better prepared for winter and, indeed, for flu. There are something like 21,000 people eligible for free flu jabs this year, including, for the first time, care workers in the independent and voluntary sector. So that is good progress. Of course, we do not know how exactly it will play out.

On the point about readmission, the head of Healthwatch said that the data raises some big questions—and we would agree with that. Some work needs to be done on the quality of the data, and NHS Digital has been asked to look at it. One issue is having the right care settings for patients to be discharged to, which is why I am sure the noble Baroness will welcome the data published last week showing a £500 million-plus increase in health and social care spending on precisely that kind of provision.

Baroness Morris of Bolton (Con): My Lords, a few weeks ago, I read an excellent letter by a doctor in a newspaper which said that, as well as having the flu jab to protect ourselves, we have a responsibility to those around us who are more vulnerable. I was shocked last year, when I went to the excellent drop-in centre that we have every year, to discover that one of the most vulnerable groups to influenza is pregnant women. Would my noble friend agree that that message of responsibility to others is a very powerful one, and one that should make us all stop, think and then be immunised?

Lord O'Shaughnessy: My noble friend is absolutely right. I fear that the Westminster flu clinic had run out of jabs when I went, unsuccessfully, to get mine, but I did have one last week. Her point was about super-spreaders and this is one of the reasons why young children aged two to eight—who are most likely to live in families with pregnant women—are now getting the nasal spray at nursery and in school. This is precisely to protect the families of those who are most vulnerable.

Lord Clarke of Hampstead (Lab): My Lords, I am sure that the possibility of people getting vaccinations in places such as Sainsbury's and Boots while they are doing the shopping is a very good thing. I talked about this to a doctor friend at the weekend and was told that the pharmacists in those places get paid more for these vaccinations than doctors in their surgeries. Can the Minister confirm whether this is the case? If it is, it is a bit unfair to the NHS people.

Lord O'Shaughnessy: I was not aware of that particular fact, but I will look at the issue of the tariffs. Vaccinations are available in a range of settings: nurses, schools, shopping centres, even the Houses of Parliament—and, of course, community pharmacies, which have a critical role to play as one part of the strategy. Something like a million people have already been vaccinated in them so far this year. I will write to the noble Lord with the specifics on the tariff.

Baroness Jolly (LD): My Lords, the Minister has, quite rightly, said that community pharmacies are a really important place to seek one's flu jab. However, the owner of Lloyds Pharmacy, Celesio UK, has announced that nearly 200 of its local chemist's shops will cease trading. What assessment have the Government made of the potential clinical impact of this decision? What pressures will follow next winter as a result?

Lord O'Shaughnessy: I agree with the noble Baroness about the role of community pharmacy. It is worth bearing in mind that some 88% of people are within a 20-minute walk of a community pharmacy, which is accessible for the vast majority. There are also 20% more pharmacies than there were 12 or 13 years ago. Pharmacies have a critical role to play and are there in the community, but companies come in and out all the time.

Baroness Meacher (CB): My Lords, I talked to a very senior NHS consultant this morning. To my absolute amazement, he said that the latest research showed that compulsory flu jabs for NHS staff provide no significant improvement at all in patient health. This is rather striking and a bit unexpected. Does the Minister have any different research evidence?

Lord O'Shaughnessy: That is unexpected and would be worrying if it is true. That is not the information on which we have based our policy. Our information is that, for most people—though not all—flu jabs are effective in mitigating the risk of flu in care settings.

Baroness Manzoor (Con): My Lords, the World Health Organization recommends what strain of vaccine should be developed, nine months to a year ahead. This happened before the Australian epidemic which affected the elderly and killed many people. Will the Minister confirm that the vaccine which has been developed here in the UK is both effective and relevant and that the young and elderly people do need to access it?

Lord O'Shaughnessy: My noble friend is absolutely right. Back in September, Simon Stevens, the head of the NHS, warned about the impact of the flu epidemic in Australia and New Zealand. The feedback on that was that the particularly vulnerable groups were the over-80s and five to nine year-olds. We have talked about helping younger children through school-based immunisation. We also have the highest uptake in Europe of over-65s getting flu jabs. There is clearly more to do because around one-third of people still do not.

Lord Winston (Lab): My Lords, will the Minister reconsider his statement, in answer to the Question, that the NHS has never been better ready for a flu outbreak? The problem with viral infections, like pandemics, is that they are completely unpredictable and often hit in a way that we never expect. They remain one of the biggest single threats to humanity. I hope he understands that this unpredictability is a very real issue with all these infections, including influenza, as history has shown us.

Lord O'Shaughnessy: The noble Lord is, of course, quite right: we cannot know what will hit us. However, we can prepare in advance as much as possible. That was the sense I meant to convey—namely, that a huge amount of preparedness has gone on for not just flu but the winter. That work started in the summer—earlier this year than ever before. The flu vaccination on offer covers the strains that Public Health England thinks are most likely to come, but, of course, we cannot predict exactly what will happen.

Public Parks: Funding

Question

2.44 pm

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

To ask Her Majesty's Government what assessment they have made of the availability of resources for the support and maintenance of public parks in the United Kingdom.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Northern Ireland Office (Lord Bourne of Aberystwyth) (Con): My Lords, the Government recognise the value of parks in providing vibrant and inclusive locations for local communities to enjoy. We welcome the Select Committee's inquiry on parks and have established a parks action group across Whitehall departments and with experts from across the parks sector. We have also committed £500,000 to support the group's work on building the sustainability of parks.

Baroness Jones of Whitchurch (Lab): I thank the Minister for that reply. Going right back to the Victorians, it was recognised that public parks benefit our physical and mental health as well as the environment and biodiversity. Is the Minister therefore concerned by the deterioration of our parks? There have been reports of huge cuts to the maintenance budgets with the loss of trees, shrubs and flowers, which are often replaced with bare soil, and, along with that, increased graffiti and vandalism. Does he agree that the rise of privatised open space in our cities is not the answer to that? What we need is green open space available to everyone. Therefore, I urge the Government to take a lead on reinstating our parks as the national pride that they once were, rather than passing the problem down to local authorities and voluntary organisations, which are doing their bit but simply do not have the resources available to reverse that decline.

Lord Bourne of Aberystwyth: My Lords, I am afraid I do not recognise that picture of doom and gloom painted by the noble Baroness opposite. Indeed, the Select Committee report recognised the valuable work done by local authorities over time. In addition, there are the royal parks, supported by DCMS, and national parks. The noble Baroness is right about these having thrived since Victorian times, but they are still thriving. An immense amount of good work is going on. We have established a parks action group, which is looking at this, and have accepted the majority of the Select Committee's recommendations, as the noble Baroness will know.

Baroness Rawlings (Con): My Lords, I hope that many of your Lordships would agree that public parks have been important for centuries, not only for human enjoyment and wildlife protection but as a vital filter for pollution. With the present awareness of escalating mental health and stress problems, never have these precious green havens been more important. Does the Minister agree that they should be properly cared for and financed? Would the Government support a countrywide volunteering scheme, perhaps teaming up with *Country Life* magazine, the best campaigner for serious like causes?

Lord Bourne of Aberystwyth: My Lords, I know that my noble friend has taken an interest in parks for a considerable time. The parks action group, about which I spoke, is doing work across government. We recognise the value of this work across government so the group includes representatives from, for example, the Department of Health and the Home Office and other organisations such as the National Trust. The LGA is represented, as is Keep Britain Tidy. This work is important for all the community and contributes massively to our national well-being. We look forward to the work of the parks action group.

The Earl of Clancarty (CB): My Lords, are the Government considering mapping the extent of public parks in the country, which might include some idea of their current state of preservation?

Lord Bourne of Aberystwyth: My Lords, the noble Earl raises an important issue. The parks action group will look at all these issues at its first meeting in November. We expect it to consider whether it will do that work and then draw conclusions from it. I look forward to seeing how the group's first meeting goes. We will, of course, ensure that the House is kept in the picture on how that is progressing.

Lord Scriven (LD): My Lords, Natural England estimates that the NHS could save £1 billion a year in mental and physical health costs if every household had equal access to parks and green spaces. Is the cross-Whitehall group specifically looking at this saving, as well as the potential pooling of budgets, where one department saves and another can benefit, to look at equal access to parks and to bring about better health and well-being?

Lord Bourne of Aberystwyth: The noble Lord raises an interesting and germane point about the importance of the parks sector to the whole community, not just in economic terms. We do not want to prejudge the work that will be done at the first meeting of the parks action group, but it is a broad-based committee that will look at this. As I say, we will ensure that the House is updated on how that work is going forward. However, it is clearly an interesting and important piece of work.

Baroness Hollis of Heigham (Lab): My Lords—

Baroness Billingham (Lab): My Lords—

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, I hope that both noble Baronesses will agree to give way appropriately. We have time to hear both if they are brief.

Baroness Billingham: My Lords, my question relates to sport, which we do not talk enough about in this House. Public parks have been incredibly important in the provision of sporting facilities, from tennis courts to football pitches. They are indeed the grass roots of sport. Why is there such a reduction in courts and pitches? It is important that this is halted. What action are the Government taking to provide more facilities, not fewer?

Lord Bourne of Aberystwyth: My Lords, the noble Baroness raises an interesting point, specifically on courts and pitches. I will ensure that she gets a response to her question, but it goes beyond today's narrow Question on support.

Lord Flight (Con): Right next door to this House, Victoria Tower Gardens—a beautiful piece of parkland—is threatened with being overrun by the Holocaust memorial. The Holocaust memorial is a great cause and very worthy, but it must be more sensible for it to be sited at the Imperial War Museum, which desperately wants it. Otherwise, we will lose a rare piece of parkland, slap bang in the middle of London.

Lord Bourne of Aberystwyth: My Lords, noble Lords around the House will have differing views on this. First, we are not losing parkland but gaining an important monument in central London, which I think is central to the thoughts of all parties and people in the country. I am sure that there will be ample opportunity to discuss this, but I am also sure that the House will want to welcome the winning design and be behind this important national monument.

Benefit Rate Freeze

Question

2.52 pm

Asked by ***Baroness Lister of Burtersett***

To ask Her Majesty's Government what is their assessment of the impact of the benefit rate freeze, in the light of the higher rate of inflation than that anticipated in the original impact assessment.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Buscombe) (Con): My Lords, we currently provide people below state pension age with over £95 billion a year in welfare support. The benefit freeze is part of a package of welfare reforms that is designed to ensure that the system remains sustainable and to incentivise claimants into work. These reforms are working, and we have not had a lower unemployment rate since the 1970s. The changes we have made to the benefits system allow us to target the support we provide to those who need it most.

Baroness Lister of Burtersett (Lab): I take it from that reply that the Government have not done an assessment. However, independent assessments of the four-year freeze indicate losses of over £800 a year for many two-child families in or out of work, and significantly worse poverty—especially child poverty—inequality and homelessness. My question to the Minister is simple. Do the Government care about the harmful impact of this policy on people who already have so little—yes or no?

Baroness Buscombe: My Lords, we do care, and that is why we are incentivising people into work. All our research shows that workless families are most likely to drive children into poverty. In terms of our reforms, we introduced 15 hours of free childcare for working families. From September this year, we have doubled that from 15 to 30 hours a week in England, worth on average up to £5,000 a child. Since April 2016, the universal credit childcare element has covered up to 85% of eligible childcare costs compared with 70% with working tax credits.

Baroness Sherlock (Lab): My Lords, these benefit freezes are not reforms; they are simply a cut. Benefits used to rise in line with inflation every year until the Government decided that in future they would not. They have been frozen in cash terms, so all that happens is that people have the same amount of money to pay for food and rent in 2020 as they did in 2015 while inflation goes up. That simply cannot be right. These are people who are too sick to work, who have small children or who are in work but cannot earn enough to pay for the running costs of their household. Therefore, I ask the Minister again: do the Government care about the poorest in our society? If they do, what are they going to do about it, because fine words butter no parsnips?

Baroness Buscombe: My Lords, as I have said to noble Lords opposite, we do care, but we are absolutely clear that work is the best way to get children, in particular, out of poverty. That is why we want to incentivise work, which is the best route, but we need to focus on making sure that people see their wages rise and take home more of their pay packet once they are in work. Our reforms include increasing the national living wage for workers aged 25 and over, cutting income tax for over 30 million people and extending free childcare for working parents.

Lord Stoneham of Droxford (LD): My Lords, the Government never anticipated that inflation would be double what it was when they originally introduced this freeze on working-age benefits. If they are prepared to look again at public sector pay, why will they not look at working-age benefits?

Baroness Buscombe: I think I said that we are already spending over £95 billion on benefits for people of working age, but we have to ensure that that is fair also to the taxpayer and that it encourages people into work. Before we brought in the Welfare Reform and Work Act, the inflation rate, for example, for most working-age out-of-work benefits, such as jobseeker's allowance, went up by 21% between 2008 and 2015, while earnings rose by 12%. We want to incentivise work, which we know is the best route out of poverty.

The Lord Bishop of Oxford: My Lords, does the Minister agree that incentivising people back into work and supporting the poorest in our society, including children, are not mutually exclusive? Will she comment on the ways of doing the second alongside the first? Will she also set out the Government's plans to remedy the current situation, in which the poorest of the poor are falling further behind?

Baroness Buscombe: I absolutely understand where the right reverend Prelate is coming from, but I want to make it clear that we are doing all we can to help those most in need and, for example, maintaining payments for people with additional needs. That is why we will be spending a further £2.5 billion this year to support pensioners and carers and to maintain the value of payments to people faced with the extra costs of disability needs. In addition, we are giving extra support to lone parents and children.

Baroness McIntosh of Pickering (Con): My Lords, does the Minister agree that memories are extremely short? Does she remember a time when a different Government were in power and pensions were put up by a miserly 75 pence a week?

Baroness Buscombe: I certainly remember that well. It is completely right that we do all we can to support pensioners.

Baroness Watkins of Tavistock (CB): My Lords, can the Minister comment on the intergenerational difference? Many pensioners pay 40p in the pound in tax and get significant rises because of the triple lock, whereas some of the poorest families who have been referred to recently are having their income reduced in relation to inflation?

Baroness Buscombe: My Lords, it is true that the state pension and benefits for pensioners are exempt from the benefit freeze, but this is because they are generally for people who have permanently left the labour market, meaning they have less ability to increase their income. We are committed to the triple lock for the remainder of this Parliament, but pensioner poverty continues to stand at one of the lowest rates since comparable records began—and we want to keep it that way.

Child and Adolescent Mental Health Services

Question

2.59 pm

Asked by ***Baroness Walmsley***

To ask Her Majesty's Government what action they are taking to ensure that children and young people can obtain timely access to Child and Adolescent Mental Health Services.

The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con): My Lords, the Government are committed to making sure that 70,000 more children and young people each year will receive evidence-based mental health treatment by 2020-21. Since publishing *Future in Mind*, the Government have made an additional £1.4 billion available to improve children's mental health. Key mechanisms for delivery are local transformation plans, which cover the full spectrum of mental health, and the upcoming children and young people's mental health Green Paper, which will contain proposals for further improving access to services.

Baroness Walmsley (LD): My Lords, does the Minister agree that early intervention is essential to prevent escalation into crisis and lifelong problems? Is he aware that the number of CAMHS psychiatrists fell by 6.6% between 2013 and this year, while demand for their services rose? The number of qualified doctors who go into psychiatry is 2.6%, the lowest of any specialism, and some universities do not send any. Will he consult Health Education England to find out what it is doing about this, because the pipeline is drying up?

Lord O'Shaughnessy: The noble Baroness is quite right to highlight the fact that we need more staff to meet the mental illness burden in society, which is sadly growing. I hope that she will have seen that Health Education England has announced that there will be 21,000 more mental health staff by 2021, of which 13,000 will be qualified clinical staff, including 700 more doctors. The warning she has made has been heard loud and clear and those changes have been made.

If I may, I would like to use this opportunity to say that I made a mistake in my previous answer, when I talked about there being 21,000 people eligible for flu jabs. If that really was true, that would be a poor place to be. It is actually 21 million, which is slightly more reassuring.

Baroness Pitkeathley (Lab): My Lords, I would like to ask the Minister about the 700,000 young carers, who often have severe mental health needs because of the stress of the duties they undertake, as he will know. We had high hopes of specific action for young carers in the refreshed carers strategy, but I understand that this is being rolled up into the consultation on the social care Green Paper. I am concerned and would like to be reassured that the Government have not abandoned the long-awaited carers strategy. If we are waiting for the social care consultation, how will he ensure that the mental health needs of young carers are urgently addressed?

Lord O'Shaughnessy: I know that the noble Baroness cares passionately about this group of people. My understanding is that those policy issues are being considered in the round with the social care consultation. I shall write to her to clarify that point. She might like to know that, in the upcoming Green Paper on children and young people's mental health, there will be an expansion of some of the work that has already gone on around providing mental health first aid and various other things in schools, which will capture some of the young people that she is talking about.

The Archbishop of Canterbury: I declare an interest as having members of the family who have used child and adolescent mental health services. Does the Minister not agree that the fundamental principle of the NHS is free treatment at the point of need? Does he also agree that one of the major failures in CAMHS—it has been well evidenced by academic studies over the last two years—has been that, because of the shortage of resources, only those with the most critical needs are treated at all, and the early intervention which would help prevent needs becoming critical has been deeply neglected owing to an absence or lack of specialised therapies, particularly talking therapies? Will he confirm that the work on the most critical side is going to be extended so that children and adolescents can get care earlier and more effectively, saving the state money and fulfilling the purposes of the NHS?

Lord O'Shaughnessy: Yes, I wholeheartedly agree with the most reverend Primate. We are making up for lost time, unfortunately, with children and young people's mental health care and there is a lot to do. He will be pleased that the additional funding being provided is helping with the rollout of the children and young people's IAPTs—the talking therapies. As I said, the intention of the extra funding is to be able to treat 70,000 more young people, on top of those who have already been treated, by 2021—so more young people are being seen. That will increase the 25% of the potential caseload currently dealt with to 35%. Obviously that is better but it is not the whole way.

Lord Farmer (Con): My Lords, following on from that question, I ask what the Government are doing in relation to preventing children's mental health problems by addressing parental conflict and family breakdown.

Lord O'Shaughnessy: That is an incredibly important point because good relationships are very influential on young people's mental health, and the Green Paper will look at the role of family conflicts. My noble friend will be pleased to know that the Department for Work and Pensions is launching a programme to reduce parental conflict in conjunction with the Early Intervention Foundation. I hope that it will have some positive benefit in reducing parental conflict, which is, of course, one of the causes of mental illness.

Lord Brooke of Alverthorpe (Lab): Does the Minister accept that there is a wide variation in the offering of services between one geographical location and another? Will the Green Paper which is being prepared address this, and how quickly will it be resolved?

Lord O'Shaughnessy: The noble Lord is right about variation, sadly. We had the CQC thematic review on mental health provision at the end of last week, which showed that 80% of specialist in-patient care is good or outstanding but that that is true of only two-thirds of community care provision, with around a third

[LORD O'SHAUGHNESSY]
either requiring improvement or inadequate. That is clearly not good enough. Patchy provision is absolutely one of the things that we need to deal with. The best way of doing that is by expanding both the number of children being treated and the size and quality of the workforce, to help us to meet our targets.

Baroness Jolly (LD): According to a *Guardian* article last month, English CAMHS is struggling to satisfy the rapidly growing demand of referrals. We all know this. Within the past decade, 68% of admissions into hospital because of self-harm were girls under the age of 17. What are the Government doing to decrease the number of young girls inflicting self-harm?

Lord O'Shaughnessy: Again, this is one of the most difficult issues. Two hundred thousand people a year are admitted into the health service with self-harming injuries. Twenty per cent of young women under the age of 24 have said that they have self-harmed at some point in their lives—that is one in five. There are now NICE guidelines on self-harm and its treatment and there will be a new care pathway by 2019. However, I do not underestimate how difficult it is to crack this problem.

Data Protection Bill [HL]

Committee (1st Day)

Relevant document: 6th Report from the Delegated Powers Committee, 6th Report from the Constitution Committee

3.08 pm

Clause 1: Overview

Amendment 1

Moved by ***Lord Stevenson of Balmacara***

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

"( ) Section (Right to protection of personal data) makes provision for a general right to the protection of personal data."

Lord Stevenson of Balmacara (Lab): My Lords, in moving Amendment 1 in my name I shall speak also to Amendment 4A, which I hope the Government will agree is consequential. We now commence seven days in Committee on the Bill in your Lordships' House with a simple amendment. It sets out a principle that we think is important enough to ensure that it is at the heart of the Bill. As in all Committee debates, Her Majesty's loyal Opposition hope to engage the Government on issues of both principle and detail, and thereby improve the Bill by the time it leaves this House. As witness to our willingness to work with the Government, we have been reading the rather florid statements that the Government put out over the weekend and have tabled an amended version of our Amendment 4 in manuscript, which I gather significantly reduces the gap between us and the Government on a number of key points. But we will not resile from ensuring that the principles which underpin this Bill are securely in place.

As we made clear at Second Reading, we broadly support the Bill but we cannot ignore the fact that if the European Union (Withdrawal) Bill receives Royal Assent as it currently stands, it will remove rights which the people of this country currently enjoy, care deeply about, and are essential to UK business going forward. We think that the status quo has worked well for the UK up until now, so if it is not broken, why change it? I hope that the noble Lord has a convincing argument to make on this point when he comes to respond.

Much has already been said in your Lordships' House about how complicated this Bill is. It has to deal with a fast-growing and crucial part of our economy and the pace of technological change will create services that we cannot even imagine today. Legislating for this is complicated, but getting the principles right is the key here. It gets even more complicated. The Bill deals with the situation that will obtain after the general data protection regulation is implemented across Europe on 25 May 2018. It provides for the period from that date until such time as the UK leaves the EU and it covers the period after that when what is called the "applied GDPR" will become the law of the land. It has been remarked on that all this is happening without Parliament actually scrutinising the basic text. I suggest again that principles are the key.

One of the key principles which underpinned earlier data protection legislation is Article 8 of the EU Charter of Fundamental Rights. It is indeed the basis of much of what is in the GDPR and applies to the whole of the EU, but when we try to find references in the Bill to the right to privacy and to the protection of personal data which Article 8 guarantees, they are not mentioned explicitly. We believe that the Government approach is wrong for three reasons. These principles matter and have been the subject of recent decisions in the courts, not least the one mounted by the Secretary of State for Exiting the European Union when he was David Davis MP, along with Tom Watson MP. Secondly, the removal of the right to protection of personal data risks weakening, or being perceived as weakening, UK data protection post Brexit. That may have significant consequences for UK data processing businesses, a point that I want to come back to.

The third reason is a broader point, one that the Government do not seem or perhaps do not want to get: rights and specific law act together to make a whole that is greater than the sum of the parts. If we were continuing in our membership of the EU, the fact that the Bill does not explicitly cover our rights to privacy and protection of our personal data might not matter because the EU Charter of Fundamental Rights would continue to be in force and individual data subjects such as Mr Davis and Mr Watson could rely on it if required. But while the EU withdrawal Bill currently in another place contains thousands of provisions that will be converted into our law, only one provision has been singled out for extinction—the EU Charter of Fundamental Rights. This omission from the Data Protection Bill really does matter because as

well as underpinning personal rights to privacy, the wording of Article 8 will in effect be right across the rest of Europe and underpinning the legal framework permitting the free flow of data across European borders. It is the removal of the references to Article 8 that will provide a significant and totally unnecessary risk when the time comes for the EU to assess whether our regime is essentially equivalent to the rest of the EU, because that will be the test.

It is common ground among all the parties that it is essential that immediately after Brexit, the Government should obtain an adequacy agreement from the Commission so that UK businesses can continue to exchange personal data with EU countries and vice versa. If we are unable to reach such an agreement with the EU, there will be no legal basis for the lawful operation of countless British businesses and there will also be a significant question of whether EU companies will be able to trade with us if we do not enjoy the Article 8 protections that they will have. That, in fact, is double jeopardy. The Government seem to have forgotten that the frictionless transfer of data is critical to the functioning of our economy. Roughly 70% of the UK's trade and services is reliant on the free flow of personal data. The EU's data economy is expected to be worth £643 billion by 2020 and millions of UK citizens regularly share their lives online. To operate, UK businesses require clarity on the legal basis for data transfer post Brexit, but so do EU companies.

The rights outlined in our Amendment 4A are at the cutting edge of global data protection law and are essential for our tech industry in the UK. Indeed, the wording of the amendment was suggested to us by techUK, which is the industry voice of the UK tech sector, representing more than 950 companies, which collectively employ more than 800,000 people. That is about half of the tech jobs in the United Kingdom. If compliance with the Charter of Fundamental Rights is required to secure regulatory harmony and thus business confidence, the Government's commitment to jettison these references in the charter appears rather odd.

Finally, concerns have been raised as to whether the amendment, even as redrafted, cuts across the GDPR. This is not the intention. The amendment does not undermine the role of the GDPR or the derogations to the GDPR set out elsewhere in the Data Protection Bill, which we support.

We will listen very carefully to the debate. I make it clear that we hope the Government will agree that the principles we outline in these amendments are important and will offer to work with us to make sure the Bill is amended on Report to achieve the objectives I have outlined. I beg to move.

3.15 pm

Baroness Ludford (LD): My Lords, I am also pleased, as co-signatory, to support the amendment, the purpose of which is to retain in domestic law wording from the European Charter of Fundamental Rights concerning data protection. This is for the benefit of British citizens and to help ensure that vital data flows for business and law enforcement can continue if we Brexit.

The specific article in the EU charter, Article 8 on data protection, is stronger in this respect than the older non-EU European Convention on Human Rights, which deals with privacy only under the rubric of protection of family and personal life. The Government plan that the charter should cease to be part of UK domestic law after Brexit in Clause 5(4) of the European Union (Withdrawal) Bill. This broader issue will be considered as part of the scrutiny of that Bill, and there is a cross-party amendment tabled in the House of Commons and led by Dominic Grieve MP to remove that clause such that the charter continues to apply domestically in the interpretation of retained EU law. Liberal Democrats strongly support that amendment, but it seems appropriate not to wait for or depend on the success of that broader effort and at least effectively to embed the thrust of the charter as it concerns data protection in this Bill, which largely concerns EU law.

This is extremely important because if we Brexit, the UK will seek from the European Commission an adequacy decision on UK data protection so that transfers between the UK and the EU can continue smoothly—an objective the Prime Minister has singled out for mention. If we leave, EU states may no longer be able to share data with us unless our legal regime on matters including state surveillance powers aligns with EU requirements. The adequacy assessment will be wide-ranging, taking in all aspects of law and practice in the UK. The embedding of the charter's data protection right in this Bill would be an important safeguard for business continuity—especially for tech companies, which depend crucially on the free flow of data—as well as ensuring that essential cross-border police and intelligence co-operation is not disrupted.

I, my noble friends Lord McNally and Lord Paddick, and other noble Lords raised at Second Reading the need for measures to protect us from threats, not to undermine our civil liberties. We are used to the European Court of Human Rights ruling on privacy issues, several times finding the UK in breach of the convention, but more recently in the digital age it is the European Court of Justice—the EU court—that has come into play as EU law on protection of electronic communications and the provisions of the Charter of Fundamental Rights has begun to bite. The Snowden revelations brought heightened sensitivity about the extent of the legitimacy of the activities of our intelligence services.

The EU data retention directive—the EU law on mandatory mass data retention—was pushed through Brussels in 2005 when the UK had the presidency of the EU by the then UK Home Secretary in an expert piece of lobbying after the London bombings of that year. In a landmark 2014 judgment, the court struck it down as incompatible with the right to respect for private life and data protection under Articles 7 and 8 of the charter. Then, as mentioned by the noble Lord, Lord Stevenson, the judgment on DRIPA last December—technically, the Tele2/Watson case, although initially also involving the then Back-Bench David Davis MP—continued in the same vein, declaring that mass data retention was "disproportionate" to citizens' rights to privacy. Its implications for the Investigatory Powers Act and the question of whether bulk collection

[Baroness Ludford]
of communications data could be permitted to infringe privacy on the grounds of pursuit of serious crime or threats to national security may be ascertained by the reference to the European court made by the Investigatory Powers Tribunal in September. Certainly, the wide range of powers in the Investigatory Powers Act might look vulnerable to being found in conflict with EU law. The Independent Reviewer of Terrorism Legislation, Max Hill, suggested that it was unclear whether the ruling in the Watson case on safeguards for data retention regimes could be interpreted as applicable to national security.

It is true that while in the EU the national security exemption from EU competence applies but, as was brought out at Second Reading, if we were outside the EU the arrangements for our intelligence agencies would go into the whole mix that is assessed for compliance with EU standards. The court's decision in July, rejecting the legality of the EU agreement with Canada on the transfer of passenger name record details, provides a salutary lesson in how the court approaches third-country transfers. It struck down the agreement because several of its provisions were incompatible with EU fundamental rights. It is therefore crucial that we embed the wording of Article 8 of the charter.

The Labour Opposition have tabled an amended version of Amendment 4, namely Amendment 4A. This is an interesting variation and I look forward to learning a bit more as we progress about exactly how the new wording would work. As I understand it, the safeguards in subsection (1) of the proposed new clause and the first part of subsection (2), which are replicated from Amendment 4, would and should still govern the,

"provisions, exceptions and derogations of this Act",

otherwise, the point of writing in safeguards is undermined.

I wonder about the reference to,

"purposes as set out in the GDPR",

since the GDPR is concerned only with the processes for data manipulated in accordance with purposes set down in other instruments. I am slightly unclear about that.

I believe that there has been concern about a conflict with press freedom. Of course we are suffering here from the fact that we have only a partial bite from the charter, which contains a firm provision on freedom of expression and information as well as on the right to security. When we succeed in retaining the whole charter in domestic law via the EU withdrawal Bill, the whole balancing exercise will become more apparent than with this snapshot. In the meantime, we have to proceed with entrenching this partial aspect of the charter as concerns data protection.

Lord Pannick (CB): My Lords, the problem with Amendment 4 is that it would not incorporate the charter provision relating to personal data. The reason for that is that it addresses the prima facie right to the protection of personal data, but not the limitations and exceptions recognised by the European charter itself. Article 8, like all the other rights in the European charter, is subject to the limitations stated in Article 52. That says that there can be limitations on protected rights if they are provided for by law, are necessary and meet,

"objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others".

It is because there has to be a balance between this prima facie right and exceptions and limitations that the Bill contains a very large number of exemptions which cover a whole range of circumstances in which the rights of the data subject have to give way to other considerations, such as national security, the detection of crime, taxation, judicial appointments or confidential references for employment. There are many such exemptions.

The Bill contains exemptions because there are other interests in this area, and other rights, which conflict with the right to protection of personal data, and a fair balance is required. The Committee will want to debate the scope of those exceptions and limitations and be satisfied that the balance has been struck correctly. But Amendment 4 suggests that there is some absolute right to the protection of personal data. That is simply wrong. That is why, I imagine, the noble Lord, Lord Stevenson, has tabled manuscript Amendment 4A, which attempts to address the defect in Amendment 4.

I would have wished for more time to consider Amendment 4A, which I understand was tabled only this morning, particularly if the noble Lord, Lord Stevenson, intends to divide the Committee today. I am concerned that Amendment 4A poses two difficulties of its own. First, the value of including Amendment 4A is not clear to me. The Bill already sets out in considerable detail the domestic implementation of the charter obligation; that is, Article 8 read with Article 52. I fear that including Amendment 4A in the Bill would be likely to cause legal confusion and uncertainty in an area where precision and clarity are essential—and, indeed, are provided by the substance of the detailed provisions in the Bill.

Secondly, I fear that the purpose of Amendment 4A is to confer some special, elevated legal status on Article 8 rights concerning personal data for the future, as subsection (4) suggests. I think that would be very unwise because, as I have said, Article 8 rights often conflict with other rights—whether it is freedom of expression, which we heard about, or the right to property—or other interests. The detailed provisions of the Bill illustrate the difficult choices that have to be made in this area.

Amendment 4A seeks to give a special legal status to one charter right in isolation and that is simply inappropriate. For those reasons, I hope that the noble Lord, Lord Stevenson, will not divide the Committee on Amendment 4A. If he does, I will vote against it.

Lord Faulks (Con): My Lords, this is a complex Bill—necessarily so as it balances the need to access data and the need, in appropriate circumstances, to protect data from access, as the noble Lord, Lord Pannick, said. Most of the amendments in the Marshalled List seem to me to be about fine-tuning the provisions to alter the balance a little, one way or another.

However, Amendment 4A—charmingly introduced as it was by the noble Lord, Lord Stevenson—seems to be in a different category. It seeks to incorporate the provisions of the Charter of Fundamental Rights into the Bill by including the wording of Article 8.

I do not claim particular expertise in data protection, except to say that every business and every professional is or should be aware of their obligations in this area. I do, however, have considerable experience of the interaction of detailed legislative provisions and rights instruments. My experience stems from legal practice and as a former Minister in the Ministry of Justice. A particular focus of my attention was the European Convention on Human Rights and, to a lesser extent, the charter.

There is always a difficulty in marrying up detailed legislative provisions and broad-based charters or conventions, which are inevitably framed in generalisations. I have always thought that a combination of our Parliament and our courts should be capable of protecting citizens' rights. However, to help in that pursuit we have the Human Rights Act, which incorporates the European convention into our law and gives the Strasbourg court a significant role.

3.30 pm

The charter, unlike the European convention, is a relatively new development and it is a particularly EU document, as opposed to one stemming from the Council of Europe. When it came into being, there was concern that it could create a flood of new court actions, which could overturn British laws. However, the country was no doubt much reassured by Keith Vaz, the then Minister for Europe, who said that the charter would have no greater standing before EU judges than a copy of the *Beano* or the *Sun*. He specifically said that it did not,

"establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Union".

The noble and learned Lord, Lord Goldsmith, who I am glad to see in his place, expressed himself in far more lawyerly terms when giving evidence to the European Scrutiny Committee, as one would expect. He explained that the UK Government's objectives in the charter convention negotiations were to be careful that the charter did not create new rights and, in particular, not to make economic and social rights justiciable where they were not already justiciable.

Tony Blair, the then Prime Minister, assured the House of Commons, which was concerned about the implications of the charter:

"It is absolutely clear that we have an opt-out ... from the charter".—[*Official Report*, Commons, 25/6/07; col. 37.]

He referred to Protocol 30 of the treaty. Unfortunately, the European Court of Justice took a different view of the effect of Protocol 30 and even though the charter applies only when member states are acting in the scope of EU law, the ECJ has rather inevitably read this phrase expansively.

In view of its previous attitude to the charter, it is therefore surprising that the Labour Party has now evinced such enthusiasm for it. For those of your Lordships who, like me, very much regret that we are leaving the EU, one of the only clear benefits for our law is that we will no longer be confused—or at least potentially confused—by the fact that the charter has some role as yet not clearly defined in our law. Clause 5(4) of the European Union (Withdrawal) Bill makes it absolutely clear that the charter will have no continued life after Brexit. This amendment, on the other hand, would hardwire the charter, or at least Article 8, into our law and of course would give the ECJ, as the ultimate arbiter of EU law—and this is EU law—a continued role after Brexit.

All this is very good news for lawyers, for whom complexity is the stuff of profit. But how will it help in protecting rights? It is expressed as an absolute right—not its position in EU law, as the noble Lord, Lord Pannick, said. This is to be compared with Article 8 of the ECHR, a right which has caused some difficulty but is nevertheless a qualified right. How will the two work together? This would be an absolute, unqualified and free-standing right. How on earth are the courts to apply it, superimposed as it will be on other provisions in the Bill and existing concurrently with the European convention? There are distinct dangers that it will be relied upon by those whose data should be accessed, such as terrorists. I fear that we have as yet received no clear explanation of the justiciability of the provision and how it will work in practice, in particular in what circumstances it will provide protection which would not otherwise be provided by the detailed provisions of this Bill. It follows that this amendment is, in my view, incoherent, unnecessary and even potentially dangerous—but that is a charitable view.

Another view is that this is a cynical piece of politics. It has nothing to do with data protection and everything to do with Brexit. It is not without significance that the charter, as we have heard from the noble Baroness, Lady Ludford, is the subject of various amendments in the House of Commons in relation to the European Union (Withdrawal) Bill. Is this the first shot in the war to destroy that Bill? Surely it would be more appropriate for the Opposition to hold their fire, rather than undermine this valuable legislation.

The Liberal Democrats have of course made their position clear. They do not think it appropriate to respect the result of the referendum without asking the public to think again. It follows, I suppose, that they will have no compunction in undermining the coherence of this Bill in pursuit of their objective of frustrating Brexit. There are so many of them that, combined with the Labour Party, they can probably defeat the Government on this issue. I wonder how a party which is so insistent on the proper workings of democracy can justify by their disproportionate representation in this House playing such a destructive role, particularly when they are unelected.

The noble Lord, Lord Stevenson, is rightly respected in your Lordships' House. I suspect he has his riding instructions. This amendment is at best a bad idea; at worst, it is a piece of unworthy political manoeuvring. I suggest your Lordships have no truck with it, and I hope the Committee will vote against it.

Lord Lester of Herne Hill (LD): My Lords, one of my many character defects is party loyalty. That has led me in the past even to vote against my own amendment, which I will never do again. Today, I have the misfortune to disagree with my party. I will explain

[Lord Lester of Herne Hill]
briefly why I cannot possibly support the original amendment, which is constitutionally illiterate, or the attempt to rescue it in the manuscript amendment.

The Minister has rightly put on the front page of the Bill his opinion that the Bill is compatible with the convention rights. Those rights include the right to free speech in Article 10 and the right to respect for privacy in Article 8. The Minister could certify in that way because the Bill rightly carries forward from the previous Act journalists' rights—for example, to protect their sources—which you can find buried away in Schedule 2(5). The Minister was able to do that because we have the Human Rights Act, which requires him to do so, and the European convention, which strikes a balance between free speech and privacy.

I do not understand what on earth the charter has to do with that. As the noble Lord, Lord Faulks, rightly explained in the better part of his speech—the first part—the charter is there as a shield against the abuse of power by EU institutions. Maybe he did not say that, but he would like to have done, I am sure. It is not intended to be a source of rights in parallel with the European convention. The amendment in its original form, and its amended form, seeks to give legal force to one bit of the charter. It squints. It looks at Article 8 of the charter on privacy and data protection, but it does not look at the other bit of the charter that deals with free speech. Then, because it is obvious that the original version was constitutionally illiterate, the manuscript amendment seeks to repair that by saying that it is subject to the exceptions and derogations in the Bill. That is not good enough because it then seeks to give fundamental importance to the right of data protection, as though it were in the Human Rights Act and the European convention, and then it completely fails to explain how on earth any court is meant to reconcile the amendment, if it became law, or the amended amendment, if that became law, with what we already have in the European convention.

I agree with every word of my noble friend Lord Pannick's speech, and I agree with the first part of the speech by the noble Lord, Lord Faulks. I am afraid I cannot possibly support this amendment. I very much hope that it will be a probe and nothing more at this stage. We are at the beginning of Committee stage. We need to think about some of these issues carefully. If we were now to divide the House and vote to incorporate either version, we would be doing an injustice to the arguments and intelligence of the House.

When I first joined the House, I remember Lord Alexander of Weedon saying to me, "Anthony, you must remember that the House of Lords is not a Court of Appeal; it is essentially a jury". He was right about that. Most noble Lords, including me, will have understood only half of what was said in some of the original speeches. What is surely clear is that we would be failing in our duty today if we were to amend the very beginning of the Bill at this stage, rather than consider it properly and come back to it at Report.

Lord Arbuthnot of Edrom (Con): My Lords, it is a daunting thing to have to follow such an enjoyable speech. I simply say that, as I read Amendment 4 alongside Amendment 4A, it appears that the original opposition amendment had the unintended consequence that it destroyed all the exemptions already contained in the Bill. So Amendment 4A must be an improvement, but I am unclear precisely what is the purpose of Amendment 4A, because it expressly adds the principle of its being subject to all the general provisions of the Bill, so it adds nothing. I hope that we will not be pressed to a Division.

Lord Goldsmith (Lab): The amendment raises an important question of principle, and one which this House will have to consider further when we scrutinise the European Union (Withdrawal) Bill. One reason why the charter was brought into being was to give visibility to rights which existed elsewhere. As at least some noble Lords will know, I speak with some experience, having spent a number of months involved in the negotiation and conclusion of the European Charter of Fundamental Rights. It was a key aim behind the decision of the European Council at Tampere and Cologne to bring together a group of people to set out in the charter the rights which would affect them, largely in their relations with the EU institutions.

I emphasise the word "visibility", because the point just made by the noble Lord, Lord Lester, about laypeople not understanding what lawyers say is all too familiar to those of us who are lawyers. It is a very good reason why we should attempt, when we are saying things which are important, to say them in a way which is clear and comprehensible. Both amendments—I shall come to the difference between them as I see it—start by saying that we all have the right to protection of personal data concerning ourselves. That is a very important principle, and one which is very reassuring, whatever the exceptions, derogations and limitations on it may be. That is what the charter sought to do: to make these things clear to everybody.

What are the objections to the amendments? The first is that they do not allow for the exceptions and reservations which apply. The noble Lord, Lord Pannick, referred to the provisions of the charter, which state that all of the rights in the charter, with almost no exception—although there are one or two—can be subject to exceptions and limitations. I agree with the noble Lord about that; that is the position taken in the charter, and rightly so. There is a balance between different rights of different people and of different rights between the citizen and the state.

That is what I understand that Amendment 4A is intended to correct, by making it clear that the general statement of principle, which I still believe is important, is none the less subject to certain exceptions and derogations set out in the Bill. The Bill in Clause 13 and the regulation-making power under Clause 14 provide for the ability to make exceptions, reservations and derogations. I sympathise with the noble Lord, Lord Pannick, when he says that he is not sure, in the time available, whether this will achieve the objective of turning something which he was concerned appeared to be too absolute into something which works. There are ways to deal with that and ensure that further time is available or—this is not for me to say—if my noble friend Lord Stevenson moves the amendment and it is passed, it can be corrected afterwards. But that is a point of timing, albeit an important detail. With respect,

it appears to me that what matters is for us to give a clear statement that this principle of data protection applies to all of us.

It is then asked, "Well, what about other provisions in the charter?". No doubt that is a debate that we will have when we come to the withdrawal Bill. Will those other provisions also be allowed to stand? That will be a matter for this House and the other place when the Government bring forward that Bill. However, there is a need for visibility and for reassurance to all that there will still be a principle of data protection that we will uphold. For that reason, while it is apparent from what I have said that my preference is for Amendment 4A as opposed to Amendment 4, I think that that amendment ought to receive the support of this House.

3.45 pm

Lord Cormack (Con): My Lords, I appeal to the noble Lord, Lord Stevenson, not to rush the House on this matter. The amendment is clearly deficient. This morning I was with the director of the Victoria and Albert Museum, Dr Tristram Hunt, who urged me, if I possibly could, to say something briefly this afternoon. He gave me a brief that I have not had a chance to master, but it is quite clear that all the directors of our great national museums and galleries have real misgivings about Amendment 4 and, from what I have heard, would have similar misgivings—or most of them—about Amendment 4A. There is no constitutional need for us to divide this afternoon. Shortly after I came into your Lordships' House, I remember that the late Lord Jenkin of Roding said, "We don't normally vote at Committee stage in our House. It's better to air the arguments and then to come back to them on Report". That was wise advice and the House should heed it today.

Lord McNally (LD): My Lords, I suspect that this is going to be a shorter debate than perhaps was at first imagined, but I feel it is important that I add one or two words. When I was Minister at the Ministry of Justice, preceded by the noble Lord, Lord Faulks, I met a distinguished American lawyer. I said to him by way of introduction, as I regularly did, "Now, I'm not a lawyer". He looked at me and said, "Then I'll speak very, very slowly".

I feel a bit like that after all the howitzers have been rolled out this afternoon—the noble Lords, Lord Faulks, Lord Lester and Lord Pannick, along with a more helpful contribution from the noble and learned Lord, Lord Goldsmith. I intervened because it would be very wrong, or very misleading, if Ministers were to take this mini-debate as an escape from a real problem. I was, although the post may have been slightly misnamed, Minister for Data Protection for three and a half years. Between 2010 and 2013 I had the job of going across to Brussels for negotiations on a lot of the issues that we are now discussing. What struck me there was how much influence we had in bringing together legislation that met the concerns mainly of western Europeans about a light-touch form of regulation and the concerns mainly of eastern Europeans who had fairly recent experience of how state abuse of power could be used against the citizen and the individual.

The point that I want to leave with Ministers is that, whatever fault our legal experts have found with the amendment, it underpins a real concern, which the noble and learned Lord, Lord Goldsmith, picked up: the layman, the ordinary citizen, wants to be assured that by the end of the Bill's passage, on which we are only just starting, it will very much protect civil rights, civil liberties and individual freedoms. One of the great challenges we face is that this extraordinary change in the structure of our society, brought about by this fourth industrial revolution based on data, really calls into question a lot of the protections that we thought we had.

I hope the Minister will take and grab hold of what was said in introducing this Bill. We are attempting in these amendments, particularly in Amendment 4A, to meet a real and genuine concern of ordinary people who are perhaps not as clever as the noble Lords, Lord Pannick, Lord Lester, and others, but who have a concern about the abuse of power. There has been no sense of shame or regret. I understand and have been passionate all my life about the defence of the freedom of the press, but I wish that the press did not rush so quickly to scream, "They're trying to curb the freedom of the press", when all that the press has done since Leveson is try to sabotage any proper press regulation. I worry about saying, "Well, it will stop various parts of our society using this new data", without seeing and recognising the huge amount of evidence already of massive abuses of data which impinge on our very democracy. I felt it worth saying, even if I had to listen to the lawyers, that the layman also has a voice in this, and we have a real duty to make sure that this legislation is up to the task presented by the new data world.

The Earl of Lytton (CB): I realise that, in rising to speak on this particular part of the Bill, I depart slightly from the purpose of the noble Lord, Lord Stevenson—but I thank him for raising the issue all the same.

Of course, we are dealing with the overview of the Bill. The noble Lord, Lord McNally, almost wrote my introduction. What has worried me for some considerable time, notwithstanding the Bill's provisions that provide for data subject to error correction, is the manifest inclusion of data in the data processing function, which is broadly drawn—namely, the inclusion of information that is knowingly false or recklessly included in that process, and which can affect the life chances of individuals. We know of significant and high-profile circumstances in which false information has been included and has either affected a significant class of people or has seriously damaged the life prospects of individuals.

Given that the collection of data is part of the processing function, it seems to me that very little is being said about responsibility for those sorts of errors—in other words, the things that one could or should have realised were incorrect or where there was a disregard for the norms of checking information before it got into data systems. We heard at Second Reading how difficult it is to excise that information from the system once it has got in there and been round the virtual world of information technology.

[The Earl of Lytton]

Could the noble Lord, Lord Stevenson, or the Minister in replying, say whether there is anything apart from the Bill—I do not see it there at the moment—that enables there to be some sort of sanction, for want of a better word, against knowingly or recklessly including data that is false and which affects the life chances and prospects of individuals because it is capable of being identified with them and can be highly damaging? That is something that we may need to look at further down the line. If I am speaking in error, I shall stand corrected.

Baroness Hamwee (LD): My Lords, I say to my noble friend Lord McNally that it is even worse having people say to you, "You're a lawyer, you must understand this", when too often you do not.

I have a question for the Minister. Am I right in thinking that the Charter of Fundamental Rights will apply to all member states after Brexit? Is it not the objective that we are on all fours with them as other users of data and, therefore, if there is no provision such as the ones that we have been debating contained in the Bill, how will that affect the adequacy arrangements?

The Earl of Erroll (CB): My Lords, I want to say a couple of words about privacy. A very important basic point has been raised here. I am not going to argue with lawyers about whether this is the right way in which to do it, but the right to privacy is something about which people feel very strongly—and you will also find that the Open Rights Group and other people will be very vociferous and worry about it, as should all of us here. When we go out and do things on the internet, people can form some interesting conclusions just by what we chance to browse on out of interest, if they can record that and find it out. I became very aware of this, because I have been chairing a steering group that has been producing, along with the British Standards Institution, a publicly available specification, PAS 1296, on age verification. It is designed to help business and regulators to comply with Section 3 of the Digital Economy Act, which we passed just the other day, which is about protecting children online. The point is to put age verification at the front of every website that could be a problem. We want it to be anonymous, because it is not illegal for an adult to visit sites like that; if it was recorded for certain people in certain jobs, it could destroy their careers, so it must be anonymous. So a question arises about trying to put in the specification a right to privacy.

One thing that we have to be very careful about is not to interpret laws or regulations or tread on the toes of other standards. Therefore, when this Bill and the GDPR are passed, we must make sure that people processing any of that material ensure that any data is kept completely secure, or anonymised, or is anonymous in the first place. Websites, first of all, should not know the identity of a temporary visitor when they get verified—there are ways of doing that—so that there are rights to privacy. The thing about the right to privacy is that it is a right that you, the individual, should have. The GDPR and this Bill are about how you process data; in other words, it is about what you do with the data when you have it. The legislation builds in lots of safeguards, but there is nothing that says, when you decide what data to keep or whatever it is, that people should have a right to know that it will not be revealed to the general world.

The question is where we should put it in. People used to think that Article 8 of the European Convention on Human Rights covered them, but I realised just now that it covers only your relationship with Governments. What about your relationship with other corporates, other individuals or ordinary websites? It should cover everybody. So there is an issue here that we should think about. How do we protect ourselves as individuals, and is this the right place to do it? I think that this is probably the only place where we can put something in—but I leave that to the very bright lawyers such as the noble Lord, Lord Pannick, to think about.

4 pm

Lord Clement-Jones (LD): My Lords, I remind the Committee that this is an intensely practical issue. We have managed to lure many of our learned noble Lords from their chambers today—so clearly it has been a fairly expensive afternoon. I am only a humble solicitor and I tend to focus on what is practical and necessary for those whom we advise. The fundamental basis of these amendments is the concern in many sectors—manufacturing, retail, health, information technology and financial services in particular—that the free flow of data between ourselves and the EU continues post Brexit with minimum disruption. With an increasingly digital economy, this is critical for international trade.

We have been briefed by techUK, TheCityUK, the ABI, our own Lords EU affairs sub-committee, and the UK Information Commissioner herself. They have persuasively argued that we need to ensure that our data protection legislation is ruled as adequate for the purposes of permitting cross-border data flow into and out of the EU post Brexit. The first question that arises is: will the Government, even before any transition period, start the process needed to obtain an adequacy decision from the EU before we arrive at the status of a third country for EU data adequacy purposes?

However, as the Committee has heard today, if an adequacy ruling is to be sought, a major obstacle has been erected by the Government themselves in the European Union (Withdrawal) Bill, which makes it clear that the European Charter of Fundamental Rights will not become part of UK law as part of the replication process. Many noble Lords have spoken of their fears about the interaction with Article 8 of the charter, yet this article, relating to the protection of personal data, underpins the GDPR. How will we secure adequacy without adhering to the charter? Will the Government separately state that they will adhere to Article 8? We are not trying today to confer "special status", in the words of the noble Lord, Lord Faulks, on Article 8. The wording of the amendment reflects Article 8, but it is designed to create certainty, post Brexit, for the sectors of business which I mentioned earlier.

Let us not forget that the EU Select Committee heard from witnesses who highlighted the ongoing role of the European Court of Justice and the continued relevance of the Charter of Fundamental Rights in relation to adequacy decisions. The amendment is not

frivolous: it is essential to underpin an adequacy decision by the EU post Brexit. Does the House really want to put that decision at risk? I am sure that it does not. Whether now or in the future, we need to pass this kind of amendment. I look forward to hearing what the Minister has to say, which will determine whether or not the House divides.

Lord Brown of Eaton-under-Heywood (CB): My Lords, when I came into the Chamber, I had not the faintest intention of speaking in this debate. I do so, above all, for one reason: not because I am opposed to the amendment, although I am, very substantially, for the reasons given by the noble Lord, Lord Pannick. I do so because, in my experience, it is very unusual nowadays to vote at the outset of Committee stage on so fundamental a question as that raised by the amendment. It is surely yet more unusual—spectacularly so—to do so on a manuscript amendment filed this morning, which none of us has had sufficient time to deal with, on a very tricky area of the law, which so fundamentally alters the original amendment. As we have heard, that amendment was completely hopeless. The noble Lord, Lord Lester, described it as "constitutionally illiterate". At least this one tries to introduce the concept of a balanced right which previously was missing.

It is true that I come from a different tradition where you do not vote on anything or decide anything unless you have heard the arguments. I rather gather that there may be a whipped vote on the other side, so the amendment is going to be voted on by noble Lords who have not heard the arguments of the noble Lords, Lord Pannick, Lord Faulks and Lord Lester, and who do not recognise the difficulties and the fundamental importance of this amendment. I seriously urge that it is not pressed to a Division today.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, I am grateful to all noble Lords who have spoken, many of whom do not appear to support these amendments. I particularly thank the lawyers in the House, who have instructed us on the legal position. I feel slightly like the lay person who was talked about, which I am, I hasten to add.

On a political view, it is important to remember that only three weeks ago at Second Reading it was clear that the Bill was widely supported across the House. Many noble Lords highlighted areas where further scrutiny and perhaps improvement were desired, but the House was unanimous in the view that data protection laws needed updating, that the general data protection regulation standards were the right standards, and that we must do everything to maintain future free flows of data. We shared those conclusions because we understand the role and value of data in our digital world and how it is the basis of delivering education, social mobility and economic advantage. That is why it is so sad that in this first group of amendments, on the first of seven days of Committee, for a Lords starter Bill, the opposition parties have threatened to suspend the usual business arrangements whereby we can debate in Committee, meet subsequently outside the Chamber and often come to agreement before the Bill leaves our House—an arrangement which does not prevent votes when they are needed, but which has worked well in the past. I urge noble Lords not to put this at risk. The Data Protection Act has stood the test of time because it was not a partisan piece of legislation, and we must not allow this Bill to become one.

Many noble Lords have said that these amendments are made in good faith to ensure that the UK is given a data protection adequacy agreement by our largest trading partner. This is the right ultimate objective, but it is the wrong route to get there. Contrary to the charge of the noble Lord, Lord Stevenson, we have not forgotten the importance of a free flow of data. In fact, ensuring we maintain a free flow of data is our number one priority, and we want to achieve that from the moment of Brexit, not wait to become a third country and then start the application process for adequacy. I direct those remarks especially to the noble Lord, Lord Clement-Jones. That is why last year we committed to ensuring that the UK adopts GDPR standards. That is why in August we published our plans and ambitions for the free flow of data once we leave the EU. That is why we have presented this House with this Bill: a Bill which builds a comprehensive regulatory system for personal data that covers everything that could be scrutinised in future adequacy negotiations, including areas which are not currently subject to EU jurisdiction. That answers the question of the noble Baroness, Lady Hamwee, on adequacy and the point made by the noble Lord, Lord Clement-Jones.

In the past, 12 countries have negotiated adequacy agreements with the EU Commission, including Canada, Israel, New Zealand and the USA. None of these was forced by the EU Commission to put the charter into their law in order to obtain adequacy. It is not a requirement and it is peculiar to suggest that it will be. It is a myth that we need this amendment to secure a future agreement. Why is that? The GDPR itself, which will become part of our law, says in Recital 4:

> "This Regulation respects all fundamental rights and observes the freedoms and principles recognised in the Charter as enshrined in the Treaties, in particular the respect for private and family life, home and communications, the protection of personal data".

Recital 173 says:

> "This Regulation should apply to all matters concerning the protection of fundamental rights and freedoms vis-à-vis the processing of personal data".

The noble Lord, Lord Stevenson, was reported over the weekend to be claiming that the Government were scaremongering. We were not. We were deadly serious about the risks, so I am delighted that the noble Lord has now recognised that Amendment 4 needs further thought. What a pity, therefore, that he was unable to discuss it with the Government.

I listened to the noble Baroness, Lady Ludford, who addressed the original Amendment 4. The problem, which I think has been alluded to, is that subsection (3) of the proposed new clause creates an absolute unqualified right to data protection. As attractive as that sounds, it is fatal, for two reasons. First, data protection is not an absolute right, as many noble Lords have said, and the GDPR says it explicitly, too:

> "The right to the protection of personal data is not an absolute right; it must be considered in relation to its function in society and be balanced against other fundamental rights, in accordance with the principle of proportionality".

[Lord Ashton of Hyde]
Secondly, both the GDPR and the Bill create a number of exemptions from data rights, which we will debate over the next few weeks. However, while we may disagree on some exemptions, I think that we all agree on the important ones. Terrorists must not be given unrestrained access to information held about them by the security services. Scientists must not usually be prevented from advancing research and furthering understanding. Therefore, the original Amendment 4 creates a risk at precisely the time we need reassurance.

However, Amendment 4A is a welcome improvement. We received this amendment just before noon today. Data protection is not the simplest area of our law, and at Second Reading many noble Lords commented on the complexity of the subject. It would be irresponsible of the Government to accept an amendment of this sort with just a few hours to consider it. What does it mean for future data flows and trade? How does it interlock with the rest of our legislation on information rights? What will the courts make of it?

At best, Amendment 4A is unnecessary or may not achieve what it seeks to achieve. Two particular problems with it were mentioned by the noble Lord, Lord Pannick. First, it has no value, and it only creates legal confusion. Secondly, subsection (4) of the proposed new clause is unwise. Rights often conflict; the Bill and the Human Rights Act manage those conflicts, while subsection (4) does not. At worst, as my noble friend Lord Faulks, outlined, it may have unintended consequences which nobody has been able to consider. Our initial analysis is similar to that given by the noble Lord, Lord Pannick, that Amendment 4A probably does very little. It does little other than summarise what the Bill does. The Bill protects personal data rights, and Amendment 4A reminds us of this. None the less, with so much at stake, we must give this amendment full and careful legal analysis.

The noble Lord, Lord Stevenson, has been placed in a difficult position. Labour is in a muddle over this. But that is exactly why we do not usually vote in Committee. This stage is for resolving muddles and for understanding the issues. It is not the stage for tabling amendments on the day and voting on them hours later, without even discussing it with the Government. I cannot see how this is a service to the House, which prides itself on careful reflection.

The noble Lord, Lord Stevenson, reminded us at Second Reading about the number of Bills that he and I have worked on together. He said that this was the sixth. I pay tribute to the careful, detailed—and sometimes even enjoyable—scrutiny he has given. We have had many useful meetings. Today is the first day in Committee and the first group of amendments on the Bill. We should continue with the positive spirit that we have built together, setting out our arguments and concerns. We can continue to meet outside the Chamber, and I and the Bill team are always happy to listen to and meet other interested noble Lords. On Report, we can reflect and, where we disagree, we can divide.

Therefore, I hope that noble Lords will see that now is not the time and these are not the amendments on which we should divide at this stage. They are unnecessary and they may be deficient. This Bill is essential for our social and economic future, and we risk wrecking it at the first hurdle. I therefore ask the noble Lord to withdraw the amendment.

4.15 pm

Lord Stevenson of Balmacara: My Lords, I thank all those who have contributed to this debate—at some personal cost, I understand. There are points that we will certainly reflect on as we read *Hansard*.

I shall start with a slightly unusual point. I want to commiserate with the Minister for the unfortunate loss of his data just before he came into the Chamber this afternoon. His speaking notes and apparently much other data were stolen from him. That just shows the sorts of difficulties that one has with data, privacy and the issues that we have been talking about. I am surprised that he did not mention it, but he did not and I can only assume that things have worked out all right. However, if he wants help in drafting the personal victim statement, we will be very happy to meet him outside the Chamber on a number of occasions if that will be of assistance.

I do not have much luck with my drafting. I seem to recall being in this place only a few months ago and being coruscatingly attacked by a Cross-Bencher who thought that I had got a lower second with an amendment that I put forward to the higher education Bill. Mind you, I had quite a good result on that Bill. It was amended on the first day in Committee and that seemed to concentrate the minds of Ministers rather effectively. Therefore, I do not agree with those who have felt that this is a constitutional absurdity. In this House we have always reserved the right to vote "inappropriately" at any point, and Committee is one of those occasions. I am not saying whether we will do that today; I am just saying that it is not barred and it often has a purpose to serve.

However, the general tenor of the responses has been that we should not rush this. I was particularly pleased that the Minister suggested that we should meet outside the Chamber to discuss this issue, possibly reach agreement on it—those were his words—and perhaps come back on Report. I should remind him that Amendment 4 was tabled three weeks ago and no invitation to such a discussion reached my ears, so I am a bit surprised. The amendment was published and was available, and it could have been discussed. The fact that we are not going to move it today is slightly irrelevant but it raises all the issues that we are now engaging with. Indeed, at the meeting only last week, we did not really get on to the discussion about what we are about—we talked about other matters.

However, I do not want to fall out with the Minister because I enjoy working with him. Six Bills may seem a lifetime to many people but it has been a time enlivened by the ability to talk inside and outside the Chamber and to reach agreement. I hope that that is a genuinely meant proposal and, if it is, I will consider it very carefully.

My noble and learned friend Lord Goldsmith pointed out a really important issue. As I said in my speech—he picked it up and exemplified it—in order to achieve what the Government want to do, we need a combination of the rights that exist and the statutes that deliver the

particularities of the issues concerned. I take on board all the points that have been made about drafting and the inability to do so, and I will reflect on those. However, if we have the right objective, which is to ensure that that balance is available to the people of the United Kingdom and that it will support our businesses in the future, surely we have a duty to make sure that it is delivered to a final conclusion and, if necessary, voted on.

In passing, I observe that it is interesting that the Minister had to resort to the recitals to the GDPR to be convincing about the fact that the GDPR has the effect of bringing the rights in the charter into the discussions about data processing. That is amusing because one very striking thing about the regulation, apart from the fact that we do not have it in front of us to discuss it, is that, in the form in which it will appear in law in the United Kingdom at the end of this process, the recitals will not be part of it. Therefore, his reliance on them is ironic to the point of being rather difficult to accept, but he made points of substance, so I think we will move over that.

Despite the rightful criticisms, there is a general feeling across the Committee that we need to do a bit more work on this. I think that we are on to something that is important enough to spend time on, and we are prepared to do that. We do not think that we are in a muddle on this—we think that there is an issue—but I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Clause 1 agreed.

House resumed.

Sexual Harassment in Parliament

Statement

4.20 pm

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, with the leave of the House, I will now repeat in the form of a Statement the Answer given by my right honourable friend the Leader of the House of Commons in response to an Urgent Question. The Statement is as follows:

"As you know, Mr Speaker, I was very keen to come to the Chamber and make a Statement today, but I am delighted to respond to the right honourable lady, and grateful to you for inviting me to provide a full response. It is absolutely right that the House must address the urgent issue of alleged mistreatment of staff by Members of Parliament. These allegations make clear that there is a vital need to provide better support and protection for the thousands of staff members working in Westminster and in constituency offices across the country. In tackling this problem, we also need to recognise that we have interns, work experience placements, House staff, clerks and civil servants, who all deserve to be afforded our care and our respect.

I can confirm that the Cabinet Office is urgently investigating reports of specific allegations of misconduct in relation to the Ministerial Code. I am well aware that the public rightly expect MPs to display the highest standards. As the Prime Minister outlined in her letter yesterday, there can be no place for harassment, abuse or misconduct in politics. Your age, gender or job title should have no bearing on the way you are treated in a modern workplace. Nobody is an exception to that.

As the Nolan principles outline, as public servants we must demonstrate accountability, openness and honesty in our behaviour. Regardless of role or position, a new approach will need to cover everyone working for Parliament. If someone is made to feel uncomfortable, or believes that others have acted inappropriately toward them, they should be able to contact an external, independent, specially trained support team via phone, the intranet or face to face, so that any issue can be raised confidentially, and appropriate advice and support can be given. Everyone in this House must be clear that whenever a serious allegation is made, the individual should go to the police and be supported in doing so. However, it is clear that the current system is inadequate. It is for Parliament to come together to resolve this, but the Government believe there should be some guiding principles.

First, as in any other workplace, everyone in Parliament should have the right to feel at ease as they go about their work, irrespective of position, age or seniority. Secondly, while we have had a confidential helpline in place for several years, it must now be strengthened as a dedicated support team, made more accessible, given more resources, and its roles and responsibilities highlighted to all who work here. Thirdly, the support team should have the ability to recommend onward referral of a case to ensure appropriate investigation and action takes place. Fourthly, the support team should recommend specialised pastoral support for anyone who is experiencing distress as a consequence of their treatment in the workplace. Fifthly, the support team should strongly recommend reporting any allegations which may be criminal directly to the police. Sixthly, and in addition, there may be further action which government and political parties themselves can take to ensure high standards of conduct and that inappropriate behaviour is properly dealt with. This is the very least we can do.

As the Prime Minister outlined yesterday in her letter to party leaders, we must establish a House-wide mediation service, complemented by a code of conduct and contractually binding grievance procedures, available for all MPs and Peers, and their staff, irrespective of their party banner. This will reinforce to those who work here—and to the public—that we are serious in our treatment of wrong doing and support for those who suffer it.

I know all party leaders will work together with the House to reach an agreement and get these changes in place as soon as possible. As Members of Parliament, our constituents will be rightly appalled at the thought that some representatives in Parliament may have acted in an entirely inappropriate way towards others. These reports risk bringing all of our offices into disrepute.

I know this is an issue of great concern to you, Mr Speaker, and I know that you will do everything you can to tackle this issue. I know that Members

[Baroness Evans of Bowes Park]
from all parties will want to work alongside you—to investigate every claim, provide the right support in the future and ensure this never happens again.

It is a right, not a privilege, to work in a safe and respectful environment. These plans will ensure that Parliament takes a zero-tolerance approach. Parliament must take action in days, not weeks".

4.25 pm

Baroness Smith of Basildon (Lab): My Lords, I thank the noble Baroness for repeating the Answer to the Urgent Question today. It is clearly unacceptable and offensive to their office and to individuals for anyone, whether or not in a position of power, to act inappropriately towards another in a workplace. Such sexual and sleazy behaviour and abuse is highly intimidating for the person on the receiving end and it affects their colleagues.

This is not a party-political issue: it is a human and workplace issue that must concern us all. The workplace, especially here in Parliament, should always be one where the individual can give their best. No staff member or colleague should have to cope with or manage such inappropriate behaviour and no one should be frightened to speak up or make a complaint to do with any kind of harassment, bullying or sexual intimidation.

That means that the mechanisms for complaints, advice and support have to be in place. I welcome today's Statement as a first step on this road. However, the third point of the guiding principles states that,

"the support team should have the ability to recommend onward referral of a case—to ensure appropriate investigation takes place",

but I am not clear on how that will happen and what mechanisms the Government are suggesting or putting forward. Clearly the most serious complaints are a matter for the police but does the Leader of the House agree that, in dealing with any such complaints, the key has to be a process of good employment practices embedded in the whole culture of Parliament?

Does she further agree that it would be helpful for all political parties and the parliamentary authorities to publish their complaints procedures, so that anyone who finds themselves having to make a complaint can do so with the confidence of knowing how that complaint will be dealt with? Any such process has to explicitly clear, sensitive and robust. I advise all staff and colleagues to be members of a trade union, which are experts in processes and procedures and are able to give advice.

Recent press reports of Ministers or ex-Ministers abusing their positions by behaving inappropriately damage not only those individuals but the institution of Parliament as a whole. From talking to colleagues I know that most parliamentarians treat their staff and colleagues with respect and decency and are appalled that such allegations have been made. However, there are those few who fail to meet appropriate standards. Parliament has always to aim for the highest standards.

Baroness Evans of Bowes Park: I thank the noble Baroness for her excellent comments. She is absolutely right that this is not party-political but a human and workplace issue. Certainly her tone shows that we can and want to work together to ensure that we tackle inappropriate behaviour and that Parliament is an enjoyable place where people can come to work and feel safe.

She is right that the key will be the mechanisms and process. That is why we have set out the direction of travel today but we will need to work through the commissions with the House authorities, at speed, to ensure that we get a robust—and legally robust—procedure so that when people come forward with these kinds of allegations, which can be extremely difficult, they know that they will be treated fairly and properly, and that their comments will be properly reflected and action taken.

I assure her that I am looking forward to working with leaders across the House, the commission and, of course, our colleagues in the Commons. We have been very clear that this needs to be two-House-wide, working together. We need to come together as Parliament to ensure that we get the right processes in place.

Lord Newby (LD): My Lords, I too thank the noble Baroness the Leader of the House for repeating the Statement and indeed for the speed with which the Government have responded to the allegations that were reported over the weekend. As the noble Baroness, Lady Smith, has said, this is not a party political issue and it is not even an issue for one House versus the other. The key line in the Statement with which we would all agree is, "There can be no place for harassment, abuse, or misconduct in politics".

The truth is that political parties over a long period have been slightly slapdash in how they have dealt with staff and volunteers. They often operate under great pressure, so people have tended to look at inappropriate behaviour in a less serious light than they might have done in some other professions. I am pleased that the proposals include establishing a House-wide mediation service, although I hope that that means a Parliament-wide service, along with, "a code of conduct and contractually binding grievance procedures".

My only questions concern process. I think that the noble Baroness said that as far as this House is concerned, the body that will take this forward is the House of Lords Commission. I should like to check whether that is indeed the intention. Also, has any thought been given to what dealing with this in a speedy manner might mean?

Baroness Evans of Bowes Park: Again, I thank the noble Lord for his constructive comments. It will involve many of us working together. Our House of Lords Commission will need to be involved. I believe that the House of Commons Commission is meeting later today and this issue will be a key item of discussion. All of us on the commission will want to make sure that we can be involved in and oversee discussions, and of course the House authorities will also play a part. However, this will be very much a matter of cross-House working and it may be that we have to establish ways to ensure that dialogue can take place quickly between the two Houses, so that we move things along in a way that sometimes does not

happen. I would not like to give the noble Lord an exact timetable because I do not have one at the moment, but I hope it is clear from the Statement that there is an urgency to this. We all agree on that and we will work together to move forward in a constructive way; that is certainly what we will be looking to do.

Viscount Hailsham (Con): My Lords, if we are to have a procedure that results in adverse findings against an individual, perhaps I may ask my noble friend to ensure that we have due process. That involves having a proper appeal process where there is a re-hearing on the merits, preferably under a senior judicial figure. Does my noble friend remember the case of Neil Hamilton? I was in the House of Commons at the time and I am very far from certain that the process we had in place then was in any way fair.

Baroness Evans of Bowes Park: My noble friend is absolutely right that it has to be a fair process for all involved so that we can be confident in the results. I am not aware of the details of the case he talked about, so I shall obviously bear that in mind. However, I can assure him that we want the process to be robust for everyone involved so that staff, MPs, Peers and the public can be confident that we are looking into these matters properly and dealing with them. I can give him that assurance.

Baroness Donaghy (Lab): My Lords, I am sure that the noble Baroness will agree that we should be careful not to reinvent the wheel. I was the chair of ACAS for seven years, and we did a lot of work on the issue of power relationships, which is what this is about. It was something I was used to in the universities where I worked; namely, the power relationship between academics and students. Similarly, it has to be said that it would happen in the old days in the trade union movement. There is nothing new under the sun about this issue, but what is shocking is that our procedures are so primitive. The noble Baroness has said herself that it can be extremely difficult for someone to complain. It is difficult to do so even under a good procedure, so where it is not good, it is important to foster a climate of support so that individuals feel supported when they make a complaint. After all, in many cases it is they who will be sacrificing their rather junior careers. Will the Minister go to organisations which have experience of this, and confirm that we should attempt to create a climate of support, so that complainants feel they are not alone?

Baroness Evans of Bowes Park: I entirely agree. We do not want to reinvent the wheel and we should draw on best practice. That is certainly something we will look to do. I entirely agree with the noble Baroness about culture; that is extremely important. We need to be leaders in helping to bring that culture change about. One of the other principles we mentioned was that support teams should recommend specialised pastoral support to anyone in distress, because having support during this time is extremely important. That is one of the elements and principles we will try to include in any new process that is developed.

Baroness Jenkin of Kennington (Con): My Lords, like many noble Lords in the Chamber I have worked in and out of this building for the last 40 years, but unlike most I was a very young PA when I started. I was regularly approached by what one might call the usual suspects, who are well known to most of us. I very much welcome the measures set out today. Forty years ago there were only 27 women MPs, totalling I think 4% of Parliament. My guess is that today it is a better environment than it was, although I am not denying that there is inappropriate behaviour. Across Parliament there are more than 200 women MPs, or about 30% of the total. Does my noble friend agree that a better gender balance will help to normalise the work environment and will lead to better behaviour, culture and decisions across the board?

Baroness Evans of Bowes Park: I thank my noble friend and I pay tribute from this side of the House to the work she has done on this. She is absolutely right to point out the changing gender balance in both Houses. This House is a leader in this regard, with two female Leaders of the House, a lot of female representatives on our Front Bench and two female Speakers. As a House we can be proud of the work we have done on gender balance. We have more to do, but we can be a very good influence around this building.

Lord Lester of Herne Hill (LD): My Lords, the Statement referred to the fact that a Minister has been referred to the Cabinet Office to see whether he has violated the Ministerial Code. Will the Leader of the House tell us which provision of the Ministerial Code is in play here?

Baroness Evans of Bowes Park: I cannot go into the details of the investigation, but the Ministerial Code is clear that one of the things Ministers have an obligation to do is protect the integrity of public life, so we shall have to wait until the investigation concludes.

Baroness McIntosh of Pickering (Con): My Lords, will my noble friend explain what the relationship of the proposed new mediation service will be with the current HR provision? At the moment, any side, working for either the employer or employee—but particularly the employee, who is in a vulnerable position—can raise a grievance against their employer. How will this mediation service play into that existing system? What provision will be made against any potentially malicious allegations that may be brought on political grounds?

Baroness Evans of Bowes Park: The details of the interaction are obviously something we will need to look at, but we are absolutely clear that we do not want a confused system. It must be clear where people with specific allegations or concerns should go, and that will need to be looked at. My noble friend's point links to that made earlier by my noble friend Lord Hailsham. We need a robust system that both sides feel does the job well and properly, so we can all be clear that the decisions made have the trust of everybody involved in the process.

Lord Soley (Lab): I strongly support this approach. It is long overdue. Having tried to deal with it before, I have a lot of sympathy with it. We are engaged in a very complicated process involving not just Members of both Houses, but members of political parties and relationships between parties and Members. On top of that, you have the complication that every Member—particularly in the House of Commons, but also here—is also an individual employer. There is not necessarily a clearly drawn-up contract of employment; it varies immensely. Going down the road of having a contract, which I am not unsympathetic to, has payment implications, which opens up a whole can of worms. I really want to support this as it is very important, but there is a complex set arrangements here that we need to tackle right the way through.

Baroness Evans of Bowes Park: The noble Lord has highlighted exactly the complexity. It is critical that we get it right, which is why I did not want to give a false timetable. We cannot rush this, only to get it wrong, but we want to move along because we consider it important. I have been in a number of meetings today, and the points the noble Lord has raised are certainly things we are all well aware of. We will work across the House and across parties to make sure we have a robust system in place that Members, staff and the public can have faith in.

Lord Tebbit (Con): Do my noble friend and her colleagues think that standards of conduct have fallen, or that we are now facing up to the way things have always been and taking some action? Would these arrangements have any effect on relationships between Ministers and their officials? After all, I think we can all remember one rather notorious case—indeed, the noble Lord involved in it is not present today, I am not surprised to say—when certain things went on in a pretty blatant way during working time, paid for by the taxpayer.

Baroness Evans of Bowes Park: My broad point is that we are determined to protect staff who work for MPs and Peers and want to make sure that people who work in the two Houses are treated properly and fairly. That is what we intend to do. We want to maintain the highest standards of behaviour within Parliament—I think everyone agrees with that.

Lord Dubs (Lab): My Lords—

The Lord Bishop of Chester: My Lords—

Lord Taylor of Holbeach (Con): Order. As noble Lords will know, there are supposed to be only 10 minutes of questions and we should try to get our business back on track. That is not because I want to interrupt this particular process, but I think we should go back into Committee to continue with the Bill, as the Statement that is to follow has not yet been started in the other place.

Data Protection Bill [HL]

Committee (1st Day) (Continued)

4.42 pm

Clause 2: Terms relating to the processing of personal data

Amendment 2

Moved by ***Lord Clement-Jones***

2: Clause 2, page 2, line 4, at end insert—

"( ) In this Act, unless the context otherwise requires—

(a) "obtaining" or "recording", in relation to personal data, includes obtaining or recording the information to be contained in the data, and

(b) "using" or "disclosing", in relation to personal data, includes using or disclosing the information contained in the data."

Lord Clement-Jones (LD): My Lords, right from the outset, I had better declare that this is a probing amendment. I shudder to think of another chastisement from the noble Lord, Lord Ashton—that would be too terrible to contemplate. Chastisement from the noble Baroness? Even better.

The amendment is about whether we should put the Bill on all fours with the Data Protection Act 1998. Personal data is defined in Clause 2(2), and then Clause 2(4) goes on to talk about "processing" of data, in terms of requiring the personal data to be recorded in order that it can be subject to,

"an operation … performed on personal data".

It follows that, if the information is not recorded, it is not capable of being processed under the Bill as it cannot be subject to an operation.

Where I am slightly confused is looking at article 5(1)(f) of the GDPR, which talks about personal data being,

"processed in a manner that ensures appropriate security",

which means that security obligations apply to recorded information about an individual and perhaps not to unrecorded information, which may be, for instance, disclosed in a conversation. If a controller fails to control his staff and a staff member discloses information in an unrecorded form, is that controller in breach of the security principle?

It would have been crystal clear in the Data Protection Act 1998 because Section 1(2) of the DPA closes that kind of loophole. That is exactly the wording that has been adopted in the amendment. Perhaps the Minister can explain whether we are incapable of using that definition because it is the GDPR or simply because we have failed to incorporate and bring forward equivalent provisions from the 1998 Act. I beg to move.

Lord Stevenson of Balmacara (Lab): My Lords, I support the amendment in the names of the noble Lords, Lord Clement-Jones and Lord McNally. I will speak also to Amendments 3 and 9 in this group. This is a wide-ranging, rather stretching group covering a

lot of detail, and I am sure the noble Baroness the Minister, who is making her first appearance on this Bill, will be able to cope with it with ease and will not have to resort to having meetings outside or anything; it will be a straight answer. I mean no disrespect to the noble Lord the Minister who spoke earlier.

Amendment 3 is a probing amendment. I make that absolutely clear, like the noble Lord, Lord Clement-Jones, did. It is about the rather disputed issue, as I understand it, of the status that many of the big tech companies that operate in the United Kingdom have in relation to the Act. Are they, as I think I have heard in other meetings, data controllers in the sense that the Bill sets out to achieve; in other words, are they responsible for all the elements that will be raised in the Bill and in the GDPR in relation to that issue? I am looking for a clear and straightforward answer on that, because it seems to me that there has been too much evasion and difficulty in pinning down some of the definitional points that this issue raises.

Having established that they are data controllers and that the material and data that they go through are subject to the Bill in its entirety—and, by implication, the GDPR—in which territory will this power exist? Obviously, that has relevance both pre and post Brexit. For instance, I asked the representatives of a large company who came in to brief us about their concerns about the Bill the very same question and received the answer that they regarded themselves as being European data controllers, which was a strange combination of thinking, and that they had selected, because it seemed appropriate at the time—again, I would be interested in having more information on that if it is available—that the Irish Information Commissioner would be responsible for any activities that were regulated under the Act and they would look to that body. Irrespective of whether or not that is true, and I suspect it is, that leads to a question about the role the Information Commissioner in the United Kingdom has in relation to companies which choose a European domicile and have a responsible information commissioner who is not in this country and therefore not subject to any regulatory or statutory provisions provided by this Parliament. There is no particular reason why this should be wrong. I am not in any sense making accusations that would arise from that, but it is important that we have on the record a very clear narrative on this point because it will raise a lot of questions if we do not.

Amendment 9 has already been referred to in the debate on Amendment 1, in relation to where the recitals that accompany the GDPR are going to end up. Reflecting on what was said by the Minister in that debate, I found that very helpful in answering the questions that Amendment 4A raised. Therefore, it poses another question about why the Government decided—well, they have no choice—to have an arrangement under which the GDPR comes into play, as required, on 25 May 2018. However, at that point the recitals will not be brought into effect. I understand that the recitals do not have statutory power in the GDPR, but it is quite clear, from reading around on this subject and hearing of cases already raised in relation to data processing, that they are helpful to those who have side issues arising from the GDPR. The recitals help them to understand what the legislation actually means and, without them, there may well be a problem, at the least, in getting a consistency of approach across the EU. It is therefore important that we should know where the recitals are going to end up. If they are not being brought in, to what extent can they be relied on and, if so, by whom?

Baroness Chisholm of Owlpen (Con): My Lords, I am grateful to the noble Lords, Lord Clement-Jones and Lord McNally, for the opportunity to explain the meaning of data processing. As the noble Lord, Lord Clement-Jones, has explained, Amendment 2 would import words in relation to this term from Section 1(2) of the Data Protection Act. It might be helpful if I explain that the definition in Clause 2(4) of the Bill is taken directly from article 4(2) of the GDPR. Importantly—the noble Lord, Lord Clement-Jones, was right to mention this—the extent to which we can redefine or reinterpret it is therefore limited.

Having said that, the current definition of data processing already refers to,

"any operation or set of operations which is performed on personal data, or on sets of personal data".

That is a very broad term. If somebody obtained, recorded, used or disclosed all or any part of the data relating to individuals, I have no doubt and am confident that it would be covered by the existing definition.

I go on to the amendments in the name of the noble Lord, Lord Stevenson, who I thank for his kind words about us being together at the Dispatch Box. I greatly look forward to it, too. As he explained, Amendment 3 aims to clarify that the processing of data includes processing undertaken by information society services, such as commercial websites. Article 4 of the GDPR and Clause 2 make it quite clear that the term processing applies to any automated and certain non-automated processing. There is no doubt that this would include information society services.

Lord Stevenson of Balmacara: I am sorry to interrupt so aggressively and early in the Minister's response, but a word was used that I did not understand and I therefore need to come back. In films, we often find that if you talk to an American film executive about whether a film is successful, compared with what happens if you talk to a British executive in a similar situation, they will use "quite" in completely different senses. Britain uses "quite" to mean, "That's okay". But if Americans say, "That film was quite successful", it means, "Blimey—you really have hit the box office". In which sense was the Minister using it?

Baroness Chisholm of Owlpen: I am using it in the English sense. The noble Lord interrupted me, but I wanted to go on to say that, because of this, we can see no reason to distinguish information society services from any other type of data controller or processor.

[Baroness Chisholm of Owlpen]

Additionally, the definition of controller in the GDPR requires a case-by-case analysis to determine who the controller is, but it is likely that social media companies are controllers. Although the person posting personal data online is a controller, social media companies control personal data: in the context of activities which involve collecting such data; in retrieving, recording and organising it for indexing purposes; in storing it on their services; and in disclosing and making it available to users in the form of lists of search results. The Information Commissioner has also published guidance on this matter suggesting that, if a social media site's operator has a moderating role over the site's contents, then it is likely to be a controller.

In respect of Amendment 9, the recitals to the GDPR do not have normative effect—they are more akin to Explanatory Notes—and there is no requirement for the UK to enshrine them in legislation. In some places in the Bill we have adopted some language in the recitals to aid with clarity. For example, in Clause 8 we borrow from the recitals to make it clear that the consent of the holder of parental responsibility should not be necessary in the context of preventive or counselling services offered directly to a child. We will return to this later in Amendment 17 in another group. It is important to say that recitals do not contain substantive law, nor can they override the express language of a regulation. I hope my clarification on this issue is sufficient, and I urge the noble Lord to withdraw his amendment.

Lord Clement-Jones: My Lords, I was hesitating as I thought perhaps the noble Lord, Lord Stevenson, might want to come back. I must admit that that was one of the most interesting answers in the light of what the noble Lord, Lord Ashton, said in the previous debate. He prayed in aid two recitals to the GDPR and yet they do not have "normative effect", which is extremely interesting. I feel another amendment coming on in due course—at the appropriate time, of course. The noble Lord, Lord Ashton, was not in his place when I said I feared another chastisement from him, but that is why I emphasised that my amendment is purely a probing amendment.

Returning to what the Minister said about that, I think she is really saying that the GDPR is wide enough in article 4 to cover conversations, casual disclosure of information and so on and that the information does not have to be structured or in recorded form. That is a very useful explanation that people will rely on when they come to look at the Act in future years. I beg leave to withdraw the amendment.

Amendment 2 withdrawn.

Amendment 3 not moved.

Clause 2 agreed.

House resumed.

Deaths in Police Custody

Statement

4.58 pm

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, with the leave of the House, I will repeat a Statement made in the other place by my honourable friend the Minister for Policing and the Fire Service.

"With permission, Mr Speaker, I would like to make a statement to the House on the publication of Dame Elish Angiolini's *Report of the Independent Review of Deaths and Serious Incidents in Police Custody*, and the Government's substantive response to the report and its recommendations.

In 2015, the right honourable Theresa May met with the relatives of Olaseni Lewis and Sean Rigg, who had died tragically in police custody. The families' experiences left her in no doubt that there was significant work to do—not only to prevent deaths in police custody but also, where they occur, to ensure that the families are treated with dignity and compassion and have meaningful involvement and support in their difficult journey to find answers about what happened to their loved ones.

I know that everyone in this House will want to join me in expressing our sympathy and sorrow for all those families who have lost loved ones who have died in police custody.

It is essential that deaths and serious incidents in police custody are reduced as far as possible and, where they occur, that they are investigated thoroughly, agencies are held to account, lessons are learned and bereaved families are provided with the support that they need. I know that the House will want to join me in acknowledging the incredible efforts of our country's police forces and officers, the vast majority of whom do their jobs well, to give substance to the Peelian principle of policing by consent. However, when things go wrong, policing by consent can have meaning only where swift action is taken to find the truth, to expose institutional failings, and to tackle any conduct issues where these are found.

It is for these reasons that in 2015, the Government commissioned the independent review of deaths and serious incidents in police custody, and appointed Dame Elish as its independent chair. Earlier this year, Dame Elish concluded her review and today, having carefully considered the review and its recommendations, the Government are publishing both her report and the Government's response.

The report is considerable in scope and makes 110 recommendations for improvement covering every aspect of procedures and processes surrounding deaths and serious incidents in police custody. It is particularly valuable in affording a central role to the perspective of bereaved families and demonstrating beyond doubt that their experiences offer a rich source of learning for the police, investigatory bodies, coroners and many others with a role to play when these tragic incidents occur.

In terms of the Government's response, I stress to the House that the issues identified in Dame Elish's report point to the need for reform in a number of

areas where we have begun or set in motion work today. But her report also highlights complex issues for which there are no easy answers at this time. The Government response which I outline today is the start of a journey: a journey which will see a focused programme of work to address the problems identified.

As the House will understand, I do not intend to go into the detail of the Government's response in respect of all of the report's recommendations. Instead, I will highlight key areas of concern and our approach.

The first relates to inquests. These are intended to be inquisitorial, to find out the facts of a death, and should not be adversarial. Despite this, Dame Elish finds that inquests currently involve legal representation for interested persons, particularly those connected to the police force, and little or no help for bereaved families. The Government recognise that in some circumstances, legal advice and representation may be necessary in the inquest process. That is why we have protected legal aid for advice in the lead-up to and during inquest hearings.

However, it is also clear that the system needs simplifying, so that legal representation is not necessary in all cases, and the Government will investigate how we can meet this ambition and take this forward in the coming months.

As an initial step towards addressing these concerns and ensuring that the bereaved can have confidence in the arrangements, the Lord Chancellor will review the existing guidance so that it is clear that the starting presumption is that legal aid should be awarded for representation of the bereaved at an inquest following a non-natural death or suicide of a person detained by police or in prison, subject to the overarching discretion of the Director of Legal Aid Casework. It will also be made clear that in exercising the discretion to disregard the means test, consideration should be given to the distress and anxiety caused to families of the bereaved in having to fill out complex forms to establish financial means following the death of a loved one. This work will be completed by the end of the year.

As a next step, the Lord Chancellor will also consider the issue of publicly funded legal advice and representation at inquests, particularly the application of the means test in these cases. This will form part of the upcoming post-implementation review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, to be published next year.

However, while there are cases where legal support is required, we believe that we can go further towards building a non-adversarial inquest system which is better for all involved. The Lord Chancellor will also consider, to the same timescale as the legal aid review, reducing the number of lawyers who attend inquests, without compromising fairness, and making inquests more sympathetic to the needs of the bereaved.

This country is proud to have a world-leading police force. The police put themselves in harm's way to protect the public with honesty and integrity, upholding the values set out in the policing code of ethics. Police integrity and accountability are central to public confidence in policing, and a system that holds police officers to account helps to guarantee this. The Government must ensure that the public have confidence in the police to serve our communities and keep us safe.

When things go wrong, swift action is needed to expose and tackle any misconduct. Action must be open, fair and robust. The Government will therefore implement legislation later this year to extend the disciplinary system to former officers so that, where serious wrongdoing is alleged, an investigation and subsequent disciplinary proceedings can continue until their conclusion, even when an officer has left the force. We will also make publicly available a statutory police barred list of officers, special constables and staff who have been dismissed from the force and are barred from policing.

The Independent Police Complaints Commission has undergone a multiyear major change programme that has seen a fivefold increase in the number of independent investigations that it opens each year, compared to 2013-14. On Friday 20 October we reached another major milestone in reforming the organisation with the announcement of the first director-general of the new Independent Office of Police Conduct. The new director-general will start in January 2018 when the reforms to the IPCC's governance are implemented and it is officially renamed the IOPC.

The Government are strengthening safeguards in the custody environment. It has been clear that police custody is no place for children. Provisions in the Policing and Crime Act 2017, shortly to be brought into force, will make it unlawful to use a police station as a place of safety for anyone under 18 years of age in any circumstances, and further restrict the use of police stations as a place of safety for people aged 18 and over.

The work of the College of Policing and the National Police Chiefs Council to improve training and guidance for police officers and staff in this area is to be commended. Drawing also on learning from the IPCC's independent investigations, this has contributed to a significant reduction in the number of deaths in custody in recent years.

In other areas, however, improvements require us to tackle entrenched and long-standing problems that cut across multiple agencies' responsibilities. The Government will not shy away from the long-term collaborative work that that requires. That is why we have commissioned the Ministerial Council on Deaths in Custody to play a leading role in considering the most complex of Dame Elish's recommendations: those relating to healthcare in police custody, inquests and support for families. The ministerial council is uniquely placed to drive progress in these areas and has been reformed to ensure an increased focus on effectively tackling the issues that matter most. It brings together not only Ministers from the Home Office, the Department of Health and the Ministry of Justice but leading practitioners from the fields of policing, health, justice and the third sector. In addition, its work is informed by an independent advisory panel that

[Baroness Williams of Trafford]
brings together eminent experts in the fields of law, human rights, medicine and mental health. This will introduce necessary oversight and external challenge to ensure that lessons are learnt. In my role as co-chair of the ministerial board, I am personally committed to help to drive through the new work programme for the council and I will do so in a way that is transparent to the families.

Every death in police custody is a tragedy and we must do all that we can to prevent them. The independent review of deaths and serious incidents in police custody is a major step forward in our efforts to better understand this issue and bring about meaningful and lasting change. I thank Dame Elish Angiolini for her remarkable contribution to this important issue, as well as Deborah Coles for her continuing commitment to preventing deaths in police custody. I particularly thank the bereaved families who contributed to Dame Elish's review; they have laid their experiences bare in order for us to learn from them and to spare other families the suffering that they have endured, and I cannot commend them highly enough.

In addition to publication on GOV.UK, I will place in the House Library copies of *The Report of the Independent Review of Deaths and Serious Incidents in Police Custody*, its accompanying research report, the Government's response to the review and the *Concordat on Children in Custody*. I commend this Statement to the House".

5.10 pm

Lord Rosser (Lab): I thank the Minister for repeating the Statement made earlier in the House of Commons. I agree with the Statement's acknowledgement of the tremendous efforts of our police forces and officers.

The independent review by Dame Elish Angiolini QC into deaths and serious incidents in police custody was commissioned by the then Home Secretary in July 2015 to alleviate the pain and suffering of families still looking for answers. We thank Dame Elish for her comprehensive report and all those who contributed to it. However, will the Minister say when that report was received by the Home Secretary, as there appears to have been a lengthy delay between the report being received and the independent report being placed in the public arena—a delay which does not seem entirely consistent with the objective of alleviating the pain and suffering of families still looking for answers? What parts of the report, bearing in mind the delay, would have caused the Government a problem if the report had been placed in the public arena much earlier? Remarkably, after all the delay, the Government still do not intend to give their response to the recommendations, including the ones on healthcare in police custody, inquests and support for families. I hope the words "kicking" and "long grass" do not prove to be all too accurate.

The report is critical of the current processes, protocols and procedures for investigating deaths in police custody and of the role and approach of the agencies and organisations involved. It makes a considerable number of recommendations for speeding up the process of investigating deaths in police custody, including following contact with the police, in the light of the lengthy delays that currently occur, in contrast to the urgency, haste and mindset that is normally associated with potential and actual murder investigations. The delay in the current process leads to frustration, anger and suspicion that justice is not being done, and does not exactly enhance confidence and trust in the police, particularly among and within the families and communities most directly affected. The campaigning group Inquest has, I believe, said that more than 1,000 people have died in police custody or following contact with the police since 1990. No police officer apparently has been convicted in a criminal court in connection with any of those deaths.

The report makes a number of recommendations. For example, it states:

> "For the state to fulfil its legal obligations of allowing effective participation of families in the process that is meaningful and not 'empty and rhetorical' there should be access for the immediate family to free, non-means tested legal advice, assistance and representation immediately following the death and throughout the Inquest hearing".

I would have to say that, from the Statement, the Government appear to be a little lukewarm on implementing this recommendation in full. The Statement says, for example, that legal aid may be necessary in some circumstances. There is reference later on to "considering" the issue of publicly funded legal advice and representation at inquests.

The recommendations also include the comment that NHS commissioning of healthcare in police custody was due to have commenced in April 2016 but was halted by the Government earlier in the year. This report strongly recommends that this policy is reinstated and implemented. Perhaps the Minister can say why the commissioning of healthcare in police custody was halted by the Government, particularly since the report seems to have commented somewhat adversely on it.

The report also addresses the extent to which police use of restraints against detainees was identified as a cause of death by post-mortem reports in 10% of deaths in police custody between 2004-05 and 2014-15. It also says that a significant proportion of deaths involved people with mental health needs, and the report makes specific recommendations providing for change in how such people are treated, as indeed it does for those who have issues with drugs and/or alcohol. Drugs and/or alcohol featured as causes in around half of deaths, and an even higher proportion of those who died had an association with drugs or alcohol—namely, 82%.

The Statement indicates exactly what actions the Home Secretary now intends to take—and, I would have to say, not take—in the light of the report's recommendations. By when do the Government expect to see a considerable improvement in the practices, procedures and mindsets identified in the independent review as contributing to and exacerbating the impact of the current delays in investigations into deaths in police custody? Against

what criteria will the Government assess the effectiveness or otherwise of the actions that they are announcing today in light of the review? What are the specific goals that the Government expect their actions announced today to deliver? Who will be responsible for ensuring that those goals are delivered? What, if any, additional resources will be made available to implement even the actions announced today in the Statement, let alone if we implemented all the recommendations set out in the report?

In the light of the recommendation in the report, can the Government say any more—since I have questioned them—about the arrangements that will be introduced to make sure that there is proper legal representation for the families of those who have died in police custody at coroners' court inquest hearings? Surely, the Government can be a bit more specific than they have been, because this report was submitted many months ago. Indeed, that applies to most of the recommendations in the report, bearing in mind that they have said that they do not intend to give a detailed response to all the recommendations today—and, indeed, they have not.

The report states that its recommendations are necessary to minimise as far as possible the risk of deaths and serious incidents in police custody occurring in future and to ensure that, when they do, procedures are in place that are efficient, effective, humane and command public confidence. It is now principally, although I accept not solely, up to the Government to make sure that those objectives are achieved within the shortest possible timescale. So far, the Government will appear to many to have dragged and still be dragging their feet. To allay those fears, will the Government report back to this House within no more than six months on the progress being made on the implementation of the recommendations in this comprehensive and valuable independent report?

Lord Paddick (LD): My Lords, I, too, thank the Minister for repeating the Statement and express our sympathy to all those who have lost loved ones as a result of deaths in police custody. I declare an interest in that, when I was borough commander in Lambeth in south London, there were a number of deaths in custody. It is important to express that to the House, because the impact that it can have on the officers involved is also something that needs to be taken into account—particularly those officers who have acted in good faith and have done nothing wrong.

There are 120 recommendations, and it would be impossible to cover the whole ground, but there are a couple of issues that I want to highlight. The Minister has said, and the report talks about the fact that inquests are intended to be inquisitorial and should not be adversarial. When I represented the family of somebody whose son died as a result of a police action, it was the most adversarial court appearance that I have ever appeared in, bearing in mind that the overall majority of my experience had been in adversarial criminal courts. Surely, in those circumstances, and unless and until that situation is changed, families of those who have lost loved ones at the hands of the police should receive equality of arms in terms of legal representation with the police as recommended in this review—no ifs, no buts and no conditions.

On another issue, 15 or more years ago I was the Association of Chief Police Officers lead on mental health issues in policing. Following a number of deaths in police custody, training was introduced on the safe restraint of those suffering from mental illness. That was 15 years ago. Why does this report say that:

> "National policing policy, practice and training must reflect the now widely evident position that the use of force and restraint against anyone in mental health crisis … poses a life threatening risk"?

This has been evident for decades, yet people are still dying in those circumstances at the hands of the police. What are the Government going to do differently this time to make a real difference?

Noble Lords: My Lords—

Baroness Williams of Trafford: My Lords, I apologise for being a bit slow standing up, which is probably why noble Lords thought they could do so.

I thank the two noble Lords for their questions on this extensive report, which has 110 recommendations. The noble Lord, Lord Rosser, started with the point that we received the report in January and he asked why it had taken so long to publish our response. There is no mysterious reason for this: we thought we would prioritise thoroughness over speed and we have considered the report carefully. It has been an incredibly busy year in Parliament and it is important that this report should be published when it can receive all the attention it deserves.

The Government commissioned the review to shine a light on the issue of deaths in police custody, and that is precisely what it does. As the noble Lord said, Theresa May—now Prime Minister, then Home Secretary—commissioned it. It is therefore proper that the Government respond to it thoroughly. The noble Lord asked why we have not responded to aspects such as healthcare in police custody, inquests and support for families. We have commissioned the Ministerial Council on Deaths in Custody to play a leading role in considering these, which are the most complex of Dame Elish's recommendations. He also asked why we stated that legal aid "may" be needed and wondered whether there was some doubt about it. I will clarify by repeating, from the Statement, that,

> "the Lord Chancellor will review the existing guidance so that it is clear that the starting presumption is that legal aid should be awarded for representation of the bereaved at an inquest following the non-natural death or suicide of a person detained by police or in prison, subject to the overarching discretion of the Director of Legal Aid Casework".

I also said that, in exercising that discretion,

> "consideration should be given to the distress and anxiety caused to families of the bereaved in having to fill out complex forms to establish financial means following the death of a loved one. This work will be completed by the end of the year".

I think that our intention is clear; I would not want noble Lords to think it was not.

The noble Lord, Lord Rosser, also asked why the Government dropped plans to bring NHS commissioning into police custody. Police and crime commissioners are well placed to commission the

[Baroness Williams of Trafford]
most appropriate healthcare and forensic services to meet the needs of their custody populations. The Government are determined that PCCs should retain full flexibility to prioritise their resources according to those needs.

The noble Lord, Lord Rosser, talked about the 10% of deaths due to restraint. I do not have the exact figures for those deaths and I would not want to put out an inaccurate one today. However, there are procedures, processes and training in place to ensure that restraint is administered appropriately and proportionately, and reporting procedures in place for when restraint is undertaken. The treatment of people with mental health problems has been a particular focus. In fact, I recall that some 15 years ago, I campaigned for places of safety—not in custody but in a mental health setting—for people who found themselves in police custody inappropriately. What we have announced is absolutely the right way to go, in terms of no child and wherever possible no adult with a mental health problem being detained in police custody. We debated this at length during the passage of the then Policing and Crime Bill. The noble Lord, Lord Rosser, asked about updating the House on progress in six months. As I said, we have commissioned the ministerial board on deaths in custody to oversee the implementation of the measure, and the board includes external stakeholders who will hold the Government to account on progress.

The noble Lord, Lord Paddick, talked about the effect that a death in police custody has on police officers. He is well equipped to make that point. We praise the police for what they do because they carry out some very difficult jobs. We sometimes forget the effect on them when somebody dies in police custody. I can well appreciate that an adversarial situation will arise when a policeman has to tell a family that their child has died in police custody.

The noble Lord, Lord Paddick, also talked about coroners' courts being adversarial and said that families should receive publicly funded legal representation. As I said, we will consider a number of measures to meet the challenge of making inquests less adversarial, including reducing the number of lawyers who attend, with the aim of making inquests more sympathetic to the needs of the people they are there for—the bereaved.

5.29 pm

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, I declare my interest as a former president of the Police Superintendents' Association. Does the Minister agree that the police service is often the agency of last resort, and that many people who find themselves in police custody should not be there and should be dealt with by other agencies? That is not the fault of the police, of course, and is often a matter of funding and resources in many other areas. Does she also agree that one of the difficulties is being open and honest with the public? Historically, the police service, like many organisations, has closed ranks. The police service needs to be far more open and honest with the public. I think it is moving this way and I hope that issue is addressed in the report. I like to see senior officers prepared to go on television and make statements. Obviously, they should not disclose everything as we do not want that to affect the judicial system or judicial process. However, it is gratifying to members of the public, particularly grieving families, if the police appear to be open, honest and transparent without, as I say, compromising an investigation. There is a lot to welcome in the report. As has been suggested, I hope that the Government implement its provisions as soon as possible.

Baroness Williams of Trafford: I thank the noble Lord for his points about openness and honesty with the public. Quite often, the heartache of bereaved families is made worse by a feeling that perhaps people have not been open and honest with them. A theme runs through the Government's response—and, indeed, through Dame Elish's report itself—which talks about transparency in the whole process. Therefore I totally agree, as do the Government, with the noble Lord's point.

The noble Lord also talked about police services as the agency of last resort. If I learned anything in local government, it was about the multiagency approach of services working together. Whether in the custody arena or in child protection, when agencies work together and place people appropriately, that starts to end this system of people literally being dumped in the first place that people think of. That particularly applies to people with mental health problems, which is why I was so keen all those years ago to see places of safety established, and I am very pleased now to see that wherever possible, no child or adult with a mental health problem will be placed in police custody.

Lord Blair of Boughton (CB): First, this is a welcome report. Secondly, however, I wonder whether the Minister will agree with me that the weakest part of its recommendations is about the largest number of deaths, which is the rising number of deaths after people are released from police custody. The numbers are between 60 and 70 a year for the last three years of people committing suicide at the end of police custody. A lot of this will of course be based on more people being arrested for offences involving child indecency. The report notes rather drily that this is a "holistic" issue and not just a matter for the police. That is absolutely right, but there are no proper recommendations about what will be done about that level of deaths, which far exceeds any of the other statistics in the report.

Baroness Williams of Trafford: The noble Lord makes a fair point about people who die post-police custody, which can occur because of a number of different factors. If there is a death after custody, that will still be looked into. I will have to write to him about the specifics.

Viscount Hailsham (Con): My Lords, as one who used to participate in many inquests, I urge on my noble friend the importance of ensuring publicly funded representation at inquests. It is an important

way of holding the police to account and scrutinising their actions, thus giving acceptability to the decision of the coroner. I suggest that the coroner should be the determinative voice in deciding whether public funding should be available. It would be good if this process extended not just to deaths in custody but to deaths as a result of police action.

Baroness Williams of Trafford: I recall my noble friend making this point during the passage of what is now the Policing and Crime Act. Certainly, the issue of how inquests are funded will be kept under consideration, so I thank him for raising it again today.

The Lord Bishop of Chester: My Lords, I very much welcome the report; I have simply read the executive summary. It is obviously important to respond well after death occurs, but equally, arguably, it is even more important to put in place measures to reduce the possibility of death. This is where the healthcare provision in the police service is especially important. Given that the NHS has a direct responsibility to provide healthcare in prisons but does not have an equivalent responsibility for those in police care, and given that for half the people the cause of death is alcohol and drug-related, is there not a need to join up A&E, the police, the whole NHS and police support? It is no doubt complex, but at the heart of this lies quite a simple issue. This ought to be brought within the ambit of the NHS, which is the case with prisons.

Baroness Williams of Trafford: The right reverend Prelate is correct that while it is complex, it is incredibly simple. We have dealt with this sort of multiagency approach in other public service areas in the past. He is also right to talk about the approach to drugs and alcohol and the possibility that misuse can lead to death in custody. Of course, a range of various treatments is already available in prisons, but the Government will certainly consider this in due course.

Lord Harris of Haringey (Lab): My Lords, as a former chair of the Independent Advisory Panel on Deaths in Custody, and as someone who gave evidence to Dame Elish, I very much welcome her report. However, I am somewhat disappointed that after 11 months of consideration, the Government's response—although quite voluminous—is quite so thin. Two of its proposals are to set up another two working groups. What is the point of setting up an independent review, considering that for 11 months without saying a word, and then setting up two further working parties to look at several aspects? The real issue is that many of these lessons have been spelled out time and time again in the inquests that have taken place into people who have unfortunately died in police custody. What is the process the Government see going forward to ensure that lessons arise from an individual death are taken on board, not just in the police force area where the death occurs but more generally?

Secondly, on the question of the inquests, I remember vividly talking to the families of those whose loved ones died in the custody of the state. They described how every single person who was in any way engaged in that death—every police officer, the police force concerned, any health workers, and so on—would all be independently represented at the cost of the state. However, the individuals concerned—the families, who might have to agree among themselves as to which members would be there, because of shortage of funds—were not automatically represented. Is it not time that the Government, rather than talking about legal aid, which will presumably diminish the pot for everyone else, are quite clear that these individuals and families should be represented at public expense?

Baroness Williams of Trafford: The Government's response is very much empathetic to the fact that the families of people who died in custody generally feel that they have come off worse through the inquest and representation processes and the financial ability to pay. At the moment, 50% of people are entitled to legal aid, while the other 50% might feel that they are short-changed when it comes to this sort of process. More than that, however, they are also bereaved and probably in an environment that they have never been in before. The Government are alive to that, which is why they commissioned this report back in 2015. The working groups will see that the work goes forward, and it is right to do that. On the wider learning, Bishop James's report will come out on Wednesday, which I am sure will give insight not only into Hillsborough but into the wider lessons to be learned. Every time we carry out these reviews we attempt to learn the lessons of the past and we hope that they do not happen again.

Baroness Berridge (Con): My Lords, the report refers to the disproportionately high numbers of black men in restraint-related deaths, often in contentious circumstances. That is a serious issue because it connects so vividly with the perception many in the BAME community have of the police service. As the report recommends:

> "Statistics should be published breaking down restraint related deaths by ethnicity".

Can my noble friend please outline whether that recommendation will be accepted and, if it is, will it be recorded along with the race disparity audit statistics so that there is one central point with all those ethnicity statistics together?

My noble friend mentioned that third sector groups would be involved in the ministerial council on this issue. Is a means proposed for the ministerial council to engage with the many groups that have existed in relation to deaths in custody, particularly within the black and minority ethnic community, because of the resonance that they have, as the report outlines?

Baroness Williams of Trafford: My Lords, from 1 April this year police forces across England and Wales have commenced the recording of a broad range of data following each instance in which force has been used, including the reason force was used, the injury data, the gender, ethnicity and perceived mental health of the subject involved, and the location and outcome of the incident. The use-of-force data collection system will remain under review

[Baroness Williams of Trafford]
to ensure that it continues to be fit for purpose, including through a programme board attended by the Home Office and led by the national police lead for use-of-force data. The publication of data on officers' use of force will provide unprecedented transparency and accountability, as well as insight into the challenges faced by the police as they perform their duties. In the longer term, it will also provide an evidence base to support the development of tactics, training and equipment to enhance everyone's safety.

Lord Scriven (LD): My Lords, paragraph 45 of the executive summary says that a key theme to emerge from this review is the failure to learn lessons and to properly consider and implement recommendations from previous reports and studies. In the light of that, there is a recommendation for an independent office of compliance which should be answerable to Parliament and tasked with the dissemination of learning, the implementation of that learning, monitoring the consistency and application at a national level, and compliance with inquest outcomes and recommendations. Are the Government minded to set up that independent body which is accountable to Parliament so that lessons are learned and implemented?

Baroness Williams of Trafford: My Lords, I do not know whether this will entirely answer the noble Lord's question. I suspect that it may not, in which case I shall write to him afterwards. The independent office for police conduct and the existing commission structure will be replaced with a new single head—the director-general—with ultimate responsibility for all investigative decisions. This position is barred to anyone with a policing background—hence the independence. The director-general will have statutory powers to determine which posts in the IOPC are barred to former police. From the noble Lord's gesture, I think that I shall write to him.

Baroness Jones of Moulsecoomb (GP): My Lords, three things leapt out at me from the report—things which are lessons learned in the past but which are apparently still unlearned. The first is the disproportionate racial element to the deaths—the fact that young black men seem extremely vulnerable to police interventions. The second is the idea of having cameras in police vans. I have completely forgotten the third, but in relation to the first two, surely these things have been learned before. Why is there still a problem? Why is it still happening and, to repeat the question from the noble Lord, Lord Paddick, what are this Government going to do differently?

Baroness Williams of Trafford: I am glad that the noble Baroness forgets parts of questions because I forget parts of answers. In terms of whether black and minority ethnic people are more likely to die in police custody, the report commissioned by Dame Elish found that deaths in custody are representative of the detainee population and that the proportion of black people who die in police custody is lower than the proportion arrested for notifiable offences. In addition, in 2011 the IPCC published the results of a 10-year study that it had carried out into deaths in custody from 1998-98 to 2008-09. It found that 22 deaths—that is, 7% of deaths—were of black individuals. The report noted that the ethnicity of the deceased in police custody was broadly in line with the ethnic demographic of detainees. On the question of cameras in police vans, I shall have to come back to the noble Baroness.

Lord Deben (Con): Does my noble friend accept that it is damaging to the police if the public or those who have lost a relative feel that they have been unfairly treated? This is a question not just of those people but of the reputation of the police. Will she therefore reconsider all the caveats that she has put around support for the families? As the noble Lord opposite said, this support should not come out of the legal aid budget but should be on all fours with the support provided to all the other people who are represented. Unless that happens, frankly the public will not believe that they are getting fair dos. I am afraid that it will be expensive but I do not see how we will otherwise be able to protect the police force from the attitudes that are becoming increasingly prevalent.

Baroness Williams of Trafford: My Lords, I most definitely agree with my noble friend that it is damaging to the police if people feel that they have been short-changed or indeed prejudiced against in the investigation of the death of one of their loved ones. I did not express caveats; I said that there would be—

Lord Deben: There were "ifs" and "buts".

Baroness Williams of Trafford: There might be "ifs" and "buts" but we are a cautious lot in the Home Office. It is not a no or a caveat; we will be considering it in the round as we proceed.

Baroness Farrington of Ribbleton (Lab): My Lords, will the Minister please confirm that, when there are incidents involving public services, people are expected to be open and honest? Often, throughout this system people are told by insurers, "You may not say anything now". Will the Government look carefully at where the insurance industry, by stopping people making open and honest comments, inhibits that openness and honesty?

Baroness Williams of Trafford: My Lords—

Lord Deben: Another "if".

Baroness Williams of Trafford: I say to my noble friend that there is not another "if". It is important that the police protect the public with honesty and integrity and that they uphold the values set out in the policing *Code of Ethics*. Police integrity and accountability are central to public confidence in

policing. A system that holds police officers to account helps to guarantee that, so the Government must ensure that the public have confidence in the police to serve our communities and keep us safe. I think that on that we all agree.

Lord Falconer of Thoroton (Lab): Dame Elish's report is very good and I understand that it will take time to consider it. I am extremely worried by the answers that the Minister has given about inquest representation. I am afraid that the noble Lord who mentioned "ifs" and "buts" was putting it kindly. I have two questions. Please can the Minister confirm that there is an immediate change in approach by the Legal Aid Board to giving legal aid for representation for the relatives and families of those who have died in custody? It is unclear from the answer that has been given whether there is a change in practice. The Minister said that the starting point is that you will get legal aid but that it is subject to an overriding discretion. Please can she confirm that there is a change of practice and that the presumption is that you get legal aid unless there are exceptional circumstances? Secondly and separately, please can she provide details to the House of the legal aid review and of how representation at inquests is to be considered? When will the review report and will the timing of those recommendations be different from the timing in relation to the rest of Dame Elish's recommendations?

Baroness Williams of Trafford: My Lords, I suspect that I have sounded a bit cautious this afternoon but I can guarantee that the starting presumption is that legal aid should be awarded for representation of the bereaved at an inquest. There is a presumption to grant legal aid. It is a total change of approach, as I think the noble and learned Lord will agree, and I should have thought that the House would be happier about it. It is a total change of approach.

Data Protection Bill [HL]

Committee (1st Day) (Continued)

5.49 pm

Amendments 4 and 4A not moved.

Clause 3: Processing to which this Part applies

Amendment 5

Moved by ***Lord Stevenson of Balmacara***

5: Clause 3, page 3, line 27, at end insert—

"( ) does not apply in the course of an activity which falls outside the scope of EU law."

Lord Stevenson of Balmacara (Lab): My Lords, in moving Amendment 5, I will also speak to Amendment 6 which are both in my name. I will respond later to Amendment 115, which is in the same group but was tabled by other noble Lords. Amendments 5 and 6 are probing amendments to try to tease out what appears to be a change of definition between various parts of the Act.

Amendment 5 relates to page 3 and Clause 3(1), (2) and (3) in Chapter 1, which raise concerns about what exactly is happening with the arrangements. It is easier if I read out the two subsections concerned. Clause 3(2) states that:

"Chapter 2 of this Part … applies to the types of processing of personal data to which the GDPR applies by virtue of Article 2 of the GDPR".

That is the question I want to peruse, because later in the Bill, on page 11, Clause 19(1)(a) refers to activities which operate. This amendment is a probing one to try to tease out an answer that we can read in *Hansard*, so as to know what exactly we are talking about. It may appear to be a narrow difference or nitpicking, but "an activity" is a very broad term for anything in relation to data processing and contrasts with the narrow way in which Clause 3(2)(a) talks about "types of processing". Are these the same? If they are not, what differentiates the two? If they are different, why have we got different parts in different areas of the Bill?

Amendment 6 relates to page 3, line 31. This question of definition has come up in relation to Chapter 3 of the part. I understand this to be more of a recital, if I may use that word, than a particular piece of statute and it may not have normative effect, if that is the correct terminology. Clause 3(3)(b) says that the part to which this applies,

"makes provision for a regime broadly equivalent to the GDPR to apply to such processing".

What is "broadly" in this context? Maybe I am obsessed with the use of English words that have common meanings, but again it would be helpful to have a bit more information on the definition from the Minister when he responds.

Perhaps more than the "quite" used in response to an earlier amendment, this has not got transatlantic resonances, but it is important in questions of adequacy in any agreement we might seek with the EU in the future. "Broadly equivalent" carries echoes of an adequacy agreement, which would assert that the arrangements in the two countries concerned—the EU on the one hand and the third country on the other—were sufficiently equivalent to allow for future reliance on the processes in the third country to be treated as appropriate for the transfer of data into and from, in relation to future industrial processes.

We are aware that an element of legal decision-making arises, which might change that "broadly equivalent" to a higher bar of requirement in the sense that the court is beginning to think in terms of "essentially equivalent", which is very different from "broadly equivalent". Again, I would be grateful if the Minister could respond to that. I beg to move.

Lord Clement-Jones (LD): I will speak to Amendment 115 in this splendidly and creatively grouped set of amendments. The Government appear to have removed some of the extraterritorial elements in the GDPR, in applying derogations in the Bill. Paragraph 9(d) of Schedule 6 removes all mention of "representative" from the Bill. This could have major consequences for data subjects.

Article 3 of the GDPR extends its provisions to the processing of personal data of data subjects in the European Union by a controller not established in the European Union. This happens when a controller

[LORD CLEMENT-JONES]
is offering goods or services into the European Union. In such circumstances, article 27 requires a representative to be appointed in a member state, if a controller is not in the Union. This article is removed by paragraph 23 of Schedule 6.

Recital 80 of the GDPR explains the role of the representative:

"The representative should act on behalf of the controller or the processor and may be addressed by any supervisory authority … including cooperating with the competent supervisory authorities … to any action taken to ensure compliance with this Regulation. The designated representative should be subject to enforcement proceedings in the event of non-compliance by the controller or processor".

Suppose a company incorporated in the USA does not have a place of permanent establishment in the UK but still falls within article 3, such a company could be established in the USA and use its USA website to offer services to UK citizens without being caught by the Bill. Can the Minister reassure us that there is a solution to this problem?

Baroness Hamwee (LD): My Lords, I am glad that the noble Lord, Lord Stevenson, has raised the question of the meaning of "broadly equivalent". It encapsulates a difficulty I have found throughout the Bill: the language of the GDPR and of the law enforcement directive is more narrative and descriptive than language to which we are accustomed in UK legislation. Though one might say we should just apply a bit of common sense, that is not always the first thing to apply in interpreting UK legislation.

In this clause, there is another issue apart from the fact that "broadly equivalent" gives a lot of scope for variation. Although Clause 3 is an introduction to the part, if there are problems of interpretation later in Part 2, one might be tempted to go back to Clause 3 to find out what the part is about and be further misled or confused.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, I am grateful to noble Lords for their comments and the opportunity, I hope, to make things clearer. Amendment 5 seeks to make it clear that the applied GDPR does not apply to processing activities which fell outside the scope of EU law. Amendment 6 examines the differences between the GDPR and the applied GDPR. The applied GDPR exists to extend the GDPR standards to personal data processing to datasets outside the scope of EU law, which may be otherwise left unregulated. This is an essential extension because, first, we believe that all personal data should be protected, irrespective of EU legal competence; and secondly, we need a complete data protection regulatory system to secure the future free flow of data.

Chapter 3 of Part 2 and Schedule 6 create the applied GDPR, which is close to, but not identical to, the GDPR. This is primarily because we have anglicised it as it sits within our domestic law, not European law. References to member states become references to the UK. As domestic regulation it is also outside the scope of the functions of the European Data Protection Board, so appropriate amendments are needed to reflect that. Otherwise the same general standards and exemptions apply to the applied GDPR as for the GDPR.

6 pm

Clause 3 exists to help make the Bill easier to follow. It signposts readers to the provisions that cover either the GDPR or the applied GDPR. The language that it uses to do this has no legal effect. The applied GDPR is what it is. The extent of its similarity to the GDPR is a subjective matter. The Bill describes it as "broadly equivalent". Amendment 6 prefers,

"identical in all major respects".

We prefer the current drafting of the Bill because it better reflects the position.

The noble Lord, Lord Stevenson, asked about the relevance of "activity" in Clause 19. Activities should be taken to include processing of personal data. There is no special meaning. It has the meaning as in article 2 of the GDPR.

Amendment 115 seeks to reinstate the definition of "representative" into article 4 of the applied GDPR. Under the GDPR the territorial scope extends to controllers outside the EU where they are offering goods and services to persons inside the EU. Where a controller is outside the EU, subject to certain exemptions in article 27 of the GDPR, they must designate a representative inside the EU. The applied GDPR does not have the same extraterritorial application as the GDPR so does not have any requirements to designate representatives. As such, that definition is unnecessary.

The applied GDPR applies only to the processing outside the scope of the GDPR and which is not caught by any of the data being processed for law enforcement or national security purposes under Parts 3 and 4 of the Bill. The type of processing captured is primarily within the public sector, relating to areas such as defence and the UK consular services. Controllers in these situations are either in the UK or, if overseas, are not offering goods and services to those in the UK. As such, there is simply no need for the applied GDPR to have the same extraterritorial application as the GDPR.

Some people have suggested that the applied GDPR represents what the GDPR may come to look like once the UK leaves the EU. In some respects, this is a reasonable conclusion to draw. The applied GDPR anglicises the language and strips out irrelevant provision. This approaches some of the issues that the noble Baroness, Lady Hamwee, was talking about—the European language as opposed to what we are used to in UK legislation.

However, in some respects, it is not the same as what future legislation will look like, including on the question of extraterritoriality. When we leave the EU, the powers in the EU withdrawal Bill will bring the GDPR into our domestic law, anglicised—as has been done to the applied GDPR—but also with other modifications that are dependent on the future negotiations with the EU.

We have been clear, as I mentioned with the previous group of amendments, the future free flow of data is the number one priority in respect of our

data protection policy and will ensure that we maintain the international high standards in this respect. I hope my clarification is sufficient and that the noble Lord will withdraw the amendment.

Lord Clement-Jones: My Lords, I thank the Minister for that interesting exposition, which ranged from now into the future. He has given a vision of the post-Brexit shape of our data protection legislation. Extraterritoriality will apply even though the language used may be that of the applied GDPR as opposed to the GDPR itself—just to be confusing, perhaps as much as the Minister confused us.

I want to be absolutely clear that we are not derogating from the GDPR in extraterritoriality. That seems to be the nub of it. The Bill makes changes to the applied GDPR—I would like to read in *Hansard* exactly what the Minister said about the applied GDPR because I did not quite get the full logic of it—but there is no derogation in the GDPR on extraterritoriality. It would be helpful if he could be absolutely clear on that point.

Lord Stevenson of Balmacara: Perhaps the Minister will respond to that because I, too, am troubled about the same point. If I am right, and I will read *Hansard* to make sure I am not misreading or mishearing what was said, the situation until such time as we leave through Brexit is covered by the GDPR. The extraterritorial—I cannot say it but you know what I am going to say—is still in place. Therefore, as suggested by the noble Lord, Lord Clement-Jones, a company operating out of a foreign country which was selling goods and services within the UK would have to have a representative, and that representative could be attached should there be a requirement to do so. It is strange that we are not doing that in the applied GDPR because, despite the great improvement that will come from better language, the issue is still the same. If there is someone that our laws cannot attack, there is obviously an issue. Perhaps the Minister would like to respond.

Lord Ashton of Hyde: Quite apart from the get-out that Clause 3 is only a signposting, I can confirm that we are not derogating from the GDPR. We intend to apply GDPR standards when we leave the EU, so we are not derogating from the GDPR on extraterritoriality.

Lord Stevenson of Balmacara: This concerns Amendment 115, which is to a substantial part of the Bill; it is not the issue raised by the amendment I introduced. We are talking about page 158, line 34. Perhaps it would be better if I requested a letter on this point so that—again, I cannot say the word—does not bog us down.

Lord Ashton of Hyde: Extraterritoriality.

Lord Stevenson of Balmacara: Isn't he so smooth? Unfortunately, I bet *Hansard* does not print that. However, extraterritoriality is important because it represents a diminution of the ability of those data subjects affected by actions taken by those bodies in terms of their future redress. It is important that we get that right and I would be grateful if the Minister could write to us on that.

I am satisfied with what the Minister said on Amendments 5 and 6. I am grateful and beg leave to withdraw the amendment.

Amendment 5 withdrawn.

Amendment 6 not moved.

Amendment 7

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

7: Clause 3, page 3, line 32, at end insert—

"(4) This Act does not apply to any organisation employing five employees or fewer.

(5) Organisations covered by subsection (4) include, but are not limited to—

(a) small businesses,

(b) charities,

(c) parish councils."

Baroness Neville-Rolfe (Con): My Lords, in moving Amendment 7 I shall speak also to Amendments 152 and 169, which have been grouped together. They all stand in my name and that of my noble friend Lord Arbuthnot of Edrom, who spoke so eloquently at Second Reading.

Amendment 7 explores an exemption for small organisations in the business and charity sectors and for parish councils, all of whom have expressed concerns to me about the burdens of the Bill. At Second Reading, I, like others, supported the Bill because it brings us up to date for the digital age, encourages good data practice to minimise scams and cyberattacks, and prevents abuse. It gets us up to the standards we need to get a good deal on data protection in the Brexit talks, and it provides citizens with easier access to their data. However, as presently drafted, I fear it imposes disproportionate burdens, especially on small businesses, charities and other small organisations. Luckily we have my noble friend Lord Ashton to guide us through this part of the Bill, and I congratulate him on his response to the first group of amendments today.

I come to this matter because sometimes I feel like a voice in the wilderness, fighting over-regulation and complexity. Our recent record on productivity is bad, partly because of poorly constructed and complex regulation and, in some cases, overbearing regulators. I would add that the fashion for intervention on all sides of the House could actually make things worse.

Instead of questioning regulation as we used to do, the Government are now seeking to match every EU rule as part of the Brexit project. Detailed consideration of how to ameliorate the impact on small businesses and charities, for example, seems to have gone out of the window and conversations on how to improve things once Brexit has given us greater freedom are regrettably not encouraged. In short, economics gets less attention in this House

[Baroness Neville-Rolfe]
than it ought to. Those of us who have worked in business and the charitable sector know that well-meaning measures can adversely affect business by reducing competitiveness and growth, and indeed the tax take we need to build schools and pay for welfare. We are regulating more and not thinking about how we can do less. I was struck by what the noble Lord, Lord McNally, said earlier about the good but light touch that he sought in Brussels when he was dealing with data protection legislation.

Research by the Federation of Small Businesses shows that data protection regulation is one of the most salient regulations for 59% of small businesses. The federation provided me with some estimates which suggest that small businesses in the ICT sector alone, representing 6% of the business sector according to the ONS, will spend £700 million in man hours on implementing the new requirements—and that is not allowing for the cost of materials and ongoing compliance. Nor does it allow for the opportunity cost, another economic concept that is widely ignored in government. What we sorely need is a proper impact assessment, not the one provided so far, which does not address the cost to business and, oddly, suggests that there is no need to consult the Regulatory Policy Committee. If it is not needed for this sort of burden, I am not sure what it is needed for.

This House rightly always supports proper costing, as I know from some of the Bills I have been involved in. Before the Committee stage ends, we need to know the updated cost impact for business of what is coming in: first, under the GDPR, which will take direct effect and, as I understand it, continue after Brexit under the terms of the withdrawal Bill; and secondly, under what is planned in this Bill through the regulations to be made using its powers. I hope the Minister can help us with that.

It is against this background that Amendment 7 proposes an exemption from the Bill's provisions—not, of course, from the GDPR, which has direct effect. Inevitably, the amendment is exploratory in nature. However, I trust that it will give the Minister, DCMS and the Information Commissioner the opportunity to think carefully about what we might do to reduce the burden on small businesses, charities and parish councils, which the National Association of Local Councils says are very concerned about the panoply of new rules. I cannot believe that we would see these in Greece.

The argument I have heard from the Government is that the changes are good for these organisations because they are under-compliant at present: they would deter the cyberattacks and data leaks that can harm them. I accept that responsible bodies know that good data practices are business critical, but what they do not need is the full panoply of controls, fees and penalties being introduced by this Bill. There is a risk of fines for breaches of up €20 million or 4% of worldwide turnover. My fear is that the controls are so burdensome, open-ended and threatening that at the margin, businesses will either give up or be deterred from operating overseas—at a time when we need them to export more. We need to find a way of bringing in de minimis rules and reducing the powers of the commissioner to what is reasonable. Another look at the compensation provisions with an eye to small operators could also be useful. I note that the Delegated Powers and Regulatory Reform Committee shares some of my concerns about the powers being given to the commissioner, as well as the extraordinarily wide powers being delegated to Ministers, which we will discuss later.

One practical countermeasure would be to introduce a greater emphasis in the Bill on the economic and other consequences of the commissioner's work and to make this transparent, so that it can be considered properly by all those affected and publicly debated before she takes measures in relation to the protection of individuals' rights and the processing of personal data.

That is the purpose of Amendment 152, which adds a third duty after subsection (1)(b). Perhaps I may give an example of why this is of practical importance. I spoke to representatives from CACI, a leading firm in mapping and data analytics, which is the sort of business we want to encourage if we are to be world-leading here in the UK. They are concerned about the technical aspects of ICO draft statutory guidance on consent. The fear is that the ICO may be adopting a needlessly restrictive interpretation of the GDPR which will benefit the large social media multinationals at the expense of British operators in retail and marketing, as well as charities. This would threaten the way that they and others run their businesses. I urge Ministers to meet representatives of the business community most at risk, not just the trade associations, as soon as possible and before the ICO finalises its vital guidance.

I believe strongly that regulators with powers as wide as those of the Information Commissioner need to engage properly on the content of draft regulations and draft guidance, which is often equally important. They must be required and of course resourced to do so; otherwise—going back to my first point—the burdens and risks will be disproportionate.

6.15 pm

Finally, Amendment 169 would introduce a new clause after Clause 153 to give the Secretary of State a role in ensuring top-quality, comprehensive information on the changes for business. Small businesses operate under a number of constraints tied to their size, such as limited in-house expertise, owners' limited time, a limited asset base—and, of course, knowing where to go for help. When the FSB survey asked small businesses what aspects of regulation created the biggest barriers in general, 15% cited lack of guidance. On data protection in particular, that figure rose to 35%. Even worse, when asked about data protection, 58% said that regulation was too broad and it was difficult to know how to comply, with 51% citing inconsistent or complex language.

That is the background to my proposal in Amendment 153 to require clear information at least six months before the rules come in and suitable online material, and for a report to be brought before

Parliament on how this is being achieved before the provisions of the new Act come into force. Our amendment requires online information on both the new Act and on the GDPR in a simple and easily accessible form, along with the use of free online training and testing. I know from direct experience that this can be invaluable in helping businesses to actually comply.

Indeed, it can also be invaluable to charities. Proper, clear information and guidance is vital to them and their data controllers. They face the same uncertainties, costs, and commercial and reputational risk from prosecution. I therefore also support Amendment 170, which would add charities, and I am delighted that it comes from the noble Lord, Lord Clement-Jones, with whom I have had such productive dealings on intellectual property. I beg to move.

Lord Clement-Jones: My Lords, I thank the noble Baroness for that accolade. I rise to speak to Amendment 170, which is a small contribution to perfecting Amendment 169. It struck me as rather strange that Amendment 152 has a reference to charities, but not Amendment 169. For charities, this is just as big an issue so I wanted to enlarge slightly on that. This is a huge change that is overtaking charities. How they are preparing for it and the issues that need to be addressed are of great concern to them. The Institute of Fundraising recently surveyed more than 300 charities of all sizes on how they are preparing for the GDPR, and used the results to identify a number of areas where it thought support was needed.

The majority of charities, especially the larger ones, are aware of the GDPR and are taking action to get ready for May 2018, but the survey also highlighted areas where charities need additional advice, guidance and support. Some 22% of the charities surveyed said that they have yet to do anything to prepare for the changes, and 95% of those yet to take any preparatory action are the smaller charities. Some 72% said that there was a lack of clear available guidance. Almost half the charities report that they do not feel they have the right level of skills or expertise on data protection, and 38% report that they have found limits in their administration or database systems, or the costs of upgrading these, a real challenge. That mirrors very much what small businesses are finding as well. Bodies such as the IoF have been working to increase the amount of support and guidance on offer. The IoF runs a number of events, but more support is needed.

A targeted intervention is needed to help charities as much as it is needed for small business. This needs to be supported by government—perhaps through a temporary extension of the existing subsidised fundraising skills training, including an additional training programme on how to comply with GDPR changes; or a targeted support scheme, directly funded or working with other funding bodies and foundations, to help the smallest charities most in need to upgrade their administrative or database systems. Charities welcome the recently announced telephone service from the ICO offering help on the GDPR, which they can access, but it is accessible only to organisations employing under 250 people and it is only a telephone service.

There are issues there, and I hope the Minister will be able to respond, in particular by recognising that charities are very much part of the infrastructure of smaller organisations that will certainly need support in complying with the GDPR.

Lord Knight of Weymouth (Lab): My Lords, I broadly support what these interesting amendments are trying to do. I declare my interest as a member of the board of the Centre for Acceleration of Social Technology. Substantially, what it does is advise normally larger charities on how to best take advantage of digital to solve some of their problems.

Clearly, I support ensuring that small businesses, small charities and parish councils, as mentioned, are advised of the implications of this Act. If she has the opportunity, I ask the noble Baroness, Lady Neville-Rolfe, to explain why she chose staff size as the measure. I accept that hers is a probing amendment and she may think there are reasons not to go with staff size. The cliché is that when Instagram was sold to Facebook for $1 billion it had 13 members of staff. That would not come within the scope of the amendment, but there are plenty of digital businesses that can achieve an awful lot with very few staff. As it stands, my worry is this opens up a huge loophole.

Lord Maxton (Lab): I entirely agree with my noble friend. The point I was going to make is that small companies are often very wealthy. In the global digital world that is the fact: you do not need the same number of employees as in the past. Equally, would the amendment apply to five employees globally, or just in this country?

Lord Knight of Weymouth: Certainly if the amendment were to have any legs in terms of using the number of employees as a parameter then that would have to be defined. However you chose to define the size of an organisation, you would need to explore how to work that out.

Baroness Neville-Rolfe: I chose five employees because it often denotes a small organisation or a small business. I can see that some of the businesses in that category might be fairly large. I would of course have no objection to adding an extra criterion, such as turnover, if there was a mood to write exemptions into the Bill. Other legislation has exemptions for smaller bodies. The overall objectives of the data protection legislation clearly have to be achieved but I am concerned that, in particular, some of the subsidiary provisions, such as fines and fees, which I mentioned, are demanding and worrying for smaller entities.

Lord Knight of Weymouth: I am grateful for the noble Baroness's comments. Something certainly can be done to think more about turnover than the number of employees, otherwise there would be a big loophole, particularly around marketing and being able to set up a company to harvest data, for which

[Lord Knight of Weymouth]
the Act would not apply. It could then sell the data on. It would not need very many people at all to pursue that opportunity.

The other thing these amendments allow us to do is ask the Minister to enlighten us a little on his thinking about how the Information Commissioner's role will develop. In particular, if it is to pursue the sorts of education activities set out in these amendments, how will it be resourced to do so? I know there are some career-limiting aspects for Ministers who promise resources from the Dispatch Box, but the more he can set out how that might work, the more welcome that would be.

Lord Arbuthnot of Edrom (Con): My Lords, I declare my interests as a chairman of a charity and of a not-for-profit organisation, and as a director of some small businesses. Having said that, I agree with every word that my noble friend Lady Neville-Rolfe said.

The Association of Accounting Technicians has said that the notion that the GDPR will lead to a €2.3 billion cost saving for the European Union is absurd. I agree. The Federation of Small Businesses has said how a sole trader might have to pay £1,500 for the work needed, and someone with 25 employees might have to pay £20,000. In the Second Reading debate my noble friend Lord Marlesford talked about his parish council rather poignantly. It might be impossible to exempt organisations such as those from European Union regulations. But if that is so, I hope that my noble friend the Minister will say, first, why it is impossible; and, secondly, what we can do to get round and to ameliorate the various different issues raised.

On the duty to advise Parliament of the consequences of the Bill, I said at Second Reading that the regulator cannot issue guidance until the European Data Protection Board issues its guidance. That may not be until spring next year. This leaves businesses, charities and parish councils very little time, first, to make representations to Parliament; secondly, to bring in new procedures; and thirdly, to train the staff they will need. In that short time, organisations will all be competing for very skilled staff. That must push the price of those skilled staff up at a time when these small businesses will find it very difficult to pay.

I look forward with interest to hearing what my noble friend says, and I hope that he will be able to agree to the meeting that my noble friend asked for.

Lord Lucas (Con): My Lords, I declare an interest as the editor of the *Good Schools Guide*. We have three employees and we certainly should come under this Act in terms of the data on people and schools that we have in our charge. It is very difficult to find any measure that describes the importance of data that a business holds other than, "How important is the data that you hold?". Therefore, I look to my noble friend to explain how the Information Commissioner will not take sledgehammers to crack nuts and how they will genuinely look at how important the data you have under your control is and, given that, what efforts you ought to have made. That seems the right criterion to get a system that operates in a human way, where there is a wide element of giving people time to get up to speed and being human in the way you approach people, rather than immediately reaching for the fine.

However, this is important. This is our data. Just because I am dealing with someone small, I do not want them to be free from this. I want to be secure in the thought that if I am dealing with a small company my data is just as safe as if I had been dealing with someone big. I want to encourage small businesses to grow and to be able to reassure their customers that they are every bit as good. They would have terrible trouble having contracts with the NHS and others if they are not up to speed on this.

I do not think that is the way, but I do think we have to understand that this will be very difficult for small businesses. We have to look at how we might construct a set of resources that small businesses can use not only to get up to speed but to stay up to speed, because this is a constant issue. I draw your Lordships' attention again to what is going on in Plymouth, where both universities, the FE colleges, the schools and the local authority, and a lot of the big businesses, have got together to construct apprenticeships in cybersecurity tailored to small businesses. Expert cybersecurity advice has been made available to small businesses in small chunks, while young people are trained in how to take the right path in cybersecurity rather than wandering off to the point where they get arrested if they visit the United States. There is scope for extending that in areas such as social marketing but also in data protection, where expertise tends to be concentrated in large organisations and a structure is needed that enables small businesses to have ready access to it. We could greatly enhance the employment prospects of a lot of young people, and improve life for our small businesses, if we talked to BEIS and the DfE about tweaking the requirements for apprenticeships to make it rather easier to run them in small businesses.

6.30 pm

Lord Kennedy of Southwark (Lab): My Lords, I refer the Committee to my registered interests: I am on the board of two small charities in the London Borough of Southwark.

I recall from Second Reading the noble Lord, Lord Marlesford, who is not in his place today, talking about the effect of the legislation on small organisations—many others have made reference to it already. He referred to parish councils, which often employ just a part-time parish clerk. The noble Lord, Lord Arbuthnot of Edrom, spoke similarly about the effect on organisations. Both noble Lords had a point at Second Reading, as does the noble Baroness, Lady Neville-Rolfe, with her amendment today.

As we have heard, the amendment limits the scope of the Act to organisations employing more than five people and specifies for exemption organisations such as small businesses, charities and parish councils which meet the employment qualification of five

employees or fewer. My noble friend Lord Knight of Weymouth made a valuable point about size and turnover—I think the noble Baroness accepted that in her intervention.

The amendment also makes the useful point that the exemption is not limited to these three specific groups but seeks to cast a wider net. I certainly want to hear from the Minister that community councils would be exempted, as well as the small not-for-profit sector and small co-operatives, which I am sure is the intention behind the amendment.

The amendment needs a detailed response, as we have to be clear on what the Government think is reasonable for such organisations to have to comply with and how the Government will make it as simple as possible and not pile additional burdens on them. I hope the Minister will not say that these organisations already have to comply with the 1998 Act and that this legislation is only a very small increase in what is required. We will require a lot more reassurance than that from the Minister.

Amendment 152, also in this group, would place a duty on the Information Commissioner to advise Parliament, government and other institutions and bodies on the likely consequences, economic or otherwise, for industry, charities and public authorities of measures relating to the protection of individuals' rights and freedoms with regard to the processing of personal data. The noble Baroness again makes a valid point and there is merit to placing this duty in the Bill.

If the Minister thinks that Clause 113, and specifically Clause 113(3)(b), is sufficient to provide the Information Commissioner with the power and the duty to do what is set out in the amendment, we need him carefully to set that out today for the benefit of your Lordships' House.

Amendments 169—and Amendment 170, which would add "and charities" to it—raises some very important issues. It would place a duty on the Secretary of State to ensure that they or the Information Commissioner had a programme in place to ensure that information on the new duties that businesses and charities will be obliged to follow is publicly available. Again, these are very important and welcome amendments. Large businesses, large corporations and large charities will more than likely have the structures in place to ensure that they comply with any new requirements, but smaller organisations do not have compliance departments or lawyers on retainer to advise them. The Government have to get that message out to them. I particularly like subsection (2) of the new clause proposed by Amendment 169, which would require this information to be placed online and the Secretary of State to have regard to the creation of online training and testing to meet the requirements of the new Act. This group of amendments raises important matters on which I hope the Minister can give the Committee some reassurance.

Lord Ashton of Hyde: My Lords, I am grateful to all noble Lords who have raised the amendments and commented on them, because the Government recognise the concern behind them; namely, to protect the smallest organisations from the additional requirements established by this and future data protection legislation and to ensure that all UK businesses and organisations are properly supported through the transition.

I fully concur with my noble friend Lady Neville-Rolfe that supporting UK businesses of all sizes must be a priority. I can assure her that it is of the utmost importance both for the Government and for the Information Commissioner. However, I cannot agree with the proposal in Amendment 7 that those organisations with five or fewer employees be exempted from the requirements of the Act. We are talking in this Bill not just about businesses but about individual rights of data subjects. As my noble friend Lord Lucas mentioned, it is right that individuals enjoy the protections that will be afforded by this new regime regardless of the size of the organisation with which they are dealing. People should not be afforded a lesser degree of protection simply because they have chosen to do business with, or indeed to voluntarily support, a small organisation. After all, the fact that an organisation employs few staff does not mean that a breach of data protection law will cause a correspondingly small amount of distress. Many of the most cutting-edge financial technology firms begin life in someone's back bedroom, but it does not make their customers' transaction history any less worthy of protection.

Amendment 7 is unlikely to have the intended effect because the GDPR does not permit such an exemption. As an area in which our ongoing relationship with the European Union will be of the utmost importance, I do not consider that such an amendment would be in the best interests of British businesses.

However, I understand my noble friend's concerns that the smallest organisations may be the least well equipped to deal with the changes introduced by this regime. I was therefore pleased to learn recently—the noble Lord, Lord Clement-Jones, mentioned this—that the Information Commissioner has announced the establishment of a dedicated telephone advice service for small and micro businesses to support them in implementation. The noble Lord also mentioned that the threshold was 250 employees, which represents quite a large organisation by today's terms, with small businesses, especially in the tech field, growing up all over the place.

In respect of Amendment 152, I fully concur with my noble friend about the importance of monitoring the consequences of the Act for businesses and other organisations. I reassure her that there is already, quite rightly, a broad obligation on government to assess and report on the impact of all legislation that regulates business under the Small Business, Enterprise and Employment Act 2015. In addition, the Information Commissioner will be required to advise Parliament, government and other bodies on both legislative and administrative measures relating to the new Act and to provide opinions on any issue relating to the protection of personal data. My noble friend Lady Neville-Rolfe also asked about the impact

[Lord Ashton of Hyde]
on business. I confirm that the Government will publish a further assessment of the impact of the Bill on business very shortly.

With regard to Amendment 169, it is worth reiterating that the Information Commissioner has already provided general guidance, which is available online to all businesses, to help them understand their obligations. The commissioner is continuing to develop this guidance and has a programme in place for publication. I cannot go through it all but, in addition to the guidance the ICO has already published, it expects to develop this further between now and May into a fully comprehensive guide to the GDPR, including summaries and checklists, as well as more detailed content focused on key areas. This will also be available online from early next year. Later this year, the Information Commissioner will publish draft guidance on children's data; on accountability, including documentation; on legitimate interests, including examples addressing universities maintaining alumni relationships; and draft guidance on security of processing, including joint work on high-level security principles. It will also provide sector-specific guidance. The Government are working with the Information Commissioner to identify appropriate areas and to work with sectors to deliver more guidance.

In respect of timing, I completely agree with my noble friend that it is desirable that up-to-date guidance about the new regime is available to businesses as soon as possible. As I have just set out, that is precisely what the commissioner is already attempting. But I fear that it may not be feasible, as the amendment requires, for final information to be published at least six months before the commencement of the provisions in the Act, not least because changes to the Bill may affect that guidance.

In respect of Amendment 170, I share the sentiment of the noble Lord, Lord Clement-Jones, in wishing to ensure that charities are provided with guidance to help them understand their obligations. I reassure him that the general guidance that the Information Commissioner has already published is designed to assist all organisations through the transition.

The noble Lord, Lord Knight, asked how the role of the Information Commissioner will develop and be resourced. My noble friend Lady Williams said at Second Reading that the Government take the adequate resourcing of the Information Commissioner very seriously and have provided for an appropriate charging regime in Part 5 of the Bill. I assure the noble Lord that we are aware that there are problems with the Information Commissioner at the moment and we are looking at that. But, possibly for the reasons that he mentioned, I am not able to make any binding commitments tonight. But I accept that there is an issue there. We are looking at it.

I assure noble Lords that the Government share the concerns raised in these amendments and are particularly pleased that the Information Commissioner is actively taking steps to provide dedicated support for small and micro enterprises, including the telephone service I mentioned earlier. With that in mind, I hope my noble friend feels able to withdraw her amendment.

Lord Kennedy of Southwark: The Minister mentioned guidance a few times and said that it might not be ready in time. I was reminded of our debates—which he was not involved in—on the Housing and Planning Bill. We were told about guidance and regulations, and well over a year later we have seen next to nothing. This is such an important issue that we need to hear a little more from the Minister. I and many other noble Lords mentioned parish councils. I do not think he mentioned those. For example, I know the Deeping St James Parish Council in Lincolnshire very well. It employs only a part-time clerk. I think the noble Lord, Lord Marlesford, made a similar point about parish councils at Second Reading. Perhaps the Minister could say something about that.

Lord Ashton of Hyde: Yes, I think my noble friend mentioned the parish council of the noble Lord, Lord Marlesford, in her reply. I make the point again that individuals' data rights have to be protected. Just because parish councils are small organisations does not mean that they should not take that seriously—and I am sure they do. With regard to the practicalities of how they cope with their duties, apart from the fact that the Information Commissioner is providing guidance specifically for small organisations, the parish clerk—who already often works for more than one parish council so they can share the cost—is in a good position to deal with the duties under the Bill and will be able to take the guidance relating specifically to small businesses and organisations from the Information Commissioner.

I admit that I did not follow the Housing and Planning Bill too closely. But I mentioned a lot of the guidance that will be available before the end of the year. The Information Commissioner is very aware of the need to produce this quickly. In addition, of course, she is actively involved in outlining the European guidance on which a lot of member states' guidance will be based. Therefore, she is helping to set the tone on which her future guidance will be based.

6.45 pm

Lord Kennedy of Southwark: That is fine as far it goes. The point I am making is that we have heard guidance mentioned two or three times, in relation to two or three different organisations. I know that the Minister was not involved but we heard the same comments about guidance and regulations from the Government Front Bench when we were dealing with the Housing and Planning Bill. I hope we are not having déjà vu here. We hear these things are coming forward. These things are very important. I accept entirely that people's data are important—of course they are—but, equally, getting this guidance right is important, as is organisations being able to have the information so that they ensure that they comply with the law. I hope the Minister can take back how important this is. He said it will all be after Report, at

the end of the year. The Bill will have long left this House and we will be saying, "Where is this guidance then? You promised it and nothing has arrived". It really is not good enough for the individual data subject or for business or for anyone else involved.

Lord Ashton of Hyde: I agree with the noble Lord that, if nothing did arrive, it would not be good enough.

Baroness Neville-Rolfe: My Lords, I was slightly disappointed when all my amendments were grouped, but bringing them together has led to an extremely useful and productive debate. I am very grateful to noble Lords right across the Committee for their support. I am also grateful to the Minister for saying that he will let us have a compliance cost assessment, which I will read with the detail and vigour that it merits, and for some of the other points he made.

I am a little disappointed about how we achieve some de minimis relief for the smaller organisations in these various sectors, including the ones mentioned by the noble Lord, Lord Kennedy, as well as on guidance—I am not sure we are quite there. We need to think a little further. I gave the Minister an example of the difficulties that the data analytics sector had had on consent. It would be good if he could look at that point and perhaps arrange for a meeting so that we could talk further. I will look in *Hansard* at the progress we have made in this very constructive discussion and possibly come back on Report on one or two points. I beg leave to withdraw the amendment.

Amendment 7 withdrawn.

Clause 3 agreed.

Clause 4: Definitions

Amendment 8

Moved by ***Baroness Chisholm of Owlpen***

8: Clause 4, page 3, line 40, at end insert "and to section 183"

Baroness Chisholm of Owlpen (Con): My Lords, the Bill creates a comprehensive and modern framework for data protection in the UK. The importance of these data protection standards continues to grow—a point which has not been lost on noble Lords; nor has it been lost on organisations, business groups and others. We are grateful for all the feedback we have received through responses to the Government's call for views and on our statement of intent, and, most recently, on the drafting of the Bill itself. Hence this large group of technical amendments seek to polish various provisions of the Bill in response to that feedback. If I may, I will save noble Lords from the tedium of going through each amendment in turn—we would be here all night—and instead focus on the small number of substantive amendments in the group.

I begin with Amendment 51, which ensures that automatic renewal insurance products purchased before 25 May 2018 can continue to function. Automatic renewal products work on the principle that, if the insured person does not respond to the renewal notice, their insurance continues uninterrupted. Without the amendment this would not be possible for products such as motor insurance, which require processing of special categories of personal data and criminal convictions and offences data, potentially leaving individuals unwittingly uninsured.

Amendment 55 responds to a request from the Welsh Government to extend an exemption on passing information about a prisoner to an elected representative to Members of the Welsh Assembly. I am very happy to give effect to that request.

Amendment 56 ensures that existing court reporting—so important for ensuring open justice—can continue. Judgments may include personal data, so this amendment will allow the courts to continue with current reporting practices.

Paragraph 9 of Schedule 2 provides a limited exemption in respect of certain regulatory activities which could otherwise be obstructed by a sufficiently determined individual. Amendment 86 adds five additional regulatory activities to that list to allow relevant existing data processing activities to continue.

Amendment 87 extends the common-sense protection provided by paragraph 22 of Schedule 2 for confidential employment references, so that it also expressly covers confidential references given for voluntary work.

Amendments 90 and 186 ensure a consistent definition of "publish" and "publication" throughout the Bill.

I conclude my brief tour—it did not seem very brief to me—of these amendments with reference to the amendments to Schedule 6. As noble Lords will recall, in creating the applied GDPR Schedule 6 anglicises its language, so as to ensure that it makes sense in a UK context. This is a mechanical process involving, for example, replacing the term "member state" with "United Kingdom". Amendments 112 to 114, 116 to 118 and 120 to 124 refine that process further.

The remaining amendments that I have failed to mention will dot the "i"s and cross the "t"s, as detailed in the letter from my noble friends Lord Ashton and Lady Williams when the amendments were tabled on 20 October. For these reasons, I beg to move Amendment 8 and ask the House to support the other government amendments in this group.

Lord Knight of Weymouth: My Lords, I will be brief on this group but I have two points to make. One is a question in respect of Amendment 51, where I congratulate the insurance industry on its lobbying. Within proposed new paragraph 15A(1)(b) it says,

"if … the controller has taken reasonable steps to obtain the data subject's consent".

Can the Minister clarify, or give some sense of, what "reasonable" means in this context? It would help us to understand whether that means an email, which might go into spam and not be read. Would there be a letter or a phone call to try to obtain consent? What could we as citizens reasonably expect insurance companies to do to get our consent?

[Lord Knight of Weymouth]

Assuming that we do not have a stand part debate on Clause 4, how are the Government getting on with thinking about simplifying the language of the Bill? The noble Baroness, Lady Lane-Fox, is temporarily not in her place, but she made some good points at Second Reading about simplification. Clause 4 is quite confusing to read. It is possible to understand it once you have read it a few times, but subsection (2) says, for example, that,

"the reference to a term's meaning in the GDPR is to its meaning in the GDPR read with any provision of Chapter 2 which modifies the term's meaning for the purposes of the GDPR".

That sort of sentence is quite difficult for most people to understand, and I will be interested to hear of the Government's progress.

Lord Clement-Jones: My Lords, I thank the noble Baroness for introducing these amendments in not too heavy a style, but this is an opportunity to ask a couple of questions in relation to them. We may have had since 20 October to digest them; nevertheless, that does not make them any more digestible. We will be able to see how they really operate only once they are incorporated into the Bill. Perhaps we might have a look at how they operate on Report.

The Bill is clearly a work in progress, and this is an extraordinary number of amendments even at this stage. It begs the question as to whether the Government are still engaged in discussions with outside bodies. Personally, I welcome that there has been dialogue with the insurance industry—a very important industry for us. We obviously have to make sure that the consumer is protected while it carries out an important part of its business. I know that the industry has raised other matters relating to third parties and so on. There have also been matters raised by those in the financial services industry who are keen to ensure that fraud is prevented. Even though they are private organisations, they are also keen to ensure that they are caught under the umbrella of the exemptions in the Bill. Can the noble Baroness tell us a little about what further discussions are taking place? It is important that we make sure that when the Bill finally hits the deck, so to speak, it is right for all the different sectors that will be subject to it.

Lord Stevenson of Balmacara: My Lords, I thank my noble friend Lord Knight and the noble Lord, Lord Clement-Jones, for raising points that I would otherwise have made. I endorse the points they made. It is important that those points are picked up, and I look forward to having the responses.

I had picked up that the Clause 4(2) definition of terms is probably a recital rather than a normative issue, and therefore my noble friend Lord Knight's point is probably not as worrying as it might otherwise have been. But like him, I found that it was tending towards the Alice in Wonderland side. Subsection (1) says:

"Terms used in Chapter 2 and in the GDPR have the same meaning in Chapter 2 as they have in the GDPR".

I sort of get that, but it seems slightly unnecessary to say that, unless there is something that we are not picking up. I may be asking a negative: "There's nothing in here that we ought to be alerted to, is there?". I do not expect a response, but that is what we are left with at the end of this debate.

I have one substantial point relating to government Amendment 8. In the descriptions we had—this was taken from the letter—this is a technical amendment to ensure that there is clarity and that the definition of health professional in Clause 183 applies to Part 2 of the Bill. I do not think that many noble Lords will have followed this through, but it happens to pick up on a point which we will come back to on a later amendment: the question of certain responsibilities and exceptions applying to health professionals. There was therefore a concern in the back of my mind about how these would have been defined.

My point is that the definition that appears in the Bill, and which is signposted by the way that this amendment lies, points us to a list of professionals but does not go back into what those professionals do. I had understood from the context within which this part of the Bill is framed that the purpose of having health professionals in that position was that they were the people of whom it could be said that they had a duty of care to their patients. They could therefore by definition, and by the fact of the posts they occupied, have an additional responsibility attached to them through the nature of their qualifications and work. We are not getting that out of this government amendment. Can the Minister explain why polishing that amendment does or does not affect how that approach might be taken?

Baroness Chisholm of Owlpen: I thank noble Lords for all their contributions. The noble Lord, Lord Knight, wanted to know what "reasonable" meant in this context. The Financial Conduct Authority has set requirements on insurers in relation to the steps they must take in the case of insurance contracts that are automatically renewed. In this context, our view is that those steps are likely to be reasonable. As to how they get in contact, it is by normal business procedure acceptable to the FCA. Normally emails and so on is the way they do that.

7 pm

I agree that the language can be very complicated and we are certainly working to make it understandable to everyone. We are still talking to stakeholders about issues that they may have. For instance, on the insurance amendment we talked to the ABI and Lloyds and worked with them when we drew up the amendment. We will carry on doing that with anybody who wishes to be in touch with us. I think that answers the questions asked by the noble Lord, Lord Clement-Jones. We are certainly still in touch with people.

Lord Knight of Weymouth: To clarify the question around insurance companies, if as technology and communications change there is a sense that the insurance companies should work a bit harder, would the first recourse be to go to the Financial Conduct Authority in order for it to regulate the insurance companies to do a better job?

Baroness Chisholm of Owlpen: Yes, it is the FCA. That would be the case.

The noble Lord, Lord Stevenson, talked about Amendment 8, the health amendment. It is to ensure that there is clarity for health professionals in Clause 183. The GDPR refers to health data being processed under the responsibility of a health professional whereas the Bill says,

"under the supervision of a health professional",

to clarify that no intentional difference in the meaning is being conveyed. These amendments ensure that consistent language is used and so make it more understandable. I hope that has answered all noble Lords' questions. Please come back to me if it has not.

Amendment 8 agreed.

Amendment 9 not moved.

Clause 4, as amended, agreed.

Clause 5 agreed.

Clause 6: Meaning of "public authority" and "public body"

Amendment 10

Moved by ***Baroness Royall of Blaisdon***

10: Clause 6, page 4, line 35, at end insert—

"( ) A college, school or university is not a public authority or public body for the purposes of the GDPR."

Baroness Royall of Blaisdon: (Lab) My Lords, I rise to move Amendment 10 in my name and the names of the noble Lords, Lord Pannick and Lord Macdonald of River Glaven. In doing so, I declare my interest as principal of Somerville College, Oxford.

The GDPR, which will be brought into effect in domestic law by the Data Protection Bill, will have an impact on many aspects of university business from procurement to the commercialisation of research. Universities up and down the land are therefore now making preparations to ensure that they will comply with the new requirements. It is immensely complex, and throughout the Committee stage issues will be raised which are pertinent to universities.

With this amendment I am concerned about one aspect of the life of universities, colleges and schools which will be severely impacted by the GDPR. It is our ability to fundraise and to maintain alumni relations, hence our amendment, which is probing at this stage. I have only recently become aware of the huge importance of alumni relations and fundraising and of the fact that they are inextricably linked. As a consequence of financial constraints and government encouragement, universities, colleges and schools are having to raise more and more money to provide the education and the excellent facilities rightly expected by students.

As far as universities are concerned, with potentially reduced tuition fees, Brexit and, despite what the Government may say, a reduction in the number of foreign students, the need to raise money will increase. At Oxford, the system that I now know best, the excellent tutorial system demands even greater resources. I do not complain. However, with the introduction of the GDPR our alumni relations and fundraising ability will be severely limited unless we can find a way through, for example by stating that a college, school or university is not a public authority for the purposes of the GDPR. Naturally universities, including Oxbridge colleges, are concerned to ensure that personal data is processed lawfully in the course of contacting alumni for fundraising purposes, and we want to ensure that we work in the most cost-effective way. I should stress that none of the contacts made to our former students relates to cold calling. We are talking about alumni, people who spent three or more years as students, with whom we have therefore have a long-standing relationship. With regard to a college such as Somerville, our alumni feel they belong to a community and they want us to remain in close touch with them.

As the Minister, will be aware, under the GDPR, in order for the processing of personal data to be lawful at least one of the six conditions set out in article 6 of the GDPR must apply. The most important change to the lawfulness conditions by the GDPR concerns the consent condition. The GDPR sets a high standard for consent requiring a positive opt-in, and unless opt-in consent has been obtained, or is obtained in future, current and future contact with alumni will be limited. It is clear that existing consents are unlikely to meet the GDPR standard and as a result all fundraising and alumni databases might have to be rebuilt from scratch and/or a huge exercise undertaken to secure explicit consent from all our former students if the consent condition were to be relied on by colleges to justify their processing of alumni data. This is an enormous administrative task and hugely time-consuming. At Somerville, we are already grappling with the new consent standard, and it is both difficult and detrimental.

I understand that when the Council for Advancement and Support of Education—CASE—met DCMS and the Information Commissioner in May it was suggested that the legitimate interest condition could, in appropriate circumstances, be relied on by fundraisers. However, this condition does not apply to processing by public authorities. While the GDPR contains no definition of public authority, Clause 6(1) states:

"For the purposes of the GDPR, the following (and only the following) are 'public authorities' and 'public bodies' under the law of the United Kingdom—

a public authority as defined by the Freedom of Information Act 2000".

The Freedom of Information Act 2000 contains in Schedule 1 a list of public authorities which includes, at paragraph 53,

"the governing body of … a university receiving financial support under section 65 of the Further and Higher Education Act 1992",

and,

"any college, school, hall or other institution",

of such a university. It is clear that universities, colleges and schools fall within this definition of public authority, which would mean that the legitimate interest

[Baroness Royall of Blaisdon]
condition could not be applied and they would have to rely on either the public interest condition or the consent condition.

I know that the Bill team recently had a meeting with UUK at which this issue was discussed. Oxford University was not present, but this was not due to lack of interest or concern; it was agreed that Cambridge should represent the interests of Oxbridge as a whole. At this meeting, the Bill team was apparently clear that it had put exemptions in the Bill to protect the position of universities. I am glad that there is no policy dispute, but I have to say that my noble friends and I have been unable to identify the exemptions.

The Minister may say that it is a matter that will be dealt with by guidance, but I regret that in my view guidance will not suffice. This is a matter of huge importance to universities as well as to colleges and schools, and there needs to be clarity in the Bill. I look forward to the Minister's response. If, as I suspect, we do not reach agreement today, I would be grateful if the Minister's office could arrange a meeting with interested Peers so that we might discuss this further. I beg to move.

Lord Pannick (CB): My Lords, I declare an interest as a fellow of All Souls College, Oxford. Although All Souls has no students and therefore no alumni, it has former fellows. I endorse everything that was very eloquently said by the noble Baroness. There is a problem here. It needs to be addressed. My understanding is that the Government are sympathetic to the mischief which the noble Baroness has identified. For the reasons she has explained, the mischief is not remedied by the terms of the Bill and I very much hope that the Government will be able to indicate today that they are sympathetic and are willing to meet the noble Baroness, Lady Royall, and others to find a way in which these concerns can be addressed as they ought to be.

Lord Macdonald of River Glaven (LD): My Lords, I have put my name to the amendment and I declare an interest as the warden of Wadham College, Oxford.

It is important to underline, as the noble Baroness has, that fundraising is now intrinsic to the financial well-being of institutions of higher education. That is certainly true of my college. It is intrinsic and critical because, along with conference business and other means of raising money, it helps to plug the gap that exists between fee levels for students and the real cost of educating them. It is clearly in the public interest that colleges and universities be placed in the strongest possible position to raise money to plug that gap.

It is equally important to bear in mind that the sort of fundraising that we are talking about does not involve random mailshots to unsuspecting victims, but regular contact over years with individuals who overwhelmingly regard themselves as members of a close community and are much more likely to complain if they are not contacted than if they are. I have experienced that many times. Requiring colleges to rebuild their alumni databases from scratch could serve no conceivable public benefit; indeed, it would lead to a significant public disbenefit, because it would weaken our ability to fundraise in already straitened financial circumstances.

I certainly agree with the noble Baroness that guidance would be insufficient in this situation. This matter is of such importance to the economic well-being of the institutions in question that it must be dealt with in the Bill. I very much look forward to hearing the Minister's response and would wish to attend any meeting, should one be arranged.

Baroness Kennedy of The Shaws (Lab): My Lords, I regret that this is beginning to sound like a chorus from Oxford, but I, too, am the head of an Oxford college—in my case, Mansfield College. I join noble Lords in expressing concern. I have also been the chancellor of Oxford Brookes University, a different kind of university, the president of SOAS and a visiting professor at Sheffield Hallam—very different institutions in higher education—and am now very involved in the further education world.

We have always looked across the Atlantic and said, "Isn't it wonderful that people in America are so generous to their colleges and remember the places where they got their education? Isn't that a wonderful thing to encourage here?". That has been going on for some decades, but some colleges and universities are still new to this and have been working very hard to create databases and links with those who go through their institutions and connections with those who went in the past. To ask us now to revisit all that conscientious work and then try to secure all the consents necessary really is the law of unintended consequences. It is not what the Bill had in mind.

I remind people that concern was expressed that elderly persons, for example, were feeling belaboured by communications from charities wanting them to make those charities the beneficiaries of their wills, or whatever, which had unpleasant consequences for older people. One wanted a constraint on such cold calling and writing to people without invitation or connection. That is not the case here. Our students have created relationships inside their colleges. They know their universities and feel grateful to them for the experiences they have had. Their connections make them part of the community, so it is very different.

I hope that today we will not hear simply, "Let us go away and think about this". I hope that the Minister will indicate that there will be an exemption in the Bill for colleges and higher education institutions—and schools—because fundraising is, in our current climate, part and parcel of our existence.

I happen to be the head of a college that does not have a wealthy alumni base. It has been very hard work creating the links that we have. We do not have a huge staffing capacity. To expect small colleges to go back in time to get the consents all the way down the line is expecting too much.

I hope that we will hear some very positive things from the Front Bench and that the Government will make an exemption in the Bill, rather than include something in regulations. This is very important to the quality of what we can offer our students, and it is

not just the elite universities that face this—it is all universities, because fundraising is so much part and parcel of what we do.

7.15 pm

Lord Clement-Jones (LD): My Lords, I suspect that if you scratched half the Members of this House, they would have to declare an interest. I will just add a bit of non-Oxford variety as chair of the council of Queen Mary University of London. I express Front Bench support for my noble friend's amendment and that of the noble Baroness, Lady Royall.

There is no doubt about the interaction of article 6 and the unfortunate inclusion of universities in the Freedom of Information Act definition, and there is no reason that I can see—we have heard about the alumni issues and the importance of fundraising to universities—why universities should not be put on all fours with charities, which can take advantage of the exemption in article 6. I very much hope that the Minister, who was nodding vigorously throughout most of the speeches, is prepared to state that he will come forward with an amendment, or accept this one, which would be gratefully received.

Lord Lucas: My Lords, perhaps I may say a word on behalf of the victims. I very much hope that we will be given the right to ask the college to cross our name off.

I very much enjoyed my time at Oxford. It took Oxford 37 years to cotton on to the idea that, having spent three years doing physics there, perhaps I was interested in physics and it might offer me something in continued involvement other than students being pestered into asking me for money twice a year. That is not a relationship; that is not a community; that is a one-way suck. It is a Dyson vacuum cleaner designed to hoover money in on the basis of creating some sort of obligation. It was a contract 40 years ago, for goodness' sake: create something now or keep something going.

Fundamentally, I have very little sympathy with the idea—

Baroness Kennedy of The Shaws: The noble Lord could not have gone to the colleges that we all represent.

Lord Lucas: I am absolutely content that universities should be put on a par with charities, because I know that we will be looking after the interests of those whom charities approach just as much as we look after the interests of charities. I hope that is the solution that my noble friend will afford, but it is welcome that there are limitations in the Bill on the random approaches that can be made by organisations. To the extent that we allow exemptions, we should not privilege universities in any particular way. Yes, they are often worthy causes, but they are very fond of money.

Lord Kennedy of Southwark: My Lords, I have no interests whatever to declare in this debate.

Amendment 10, moved by my noble friend Lady Royall of Blaisdon and signed up to by the noble Lords, Lord Pannick and Lord Macdonald of River Glaven, raises the important issue of legitimate fundraising and alumni relations undertaken by schools, colleges and universities being at risk due to the changes being brought in by GDPR. My noble friend referred to various conditions and mentioned the lawfulness condition, specifically on the issue of consent.

As we have heard, GDPR sets a very high bar in requiring a positive opt in, and it is likely that existing consents will not reach the required standard. So educational institutions would have to take on the enormous task of rebuilding their databases from scratch to meet the condition, as my noble friend referred to.

The public interest condition does not really work, for various reasons. The legitimate-interest condition may provide a route for the justification of data processing for fundraising purposes but, as we have heard in this debate, there are issues here as well. To make that a realistic solution to this unintended consequence of the new regulations—I think we all agree that it is unintended—my noble friend is seeking to put in the Bill a subsection in Clause 6 that, for the purposes of GDPR, would make it clear that schools, colleges and universities are not public bodies.

I note that Clause 6(2) provides the Secretary of State with the power to designate those public bodies that are not regarded as public bodies for GDPR. I am not sure what the general attitude of the Minister is, although he seems to have indicated that he is broadly sympathetic, but if he is going to rely on subsection (2) then he is going to have to do a bit more. As I mentioned previously, when Governments tell us it will all be sorted out in regulations, that is often not the solution and things can take a very long time. I mention the Housing and Planning Act again.

This is not something that educational institutions can wait months or years for; it would cost them considerably in terms of their fundraising plans. I hope the Minister can deliver some positive news to my noble friend, who has raised an important issue. It is fair to say that if she pressed this or a similar amendment to a vote on Report, she would be likely to win the day because it is an issue that many noble Lords are very concerned about.

Baroness Chisholm of Owlpen (Con): My Lords, I thank noble Lords for taking part in this debate. I always feel humbled when I realise how many chancellors, presidents and fellows of universities we have in this House. I think that is why our debates and discussions are always of such high quality, because that is what noble Lords bring to this House. I congratulate the noble Baroness, Lady Royall, on her appointment. I visited Somerville College a lot because my daughter went there; she had an extremely enjoyable time and loved her three years there.

Universities are classified as public authorities under the Freedom of Information Act, and the Bill extends that classification to data protection. We recognise that universities, as complex organisations with many varying functions and interests, also carry out other functions that may not count as "public

[Baroness Chisholm of Owlpen]
tasks" under data protection law. The conundrum raised by the noble Baroness has also been raised with the Government by the universities. I thank them for their time and help in working with both the Government and the Information Commissioner to resolve the problem.

I fully appreciate that the intention of the amendment is to protect our schools, colleges and universities by allowing them to continue pursuing their interests outside of their public tasks. I reassure noble Lords that neither the Bill nor the GDPR puts that at risk. The Information Commissioner's Office has confirmed that it will issue detailed guidance on this matter, including the processing of personal data for the purpose of maintaining alumni relations, in order to make this clear. Representatives of the higher education sector have also indicated to the Information Commissioner's Office that they may wish to develop further sector-level guidance, and the Information Commissioner's Office will assist with that.

However, we are very sympathetic to everything that noble Lords have said today. It is important that we should meet again, and I am happy to agree to a meeting between myself, my noble friend Lord Ashton and all interested Peers so that we can talk about this further, in order that when we come back on Report we will have something that perhaps everyone will wish to hear. I hope my clarification on this issue is sufficient for now, and that the noble Baroness will agree to withdraw her amendment.

Lord Kennedy of Southwark: The Minister mentioned guidance and said that these matters would be solved then. Can she give us an assurance that we will have the guidance before the Bill becomes law?

Baroness Chisholm of Owlpen: The guidance from the Information Commissioner's Office is ongoing. I had better go and find out whether we will have it by the time this Bill becomes law, because I do not want to say something at the Dispatch Box that turns out to be wrong. I will have to get back to the noble Lord on that point.

Baroness Royall of Blaisdon: My Lords, I am grateful to the Minister for her semi-positive answer. I have to say that if the guidance were available before the Bill became law, that would be quite extraordinary because it is not the norm, but it would be very welcome. I am grateful for her sympathy and understanding, and I realise that there has been a meeting between the university sector and the Information Commissioner's Office, but personally I still feel the guidance is not enough. I am therefore grateful for the offer of a meeting to discuss this further. I thank everyone who has participated in this short debate. I particularly thank my noble friend Lady Kennedy of The Shaws for quite rightly pointing out that this is a matter of importance for schools, universities and colleges up and down the land, not just the "elite", as it were—everyone is going to suffer.

With the reassurance from the Minister that we can have a meeting to discuss this further, I beg leave to withdraw the amendment.

Amendment 10 withdrawn.

Clause 6 agreed.

Clause 7: Lawfulness of processing: public interest etc

Amendment 11

Moved by ***Lord Clement-Jones***

11: Clause 7, page 5, line 6, leave out "includes" and insert "means"

Lord Clement-Jones: My Lords, I shall also speak to Amendments 13, 15 and 21. It is slightly putting the cart before the horse to deal with Amendment 11. I will do so since it comes earlier in the order, but it covers a rather less general issue than the less general amendments.

Under the current Data Protection Act, controllers need a Schedule 2 legal basis to process personal data. Schedule 2 lists six main groupings and the controller has to select at least one from the list. If the controller does not have a legal basis for processing, then the controller cannot process the personal data. So it is surprising to discover that Clause 7, through the use of the word "includes", can legitimise public sector processing of personal data on a ground not listed in the Bill. Such a basis might be, for instance, not necessary for the controller's statutory functions, and that is why I seek the Minister's reassurance.

There is all the difference between setting out the bases in an exhaustive way and a non-exhaustive way. In looking at how the position is reached, one needs to look at Clause 7, which states:

"In Article 6(1) of the GDPR (lawfulness of processing), the reference in point (e) to processing of personal data that is necessary for the performance of a task carried out in the public interest or in the exercise of the controller's official authority includes processing of personal data that is necessary for … administration of justice",

and so on until (d),

"the exercise of a function of the Crown, a Minister of the Crown or a government department".

It can be seen by comparison with Schedule 2 of the DPA that the only missing basis for processing is,

"the exercise of any other functions of a public nature exercised in the public interest by any person".

The Explanatory Notes to Clause 7 state:

"Article 6(2) of the GDPR enables Member States to, amongst other things, set out more specific provisions in respect of Article 6(1)(c) and (e). This clause provides a non-exhaustive list of examples of processing under Article 6(1)(e)".

That seems slightly paradoxical; it says it is going to be more specific than the Explanatory Notes say it is going to be non-exhaustive. The note continues:

"This includes processing of personal data that is necessary for the administration of justice",

and so on. The section on Clause 7 concludes:

"The list is similar to that contained in paragraph 5 of Schedule 2 to the 1998 Act".

So the intent, as explained in paragraphs 85 and 86 of the Explanatory Notes, is for the Government to use the flexibility set out in Article 6(1)(c) and (e) to take

an exhaustive list of legal bases for the processing of personal data and actually create a non-exhaustive list of grounds that public bodies can use in Clause 7. How paradoxical can you get?

7.30 pm

The difference between exhaustive and non-exhaustive is profound. An exhaustive list requires that the legal basis associated with processing be one of those listed. The non-exhaustive list says that the legal basis can be one of those listed, but there may be another legal basis that is not listed that applies to the processing of personal data. In other words, the legal basis, or the grounds in Clause 7 that allow a public sector controller to process personal data, extend beyond paragraphs (a) to (d) and include other unspecified grounds. What are these other grounds? How many are there? Who defines them? What are the Government's intentions? Indeed, how can Clause 7 be enforced by the ICO if a public sector controller such as a local authority can argue that the processing of personal data, although not necessary for the exercise of the function conferred on it by enactment, is necessary for the exercise of a function agreed at, say, a council meeting? Who knows whether this ground is valid when the list of possible grounds in Clause 7 is non-exhaustive? I hope I have made clear the position and our bafflement as to why the list is non-exhaustive, and I very much hope that the Minister can explain the import and purpose of Clause 7.

Other amendments that we have tabled are probing in nature as well. The term "public interest" is used throughout the Data Protection Bill and is key to applying many of its provisions. These include consideration of the legal basis, condition for processing, whether the exemption applies, whether the data can be transferred, and as a defence to certain offences. In relation to special categories of personal data, the term "substantial public interest" is used in the Bill, as in the GDPR. Neither "public interest" nor "substantial public interest" are defined terms in the Bill. Concerns regarding the lack of clarity around those terms were raised during Second Reading. My noble friend Lady Ludford, in particular, raised that, and the noble Lord, Lord Patel, raised it in the context of research.

Further clarification on the scope of "public interest" and "substantial public interest" in the Bill is required. I am afraid that the noble Lord, Lord Collins, may have to put up with this, but guidance is needed on how those terms are to be interpreted when applying the Bill's provisions. I think we will see a theme whereby the noble Lord, Lord Collins, stands up every time the word "guidance" is mentioned, asking when, how and so on.

The application of a public interest test or substantial public interest test will to an extent depend on the circumstances of the processing. However, guidance on the application of these terms from the ICO would provide clarity and greatly assist controllers and processors in carrying out their obligations, and data subjects in understanding whether their data is being processed in accordance with the terms of the legislation. It would be desirable to have a statutory code of practice requiring the commissioner to produce such guidance, and to allow it to be consulted on and scrutinised by Parliament.

Public interest, of course, is also relevant to both freedom of expression and freedom of information. Guidance should be available as to its application in both those contexts. I hope I have said enough in the hope that the Minister will untangle this particular puzzle for us over time—perhaps not at this stage, but certainly as the Bill progresses. I beg to move.

Lord Stevenson of Balmacara (Lab): My Lords, I do not need to say very much about our amendments in this group because they overlap to a great extent with what has just been said by the noble Lord, Lord Clement-Jones. I should not really delay the House as it is anxious to get on to other business, but the noble Lord made an interesting comment about the response that might come from my noble friend sitting to my right. In our Whips' Office we have a regular problem, because Ray Collins and Roy Kennedy are, confusingly, always called Roy Collins and Ray Kennedy. I have never actually heard them be confused when called by their surnames, so we have had a first today. It is always nice to see firsts in our rather dull and restricted life—it is time for dinner.

This is quite an important amendment, and the noble Lord, Lord Clement-Jones, has made the case very well. When I was looking through the Bill and trying to come up with a sense of narrative that we could use here, I wondered about the introduction of "substantial public interest", which predates this Bill significantly. It appears in the 1998 Data Protection Act but it was not challenged there. It felt to me like a mistranslation—a sort of Anglicisation gone wrong, because there should not be gradations of public interest. A matter is either in the public interest or it is not: it should not have to be qualified by the word "substantial" to get it to a different level of concern or consent. In that sense, maybe "substantial" just means of greater sensitivity, rather than more important and therefore to be restricted. I should be grateful if the Minister reflected on that when responding.

I share the concern that the noble Lord, Lord Clement-Jones, raised in his first amendment. By and large, the Bill is pretty good at tying down where there is flexibility and where there is not, but here, the terminology seems very loose. We can understand what Clause 7 means, but the idea that it would be relatively easy to extend and adapt the list in subsections (a) to (d) is quite worrying. If that is to stand, and the defence says that it is reasonable in the circumstances to have such wording, we need to understand the powers under which that list could be adapted or amended. Are they to be found in the Government's ability to seek regulatory approval, or will it be done in some other form? We ought to know the answer to that.

Since we are back on codes, as mentioned by the noble Lord, here is a code that it is really important to have before we get to Report. I would be grateful if the Minister confirmed that that will be possible. I understand that the issue is not in his hands, because

[Lord Stevenson of Balmacara]
the Information Commissioner will be the person responsible. However, given that the terminology in the Bill will have an impact right across our statutory provisions regarding what is or is not in the public interest, and if this is the long-awaited guidance and the substitute for a proper definition in statute, it is very important that we have it in time to discuss it on Report.

Lord Patel (CB): My Lords, I speak to Amendments 11 and 13, in the name of the noble Lord, Lord Clement-Jones, and Amendment 154, in the name of the noble Lord, Lord Stevenson of Balmacara, and to which I have added my name in support.

When I first read the amendments tabled by the noble Lord, Lord Clement-Jones, I was concerned because I thought them quite restrictive. Now that he has spoken to them, I can see that he intended them to be wider, so I apologise to him that I did not have the opportunity to speak with him beforehand, so that I would have had that clarification. None the less, having said that, I am concerned that the amendment would restrict the interpretation of,

"a task carried out in the public interest",

and a narrow list is set out in Clause 7(a) to (d). That is a major concern for universities and other institutions involved in research.

It is absolutely important that universities and other public bodies that carry out research functions are able to use,

"task carried out in the public interest",

as a legal basis for processing personal data. Restricting this clause to apply only to those functions listed in paragraphs (a) to (d) would instantly make all processing of personal data carried out for research purposes with a university illegal. That is unless it could meet the stringent requirements of GDPR-compliant consent, which I will speak to on an amendment in the group that follows.

None the less, providing further clarity through regulations would ensure that "public interest" was not used as a catch-all for public bodies, negating the incentive to restrict the definition in the Bill in the way proposed by this amendment. I have no doubt that we will have a discussion and that the amendment is not intended to be so restrictive. I look forward to the Minister's summing up.

I support Amendment 154 in the name of the noble Lord, Lord Stevenson of Balmacara. However, under the GDPR, all users and controllers of data will need to be much clearer about the legal basis that they use to process personal data, and more explicit with data subjects about what is happening to data about them. However, this shift is also likely to generate a certain amount of confusion among researchers who process personal data as part of their studies.

An enormous amount of research using personal data is carried out by universities, which constitute public bodies. As it stands, the Bill defines "public interest" in quite a narrow way—and I shall come to that in more detail when I deal with a group of amendments in my name. But "public interest" is an underspecified notion that could be interpreted in many ways, in the absence of authoritative guidance—and it is that absence that the amendment under the name of the noble Lord, Lord Stevenson of Balmacara, deals with. Placing the requirement to produce codes of practice in the Bill will ensure that it is an undertaking that receives the urgent attention that it demands, and I support it for that reason.

Lord Ashton of Hyde: My Lords, this is a rather unusual occasion, in that normally noble Lords say that they are going to read very carefully what the Minister has said in *Hansard*. In this case, I am certainly going to have to read carefully what the noble Lord, Lord Clement-Jones, said, in *Hansard*. This is a complicated matter and I thought that I was following it and then thought that I did not—and then I thought that I did again. I shall set out what I think should be the answer to his remarks, but when we have both read *Hansard* we may have to get together again before Report on this matter.

I am glad that we have this opportunity to set out the approach taken in the Bill to processing that is in the public interests and the substantial public interests. Both terms are not new; they appeared before 1998, as the noble Lord, Lord Stevenson, said, in the 1995 data protection directive, in the same sense as they are used in the GDPR and the Bill. That is to say, "substantial public interest" is one of the bases for the processing of special categories of personal data, and this is a stricter test than the public interest test that applies in connection with the processing of all categories of personal data. The noble Lord, Lord Clement-Jones, was wrong to suggest that the list provided in the 1998 Act in relation to public interest was genuinely exhaustive, I think. As he said himself, the effect of paragraph 5(d) of Schedule 2 was to make that list non-exhaustive.

In keeping with the approach taken under the 1998 Act, the Government have not limited the public interest general processing condition. The list in Clause 7 is therefore non-exhaustive. This is intentional, and enables organisations which undertake legitimate public interest tasks to continue to process general data. Noble Lords may recall that the Government committed after Second Reading to update the Explanatory Notes to provide reassurance that Clause 7 should be interpreted broadly. Universities, museums and many other organisations carrying out important work for the benefit of society all rely on this processing condition. For much the same reason, "public interest" has not historically been defined in statute, recognising that the public interest will change over time and according to the circumstances of each situation. This flexibility is important, and I would not wish to start down the slippery slope of attempting to define it further.

The Government have, however, chosen to set out in Part 2 of Schedule 1 an exhaustive list of types of processing which they consider constitute, or could constitute, processing in the substantial public interest. That reflects the increased risks for data subjects when their sensitive personal data is processed. Again, this approach replicates that taken

in the 1998 Act. Where the Government consider that processing meeting a condition in that part will sometimes, but not necessarily, meet the substantial public interest test, a sub-condition to that effect is included. This ensures that the exemption remains targeted on those processing activities in the substantial public interest. A similar approach was taken in secondary legislation made under the 1998 Act. The Government intend to keep Part 2 of Schedule 1 under review, and have proposed a regulation-making power in Clause 9 that would allow Schedule 1 to be updated or refined in a timelier manner than would be the case if primary legislation were required. We will of course return to that issue in a later group.

Amendment 15 seeks to make clear that the public interest test referred to in Clause 7 is not restricted by the substantial public interest test referred to in Part 2 of Schedule 1. Having described the purposes of both these elements of the Bill, I hope that noble Lords can see that these are two separate tests. The different wording used would mean that these would be interpreted as different tests, and there is no need to amend the Bill to clarify that further.

Amendment 154 would require the Information Commissioner to develop a code of practice in relation to the processing of personal data in the public interest and substantial public interest. As we have already touched on, the Information Commissioner is developing relevant guidance to support the implementation of the new data protection framework. Should there later prove a need to formalise this guidance as a code of practice, Clause 124 provides the Secretary of State with the power to direct the Information Commissioner to make such a code. There is no need to make further provision.

I hope that that explanation satisfies noble Lords for tonight, and I urge the noble Lord to withdraw his amendment. However, in this complicated matter, I am certainly prepared to meet noble Lords to discuss this further, if they so require.

Lord Clement-Jones: My Lords, I thank the Minister for that very helpful exposition. I shall return the compliment and read his contribution in *Hansard* with great care. I apologise to the noble Lord, Lord Kennedy, if the Bill has already had a befuddling influence on me. It comes from looking along the Labour Benches too much in profile.

With this amendment, I feel somewhat caught between the noble Lord, Lord Patel, and a very hard place. Clearly, he wants flexibility in a public interest test, and I can well understand that. But there are issues to which we shall need to return. The idea of a specific code seems the way forward; the way forward is not by granting overmighty powers to the Government to change the definitions according to the circumstances. I think that that was the phrase that the Minister used—they wish to have that flexibility so that the public interest test could be varied according to circumstances. If there is a power to change, it has to be pretty circumscribed. Obviously, we will come back to that in a later group. In the meantime, I beg leave to withdraw the amendment.

Amendment 11 withdrawn.

House resumed. Committee to begin again not before 8.47 pm.

Sierra Leone: Ebola

Question for Short Debate

7.48 pm

Asked by ***Baroness Hayman***

To ask Her Majesty's Government what assessment they have made of progress in the recovery of Sierra Leone from the effect of the Ebola outbreak; and what assistance they are offering the Government of Sierra Leone in the recovery effort.

Baroness Hayman (CB): My Lords, I am grateful for the opportunity to introduce this debate tonight and to the other noble Lords who will be speaking, albeit too briefly. I declare my interests as set out in the register, and add that my husband chairs an international NGO active in Sierra Leone.

It is almost exactly three years to the day that the Disasters Emergency Committee launched its appeal for the victims of the Ebola outbreak in west Africa, the first time DEC had ever launched an appeal for a health emergency. The disease was raging throughout Guinea, Liberia and Sierra Leone. In August, an international emergency had been declared, and the UN was warning that if the epidemic was not brought under control before the end of the year we would face a global crisis.

The initial international response to the outbreak was desperately slow and inadequate, but the seriousness of the situation was eventually grasped. Epidemiologists and medical staff poured into the affected areas from all over the world. Community mobilisers in those countries worked tirelessly to break down the distrust of official advice among those most at risk and to persuade communities of the need to change burial practices in particular. International NGOs rose to the challenge of working in areas completely new to them, such as safe and dignified burials and contact tracing of potential patients. The UK sent 1,500 military personnel to Sierra Leone to implement a national emergency response centre under the guidance of that country's President.

I went to Sierra Leone in February 2015 and saw for myself both the terrible devastation that the disease was causing and how effectively the UK, as international lead partner, was working through our NGOs, DfID staff, brave NHS volunteers and the outstanding work of the then high commissioner, Peter West. I will never forget what I saw during that visit and there is much that I could say tonight about the outbreak and the response to it, but I want to

[Baroness Hayman]
concentrate on the future and how the UK can support Sierra Leone going forward. However, it is important to acknowledge that the developed world was never interested in Ebola until this outbreak brought the disease to its TV screens and, potentially, to its borders. The reason that there was no vaccine, no rapid diagnostic test and no effective treatment for Ebola was not because haemorrhagic fevers are particularly complex or difficult diseases to treat. It is because they are, fundamentally, diseases of the poor. We often call such afflictions "neglected tropical diseases" but actually they are the diseases of neglected peoples. In our shrinking global world, we need to understand not only the moral imperative but also the self-interest in spending more resources and effort on finding solutions for these diseases. In this context I particularly welcome the setting up of the Ross fund to nurture British research. In London and Liverpool we have extraordinary centres of excellence and scientific expertise and we should support them.

In 2016, I visited Sierra Leone again after the country had been declared free of Ebola. It was a pleasure not to see burial workers in protective clothing; not to have ones temperature taken at roadblocks or to have to wash ones hands at every building's entrance; not to have a curfew and a palpable sense of fear wherever you went. However, the Ebola epidemic, like any natural disaster, left behind it a trail of destruction and long-term problems. These were not helped by the disastrous floods this year, where the vulnerability of the infrastructure and the communities in which many of Sierra Leone's people live was graphically illustrated. The country was poor before Ebola struck and it reversed much of the progress that had been made after the civil war, some 50% of its population living on under $2 a day.

The effects of Ebola were devastating: 4,000 deaths; some 14,000 people either infected or believed to be so; children orphaned and schools closed. For many girls, their education was not only interrupted but completely ended. There was a spike in teenage pregnancies, much of it related to the exploitation of young girls in poverty by older men. Survivors are left with a range of health problems, and in some cases have suffered social stigma as, cruelly, did some of the Sierra Leonean heroes of the epidemic who worked on burial programmes. During the outbreak, health workers were 20 times more likely to be infected than the general population, and 220 lost their lives, a significant number in a country whose health service was already desperately underresourced. Vaccination rates fell from their high of 92% in 2013 and were still nearly 10% lower than that last year. During Ebola, maternal deaths increased by 30%, and newborn deaths by 24%. It is chilling to remember that maternal deaths in Sierra Leone are 100 times those in our own country. As far as the economy was concerned, in 2015 GDP actually fell by 21%. Major industries such as tourism were devastated, but the closure of markets during the epidemic meant that many small businesses also went to the wall.

In recognition of all these problems, the UK Government allocated £240 million to support the President's recovery plan in Sierra Leone. The strengthening of health systems, as well as women's education, health and empowerment have been high priorities. However, there are also a number of deep-rooted structural challenges that have to be faced. Next year, there will be elections in Sierra Leone and constitutional changes are proposed. I know from my visits to the Parliament there how underresourced it is and how difficult it is for MPs to act as a constituency advocates, particularly for the poorest in Sierra Leonean society. I hope that the Minister can reassure me that the strengthening of parliamentary democracy will remain a priority for the UK.

There is a specific issue on which I would be grateful for comments from the Minister. One of the main pillars of DfID support has been the Saving Lives programme, to which £150 million was pledged over five years and which focused particularly on improving the availability of reproductive, maternal, neonatal, child and adolescent health services by 2021. Several UK-based NGOs involved in these areas have flagged concerns to me about the management of that programme; about abrupt changes late in the setting of contracts; and about whether funding has been reduced and resources diverted to other areas. I hope the Minister can give me some reassurance about the programme and assurance that UK NGOs and institutions which have worked for decades in Sierra Leone will be supported by DfID in their future work.

One of the lessons from the Ebola crisis was how, in the end, the Sierra Leonean Government, international donors, NGOs and community groups worked effectively together to defeat the outbreak. In the long, hard slog ahead, not just to recover from the effects of Ebola but for Sierra Leone to become a thriving, successful, democratic country within Africa, that commitment to integrated and sustained effort will be necessary once again. I hope that our DfID representatives in the country and our high commission will take the lead in ensuring that sort of co-operation. Most of all, I hope that the Minister will be able to assure us today that Her Majesty's Government are committed to working with the Government of Sierra Leone and other partners across a wide range of fronts: economic development and increasing the tax base; health infrastructure; water and sanitation; the empowerment of women; and, perhaps especially, the horribly high rates of FGM and what can be done to reduce them. I hope that Her Majesty's Government will agree to commit the necessary resources to meet all those challenges, not just in the short term but for the sustained, long-term effort that will be necessary for success.

7.58 pm

Baroness Jenkin of Kennington (Con): My Lords, I thank the noble Baroness for introducing this debate so ably and for her constant campaigning, particularly on neglected tropical diseases. I have only visited Sierra Leone once, and before the Ebola outbreak, but it was easy for me to visualise, as the

noble Baroness was speaking, the challenges I saw even then, before it was so ravaged by this terrible disease.

The 2014-16 outbreak in west Africa was the largest and most complex Ebola outbreak since the virus was first discovered in 1976. There were more cases and deaths in that outbreak than in all others combined. It spread between countries, starting in Guinea then moving across borders to Sierra Leone and Liberia. Following a delay in international action, Britain played a leading role in the fight against Ebola in Sierra Leone and continues to lead the way in supporting developing countries to quickly and efficiently tackle such threats at their source and prevent them from spreading.

A number of reports and studies commissioned in the aftermath of the crisis have recognised that community engagement is a key strategy to successfully controlling future outbreaks. It is clear that any attempt to guard against future outbreaks must prioritise community engagement and education. Linked with the concept of community engagement is that of community resilience and preparedness for disasters and emergencies. The prospect of the re-emergence of the Ebola virus is an issue of real, live concern in Sierra Leone. Individuals and communities that were most affected by Ebola are perceived to be most at risk of re-emergence and, as a result, remain stigmatised, marginalised and vulnerable, while much of the promised welfare support for these communities has yet to materialise. Preparedness and resilience of communities is crucial in the light of possible re-emergence. Thankfully, important lessons have been learned with regard to transmission of communicable diseases through good hygiene practices, phasing out high-risk cultural practices and road blocks to prevent mobility. The real test, however, would be the speed of an effective response and the degree of co-ordination of government, NGO and community efforts and resources, having learned these recent lessons.

Alongside DfID initiatives in this area, NGOs such as Restless Development—I declare an interest as a patron—have been at the forefront of efforts to support and promote community engagement schemes in Sierra Leone, uniting high-level strategic response with a bottom-up approach. Much of their work has been around their tried-and-tested model of mobilising youth energy to address safety and protection, as well as adopting an intergenerational approach to restoring livelihoods and stability. I pay particular tribute to the efforts of the Social Mobilisation Action Consortium, formed by Restless Development, GOAL, Focus 1000, and BBC Media Action, which have worked hard over the last few years to promote greater awareness. The consortium has been instrumental in leading the largest community mobilisation ever seen in Sierra Leone, with over 1,500 youth around the country trained by Community-Led Ebola Action, reaching over 3 million people with life-saving messages—and mobilised at speed, unlike much of the international response which was slow and clunky. The bottom-up approach has built a foundation of trust, at the community and national level, which may be successfully built upon to ensure that communities are more resilient and better prepared to prevent further outbreaks and deal with what happens if an outbreak occurs.

To conclude, I ask my noble friend the Minister: how are the Government building on and recognising the contributions that both younger and older people play in strengthening resilience within their communities? To what extent are the Government considering how intergenerational responses to development challenges such as the Ebola crisis can be used to fulfil their commitments to leave no one behind?

8.02 pm

Lord Falconer of Thoroton (Lab): My Lords, I congratulate the noble Baroness, Lady Hayman, on procuring this debate. It is very timely and important that we debate Sierra Leone. I declare an interest: my son has spent the last seven years running a charity in Sierra Leone which he has sought to finance with a variety of agrarian businesses. Sierra Leone is at this moment at a crossroads.

Prior to Ebola, Sierra Leone was enjoying a very high rate of growth from a very low base. It was not just Ebola that brought Sierra Leone to its knees but the collapse in the iron ore price. There were two iron ore mines: one was closed and the other was taken over by the Chinese. Sierra Leone is a country completely dependent economically on commodities and aid. The two commodities on which it is dependent are diamonds and iron ore. It imports practically everything else. Despite the fact that it is a poverty economy, everything is hugely expensive in Sierra Leone because it is all imported. Freetown, which is an incredibly undeveloped city, is one of the most expensive places to go to in the world.

Sierra Leone is a year away from a general election. The British Government did terrifically in relation to the Ebola outbreak. Both DfID and the UK military performed tremendously in bringing the outbreak to an end. Now there is an almost greater challenge to provide structural benefits to Sierra Leone. I suggest four areas on which the British Government may wish to focus. First, the aid that they give should be focused on diversifying the economy away simply from the commodities-based economy. In particular, it should focus on agrarian businesses and tourism. Agrarian businesses have a good base in Sierra Leone and yet that country imports practically all its food. It is time that investment was made in those agrarian businesses.

Secondly, the future of Sierra Leone depends crucially on there being private investment. It cannot survive on aid alone. The Department for International Development should consider investing in private businesses. The problem with Sierra Leone is that there are very low barriers to entry: you can get businesses going but they are never sustainable. DfID should see whether there are private sector partners with which it can operate to try to get more sustainable businesses.

Thirdly, as the noble Baroness, Lady Hayman, said, investment needs to be made in the infrastructure of Sierra Leone, in particular the rule

[Lord Falconer of Thoroton]
of law and democratic institutions. Parliament and the courts are underfunded but this action means in particular really fighting corruption. People will not invest in a country where they perceive corruption to be widespread. Genuine efforts are being made to fight corruption but investment needs to be made by the British Government to support those efforts.

Fourthly, and finally, the Sierra Leonean Government should be encouraged to enter into more bilateral investment treaties with countries other than just China, the UK and Germany, which are the three countries with which it has bilateral investment treaties now. The more there are bilateral investment treaties with other countries, the more that encourages countries other than the three I have mentioned to invest in Sierra Leone.

I have been regularly to Sierra Leone over the last eight years through the good times and the bad times, and there have been a lot of very bad times. However, there are real opportunities in Sierra Leone if the investment is right and it is aimed at creating a sustainable, diverse economy. I believe that is where the British Government, who have been a stalwart friend of Sierra Leone, should focus their efforts.

8.07 pm

Baroness Coussins (CB): My Lords, I would like to draw attention to a group of people whose work is rarely acknowledged but who have been vital to the recovery from Ebola in Sierra Leone and elsewhere: the interpreters and translators who work alongside health professionals on both treatment and prevention. I am most grateful for information from the organisation, Translators Without Borders—or TWB—which has been an essential part of the recovery in Sierra Leone. I pay warm tribute to its work. I should also declare my own interest as vice-president of the Chartered Institute of Linguists.

When Ebola took hold the initial response was painfully slow, as we have heard, and language was one of the main difficulties faced by humanitarian workers. Language is not usually seen as a priority in emergency responses and, as a result, misinformation and panic can spread quickly. Information was available mainly in English or French, but only a minority of people spoke either of these. In Sierra Leone, only 13% of women understand English. Most Sierra Leoneans, particularly in rural areas, speak Krio, Mende and Temne. This led to important knowledge gaps: 30% believed that Ebola was transmitted via mosquitoes, another 30% thought that it was an airborne disease. Four out of 10 believed that hot salt-water baths were an effective cure, so TWB developed its Words of Relief project, the first translation crisis relief network in the world. It was funded by the Humanitarian Innovation Fund and Microsoft.

Started in Kenya in January 2014, the project extended in November that year to Ebola-affected countries. It created what TWB calls "spider networks" of crisis translators. These are virtual teams of translators trained to respond rapidly to language needs. They were based around the world, in the US, Ghana, Sierra Leone, Mali, France, Switzerland, Germany and Kenya. They were recruited because they are native speakers and have strong links to the affected countries. Their language skills were vetted and they underwent high-quality, rigorous, expert online training, even ensuring that correct dialects were being used. Hundreds of Ebola-related items were translated and disseminated, including posters, videos, cartoons and maps. One of the most effective outputs was a series of simple posters that suggested ways to prevent the spread of Ebola, describing symptoms and emphasising the urgency of medical attention. Others targeted children and other carers.

However, the main problem was getting content from the aid agencies. TWB believes that this is partly because the agencies were stretched too thinly during the crisis, as well as due to a lack of incentive because the use of local languages is not one of the effectiveness measures for projects. Another major concern was illiteracy. According to UNESCO, adult literacy rates in the three most affected countries are below 48%. In TWB's experience, priority needs to be given to audio and video material in local languages.

It is clear that a greater focus on translation is needed to help control crises such as the Ebola outbreak. Aid agencies and Governments alike need to collaborate and provide content for translation, and provide it quickly. Will the Minister take this issue back to his department and seek to establish a firm protocol, that wherever Her Majesty's Government are involved—whether in an emergency response or their follow-up recovery programme, and whether through DfID directly or through funding the work of an NGO or an aid agency—explicit measures are built into the project to integrate language and translation work, and that evaluating the success of any intervention includes looking at the impact made by translators and interpreters?

8.11 pm

Viscount Ridley (Con): My Lords, I thank the noble Baroness, Lady Hayman, and congratulate her on securing this debate and on bringing her own experience to bear on it. I will raise two issues briefly. The first is the dreadful initial response of the World Health Organization and what lessons are being learned from it, and the second is the very recent development at a British university of a rapid blood test for diagnosing Ebola.

On the first issue, I make it clear that I am not criticising all those who worked incredibly hard under very dangerous conditions to bring this terrifying epidemic under control, including those working for the World Health Organization and the UK Government. My target is what happened at an earlier stage. I will quote from a devastating report prepared by Médecins Sans Frontières a year into the 2014 outbreak. It says:

"On 31 March, MSF publicly declared the outbreak as 'unprecedented' due to the geographic spread of the cases … On 1 April, the World Health Organization … via its chief spokesperson in Geneva, was the first to call into question MSF's declaration, objecting that the virus dynamics were not unlike those of past outbreaks, nor was the outbreak unprecedented …

We raised the alarm publicly again on 21 June, declaring that the epidemic was out of control and that we could not respond to the large number of new cases and locations alone … It was like shouting into a desert".

The report says that,

"members of the WHO in Guinea and Sierra Leone downplayed the epidemic's spread, insisting it was under control and accusing MSF of causing unnecessary panic".

At the end of June, there was a World Health Organization meeting in Geneva. Marie-Christine Ferir of MSF says:

"I remember emphasising that we had the chance to halt the epidemic in Liberia if help was sent now … It was early in the outbreak and there was still time. The call for help was heard but no action was taken"…

She said that meetings happened but action did not. It was not until 8 August, after more than 1,000 people had already died, that the WHO at last declared the outbreak a,

"public health emergency of international concern".

The WHO Executive Board has since resolved to enact reforms for epidemic response, but very little has happened. Could the Minister tell us what pressure we in the UK are bringing to bear on the WHO, an organisation to which we pay $21 million a year, and which recently thought fit to make Robert Mugabe a good will ambassador?

The second issue is technical. During the 2014 outbreak, it took five days or more to get a result from a blood test to see whether somebody had Ebola. That was eventually reduced to between five and eight hours, but it still cost $100 a test. One of WHO's mistakes, which puzzled people at the time, was to insist on one technology that was laboratory-bound and expensive: GeneXpert, made by Cepheid. It was hardly used, because it was simply too complicated.

Dr Sterghios Moschos at Northumbria University announced last month that in collaboration with BioGene Ltd and PHE at Porton Down he has developed a simple 70-minute diagnostic test that detects the Ebola virus reliably when spiked into cow's blood. He has not been able to test it on people for the good reason that at the moment nobody has Ebola. But he says that,

"in the future, stockpiling instruments and tests for known high-risk diseases, such as Ebola virus disease, would make mass screening capacity available in a matter of days or even hours".

Could the Minister say whether the British Government will look into this to see how his test could be developed and stockpiled as he suggests? Could they perhaps consider deploying it at ports of entry for protection against not just Ebola, because it is a platform that could work for Lassa, dengue, West Nile, yellow fever and Zika? I should declare a possible interest. I have no interest in Dr Moschos's work or in BioGene but I have one in another Newcastle company, QuantuMDx, which is working on similar rapid and inexpensive tests for diseases, although not Ebola.

8.16 pm

Lord Giddens (Lab): My Lords, I begin by expressing my admiration for the noble Baroness, Lady Hayman, for her continuing dedication to and involvement in the future of Sierra Leone in the wake of this disaster. Building on what she said, four minutes is not long to speak about an epidemic that once caused headlines and panic around the world. If the same scenario had occurred in a developed country, one has to ask whether it would have drifted into such relative obscurity. I think not. I want to make a number of brief points and perhaps the Minister, who is already loaded up with questions, can respond to at least some of them.

First, Ebola has not disappeared. There will be new cases in 2017 in Sierra Leone and elsewhere. One of the most marvellous things that happened was the creation of an effective vaccine, but this covered only one strain of the virus. I would like the Minister to comment on the observation of one leading expert in the field, who says that we are just as vulnerable to an Ebola pandemic as we were in 2014.

As was said by the noble Lord, the economy of Sierra Leone was absolutely shattered by the impact of Ebola. Previously it was growing at 20% but I think the true figure of the collapse in the year that followed was minus 40%. The economic losses in Sierra Leone were more than twice those in Liberia or Guinea. How would the Minister assess the really core issue of the durability of the economic recovery? Is the UK continuing to make a direct contribution to what is needed in relation to this fundamental issue?

Some positives emerged from this horrendous episode—for example, the active attempts to develop local community care. Some of these were pretty innovative and, to add to what other noble Lords have said, the UK Government are to be commended for their efforts in this area, as in others. However, what is happening today with these endeavours? Does the UK continue to play a direct part in the evolution of these crucial local community involvements, not just to deal with the continuing consequences—Ebola survivors are still basically shunned by many people—but to further develop the resilience displayed?

As my noble and learned friend Lord Falconer said, corruption in the country is endemic at all levels in the country. According to a BBC report this week, millions of pounds in funds raised to fight the virus have now gone missing. How much of this money has been traced?

Last week a national newspaper had the headline, "Foreign Aid: Let's STOP it NOW". The argument was that we should concentrate on the NHS and domestic problems. I hope that the Minister will respond very forcefully in repudiating such assertions. Commitment to overseas aid is not just a moral imperative; it is a material one for the UK. As other speakers have said, at one point there was the possibility of this outbreak becoming a pandemic, and I stress, as I said at the beginning, that the disease has not disappeared.

I have a final quick question. Did Nurse Cafferkey get to run her marathon? She was such a figure in all this. She said that she was going back to Sierra Leone to take part in the marathon, even if she had to do it in a wheelchair. I was unable to trace whether she succeeded—maybe the Minister can elucidate that.

8.20 pm

Baroness Tonge (Non-Afl): My Lords, first, I congratulate the noble Baroness, Lady Hayman, on securing this debate.

I declare an interest as chair of the APPG on Population, Development and Reproductive Health. Members of the group visited Sierra Leone this time last year with the assistance of the UNFPA, which does much work there. While we were there, we were fortunate in bumping into the new Secretary of State, Priti Patel, at the high commissioner's residence, so we corralled her and did not let her escape for a while.

Another memory of that visit was the plaque in memory of Jo Cox MP which had been erected in the Parliament chamber. It was shown to us by the niece of the late Satta Amara, founder of the 50/50 Group of Sierra Leone, which promoted women's empowerment in the country. I knew Satta, and we had done exchange visits between her country and my constituency in the years before the Ebola outbreak.

I have indulged in that preamble because the empowerment of women by giving them power over their own bodies and over the number of children they have is very important to a county's development and economic success. That means improving maternal health before all else. I do not have time to list Sierra Leone's statistics and shall not do so. Your Lordships all know how dire they are.

After the end of the civil war in Sierra Leone, DfID was a major donor, particularly to healthcare, and efforts were made to roll out treatments for individual diseases such as HIV/AIDS. Yet during our visit, post Ebola, there was still very little evidence of a health network countrywide. Such a network does not particularly need doctors and nurses but it needs workers to impart public health messages and distribute supplies such as contraceptives, which only 16% of women in Sierra Leone can access.

We visited two hospitals: a very overcrowded and struggling government-run one, and the exemplary charity-run Aberdeen Women's Centre. There are only 40 hospitals in the whole of Sierra Leone and few health centres, which in my view are even more important, although people were trying to create "pop up" health centres—again, to deal with HIV screening.

A worrying fact was the lack of treatment available for cervical cancer, which affects thousands of women in Sierra Leone. They test these women but there is no treatment available. It is very cruel to tell someone they have a disease but cannot do anything about it.

Also, will the Minister tell us when there is to be a campaign to vaccinate women against the HPV virus, which causes cervical cancer? I hear that something may be being done on this front; perhaps the Minister could confirm.

We were told that Sierra Leone was trying to develop health networks, but could the Minister tell the House if DfID is encouraging this? It is so important. The lack of such a network was in my view a major contributor to the spread of the Ebola epidemic. Does the Minister agree?

I would have liked much more time to talk about this beautiful country which has suffered so many misfortunes, from the curse of the diamond trade, as mentioned by the noble and learned Lord, Lord Falconer, to the recent mudslide and floods near Freetown—another blow to the health services trying to grow there. I hope the Minister will assure us that the UK will continue to engage with Sierra Leone and support the people there.

8.25 pm

Baroness Sheehan (LD): My Lords, I add my voice to that of other noble Lords in thanking the noble Baroness, Lady Hayman, for bringing this important debate to the House. I share wholeheartedly the sentiments of so many in your Lordships' House expressing admiration for all involved in bringing this crisis to an end.

The deadliest outbreak of Ebola virus disease in history dominated headlines for many months from 2014 to 2016, when the international community found itself faced with a steep learning curve. Today is an opportunity for our Government to demonstrate that lessons have been learnt and planning for future such outbreaks has been accordingly modified.

We have heard from noble Lords of the great challenges that bringing the epidemic under control presented to the affected population, the authorities on the ground and the international community. I agree with the noble Baroness, Lady Jenkin, and hope our Government have taken on board how important it is to engage at an early stage with faith and community leaders. The Minister will know that it was only when community leaders were properly involved that important aspects of controlling the spread of the disease, such as safe burial practices, were brought to the fore. So may I ask the Minister: how is DfID continuing to work with faith and community leaders and civil society organisations in Sierra Leone?

I was fortunate enough to take part in a visit to Sierra Leone in November 2016, under the auspices of the All-Party Parliamentary Group on Population, Development and Reproductive Health, chaired by the noble Baroness, Lady Tonge. What we found was that a health system which had been thought to have improved immeasurably was brutally exposed by the Ebola crisis to be very fragile. How is DfID leveraging its considerable reputation in strengthening health systems and what headway is it making in pressing the Government of Sierra Leone to take ownership of delivering sustainable development goal 3, which focuses on building robust health systems?

I would briefly like to turn my attention to prevention. The WHO Ebola virus disease fact sheet, most recently updated in June 2017, mentions an experimental Ebola vaccine, rVSV-ZEBOV, which proved highly protective in trials. Could the Minister update the House on progress on rolling out a vaccine programme in Sierra Leone?

The International Development Committee's report on the responses to the Ebola outbreak exposed shortcomings in the World Health Organization's dealings with the crisis, a point made by the noble Viscount, Lord Ridley, specifically in delays to sounding the alarm and declaring a public health emergency of international concern. This was despite the early warnings from Médecins Sans Frontières. The report specifically recommended the need for a,

"transparent and clearly understood grading system for public health emergencies".

Is the Minister able to confirm that that work is under way? In the same vein, what has DfID done to improve its ability to,

"independently assess international public health risks,

as asked to do so by the International Development Committee? This is important because a recurring theme in the IDC's report is that early intervention will save not only money but, more importantly, lives also.

8.30 pm

Lord Collins of Highbury (Lab): My Lords, I, too, thank the noble Baroness, Lady Hayman, for initiating this debate today and for giving us the opportunity to focus on the key priorities and lessons from Ebola in Sierra Leone. As we have heard, these relate to the need for strengthening healthcare systems, growing primary healthcare staff and training, scientific capacity in diagnostics and public health labs, and of course public health messaging and outreach.

In DfID's bilateral development review, strengthening health systems across the world was a clear priority. This, too, as we have heard, was emphasised by the Commons International Development Committee. It also stressed the importance of linking this to the SDG 3 by taking into account how they work as a whole and how accessible they are. Like the noble Baroness, Lady Hayman, I welcome the support given by DfID to the President of Sierra Leone who has for the past two years identified health as one of his priority sectors. The two top goals—to bring about a significant reduction in maternal and child deaths and to be able to respond effectively to future Ebola cases—have been backed by DfID.

As we heard from the noble Baroness, the Resilient Zero and Saving Lives programmes provide for early identification and prevention, investment in sanitation, health workers training and access to good-quality basic services for women and young children. Over five years, the goal is to save the lives of over 22,000 children and over 2,000 women, as well as providing family planning for more than 134,000 women and girls. How is DfID making these programmes more sustainable in the long term? We have seen programmes work well but then, when things are pulled back, they are not as sustainable as we thought.

My noble and learned friend Lord Falconer raised the issue of the private sector, which is crucial, and we have received reports of CDC programmes which have been supporting and trying to bring in other private sector finance. One of its programmes during the outbreak was to ensure the sustainability of businesses so that they did not go completely under. I would like to hear more about those CDC programmes from the Minister and again plug the need for a proper debate on the role of CDC in Africa and its five-year plan.

Before the outbreak, the Sierra Leone Government were spending more on tax incentives for big companies than on development priorities such as health. How is DfID working with the Sierra Leone Government to encourage them to adopt the recommendations in the report, *Supporting the Development of More Effective Tax Systems,* by the IMF, the OECD, the UN and the World Bank? More broadly, how is it working to help Sierra Leone claim more tax revenues?

One other clear lesson that we have heard in the debate on the outbreak has been the role of community engagement, which all too often has been regarded as a soft and relatively non-technical add-on to medical interventions. Can the Minister update us on all the programmes funded by DfID that achieved tangible behaviour change around issues such as safe burials, early treatment and social acceptance of Ebola survivors? We are aware that DfID has been supporting those programmes, but it is their sustainability that we are interested in today. Clearly, we need to ensure this continues and is extended to enable civil society organisations to work with all communities.

8.34 pm

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, I join others in paying tribute to the noble Baroness, Lady Hayman, for securing this debate and for the consistency with which she has followed these issues. As we look back through the briefing packs, we can see the debates she has initiated and the Questions she has asked all the way through. That is a great example of what happens in this place in terms of people sticking with issues. It also demonstrates her personal commitment not only in this area but through her work on the Disasters Emergency Committee and in the field of neglected tropical diseases. I was also struck during the debate by how so many noble Lords drew on their personal experiences of Sierra Leone. The noble Baronesses, Lady Tonge, Lady Sheehan and Lady Hayman, my noble friend Lady Jenkin and the noble and learned Lord, Lord Falconer, all spoke about their close links to and understanding of the situation.

The World Health Organization declared Sierra Leone Ebola-free just 592 days ago. That is less than two years since the country emerged from the devastating epidemic, which killed nearly 4,000 people, destroyed livelihoods, robbed a generation of children of a year's education and further decimated an already weak healthcare system. While a lot has been achieved in the last 592 days, this work was not just about recovering or rebuilding, it was also about laying the foundations that were absent from the start. The noble Baroness, Lady Hayman, referred to the fact that before Ebola, Sierra Leone had some of the worst health indicators in the world. A quarter of all women of childbearing age died as a result of their pregnancy, an issue referred to by the noble Baroness, Lady Tonge; one in six children died before their fifth birthday; and malaria accounted for half of all out-patient visits. Progress was being made, but not fast enough. As the UK led the international response to the epidemic, saving thousands of lives while protecting our shores, we also stood shoulder to shoulder with Sierra Leoneans during an ambitious and fast-paced recovery. However, I accept the point made by the noble and learned Lord from his own experience: the narrowness of the base of the Sierra Leone economy in terms of its dependence is a structural weakness that needs to be addressed. I shall come on to that later in my remarks.

[Lord Bates]

As we look back over the past 592 days, we can be proud to have fulfilled our pledge to support Sierra Leone's President's Recovery Priorities, referred to by the noble Lord, Lord Collins. We have educated 700,000 girls, trained 40,000 teachers and built 393 classrooms. The noble Baroness, Lady Coussins, rightly referred to the importance of education and her points about linguistics as a part of this are important. I have noted them and will take them back to the department and respond further to her.

Defeating Ebola was the second exceptional intervention by the UK following our efforts to end the civil war, helping the country be a stable and prosperous nation that responds effectively to natural disasters. Reference has been made in the debate to the recent floods and landslides, which again have had a devastating effect on people's lives and on the economy. We want to see a nation that can stand on its own two feet. As our recovery programme comes to an end, our support will remain high and our partnership with Sierra Leone will remain strong with DfID, the FCO, the MoD and Public Health England working hand in hand to deliver the UK aid strategy. The noble Baroness, Lady Hayman, mentioned the commitment we demonstrated following the landslides and flooding in Freetown this summer. UK personnel were at the scene within hours to co-ordinate the response. Two world-leading humanitarian experts provided specialist advice and £5 million of additional support was announced to provide clean water, food and medicines for the thousands of victims.

Our efforts are not limited to humanitarian aid. Sierra Leone will continue to be one of the best-funded countries on a per capita basis. Our focus will continue to be on improving the lives of the people of Sierra Leone, including investing in water and power as well as basic health services to help boost the private sector, which is essential to the country's development. I recognise the point made by the noble Lord, Lord Collins, about the role played by CDC with small and medium-sized enterprises in providing liquidity at the start of the crisis, which made a major difference. I also recognise that a debate on the subject of CDC and its economic development plans is long overdue, and I am delighted to be joined in this debate by two or even three members of the usual channels. I hope that there will be an opportunity soon to explore that issue further.

We will continue to support children's education and improve learning outcomes for 700,000 additional girls through to 2021. Our support for basic health services will continue until at least 2020. We will save the lives of more than 22,000 children and 2,000 women, and provide family planning for more than 134,000 women and girls, to which the noble Baronesses, Lady Tonge and Lady Sheehan, referred. We are also helping to tackle global health threats to Sierra Leone to make sure it is ready to contain future outbreaks before they grow into epidemics, protecting people in the UK. People's preparedness is a point my noble friend Lady Jenkin referred to in particular. The noble Lord, Lord Collins, referred to the importance of that being a community health-based solution. We have looked at the community health elements. One of the approaches we have learned at DfID from previous crises is that imposing a top-down solution never works in the long term. It has to be something that comes from the bottom up. That is that is why so many of the valid points made in the debate are being adhered to already.

However, as we discuss the recovery of Sierra Leone from Ebola, we should not pretend that the epidemic was just a crisis of the health system; it was a crisis of governance. Several noble Lords referred to this. The noble Baroness, Lady Hayman, referred to the elections, which I will come back to in a second. It was also right for the noble Lord, Lord Giddens, and the noble and learned Lord, Lord Falconer, to refer to the endemic problem of bribery in the country and corruption in general. That is why our Pay No Bribe programme is essential to carrying through and following through our zero tolerance of bribery and corruption where DfID operates. We are also supporting the Government to increase revenue to stimulate growth and spend their resources as effectively as possible.

As we look beyond the last 592 days, the UK's priority is the delivery of successful parliamentary and presidential elections in March next year, which the noble Lord, Lord Collins, referred to. They must be free, fair and, above all, peaceful. We are focused on ensuring that citizens can exercise their rights at the ballot box. The UK has played a central role in helping Sierra Leone to restore and deepen its democratic governance, help build peace and stability, and make progress on tackling poverty. Our focus will continue to be on improving the lives of the people of Sierra Leone and supporting critical reforms to support the clear leadership of the Government.

In the time I have available I will turn to some of the specific points raised by noble Lords in the debate. The noble Baroness, Lady Sheehan, asked about the vaccine. The vaccine she referred to was used successfully when the country suffered two cases in January 2016. The World Health Organization and the Government of Sierra Leone gave permission for it, but it is still at the trial stage. She also asked about early intervention and the assessment of public health trusts, which I have covered in the reply on vaccines.

My noble friend Lord Ridley asked about one of many innovations that have come out of the great universities of that wonderful city, Newcastle upon Tyne—Northumbria University's tests. We do not have details on that particular test but I would be very grateful to receive further information on it from my noble friend and to make sure it is put in contact with the relevant officials in DfID. As the noble Baroness, Lady Hayman, mentioned, it is core to the objectives of the Ross fund.

The noble and learned Lord, Lord Falconer, referred to the importance of diversifying the economy. The UK is investing in infrastructure—water, power and roads—to help create jobs, open up markets and attract investment. We are helping small and medium-sized businesses to access finance and learn new skills to grow. We are bringing in UK expertise, including the British Geological Survey, to help Sierra Leone best exploit and manage its natural resources. CDC is also seeking opportunities in that area.

There was some criticism of the World Health Organization, which we recognise. The Secretary of State, who, as the noble Baroness, Lady Tonge, mentioned, has visited Sierra Leone, is adamant that we need to reform the international humanitarian organisations, the World Health Organization among them. We are working on greater transparency, stronger accountability and measurement by results.

My noble friend Lady Jenkin asked what we are doing to empower citizens, particularly young people—she made a good point about the work of Restless Development in the country, which we recognise. DfID's strengthening accountability and building inclusion programme is building stronger accountability between citizens and service providers. We are investing £9.5 million in that programme between 2016 and 2020. We hope that it will help.

Several noble Lords, including the noble Baronesses, Lady Tonge and Lady Hayman, mentioned female genital mutilation. Sadly, Sierra Leone has one of the highest prevalence rates in the world. We have been at the forefront of looking to implement initiatives such as the Maputo Protocol in this area.

There are many points to which I have not been able to respond. Therefore, it would perhaps be a good opportunity for me to write to noble Lords to follow them up.

Particularly at this time of year, we should pay tribute to the thousands of British military personnel, NHS staff, Public Health England staff, laboratory staff, civil servants and volunteers who risked their lives to fight the Ebola epidemic when it broke out. This was a truly collective effort: the best of Britain working together to help Sierra Leone tackle this horrible disease. We could not have done it without their bravery and compassion for those in need. DfID will remain engaged so that their investment and sacrifice is not lost.

8.46 pm

Sitting suspended.

Data Protection Bill [HL]

Committee (1st Day) (Continued)

8.47 pm

Amendment 12

Moved by ***Lord Patel***

12: Clause 7, page 5, line 6, after "includes" insert ", without prejudice to the generality of the expression "necessary for the performance of a task carried out in the public interest","

Lord Patel (CB): My Lords, I shall speak also to my Amendments 14 and 111. Perhaps I may first thank the Minister and his team, who kindly agreed to see me and others to discuss what amendments I might have following my Second Reading speech. I am not sure that we resolved any issues, but I at least thank him for his courtesy and hope that, after today, we will resolve those issues.

I will speak first to Amendments 12 and 14. I beg the Committee's indulgence for taking slightly more time than your Lordships might expect for a group of amendments, partly because I think this is the only time we are dealing with the major sector issues—the sector being the universities and other research institutions on which we are about to rely a lot for our economic growth; I will come to that. I am supported enthusiastically by the Wellcome Trust, the MRC, Cancer Research UK, the AMRC, the Sanger Institute, the Academy of Medical Sciences, the ESRC and many others. They are extremely anxious that what we do with the Bill does not in any way counter their ability to use data for productive research—and I do mean productive research. I declare an interest: I am a fellow of the Academy of Medical Sciences and of the Royal Society of Edinburgh, and I have a strong association with Dundee University. I cannot miss the opportunity to say that last week Dundee University was ranked number one globally for science innovation, beating every university in the United States. That is a fantastic achievement in science research. It beat all the so-called elite universities in England that we hear about, as well.

Clause 7 sets out a legal basis for processing personal data in the public interest. This reflects article 6(1)(e) of the GDPR. It is incredibly important to get the clause right as it will be the only legal gateway available for many research purposes. Why is this the case? Most research purposes rely on informed consent as a legal basis for processing. Consent is the basis of article 6(1)(a) of the GDPR. However, GDPR-compliant consent for the use of personal data is not always a feasible option as a legal basis. Consent is often important in the interests of fairness and transparency but will not be the appropriate legal basis for much research.

I will highlight two relevant sets of circumstances to illustrate why public interest is a necessary legal basis for many valuable research purposes. The first is where consent is not possible. There are a number of situations in which it is problematic to seek consent. Seeking consent may be impracticable where health data have been collected in the past and the time and expense seeking and approaching individuals for consent would be prohibitive. It may compromise effective population coverage; for example, requiring consent has been shown to have a negative impact on the quality of data for cancer registries. It may cause distress or harm in situations where patients may be inconvenienced or upset by being contacted for their consent to use their data for a research project, even if they do not subsequently object to the research going ahead; for example, contacting people about a study examining unexplained child deaths could cause serious distress. It may lead to bias because of self-selection bias among data subjects when asked a question. It may prevent studies large enough to produce meaningful results because the cost of seeking consent across a large number of people can be very high.

I will give one or two examples pertaining to the five issues that I have described. A study of more than 40,000 people demonstrated a highly significant association between the use of minor tranquillisers such as Diazepam and the risk of serious road traffic accidents. This was done through linking prescriptions issued by GPs and

[LORD PATEL]
data on hospital admissions and deaths. By the way, this study had considerable implications for the safety of patients prescribed Diazepam, and their treatment, and of course also for other road users, but would not have been possible if data could not be processed on a consent basis. A study of the incidence of breast cancer in women was used to show that affluent women have a higher incidence than socially deprived women, but that socially deprived women had poorer survival statistics. This study used identifiable data without consent; it used hospital and GP records to look at a number of factors involved in cancer treatment.

Access to patient records also helps researchers to identify suitable participants to be invited to take part in studies. This is essential for evaluating new medicines, technologies and interventions for the prevention, diagnosis and treatment of disease. For example, in my own field, when the UK collaborative trial of ovarian cancer screening was set up to investigate different ovarian cancer screening methods, 1.2 million patients were invited to take part by post, leading to 200,000 women consenting to take part. It is a world-renowned study whose results have benefited the whole world. If consent were the only available legal basis, that recruitment strategy would not have been possible as these women had not given consent to the initial contact. Of the 1.2 million women contacted, only 32 women raised any concerns about being contacted.

These are just some of the many examples of vital research that, although very much in the public interest, cannot be done on the basis of consent. The research community has developed a system of robust and proportionate safeguards for these situations, to ensure that research on important topics can be undertaken using personal data where consent is not possible while protecting the research subjects. The use of personal data in these circumstances is controlled through safeguards. Studies using health data are reviewed by the Health Research Authority's confidentiality advisory group; they must also receive a positive opinion from a research ethics committee to be eligible. The use of this data must be considered to be in the public interest, so we have safeguards.

In this country, we also have the benefit of a National Data Guardian for health and social care—a position I very much hope will be placed on a statutory footing through a Private Member's Bill that is progressing through the other place. This guardian's role is to protect patients' rights and interests over data about them, within and beyond health and care services. The reason for this exposition into the governance of personal data in health research is to illustrate that the UK has a robust, well-established system of safeguards and oversight for processing personal data in the public interest when it comes to health and medical research.

I turn to the second issue: where consent cannot meet GDPR standards. Even with the most rigorous standards and through engagement with participants, consent may not meet the new, stricter standards specified by the GDPR as a basis for processing under article 6(a). The working party of EU data protection regulators—the article 29 working party—produced an opinion in 2011 on the definition of consent that ran to 38 pages. It is not a straightforward legal basis for researchers to use. Furthermore, data collected for research purposes often has significant value beyond the limited, original purpose of its collection. Research can proceed in unanticipated ways, with different teams using the data and processing it in such a way that the data subjects could not feasibly be informed at the outset of the full extent of how their data could be used, for what purposes or by whom.

My own unit started collecting data in 1958, before I even started as a junior doctor, and carried on collecting information manually for over 50 years. The consent we had from the pregnant women who had had babies was that we wanted to use the data to improve the services. Subsequently, 45 years later this was the only data available—in this country or worldwide—to prove that the intrauterine environment and the effect on that environment produces adult diseases. That is now well established. That information would never have been available if we did not have that data. We are proud that we have collected it.

Another example is UK Biobank. It relies on broad consent where the participants give consent for pseudonymised data to be used for a variety of research studies under certain conditions. This broad consent approach is approved by an ethics committee and reduces the burden on participants because they do not need to be contacted for consent for each new study. I have no doubt that my noble friend Lady Manningham-Buller will have something to say about this as she is the chairman of the Wellcome Trust, which is the holder of the data.

9 pm

UK Biobank is a major national and international health resource with the aim of improving the prevention, diagnosis and treatment of a wide range of serious and life-threatening diseases. UK Biobank recruited 500,000 people across the country to take part in the project. Some Members of this House might well have been contacted. Participants have provided measurements, blood, urine and saliva samples for future analysis and detailed information about themselves and agreed to have their health followed. Genetic and imaging data is now also being collected. It is a resource unique in the world. No one else will have data for 500,000 people.

Even with a broad-ranging and detailed consent process, the nature of the resource is such that the data will be used in ways that cannot yet be foreseen. It might even be used when some of the subjects are long gone. It will also be made available to bona fide researchers from all over the world. It would be prohibitively burdensome to researchers and, more importantly, to the participants if each and every use of personal data required a re-consent process. The research would grind to a halt.

Let me now express my support for the GDPR. It clearly supports alternatives to consent for research and makes clear provisions for it, with safeguards. A significant Europe-wide advocacy campaign, "Data saves lives", which had widespread support from patient groups, strongly made the case for this during the passage of the GDPR. This coalition lobbied the European Parliament for these provisions for research.

Patient groups understand the value of and support medical research that cannot reach the high bar of GDPR-compliant consent. The UK Government were also instrumental in securing this outcome for the GDPR though shaping the position of the Council of Ministers. For these reasons, the Bill has to contain an alternative legal basis to consent for such research purposes.

My amendment, Amendment 12, seeks to ensure that the functions listed in Clause 7(a) to (d) are not read as exhaustive. I recognise that the Explanatory Notes state this much, but this goes against the general principle of interpretation of a UK statute that where a law lists specific items general statements then apply only to the same kind of items. This suggests that public interest should be interpreted as a narrow concept confined to public and judicial administration. Amendment 12 overrides the general principle of interpretation to ensure unequivocally that public interest can be interpreted more broadly than the narrow list of functions implies.

Amendment 14 builds on this provision by seeking regulations to provide further clarification regarding what the Government consider to be tasks in the public interest. This would allow scope to provide much greater clarity for public bodies without placing an undue burden on the Bill to provide this much-needed detail. The Government have strongly advocated the potential of data to drive better public services, better health and a stronger economy, for example through the Digital Economy Act and the recent publication of the life sciences industrial strategy, without which the economy will suffer. It would be a great irony if this push to better realise and unlock the value of data held and controlled by public bodies were to come unstuck as a result of data protection law in setting out clearly enough which organisations could process personal data in the public interest, or what types of processing legitimately fall under this category.

I know I have been talking for a long time, but I still have to deal with Amendment 111, which is mostly about safeguards where the other two were about the public interest. Amendment 111 concerns Clause 18 and the provisional safeguards where special categories of personal data are being processed. Clause 18 has a dual role in the Bill. It serves to set out the criteria under which research purposes are exempt from the usual data subjects' rights set out in Part 6 of Schedule 2. This reflects the safeguarding role of Section 33 in the current Data Protection Act. However, Clause 18 also sets out the requirements for processing special categories of personal data under paragraph 4 of Part 1 of Schedule 1. This gives effect to the GDPR article 89(1) safeguards that legitimise the processing under article 9(2)(j).

Under the Data Protection Act as it stands, medical research often uses "medical purposes", which includes medical research, for special category processing. This allows medical research as a legal basis with no need for additional safeguards. Under the GDPR, however, "medical purposes" no longer includes medical research. This means that, for research purposes that do not fall within the provision of healthcare, the only legal route for processing special categories of personal data will require fulfilling the demands of Clause 18.

The subsection of concern is Clause 18(2), which reads:

> "Such processing does not satisfy the requirement in Article 89(1) of the GDPR … if … it is carried out for the purposes of measures or decisions with respect to a particular data subject".

Most research purposes will be unaffected by this provision. However, interventional research studies such as clinical trials inherently involve processing data in order to make decisions with respect to particular data subjects as part of the research protocol.

Interventional research is vital to investigate the following: risks and causes—how genetics, lifestyle and other factors can increase people's risk of disease; prevention—trialling drugs or lifestyle changes to reduce risk; diagnosis—developing new tests or scans for disease; safety—establishing whether a potential new treatment is safe for patients and at what dosage; treatments—investigating new drugs or combinations of drugs and new ways of giving treatment, and whether these are effective; and controlling the symptoms of disease or side-effects of medication—testing new drugs or complementary therapies. All these activities necessitate the processing of special categories of personal data, such as health data, to make decisions about that data subject in terms of their participation in a recent study.

The clause is well intentioned, seeking to protect the rights of data subjects when data about them is being processed in such a way that it will have a direct impact on them. This is laudable. However, for interventional research it is not a workable provision. In all cases of interventional research, data subjects will undergo an informed-consent process and so will be aware of how data about them are being processed for the purposes of the study. All such studies are also subject to approval from the relevant ethics committee, such as those approved by the Health Research Authority. While consent is sought in these cases, it will not necessarily be feasible for this to meet the standards of GDPR consent, as I have already explained.

Clinical trials are a vital part of health research and the life sciences industry. More than 650,000 people in the UK participated in such studies in the past year alone, with over 2,000 studies supported by the National Institute for Health Research. It therefore cannot be understated how important it will be to ensure that such trials have a firm legal footing on which to process personal data.

My amendment would enable interventional research to work around the provisions of Clause 18, while ensuring that robust safeguards are in place. My amendment would permit studies that have been approved by a relevant ethics body to substitute the requirements of Clause 18(2) with ethics committee approval, so that interventional research continues to have access to an appropriate legal issue, through paragraph 4 in Part 1 of Schedule 1.

A legal precedent for requiring ethics committee approval has been set in legislation, in paragraph 4 of Schedule 2 to the Psychoactive Substances Act 2016, which exempts "approved scientific research" from the prohibitions on the use of psychoactive substances set out in the Act, and defines a "relevant ethics review body". The same definition would, I believe, be suitable for the purposes of this amendment. I beg to move.

Baroness Manningham-Buller (CB): My Lords, it is late and I have little to add to what my noble friend Lord Patel said. I declare an interest as chair of the Wellcome Trust, and I was also closely involved with Imperial until conflicts of interest preventing my going on. I have a lot of sympathy with those who spoke earlier on the issue of fundraising for universities. I speak tonight briefly about the concern I raised on Second Reading: the Bill as drafted just does not offer the clarity we need for people dealing with medical research in universities and other institutions, such as the Crick Institute.

The noble Lord, Lord Patel, amply illustrated the value of such research in understanding fundamental disease, the efficacy of treatment, and following on and learning from big datasets which give us the power to do things in medical research that were once not possible. We are not looking for medical researchers to be given particularly special treatment—there are quite a lot of exceptions here anyway—but to clarify what they are doing and how, so they can do it safely and with confidence.

I come back to where the noble Lord, Lord Patel, started. Researchers need to be able to do this work to improve global health—the health of everyone. Health does not stop at boundaries. Results are shared and we all learn from each other. We heard examples from the noble Lord. In a more parochial sense, this is a critical part of the industrial strategy we need to implement to deal with the economy post-Brexit. That document said that we have to streamline our legal and ethical approvals for medical research. This is one of the ways to get economic growth, so over and above the health aspects, there are strong economic reasons for being sure we can provide absolute clarity for people doing this sort of work. The consent issues are not straightforward but provided there are other safeguards—proper ethical committees and proper supervision—I think we can get there. However, we need to say a bit more in the Bill so that people are confident that they can do this.

Lord Stevenson of Balmacara (Lab): I am conscious that we have had had a full and interesting introduction to this group of amendments from the noble Lord, Lord Patel, which builds on earlier discussions. It was difficult to get into this debate without having a little more than he was able to give us—and I do not want to push him too hard on this, but it would be helpful to hear a bit more about ethical committees.

As I understand it, the argument is a three-pronged one. An additional point was made about the need to think about the industrial strategy and not to hold back the research that will be influential in driving forward our brilliant life sciences. But the issue here is whether we could have a parallel system, changing the nature of the public interest test as described by the noble Lord, Lord Patel, and relying on an agency basis. We are calling that an ethics committee, which will basically take on the burden of determining what is appropriately done outside the narrow scope of the Bill as drafted. It would provide the measures of assurance that the Bill seeks, because it deals with a particular type of operation that would not fit naturally into the GDPR more generally. That is the main burden of the argument. I need a bit more information on how the noble Lord sees ethics committees more generally taking on that burden; perhaps he could share that with us.

9.15 pm

Lord Clement-Jones (LD): My Lords, that provokes me to add something. I am not entirely clear whether we are talking about something that is too narrow within the GDPR, or whether it is a lack of a suitably wide derogation on the part of the Government as part of the Bill. For all the reasons that the two noble Lords have mentioned, it seems extraordinary that the beneficial activities that they are discussing are not included as exemptions, whether explicitly or implicitly. It may be that the Minister can give us greater comfort on that, but I am not clear what is giving rise to the problems. As we heard in earlier groupings, I am a fan of having something more explicit, if anything, in the Bill, which is particular perhaps to medical research and other forms of research in that sort of area. But it is not clear whether that is going to be permissible under the GDPR or whether the Government can actually derogate from it in those circumstances.

Lord Patel: I shall respond to some of the points raised. First, on the research ethics committee, we established through legislation—and I remember the debates that we had—a national Research Ethics Committee to deal with all applications for biomedical research, but particularly research involving patient data and transfer of data. If I as a clinician want to do a trial, I have to apply to that committee with a full protocol as to what consent procedures and actual research there will be, and what will be the closing time of that consent. If I subsequently found the information that I had could lead to further research, or that the research that I had carried out had suddenly thrown up a next phase of research, I would have to go back to the committee and it would have to say, "Yes, that's part of the original consent, which is satisfactory to progress with the further research". It is a robust, nationally driven, independently chaired national ethics committee, apart from the local ethics committee that each trust will run. So the national ethics committee is the guardian.

Furthermore, there is a separate ethics committee for the 500,000 genomes project, run by the Wellcome Trust and other researchers; it is specifically for that project, for the consent issues that it obtains, the information given at the time when the subject gives the consent and how the data can be used in future. The genomes project aims to sequence all the 500,000 genomes, and to link that genome sequence data with the lifestyles that people had and diseases that they developed to identify the genes that we can subsequently use for future diagnosis and treatment—and to develop diagnostic tests that will provide early diagnosis of cancers, for instance. The future is in the diagnostic tests. Eventually we will find them for diseases which have not developed but which have a likelihood of developing. Those diagnostic tests will identify the early expression of a protein from a gene and then find a treatment to suppress that expression well before the diseases develop, rather than waiting until the cancer develops and then treating it.

All this is based on the data originally collected. At this stage, it is impossible to know where that research will lead—that is the history—apart from the clinical trials which are much more specific and you get consent for them. I realise that there is a limit to how much the text of the Bill can deviate from the GDPR, unless it is dealing with specific issues which the GDPR permits member states to provide derogations for. I realise that, post exit, the UK will need an adequacy agreement and some equivalent, neutral recognition of data protection regimes between the UK and the EU. We need that for the transfer of data. For instance, the noble Baroness, Lady Neville-Jones, has talked about extremely rare diseases, which require the exchange of data across many countries because their incidence is low and no one country could possibly have enough information on that group of patients.

The research exemption does not undermine agreement on Clause 7—which is what the noble Lord, Lord Clement-Jones, was leading up to when he asked about the ethics committee. The noble Baroness, Lady Neville-Rolfe, suggested that medical research should be possible through the research exemption, but that has to be wide enough yet not specific enough to encompass wider exemptions. I hope that the Minister will come up with that trick in an amendment which he might bring forward. It will not be restrictive, yet protect the patient's personal interest.

There is a research exemption for processing specific categories of data, including health data. The legal basis for this is through article 9 of the GDPR, referred to in Part 1 of Schedule 1 to the Bill. However, all processing of personal data also needs an article 6 legal basis: research is not exempt from needing this. I am arguing today that research needs that exemption, defined in wide enough terms. For processing special categories, you need both an article 6 and an article 9 legal basis. We need to have provision for both in the Bill. One of the article 6 legal bases is consent and I have explained why this is not suitable for much research. The other feasible route for universities and other public bodies processing personal data for research is public interest. This is why it is so important to be clear on what processes can use this legal basis.

There was serious concern about the likely impact of the GDPR on research as it was being drafted. However, this was successfully resolved and it provides the necessary flexibility for the UK to create a data protection regime that is supportive of research in the public interest. The Government, and other UK organisations, worked hard to make sure that this was the case. The provision is there: it is now for the Government to act on it. It is also important to seek an adequacy agreement post Brexit: we will have to have one. It will be vital to consider the need to retain, post Brexit, cross-border transfers of data for research. I give the same example of rare diseases as the noble Baroness, Lady Neville-Jones, used. The Government have recognised the value of retaining a data protection regime consistent with the EU, but the research community would welcome knowing whether it will seek a status of adequacy as a third country or an equivalent agreement.

The plea I make is that unless we include a provision, and there are exemptions which can be written in the Bill in the format that is required, we will not be able to carry out much of the research. A question was asked about the life sciences industrial strategy. It is the key pillar of the Government's industrial strategy Green Paper. It relies on data that the NHS collects and the data that the science community collects and marrying up the two to produce, and lead the world in, treatments and developing technologies. If we are not able to do this, the whole thing will be unworkable.

Lord Stevenson of Balmacara: I am very grateful to the noble Lord for a very full response. It was quite a narrow question. I did not need all of that response but I have learned a lot more in the last few minutes—

Lord Patel: I thought that it might have been leading up to more.

Lord Stevenson of Balmacara: It might have been. The noble Lord has exposed a much greater issue than we thought we were grappling with. The case has now been well made that there are four pillars rather than the three that I adumbrated before. We seem to have a case for special treatment. I am sure that the noble Lord, Lord Patel, with his assiduous workload and high work rate will have made this point several times to officials and Ministers. However, if he is not getting the answers he needs, we have a bit of a problem here, so I hope that the Minister will be able to help us on that.

This goes back to an earlier debate about the public interest. It again worries me—I think the noble Lord, Lord Clement-Jones, touched on this—that "public interest" is becoming an overworked term for rather too many issues. In other words, the argument here is not about the public interest at all; it is about the public good that would come from a differential approach, safeguarded by the ethics approach—I said that was new to me and I am grateful to hear about it—and about reinforcing the contribution that would make to an industrial strategy covering a much broader range of understanding about what we are doing, thus making this country a world centre for all that. So there is a power behind this that I had not appreciated and I am grateful to the noble Lord for explaining it. It is easy to analyse it in this way and come up with the answer that he might want, but is it the right way forward on this?

The noble Lord was wise to point out that there are constraints within the GDPR and limits on what the Government can do, but it must be possible to think more creatively about the problem that has come forward. If, as the noble Lord said, the GDPR opens up the question of not requiring consent in that very formal sense, and we are looking for an evidence-led policy initiative which addresses the public good, it behoves Ministers to think very carefully about how one might take it forward.

This may or may not be the only issue that requires this sort of approach, but the case has been made on its merits that more needs to be done. Listing existing bodies that are not included, to put it in the positive, in a list of issues—for example, the administration of justice is a function of the Houses of Parliament—is not the way into this issue. I appeal to the Minister to

[Lord Stevenson of Balmacara]
think creatively about this because it seems to me that we need a new approach here. I am very convinced by that and look forward to hearing what the Minister says.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, first, I thank the noble Lord, Lord Patel, for his insightful remarks and for providing us with evidence of his knowledge of this subject, and of the Bill's potential implications for pioneering medical research. I am grateful to him for sharing his expertise on these issues. I am also grateful to the noble Baroness, Lady Manningham-Buller, who speaks on behalf of the Wellcome Trust. Other reputable medical research organisations and universities have also expressed concern about this issue. I understand about the issue of consent and whether it is GDPR-compliant.

On the concerns the noble Lord raised in relation to Clause 7, I mentioned at Second Reading, and on a previous group of amendments, that the list of tasks in Clause 7 is deliberately designed to be indicative and non-exhaustive. When I wrote to noble Lords after that debate, I committed to make this clearer in the Explanatory Notes and the Government will honour that commitment.

The noble Lord, Lord Stevenson, mentioned that we might have to have a new approach to this problem. We are happy to think about these issues. At the moment we find that it is difficult to expand Clause 7 to cover every scenario where personal data has been processed in the public interest. Each addition to the list, however justified on its own merits, would cast greater uncertainty on the public interest tasks that continue to be omitted. However, I can reassure universities and research groups carrying out legitimate medical research, that, in the Government's view, such tasks are in the public interest for these purposes. I will come later to how we take this forward.

9.30 pm

On Amendment 111, once again I thank the noble Lord, Lord Patel, for his helpful suggestions. He explained that the safeguard in Clause 18(2)(a)—on page 10 of the Bill—could impede certain types of medical research, such as clinical trials and interventional research, which sometimes involve decisions being made about data subjects without their explicit consent. Incidentally, the provisions in Clause 18 were copied from the Data Protection Act on the basis of responses to the Government's call for views in May. These more technical issues have emerged recently, and we certainly will consider them further.

It is absolutely not the Government's intention to impede pioneering medical research, which can have tangible benefits for society as a whole. The noble Lord's suggestion of disapplying the safeguards if the research project has been approved by a relevant medical ethics review body is certainly worthy of further consideration. I am happy to work with him and other noble Lords to explore it further in the coming weeks. On that basis, I invite the noble Lord to withdraw his amendments. However, once again, I am grateful to him for raising these important points and I hope we will reach a solution which works for everyone.

Lord Clement-Jones: My Lords, the Minister gave the impression that medical research of the type described by the noble Lord, Lord Patel, was encompassed, or allowable, by the GDPR. Can he give chapter and verse on where in the mixture of article 6 and article 9 that occurs? That would be extremely helpful. I understand that obviously the Minister was also agreeing to look further in case those articles did not cover the situation, but it would be good to know which articles he is referring to.

Lord Ashton of Hyde: I re-emphasise to the noble Lord that we think these tasks are in the public interest. However, I understand his desire for even more clarity than that. It would be sensible if I wrote to him and to other noble Lords taking part in the debate. I want to make sure that I get the legal basis right rather than just doing it on the hoof, so I agree to write to him and to all noble Lords who have spoken tonight. Again, as I say, we will work towards what I hope will be a more acceptable solution for everyone. Fundamentally, we do not want to impede medical research that is for the public good.

Baroness Manningham-Buller: May I correct an impression that medical research does not seek consent? It seeks consent whenever possible, and extensively. However, there are categories where something else is needed. I would not want to leave the House with the impression that there is a substitute for that. In some circumstances we need an additional safeguard.

Lord Ashton of Hyde: I believe also that even when consent is obtained, the worry is that it may not be subject to GDPR compliance, even if consent was acceptable before.

Lord Stevenson of Balmacara: I think we have already made the point and we do not need to come back to it. What I took from the noble Lord's earlier contribution was that one way in which medical research is developed and carried out involves a consent process, and we would not want to change anything in that sense. However, for lots of reasons—the noble Lord gave three or four—you cannot always use consent. You may not want to go to the patient, or perhaps you cannot go to or find the patient. Alternatively, the noble Lord made the more general point that you often collect data without any real sense of where it might go in the future. We are not saying that any of that is good, bad or indifferent—one is no better than the other—but they all need to be considered in a broader understanding of the public good being best served by having the least restrictive system concomitant with appropriate procedures being in place. That is the line, with the ethics committee sitting at the top, that gets you to the point where that would be a fruitful conversation to have with Ministers.

Lord Patel: I must make the issue absolutely clear. If I did not do so before, I will set it out again slowly and carefully. Medical researchers are not asking to be allowed to do research without consent. They are asking for consent to be interpreted not in a narrow sense but in a sense that will allow research to continue with consent having been obtained. I shall give an example. When I chaired the UK Stem Cell Bank, we

made it clear that consent would have to be obtained from those who donated stem cell material, including embryonic stem cells. Consent was given on the basis that the embryonic stem cells would be used for research to improve healthcare, but at that time it was not possible to say which healthcare.

Embryonic stem cells, properly kept, are immortal: they can survive for generations. There is a classic example of this. Most of your Lordships are familiar with the lady whose tissue was taken in 1950. Her name was Henrietta Lacks—hence the cells are called HeLa cells. These aggressive cervical cancer cells were taken from her in the United States without consent, but they still exist in every laboratory in the world. A billion dollars-worth of drugs have been developed and marketed using HeLa cells. If consent had been obtained, what would that consent have been for? Exactly the same applies to consent for stem cells—it is for the development of drugs.

Researchers are not saying that we should not have consent. They are saying that there ought to be an authority like the ethics committee that gives consent and to which you can go back and say, "By the way, I have that material and I have found more. I am still developing drugs but this is not the same". I hope I have been clear about that. We are looking for exemptions that are wide enough.

Perhaps I may come back to the matters raised by the Minister and refer, first, to the public interest issues. I understand that the Government do not intend the functions listed in Clause 7 to be exhaustive and to allow, for example, research conducted by universities or NHS trusts to use the public interest legal basis. It would provide much needed clarity and assurance for the research community if that could be made explicit in the Bill. That, basically, is all we are saying on the public interest. There is currently a highly risk-averse culture in data protection, driven in part because people are unclear about the rules and about what they can or cannot do with that data and for what purposes. If it is made clear what they can do or where they have to go to make it clear, that will be helpful. This is why the public interest legal basis matters so much for research. The Data Protection Bill is an opportunity to set out very clearly the legitimate basis for processing personal data, setting out a clear public interest function for research that will give researchers the confidence to know when they are operating within the law.

I will now make a comment about what the Minister said about the safeguards. My Amendment 111 is to Clause 18, which prohibits the processing of personal data to support measures or decisions with respect to particular individuals. This is clearly problematic for any research that involves an intervention for an individual, which forms the bedrock of our understanding of a vast range of treatment of diseases. The range of law covering the use of personal data for research is complex, governed both by data protection law and common law, where duties of confidentiality toward the data subject exist. In my view, the implementation of GDPR through the Bill is an opportunity to provide clear information to researchers about the legal basis for processing personal data and the requirements of accountability, transparency and safeguards.

It is therefore essential that authoritative, comprehensive and unambiguous guidance is created to assist with this transition to a new data protection law. The Health Research Authority is working on guidance for health research, but researchers are urgently in need of this advice to ensure they are compliant by May 2018.

Those are my comments in response to the Minister. I am labouring these points today because this is the only opportunity I will have in Committee to debate these issues at length. I do not wish to rehearse this at Third Reading if we can resolve these issues by communication and find a way out.

Amendment 12 withdrawn.

Amendments 13 to 15 not moved.

Clause 7 agreed.

Clause 8: Child's consent in relation to information society services

Amendment 16

Moved by ***Baroness Howe of Idlicote***

16: Clause 8, page 5, line 15, leave out from "as" to "and" and insert "an age between 13 and 16 years, to be decided by the Commissioner based on relevant evidence and consultation,"

Baroness Howe of Idlicote (CB): My Lords, there are a series of amendments to Clause 8 that we are debating today. I hope your Lordships will allow me to give some background to set the context. Clause 8 sets the age at which children can first provide their personal data online in relation to information society services, without the permission of a parent or guardian. Given that the provision of such personal data is in exchange for online products or services, this age of consent is effectively the age at which companies can begin making money from young people online without a parent or guardian's involvement. Article 8(1) of the GDPR states that the age of so-called digital consent should be 16, but allows member states to lower the age as long as it does not go below 13. The UK Government have set the age at 13, the minimum age possible in Clause 8.

Amendment 16 is a probing amendment to explore the evidence for whether the UK should be opting for 13. As was mentioned at Second Reading, there is concern that the Government have sleepwalked into this position without having provided much in the way of evidence for the decision to this House or the public. Such evidence is needed, not least because a recent YouGov survey for BCS, the Chartered Institute for IT, has suggested that the Government's thinking is a long way from where public opinion sits. In the survey, the public were asked what the most appropriate age of consent for providing personal data online should be. The findings were rather stark. A mere 2% believed 13 was the most appropriate age. The vast majority, 81%, believed it should be set to either age 16 or 18, with non-parents tending to favour 16 and parents favouring 18. These findings indicate that,

[Baroness Howe of Idlicote]
even if 13 is the most appropriate age, the Government have some way to go in convincing the public that this is the case.

There is little evidence provided by the Bill's Explanatory Notes, which simply note that the age of 13,

"is in line with the minimum age set as a matter of contract by some of the most popular information society services which currently offer services to children (e.g. Facebook, Whatsapp, Instagram)".

Given that these are the very companies that stand to profit the most from children providing their personal data to them, it seems counterintuitive that they have effectively been allowed to set a de facto standard age of consent for them doing so. This was recognised in the Children's Charities' Coalition on Internet Safety's open letter to the Information Commissioner's Office earlier this year.

9.45 pm

If the Bill is to set into law the age at which online companies can start profiting directly from our children and grandchildren, would it not be better for that age to be set deliberately and consciously and based on more than the status quo established by the companies? I am not saying that 13 is the right or wrong age at which children can give information away online, but this should be decided based on evidence from industry and the public. That would allow the decision to be clearly explained and, importantly, justified to a public who are apparently uncomfortable with it currently.

At Second Reading, the Minister told your Lordships that the Government had consulted on the GDPR and that 13 was in line with the responses they had received. However, the relevant page on GOV.UK does not clearly set out further justification for using the age of 13, nor is there any referral to support from children's charities and parents for 13 over one of the other choices The noble Lord, Lord Ashton, in his letter of 19 October to Peers after the debate did not set out any reference to the evidence on which the Government had based their decision.

My amendment is simple: it would amend Clause 8(a), where the age of 13 is established, and would instead transfer responsibility for setting that age to the Information Commissioner. It would crucially add a requirement for the commissioner to have based her decision on relevant evidence and consultation. This would demonstrate a conscious process to the public, providing an important first step to bringing public opinion in line with the new legislation—an evidence-based process that should take into account the issues around social media and online safety raised in the *Internet Safety Strategy* Green Paper, a document published since the Bill's Second Reading.

This is an important issue for children, young people and parents. I look forward to the debate on the other amendments in this group and to the Minister's response. I beg to move.

Lord Arbuthnot of Edrom (Con): My Lords, I shall speak only to Amendment 188, and I do so because, as so often, I am confused. In Scotland, a person aged 12 is presumed to have capacity to exercise rights under the Data Protection Act 1998, and that position is perpetuated in the Bill. How does that mesh with the general data protection regulations, which provide that consent to process personal data is lawful below the age of 13 only if given by a parent? I think that is the position and that is why I have tabled my probing amendment. Perhaps my noble friend could explain why Scottish children are so much more mature than English children.

I was persuaded by the view expressed by the noble Baroness, Lady Lane-Fox, at Second Reading when she said that we do not want to bring in lots of new and different laws for 13 year-olds and we need to recognise the reality that children will wish to do what their peers are doing. We do not want to incentivise them to tell lies online. So I am perfectly happy with the Government's position on the age of 13 and just a bit bewildered about Scotland.

Lord Stevenson of Balmacara: As a Scot I can hardly complain, and I am always bewildered, too—not only about this but about many other things. Our Amendment 17 in this group is also one of bewilderment. Clause 8 is headed:

"Child's consent in relation to information society services",

and refers to "preventive or counselling services" not being included. This goes back to an earlier amendment, when we established that these references are actually recitals and not part of the substantive GDPR, so we are back in what is not normative language and issues that we cannot possibly talk about in relation to the wider context because we are talking about the law that will apply.

There are three points that need to be made and I would be grateful if the noble Lord would either respond today or write to me about them. The first is to be clear that the reference to "information society services", which is defined, has nothing in it that would suggest that it is a problem in relation to the lack of inclusion of preventive or counselling services. The answer is probably a straightforward yes. Secondly, what are the preventive or counselling services that we are talking about? I think the context is that these are meant to exclude any data processing relating to a data subject if the data subject concerned—with parental consent if the subject is younger than 13 and on their own if they are older than 13—who is taking a form of counselling that may be related to health or sexual issues would not be allowed to be included. Is my understanding of that right? I am sure that it is.

Thirdly, could we have a better definition of preventive or counselling services because those are very wide-ranging terms? Yes, they come from a recital and perhaps in that sense they can be tracked back to earlier discussions around the formation of the GDPR, but they have to be applied in this country to situations in real life. I am not sure what a preventive service is and I should like to have it explained. Counselling services I probably do get, but do they include face to face counselling or is this about only online counselling services? Is it the same if the child is being accompanied by a parent or guardian? There are other issues that come into this and there is a need for clarity on the point.

While I am on my feet I should like to respond to the amendment moved by the noble Baroness, Lady Howe, who has campaigned long and hard on these issues. We would be bereft if she did not enter into this Bill with all its implications for children, given the wisdom and experience that she brings to the table. The point she makes is one of simple clarity. There is a need to be very careful about the evidence gathering on this issue and it is probably not appropriate for it to be left to Ministers in regulations. There needs to be a wider discussion and debate on the matter, perhaps involving the Children's Commissioner and other persons with expertise. She has made her point very well and I should like to support it.

Lord McNally (LD): My Lords, I associate myself with the amendment in the name of the noble Baroness, Lady Howe. We are in Committee and it is a probing amendment. When we discussed it with colleagues the feeling was that 13 might be the right age but, as the noble Baroness indicated, it needs probing and some thinking about.

There is a danger, particularly in a House with our age group, that we assume these technologies are understood by the young—even the very young. We all hear anecdotes of parents or grandparents who have to consult their eight year-olds on how to make various gadgets work, but that misses the point. A frightening amount of information is being freely given. I mentioned at Second Reading that my generation and my parents' generation had thoughts of personal privacy that my daughter and her contemporaries seem to have no thought of. They are very happy to exchange information about themselves, what they do and where they are with gay abandon.

When we get to the very young it is very important to make sure—we will discuss this in later amendments, if not tonight—that there is sufficient understanding and information to make informed choices, otherwise we get into very dangerous territory indeed. Therefore we are, not for the first time, in the noble Baroness's debt for raising these questions. Late as it is, it is right that we put on record that these things, along with the amendments that will follow in the next couple of groupings, need to be taken as a whole before we make a final judgment as to the right age.

Lord Ashton of Hyde: My Lords, I echo the comments of the noble Lord, Lord McNally, to say we are grateful to the noble Baroness, Lady Howe. I acknowledge, particularly after her Second Reading speech, that she has not immediately demanded that the age be put back up to 16, which I thought she might. She has produced an interesting amendment.

Amendment 16 would give the Information Commissioner the power to determine the age threshold at which children can consent to their data being processed by online information services. This would be based on consultation and evidence. While it is certainly a preferable proposal to a blanket increase to 16, I am afraid I still cannot agree.

First, the Information Commissioner's role as an independent regulatory authority is to administer and enforce the application of data protection legislation. As part of that role the Commissioner provides advice to businesses, organisations and individuals on the proper implementation of the legislation and on their rights under that legislation, and provides redress for breaches of individuals' personal data. It also has an advisory function in relation to Parliament, the Government and other institutions. By contrast, the question of affixing the age below which parental consent is required has much broader-ranging considerations and implications, including an important moral dimension. Requiring the Information Commissioner to be the one to answer it would place on the officeholder an extra demand for which the office is neither designed nor resourced.

Secondly, the GDPR specifies that it is member states that should make this important decision. It does not give the power for states to delegate this choice to another regulatory body. Therefore, this amendment would make the Bill as a whole non-compliant with the GDPR. It is for those reasons that the Government consider that the question should be decided by this House and the other place rather than by a regulatory body. I realise that, in saying that, we leave ourselves open to further discussions on this matter.

10 pm

Amendment 17 tests the meaning of the exception to the requirement of parental consent for children to share their personal data to access counselling services. Children, whatever their age, should be able to obtain support from professional services such as ChildLine and that is the purpose of the exemption. The noble Lord, Lord Stevenson, asked me several questions, including on the definition of "preventive" and "counselling". We suggest that "preventive" could refer to the prevention of any form of serious harm to which a child might be exposed—for example, physical or sexual abuse, trafficking or forced marriage; "counselling" would likely encompass at least the giving of advice to children on a range of personal, social or psychological matters. The Government recognise that there is a public interest in ensuring that the definition is not drawn too broadly to prevent children's exposure to commercial or criminal entities masquerading as these services.

We have already debated the legal applicability of the recitals of the GDPR. The Government consider excluding preventive and counselling services from the scope of article 8 to be consistent with the purposes of the GDPR in light of the 38th recital, which states:

> "The consent of the holder of parental responsibility should not be necessary in the context of preventive or counselling services offered directly to a child".

I accept that recitals do not have the same normative effect—I think that that is the expression—but they are useful. Courts take them into account when looking at how the articles should be interpreted. The GDPR contains 31 pages of them—173 recitals. The European Parliament has spent a lot of time considering them, so we should be able to bear them in mind to help us illustrate what the Parliament was thinking when it passed the articles themselves, in the same way that the courts in this country can look at Explanatory Memoranda and what a Minister says from the Dispatch Box.

[Lord Ashton of Hyde]

This exception is also appropriate in light of the UK's status as a signatory to the UN Convention on the Rights of the Child, in particular Articles 13, 16 and 19. For those reasons, we consider it important to make this exception clear in the Bill.

I turn to Amendment 188, tabled by my noble friend Lord Arbuthnot. The request here is that the age at which children may exercise their rights under this Bill and consent to data sharing in Scotland is altered from 12 to 13. The Government understand that the intention behind this is to bring parity between the online and offline regulation in Scotland. In England and Wales when considering whether a child has the capacity to consent the common law "Gillick test" is applied. It is generally taken that a child of 12 years old and above will have the maturity and understanding to give consent. Additionally, the GDPR states that, notwithstanding that a child of 12 or younger may have the maturity and understanding to give consent in their own right, they may not do so in relation to data sharing with online services until they are 13 years old.

In Scotland, capacity is governed by statute. Unless a child falls into one of the exceptions under which they may consent for themselves, a child does not have capacity to consent until they are 16 years old. This clause creates an exception to this so that children in Scotland are presumed to have the maturity and understanding to exercise rights and give consent under this Bill at age 12 and above. This means that children in Scotland are in the same position as children in England and Wales: they can consent where they have the maturity and understanding to do so, usually at 12, but in relation to online services only, they cannot do so until they turn 13.

If we were to accept the amendment, sufficiently mature 12 year-olds in England and Wales could consent to their data being processed—except in relation to the provision of online services—and exercise rights such as the right to be forgotten, but children in Scotland could not. Therefore, while the amendment would create consistency between the online and offline approaches in Scotland, it would risk creating disparity between the rights of Scottish children and those in the rest of the UK.

The Government recognise the need for consistency in regulation but we believe that the priority should be to provide consistency for all UK children. For this reason, it is essential that the age in Scotland be set at 12 to, in effect, match that in England and Wales. This prevents Scottish children being at a disadvantage compared to their English and Welsh counterparts—it is as simple as that. I therefore ask the noble Baroness to withdraw her amendment.

Baroness Howe of Idlicote: My Lords, I am most grateful to the Minister for his explanation, even though he cannot agree with my amendment. I think quite a number of my colleagues are still not just confused as regards Scotland and England, but concerned about how this is going to be interpreted in real life. We have time to think about it before Report. In the meantime, I am not pleased but I will withdraw my amendment and hope that there may be opportunities between now and Report to get a little more clarity on this subject.

Amendment 16 withdrawn.

Amendment 17 not moved.

House resumed.

House adjourned at 10.07 pm.