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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

House of Lords

Monday 6 November 2017

2.30 pm

Prayers—read by the Lord Bishop of Gloucester.

Oaths and Affirmations

2.34 pm

Lord Foster of Bath took the oath, and signed an undertaking to abide by the Code of Conduct.

Retirements of Members

Announcement

2.36 pm

The Lord Speaker (Lord Fowler): My Lords, I should like to notify the House of the retirements, with effect from 3 November, of the noble Lords, Lord Plumb and Lord Tanlaw, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House, I should like to thank the noble Lords for their much-valued service to the House.

European Union

Question

2.36 pm

Asked by ***Lord Dykes***

To ask Her Majesty's Government whether they have had any discussions with the European Commission about its proposals for the future of the European Union.

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, until exit negotiations are concluded, the UK remains a full member of the European Union, and all the rights and obligations of EU membership remain in force. During this period, the Government will also continue to negotiate, implement and apply EU legislation. We have been engaged in discussions about the future of Europe, including through our input into the Commission work programme 2018, through conversations at COREPER and at the recent General Affairs Council in October.

Lord Dykes (CB): I thank the Minister for that helpful Answer. Bearing in mind that paragraphs 9 and 10 of the Prime Minister's Florence speech were a massive paean of praise for the Commission and the European Union sovereign member states' future plans for modernisation and development, why do we not join in that excitement and work with them on a long-term basis, not least because Brexit is getting more and more problematical?

Lord Callanan: Because we will not be a member in the long term, my Lords.

Lord Anderson of Swansea (Lab): My Lords, would it not be somewhat impertinent of the Government to seek to influence an organisation from which they have pledged to withdraw their membership?

Lord Callanan: Yes. It is in our interests for the EU to do well and to succeed, but obviously it would be wrong of us to try to influence where its members might want to take the organisation in the future when we are no longer a member.

Lord Spicer (Con): My Lords, under Article 50, we will leave the European Union on 29 March 2019. Does my noble friend share my worry that sometimes, the noble Lord, Lord Dykes, tends to have a temporary lapse of memory about that?

Lord Callanan: I am sure that the noble Lord noticed that we had a referendum on the subject.

Baroness Ludford (LD): My Lords, can the Minister assure us that, as the EU reforms and changes, the Government will ensure that the United Kingdom plays to its strengths in Europe, such as in the single market, of which Mrs Thatcher was the architect, and in justice, security and defence, rather than running away from these major assets that we contribute to the EU?

Lord Callanan: On the subject of defence and security, we have proposed a bold new strategic partnership with the EU, including a comprehensive agreement on security, law enforcement and criminal justice co-operation.

Lord Liddle (Lab): My Lords, regarding the debate on the future of Europe, has the noble Lord read the speech that President Macron of France made at Sciences Po in September, in which he proposed lots of interesting ideas for future co-operation on climate change, Africa, migration, technology and the development of defence procurement? Does he think that the Government might take on board some of those ideas in drawing up the framework for future co-operation and the future relationship, which they are required to do under Article 50?

Lord Callanan: I have seen President Macron's speech. He made some interesting proposals on how the EU should develop. I am sure that we will want to look closely at those and that we will consider them alongside contributions from leaders of other member states.

Lord Pearson of Rannoch (UKIP): My Lords, I welcome the noble Lord to his new position and ask him to forgive me if I ask a question that I have asked the Government many times without getting a satisfactory answer. What is now the point of the European Union? If our departure hastened its demise, would that not be good for Europe's democracies, which could collaborate and trade freely together without its malign, expensive and destructive self-interest?

Lord Callanan: I think that what happens to the European Union after we leave is a matter for the remaining member states to determine.

Lord Wigley (PC): My Lords, will the Minister confirm that, if it appears over the coming months that the Government will fail to get anything but the hardest of hard Brexits, and if in the meantime these ideas about the future of Europe develop, the Government still have the option to withdraw their Article 50 application?

Lord Callanan: My Lords, we had a referendum: both Houses of Parliament voted for the triggering of Article 50. We are leaving the European Union in March 2019.

Lord Hannay of Chiswick (CB): My Lords, the Minister has given three replies now which imply that from the day we leave the European Union, we shall not have the slightest interest in how it develops or think it proper to express our views on how it develops. I think his successor on those Benches may find that hard to swallow. Could he reconsider what he has been saying? I do not think that we no longer have any interest in the future of Europe—even when we have left.

Lord Callanan: My Lords, I do not think I said that. Of course we have an interest in co-operation with our European partners, and that will include an interest in how the EU develops. As I have said, we will want to take forward a close and constructive partnership, including on security and defence matters, so of course we will have an interest in how it proceeds.

Lord Higgins (Con): Has my noble friend noticed that the referendum to which he referred was established by Parliament very clearly as an advisory referendum? Should that not be something we respect before we consider any further action?

Lord Callanan: The referendum took place. The Government spent, I think, £9 million on sending round pamphlets saying that we would respect the outcome of that vote, and that is what we are doing.

Baroness Hayter of Kentish Town (Lab): My Lords, *The Times* reported that Mr Gove was joining the Brexit "war cabinet". I trust that is not the Government's phrase—we are not at war. Does the Minister agree that we should be talking to our European friends about a close, perhaps a special relationship with the EU after March 2019, and not about being at war with them?

Lord Callanan: I agree totally with the noble Baroness. I am sure she is not asking me to comment on everything that the media and the press say—we would be here for a long time if we were to do that. Yes, I agree with the points she has made.

Lord Tomlinson (Lab): Will the Minister accept, as his predecessor accepted, that the normal standard in treaty negotiations is that nothing is agreed until everything is agreed? Will he confirm that today, and confirm that it is on the basis of everything being agreed that this House, like the rest of Parliament, will have a vote on what the future relationship should be?

Lord Callanan: Yes, I can confirm that to the noble Lord: nothing is agreed until everything is agreed. That is a standard principle of European negotiations I have taken part in, as many of us in this House have done. We are also committed to a meaningful vote at the conclusion of those negotiations.

Brexit: Non-chemical Farming Methods

Question

2.44 pm

Asked by ***Baroness Jones of Moulsecoomb***

To ask Her Majesty's Government what steps they are taking to protect rural communities from pesticides; and whether they intend to adopt non-chemical farming methods post-Brexit.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I declare my farming interests as set out in the register. Pesticides are highly regulated so that they do not harm people or the environment. This work is led by the Health and Safety Executive and the UK Expert Committee on Pesticides, which have a deserved reputation for rigour. After EU exit, we will continue to base our decision-making on pesticides on careful scientific assessment of the risks, just as we do now.

Baroness Jones of Moulsecoomb (GP): I thank the Minister for his Answer. Defra's Chief Scientific Adviser, Professor Ian Boyd, has said that laboratory results from the testing of chemicals cannot be trusted when those chemicals are used on an industrial scale for farming. Will the Minister tell the House what the Government think a safe level of pesticide use is? How are the Government monitoring those levels in rural areas?

Lord Gardiner of Kimble: My Lords, the whole role of our committees and regulatory bodies is extremely strong. As I said, there is the Chemicals Regulations Directorate of the Health and Safety Executive, the UK Expert Committee on Pesticides, the Expert Committee on Pesticide Residues in Food and the Food Standards Agency, all of which are tasked with ensuring that our food and environment are safe. That is what we are working on. Of course it is essential that those who work in agriculture are assured in using pesticides and have the right training to do so in a responsible and sustainable way.

Lord Naseby (Con): My Lords, as one who lives in rural Bedfordshire and used to look after rural Northamptonshire, is it not a fact that there are very strict regulations on the use of spraying materials, when crops are sprayed with pesticides and herbicides? Given that Brexit is on the horizon, is this not entirely the wrong time to have an overall review of the role of pesticides? Can we not have complete faith in what our farmers and horticulturists are doing today and have done in the recent past?

Lord Gardiner of Kimble: My Lords, there is an important balance to this, which the industry is seized of. This is why the integrated pest management and agritech innovations will be so important for us, with much more precise use of pesticides. There is a fall in the total weight of pesticides being applied because of newer chemicals having lower doses and new and more efficient methods of application. There are advances in this area that we should all champion.

Baroness Jones of Whitchurch (Lab): My Lords, the ongoing concerns about pesticides are around not only their impact on the health of those living in rural communities but the impact on bees and other pollinators. Does the Minister agree that we should adhere to the precautionary principle when we authorise the use of these chemicals in the future?

Lord Gardiner of Kimble: My Lords, I have just come back from Kew; I presented the Bees' Needs awards to primary schools and many other organisations, including large landed estates. The *National Pollinator Strategy* and the national plan on pesticides are designed to include the sustainable use of pesticides. The most important message of all is on the sustainable use of pesticides. Pesticides used in the right way are very important for agricultural production and for many of the things we want to do in urban areas, too.

The Countess of Mar (CB): My Lords, I readily acknowledge the improvements that have been made in pesticide applications over recent years. However, does the Minister agree that pesticides are effective not only on the day that they are sprayed but continue to off-gas for quite some time, especially in hot summer weather? People living in the locality of fields that have been sprayed have not been consulted—there has been no bystander consultation. Is he aware that with Roundup, for example, there is no check on the soil or water effects?

Lord Gardiner of Kimble: Again, my Lords, the regulations are strong, as it is essential that there is no harm to people or the environment. One thing we are working on in our 25-year environment plan, which is all about enhancing the environment, is the importance of soil health and fertility. It is very important that pesticides are used sustainably and that, wherever possible, we can reduce their use.

Earl Cathcart (Con): My Lords, as a farmer, can I ask the Minister whether he agrees that 25% to 75% of crops, depending on the crop, might be lost if no pesticides were used? Presumably, the alternative is to go for 100% GM crops.

Lord Gardiner of Kimble: My Lords, on the issue of yields, the use of pesticides is precisely to protect crops and grassland. Obviously, we need to use them carefully and have them well regulated. Without pesticides, undoubtedly yields would be reduced. The most important thing is that there is active co-operation on this now: 4.4 million hectares of land are involved in the voluntary initiative and the integrated pest management situation. All of that is strong news.

Lord Greaves (LD): My Lords, the comprehensive codes of practice issued by the department and Natural England include advice on how to deal with rights of way and other areas for public access in places that are treated with pesticides. Do the Government have any hard evidence on how effective those codes of guidance are in relation to recreational users of the countryside?

Lord Gardiner of Kimble: My Lords, as the noble Lord has raised that issue I will look into it. To repeat, there is strong regulation on pesticides; that is why it is so important. The truth is that we often need to use herbicides in order to ensure that rights of way are clear for people to enjoy the countryside.

Lord Whitty (Lab): My Lords, over a decade ago, when I was doing the noble Lord's job, we had a programme of looking at non-chemical ways of doing what pesticides do and improving the method of application. Will the Minister update us? Do the Government still support that work? If so, by how much and when can we expect the results?

Lord Gardiner of Kimble: My Lords, it is continuing. I am sure that, with his experience, the noble Lord will know about the UK national action plan on pesticides and that it is an ongoing process. We will continue to develop and adapt as further knowledge becomes available. My whole point is that the national action plan and the pollinator strategy are designed to assist in enhancing the environment and to have pesticides used when necessary and with precision.

Brexit: Farm Support

Question

2.52 pm

Asked by ***Baroness McIntosh of Pickering***

To ask Her Majesty's Government what recent discussions they have had with farming organisations about the future of farm support post-Brexit.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I declare my farming interests as set out in the register.

Ministers and officials met farming organisations and individual farmers across the United Kingdom on more than 45 separate occasions between July and October. We continue to work closely with farming organisations on the important issue of future farm support. We want to see farmers producing high-quality food, meeting animal health and welfare standards and enhancing the environment, and we are actively engaging with farmers to achieve these complementary aims.

Baroness McIntosh of Pickering (Con): My Lords, does my noble friend recognise the value to hill farmers in north Yorkshire and other areas of the export of live animals for fattening, processing and breeding, and indeed for racing purposes? Will he take this opportunity to give the House a categorical assurance that this trade in live animals—albeit it is small compared with the trade in carcasses—will continue, and also update the House on the tripartite agreement on racing to ensure that the free movement of horses for racing purposes will continue after Brexit?

Lord Gardiner of Kimble: My Lords, there are a number of distinctions there that I should draw to the attention of noble Lords. The Government are clear

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that they would prefer animals to be slaughtered close to the point of production, and we intend to take steps to control the export of live farm animals for slaughter. Obviously, we desire our very good livestock to go abroad in terms of breeding, and I am fully seized of the importance—having spent a day at Newmarket, not just on the course but in Newmarket generally—of the equine sector as well as the tripartite agreement between Ireland, France and this country. We are working on that because I am fully seized of the importance of the equine sector.

Lord Watts (Lab): My Lords, will the Government consider introducing a means-test system in any future support, bearing in mind that rich people are receiving millions of pounds of taxpayers' money through avoiding taxation by buying farms?

Lord Gardiner of Kimble: My Lords, what I can say is that we definitely think that public money should reward environmentally responsible land use. That is the reform that we think is important. We wish to continue to support the agricultural sector, but if public money is to be used it should be to ensure, with 70% of the land in this country farmed, that our farmland is playing its part in enhancing the environment.

Lord Teverson (LD): My Lords, I welcome the Government's commitment to animal welfare in future expenditure, but when we have free trade agreements with countries such as the United States, Argentina and New Zealand, which have much lower levels of animal welfare, will not the agricultural clauses that are bound to be in those FTAs fundamentally undermine British farmers and British animal welfare?

Lord Gardiner of Kimble: My Lords, the Secretary of State has been very clear that we will not in any way allow animals to come in that are produced to a lower standard using compromised welfare standards as compared with our own very high-quality produce, which is our great British brand. Let us be clear: we do not propose to permit any product to come in that has lower animal welfare standards. We are not going to compromise on that.

Lord Cameron of Dillington (CB): My Lords, what discussions have the Government had with rural and indeed urban organisations to establish what services land managers can provide to others to best maximise the benefits of the countryside to the whole population, and while doing so to best maximise returns to farmers?

Lord Gardiner of Kimble: My Lords, the noble Lord is absolutely right. Not only are we engaging with farming organisations and farmers, we are engaging with non-farming organisations in both the urban and the rural situation. I have an extremely long list before me of organisations that we are working with, from the Campaign to Protect Rural England, Compassion in World Farming, the Woodland Trust, the Centre for Ecology & Hydrology, to the RSPB. We engage with so many organisations because what we want in the 25-year environment plan and in our proposals for agriculture is to have a consensus about the way forward on enhancing the environment.

Viscount Hailsham (Con): My Lords, have the Government made it plain to the agricultural community that, contrary to what was said by many Brexiteers during the referendum campaign, overall support for agriculture is likely to be much less when we leave the European Union than it would have been if we had stayed in?

Lord Gardiner of Kimble: My Lords, we are having realistic discussions with the farming industry about how we are to reform the CAP and bring forward a system that is less bureaucratic, will enable farmers to flourish, and encourages environmentally responsible land use. We should use the opportunity of leaving to bring forward proposals which help us make our country even better in terms of the environment. This is one of the key opportunities we should grasp, and I think that farmers want to grasp it too.

Lord Grocott (Lab): My Lords, further to the previous question, is it not worth reminding ourselves that there were substantial levels of support for farming, and quite rightly so, long before we ever joined the Common Market, as it then was? Is not the crucial issue about farm support post Brexit that decisions about that support will be made by Ministers accountable to Parliament and by a Parliament which is democratically accountable to the British people?

Lord Gardiner of Kimble: I agree with the noble Lord because it is important to note, not only in Westminster but in the devolved Administrations as well, that there are very distinct agricultural systems, whether we are talking about uplands, lowland grassland farms or farms that are really important in terms of landscape. In all of this we can have a more distinct system to encourage ways of sustaining and enhancing our environment and our landscapes.

Lord Burnett (LD): My Lords, I draw attention to my interests as set out in the register of interests. In any trade agreement, the United States will insist on unfettered rights to export to us pigmeat, beef and sheepmeat. What effect will this have on farmers' livestock values?

Lord Gardiner of Kimble: These are all going to be matters for negotiation in the future and I am not in a position to talk about hypothetical situations. As I said, it is clear that we will not be compromising on our animal welfare standards—it is very important that the British brand should be adhered to. It is all very well, but if countries think that they can deliver lower-quality food, that is an enormous mistake. We should be negotiating from a position of strength, and I think that the British brand has a lot of strength to it.

Brexit: EEZ and Territorial Seas

Question

2.59 pm

Asked by ***Lord West of Spithead***

To ask Her Majesty's Government what contingency planning they have undertaken to ensure patrolling and enforcement of the United Kingdom's exclusive economic zone and territorial seas after Brexit.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, the Government recently established the Joint Maritime Operations Coordination Centre—JMOCC—to co-ordinate sea-based patrol activity across marine agencies to reinforce the security of our waters after Brexit. In respect of fisheries, Defra has assessed the scale and volume of sea-based patrol capability required for Brexit. Defra and the Marine Management Organisation will work through the JMOCC to utilise available resources in partnership with the Ministry of Defence and other agencies.

Lord West of Spithead (Lab): My Lords, I thank the Minister for that helpful Answer and for the discussions we have had about the co-ordination of this. We have a dreadful hotchpotch of vessels and departments involved, and we are responsible for a vast sea area and a hugely long coastline. To somehow get the maximum effect out of the very small number of ships we have, and to overcome the fact that we do not have a proper air surveillance capability and are not using drones properly, it is absolutely necessary to have a study into how we can focus this and use the JMOCC properly—bearing in mind there is also an operations centre in the Maritime and Coastguard Agency and the MMO—so we can co-ordinate this and do it properly. At the moment, we will not be able to do it. Is the Minister willing to look at setting up some group to co-ordinate that study so that we have a snowball's chance in hell of looking after the waters for which we are responsible?

Lord Gardiner of Kimble: My Lords, yes, with 11,000 miles of coastline and an EEZ of 165 square miles, it is a task. That is precisely why, with the Security Minister having overall responsibility for the JMOCC, the whole purpose is to improve the co-ordination of cross-agency patrol capabilities, increase information-sharing across government and enhance aerial surveillance operations. The whole purpose is to ensure co-ordination; the fact that the JMOCC will be co-located with the National Maritime Information Centre will offer us a strong chance to bring all these things together.

Lord Sterling of Plaistow (Con): The first responsibility of government is the defence of the realm and, in particular, homeland defence. The co-ordination that my friend the Admiral, the noble Lord, Lord West, has just commented on is essential but, frankly, without the kit and the people it does not make much sense. Some of us have pushed many times before, but in practice, we should have not just offshore vessels but inshore ones, whether they are large RIBs or MTB types, stationed in every single little port in the country. The key point is that that would have the effect of the public, at large, feeling that they are being protected. We could use our reservists and marine reservists to man those vessels—and it would encourage them to realise that, if the service is to do what it should be doing, they must vote more moneys in favour of giving it the resources it needs.

Lord Gardiner of Kimble: My Lords, as I said, the purpose of the JMOCC is to ensure the best co-ordination. Obviously, we rely on the Royal Navy, as we have traditionally. The offshore patrol vessels currently in operation will be replaced by five more capable Batch 2 OPVs, being built in Govan; then there is our Border Force, with six coastal patrol vessels and five cutters. Marine Scotland runs its own arrangements, and the 10 inshore fisheries conservation authorities have 31 "sea-going assets", as they are described, ranging from small, inshore vessels to larger fisheries protection vessels. I want to be absolutely clear: we are analysing and working on how we can best enhance the capability.

Baroness Jones of Whitchurch (Lab): My Lords, the Minister will be aware of the UK's obligation under international law to co-ordinate with neighbouring states on access rights and sustainable management of fishing stocks. As not all of the EU 27 states have an interest in this, will the Minister tell us what bilateral discussions the Government are having with all our potential neighbouring fishing allies and competitors? How will the Lords be kept up to date with progress in those discussions?

Lord Gardiner of Kimble: My Lords, there were a number of points there. We will be introducing a fisheries Bill, as was in the Queen's Speech. Our objective is to publish a White Paper by Christmas.

A noble Lord: This year.

Lord Gardiner of Kimble: Indeed, this year—my brief says "this year". That is very important so we set out our future marine fisheries management. Of course, we need to co-operate. The whole essence of what we need to do in these waters is to negotiate, for the first time for a long time, up to 200 miles or the median line. We will be responsible for access to those fisheries but, clearly, the whole purpose of what we are entering into is to have responsible coastal states having discussions and negotiations. As the noble Baroness said, the most important thing is that we get maximum sustainable yields and that they achieve the total allowable catches. Of real importance and the real opportunity is to have sustainable stocks.

Lord Campbell of Pittenweem (LD): My Lords, would the anxieties of the noble Lord, Lord West, not be allayed were it the position that the Royal Navy, as he has frequently argued, should have more surface ships? In view of its responsibilities in this area, would it not be appropriate for Defra to lobby the Chancellor of the Exchequer to ensure there are no more cuts to the defence budget?

Lord Gardiner of Kimble: The whole purpose of JMOCC is to ensure that we and our capabilities are properly co-ordinated. In fact, the noble Lord and I

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are going to the MMO in Newcastle as soon as we can, early next year, because it is important that we have not only maritime, vessel and aerial capability but the enormous technology there is in digital and awareness of surveillance from the Newcastle office. All those combined will ensure we have secure waters.

Joint Committee on the National Security Strategy

Membership Motion

3.06 pm

Moved by ***The Senior Deputy Speaker***

That the Commons message of 30 October be considered and that a Committee of ten members be appointed to join with the Committee appointed by the Commons as the Joint Committee on the National Security Strategy, to consider the National Security Strategy;

That, as proposed by the Committee of Selection, the following members be appointed to the Committee:

Brennan, L, Campbell of Pittenweem, L, Hamilton of Epsom, L, Harris of Haringey, L, Healy of Primrose Hill, B, Henig, B, King of Bridgwater, L, Lane-Fox of Soho, B, Powell of Bayswater, L, Trimble, L.

That the Committee have power to agree with the Committee appointed by the Commons in the appointment of a Chairman;

That the Committee have power to send for persons, papers and records;

That the Committee have power to adjourn from place to place in the United Kingdom;

That the Committee have leave to report from time to time;

That the reports of the Committee be printed, regardless of any adjournment of the House;

That the evidence taken by the Committee in the last session of Parliament be referred to the Committee;

That the Committee have power to appoint specialist advisers;

That the evidence taken by the Committee be published, if the Committee so wishes.

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, the message from the Commons regarding the Joint Committee on the National Security Strategy was received on 31 October, not 30 October as stated on the Order Paper. For the further information of the House, this will not interfere with the first scheduled meeting agreed between both Houses, which will take place next Monday. Having clarified those points, I beg to move.

Motion agreed, and a message was sent to the Commons.

Communications Committee

Citizenship and Civic Engagement Committee

Deputy Chairmen of Committees

Membership Motions

3.07 pm

Moved by ***The Senior Deputy Speaker***

Communications Committee

That Baroness Stowell of Beeston and Lord Goodlad be appointed members of the Select Committee in place of Lord Henley and Lord Finkelstein, resigned and that Lord Gilbert of Panteg be appointed Chairman.

Citizenship and Civic Engagement Committee

That Baroness Eaton be appointed a member of the Select Committee in place of Baroness Stedman-Scott, resigned.

Deputy Chairmen of Committees

That the following members be appointed to the panel of members to act as Deputy Chairmen of Committees for this session:

Finlay of Llandaff, B, Lexden, L, Newlove, B, Palmer of Childs Hill, L, Rogan, L.

Motions agreed.

Data Protection Bill [HL]

Committee (2nd Day)

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

3.09 pm

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

Amendment 18

Moved by ***Baroness Kidron***

18: Clause 8, leave out Clause 8 and insert the following new Clause—

"Child's consent in relation to information society services

In Article 8(1) of the GDPR (conditions applicable to child's consent in relation to information society services)—

(a) references to "16 years" are to be read as references to "13 years" provided that the information society service meets the minimum standards of age-appropriate design as determined by the Commissioner, and

(b) the reference to "information society services" does not include preventive or counselling services."

Baroness Kidron (CB): My Lords, I shall also speak to Amendments 19, 155, 156 and 157 and in so doing I thank the many noble Lords who have voiced their support, particularly the noble Baroness, Lady Harding

of Winscombe, and the noble Lords, Lord Storey and Lord Stevenson of Balmacara, who have put their names to them. In Clause 8, the Government have chosen with nothing more than a tick of a box to treat a child of 13 as if they were an adult when in the digital environment, with the explanation that they are merely aligning legislation with the age used by popular sites. That cannot be right.

Children have special protections and privileges evident in our culture, embedded in our law and determined by our being signatory to the charter on the rights of the child. Collectively, the amendments affirm that a child is a child even online, a principle that is not sufficiently articulated in the Bill. I shall go to each amendment in turn.

Amendment 18 would make the consent of a child aged 13 to 16 lawful only when a service seeking that child's consent meets,

"minimum standards of age-appropriate design".

Amendment 19 would make consent given by a person with parental responsibility on behalf of a child under 13 lawful only when the service seeking the consent meets the,

"minimum standards of age-appropriate design".

Passing these amendments would make it unlawful to seek a child's consent or parental consent on a child's behalf without providing a service that recognises the age of that child.

Amendment 155 would require the Information Commissioner to create guidance on age-appropriate design and take into account such matters as a child's need for high privacy settings by default, not revealing their GPS location, using their data only to enable them to use a service as they wish and no more, and not automatically excluding them if they will not give up vast swathes of data however nicely you ask. If the commissioner so wished, it could also mean giving a child time off by not sending endless notifications during school hours or sleep hours and deactivating features designed to promote extended use; making commercially driven content, whether a vlogger or a direct marketing campaign, visible to and understood by a minor; and insisting on reporting processes with an end-point and a reasonable expectation of resolution. The amendment would require the commissioner to consult a wide group of stakeholders before coming to that decision and, crucially, sets out that she must also consult children, who are so often the first to adopt emerging technologies—early to spot the issues yet rarely asked to contribute meaningfully to how their needs might be met in the digital environment. Government has been widely criticised for not consulting children, so I wish to put on the record that where their views have been captured, children have consistently called for better privacy and data management, clearer guidance on content, transparent reporting strategies and greater visibility of how their data are shared and commoditised, calls which industry and government steadfastly choose to ignore. Amendments 156 and 157 would ensure that both Houses were able to scrutinise the guidance before it came into force.

The GDPR is the substantive law which the Bill supplements. While the GDPR acknowledges that children enjoy enhanced rights online, it says little about what this means in practice, and the majority of the provisions for children sit in the recitals, which, as we heard last week, are not binding. The limitations of Article 8 of the GDPR are pointed out by Professor Sonia Livingstone OBE, who writes that:

"article 8 of the GDPR is beginning to seem to me increasingly irrelevant. When kids tick the box the companies will then bear no responsibility to them by reason of their age".

Meanwhile, John Carr OBE says:

"If you entice or allow 13 year-olds on your site, you must … treat them in a manner relevant to their age".

Professor Livingstone and John Carr are arguably the most renowned experts in the field of childhood online. On this matter, they are joined by the NSPCC, Parent Zone, YoungMinds, the Anti-Bullying Alliance, the CHIS and the Children's Commissioner—among many others—in supporting the amendments. The amendments provide clarity, allow our legislation to reflect our values, and are necessary to make industry respond to the needs of children.

3.15 pm

When I first tabled Amendment 18, a number of people from the Government said to me, "Nice amendment, but it threatens compatibility with existing EU law and potentially our prospects for securing a post-Brexit adequacy agreement". I see no cause for this anxiety. Article 8 of the GDPR provides that,

"the processing of the personal data of a child shall be lawful where the child is at least 16 years old. Where the child is below the age of 16 years, such processing shall be lawful only if and to the extent that consent is given or authorised by the holder of parental responsibility over the child. Member States may provide by law for a lower age for those purposes provided that such lower age is not below 13 years".

The legal advice from a leading QC who specialises in this area is that,

"these amendments are consistent with the approach of the GDPR towards children in particular as set out in recital 38".

He continues by saying that they are:

"consistent with the scheme of the GDPR to balance the lower age of consent with the addition of further protective measures in the form of age appropriate design".

If the Government have a legal opinion to the contrary, the onus is on them to share it; otherwise, we should be discussing the amendments on their own merits.

The Minister is aware that I offered to discuss the amendments with the Government but that offer has yet to be taken up, so I was very surprised to read in the *Sunday Telegraph* yesterday a quote from the Minister, Matt Hancock, who said that,

"this amendment risks creating confusion and disproportionate legislation as part of the Data Protection Bill".

I am uncertain what the Minister for Digital finds confusing. This is a straightforward amendment that simply recognises that a child of 13 is not the same as an adult, and that is as true in the digital world as it is in the analogue. I am somewhat concerned that his position has more to do with the conflict in his role between looking after tech and looking after the nation's children. As for "disproportionate legislation", again, I see no case. The Minister argues that he can deliver the same outcome within the Government's recently announced internet safety strategy, but this strategy relies on industry's negligible appetite for change, offers

[Baroness Kidron]
self-regulation as the method, takes a narrow definition of "childhood needs", ignores the voices of children, and is utterly silent on the question of enforcement. ICT companies already subscribe to multiple voluntary standards and these have had next to no impact.

Year after year, we see an increase in the problems that young people face online. For example, even at the lowest level of ambition—the stated goal of preventing underage use—we still find that 78% of 10 to 12 year-olds have a social media account, when the joining age is 13. When the law firm Schillings translated Instagram's 5,000-word terms and conditions into plain English so that young people could see what they were signing up to, it said—I paraphrase—"We may keep or share your personal information, including name, address, school, your likes and dislikes, your phone number, where you go, who your friends are, and any other information that you may share, including your birthday and who you are chatting to, including in private messaging".

Self-regulation does not work. I am afraid that government policy is little more than putting the foxes in charge of guarding the henhouse. It is the duty of government to advocate on behalf of its citizens, particularly those who cannot advocate for themselves. In balancing the needs of tech and childhood, we must choose childhood because children cannot yet, and should not be expected to, look after themselves.

Before I sit down, I want briefly to answer three very specific points that noble Lords have raised with me. First, we are not calling for a higher age of consent because raising the age without placing conditions will inevitably mean that millions more children will be trespassers on sites where providers have been absolved of any responsibility towards their underage users. It is wrong to lock young people out. They must be invited to explore and participate in the digital world, but on terms that are designed to support their age and their established rights and freedom.

Secondly, is age-appropriate design achievable? Yes. The technology needed to deliver it already exists and is routinely used to tailor our online experiences. If the technology behind my Facebook account is sophisticated enough to personalise my home page with adverts specific to my purchasing preferences and a newsfeed specific to my interests, then it is sophisticated enough to be personalised to the needs of a 13 year-old. Subsection (6) of the proposed new clause inserted by Amendment 155 provides for transitional arrangements that would allow companies time to make the necessary changes. It is important to note that these standards would not affect the freedoms of adult users. It is entirely possible to vary the user experience. Personalisation is an industry norm.

Finally, is it not a matter for parents? Parental responsibility and guidance can never be replaced, but if devices are portable, services are designed for adults and community rules are not upheld, then parents do not have the tools to guide children in the digital environment. It is the responsibility of companies to provide age-appropriate services and of government to ensure that they do, so that parents and children are able to make positive choices.

It is imperative that children and young people are able to access a digital environment creatively, knowledgably and fearlessly. In helping them do so, we would be fulfilling the Government's manifesto pledge to make the UK the best place in the world to be on line. I beg to move.

Baroness Harding of Winscombe (Con): My Lords, I should draw the attention of the House to my interests in various digital organisations as set out in the register. I put my name to the amendments tabled by the noble Baroness, Lady Kidron, with a heavy heart, if I am honest. I have spent the past eight years running an internet service provider and arguing that competition is the route to delivering better services for consumers, and a large part of me would really like to believe that the fierce competition that exists among social media companies and other web applications would drive to the right outcomes for our children and for parents looking to protect their children, but the sad truth is that that is not the case. I have worked for and with many very well-meaning and talented people who lead these businesses, but the truth is that some of the largest companies in the world are simply not putting in place the most basic protections for our children. It is clear that our children are not protected. What is more, children say that themselves. They love social media platforms, but in research conducted by the Children's Society, 83% of children said that they think that social media companies should do more to protect them, and we know that if we ask parents we get very similar statistics.

It is also clear that we know what could be done. It is no good saying we should set minimum standards if we do not have a sense of what those basic minimum standards would be. As the noble Baroness, Lady Kidron, has just set out, the children's charities, led mainly on this by the NSPCC and the Anti-Bullying Alliance, are very clear about what some very basic standards would look like: the strongest privacy settings being default on for anyone under 18; geolocation turned off as a default if you are under 18; regular prompts about your privacy settings targeted in language that under-18s will understand; age being a required field when signing up for a service; and clear, transparent reporting processes if a child reports abusive behaviour on that platform in children's language.

These are not difficult things, and I hope they are not contentious, yet they are not being done. We owe it to our children to step back and ask why these basic things are not being done. People attempted to argue that this is because these are small start-ups scrambling in the rush to build a tech business, but I am afraid the basic things I have just listed are by and large not done by the largest businesses on the planet, providing services to the vast majority of our children.

The second reason people argue these things are not being done is that these are global businesses that will develop only one, global, product and they cannot—they are terribly sorry—adjust for our children's needs when they are working on their global technology road map. That is just not a good enough argument. In every other form of regulation the world over, good regulation begins in one geographical area and then spreads. We should not allow these large companies to

tell us that because they are global they cannot engage with us locally. Actually, they are all learning that that is not true.

I suspect that the real reason we are not getting change is a very practical one, which is that every technology company in the world has a contended development pipeline, by which I mean they have more things they want to do to improve their product for their customers than they have the resource or capability to deliver. I say this having been a chief executive of a tech company: you spend your life trying to prioritise the list of ideas and innovations, and the harsh reality is that protecting children is not coming high enough up that contended technology stack in any of these businesses. That is probably not surprising, because children themselves will be asking for other things as well, and it is exactly why you need to have regulation.

We accept absolutely, almost as an act of faith, that minimum health and safety standards are necessary in the physical world and that factories have to meet basic regulatory standards. The digital world is no different. We know what those basic standards should be now. I am sure they will change over time, but we know enough to set them. Our children's mental health is every bit as important as people's physical health as they grow up. This is something that we have to face.

I hope your Lordships will forgive me if I am getting the procedures of the House wrong, but my noble friend Lady Lane-Fox asked me to add her voice to this debate. Although she is currently in her place, she says:

"I cannot be in my place for the length of the debate today but I would like to add my voice to the amendment. There is a clear need for more to be done to protect children and to ensure that they can realise the multiple benefits of engaging with the internet while recognising that they are not yet experienced users.

I welcome the opportunity to design accessible and clear services that help children to navigate around safely. As others may already have raised, designing for children is not technically difficult—the BBC has been doing it well online for many years, but it is right to ensure more services are as careful and do not shirk their responsibilities. As I raised in Second Reading, I would very much hope that the ICO will be given the necessary resources to be able to handle Baroness Kidron's sensible suggestions alongside the other sizeable new areas of activity that they are being given in this Bill".

Switching back to my own voice, I join the noble Baroness in being convinced of the good that the digital world can do, but as with all technology, we need to mould it to meet our needs, not vice versa, and it is high time we set out the basic safety requirements our children need. That is what this set of amendments intends to do, which is why I support it.

Lord Storey (LD): My Lords, as I have said on a number of occasions, my previous job for 40 years was a teacher, 20 of those as a head teacher. One of my prime responsibilities as a head teacher was the safeguarding of children in my school. That was the most important thing I did: to make sure they were safe, so that those primary-age children, aged from five to 11, and nursery as well, could enjoy their childhood and their parents could know that they were safe and enjoying their innocence.

The Government did a lot with their education policies about safeguarding. Anyone visiting the school had to be checked and double-checked and had to wear identification. Children who went out of school had to be escorted properly and correctly. As part of our personal and social health education, we made sure that young people themselves understood. Yet, when it comes to this area, we seem not to take the role as seriously as we should. I was reading the newspapers on the train from Liverpool this morning. I just could not believe the *Times* headline:

"Children as young as ten are sexting".

The article says that,

"according to figures from the National Police Chiefs Council. In 2015-16, there were 4,681 cases",

where children as young as 10 were either sending inappropriate messages or photographs to other pupils or receiving them. Imagine it was your daughter who at the age of seven or eight—and some of them are that young—was receiving inappropriate pictures from other pupils. How would you feel as a parent? Is that really protecting or safeguarding those children?

I do not want to speak at length in this debate; I think the noble Baronesses, Lady Kidron and Lady Harding, have said it all. It is not beyond our wit to do these simple things. I have seen for myself that self-regulation does not work. I hope that between now and Report the Government will put aside any feeling that, "We can't do this because of the EU, because of our own lethargy, because of what we have said in the past or because it will create more regulation". This is about children. Let us all agree that on Report we can agree these eminently sensible amendments.

3.30 pm

Lord Knight of Weymouth (Lab): My Lords, I support the amendments. I remind the House of my interests in relation to my work at TES, the digital education company.

The noble Baroness, Lady Kidron, and the others who have supported the amendment have given the Government a pretty neat way out of the problem that 13 as the age of consent for young people to sign up to "information society services", as the Bill likes to call them, feels wrong. I have found that for many Members of your Lordships' House, 16 feels like a safer and more appropriate age, for all the reasons that the noble Lord, Lord Storey, has just given in terms of defining when children are children. There is considerable discomfort about 13 in terms of where the Bill currently sits.

However, I think many noble Lords are realists and understand that to some extent the horse has bolted. Given the huge numbers of young people currently signing up to these services who are under 13, trying to pretend that we can find a way of forcing the age up to 16 from the accepted behavioural norm of 13 looks challenging. Yet we want to protect children. So the question is whether these amendments would provide that solution. That hinges on whether it is reasonable to ask the suppliers of information society services to verify age, and whether it is then reasonable to ask them to design in an age-appropriate fashion. From my experience, the answer to both is yes, it is. Currently, all you do is tick a box to self-verify that you are the age you are. If subsequently you want to have your

[Lord Knight of Weymouth]
data deleted, you may have to go through a whole rigmarole to prove that you are who you are and the age you say you are, but for some reason the service providers do not require the same standard of proof and efficacy at the point where you sign up to them. That is out of balance, and it is effectively our role to put it back into balance.

The Government themselves, through the Government Digital Service, have an exceedingly good age-verification service called, strangely, Verify. It does what it says on the tin, and it does it really well. I pay tribute to the GDS for Verify as a service that it allows third parties to use: it is not used solely by Government.

So age verification is undoubtedly available. Next, is it possible—this was explored in previous comments, so I will not go on about it—for age-appropriate design to be delivered? From our work at TES, I am familiar with how you personalise newsfeeds based on data, understanding and profiling of users. It is worth saying, incidentally, that those information society services providers will be able to work out what age their users are from the data that they start to share: they will be able to infer age extremely accurately. So there is no excuse of not knowing how old their users are. Any of us who use any social media services will know that the feeds we get are personalised, because they know who we are and they know enough about us. It is equally possible, alongside the content that is fed, to shift some aspects of design. It would be possible to filter content according to what is appropriate, or to give a slightly different homepage, landing page and subsequent pages, according to age appropriateness.

I put it to the Minister, who I know listens carefully, that this is an elegant solution to his problem, and I hope that he reflects, talks to his colleague the right honourable Matthew Hancock, who is also a reasonable Minister, and comes back with something very similar to the amendments on Report, assuming that they are not pressed at this stage.

Baroness Hollins (CB): My noble friend made a very strong case. The internet was designed for adults, but I think I am right in saying that 25% of time spent online is spent by children. A child is a child, whether online or offline, and we cannot treat a 13 year-old as an adult. It is quite straightforward: the internet needs to be designed for safety. That means it must be age appropriate, and the technology companies need to do something about it. I support the amendments very strongly.

Lord Alton of Liverpool (CB): My Lords, I, too, support my noble friend Lady Kidron. Last week, with her and my noble friend Lord Best, I was able to attend a briefing session with the right honourable Karen Bradley, the Secretary of State. I found that very helpful. We were looking at the Green Paper on internet safety published on 11 October. It is curious that we are here in Committee talking about some of the same issues when that significant consultation is being undertaken by the Government. I hope that when the noble Lord, Lord Ashton of Hyde, comes to reply to the debate, he will say something about how the Government intend to synchronise the discussion of and consultation on the Green Paper that is under way with the moving horse of legislation that is proceeding through your Lordships' House.

During our discussions last week, my noble friend raised again the duty to protect. I agree with what the noble Lord, Lord Knight, just said about this providing an elegant way forward. I guess that many of us would want to turn the clock back if that were possible, but we recognise that it is not, and this may well be, therefore, a better way to proceed. It is certainly one to which the Government should be giving considerable attention.

While I am on my feet, perhaps I may remind the noble Lord, Lord Ashton, of the amendment that I moved with my noble and learned friend Lady Butler-Sloss during the debate in April on the digital legislation. I particularly draw his attention to col. 40 on 20 March and the remarks made by his right honourable friend the Minister of State for Digital in the other place on 26 April, when he described the question of prohibited material and definitions, which we had argued should be consistent across varying media platforms. They both said that this was unfinished business that would be returned to. I have studied the Green Paper but have not been able to find the solution to that unfinished business, and wonder whether it will be addressed as the legislation proceeds.

Perhaps I may also ask the Minister about the protection of minors. It has been stated again and again, by all noble Lords who have participated so far, including the noble Lord, Lord Storey, that the protection of children should be a paramount consideration at all times. The Minister may recall the case, which I raised with the Secretary of State and in your Lordships' House, of some young people who had visited suicide sites. I was horrified to learn from the headmaster of a school in Lancashire, where I arrived to distribute prizes, that a child who had visited a suicide site had taken their own life only that morning. What further protections are being provided to require service providers, for whom self-regulation is clearly not enough, to do rather more about that question?

It has been said that parents do not have a chance in this situation; that is absolutely right. As my noble friend Lady Hollins said, young people spend a vast amount of time on the internet. Many parents do not understand how it works. It is therefore crucial that we do all we can to place pressure on the service providers. I remind the House of the advice that Aristotle gave parents. He said that only a bad parent would place their children in the hands of a foolish storyteller. I fear that many of us, maybe inadvertently and without knowing the full consequences of placing our children in the hands of the Twittersphere and the digital world, with all the information that pours into their minds on a massive scale, have placed them into bad hands. We need to do more to protect them. This is what my noble friend is trying to do and I commend her amendment to the House.

Baroness Jay of Paddington (Lab): My Lords, I support the aim of these amendments, as do other noble Lords who have spoken. They were extraordinarily well introduced, given the scope of what they are intended to achieve. As I said at Second Reading, I do

not have the same authority and technical background in the industry as many noble Lords who have taken part, particularly the noble Baroness, Lady Harding. However, I have a legitimate question for the noble Baroness. The Minister, who will have heard the general support around the House, will also be aware of this. However good the intentions of the amendments—and I support their aims—it is difficult to regulate in a world in which technical capacity is international. As the noble Baroness, Lady Harding, said, these matters are rather low on the agendas of the major, global corporations which are responsible for producing the technology, delivering the content and organising the platforms that children may be accessing, appropriately or not. It is legitimate to ask, as she did, whether what we say and how we regulate in this country can be a beacon. I think she said that this could be the beginning of a geographical spread of better regulation. It would be pointless to ignore the fact that we are dealing not with an internal issue of domestic regulation as we would be with terrestrial broadcasting, but with global corporations, most of them based on the west coast of the United States, which do not necessarily even agree with the aims of these amendments—which I very certainly do.

Baroness Howe of Idlicote (CB): My Lords, the intention for a minimum level of design to help children and their parents, set out in Amendments 18, 19, and 155, is indeed laudable and provides an excellent opportunity for us to debate the role of the Information Commissioner. However, I am concerned that these amendments continue legal uncertainty in a number of ways. The revised Clause 8, introduced by Amendment 18, would uphold the age of 13 as the age of digital consent—but only when a website,

"meets the minimum standards of age-appropriate design as determined by the Commissioner".

Similarly, Amendment 19 seeks to ensure that sites which children under 13 are likely to visit have a certain minimum design to help children and parents. Details for establishing those standards are in Amendments 155, 156 and 157.

My first concern is how a consumer—a child or parent—will know whether a website meets the minimum standards and therefore which age of consent applies. Secondly, what would happen were a site not to meet the minimum standards set by the Information Commissioner but still used 13 as the age for when a parent is no longer required to consent to the use of the child's data?

3.45 pm

Thirdly, in relation to sites requiring parental consent under Amendment 19, it is not clear how parents should deal with websites that do not meet the minimum standards. If a website does not meet the minimum standards, will a parent's consent to the processing of their child's data be invalid?

None of the Amendments 155, 156 and 157 about establishing the guidelines on minimum standards seems to address these questions, or how the minimum standards will be enforced. Without any way to enforce the standards or clarity about situations where sites do not meet the standards, especially for parents, guidelines on minimum standards cannot offer any clear protection.

Amendment 20A proposes a review of Clause 8, including,

"an assessment of the efficacy of age verification processes for the purposes of gaining consent of children aged 13 years and over",

and of the impact of this clause on the wider issues relating to the safety of children online. I welcome the intention of this amendment to allow reconsideration of the age at which children can consent to sharing their data online. However, I am not sure that it quite addresses the problem. While I am not saying that the digital age of consent absolutely has to be 16, I still do not see an evidence base for suggesting that it should be 13.

I struggle to see how any amendment can take us to where we need to be at the moment without requiring the generation, prior to the coming into force of this clause, of an evidence base to facilitate an informed determination of what the digital age of consent should be.

The Earl of Erroll (CB): My Lords, we have to face the reality that children are going online at a younger and younger age, so anything that facilitates that and makes it work more sensibly is essential. We need to think about the interface with the right of erasure in Clause 44 and the clauses just after it. I am not sure whether parental consent is still required for this when someone is under 16. There have been problems where children or younger people have put images and other material online which they want removed but are far too embarrassed to tell their parents about them. The problem is that data processors are not allowed to remove them without parental consent, so the children do not tell their parents, the images stay there and a lot of trouble is caused. That area should be looked at in relation to these clauses and Clause 44. I would love to leave it to someone else to sort this out who is better qualified to deal with the legal position.

Lord Puttnam (Lab): My Lords, I support this amendment and apologise to the Minister and the House for not being present at Second Reading as I was overseas. However, my noble friend Lady Jay more than adequately set out some of my concerns around Part 5 of the Bill. However, this is also a very important amendment. In the debate initiated by the noble Baroness, Lady Lane-Fox, on 7 September, the noble Baroness, Lady Kidron, said:

"There is an awkward tension in having a technology that is able to help us to confront our societal needs … and a corporate culture that aggressively balks at … long-term societal responsibilities".—[*Official Report*, 7/9/17; col. 2118.]

In the end, that is precisely what this comes down to. The noble Baroness, Lady Harding, made a very important point a little earlier. She referred to barriers to entry being used by corporations to not do the things that they should do, and at the time they should do them.

Today is the 20th anniversary of my entering your Lordships' House and, if I had to count the number of times I have been told that barriers to entry are the reason for not doing something, we would all be here all day. I well remember the noble Lord, Lord Oxburgh, who is in his place, and I having a meeting with the then Ministers for Energy and being told that "barriers to entry" were one reason that the large energy companies could not do the things that we suggested they might

[LORD PUTTNAM]
do at the time. Therefore the idea that the Silicon Valley companies have not reached a sufficient size or sophistication to be able to carry out the de minimis changes to their platforms—the effect of the amendment which the noble Baroness, Lady Kidron, set out so beautifully—is a nonsense. Please can the noble Lord, Lord Ashton, beg Matt Hancock, the Minister, to put to one side any more arguments about unacceptable barriers to entry being raised by this and indeed other amendments on the same subject?

Lord Stevenson of Balmacara (Lab): My Lords, this has been a terrific debate on an important subject. We probably all agree that of all the issues that will come up on the Bill, we care about this one the most and would like to see it settled in a way that balances, as has been said, the wish for people to enjoy the use of the internet—which brings so much in so many different ways—with an appropriate regulatory structure that means that harm is prevented where it is appropriate to do so.

I was struck by what the noble Baroness, Lady Harding, said. Obviously, she is in a difficult position, speaking against her Government on a matter about which she has so much expertise and knowledge. However, she made the case so well that it is worth paying tribute to her for that. If we find a situation in any aspect of our public life where those responsible for an issue are unwilling or unable to deal with it appropriately, the public authorities have to take that step. We are in that situation—she made that clear so well.

Other arguments have been used today that were knocked back by the noble Baroness, Lady Kidron, when she spoke, but it is important to bear this in mind. There is no question here about us affecting our adequacy issues. This is definitely left to the government agencies in the countries involved to act on, and there is no issue here with regard to what we would say to the European Union should that be required in terms of adequacy, so we should not be dissuaded by that. As the recitals attached to the GDPR say, it is still a question of needing to balance the lower age of consent with the appropriate safeguards required. Age is one of those—it is important, but not the only one; capacity has also been raised before. However, we have the issue here about age, and there is a need for guidance around that.

The Government will not address the issue in any future sense. The internet strategy, which was referred to, is a bit of a red herring here, and, as we have heard, self-regulation, on which it is largely based, does not work. Therefore, action is probably required. As I said, if the industry will not do it, the public authorities should. We want this country to be the best place in the world to be online, and we want it to be safe to do so. If it is possible to design an age-appropriate environment, we should look very hard at that. The case that has been made today is incredibly important. The Government have a good sense of that from all around the Committee, as was said, and I hope they will be able to respond positively to it.

I will speak briefly to Amendment 20A, which picks up points made by the noble Baroness, Lady Howe. One issue that affects all those who wish to work in this area is the lack of information about what is happening on the ground: who is using what and how, with regard to time, effort and use of the internet? Amendment 20A, in my name, suggests to the Government that there is need at some point for a proper review which will require the companies to divest the information they currently have but which they do not share on information society services. Only then will the evidence of which the noble Baroness, Lady Howe, spoke, which will inform us as we go forward, be available. However, it should not stand in the way of the need to act in this way in this amendment, which I fully support.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, the noble Lord, Lord Stevenson, said that he hoped I had a sense of where the Committee is coming from. I very much have a sense of that. I know that child online safety is an issue that is taken seriously by all noble Lords in the House, and it has been the subject of much debate apart from today. I am therefore grateful to the noble Baroness and to all who contributed for introducing this important subject. I assure all noble Lords that we have an open mind. However, I will pour a bit of cold water because some issues, to which we may well come back, need to be thought about. I apologise to the noble Baroness, Lady Kidron, for the fact that we have not met. I thought that we were arranging a meeting. I have certainly talked to my noble friend Lady Harding about these amendments. However, I repeat not only to her but to every noble Lord that I am very happy to talk to anyone about these matters before Report, and I have no doubt that I will be talking to the noble Baroness before too long.

At Second Reading we heard a good deal about the need to improve online safety and concerns about the role that social media companies play in young people's lives. The Government are fully committed to this cause. Our approach has been laid out in the *Internet Safety Strategy* Green Paper, published earlier this month. In that strategy, the Government detailed a number of commitments to improve online safety for all users and issued a consultation on further work, including the social media code of practice, the social media levy and transparency reporting. Although the Government are currently promoting a voluntary approach to work with industry, we have clearly stated in the strategy—and I repeat it now—that legislation will be introduced if necessary, and this will be taken forward in the digital charter.

The Government's clear intention is to educate all users on the safe use of online sites such as social media sites. Again, this is set out in the strategy. This includes efforts targeted at children, comprising working with civil society groups to support peer-to-peer programmes and revised national curriculums. We believe that education is fundamental to safe use of the internet because it enables users to build the skills and resilience needed to navigate the online world and to be capable of adapting to the continuous changes and innovations that we see in this space.

The aim of these amendments is to allow information society services to make use of the derogation in the

GDPR to set the age threshold at 13 only if sites comply with guidance on the minimum standards of age-appropriate design as set out by the Information Commissioner. Although the Government are sympathetic to their goal to raise the level of safety online, we have some questions about how it would work in practice and some fundamental concerns about its possible unintended consequences.

The noble Lord, Lord Storey, said that we should not rest our case on EU law. That is an enticing argument, especially from a Liberal Democrat, but I think that there is a sense of frustration there and I would not hold him to that. However, the fact is that, as we discussed last week, we are determined to ensure that we preserve the free flow of data once the UK leaves the EU.

I have to raise the issue of compliance with the GDPR, because we have a very real concern that these amendments are not compatible with it. The GDPR was designed as a regulation to ensure harmonisation of data protection laws across the EU. The nature of the internet and the transnational flow of data that it entails mean that effective regulations need international agreement. However, these amendments would create additional burdens for data controllers. Article 8 of the GDPR says that member states may provide by law for a lower age but it does not indicate that exercising this derogation should be conditional on other requirements. These amendments go further than permitted, creating a risk for our future trading relationships.

The noble Baroness mentioned that she had advice from a prominent QC. If she would care to share that with us, I would be happy to discuss it with her, and we will put that in front of our lawyers as well. I have an open mind on this but we think that there is an issue as far as the GDPR's compatibility is concerned.

Amendment 155 would require the Information Commissioner to produce guidance on standards and design. The Information Commissioner will already be providing guidance on minimum standards to comply with the requirement not to offer services to under-13s without parental consent. Indeed, it will be the role of the commissioner to enforce the new law on consent. Although the guidance will not include details on age-appropriate design, this is not something that should be overlooked by government. However, tackling the problem of age-appropriate design is not just a data protection issue, and we should be very cautious about using this age threshold as a tool to keep children off certain sites. This is about their data and not the more fundamental question of the age at which children should be able to use these sites.

We need to educate children and work with internet companies to keep them safe and allow them to benefit from being online. Where there is clearly harmful material, such as online pornography, we have acted to protect children through a requirement for age verification in the Digital Economy Act 2017. The Government's *Internet Safety Strategy* addresses a wide range of ways to protect the public online. While online safety, particularly for children, is very important, we should not be confusing this with the age at which parental consent is no longer required for the processing of personal data by online services. The Government have a clear plan of action.

4 pm

Lord Knight of Weymouth: I apologise to the Minister for interrupting. I am just interested in that confusion that he talks about. Perhaps I am incorrect, but I understand that images, for example, are data. There is a lot of concern about sexting and about platforms such as Snapchat and the sharing of data. Where is the confusion? Is it in the Government, or in the Chamber?

Lord Ashton of Hyde: I do not think I mentioned confusion. What we are talking about in the Bill is purely data protection. We are talking about the age at which children can consent to information society services handling their data. What I think the noble Baroness, and a lot of Peers in the House, are talking about is keeping children safe online, which is more than just protection of their personal data.

Baroness Kidron: I also apologise for interrupting but I have to support the noble Lord, Lord Knight. When I read out the list, I said that Instagram takes information such as your phone number, your birthday and who you are chatting with. That is data, so I come at this from a very clear position on children's rights. I am very keen for children to be online. I agree with the noble Lord, Lord Knight, that we are beyond an age of consent, as he said on Second Reading. Consent is meaningless if you do not change the service on the other side of that consent. It is not simply about the bad things that happen. It is about abusing the entire data of a child when they are online. I hope that is helpful to put it back into scope of the Bill.

Lord Ashton of Hyde: There may be some confusion now. I am not saying that children's data is not important or that data protection for children is not important: clearly they are. However, the internet safety strategy addresses an overall, comprehensive range of measures that is about more than just data protection. We want to have a comprehensive strategy, which I am going to come to, to talk about safety. Nobody in their right mind is saying that we should not protect children, not only on the domestic front but internationally, as the noble Baroness, Lady Jay, said. Let me continue and I am sure all will become clear. If it does not, I am sure that the noble Baroness and others will cross-question me. If I have misunderstood what the noble Lord, Lord Knight, is getting at, I will look at *Hansard* and get back to him. I am sure we will come to this again.

We have a clear plan of action to raise the level of safety online for all users, as set out in the internet safety strategy. We are consulting on a new code of practice for the providers of online social media platforms, as required by the Digital Economy Act. That will set best practice for platform providers in offering adequate online protection policies, including minimum standards. Approaching the problem in this way as a safety matter, rather than a data protection matter, ensures we can tackle the problem while avoiding a debate over whether we are compliant with the GDPR. The internet safety strategy also outlines the Government's promotion of "Think safety first" for online services. This will aim to educate and encourage new start-ups and developers to ensure that safety and privacy are built into their products from the design phase. Examples

[Lord Ashton of Hyde]
of this type of approach include having robust reporting mechanisms for users. We are looking at whether extra considerations should be in place on devices that are registered as being used by a child.

It is essential that we take a careful and considered approach to affecting the design standard of online services. Making overly complex or demanding requirements may result in negative consequences. Let me explain why. Amendments 18 and 19 essentially offer website operators a stark choice. Websites will need to either invest in upgrading standards and design or withdraw their services for use by under-16s. This is dangerous for the following reasons.

First, it could cause a displacement effect where children move to less popular platforms that would potentially not comply with such requirements—the noble Baroness, Lady Jay, talked about foreign sites. It is often more difficult to monitor these services and to ensure they have the basic protections that we expect from more legitimate sites. Platforms comply either because they are responsible or because they believe that the regulator will take enforcement action against them. Platforms hosted overseas may not always comply, because to do so would reduce the volume of users and potential monetisation, and the risk of enforcement action may be low.

Secondly, it is likely that young people, particularly those who already use these sites, may lie about their age to circumvent restrictions. This could have negative consequences for the prosecution of online grooming and underage sex: teenagers would be vulnerable to the assumption that they are over 16; adults could use this as a defence for their conduct; and sites may not be as accountable for the content that children are exposed to. This is not an imaginary problem. There have been cases of acquittal at trial, where men have had sexual relations with underage girls after meeting them on sites for over-18s only, using their presence on the site as a defence for believing them to be adults.

Thirdly, circumvention may be sought through the use of mechanisms to anonymise—I am having a problem with my pronunciation too—the use of the internet. Young people may adopt anonymising tools such as VPNs to access non-UK versions of the sites. This would make it more difficult for law enforcement to investigate, should they be exploited or subject to crime.

Fourthly, there is already in place a variety of legislation to safeguard children. Any change brought in through this Bill would have potential ramifications for other statutes. Altering how children make use of online service providers would need to be carefully worked through with law enforcement agencies to ensure that it did not damage the effectiveness of safeguarding vulnerable people.

Fifthly, these amendments do not just apply to social media services. A broad range of online services would be affected by this proposal, from media players to commerce sites. The kinds of services that would be caught by this amendment include many that develop content specifically for young people, including educational materials, not to mention the wider impact on digital skills if children are forced offline.

I move on now to more practical considerations. I am concerned that the amendments as drafted, while an elegant proposal, could serve to create confusion about what sites have to do. We know that the GDPR will apply from 25 May, and I am not convinced that this will allow enough time for the commissioner to consult on the guidance, prepare it, agree it and lay it before Parliament, and for companies to be compliant with it. Online service providers will need to adhere to the new requirements from May 2018, and may have existing customers that the new provisions will apply to. They will need some time to make any necessary changes in advance. Even with the transition period available in the amendment, this would lead to considerable uncertainty and confusion from online services about the rules they will have to follow come May. This could result in the problems that I have already laid out.

Finally, the Information Commissioner has raised a technical point. These amendments would apply only where consent is the lawful basis for processing data. Children also have access to online services where the data controller relies on a contractual basis or vital interests to offer services, rather than reliance on consent. Therefore, the amendments may have less reach than seems to be envisaged and are likely to lead to confusion as to which services the requirements apply to.

In summary, in spite of our appreciation of the aims of these amendments, we have concerns. They may prove dangerous to the online safety of children and young people. Creating unnecessary and isolated requirements runs the risk of being counterproductive to other work in this space. There needs to be some serious and detailed discussion on this before any changes are made. Furthermore, the technical and legal drafting of the amendments remains in question.

There is no doubt that further work needs to be done in the online safety space to ensure the robust and sustainable protection of our children and young people online. We have demonstrated commitment to this through the work on the internet safety strategy and the Digital Economy Act. We are working on these issues as a matter of priority, but strongly believe that it is better to address them as a whole rather than pursue them through the narrow lens of data protection. We need to work collaboratively with a wide range of stakeholders to ensure that we get the right approach. The noble Baroness, Lady Kidron, for example, was among those who attended the parliamentarians' round table on the internet safety strategy, which she mentioned, hosted by the Secretary of State last week. We are engaged on this issue and are not pursuing the work behind locked doors. These specific amendments, however, are not the right course of action to take at this time.

Lord Alton of Liverpool: My Lords, the Minister has just referred to the round table. He will recall that I mentioned in my remarks the issue of definitions and suicide sites that were raised during that round table last week. Can he tell the House any more about that?

Lord Ashton of Hyde: I was not at the round table, and I am afraid that I would require some notice to answer that question. I am certainly happy to write to the Committee about that. I had not forgotten; I just do not have an answer.

Given the arguments that I have laid out, I would like to reassure the House that this issue remains high priority. The noble Lord, Lord Knight, asked whether GOV.UK's Verify site could be used for age verification. Verify confirms identity against records held by mobile phone companies, HM Passport Office, the DVLA and credit agencies, so it is not designed for use by children. We will continue to work with interested parties to improve internet safety, but in a coherent and systematic way. For the moment, and in anticipation of further discussions, I ask the noble Baroness to withdraw her amendment.

I now move to Amendment 20A from the noble Lords, Lord Stevenson and Lord Kennedy, on the requirement for a review of Clause 8. Again, the Government agree with the spirit of this amendment in ensuring that the legislation we are creating offers the protections that we desire. However, there are a few issues that we would like to address.

First, it is government practice to review and report in cases of new legislation like this. Bringing about a mandatory report in this case is therefore unnecessary. Furthermore, prescribing the specific content of such a report at this stage is counterproductive. This is especially true given the complex and wide-ranging nature of child online safety and the work being conducted by the Government in this space.

Secondly, on timings, as noble Lords are aware, we must comply with the GDPR from 25 May next year, by which time the Bill must be passed. I am concerned, therefore, that to require a review to be published within 12 months of the Bill passing would not leave sufficient time to produce a meaningful report. Companies need the time to bring in new mechanisms to be compliant with the regulation. For data to be created and collected, time must be given for the sites to be tested and used following the new regulations. This will allow for the comparison of robust data and that which will reflect other work around online safety, which is still being developed. For those reasons, I ask the noble Lords not to press their amendments.

Lord Stevenson of Balmacara: I do not think that the Minister answered the point made by my noble friend Lady Jay on extraterritoriality—a word that I know he will want to use. Also, before the noble Baroness, Lady Kidron, replies, the main thrust of the Minister's points was that government action on a code and on the digital charter would take most of the issues away. He relied on that in terms of his main argument. But am I right in saying that the code that has been consulted on is voluntary and that there will be no statutory basis for the digital charter? I would be grateful if he could help us on those two points.

4.15 pm

Lord Ashton of Hyde: I am happy to confirm those two points. On extraterritoriality, I agree with the noble Baroness that it is difficult to control. Commercial sites are easier—an example of which is gambling. We can control the payments, so if they are commercial and cannot pay people, they may well lose their attractiveness. Of course, the only way to solve this is through international agreement, and the Government are working on that. Part of my point is that, if you drive children away to sites located abroad, there is a risk in that. The big, well-known sites are by and large responsible. They may not do what we want, but they will work with the Government. That is the thrust of our argument. We are working with the well-known companies and, by and large, they act responsibly, even if they do not do exactly what we want. As I say, however, we are working on that. The noble Baroness is right to say that, if we drive children on to less responsible sites based in jurisdictions with less sensible and acceptable regimes, that is a problem.

Lord Knight of Weymouth: Could the Minister help me with any information he might have about when the GDPR was drawn up? It must have been envisaged when Article 8 was put together that some member states would go with something different—be it 13, 16, or whatever. The issue of foreign powers must have been thought about, as well as verifying age, parental consent, or the verification of parental identity to verify age. Article 8 just talks about having to have parental sign-off. These issues of verification and going off to foreign powers must have been thought about when the article was being put together in Europe. Does he have any advice on what they thought would be done about this problem?

Lord Ashton of Hyde: I cannot give the noble Lord chapter and verse on what the European bureaucrats were thinking when they produced the article, but age verification is not really the issue on this one, because it is extremely difficult to verify ages below 18 anyway. Although one can get a driving licence at 17, it is at the age of 18 when you can have a credit card. As I say, the issue here is not age verification—rather, it is about how, when we make things too onerous, that has the potential to drive people away on to other sites which take their responsibilities less seriously. That was the point I was trying to make.

Baroness Jay of Paddington: My Lords, the Minister was kind enough to respond to the point I sought to make about the extraterritorial nature of all this, which of course goes way beyond individual sites to corporate ownership, the issue that I am most concerned about. I am glad that the Government are having conversations with, or at least dealing with, what he describes as the most responsible players in this market. None the less, we are dealing with a global environment in which most countries, not just a few rogue countries, have a very different environment and understanding of the culture and nature of the regulation of broadcasting than we do in this country. We have had a very particular and sophisticated way of dealing with terrestrial broadcasting for several generations. The real problem lies in addressing how we can translate some of those values and regulatory formats into the global internet age.

Lord Ashton of Hyde: I take that point completely. So that I get it right, it would be best if I write to the noble Baroness about what we are doing. I am afraid that I cannot recall whether it is the G8, the G20 or whatever. Ownership is obviously a key point as well, so I will write to the noble Baroness on those points.

Baroness Kidron: I thank everyone who has contributed to this fantastically supportive debate with their very interesting comments. I am grateful to the Minister for saying that he is sure that we will return to this issue.

I am going to try to tackle a couple of points, but I do not have the organising skills with all my pieces of paper to pick up on what all noble Lords have said. I think there is a bit of a muddle in the Room about this approach, which is aimed deliberately at all data controllers. Those people who have for many years been designing with children in mind will have less far to go to meet the regulations than the people who have not been thinking about children at all. I am deliberately saying that it is a data question; I believe it to be one. This is not supposed to be in the gift of a few big companies; these amendments are supposed to deliver what children deserve and need in the digital environment. It is excellent that it is in a data environment, because it becomes a price of doing business. To the people who have misunderstood the point, we are saying that it will be unlawful to process data unless you provide these services—and, when that is the case, just watch the gold rush toward smart age verification. If children's data is being processed unlawfully, we would expect there to be some sort of enforcement. I admit to the Minister that our amendment could perhaps do with a bit more work on enforcement and what that might look like.

Secondly, I want to make a point about resilience and education. I believe we are about to discuss education, which is an enormous component of online safety and resilience for children. But we must not make the mistake of thinking that children have to adapt to the needs of data controllers; it is data controllers who must meet the needs of children. That is what these amendments are about. I am absolutely committed to working with the Government, because all their public pronouncements on this subject are in that direction. We have to make it work, so that at least some of the work is done on the other side of the equation. I am unhappy about it being put in the context of getting a few big companies paying for some digital champions. In fact, I was very concerned that the Secretary of State chose to announce the internet safety strategy alongside Facebook, which has a programme it charges schools for that also teaches young people to be very good Facebook users. Before we get to that point, arm in arm with some of these people, we must first work out what our standards are. That is the role of this House. It may not be outsourced to Silicon Valley; that is not appropriate.

On data controllers raising the age, it is worth noting that nearly 3 billion people are online and one-third of them are under the age of 18. That is not a marginal group; that is a huge group. I find it hard to believe that data controllers will abandon that consumer group, just because we have asked them to behave a little better and be a little more moderate in the data they are taking. Again, regulatory compliance is a cost of doing business. Every business has it; this is just another example. I want to discuss this issue with the noble Baroness, Lady Howe, and write to her. She made some excellent points; some of them were perhaps on the misunderstanding of whether such compliance was for everybody or just some sites. I absolutely support her on the question of evidence and evidence-based legislation in this area; I do an immense amount of research work with children and academics. I agree with her, and will write to her in detail because her points were so specific.

Finally, I hope that the Minister, Matt Hancock, will forgive me for quoting him one more time. He said that the Bill's purpose was to give,

"consumers confidence that Britain's data rules are fit for the digital age in which we live".

I do not think that having millions of young kids in the United Kingdom treated as adults is a fit outcome for the digital age. I welcome the noble Lord's clear sign that he is willing to talk to us. I will definitely be doing that. I hope he will also show me his legal opinion, as well as wanting to see mine. With that, I beg leave to withdraw the amendment.

Amendment 18 withdrawn.

Clause 8 agreed.

Amendment 19 not moved.

Amendment 20

Moved by ***Lord Storey***

20: After Clause 8, insert the following new Clause—

"Education for children of school age relating to the rights of data subjects

(1) Upon the passing of this Act, the Secretary of State must make arrangements for all children of school age to receive education relating to the rights of data subjects, appropriate to their age.

(2) For the purposes of subsection (1) "the rights of data subjects" must include—

(a) rights under this Act and other Acts and Regulations relating to data protection and privacy,

(b) security of personal data, and

(c) other matters related to the understanding and exercise of rights under this Act and other Acts and Regulations relating to data protection."

Lord Storey: My Lords, the second pillar of protection of children and young people is education. In my view, that would be achieved through personal, social and health education. The noble Baroness, Lady Massey, has championed this issue for as long as I have been in the House of Lords.

One of the sad casualties of the last general election was the then Schools Minister, Edward Timpson, who was very keen that not only relationship and sex education would become a compulsory part of the curriculum, but PSHE would be part of the curriculum of all schools. Indeed, last year I asked an Oral Question on the subject. The then education Whip, now the Leader of the House, the noble Baroness, Lady Evans, said she thought it important that PSHE is taught in schools. Sadly, she missed two little words: in "all" schools and for "all" children. That has been the nagging issue. It is a question of not just having the subject, but ensuring it is taught in all schools, whether academies, free schools, independent schools or whatever, for the well-being of all our children.

On 24 October 2017 the Education Select Committee published the Government's response to the joint report by the Education and Health Committees, *Children and*

Young People's Mental Health—the Role of Education. In response to the recommendation that,

"schools should include education on social media as part of PSHE, including educating children on how to assess and manage the risks of social media and providing them with the skills and ability to make wiser and more informed choices about their use of social media",

the Government responded:

"All young people should have access to a curriculum that ensures they are prepared for adult life in modern Britain. Personal, Social, Health and Economic education … Relationships Education, and Relationships and Sex Education … help to provide pupils with the key knowledge and skills to ensure that they can keep themselves safe, develop healthy and positive relationships, maintain good mental health, build resilience and successfully navigate the changing world in which they are growing up".

The Children and Social Work Act 2017 gives the Secretary of State the power to make PSHE or elements therein mandatory, subject to careful consideration. It has also given a duty to the Secretary of State to make relationships education in primary and relationships and sex education in secondary mandatory in all schools. The department will be conducting a thorough and wide-ranging engagement process on the scope and content of these subjects, considering school practice and quality of delivery to determine the content of the regulations and statutory guidance. Sadly, that consultation has slipped further behind the promised date originally given.

4.30 pm

The Government response continues:

"The engagement process will seek evidence from schools and teachers, parents and pupils; experts in safeguarding and child wellbeing; subject experts; voluntary organisations and other interested parties; and other government departments and public sector bodies. This will consider what should be taught at a high-level whilst maintaining flexibility for schools in how best to deliver these subjects as part of a broad and balanced curriculum. We will set out more details in due course about the engagement process and the work to consider age appropriate subject content".

This looks very much like kicking a very important can a long way down the road. As I have said, we have waited so long for government to act on these matters, yet we are caught up in the sorts of processes which Governments seem to want. As yet, we have no commitment from the Government that the Secretary of State will use the power to make PSHE a statutory subject.

It is not just the Education Select Committee which says these things. The House of Lords Communications Committee called in its *Growing Up with the Internet* inquiry report for the rollout of an ambitious programme of digital literacy training which would feature in a statutory PSHE curriculum. Encouragingly, the Government's own internet safety strategy Green Paper states that they will "carefully consider" whether to introduce statutory PSHE.

We are therefore at an important time. By agreeing this amendment, we can ensure that PSHE will be the vehicle by which these issues can be taught to all children in all schools. I hope that when we come to Report the Minister will be able to report that that will be the case. I beg to move.

Lord Knight of Weymouth: My Lords, does the Minister agree with the noble Lord, Lord Storey, that PSHE would be the most appropriate way to educate young people about data rights? If so, I note that the Secretary of State, Justine Greening, has today announced that Ian Bauckham will lead the review on how relationship and sex education for the 21st century will be delivered. Can the Minister, who is clearly prepared to think about this appointment today, ask whether it is within his scope to think about how data rights education may be delivered as part of that review, and whether the review will draw on the work of the previous person who reviewed the delivery of PSHE, Sir Alasdair Macdonald, the last time Parliament thought that compulsory SRE was a good idea?

Baroness Kidron: I support the amendment. I was on the House of Lords Communications Committee, to which the noble Lord just referred. We recommended that digital literacy be given the same status as reading, writing and arithmetic. We set out an argument for a single cross-curricular framework of digital competencies—evidence-based, taught by trained teachers—in all schools whatever their legal status.

At Second Reading, several noble Lords referred to data as the new oil. I have been thinking about it since: I am not so certain. Oil may one day run out; data is infinite. What I think we can agree is that understanding how data is gathered, used and stored, and, most particularly, how it can be harnessed to manipulate both your behaviour and your digital identity, is a core competency for a 21st-century child. While I agree with the noble Lord that the best outcome would be a single, overarching literacy strategy, this amendment would go some small way towards that.

Lord Puttnam: My Lords, I add my voice to that of the noble Baroness, Lady Kidron. President Clinton memorably said that the first step in solving a problem is recognising there is one. If anyone does not believe there is one, we rehearsed some of it in the previous debate; I would also advise them to watch two very recent TED Talks by Zeynep Tufekci and Sam Harris. If, having seen these, they can convince themselves there is not a serious and urgent problem, then their judgment is very different from mine.

I will speak for a couple of moments on this because I regard it as a very significant issue. Karl Marx—who knew a thing or two—said that if you change the dominant mode of production that underpins a society, the social and political structure will change, too. I believe we have changed the fundamental mode of production that underpins society. It is now called digital. We have to address that and we are not addressing it anything like seriously enough. There are two issues I would like to raise, and if there is a note of frustration in my voice, I apologise.

In 2003, through very torturous processes in this House, we managed to persuade the then Labour Government to impose a duty on Ofcom—and I spend most of my life defending Ofcom—which was very clear; it was laid out by the noble Baroness, Lady Jay, at Second Reading. Ofcom was given the specific duty of promoting media literacy. The wording was that Ofcom was required,

"to bring about, or to encourage others to bring about, a better public understanding of the nature and characteristics of material published by means of the electronic media",

and,

[LORD PUTTNAM]

"to bring about, or to encourage others to bring about, a better public awareness and understanding of the processes by which such material is selected, or made available, for publication by such means".

Fifteen years later, in respect of these duties, Ofcom has wholly failed. By taking a very narrow, technical view of its responsibility, it has done almost nothing to promote notions of digital literacy in the electronic media. If we are not careful, the same will happen in the digital world. The noble Baroness, Lady Lane-Fox, used a much better phrase than "digital literacy". She used the phrase "digital understanding" in a recent debate in your Lordships' House. That is really what this is about.

To emphasise something that the noble Baroness, Lady Kidron, said, this is all about data. Ten days ago in Los Angeles, Lachlan Murdoch—who I think also knows a thing or two about this business—said the following:

"We're in the beginning of an incredible transformation … we're in the first months of something that will have a multi-decade life and future. Businesses that have large data sets and robust data sets will be the companies that win in the future".

Every company in Silicon Valley and every communications company in the world knows that. This is why this is such a fundamental issue.

To my delight and surprise, the Italians appear to have picked up on this. In the *New York Times* of 18 October there is a long piece about a new law that was passed on 31 October by the Italian parliament that entirely acknowledges that young people have to have a far greater understanding of the modes of information, the nature of information and the ramifications of information than is presently the case. Some 8,000 schools in Italy are now receiving instructions on how to get across to children the seriousness and importance of, first, the manner in which they give and use their data and, secondly, the means by which they are informed.

Finally, in a very recent book *Move Fast and Break Things* by Jonathan Taplin, a man I happen to know, he says:

"Part of our role as citizens is to look more closely at the media surrounding us, think critically about its effects, and whose agenda is being promoted".

I put it to your Lordships that every single front page of every newspaper over the past four months has made this extraordinarily evident. In the words of the noble Baroness, Lady Lane-Fox, we are "sleepwalking" into a situation over which we have little control and of which the companies that do have control are not taking sufficient notice. As proved by the Communications Act 2003, you can crunch out the best possible wording and it is still possible for that wording to have absolutely no lasting effect on society as a whole.

Lord Stevenson of Balmacara: My Lords—

Lord McNally (LD): My Lords, my name is also on this amendment. It is a great pleasure to follow the noble Lord, Lord Puttnam, who has championed these issues for 20 years or more. It is worth while having a reality check for ourselves. One of the good things about the House of Lords is a certain continuity. I was in this House for the Data Protection Act 1998, which we are now reviewing, and for the Communications Act to which the noble Lord, Lord Puttnam, referred, and I served on his committee. We had no idea what revolution was coming our way. Indeed, in the Communications Committee, we were asked not to look at the internet; it was for the future. If we think about what has happened in those 20 years, what on earth is going to happen in the next 20, when we are reliably told we are on the verge of a fourth industrial revolution driven by data?

We were quietly asked by the noble Baroness, Lady Kidron, not to include this amendment in the previous group in case the whole thing became hijacked by a debate about education, and she was shrewd in that, but it was useful that she pointed out—I love this point—that data literacy should be as important as the three Rs as a core competency for the 21st-century child. If we are going to achieve that, we have to get out of the silo mentality: "It's not our job, it's the Information Commissioner's job"; "It's the Department for Education's job"; "It's DCMS's job". Somebody has to take responsibility for what we are saying because it is one of the great challenges.

There is a danger, particularly in a House of this age group, that we overestimate the capacity of the young. We all have our anecdotes about our grandchildren or our children being able to work the gadgets that we cannot work, but that does not mean that they have the competence or the maturity to make proper rational, responsible decisions about some of the factors that come within their ambit with this new technology. My noble friend Lord Storey referred earlier to a story in today's paper about the increase in sexting among young children. We also know the extent of cyberbullying that goes on between children and about the naivety of children in being willing to reveal personal information online. Navigating the digital world is very complex.

The noble Lord, Lord Lexden, is in his place, and I am always worried about quoting history, but when the reform Act was passed in 1867, somebody said, "We now must educate our masters", and that brought about the Elementary Education Act 1870. Nobody can now be in any doubt about the enormity of the task of preparing the whole population, but especially our children, to handle the new powers that are coming down the track at us. Educating for digital is one of the most important tasks facing us. I enjoyed and appreciated the way the noble Baroness, Lady Kidron, delivered her amendments. She made the point that that education is not to make this generation of children able to fit into the needs of Silicon Valley; it is to give them the power to make sure that Silicon Valley responds to their needs as citizens. That is the task that this amendment is trying to promote.

4.45 pm

Lord Lucas (Con): My Lords, I will speak briefly to support this amendment and particularly what the noble Lord, Lord McNally, has just said. We are asking our children to take on a whole set of responsibilities for which we, let alone they, are not prepared. The social consequences of social media and how to handle them produce enormous stresses on friendship. As for where this amendment is directed, there are also the consequences for children in the way their data are gathered and used, which we do not

understand. The House of Lords can now track where each of us was geographically over the last month. It is all on our phones. A complete record is kept unless you happen to have turned it off. When did we give permission for that? If we cannot handle it, how can we expect our children to be able to handle it?

It is also quite clear that the sort of middle-range teenagers—14 and 15 year-olds, boys in particular—are living in a world of extreme pornography, in quality and content, that is quite unprecedented. What effects we can expect that to have on relationships between the genders when they get through to university and life afterwards I do not know. We cannot abrogate our responsibility to make sure that children are looked after properly and that we are not exposing them to amoral companies—I am not aware that any of these companies have a deep moral sense, whatever they may claim. We entrust their upbringing and education to that, but we care very much about their mental health, their sense of society, their sense of relationship to each other and the qualities that they will bring to the world as young people. We ought to be doing something about it in schools. We probably need a bit of thought as to what that should be, but we absolutely should not be doing nothing.

Lord Stevenson of Balmacara: My Lords, I am very sorry for interrupting the noble Lord, Lord McNally, as what he had to say was very apposite and appropriate. I thought at one stage that he was going to say that he had been around for the passing of the first reform Act as well as everything else he was talking about, but I must have misheard him.

This has been a good debate, which has tended to range rather widely, mainly because it is so important we get this right. I confidently expect the Minister to respond by saying that this is a very good idea but he lacks the power to be able to give any response one way or another because it lies in the hands of one of his noble friends. That of course is the problem here, that we have another linked issue. Whitehall is useless at trying to take a broader issue that arises in one area and apply it in another. Education seems to be one of the worst departments in that respect. I mean that, as it has come up time and again: good ideas about how we need to radicalise our curriculum never get implemented because there seems to be an innate inability in the department to go along with it. It may well be that the changes to the structure of education in recent years have something to do with that. It is good to see in the second line of this amendment that this would apply to "all children" irrespective of the type of school or type of organisational structure that school is in, so that it applies to everyone. We support that.

However, two worries remain that still need to be looked at very hard, and the noble Lord who just spoke was on the point here. Do we have the skills in the schools to teach to the level of understanding that we are talking about? I suspect that we do not. If so, what are we going to do about that? Thirdly, I suspect that our kids are way ahead of us on this. They have already moved across into a knowledge and understanding of this technology that we cannot possibly match. Teaching them to go back to basics, as has been the case in previous restructuring of the curriculum, is not the right way. We need a radical rethink of the overall curriculum, something which is urgent and pressing. It is raised, interestingly enough, in a number of publications that are now appearing around the industrial strategy. If we do not get this right, we will never have a strategy for our industries that will resolve all the issues we have with improving productivity. I hope the Minister will take this away.

Lord Ashton of Hyde: My Lords, I am grateful to the noble Lord, Lord Storey, whose long experience in education I acknowledge, and to all noble Lords who have contributed. I could not agree more about the importance of children and young people fully understanding how their data is collected, stored and used. That is why the Government have already taken steps to ensure that key aspects of data protection are taught in maintained schools. In 2014 we established a new and more rigorous national computing curriculum covering ages five to 16. It is compulsory in maintained schools in England and sets an ambitious benchmark that autonomous academies and free schools can use and improve on.

The new computing curriculum was developed by industry experts and includes safety, which helps to give children the tools that they need to make sensible choices online. I say to the noble Lord, Lord Puttnam, and my noble friend Lord Lucas that they were a bit pessimistic about what we are doing; we are certainly not doing nothing, as my noble friend implied. Children are taught how to use technology safely, respectfully and responsibly; how to recognise unacceptable behaviour; and how to report concerns about content and contact. Importantly, the curriculum also includes keeping personal information private and protecting their online identity and privacy, both of which are important parts of data protection. All schools can choose to teach children about data collection, storage and usage as part of these topics.

I also say to the noble Lord, Lord Puttnam, that the digital economy is actually not doing too badly; it is growing at twice the rate of the rest of the economy. The Government are spending to improve skills at all levels, including at PhD level, to prevent social exclusion. So we get the issues that he is talking about, and in my answer to the debate of the noble Baroness, Lady Lane-Fox, I outlined some of the things that we are doing.

Lord Puttnam: I accept entirely that the economic drivers for the digital economy are being handled quite well. I am suggesting that the societal end of that debate is not keeping pace with the commercial and that, if we allow too great a disconnect to occur between societal impacts and commercial success, we will reap a very unfortunate harvest. The Minister was good enough to see me last week, together with an official from the Department for Education. I am not pretending for a moment that nothing is being done, but I am suggesting that there is nothing like enough urgency in trying to correct the societal aspects of this issue.

Lord Ashton of Hyde: I take that point. I also understand the difference that the noble Baroness, Lady Lane-Fox, highlighted between digital skills and

[Lord Ashton of Hyde]
digital understanding, and we need to address that. One of the issues that the data ethics body is going to look at is how society deals with these technical problems, albeit that they are changing incredibly fast.

I have talked about younger pupils. Older pupils are also taught citizenship as part of the national curriculum. That equips pupils to take their place in society as active and responsible citizens, including providing them with the knowledge and skills that they need to think critically and to research and interrogate evidence. These vital skills help our children understand how their data can be used and why data protection is important.

Amendment 20 would require the Secretary of State for Education to make changes to the current maintained schools national curriculum, and would create new requirements for independent schools and academies. In our view, now is not the time to make further changes to these subjects. We need to allow schools to fully embed the new curriculum in order to provide a period of stability for schools so that they can focus on ensuring that pupils are taught this new curriculum well, including the new aspects on data protection.

Having said that, we are not complacent. We realise that companies' use of data in the online world is increasingly complex and that we need to support children to understand that. The changes introduced in the Children and Social Work Act 2017 represent a step change in education on online safety. For the first time it will be compulsory for all primary-aged children at school in England to be taught relationships education, and all secondary-school children will be taught relationships and sex education. In addition, we will carefully consider whether also to make personal, social, health and economic education compulsory in all schools.

The noble Lord, Lord Knight, took my lines to a certain extent. I was going to confirm that the Department for Education confirmed today that it has begun its engagement with stakeholders. This is a point that has come up before: that will help it reach evidence-based decisions on the content. I can tell the noble Lord that the head teacher who is running it will advise the Department for Education on what will be included in relationships and sex education and PSHE, whether it should be compulsory and, if so, what content may be included. It will be live to online issues and include what children need to know to be safe online, beyond what is already in the computing curriculum.

The Government will ensure that these new compulsory subjects in England address the challenges experienced by young people online and are seeking views to work out exactly what this should cover and how best to do so. The Department for Education will support schools to ensure that content is pitched at the right level for each school year and builds knowledge as children grow up. Engagement and consultation will help us to get the detail right.

My department, DCMS, and the Department for Education are working together on the online safety aspects of these subjects. We will work with partners, including social media and technology companies, subject experts, law enforcement—

Baroness O'Neill of Bengarve (CB): I thank the Minister for giving way. Is he suggesting that the aim should be to adapt children to the realities of the online world and the internet service providers, rather than to adapt the providers to the needs of children?

Lord Ashton of Hyde: I am not an expert on education, but I do not think that "adapting" children is a recognised educational aspiration. We are trying to make children aware of the issues involved in the online world. We all accept that they are technically skilful, but they may not have the maturity to make the right decisions at certain times in their lives. As I said, we are trying to pitch it so that, as children develop, they are introduced to different things along the way. I hope that that answers the noble Baroness.

We are working with social media and technology companies, subject experts, law enforcement, English schools and teaching bodies to ensure these subjects are up to date with how children and young people access content online and the risks they face. We will also consider how best to support schools in the delivery of these new subjects. It is important to note that education on data processing does not exist in a vacuum but is viewed as a part of a wider programme of digital learning being promoted to improve user awareness of online safety and build digital capability. As such, we think that legislation focusing solely on data processing would risk detracting from the broader issues being tackled.

I am grateful to noble Lords for their amendment: it has prompted an interesting debate and raised issues which have gone beyond data protection, on which of course we are concentrating in the Bill. I hope that I have reassured the noble Lord that the Government take the issue of educating young people seriously, particularly in data protection matters. Not only do they already feature in the curriculum but we are considering how we might strengthen this teaching as a key part of our wider online safety work. With that reassurance, I hope that the noble Lord will feel able to withdraw the amendment.

Lord Storey: I am very grateful for the Minister's helpful reply and to noble Lords who have contributed to this debate. I do not particularly like the phrase "digital literacy": I much prefer "digital understanding". I always understood that the fourth "r" was religion, so perhaps, with a small "r", this is a religion for some of these large tech companies.

I can accept everything the Minister said, with the exception of two points. He said that these things are happening in the maintained sector. However, over 70% of our secondary schools are no longer in the maintained sector and they can choose whether or not to follow the programmes that he has suggested. Free schools are also increasing in number and, again, they do not have to take any part in this activity if they do not want to.

I agree with the Minister that this is not a discrete package where you tick the box when you have done it. It has to be part of a wider programme which goes through all aspects of learning. I also agree with the noble Lord, Lord Stevenson, who raised the question of whether we have the skills in our schools. It is not

just digital issues: we do not have teachers for A-level maths or physics but we do not stop doing maths or physics. This might ensure that we actually started training teachers to work in this area.

I am grateful for the Minister's helpful reply and look forward to considering this again on Report. I beg leave to withdraw the amendment.

Amendment 20 withdrawn.

Amendment 20A not moved.

Clause 9: Special categories of personal data and criminal convictions etc data

Amendment 21 not moved.

House resumed.

Paradise Papers
Statement

5.01 pm

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, with the leave of the House, I shall now repeat in the form of a Statement the answer to an Urgent Question asked in another place. The Statement is as follows:

"Mr Speaker, this Government believe in a fair tax system where everyone plays by the rules. The Government have taken decisive action to tackle tax avoidance and evasion and improve the standards of international tax transparency. The UK has secured an additional £160 billion in compliance revenue since 2010, far more than was achieved under the previous Labour Government. Under this Government, the UK now has one of the lowest tax gaps in the world. We have provided HMRC with tough new powers and in 2015 it received £800 million additional funding to go on tackling tax avoidance and evasion.

Turning to recent events, yesterday evening several international news organisations, led by the International Consortium of Investigative Journalists, reported on an information leak regarding the financial affairs of a large number of individuals. I should remind the House at this stage that Ministers do not intervene in the tax affairs of individuals or businesses, as to do so would be a breach of taxpayer confidentiality. However, I can inform the House that on 25 October HMRC requested that the ICIJ, the *Guardian* and the BBC share the leaked data so that the information can be compared with the vast amount of data HMRC already holds due to the initiatives that this Government have undertaken. They have yet to respond to this request.

Nevertheless, since this data was retrieved in 2016, the Government have implemented international agreements that have changed the game for those who seek to avoid and evade taxes. HMRC has already started benefiting from the automatic exchange of financial account information through the common reporting standard—an initiative in which the UK has led the world, with over 100 jurisdictions signing up. The Crown dependencies and overseas territories are among those who signed up to this initiative and have begun to exchange information with HMRC for over a year. The Crown dependencies and overseas territories have also committed to holding central registers of beneficial ownership information which the UK authorities are able to access.

It is important to note—and I quote from the ICIJ's disclaimer in the programme—that:

'There are legitimate uses for offshore trusts and companies. [The ICIJ] do not intend to suggest or imply that any people, companies or other entities included in the ICIJ Offshore Leaks Database have broken the law or otherwise acted improperly'.

So notwithstanding the generalised aspersions made by the Opposition, the use of offshore accounts or trusts does not automatically mean dishonesty. However, this House should be assured that, under this Government, HMRC will continue to bear down with vigour on any tax avoidance or evasion activity wherever it is found".

5.04 pm

Lord Davies of Oldham (Lab): My Lords, that is a totally inadequate response given the sense of outrage in the country over what has been revealed in the paradise papers. The Government are trying to say that, after seven years of Conservative Chancellors of the Exchequer and Conservative government, condign action is now being taken against aspects of tax avoidance, which has clearly not happened over the preceding period. Therefore, I do not think that we should take these suggestions seriously. After all, only in the last few weeks the Government have rejected any mention of non-dom status in the Finance Bill and have rejected Labour's demand that this issue be identified and dealt with in legislation.

The Conservative Party has a great deal to conceal. What is the tax status of the former non-domicile Lord Ashcroft? We noticed that for a short while he figured prominently in the newspapers during the election period but, of course, by then he had already paid half a million pounds into the Conservative election fund. Therefore, we cannot take this Statement at face value. The Government purport to say that they are interested in fair taxation. We have seen their record on that over the last seven years and know that many people in this country are being impoverished by them while they still treat the very rich advantageously.

There is nothing in the Statement about the great global companies and their taxation advantages; we do not get a single mention of any of them. What we do get, because the Paradise papers reveal this, is that there has been maladministration by the Government of the Duchy of Lancaster estates. The Chancellor of the Duchy of Lancaster is the elected Member responsible for those estates yet, following the revelations of the Paradise papers, the Queen herself has had her name dragged down by these assertions. The Government do not even think that they owe Her Majesty an apology, because there is no suggestion in the Statement that they recognise that the fault lies with poor government administration.

We seek a full public inquiry into tax avoidance. Nothing less will restore our nation's confidence that the Government's approach to this whole wretched issue is adequate.

Lord Bates: The noble Lord asked what we had done about tax over the past seven years. The Statement mentioned that we have collected £160 billion in compliance revenue since 2010, that the tax paid by

[Lord Bates]
the richest 1% is now 28% of the total, which is more than it was under the previous Labour Government, and that we have introduced initiatives such as a diverted profits tax to tackle just the sorts of corporate manoeuvring of tax, revenues and incomes that he talked about. We have introduced the Criminal Finances Act to make it a criminal offence for employees of organisations, be they professional services firms or others, to give advice on avoiding tax. We are at the forefront of the OECD tax initiatives. This Government included in the Finance Bill, which will come before this House on 15 November, a measure to make it no longer possible to have non-dom status in perpetuity—we are ending that position. Therefore, we have done a great deal but we are not complacent. We recognise that there is an issue to be addressed and fairness will be at the heart of all our actions.

Baroness Kramer (LD): My Lords, do the Government not recognise that the ordinary taxpayer hearing again this news today is utterly outraged that if you are rich or a business, you can avoid tax? There are schemes on an industrial scale, which are protected by a lack of transparency. During the passage of the then Criminal Finances Bill, when there was pressure from all over this House for the registers of beneficial ownership in the overseas territories to be made public, why did the Government resist when that would have stripped away secrecy? Why, also, have they brought a Sanctions and Anti-Money Laundering Bill to this House that gives Ministers the power, with virtually no intervention by Parliament at all, to eliminate every anti-money laundering regulation and replace them by highly watered-down versions? Is this the new Britain we are to expect post Brexit?

Lord Bates: Of course it is right that the overseas territories and Crown dependencies take the correct approach on this. That is why the common reporting standard I mentioned—which has just come into effect and on which we led the way through the G7 and various initiatives through that—is coming into effect. That means that the Crown dependencies and overseas territories must inform HMRC about any person from the UK who is registered for tax in the UK but has an account in a different jurisdiction—one of a hundred, including all the overseas territories and Crown dependencies. That is just the type of action we need to ensure that people pay the taxes they are due to pay.

Lord Howell of Guildford (Con): My Lords, of course it is right that companies and entities that operate here in the UK should pay their full weight of tax. However, if the proposition is that all offshore investment is somehow to be disapproved of or stopped altogether, would that not require a return of full capital controls of the kind we had in the distant past, and would it not be a strong disincentive to the inward investment on which this economy strongly relies and a disaster for the UK economy?

Lord Bates: My noble friend is right. Indeed the ICIJ, which I mentioned and which released this leak, was keen to point out that it is not suggesting any wrongdoing and that there is legitimate use for these facilities, such as purchasing assets in currencies other than sterling, avoiding double taxation and pooling of investments from different tax jurisdictions. It is important to draw the line between that avoidance and the evasion which we talked about earlier.

Lord Clark of Windermere (Lab): My Lords, 20 years ago I had the responsibility of being the Chancellor of the Duchy of Lancaster, and as such was responsible for the organisation. I well recall chairing meetings of all the senior officials and answering questions in the House of Commons. Does the current Chancellor of the Duchy of Lancaster, Sir Patrick McLoughlin, have the same responsibilities? If not, as Her Majesty had no knowledge of these investments, who is responsible?

Lord Bates: I will have to check on the practices. However, my recollection is that Sir Patrick McLoughlin responds in his capacity as part of Cabinet Office Questions during regular Oral Questions. Members of all sides of the House and in both Houses are at liberty to table Questions for Oral Answer or debate at any point, and people will have to respond according to their responsibilities.

Lord Gadhia (Non-Afl): My Lords, I declare my interests as an investor in a wide range of assets, including offshore investments. Will my noble friend agree that millions of UK savers and pensions, let alone Her Majesty, benefit directly or indirectly from investments held offshore, and to suggest that they are avoiding tax is simply fake and false news? Those who take the time to properly understand offshore investment vehicles will realise that their underlying purpose is to provide an efficient and predictable umbrella structure to attract the widest possible range of investors from around the world. They are in fact set up to minimise the amount of tax paid within the offshore entity and consequently to maximise the returns flowing back to investors, allowing them to pay tax directly in their own countries.

Noble Lords: Order!

Lord Gadhia: The use of these investment vehicles therefore maximises the eligible tax take for the UK Exchequer, and to suggest otherwise is either financial illiteracy, political populism or lazy journalism. Will my noble friend agree that we need to collect the tax and that, if it is not paid, that is tax evasion not avoidance?

Lord Bates: The key point that must be remembered here is that, if funds are for legitimate reasons allowed to be placed offshore in order to purchase assets, and if the people concerned are domiciled in the UK, the funds need to be repatriated to the UK and full tax needs to be paid on the profits, income and revenue gained.

Lord Blunkett (Lab): My Lords, there is a vast difference between an offshore vehicle intended to facilitate overseas investment and a trust that is set up to ensure that the individual concerned can place money outside this country, then have it loaned back to them, thereby not only avoiding income tax and

national insurance on payments but, in the event of their death, ensuring that their estate has to pay the money back into the overseas trust, thus avoiding inheritance tax. That is surely a scandal.

Lord Bates: Each of these things will be checked by HMRC, but the point is that evasion of tax and attempting to evade tax is against the law and will be pursued with all vigour by HMRC. Avoidance continues to be part of the international financial system and we recognise and value it.

Lord Lea of Crondall (Lab): My Lords—

Noble Lords: Order!

Lord Campbell-Savours (Lab): The House was abused by the noble Lord, Lord Gadhia, and should be given extra time.

Lord Young of Cookham (Con): We did have extra time—we allowed an extra speaker from the Opposition. I think that it is now time to move on to the next Statement.

Grenfell Recovery Taskforce

Statement

5.16 pm

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, with the permission of the House, I would like to repeat a Statement made by my right honourable friend the Secretary of State for Communities and Local Government in the other place:

"With permission, Mr Speaker, I should like to make a Statement on the independent Recovery Taskforce, which is working with the Royal Borough of Kensington and Chelsea in the wake of June's tragic fire at Grenfell Tower.

The people of North Kensington have been failed by those who were supposed to serve them. They were failed by a system that allowed the fire to happen, and they were failed once again by a sluggish and chaotic response in the immediate aftermath.

It was clear that, if RBKC was to get a grip on the situation and begin to regain the trust of residents, it would have to change and change quickly. That started with a change in leadership of the council, new senior officers, and new support brought in from other councils and central government. To ensure that that translated into a better service for the victims and people of North Kensington, and to assure me that the council would be capable of delivery, I announced on 5 July that I was sending in a specialist task force.

The task force is made up of experts in housing, local government, public services and community engagement. I deliberately appointed independent-minded individuals who would not hesitate to speak their minds. I have now received the first report from the task force, reflecting on its first nine weeks on the ground. The report has been shared with the right honourable Gentleman opposite. I will also be placing copies in the Library of the House, and it will be published in full on GOV.UK.

It is clear from the report that progress is being made, that much-needed change has happened and continues to happen, and that the council today is a very different organisation from the one that failed its people so badly back in June. The task force is satisfied that RBKC, under its new leadership, recognises the challenges it faces and is committed to delivering a comprehensive recovery programme. For that reason, it does not see any practical advantage from a further intervention at this time, which would risk further disruption.

But while the green shoots are there, the report pulls no punches about the fact that there is still significant room for improvement. The task force has identified four key areas in which the council needs to step up. The first is pace. The speed of delivery needs to be increased—more work needs to be done more quickly.

The second area is innovation. The scale and impact of the fire was unprecedented in recent history, but RBKC is relying too much on tried and tested solutions that are not up to the task. The council should be much bolder in its response.

The third area is skills. Too many of the officers and councillors working on the response lack specialist training in how to work with a traumatised community. This needs to change.

The final area, arguably the most important going forward, is a need for greater empathy and emotional intelligence. The people of Grenfell Tower, Grenfell Walk and the wider community have already suffered so much. Yet the task force has heard too many accounts of that suffering being compounded by bureaucratic processes that are not appropriate, when so many deeply traumatised men, women and children have complex individual needs. So a greater degree of humanity must be put at the heart of all RBKC's recovery work.

I have discussed these recommendations with the council's leadership and they have accepted them all without question. Culture change is never quick or easy to achieve in any organisation, but I am in no doubt that the leadership and staff of the Royal Borough of Kensington and Chelsea genuinely want to do better. It is their community too, and they desperately want to help it to heal.

I am particularly encouraged that the council is now drawing on NHS expertise to secure specific training for those front-line staff responsible for providing direct support to the survivors. I have assured the council that I will continue to support it in building capacity. However, I have also made it clear that my support will not be uncritical or unqualified. I expect to see swift, effective action to deal with all the issues highlighted in the report. I am not taking any options off the table if progress is not made, and I shall continue to monitor the situation closely.

Until now, one aspect of that monitoring has involved weekly meetings, chaired by myself, that bring together Ministers from across Government and senior colleagues from RBKC. Although these have proved effective, the task force has expressed concern that meeting so often is beginning to become counterproductive. The time required to prepare properly is cutting into the time

[Lord Bourne of Aberystwyth]
available for front-line work. As a result, the report recommends that we meet less often. I have accepted this recommendation. However, let me reassure the House that this does not mean our priorities are shifting elsewhere, or that the level of scrutiny is being reduced. It is simply a matter of ensuring time and resources are focused to the maximum on those affected by the fire.

One area to which the House knows I have been paying particularly close attention is the rehousing of those who lost their homes in the fire. While I have always been clear that rehousing must proceed at a pace which respects the needs, wants and situations of survivors, I have been equally adamant that bureaucratic inertia must not add delay. Clearly, some progress is being made. The latest figures I have from RBKC are that 122 households out of a current total of 204 have accepted an offer of either temporary or permanent accommodation. Seventy-three of these have now moved in, of which 47 households have moved into temporary accommodation, and 26 households into permanent accommodation.

However, the report is also clear that that the process is simply not moving as quickly as it should. RBKC's latest figures show that 131 Grenfell households are still living in emergency accommodation. Behind every one of these numbers, there are human faces. There can be no doubt that there are families who desperately want a new home but for whom progress has been painfully slow. Almost five months after the fire, this must improve. Responsibility for rehousing ultimately lies with RBKC. However, in central government we cannot shy away from our share of responsibility. I expect the council, in line with the task force's report, to do whatever is necessary to ensure households can move into settled homes as quickly as possible. I will continue to watch closely to ensure this is done.

When I announced the creation of the task force, I said it would stay in place for as long as it was needed. Based on this first report, there is still much to be done, so the task force will remain in Kensington and Chelsea for the foreseeable future. I have asked the task force to ensure that proper action is taken on all the fronts they identify, and to come back to me in the new year with a further update, which I will of course share with the House.

I must of course thank the four expert members of the task force, Aftab Chughtai, Javed Khan, Jane Scott, and Chris Wood, for their tireless efforts. Last week I read the right reverend James Jones's excellent report on the appalling experiences of those who lost loved ones in the Hillsborough disaster. It is a sobering piece of work, reminding us that,

'the way in which families bereaved through public tragedy are treated by those in authority is in itself a burning injustice'.

We saw that all too clearly in the hours and days after the Grenfell fire.

The clock cannot be turned back and the woeful inadequacies of the early response cannot be undone. But I can say, once again, that for as long as I am in public life I will do all I can to ensure that the failures of the past are not repeated and the people of Grenfell Tower get the help and support they deserve. The Hillsborough families had to fight for a quarter of a century to get their voices heard, to be taken seriously and to be treated properly by those in authority. We cannot allow that to happen again. I will not allow that to happen again. The public inquiry established by the Prime Minister will play the major role, but for its part, I am confident that the continued work of the task force will also help ensure that the survivors receive the support and respect they deserve".

5.25 pm

Lord Kennedy of Southwark (Lab): My Lords, I refer the House to my interests in the register as an elected councillor for the London Borough of Lewisham and a vice-president of the Local Government Association. I am grateful to the noble Lord, Lord Bourne of Aberystwyth, for repeating the Statement made by his right honourable friend the Secretary of State for Communities and Local Government in the other place. I also pay tribute again to the public sector officials—from the police, the fire service and the ambulance service to the NHS and local and national government—along with the faith groups, the charity and voluntary sectors, and the community in North Kensington, for the way that they have all supported families as they recover from this appalling tragedy.

As I have mentioned before, within the public sector there is not one group of heroes and then another group of workers that deserves to be attacked. That is unfair. I remind the House of the treatment of firefighters by the Foreign Secretary when he was the Mayor of London, which is a case in point. Some of the comments he made when he was mayor are shameful. He should apologise for what he said about these heroes, but all we get from him in this area is silence. He is not a politician usually noted for being quiet; he is usually very happy to give his views on a range of subjects, but strangely not on this one. I say again: come on, Boris Johnson MP, your apology to the firefighters of the London Fire Brigade for your ill-informed and hurtful comments is long overdue.

The people of North Kensington were failed by those elected to serve them. Therefore, the change of leadership in the authority is welcome, and I wish the leadership well in the important work that they are doing. The former chief executive of my own borough, Barry Quirk, has been installed as the new permanent chief executive of Kensington and Chelsea Council. He will provide much-needed stability and leadership for the council staff. He is a very able man and the council has chosen wisely in this respect.

The report of the recovery task force highlights some serious problems that need to be overcome. At some point, consideration will have to be given as to whether this authority can continue in its present form. That is not a decision for today or next week, but Ministers must keep it under review and not take it off the table. What we cannot have happen is that as the authority fades from our attention, the old ways, habits and failures return. If the structure is beyond saving then other options will need to be considered to ensure that all residents of the borough are properly served. The governance arrangements are of concern to us all. It would be helpful if the Minister could tell me whether the new leadership has offered a seat or

two in the cabinet to the opposition. I have mentioned that a number of times before and it would be a welcome step.

I take the point about the frequency of meetings of the ministerial recovery group and the pressure that it brings, and agree that it should be reduced. However, it is welcome that the council will remain very much in the sight of the department. Will the Minister tell us what the department has done specifically to help the new chief executive bolster the capacity and capability of the senior staff team? There are some very able people working in his department and elsewhere in local government, in London and across the country. What support has his department given to the authority to aid this work?

I fully understand that we want to give people time to be rehoused in a permanent place rather than having to move again. However, as the Minister said and as the report highlights, the pace is slow. What analysis has the department undertaken to see why this is the case? If it has not done any work on this, why not? What are the barriers to rehousing people permanently and what has the department done to remove them? Can he give the House an example in this respect? I do not believe that people want to carry on living in hotel rooms for any longer than is necessary.

I agree that there is a greater need for more empathy, emotional intelligence and humanity as we move forward. It is just a tragedy and a terrible indictment that when it is the richest borough of one of the richest cities in the world, and in the fifth-richest country in the world, a Minister in 2017 has to come to the Dispatch Box and say so.

Just because you are less fortunate, because you are poor or because you live in a council property does not mean that you should have fewer rights, be less respected or have your views taken into account any less. But that is what the local community has clearly felt and experienced in Kensington and Chelsea, which is shameful. I am pleased that the task force will remain in place for the foreseeable future and that nothing is to be taken off the table. I join with the Minister in thanking the task force and specifically the four expert members for their work and comprehensive report. There is serious work to be done to support the victims and the local community on the long road to recovery. I wish everyone well in that task. They have my full support and gratitude for the work they are doing.

Baroness Pinnock (LD): My Lords, I draw noble Lords' attention to my entry in the register of interests as an elected councillor in the borough of Kirklees and as a vice-president of the Local Government Association. I welcome today's Statement on the interim report of the task force. However, I draw attention to one of the four priorities that were set by the Secretary of State for the work of the task force—that it would,

"ensure that all the immediate housing needs resulting from the fires are fully and promptly addressed by RBKC".

But we have heard today in the Statement and the interim report that the number who have been permanently rehoused is pitifully low. Four months after the dreadful fire at Grenfell, only 26 of 204 families have been rehoused permanently and 130 are still in emergency bed and breakfast accommodation. I find that disgraceful and a tragedy; I hope that the Minister will be able to tell us why those figures are so low. The full report also asks for an immediate strategy and agreed targets for rehousing. It would be good to hear from him whether that has been done, whether targets have been set and what they are. That is the most important feature of the aftermath of this dreadful fire.

The second point that I would draw attention to is that the report, I am pleased to say, makes no immediate recommendation about the future of the tenant management organisation. Fears have been expressed in the media by residents that disbanding the TMO would lead to avoidance of effective scrutiny of its actions or inactions, and the avoidance of potential prosecutions. Can the Minister confirm whether that is the case? Will the TMO remain in place until the report of the Prime Minister's inquiry and for any consequences of that inquiry?

The third issue that I raise is not referenced in the report, which is strange. It is the consequences of the fire and the impact on those families in the adjacent tower blocks. For example, what action is being taken to have the fire hazard panels replaced? What government contribution will be made towards their replacement?

Lastly, the final recommendation in the interim report talks about the awful consequences of having the burnt tower remaining in place. It recommends:

"Covering the Tower: Management of the site is not currently the responsibility of RBKC. Nevertheless we would strongly recommend that those responsible for it accelerate covering the Tower. It is reprehensible that it has remained uncovered for so long".

It then gives a timetable for it to be done by December 2017—in six weeks' time, perhaps. That is unfortunately not mentioned in the Secretary of State's Statement, but it is an important step towards a healing process and I urge the Minister, if he is not able to reply this afternoon, to give us a written response.

Lord Bourne of Aberystwyth: My Lords, I thank the noble Lord, Lord Kennedy, and the noble Baroness, Lady Pinnock, for their responses and I will try to deal with the points that they raised. First, I join with the noble Lord, Lord Kennedy, in his tribute to the public sector. I wholeheartedly agree, as he knows. We have been here before, but it is certainly worth restating the continuing role played by the public sector and the role that it obviously played in the immediate aftermath of the fire—the fire service, the ambulance service, the police, the whole of the public sector and local government—along with the voluntary sector, the local community of North Kensington and many individuals who went along to help. It showed our country and our society at our best. I thank the noble Baroness for also making that tribute. I certainly also echo what the noble Lord, Lord Kennedy, said about Barry Quirk, who is doing excellent work in helping in relation to Grenfell.

I will try to deal with the points raised. First, the Secretary of State has made it absolutely clear on behalf of the department and the Government that all options are on the table for the future. The task force has recommended that at this stage commissioners are not appropriate, but that does not mean we have taken

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that option off the table. Of course, it is a possibility for the future if we feel it necessary. But the report makes the point that significant progress has been made, although more progress is needed. The Government have accepted the report in full, which covers the comments about the clothing of Grenfell Tower, which I wholeheartedly agree needs dealing with in very short order. I will come back to the timescale, if I may. But to restate, the Government have accepted all the recommendations of the task force as, to be fair, has the Royal Borough of Kensington and Chelsea, in relation to those comments addressed to the borough. As the noble Baroness made clear, the clothing of the tower is not the responsibility, as things stand, of the local borough.

The noble Lord, Lord Kennedy, asked about working with the opposition party, or parties, in the Royal Borough of Kensington and Chelsea. That is something for them, but we would very much encourage the council to look at how to work together. It is obviously far better if parties work together, as we have been doing in this House, so I would certainly encourage that.

As to how we as a department have bolstered—an appropriate word used by the noble Lord—in this context, we have certainly been helping with housing issues and encouraging the appropriate use of the NHS, and with community engagement. Staff are still there; I spoke to some this morning and that work goes on. He talked about the barriers to rehousing. Once again, as he knows, this is a complex position in the Royal Borough of Kensington and Chelsea. We can push for and ensure that there is a speedier response, and the task force recommends that. The Royal Borough of Kensington and Chelsea will make an announcement about the appropriate strategy as we move this forward. But some things, in all fairness, are more difficult. Some families have moved into temporary accommodation, and I think in some cases to permanent accommodation, then changed their minds. We are keen to listen to what local people want so we have sought to honour that because feelings are still very raw. Sometimes people feel that they want to move close to the tower and then change their minds, understandably. So there are barriers other than the process arrangements set by local government and central government.

It remains the case that we want 300 potential houses. That is the target of the Royal Borough of Kensington and Chelsea, and I am sure that the council will say more on this when it makes an announcement shortly, specifically about how we get there by the end of the year. That is broadly the number of permanent homes needed. In fact it is more than is required but one feels the need for a bit of a cushion. If I am not wrong, I think that there are around 160 available at the moment, which leaves another 140 to be brought on. There has to be, and to a degree there has been, a cultural change on the part of the borough. In fairness, I do not think that any local authority would have been able to take on this sort of challenge without making some incredible changes. Some of those have happened in Kensington and Chelsea, although clearly more still needs to be done.

The noble Baroness, Lady Pinnock, asked about households that were living not in Grenfell Tower or Grenfell Walk, but in the walkways. There is still a need for them to be permanently housed as well. Again, I think the feeling among many of those families is that they do not want to move back until the tower is properly clothed, which goes back to the point that she rightly picked up on. She also raised the issue of the tenant management organisation. We do not want it to disband because of the possibility—I should state that it is important that we get this legally right—of prosecution. There needs to be the possibility of prosecuting authorities and individuals, and therefore from that point of view its status will remain. I say that without prejudice to anything that is found in the inquiry or by the CPS. In terms of running the housing, of course the organisation was removed immediately and we have not yet made a decision about what fresh arrangements will happen. Again, we will want to look very carefully at all the options for future housing arrangements for Kensington and Chelsea. We are not saying that it will be a, b or c because it is something that needs to be looked at. The point was picked up in the task force report, and it remains the case that all options are open.

I have written something down in my own handwriting which I cannot remotely read. I hope that noble Lords will forgive me if I pick up the point in the write-around later. I turn to the timescale for the tower, which was raised by the noble Baroness, and where the work needs to be done by December 2017. As I say, the department and the Government have accepted all the recommendations, so we are looking for that to be completed within the timescale. I reiterate that the Secretary of State has made that absolutely clear on behalf of the Government.

5.42 pm

Lord Shipley (LD): My Lords, I remind the House that I am a vice-president of the Local Government Association. I should like to address the issue of emergency planning. It has become clear from this report that the Royal Borough of Kensington and Chelsea did not have an operational emergency plan in place when the Grenfell fire broke out in June. The Statement does not actually tell us whether there is one in place now, or whether officers are being employed in the council to deliver one. However, on page three the report states:

> "This intervention has not had the benefit of an inspection that would identify specific failings in a local authority and would precede a statutory intervention".

Will action be taken to assess the robustness of Kensington and Chelsea's emergency planning, which is a statutory requirement? Also, can the Minister say what advice his department will now give to other local authorities about emergency planning arising from the lessons being learned in Kensington and Chelsea?

Lord Bourne of Aberystwyth: I thank the noble Lord for his question in relation to emergency planning. He will be aware that one of the terms of reference of the inquiry is the actions of the local authority and other bodies before the tragedy, so it certainly will be picked up by the inquiry. Further to that, what we obviously want to ensure, and no doubt the House will

totally support this, is that all the lessons from this are learned by all local authorities and public authorities. We would wish the message to go out and we will ensure that that happens. The messages from this are to be learned by local authorities for the future, including in relation to emergency planning along with many other issues.

Lord Beecham (Lab): My Lords, I declare my local government interests as a councillor in Newcastle and as an honorary vice-president of the Local Government Association. I thank the Secretary of State and the Minister for the tone and the content of the Statement that has been made today. It is clear that there is a great deal going on, and a great deal more to be done. However, I should like to ask about the general situation in the country. What is going to happen about the installation of sprinklers up and down the country? That is a key issue. I am not expecting an immediate decision, but is there a timescale within which it is likely that a decision can be made?

In addition to that, to what extent are the Government engaging with the owners of other multi-story buildings; that is, housing associations and privately owned blocks that are not in the social housing sector? Presumably all of these blocks will need the same checks that were lamentably lacking in the case of Grenfell if we are not to see, unfortunately, some kind of repetition. It is not a matter that can be resolved quickly, but the sooner we start on it, the better. I hope that the Minister can give us some assurances in those respects.

Lord Bourne of Aberystwyth: I thank the noble Lord very much indeed for his typically generous comments about the tenor of the Government's response to this dreadful tragedy. He asked specifically about the position on sprinklers. Perhaps I may restate something that has been said before, but it certainly bears restating: the Dame Judith Hackitt review is looking at building regulation and fire safety and it will certainly be considering this issue. I have also just looked at the terms of the inquiry and it is in there as well, so I have reassured myself that it is in place. Obviously we will await the results of these two independent inquiries. It is for them to make their recommendations and we would expect to carry them forward and regard them with appropriate seriousness.

The noble Lord also asked about the position of blocks other than those which are within local authority control; he specifically asked about housing association and privately owned blocks, and perhaps by inference other government blocks—there are some in the health sector and in education that are subject to the same principles that are being carried forward on testing and so on. That is true of housing associations as well. On private blocks, we have asked local authorities to follow up in relation to the blocks in their areas and have asked for a response from them. We will follow up on those responses in due course.

Lord Campbell-Savours (Lab): My Lords, perhaps I may follow up on a question put by my noble friend Lord Beecham on private blocks, and which I have raised before in the House with the Minister. Are local authorities required to hold information on the specification of the cladding that has been applied to private blocks where that cladding has been the subject of approval by building control officers in the local authorities where those blocks were built?

Lord Bourne of Aberystwyth: My Lords, if I may I will write to the noble Lord on the specifics of his question. However, on the general point, local authorities are being required by us to report on all private blocks that may offend in relation to these safety standards. As I say, I will get back to the noble Lord on his particular point.

Baroness Berridge (Con): My Lords, building on the comment by the noble Lord, Lord Shipley, in relation to the terms of reference of the inquiry, it does not seem that the systemic issue that this raises is actually strictly within those terms of reference. It refers to the arrangements that the local authority and other organisations had in place to respond to complaints made by residents in relation to the fire safety of buildings. The question really raised the point about the systemic issue. Although Grenfell was unprecedented, the strength of the local authority not only in emergency planning but in other areas to deal with this kind of incident was lacking, yet there were other authorities which came to the aid of the Royal Borough of Kensington and Chelsea which seemed to have maybe better senior management and leadership. Do we need some form of stress testing of local authorities to see whether they are up to responding to this type of incident? As I read them, that does not seem to be strictly within the terms of reference of the inquiry.

Lord Bourne of Aberystwyth: I thank my noble friend. I have the inquiry's terms of reference in front of me. First of all, I am not sure whether she was referring to the issue of fire sprinklers; perhaps not. The inquiry covers the scope and adequacy of the relevant regulations, legislation and guidance. It also refers to the actions of the local authority and other bodies before the tragedy, which puts it in scope. I am sure that any inquiry chairman, if they wanted to report, would regard that as in scope. I had better not go further than that.

Baroness Hamwee (LD): My Lords, the Minister referred to culture. He used words such as "empathy" and quite rightly said that changing a culture is a very long-term project. Does he share my concern—this is no reflection on Barry Quirk at all—that local authorities must be tempted to put their efforts into senior leadership and front-line services, leaving a bit of a hollow in the middle? The culture has to go all the way down, and the people in the middle contribute to the culture. I am of course referring to the financial position that many local authorities find themselves in.

Lord Bourne of Aberystwyth: I thank the noble Baroness very much. Of course, she is very well acquainted with London local government, in particular. In relation to the culture, without prejudicing anything specific that is being looked at by any of the inquiries, I agree with her that the culture has to run throughout an organisation. She referred to finance. Once again, without wanting to prejudice anything in relation to the Royal Borough of Kensington and Chelsea, I do

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not think finance is a major issue here, certainly not in terms of the costs of finding additional housing. We know the borough has the money for that, so I think that would be covered. She made another point, which I have now forgotten.

Baroness Hamwee: I was talking about local authorities focusing on senior leadership and front-line services, leaving something of a hollow in the middle. It is a much wider question than one can deal with in an afternoon.

Lord Bourne of Aberystwyth: I am sorry, that was the point I picked up on. I agree with her that culture has to be pervasive through the whole organisation. I am sure that that would be picked up, but again, that will be looked at by the inquiries. I do not want to prejudge what they will find.

Lord Tebbit (Con): My Lords, my noble friend has not said anything—I wonder if anything is known about it—about the prevalence of the habit that was exposed by the tower fire of tenants of such social housing moving out and letting their accommodation at an extraordinarily large profit to themselves, which enables them to live in much better accommodation somewhere else, and all sorts of people who may have no entitlement whatever to social housing moving in. Are we thinking a bit more about what should be done about that?

Lord Bourne of Aberystwyth: My Lords, clearly those issues must be looked at at some stage. I am sure my noble friend will appreciate that the tenor of the department's concern at the moment is dealing with the grief, anguish and injury, and getting people properly rehoused. I will make sure that he gets a response about what is being done by the Royal Borough of Kensington and Chelsea, but I think the Government are right to ensure that the focus is on rehousing and putting these people's lives back together. That is not to say that those issues are not important, but I do not think they are as important as these issues.

Lord Hylton (CB): My Lords, I apologise to the Minister for not being in my place to hear the earlier part of the Statement. Nevertheless, I think we all know that local housing authorities have certain powers of compulsory purchase of properties. Can the Minister tell the House whether, in his view, using those powers would speed up the permanent rehousing of the displaced people and families?

Lord Bourne of Aberystwyth: My Lords, I thank the noble Lord for his question—and his apology, which is accepted. On compulsory purchase powers, the first point I would make is that compulsory purchase can take quite some time. There is a degree of urgency here, as has been indicated by the task force response. I should also restate, although I think the noble Lord was in his place by this stage, that the Royal Borough of Kensington and Chelsea will come forward with an announcement in short order about how it will give more impetus to the issue. For the moment, from the department's point of view, compulsory purchase would not be an appropriate response, partly because it would be too slow.

Data Protection Bill [HL]

Committee (2nd Day) (Continued)

5.55 pm

Amendment 21A

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

21A: Clause 9, page 5, line 41, at end insert—

"( ) The processing is compliant with Article 9(4) of the GDPR on additional conditions for processing biometric data if it meets the conditions in Part 3A of Schedule 1."

Lord Clement-Jones (LD): My Lords, I beg to move Amendment 21A and also speak to Amendment 66A. I also support Amendments 41 and 44, but my noble friend Lord McNally will speak in support of those.

The issue in question is the need for a lawful basis for biometric data used in the context of identity verification and authentication to increase security. Biometric data changes its status under the GDPR and becomes a new category of sensitive data. That narrows the lawful basis on which companies can collect and use biometric data, and it makes this processing of data difficult or impossible because the only lawful basis available is consent, which is not appropriate or feasible in the circumstances.

Biometrics are increasingly being used in different sectors for identity verification and authentication, both as a security measure and to provide greater identity assurance. I am sure that anybody who has used the fingerprint security aspect of an iPad will be aware of that. Employers are also increasingly using biometric access controls for premises or parts of premises that require high security levels and access audit trails. Organisations using biometrics for additional security and assurance also need to keep their mechanisms up to date, and continually test and develop ways in which to prevent bad actors from hacking or gaming their systems. That research and development activity also requires biometric data processing and can involve AI or machine learning to train and test systems.

The Bill has a fraud prevention lawful basis for processing sensitive data, under a heading of "substantial public interest". However, even assuming that the Bill is clarified and the fraud prevention lawful basis is available to use without having to satisfy an additional "substantial public interest" test, it is not suitable for the biometric uses described. The problem is the risk that necessary and desirable processing of biometric data will not be possible. Increased security benefits everyone, and it would not be desirable for the law protecting the use of personal data to be the barrier to organisations implementing better security for individuals.

The solution is that we acknowledge that the GDPR allows additional lawful bases for processing sensitive data. Specifically, Article 9(4) allows member states to add lawful bases for processing biometric, genetic or health data. The essence is that we use the option available under that article to add a lawful basis, as set out in the amendments. The amendments may not be technically perfect, but I hope that the Minister will agree that they are heading in the right direction. The proposed additional lawful basis covers three biometric

data processing activities, described above. There are already safeguards for individuals in the GDPR regarding biometric data processing, as any large-scale processing of sensitive data is subject to a data protection impact assessment, which would be the case for identity verification or authentication as an integral and ongoing security or assurance feature of the service that the individual has chosen to use. The proposed amendment would also introduce this safeguard as a requirement for employee biometric access control processing. I beg to move.

6 pm

Lord Griffiths of Burry Port (Lab): My Lords, it falls to me to speak to a sequence of amendments from Amendment 35 to Amendment 68. Whereas we have had complicated issues before us in previous discussions on the Bill, most of these are probing and of a much simpler substance. I will proceed with them as best I may.

Amendment 35 is to paragraph 5(1), which states that a condition for substantial public interest is met only when the processing is carried out by the controller, who has,

"an appropriate policy document in place".

The amendment we propose seems sensible and simple, which is that the policy document should be,

"made available to the data subject without charge".

We repeat that in Amendment 68 to Part 4 of Schedule 1, where there is discussion of an "appropriate" document.

Amendment 37 probes the protected characteristics of the Equality Act. Whereas in the Bill just a few are mentioned, our amendment asks why all those included in the Equality Act are not in that list. In the amendment we can see the proposed extra categories that would be placed there to complete that list. Once again it seems sensible, having started on that track, to complete that process.

We come next to preventing or detecting unlawful acts. Amendment 38 asks about "a serious" test. We have had conversations with Reuters and a number of amendments are consequent on some of the observations we made in that conversation. Thus with Amendment 39 we would ask the information commissioning officer to clarify that processing must be carried out without the consent of a data subject where,

"a data subject is unlikely to give consent",

for example to frustrate prevention or detection, where it would involve disproportionate effort to achieve consent or where the nature of the processing means that withdrawal of consent would prejudice prevention or detection of unlawful acts. That probes the extent to which these matters might apply.

Amendment 40 is again a probing amendment on the question of dishonesty, under the heading:

"Protecting the public against dishonesty".

Perhaps we need to work out how better to define dishonesty. We all know what telling a lie is, but in the days of fake news we can perhaps have different or varying views on this. Perhaps it needs to be tied down a bit more closely.

Amendment 41 refers to protecting members of the public. It is unclear in the schedule whether this extends to protecting businesses from doing business with other businesses that would cause them severe reputational harm because, for example, they engage in modern slavery, bribery or whatever. It might be good to frame the law so it is clear that it involves businesses and members of the public. To skip an amendment for the moment, that ties in with Amendment 44. Paragraph 12 does not expressly allow screening by private companies for the purpose of checking against non-UK terrorist financing or money-laundering laws. Nor does it allow screening to be undertaken to comply with widely recognised guidelines such as those promulgated by the Financial Action Task Force, in which the United Kingdom Government participate. It seems sensible to include that screening in the Bill. The amendment seeks to achieve that.

Amendment 43 is to paragraph 12, which says that the condition of expressing a public interest is met,

"if the processing is necessary for the purposes of making a disclosure in good faith",

under sections of the Terrorism Act and the Proceeds of Crime Act. Again, it would be nice to tie some of that down with further clarification. That might help us all. Amendment 45 asks about counselling.

That is the rather interesting daisy chain of amendments it falls to me to present. Since this is, for me, a maiden speech on a piece of legislation, nobody would expect it to be contentious, disputational or controversial. In that sense, I offer it for the consideration of the Committee.

Baroness Neville-Jones (Con): My Lords, I will speak to Amendment 45A in my name. I am advised my Amendment 64 is not in the right place, so I direct the Committee's attention to Amendment 45A.

Last Monday there was considerable focus in our discussions on the vital need to ensure that legitimate research—especially medical research in the public interest based on the personal data of patients—was not impeded by the terms of this legislation by requiring re-consents that might well be unobtainable. The noble Lord, Lord Patel, spelled out the arguments with great cogency and I do not need to repeat them.

My amendment seeks to ensure that another category of medical activity is not prevented from continuing to give help. I refer to patient support groups. At Second Reading I spoke about Unique, a not-for-profit charity that enables research into, and offers support to, sufferers of rare chromosome disorders and their families. These disorders can and often do result in severe and even profound lifelong disability for which there is no cure.

Since I spoke, many other patient support organisations have been in touch with the same concerns. They support my amendment. They include Genetic Alliance, which comprises 190 organisations giving support to individuals with rare or incurable conditions, such as the Down's Syndrome Association; the MPS Society, which supports individuals suffering from mucopolysaccharide disease; Alström Syndrome UK; Prader-Willi Syndrome Association; the MND Association for motor neurone disease; Action Duchenne, which supports those suffering from muscular dystrophy; Save Babies Through Screening Foundation, which focuses on infants with Krabbe disease; the Lily Foundation, which supports those with mitochondrial

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disease; the PCD Family Support Group, for primary ciliary dyskinesia; UKPIPS, Primary Immune-deficiency Patient Support; SMA Support for spinal muscular atrophy; Vasculitis UK; and Annabelle's Challenge.

All these groups support the amendment I tabled. I could go on; there are others. I have listed them because I do not want it thought that there is in my amendment any suggestion of special pleading for a very small number of organisations. On the contrary, patient support groups are numerous and do unsung but irreplaceable work among individuals and families for whom life can be very hard.

What is the problem with the Bill? Schedule 1 lists a number of circumstances in which the special category of sensitive personal data can be processed without explicit consent for reasons of public interest. But patient support groups do not fall into the categories of organisations that can avail them themselves of this exemption, nor do the purposes for which they collect personal data qualify. This means that the Bill will oblige patient support groups which collect health information from their members either to re-contact everyone from their database to get renewed explicit consent, or to destroy or anonymise any data not re-consented.

On the face of it, this may seem perfectly reasonable, but it takes no account of the real-life situation of the individuals and their families which the patient support groups help. I explained at Second Reading how in reality carers, who may be the other side of the world, may not respond to communications but then, possibly years later, communicate to ask for help or get in touch to help each other. It is certainly wasteful and gratuitously harmful to require such data to be destroyed when it is the very basis on which these groups can offer relevant support. In the case of Unique, experience suggests that up to 50% of existing data would need to be destroyed, having been accumulated over 30 years, and thus lost for current and future research and sufferers. I am sure this cannot be the intended outcome of the Bill.

Anonymisation, which in some circumstances might be an acceptable answer, does not provide a solution in the case of support groups. Matching disease types enables support groups to give informed prognoses to the families of sufferers and to their clinicians, who individually may not have met such a rare condition before. They help with practical advice and put sufferers and their families in touch with each other, thus improving their prospects and relieving distress and loneliness. But to do this, they need access to names and addresses and special-category data of their members, because anonymous data are of absolutely no use in this context.

Medical research would also be the loser as the Bill stands. To take one example, the MND Association, the motor neurone support group, has more than 3,000 blood samples in its collection, cell lines and accompanying clinical information. This database has been and is used in a variety of research projects to look at potential causative genes. Samples will also be used to screen potential drugs. To all this, the personal data of the individuals concerned is essential and it is not guaranteed that they will always be capable of being re-contacted.

In this context, perhaps I may quote from a statement by Public Health England in support of the work of patient support groups:

> "We are clear that patient registries, particularly for individuals with less common conditions, are one of the most valuable sources for the care, research and support of patients and their families. In many cases they are the only source of information on some disorders. Some collections stretch back many years. This historical record is essential for longitudinal studies and long term follow up … These searches can only be performed on well curated, identifiable data as people change their names and locations".

Public Health England goes on to say that the question is about the adequacy of the consent obtained in the first place and whether it meets the enhanced rights of data subjects under the GDPR. Absolutely—there is no argument that the consent at the outset needs to be of a good standard so that subsequent use of personal data can be validly based on it.

My amendment would confine the special provision that I am proposing to members of organisations for specific purposes which I would hope we could all agree lie in the public interest. It would not open the floodgates to a collection of streams of unconsented personal data for undefined purposes. I therefore hope that the Government can agree to my amendment.

6.15 pm

Lord McNally (LD): My Lords, as my noble friend Lord Clement-Jones indicated, I shall speak to Amendments 41 and 44, which were eloquently introduced by the noble Lord, Lord Griffiths. I had no idea that it was a maiden speech from the Front Bench, and it is to the discredit of the Labour Party that it has taken him so long to climb to the top of the greasy pole. Having got there, I hope that he enjoys the view.

As the noble Lord indicated, these amendments are inspired mainly by Thomson Reuters and others in the City. I attended a seminar in the City some weeks ago in which the corporation, the City of London Police and some leading companies talked about the challenges that data was bringing them. At the core of this is a concern that the Bill is loosely and poorly worded in preventing private companies doing work with data which will help them to keep best practice in line with the objectives for corporate governance and efforts to fight crime, terrorism, slavery, bribery and corruption.

I hope the Minister can give some comfort that the Bill will give cover to companies, financial institutions and others to carry out this kind of data activity and allow screening by private companies for the purposes of checking against non-UK laws on terrorist financing or money laundering. It should be amended to allow compliance with widely recognised guidelines such as those promulgated by the Financial Action Task Force. In the light of the Minister's response and in consultation with those who have asked us to raise this matter, we would see whether we wanted to take it further. At the source of these amendments is a concern on the part of companies which I think genuinely want to help.

Lord Lester of Herne Hill (LD): My Lords, I want to raise an issue which I would be grateful if it were thought about, although I would not dream of asking the Minister to give an informed reply today. I am

puzzled especially by Amendment 37, spoken to by the noble Lord, Lord Griffiths, because I spent a good deal of my time developing the Equality Act 2010 and we were very concerned when doing so about issues of personal privacy and enforceability.

Obviously, one size does not fit all when it comes to equal opportunity and treatment. It is fairly easy to operate a policy measuring ethnicity, for example, without any problem about privacy; it is pretty easy to do so in respect of gender, although gender does not at the moment figure in the list for some reason, but it becomes terribly difficult when one is dealing with sexuality, religion or philosophical belief, which are for some reason in the list at the moment. I would be grateful if the Minister could reflect with people from the Government Equalities Office on whether this is an example of overlegislation, which it would be much better to prune down.

I am all in favour of affirmative action to promote equality between the sexes or people of different ethnicity, but when it comes to religion, philosophical belief and the other matters that are either there at the moment or would be there under Amendment 37, I get very worried. For example, I once represented the Church of Scientology—successfully—in establishing that scientology is a religion. I would not like these provisions to be the source of conflict and division between one kind of religion and another, or one kind of no religion and humanists, and so on. I think it is an example of overlegislation and underlegislation, and needs to be sorted.

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 participated. I am especially grateful for the clear way in which the noble Lord, Lord Griffiths, outlined the case for all his amendments. He could have chosen an easier Bill to start on, I must say, but he did it very well. I am grateful for the opportunity to set out the purpose of various conditions included in Schedule 1, this time specifically with reference to Part 2.

As we have already discussed, for "special categories of data" to be processed lawfully, controllers must demonstrate that their processing meets one of the processing conditions set out in article 9 of the GDPR. We have already touched on several of these. Here we turn to processing which is,

"necessary for reasons of substantial public interest".

Clause 9 requires that controllers wishing to rely on this processing condition must meet one of the conditions set out in Part 2 of Schedule 1.

Paragraph 7 of Schedule 1 allows processing of certain specified special categories of personal data for the purpose of promoting equality of opportunity. Amendment 37 seeks to expand this condition to permit the processing of additional categories of personal data. This is unnecessary because the categories of data referred to in the amendment are either not considered by the GDPR framework to be special categories of data in the first place or covered by the categories already listed in paragraph 7 of Schedule 1; for example, "Personal data revealing age" need not be listed because it is not subject to additional protection to begin with.

The Government accept that the existing special categories of data are broad and in some circumstances will overlap with the categories of data suggested in the amendment; for example,

"Personal data revealing a disability",

will fall within the special category of "Data concerning health". But in these cases, paragraph 7 already permits the processing of such data for equality-monitoring purposes. I will read carefully the remarks of the noble Lord, Lord Lester. I suspect his point is to do with what is and what is not a special category of data, but I will read *Hansard* and write to him, and copy other noble Lords. I thank him for not requiring a considered answer tonight.

Amendments 38 and 39 address the condition in paragraph 8 which permits the processing of data where this is,

"necessary for the purposes of the prevention or detection of an unlawful act".

Amendment 38 would make it clear that the condition was available only if the unlawful act in question was "serious". I can understand the rationale behind the amendment but the Government consider that it might nevertheless be in the substantial public interest for an organisation to process data for the prevention or detection of an unlawful act that was not obviously "serious". An offence such as driving without a licence or insurance may not be the most serious in terms of the maximum penalty available, but it could still be in the substantial public interest for it to be reported by the data controller. Paragraph 8 ensures that data controllers are empowered to make that call and be accountable for their decision.

Amendment 39 would make the condition available only,

"under circumstances in which it is reasonably clear that a data subject is unlikely to give consent".

While similar provision is made in other conditions where required, the Government consider that it would not be appropriate in this case, given that the purpose is to process data in circumstances where seeking consent risks prejudicing the prevention or detection of an unlawful act.

Amendment 40 would remove the word "dishonesty" from paragraph 9(2)(a) so that an organisation could rely on this provision only if it were processing sensitive categories of personal data to protect the public from malpractice, other seriously improper conduct or the other listed behaviours. The Government consider that there might be situations where an organisation would also need to process data to protect the public from dishonesty that does not necessarily amount to malpractice or improper conduct. It is therefore right that the paragraph covers the full gamut. This processing condition is not new; a similarly worded provision already exists under the current Data Protection Act.

The noble Lord, Lord Griffiths, suggested that there was a need for a further definition of "dishonesty". I am afraid we do not agree. The word has a plain English meaning, defined in the dictionary. Furthermore, to define it here would cause confusion as it is used throughout UK legislation.

[Lord Ashton of Hyde]

Amendment 41 would extend the scope of the same processing condition so that it could also be used to protect bodies and associations, rather than just the general public, from dishonesty, malpractice and improper conduct. It is one thing to allow the processing of an individual's personal data for the purposes of protecting the general public—that is, other individuals; there is a neat symmetry there—but quite another to suggest that it could be processed to protect organisations from reputational harm. On that basis, I cannot agree to include it.

Amendments 43 and 44 address the processing condition in paragraph 12 which allows organisations such as banks to make disclosures "in good faith" under the Terrorism Act 2000 and the Proceeds of Crime Act 2002 about third parties who are suspected of terrorist-financing offences or money laundering. This processing condition is intended to protect organisations that disclose data on the basis of a genuine suspicion, even if it turns out later not to have been well founded. Noble Lords will recall that this condition was debated and agreed to as part of the Criminal Finances Bill earlier this year. The condition is tied to the improvement of a specific statutory regime—known as the suspicious activity reports regime—and is designed to give legal clarity to encourage the sharing of information to prevent serious crime and terrorism. I know there are some in the financial sector who have suggested that these provisions should go further to permit screening by private companies for the purposes of checking against non-UK laws on terrorist financing and money laundering. As noble Lords may be aware, the relevant provisions in the Criminal Finances Act were commenced only at the end of last month. We are not convinced that there is a need to amend them at such an early stage.

Amendment 45 would amend the processing condition relating to,

"confidential counselling, advice or support",

in paragraph 13. It would add "guidance" to the list of processing activities which are permitted under this provision. This paragraph is not new; the relevant wording is drawn directly from existing legislation. But I am happy to put on the record the Government's view that guidance is already covered by this provision and thus there is no need to amend it.

Amendments 45A and 64 in the name of my noble friend Lady Neville-Jones seek to clarify the legal status of processing by patient support groups. The Government strongly support the varied and important work of patient support groups and I am grateful for my noble friend's time in meeting me recently. It is important to reiterate that groups such as Unique will have access to a number of provisions already in the Bill, even in cases where consent cannot be obtained, or reobtained, from the data subject.

We discussed the provisions for scientific research last week. In addition, paragraph 13 of Schedule 1 makes provision for confidential counselling, advice and support. Taken together, the provisions I have mentioned—for consent, scientific research, and confidential counselling, advice and support—seem to cover a great deal of the vital work undertaken by patient support groups. But the Government retain an open mind on this and I will read my noble friend's contribution in *Hansard* carefully.

6.30 pm

Amendment 52 would amend the processing condition relating to occupational pensions contained in paragraph 16. At the moment, processing in relation to occupational pensions forms part of a processing condition in relation to insurance. In drafting the Bill, the Government have simply decided, in the interests of clarity, to give it a processing condition in its own right.

I turn now to Amendments 35, 67 and 68, which concern the requirement for data controllers to have an appropriate policy document in place when processing special categories of personal data and criminal convictions data in certain circumstances. The requirement for an appropriate policy document is new; there is no such requirement in the current Data Protection Act. It further enhances the Bill's commitment on transparency and the protection of individuals' data. Paragraph 31 requires that the data controller make the policy document available to the Information Commissioner on request and without charge. We consider that the Information Commissioner is best placed to consider whether the policy document meets the technical requirements and can take any further appropriate action, if required.

In considering whether there is value in extending a similar right to data subjects, as Amendment 35 does, it is worth noting that controllers will be obliged to provide data subjects with clear and comprehensive information on how their personal data will be processed as well as on their associated rights as data subjects. This obligation attaches to all data controllers, not just those required by the Bill to maintain an appropriate policy document. If, on the basis of the information provided, a data subject believed that there had been a breach of the law, they would be able to raise their concerns with the Information Commissioner who has powers under the Bill to investigate and take action in respect of breaches of data protection law.

Finally, I turn to recent Amendments 21A and 66A tabled by the noble Lords, Lord Clement-Jones and Lord Paddick. As we have heard, article 9(1) of the GDPR prohibits the processing of sensitive categories of data, including biometric data which can be used to identify someone, unless the conditions in article 9(2) can be satisfied. As the noble Lord, Lord Clement-Jones, explained, article 9(4) allows the UK to introduce further conditions with regard to the processing of biometric data. These amendments propose to do that by creating a new part in Schedule 1 dealing with the processing of biometric data to make it clear that biometric data can be processed where it is used as a security feature to access a service that the data subject has chosen to use. As the noble Lord explained, many of us are familiar with the verification devices on mobile phones and computers which allow the user to access the service using fingerprint recognition.

Lord Maxton (Lab): I have fingerprint identification on my mini iPad, but I also have a password. Sometimes the fingerprint will not work, and you have to use the password.

Lord Ashton of Hyde: I agree. I have the same. You have to put in your numerical password every so often just to check that you have still got the same finger. Technically, you might not have.

The amendments also seek to permit the processing of such data when biometric identification devices are installed by employers to allow employees to gain access to work premises or when the controller is using the data for internal purposes to improve ID verification mechanisms. I am grateful to the noble Lord for raising this important issue because the use of biometric verification devices is likely only to increase in the coming years. At the moment, our initial view is that, given the current range of processing conditions provided in Schedule 1 to the Bill, no further provision is needed to facilitate the activities to which the noble Lord referred. However, this is a technical issue and so I am happy to write to the noble Lord to set out our reasoning on that point. Of course, this may not be the case in relation to the application of future technology, and we have already discussed the need for delegated powers in the Bill to ensure that the law can keep pace. I think we will discuss that again in a later group.

On this basis, I hope I have tackled the noble Lord's concerns, and I would be grateful if he will withdraw the amendment.

Lord Clement-Jones: My Lords, as usual the noble Lord, Lord Maxton, has put his finger on the problem. If we have iris recognition, he will keep his eye on the matter.

I thank the Minister for his explanation of the multifarious amendments and welcome the maiden speech from the Front Bench by the noble Lord, Lord Griffiths. I do not think I can better my noble friend Lord McNally's description of his ascent to greatness in this matter. I suspect that in essence it means that the noble Lord, Lord Griffiths, like me, picks up all the worst technical amendments which are the most difficult to explain in a short speech.

I thought the Minister rather short-changed some of the amendments, but I will rely on *Hansard* at a later date, and I am sure the Opposition Front Bench will do the same when we come to it. The particular area where he was disappointing was on what you might call the Thomson Reuters perspective, and I am sure that we will want to examine very carefully what the Minister had to say because it could be of considerable significance if there is no suitable exemption to allow that kind of fraud prevention to take place. Although he said he had an open mind, I was rather surprised by his approach to Amendments 45A and 64 which were tabled by the noble Baroness, Lady Neville-Jones. One will have to unpick carefully what he said.

The bulk of what I want to respond to is what the Minister said about biometrics. I took quite a lot of comfort from what he said because he did not start quoting chapter and verse at me, which I think means that nobody has quite yet worked out where this biometric data fits and where there might be suitable exemptions. There is a general feeling that somewhere in the Bill or the schedules we will find something that will cover it. I think that may be an overoptimistic view, but I look forward to receiving the Minister's letter. In the meantime, I beg leave to withdraw the amendment.

Amendment 21A withdrawn.

Amendment 22

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

22: Clause 9, page 5, line 42, leave out subsection (6)

Lord Stevenson of Balmacara: My Lords, I rise to speak to another rather wide-ranging group, in terms of numbers, although I think we will find the amendments are a theme and variation on an issue that will run through not just this Bill but a number of Bills to come. I refer to secondary legislation and powers in the future when it is necessary for the Government of the day to try to change that which has been set down in primary legislation in the past.

Amendment 22, which kicks this off, is taken very largely from the report of the Delegated Powers and Regulatory Reform Committee. I make no apology for that. I think it is a very good report, as always, from that committee which does a fantastic job on what we are doing. I think I am probably interposing in a dialogue that may be carrying on out of our direct ken since normally in this matter one would get a memorandum, which I think we have seen, and I thank the Minister and the Bill team for that. The first response from the Delegated Powers and Regulatory Reform Committee will make some comments and I think it likely that the Minister and his colleagues will respond to that. We are only in the early stages, so I suspect we are a bit previous on this point.

However, this is an issue of some substance that may well be in all the Brexit-related Bills soon to arrive in your Lordships' House, which suggests that we might just have a quick canter around it at the moment.

In preparing for this particular area, I had thought that we would just stick with Clause 9, but I was drawn into also putting in Clause 15, because there is an interesting point here that I wanted to raise with Ministers. The noble Lord, Lord Whitty, the noble Baroness, Lady Jones, and the noble Lords, Lord Clement-Jones and Lord Paddick, have had less restraint, and therefore we are covering quite a large number of the issues raised by the DPRRC. I look forward to hearing the response and to the wider contributions from those who have tabled amendments in this group.

The main theme that seems to run through this is what the committee says in paragraph 20 of its recent report, that,

"we take the view that the memorandum does not adequately justify the breadth of the power in clause 9(6) of the Bill, and that it is inappropriate for Ministers to be given carte blanche to rewrite any or all of the conditions and safeguards in Schedule 1 by regulations in order 'to deal with changing circumstances' instead of bringing forward a Bill".

The committee then slightly changes its position by recognising that currently this is under the affirmative procedure, quite a strong measure to have in play in legislation, and suggesting an alternative approach:

"It may be appropriate … for Ministers to have a more focused power enabling them to update specific paragraphs".

[Lord Stevenson of Balmacara]

Maybe that is a line the Government will take. The essence of this is Henry VIII powers—how egregious they are and how bad it would be in future to come across them. At the same time we have to balance that against the obvious need, particularly in this Bill—as we have already discussed we are talking about fast-moving technology, although it applies in other areas—for some flexibility on the part of the Government of the day to bring forward amendments and changes as and when required. It is a balance and has to be struck properly, but the first shots in this have tended to be that Ministers are too aggressive. We await further discussions, but that is the ground which we will be traipsing around.

Amendment 106A relates to Clause 15(1)(b), at line 44 on page 8, which talks about,

"the power in Article 23(1) to make a legislative measure restricting the scope of the obligations and rights mentioned in that Article where necessary and proportionate to safeguard certain objectives of general public interest."

I take this to be a quote from the GDPR. It is therefore couched in language which I think would be unexceptional if we were transposing the GDPR into the Bill, but of course we are not, and we are not allowed to amend it. The question really is what a legislative measure is. This is not a rhetorical question, because I would like an answer. In our system, as I understand it, Secretaries of State bring forward legislation in the form of a Bill. If they are not doing that, they bring it forward in secondary regulations. But a legislative measure has no apparent meaning in terms of the work we do—maybe the Minister will confirm that this is perfectly right. But for the moment, this probing amendment not only underlines the point made by the DPRRC in relation to the power in Clause 15 but is also about the particularity of the language used. I beg to move.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): I remind the Committee that if this amendment were to be agreed, I would be unable to call Amendment 22A for reason of pre-emption.

Baroness Jones of Moulsecoomb (GP): My Lords, I regret I was not able to speak to the Bill at Second Reading, but I take great delight in speaking to it this evening, on Amendments 22, 23, 107, 138 and Clauses 15 and 111. I am well aware that the Bill is extremely important. The digital age brings all sorts of opportunities for us but also lots of challenges, and it is absolutely right to keep up to date and make sure that we have legislation in place for the big questions of privacy in such rapidly changing times. When the current data protection legislation came in, most people were still getting to grips with email, and sending a text message on your mobile phone was a really fancy way of communicating. It is time that the legislation was updated.

The sheer volume and depth of personal data that are now floating around online would have been unimaginable then. We share the deepest and most personal details of ourselves quite freely these days, or at least some of us do. The Bill seeks to set important new standards for the protection of people's data and give them more rights over how their data are used. So far, so good—for example it would allow some of us to ask the social media companies to delete any stupid comments we made a decade or so ago, which might help some MPs currently.

6.45 pm

My problem with the Bill is twofold. Large parts of it are not about protecting people's data or granting new rights. Significant parts of the Bill are focused on removing or reducing people's data rights which are otherwise granted by the general data protection regulation. The noble Lord, Lord Stevenson, used the word "aggressive", which is a very good word to use for some of these clauses. The Government are also trying to exercise too many derogations and opt-outs in the Bill. We should be aiming to protect people's data as much as possible and restricting data rights only where absolutely necessary. This is the purpose of the amendments that I have tabled or signed.

The second problem is that this is such a power grab by the Government. We will hear a lot about this over the next few weeks and months, but the bypassing of Parliament like this by giving excessive delegated powers to Ministers is unacceptable. I can see, possibly, the need for the very occasional use of Henry VIII powers, but overall far too much power is being put into them. The Select Committee put it much better than I can:

"We draw attention to the number and breadth of the delegated powers in this Bill. This is an increasingly common feature of legislation which, as we have repeatedly stated, causes considerable concern. The Government's desire to future-proof legislation, both in light of Brexit and the rapidly changing nature of digital technologies, must be balanced against the need for Parliament to scrutinise and, where necessary, constrain executive power".

The privacy rights at stake in the Bill are so important that they absolutely must be properly approved by Parliament and parliamentarians. Changing these rights with delegated legislation is a nonsense. It is particularly important that Parliament remains responsible for deciding these rights, since so much of it applies to the Government's use of personal data. We cannot allow the Government to decide what the Government are allowed. That is not a democracy; it is a dictatorship.

Amendment 22 relates to Clause 9(6). Article 9 of the GDPR has strict rules about processing particularly sensitive personal data, such as data,

"revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation".

Processing that sensitive data is prohibited, except in a very limited set of circumstances set out in the GDPR or in legislation passed by Parliament. Schedule 1 to the Bill sets out 28 circumstances where the sensitive data is allowed to be processed, supposedly with relevant safeguards. Clause 9(6) is the Henry VIII power which allows the Secretary of State just too much power, to,

"amend … by adding, varying or omitting conditions or safeguards, and … make consequential amendment of this section".

The Delegated Powers and Regulatory Reform Committee also concludes that Clause 9(6) is "inappropriately wide" and should be removed from the Bill. We all understand that there will be negotiations on the Bill. It is important to get it passed, but it is also important

that it is passed right, and I very much hope this is one area where the Government will see sense and take out these sweeping powers. Personally, I think we must resist, with everything we have, any attempt by the Government to wrestle power over which of these rights are protected and which are not.

Clause 9(7) is a tidying-up provision; if Clause 9(6) is removed then subsection (7) has nothing to apply to, so it should also be removed.

In Clause 15, I put my name to Amendment 107 but I should have signed Amendment 108 as well. The super-affirmative resolution procedure would be much better than the affirmative resolution procedure as it would force the Government to have regard to the opinion of Parliament, but it would still be far from perfect. We would be much better off not having these broad delegated powers in the first place.

Amendment 130 in Clause 33 is about removing the power to amend Schedule 8 using delegated legislation. That is the same as in Clause 9, and the same applies to my amendment in Clause 84. In opposing Clause 111, I would like to remove the power to make further exemptions in relation to national security.

I look forward to seeing the Bill becoming something that we can all perhaps sign up to, but at the moment the Government are being far too aggressive and greedy for power.

Lord Arbuthnot of Edrom (Con): My Lords, like the noble Baroness, Lady Jones, I understand the issues of fast-changing technology and the fact that it is very hard for primary legislation to keep up. My noble friend Lady Neville-Rolfe has asked me to express her sadness that she is unable to be here today due to a family funeral. I shall speak to the amendments in our name which, like Amendment 24, propose the super-affirmative resolution procedure.

The report by the Delegated Powers Committee speaks eloquently for itself. The arguments have been made already by the noble Lord, Lord Stevenson, and the noble Baroness, Lady Jones, and I shall not repeat them. Our amendments would do two extra things: they would put the super-affirmative resolution process in the Bill, which would make it a bit clearer—that seems more helpful—and would add a requirement for an updated impact assessment for industry, charities and public authorities. The reason for that is that the Executive could make changes under these powers, including adding a whole new technology to the data protection regime—so an impact assessment, according to my suggestion, would be essential. My noble friend Lady Neville-Rolfe and I would support any call for discussions with the Minister so that we can identify where the super-affirmative procedure should apply.

Lord Whitty (Lab): My Lords, I have two sets of amendments in this group. The first ones are actually amendments to that of the noble Lord, Lord Arbuthnot, because, like him, I think it would be useful, given the range of delegated powers within the Bill, if we wrote the super-affirmative resolution into the Bill. If we do not succeed in greatly reducing the amount of delegated legislation that is permitted under the Bill—although I hope my noble friend Lord Stevenson and others do—we need to treat that delegated legislation when it is brought forward in a way that is more intensive, consultative and engaging than our normal simple affirmative resolutions.

So I support the principle of the amendment of the noble Lord, Lord Arbuthnot, and the noble Baroness, Lady Neville-Rolfe. My Amendments 182A to 182C would simply add an additional dimension. As I read the amendment at the moment, it is emphatic on getting the Government to identify the impact on industry, charities and public bodies. The main point that we are all concerned about is actually the impact on individuals, the data subjects, yet they are not explicitly referred to in the draft of the amendment before us. My three amendments would therefore effectively do two things: first, they would require the Minister to consult data subjects or organisations representing them, such as consumer organisations, as well as those stipulated in the amendment as it stands; and, secondly, they would ensure that the impact assessments related to the impact on individuals as well as on organisations. I hope that the noble Lord would agree to my amendments at whatever point he and the noble Baroness propose to put this to the vote, in which case I could fully support their amendment.

My Amendment 22A is a specific example of the themes that my noble friend Lord Stevenson and the noble Baroness, Lady Jones, have already spelled out. I will not repeat everything they said but it is a particularly egregious form in that it allows the Minister—the noble Baroness, Lady Jones, has already referred to this—to add, vary or omit any safeguard that is in Schedule 1. I particularly object to "omit". That does not simply mean modifying or tinkering in order to keep up with the technology; rather, it means omitting a serious safeguard that has been put in the Bill during its passage through Parliament.

Since Schedule 1 is pretty wide ranging, this could include issues that related to legal proceedings, crime, taxation, insurance, banking, immigration, public health or indeed any aspect of the public interest. That is a huge range of potential removal of safeguards that would not be subject to the approval of this House through primary legislation. If the safeguards persist and are maintained through the Bill when it eventually emerges, the ability of Ministers to vary them so drastically should be curtailed. I understand that my amendment would be pre-empted if my noble friend Lord Stevenson's amendments were carried—but if they are not we definitely need to alter that clause.

This is a complex Bill because of the technology and because of the juxtaposition between European legislation and the position we are currently in with regard to it. The Bill is also an exemplar of what we are going to go through in Brexit-related legislation in a much wider sense. We must get right how we deal with delegated legislation post Brexit, and we need to ensure that the Bill is an example and does not concede powers to Henry VIII or indeed to the Minister that we might regret when his successors make use of them later.

Lord Clement-Jones: My Lords, I can be very brief. I have not yet quite got through the concept of the Minister as Henry VIII. There is a clear common theme coming through every speech in the House

[Lord Clement-Jones]
today. The issue is whether the Government's arguments for the use of the powers contained in the various clauses that have been mentioned—my amendments from these Benches, Amendments 24 and 107, relate to Clauses 9 and 15, but there is a broader issue—are credible and whether their desire for flexibility is convincing. As many noble Lords have mentioned, the Delegated Powers Committee did not find them particularly credible and stated:

"We regard this as an insufficient and unconvincing explanation for such an important power".

That applies to Clause 15, but we on these Benches believe that the power in Clause 9 should not be there in its present form, either.

We have tried to be constructive. We have put forward a suggestion, as has the noble Lord, Lord Arbuthnot, for the use of the super-affirmative power. That is extremely well known and is enshrined in legislation—so, unlike the noble Lord, we did not feel the need to spell out exactly what the procedure was because it is already contained in a piece of legislation that I will no doubt come across in my notes at some suitable moment. It is now an extremely common and useful way of giving the Government flexibility, while allowing sufficient consultation before any regulations come to the House by affirmative resolution. We recognise that this could be fast moving, so it may be appropriate that the Government have those powers, provided that they are governed by super-affirmative resolution.

7 pm

I expect that the BMA has made its views known to the Government. It is particularly concerned, in the context of Clause 15, that the Bill could give the Government an inappropriate fast-track power, for instance, to change the law on how confidential health data are shared, with little scrutiny or oversight. That is but one example of why we believe that amendments should be made.

I suppose that it depends on how the parties come together after Committee to agree on the best form of action in response to these Henry VIII powers—but I suspect that, on Report, there will be a deal of contention on the matter.

Lord McNally: I can imagine how it was when the legislative programme was discussed in the Cabinet Office, or even at No. 10: how on earth do we get all this through? I am sure that the Civil Service advice was—or at least one adviser said—"Well, you could try by Henry VIII powers and lots of secondary legislation. Looking at the present rules, that is the only way that we think you could get it through in that timetable". And so the process started.

I know that the big problem for Ministers in this House is that there will be great impatience in No. 10 and down the Corridor at any delays or defeats—but, as has been said a number of times, they are going about it the wrong way. We are heading for a constitutional car crash unless there is intervention at the very highest level to look at this problem. It is a twin problem: how do you give flexibility to make legislation fool-proof in a rapidly changing technological situation, which is one of the central problems for the Bill; and how do you deal with Brexit legislation in such a tight timetable?

I know what cannot happen. It would be the irony of ironies if an exercise that was supposed to return sovereignty to this Parliament ended up with this Parliament accepting a whole range of precedents that diminished its sovereignty. Therefore, although it is unfair on each Minister, this debate will continue to take place, and I hope that when we get to Divisions we will put a halt to this solution, so that some really hard thinking will be done about how to achieve the end of the Government getting their business through without sacrificing parliamentary sovereignty.

Baroness Chisholm of Owlpen (Con): My Lords, I welcome this opportunity to set out the Government's position on various delegated powers contained in the Bill, which have been the subject of recommendations by the Delegated Powers and Regulatory Reform Committee. The Government are very grateful to the committee for its usual thoroughness in examining the delegated powers in the Bill, but I should begin my remarks by saying that the committee's report, which ran to some 20 pages, was published only on 24 October, so we are still considering its conclusions and recommendations. The range of views expressed in tonight's debate will be further input into that process.

The current Data Protection Act has stood firm for almost 20 years. This one will be in danger of lasting barely two if we start striking out the delegated powers contained within it. As the noble Lord, Lord Stevenson, and the noble Baroness, Lady Jones, said, such is the pace of change in this area that we need to keep up with what is going on. Furthermore, new forms of data processing not yet dreamed of will have been designed, developed and deployed even before the Bill reaches Royal Assent. It is essential that the law can keep up.

It is also worth reminding ourselves that the Government have taken the opportunity to include directly in the relevant schedules numerous provisions which had previously been included only in secondary legislation. The noble Lord, Lord Stevenson, has been extremely busy, and has taken the opportunity to table more than a dozen amendments to Schedule 1 alone. We will of course turn to those shortly.

That said, the Government recognise that there is tension between the need to provide for appropriate future-proofing of legislation, such as provided for in Clauses 9, 15, 33, 84 and 111, and the need to ensure proper parliamentary scrutiny of the resultant delegated powers. It follows that we are open to constructive suggestions as to how provisions in the Bill can be improved and, obviously, that includes its regulation-making powers.

I have listened with care and interest to the case put forward by my noble friend Lord Arbuthnot, the noble Lord, Lord Clement-Jones, and the noble Baroness, Lady Jones, for the application of the super-affirmative procedure. I am also grateful to the noble Lord, Lord Whitty, for reminding us that data subjects, not just data controllers, have an interest in the proper application of these powers.

I am sure that noble Lords will agree that the amendments before us should be considered in the context of the broader recommendations of the Delegated Powers and Regulatory Reform Committee report. As I said earlier, the process of considering these issues is still ongoing, but I am more than confident that it will conclude in time for the Bill's next stage.

Before I conclude, I think that the noble Lord, Lord Stevenson, asked what was meant by "legislative measure". Clause 15(1)(b) uses the term "legislative measure" to reflect the wording used in Article 23 of the GDPR. Recital 41 makes clear that a legislative measure would include an Act or statutory instrument. I hope that that answers the question.

I therefore humbly invite the noble Lord to withdraw his amendment on the understanding that we will return to this important issue on Report.

Lord Stevenson of Balmacara: I thank all noble Lords for their contributions; we have had a very good go at this, which has raised all the big issues. The Minister made a positive response, with a sideswipe at me for being too active on the amendment front; but that is what we do, and we expect Ministers to be able to deal with them without too much worry. We are enjoying this debate and will have lots of things to come back to on Report because of the interesting points being made.

However, on this issue, we are slightly narrower. The Government have got themselves into a bit of a hole here. I appreciate the wider context, and the point has been very well made. It seems to me that there are three options. They can tough it out and just say to the DPRRC that it has stepped too far from where they want to be and this is the only way forward. They can follow the DPRRC and find amendments that they can bring back on Report—I think the Minister was talking about Report; later than that would be too late. We are talking here about narrower powers to define down the areas within which discretion is operated. To follow the point made by the noble Baroness, Lady Neville-Jones, and the noble Lord, Lord Arbuthnot—I think this is my noble friend Lord Whitty's concern and is shared widely around the House—the most egregious issue here is when the Government seek to omit legislation which has been passed as primary legislation by secondary legislation, or legislative measures, as we now call them.

The helpful suggestion, backed up by the noble Lord, Lord Clement-Jones—that we should have a super-affirmative measure when matters are almost of the status of requiring there to be primary legislation, but for which flexibility requires a lesser measure—seems to be the way forward. A very little research shows that "super-affirmative" has many meanings. That chosen by the noble Lord and the noble Baroness, Lady Neville-Jones, is one of about seven or eight. The Public Bill Office has published a table which noble Lords can pore over at leisure and find themselves completely confused at the end about the best route forward. I am sure the clerks will guide us as we go forward down that route. However, the best seems to be the one that provides for amendments to be made to the measure that is being considered before the vote. That is the sensibility which is being assembled around the Committee, and I hope that the Government will take it away and do it.

The noble Lord, Lord McNally, is right: there is a possibility here of a constitutional car crash. It is not restricted to this Bill, and no noble Lords who have spoken in this debate would want it to be taken, sui generis, to this Bill. It has to be taken more widely, because it is a much bigger issue. On the other hand, this provides an opportunity to go forward. In the meantime, I beg leave to withdraw the amendment.

Amendment 22 withdrawn.

Amendments 22A to 24 not moved.

Clause 9 agreed.

Schedule 1: Special categories of personal data and criminal convictions etc data

Amendment 25

Moved by ***Lord Kennedy of Southwark***

25: Schedule 1, page 112, line 8, leave out paragraph (a)

Lord Kennedy of Southwark: My Lords, the amendments in this group are largely in my name and that of my noble friend Lord Stevenson of Balmacara and are probing in nature. We look forward to the Minister's response, as we seek to test the provisions before the Committee.

The GDPR generally prohibits the processing of special category data, with article 9(2) of the GDPR providing for circumstances in which, on the processing of special category data, article 9(1) may not apply. Paragraph 1 of Schedule 1 states that it may not apply if,

"the processing is necessary for the purposes of performing or exercising obligations or rights of the controller or the data subject under employment law, social security law or the law relating to social protection".

Amendment 25 would delete paragraph 1(1)(a) on page 112 of the Bill, and I hope the Minister will be able to explain to the Committee why the provision, in the form it is written in the schedule, is necessary.

Amendment 25A in the name of the noble Earl, Lord Kinnoull, and the noble Lord, Lord Clement-Jones, changes the emphasis by deleting the word "under" and replacing it with the words "in connection with". That probably widens the scope, but it will be useful to hear the noble Lords speak to that amendment and the Minister's response.

Amendments 27 and 28 in my name and that of my noble friend Lord Stevenson move on to the question of health and social care purposes. Specifically, these amendments delete two conditions concerning,

"the working capacity of an employee",

and,

"the management of health care systems or services or social care systems or services".

When the Minister responds, will he specifically address why paragraph 2(2)(b) of Schedule 1 is deemed necessary? Will he give the Committee some examples of the data on the working capacity of an employee that would be collected under this provision of the assessment? It would

[Lord Kennedy of Southwark]
also be helpful to understand why paragraph 2(2)(f) of Schedule 1 is necessary and why it would not be covered under paragraphs 2(2)(d) and 2(2)(e).

Amendment 29 would delete paragraph 3(a). We have tabled the amendment simply to enable the Minister to state clearly and to put on the record why this sub-paragraph is necessary. Amendment 31 would strengthen the sub-paragraph by putting the words,

"who owes a duty of confidentiality",

after "health professional". Those words are used in paragraph 3(b)(ii) and we can see no reason why they are not used in 3(b)(i). If the Minister thinks that they are not necessary then will he say so clearly for the record and explain his reasoning carefully? Amendment 70 puts the words in the same context on the face of the Bill.

Amendments 31 and 32 concern paragraph 4 of Schedule 1. They would sharpen up and widen the definition in the Bill and make it clearer that "archiving" includes collections of physical and digital materials. The wording in the Bill at the moment is a big weakness and these amendments, and Amendments 33 and 34, help improve it.

The final amendment in this group would add to Clause 15 a subsection which puts into the Bill a clear restriction that if there is a common law duty of confidentiality it cannot be overridden by regulations under the Act. That is an important safeguard that belongs on the face of the Bill. There is a lot here for the Committee to debate. I beg to move.

7.15 pm

The Deputy Chairman of Committees (The Countess of Mar) (CB): If this amendment is agreed, I cannot call Amendments 25A or 26 because of pre-emption.

The Earl of Kinnoull (CB): I speak to Amendment 25A and declare my interests as set out in the register, particularly those in respect of the insurance industry. I thank the noble Lord, Lord Kennedy of Southwark, for a clear introduction to his thinking. I am also looking forward to hearing what the Minister says later on.

Amendment 25A is essentially a probing amendment relating to another problem of unintended consequences of the Bill's far-reaching provisions. The impact assessment, in its section entitled "policy objectives and intended effects", talks of setting new standards in accordance with the GDPR,

"whilst preserving existing tailored exemptions from the Data Protection Act".

Later on, the assessment talks about ensuring that,

"the burden on business is kept minimal".

Amendment 25A is designed to avert just such an unintended consequence which, although small in words, would be substantial in effect for insurers and therefore affect people who want to take out policies. Without this amendment, the Bill would affect insurers' ability to process data in relation to obligations in connection with employment law. In short, they will have to redesign all their processes in what is a substantial and important area. The amendment changes the wording back to that in paragraph 2(1) of Schedule 3 to the Data Protection Act 1998, so that insurers can continue to use existing procedures. It is entirely consistent with the GDPR, in particular with article 9(2)(b), which is the bit which affects this and calls for safeguards. I can think of no better watchdogs than the Information Commissioner's Office and the FCA. I therefore feel that this amendment should be uncontroversial and look forward to hearing the Minister's reasoning on it. I would welcome discussions outside the Chamber should he want further detail.

Lord Kakkar (CB): My Lords, I support Amendment 108A and remind noble Lords of my entry in the register regarding my duties as a doctor and medical researcher.

The overriding duty in common law to protect medical confidentiality is vital to contemporary clinical practice. There are considerable concerns that Clause 15 might provide an opportunity for that duty to be overridden through the application of future regulations. It is important for Her Majesty's Government to establish that that is not possible and could not be the case in the future. The provisions in common law regarding medical confidentiality provide further safeguards for healthcare data beyond those provided in current data protection regulation and statute. It would be a retrograde step if provision were made that destroyed those safeguards. That might be manifested in a greater reluctance for individual patients to share their confidential information with healthcare professionals. This may result in a poorer ability for the public interest to be satisfied and safeguarded in terms of collecting data on important public health issues. It may also result in greater reluctance for individuals to participate in medical research or to provide their data for fear that it may be shared in the wrong way. Can the Minister provide reassurance that the application of Clause 15, as drafted, would not result in undermining this common law duty, and therefore have serious unintended consequences in the future? If Her Majesty's Government are not able to provide that reassurance, how would they go about dealing with Clause 15? Would they include in the Bill a measure such as that proposed in Amendment 108A, or what other mechanism would they provide to ensure that this vital common law duty is in no way affected in the future?

Lord Lucas (Con): My Lords, I offer a slight contrast to that. I hope that this clause will help with a couple of sorts of problems that I have come across over the last 20 or 30 years. One concerns children at university who become suicidal and their parents are never told because everybody believes they have a duty of confidentiality and cannot communicate with the parents. A friend of mine got very close to going over the edge but fortunately one of his friends told his parents and then everything got sorted out. Suddenly regarding parents as aliens when someone is 18 and in severe psychological difficulty is an uncomfortable effect of the way that current regulations are perceived. I hope that this provision might loosen things up.

Another aspect is dealing with schoolchildren with eating disorders. Many aspects of eating disorders present as social interactions with other children. However, if there is an absolute prohibition on discussing someone's condition with other children, even the children who

share a bedroom with them in boarding school, that seems to me destructive of the interests of the child. Therefore, I would like to see—and I hoped that I was seeing—a slight broadening of the current regulations which might lead to arrangements which allowed the best interests of the patient to come into effect rather than a strict adherence to the dogma of, "We can't tell anybody".

Lord Lester of Herne Hill: My Lords, the Minister rightly signed on the face of the Bill his statement of its compatibility with the European Convention on Human Rights. I wonder whether the answer to the question of the noble Lord, Lord Kakkar, is not provided by the Human Rights Act itself, which says that all legislation, old and new, must be read—and given effect, if possible—compatibly with the convention rights. One of those convention rights is the right to privacy. The right to privacy embraces the equitable duty of confidentiality referred to by the noble Lord, Lord Kakkar. Therefore, the reassurance is given by the Human Rights Act rather than by anything else. The relevant provisions of this Bill would have to be read compatibly with that. However, I may be speaking out of turn.

Lord Patel (CB): My Lords, if I have understood the noble Lord, Lord Lucas, wrongly, I am sure that he will correct me. However, the impression he gave was that the confidentiality between a doctor and a patient forbids the doctor to inform a family member if the patient is likely to suffer harm, even self-inflicted harm. That is not the case. The doctor is bound to respect confidentiality, but if that is likely to result in not informing the family of the harm that may be caused to a patient, or distress to the family, it is not true that confidentiality will still hold.

Lord Lucas: My Lords, I am glad to know that. I have not dealt directly with a doctor on this at all but rather with university and school authorities. In those cases—not steadily and not, thank goodness, frequently—I have encountered a complete unwillingness to risk telling anybody anything for reasons of confidentiality. I hope that principle is misunderstood, but this certainly happens. In cases where there is a very clear principle of confidentiality, the circumstances under which it can reasonably be interpreted as being in the best interests of the patient to breach it need to be better understood by people who are not medically trained so that they feel confident in passing the information back. I am not trying to create law in an extremely difficult area. I hoped that the Bill might lead over time to universities feeling that parents were part of the solution, and to schools feeling that other children were part of the solution, and feeling confident that guidelines had been evolved which allowed them to seek support for these children beyond just their own tight resources. I am delighted to hear what the noble Lord said but that is not what gets through once it has been through the filter of university, at least on the occasions that I have dealt with it. I probably see the cases that go wrong. If something has worked out right, there is no reason why it should come to me.

Lord Ashton of Hyde: My Lords, I am grateful to noble Lords who have spoken and for the opportunity to set out the purposes of various conditions included in Part 1 of Schedule 1.

It is worth recalling that, in order for special categories of data to be processed lawfully, controllers must demonstrate that their processing meets one of a defined list of processing conditions set out in article 9 of the GDPR. Many controllers will meet this requirement by seeking the explicit consent of the data subject but the reality is there will be circumstances where it would not be appropriate, or indeed possible, for a controller to seek consent. In these cases, alternative conditions include processing which is necessary for the purposes of employment and social security; for the provision of health or social care; for public health; and for archiving and research. But for UK controllers to take advantage of these particular processing conditions, the UK must make suitable provision in UK law. That is what the conditions set out in Part 1 of Schedule 1 seek to do.

Paragraph 1 of that schedule, referenced in Amendment 25, refers to the processing of sensitive personal data where necessary for exercising obligations under employment law, social security law or the law relating to social protection. This is a specific category under article 9(2)(b) of the GDPR, and paragraph 1 gives it legislative effect.

It is true that the 1998 Act did not refer to social security and social protection law, but the GDPR gives them specific emphasis in recognition of the reality that processing of special categories of data may be necessary for the purposes of calculating social security benefits or arranging interventions by social services when people are in need of support. In practice, it may not be possible to obtain consent to every measure or decision which is taken about a person when arranging benefit payments or care provisions. Amendment 25 would remove paragraph 1(1)(a) from Schedule 1, making this clause ineffective and closing off a potentially valuable processing condition to social services and other care providers.

The noble Earl, Lord Kinnoull, and the noble Lord, Lord Clement-Jones, suggested in Amendment 25A that "under" employment law should be replaced with "in connection with" employment law. I appreciate the sentiment behind the amendment, which is to ensure that the provision does not operate too restrictively. However, the Government are satisfied the term is sufficiently broad to cover processing that would have been permitted for these purposes under the Data Protection Act, while operating within the limits of the derogation provided for by the GDPR. The new condition, which permits processing that is,

"necessary for the purposes of performing or exercising obligations or rights of the controller or the data subject under employment law",

would have the same meaning as the Data Protection Act wording, which referred to, processing necessary for the purposes of,

"exercising or performing any right or obligation which is conferred or imposed by law on the data controller in connection with employment".

I therefore hope the noble Lords will accept my reassurances in that regard.

7.30 pm

The Earl of Kinnoull: I raise a simple point—that pretty big businesses look after the employment law insurance issues, and they are so incredibly important that they are often compulsory types of insurance because we feel that every business should have them. These huge businesses will have massive change in the way this operates because there is this change. We have just heard that it is not a change, but I hope that the Minister will accept that the insurance businesses—I had a sensitive briefing from the ABI—are worried about that. Accordingly, will he at least be prepared to have a meeting to go through that, otherwise there will be a lot of expense, fuss and bother and maybe some unintended damage to the process of an important type of insurance?

Lord Ashton of Hyde: I said that we believe that the term is sufficiently broad to cover processing that would have been permitted hitherto, which the noble Earl refers to. However, of course, if we have got it wrong and if the insurance industry has a point it wants to bring up, it would be sensible, and I would be delighted, to meet him and the industry to discuss that. As I said before, we have an open mind, so I will certainly do that.

On the provisions in paragraphs 2 and 3 of Schedule 1 on health and social care, and public health, respectively, which are the focus of Amendments 27 to 29, it is fair to say that the drafting here has moved on slightly from the approach taken in Schedule 3 to the 1998 Act. However, article 9(2)(h) of the GDPR refers specifically to processing which is necessary for,

"the assessment of the working capacity of an employee",

and,

"the management of health … care systems".

Article 9(2)(i) refers specifically to processing which is,

"necessary for reasons of public interest in the area of public health".

The purpose of paragraphs 2 and 3 of Schedule 1 is to give these GDPR provisions legislative effect. To remove these terms from the clause by virtue of Amendments 27 to 29 would mean that healthcare providers might have no lawful basis to process special categories of data for such purposes after 25 May. I am sure that noble Lords would agree that that would be unwelcome.

The noble Lord, Lord Kennedy, asked some questions on paragraph 2 and asked for an example of data processed under paragraph 2(b). An example would be occupational health. The wording of paragraph 2(2)(f) of Schedule 1 is imported from article 9(2)(h), and I refer the noble Lord—I am sure that he has remembered it—to the exposition given in recital 53.

Paragraph 4—the focus of Amendments 32 to 34—provides for the processing of special categories of data for purposes relating to archiving and research. The outcome of these amendments would be to name specific areas of research and types of records. The terms "scientific research" and "archiving" cover a wide range of activities. Recital 157 to the GDPR specifically refers to "social science" in the context of scientific research, and recital 159 makes it clear that,

"scientific research purposes should be interpreted in a broad manner including for example technological development and demonstration, fundamental research, applied research and privately funded research".

The Government are not aware of anything in the GDPR or the Bill which casts doubt on the application of these terms to social science research or digital archiving.

Finally, on the important issue of confidentiality, Amendments 31 and 70 are unnecessary, because all health professionals are subject to the common-law duty of confidentiality. The duty is generally understood to mean that, if information is given in circumstances where it is expected that a duty of confidence applies, that information cannot normally be disclosed without the information provider's consent. However, beyond relying on the common-law duty of confidentiality, health professionals and social work professionals are bound by the requirements in their employee contract to uphold rules on confidentiality, whether that information is held on paper, computer, visually or audio recorded, or even held in the memory of the professional. Health professionals and social work professionals as defined in Clause 183 are all regulated professionals.

I can therefore reassure the noble Lord, Lord Kakkar—I am also grateful to the noble Lord, Lord Lester, for his support with regard to the Human Rights Act—that the Government strongly agree on the importance of the common-law duty of medical confidentiality but also recognise that it is not absolute. For example, there already are, and will continue to be, instances where disclosure of personal data by a medical professional is necessary for important public interest purposes, such as certain crime prevention purposes or pursuant to a court order. I therefore cannot agree to Amendment 108A, although, as we have already said, the Government are committed to looking at the issue of delegated powers in the round. I will certainly include that in that discussion. Therefore, with that reassurance, I ask the noble Lord to withdraw his amendment.

Lord Lucas: My Lords, might I beg a meeting of the Minister to discuss the matter of suicidal students at university and how that will be handled under the new legislation as it is developed? This need not necessarily fit within the timescale of the Bill, but I would very much like to be able to understand policy on it and to involve universities in moving from the current unsatisfactory position.

Lord Ashton of Hyde: It is always a pleasure to meet my noble friend, and I am happy to do that.

Lord Kennedy of Southwark: My Lords, I thank all noble Lords who have spoken in the debate this evening. We have touched on a number of important topics, which I hope the noble Lord, Lord Ashton of Hyde, will reflect on as we move through the Bill and look at these issues again. I make it clear that my amendments were all probing amendments to get from the Government their position on things. I was particularly pleased that the noble Earl, Lord Kinnoull, raised the issue about the insurance industry and that the Minister will meet him and representatives of the industry.

I noticed when the Minister replied to the debate that on more than one occasion he made references to recitals. He, I and the House know that the recitals will not form part of British law, so to keep relying on them is, I contend, a little weak on the Government's part. They will have to find something a bit stronger and more solid as we move on, because, as I said, these will not form part of British law. That is an important point for the Minister to think of when he responds to amendments. For him to keep relying on them highlights the position the Government are in, which is not very good at the moment. Having said that, I beg leave to withdraw the amendment.

Amendment 25 withdrawn.

Amendment 25A not moved.

House resumed. Committee to begin again not before 8.39 pm.

Scrutiny of Secondary Legislation

Motion to Regret

7.40 pm

Moved by ***Lord Tunnicliffe***

That this House regrets that Her Majesty's Government has introduced the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, the Information about People with Significant Control (Amendment) Regulations 2017 and the Scottish Partnerships (Register of People with Significant Control) Regulations 2017 without sufficient assessment of the effectiveness and value for money of the bureaucratic process proposed; and notes, with approval, that the Secondary Legislation Select Committee has questioned "the seriousness with which the Government view the process of scrutiny of secondary legislation" (SIs 2017/692, 2017/693 and 2017/694).

Relevant document: 2nd Report from the Secondary Legislation Scrutiny Committee

Lord Tunnicliffe (Lab): My Lords, I will speak, first, to the procedural issues to which the regret Motion directly refers and then turn to the anti-money laundering and terrorist-funding measures which these instruments have introduced.

Noble Lords will know that I take a great deal of interest in secondary legislation, particularly when it pertains to Treasury matters. I am therefore familiar with the reports that the Secondary Legislation Scrutiny Committee produces. In recent years I have rarely read such a scathing assessment from the committee about the Government's approach to the checks and balances, such as impact assessments, public consultations and timetables, which underpin our legislative process. At the very least, I would expect the Government to learn from the errors that they have made. However, they appear not to have learned anything. In the Government's response to the committee, Stephen Barclay MP, the new secondary legislation champion, stated:

"My officials have alerted me to a similar issue where the General Election purdah period has also had an impact on finalisation of the impact assessment for the implementation of the Payment Services Directive 2. The Government will shortly be laying the Payment Services Regulations 2017, which implement the Directive. Whilst a final impact assessment for implementation of the Directive has been submitted to the RPC, the Government will not be able to publish an impact assessment that has been through RPC scrutiny alongside the Regulations".

I ask the noble Lord: how many more pieces of secondary legislation will be subjected to sub-standard preparation?

One of the most striking aspects of the Secondary Legislation Scrutiny Committee's report is the number of occurrences of bad practice that it has noted. First, there is the timing. The three SIs in question were laid on 22 or 23 June and came into force on 26 June, thereby breaching the convention which expects instruments to be laid 21 days before they come into law. The Government go on to say that the general election held on 8 June made it impossible to meet the 21-day deadline, but the Treasury consultation closed in November 2016—nearly a year ago. Why did it take the Government until April of this year to publish the final regulations? It should be of concern to us all that, as the committee says, the Government's default position is to reduce the time available for parliamentary scrutiny.

Secondly and perhaps even more significantly, despite the scale of the impact that this measure will have, the Government did not see fit to publish an impact assessment at the same time as the instrument. The net cost to businesses will be £5.2 million a year—not an insignificant impact. The absurdity of this situation can be summed up by paragraphs 11.2 and 11.3 of the Explanatory Memorandum published alongside the regulations. Paragraph 11.2 reads:

"The Impact Assessment will provide further detail on impact for small businesses".

Paragraph 11.3 goes on to say:

"No specific action is proposed to minimise regulatory burdens on small businesses".

Frankly, the Government had no idea whether action was required, given that the final impact assessment had yet to be published. What is the Government's excuse this time? Will they say that the Regulatory Policy Committee was also affected by the general election? However, the committee makes the point that the RPC is an independent body. Do its role and functions change during a general election? Did all the RPC's work cease?

We are as unconvinced as the committee was that the Government could not have published provisional or indicative figures in the memorandum. Given that the draft impact assessment was completed on 13 April 2017, that would seem to have been entirely possible. Why did the Government choose not to pursue this course of action and, given that this is clearly not going to be a one-off, will the Government commit to publishing provisional figures in future if an impact assessment is not available?

I should now like to address the substance of the three instruments. I start by making it very clear that we support efforts by the Government to tackle money laundering and terrorist financing. We agree with the Government's objective of making the financial system as hostile as possible for illicit finance, and it is right that businesses know their customers and manage their risks. Indeed, we welcome the Government's decision to clarify that an estate agent should consider

[LORD TUNNICLIFFE]
that they enter into a business relationship with a purchaser as well as a seller. Estate agents must now apply due diligence checks to both parties and, in so doing, close an existing loophole.

It is also encouraging to see that the Government have acted on PEPs. A firm will now be required to assess the risk posed by each individual on a case-by-case basis. The FCA guidance states that UK PEPs should be treated as low risk unless the firm has identified independent high-risk factors. This is a common-sense change which we support.

However, as I am sure the Minister would expect, there are omissions from the regulations and elements of policy which we query, so I have a number of questions for him. Perhaps the most striking omission from the regulations is a reference to providers of gambling services other than casinos. The Government have explained that this decision,

"was based on evidence that indicated the gambling sector was low risk relative to other sectors".

What evidence was produced suggesting that money laundering in the gambling sector was low? Whom did the Government consult beyond the gambling industry, and did those other stakeholders share different views about the potential for money laundering and terrorist financing?

Although I confess to being concerned by that omission, I am pleased that the Government have been explicit that this will be reviewed by 26 June 2018. This report— to be produced by the Treasury and the Home Office—must identify, assess, understand and mitigate the risks of money laundering and terrorist financing. This is a substantial piece of work and, given that one reason we are here this evening is the Government's failure to meet a deadline, I would like the Minister to say how long they anticipate that this process will last. Whom do the Government intend to consult and, with particular reference to the gambling sector, what criteria are the Government using to determine whether the status quo should be maintained?

I turn to due diligence, which makes up a substantive part of the SI. Part 3 of the main money laundering regulations outlines the three different levels of due diligence that companies have to apply based on the specific nature of a business relationship. The Government have stated that they do not want to be prescriptive and, as such, they have made the decision not to publish guidance alongside these instruments. However, it strikes me that this is exactly the sort of area where prescription is required. I note that it will be up to the regulators—the Financial Conduct Authority, HMRC and the Gambling Commission—to produce guidance on how to carry out these checks. Have the regulators been in contact with each other to ensure that there is consistency where necessary, as well as delineation between the three due diligence categories? Businesses and the regulators will require clarity and this will be achieved only if there is integrated working.

On the matter of the regulators, this will place a further strain on their resource capacity. HMRC in particular has in recent years faced reduced budgets with increased demands. I would be interested to know whether HMRC, the FCA or the Gambling Commission have contacted the Government asking for additional resources. I am sure the Minister will highlight that the Government intend to hire an additional 5,000 HMRC staff, which is welcome news. However, how many of those staff will have anti-money laundering responsibilities?

On the specifics of enhanced due diligence—the highest category—the regulations stipulate that "additional independent, reliable sources" and increased,

"monitoring of the business relationship",

are needed in order to fulfil the requirements of the legislation. But what practical differences would the Government expect to see under enhanced measures and what would be regarded as sufficient monitoring?

Alongside the additional screening and scrutinising measures, larger businesses will also have to make changes to their management, and in some cases perhaps their structure. This underlines that committee's point about the significance of these regulations. Businesses will be required to appoint one individual from the board of directors or senior management team to take responsibility for compliance with these regulations. Furthermore, the company must establish an independent audit function to examine and evaluate the effectiveness of policies, controls and procedures adopted by the chosen board member, and make recommendations and monitor their compliance. How many companies will this affect, and when are they expected to have complied with this aspect of the regulations? Can the Minister say more about the independent audit function? Could it be incorporated in the company's existing auditing arrangements, or are they expected to be separate?

My final point relates to the issue of failure to co-operate. What mechanisms are in place if businesses fail to comply with these changes? Have the Government indicated the scale and extent of the reprimand they can expect from the regulators?

The main intent behind this Motion was to get to the bottom of the procedural irregularities which took place in the preparation of the regulations. The Government are not short of problems, and I am sure that they do not want to be accused of undermining the crucial work of your Lordships' House in scrutinising secondary legislation. We will of course support the Government in preventing money laundering and terrorist financing, but however noble and vital a policy may be, there are principles and procedures which are necessary components to our legislative process and which must be followed. I can only hope that the Government take heed of the warnings from ourselves and the Secondary Legislation Scrutiny Committee. I beg to move.

Baroness Bowles of Berkhamsted (LD): My Lords, by chance this Motion is being debated on the same day that we have had the Urgent Question on the paradise papers. I would like to make a couple of short points before I get on to the main issues of timing. Seeing the paradise papers means that we cannot avoid having many more debates on tax avoidance and money laundering. It shows yet again that more has to be done on the transparency of British overseas dependencies and territories. I would like to point to an extract I have seen from the Government in the

context of money laundering, which comes from the Companies House annual report 2014-15 and says that the,

"benefit in having an open, and up to date, register means that it has 'many eyes' checking the information … The more open the data is, and the more it is viewed, trust and transparency will increase".

That says it all about closed registers.

Turning to the Motion, I am not a member of the Secondary Legislation Scrutiny Committee, and am not yet an expert in the intricacies of how secondary legislation is scrutinised here, but I was quite expert at dealing with, and changing, comparable processes in the EU. I find myself asking why the Government organised themselves to make this regulation just in time for transposition so that there was then no breathing space to permit proper parliamentary scrutiny when a general election was called. Time did not have to be so tight, but I fear that it is part of a pattern of seeing scrutiny of secondary legislation as a mere fig leaf for due process.

The fourth money laundering directive was completed some time ago. All but the final trialogues were completed when still under my remit as chair of the Economic and Monetary Affairs Committee of the European Parliament. It was not a difficult directive. It closely followed the Financial Action Task Force recommendations that came out in 2012. Despite being slowed down by the election of a new European Parliament, the summer break, and the palaver of appointing a new Commission, it was done and dusted, translated and published by June 2015, setting two years for transposition.

What filled those two years? It took 15 months to get a first consultation out. The consultation was not opened until 15 September 2016 and closed eight weeks later on 10 November. There were a total of 186 responses to that consultation. I have not tracked down a breakdown, but that number covers all the responses from supervisors and other Government departments, as well as from NGOs and industry. It is not a huge number. Unfortunately, I have not managed to find publications of the actual submissions, but have seen a summary in the following consultation.

By then, the timing problem had been created, but there was a follow-up with a second consultation and draft regulation after another four months; it opened on 15 March 2017 and closed on 12 April 2017. The regulation would have got to a touchdown only just in time even if an election had not been called. That first 15-month delay is unacceptable, because it was scheduled in that Parliament would be given minimum time and scheduled in that there was no contemplation of a vote against, because there would not have been time for changes even without an election. I cannot find any excuse in the subject matter for delay. It is frequently iterated that the UK is a leader in FATF. Back in 2012, it was known what the provisions were and where flexibility lay. If the Government are so keen to say that they lead the field by example, which by all means they should as host to a centre of global financial services, why were they pushing up against the deadline?

I know that amendments by way of the so-called fifth money laundering directive were soon under way. It might have been convenient to delay and try to do this at the same time as transposing the fourth directive. That does not seem appropriate, but if that were a reason for delay it means that convenience was given priority over parliamentary scrutiny. The European supervisory authorities managed to complete their consultation and guidance by November 2016, even though it is guidance for supervisors that they do not have to follow until June 2018. However, it helps with how to deal with risk assessment, and has already been referenced in the consultation that the FCA has launched. There is a problem in and around how you deal with assessing risk. In that regard, the Government possibly did their best by publishing the annex of factors from the directive in the regulation. However, a lot of businesses will have been left dangling, and wondering what they are going to do.

8 pm

I will say a couple of things about the Financial Action Task Force and our scrutiny of it. The task force is an informal international partnership between Governments, and accountability, such as it is, comes through Ministers. It was pointed out in the House of Lords EU Committee report on money laundering in 2009 that:

"Since the Government accept that they are accountable to Parliament for United Kingdom membership of the FATF, they should find a more systematic way to report to Parliament on FATF developments".

I would like to know how that has been followed up.

That is a very important point and one that applies to various other international standard-setting bodies, where the standards are agreed long before the opportunity for parliamentary scrutiny. If in future the UK is not involved in the various stages of consultation and scrutiny that happen through the EU process, it becomes all the more necessary for the scrutiny available to this Parliament to be taken more seriously. Unfortunately, no reassurance can be obtained from the manner in which this transposition regulation was handled, which adopted a just-in-time timetable, even if the election had not got in the way, indicating that there was no real choice in the matter.

As secondary legislation operates at the moment—we debated this last Wednesday in the Second Reading of the Sanctions and Anti-Money Laundering Bill—the Government do not tolerate rejection by this House. Instead, they escalate it to a constitutional and existential crisis. Now, in the context of Brexit, the Government have said that anti-money laundering legislation will continue to be done by regulation because FATF things have to be done fast. The evidence from 2012 until June 2017 does not bear that out. Further, in the debate on Wednesday the Minister stated that the new Bill was "power without policy". There we have it: power without policy to be made by secondary legislation.

It is also worth pointing out that the Government did not include any questions about the extension of criminal offences in their consultation. They did consult on the administrative fines that were part of the directive but did not, unless I missed it, point out the new criminal offences. This is all the more relevant if you take into account the difficulty that businesses will have in complying, which the noble Lord who spoke before me pointed out. The answer to one of his questions—what happens if businesses do not comply

[Baroness Bowles of Berkhamsted]
with having the regulations in place—is that it can be a criminal offence. That is what it says in the new regulation.

Not consulting on the new criminal offence is all the more an omission when, in March to April of this year, at the same time as that consultation, another consultation was carried out by the Ministry of Justice calling for evidence on corporate liability for economic crime. It included a question on whether it was appropriate to introduce new criminal offences by statutory instrument.

I find this Motion well founded in its subject matter and timing. I do not think that the delay was solely the result of the general election. That merely exacerbated the repressive timetable that had already been set.

Lord Haskel (Lab): My Lords, I am a member of the Secondary Legislation Scrutiny Committee, and the Minister will be pleased to hear that I will concentrate my remarks on its work. Our task is to keep the Government up to scratch so that Parliament can properly scrutinise secondary legislation. I thank my noble friend for moving this Motion, which draws attention to this work and helps us in carrying it out.

What was wrong with these regulations? I do not want to repeat everything that has been said but, as my noble friend explained, we were unhappy with both the drafting and the process. We were unhappy with the definition of a "person with significant control", and explained why that was unclear. We were unhappy with the fact that, although it was promised, there was no analysis of the consultation—this, of course, is standard practice. As my noble friend said, the impact assessment came two weeks after the regulations were laid. When it did come, there was no assessment of the value to be gained from the cost to business.

These regulations were laid in a rush. As the noble Baroness and my noble friend explained, instead of the normal 21 days between a regulation being laid and it coming into force, there were only two or three days. When we drew the Government's attention to this, we were told that it was "because of the election". However, as others have pointed out, the consultation ended in November 2016, so why the delay? If the Government want Parliament to scrutinise regulations properly, everything should be done in good time and with proper care; otherwise, Ministers will be called into account—that is what we have to do.

The committee wrote to Stephen Barclay MP, the Economic Secretary to the Treasury, about its concerns. Perhaps it was because of those concerns that, in his reply, he helpfully said that HM Treasury was instituting new proceedings and that he would become the "secondary legislation champion". That was good news, but that was in July. Will the Minister confirm that this has actually happened, because it would greatly assist Parliament in its scrutiny and the public in their understanding of the law?

The Minister of State, Department for International Development (Lord Bates) (Con): I thank noble Lords for their contributions and the noble Lord, Lord Tunnicliffe, for moving the Motion. I was in the middle of reading my notes seeking to answer the point of the noble Lord, Lord Haskel, and then realised that it was my time to speak. Perhaps he might bear with me as I quickly try to offer a response.

We can confirm that Stephen Barclay is now acting as the secondary legislation champion, as set out in his letter of 17 July to my noble friend Lord Trefgarne, chair of that committee. The new prioritisation and planning process is now operational. I will come back to some of those points, because they overlap with points made by other noble Lords, including the noble Lord, Lord Tunnicliffe, who talked about focusing more on procedure rather than on questioning the argument for the need for these money laundering regulations to be put in place.

I thank the noble Lord for bringing about this debate. I am sure noble Lords will agree that protecting the public and our economy from financial crime is vitally important and something that cannot be taken lightly. Indeed, the size of the UK's economy, our open economy and the attractiveness of the London property market to overseas investors exposes the UK to money laundering—a point made by the noble Baroness, Lady Bowles, about the importance of London. The Home Office estimates that serious and organised crime costs the UK at least £24 billion every year, which is a significant sum. I am sure that we all agree on that.

In June 2017, the Government updated their anti-money laundering and counterterrorist financing regime. In doing so, the EU's fourth money laundering directive was transposed into UK law. This was mainly through the 2017 money laundering regulations, but also through two linked statutory instruments produced by the Department for Business, Energy and Industrial Strategy. This brought the UK's anti-money laundering regime in line with the latest global standards.

The Government's overarching objective in this area is to ensure that the UK's anti-money laundering and counterterrorist financing regime is current, effective and proportionate. The money laundering regulations have made it clear to both firms and supervisors that they must take a risk-based approach, as the noble Lord, Lord Tunnicliffe, said, taking steps to avoid putting disproportionate burdens on businesses.

In terms of processes of implementation, before the directive was transposed, the Government sought views and evidence through public consultations. The noble Baroness referred to the consultation exercise and the 186 responses that were received. The responses to the autumn 2016 consultation, which was also referenced by the noble Lord, Lord Tunnicliffe, were used to inform the Government's decisions. Therefore, the draft regulations were published in March 2017.

The UK was legally obliged to transpose the directive by 26 June 2017 and meeting that deadline was imperative to minimise uncertainty for businesses that had prepared for implementation on this date. While I am not trying to suggest to the noble Baroness, Lady Bowles, that this is in any way an excuse, the Dissolution of Parliament came at a difficult time for the implementation of those directives because it was not possible to lay the money laundering regulations and the two separate but linked BEIS statutory instruments within the appropriate timeframe. That is something that we have

acknowledged in our communications with the Secondary Legislation Scrutiny Committee. As the noble Lord, Lord Tunnicliffe, noted, we were unable to lay one of the impact assessments along with the regulations. A draft was however published in September 2016, alongside the first consultation, and eight months prior to the regulations coming in to force.

I shall now address some of the key policy questions raised by noble Lords in the debate. The noble Lord, Lord Tunnicliffe, rightly pointed out that the gambling sector, except for casinos, has been exempted from the scope of the money laundering regulations. While the Government recognise that money laundering risks exist in the gambling industry, in comparison with other regulated sectors, they are lower-risk. That was confirmed by the national risk assessments in 2015 and 2017. The Government will keep that decision to exempt gambling service providers, except casinos, under review as we move forward.

On the national risk assessment that the Treasury and Home Office must produce, I can confirm that that was published on 26 October 2017. It had the benefit of input from across government and the private sector. The noble Lord, Lord Tunnicliffe, also raised the question of the different levels of consumer due diligence that firms should apply and the need to be consistent across sectors. Businesses are required to carry out risk assessments and base their level of customer due diligence checks in line with those risks. To ensure consistency across sectors, all guidance is reviewed by the Money Laundering Advisory Committee, which includes representatives from law enforcement, the Government, industry and regulators, so there is a voice to be heard there. The Treasury is also in the process of reviewing the guidance and ensuring that messaging across sectors is consistent, which I know was a concern of the noble Baroness, Lady Bowles.

On the point made by the noble Lord, Lord Tunnicliffe, about regulators and the strain on their resources, I can confirm that anti-money laundering responsibilities in the FCA, HMRC and the Gambling Commission are paid for by relevant businesses, which they supervise. The noble Lord also notes the steps that businesses have taken to comply with the regulations include appointing a compliance officer. Around 100,000 businesses are subject to the money laundering regulations and, where appropriate, based on the size and nature of the businesses, they may be required to take steps, including appointing a compliance officer. I can also confirm, as I was asked, that the money laundering regulations specifically state what mechanisms are in place if businesses fail to comply.

8.15 pm

The Government accept that we need to improve our performance and raise our game in managing secondary legislation as a coherent programme, as the noble Lord, Lord Haskel, and his committee rightly set out. I would like to assure noble Lords, the House and the committee that we are doing a great deal of work within government to improve the management of secondary legislation. This includes more central oversight as the Government align their approach to secondary legislation with their approach to primary. The Cabinet committee that oversees all primary legislation is now overseeing secondary legislation as well. There is also a focus on better management within departments, which I referred to in the letter from Stephen Barclay on 17 July.

Noble Lords will be aware that we debated the Second Reading of the Sanctions and Anti-Money Laundering Bill just last week, to which the noble Baroness, Lady Bowles, referred. That Bill will take the legal powers necessary for the Government to make, amend and repeal secondary legislation relating to anti-money laundering and counterterrorist financing once the UK ceases to be a member of the European Union. The Sanctions and Anti-Money Laundering Bill provides that post-Brexit secondary legislation relating to anti-money laundering and counterterrorist financing policy will be made through the draft affirmative procedure, which I know was debated and responded to by my noble friend Lord Ahmad in the debate last week. The only exception to this will be the secondary legislation designating high-risk countries. The approach through the Sanctions and Anti-Money Laundering Bill will therefore significantly enhance both the quality and the level of parliamentary scrutiny over the defences against misuse of the financial system. These are topics in which parliamentarians take a keen interest and it is therefore right that the government approach, following our withdrawal from the European Union, should make full use of noble Lords' knowledge and engagement.

I hope noble Lords will be reassured that the Government are taking action. We recognise the specific problems relating to these regulations and have sought to respond to them. I finish by again thanking the noble Lord, Lord Tunnicliffe, for giving me the opportunity to set out the position of Her Majesty's Government on the future performance relating to secondary legislation on these important matters.

Lord Tunnicliffe: My Lords, I thank all noble Lords who have taken part in this debate. There was a degree of loyalty and nostalgia in my moving this Motion because for one and a half hard years I was a member of what at the time was much more romantically known as the Merits Committee, although we did the same work—and it is very important work.

I thank the noble Baroness, Lady Bowles, for setting out the timetable in more detail. It is clear from her speech that the Government could have done a better job if they had planned ahead more. I also thank my noble friend Lord Haskel for bringing out the frustration felt by the committee. I hope this debate will feed back to the committee that we take its work seriously and that we will be looking more and more to its work as the role of secondary legislation emerges in much of the legislation we are anticipating.

I thank the Minister, in particular for his response on the more detailed areas. I notice that the report on gambling came out on 26 October, and I hope he was implying in his remarks that this area would be kept under review; I think he said that directly. We hope that there will be another report in the not too distant future. I note the reliance on the Money Laundering Advisory Committee, and perhaps it is unfortunate that that did not come out in the Explanatory Memorandum because this area is very important.

[Lord Tunnicliffe]

I end by referring back once again to the committee. We will be looking at its work and its output, and we will act where we feel that there are flaws in the SIs the committee brings up, and particularly where there are lapses in procedure. For the moment, I am content to withdraw the Motion.

Motion withdrawn.

8.20 pm

Sitting suspended.

Data Protection Bill [HL]

Committee (2nd Day) (Continued)

8.39 pm

Amendment 26

Moved by ***Lord Tope***

26: Schedule 1, page 112, line 10, leave out "the law relating to" and insert "for the purpose of"

Lord Tope (LD): My Lords, it is a pleasure at last to move Amendment 26. I do not think that I will detain the Committee for very long on this relatively straightforward amendment. I was alerted to concerns about this matter by London Councils, which represents the 32 London borough councils and the City of London. London Councils operates services on behalf of the London boroughs on a non-statutory basis. It is concerned about the present wording of the Bill, particularly Schedule 1 and the part to which my amendment applies, which fails to consider non-statutory services in relation to the conditions that must be satisfied to meet the exemptions set out in Schedule 1.

In particular, London Councils provides the Taxicard service, which is a non-statutory subsidised mobility service for people with severe sight and/or mobility impairments. The service currently provides around 70,000 disabled, and in many cases vulnerable, Londoners with subsidised transport, for which eligibility is determined at borough level.

When applying for the service, applicants provide special categories of data to demonstrate their eligibility. London Councils is therefore data controller and processor of such data. The Taxicard service falls within the definition of social protection and is a social protection scheme as set out in EU regulation 458/2007—however, it is delivered on a non-statutory basis. The current wording of the Bill is ambiguous as to whether services such as Taxicard would comply with the exemptions set out in the Bill. Despite fulfilling the definition of "social protection" set out in EU law it is a non-statutory service in respect of UK law. As the Bill refers to,

"the law relating to social protection",

there are concerns about the extent to which organisations such as London Councils can rely on the exemption.

Were the exemption not to apply to the scheme, London Councils would have to take measures to comply with the provisions of the GDPR. These would include periodically writing to all 70,000 members to ask their explicit consent to process their special categories of data. Given the particular cohort of members of Taxicard, it is likely that some will not understand or be sufficiently informed of the GDPR to know why they are being written to or, probably, not sufficiently capable or motivated to respond, given their underlying health conditions. In taking such measures there is a real risk that many disabled Londoners who currently benefit from the scheme would no longer be able to do so, because anyone who did not respond would have to be deemed to have withheld their consent. In such cases, London Councils would have to stop providing the Taxicard service.

I am quite certain that it is not the intention of the Government that that should happen; still less that the Bill should be the means by which it happens. I understand that London Councils met officials at the department some three weeks ago, so I hope that the Minister will be able to say, preferably, that he accepts my amendment this evening—victory is always pleasant, if unusual—but if he cannot, that he can at least give some comfort that the Government are cognisant of the problem, that they are working on it and that appropriate amendments will be made to this schedule to ensure that there is no question of any ambiguity. I beg to move.

8.45 pm

Baroness Chisholm of Owlpen (Con): My Lords, as the Minister said in responding to the previous group of amendments, in order for special categories of personal data, for example, data concerning health, to be processed, controllers must demonstrate that the processing meets one of the conditions for processing set out in Article 9. Article 9(2)(b) permits processing without the consent of the data subject where necessary for purposes of employment law, social security law and social protection law, provided that a legal basis is set out in UK law. Paragraph 1 of Schedule 1 therefore introduces the necessary processing condition.

The noble Lord queried whether the reference to "social protection law" could be removed in favour of a more general provision on social protection. I am aware that some local councils have raised concerns about whether some of the services they provide would be covered by the current wording. We are somewhat restricted by the wording of Article 9, which specifically refers to "social protection law", so limited change is allowed. Nevertheless, I can reassure the noble Lord that the term has a broad interpretation. This is because paragraph 1(3) of Schedule 1 provides that "social protection" would include any intervention described in Article 2(b) of Regulation (EC) 458/2007 of the European Parliament. I am sure all here read the regs every night, but for those who are not familiar with that regulation, Article 2(b) covers interventions that are needed to support people who may be suffering difficulties in relation to healthcare or sickness; disability; old age; survivorship; family and children; unemployment; housing; and social exclusion. Given the breadth of issues covered, I think it would be fair to say that the current wording of the clause would cover a wide range of social services interventions.

It is worth adding that social protection law is a new ground for processing special categories of data in the Bill. It was not included in the Data Protection Act 1998 as a specific category. From that point of view, it should be more helpful to social service providers

than the previous provisions in the Data Protection Act 1998 on which they currently rely.

I recognise the concern that Taxicard is a non-statutory service and therefore may not be able to use the derogation in Part 1 of Schedule 1, which uses the term,

"law relating to social protection".

As I have already illustrated, the Government's intention is to apply this derogation broadly. There is no desire to see vital services, which are often a lifeline to their clients, stopped. I am happy to take away the specific issue the noble Lord raised and to work with the Information Commissioner and her office to consider it further. I hope that reassures the noble Lord, Lord Tope, and I respectfully invite him to withdraw his amendment.

Lord Tope: My Lords, I am most grateful to the Minister for setting that out so fully and clearly. As I think I said when moving the amendment, I am quite sure it is not the intention of the Government that the Bill should have this effect, but at this stage of any legislation we always have to be particularly concerned about any unintended consequences. I will seek advice from those better able to determine such matters than I am. I am grateful to hear from the Minister that the Government are cognisant of the issue and are considering it. If necessary we can return to it at a later stage of the Bill with appropriate amendments. I beg leave to withdraw the amendment.

Amendment 26 withdrawn.

Amendments 27 to 29 not moved.

Amendment 30

Moved by ***Lord Ashton of Hyde***

30: Schedule 1, page 113, line 8, leave out "supervision" and insert "responsibility"

Amendment 30 agreed.

Amendments 31 to 41 not moved.

Amendment 42

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

42: Schedule 1, page 115, line 19, leave out "substantial"

Lord Stevenson of Balmacara (Lab): My Lords, at Second Reading I touched on the question of whether the Bill might be used as a vehicle for rehearsing some of the arguments that we have heard in your Lordships' House about the issues raised by Sir Brian Leveson in his report. I opined at the time, and am still of the belief, that this would not be the right place to put forward those amendments again, because I would favour an initiative from the other side of the House which tried to build on some of the work that was done in the run-up to the work that was done after the Leveson report was first published, which saw all party groups coming together to try and find a way forward. It seemed that we were beginning to get ourselves into a cul-de-sac on many of these issues. Although there were strong passions and strong beliefs, and good intellectual and other reasons for taking forward some of these issues, the times had changed and the climate had moved on. It was therefore important to try and think again about what would happen.

However, I also said that maybe others would take a different view of that and come forward with amendments on these and related issues. I expressed the view that, if they did, Her Majesty's Loyal Opposition would look at them on their merits and respond to them as and when they came up. This explains why we have not signed up to some of the amendments that are before your Lordships' House today.

I also said that our main concern going into Committee would be to make sure that the arrangements under which we currently operated, which were largely set out in the Data Protection Act 1998, were continued. It was very important that all concerned had confidence that the transposition between 1998 and today, and going forward to 25 May 2018, was adequate and sufficient, in terms of how we approached them in relation to that Bill. I am therefore introducing Amendment 42, which is largely a probing amendment aimed at getting Ministers on the record as to whether or not they feel that the transposition has been made fairly and effectively. To the extent that there is an addition to the existing law, as I understand that to be the case, it is in response to a particular aspect of the current regime which does not seem to work well in practice. The Information Commissioner's Office has made it clear that it feels that it could do with an additional power, which I think is provided for in the Bill, to assist with the ability to reimburse those who have been affected by actions arising from a complaint they have taken forward in relation to the press. If that is the case, I would be happy to have that confirmed. That is the reason for Amendment 42, and I look forward to hearing from Ministers how they respond to that.

In pursuit of a perfectly normal and natural wish to scrutinise the Bill as it is before us, we have two other amendments in this group. Amendment 87B was offered to us by the NUJ, and is on a question which comes up a lot when talking about intellectual property issues relating to photography—not that this is actually about that, but journalism has a common-sense meaning which is often used in language other than that of Bills to reflect all aspects of journalism, including photojournalism. But of course it is not the totality of what photographers do, so this amendment is an attempt to get on the record what Ministers believe to be the sense on page 136, in Part 5, where paragraph 24(2) states that GDPR provisions do not apply,

"to personal data that is being processed only for the special purposes to the extent that … the personal data is being processed with a view to the publication by a person of journalistic, academic, artistic or literary material".

Given the absence of the term "photography" or "photographer", I have a slightly rhetorical question, but one to which I am looking for an answer. Can I assume that the sense of that paragraph is that this would catch photographers?

If that is the case, since photography is often done in a way that would not always result in publication, could we have clarity about the situation if the photographers were to rely on this provision in relation to material? Say, for instance, they were taking a number of photographs of a demonstration, some of

[LORD STEVENSON OF BALMACARA]
which would be used but a lot would not be, and then it was felt that there was some other purpose that those photographs could be used for—that was an example given to us by the NUJ. It was concerned that the photographer should not be discriminated against, in the sense that the work of building up a personal archive of photographs taken on the job that did not result in specific publication might not necessarily fit particularly well with that. This is just a probing amendment to see what the response to that is.

The other amendment in our name in this group is Amendment 87E, relating to an issue that has been raised by others in this group. There is what I think is meant to be a transposition from the Data Protection Act 1998 to refer to the question of whether or not the public interest is engaged, and various rules and regulations around that. The notion behind our amendment is that we are not sure it is helpful nowadays for the legislation to refer in specifics to a list of codes and practices, particularly because one of those—I reference paragraph 24(5)(c)—is not correctly described. I think others will speak to this as well. Obviously there is a code of practice that editors of major newspapers have contributed to and which works reasonably well in practice, but the danger about that as an example is that it cuts out a lot of other codes of practice that could easily be mentioned there. Having them there does not seem to advance the argument, which is that the controller must have regard to appropriate codes of practice or guidelines that exist. In the event that any question is raised by the Information Commissioner or others, it is more appropriate for that to be left more general than specific. With that, I look forward to the responses. I beg to move.

Baroness Hollins (CB): My Lords, I will speak to the amendment in my name. I am grateful to the noble Earl, Lord Attlee, who has added his name in support. I will also speak in support of the amendment in the name of my noble friend Lord Skidelsky.

First, I want to explain why the Bill in its current form does not provide an adequate balance between privacy and freedom of expression, despite claims to the contrary by some parts of the media this weekend. Freedom of expression is essential to hold power to account and to expose wrongdoing, and it must be protected. However, the public also need to be protected from those who might seek to abuse such freedoms with the primary business purpose of selling newspapers.

The need for balance was recognised by Lord Justice Leveson in his 2012 report, and these amendments seek simply to implement some of the Leveson recommendations on data protection. It is worth remembering how some newspapers exploited private data in the past. Operation Motorman was a lengthy police investigation. The Information Commissioner reported on it in 2006, detailing the kinds of information that private investigators were buying unlawfully or obtaining by deception, including bank records, medical records, tax records, benefits records, phone records—thousands of transactions obtained from just one private investigator and commissioned by journalists. The victims whose data had been illegally accessed were not celebrities or public figures being investigated for genuine public interest reasons. They were just ordinary people with tenuous connections to those in the public eye: the sister of a well-known MP's partner; the mother of a man once linked romantically to a "Big Brother" contestant; the decorator who had once worked for a lottery winner; and the GP who was doorstepped by a Sunday newspaper in the mistaken belief that he had inherited a large sum from a former patient. All these were victims of data misuse, and we are still learning how widespread those practices were.

Some argue that that is history and that newsroom practices have changed since the Leveson report, but the economic pressures which drove newspapers to desperate practices before are even more acute now. Many of the same editors and senior executives are still in place, and many in this House will remember similar promises of reform made by newspaper editors in the wake of the Calcutt report nearly 25 years ago. Does the Minister agree that this time, it is our responsibility to act decisively to protect the public from the less scrupulous elements of the press?

There is an exemption in the Data Protection Act 1998 for journalism, and this is reproduced in the Bill, but the exemption as drafted effectively offers a blank cheque to publishers and would allow them to breach data rights with little protection for the public from abuse. The GDPR is clear: exemptions should be made only when they are necessary to reconcile the right to protection of personal data with freedom of expression. My amendments are designed to ensure that this balance is properly preserved. They have been drafted by a senior QC and are based on recommendations made by Lord Justice Leveson, himself an independent senior judge, after a public inquiry in which he heard evidence and arguments from all sides, including the newspaper industry. I should declare an interest here and remind the Committee that I gave evidence to the Leveson inquiry.

9 pm

The amendments would require that a publisher which has declined to be subject to recognised independent regulation must be subject to stricter standards of data protection. Publishers which have rejected independent regulation cannot be left to breach the data rights of citizens. There must be safeguards, and the amendments bring the safeguards into line with Leveson. They offer an incentive to publications to join or establish a genuinely independent and effective self-regulator, exactly as Parliament intended in its response to Leveson and when, through royal charter, the independent Press Recognition Panel was set up. Some publishers have tried to persuade us that IPSO is an independent regulator—their supporters will doubtless make the same point today—but they are wrong: it is not independent, it is entirely owned and controlled by the newspapers themselves. As the Media Standards Trust found in an independent analysis, the publishers control IPSO's rules, code of practice, budget and sanctions. Its independence is an illusion.

Amendment 87A is very straightforward. At the moment, the Bill would allow an exemption for personal data which is being processed solely "with a view" to publication. The amendment would reinforce privacy protection by requiring the processing of personal

data to be "necessary for" publication before the exemption applied. Leveson recommended that the exemption should be strengthened precisely in this way, and I look forward to the Minister's acceptance of that.

Amendment 87C would require that any breach of citizens' data rights under the exemption is proportional to the public interest. The regulation specifies that a balance must be sought between free expression and privacy rights. The amendment is necessary simply to codify that balance in the exemption.

Amendment 89B and 91A would separate those publishers which have joined an independent regulator from those which have not. Those publishers which have joined an independent regulator would retain access to the full list of exemptions as originally drafted. This is because their membership of such a regulator already provides the public with protection. Those publishers which have decided not to join a recognised regulator would have access to a restricted list.

Before anyone protests, this list still guarantees freedom of the press, safeguards investigative journalism and protects confidential sources, but it limits those publishers' ability to breach other areas of data protection law. Publishers which have rejected independent recognised regulation would lose exemptions from data protection principles 5(1)(b) and (d), which require data to be processed fairly, for legitimate purposes and to be kept accurate; article 13(1), (2) and (3), which require citizens to be notified of data obtained about them; and article 14 (1) to (4), which require information to be provided to citizens where it is acquired from a third party. The amendment, however, insists that the exemption is maintained where compliance could identify a journalistic source.

On article 15(1) to (3), which allows citizens to make subject access requests for data held on them, the amendment would retain an exemption from 15(1)(g), which allows details of a source of data to be requested, to protect journalistic sources. The publishers which had rejected independently recognised regulation would lose the exemptions under article 16, meaning newspapers would be obligated to correct any inaccurate data, and article 17(1) and (2) on the right to erasure, because a public interest exemption already exists in the article itself.

I also support Amendment 89A in the name of the noble Lord, Lord Skidelsky, to which he will speak in more detail. This would replace the code designation of IPSO's editors' code with any code adopted by a regulator which meets Leveson's criteria for independence and effectiveness; in other words, as judged by the Press Recognition Panel. It is disturbing that, as written, the Bill would deprive the independent Press Recognition Panel of its role and responsibility to approve legitimate independent regulators. I trust that the Minister will confirm that it was an oversight to name IPSO in the Bill, to the detriment of any regulator approved by the Press Recognition Panel.

This amendment puts the Press Recognition Panel back in the position of approving regulators by simply de-designating the editor's code and, instead, designating the code of any regulator which meets the Press Recognition Panel's test for approval. Should IPSO seek recognition at any point, the code it enforces would, of course, qualify and I would urge it to take those steps. Finally, the amendments in this group show the continuing cross-party support for the Leveson inquiry recommendations. I hope the Minister will agree with me on their merit and timeliness: if not now, when?

Lord Skidelsky (CB): My Lords, Amendment 89A in my name would remove the reference on page 137, line 14, to the IPSO editors' code—written mainly by newspaper editors and enforced by their own, industry-controlled regulator—and replace it with a reference to any code operated by a regulator which meets Leveson's criteria for independence and effectiveness. It is wrong, in principle, to place the IPSO Editors' Code of Practice in the Bill alongside the BBC guidelines and Ofcom code of practice, which are the approved codes of statutory bodies. Parliament has approved a procedure whereby a press regulator may apply for recognition from the Press Recognition Panel, which is an integral part of the charter system, devised by Parliament to oversee press regulation. One of the criteria set out by the panel for effective self-regulation is that the regulator,

"should be independent of the publishers it regulates".

I do not know whether the IPSO code would pass this test, because it has never been tested; IPSO has never applied for recognition. However, I doubt it, because the code is drawn up and managed by the editors' code committee, which is made up of nine editors and newspaper executives and three lay people, with the chairman as an ex officio member. What is more, that code could be changed by that particular committee of the newspaper industry any time it wants and there is nothing that Parliament could do about it. That means that it is quite wrong for the IPSO code to be singled out, for reasons of freedom and information, for the full range of exemptions to which the noble Baroness, Lady Hollins, referred. It would be quite wrong for it to get that status.

My amendment seeks to confine the media code of conduct to the BBC guidelines, the Ofcom code and any code recognised by the Press Recognition Panel set up by the royal charter to provide a credible balance between freedom of expression and the right to privacy. I hope that the Government and the whole House will give it sympathetic consideration. I am sorry that I did not consult more widely beforehand: I am trying to finish a book which the publishers are screaming for, but I should have done that. However, I hope that this amendment will receive consideration.

Earl Attlee (Con): My Lords, I am grateful to the noble Baroness, Lady Hollins, and the noble Lord, Lord Skidelsky, for speaking to these important amendments. The noble Lord, Lord Skidelsky, need not worry about not priming the House, as it were, as we are only in Committee and this is a very early stage in the process.

I am sure the Committee will agree that data protection requires the proper balancing of rights, and the amendments in the name of the noble Baroness, Lady Hollins, address that balance in the key area of journalism. Freedom of expression must include genuine public interest journalism. It must be right that journalists

[Earl Attlee]
and the media have special rights in respect of data protection. It is obvious that the media have a vital role in ensuring that parliamentarians and others in public life adhere to the seven principles of public service. That role would be frustrated if there was a general right for everyone, not just politicians, to know what, if anything, the media "had on them", if I may put it that way. These amendments do no more than strike that balance correctly: to protect public interest journalism while preventing the systemic abuse of citizens' data rights. That abuse happened at the *News of the World* most infamously, but it also happened on an industrial scale at Trinity Mirror titles and other newspapers.

However, these amendments would also achieve something further and equally desirable. In retaining the broader exemption for newspapers that have agreed to sign up to an independent regulator, these amendments, while protecting the public, would also encourage newspapers to sign up to a genuinely independent regulator. Your Lordships will recall that in 2013, we voted in support of implementing the Leveson recommendations to provide an incentive for newspapers to sign up to an independent regulator. This was the system the former Prime Minister, David Cameron, recommended to Parliament, which was signed up to by all major parties in Parliament at that time. That system came with incentives because Leveson was not naive enough to believe that newspapers would sacrifice control over their own regulator without those incentives, and neither was this House. It is extremely regrettable, therefore, that the Government have so far not commenced Section 40 of the Crime and Courts Act, which was passed by this House to provide the most critical of those incentives.

The former Prime Minister, Sir John Major, warned at the Leveson inquiry that there was a serious risk of one party breaking ranks on press regulation policy. Making policy sacrifices to the press is a temptation that afflicts Governments of all colours, of course. However, I hope that the Government will recognise the strength of feeling in this House. This amendment would add to the work of the incentive passed by this House in 2013: it would incentivise newspapers to sign up to an independent regulator while still protecting the public.

I turn to the amendment in the name of the noble Lord, Lord Skidelsky. The proposed designation of the editors' code is very odd indeed, first, because the Bill names an NGO in primary legislation which might not necessarily exist even next week. Of course, I can fully understand why it would not be appropriate to have the Secretary of State designate a regulator. It would smack of state regulation of the media, which we all want to avoid. Secondly, however, it is because the Crime and Courts Act and the royal charter combined already provide a mechanism for ensuring that any press regulator is genuinely independent and effective. I therefore support the amendment in the name of the noble Lord, Lord Skidelsky, which would replace the code used by IPSO with that of any regulator which was approved by the Press Recognition Panel under the royal charter. Of course, that could include the code of IPSO, if it reformed itself to pass the modest Leveson tests for independence and effectiveness. Clearly, Parliament put the Press Recognition Panel—the independent panel free from politicians and the press—in the sole position of judging the independence and effectiveness of press regulators. The Government should not seek to override their role by specifying the editors' code in this manner.

Finally, I make it clear that I have already written formally to my noble friend the Chief Whip, indicating that I will vote in support of these amendments on Report if there is a Division. Tonight, however, we should confine ourselves to having a thorough discussion about them.

9.15 pm

Baroness O'Neill of Bengarve (CB): My Lords, I add my voice to those of my noble friends and the noble Earl, Lord Attlee. We sometimes forget that in talking about an approved regulator, we do not mean that the Press Recognition Panel is a regulator; it is an audit body—an auditor of self-regulating bodies. The press requires self-regulation, but which meets a standard in which members of the public can have confidence. They can have confidence if the process that we have already agreed of setting up a self-recognition panel is used. It is of course open to IPSO to apply for recognition by that process, remaining self-regulating but recognised, as it is open to other self-regulating bodies to be recognised in that way. This is a satisfactory way of accommodating the interests we all have in having media that are self-regulating but also meet standards.

Lord Black of Brentwood (Con): My Lords, I declare an interest in this group of amendments as executive director of Telegraph Media Group and draw attention to my other media interests in the register.

When I saw, not with a great deal of surprise, that this group of interlocking amendments relating to press regulation had been tabled—perhaps their second or third outing in as many years—I was reminded fleetingly of that famous line of President Reagan to Jimmy Carter in a presidential debate: "There you go again". That is what this feels like. We have another Bill—with only the most tangential link to the media—and yet another attempt to hijack it to bring about some form of statutory press control. As the *Times* put it last week:

> "The Data Protection Bill is meant to enhance protection of personal data. It is not meant to be a press regulation bill by another name".

But this profoundly dangerous set of amendments seeks to warp the Bill in just that way.

Can we please be crystal clear about the impetus behind these amendments? It is certainly nothing to do with data protection. It is to try, yet again, to force the British press—national papers, regional and local papers, and magazines: in other words, everything from the *Guardian* and the *Daily Telegraph* to the *Birmingham Mail*, the *Radio Times* and *Country Life*—into a state-sponsored regulator, with virtually no members and no prospect of any, and almost wholly funded by the anti-press campaigner Max Mosley. Indeed, it is the very same regulator which was recently brought into disrepute when an internal report found that its chief executive and two members of its board

had breached internal standards by distributing tweets attacking major national newspapers and journalists. These amendments try to do that by seeking to remove vital journalistic exemptions enshrined in the GDPR from all those who will not, on grounds of principle, be bullied into a system of state-sponsored regulation. Other amendments seek to remove the protection for freedom of expression, which has worked very well in the Data Protection Act 1998, to balance convention rights and make privacy in effect a trump card.

Let us be clear: the amendments would be a body blow to investigative journalism—at a time when, as we have seen in recent days and weeks, it has never been more vital—by giving powerful claimants with something to hide the ammunition to pursue legal claims and shut down legitimate public interest investigations into their activities even before anything is published. All UK news operations, none of which will under any circumstances join Impress or any body recognised by the Press Recognition Panel, would find themselves under incessant legal challenge, with a profound impact not just on investigations but on news, features and even the keeping of archives. In my view, it is no exaggeration to say that that would overturn the principle that has underpinned free speech in Britain for two centuries: that journalists have the right to publish what they believe to be in the public interest and answer for it after publication—a right upheld by the courts here and all the way up to the European Court of Human Rights.

The protections which make investigative journalism possible would in effect be enjoyed by only a handful of hyper-local publishers which have signed up to a state-backed regulator. Are the noble Lords in whose names these amendments stand really content to see the future of investigative journalism in this country invested in *The Ferret* or insideMoray, rather than in the teams from the *Observer*, the *Liverpool Echo*, the *Scotsman* and the many others which over the years have broken story after story in the public interest? Frankly, if this were not so deadly serious, it would be funny.

If these amendments ever found their way into this legislation, it would be not just a massive blow for investigative journalism and public interest reporting but a further knock to our international reputation as a beacon for press freedom. No other country in the free world has a system such as the one proposed here, where publications are bullied by politicians into some form of state-backed regulation.

It is six years since the Leveson inquiry took place. In those six years, the world has changed—not just in terms of the commercial position of newspapers and magazines, many of which now fight daily battles simply to survive, but also in terms of strong independent regulation. It is time that we moved on too, and I am very pleased that my party has done so by committing itself to the repeal of Section 40.

This Bill is very carefully crafted to balance rights to free expression and rights to privacy, which of course are of huge importance. It recognises the vital importance of free speech in a free society at the same time as protecting individuals. It replicates a system which has worked well for 20 years and can work well for another 20. To unpick it in the way that this set of amendments tries to do, making so much public interest reporting impossible, is grossly irresponsible, and I hope that the Committee will reject it.

Earl Attlee: My Lords, my noble friend has made a very interesting speech, which is very helpful to the Committee, but it would also be helpful to the Committee if we could understand what it is in the requirements of the Press Recognition Panel that makes it impossible, or makes IPSO unwilling, to meet those requirements. What is so difficult about becoming an approved regulator?

Lord Black of Brentwood: My Lords, it is not a question of meeting the requirements of the Press Recognition Panel. It is my belief that IPSO probably would meet the requirements. It is a fundamental belief that self-regulation cannot be self-regulation if it is approved by a state-run body. The Press Recognition Panel was set up by royal charter, which is a method of state regulation in all but name, and the press will not and cannot—and in my view absolutely should not—submit itself to something that has state backing in that way.

Earl Attlee: My Lords, that is extremely helpful to the Committee but I still do not understand how the state and government Ministers would be able to influence the work of the Press Recognition Panel.

Lord Black of Brentwood: My Lords, the Press Recognition Panel was set up by royal charter, underpinned by legislation in this House, legislation to which I was fundamentally opposed. The Press Recognition Panel was set up—I forget the exact figure—with £3 million of taxpayers' money. It is a state-run body. To have a state-run body which in some way recognises a system of self-regulation negates the whole concept of self-regulation.

Earl Attlee: The noble Lord, Lord Black, is being very helpful. The courts are supposed to be independent and they are, but they are funded by the state as well.

Lord Black of Brentwood: My Lords, I am going to give way to judicial friends who are probably waiting to speak and will be able to deal with the question about the courts better than I can.

Lord Lester of Herne Hill (LD): I remember Lord Campbell of Alloway once saying to me, "Never make a serious point after the dinner hour". I think I now understand what he meant. I am in some difficulty, because my noble friends have not moved Amendment 88. I was hoping to make a speech explaining why I profoundly disagree with Amendment 88. Even given the flexibility of the rules of procedure of the House, I am not sure that I can do that until one of them moves Amendment 88. I am going to give them the opportunity of doing so.

Lord Skidelsky: The noble Lord, Lord Black, paints an incredibly rosy picture of the state of press regulation in the last 20 years. What he ignores is the background to the Leveson inquiry itself and the statutory system—the royal charter and so on—which followed it. There were years in which many newspapers grossly abused their freedom of speech. That is why this interlocking

[LORD SKIDELSKY]
set of propositions, as he calls them, got going and produced a system which all the parties in Parliament accepted in 2013. He says that no other country in the world has a system like ours. No other country has had such an abusive press in parts, though not all the press by any means. These amendments seek to create a balance between freedom of speech and the right of privacy by setting up an auditor to determine how that balance is kept. It is an independent auditor, not part of the Government or the state. The noble Lord, Lord Black, seems to confuse the role of the state with that of an independent auditor, so the argument falls to the ground.

Lord McNally (LD): My Lords, so that my noble friend Lord Lester can come in in due order, I will speak to Amendment 88. I also draw the Minister's attention to Amendment 91, which relates to the City. It is clear from the ICO guidance that journalistic exemption was intended to apply to non-media companies, but this is not made explicit in the Bill. In addition, the Bill does not address whether material can be considered published if it is behind a paywall, or mainly addressed to corporate subscribers. That is the thinking behind Amendment 91. We were discussing earlier the concerns of some in financial services and companies such as Thomson Reuters about how the Bill affected them, and that is my probing for them.

I would like to speak to Amendment 88. I was one of the four privy counsellors who signed off the royal charter. I was in government when this went on. It was not an attempt by government to regulate the press. In fact, the coalition Government twisted and turned to try to find ways of taking this forward, as far away from state regulation as we possibly could.

9.30 pm

I always like to hear the noble Lord, Lord Black, in full flow and we had the lot: hijacking the Bills, state-sponsored legislation, an attack on principle and bullying. As the noble Lord, Lord Skidelsky, said, Leveson did not come out of a clear blue sky. It is now more than 25 years since the then Minister, David Mellor, warned the press that they were drinking in the last-chance saloon. But it has always been the feeling of the kind of media that the noble Lord, Lord Black, represents that they just have to dig their heels in and refuse to do anything, because the fuss will die down and the politicians will lose their nerve and back off. As somebody who believes passionately in press freedom, I say to the noble Lord that that policy approach—the feeling that the press can turn back any reasonable proposal and in the end be successful—is an extremely dangerous one. Last June, had the general election campaign gone on another month, the press might have had to deal with Mr Tom Watson as Secretary of State. The idea that the press will inevitably have a Conservative Government and that that Government will do its bidding is a high-risk strategy for any sector.

One has to say it is true that the Conservative Government have reneged on the clear promise they made to see through part 2 of Leveson, which would have dealt with data. It is six years since Leveson but, my goodness, in six years the importance of data and how it is handled has grown ever more important, as this Bill illustrates.

One thing on which I agree with the noble Lord, Lord Black, is that the past few days have reminded us just how important a free press is, given the scandals around Westminster and tax avoidance. However, Leveson came out of massive violations of public trust; the noble Lord, Lord Black, and his friends seem to show no sense of remorse for or understanding of that. Here, I must pay tribute to the noble Baroness, Lady Hollins, who, over a number of years, has shown great courage and fortitude in sticking to her principles on these issues.

There is another thing that sticks in my mind. I remember when Rupert Murdoch was before the committee. He said that it was the "humblest" day of his life, which I always thought was a slightly strange choice of words—he did not say "humbling" but "humblest". But then I understood: what really happened was that he weathered the storm, went back and, like the Bourbons, learned nothing and forgot nothing. There is no guarantee that the press will not behave as badly again. IPSO was set up in the same old sweetheart format as its predecessors. As I said, the Conservatives reneged on their promises about the second part of Leveson. Then, almost to add insult to injury, they put IPSO in this Bill rather than the recognised regulator.

I know my noble friend Lord Lester is going to say how sad he is that he cannot support us on this, but what I want is some sense from the noble Lord, Lord Black, and his friends that they have to move. This issue will not go away. The sense of outrage will not go away. The sense that they have got away with it again will not go away. The idea that the only kind of press regulation that we can have is the kind that is determined by the owners of the press is an insult to the intelligence of the British people, and an underestimate of just how appalled and outraged they were by the things that came out during the Leveson inquiry.

I therefore say to my noble friend Lord Lester, who I know has great influence in these matters: instead of always castigating us for attacking the freedom of the press, could he use some of his eloquence to persuade the noble Lord, Lord Black, and his friends to move towards what the noble Lord, Lord Stevenson, said? Influential people in all parties have been willing to put their hands to trying to find a compromise—a system that would work and have credibility, and give some satisfaction to the noble Baroness, Lady Hollins, and those who have been damaged and hurt by the abuses of the press.

Today, I had a letter from the Press Regulation Panel, which with all good organisation, I cannot find in my papers. The Press Regulation Panel stands ready to work for such a solution with all the best intentions in the world: not to have a state-regulated press, but to have something that gets that balance right between privacy and press freedom, privacy and freedom of speech. My noble friend Lord Lester has written a very good book about five freedoms. The two freedoms put side by side are privacy and freedom of speech. But as it is now, that balance has not been reached. The noble Lord, Lord Black, has not moved an inch

this evening. I can only say, as I said before, that this issue will not go away; not because people want to hijack Bills, but because from the media there is no repentance, no remorse and no realisation that there is still a great public demand to see them mend their ways.

Lord Lester of Herne Hill: My Lords, I wonder whether it might be helpful for me to begin by trying to find what we can all agree on and then look at what we cannot agree on. Everyone here, I am sure, will agree that the right to freedom of speech and the right to freedom of the press are essential foundations of a democratic society. Everyone would agree that the proper functioning of a modern participatory society requires the media to be free, active, professional—I underline the word "professional"—and inquiring. That is why the courts recognise the cardinal importance of press freedom and the need for any restriction on that freedom to be proportionate and no more than is necessary. As a great American judge once put it, one should not burn the house down in order to roast the pig.

Everyone would also agree, including the noble Lord, Lord Black, that freedom of expression and press freedom are not absolute rights; they carry responsibilities. The fate of the *News of the World* and the journalists convicted of gross abuses of privacy are examples of the need for effective regulation of the press and a fair balance between competing rights and interests. The way in which the family of the noble Baroness, Lady Hollins, was treated by the press was completely disgraceful and I am not surprised that ever since, she has pursued these issues with courage and determination. That does not mean that she is necessarily right, but it does mean that we should acknowledge that she and her family are real victims of real press abuse.

My noble friend Lord McNally will remember, since he and I made the Defamation Act 2013, how that Bill was hijacked in the House of Lords in order to try to coerce the press into what is now seen as a desirable system of regulation. Members of the House will remember that the Prime Minister refused to allow progress to be made on the then Defamation Bill until it was no longer taken hostage. What happened was that a deal was done, with Oliver Letwin as the broker, I think, to try to reach a compromise between the conflicting interests of privacy and free speech. Hacked Off got into the room without the press being represented and the result was the striking of a bargain that the press was profoundly opposed to. It was profoundly opposed to it because of the swingeing penalties by way of punitive damages and arbitrary costs rules as a punishment for the press if it did not join the system that was seen to be post Leveson. The reason why the press did not follow that path was that, among other things, it was advised by the noble Lord, Lord Pannick, and by me that it would be entirely unlawful for the press to be subject to arbitrary costs rules so that even if the press won, it would be liable to pay the other side's legal costs and punitive damages. The noble Lord, Lord Pannick, advised in particular, and I agreed with him, that these were clearly contrary to the European Convention on Human Rights.

It is not true, as my noble friend Lord McNally seems to think, that nothing then happened, because something major did happen. The press barons who had for years been negligent and I would say stupid in opposing effective press regulation through the Press Complaints Commission, which was a useless and toothless regulator, realised in the end that the writing was on the wall. They appointed Sir Alan Moses, a very independent Court of Appeal judge, to become chairman of the Independent Press Standards Organisation. IPSO tackles media abuse. Although I know that not all agree, it is the independent regulator under a very independent chair for the newspaper and magazine industry in the UK. It regulates more than 1,500 print and 1,100 online titles. It handles complaints about possible breaches of the editors' code. It gives guidance for editors and journalists. It advises about the editors' code and it maintains a journalists' whistleblowing hotline. Members of its staff are available to advise the public, complainants, editors and journalists, and it monitors its members' compliance with the editorial code. It also carries out standards investigations where it believes that there have been serious and systemic breaches of the code.

Amendment 88, spoken to by my noble friend Lord McNally, would remove the reference in Schedule 2 to the IPSO Editors' Code of Practice as a code of practice to be taken into account in determining whether it is reasonable for the controller to believe that publication is in the public interest. It would leave reference to the BBC Editorial Guidelines and the Ofcom Broadcasting Code, but make it more difficult for a publisher governed by IPSO to defend itself by relying on IPSO's professional code.

9.45 pm

Amendment 89A, in the name of the noble Lord, Lord Skidelsky, like his original amendment, would in effect insert the Impress standards code. The noble Lord is a distinguished economic historian and biographer of Keynes and others, including Oswald Mosley. Impress is funded mainly by Oswald Mosley's son, Max, and is supported by the Hacked Off celebrity movement; it is not supported by any national or regional newspapers. I should declare a professional interest, because I represented the *Guardian*, intervening in Max Mosley's case in Strasbourg, where the noble Lord, Lord Pannick, failed to persuade the European Court of Human Rights of Max Mosley's bizarre claim that the protection of personal privacy required the media to be bound to notify the victim in advance so that the victim could always get an injunction or prior restraint.

Lord Skidelsky: I wonder how relevant all those last bits are to the subject we are discussing.

Lord Lester of Herne Hill: The relevance of what I have just said is that Max Mosley, who funds Impress, is fanatical in his desire for a privacy law that involves prior restraints. That simply indicates a complete lack of balance in his approach.

Lord Skidelsky: I have one more question. I thought we were discussing the substance of the argument, not the personalities of the people who may support one side or the other.

Lord Lester of Herne Hill: I was not discussing personalities, but what happened in the case in Strasbourg. I was about to say that, ironically, the Strasbourg court of human rights had regard to the editors' code in the course of giving its judgment, so it certainly regarded the old editors' code as relevant for that purpose.

The Explanatory Notes to the Bill state:

"Article 85 of the GDPR requires Member States to provide exemptions or derogations from certain rights and obligations in the context of processing personal data for journalistic purposes or the purpose of academic, artistic or literary expression".

The notes go on to explain how that works. Article 10 is engaged, as there is an inherent tension between data protection and the right to freedom of expression. The Government were right to recognise those inherent tensions, which are not new. Personal data is about private information. I am reliably told that those public figures who wish to keep their private information away from inquiry now, as a matter of course, use data laws to protect publication in newspapers. If the correct balance is not struck, the ability of the press to act as a watchdog will be impaired to the detriment of democracy. Investigations, such as those into sex grooming, will become more difficult to publish.

The exemptions in Part 5 of Schedule 2 to the Bill are not new. They carry forward similar provisions in the Data Protection Act 1998. There is no good reason to amend them to the detriment of IPSO titles. It would be punitive to do so. Article 88 treats the majority of the print media, regulated by IPSO, less favourably than the BBC, broadcasters regulated by Ofcom and, if the amendment of the noble Lord, Lord Skidelsky, is accepted, members of Impress. That would mean that members of IPSO would be unable to rely on their compliance with the editors' code—to which they are bound by contract—in their defence. It is difficult to understand the justification for this form of discrimination against editors and journalists working for our national and regional newspapers.

Lord McNally: I do not know how many more pages my noble friend has of this. Somewhere in it must be the recognition that IPSO has not applied for recognition, which would have given it all the protections he is calling for. He does not do himself a service. One of the reasons why people get irritated by the lawyers in this House is that they think that if they make a long enough speech it must be so and only the wicked would disagree. The reason why IPSO would be under threat is that it has not sought recognition. He gave a long list of IPSO's supposed strengths. It is a sweetheart organisation. It is run by the newspaper owners. That is what we are trying to move away from.

I have now found something on the independent overseas press regulation. David Wolfe QC has said that it is disappointing that there continue to be attempts to prevent the recognition system working and that it is frustrating that Section 40 of the Crime and Courts Act has not been commenced. I would be a lot more impressed with my noble friend if he got behind that, or at least gave his friends in IPSO some really good advice and asked them to try to find a way forward with press regulation, instead of giving them an absolute veto on seeking a solution to this matter. I have finished—for the time being.

Lord Lester of Herne Hill: My Lords, I have tried to explain that the objection to the post-Leveson deal was that it was punitive and unfair. That is why the press chose, as is its right, not to be part of it. It chose instead a system of self-regulation with a very independent Court of Appeal judge, who, when he took office, made it clear that he would insist upon the system working properly and independently, as he has ever since. It is true that he has had to struggle against resistance by some newspapers, but that is the system we have.

Baroness Hollins: The noble Lord's support for IPSO as being substantially better than the PCC is surprising. It has done no standards investigations, issued no fines and made no front-page corrections. I do not understand how that can be seen as regulation.

The noble Lord described Hacked Off as a movement set up to support celebrities. It was actually motivated by the Dowlers and sustained because of concerns about people like the McCanns and Christopher Jefferies. It is not about celebrities. Celebrity money has provided some of its support because they were motivated by hearing about those appalling abuses. That is what it is about.

All my amendments would do is incentivise a regulator to seek approval of its independence. Why will IPSO not seek approval and recognition of its independence? Why is it so afraid? Is it because it is not independent?

Lord Lester of Herne Hill: My Lords, I am not here on behalf of IPSO; I am not counsel for IPSO. I have simply tried to explain historically why we are where we are and the arguments the press made in the past that I was party to at the time, as was the noble Lord, Lord Pannick. If there are points to be made about the way in which IPSO works, no doubt they will be made by Members of the House. I stand corrected by the noble Baroness, Lady Hollins, who reminds me that it was not only celebrities who were abused, which is completely true.

What I am trying to say is that no democracy in the world has a system of press regulation that has been formulated post Leveson. It is objectionable to our national and regional newspapers. They will not change and suddenly agree to a different system because of anything which your Lordships say or do. It is a free press and the sensible thing to do is to make the system work. I believe that under Sir Alan Moses it is working, but if it is not working sufficiently, I am sure that they would be interested in any suggestions. It is hopeless if your Lordships believe that you can bully them into giving up their self-regulation in favour of the statutory system which they reject.

Earl Attlee: The noble Lord has been very helpful to the Committee. He told us what the disadvantages would be for a media operator if they were not signed up to an approved regulator. Can he tell the Committee what the advantages would be for a media operator if they were signed up to an approved regulator?

Lord Lester of Herne Hill: I do not understand the question. It depends on which regime we are talking about. Right now, there would be no advantages.

Lord Skidelsky: I have never heard a more absurd argument than that we can trust IPSO because Sir Alan Moses is chairman of it. Sir Alan is an admirable person; he is personal friend. How long is he going to be chairman? Who is the next chairman going to be? What about the independence of the editors' code? The code may be fine at the moment, but it can be changed any time the committee decides without Parliament having any say in it at all.

Lord Lester of Herne Hill: I have been very careful not to traduce Impress or Max Mosley, nor will I seek to defend Alan Moses. We are not concerned with individual personalities; we are concerned with a political problem.

Lord Skidelsky: With great respect, we are concerned with the permanence of arrangements set up and put into primary legislation. The chairman of IPSO is not there for ever, and the code can be rewritten whenever the committee decides to do so.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, of course, we appreciate the contributions from all sides of the Committee on this issue, but let us be clear: this Bill is about data protection—it is not about press regulation. It is not about distinguishing between journalists, nor between the regulators they may or may not belong to.

The Government are committed to defending not only hard-won liberties but the operation of a free press. That is a fundamental principle of any liberal democracy. This Bill seeks to preserve the balance found in the 1998 Act, where journalists can process personal and special categories of personal data, but only when their processing is in the public interest and the substantial public interest respectively. The Bill also seeks to ensure that journalists are exempt from compliance with certain data protection requirements where to do so would undermine the operation of a free press, a key part of a strong and effective democracy where Governments are held to account and corruption and criminal behaviour can be challenged. No one seeks to condone the past misbehaviour of individual media organisations, nor to legitimise it.

Amendment 42 is moved by the noble Lord, Lord Stevenson. As we discussed last week in reference to Part 2 of Schedule 1, there is an exhaustive list of the types of processing which could be in the substantial public interest. When the Government consider that processing of a particular type will not always be in the substantial public interest, the Bill makes it a requirement that the data controller satisfies himself that any particular instance of processing is in the substantial public interest. Amendment 42 concerns the condition allowing journalists to process data in connection with unlawful acts and dishonesty, as dealt with in paragraph 10. The Bill, however, needs to balance freedom of expression with privacy and it may be that in some cases an act of dishonesty is not important enough and does not engage the substantial public interest to the extent that it justifies the processing of sensitive data by journalists. That is why the distinction is made.

To pick up on a point made by the noble Lord, Lord Stevenson, about continuity of arrangements in the 1998 Act, this processing condition is the same as that which currently appears under the existing Data Protection Act. It would appear that journalists have been dealing with that effectively and making the appropriate judgments for the last 20 years. I hope that that goes some way to explaining why we resist Amendment 42.

On Amendment 87B, I reassure the noble Lord that the specific inclusion of "photographic material" in paragraph 24(2)(a) of the schedule is unnecessary. This is because photographic material is likely to fall within one or more of the categories listed in that paragraph—for example, journalistic material or artistic material. We suggest that there is no requirement for express reference to photographic material. As for the point that was raised with the noble Lord by the NUJ, I think, about the use, the test is,

"with a view to publication".

As long as that test is met, it does not necessarily follow that there must have been publication in order to legitimise the material in question. The position would, of course, be radically different if one had regard to one of the amendments moved by the noble Baroness, Lady Hollins.

Amendment 87E would remove the list of codes and guidelines in paragraph 24 of Schedule 2 that help controllers assess whether a publication would be in the public interest for data protection purposes and would replace it, as I understand it, with the term "appropriate codes". I confess that I am a lawyer, to respond to a point made by the noble Lord, Lord McNally, or at least it is alleged that I am. That would certainly make it more difficult, as a matter for interpretation, for both publishers and the Information Commissioner to evaluate whether the publication of an individual's personal data was in the public interest. Indeed, rather than the clarity of a list, one could instead be faced with years of potential litigation before an adequate body of case law was in place to establish what was appropriate. That is why we suggest it is appropriate that there should be a specific list, as reflected in the current legislation, the 1998 Act.

Amendments 88 and 89A concern the specific industry codes listed in the Bill. I start by saying that the codes currently listed in the Bill reflect those that are listed in the existing legislation. The editors' code listed in the Bill—now enforced by IPSO rather than the Press Complaints Commission, I acknowledge —is one of these, and the Information Commissioner has already reflected this change in her current guidance on Section 32 of the existing Act. That follows from the Data Protection (Designated Codes of Practice) (No. 2) Order 2000, which set out the various codes of practice and included the editors' code of practice. While there is a suggestion that the editors' code of practice might change, in the light of any such change the Information Commissioner's view and guidance as to the applicability of that code may also change. So it is not as if it is entirely without control.

Lord Clement-Jones (LD): The Minister said that it could change, but the word IPSO is actually in the Bill, so I do not quite understand the point that the Minister has just made.

Lord Keen of Elie: Let me elaborate on the point for a moment to make it clear. IPSO did not exist in 1998; the editors' code did and therefore the editors' code was incorporated as such by reference to the 1998 Act and the 2000 order. The relevant editors' code is now known as the IPSO code. It is essentially the same code, as I understand it. I see that the noble Lord, Lord Stevenson, is shaking his head on this point, but it is essentially the editors' code that is now incorporated within the IPSO code.

Lord Stevenson of Balmacara: I could not resist jumping up. I think the nub of the argument is the four letters IPSO. It is an editors' code. IPSO is a separate body. I think there would be less concern if it were just simply the editors' code because we understand what that is. That would be the right reference, but I think we will return to this later.

Lord Keen of Elie: The terms of the editors' code are now referred to as the IPSO code, but I take the noble Lord's point and I will take away and consider whether there is any material issue about using the designation of that code in the schedule. However, it is, with respect, essentially the editors' code as it was originally recognised. As I understand it, that is reflected in the Information Commissioner's current guidance under reference to Section 32, which is why it appears in the schedule in the form that it does.

Lord Lester of Herne Hill: I shall be corrected in due course if I am wrong, but I think the position is that the editors' code was the code that was formulated under the PCC, and then when Sir Alan Moses became chair of IPSO the code was then amended to strengthen it—but I shall be corrected if that turns out to be mistaken.

Lord Keen of Elie: The noble Lord is quite right that it had its origin as the editors' code before the PCC, but I am reflecting the fact that the Information Commissioner, being aware of the genesis of that code and its approval, has, as I understand it, under current guidance under reference to Section 32 of the existing Act acknowledged it as a relevant code. It seems to me that we may be arguing around designation rather than content, and I will give further consideration to the question of designation.

Removing that code—I will call it "that code" for present purposes—as proposed in the amendments would be a quite extraordinary step. Whatever one might think of IPSO, we should recognise that it has more than 2,500 members, including most of the major tabloids and broadsheets. Removing the code from the Bill would therefore remove protections for the vast majority of our press industry and cause significant detriment to what is a free press.

No codes adopted by a Press Recognition Panel-approved regulator are listed—and of course there is only Impress in that context. Under current legislation the Information Commissioner's guidance on Section 32 does not include that code. That does not mean that such a code cannot be included in the future. However, before amending the list of codes, the current and proposed legislation makes it clear that the Secretary of State must consult the Information Commissioner. The self-regulator Impress has applied for its standards code to be included in the schedule, and the Secretary of State is currently considering that application—but in due course, once she has considered the application, she will have to refer to the Information Commissioner and consult her about that application.

I should also emphasise that the current list of codes, allowing for the point about designation, does not represent an endorsement of any one press regulator over another. This is about ensuring that the codes listed are appropriate, having regard to the need for data protection.

It is also worth noting that the exemption the Bill provides to those processing data for special purposes will be available to all journalists where the criteria set out in paragraph 24(2) of Schedule 2 are met. Where a publication is subject to one of the listed codes of conduct, it must take that code into account when determining whether publication is in the public interest. However, although the commissioner's current guidance emphasises that compliance with industry codes will help demonstrate compliance, those publications that are not subject to a code are not somehow excluded from qualifying under the relevant exemptions, if they meet the three-part test in paragraph 24.

I appreciate that the intention of Amendment 91 is to ensure that we interpret the notions relating to journalism broadly and, in doing so, protect the right to freedom of expression. However, there is no requirement for this amendment if one has regard to Clause 184, the relevant interpretation clause, which makes it clear and underlines that material need be available only to a section of the public, and that would include those who subscribe by way of a fee for particular access to material. So these exemptions will extend to the sort of body that was referred to by the noble Lord in relation to Amendment 91. If anything, there is duplication, because we have not only paragraph 24(9), which refers to the public and a "section of the public", but Clause 184, which defines the public by reference to, and includes, a section of the public. I believe that there was an earlier proposal to take paragraph 24(9) out in order to avoid that duplication.

I turn to the amendment tabled by the noble Baroness, Lady Hollins, and supported by my noble friend Lord Attlee. Article 85 of the GDPR requires member states to reconcile the right of protection of personal data with the right to freedom of expression and information, which is of course embraced by the European Convention on Human Rights. Although like, clearly, other Members of the Committee, I have great sympathy for the noble Baroness's own experience, I firmly believe that the Bill strikes the right balance in reconciling these interests and aligns with the requirements of the regulation.

By contrast, the proposed amendments seek to reset that balance, so that the right to personal information privacy trumps that of the right to freedom of expression and information. This would be inconsistent with Article 85, which recognises the special importance of freedom of expression and provides a wide power to derogate from the regulation for processing for the special purposes. That point was elaborated by the

noble Lord, Lord Lester of Herne Hill, when he underlined the importance of the freedom of the press in this context.

Amendment 87A seeks to amend the journalistic data protection exemption to make it available only where the processing of data is necessary for publication, rather than simply being undertaken with a view to publication. I fear that this does not reflect the realities of how journalists work and how stories, including the most sensitive and important pieces of investigative journalism, are put together and published. A journalist will not know what is necessary until the data has been gathered, reviewed and assessed.

Amendments 87C and 87D relate to what factors the controller must take into account when considering whether publication of data would be in the public interest. The amendments would remove the requirement on the controller to take account of the special importance of the public interest in freedom of expression and information, and make the exemption available only where, objectively, the likely interference with privacy resulting from the processing of the data is outweighed by the public interest.

Controllers already have to consider issues of privacy when considering the public interest. But this amendment goes too far in saying that public interest can be trumped by privacy, weighting the test away from freedom of expression. This is again contrary to Article 85, which requires a reconciliation of these rights. I understand the noble Baroness's intent here, and the harm that she seeks to prevent, but the rebalancing that she suggests goes too far.

Finally, Amendments 89B and 91A aim to narrow the exemptions for journalists who are not members of an approved regulator as defined by the Crime and Courts Act 2013. Fundamentally, these provisions are about protections that journalists should be able to legitimately rely on in going about their important work. We should view these clauses through that lens—as vital protections that give journalists the ability to inform us about the world in which we live and to effectively hold those in power to account.

The Government do not condone the past behaviour of individual media organisations, nor, as I noted earlier, do we seek to legitimise it. Equally, though, we do not think the problems that Sir Brian Leveson and others have identified can, or indeed should, be fixed through the medium of data protection law. Indeed, the Government feel strongly that these important protections for journalists should be maintained.

We must strike the right balance in reconciling the right to privacy with the right to freedom of expression and information. I hope I have gone some way towards explaining how the Bill seeks to do that. I hope I have addressed the concerns that have been expressed through the amendments, and I urge noble Lords to withdraw them.

10.15 pm

Lord Stevenson of Balmacara: My Lords, this has been a very interesting debate. It has lasted one hour and 25 minutes and there is a little more to go. The hour is late and I do not think one wants to rush to judgment on the many important things that have been said today. As I am sure many other noble Lords do when faced with such an intense and important debate, I want to reflect a little on it, read what it looks like in *Hansard* the next day and then form a view on it. However, I shall share one or two things with the Committee that come to my mind and I think we should take away from this.

Of course this is about the balance between privacy and freedom of expression. It was interesting that the noble Lord, Lord Black, was at pains to point out in his intervention that he did not think there would be any country in which the sort of systems that are discussed in some of the amendments here took place. I ask him: is there a country that he would be happy to live in that did not have a statutory protection of privacy and freedom of expression, however well balanced and proportionate that would have to be? The answer would be very interesting.

My memories from this will be of the long campaign that the noble Baroness, Lady Hollins, has fought to try to get this troubled area of our law into better shape. The perhaps reluctant speech by the noble Lord, Lord McNally, in opening up the way for the noble Lord to debate issues relating to earlier approaches to this area, struck home for me. I thought it was a powerful intervention and one we should think hard about.

My ultimate feeling about this is that we may be talking about the very narrow issue of data processing in relation to journalism, but of course it engages all the issues that arise from any decision that we make about the balance between privacy and freedom of expression. As I tried to demonstrate in the discussions on day one of Committee, if there were better protections between a right to privacy and the right to freedom of expression than there currently are in the Bill, maybe this would be an easier process, but they are not there yet. We need some movement here. The genuine offer that I made to the noble and learned Lord to try to find common ground on this and move forward, which was picked up by others, seems to have been rejected. That is sad, and we will not get very far if that is the attitude we are going to encounter.

At the end of the day, we may not have a choice on this. If Parliament is unable to act, it may well be that the privacy law we end up with will be judge-led, arising from cases that happen to come in, out of which a body of law will be built up that does not suit the noble and learned Lord and his friends. He should think very carefully about where we are at the moment, where the political power lies, where the interests of those engaging with this are coming from and how long it would be before we got to a point where we could take this forward.

I think we will come back to this on Report more than once. There are issues here that will survive the helpful comments made by the noble and learned Lord, who covered the detail of the amendments very fully. I will read what he said very carefully. I do not think we have got to the bottom of how you get the balance in law for a long time so that it works. It is not to do with definitions of which code or otherwise we are talking about; we are talking about real principles here that need to be addressed.

Baroness Hollins: My Lords, I want to make a couple of comments. I take exception to the suggestion that my amendments are in some way bullying. If anything, it is the newspapers that are bullying: for example, bullying the Government not to commence Section 40 of the Crime and Courts Act 2013. This is not the wrong Bill: it is about data protection. All that my amendments would do is implement Lord Justice Leveson's recommendations on data protection. It is a data protection Bill, and that is what they are about.

The so-called IPSO code is owned by the Regulatory Funding Company and, as I understand it, only its sub-committee can change it. IPSO then has to take it or leave it. The RFC also refused to allow IMPRESS to use it. It seems very strange to have that code named in the Bill. I will think carefully and review what needs to come back on Report, but I would welcome an opportunity to discuss this further with the noble and learned Lord to try to understand why there is such a difference of view about it.

Lord Skidelsky: I should like to make just one point. The noble and learned Lord, Lord Keen, came close to admitting that to put IPSO in the Bill was a mistake—I say came close to admitting—whereas it would have been perfectly all right to have just said, "the editors' code". There is something there to discuss, because if you call it the IPSO editors' code, that looks as if you are favouring a particular organisation, rather than a code. The code is owned by the newspaper publishers; it is their code; we need to take that into account. It is less obnoxious just to have "the editors' code", than to have an organisation named in the Bill as the effective carrier of that code. I do not know whether the noble and learned Lord is willing to consider leaving out mention of the organisation. If so, it would be interesting to discuss how best to do that. I may come back to this on Report, but thank him very much for his speech.

Lord Stevenson of Balmacara: I beg leave to withdraw the amendment.

Amendment 42 withdrawn.

Amendments 43 to 45A not moved.

House adjourned at 10.22 pm.