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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

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

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

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House of Lords

Monday 13 November 2017

2.30 pm

Prayers—read by the Lord Bishop of Ely.

Brexit: Financial Settlement

Question

2.35 pm

Asked by ***Lord Spicer***

To ask Her Majesty's Government what estimates they have made of the impact on the eventual financial settlement with the European Union of those European Union assets towards which the United Kingdom made a financial contribution and which at Brexit will remain part of the European Union.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, the treatment of the European Union's assets will need to be agreed as part of the negotiations. The Government are now performing a line-by-line analysis of our potential commitments. We recognise that the UK has obligations towards the EU and the EU has obligations towards the UK.

Lord Spicer (Con): My Lords, have we not got it exactly the wrong way round with Brussels? How on earth are we meant to decide on the financial matters before we know the more general direction of what has been proposed?

Lord Bates: That fits very much with what the Prime Minister said in her Florence speech on 22 September, when she said that nothing is agreed until everything is agreed. We see this very much as a single negotiation. We want all of the elements to it agreed—and an important part of that will be the financial settlement.

Lord Rooker (Lab): How can you negotiate on a legal obligation?

Lord Bates: Forgive me?

Lord Rooker: The Minister said it was a question of negotiation. Surely the question of the finance is a legal obligation. How can you negotiate on a legal obligation?

Lord Bates: There are parts of that which are related to it. We have said that we want to be fair in the exit and some elements cover, for example, pensions and liabilities for ongoing programmes. Indeed, as the Prime Minister set out in her Florence speech, no country should have pay in more during the current budget cycle and no country should receive less. That is a generous way of recognising that we have obligations, but as part of a wider negotiation.

Lord Bridges of Headley (Con): My Lords, following on from my noble friend Lord Spicer's question, does the Minister agree that Monsieur Barnier's position today seems entirely contradictory to the position he set out in the negotiating guidelines published in April, which state:

"In accordance with the principle that nothing is agreed until everything is agreed, individual items cannot be settled separately"?

Lord Bates: My noble friend has great experience in this area. He draws my attention to a significant part of the setting out of the principles which the Prime Minister's speech of 22 September chimed with exactly. Some of the comments coming from the other side do not necessarily recognise that, so it is good to be reminded of it.

Baroness Smith of Newnham (LD): My Lords, in light of the fact that sterling has fallen yet again, does the Minister agree that EU denominated liabilities will increase the greater government uncertainty and instabilities? Is anyone in control? Is it not time for the Prime Minister to get a grip?

Lord Bates: She has a grip. That grip was demonstrated in her Florence speech, where she set out our negotiating position, which is very strong and fair. Any settlement would of course be denominated in euros as the currency—we recognise that—but that, too, needs to be taken into account as we agree what the final settlement should be as part of the wider negotiations.

Lord Cormack (Con): My Lords, the Prime Minister may well have a grip. That is good, but some of us are absolutely fed up to the back teeth of reading, as we did this morning, of two Cabinet Ministers publishing their attack on a third. This is appalling, and something up with which she should not put.

Lord Bates: I think my noble friend would recognise that there can be full and frank negotiations in Cabinet between colleagues.

Noble Lords: Oh!

Lord Bates: There is no doubt that the entire Cabinet signed off on the position of the Florence speech, and that remains the position David Davis is pursuing with vigour and ability in Brussels at present.

Lord Davies of Oldham (Lab): My Lords, the temptation to follow the noble Lord, Lord Cormack, is almost overwhelming, but on this occasion I will resist, to return to the main issue of the Question. We in the Labour Party accept the referendum result, but we will seek to remove the concept of "no deal", which wrecks confidence as far as British business is concerned. The Minister refers to the fact that other noble Lords have had experience at the Dispatch Box on Treasury matters, but they do not last very long, do they?

Lord Bates: I had the benefit of seeing the faces of the noble Lord's colleagues behind him when he was asking that question, which reminds us that the negotiation is not necessarily easy for any of us, in any party. Where do the Opposition stand on free movement and

[LORD BATES]
the single market? The only thing they seem to agree on is that we ought to sign up to whatever is put in front of us. We are saying no—this is a negotiation and we have the right to say no.

Lord Tugendhat (Con): My Lords, does my noble friend agree that these matters are very complicated, that it is very important for the United Kingdom to get the best deal it can and that in putting a date in the Bill, the Government are handing negotiating cards to the other side and making it much more difficult for them to secure their own objective?

Lord Bates: I beg to disagree with my noble friend, although I recognise his immense experience in this area. All that has been proposed is to make explicit what has been implicit and what has been set out in the Florence speech and all the way through the process, ever since Article 50 was triggered.

Lord Grocott (Lab): My Lords, we are back to the question of finance. Can the Minister confirm that over the past 40 years, we have been huge net contributors to EU funds? Can he also confirm that we are currently being asked to pay large sums of money to depart the EU? I wonder if he could get someone from the Commission to come along and explain to the British people—who I think would find it difficult to understand— that the more we pay into the organisation, the more it costs to get out.

Lord Bates: The noble Lord is absolutely right in pointing to the fact that there are assets of the European Union. Those are highlighted in the consolidated report and account, the difficulty with which is that it shows assets of £162 billion, but liabilities of £234 billion. In agreeing what our share of the assets is, we also have to be fair and recognise that there may be some concomitant responsibility for some of the liabilities.

Lord Wigley (PC): My Lords, further to the point made a moment ago about the date being written into the Bill, does that not mean that on that date in March 2019, if all is not agreed at that point, nothing is agreed, and we would leave without even any semblance of a security agreement?

Lord Bates: That is a fact that should be borne in mind by all parties for the negotiation.

Road Safety: Hand-held Devices

Question

2.43 pm

Asked by ***Baroness Pidding***

To ask Her Majesty's Government what assessment they have made of the impact on road safety of the increase introduced at the end of 2016 in the number of penalty points imposed under a fixed-penalty notice issued for drivers caught using a hand-held mobile phone or other similar device while driving.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, Britain has some of the safest roads in the world, but we are determined to do more to reduce casualty figures. Since the increased penalties were introduced in March 2017, over 15,000 drivers have been fined and issued with six penalty points. However, it is too soon to assess what impact the change is having on road safety. We are conducting a roadside observational survey on usage of mobile phones and expect the results in the new year.

Baroness Pidding (Con): My Lords, I welcome my noble friend the Minister to her debut at the Dispatch Box in her new role. Will she join me in congratulating Thames Valley Police on the work it has done in seeking to change driver behaviour and make driving while using handheld mobile devices socially unacceptable? A video it recently produced has been requested by companies across the UK to help raise awareness of the dangers. This Thames Valley Police campaign won a national safety award in June. Anecdotally, it says the message is starting to creep through. What assurances can my noble friend give the House and all police authorities throughout the UK that the Government will do what they can to assist in the campaign to make this dangerous behaviour socially unacceptable?

Baroness Sugg: I join my noble friend in commending the Thames Valley Police for the work it is doing raising awareness of this issue. I have seen the video she mentions, which features the families of the tragic victims of the A34 crash. As well as tougher sanctions, we have been running a dedicated national THINK! campaign since March to highlight the dangers of using a mobile phone. One of the highlights of this campaign was a new film launched last month to target young drivers, which has been a great success on social media, with more than 3 million views on Facebook alone.

Lord Bradshaw (LD): As a former member of the Thames Valley Police Authority and someone who specialised in road safety, I endorse what the noble Baroness, Lady Pidding, just said, but regulations on parking are ignored throughout the area. Some very dangerous parking is taking place in town centres. Does this not indicate a lack of respect for the law? What are the Government doing about it?

Baroness Sugg: I am afraid I am not aware of the incidents that the noble Lord raises. Obviously, we are working with police forces across the country to ensure that enforcement takes place, because laws are only as good as their enforcement.

Lord Watts (Lab): My Lords, what is the Minister going to do about cyclists who use their phones, often while travelling at high speed? They are becoming a danger on our roads.

Baroness Sugg: My Lords, I agree that everyone who uses highways has a responsibility to behave safely. A number of offences can cover cycling behaviour,

such as fixed penalty notices, or officers can report the road user for prosecution. The Government announced last month their cycle safety review, which will involve a consultation on these issues. We are working with stakeholders for their input and we will publish fuller terms of reference next year.

Baroness Manzoor (Con): My Lords, statistics show that young people aged between 17 and 29 are more likely to use mobile phones and other hand-held devices. What are the Government doing to take action against this, especially relating to further education for that group?

Baroness Sugg: My noble friend is right to highlight the important issue of addressing young drivers. Around 20% of new drivers will have a crash within the first six months of passing their test, so any novice driver caught using a mobile phone while driving in their first two years will have their licence revoked. We have announced changes to the practical driving test that will come into force in December. I mentioned the THINK! campaign, which targets young drivers. We have also produced a provisional licence mailing insert, which is estimated to reach nearly 1.7 million new drivers annually.

Baroness Jones of Moulsecoomb (GP): My Lords, how many drivers are driving legally with 12 points on their licence because they claim personal hardship if they lose their licence?

Baroness Sugg: I am afraid I do not have the figures that the noble Baroness refers to, but I will look into the issue and write to her with that information.

Lord Rosser (Lab): The Home Secretary recently told police and crime commissioners to stop pointing out the pressing need for more money for our underresourced police and instead concentrate on those who are breaking the law. That outburst was clearly an admission by the Government that they will let down the police yet again in the forthcoming Budget by not providing the resources that PCCs and the police need to do their job. What representations, if any, have Transport Ministers made to the Treasury that on increasing numbers of occasions road traffic offences—including vehicle theft and using hand-held mobile phones while driving—cannot even be pursued by the police, let alone see perpetrators brought to justice, due to the continuing squeeze on police budgets and continuing reductions in the number of police officers? Can I take it that the Department for Transport, despite the recent publicly expressed concerns of HM Inspectorate of Constabulary, has remained utterly silent on the issue of inadequate police resources?

Baroness Sugg: My Lords, we are very sensitive to the pressures which police face. We recognised the importance of wider police spending in the 2015 spending review, which protected overall police spending in real terms. It is of course up to police and crime commissioners and chief constables of each police force to decide how they deploy resources. As my noble friend Lady Pidding highlighted, as well as working closely with the police to support enforcement action, police forces across the country are doing valuable work in the campaign to reduce hand-held mobile use and we should commend them.

The Countess of Mar (CB): My Lords, is there not a problem with traceability when it comes to issuing cyclists with fixed penalty notices? There is no obvious sign, as there is with a car and its registration plate. Cyclists can give a Mickey Mouse name and address. What is the effect of the fixed penalty notice in this case?

Baroness Sugg: On cycling, as I mentioned earlier, there are a number of measures which officers can use, including verbal warnings and fixed penalty notices. However, I acknowledge that there is a problem with traceability. That is something that the cycle safety review, which we will publish next year, will address.

Baroness Farrington of Ribbleton (Lab): My Lords, will the Minister join me in condemning local Conservative associations such as Kensington and Chelsea, which has written to ask me to sign a petition condemning the attempt of the police authority to live within its budget by reducing a service to local people? Does she agree that such dishonesty is giving politics a bad name?

Baroness Sugg: No, I am afraid that I do not agree with the noble Baroness. Obviously I will look into the case to which she refers, but I know that Kensington and Chelsea and all local authorities work closely with the police to ensure that they are able to deliver the services which we require.

Dyslexia: Disabled Students' Allowance

Question

2.50 pm

Asked by ***Lord Addington***

To ask Her Majesty's Government why dyslexic students have to pay for an assessment for disabled students' allowance when other disabled students do not.

Lord Addington (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper, and I draw the House's attention to my declared interests.

The Parliamentary Under-Secretary of State, Department for Education (Lord Agnew of Oulton) (Con): My Lords, all students are required to prove their eligibility for disabled students' allowances. This applies to all students, including those with specific learning difficulties such as dyslexia and dyspraxia. DSA funding is not available to any student to pay for evidence to establish eligibility. DSAs continue to provide funding for eligible dyslexic higher education students to access IT equipment as well as software and other support.

Lord Addington: I thank the Minister for that reply. However, if you have already had a diagnosis—for instance, in primary school—have received assistance for dyslexia or a SpLD condition throughout your education, including assistance in the exams that get you to university, what possible justification is there for a further assessment that you have to pay for to get the assessed help at university?

Lord Agnew of Oulton: The noble Lord, Lord Addington, has great expertise in this area, both as president of the dyslexia association and in other commercial interests, so I defer to his superior knowledge. I reassure him that many universities now offer hardship funds for these tests. Perhaps I may quote from the University of East Anglia, which states:

"The cost to students for the 2017/18 academic year will be £30.00 for the screening and £70.00 for the Educational Psychologist or Psychiatrist assessment".

Lord Hunt of Kings Heath (Lab): My Lords, I do not think that the Minister has answered the noble Lord's Question. I do not understand why people with dyslexia have to go through what essentially is a second assessment which they have to pay for—which, as he said, costs hundreds of pounds—when for other students with other disabilities a letter from their doctor will be enough to process them through the allowance. Why are people with dyslexia discriminated against?

Lord Agnew of Oulton: My Lords, specific learning disabilities are treated separately. In a working paper in 2005, where the British Dyslexia Association was part of the consultation group, the view then was that progress into higher education represented a major transition and that more adult-based assessments should therefore be used.

Baroness Manzoor (Con): My Lords, would it be possible for the Minister to take this back? There are some concerns around equality and it would be worth readdressing this issue.

Lord Agnew of Oulton: I will need to write to my noble friend on that.

Baroness Garden of Frognal (LD): My Lords, there is proof that students who use computer assistive technology do better than those who are eligible for it but do not, but it appears that the additional charge of £200 is having a detrimental effect on take-up. What measures are the Government taking to ensure that all those who need it have access to it, regardless of their means?

Lord Agnew of Oulton: My Lords, once an assessment has been carried out, and there are 180 assessment centres in the country, they will produce a package that is relevant for the individual sufferer of the condition. There are four bands of assistance graded by the assessor when they meet the person needing the help.

Lord Hughes of Woodside (Lab): My Lords, the Question is not about the different bands of assessment, but about why an assessment will cost some applicants money—they have to pay for the assessment—while others do not pay. A simple GP's letter should be enough, as my noble friend suggests. Why does the Minister not answer that question?

Lord Agnew of Oulton: My Lords, the decision, as I mentioned, was to split special educational needs away from specific learning difficulties.

Noble Lords: Why?

Lord Agnew of Oulton: Because I suspect that there is only a limited amount of money available and the view is that the money should be spent on helping those who actually have the condition.

Lord Skelmersdale (Con): Was it not the Labour Government who introduced this particular policy?

Lord Agnew of Oulton: I think that that is very likely.

Lord Watts (Lab): My Lords, the Minister says that these people have already had assessments and have been proven to have a condition. That condition does not change when they go to university. Can he explain why they are being treated differently from other groups?

Lord Agnew of Oulton: As I previously mentioned, the view was that adults' needs change: an initial diagnosis in childhood may not apply in adulthood.

Lord Addington: My Lords, just to be clear, I think that the House should know that you can be charged up to £600 for this assessment, when you already have a history of being assessed. This was a very old system; I do not know exactly when it came in. Does the Minister agree that it is well overdue that we look at this again?

Lord Agnew of Oulton: My Lords, we do agree.

Overseas Aid and Defence Expenditure

Question

2.57 pm

Asked by ***Lord Lee of Trafford***

To ask Her Majesty's Government what is the ratio of overseas aid expenditure to defence expenditure in the current financial year.

Lord Lee of Trafford (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and declare an interest in shareholdings as set out in the *Register of Members' Financial Interests*.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, according to the latest available data, the ratio of defence expenditure to overseas aid expenditure in 2016 was more than 3:1. The UK Government spent £42.2 billion on defence

and £13.3 billion on overseas aid in 2016. Both defence and overseas aid budgets are published on a calendar-year basis, in line with international standards.

Lord Lee of Trafford: My Lords, is the continuing hollowing out of our Armed Forces not a betrayal of all those veterans who proudly marched and paraded over the weekend? The defence budget is under huge pressure, our Army is below strength, we would be hard pushed to deliver 12 escort vessels and there is speculation over cuts to our amphibious capability, to our Royal Marines and to our minesweepers, to say nothing about finding money for the Joint Strike Fighter for our new carriers. While many of our aid programmes are vital and commendable, is it not time to revisit the 0.7% commitment? Is not the current ratio of overseas aid expenditure to defence expenditure now just unsustainable? Does development aid really need its own department?

Lord Bates: Perhaps I may answer the second part of that question. If we look just at the past year, overseas aid has provided humanitarian assistance to 17 million people. Some 28.7 million people have received immunisations, saving 475,000 lives, while 7.1 million children have been provided with education and 27.2 million have been provided with access to clean water. So the answer to the second part of the noble Lord's question is yes, it is needed, and the Department for International Development is doing good work.

On defence, I do not accept the noble Lord's premise that the Armed Forces have been hollowed out. The defence budget is increasing in real terms year on year by 0.5% over the current spending review period. In terms of aircraft—I see that the noble Lord may wish to come in on this at some point—there is our shipbuilding strategy, the details of which I will perhaps elaborate on later.

Lord Sterling of Plaistow (Con): My Lords, on the point that has been brought up, I am totally in favour of supporting crises in which defence plays a major part. No one could possibly argue with that, but we have to be able to assess how the other 85% is faring. In July the National Audit Office said the following:

"With only one of the four of the UK Aid Strategy's objectives supported by measurable targets, it is not possible to assess progress in its implementation".

If we take the next 15 years, this country will be spending well over £200 billion on aid. No organisation that I know of is prepared to spend without being able to judge additionality. Therefore, how long can this country truly justify spending moneys which cannot be assessed for additionality?

Lord Bates: I agree to this extent with my noble friend: we do not want to waste money. That is one of the things we have been driving very hard on in the Department for International Development. I am very happy to meet with my noble friend to discuss how the aid budget is being used and the lives which have been saved as a result of it. I happen to think that one of the things we can be proud of in this country, particularly when we think of the act of Remembrance which took place yesterday, is that we are the only country in the world which actually meets its 2% obligation under the NATO agreement along with our 0.7% aid commitment. That is the type of global Britain which we can all be proud of.

Lord West of Spithead: My Lords, in the last two debates on defence, it has been made clear by speakers on all sides of the House, apart from the Government Front Bench, that defence is in crisis and that not enough money is being spent on it. Everyone has said that, and indeed the noble Earl took that message back to the department, so to say that all in defence is fine and rosy is incorrect. One wonders if the Government need to have a reality check on this. I am very proud of 0.7% being spent on aid, but can the Minister assure me that the defence budget is going to get the same protection and be looked after in the same way as the aid budget? I ask this because in the final analysis, strong defence forces help stability, make us all safer, and enable aid to actually be used in these places abroad.

Lord Bates: As I just mentioned, the defence budget differs from the aid budget in the sense that it will increase each year in real terms by 0.5%, which is greater than is going into overseas aid. We have announced a national security capability review which is being conducted at the present time. The noble Lord will also be aware of the national shipbuilding strategy which has put in an order for five Type 31e general purpose frigates in addition to the Type 26 frigates ordered in July. We can do both, and we are.

Baroness D'Souza (CB): My Lords, as I understand it, is not an increasingly large amount of the development aid budget now dispersed among other departments where the same standards of evaluation do not apply, and are certainly not as rigorous as those applied by the Department for International Development?

Lord Bates: It is true to say that around 26% of the overseas aid budget is dispensed by other departments, and a lot of it is spent by Department for Business, Energy and Industrial Strategy. It is investing in education and research, particularly in medicine, along with development matters that will help developing countries. However, we are clear that everything has to be categorised as overseas development assistance; it must meet the primary purpose test, which is that it is for the economic development of the least well-off countries in the world. We are absolutely confident that that target is being met. If it is not met, the money is not categorised as overseas development assistance and therefore we do not meet the 0.7% target. That is why we take it very seriously.

Lord Davies of Oldham (Lab): My Lords, I congratulate the Minister on his answers to this Question. Is it not essential that we continue to commit ourselves to 0.7% for the aid budget? It would be quite wrong to raid it in order to solve the problems of defence.

Lord Bates: The noble Lord is absolutely right and we share that concern. It is a joint commitment, which had widespread support on all sides of the House when it went through. We can stick to the legislation and be proud of it because we are saving lives.

Lord Boyce (CB): My Lords, if the Minister believes that there is no problem with the defence budget, why at the moment are illustrative savings being looked at, for example to close out an Army brigade, do away with the Army Air Corps, and completely undermine and shred our amphibious capability?

Lord Bates: The noble and gallant Lord will be aware that a national security capability review by the national security adviser is under way. As part of that all options are being looked at, as he would expect when a review takes place, but no decisions have been made at present and the comments on the budget remain.

Lord Campbell of Pittenweem (LD): My Lords, if everything in the garden is lovely, why have the Government reduced their order from Boeing for replacement Apache helicopters from 50 to 38, if it is not from budgetary pressures?

Lord Bates: I am not making the claim that everything in the garden is rosy. People are having to make tough decisions but what I have highlighted on this Question is that we are fulfilling our obligations under NATO. We are actually going beyond them, as we have spent more than 2%. In answer to the point made earlier by the noble Lord, Lord Lee, we have spent 2.1% while at the same time protecting the 0.7%. I think we can be proud of that record but how we spend on aid and defence is a matter that we should keep under close review.

Business of the House

Motion on Standing Orders

3.06 pm

Moved by ***Baroness Evans of Bowes Park***

That Standing Order 46 *(No two stages of a Bill to be taken on one day)* be dispensed with on Tuesday 14 November and Wednesday 15 November in respect of proceedings on any Northern Ireland Budget Bill brought from the Commons and on the Finance Bill.

Lord Foulkes of Cumnock (Lab): This is a debatable Motion, as I understand it. Can the Leader of the House explain, since this House has agreed that we have too many Members—and since we are about to debate the report from the noble Lord, Lord Burns, and his committee—on what basis, on Thursday of this week, two new Peers are being introduced?

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): I am afraid that I do not think that is relevant to this Motion, which is on important legislation that we need to get through on Northern Ireland. I hope that the noble Lord will agree to the Motion.

Motion agreed.

European Union (Approvals) Bill

Order of Commitment Discharged

3.07 pm

Moved by ***Lord Henley***

That the order of commitment be discharged.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, I understand that no amendments have been set down to this Bill and that no noble Lord has indicated a wish to move a manuscript amendment or to speak in Committee. Unless, therefore, any noble Lord objects, I beg to move that the order of commitment be discharged.

Motion agreed.

Data Protection Bill [HL]

Committee (3rd Day)

3.08 pm

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

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

Amendment 45B

Moved by ***The Earl of Kinnoull***

45B: Schedule 1, page 116, line 35, leave out paragraphs 14 and 15 and insert—

"(1) This condition is met if the processing—

(a) is necessary for the purposes listed in sub-paragraph (2), and

(b) is necessary for reasons of substantial public interest.

(2) The purposes mentioned in sub-paragraph (1)(a) are—

(a) the arrangement, underwriting, performance or administration (or assisting in the arrangement, underwriting, performance or administration) of a contract of insurance or reinsurance;

(b) the handling or administration (or assisting in the handling or administration) of a claim made under a contract of insurance or reinsurance."

The Earl of Kinnoull (CB): My Lords, I will speak also to Amendments 46A, 47A, 48A and 50A. We move to a series of probing amendments relating to insurance. I am concerned about many practical things in the Bill, and what I see as unnecessary and unwise obstacles for insurance in general, and for motor insurance and employer liability insurance in particular. I declare my interests as set out in the register of the House and, in particular, those in respect of the insurance industry.

I thank the noble Lord, Lord Clement-Jones, for his support for these amendments—indeed, he was emailing me late last night—and I thank the Minister for a generous slice of his time last week. I also thank the Association of British Insurers and the Lloyds

Market Association for their help in preparing my remarks. They, in turn, have had input from the four other major insurance market associations and other bodies.

The insurance industry delivers products in the public interest. Indeed, some of the major classes, such as motor insurance and employer liability insurance, are compulsory. It is greatly to society's benefit that there is a wide choice of good products available at a reasonable price. It is less well understood in the wider world what an important part reinsurance plays in supporting insurers by protecting insurance companies from large unexpected losses and providing temporary extra capital when it is needed. In other words, insurers, too, need a wide choice of good products available at a reasonable price. It is a complex ecosystem, and unintended consequences tend almost invariably to hurt the man in the street.

The impact assessment called for the setting of new standards in accordance with the GDPR,

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

Later on in the same page of the impact assessment there is a call for,

"exercising the derogations in the best interest of the UK".

In fact, the impact assessment has several references to business and insurance business which make it plain that the Government do not intend to place an undue extra burden on business. I am grateful to the Government and the Bill team for having gone some way to alleviating the problems—but I fear that we need to go a lot further.

Sensitive personal data under the current Data Protection Act 1998 has become special category personal data in the GDPR. The treatment of special category personal data looks similar under the GDPR and the DPA, with consent as the applicable legal ground under which data can be processed in most cases. However, what has changed is the definition of consent, with the threshold for valid consent under GDPR now being much higher.

For insurers and reinsurers, the two most common types of special category personal data are information relating to health and information relating to criminal convictions. Being able to consider health and criminal conviction data is hugely important for insurers uniformly and throughout the world. The ABI estimates that the ability to process these types of data helped in detecting around £1.3 billion in fraudulent claims in 2015 alone, and I fear that the Bill unamended would therefore potentially increase costs for millions of motor insurance policyholders. To get an idea of the size of the market where health data is required for underwriting and claims purposes, the LMA has advised me that it identifies annual Lloyd's market premiums alone of at least £2.3 billion a year.

Processing special-category data, including health data, is fundamental to calculating levels of risk and underwriting the majority of retail insurance products. ICO draft guidance infer that consent as a precondition of accessing a service, as would be the case for a proposal for an insurance contract, would not be a legitimate basis for processing special-category personal data.

Let us take the example of a daily smoker who at retirement age tries to buy an annuity. They would be asked to provide their medical details. This health data would establish that the individual has a below-average life expectancy. The insurer is therefore able to offer an enhanced annuity that pays the individual a higher percentage of income every year.

Under the Bill and its associated draft ICO guidance, insurers would not be able to access the individual's medical records as consent is a precondition of accessing the enhanced annuity market and therefore such consent cannot be freely given. Insurers would be unable to offer an enhanced annuity and the individual would be treated as a consumer with average life expectancy and receive a lower income from their annuity. This would be a highly undesirable state of affairs.

Take the situation where an insurer has a direct relationship with the insured—a personal motor policy, let us assume. It would seem relatively easy for them to obtain a consent for all processing. However, it is not. More than half the motor insurers in the UK make use of the Motor Insurance Bureau's MyLicence anti-fraud facility. This third-party service, available to all insurers, allows them at the quote stage to understand a driver's record using DVLA data. Express consent is not possible and nor, for the same ICO reasoning as my annuity example, would any consent anyway be valid. If the Bill is unamended, this would be bound to drive up premiums for motor insurers, as a principal defence against fraud would cease to exist.

3.15 pm

I am afraid it gets worse. Much more common in insurance is an indirect relationship with the data subject. The distribution of insurance products in the UK usually involves multiple data controllers, such as insurers, brokers, cover-holders and reinsurers. The claims settlement process may involve a number of other data controllers, for example loss adjusters, lawyers and doctors. Obtaining consent is problematic because each party in the product or claims chain who is not in direct contact with the data subject will be relying on another party to obtain consent on their behalf. Each GDPR data controller must be expressly named in consent documentation. That situation therefore would become horribly complex, and be inconsistent with the admirable aims of the impact assessment, without the derogations that I am asking for.

Giving an example of the future under an unamended Bill might help. One of the most popular small-farm insurances on the market in the UK is underwritten by an agency on behalf of 10 or more insurers. Farm policies contain several liability sections. If there is an injury on the farm, express consents on behalf of the injured party will have to be provided for the original broker, the underwriting agency, each of the insurers, the loss adjusters, and potentially all the reinsurers of the original insurers and the associated reinsurance brokers. Until that consent chain is in place, the claim cannot be fully processed. Does the Minister agree with me that this would be another highly unsatisfactory state of affairs?

Yet another unsatisfactory situation arises when a policy is bought by a third party. An example would be employer liability insurance—a compulsory class—

[The Earl of Kinnoull]
where employees' personal data needs to be supplied to assess the risk; here, the relationship is between the insurer and the employer. In the case of a claim, how does the Bill's consent chain work? Does the Minister agree with me that we can and must do better in this Bill?

Although it is practicable to obtain the consent of the data subject in many cases, often it is not. Aggrieved claimants, for example, may not provide their consent for the insurer processing their personal data, as they simply want the corporate insured to pay their loss. They do not care whether or not it is covered by insurance. How is the insurer meant to act in these circumstances, or rate for this? I fear it would be a recipe to reduce competition and drive up prices for employer liability insurance, which is a compulsory class. This would certainly not be in the best interests of any policyholders or data subjects. These are market-wide issues and are not specific to any one type of insurance over another.

I feel in general that trying to shoehorn insurance business into GDPR article 9(2)(a)—the consent bit—is far from being in the public interest and that the public would be best served using a derogation under article 9(2)(g): that the processing is necessary for reasons of substantial public interest.

The amendments set out two alternative ways in which the issues might be tackled, while at the same time being wholly consistent with the GDPR. Under Amendment 45B, the new insurance paragraph would continue to sit within the "Substantial public interest conditions" subheading in Schedule 1, Part 2, as do the present paragraphs (14) and (15). The language is modelled on paragraph 6 of Schedule 1: the derogation for,

"Parliamentary, statutory and government purposes".

It is effective at curing the problems with obtaining consent that I have described—and, indeed, those of withdrawing consent. It is consistent with the impact assessment and article 9(2)(g) of the GDPR. It is clear that the special category "personal data" can be used only for a necessary purpose and not in, say, a marketing drive, and the ICO and the FCA will patrol matters with their usual thoroughness.

The other amendments, together, are an alternative. They would allow insurers to continue to access and use health and criminal conviction data in another way. Amendment 46A widens the definition of insurance to bring more classes of insurance under the regime of Schedule 1, including, for instance, motor insurance and household insurance. This not only replicates the status quo but is also consistent with article 9 of the GDPR, given the twin watchdogs that I referred to: the ICO and the FCA.

Amendment 47A removes a new provision that presents a potential administrative minefield, did not form part of the DPA and is not needed for the purposes of the GDPR. Amendment 48A is a further amendment along the same lines, which widens paragraph 14 of Schedule 1 so that it covers all insurance business and extends the scope to cover criminal convictions. Amendment 50A is, I fear, a rather hurried bit of drafting, but is intended to allow the processing of third-party joint policyholders' data. Properly drafted, this would allow consent to be given by one policyholder on behalf of another joint policyholder. In many cases, this is simply a pragmatic necessity and, again, I feel the amendment is consistent with not only the Government's stated aims in the impact assessment but the GDPR. I beg to move.

The Lord Speaker (Lord Fowler): I should notify the Committee that if Amendment 45B is agreed, I cannot call Amendments 46 to 50A by reason of pre-emption.

Lord Clement-Jones (LD): My Lords, the noble Earl, Lord Kinnoull, has clearly and knowledgeably introduced the amendment, which I strongly support. He made clear through his case studies the Bill's potential impact on the insurance industry, and I very much hope that the Minister has taken them to heart. Processing special category data, including health data, is fundamental to calculating levels of risk, as the noble Earl explained, and to underwriting most retail insurance products. Such data is also needed for the administration of insurance policies, particularly claims handling.

The insurance industry has made the convincing case that if the implementation of the Bill does not provide a workable basis for insurers to process that data, it will interrupt the provision to UK consumers of retail insurance products such as health, life and travel insurance, and especially products with health-related consumer benefits, such as enhanced annuities. The noble Earl mentioned a number of impacts, but estimates suggest that, in the motor market alone, if this issue is not resolved, it could impact on about 27 million policies and see premiums rise by about 3% to 5%.

There is a need to process criminal conviction data for the purposes of underwriting insurance in, for instance, the motor insurance market. Insurers need to process data to assess risk and set the prices and terms for mainstream products such as motor, health and travel insurance.

The key issue of concern is that new GDPR standards for consent for special category data, including health, such as the right to withdraw consent without experiencing detriment, are incompatible with the uninterrupted provision of these products. As the noble Earl, Lord Kinnoull, has clearly stated, there is scope for a UK derogation represented by these amendments, which would be in the public interest, to allow processing of criminal conviction and special category data when it is necessary for arranging, underwriting and administering insurance and reinsurance policies and insurance and reinsurance policy claims. I very much hope that the Minister will take those arguments on board.

Lord Stevenson of Balmacara (Lab): My Lords, the noble Earl, Lord Kinnoull, has done us a great favour in introducing with great skill these amendments, which get to the heart of problems with some of the language used in the Bill. We are grateful to him for going through and picking out the choices that were before the Government and the way their particular choices

seem to roll back some of the advances made in the insurance industry in recent years. I look forward to the Minister's response.

Our probing Amendment 47 in this group is on a slightly higher level. It is not quite as detailed—nor was it intended to be—as the one moved by the noble Earl. We were hoping to raise a more general question, to which I hope the Minister will be able to respond. Our concern, which meets the concerns raised by the noble Earl, Lord Kinnoull, and the noble Lord, Lord Clement-Jones, is where the Government want to get to on this. It must be true that insurance is one of the key problems facing many people in our country. It is the topic that will be discussed in the QSD in today's dinner break as it bears heavily on financial inclusion issues. So many people in this country do not take out insurance, personal or otherwise, and suffer as a result. We have to be very careful as we take this forward as a social issue.

However, an open-ended derogation to allow those who wish to gather information to make a better insurance market surely also raises risks. If we are talking about highly personal profiling—we may not be because there are constraints in the noble Earl's amendment—it would lead to a more efficient and cheaper insurance industry, but at what personal cost? For instance, if it is possible to pick up data from those who perhaps unadvisedly put on Facebook or Twitter how many times they get drunk—I am sure that is not unusual, particularly among the younger generation—information could be gathered for a profile that ought to be taken into account for their life, health or car insurance. I am not sure that we would be very happy with that.

Underlying our probing amendment is to ask the Minister to respond—it may be possible by letter rather than today—on protections the Government have in mind. What sort of stock points are there that we can rely on as we move forward in this area? As processing becomes more powerful and more data is available, pooled risks are beginning to look a little old-fashioned. The old traditional model under which insurance is gathered is that the more the pool is expanded, the risks are spread out more appropriately across everybody. The trouble is that the more we know, we will be including people who are perhaps more reckless and therefore skewing the pooling arrangements. We have to be careful about that.

There is obviously a social objective in having a more efficient and effective insurance market but this ought to be counterbalanced to make sure that those people who are vulnerable are not excluded or uninsurable as a result. The state could step in, obviously, and has done so, as we have been reminded already in our Committee discussions about the difficulty of getting insurance for those who build on flood plains. However that is not the point here. This is about general insurance across the range of current market opportunities being affected by the fact that we are not ensuring that the data gathered is both proportionate and correct in terms of what it provides for the individual data subjects concerned.

The Earl of Erroll (CB): I want to say a couple of words on consent, because it is something I have been thinking about for a while. Consent is often seen as a great panacea to this whole thing about protecting people, but I do not think it really is. The requests that really irritate me are the ones that ask for unnecessary information such as your date of birth, when all you are trying to do is to sign up for a warranty on a bit of equipment or whatever, because firms are trying to profile their customers. Those I agree should be stopped. But other consent requests are essential to giving a good service.

There are two things to say about such requests. One is that most people do not mind, because they assume that people know everything about them anyway—particularly the Government and the big boys. They just want the thing to be done properly so that they can get their money, or whatever it is. To put blocks in the way so that they have to click on or sign lots of different consent forms does not get them any further and just irritates them more. Those provisions are very sensible.

3.30 pm

There is another problem with consent. These days, when you go on any website, there is this great thing about cookies. The website will ask, "Do you mind that we've got all these cookies? And, by the way, I'm afraid the website won't react properly if you do mind". That is perfectly true; the cookies are necessary to drive the websites. Everyone clicks on the things or just lets them go, so the thing that is supposed to prevent websites spying on you is totally ineffective. That is a typical example of where we put consent into a Bill and all it does is irritate people—it does not do any good at all. So this may be a case where we are going too far on consent, which will just be a nuisance to everybody and will disadvantage some people.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, I am grateful to all noble Lords who have spoken and for the opportunity to speak to Schedule 1 in relation to an industry in which I spent many years. I accept many of the things that the noble Earl, Lord Kinnoull, described and completely understand many of his points—and, indeed, many of the points that other noble Lords have made. As the noble Lord, Lord Clement-Jones, said, I have taken the noble Earl's examples to heart, and I absolutely accept the importance of the insurance industry. The Government have worked with the Association of British Insurers and others to ensure that the Bill strikes the right balance between safeguarding the rights of data subjects and processing data without consent when necessary for carrying on insurance business—and a balance it must be. The noble Lord, Lord Stevenson, alluded to some of those issues when he took us away from the technical detail of his amendment to a higher plane, as always.

The noble Earl, Lord Kinnoull, and the noble Lords, Lord Clement-Jones and Lord Stevenson, have proposed Amendments 45B, 46A, 47, 47A, 48A and 50A, which would amend or replace paragraphs 14

[Lord Ashton of Hyde]
and 15 of Schedule 1, relating to insurance. These amendments would have the effect of providing a broad basis for processing sensitive types of personal data for insurance-related purposes. Amendment 45B, in particular, would replace the current processing conditions for insurance business set out in paragraphs 14 and 15 with a broad condition covering the arrangement, underwriting, performance or administration of a contract of insurance or reinsurance, but the amendment does not provide any safeguards for the data subject.

Amendment 47 would amend the processing condition relating to processing for insurance purposes in paragraph 14. This processing condition was imported from paragraph 5 of the 2000 order made under the Data Protection Act 1998. Removal of the term might lessen the safeguards for data subjects, because insurers could potentially rely on the provisions even where it was reasonable to obtain consent. I shall come to the opinions of the noble Earl, Lord Erroll, on consent in a minute.

Amendments 46A, 47A, 48A and 50A are less sweeping, but would also remove safeguards and widen the range of data that insurers could process to far beyond what the current law allows. The Bill already contains specific exemptions permitting the processing of family health data to underwrite the insured's policy and data required for insurance policies on the life of another or group contract. We debated last week a third amendment to address the challenges of automatic renewals.

These processing conditions are made under the substantial public interest derogation. When setting out the grounds for such a derogation, the Government are limited—this partly addresses the point made by the noble Lord, Lord Stevenson—by the need to meet the "substantial public interest test" in the GDPR and the need to provide appropriate safeguards for the data subject. A personal or private economic or commercial benefit is insufficient: the benefits for individuals or society need to significantly outweigh the need of the data subject to have their data protected. On this basis, the Government consider it difficult to justify a single broad exemption. Taken together, the Government remain of the view that the package of targeted exemptions in the Bill is sufficient and achieves the same effect.

Nevertheless, noble Lords have raised some important matters and the Government believe that the processing necessary for compulsory insurance products must be allowed to proceed without the barriers that have been so helpfully described. The common thread in these concerns is how consent is sought and given. The noble Earl, Lord Kinnoull, referred to that and gave several examples. The Information Commissioner has published draft guidance on consent and the Government have been in discussions with her office on how the impact on business can be better managed. We will ensure that we resolve the issues raised.

I say to the noble Earl, Lord Erroll, that consent is important and the position taken by the GDPR is valid. We do not have a choice in this: the GDPR is directly applicable and when you are dealing with data, it is obviously extremely important to get consent, if you can. The GDPR makes that a first line of defence, although it provides others when consent is not possible. As I say, consent is important and it has to be meaningful consent, because we all know that you can have a pre-tick box and that is not what most people nowadays regard as consent. Going back to the noble Earl, Lord Kinnoull—

Lord Clement-Jones: My Lords, I am sorry to interrupt. The Minister mentioned the guidance from the Information Commissioner. From what he said, I assume he knows that the insurance industry does not believe that the guidance is sufficient; it is inadequate for its purposes. Is he saying that a discussion is taking place on how that guidance might be changed to meet the purposes of the insurance industry? If it cannot be changed, will he therefore consider amendments on Report?

Lord Ashton of Hyde: Of course, it is not for us to tell the Information Commissioner what guidance to issue. The guidance that has been issued is not in all respects completely helpful to the insurance industry.

The Earl of Kinnoull: Following up the noble Lord's point, I would like to say a couple of things. First, I sort of understand where the Information Commissioner's Office is coming from. I have article 7 in my hands, which contains the definition of consent from the GDPR, and article 9(2)(a). My concern is that even if the Government are very nice to an Information Commissioner and persuade them to change the guidance, it could change at any time. It is important to ensure that the Bill will work for the ordinary man in the street. As for compulsory classes, it is not about looking after the insurers but every small business in Britain and every small person who wants to get motor insurance, especially those who have problems with either criminal convictions or their health.

Lord Ashton of Hyde: I agree; I think I mentioned compulsory classes before. Going back to the guidance, we are having discussions. We have already had constructive discussions with the noble Earl, and we will have more discussions on this subject with the insurance industry, in which he has indicated that he would like to take part. I am grateful to him for coming to see me last week.

Lord Clement-Jones: My Lords, I am sorry to interrupt the Minister again but he is dealing with important concepts. Right at the beginning of his speech he said he did not think this could be covered by the substantial public interest test. Surely the continuance of insurance in all those different areas, not just for small businesses but for the consumer, and right across the board in the retail market, is of substantial public interest. I do not quite understand why it does not meet that test.

Lord Ashton of Hyde: I may have misled the noble Lord. I did not say that it does not meet the substantial test but that we had to balance the need to meet the substantial public interest test in the GDPR and the need to provide appropriate safeguards for the data

subject. I am not saying that those circumstances do not exist. There is clearly substantial public interest that, as we discussed last week, compulsory classes of insurance should be able to automatically renew in certain circumstances. I am sorry if I misled the noble Lord.

We realised that there are potentially some issues surrounding consent, particularly in the British way of handling insurance where you have many intermediaries, which creates a problem. That may also take place in other countries, so the Information Commissioner will also look at how they address these issues, because there is meant to be a harmonious regime across Europe. The noble Earl has agreed to come and talk to us, and I hope that on the basis of further discussions, he will withdraw his amendment.

Lord Stevenson of Balmacara: I followed the Minister quite well until the last exchange, where I got a bit confused. Is he saying in some sense that there may be a case for two types of derogation: that that which applies to compulsory insurance—there are strong public interest reasons why it should be continued—might be done under one derogation and the rest raised as more specific items, as suggested by the noble Earl?

Lord Ashton of Hyde: We can break it down simply between compulsory and non-compulsory classes. Some classes may more easily fulfil the substantial public interest test than others. In balancing the needs, it goes too far to give a broad exemption for all insurance, so we are trying to create a balance. However, we accept that compulsory classes are important.

Lord Clement-Jones: I am sure that the noble Earl, Lord Kinnoull, will come back at greater length on this. The issue that the Minister has outlined is difficult, partly because the Information Commissioner plays and will play such an important role in the interpretation of the Bill. When the Government consider the next steps and whether to table their own amendments or accept other amendments on Report, will they bring the Information Commissioner or her representative into the room? It seems that the guidance and the interaction of the guidance with the Bill—and, eventually, with the Act—will be of extreme importance.

Lord Ashton of Hyde: I agree, which is why I mentioned the guidance that the Information Commissioner has already given. I am certainly willing to talk to her but it is not our place to order her into the room. However, we are constantly talking to her, and there is absolutely no reason why we would not do so on this important matter.

The Earl of Kinnoull: I thank all noble Lords who have taken part in this short but interesting debate. Of course, the Information Commissioner reports to Parliament, so if we held a meeting here, we probably could ask her, quite properly, to come. That might be quite helpful in this complex area. As I said, when you mess around in these areas, the person who suffers is the man in the street, not the insurance companies. The noble Lord, Lord Stevenson of Balmacara, in particular made a number of interesting points in speaking to his amendment, which need to go into the mix as regards how we sort through this difficult area.

I am very grateful to the Minister for confirming that we will continue discussions in this area. I do not think for a moment that I necessarily have all the right answers, but we have started on the journey and will continue. We will certainly be talking about the same issues again in different formats on Report and I look forward to that very much. On that basis, I beg leave to withdraw the amendment.

Amendment 45B withdrawn.

3.45 pm

Amendment 46

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

46: Schedule 1, page 116, line 36, after "on" insert "relevant"

Amendment 46 agreed.

Amendments 46A to 47A not moved.

Amendment 48

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

48: Schedule 1, page 117, line 5, at beginning insert "relevant"

Amendment 48 agreed.

Amendment 48A not moved.

Amendments 49 and 50

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

49: Schedule 1, page 117, line 14, after "of "" insert "relevant"

50: Schedule 1, page 117, line 16, leave out "sub-paragraph" and insert "definition"

Amendments 49 and 50 agreed.

Amendment 50A not moved.

Amendment 51

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

51: Schedule 1, page 117, line 35, at end insert—

"15A(1) This condition is met if—

(a) the processing is necessary for the purposes of—

(i) automatically renewing a pre-GDPR insurance contract, or

(ii) carrying out, or managing the expiry of, an insurance contract resulting from the automatic renewal of a pre-GDPR insurance contract,

(b) the controller has taken reasonable steps to obtain the data subject's consent to the processing of personal data necessary for those purposes in accordance with sub-paragraph (2), and

(c) the controller is not aware of the data subject withholding such consent.

(2) The steps described in sub-paragraph (1)(b) must have been taken—

(a) in the case of a contract which automatically renews after a period of less than 10 months, on at least one automatic renewal of the contract in each period of 12 months that has ended since 25 May 2018;

(b) in any other case, each time the contract has automatically renewed since 25 May 2018.

(3) For the purposes of this paragraph, an insurance contract is automatically renewed if—

(a) a new insurance contract between the same parties is made without the insured person taking any steps, and

(b) the new contract provides cover which is the same as, or substantially similar to, the cover provided by the expired contract,

and references in this paragraph to the automatic renewal of a contract include both the first automatic renewal on the expiry of that contract and subsequent automatic renewal originating with that contract.

(4) For the purposes of sub-paragraph (3)(a), the new contract and the expired contract are to be treated as made with the same insurer if they are made with different insurers but arranged by the same intermediary.

(5) In this paragraph—

"insurance contract" means a contract of general insurance or long-term insurance;

"insurer" means a person carrying on business which consists of effecting or carrying out insurance contracts;

"pre-GDPR", in relation to an insurance contract, means made before 25 May 2018.

(6) Terms used in the definition of "insurance contract" in sub-paragraph (5) and also in an order made under section 22 of the Financial Services and Markets Act 2000 (regulated activities) have the same meaning in that definition as they have in that order."

Amendment 51 agreed.

Amendment 52 not moved.

Amendment 53

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

53: Schedule 1, page 118, line 19, leave out first "substantial"

Lord Kennedy of Southwark (Lab): My Lords, as this amendment involves data provided by local authorities, I should declare my interests as a councillor of the London Borough of Southwark and as a vice-president of the Local Government Association.

Amendment 53 in my name and that of my noble friend Lord Stevenson of Balmacara would delete the first occurrence of the word "substantial" from paragraph 17(2) of Schedule 1 and Amendment 54 would delete its second occurrence from the same provision.

Healthy-functioning political parties are a vital part of our democracy. Campaigners and campaigning have moved on a long way from the days of hand writing envelopes to encompass much more sophisticated methods of contacting voters using all available mechanisms.

Political parties and their members need clarity and certainty as to what they are required to do, what they are able to do and what they are not able to do, so that they act lawfully at all times and in all respects. We cannot leave parties, campaigners and party members with law that is grey and unclear, and with rules that mean that campaigners, in good faith, make wide interpretations that are then found to be incorrect, due largely to the required clarity not having been given to them in the first place by government and Parliament.

I am also very clear that political parties are volunteer armies, with people volunteering to campaign to get members of their party elected to various positions in Parliament and in local authorities and to run various campaigns.

I have a number of questions for the Minister. I do not necessarily expect to get answers today but I hope that when he responds he will agree to meet me along with other interested Peers on the matters I am raising. I know that the noble Lord, Lord Hayward, from the Minister's Benches would certainly like to meet him, and I am sure that the noble Lord, Lord Tyler, would also wish to be involved in those discussions. I hope that the Minister will agree to that. I also think that it would be useful if any such meeting involved officials from the three parties to discuss how we can get this right; otherwise, there will be all sorts of problems for parties, party members and campaigners, and none of us wants that.

Therefore, my questions to the Minister are as follows—as I said, I shall be happy for him to write to me. Will he provide a list of the characteristics or activities that are required for a political party to conduct operations? Does he believe that the terms in relation to political activity in paragraph 17 of Schedule 1 definitively cover the required activities of UK political parties? Will he clarify what constitutes profiling with regard to the activities of political parties? What activities or operations with reference to paragraph 17(1)(c) of Schedule 1 would be considered necessary for a political party? Does he think that the procedure detailed in paragraph 17(3)(a), whereby a data subject can give written notice to require the data controller—in this case, a political party—to cease the processing of their data, is consistent with Section 13(3) of the RPA 1983, where parties hold and process data on the basis not of consent but of being supplied that data by a local authority via the electoral register? Given the regular transfer of registers to political parties, does the Minister think it is practical or enforceable for a party to cease processing the data, which will likely be resupplied by an authority?

Let me make the point this way: take elector A, who instructs the party to stop processing their data, and the party complies. But the party then gets given data from the local authority in the next round, and elector A's information is included. As soon as the party processes that data, it will technically have infringed the law. This is very complicated and it would be useful if the Minister's officials could meet people interested in this area and come back to us. Whatever

we end up with following this process, it must be consistent and work, and it should not bring into conflict two different Acts of Parliament. I beg to move.

Baroness Hamwee (LD): My Lords, the noble Lord referred to the rules as a bit grey and asked for clarity for the volunteer army. I should declare an interest as a foot soldier in that volunteer army.

The noble Lord's request that party officials should be involved in this process is a good one—I would have thought they would have been. The Minister should be aware of my first question as I emailed him about this, over the weekend I am afraid. Has the Electoral Commission been involved in these provisions?

The noble Lord mentioned the electoral register provided by a local authority. My specific question is about the provision, acquisition and use of a marked electoral register. For those who are not foot soldiers, that document is marked up by the local authority, which administers elections, to show which electors have voted. As noble Lords will understand, this is valuable information for campaigning parties and can identify whether an individual is likely to turn out and vote and so worth concentrating a lot of effort on. I can see that this exercise could be regarded as "campaigning" under paragraph 17(4) of Schedule 1. However, it is necessary, although I do not suppose that every local party in every constituency makes use of the access it has. It is obvious to me that this information does not reveal political opinions, which is also mentioned in the provisions. I would be grateful to hear the Minister's comments. I am happy to wait until a wider meeting takes place, but that needs to be before Report.

I want to raise a question on a paragraph that is in close geographical proximity in the Bill—I cannot see another place to raise the issue and it occurred to me only yesterday. Why are Members of the House of Lords not within the definition of "elected representatives"? We do not have the casework that MPs do, but we are often approached about individual cases and some Peers pursue those with considerable vigour. This omission—I can see a typo in the email that I sent to the Minister about this; I have typed "mission" but I meant "omission"—is obviously deliberate on the part of the Government.

Lord Ashton of Hyde: My Lords, I begin by repeating, almost word-for-word, the noble Lord, Lord Kennedy: engaging voters is important in a healthy democracy. In order to do that, political parties, referendum campaigners and candidates will campaign using a variety of communication methods. However, they must comply with the law when doing so, and this includes the proper handling of the personal data they collect and hold.

Noble Lords will be aware that the Information Commissioner recently announced that she was conducting an assessment of the data protection risks arising from the use of data analytics, including for political purposes. She recognises that this is a complex and rapidly evolving area where organisations use a person's internet or public profile to target communications or messaging. The level of awareness among the public about how data and analytics work and how their personal data is collected, shared and used through such tools is low. What is clear is that these tools have a significant potential impact on an individual's privacy, and the Government welcome the commissioner's focus on this issue. It is against this backdrop that we considered the amendments of the noble Lord.

The amendments seek to amend a processing condition relating to political parties in paragraph 17. The current clause permits political parties to process data revealing political opinions, provided that it does not cause substantial damage or substantial distress. This replicates the existing wording in the Data Protection Act 1998. I have said that political campaigning is a vital democratic activity but it can also generate heated debated. Removal of the word "substantial" could mean that data processing for political purposes which caused even mild offence or irritation becomes unlawful. I am sure noble Lords would agree that it is vital that the Bill, while recognising the importance of adequate data protection standards, does not unduly chill such an important aspect of the UK's democracy. For that reason I ask the noble Lord to withdraw the amendments.

I thank the noble Lord for allowing me to reply later to his list of questions. I found it difficult to copy them down, let alone answer them all, but I take the point. In many instances we are all in the same boat on this, as far as political parties are concerned. I shall of course be happy to meet with him, and I take the point about who should attend. I am not sure it will be next week, when we have two days in Committee, but we will arrange it as soon as possible. I will have to get a big room because my office is too small for all the people who will be coming. I take the points the noble Lord made in his questions and will address them in the meeting.

The noble Baroness, Lady Hamwee, asked whether the Electoral Commission had been consulted. It did not respond to the Government's call for views which was published earlier this year, and we have not solicited any views explicitly from it beyond that.

The noble Baroness also asked about the provision, acquisition and use of a marked electoral register within paragraph 17 of Schedule 1. As she explained, the marked register shows who has voted at an election but does not show how they voted. As such, it does not record political views and does not contain sensitive data—called special categories of data in the GDPR—and, as the protections for sensitive data in article 9 of the GDPR are not relevant, Schedule 1 does not apply.

Lastly, the noble Baroness asked why Members of the House of Lords are not within the definition of elected representatives. Speaking as an elected Member of the House of Lords—albeit with a fairly small electorate—I am obviously interested in this. I have discovered that none of us, I am afraid, are within the definition of elected representatives in the Bill. We recognise that noble Lords may raise issues on an individual's behalf. Most issues will not concern sensitive data but, where they do, in most cases we would expect noble Lords to rely on the explicit consent of the

[Lord Ashton of Hyde]
person concerned. This arrangement has operated for the past 20 years under the current law, and that is the position at the moment.

I hope I have tackled the specific items relating to the amendments. I accept the points made by the noble Lord, Lord Kennedy, about the electoral issues that need to be raised in general.

Lord Whitty (Lab): I fully support my noble friend's assertions and the Minister's response. It is very important that registered political parties can operate effectively. I wonder whether, in the discussions he is proposing to undertake, the Minister will also address the issue of other organisations and political parties attempting to influence the political process. I do not think I need to spell it out, in view of recent news, but the use of social media by organisations that are not covered by our electoral law or by registration as a political party must not have the same provisions that registered political parties would have under the Bill or my noble friend's amendments. I wonder if that could be addressed directly in these discussions.

4 pm

Baroness Jay of Paddington (Lab): My Lords, before the Minister replies to my noble friend Lord Whitty, I want to emphasise the importance of his arguments and ask him to reflect again on what he said about the point made by the noble Baroness, Lady Hamwee, on the Electoral Commission's involvement. Although, as the Minister said, he wrote in general terms to the commission—or it was asked to give evidence to the Government on the matter—that may have been around the time of the general election, when perhaps it was engaged in immediate problems. It is important that it be included in discussions on the broader issues, particularly the ones just raised by my noble friend Lord Whitty. Perhaps it would be worth the Government reflecting on attempting to draw it into the conversation now.

Lord McNally (LD): It is easier for me to intervene now, so the Minister can answer everything in one go. In two small amendments, there is a massive issue that needs to be addressed with great seriousness. The Minister referred to the Information Commissioner's study on the interrelationship between data and the political process. I wonder whether her findings will be available before the Bill becomes law, because that will have a great impact. The other thing we must learn, as the noble Lord, Lord Whitty, said, is that it is often wise to look across the Atlantic to find out what is coming to us. There is a massive problem coming down the road concerning how data are used during the political process. On the one hand, there is the issue, referred to by the noble Lord, Lord Kennedy, of political parties being mostly volunteers, trying their best to deal with complex laws. They must be protected as best they can. On the other side of the argument, there is a degree of sophistication in applying data to politics, which could become a threat to the democratic process. These are two small amendments, but they are an iceberg in terms of the problems that lie beneath them.

Lord Lucas (Con): My Lords, I want to pick up on the last point of the noble Lord, Lord McNally. We are getting into a situation where political parties are addressing personal messages to individual voters and saying different things to different voters. This is not apparent; there must be ways to control it. We will have to give some considerable thought to it, so I see the virtue of the amendments.

Lord Ashton of Hyde: Quickly, because I will not remember all the questions and points, I want to emphasise that they are all very good points and I will reflect on them. My main mission is to get the GDPR and law enforcement directive in place by May 2018. I absolutely accept the point made by the noble Lord, Lord McNally—that this is the tip of iceberg—but we must bear in mind that this is about data protection, both today and on Report, so I will focus on that. We have already had other avenues to raise a lot of the points the noble Lord made, but I agree that it is a huge issue. He asked when the report from the Information Commissioner will be available. I would expect it before Christmas, so it will be before the Bill becomes law.

I certainly undertake to reflect on what the noble Baroness, Lady Jay, said about the Electoral Commission. I believe that our call for views was after the election; nevertheless, I take her point. I am very sorry but I cannot remember what the point from the noble Lord, Lord Whitty, was, but I accept these things have to be taken into account. When we have our meeting—it is becoming a big meeting—it will be for people concerned specifically with the Data Protection Act, not some of the issues that lie outside that narrow area, important though they are.

I ask noble Lords not to press their amendments.

Lord Lucas: My Lords, picking up on the last point from the noble Baroness, Lady Hamwee, is this the first time the privileges of Members of this House have been reduced in relation to Members of the other House? If so, will the Government consult the Speaker of this House on whether he considers that desirable?

Lord Ashton of Hyde: My Lords, they have not been reduced. This is the position that exists today.

Lord Lucas: My Lords, privileges are being given to Members of another place—and indeed to Members of the Parliaments of Scotland and other places—that are being denied to us. Is this the first time that has been done?

Lord Ashton of Hyde: No, it is not the first time because this is the position that exists under the Data Protection Act 1998.

Lord Kennedy of Southwark: My Lords, I thank all noble Lords for speaking in this debate. As I think the noble Lord, Lord McNally, said, these amendments would delete just two words, but we have had a very important debate. We tabled the amendments to probe these issues, which are very important.

I am pleased that the noble Lord, Lord Ashton of Hyde, has agreed to meet us because we need to discuss this. It would be much better if we could get interested Peers from this House and officials from various parties together to sort this matter out, rather than leave it and let it go to the other place. We have a much better record of sitting down and sorting such issues out. I hope, if we need to amend the Bill, we do so on Report. Before we have our meeting—I accept it will be quite a big meeting—it would be useful if the noble Lord wrote to me, if he can, and to other interested Lords so we can have the Government's position on paper before we sit down. That would help our discussions and move them on. There is a community of interest among noble Lords.

I certainly agree with the points made by the noble Lord, Lord McNally, and by my noble friends Lord Whitty and Lady Jay, but we need to focus on these issues, get them right and get proper amendments in place to protect parties and campaigners as they do their proper and lawful work. At this stage, I am happy to withdraw the amendment.

Amendment 53 withdrawn.

Amendment 54 not moved.

Amendments 55 and 56

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

55: Schedule 1, page 120, line 37, after "Commons" insert ", a member of the National Assembly for Wales"

56: Schedule 1, page 121, line 1, at end insert—

"20A_ This condition is met if the processing—

(a) consists of the publication of a judgment or other decision of a court, or

(b) is necessary for the purposes of publishing such a judgment or decision."

Amendments 55 and 56 agreed.

Amendment 57

Moved by ***Lord Moynihan***

57: Schedule 1, page 121, line 3, leave out paragraph 21 and insert—

"21(1) This condition is met if the processing is carried out—

(a) in connection with measures designed to protect sport in the United Kingdom from athletes taking performance enhancing substances listed in the World Anti-Doping Code which are undertaken by UK Anti-Doping (UKAD) or any successor body mandated by the Secretary of State as a non-departmental public body responsible for such objectives, or

(b) for the purposes of national governing bodies of sports, sports clubs, institutions of higher education, schools or managers of sporting events providing information about individual athletes who may be in receipt of performance enhancing substances to UKAD or its successor body.

(2) The reference in sub-paragraph (1)(a) to measures designed to protect sport in the United Kingdom from athletes taking performance enhancing substances include measures designed to identify or prevent doping including, but not limited to, requesting information about the gender of the data subject if thought to be relevant to the use of banned performance enhancing substances.

(3) For the purposes of this paragraph—

(a) data controllers include, but are not limited to, the UK Anti-Doping Agency, medical practitioners recognised by the British Medical Association, national governing bodies of sport, sports clubs, higher education institutions, schools and managers of sporting events;

(b) data processors include but are not limited to all sports bodies and individuals appointed by the controller; and

(c) data subjects are athletes competing in national junior and senior teams aged 12 years and above."

Lord Moynihan (Con): My Lords, at Second Reading, the Government described the exemption of doping in sport as a flexibility permitted within the GDPR. This is welcome. My understanding is that anti-doping in sport comes under Part 2, relating to the permissibility of collecting personal data for reasons of public interest. Therefore, biometric data, for example, may be collected and processed to prevent doping without the explicit consent of the data subject—in this case the athlete. Member states are able to pass into their domestic legislation further restrictions on the processing of special categories of data. This is what the Government do under Part 4 of Schedule 1.

The relevant data controller—a role which currently is not clear in the Bill in the case of sport—will have to produce a document that explains how its procedures comply with article 5 of the GDPR and what its policies on retention and use of personal data within its control are. It will also be under an obligation to maintain a record of the processing it or its data processors have undertaken to comply with article 30 of the GDPR. With respect to this, the data controller has to show how they comply with article 6 of the GDPR and whether they have deleted or retained the data under their control. Sport would be wise to reflect that the Government have said that what is proposed is not an exemption to the Bill but flexibility permitted within the GDPR, which will require sporting bodies to exercise a number of important responsibilities, and that ignoring such responsibilities comes with significant sanctions, some criminal in nature. I would be grateful if the Minister could confirm that my understanding is correct on that subject.

From the perspective of the athletes, the fact that—across the party divide, I understand—we are supportive of this flexibility does not underestimate what we are asking for. The doping regime in sport requires the athlete to be totally responsible for what is in their body at all times. I know of few spheres of activity where the onus on an individual is so severe. Our athletes are guilty before being proven innocent. It is intrusive, to say the least, to have a regime whereby a young gymnast eating beef which may have been imported from a country where the farmer used steroids to fatten his cattle for market is immediately found guilty of a doping offence in this country. It is equally important to recognise that the "whereabouts test" required of all our leading professional and amateur athletes requires them to inform the doping authorities

[LORD MOYNIHAN]
of where they are for a given period each and every day including their holidays, where in all other forms of employment this intrusive and onerous requirement goes beyond the freedom that an employee can legitimately expect, not least under European law, as well as the freedom to have their holidays uninterrupted on a daily basis by their employers.

I appreciate that these exemptions must respect the essence of fundamental rights and freedoms, and be a necessary and proportionate measure in a democratic society for the purposes of safeguarding the doping regime in British sport, necessary for reasons of public interest and providing for suitable and specific measures to safeguard the fundamental rights and interests of data subjects. I would be grateful if the Minister could confirm that this is the case. This law, which enshrines in UK law a right to be forgotten and for an athlete not to provide a test sample, claiming protection under this Bill, would drive a coach and horses through the anti-doping regime that we have developed in this country under the aegis of UKAD, or UK Anti-Doping, if it was not treated with the flexibility permitted within the GDPR. Thus, I fully support the decision taken by the Government.

I am also in full support of the work of the governing bodies, UKAD and the world of sport in the fight against doping, which poses the greatest threat to clean sport in our generation, particularly since it was reported only two weeks ago by the World Anti-Doping Agency in publishing its 2016 anti-doping testing figures that the number of adverse analytical findings is increasing. We face a world where new technologies and pharmaceutical products, changes in doping patterns, gene editing and state-sponsored doping both within and beyond the borders of Russia are growing issues, providing not a diminishing but an increasing menace to clean sport.

The amendments that I have tabled are set against this background, probing in nature at this stage, and underline a number of important points which may require further consideration by the House. Currently, the relevant provision, paragraph 21 in Schedule 1, is broadly drawn and would lead to unintended consequences, for there is no definition of doping nor of sport, and the definition of the bodies to be covered by it is non-existent. This could become a lawyer's paradise. If I and another noble Lord establish an organisation with the broad aims set out in paragraph 21, it seems to me that we would be deemed a "relevant body". Indeed, there is no mention of the framework currently in place to eliminate doping—namely UKAD, the government-funded UK anti-doping body, which should be referenced in the legislation, providing it with the necessary powers. Looking further at the wording, I would like to ask the Minister whether he agrees with me that,

"doping … at a sporting event",

covers spectators as well as competitors. If so, we need further work on the wording.

I have stated that I believe that UKAD should be named on the face of the Bill, since UKAD is the arm's-length body, or ALB, accountable to Parliament through the Secretary of State at the DCMS and mandated to deliver the Government's treaty commitments under the UNESCO International Convention against Doping in Sport to protect a culture of clean sport in the UK. This is achieved through the implementation and management of the UK's national anti-doping policy, which requires funded sports bodies in the UK to comply with the World Anti-Doping Code.

4.15 pm

By naming UKAD in the Bill we will enable it to deliver its current agenda of reforms, which it sees as essential to be a more effective body and with which I agree. This would, for example, extend the reach of UKAD across all sports in the UK covering all levels, including amateur as well as elite. Today it is restricted, given its resources, to work only through the relevant sports and numerous governing bodies and umbrella bodies that exist. It would enable it to demand information from national governing bodies of sport, the NGBs, including the records of treatment of athletes by athlete support personnel. It would enable it to require NGBs to provide UKAD with details of their members, through the provision of their full membership databases. It would enable it to demand production of communications devices, together with their password details and to reach out beyond the remit of governing bodies—for example into university gyms, renowned centres for a small minority of aspiring professional rugby players to add strength and body mass through the use of steroids and other banned performance-enhancing drugs. It would enable it to criminalise doctors who are outside the remit of governing bodies and found to be in breach of the GDPR process when they fail to provide personal data required by the GDPR regime under Clauses 21(1) and 21(2) of the Bill. Finally, it would enable it to have the tools in place to manage a regulated assurance regime that checks on compliance, not just in governing bodies but across sport in the United Kingdom. All could be determined as necessary by UKAD in undertaking its duties if it is, indeed, a controller in this context.

My noble friend may, in responding, point out that the clause should include bodies wider than just the processes conducted under measures set by UKAD, and that my wording may be deficient in that respect. I understand this opinion, which has been aired by some governing bodies of sport, but if that is the Minister's view, and it finally proves convincing, a change to my wording could address that, as there are, indeed, other organisations that we may regard as additional to UKAD in the fight against doping. Some examples might be sports which, while working with UKAD in some capacity, have their own related doping rules, such as the FA and the RFU. While it should be pointed out that both the FA and the RFU govern Olympic sports and are therefore fully covered by the World Anti-Doping Agency, which provides the framework for all UKAD's operations, policies and codes, I believe that UKAD should have ultimate responsibility for accrediting all British anti-doping programmes, and my amendment seeks to achieve this objective.

International federations may apply their own measures when running events in the UK. This might be UK-based federations, such as the Commonwealth Games

Federation, or international federations of sport—or, indeed, the International Olympic Committee or the International Paralympic Committee—when they are running events here. Again, I believe that UKAD should have overall authority to determine whether their programmes, when operating in the UK, are to a standard that fulfils its criteria. We should not seek to bring any event to this country with public or lottery funding, nor should we support any international event on these shores, funded either through lottery funding or public money, which does not meet the standards and procedures set and agreed by UKAD, as the sole recognised body responsible for the fight against doping in sport in the UK. Otherwise, we risk allowing British or international sports organisations to hold events that could circumvent what we, as Parliament, recognise to be the minimum standards in the fight against cheating in sport.

My amendment makes reference to performance-enhancing substances listed in the World Anti-Doping Code.

Lord Hayward (Con): Is there not always a risk in naming a specific body in any piece of legislation, because government have the habit, on occasion, of changing the name of a body and you then have to change the name on the primary legislation?

Lord Moynihan: I hear what my noble friend says. I recognise that the wording may need to recognise any successor body to UKAD, but the importance of putting UKAD in the legislation now arises from the fact that it is an arm's-length body accountable to Parliament; that it is honour bound—and, indeed, legally bound, at the moment, through the Secretary of State—to deliver the requirements of the UNESCO International Convention against Doping in Sport; and it is the recognised and funded body in this country. It would be possible to add "and to any successor body" to my amendment.

Lord Maxton (Lab): My Lords, how does the noble Lord define sport? That is a major question. For instance, in snooker, which I believe is defined as a sport, it is recognised that beta blockers are a banned substance whereas in other sports they would not necessarily be banned. Dancing is not defined as a sport although it demands very much more activity than either darts or snooker, which is a sport.

Lord Moynihan: The noble Lord raises an issue that could well keep the Committee late into the evening and indeed has taxed the minds of many individuals both inside and outside this Chamber. For example, if we consider sport to require physical activity and competition, gardening at the Chelsea Flower Show might well be covered by that broad definition. I hope that my noble friend in sport, and indeed the noble Lord, will forgive me if I do not pursue that path. However, I did say at the outset that there is an important issue here in that we need to define what the Government mean by sport in their amendment, because it is unclear to many people outside this Chamber—and oft debated—what exactly a sporting activity is.

I shall close by touching on the performance-enhancing substances listed in the World Anti-Doping Code and why I believe it is critical that we should cover those. I have reservations about exempting sports bodies from requiring sensitive personal data from athletes simply because they are deemed to be "contrary to the spirit of sport" or, while legal, "could cause harm to an athlete". My objective has always been focused on tackling doping in sport and I believe that it may go too far to seek an exemption for these additional categories. However, I remain open to persuasion by the Minister on this issue and will listen carefully to both UKAD and to the UK governing bodies of sport if they feel otherwise. If so, in a future amendment we will need to be specific about exactly what we mean by the "spirit of sport" by defining it in primary legislation and being clear about who determines what does cause "harm to an athlete", and why such protection from the GDPR rights is appropriate in that context.

On the final question of gender, this is a probing amendment since the current position in UK law is that competitive sports men and women who have undertaken a change in their gender are currently prohibited from participating in certain competitions under the Gender Recognition Act 2004. As a result, an athlete who changes their gender would be subject to the onerous sanctions in this Bill if in the process of any medical treatment to assist their change-in-gender process they used banned performance-enhancing substances. This is not unusual where testosterone is prescribed.

In conclusion, I hope that this is the beginning of a legislative path where those who knowingly cheat fellow athletes out of their careers, recognition, selection or financial gain by taking a cocktail of banned drugs are recognised for what they are doing—namely, committing fraud. We also believe that tailor-made legislation should be put in place to criminalise that activity, as it is in every other sphere of life. UK Anti-Doping has the national duty to ensure that all sports comply fully with anti-doping policies and procedures. Under its new chair, Trevor Pearce, its new director of communications, Emily Robinson, and its CEO, Nicole Sapstead, I believe that an effective team is now in place who recognise that a globally leading NADO has to be well resourced, truly independent of the governing bodies of sport and granted additional powers. My amendments to the Bill begin to provide it with the tools it needs and I believe that it is best positioned to lead the campaign. This legislation should make it unequivocally clear that that is the case because that is the best way of protecting the interests of athletes. I beg to move.

The Deputy Chairman of Committees (The Countess of Mar) (CB): My Lords, if this amendment is agreed to, I cannot call Amendments 58 to 62 because of pre-emption.

Lord Clement-Jones: I must say how delighted I am that on this occasion we had the noble Lord advocating his own amendment. I was nearly in the hot seat last week, but we have just avoided it. I was delighted at his powerful advocacy because of course the noble Lord

[Lord Clement-Jones]
is extraordinarily well informed on all matters to do with sport, and this goes to the heart of sport in terms of preventing cheats who prevent the rest of us enjoying what should be clean sport, however that may be defined. All I have to do is pick out one or two of the elements of what the noble Lord said in my supportive comments.

There is the fact that neither "doping" nor "sport" is defined in the Bill, as the noble Lord pointed out. There is no definition of the bodies to be covered by paragraph 21, which is extremely important. He also made an extraordinarily important point about UKAD. Naming UKAD in the Bill, as the amendment seeks to do, would add to its authority and allow it to carry out all the various functions that he outlined in his speech. If it is necessary to add other bodies, as he suggested, that should of course be considered.

The noble Lord's reference to performance-enhancing substances, which again are mentioned in the amendment and included in the World Anti-Doping Code, ties the Bill together with that code and was very important as well. Finally, the point that he made about gender and the substances used in connection with gender change was bang up to the minute. That, too, must be covered by provisions such as this. So if the Minister is not already discussing these issues with the noble Lord, Lord Moynihan, I very much hope that he is about to and will certainly do so before Report.

Lord Stevenson of Balmacara: My Lords, once again your Lordships' House is very grateful to the noble Lord, Lord Moynihan, for raising this issue and, as the noble Lord, Lord Clement-Jones, said, for doing so in such a comprehensive way. It is in the context of the much wider range of issues that the noble Lord, Lord Moynihan, has been pursuing regarding how sport, gambling and fairness are issues that all need to be taken together. We have been supporting him on those issues, which need legislation behind them.

Noble Lords may not be aware that we have been slightly accused of taking our time over the Bill. I resist that entirely because we are doing exactly what we should be doing in your Lordships' House: going through line-by-line scrutiny and making sure that the Bill is as good as it can be before it leaves this House. We saw the noble Lord, Lord Moynihan, at the very beginning of Committee and he then dashed off to Australia to do various things, no doubt not unrelated to sport. He has had time to come back and introduce these amendments—but, meanwhile, the noble Lord, Lord Clement-Jones, and I were debating who was going to pick the straw that would require us to introduce them. We were very lucky not to have to do so because they were introduced so well on this occasion.

Our amendment in this group is a probing amendment that picks up on some of the points already made. It raises the issue of why we are restricting this section of the Bill to "sport"—whatever that is. If we are concerned about performance enhancement, we have to look at other competitive arrangements where people gain an advantage because of a performance-enhancing activity such as taking drugs. For instance, in musical competitions, for which the prizes can be quite substantial, it is apparently possible to enhance one's performance—perhaps in high trills on the violin or playing the piano more brilliantly—if you take performance-enhancing drugs. Is that not somehow seeking to subvert these arrangements? Since that is clearly not sport, is it not something that we ought to be thinking about having in the Bill as well? I say that because, although the narrow sections of the Bill that relate to sport are moving in the right direction, they do not go far enough. As a society, we are going to have to think more widely about this as we go forward.

Lord Maxton: I am slightly confused by what is a performance-enhancing drug. We have seen athletes and other sportsmen banned in this country for taking what I would call non-enhancing drugs: in other words, cannabis or whatever it might be. In that case they are not performance-enhancing drugs but the reverse of them—yet people can be banned even if taking them is deemed legal in the country where they do so. Even if it is legal to take cannabis, the drug can still be deemed a banned drug by the anti-drug authorities.

Lord Stevenson of Balmacara: My noble friend is quite right. He has obviously been careful to make sure that he has no personal experience of what he talks about and I would like to make it clear that I have none, either. But it is a very tricky area and we are wrong just to dance around it with the idea that we are somehow doing something important in relation to a particular aspect of drug enforcement.

To do this properly, we need a much clearer approach. I realise that I am in danger of rising above the detail here and going back to my high plain of intellectual approach to the Bill for which I have already been criticised—but I hope that when the Minister responds we can get somewhere on this. A meeting on the particular narrow points raised by the government amendment and by the noble Lord, Lord Moynihan, is required. It would be helpful to see the context in which this might operate. I would be happy to attend such a meeting should that be the case.

4.30 pm

Baroness Chisholm of Owlpen (Con): My Lords, I want to reiterate what my noble friend Lord Ashton said. I think we are learning a lot about philosophy from the noble Lord, Lord Stevenson, during the passage of the Bill. It is a welcome addition as far as I am concerned.

I shall start with brief reference to the government amendments in this group. These amendments, Amendments 58 to 60 and 62 and 63, make further related provision in respect of processing undertaken to ensure the integrity of sport. This is necessary because, unusually, integrity issues in sport often relate to sensitive data, the processing of which may otherwise be prohibited under article 9 of the GDPR. I am grateful to a number of stakeholders for their help in making sure that these amendments will achieve their intended effect.

I turn now to the amendments tabled by the noble Lord, Lord Moynihan, and the noble Lord, Lord Stevenson. Amendments 57 and 61 seek to amend the

processing condition in paragraph 21 on anti-doping in sport. This condition was included in the Bill following extensive engagement with sports governing bodies and UK Anti-Doping, which together implement and manage anti-doping policy in the UK. They are also responsible for eliminating the scourge of doping in sport. The paragraph as included in the Bill permits the processing of sensitive data for these purposes. UKAD is of the view that the measure as drafted will enable it to continue to perform this important function.

Amendment 57, tabled by my noble friend Lord Moynihan, who has such great expertise in this area and has done so much over the years to try to combat doping in sport, seeks to narrow the doping provision so that it allows processing only where it relates to an athlete who may be in breach of UKAD's rules. Amendment 61, tabled by the noble Lord, Lord Stevenson, instead seeks to limit the provision to rules set by a sports governing body with responsibility for a single sport. Neither position reflects the reality of split responsibility for anti-doping in UK sport today. Removing the reference to "sporting event" and "sport generally" may potentially exclude the anti-doping processing carried out by UKAD and by those bodies which set and enforce anti-doping rules in a particular sporting event rather than a particular sport, such as 6 Nations rugby, the IOC or the Commonwealth Games Federation. The Bill must not be limited to only the interventions of UKAD but must allow processing in those sports and sporting events which have their own anti-doping rules. The fact that those bodies are not governed entirely by UKAD's rules makes their processing no less important. Equally, the provision must allow processing in relation to participants who are not themselves athletes. As noble Lords will understand, the sensitive data or criminal record of a coach or relative may be fundamental to anti-doping cases.

A narrowing of the scope of this paragraph could create loopholes for participants who cheat. For these reasons, I am confident that the original drafting suffices. Paragraph 21 of Schedule 1 was subject to significant engagement with sports governing bodies. Given that the Bill comes out of the government department that is also responsible for sport, we have been able to take extra care. The large number of relationships we have with this sector have been used to test the draft, and UKAD is content.

Several noble Lords mentioned various items which I will also refer to. My noble friend Lord Moynihan wanted me to confirm that athletes cannot rely on the right to be forgotten. That right is not unlimited, and if the personal data has been lawfully processed, and needed to be processed, then it would be there only if there was no overriding legitimate interest for the processing of that data. The controller would have to erase the personal data in these circumstances.

My noble friend also asked why we did not criminalise doping. None of those interviewed as part of the review were in favour of criminalising doping in sport. This was a unanimous view. For example, sports governing bodies expected that their internal investigations would be negatively affected by the criminalisation of doping in sport. It would remain quicker to deal with an instance using regulatory or disciplinary proceedings, which must be proved to the civil standard of the balance of probabilities rather than beyond reasonable doubt. Others noted that the current penalties were already sufficient to end a sporting career.

My noble friend also wanted to know whether doping at a sporting event covered spectators. This is a broad measure to cover processing in connection with measures designed to eliminate doping, for the purposes of providing information about doping or suspected doping. This could include processing of special categories, such as data relating to spectators or third parties providing information, but not only when necessary in connection with anti-doping measures.

The noble Lord, Lord Stevenson, brought up a good point, about why sport is unique when there are other areas that could also be included in this. Particular provision for sport is needed because sports bodies are an unusual type of regulator, where the regulation they carry out is capable of meeting a substantial public interest test yet they cannot rely on paragraph 9—there is no statutory recognition of their function nor is it beyond argument that enforcement of their rules benefits all members of the public, as opposed to the protection of their participants. Reliance on paragraph 9 for this processing would be too narrow, but important to remedy given the amount of sensitive data that might be processed by sports bodies in pursuit of their integrity functions. This is not something that we are aware would apply to other types of regulators.

I will move the government amendments for the reasons I have set out, and will of course be happy to meet noble Lords if they wish to discuss this point further.

Lord Moynihan: First, I thank the noble Lords, Lord Stevenson and Lord Clement-Jones, for offering to stand in for me at the last Committee sitting. I was in my place for the first sitting, when we were expecting to reach this amendment, but regrettably had to travel to Australia on two occasions in the last month, only returning about four and a half hours ago. I apologise if I was not as lucid as I would like to have been, and I am very grateful to them for offering to assist if I had been absent again.

I will respond very briefly to a number of points raised. In response to the noble Lord, Lord Maxton, I took into consideration the question of what is a performance-enhancing drug and have suggested, in my amendment, that it should be a drug listed under the WADA—World Anti-Doping Agency—code as a performance-enhancing drug and part of the World Anti-Doping Code. I know this is a contentious issue and that there is an issue about what should or should not be in that code. Indeed, I have many reservations about a number of the drugs in it, which I do not see as performance enhancing, but it is the best international definition at the moment for sport and is used by the International Olympic Committee.

Lord Maxton: As a result of the answer given to me by my noble friend, I have looked this up. It says:

"Use of recreational or social drugs is banned in sport",

even though they may be,

"detrimental to sporting performance and result in a positive test result weeks later".

It is not just drugs that enhance performance that are banned but those which do not enhance performance.

Lord Moynihan: I have a great deal of sympathy with and support for the noble Lord, Lord Maxton. I said towards the end of my comments that I have reservations about the Bill applying to categories such as "the spirit of sport"—that is a direct quote—and where there may be harm to an athlete from a drug. I am focused on performance-enhancing drugs, which is why I wrote that into the amendment.

Secondly, I have to say to my noble friend—I may well be wrong, and she has had the advantage of being in the United Kingdom over the past three or four days and may well have spoken to UKAD during that time—that my clear understanding is that UKAD would like to go further than what is in the Bill drafted by the Government. If I am wrong, I will be pleased to reflect on what she has said, but I suggest that it would be worth while, given that my understanding differs from hers, that we have a meeting and encourage UKAD to be present, because my clear understanding is that it would like to go further and have the powers to which I referred in the Bill.

Finally, I turn to the somewhat surprising comment that my noble friend made about spectators at a sporting event being covered. Surely when we are looking at doping in sport it is not intended to cover spectators or anybody at a sporting event. The police, St John Ambulance, stewards—where does the catch-all end? My concern derives from that reflection: this is too general. If we are to be really effective in tackling and eliminating doping in sport, let us at least make sure that the legislation that we enact through due process in both Houses is as accurate and comprehensive as possible. In that context, I echo the comments made by both the noble Lord, Lord Clement-Jones, and the noble Lord, Lord Stevenson.

With the expectation of a further meeting and returning to this at a later stage, I beg leave to withdraw the amendment.

Amendment 57 withdrawn.

Amendments 58 to 60

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

58: Schedule 1, page 121, line 3, leave out "carried out" and insert "necessary"

59: Schedule 1, page 121, line 4, leave out "in connection with" and insert "for the purposes of"

60: Schedule 1, page 121, line 5, leave out "supervision of a body with responsibility" and insert "responsibility of a body or association that is responsible"

Amendments 58 to 60 agreed.

Amendment 61 not moved.

Amendments 62 and 63

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

62: Schedule 1, page 121, line 9, at end insert "or association"

63: Schedule 1, page 121, line 11, at end insert—

"21A(1) This condition is met if the processing—

(a) is necessary for the purposes of measures designed to protect the integrity of a sport or a sporting event,

(b) must be carried out without the consent of the data subject so as not to prejudice those purposes, and

(c) is necessary for reasons of substantial public interest.

(2) In sub-paragraph (1)(a), the reference to measures designed to protect the integrity of a sport or a sporting event is a reference to measures designed to protect a sport or a sporting event against—

(a) dishonesty, malpractice or other seriously improper conduct, or

(b) failure by a person participating in the sport or event in any capacity to comply with standards of behaviour set by a body or association with responsibility for the sport or event."

Amendments 62 and 63 agreed.

House resumed.

Nazanin Zaghari-Ratcliffe

Statement

4.42 pm

Baroness Vere of Norbiton (Con): My Lords, with the permission of the House, I shall repeat the Answer to an Urgent Question in the other place. The Answer is as follows:

"Mr Speaker, with your permission, I should like to make a Statement on the case of Nazanin Zaghari-Ratcliffe. The whole House will join me in expressing our profound concern about the ordeal of this young mother, who has spent the past 19 months in jail in Iran, and every honourable Member will join the Government in urging the Iranian authorities to release her on humanitarian grounds.

I spoke by phone to her husband, Richard Ratcliffe, yesterday, and we agreed to meet later this week. I told Mr Ratcliffe that the whole country is behind him and that we all want to see his wife home safely.

In view of the understandable concern, I propose to describe the background to Mrs Zaghari-Ratcliffe's case and the efforts that the Government are making to secure her release. In April last year, she was visiting her relations in Iran, along with her daughter, Gabriella, who was then only 22 months old, when she was arrested at Imam Khomeini Airport in Tehran while trying to board her flight back to the UK. The British Government have no doubt that Mrs Zaghari-Ratcliffe was in Iran on holiday, and that that was the sole purpose of her visit.

As I said in the House last week, my remarks on this subject before the Foreign Affairs Select Committee could and should have been clearer. I acknowledge that the words I used were open to being misinterpreted, and I apologise to Mrs Zaghari-Ratcliffe and her family if I have inadvertently caused them any further anguish.

The House should bear in mind that Iran's regime—and no one else—has chosen to separate this mother from her infant daughter for reasons that even it finds difficult to explain or describe. On 9 September 2016,

Mrs Zaghari-Ratcliffe was brought before a secret trial and sentenced to serve five years in prison, supposedly for plotting to overthrow the Islamic republic. The House will know that, as far as we can tell, no further charges have been brought against her and no further sentence has been imposed since that occasion over a year ago.

Eleven days after Mrs Zaghari-Ratcliffe was sentenced, my right honourable friend the Prime Minister raised her case with President Hassan Rouhani of Iran in New York on 20 September 2016. Two days later, I raised her case with my Iranian counterpart, Mr Zarif. For the sake of completeness the House should also know that the Prime Minister, the right honourable Theresa May, raised Mrs Ratcliffe's imprisonment with President Rouhani on 9 August 2016, and my predecessor as Foreign Secretary, my right honourable friend the Member for Runnymede, wrote to the Iranian Foreign Minister about her plight and other consular cases on 29 August 2016.

At every meeting with our Iranian counterparts, my colleagues and I have taken every opportunity to raise the cases of Mrs Zaghari-Ratcliffe and other British nationals held in Iranian jails. We have expressed our concerns at every level—official, ministerial and Prime Ministerial—on every possible occasion during the 19 months that she has been in jail. In addition, Mr Ratcliffe has held regular meetings with my honourable friend the Member for Bournemouth East, formerly the Minister for the Middle East, and with the current Minister, my honourable friend the Member for North East Bedfordshire.

A situation where a British mother is held in these circumstances is bound to cast a shadow over Britain's relations with Iran at a moment when, in the aftermath of the agreement of the nuclear deal in July 2015 and the easing of sanctions, we had all hoped to witness a genuine improvement. So I shall travel to Iran myself later this year to review the full state of our bilateral relations and drive home the strength of feeling in this House, and in the country at large, about the plight of Mrs Zaghari-Ratcliffe and other consular cases.

In order to maximise the chances of achieving progress, I would venture to say that honourable Members should place the focus of responsibility on those who are keeping Mrs Zaghari-Ratcliffe behind bars, and who have the power to release her whenever they choose. We should be united in our demand that the humanitarian reasons for releasing her are so overwhelming that, if Iran cares about its reputation in this country, its leaders should now do what is manifestly right. I commend the Statement to the House".

My Lords, that concludes the Statement.

4.48pm

Lord Collins of Highbury (Lab): My Lords, like my right honourable friend in the other place, I should like to say, first, that I am sure all noble Lords will join us in sending our thoughts to those affected by yesterday's earthquake on the Iran-Iraq border.

No one who listened to Richard Ratcliffe over the weekend can be in any doubt about how urgent it is for Nazanin's mental and physical health that she is returned to her family as soon as possible. The Foreign Secretary said that he would be meeting Mr Ratcliffe this Wednesday and that he would be explaining the position on diplomatic status. Will the Minister undertake to report to the House on these discussions and on any possible outcome and progress?

I note that in the other place, the Foreign Secretary apologised for his mistake—being very clear that she was on holiday. However, will he write to the Commons Foreign Affairs Committee correcting the record formally?

We all agree that the responsibility for Mrs Zaghari-Ratcliffe's incarceration and mistreatment lies entirely with the Iranian authorities, and we all unite in urging them to restore her to freedom. But every single Member of the Government should speak with one voice on this subject. Sadly, that was not reflected by the Environment Secretary over the weekend.

In repeating the Statement, the Minister referred to the Prime Minister making representations at head of government level in the past. Will she urge the Prime Minister to do this again, especially in advance of the Foreign Secretary's visit to Iran?

Baroness Vere of Norbiton: I, too, reiterate our thoughts for all those affected by the earthquake in Iran. The noble Lord raises a number of issues, and I hope to be able to answer them as well as I can. On diplomatic protection, we are looking at all aspects of this case, and the Foreign Secretary is looking forward to discussing the case with Richard Ratcliffe when he meets him on Wednesday. I believe that the House will be updated—to the extent that it is reasonable and proper in the light of the continuing discussions around the safe release of Nazanin, we will come back and update the House as and when we can.

On the comments of my right honourable friend the Foreign Secretary, in the other place today I think he went further than he has previously. He said that it was his mistake, and he has retracted the statement—and clearly, he has done so publicly—that Nazanin was there in any other capacity than on holiday. I am sure that those who heard his initial statement will also hear the words he went on to say today.

On the comments of my right honourable friend the Environment Secretary, what is often not reported in the press is that he actually said:

"There is no reason she should be in prison as far as anyone knows".

I think that Her Majesty's Government would agree with that—so he was not speaking in a different fashion.

Finally, on the role of the Prime Minister in all these discussions, the noble Lord is right that, if it is appropriate, I am sure she will want to involve herself in Nazanin's safe return. However, it may not be—and it may be that other routes are better.

Baroness Northover (LD): My Lords, I am glad that the right honourable Foreign Secretary has now apologised for his Statement to the Foreign Affairs Committee and for the "anguish", as he put it, it has caused. He said in the Commons—I listened to it just now—that he got it wrong, and accepts that Nazanin Zaghari-Ratcliffe was on holiday, of course, visiting her parents.

[Baroness Northover]
But he also says that he "could have been clearer", rather than more accurate. Does the Minister agree that, in such sensitive situations, we always have to be immensely careful as to what we say and do?

As noble Lords know, I have raised this case repeatedly in this House—and I pay tribute here to Richard Ratcliffe. For two months now, the Foreign Office has had the legal advice of Nobel laureate lawyer, Shirin Ebadi, which concludes that the Government have the power to take legal action against the Iranian Government to protect Mrs Ratcliffe's rights as a British citizen. Will they now take such action so that, at last, Nazanin and Gabriella can be brought home?

Baroness Vere of Norbiton: I am not sure that it is really the time now to go into more detail about the Foreign Secretary's comments. We know exactly what he said and we know now what he has admitted was his mistake.

On the point about the legal advice, as with all Foreign Office policies we explore all options that will support or further our objectives. That includes, obviously, working with external lawyers where they might have an input. So I can confirm that conversations are continuing with a number of third parties, all of whom are engaging with the Foreign Office to make sure that we can ensure the safe return of Nazanin as soon as possible.

Lord Anderson of Swansea (Lab): My Lords, there is a danger of creating a smokescreen to defend Cabinet Ministers on this. It is clearly a very sensitive issue. A simple question is whether the Foreign Secretary was aware of the facts when he made his statement to the Foreign Affairs Committee.

Baroness Vere of Norbiton: My Lords, I cannot possibly answer that question as I am not the Foreign Secretary.

Lord Singh of Wimbledon (CB): My Lords, while we welcome the strong condemnation of the cruel and arbitrary detention of Mrs Ratcliffe, would it not add strength to our protest if we were consistent in our condemnation of human rights abuses wherever they occur? I give the example of the recently departed Defence Secretary, who on two occasions very recently said that we should not talk about human rights when discussing arms deals with Saudi Arabia. Earlier he said the same thing about China. Is it not important that we should be totally consistent in condemning abuses of human rights wherever they occur?

Baroness Vere of Norbiton: The noble Lord is absolutely right: the human rights situation in Iran remains dire and we are determined to continue to hold the Government to account. We frequently release statements condemning the human rights situation in Iran and lead action by the international community. We regularly raise human rights issues in dialogue with Iran. However, we must be clear: there is no link, nor should there be, between consular cases and many other issues.

Lord Campbell of Pittenweem (LD): My Lords, the Foreign Secretary's remarks, which the noble Baroness has repeated, sound more like a plea of mitigation than anything else, but a plea of mitigation is effective only if it is preceded by an unequivocal apology. In truth, the apology which the Foreign Secretary made when this matter was debated in the other place had to be dragged out of him after some 15 or 20 minutes. The truth of the matter is that the Foreign Secretary is not up to his responsibilities, and this is an eloquent indication of that. The Prime Minister knew what she was getting when she appointed him. It is now time for her to take personal responsibility for the case we are discussing and ensure that the Foreign Secretary is no longer able to dabble in it.

Baroness Vere of Norbiton: My Lords, I repeat that the Foreign Secretary has apologised for his remarks. It is his intention to continue to do all he can in his role as Foreign Secretary to ensure the release of Nazanin and other consular cases in Iran.

Lord Hayward (Con): My Lords, will my noble friend please confirm that the Government are pursuing all negotiating avenues to release this person and other political prisoners, given that when I was involved in negotiations to free hostages in Iraq in 1990, many of the avenues that were worth pursuing were not governmental whatever, but involved religious and other bodies that have a power which many Governments do not?

Baroness Vere of Norbiton: I know that my noble friend has significant experience of negotiating the release of British nationals. He will know that every day in some part of the world a UK national or dual national is detained and another is released. Some of these cases are known only to family, some are known to family and our consular teams and others are more widely known, but in each case where we are involved, the Government give individual advice based on a judgment of what is the best interest of the person involved and the wishes of the family. The reason the Government sought private approaches to the Iranian Government in this case—the humanitarian case of a mother separated from her child—is that we believe from experience that such an approach is the right one. We have followed this persistently and regularly, informing the family at all turns. Therefore, there are many routes through which we can secure the release of Nazanin and other detainees. They may be private or public and, as I said to the noble Baroness, may involve third parties.

EU Exit Negotiations

Statement

4.58 pm

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, with the leave of the House, I will now repeat a Statement made in the other place earlier today by my right honourable friend the Secretary of State for Exiting the European Union. The Statement is as follows:

"With permission, Mr Speaker, I will update the House on negotiations between the UK and the European Union in November, reflecting our actions since the October Council. Both the UK and the EU recognised the new dynamic instilled in the talks by the Prime Minister's Florence speech.

At the October European Council, the 27 member states responded by agreeing to start their preparations for moving the negotiations on to trade and the future relationship we want to see. The Council conclusions also called for work to continue, with a view to being able to move to the second phase of the negotiations as soon as possible.

It is, of course, inevitable that our discussions are now narrowing to the few outstanding—albeit important—issues that remain. Last week, our focus was concentrated on finding solutions to those remaining issues. As we move forward towards the December Council, we have been clear with the EU that we are willing to engage in discussions in a flexible and constructive way in order to achieve the progress needed. To this end, our teams are in continuous contact, even between the formal rounds. I now turn to the three, key, ongoing areas of discussions, and will outline progress made last week on each of these.

We have made solid progress in our ongoing discussions on Northern Ireland and Ireland. Key areas of achievement include: continued progress in technical discussions on preserving north-south co-operation; agreed joint principles on the continuation of the common travel area and associated rights; and drafting further joint principles on how best we preserve north-south co-operation under the Belfast agreement to help guide the specific solutions to the unique circumstances in Northern Ireland. Both sides also remain firmly committed to avoiding a hard border—a point we have remained clear on throughout. We also remain resolutely committed to upholding the Belfast/Good Friday agreement, in all its parts, and to finding a solution that works for the people of Northern Ireland and Ireland.

We have continued to hold frank discussions with our Commission counterparts about all these issues. But in this area we have also had to be very clear with our Commission counterparts that, while we respect their desire to protect the legal order of the single market and customs union, that cannot come at the cost of the constitutional or economic integrity of the United Kingdom. As I have said, we cannot create a 'new border' within the United Kingdom. This is an area where we believe we will only be able to conclude talks finally in the context of our future relationship. Until such time as we can do so, we need to approach the issues which arise with a high degree of political sensitivity, pragmatism and creativity. Discussions on these areas will continue in the run-up to the December Council.

We have continued to make good progress on citizens' rights. Both sides are working hard towards resolution of outstanding issues. Last week, to respond to the request for reassurances by the EU, we published a detailed description of our proposed administrative procedures for EU citizens seeking settled status in the UK. As our paper demonstrates, the new procedures will be as streamlined, straightforward and low-cost as possible and will be based on simple, transparent criteria, which will be laid out in the withdrawal agreement.

While there remain differences on the issues of family reunion and the export of benefits, we have been clear that we are willing to consider what further reassurance we can provide to existing families of EU residents here, even if they are not currently living together in the UK. I believe that this paves the way to resolving the remaining issues in this area, and this was acknowledged by the Commission on Friday. There also remain some areas where we are still seeking further movement from the EU. These are voting rights, mutual recognition of qualifications, and onward movement for British citizens currently living in the EU 27. In all of these three areas, the UK's offer goes beyond that of the EU.

Finally, the Commission has fallen short of the UK's offer in relation to the right to stand and vote in local elections. This is a core citizen's right, enshrined in the EU treaties. I have been disappointed that the EU has been unwilling to include voting rights in the withdrawal agreement so far. As a result, we will pursue this issue bilaterally with member states.

This week we have also sought to give further clarity on our commitment to incorporate the agreement we reach on citizens' rights into UK law. This will ensure that EU citizens in the UK can directly enforce their rights in UK courts, providing certainty and clarity for the long term. We have made it clear that over time, our courts can take account of rulings of the European Court of Justice in this area to help to ensure consistent interpretation. However, we remain clear that, as we leave the EU, it is a key priority for the UK to preserve the sovereignty of our courts and, as such, in leaving the EU, we will bring an end to direct jurisdiction of the ECJ.

It is not my intention to pre-empt the Committee stage of the European Union (Withdrawal) Bill but what I say next will have some relevance to it. It is clear that we need to take further steps to provide clarity and certainty, both in the negotiations and at home, regarding the implementation of any agreement in UK law. I can now confirm that, once we have reached an agreement, we will bring forward a specific piece of primary legislation to implement that agreement. This will be known as the withdrawal agreement and implementation Bill. This will confirm that the major policies set out in the withdrawal agreement are directly implemented in UK law by primary legislation, not by secondary legislation under the withdrawal Bill. This also means that Parliament will be given time to debate, scrutinise and vote on the final agreement that we strike with the EU. This agreement will hold only if Parliament approves it.

We expect this Bill to cover the contents of the withdrawal agreement, including issues such as an agreement on citizens' rights, any financial settlement and the details of an implementation period agreed between both sides. Of course, we do not yet know the exact details of this Bill and are unlikely to do so until the negotiations are near completion.

[Lord Callanan]

I should also tell the House that this will be over and above the undertaking that we have already made to bring forward a Motion on the final deal as soon as possible after the deal is agreed, and that we still intend and expect such a vote on the final deal to happen before the European Parliament votes on it. There cannot be any doubt that Parliament will be intimately involved at every stage.

Finally, on the financial settlement, the Prime Minister's commitment made in her Florence speech stands: our European partners will not need to pay more or receive less over the remainder of the current budget plan as a result of our decision to leave. The UK will honour the commitments we have made during the period of our membership. This week we made substantial technical progress on the issues which underpin these commitments.

This has been a low-key but important technical set of negotiations, falling, as it has, between two European Councils. This is now about pinpointing further technical discussions that need to take place and moving forward into political discussions and decisions. We must now also look forward to moving our discussions on to our future relationship. For this to happen, both parties need to build confidence in both the process and indeed the shared outcome.

The United Kingdom will continue to engage and negotiate constructively as we have done since the start, but we need to see flexibility, imagination and willingness to make progress on both sides if these negotiations are to succeed and we are able to realise our new partnership. I commend this Statement to the House".

5.07 pm

Baroness Hayter of Kentish Town (Lab): I thank the Minister for repeating the Statement, and I give the warmest of welcomes to the announcement that the withdrawal agreement will now be implemented by means of primary legislation—something for which this House has long argued. However, there remain serious questions in regard to the withdrawal Bill and the current negotiations.

First, what on earth is this gimmick of an amendment to fix, down to the exact minute, the timing of our departure from the EU? Is it a panic measure for the Prime Minister to reassure doubters in her own party that she can deliver a workable Brexit—a response perhaps to the Johnson/Gove letter—rather than a serious piece of British legislation or diplomatic sensitivity, or was she jinxed by the speech of the noble Lord, Lord Kerr, or is it to undermine the opposition amendment that it should be Parliament, not a Minister, that decides the exit date?

Certainly, the government amendment would have Parliament fix the date, but it would decide it now, well before the withdrawal deal is complete, with imperfect knowledge of what will be needed by way of preparation or even whether a more suitable date, such as 5 April—the traditional start of our tax year—is available and with no thought to what might be happening at the time. It does not allow for an earlier date, nor does it give any room for manoeuvre for, for example, another foot and mouth crisis, a general election or some other national issue, let alone any decision by the 27 to extend the talks by a few days if they thought that we were on the edge of a breakthrough.

More seriously, it cuts across the Prime Minister's Florence speech, which envisaged that should there be a "heads of agreement" on our future relationship with the EU by March 2019, we could contribute to the EU budget for a period, during which we would abide by existing EU processes, including of course the ECJ for some matters. However, Clause 6, with the Government's new amendment, would disallow this from 11 o'clock on 29 March 2019. Will the Minister agree that it is for Parliament nearer the time to fix the date, not the Prime Minister or even Parliament now, regardless of the interests of business, consumers, the pound or any other contemporary event?

Secondly, on what basis are the Government negotiating if they are blind to the costs and benefits of each option? We thought they had done their homework but we are told now that perhaps those 58 impact assessments do not exist—they certainly have not been read by all the Ministers. Without these, on what basis are the Government taking decisions about this country's future?

Thirdly, will the Minister say whether the Government will heed the excellent advice of his predecessor but one, the noble Lord, Lord Bridges? He has called for "honesty and clarity" and that,

"Ministers should stop pretending an implementation period will begin at the end of March 2019".

Perhaps I should let the noble Lord, Lord Bridges, speak for himself, but it is too tempting to read out his words. He reminded the Government that implementation implies a treaty, well beyond the withdrawal deal, which will take years to negotiate and requires consent around the 27 parliaments. He urged the Government to clarify what they want to do with this supposed new-found freedom and to put some urgency—that is the word he used—into negotiations on the future framework.

Finally, on Northern Ireland, I wonder if the Government are regretting their "rash and reckless" ruling out of continued membership of the customs union. Even as the Government accept the introduction of a UK-EU border, albeit as "seamless and frictionless" as possible, they must realise that achieving this outside the customs union is a serious challenge. Had the Prime Minister not ruled out membership of the customs union, albeit from outside the European Union, then the apparently intractable conundrum in Northern Ireland might have been avoided, without David Davis having to reassert in this Statement his understandable rejection of a "new border" within the United Kingdom.

This week saw the commemoration of 11 November, a World War I date but, for my generation, with World War II resonance, and a reminder of all that the EU has done to end conflict in western Europe. We also commemorated the 9 November 1989 fall of the Berlin Wall and everything that the EU did to bed-in democracies in former Soviet territories, as earlier it had done with the former dictatorships in Spain, Greece and Portugal. I therefore ask the Minister how much the UK's continued and future role in such developments will be

ensured after Brexit, and how much this part of diplomacy features in Ministers' thinking as they negotiate our future relationship with continental Europe.

Baroness Smith of Newnham (LD): My Lords, I am grateful to the Minister for repeating the Secretary of State's Statement to the other place.

The Secretary of State seems to suggest that there has been a lot of activity and progress in recent weeks. That seems to be rather at odds with everything we have been hearing from Monsieur Barnier and the EU 27. One wonders who has been misled or has misunderstood what has happened in the past few weeks. The Secretary of State suggested that there has been a narrowing to only a few aspects of the remaining issues, which he then goes on to talk about: the budget and what the United Kingdom will have to pay as the divorce settlement; the rights of EU citizens; and the question of Ireland and Northern Ireland. Those are the same three issues that we have been looking at ever since the decision to leave the European Union was taken in June of last year. The idea that there has been a narrowing in these areas is interesting, but it is not yet clear what is really meant. In particular, in the context of the budget, we have heard frequently that the clock is ticking. However, while the clock is ticking, the value of sterling is falling—and every time sterling falls, the amount of money that the United Kingdom will owe in euros rises.

Instability in the Government is hugely damaging to the United Kingdom's negotiations. What is the Prime Minister doing to ensure that her Government become more stable and secure and give a clearer sense to the 27 that they know what they are doing and that they have the same clarity of purpose as the 27? The Secretary of State suggested that it is important that both sides have confidence in the process and the shared outcome. However, the 27 have a clarity of purpose—we know what they are looking for—but do they know what the United Kingdom is looking for? It is not yet clear that they do.

The United Kingdom has been given two weeks to sort out our budget offer. What plans have Her Majesty's Government put in place to ensure a solution so that, by December, progress can be made in phase 2? At present we have heard nothing at all from the Secretary of State. Is the Chancellor of the Exchequer in the loop? Is his input being asked for, or is the "flexible and constructive" approach that the Secretary of State is looking for required only of the Prime Minister, with the back-seat drivers of Gove and Johnson telling her what she should say or think?

As the noble Baroness, Lady Hayter, suggested, some thought is being given to putting 29 March 2019 in the Bill. Is that perhaps to do with the Brexiteers trying to pull the Prime Minister's strings? Putting the date in the Bill is surely one of the worst things the Government could do. It would tie the Prime Minister's hands and we should not support it.

In June, when we had the unnecessary general election that was supposed to be a Brexit election, the idea was that we would have a strong and stable Government leading the negotiations. How fanciful that now seems. Can the Minister assure us that the Prime Minister, the Secretary of State and the whole Cabinet are united in pushing, with one voice, for the best outcome for the United Kingdom? Do they have clarity of purpose? In getting the best deal for the United Kingdom, can they reassure in particular the citizens of Northern Ireland that the deal will be for the whole of the United Kingdom, and that our kingdom will remain united? It is not the European Commission that is jeopardising the integrity of the United Kingdom but Her Majesty's Government's unwillingness to have an agreement that will allow Ireland to remain without a closed border.

It is hugely important that the future relationship is clarified. That can be done only if Her Majesty's Government have their own view of what that relationship should be. Can the Minister tell the House what the Government's view is? Is there any clarity of purpose?

Finally, on citizens' rights, many of us will welcome the idea that Her Majesty's Government would like EU citizens to be able to vote in local elections. However, the Secretary of State points out that this is one of the rights of EU citizens that is enshrined in the treaties. Yes, it is—many of us passionately believe that we wanted to keep, still want to keep and do not want to throw away the rights of EU citizens. Does David Davis agree with us? Is he reluctant to see British citizens lose their citizenship rights? Would he prefer that the United Kingdom should remain part of the EU treaties? Have we made a huge mistake? Should we retain citizens' rights by simply not leaving the European Union?

Lord Callanan: I thank the noble Baronesses, Lady Hayter and Lady Smith, for their questions. I will deal with them all in turn. Both noble Baronesses asked me about the amendment on the date, tabled in another place. The amendment was in response to amendments tabled by Members of the House of Commons—led by a Labour Member of Parliament, I think—saying that the Government should clarify the exact leaving date. That date was triggered also by the submission of the Article 50 notification letter—approved by both Houses—and will be two years from then. The noble Baroness, Lady Smith, is very keen to abide by EU treaties; as she well knows, the two-year date is set down in them, unless it is extended by the unanimous vote of the other 27 EU members. We are leaving the EU on 29 March 2019, implementing the result of the referendum that was also approved in both Houses.

We recognise the need for specific solutions to the unique circumstances of Northern Ireland and we have made good progress in the negotiations. We have proposed that the UK and EU seek to agree text for the withdrawal agreement that recognises the ongoing status of the common travel area and associated reciprocal arrangements. We have developed joint principles on this, and are drafting joint principles and commitments that will guide the solutions drawn up in the second phase. Both sides agree that the Good Friday agreement on citizenship rights must be upheld, and we are committed to working together on how that is best codified.

The noble Baroness, Lady Smith, asked me a number of questions. We have a good record: we have compromised in all the areas that the EU has thought to negotiate on. Now it is about time we saw some

[Lord Callanan]
compromise from the EU side. We have compromised on both our budget offer and citizens' rights. It would be nice to see some support from the parties opposite for the UK position. In terms of the budget, billions of pounds of taxpayers' money are involved. Are the Opposition saying that we should just hand over a cheque and agree to whatever the European Commission demands? Of course we have to negotiate. The Prime Minister made a very generous offer in her Florence speech, involving considerable amounts of money. Now it is for the EU side to reciprocate with a budget offer of its own. We are very clear that, in all these areas, as set down in the EU negotiations, nothing is agreed until everything is agreed. These areas cannot all be sorted until there is a final agreement on the shape of the agreement and future customs arrangements, which will also help to enlighten our discussion on the border in Northern Ireland.

5.23 pm

Lord Lamont of Lerwick (Con): I thank my noble friend for the Statement. I welcome in particular what he said about the European Court of Justice. Can he clarify what exactly is meant in the Statement? He says that we will bring to an end the direct jurisdiction of the European Court of Justice but at the same time he says that our courts can take account of the rulings of the ECJ in this area to help to ensure consistent interpretation. Can he expand on that and explain how the Government think that will work? Secondly, can he say something about the timing of the withdrawal Bill: when does he expect it to be available to Parliament; when will the vote take place; and will that be closely linked to the vote on withdrawal, which I think is a separate matter?

Lord Callanan: On the issue of the ECJ, I do not want to go any further than the Statement. We will end the direct application of the European Court of Justice in the UK. That is entirely right—we would not expect a foreign court in any other country or organisation to have effect on UK citizens or the UK judicial process. We expect the debate and vote on the withdrawal Motion to take place before the withdrawal Bill—but of course we cannot have a withdrawal Bill until we have an agreement to withdraw from.

Lord Butler of Brockwell (CB): My Lords, I agree that the offer made by the Prime Minister in her Florence speech on the financial settlement was generous. Will the Minister confirm that any such settlement will be paid over a number of years, not as a capital sum, and must be contingent on satisfactory progress on other aspects of our future relationship?

Lord Callanan: The noble Lord makes a very good point from the benefit of his experience. These are matters that will be determined during the ongoing negotiation.

Lord Bridges of Headley (Con): My Lords, I very much welcome the Statement. Will my noble friend clarify one small point on one word, "implementation"? My understanding is that we will not be able to negotiate the new relationship with the EU under Article 50. Therefore, when it comes to implementing measures via the Bill, those measures would refer solely to the transition.

Lord Callanan: We cannot conclude the final trade deal until we have left the EU, but we are very clear that we want to get the heads of agreement and its terms sorted before we leave.

Lord Lester of Herne Hill (LD): My Lords, at present, European citizens resident in this country have their basic rights protected by the European Court of Justice. The Government intend to take that basic right away and, as I understand it, substitute our own courts, with a rather vague and difficult to understand obligation relating to the Luxembourg court. Will the Government accept that in doing all that, they are making the rights of European citizens in this country less well protected than at present?

Lord Callanan: My Lords, no, I would not accept that. We have one of the finest judicial and court systems in the world. I, along with many other citizens, am perfectly happy for our rights to be guaranteed by our ancient and well-respected judicial system. We do not need to have the ECJ telling us how to do that.

Lord Hannay of Chiswick (CB): My Lords, will the Minister clarify a point concerning the new primary legislation, which, if I understand correctly, will represent the entry into our domestic law of the commitments we reach on withdrawal? Would that have to be completed before the date the Government wish to put in for our exit? Otherwise, we would not be capable of ratifying the withdrawal agreement. Will he also clarify a point on the jurisdiction of the Court of Justice? Is he quite sure that what the Prime Minister wisely proposed in Florence for what was effectively close to a standstill for about two years will, in the eyes of our 27 negotiating partners, require us to accept the jurisdiction of the Court of Justice during that period?

Lord Callanan: My Lords, we cannot have a withdrawal Bill until we have a withdrawal agreement, so the date of the Bill will depend on when we can make a withdrawal agreement. As to the noble Lord's second question, I cannot speak for what our partners expect us to want to do.

Lord Soley (Lab): The Minister said we had given many concessions to the European Union. He is right, we have, but that is because we went into this ill-prepared and without a strategy. Listening him, it is very hard to be convinced that we have a strategy even now, because I cannot see how this process will lead to a successful outcome for the United Kingdom unless we are much clearer about money and the transition arrangements.

Lord Callanan: I think we have made excellent progress on all those issues so far in the negotiation. We have made very generous offers on the three issues the EU said it wanted to talk about first: Ireland, citizens' rights and the budget. We are waiting for our partners to reciprocate with the generous proposal we have made.

Lord Garel-Jones (Con): My Lords, I ask my noble friend the Minister to comment on the ruling of the Supreme Court in this matter:

"The 2016 referendum is of great political significance. However, its legal significance is determined by what Parliament included in the statute authorising it, and that statute simply provided for the referendum to be held without specifying the consequences. The change in the law required to implement the referendum's outcome must be made in the only way permitted by the UK constitution, namely by legislation".

Does that not mean that, while we obviously wish the Government well in the negotiations, the final outcome will be judged by Parliament?

Lord Callanan: Of course, we have said that Parliament will get a final vote on the withdrawal agreement, and we have just announced that there will be legislation to implement that. Parliament also voted for Article 50 to be implemented and the EU notified that we are leaving the organisation on 29 March 2019.

Lord Wallace of Tankerness (LD): My Lords, the Statement refers to the negotiations regarding the right to stand and vote in local elections. Given that European Union citizens can also stand and vote in Scottish Parliament elections, and the franchise for Scottish Parliament and Scottish local government elections is wholly devolved to the Scottish Parliament, can the Minister clarify the Government's position with regard to standing and voting in the devolved elections and whether the Scottish Government have been involved in this particular part of the negotiations?

Lord Callanan: We are having regular discussions with the devolved Administrations. The Scottish Government, the Welsh Government and civil servants in Northern Ireland were informed of our proposals to introduce the withdrawal Bill.

Viscount Ridley (Con): My Lords, further to what my noble friend said about fixing the date of withdrawal and to what the noble Lord, Lord Garel-Jones, said, can he confirm that the judgment of the Supreme Court in the case brought by Gina Miller confirms in precise terms that Article 50 is irreversible, in contrast to what the noble Lord, Lord Kerr, has said?

Lord Callanan: I can confirm that. It is also stated by the European Commission that Article 50, once invoked, is irrevocable unless there is political agreement on it.

Lord Elystan-Morgan (CB): My Lords, does the Minister agree that the notice given in March this year in relation to Article 50 was not a notice of withdrawal but a notice of intention to withdraw? Does he appreciate that our distinguished colleague, the noble Lord, Lord Kerr, and the vast mass of distinguished legal authority are of the opinion, therefore, that such a notice can be withdrawn unilaterally? Will the Government, especially in the light of today's Statement, no longer hide behind any artifice to try to delude the public into believing that they have no view on that matter? Will they come clean and state that they accept totally that that is the situation?

Lord Callanan: My Lords, no, I will not confirm that, because it has been stated by legal opinion on this side of the water and in the EU that Article 50 is not revocable. It all flies in the face of the results of the referendum. It is fine for Members of this House to say that we should just ignore the result, but 17.4 million people voted to leave the European Union in one of the largest democratic exercises that we have ever held. If we think that democracy is at a low ebb in this country, let us imagine what would happen if we ignored what happened in that referendum.

Lord Cormack (Con): My Lords, my noble friend will of course acknowledge that 48% of people did not vote that way, but perhaps I may ask him one specific question. He has several times said today that good progress has been, or is being, made. If that is so, that is very good, but can he tell us one single thing on which there is now agreement?

Lord Callanan: We have made good progress on a number of issues. There are many areas of agreement; for instance, on proposals on citizens' rights—I could read them all out if my noble friend wanted to stay for 20 minutes afterwards.

Lord Watts (Lab): My Lords, can the Minister explain the benefits of putting the date in the Bill, given that many noble Lords have raised the problems that may arise?

Lord Callanan: The Government are responding to many representations made from all sides in the other place—many amendments have been submitted. We have said that we will listen to opinion and we are doing precisely that.

Lord Wallace of Saltaire (LD): My Lords, to the question asked earlier by the noble Lord, Lord Lamont, about the impact of leaving on our relationship with the European court—although the noble Lord could perhaps have altered his emphasis a little—the Statement says that we intend to bring an end to the "direct jurisdiction" of the European court. I presume that we will therefore have to find some way of having a court of arbitration which will mediate between the EU and the UK—incidentally, it will impact on the sovereignty and integrity of the British judicial system, because that is what courts of arbitration unavoidably do across a whole range of issues. Are the Government confident that they can square that circle, or do they think that taking ourselves out of the European Union and out of the European court, where we currently have a judge, will leave us stronger rather than weaker in our obedience to international law and our ability to negotiate it to our advantage? The US Commerce Secretary has suggested that when we leave the European Union, the Americans will simply expect us to accept US regulations without any say on a range of problems. Is that the sort of situation we will be in?

Lord Callanan: My Lords, of course, if our manufacturers export to the United States, they have to accept American legislation; if they export to China, they have to accept Chinese legislation. Once the agreement is made, there will have to be some form of arbitration, but that is to be negotiated.

Lord Birt (CB): My Lords, if we reach a successful accommodation, as we all must hope, in phase 1, we have to move phase 2—a negotiation of unparalleled

[LORD BIRT]
complexity. The Prime Minister will have heard today a clamour from British and European business for clarity about what the endgame is, yet we understand that the Cabinet has yet to meet to discuss what it wants to achieve from this second-phase negotiation. When will the Cabinet meet, unite and decide?

Lord Callanan: My Lords, I shall not comment on internal government discussions, but it is very clear that we want a full and comprehensive free trade agreement with our European partners.

Lord Robathan (Con): My Lords, does my noble friend think that the behaviour of the EU negotiators and the rather arrogant attitude of people such as Michel Barnier and Jean-Claude Juncker have led to a feeling among the population who voted to remain in the EU that they should perhaps leave instead? My impression is, and most commentators seem to think, that the British population is moving much more towards a position of leave rather than of remain. Perhaps people in this House should accept the decision of the British people and not try to revisit it.

Lord Callanan: I would certainly agree with that, although I do not hold out hope that they might. Yes, of course, there has to be compromise on both sides. We have made very reasonable proposals, including moving on some very sensitive issues. We are waiting for a reciprocal response from the other side of the negotiations.

Baroness Miller of Chilthorne Domer (LD): My Lords, the Minister offered to read out a list of points where agreement has been reached. For UK citizens living abroad and EU citizens living here, it would be immensely useful if he did so, because they have serious planning to do.

Lord Callanan: Rather than detain the House, I would be happy to write to the noble Baroness and publish the response. We have been very open about the areas on which we have reached agreement. They have been well publicised, but I will write to her with further details.

Lord Hylton (CB): My Lords, as regards Northern Ireland, will the Minister confirm or deny that the Commission has proposed to bring forward something analogous with China and Hong Kong or China and Macau? Is this true and, if so, is it helpful?

Lord Callanan: A number of proposals have been flying around and I am sure that the noble Lord would not expect me to comment on the basis of leaked documents, but we have been very clear about our objectives. Those objectives are shared by us, by the Irish Government and by the European Commission; we just need to find a practical and realistic way to bring that into effect.

Lord Gadhia (Non-Afl): My Lords, does my noble friend agree that CETA is not a "perfectly good starting point" for any trade agreement with the EU—to quote the words of the Secretary of State, David Davis? CETA has no chapter on services, which represent 80% of our GDP, and our trade with the EU is eight times larger than Canada's. Surely we need to be much more ambitious in protecting the UK economy and jobs in any Brexit trade deal.

Lord Callanan: We have been very open that we do not want to copy any existing agreement. We want a bespoke, made-to-measure agreement that is suitable for both ourselves and the EU, because free trade benefits both sides. We think that an agreement is achievable. If both sides show commitment and willingness, we can work towards it and we should be able to achieve it.

Lord Beith (LD): My Lords, how many delegated powers, and indeed clauses, will now be removed from the existing withdrawal Bill to satisfy the indication given today that powers which should be in primary legislation will be in primary legislation under the Government's revised approach?

Lord Callanan: I am sure there will be lots of discussions and negotiations on all the clauses in the withdrawal Bill in the other place, and I am sure that we might have one or two suggestions to make in this House also.

Lord Empey (UUP): My Lords, the Minister led with the discussions in Ireland. As the noble Lord, Lord Hylton, said, there was a paper floating around using a parallel with Hong Kong and Macau, as if we are some kind of colony. May I say to the Minister that I do not agree with his assessment that there is agreement between the UK Government and the Irish Government? The Irish Government are contradicting the position of the UK Government by saying that we need to remain in the single market and the customs union. Mr Verhofstadt, the European Parliament's rapporteur, is saying the same thing. They are both wrong, and if that is where we are today, we have a lot of work to do. Will the Minister please confirm that our UK Government will make it absolutely clear that we will not allow an internal border to be created within the United Kingdom? If our time and effort, at this stage, is still being spent arguing about that fundamental point, we have a very long way to go.

Lord Callanan: The noble Lord speaks with great authority on this subject and I am happy to confirm to him that we will not agree to the imposition of an internal border in the UK.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, can the noble Lord help me? If we crash out of the EU without agreement, as is quite possible, where would that leave European citizens in this country and British citizens living in the EU? What would their legal position be?

Lord Callanan: My Lords, we hope that we will be able to get an agreement, but if we are not, they will be subject to the same rights as they are at the moment under the British courts.

Lord Marlesford (Con): My Lords, on the point raised a moment ago about Northern Ireland, surely we already have a perfectly satisfactory arrangement between the Republic of Ireland and Britain, on the

one side but not on the other, in that anyone flying into the Republic of Ireland from Britain is required to show their passport. People flying from the Republic of Ireland into Britain are not required to show their passports. From Britain to Ireland, you are required to show your passport, but not from Ireland to Britain. Of course, as a lot of people travel who are not EU citizens, scrutiny of passports is desirable. The idea that scrutinising passports forms a hard border is nonsense: it is no more a hard border, or denying the rights of people in Northern Ireland, to ask them to show their passports than it would be if Members of your Lordships' House refused to wear their passes on the grounds that they have the right to be here anyway, so why should they wear them?

Lord Callanan: My noble friend makes an important point. The UK and Ireland benefited from a common travel area long before we were both members of the European Union.

Baroness Hayter of Kentish Town: My Lords, before we finish I ask the noble Lord to look at the report in *Hansard* of what he actually said. If I heard him correctly he said that the Supreme Court ruled that Article 50 was not revocable. My recollection was that it did not opine on this, and that it took from both sides, as I think is being acknowledged around the House: the Government said this, Gina Miller's side said that, and it did not opine on it. When he has looked at his actual words in *Hansard*, should they need correction, perhaps he would either make a Statement or write to the House.

Lord Callanan: I will certainly look at that, but I am also aware of a European Commission statement that Article 50 benefits from similar arrangements.

Data Protection Bill [HL]

Committee (3rd Day) (Continued)

5.43 pm

Amendment 63A

Moved by ***Baroness Hamwee***

63A: Schedule 1, page 121, line 11, at end insert—

"Legal proceedings, legal advice, legal rights and judicial acts

(1) This condition is met if the processing—

(a) is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings),

(b) is necessary for the purpose of obtaining legal advice, or

(c) is otherwise necessary for the purposes of establishing, exercising or defending legal rights.

(2) This condition is met if the processing is necessary when a court is acting in its judicial capacity."

Baroness Hamwee (LD): My Lords, these amendments, in my name and those of the noble Baroness, Lady Neville-Rolfe, and the noble Lord, Lord Arbuthnot, may not be the most difficult or most significant that we will come to, but they are important and they deal with an issue brought to us by the Bar Council. I am aware that members of the Bar Council met officials and I believe that some of the matters throughout the Bill that they discussed were left with officials to consider—and, no doubt, with the Bar Council as well. I am not aware that this matter has been settled. The amendment would remove the paragraph from Part 3 of this schedule and put it in Part 2 and would extend the exemption recognising practicalities. Briefly, the issue is the term "legal claims".

The Bar Council makes the point that this phrase does not adequately describe all the work that lawyers and all parts of the profession undertake on behalf of their clients. There is a risk, therefore, that legal professionals will not be able to process special categories of personal data when undertaking legal advice relating to prosecutions, defences to prosecutions and criminal appeals, family and child protection proceedings and so on, or—noble Lords may think that this should not come within this category—legal advice relating to tax or a proposed transaction. The Bar Council is rightly concerned, of course, to ensure that legal professionals can process such data when undertaking activity which is squarely within the scope of its normal work but beyond what might be described by the narrow term, "legal claims". The amendment includes wording which is about to be put to the Committee in the form of government amendments which have already been debated and brings the matter of the legal activity listed in the new clause and the government amendments into Part 2 of Schedule 1. I beg to move.

Lord Griffiths of Burry Port (Lab): My Lords, if the House will indulge me, having heard someone who described herself earlier as a foot soldier in her army of volunteers, I can now identify her as a beaver in the battalion of dam building. It seems that by broadening all that falls under the term, "legal claims", and, of course, on the advice of the Bar Council, some common sense is being alluded to here and therefore we have no hesitation in joining our forces to those we have heard so ably expressed.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, I am grateful to the noble Baroness for making her debut in the Committee stage and to the noble Lord for his comments. By way of background, because I find it quite complicated, it is worth reminding ourselves that article 9 of the GDPR provides processing conditions for special categories of data. In particular, the processing necessary for,

"the establishment, exercise or defence of legal claims",

is permitted by article 9(2)(f). It is directly applicable and does not allow any discretion to derogate from it in any way. Article 10 of the GDPR, which relates to criminal convictions and offences data, takes a different approach. It requires member states to set out in their law conditions relating to the processing of said criminal convictions and offences data in order to enable many organisations to process it. Paragraph 26 of Schedule 1 therefore seeks to maintain the status quo by replicating in relation to criminal convictions data the processing condition for the special categories of personal data contained in article 9(2)(f).

Government Amendment 65, referred to by the noble Baroness, responds to a request we have had from stakeholders to anglicise the language currently

[Lord Ashton of Hyde]
used in that paragraph. The Government strongly agree about the importance of ensuring that data protection law does not accidentally undermine the proper conduct of legal proceedings, which is why we have made this provision. We submit that Amendments 63A and 64A are unnecessary. They are predicated on the false premise that government Amendment 65 in some way changes the scope of paragraph 26. It does not, it simply anglicises it. However, even if different wording were to be used in Amendment 63A to that used in Amendment 65, we are certain that the Commission would take a dim view of member states attempting to use article 9(2)(g), the substantial public interest processing condition, to expand article 9(2)(f) in the way that Amendment 63A proposes. In the light of that explanation, I would be grateful if in this case the noble Baroness would withdraw her amendment.

Baroness Hamwee: My Lords, I am still processing the compliment that has been paid to me. If I were standing for election, the noble Lord might find himself being quoted.

The Minister says that the amendment is unnecessary but then goes on to say that it is wrong. The main point is not the five or so lines of wording as what is required or precluded by the articles of the GDPR that he has quoted. I will not attempt to respond today because I could not do his arguments justice, but I suspect that others will try to do so. As I say, his officials have met with representatives of the Bar Council. I am sure that he will be happy for that dialogue to continue, and if necessary for it to extend to some of us who might come along and listen to what the officials are saying and give it a rubber stamp in an effort to progress the argument. There is a real concern about where this exemption should lie and how it should apply, so I will beg leave to withdraw the amendment, not because I am convinced but because there is still more discussion to be had.

Amendment 63A withdrawn.

Amendments 64 and 64A not moved.

Amendments 65 and 66

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

65: Schedule 1, page 121, line 36, leave out from "processing" to end of line 38 and insert "—

(a) is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings),

(b) is necessary for the purpose of obtaining legal advice, or

(c) is otherwise necessary for the purposes of establishing, exercising or defending legal rights."

66: Schedule 1, page 121, line 38, at end insert—

"26A_ This condition is met if the processing is necessary when a court is acting in its judicial capacity."

Amendments 65 and 66 agreed.

Amendments 66A to 68 not moved.

Schedule 1, as amended, agreed.

Clause 10: Special categories of personal data etc: supplementary

Amendment 69

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

69: Clause 10, page 6, line 12, leave out "supervision" and insert "responsibility"

Amendment 69 agreed.

Amendment 70 not moved.

Amendment 71

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

71: Clause 10, page 6, line 16, leave out "this section" and insert "section 9"

Amendment 71 agreed.

Clause 10, as amended, agreed.

Amendment 71ZA

Moved by ***Lord Lucas***

71ZA: After Clause 10, insert the following new Clause—

"Regulations relating to the processing of personal data under Part 3 of the Digital Economy Act 2017

(1) Subject to the following provisions of this section, the age-verification regulator under section 16 of the Digital Economy Act 2017 may publish, and revise from time to time, regulations relating to the processing of personal data for purposes of age verification under types of arrangements for making pornographic material available not prohibited by section 14 of the Digital Economy Act 2017 in order to—

(a) provide appropriate protection, choice and trust in respect of personal data processed as part of any such arrangements; and

(b) create any technical obligations necessary to achieve the aims set out in subsection (1)(a).

(2) Once the regulator has prepared a draft of regulations it proposes to publish under subsection (1), it must submit the draft to the Secretary of State.

(3) When draft regulations are submitted to the Secretary of State under subsection (2), the Secretary of State must lay those draft regulations before both Houses of Parliament.

(4) If, within the period of 40 days beginning with the day on which draft regulations are laid before Parliament under subsection (3), either House resolves not to approve those draft regulations, the age-verification regulator must not publish those regulations in the form of that draft.

(5) If no such resolution is made within that period, the age-verification regulator must publish the regulations in the form of the draft laid before Parliament.

(6) But subsection (8) applies, instead of subsections (4) and (5), in a case falling within subsection (7).

(7) The cases falling within this subsection are those where draft regulations are laid before Parliament under subsection (3) and no previous regulations have been published under subsection (1) by the age-verification regulator.

(8) The regulator must not publish regulations in the form of the draft laid before Parliament unless the draft has been approved by a resolution of each House of Parliament.

(9) Subsection (4) does not prevent new draft regulations from being laid before Parliament.

(10) For the purposes of subsection (4)—

(a) where draft regulations are laid before each House of Parliament on different days, the later day is to be taken as the day on which it was laid before both Houses, and

(b) in reckoning any period of 40 days, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

(11) References in this section to regulations and draft regulations include references to revised regulations and draft revised regulations."

Lord Lucas (Con): My Lords, I thank the Open Rights Group for pushing for this amendment, and particularly the Public Bill Office for getting it into a form that is acceptable in the Bill. This amendment addresses age verification for accessing pornography; currently there are no specific safeguards. However, sexual preferences are very sensitive, so this amendment allows—it does not compel—regulation at a higher level than is currently the case. The pornography industry has a woeful record of regular, large-scale breaches of data security and I do not believe that we should trust it. Even if we think we might trust the industry, we ought to be in a position where we do not have to. Our young people deserve proper protection regarding some very sensitive data.

I believe that we should take this seriously—my experience of young boys of 14 and 15 is that they are being exposed to high-grade pornography on a large scale, something that in the context of their relationships with women later in life we may want to think about carefully. Therefore, surely we should take the opportunity to give ourselves the powers to take action, should we decide that that is necessary, rather than having to come back to primary legislation with all the time and delay that that involves. We can anticipate this difficulty—we can see it coming down the tracks—so let us prepare for it. I beg to move.

Lord Stevenson of Balmacara (Lab): My Lords, I am completely discombobulated because the noble Lord, Lord Lucas, has hidden himself on the far right-hand side of the Chamber, which makes it very difficult to engage with him—but I am sure we can get over it. He is also incredibly skilful to have got an amendment of this type into the Bill, because we were looking at this issue as well but could not find a way through. I would like a tutorial with him afterwards about how to get inside the interstices of this rather complicated legislative framework.

I must say that I have read his amendment several times and still cannot quite get it. I shall therefore use my usual strategy, which is to come in from an aerial height on a rarefied intellectual plane and ask the Minister to sum up in a way that I can understand—but under the radar I will ask for three things. First, we spent a lot of time on this in the Digital Economy Act. It is an important area and it is therefore important that we get it right. It would be quite helpful to the Committee, and would inform us for the future, if we could have a statement from the Dispatch Box or a letter saying where we have got to on age verification.

I hear rumours that the system envisaged at the time when the Digital Economy Act was going through has not been successful in practice. I think that we have heard from the Minister and others in earlier groups in relation to similar topics that in practice the envisaged age verification system is not being implemented as it stands. What is happening is that the process of trying to clear up this area and making sure that age verification is in place is actually being carried out on a voluntary basis by those who run credit cards and banking services for the companies involved and for whom a simple letter from the regulator, in this case the BBFC, is sufficient to cause them to cease to process any moneys to the sites concerned—and, as a result, that is what is happening in the pornography industry. That may or may not be a good thing—it is probably too early to say—but it was not the intention of the Bill. That was to have a system that was dependent on a proper age verification system and to make the process open and transparent. If it is different, we ought to know that before we start considering these areas.

My third point is that we would rely on Ministers to let us know whether it is necessary to return to this issue in the sense of the information that we hope will be provided. It is only at that level that we can respond carefully to what the noble Lord said—although I have no doubt that it is a very important area.

Lord Elton (Con): My Lords, perhaps I may intervene between the two Front Benches. I wish to ask my noble friend on the Front Bench not to say—should he be tempted to—that this simply will not work, even if he explains why in great detail, but to say whether what the amendment tries to do is worth doing and, if so, how it can be achieved.

6 pm

Lord Clement-Jones (LD): My Lords, the noble Lord, Lord Stevenson, has raised some important points, which refer back to our labour over the Digital Economy Bill. One particular point occurs to me in relation to the questions that he asked: have we made any progress towards anonymisation in age verification, as we debated at some length during the passage of that Bill? As I recall, the Government's point was that they did not think it necessary to include anything in the Bill because anonymisation would happen. The Minister should engage with that important issue. The other point that could be made is about whether the Government believe that the amendment of the noble Lord, Lord Lucas, would help us towards that goal.

Lord Ashton of Hyde: My Lords, as we have heard, Part 3 of the Digital Economy Act 2017 requires online providers of pornographic material on a commercial basis to institute appropriate age verification controls. My noble friend's Amendment 71ZA seeks to allow the age verification regulator to publish regulations relating to the protection of personal data processed for that purpose. The amendment aims to provide protection, choice and trust in respect of personal data processed for the purpose of compliance with Part 3 of the 2017 Act.

I think that I understand my noble friend's aim. It is a concern I remember well from this House's extensive deliberations on what became the Digital Economy

[Lord Ashton of Hyde]
Act, as referred to earlier. We now have before us a Bill for a new legal framework which is designed to ensure that protection, choice and trust are embedded in all data-processing practices, with stronger sanctions for malpractice. This partly answers my noble friend Lord Elton, who asked what we would produce to deal with this problem.

Personal data, particularly those concerning a data subject's sex life or sexual orientation, as may be the case here, will be subject to rigorous new protections. For the reasons I have just mentioned, the Government do not consider it necessary to provide for separate standards relating exclusively and narrowly to age verification in the context of accessing online pornography. That is not to say that there will be a lack of guidance to firms subject to Part 3 of the 2017 Act on how best to implement their obligations. In particular, the age verification regulator is required to publish guidance about the types of arrangements for making pornographic material available that the regulator will treat as compliant.

As noble Lords will be aware, the British Board of Film Classification is the intended age verification regulator. I reassure noble Lords that in its preparations for taking on the role of age verification regulator, the BBFC has indicated that it will ensure that the guidance it issues promotes the highest data protection standards. As part of this, it has held regular discussions with the Information Commissioner's Office and it will flag up any potential data protection concerns to that office. It will then be for the Information Commissioner to determine whether action or further investigation is needed, as is her role.

The noble Lord, Lord Clement-Jones, talked about anonymisation and the noble Lord, Lord Stevenson, asked for an update of where we actually were. I remember the discussions on anonymisation, which is an important issue. I do not have the details of exactly where we have got to on that subject—so, if it is okay, I will write to the noble Lord on that.

I can update the noble Lord, Lord Stevenson, to a certain extent. As I just said, the BBFC is in discussion with the Information Commissioner's Office to ensure that best practice is observed. Age verification controls are already in place in other areas of internet content access; for example, licensed gambling sites are required to have them in place. They are also in place for UK-based video-on-demand services. The BBFC will be able to learn from how these operate, to ensure that effective systems are created—but the age verification regulator will not be endorsing a list of age verification technology providers. Rather, the regulator will be responsible for setting guidance and standards on robust age verification checks.

We continue to work with the BBFC in its engagement with the industry to establish the best technological solutions, which must be compliant with data protection law. We are aware that such solutions exist, focusing rightly on verification rather than identification—which I think was the point made by the noble Lord, Lord Clement-Jones. If I can provide any more detail in the follow-up letter that I send after each day of Committee, I will do so—but that is the general background.

Online age verification is a rapidly growing area and there will be much innovation and development in this field. Industry is rightly putting data privacy and security at the forefront of its design, and this will be underscored by the new requirements under the GDPR. In view of that explanation, I hope that my noble friend will be able to withdraw his amendment.

Lord Lucas: My Lords, I am very grateful for my noble friend's reply. With his leave, I will digest it overnight and tomorrow. I look forward to the letter that he promised—but if, at the end of that, I still think that there is something worth discussing, I hope that his ever-open door will be open even to that.

Lord Ashton of Hyde: I believe that during our previous day in Committee, I offered to meet my noble friend.

Lord Lucas: I am very grateful and I beg leave to withdraw the amendment.

Amendment 71ZA withdrawn.

Clause 11 agreed.

Amendment 71A

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

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

"Right to be informed of the commercial exploitation of personal data

(1) Data controllers must notify data subjects of all intended or actual commercial exploitation of their personal data.

(2) The notification under subsection (1) must be made—

(a) at the time when the data subject consents to their personal data being processed by the data controller,

(b) before commercial exploitation takes place, if this is more than six months after the notification in paragraph (a), and

(c) every six months thereafter if the commercial exploitation is ongoing.

(3) Notifications under this section must include—

(a) the primary uses to which the personal data will be put, and

(b) the gross revenues the data controller expects to receive through the exploitation of that personal data."

Lord Stevenson of Balmacara: My Lords, I was not referring to this amendment specifically in commenting on Amendment 71ZA, but we had difficulty getting this amendment in scope, so as to be in line with our aspirations and what we wanted to discuss today.

Amendment 71A would introduce an individual right for data subjects to be informed by data controllers when there is an actual or intended commercial exploitation of their personal data. Machine learning will allow data companies to get a lot of value out of people's data—indeed, it already does. It will allow greater and more valuable targeting of advertisements and services on a vast scale, given the way that modern data platforms work. This skews further the balance of power between those companies and the individuals whose data is being exploited.

One could probably describe the current relationship between people and the data companies to whom they give their data as rather unsophisticated. People hand it over for a very low value, as in a bartering service or crude exchange—and, as in a barter economy, it cannot be efficient. This amendment will test whether we can get more power into the hands of the people who make the exchange to make the market function better. The companies' position is completely the reverse: it is almost that of a monopsony, although as a technical term monopsonies are those situations in which dominant companies set a price for the market, whereas in this case there is no price. It is interesting to follow that line of thought a little further because, where there are monopsonies, the normal remedy put forward by those involved is to publish a standard price list. That improves choice to the point that people are not exploited on the price they pay; it is just a question of choice on quality or service, rather than the price. That at least protects individuals to some extent against the dominant company exploiting control.

The essence of this amendment is an attempt to try to give power back to the people whose data is being used. We are talking about very significant sums of money. I gather from a recent article in the *Guardian* that the top price you can get for your data—although I am not sure whether "price" is the right word here; "value" might be better—is about $14 each quarter for a company such as Facebook. If you compare that across the world, in the Asia-Pacific region it is worth only about $2. There is a variation, and the reason is the ability to exploit some form of advertising revenue from individual data, so the US, where the highest prices are going to be available, was worth about $2.8 billion in advertising revenue to Facebook last quarter while the second-biggest Facebook market, Europe, was worth only about £$1.4 billion, which is about half. You can see how the prices would follow through in terms of the data. We are talking about quite a lot of resource here in terms of how this money flows and how it works.

The process of trying to seek the money has already started. Some companies are now trying to reverse the direction of travel. They go to individuals through the web and offer them the chance to connect all their data together across the social media companies in which they already have it. The companies then value it and try to sell it on behalf of the individuals to the companies concerned. That is obviously the beginning of a market approach to this, which is where this amendment is centred.

I mentioned that I had difficulty getting what I wanted in the scope of the Bill. I think I have mentioned this before, but it seems to us that we do not yet have the right sense of what people's data represent in relation to the companies that seek to use it. One suggestion we have had is that we might look to the creative industries—not inappropriately since this is a DCMS Bill—and think of it as some form of copyright. If it were a copyright—and it may or may not be possible to establish one's personal data in a copyright mode—we would immediately be in a world where the data transferring from the individual to the company would be not sold but licensed, and therefore there would be a continuing sense of ownership in the process in which the data is transferred. It would also mean that there would have to be continuing reporting back to the licence holder for the use of the data, and we could go further and expect to follow the creative industries down the track which they currently go. The personal copyright would then have value to the company and there is a waterfall, as they call it, of revenue exploitation so that those who hold the copyright might expect to earn a small but not insignificant amount from it. We begin to see a commercial system, more obviously found in other areas of the marketplace, but it relates to the way in which individuals would have a value in relation to their data, and there might even be a way in which that money could be returned. If you were in that happy situation, what would you do with the money? One would hope that it would be useful to some people, but it might also be possible to accumulate it, perhaps through a collecting society, and see it invested in educational work or improving people's security in relation to their data, for instance. There are many choices around that.

Having said all that about copyright, I am not particularly wedded to it as a concept because there are downsides to copyright, but it is an issue worth exploring. The essence of the amendment is to try to restore equality of arms between the individual and the companies to which the data is transferred. I beg to move.

Lord Ashton of Hyde: My Lords, I am grateful to the noble Lord, Lord Stevenson, for raising this important subject. I recall the questions that he posed at Second Reading about whether data subjects had sufficient support in relation to the power of companies that wanted to access, use and monetise their data, and I recognise the intention behind his amendment, which he carefully explained. I also agree wholeheartedly with him that these are questions worthy of debate, not only during the passage of this Bill, but over the coming months and years as the digital economy continues to develop. Later in Committee, we may discuss suitable forums where this could take place. These are big questions of data rights and how they are monetised, if they are, versus the growth of the digital economy for public benefit.

6.15 pm

Through the evolution of the GDPR, we attempted to wrestle with these questions and to reach an appropriate balance between protecting the rights of data subjects and facilitating growth and innovation in the digital economy. Much of this Bill is about balance between rights and about where those rights should or should not be applied. The Government's view is that, on the whole, the GDPR was ultimately successful in achieving that balance. In particular, I reassure the Committee that there are already mechanisms in the new regime which will support individuals better to understand what data controllers are doing with their data for commercial purposes. For example, data controllers will be required, when obtaining personal data from an individual, to inform that person of: the purposes for which their personal data is being processed; the period for which their data will be stored, to the extent that this is possible; their right, where applicable, to

[Lord Ashton of Hyde]
withdraw consent for their data to be used; and their right to lodge a complaint with the supervisory authority. That is not an exhaustive list but is illustrative of the protections that will be put in place. Such information must also be updated if the controller intends to process the personal data for any new purpose.

I take this opportunity to add that the current statutory guidance from the Information Commissioner in relation to direct marketing states that, even if consent is not explicitly withdrawn, it will become harder for organisations legally to rely on that consent as time passes. On that basis, I am confident that the substance of the protections that the noble Lord is seeking to achieve through his amendment is already provided for.

In terms of the form that these protections take, the Government are concerned about the burdens that the noble Lord's approach would have on businesses, particularly small and micro-enterprises. Many of his remarks were addressed to the large companies that we all know about. This is particularly true in respect of the final part of the noble Lord's amendment, which would require organisations to notify an individual of the gross revenues that they expected to receive through the commercial use of their data.

The Government have sought in this Bill to minimise burdens on business. The Bill enables processing to support scientific research, journalism and many other areas. Where appropriate, it preserves the conditions and exemptions of the Data Protection Act, allowing business processing to continue. We want to support businesses to implement the new law, though we are in no doubt that updating processes and systems is not a trivial task. We believe that Amendment 71A is a burden that business does not want, and the economic consequence of overregulation of this sort is high risk where knowledge and data-driven industries can move easily to a more favourable regulatory environment.

The Government's view is that, through this Bill, we are already establishing mechanisms which will empower individuals to make informed decisions about the use of their data. These measures will ensure that when people give their consent to an organisation which is using their data for commercial purposes, they do so on the basis of a shared understanding that any consent thereby given can be withdrawn at any time if they no longer wish their data to be used for certain purposes or to be monetised in certain ways.

I accept the broader issues that the noble Lord has raised. I think they are worthy of debate but I hope that, given my explanations on the specific areas that his amendment addresses, he feels able to withdraw it.

Lord Stevenson of Balmacara: My Lords, I am very grateful to the Minister for engaging with the issues and for responding so positively to some of the ideas that underlie the amendment. This is an issue that we will need to come back to, but I take the point that the level of detail in the amendment and the impact it may have may not be appropriate at this time, in terms of our understanding of and knowledge about where we are trying to get to.

As the Minister said, there may be opportunities to discuss the way this might be taken forward, including the possibility of the data ethics group. Should the Bill be amended in that way, that would be a base on which this could come forward.

Having said that, this was clearly a probing amendment and I was not expecting a detailed response. The noble Lord was careful to make sure that we were aware of the problems concerning some of the issues, but I put it to him that the technology we are already experiencing—and there is a lot more to come—allows those who have our data to almost magically know things about us, which results in us getting birthday greetings, targeted adverts and everything else. They are already on to us on this, and I do not think we need to worry too much about the burden that might be placed on these poor companies. But I take the point and beg leave to withdraw the amendment.

Amendment 71A withdrawn.

Clause 12: Obligations of credit reference agencies

Debate on whether Clause 12 should stand part of the Bill.

Lord Stevenson of Balmacara: My Lords, Clause 12 deals primarily with credit reference agencies. It is not an area that I think we want to go through in complete detail, but in comparing the current version of the Bill with the provisions in the Data Protection Act 1998, in particular Section 39(2), we wondered whether the updating of that provision was entirely correct and thought it would be helpful to give the Minister a chance to respond to that point.

The question that underlies the suggestion that the clause should not stand part is whether Clause 12 constitutes a restriction on a data subject's access rights. It can be read as a presumption that a data subject in this area is asking only about their financial standing, and not for other data that the credit reference agency might have. The provision therefore might be said to run contrary to the underpinning rationale behind the GDPR that data controllers should be transparent and that data subjects should not be put in the position of having to guess what data is held about them in order to ask for it.

I am sorry to have to refer again to a recital, but recital 63, which the Minister might be aware of, specifies that among other purposes, the right of access is to allow a data subject to be aware of the data held about them so as to be able to,

"verify … the lawfulness of the processing"

that is taking place. This is different from the wording in Clause 12, in that the trigger appears to be based on the quantity of data rather than the type of controller. There is also no presumption about the nature of the data that the data subject wants. I think I have said enough to suggest that there is possibly an issue behind this and I would be grateful if the Minister could respond to that point.

Baroness Chisholm of Owlpen (Con): My Lords, as your Lordships know, before giving somebody credit, lenders such as banks, loan companies and shops want to be confident that the person can repay the money they lend. To help them do this, they may look at the information held by credit reference agencies.

Credit reference agencies give lenders a range of information about potential borrowers, which lenders use to make decisions about whether or not to offer a person credit. It is safe to say that the three main credit reference agencies in the UK—Equifax, Experian and Callcredit—are likely to hold certain information about most adults in the country. Most of the information held by the credit reference agencies relates to how a person has maintained their credit and their service and utility accounts. It also includes details of people's previous addresses and information from public sources such as the electoral roll, public records including county court judgments, and bankruptcy and insolvency data.

The information held by the credit reference agencies is also used to verify the identity, age and residency of individuals, to identify and track fraud, to combat money laundering and to help recover payment of debts. Government bodies may also access this credit data to check that individuals are entitled to certain benefits and to recover unpaid taxes and similar debts. Credit reference agencies are licensed by the Financial Conduct Authority.

As noble Lords may be aware, anyone can write to a credit reference agency to request a copy of their credit reference file. Given the sheer volume of requests that such agencies receive, Section 9 of the Data Protection Act 1998 provides that a subject access request made under Section 7 of the Act will be taken to mean a request for information about the person's financial standing, unless the person makes it clear that he or she is seeking different information. Very importantly, when responding to such a request, Section 9(3) of the 1998 Act requires the credit reference agencies to provide the person with details about how he or she can go about correcting any wrong information held by the agencies. The process for doing so is set out in Section 159 of the Consumer Credit Act 1974, and the 1998 Act makes reference to it. If personal information held about someone is incorrect or out of date, noble Lords will appreciate that it could lead to that person being unfairly refused credit.

Clause 12 of the Bill simply replicates the provisions in Section 9 of the DPA in relation to handling of subject access requests made under article 15 of the GDPR. If it were omitted without anything being put in its place, this could create uncertainty for consumer reference agencies about how they should respond to a subject access request. It would create uncertainty for data subjects, who would no longer be supplied with guidance on how to update details in their file that were wrong or misleading. As far as we are aware, these provisions have worked well over the last 20 years and we can see no reason why they should be omitted from the Bill.

On that basis, I respectfully invite the noble Lord to accept that Clause 12 should stand part of the Bill.

Lord Stevenson of Balmacara: I am grateful to the Minister for her response. I think we agree that any impact on one's credit standing is a major issue and that it is really important that we get this right. Although she did not specifically say so, I take it that all the big companies involved in this field were consulted before this measure was put forward. One notices, but does not make any comment, that Equifax is one of the companies concerned—and look what happened to it.

The message coming through is that the DPA 1998 provisions are being reproduced here: there is no intention to change them and people should not be concerned about this. On that basis, I will not object to Clause 12 standing part of the Bill.

Clause 12 agreed.

Clause 13: Automated decision-making authorised by law: safeguards

Amendments 72 and 73

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

72: Clause 13, page 7, line 9, leave out "prohibition on taking" and insert "Article 22(1) of the GDPR for"

73: Clause 13, page 7, line 10, leave out "for decisions"

Amendments 72 and 73 agreed.

Amendment 74

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

74: Clause 13, page 7, line 11, at end insert—

"( ) A decision is "based solely on automated processing" for the purposes of this section if, in relation to a data subject, there is no meaningful input by a natural person in the decision-making process."

Lord Clement-Jones: My Lords, in moving Amendment 74, I will also speak to Amendments 74A, 75, 77, 119, 133A, 134 and 183—I think I have encompassed them all; at least I hope I have. In a way this is an extension of the very interesting debate that we heard on Amendment 71A, but further down the pipeline, so to speak. This group contains a range of possible and desirable changes to the Bill relating to artificial intelligence and the use of algorithms.

Data has been described, not wholly accurately, as the oil of artificial intelligence. With the advent of AI and its active application to datasets, it is vital that we strike the right balance in protecting privacy and the use of personal data. Indeed, the Minister spoke about that balance in that debate. Above all, we need to be increasingly aware of unintended discrimination where an element of a decision involves an algorithm. If a particular system learns from a dataset that contains biases, such as associating female names with family roles and male names with careers, it is likely to reproduce them in its decisions. One way of helping to identify and rectify bias is to ensure that such algorithms are transparent, so that it is possible to see not only what data is being used but the steps being taken to process that data in coming to a particular conclusion.

In all this, there is the major risk that we do not challenge computer-aided decision-making. To some extent, this is recognised by article 22 of the GDPR, which at least gives the right of explanation where there is fully automated decision-taking, and it is true that in certain respects, Clause 13 amplifies article 22. For instance, article 22 does not state what safeguards need to be in place; it talks just about proper safeguards. In the Bill, it is proposed that, after a decision has been made, the individual has to be informed of the

[Lord Clement-Jones]
outcome, which is better than what the GDPR currently offers. It also states that data subjects should have the right to ask that the decision be reconsidered or that the decision not be made by an algorithm. There is also the requirement, in certain circumstances, for companies and public bodies to undertake data protection impact assessment under Clause 62. There are also new provisions in the GDPR for codes of conduct and certification, so that if an industry is moving forward on artificial intelligence in an application, the ICO can certify the approach that the industry is taking on fairness in automated decision-taking.

6.30 pm

However, the automated decision safeguards in the GDPR place too much emphasis on the requirement for a decision to be fully automated and significant before they apply. Few decisions are fully automated. Should there not also been the right to an explanation of systems where AI is only one part of the final decision in certain key circumstances—for instance, where policing, justice, health or personal welfare or finance is concerned? This could be an explanation in advance of the AI or algorithm being used—transparency by design—or, if the decision-making process is not known in advance, an obligation to test the AI's performance in the same circumstances.

The automated decision safeguards in the GDPR should be amended explicitly to protect individuals against unfair and non-transparent semiautonomous AI systems that they may face in their day-to-day lives. For example, provision in the recent Digital Republic Act in France treats semiautonomous algorithms as requiring explanation.

To really ingratiate myself with the Minister—I may not succeed, but it is worth a try—I shall quote from a speech by Matt Hancock to the Leverhulme centre last July. He said that,

"we need to identify and understand the ethical and governance challenges posed by uses of data, now and into the future, where they go beyond current regulation, and then determine how best to identify appropriate rules … establish new norms, and where necessary regulations ... Unfair discrimination will still be unfair. Using AI to make some decisions may make those decisions more difficult to unpack. But it won't make fairness less important".

That is a very important paragraph in that speech to the Leverhulme centre.

On Amendments 74, 77 and 136, clarification is needed, as it is unclear whether the UK will consider the article 29 working party opinions after we leave the European Union, despite the central role of the ICO in crafting them. This is particularly relevant as the recently published draft guidelines on profiling by the article 29 working party state:

"The controller cannot avoid the Article 22 provisions by fabricating human involvement. For example, if someone routinely applies automatically generated profiles to individuals without any actual influence on the result, this would still be a decision based solely on automated processing.

To qualify as human intervention, the controller must ensure that any oversight of the decision is meaningful, rather than just a token gesture. It should be carried out by someone who has the authority and competence to change the decision. As part of the analysis, they should consider all the available input and output data".

For the purpose of clarity of obligations imposed on controllers, it is important that this explanation is included in the Bill.

The effect of Amendment 77 would be that:

"A decision is a 'significant decision' for the purposes of this section if, in relation to a data subject, it—

(a) produces legal effects concerning the data subject, or

(b) significantly affects the data subject"—

or,

"a group sharing a protected characteristic, within the meaning of the Equality Act 2010, to which the data subject belongs".

Take the example of an advertisement targeting people based on race. An example of this was discovered by a black Harvard computer science professor, Latanya Sweeney, who investigated why, "Have you been to prison and need legal help" adverts appeared online when googling "black-sounding" names rather than "white-sounding" names. Did the decision affect her? Unlikely: she is, as are many investigators, in a privileged position. But the amendment allows for people to take action on discriminatory systems even when they themselves might not be significantly affected at an individual level. This would usefully increase protection and explicitly define that a "significant" effect can be significant to a group of which an individual is part. This is similarly acknowledged by the recent article 29 working party guidance which states:

"Processing that might have little impact on individuals generally may in fact have a significant effect on certain groups of society, such as minority groups or vulnerable adults".

Amendment 75 would clarify that the exemption from prohibition on taking significant decisions based solely on automated processing must not apply to purely automated decisions that engage an individual's human rights. In relation to general automated processing in Clause 13, the explicit protection of human rights would protect individuals from being subjected to automated decisions that could engage their fundamental rights: for example, by unfairly discriminating against them. A recent study claimed that a facial recognition tool was able to detect individuals' sexuality based on their photographs taken from online dating sites with greater accuracy than humans. Another recent study claimed that a machine learning tool was able to diagnose depression by scanning individuals' photographs posted on the social media platform Instagram with greater accuracy than the average doctor.

The rapidly growing field of machine learning and algorithmic decision-making clearly presents new risks. As a minimum, individuals' basic rights must be explicitly protected at all times and regarded as paramount.

On Amendment 183, personal data is of course already defined as data relating to a data subject which makes him or her identified or identifiable. The administrative decision then becomes one concerning him or her. This is a clarification of what "meaningful information" involves. There is evidence from both the article 29 committee and the ICO's consultation that some tweaking of "solely" appears compatible with the GDPR. Under the Equality Act 2010, there is a public sector equality duty, and public agencies have an obligation to ensure that their actions, including the generation, purchase or use of machine learning models, do not have discriminatory effects.

On Amendment 119, where automated decisions are made under article 22, data subjects are permitted minimum safeguards. Recital 71 and paragraph 115 of the Government's own Explanatory Notes suggest that this includes a right to explanation. However, as UK law has not traditionally used recitals—we heard previously that they do not form part of the Bill—it is unclear how they will be interpreted after they are migrated into domestic law as a potential consequence of the European Union (Withdrawal) Bill. This provision should be included in the main text of the Bill. Without passing an amendment, the Explanatory Notes would be incorrect in communicating the effect of the Bill.

I turn finally to Amendments 74A and 133A. These amendments are derived from a reading of recital 71, and the amendments themselves might be somewhat defective because they might give the impression that any safeguards are being deleted where children are involved. However, recital 71, when it applies to article 22, states that such measures should not concern a child. As I read that—a Minister may be able to clarify—the provisions related to automated decision-taking should not be allowable in connection with children. That requires clarification. In particular, not only is that rider to recital 71 in the recitals, there is a further recital in the GDPR, recital 38, which states:

"Children merit specific protection with regard to their personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data".

That all adds up to quite a number of areas in Clause 13 which have either not been properly transposed from article 22, or by some tweaking and clarification of definitions could vastly improve Clause 13. I beg to move, and I look forward to the Minister's reply.

Lord Stevenson of Balmacara: My Lords, we have a number of amendments in this group and I want to associate myself with many of the points made on the other amendments by the noble Lord, Lord Clement-Jones. I was only sorry that we did not get round to signing up to more of them in time to get some of the glory, because he has picked up a lot of very interesting points.

We will come to later groups of amendments that deal with a broader concern of effects and moral issues in relation to this Bill. It has been growing on me for a number of weeks now, but one of the most irritating things about the Bill, apart from the fact that it does not have the main clauses in it that one wants to discuss, is that every now and again we come up against a brick wall where there is suddenly a big intellectual jump on where we have got to and where we might want to get to through the Bill, and this is one of them.

This whole idea of automated data and how it operates is very interesting indeed. One of the people with whom I have been having conversations around this suggested that, in processing this Bill, we are in danger of not learning from history in your Lordships' House and indeed Parliament as a whole, in relation to other areas in which deep moral issues are raised. The point was made, which is a good one, that when Parliament was looking at the Human Fertilisation and Embryology Act 1990 there had been four or five years, perhaps slight longer, of pre-discussion in which all the big issues had been thrashed out both in public and in private—in both Houses and in the newspapers, and in private Bills. There were loads of attempts to try to get to the heart of the issue. We are missing that now, in a way that suggests that it will become a lot clearer when we have discussions later about a data ethics body. I am sure that they will be good and appropriate discussions.

Having said that, the issue here is extremely worrying. We are at the very start of a rich and very interesting development in how computers operate and how machines take away from us a lot of the work that we currently regard as being human work. It is already happening in the world go championship. A computer played the human go champion and beat them easily. Deep Blue, the IBM computer, beat Garry Kasparov the chess player a few years ago. The point is not so much that these things were happening, but that nobody could understand what the machines were doing in relation to the results they were achieving. It is that apparent ability to exceed human understanding that is the great worry behind what people say. Of course, it is quite a narrow area and not one that we need to be too concerned about in terms of a broader approach. But in a world where people say with a resigned shrug that the computer has said no to a request they have made to some website, it is a baleful reflection of the helplessness we all feel when we do not understand what computers are doing to us. Automated processing is one facet of that, and we have to be careful.

We have to think of people's fears. If they have fears, they will not engage. If they will not engage, the benefits that should flow from this terrific new initiative, new thinking and new way of doing things will be that we do not get the productivity or the changes that will help society as we move forward. We have to think of future circumstances in a reflective way. In a deliberative way we have to think about technical development and public attitudes. It again plays back to the work that was done by Mary Warnock and her team when they were trying to introduce the HFEA. She said, importantly, that reason and sentiment are not necessarily opposed to each other. It is that issue we are trying to grapple with today. The amendments that have been so well introduced by the noble Lord, Lord Clement-Jones, cover that.

The regulatory and legal framework may not be sufficient. Companies obviously have natural duties only to their shareholders. Parliament will have to set rules that make people in those companies take account of public fears, as well as shareholder interests. That approach is not well exemplified in this Bill yet. We need to think about how to allow companies to bring forward new initiatives and push back the boundaries of what they are doing, while retaining public confidence. That is the sort of work that was done on the HFEA and that is where we have to go.

Our Amendment 74 has already been spoken to by the noble Lord, Lord Clement-Jones. It is an important one. There is an issue about whether or not an individual—"a natural person", as the amendment has it—is involved "in the decision-making process". We should know that.

6.45 pm

Amendment 77A would ensure that data controllers must,

"provide meaningful information … significance and legal consequences",

of the processing they are doing. Amendment 77B states that:

"A data subject affected by",

automated decision-making,

"retains the right to lodge a complaint to the",

ICO.

These are all consequences of the overall approach we are taking. I look forward to further debates and the Minister's response.

Baroness Jones of Moulsecoomb (GP): My Lords, I speak to Amendment 75 in particular, but the whole issue of automated decision-making is extremely worrying.

As we have gone through this Bill, I have been desperately hoping that some of the most repressive bits are a negotiating tactic on the Government's part, and that before Report they will say, "We'll take out this really nasty bit if you let us leave in this not really quite so nasty bit". I feel that this issue is one of the really nasty bits.

I thank Liberty, which has worked incredibly hard on this Bill and drawn out the really nasty bits. Under the Data Protection Act 1998, individuals have a qualified right not to be subject to purely automated decision-making and, to the extent that automated decision-making is permitted, they have a right to access information relating to such decisions made about them. The GDPR clarifies and extends these rights to the point that automated decisions that engage a person's human rights are not permissible.

This could include being subjected to unfair discrimination. The noble Lord, Lord Clement-Jones, used the phrase, "unintended discrimination"—for example, detecting sexuality or diagnosing depression. The rapidly growing field of machine learning and algorithmic decision-making presents some new and very serious risks to our right to a private life and to freedom of expression and assembly. Such automated decision-making is deeply worrying when done by law enforcement agencies or the intelligence services because the decisions could have adverse legal effects. Such processing should inform rather than determine officers' decisions.

We must have the vital safeguard for human rights of the requirement of human involvement. After the automated decision-making result has come out, there has to be a human who says whether or not it is reasonable.

Baroness Hamwee: My Lords, I too want to say a word about Amendment 75. The Human Rights Act trumps everything. To put it another way, the fundamental rights it deals with are incorporated into UK law, and they trump everything.

Like the noble Baroness, I believe that it is quite right that those who are responsible—humans—stop and think whether fundamental human rights are engaged. The right not to be subject to unfair discrimination has been referred to. Both the Bill and the GDPR recognised that as an issue in the provisions on profiling, but we need this overarching provision. Like other noble Lords, I find it so unsettling to be faced with what are clearly algorithmic decisions.

When I was on holiday I went to a restaurant in France called L'Algorithme, which was very worrying but I was allowed to choose my own meal. If this work continues in the industry, perhaps I will not be allowed to do so next year. I wondered about the practicalities of this, and whether through this amendment we are seeking something difficult to implement—but I do not think so. Law enforcement agencies under a later part of the Bill may not make significant decisions adversely affecting a data subject. Judgments of this sort must be practicable. That was a concern in my mind, and I thought that I would articulate my dismissal of that concern.

Lord Whitty (Lab): My Lords, my name is attached to two of these amendments. This is a very difficult subject in that we are all getting used to algorithmic decisions; not many people call them that, but they are what in effect decide major issues in their life and entice them into areas where they did not previously choose to be. Their profile, based on a number of inter-related algorithms, suggests that they may be interested in a particular commercial product or lifestyle move. It is quite difficult for those of my generation to grasp that, and difficult also for the legislative process to grasp it. So some of these amendments go back to first principles. The noble Baroness, Lady Hamwee, said that the issue of human rights trumps everything. Of course, we all agree with that, but human rights do not work unless you have methods of enforcing them.

In other walks of life, there are precedents. You may not be able to identify exactly who took a decision that, for example, women in a workforce should be paid significantly less than men for what were broadly equivalent jobs; it had probably gone on for decades. There was no clear paper trail to establish that discrimination took place but, nevertheless, the outcome was discriminatory. With algorithms, it is clear that some of the outcomes may be discriminatory, but you would not be able to put your finger on why they were discriminatory, let alone who or what decided that that discrimination should take place. Nevertheless, if the outcome is discriminatory, you need a way of redressing it. That is why the amendments to which I have added my name effectively say that the data subject should be made aware of the use to which their data is being made and that they would have the right of appeal to the Information Commissioner and of redress, as you would in a human-based decision-making process that was obscure in its origin but clear in relation to its outcome. That may be a slightly simplistic way in which to approach the issue, but it is a logical one that needs to be reflected in the Bill, and I hope that the Government take the amendments seriously.

Lord Ashton of Hyde: My Lords, I thank the noble Lord, Lord Clement-Jones, who introduced this interesting debate; of course, I recognise his authority and his newfound expertise in artificial intelligence from being chairman of the Select Committee on Artificial Intelligence. I am sure that he is an expert anyway, but it will only increase his expertise. I thank other noble

Lords for their contributions, which raise important issues about the increasing use of automated decision-making, particularly in the online world. It is a broad category, including everything from personalised music playlists to quotes for home insurance and far beyond that.

The noble Lord, Lord Stevenson, before speaking to his amendments, warned about some of the things that we need to think about. He contrasted the position on human embryology and fertility research and the HFEA, which is not exactly parallel because, of course, the genie is out of the bottle in that respect, and things were prevented from happening at least until the matter was debated. But I take what the noble Lord said and agree with the issues that he raised. I think that we will discuss in a later group some of the ideas about how we debate those broader issues.

The noble Baroness, Lady Jones, talked about how she hoped that the repressive bits would be removed from the Bill. I did not completely understand her point, as this Bill is actually about giving data subjects increased rights, both in the GDPR and the law enforcement directive. That will take direct effect, but we are also applying those GDPR rights to other areas not subject to EU jurisdiction. I shall come on to her amendment on the Human Rights Act in a minute—but we agree with her that human beings should be involved in significant decisions. That is exactly what the Bill tries to do. We realise that data subjects should have rights when they are confronted by significant decisions made about them by machines.

The Bill recognises the need to ensure that such processing is correctly regulated. That is why it includes safeguards, such as the right to be informed of automated processing as soon as reasonably practicable and the right to challenge an automated decision made by the controller. The noble Lord, Lord Clement-Jones, alluded to some of these things. We believe that Clauses 13, 47, 48, 94 and 95 provide adequate and proportionate safeguards to protect data subjects of all ages, adults as well as children. I can give some more examples, because it is important to recognise data rights. For example, Clause 47 is clear that individuals should not be subject to a decision based solely on automated processing if that decision significantly and adversely impacts on them, either legally or otherwise, unless required by law. If that decision is required by law, Clause 48 specifies the safeguards that controllers should apply to ensure the impact on the individual is minimised. Critically, that includes informing the data subject that a decision has been taken and providing them 21 days within which to ask the controller to reconsider the decision or retake the decision with human intervention.

I turn to Amendments 74, 134 and 136, proposed by the noble Lord, Lord Clement-Jones, which seek to insert into Parts 2 and 3 of the Bill a definition of the term,

"based solely on automated processing",

to provide that human intervention must be meaningful. I do not disagree with the meaning of the phrase put forward by the noble Lord. Indeed, I think that that is precisely the meaning that that phrase already has. The test here is what type of processing the decision having legal or significant effects is based on. Mere human presence or token human involvement will not be enough. The purported human involvement has to be meaningful; it has to address the basis for the decision. If a decision was based solely on automated processing, it could not have meaningful input by a natural person. On that basis, I am confident that there is no need to amend the Bill to clarify this definition further.

In relation to Amendments 74A and 133A, the intention here seems to be to prevent any automated decision-making that impacts on a child. By and large, the provisions of the GDPR and of the Bill, Clause 8 aside, apply equally to all data subjects, regardless of age. We are not persuaded of the case for different treatment here. The important point is that the stringent safeguards in the Bill apply equally to all ages. It seems odd to suggest that the NHS could, at some future point, use automated decision-making, with appropriate safeguards, to decide on the eligibility for a particular vaccine—

Lord Clement-Jones: My Lords, I hesitate to interrupt the Minister, but it is written down in the recital that such a measure,

"should not concern a child".

The whole of that recital is to do with automated processing, as it is called in the recital. The interpretation of that recital is going to be rather important.

7 pm

Lord Ashton of Hyde: My Lords, I was coming to recital 71. In the example I gave, it seems odd to suggest that the NHS could at some future point use automated decision-making with appropriate safeguards to decide on the eligibility for a particular vaccine of an 82 year-old, but not a two year-old.

The noble Lord referred to the rather odd wording of recital 71. On this point, we agree with the Article 29 working party—the group of European regulators—that it should be read as discouraging as a matter of best practice automated decision-making with significant effects on children. However, as I have already said, there can and will be cases where it is appropriate, and the Bill rightly makes provision for those.

Lord Clement-Jones: Would the Minister like to give chapter and verse on how that distinction is made?

Lord Ashton of Hyde: I think that "chapter and verse" implies "written"—and I will certainly do that because it is important to write to all noble Lords who have participated in this debate. As we have found in many of these areas, we need to get these things right. If I am to provide clarification, I will want to check—so I will take that back.

Lord Clement-Jones: I apologise for interrupting again. This is a bit like a dialogue, in a funny sort of way. If the Minister's notes do not refer to the Article 29 working party, and whether or not we will continue to take guidance from it, could he include that in his letter as well?

Lord Ashton of Hyde: I will. I had some inspiration from elsewhere on that very subject—but it was then withdrawn, so I will take up the offer to write on that. However, I take the noble Lord's point.

[Lord Ashton of Hyde]

We do not think that Amendment 75 would work. It seeks to prevent any decision being taken on the basis of automated decision-making where the decision would "engage" the rights of the data subject under the Human Rights Act. Arguably, such a provision would wholly negate the provisions in respect of automated decision-making as it would be possible to argue that any decision based on automated decision-making at the very least engaged the data subject's right to have their private life respected under Article 8 of the European Convention on Human Rights, even if it was entirely lawful. All decisions relating to the processing of personal data engage an individual's human rights, so it would not be appropriate to exclude automated decisions on this basis. The purpose of the Bill is to ensure that we reflect processing in the digital age—and that includes automated processing. This will often be a legitimate form of processing, but it is right that the Bill should recognise the additional sensitivities that surround it. There must be sufficient checks and balances and the Bill achieves this in Clauses 13 and 48 by ensuring appropriate notification requirements and the right to have a decision reassessed by non-automated means.

Baroness Hamwee: As the Minister may be about to move on from that, I think he is saying that the phrase, "engages an individual's rights" is problematic. Are the Government satisfied that the provisions the Minister has just mentioned adequately protect those rights—I am searching for the right verb—and that automated decision-making is not in danger of infringing the rights that are, as he says, always engaged?

Lord Ashton of Hyde: Automated processing could do that. However, with the appropriate safeguards we have put in the Bill, we do not think that it will.

Amendment 77 seeks to define a significant decision as including a decision that has legal or similar effects for the data subject or a group sharing one of the nine protected characteristics under the Equality Act 2010 to which the data subject belongs.

We agree that all forms of discrimination, including discriminatory profiling via the use of algorithms and automated processing, are fundamentally wrong. However, we note that the Equality Act already provides a safeguard for individuals against being profiled on the basis of a particular protected characteristic they possess. Furthermore, recital 71 of the GDPR states that data controllers must ensure that they use appropriate mathematical or statistical procedures to ensure that factors which result in inaccuracies are minimised, and to prevent discriminatory effects on individuals,

"on the basis of racial or ethnic origin, political opinion, religion or beliefs, trade union membership, genetic or health status or sexual orientation".

We therefore do not feel that further provision is needed at this stage.

Amendment 77A, in the name of the noble Lord, Lord Stevenson, seeks to require a data controller who makes a significant decision based on automated processing to provide meaningful information about the logical and legal consequences of the processing. Amendment 119, as I understand it, talks to a similar goal, with the added complication of driving a wedge between the requirements of the GDPR and applied GDPR. Articles 13 and 14 of the GDPR, replicated in the applied GDPR, already require data controllers to provide data subjects with this same information at the point the data is collected, and whenever it is processed for a new purpose. We are not convinced that there is much to be gained from requiring data controllers to repeat such an exercise, other than regulatory burden. In fact, the GDPR requires the information earlier, which allows the data subject to take action earlier.

Similarly, Amendment 77B seeks to ensure that data subjects who are the subject of automated decision-making retain the right to make a complaint to the commissioner and to access judicial remedies. Again, this provision is not required in the Bill, as data subjects retain the right to make a complaint to the commissioner or access judicial remedies for any infringement of data protection law.

Amendment 78 would confer powers on the Secretary of State to review the operational effectiveness of article 22 of the GDPR within three years, and lay a report on the review before Parliament. This amendment is not required because all new primary legislation is subject to post-legislative scrutiny within three to five years of receiving Royal Assent. Any review of the Act will necessarily also cover the GDPR. Not only that, but the Information Commissioner will keep the operation of the Act and the GDPR under review and will no doubt flag up any issues that may arise on this or other areas.

Amendment 153A would place a requirement on the Information Commissioner to investigate, keep under review and publish guidance on several matters relating to the use of automated data in the health and social care sector in respect of the terms on which enterprises gain consent to the disclosure of the personal data of vulnerable adults. I recognise and share noble Lords' concern. These are areas where there is a particular value in monitoring the application of a new regime and where further clarity may be beneficial. I reassure noble Lords that the Information Commissioner has already contributed significantly to GDPR guidance being developed by the health sector and continues to work closely with the Government to identify appropriate areas requiring further guidance. Adding additional prescriptive requirements in the Bill is unlikely to help them shape that work in a way that maximises its impact.

As we have heard, Amendment 183 would insert a new clause before Clause 171 stating that public bodies who profile a data subject should inform the data subject of their decision. This is unnecessary as Clauses 13 and 48 state that when a data controller has taken a decision based solely on automated processing, they must inform the data subject in writing that they have done so. This includes profiling. Furthermore, Clauses 13 and 48 confer powers on the Secretary of State to make further provisions to provide suitable measures to safeguard a data subject's rights and freedoms.

I thank noble Lords for raising these important issues, which deserve to be debated. I hope that, as a result of the explanation in response to these amendments,

I have been able to persuade them that there are sufficient safeguards in relation to automated decision-making in the GDPR and Parts 2 to 4 of the Bill, and that their amendments are therefore unnecessary. On that basis, I invite noble Lords not to press their amendments.

Lord Lucas: My Lords, I rather hope that the Minister has not been able to persuade noble Lords opposite. Certainly, I have not felt myself persuaded. First, on the point about "solely", in recruiting these days, when big companies need to reduce a couple of thousand applications to 100, the general practice is that you put everything into an automated process—you do not really know how it works—get a set of scores at the end and decide where the boundary lies according to how much time you have to interview people. Therefore, there is human intervention—of course there is. You are looking at the output and making the decision about who gets interviewed and who does not. That is a human decision, but it is based on the data coming out of the algorithm without understanding the algorithm. It is easy for an algorithm to be racist. I just googled "pictures of Europeans". You get a page of black faces. Somewhere in the Google algorithm, a bit of compensation is going on. With a big algorithm like that, they have not checked what the result of that search would be, but it comes out that way. It has been equally possible to carry out searches, as at various times in the past, which were similarly off-beam with other groups in society.

When you compile an algorithm to work with applications, you start off, perhaps, by looking at, "Who succeeds in my company now? What are their characteristics?". Then you go through and you say, "You are not allowed to look at whether the person is a man or a woman, or black or white", but perhaps you are measuring other things that vary with those characteristics and which you have not noticed, or some combinations. An AI algorithm can be entirely unmappable. It is just a learning algorithm; there is no mental process that a human can track. It just learns from what is there. It says, "Give me a lot of data about your employees and how successful they are and I will find you people like that".

At the end of the day, you need to be able to test these algorithms. The Minister may remember that I posed that challenge in a previous amendment to a previous Bill. I was told then that a report was coming out from the Royal Society that would look at how we should set about testing algorithms. I have not seen that report, but has the Minister seen it? Does he know when it is coming out or what lines of thinking the Royal Society is developing? We absolutely need something practical so that when I apply for a job and I think I have been hard done by, I have some way to do something about it. Somebody has to be able to test the algorithm. As a private individual, how do you get that done? How do you test a recruitment algorithm? Are you allowed to invent 100 fictitious characters to put through the system, or should the state take an interest in this and audit it?

We have made so much effort in my lifetime and we have got so much better at being equal—of course, we have a fair way to go—doing our best continually to make things better with regard to discrimination. It is therefore important that we do not allow ourselves to go backwards because we do not understand what is going on inside a computer. So absolutely, there has to be significant human involvement for it to be regarded as a human decision. Generally, where there is not, there has to be a way to get a human challenge—a proper human review—not just the response, "We are sure that the system worked right". There has to be a way round which is not discriminatory, in which something is looked at to see whether it is working and whether it has gone right. We should not allow automation into bits of the system that affect the way we interact with each other in society. Therefore, it is important that we pursue this and I very much hope that noble Lords opposite will give us another chance to look at this area when we come to Report.

Lord Clement-Jones: My Lords, I thank all noble Lords who spoke in the debate. It has been wide-ranging but extremely interesting, as evidenced by the fact that at one point three members of the Artificial Intelligence Select Committee were speaking. That demonstrates that currently we live, eat and breathe artificial intelligence, algorithms and all matters related to them. It is a highly engaged committee. Of course, whatever I put forward from these Benches is not—yet—part of the recommendations of that committee, which, no doubt, will report in due course in March.

7.15 pm

I very much like the analogy the noble Lord, Lord Stevenson, drew between this debate and the human fertilisation and embryology debate, and I noticed that the Minister picked up on that. Providing the ethical framework for AI and the use of algorithms will be extremely important in the future, and in due course we will come on to debate what kind of body might be appropriate to set standards and ethical principles. I quoted the Minister, Matt Hancock, because that speech was all about creating public trust so that we can develop the beneficial uses of artificial intelligence while avoiding its perils—the noble Lord, Lord Lucas, put his finger on some of the issues. That will be important if we are to get acceptance of this new technology as it develops, particularly as we move from what might be called weak AI towards strong, general AI. We do not know what the timescale will be, but it will be particularly important to create that level of public trust. So it is extremely important in this context to kick around concepts of accountability, explanation, transparency, and so on.

Lord Ashton of Hyde: I highlight that we do not disagree with that. I will study carefully what my noble friend Lord Lucas said. We agree that it is important that privacy rights continue to be protected, and we do not expect data subjects to have their lives run by computer alone. That is exactly why the Bill creates safeguards: to make sure that individuals can request not to be the subject of decisions made automatically if it might have a significant legal effect on them. They are also allowed to demand that a human being participate meaningfully in those decisions that affect them. I will look at what my noble friend said and include that in my write-round. However, as I said, we do not disagree

[Lord Ashton of Hyde]
with that. The illusion that we have got to a stage where our lives will be run unaccountably by computers is exactly what the Bill is trying to prevent.

Lord Clement-Jones: My Lords, I would not want to give that impression. None of us are gloom merchants in this respect. We want to be able to harness the new technology in a way that is appropriate and beneficial for us, and we do that by setting the right framework in data protection, ethical behaviour and so on.

I am grateful to the Minister for engaging in the way he has on the amendments. It is extremely important to probe each of those areas of Clauses 13, 47 and 48. For instance, there are lacunae. The Minister talked about the right to be informed and the right to challenge, and so on, and said that these provided adequate and proportional safeguards, but the right to explanation is not absolutely enshrined, even though it is mentioned in the GDPR. So in some areas we will probe on that.

Lord Ashton of Hyde: My Lords, if it is mentioned in the GDPR, then it is there.

Lord Clement-Jones: Yes, my Lords, but it is in the recital, so I think we come back again to whether the recitals form part of the Bill. That is what I believe to be the case. I may have to write to the Minister. Who knows? Anything is possible.

One of the key points—raised by the noble Lord, Lord Lucas—is the question of human intervention being meaningful. To me, "solely", in the ordinary meaning of the word, does not mean that human intervention is there at all, and that is a real worry. The writ of the article 29 working group may run until Brexit but, frankly, after Brexit we will not be part of the article 29 working group, so what interpretation of the GDPR will we have when it is incorporated into UK domestic law? If those rights are not to be granted, the interpretation of "solely" with the absolute requirement of human involvement needs to be on the face of the Bill.

As far as recital 71 is concerned, I think that the Minister will write with his interpretation and about the impact of the article 29 working group and whether we incorporate its views. If the Government are not prepared to accept that the rulings of the European Court of Justice will be effective in UK law after Brexit, I can only assume that the article 29 working group will have no more impact. Therefore, there is a real issue there.

I take the Minister's point about safeguards under the Equality Act. That is important and there are other aspects that we will no doubt wish to look at very carefully. I was not overly convinced by his answer to Amendment 75, spoken to by the noble Baroness, Lady Jones, and my noble friend Lady Hamwee, because he said, "Well, it's all there anyway". I do not think we would have had to incorporate those words unless we felt there was a gap in the way the clause operated.

I will not take the arguments any further but I am not quite as optimistic as the Minister about the impact of that part of the Bill, and we may well come back to various forms of this subject on Report. However, it would be helpful if the Minister indicated the guidance the ICO is adopting in respect of the issue raised in Amendment 153A. When he writes, perhaps he could direct us to those aspects of the guidance that will be applicable in order to help us decide whether to come back to Amendment 153A. In the meantime, I beg leave to withdraw.

Amendment 74 withdrawn.

Amendments 74A and 75 not moved.

Amendment 76

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

76: Clause 13, page 7, line 15, at beginning insert "similarly"

Amendment 76 agreed.

Amendments 77 to 77B not moved.

Clause 13, as amended, agreed.

Amendment 78 not moved.

Amendment 78A

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

78A: After Clause 13, insert the following new Clause—

"Personal Data Ethics Advisory Board

(1) The Secretary of State must appoint an independent Personal Data Ethics Advisory Board as soon as reasonably practicable after the passing of this Act.

(2) The Personal Data Ethics Advisory Board's functions, in relation to the processing of personal data to which the GDPR and this Act applies, are to—

(a) monitor further technical advances in the use and management of personal data and their implications for the rights of data subjects;

(b) protect the individual and collective rights and interests of data subjects in relation to their personal data;

(c) ensure that trade-offs between the rights of data subjects and the use and management of personal data are made transparently, accountably and inclusively;

(d) seek out good practices and learn from successes and failures in the use and management of personal data; and

(e) enhance the skills of data subjects and controllers in the use and management of personal data.

(3) The Personal Data Ethics Advisory Board must report annually to the Secretary of State.

(4) The report in subsection (3) may contain recommendations to the Secretary of State and the Commissioner relating to how they can improve the processing of personal data and the protection of data subjects' rights by improving methods of—

(a) monitoring and evaluating the use and management of personal data;

(b) sharing best practice and setting standards for data controllers; and

(c) clarifying and enforcing data protection rules.

(5) The Secretary of State must lay the report in subsection (3) before both Houses of Parliament."

Lord Stevenson of Balmacara: My Lords, it always used to be said that reaching the end of your Lordships' day was the graveyard slot. This is a bit of a vice slot. You are tempted by the growing number of people coming in to do a bit of grandstanding and to tell them what they are missing in this wonderful Bill that we are discussing. You are also conscious that the dinner hour approaches—and I blame the noble Baroness, Lady Hamwee, for that. All her talk of dining in L'Algorithme, where she almost certainly had a soup, a main course and a pudding, means that it is almost impossible to concentrate for the six minutes that we will be allowed—with perhaps a few minutes more if we can be indulged—to finish this very important group. It has only one amendment in it. If noble Lords did not know that, I bet that has cheered them up. I am happy to say that it is also a réchauffage, because we have already discussed most of the main issues, so I will be very brief in moving it.

It is quite clear from our discussion on the previous group that we need an ethics body to look at the issues that we were talking about either explicitly or implicitly in our debates on the previous three or four groups and to look also at moral and other issues relating to the work on data, data protection, automatics and robotics, and everything else that is going forward in this exciting field. The proposal in Amendment 78A comes with a terrific pedigree. It has been brought together by members of the Royal Society, the British Academy, the Royal Statistical Society and the Nuffield Trust. It is therefore untouchable in terms of its aspirations and its attempt to get to the heart of what should be in the contextual area around the new Bill.

I shall not go through the various points that we made in relation to people's fears, but the key issue is trust. As I said on the previous group, if there is no trust in what is set up under the Bill, there will not be a buy-in by the general public. People will be concerned about it. The computer will be blamed for ills that are not down to it, in much the same way that earlier generations always blamed issues external to themselves for the way that their lives were being lived. Shakespeare's Globe was built outside the city walls because it was felt that the terribly dangerous plays that were being put on there would upset the lieges. It is why penny dreadfuls were banned in the early part of the last century and why we had a fight about video nasties. It is that sort of approach and mentality that we want to get round to.

There is good—substantial good—to be found in the work on automation and robotics that we are now seeing. We want to protect that but in the Bill we are missing a place and a space within which the big issues of the day can be looked at. Some of the issues that we have already talked about could easily fit with the idea of an independent data ethics advisory board to monitor further technical advances in the use and management of personal data and the implications of that. I recommend this proposal to the Committee and beg to move.

Lord Clement-Jones: My Lords, the noble Lord, Lord Stevenson, has been admirably brief in the pre-dinner minutes before us and I will be brief as well. This is a very important aspect of the debate and, despite the fact that we will be taking only a few minutes over it, I hope that we will return to it at a future date.

I note that the Conservative manifesto talked about a data ethics body, and this is not that far away from that concept. I think that the political world is coalescing around the idea of an ethics stewardship body of the kind recommended by the Royal Society and the British Academy. Whatever we call it—a rose by any other name—it will be of huge importance for the future, perhaps not as a regulator but certainly as a setter of principles and of an ethical context in which AI in particular moves forward.

The only sad thing about having to speed up the process today is that I am not able to take full advantage of the briefing put forward by the Royal Society. Crucially, it recommends two things. The first is:

> "A set of high-level principles to help visibly shape all forms of data governance and ensure trustworthiness and trust in the management and use of data as a whole".

The second is:

> "A body to steward the evolution of the governance landscape as a whole. Such a stewardship body would be expected to conduct expert investigation into novel questions and issues, and enable new ways to anticipate the future consequences of today's decisions".

This is an idea whose time has come and I congratulate the noble Lords, Lord Stevenson and Lord Kennedy, on having tabled the amendment. I certainly think that this is the way forward.

7.30 pm

Lord Puttnam (Lab): My Lords, having restrained myself for four and a half hours and having done a huge amount of work in the Library, I will, despite the amendment having been given only a few minutes, detain your Lordships for a few more moments. This is a massive issue.

As a member of the AI committee chaired by the noble Lord, Lord Clement-Jones, I have been struggling to find analogies for just how serious the world we are moving into is becoming. What I have come up with, with the help of the Library, is road safety. I am going to talk about ethics. Probably the most well-known and successful ethicist in your Lordships' Chamber is the noble Baroness, Lady O'Neill. Last week, when discussing what this Bill is really all about, she put her finger on it. She asked of the Minister:

> "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?".—[*Official Report*, 6/11/17; col. 1606.]

This seems to be fundamental to the issue. Because I needed an analogy, I started looking into road safety, and found it very interesting and—if noble Lords will give me a couple of minutes—rather instructive.

In 1929, a royal commission met, having been required to urgently legislate on road safety because of the "slaughter" that was occurring on the roads. I will not take up your Lordships' time reading out all the information that I got from the Library, but I have it all here. Parliament legislated in 1930, pretty ineffectively, and again in 1932, again ineffectively. In 1934, your Lordships' House passed a Bill on road safety, which

[LORD PUTTNAM]
was rejected in another place because of the objections of lobbyists from the automobile industry, the oil industry and the insurance industry. Parliament tried again in 1938, and once again failed.

Here, I must read something extraordinary. Lord Cecil of Chelwood, a Conservative Peer, said at the end of the debate on the report regarding the legislation:

"I believe future ages will regard with consternation the complacency, the indifference with which this slaughter and mutilation on the roads is now regarded. I observe with great interest that in the final paragraph of the Report the members of the Committee themselves say that they are puzzled and shocked … by the complacency with which this matter is regarded".—[*Official Report*, 3/5/1939; col. 903.]

Thousands of people were being killed. I put it to the House that if we get this Bill wrong, a lot of people will be hurt; if we get it right, we may save lives. That is how important it is.

I am standing here today because of a man named Ralph Nader. Through an extraordinary series of events in the 1960s, Ralph Nader was able to impose on the American automobile industry, against its wishes, seatbelts. Six years ago in Italy, my life was saved by the combination of a seatbelt and an airbag, so I take this issue pretty seriously. Look at what has happened since 1990 to the number of lives saved by the utilisation of technology that existed 20, 30 and 40 years prior to that—it is extraordinary. In 1930, almost 8,000 people were killed on the roads of Britain, with one million registered vehicles on the road. Last year, fewer than 2,000 people were killed, with 35 million registered vehicles on the road. That is because, at last, technology was brought to bear—against the wishes of the industry lobbyists.

We must understand that there are those who would like this Data Protection Bill to be weak. It is our duty to ourselves and to future generations to make it extremely tough and to not allow ourselves to be undermined by the views of the many sectors of industry that do not share our values.

Lord Patel (CB): My Lords, it is a pity I have to be brief, but I will try. The amendment is interesting and worth debating in greater detail than the time today allows. Remarks have already been made about the report from the Royal Society and the British Academy, which suggested setting up a body but did not define whether it ought to be statutory. It is a pity it did not because, if it had, perhaps the Government would have taken greater notice of the suggestion and taken on board what pages 81 and 82 of their manifesto said that they would do—set up a commission.

To me, there are three important things for any body that is set up. First, it must articulate and provide guidance on the rules, standards and best practices for data use, ideally covering both personal and non-personal data. I see this amendment as restrictive in that area. Secondly, it must undertake horizon scanning to identify potential ethical, social and legal issues emerging from new and innovative uses of data, including data linkage, machine learning and other forms of artificial intelligence, and establish how these should be addressed. Thirdly, and importantly, it should be aligned with, and not duplicate, the roles of other bodies, including the ICO as the data protection regulator and ethics committees making decisions about particular research proposals using people's data. This important amendment allows us to discuss such issues and I hope we will return to it and perhaps make it wider.

Is such a body necessary? The debates we have had suggest that it might be. The Nuffield Foundation was mentioned. It has suggested that it will set up an ethics commission, and we need to know what the purpose of that will be. What would its role be in the regulatory framework, because it would not be a statutory body? I look forward to that debate but, in the meantime, I support the amendment.

The Earl of Erroll (CB): My Lords, I support the amendment and its very simple principle. We live in a complex world and this tries to lay rules on a complex system. The trouble is that rules can never work because they will never cover every situation. You have to go back to the basic principles and ethics behind what is being done. If we do not think about that from time to time, eventually the rules will get completely out of kilter with what we are trying to achieve. This is essential.

Lord Lucas: My Lords, clearly the Royal Society has been talking to other people. I hope that someone from there is listening and will be encouraged to talk to me too. I am delighted with this amendment and think it is an excellent idea, paired with Amendment 77A, which gives individuals some purchase and the ability to know what is going on. Here we have an organisation with the ability to do something about it, not by pulling any levers but by raising enough of a storm and finding out what is going on to effect change. Amendments 77A and 78A are a very good answer to the worries we have raised in this area.

It is important that we have the ability to feel comfortable and to trust—to know that what is going on is acceptable to us. We do not want to create divisions, tensions and unhappiness in society because things are going on that we do not know about or understand. As the noble Lord said, the organisations running these algorithms do not share our values—it is hard to see that they have any values at all other than the pleasures of the few who run them. We should not submit to that. We must, in all sorts of ways, stand up to that. There are many ways in which these organisations have an impact on our lives, and we must insist that they do that on our terms. We are waking up quite slowly. To have a body such as this, based on principles and ethics and with a real ability to find out what is going on, would be a great advance. It would give me a lot of comfort about what is happening in this Bill, which otherwise is just handing power to people who have a great deal of power already.

Lord Ashton of Hyde: My Lords, the noble Lord, Lord Stevenson, has raised the important issue of data ethics. I am grateful to everyone who has spoken on this issue tonight and has agreed that it is very important. I assure noble Lords that we agree with that. We had a debate the other day on this issue and I am sure we will have many more in the future. The noble Lord, Lord Puttnam, has been to see me to talk about this, and I tried to convince him then that we were taking it seriously. By the sound of it, I am not

sure that I completely succeeded, but we are. We understand the points he makes, although I am possibly not as gloomy about things as he is.

We are fortunate in the UK to have the widely respected Information Commissioner to provide expert advice on data protection issues—I accept that that advice is just on data protection issues—but we recognise the need for further credible and expert advice on the broader issue of the ethical use of data. That is exactly why we committed to setting up an expert advisory data ethics body in the 2017 manifesto, which, I am glad to hear, the noble Lord, Lord Clement-Jones, read carefully.

Lord Clement-Jones: We like to hold the Government to their manifesto commitments occasionally.

Lord Ashton of Hyde: Tonight the noble Lord can because the Secretary of State is leading on this important matter. She is as committed as I am to ensuring that such a body is set up shortly. She has been consulting widely with civil society groups, industry and academia, some of which has been mentioned tonight, to refine the scope and functions of the body. It will work closely with the Information Commissioner and other regulators. As the noble Lords, Lord Clement-Jones and Lord Patel, mentioned, it will identify gaps in the regulatory landscape and provide Ministers with advice on addressing those gaps.

It is important that the new advisory body has a clearly defined role and a strong relationship to other bodies in this space, including the Information Commissioner. The Government's proposals are for an advisory body which may have a broader remit than that suggested in the amendment. It will provide recommendations on the ethics of data use in gaps in the regulatory landscape, as I have just said. For example, one fruitful area could be the ethics of exploiting aggregated anonymised datasets for social and commercial benefit, taking into account the importance of transparency and accountability. These aggregated datasets do not fall under the legal definition of personal data and would therefore be outside the scope of both the body proposed by the noble Lord and, I suspect, this Bill.

Technically, Amendment 78 needs to be more carefully drafted to avoid the risk of non-compliance with the GDPR and avoid conflict with the Information Commissioner. Article 51 of the GDPR requires each member state to appoint one or more independent public authorities to monitor and enforce the GDPR on its territory as a supervisory authority. Clause 113 makes the Information Commissioner the UK's sole supervisory authority for data protection. The functions of any advisory data ethics body must not cut across the Information Commissioner's performance of its functions under the GDPR.

The amendment proposes that the advisory board should,

"monitor further technical advances in the use and management of personal data".

But one of the Information Commissioner's key functions is to

"keep abreast of evolving technology".

That is a potential conflict we must avoid. The noble Lord, Lord Patel, alluded to some of the conflicts.

Nevertheless, I agree with the importance that noble Lords place on the consideration of the ethics of data use, and I repeat that the Government are determined to make progress in this area. However, as I explained, I cannot agree to Amendment 78 tonight. Therefore, in the light of my explanation, I hope the noble Lord will feel able to withdraw it.

Baroness Hamwee: Before the noble Lord, Lord Stevenson, responds—he will probably make this point better than I can—have we just heard from the Minister an outline of an amendment the Government will bring forward in order to enshrine the body they are advocating? He will understand that, whichever side of the House you are on, you are always aware that a future Government may not have the same ways of going about things as the Government he is supporting at the moment, and whose proposals are entirely laudable. Things may change.

Lord Ashton of Hyde: I cannot agree with the noble Baroness's point. However, I accept that that is a possibility and that things will not last for ever. However, in this case we expect to have the proposals shortly and this Government will definitely be around at that time.

Lord Stevenson of Balmacara: My Lords, I think that is a yes.

Lord Ashton of Hyde: The noble Baroness asked whether it would be enshrined in this Bill. As I tried to explain, it will have a far broader remit than this Bill.

Lord Stevenson of Balmacara: That is a no, then. Oh well, these things happen. You are up one minute and then down. We cannot live like this, can we? However, it is only the Committee stage and we have plenty of time. We can presumably inveigle the Minister into a meeting about this. Not with everyone concerned because that would be too much, but I would be happy to meet him about this on neutral turf if possible. I am fairly confident that we would not want to see the Government voting against a manifesto commitment, which I think I heard him say. We can be reasonably certain that progress can be made on this issue and I wish to signal here our considerable support for that. I look forward to the discussions and beg leave to withdraw the amendment.

Amendment 78A withdrawn.

House resumed. Committee to begin again not before 8.45 pm.

Household Debt

Question for Short Debate

7.45 pm

Asked by ***The Lord Bishop of St Albans***

To ask Her Majesty's Government what is their assessment of the risks posed by current levels of household debt in the United Kingdom.

The Lord Bishop of St Albans: My Lords, I am deeply concerned—as I know are many other Members of this Chamber—about rising levels of household debt in this country. Households in the UK are taking

[The Lord Bishop of St Albans]
on far more debt than they used to and overall are taking on more debt than they bring home in income. While the ratio of household debt to income has not yet eclipsed the 160% peak hit in early 2008, it currently hovers around 140%, a dramatic shift from the ratio of 95% in 1997.

Of course there are good reasons why families in this country choose to take on debt—perhaps to buy a house or another form of secured debt—but, nevertheless, we know that for some people the prospect of saving for a house is inconceivable and that those who are lucky enough to purchase a house take on an extremely high level of mortgage debt. This burden, especially for young people, should be recognised.

Even more concerning are rising levels of unsecured debt. Figures from the FCA last month indicate that a quarter of UK adults have been overdrawn in the past 12 months, and that more than 4 million people have already failed to pay domestic bills or meet credit commitments in three or more of the past six months. Forty-seven per cent of renters say they would struggle to meet their rent if payments went up by more than £100 per month. This heavy reliance on credit and lack of savings is understandably a source of vulnerability and anxiety for many and limits the ability to invest and make wise long-term financial decisions.

Debt is more than just a political or economic issue. It is also a pressing spiritual and social issue, both for the whole of society and individuals. The Bank of England, and particularly its Financial Policy Committee, will invariably have comments on the broader macroeconomic risk the increase in unsecured debt may pose. In September of this year, the Bank's Financial Policy Committee warned banks that the rapid growth of consumer credit,

"is a risk to (Banks') ability to withstand severe economic downturns",

and,

"they have been underestimating the losses they could incur".

The banking industry has an obligation to heed these warnings and act responsibly. I hope that deep and productive partnerships can be formed between financial institutions and the FCA to make changes that benefit consumers and encourage them to save, and that the Government will step in to regulate if needed.

For many, the experience of debt is profoundly destructive, isolating and surrounded by a significant and dangerous stigma. Five in every six over-indebted people who are struggling to make repayments do not get help for a wide range of reasons. A charity I know well—Christians Against Poverty—which operates 293 debt centres across the UK, including nine centres in my diocese, reports that one in 10 of the people it helps has previously attempted suicide. Tragically for many, the issue of household debt can literally be one of life and death. A survey conducted by Christians Against Poverty found that 40% of the people it helps have mental health problems and two-thirds have skipped meals due to debt—often parents who are not eating to provide for their children.

Coming from my position, noble Lords will not be surprised that I am interested in what the Christian tradition has to say about money. It affirms that each person has a moral responsibility to live within their means. That is a fundamental principle. However, illness or unforeseeable events can strike sometimes, which may result in unexpected debt. That problem is also addressed in the Scriptures: Nehemiah orders the cancellation of onerous and exploitative debt. In the Gospel of Luke, Jesus Christ says he has been sent by God to proclaim the year of the jubilee, referring back to the command given to the Israelites to forgive debt in recognition of their liberation from slavery in Egypt.

For many years, the Church of England has been at the forefront of both extending charity and finding solutions, particularly on a global scale, such as the work done by the Jubilee Debt Campaign around the millennium. The most reverend Primate the Archbishop of Canterbury's more recent Just Finance Foundation has also been working nationally and with local churches to grow credit unions and support the community finance sector. The Church has produced resources to help congregations to run debt awareness and signposting workshops. We produced a financial education and school banking programme for primary schools, called Lifesavers, to build financial capability and encourage saving from an early age. If noble Lords have not been into a school to see one of the credit unions working there, it is worth going just to see the work they do to help young people to support themselves through being financially responsible and planning properly for the future.

I hope the Government can support that work and account for the burden that debt places upon families in the UK. The Financial Guidance and Claims Bill is a good start, but more work needs to be done. I welcome the recent announcement of the consultation on a breathing space for those dealing with debt, and I hope the Minister can assure me that this much-needed legislation will be introduced as soon as possible. I also trust that the Government will consider the effects of current welfare reforms, in the light of the current high level of debt of many families in this country. We are all hearing reports of numbers of people falling into rent arrears as a result of the extended waiting period before the first payment of universal credit, which are extremely worrying. There is much that is good in the universal credit proposal but it would be a great shame if, instead of simplifying the benefits system and incentivising work, the policy was remembered for driving people into greater debt—the effects of which can be prolonged and far-reaching—exacerbating mental health problems and, in the most extreme cases, leading to homelessness and family breakdown.

When we think about the Government's upcoming Budget and hear news reports about inflation and interest rates, it is all too easy to forget that behind that, real people and families are struggling. They are not just statistics. In introducing the debate—I thank noble Lords who will speak in it—I hope that we can make a frank assessment of the risk posed to our nation and individuals by current levels of debt, and be able to work together to find solutions to this pressing social problem.

7.54 pm

Baroness Donaghy (Lab): My Lords, I thank the right revered Prelate the Bishop of St Albans for initiating the debate. I speak about personal debt from

some experience. For most of my life, I was the best friend of credit card company directors. I helped to buy their limousines and holiday homes and to pay for their alimony. I had friends who had maxed out on all their credit cards and could not afford even the minimum monthly payments on any of them. I considered myself better off because I always paid above the minimum suggested payment. I was fortunate because there came a day when I could pay off all my cards; I made a vow that those credit card directors would never again get a penny from me in interest. In the presence of the right reverend Prelate, I would not go so far as to say that I hope they are all poor and homeless, but they are certainly less well off without me.

It is too easy to borrow. If a friend suggests borrowing, they are possibly receiving a bung from the lending company for introducing you. Advice agencies are underfunded, and the one dread that all Governments have is that people will stop spending, because that is considered more important than household debt. First, a number of people are given a higher ceiling on their credit card spending without asking for it. Will the Minister say whether the Government are prepared to ban that activity? Secondly, a number of companies offer customers cash to persuade others to take out loans. For example, BrightHouse, which has already been in the regulator's bad books, offers £220 to introduce a friend, who will have to pay back money at anything up to 99.9% interest. BrightHouse has said that that is common practice among retailers. Will the Minister say whether that unethical practice should be banned? My third concern is whether the various unbiased money advice organisations are receiving adequate funding. Is the Minister satisfied that those organisations are receiving sufficient funding to do their job, and that their ability to campaign on the issue of debt has not been reduced by government legislation?

On the broader issues, the Bank of England indicates that household debt is now about £1,558 billion—one of the reasons why Bank of England rates were increased. That figure represents 135% to 140% of household post-tax income. Some commentators try to reassure us that this can be set against household wealth, which is more than £11 trillion—10 times more than the household post-tax income. Unsecured debt has accounted for a third of the rise in household debt in the past five years. Some of that is because of low interest rates and the way people are financing their car purchases. Bank of England research has shown a new kind of borrower: people who are comparatively well-off, have savings and wish to take advantage of the favourable rates available.

Perhaps we should worry only about the losers: people who borrow because of delays in their benefits or who have faced some catastrophic change in their circumstances. The Money Advice Service said that there are now 8.3 million people in the UK with problem debts. Andrew Bailey, the chief executive of the Financial Conduct Authority, said that he was concerned by the number of people who need loans to keep going, particularly those working in the gig economy. He also said:

"I don't think we have a sustainable solution, in terms of the provision of credit where needed".

He has called for government involvement. Can the Minister say in what way the Government are involved, as has been suggested by Mr Bailey?

There are individual tragedies of homelessness and depression at the extreme end; too many people are at that end. I suspect that the Government would be more worried about spending slowing down than household debt. Consumer confidence is weak and sales are down. To paraphrase Robert Browning, "What of soul was left, I wonder, when the spending had to stop?"

7.59 pm

Lord Sharkey (LD): My Lords, I too congratulate the right reverend Prelate on securing this debate, on his eloquent and forceful open speech, and perhaps on setting a record for two QSDs in one week. Today's debate is timely. The problems presented by household debt appear to be mounting and are certainly very serious. The CEO of the FCA, Andrew Bailey, discussed the issue in his Mansion House speech on 3 October. He noted that the rapid growth in consumer credit now stood at around 10% per annum. He acknowledged that there are risks to consumers, with the total stock of consumer credit standing at £200 billion. Of this, £68 billion is credit card debt; £58 billion is motor finance debt; £15 billion is in various forms of high-cost credit; £7 billion is in overdraft credit by high-street banks; and the rest—an astonishing £52 billion—is mostly in unsecured personal loans. This is a mountain of debt. It does not include any council tax, council rent or utility arrears.

Two kinds of risk are illustrated by these figures. The first is a possible systemic risk to the financial system itself—a sort of mini-version of the sub-prime mortgage financial crash of 2007-08. This arises from the size and rapid growth of the use of personal contract purchases to buy cars. Right now, 86% of new cars bought in the UK are bought this way. There are some direct risks to the consumer in this. Failing to read and understand the small print may result in large and unexpected bills. For some, that may mean effective default and premature return of the vehicle. Since the business model of the finance providers of PCPs depends critically on prices in the used car market, a sudden increase in volume via premature returns would pose an existential threat, as would the sudden and large-scale offloading of diesel cars—something widely predicted. Together, or even individually, these factors could trigger acute financial and systemic distress. Of course, the most indebted households would be most vulnerable to any new systemic crisis, as they were in the last. I am very interested to hear the Minister's views on the PCP market, his assessment of the risks involved and the actions necessary to contain them.

These high-level risks pose a potential threat to us all, but the current state of household indebtedness is already a real and present problem. Too many people and too many households are overextended. Too many are using debt to bridge the increasing gap between real wages that are in decline and prices that are increasing. Signs of distress are evident. Council tax arrears have risen by 5% in the last five years and utility arrears are rising as well. The water industry,

[LORD SHARKEY]
for example, is showing a 17% increase in arrears over four years. In all, as other Lords have mentioned, household debt as a percentage of disposable income has risen steeply over the last year and now stands at 140%. That should come as no surprise because we know how hard the less well-off are being squeezed. We know that too many have no real financial resilience—30% according to the FCA's recent, landmark *Financial Lives Survey*.

Regrettably, there are no real signs that the situation will improve. The Bank of England's November *Inflation Report* forecasts a decline in the already low level of household savings. The OBR's website shows RPI remaining above 3% for each of the next four years and household debt rising every year in the same period, reaching 153% of income. All this is bad news for many households, but that is not all the bad news. It is still the case that organisations take advantage of the most financially vulnerable. For example, the FCA has said it remains concerned about the rent-to-own sector. It is also concerned about unarranged overdraft charges, which are often higher than for payday lending, about poor lending decisions, sales and collection practices in the home-collected or doorstep lending businesses, and about catalogue credit. The FCA has added to its action list a further investigation of debt management companies.

Those are a lot of things to be concerned about, all of them presenting obvious risks, especially to the most vulnerable. It would be good to hear from the Minister the proposed timetable for action on all these areas, but there is one fundamental question: does the Minister think that the annual 10% growth in consumer credit is sustainable? If not, what do the Government propose to do to bring it down?

8.04 pm

Lord Haskel (Lab): My Lords, I too congratulate the right reverend Prelate on tabling the Question. He really has been a persistent campaigner on household debt. Sadly, he does not seem to have much support from the Government Benches this evening.

In this House, we have frequently heard how household debt is incurred not through reckless spending but by borrowing to pay for the necessities of life and for expenditure on basic living—costs such as food, clothing and accommodation. Quite rightly, noble Lords speak of the risks. The problems of household debt are rarely contained within the household. The risk is that they spill out into the rest of the community and become society's problems in the form of broken families, disruption of work, homelessness, stress and mental ill-health. These problems are passed on to the next generation. We are told that more than a third of British children will soon be growing up in relative poverty. Surely this transcends left/right politics.

A third of households with serious debt problems have people in work. The Government are proud of the employment figures, but there is something wrong with an economy where working people cannot afford to live. Yes, the Financial Guidance and Claims Bill should help by improving the quality of assistance and, I hope, by providing some respite to desperate people, but such a large number of working households in this kind of financial difficulty must indicate that the minimum wage, tax credits and housing benefits are just not working.

Surely another indication that the system is not working is the fact that four years ago there were hardly any food banks. Today, there are 2,000. Another indicator is the rise of a third in county court judgments regarding consumer debt. Yes, tax credits are being merged into universal credit with the intention of improving the incentives to work, but the right reverend Prelate and several reports have shown that this is not working either.

Economics will not solve this problem quickly. Household incomes are virtually static. Inflation is rising and the recent interest rate rise will not help. The Office for Budget Responsibility has given up forecasting a meaningful rise in productivity. So we fall back on government action. That is why the Government should support the Living Wage Foundation, which encourages companies to pay the voluntary living wage, which is above the national minimum wage. Some 3,600 companies have signed up to it, including some FTSE 100 companies. Many companies have found that it also makes good business sense. The living wage is independently calculated and reflects the real cost of living. Yet many of our largest companies still pay people less than the independently calculated living wage, preferring bogus self-employment or having low pay subsidised by us, the taxpayer, in the face of soaring executive pay and aggressive tax avoidance. No wonder the present system is under attack. Obviously the Government have to get it to work better.

All noble Lords who have spoken have mentioned the concerns of the Financial Conduct Authority. The Monetary Policy Committee is in charge of monetary policy and the Financial Conduct Authority in charge of financial conduct, but clearly they are in conflict. As we have heard, the FCA is very concerned about the rise in private debt. The Monetary Policy Committee is concerned about inflation and the money supply. There is clearly a conflict in achieving both objectives. Have the Government issued any guidance as to where the priorities lie and whose concerns in fairness should take priority? Or are the Government just drifting along hoping for the best and waiting to see what happens?

The right reverend Prelate is right. Insupportable household debt is a big contributor to the economic and social conditions causing the alienation and discontent which have captured our political life. Action is required, and quickly. What are the Government going to do?

8.10 pm

Baroness Coussins (CB): My Lords, I, too, am grateful to the right reverend Prelate for introducing this important debate, and I remind the House of my interest as president of the Money Advice Trust, the charity that runs National Debtline and Business Debtline. Last year, these free advice services helped 200,000 people by phone, with 1.3 million visits to their advice websites—figures which point to the scale of the UK's household debt problem.

Levels of household debt are indeed increasing significantly, as noble Lords have already heard, with consumer credit growth at around the 10% mark, and more than £204 billion in outstanding credit card, personal loan and other balances. Of course, this paints only a small fraction of the picture, because we are talking not only about mortgages but increasingly about arrears on household bills. The proportion of calls to National Debtline about council tax arrears, for example, has risen from 14% a decade ago to 25% last year, so it is essential that any debate around household debt reflects all these problems and not just consumer credit.

Our debate this evening is on the Government's assessment of the risks posed by household debt levels, and they are substantial. This is true in an economic sense, as the Bank of England's Financial Policy Committee has warned, but it is true also in a personal sense for those struggling to cope with their finances. Debt problems can have severe consequences for relationships, employment, mental health, physical health and a person's general well-being.

The high level of parliamentary interest in this issue is given welcome focus in the other place by the Treasury Select Committee's new inquiry into household finances, and in this Chamber through the passage of the Financial Guidance and Claims Bill. The new single financial guidance body, working in partnership with advice charities such as Citizens Advice, the Money Advice Trust and StepChange, will be key in reducing the risk that household debt poses to people's well-being.

The "breathing space" proposals, which have already been mentioned, are also a positive development and were discussed in detail in your Lordships' House at the Report stage of the Financial Guidance and Claims Bill. As I said during that debate, it is essential that any breathing space scheme include public sector debts, too, such as council tax. We must get this scheme right so that the risks of household debt both to individuals and to the economy as a whole are reduced.

There are many other things that the Government could do to reduce this risk still further. I want briefly to mention just two. The first concerns the recommendations of the group of charities behind the Taking Control campaign, which seeks fundamental reform of the regulation surrounding enforcement agents—the people we used to call bailiffs—whose actions can cause significant distress and detriment to people already in a vulnerable situation. Research by the charities found that reforms passed in 2014 and intended to protect people from unfair practices in this industry have been only partially successful, and in some cases have created new problems. I urge the Government to incorporate bailiff reform of the kind advocated by the *Taking Control* report published in March into their wider approach to the problem of household debt and in addition to a breathing space scheme. I would be grateful if the Minister could address this specific point in his reply.

Secondly, I welcome the financial inclusion policy forum that the Government are to establish. This follows the recommendation of the Financial Exclusion Committee of this House. I would be grateful if the Minister could indicate the timetable for setting up this forum and say whether the debt advice sector will be represented on it.

8.15 pm

Baroness Lister of Burtersett (Lab): My Lords, I, too, am grateful to the right reverend Prelate, not least as I am unable to take part in Thursday's debate on universal credit. It is on universal credit that I want to focus, because, as Citizens Advice and the National Federation of ALMOs have warned, UC is exacerbating household debt and rent arrears.

It is hardly news that the built-in six-week wait for the first UC payment is the source of many of the immediate problems being reported. It is therefore encouraging that there are strong hints that the Government will think again and reduce that wait to four weeks, as recommended by the Work and Pensions Committee. However, at the risk of appearing ungrateful, I fear that, while it will mitigate UC's problems, it will not solve them.

Even a four-week wait will cause serious difficulties for many people moving on to UC. The Citizens Advice survey found that only one in six were able to rely on their own resources from savings or final wages to tide them over. This is not surprising given that the FCA found that nearly one-third of UK adults show low financial resilience for reasons such as inability to cover living expenses for even a week if they lost their main source of household income. Recent evidence from KPMG, the Living Wage Foundation and StepChange underlines the extent of debt and reliance on high-cost credit such as payday loans just to get by among those in low paid and/or insecure employment. Do the Government have any information about the number of people claiming UC who are already in debt or arrears? Even if not in debt, they are unlikely to have savings to fall back on, as was clear from the impact statement on the increase in the number of waiting days.

Despite the Government's assurances, additional payments are not the answer; they are deductible loans and a recent Smith Institute study found reluctance to borrow from the Government, as they saw it, among some UC claimants. Beyond the six-week wait lies a more fundamental problem: the monthly assessment and payment of UC. The Government insist on this on the grounds that it will increase financial responsibility and readiness for the labour market, but the latest ONS statistics show that nearly one-quarter of those in the lowest pay quintile are still paid more frequently than monthly and according to the Resolution Foundation nearly three-fifths of new UC claimants moving from paid work in the last tax year had been paid more frequently than monthly. Those in the Citizens' Advice survey who were struggling with monthly payments faced an increased risk of financial hardship. While the majority might be able to cope, some are clearly finding it really difficult. At the very least why can they not be given the choice to receive fortnightly payments, as in Scotland? Instead, those who struggle are offered help with budgeting, which is quite insulting to those who managed their money reasonably when it was received more frequently.

[Baroness Lister of Burtersett]

This brings me to the issue of universal support. In the recent Commons debate, the Minister responded to lain Duncan Smith's call for,

"extra effort, focus—and money, when necessary"—[*Official Report*, Commons, 18/10/17; col. 883]—

for the rollout of universal support alongside UC, with an assurance of the Government's continued focus on it and recognition of its "absolute value". However, when I talk to people working on the ground they just laugh at the mention of universal support and say that the resources are quite inadequate and its remit too restrictive. Will the Minister ask the DWP to provide us with a report on how universal support is working? Not only does universal support appear inadequate to the task but, as predicted in your Lordships' House, the replacement of the Social Fund by discretionary local welfare assistance schemes without any ring-fenced funding has meant that in many areas this is no longer an alternative source of support in face of debt, because many authorities have closed or significantly cut back on their schemes. According to the Centre for Responsible Credit this,

"has left people facing destitution for lengthy periods of time".

This underlines how we need to put the rollout of UC in the wider context of social security cuts since 2010, totalling a cumulative £27 billion a year by 2020-21. Analysis from a number of organisations indicates that these cuts, including and especially cuts to UC itself, will have a seriously adverse impact on child poverty. This can only mean that the problem of debt and arrears will get worse, with all the consequent human suffering and adverse effects on physical and mental health that this entails. It is in the Government's hands to prevent such an outcome, starting in next week's Budget.

8.20 pm

Lord McKenzie of Luton (Lab): My Lords, it is a pleasure to follow my noble friend Lady Lister. I, too, welcome the focus of the right reverend Prelate the Bishop of St Albans's Question, which chimes with some of the discussion we have had in recent weeks on legislation. The right reverend Prelate asks for the Government's assessment of the risk associated with current levels of household debt. As a recent *Guardian* article sets out, at a time when the Government are planning to cut the annual deficit year on year, the debt of Britain's households is going in the opposite direction. We have heard some of the statistics already.

The House of Commons briefing paper tells us that household debt as a percentage of disposable income started rising in 2016 and stood at 140% of disposable income in Q2 of 2017. At the end of 2016, it amounted in total to £1,825 billion with mortgage debt making up 87% of that amount. We are also reminded that individual insolvencies in England and Wales in the first three-quarters of this year were the highest since 2014. It is the rise of non-mortgage forms of credit that is fuelling the rise in borrowing, especially arrears of household bills and utility bills. This is across the piece, including council tax and water company bills. Rent arrears, as we know, are rising dramatically. At a time of low wage growth and freezing of benefits, consumers are turning to credit to buy essentials. So we have an economy being built on debt when this was supposed to be an era of business investment, higher productivity and export growth.

What are the risks? We should first recognise that borrowing can be good for the economy—for example, if it is enabling consumer spending to be smooth—but high levels of household debt can also create problems for the economy and for individuals. There are obvious risks of increased default on loans, especially if interest rates are to rise with wages stagnating. There will be risks to the economy as a whole where individuals divert resources to dealing with secured debt and cut back on other consumer spending.

The Money Advice Service defines overindebtedness as including keeping up with domestic bills and credit arrangements being a heavy burden, and missing credit commitments or domestic bills in any three or more of the last six months. The FCA has a concept of potential vulnerability, which is a wider concept, covering those with low financial resilience, low financial capability, an experience such as divorce or bereavement, or health issues. Its 2017 survey identified that 8% of the UK adult population, or 4.1 million people, have not paid domestic bills or met credit obligations in three of the last six months. This has implications for the revenues of local and central government. Just under 8 million people are overindebted, while 4.5 million people say that they have been declined a financial services product in the last two years.

Whatever measure is used, there are millions of people in this country living hand to mouth, struggling or unable to pay their way, with many having to resort to food banks to survive. Of course we know that the misery caused by unmanageable debt is not just the financial strain it puts on households, consigning them to a future of accessing high-cost finance. It puts strains, sometimes unbearable strains, on household relationships. It affects people's self-esteem and health, particularly their mental health.

Does it have to be like this? Of course it does not. For a start, the Government could make speedier progress on introducing their manifesto commitment, referred to by others, to provide a breathing space for those struggling with debt. I leave it to my noble friend Lord Stevenson, who has been at the forefront of pushing this issue and to whom I pay tribute, to say more on this. The Government can also ensure that the new single finance guidance body is robustly introduced as soon as possible to secure a smooth transition from the existing money advice services. There is also work to do around financial education and financial capability.

But there are more profound matters. We know that the build-up of council tax arrears has arisen as a result of passing the buck to local authorities and the continuing squeeze on their finances. We know that the payment architecture for universal credit, as my noble friend Lady Lister has just said, is fuelling rent and other arrears. We also know that a decade of draconian cuts to the social security system has thrown millions into poverty. The Government have the power to change all this. They do not have to accept, for example, the grotesque juxtaposition of growing domestic debt levels when they see billions washing around in

offshore centres. The risk to our economy and the well-being of those mired in debt are in the Government's hands to address.

8.26 pm

Lord Stevenson of Balmacara (Lab): My Lords, I too congratulate the right reverend Prelate the Bishop of St Albans on the first of the double header that he has this week. He has been very successful and he must tell us how that is done. It would be much easier if one could get more opportunities to raise issues under the QSD heading. I think that he will be happy with the speeches in the debate so far, which have been wide-ranging and covered a lot of ground. They have picked up on the points that he outlined and I look forward to the Minister's response.

Of course, this is a tragic situation. The current levels of household debt are extraordinary and will be a real problem in the future. Moreover, the human cost, which everyone has mentioned, is important. Anyone who, like me, has listened in at the sharp end to phone calls from the Money Advice Trust, Christians Against Poverty or StepChange, of which I am the former chairman, will have heard the agony of people who are struggling with debt that they want to clear but simply lack any ability to do so. It is a really awful situation.

What do we do about it? I have five things that I want the Government to do: first, we have to look at pay. If there is not more money circulating in the economy, there will not be the resources to pay back the debts that are necessary for people to enjoy the lives that they want. The living wage would be a start, but there is also training to get people better jobs, along with better management of those jobs. Secondly, affordable credit needs to be made much more widely available. The problem is that people are squeezed to get the credit they want and have to pay far too much for it. It is too easy to borrow, as has been said, but we should be thinking about how to ban the usurious rates that are used. We still have problems with payday loans and we still have problems getting information around, so we need real-time credit sharing information. Consumers must also be treated more fairly by the regulator concerned. The regulator must stop being dominated by the fair markets and look at what consumer needs are. They do not require high-end usurious products.

The information that is available is one thing, but the financial products people need must also be made available on a fairer and more equitable basis. I take as an example insurance. Of course there is compulsory insurance, but there is also the discretionary kind, in particular household contents insurance. Would it not be fantastic if people could have access to what they actually need, but 39% of UK adults do not have household contents insurance, a figure that rises to more than 72% for those in rented accommodation? That is 10.5 million people without the basic cover required if they suffer a fire or are burgled. They cannot afford it. I do not have to remind the party opposite that it was people like Churchill who saw this early, going back almost 100 years. He wrote:

"If I had my way, I would write the word 'insure' over every door of every cottage and on the blotting pad of every public person because I am convinced that for minor sacrifices, families can be secured against catastrophes which otherwise would smash them forever".

Mr Churchill got a lot of things right, and I commend him.

We need proper debt advice and insolvency arrangements. We have talked about bailiff reform, which is also important, to which I would add the breathing space issue raised by my noble friend Lord McKenzie. That needs to come in under the Bill that is before us and I hope that will be the case. The Government need to focus on this. I noticed that in their response to the excellent report by the Select Committee of your Lordships' House on financial exclusion, the Government repeated a lot of the problems that that committee was trying to get at. In particular there is the worry about why the Government split their responses to financial inclusion, which is run by the Treasury, from those to financial exclusion, which is run by DWP. This is not helpful and we need something done about it.

We also need to pay more attention to the paradigm under which we operate. The Minister needs to respond to some of the worries about this. The paradigm under which most people tend to operate is to try to get as much education as they can and then to borrow a loan for a house, for instance. They then repay that over the years as they get better jobs and when they are able to repay the borrowing, they eventually retire on their pensions. I do not think that paradigm works any more and I wonder what thinking the Treasury is doing about which paradigm should replace it. My children do not expect to be in jobs for the rest of their lives—they do not expect to be in careers, in the tradition that we had when we were growing up. They are very worried about how they are going to survive. The Government have a responsibility to lead on this and explain what they want people to do, so that they do not have the worry and distress that is so common and which has been exemplified by the speeches today.

8.31 pm

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, I join other noble Lords in paying tribute to the right reverend Prelate, not only for securing this debate but for the work he has done in this area over many years to highlight a major problem. It is a social and a spiritual problem in many parts of this country. I thank him for securing this debate, as I thank noble Lords for their contributions.

Perhaps I may begin by setting one or two things in context and then come to some of the points that have been raised. In the UK, we have seen the financial positions of households improve substantially since the financial crisis. The right reverend Prelate the Bishop of St Albans mentioned that in the late 1990s, the level of debt per household was in the 90% range. It then went up to 160% at the time of the financial crisis in 2008. It has come down now to 140% but it is still at a historically high level.

Mention has also been made of debt interest payments. Those payments are of course coming down, as we have seen historically low interest rates. Whereas interest payments as a proportion of income were 4.3% in the first quarter of 2017, that is a fall from 10% in quarter 1

[LORD BATES]
of 2008, as a result of the fall in interest rates. I put these points on record simply to place some context for the debate and not in any sense to detract from the major issues, which I will come to later.

Ongoing financial and economic stability is an essential priority for this government. That is why, following the financial crisis, the government set up the Financial Policy Committee to monitor and assess potential risks, and to take any action necessary to mitigate them. In 2014, the Financial Policy Committee acted to guard against any potential risks associated with the build-up of mortgage debt and prevent a significant rise in the number of highly indebted borrowers. The right reverend Prelate referred to responsible lending, and mortgage lenders are now required to place a limit on lending at loan-to-income multiples at 4.5 or above. That is a particular focus for the FPC, which also offered guidance to mortgage lenders on affordability testing to ensure that new borrowers would be able to afford their repayments if interest rates were to rise, as they did earlier this month. In June 2017, the Financial Policy Committee assessed that the growth in consumer credit represented a pocket of risk and that increased vigilance was warranted. The noble Lord, Lord Sharkey, referred to that point.

Let me come to some of the points which were raised. The noble Lord, Lord Haskel, asked whether we support the living wage. He is a generous Member of this House, and I am sure that he would recognise that the Government deserve some credit for introducing the living wage, which is equivalent to a £910 pay rise for those who are in full-time work and were previously on the minimum wage. We have also raised the tax threshold so that many people on the lowest incomes have either been taken out of tax altogether or have had a reduction of £1,000 in their tax bill.

This brings me to a key point raised by the noble Lord, Lord McKenzie, the right reverend Prelate and the noble Baroness, Lady Lister. They spoke about why people get into debt. The primary reason why people are driven into debt is job loss. Second to that, but some way behind, is the onset of sickness or disability. There is also persistent low income and relationship breakdown. These are points that the noble Baroness, Lady Donaghy, touched upon as she looked at those areas. The noble Baroness, Lady Coussins, asked about public sector debts and what we are going to do in respect of breathing space. Several noble Lords referred to that. The Government have published their call for evidence. We will not prejudge the outcome of that, but we believe it is an extensive consultation and we are looking forward to receiving the evidence. The Government have recently called for that evidence to be provided in respect of the six-week breathing space. I heard what the noble Baroness, Lady Lister, said about the level it should be, but we are calling for that. This call for evidence is the next step in implementing our manifesto commitment. It is important that we get this right, so we are seeking to take views widely in this regard. After considering all responses to the call for evidence, the Government will bring forward a consultation on the specific policy proposal soon with a view to publishing draft legislation by the end of next year and certainly no later than 2019.

Lord Stevenson of Balmacara: I appreciate the Minister giving way as this is a time-limited debate. I wonder whether we can reflect for a minute on that. We have tabled an amendment for Third Reading of the Financial Claims and Guidance Bill, which was referred to by the noble Baroness, Lady Coussins. What the Minister has just said does not square with where we think we are on that issue.

Lord Bates: The consultation period is ongoing now. There is a schedule coming forward for Third Reading, which will be discussed. I was outlining the call for evidence that we have had and the consultation that we will have upon it. Of course the Government will make their position clear in respect of any specific amendment that may be brought forward at Third Reading.

The Monetary Policy Committee has made its decision to raise interest rates on a broad set of economic data, working closely with the Financial Policy Committee to understand its impact on households' balance sheets. The independent FCA is responsible for the regulations in place to protect customers in their dealings with financial services firms. They include at their heart the requirement that firms must deal fairly with customers in payment difficulties. Its rules require lenders to consider a variety of options to help a borrower cope with difficulties. The right reverend Prelate paid tribute to a number of organisations that are working in the area of debt resolution. I pay tribute to the work of the noble Lord, Lord Stevenson, with StepChange and that of the noble Baroness, Lady Coussins, with the Money Advice Trust. I have seen the work of Christians Against Poverty. What it is doing is quite extraordinary, but more needs to be done.

The noble Baroness, Lady Coussins, asked when the financial inclusion forum will be set up. The forum's objective is to bring together Ministers in departments with a remit to promote financial inclusion, regulators, especially the FCA, and key stakeholders to address financial exclusion. The financial inclusion forum will be co-chaired by the Economic Secretary and the Minister for Pensions and Financial Exclusion. The forum will be attended by Ministers from other departments, regulators and representatives from industry and consumer groups. It will meet on a biannual basis and review recent initiatives and progress.

The noble Baroness, Lady Donaghy, asked how concerned the Government were about the rapid growth in consumer credit as a potential risk to the economy. The FPC's most recent assessment of the growth in consumer credit is that it does not present a material risk to economic growth, as consumer credit represents 11% of overall household debt. But again, that is not to suggest that we do not consider that it is a significant factor. The noble Baroness, Lady Donaghy, also asked what the Government are doing about the high cost of credit. The Government have transformed regulation of consumer credit through the use of the Financial Conduct Authority's review of high-cost debt. We put a cap on payday lending and the egregious interest rates that were being charged there, which has led to payday loans halving in number since it was introduced.

The noble Lord, Lord Sharkey, asked specifically about car finance. Car finance companies are required to meet the standards the FCA expects of lenders, including making affordability checks and providing adequate pre-contractual explanations to customers. The FCA's chief executive, Andrew Bailey, who the noble Lord referred to in his speech, said that he does not see the growth in personal contract purchase finance as a problem per se, as it recognises that a car is an asset. The FCA is looking at the car finance market to assess whether consumers are at risk of harm. The FCA is focusing on four areas: affordability checks; conflicts of interest between lenders and dealers, a point raised by the noble Baroness, Lady Donaghy; quality of information from firms to consumers, and whether firms are adequately pricing risk.

The noble Baroness, Lady Donaghy, asked whether advice agencies have enough funding. We set up the Money Advice Service, which has spent £49 million, and over 440,000 free-to-client debt advice sessions have been undertaken. We are setting up a new single financial guidance body, bringing together the Money Advice Service, Pension Wise and the Pensions Advisory Service. This will be more efficient, and I think less confusing for customers, and will direct money to front-line services.

The right reverend Prelate, the noble Baroness, Lady Lister, and the noble Lord, Lord McKenzie, referred to universal credit. DWP research shows that the majority of people claiming universal credit are comfortable managing their budget, and any need for financial or budgeting support is discussed at the outset. For those who cannot wait until their first payment, advances are available which provide up to 50% of a claimant's indicative award straightaway, although I accept the point made by the noble Baroness—

Lord Stevenson of Balmacara: I am very grateful to the Minister for giving way. I gather that what is called inspiration may have arrived from the Box in response to my earlier point, and I would like to give him the opportunity to correct the record before we finish.

Lord Bates: I am very grateful for that. In response to the noble Lord's earlier intervention on breathing space, the position has changed since that section of my speech was last drafted, and I will write to him—this is dynamic government, unfolding by the minute and of course responding, as always, to the reasoned arguments presented by the noble Lord.

The noble Baroness, Lady Donaghy, asked what we are doing to ensure that workers in the gig economy are protected from problem debt. Information, advice and guidance is available for free from the Money Advice Service, which provides specialist support for the self-employed through its funding of the Business Debtline, which supports sole traders in dealing with debts that they may incur. Around 25,000 small business owners were supported by Business Debtline last year, and 90% of those who accessed support from it stabilised or reduced their debt after its help. Again, that relates to the right reverend Prelate's point that people out there who are facing considerable distress need to recognise that help is available and that the sooner they call on that help, the easier their problems will be to solve.

Finally, the right reverend Prelate asked whether the Government will be bringing forward legislation on a breathing space. I do not want to go over that territory again, so I will simply say that it has been a fascinating debate for all Members of the House, not least the Minister. I thank the right reverend Prelate for pursuing this matter, giving us the opportunity to debate these important issues which touch many people's lives, and we look forward to continuing our discussion.

Data Protection Bill [HL]

Committee (3rd Day) (Continued)

8.45 pm

Clause 14: Exemptions etc

Amendment 79

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

79: Clause 14, page 8, line 23, leave out "scientific or historical"

Lord Clement-Jones (LD): My Lords, this amendment arises from concerns about the narrowness of the derogations based on article 89 of the GDPR for research statistics and archiving expressed by a number of organisations, notably techUK. The argument is that there should be a derogation similar to Section 33 of the Data Protection Act 1998. That Act makes provision for exemptions for research and development where suitable safeguards are in place. The GDPR limits this to scientific and historical research, but member states are able to legislate for additional exemptions where safeguards are in place.

The organisation techUK and others believe that the Bill's provision for scientific and historical research should be broadened, involving the same provisions as Section 33 of the Data Protection Act 1998, and that the definition of scientific and historical research needs clarification. For example, it is not clear whether it would include computer science engineering research. I very much hope that the Minister will be able to clarify that. I recognise that the amendment leads the line in this group but may not be followed in exactly the same way. I beg to move.

Lord Pannick (CB): My Lords, I shall speak to Amendment 86BA, in my name. It concerns the application of data protection principles in the context of the law of trusts. The law has long recognised that a trustee is not obliged to disclose to a beneficiary the trustee's confidential reasons for exercising or not exercising a discretionary power. This is known as the Londonderry principle, named after a case decided by the Court of Appeal, reported in 1965, Chancery Division, page 9.1.8. The rationale of this principle was helpfully summarised by Mr Justice Briggs—recently elevated to the Supreme Court—in the case of Breakspear v Ackland, 2009, Chancery, page 32, at paragraph 54.

The principle is that the exercise by trustees of their discretionary powers is confidential. It is in the interests of the beneficiaries, because it enables the trustees to make discreet but thorough inquiries as to the competing claims for consideration for benefit. Mr Justice Briggs added that such confidentiality also advances the proper interests of the administration of trusts, because it

[LORD PANNICK]
reduces the scope for litigation about how trustees have exercised their discretion, and encourages suitable people to accept office as trustees, undeterred by a concern that their discretionary deliberations might be challenged by disappointed or hostile beneficiaries and that they will be subject to litigation in the courts.

There is, of course, a public interest here, which is protected by the inherent jurisdiction of the court to supervise and, where appropriate, intervene in the administration of trusts, as the noble and learned Lord, Lord Walker of Gestingthorpe, stated for the Judicial Committee of the Privy Council in Schmidt v Rosewood Trust Ltd, 2003, 2 AC 709.

The problem is that, as presently drafted, the Bill would confer a right on beneficiaries to see information about themselves unless a specific exemption is included. A recent Court of Appeal judgment in Dawson-Damer v Taylor Wessing, 2017, EWCA Civ 74, drew attention to the general applicability of data protection law in this context unless a specific exemption is enacted.

My understanding, which is indirect—I declare an interest as a barrister, but this is not an area in which I normally practise—is that in other jurisdictions such as Jersey, the data protection legislation contains a statutory restriction on the rights of a data subject to make a subject access request where that would intrude on the trustees' confidentiality under the Londonderry principle. Indeed, I am told that those who practise in this area are very concerned that offshore trustees and offshore professionals who provide trust services are already actively encouraging the transfer of trust business away from this jurisdiction because of the data protection rights which apply here, and which will apply under the Bill.

The irony is that the data protection law is driving trust business towards less transparent offshore jurisdictions and away from the better regulated English trust management businesses. I have received persuasive representations on this subject from the Trust Law Committee, a group of leading academics and practitioners, and I acknowledge the considerable assistance I have received on this matter from Simon Taube QC and James MacDougald.

This is plainly a very technical matter, but it is one of real public interest. I hope that the Minister will be able to consider this issue favourably before Report.

Lord Hope of Craighead (CB): My Lords, I want to add a word in support of the points made by the noble Lord, Lord Pannick, particularly with reference to the concerns that some people have expressed about money being moved out of the very closely and properly regulated regime of English trust law to offshore organisations and jurisdictions which are less careful about how people's money is handled.

I should declare an interest as Chief Justice of the Abu Dhabi Global Market Courts. I am not suggesting that this has anything to do with Abu Dhabi, but it has introduced me to an aspect of trust law with which I was not previously familiar, and it bears closely on the point made by the noble Lord, Lord Pannick. He referred to Jersey as one of the jurisdictions of concern. One aspect of its legislation which has come to my attention through my connection with Abu Dhabi is the Foundations (Jersey) Law 2009. This is a structure set up by statute under Jersey law which is matched with an equivalent statute in Guernsey. It creates a form of trust which is, as it were, a hybrid between a trust and a corporation with a number of aspects that are described very well in Sections 25 and 26 of the Jersey law.

One of the points about the foundation, which appears in Section 25, is that a,

"beneficiary under a foundation … has no interest in the foundation's assets; and … is not owed by the foundation or by a person appointed under the regulations of the foundation a duty that is or is analogous to a fiduciary duty".

So the beneficiary under that system is rather different from a beneficiary under our system, where undoubtedly they have an interest in the foundation's assets. But also to the point is Section 26, which provides that foundations are,

"not obliged to provide information".

That has its counterpart in the point made about the Data Protection Act in that jurisdiction. It says that except,

"as specifically required by or under this Law or by the charter or regulations of the foundation, a foundation is not required to provide any person … with any information about the foundation".

It goes on to say in subsection (2) that the,

"information mentioned in paragraph (1) includes, in particular, information about … the administration of the foundation … the manner in which its assets are being administered … its assets; and … the way in which it is carrying out its objects".

I do not wish in any way to criticise how the foundation laws are run in Guernsey or Jersey, but it is a pattern which, if repeated in less scrupulous jurisdictions, has obvious attractions. People move into a foundation and nobody knows what part of the foundation money they own, because they are not supposed to own any part of it, and the foundation is not obliged to disclose any information at all. There is a risk that those who are keen, for whatever reason—it could even be for matrimonial reasons—to conceal their assets could move them offshore from a trust such as we have in this country, closely regulated and subject to the ordinary rules, to one of these other bodies, which we would not wish to encourage. One has only to look at the Criminal Finances Act 2017 and some of the clauses in the Sanctions and Anti-Money Laundering Bill that is before the House to see that we are taking a completely opposite line to the foundations laws, because we are insisting that we should be provided with information about what organisations of this kind hold and, indeed, who holds what assets. We have not got as far as actually requiring trusts to do that but, certainly, anyone who puts his money into a company, in an attempt to conceal his assets within the company, will be forced eventually to have that information disclosed.

I add these points to suggest that the point that the noble Lord, Lord Pannick, made has a great deal of substance, which one can trace through the foundations law. I stress again that I am not criticising how this is administered in Jersey or Guernsey—that is not really the point. The point is that those who would wish to copy their systems are subject to less close scrutiny. I also emphasise that I am not suggesting that we in this country would want to adopt a foundations law;

that would really be quite contrary to how our current legislation is proceeding. So there is an important issue here about protecting ourselves—and those who set up trusts here and administer them properly according to our rules and conventions—against a loss of business, which would be detrimental not only to those who run the businesses but to the whole ethic by which we practise our trust law.

I hope that the Minister and those advising him will look carefully at the Jersey and Guernsey examples, with a view not to criticism but to sensing the risk to which the noble Lord, Lord Pannick, drew our attention.

Baroness Hamwee (LD): My Lords, Amendments 80A and 83A are in the names of the noble Baroness, Lady Neville-Rolfe, and the noble Lord, Lord Arbuthnot, and come from the Bar Council. In their unavoidable absence, I have again been asked to speak to the amendments. The Government have amendments also to paragraph 5 of Part 1 of Schedule 2—and no doubt we will be asked to agree them shortly. These amendments deal with other aspects of that paragraph and relate to legal professional privilege. The paragraph, as amended, refers to the disclosure of data but disclosure is only one of the acts of processing. The Bar Council is concerned that we need to deal with processing more widely so as not to disrupt the activities of the court and to protect privilege, which is something we have debated on many occasions and which we all agree is not only important but a fundamental right for persons and organisations.

9 pm

The Bar Council tells me:

"When courts are carrying on judicial business and lawyers are advising and representing clients they also need to collect, record, amend, consult and use personal data",

and that lawyers,

"cannot inform all persons that they are doing so without infringing on the legal privilege of their clients"—

of course, the privilege is that of the client, not the lawyer. The Bar Council adds:

"It would also cause great disruption to court proceedings and increased burden on the Courts acting in their judicial capacity if these obligations were not removed. There is no effect on any potential adequacy decision because these derogations are given effect under the provisions of the GDPR which contemplate and permit derogations".

In short, "disclosure" would be replaced by "processing".

Amendment 83A would take out the limiting words at the end of the relevant paragraph:

"to the extent that the application of those provisions would prevent the controller from making the disclosure".

The Bar Council states:

"The protection of legal professional privilege is absolute. The only basis for removing its protection is where the claim is falsely made and privilege does not apply. Similarly, the benefit of simplicity in the application of the law to the Courts acting in their judicial capacity would be lost if the derogation was limited to conflicting situations".

I am not entirely sure that I read paragraph 5 in the way that the Bar Council does as I think those words make the matter clear and do not have the limiting effect that clearly others are reading into them, but even if I am right if there is a confusion it needs to be cleared up.

Lord Griffiths of Burry Port (Lab): My Lords, we have amendments in this group. Amendment 79A concerns exemptions from GDPR and adaptations and restrictions based on various articles. As we begin to tighten up our understanding and clarify the range of application of these exemptions as the Bill goes through this House, we have talked to Liberty about the rights of individuals under this part of the Bill. Amendment 79A seeks to remove the exemption from data subjects' right to restrict the processing of their data—for example, in cases where data accuracy is contested, the processing is unlawful or the data is required for the exercise of a legal claim in relation to a variety of broad purposes including the prevention and detection of crime, tax purposes, risk assessment systems, including in the administering of housing benefit, and the maintenance of effective immigration control.

Amendment 79B is a similar and parallel amendment to remove the exemption from data subjects' right to object to data processing where there is an absence of compelling legitimate grounds, again in relation to the same range of activities and purposes. Amendment 83B is a probing amendment by which we seek to delete a paragraph which outlines where the GDPR does not apply to personal data processed for the purposes of functions designed to protect the public. Instanced against this are, for example,

"financial loss due to dishonesty … financial loss due to the conduct of discharged or undischarged bankrupts",

and so on.

A set of amendments then come under Part 3 of this schedule on the protection of the rights of others. Amendment 86A deletes conditions under which a controller can determine whether it is reasonable to disclose information without consent. Amendment 86B probes provisions which state that information can be disclosed without consent where,

"the health data test is met … the social work data test is met, or … the education data test".

When we get into some of these it seems, frankly, that they are rather loosely drafted and not immediately clear. Perhaps we could work harder to bring these things to a pitch where they are common sense and clear to normally intelligent people—although after the presentation from the noble Lord, Lord Pannick, I do not reach that bar; I am doing my best. Amendment 86C deletes the paragraph which outlines conditions by which the GDPR does not apply,

"to personal data processed for the purposes of or in connection with a corporate finance service provided by a relevant person".

Even reading the wording of an amendment which we have put some thought into is complicated, and these amendments refer to clauses in the Bill that are even more complicated. Since these affect the rights of individuals, the law should be written with some clarity and lucidity to make it more accessible.

Amendment 86D deletes a paragraph which states that the GDPR provisions do not apply where data is processed for,

"management forecasting or management planning in relation to a business or other activity".

I have to spit the word "data" out of my mouth when it is used with a singular verb. All my education taught me that it should not be.

Baroness Hamwee: My Lords, if the noble Lord scours the GDPR, he may find that the term "data" is used with a plural verb. I wondered whether to put down amendments to that, but I thought that that was pushing it a bit far.

Lord Lucas: My Lords, I support Amendment 79. I offer as an example the national pupil database, which the Department for Education makes available. It is very widely used, principally to help improve education. In my case, I use it to provide information to parents via the *Good Schools Guide*; in many other cases it is used as part of understanding what is going on in schools, suggesting where the roots of problems might lie, and how to make education in this country better. That does not fall under "scientific or historical" and is a good example of why that phrase needs widening.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, as a non-lawyer, I am delighted to find myself in the same company as the noble and learned Lord, Lord Hope of Craighead, as this has also introduced me to an area of trust law which I am not familiar with. I thank noble Lords for their amendments, which concern the exemptions from data rights in the GDPR that the Bill creates. Two weeks ago we debated amendments that sought to create an absolute right to data protection. Today we will further debate why, in some circumstances, it is essential to place limitations on those rights.

The exemptions from data rights in the GDPR are found in Schedules 2 to 4 to the Bill. Part 6 of Schedule 2 deals with exemptions for scientific or historical research and archiving. Without these exemptions, scientific research which involves working on large datasets would be crippled by the administration of dealing with requests from individuals for their data and the need to give notice and service other data rights. This data provides the fuel for scientific breakthroughs, which the noble Lord, Lord Patel, and others have told us so much about in recent debates.

Amendment 79 seeks to remove "scientific or historical" processing from the signposting provision in Clause 14. Article 89 of the GDPR is clear that we may derogate only in relation to specifically historical or scientific research. We believe that Clause 14 needs to correctly describe the available exemption, although I reassure noble Lords that, as we have discussed previously, these terms are to be interpreted broadly, as outlined in the recitals.

Part 1 of Schedule 2 deals with exemptions relating to crime, tax and immigration. For example, where the tax authorities assess whether tax has been correctly paid or criminally evaded, that assessment must not be undermined by individuals accessing the data being processed by the authority. Amendments 79A and 79B, spoken to by the noble Lord, Lord Griffiths of Burry Port, would limit the available exemptions by removing from the list of GDPR rights that can be disapplied the right to restrict processing and the right to object to processing. In my example, persons subject to a tax investigation would be able to restrict and object to the processing by a tax authority. Clearly that is not desirable.

Amendments 80A and 83A seek to widen the exemption in paragraph 5(3) of Schedule 2 which exempts data controllers from complying with certain data rights where that data is to be disclosed for the purposes of legal proceedings. Without this provision, which mirrors the 1998 Act, individuals may be able to unfairly disrupt legal proceedings by blocking the processing of data. We are aware that the Bar Council has suggested that the exemption be widened as the amendments propose. This would enable data controllers to be wholly exempt from the relevant data rights. We believe that this is too wide and that the exemption should apply only where the data is, or will be, subject to a disclosure exercise, which is a process managed through court procedure rules. At paragraph 17 of Schedule 2, the Bill makes separate provision for exemptions to protect legal professional privilege. We think that the Bill continues to strike the right balance between the rights of data subjects and controllers processing personal data for the purposes of exercising their legal rights.

Amendment 83B seeks to remove paragraph 7 of Schedule 2 from the Bill. This paragraph sets out the conditions for restricting data subjects' rights in respect of personal data processed for the purposes of protecting the public. Those carrying out functions to protect the public would include bodies and watchdogs concerned with protecting the public from incompetence, malpractice, dishonesty or seriously improper conduct, securing the health and safety of persons at work and protecting charities and fair competition in business. Paragraph 7, which is based on the current Section 31 of the 1998 Act, ensures that important investigations can continue without interference. Without this paragraph, persons would have to be given notice that they were being investigated and, on receipt of notice, they could require their data to be deleted, frustrating the investigation.

Paragraph 14 of Schedule 2 allows a data controller to refuse to disclose information to the data subject where doing so would involve disclosing information relating to a third party. Amendment 86A would remove the circumstances set out in sub-paragraph (3) to which a data controller must have regard when determining whether it is reasonable to disclose information relating to a third party without their consent. These considerations mirror those in the 1998 Act and we think that they remain important matters to be considered when determining reasonableness. They also allow for any duty of confidentiality to be respected.

Paragraph 15 of Schedule 2 ensures that an individual's health, education or social work records cannot be withheld simply because they make reference to the health, education and social work professionals who contributed to them. Amendment 86B would allow a controller to refuse to disclose an individual's health records to that individual on the grounds that they would identify the relevant health professionals who authored them. We believe that individuals should be able to access their health records in these circumstances.

9.15 pm

I come now to Amendment 86BA tabled by the noble Lord, Lord Pannick, which concerns the confidentiality of trust information. I confess that, in this, I am relying on advice even more than usual, and

so I will put forward our initial analysis, which we might then have to discuss later. However, I am grateful to the noble Lord for letting us have his counsel and opinion and for giving that to the Bill team before the debate.

The noble Lord's amendment seeks to ensure that beneficiaries of a trust are not entitled to obtain through a subject access request information about decisions taken by the trustee that they would not be entitled to have under trust law. In the recent case of Dawson-Damer, which the noble Lord referred to, an offshore trustee was found not to be entitled to the full benefit of exemptions in the 1998 Act, which would have applied if the trust had been based in the UK. I understand that the noble Lord, Lord Pannick, has been informed to the contrary, but in our initial analysis we believe that trusts have adequate protections.

The Bill replicates the position under the existing 1998 Act. Where the data comes within legal professional privilege, it is already exempted, including for enforcement of civil proceedings. Article 15(4) of the GDPR directly protects against disclosure where it would adversely affect the rights and freedoms of others, including any rights or freedoms of trustees. The court also has power to withhold disclosure of information where there is an overriding need to do so, for instance where subject access is being used for an improper purpose. We believe that any gap between what can be withheld under trust law and data protection law is narrow, and no more than is appropriate to protect the rights that the beneficiaries of a trust have in their data. In this regard, we are simply continuing the existing position.

We have considered whether any further protection is possible and do not believe that the Bill needs to be used to protect offshore trusts further. We do not believe that it will drive trusts into less transparent jurisdictions or impact on the international competition of UK-based legal advice in respect of trusts. The possible application of data protection law is just one possible risk to consider when deciding where to do business. Indeed, the tailored exemptions we have provided in this Bill may make the UK an attractive destination.

I am of course happy to discuss this technical legal matter further with the noble Lord and the noble and learned Lord if they so desire—and with my officials, which is the important bit. I take on board what the noble and learned Lord said about the Jersey and Guernsey rules and the risks that they might pose. I will take that back and read carefully in *Hansard* what the noble and learned Lord has said.

Amendment 86C seeks to remove paragraph 19, which protects personal data processed for corporate finance services. The exemption is only available to the extent to which the subject information provisions could, or in the reasonable belief of the data controller could, affect the price or value of particular instruments of a price-sensitive nature—for example, company shares. This restriction replicates the exemption for this purpose under paragraph 6 of Schedule 7 to the 1998 Act and the Data Protection (Corporate Finance Exemption) Order 2000. We think it remains an important exemption to underpin the integrity of the markets.

Amendment 86D would remove the exemption available to businesses to protect the confidentiality of personal data processed for the purposes of management forecasting or management planning to the extent that the application of those provisions would be prejudicial to that business or other activity. An example of this might be plans relating to potential future redundancies which have yet to be made public. We think that these exemptions are useful for UK business.

I hope I have given sufficient explanations in response to the amendments in this group and persuaded noble Lords that there are good reasons why the exemptions are required. In the light of the comments I have made, I invite the noble Lord to withdraw his amendment.

Lord Clement-Jones: My Lords, I thank the Minister for that tour de force. This group is an extraordinary collection of different aspects such as research trusts and professional privilege. He even shed light on some opaque amendments to opaque parts of the Bill in dealing with Amendments 86A, 86B and 86C. The noble Lord, Lord Griffiths, was manful in his description of what his amendments were designed to do. I lost the plot fairly early on.

I thank the Minister particularly for his approach to the research aspect. However, we are back again to the recitals. I would be grateful if he could give us chapter and verse on which recitals he is relying on. He said that without the provisions of the Bill that we find unsatisfactory, research would be crippled. There is a view that he is relying on some fair stretching of the correct interpretation of the words "scientific" and "historical", especially if it is to cover the kinds of things that the noble Lord, Lord Lucas, has been talking about. Many others are concerned about other forms of research, such as cyber research. There are so many other aspects. TechUK does not take up cudgels unless it is convinced that there is an underlying problem. This brings us back, again, to the question of recitals not being part of the Bill—

Lord Lucas: I support the noble Lord on this. Coming back to his earlier example, if you were told a sandwich was solely made of vegetable, the Minister is saying that that means it has not got much meat in it. This is Brussels language. I do not think it is the way in which our courts will interpret these words when we have sole control of them. If, as I am delighted to learn, we are going to implement our 2017 manifesto in its better bits, including Brexit, this is something we will have to face up to. This appears to be another occasion where "scientific" does not bear the weight the Bill is trying to put on it. It is not scientific research which is happening with the NPD. It is research, but it is not scientific.

Lord Clement-Jones: I agree with that. Again we are relying on the interpretation in whichever recital the Minister has in his briefing. It would be useful to have a letter from him on that score and a description of how it is going to be binding. How is that interpretation which he is praying in aid in the recitals going to be binding in future on our courts? The recitals are not part of the Bill. We probably talked about this on the first day.

Lord Ashton of Hyde: This was included in the letter I was sent today. I am afraid the noble Lord has not got it. The noble Lord, Lord Kennedy, helpfully withdrew his amendment before I was able to say anything the other night but the EU withdrawal Bill will convert the full text of direct EU instruments into UK law. This includes recitals, which will retain their status as an interpretive aid.

Lord Clement-Jones: My Lords, we will see if the EU withdrawal Bill gets passed, but that is a matter for another day.

I thank the Minister for his remarks. There are many aspects of his reply which Members around the House will wish to unpick.

Lord Stevenson of Balmacara (Lab): Perhaps I may pursue this for a second. It is late in the evening and I am not moving fast enough in my brain, but the recitals have been discussed time and again and it is great that we are now getting a narrow understanding of where they go. I thought we were transposing the GDPR, after 20 May and after Brexit, through Schedule 6. However, Schedule 6 does not mention the recitals, so if the Minister can explain how this magic translation will happen I will be very grateful.

Lord Ashton of Hyde: We are not transposing the GDPR. It takes direct effect on 25 May.

Lord Stevenson of Balmacara: I knew I was slow. We are moving to applied GDPR; that is correct. The applied GDPR, as I read it in the book—that great wonderful dossier that I have forgotten to table; I am sure the box can supply it when we need it—does not contain the recitals.

Lord Clement-Jones: My Lords, just to heap Pelion on Ossa, I assume that until 29 March the recitals are not part of UK law.

Lord Ashton of Hyde: They will be part of UK law, because the withdrawal Bill will convert the full text into UK law. There will of course be a difference between the recitals and the articles; it will be like a statutory instrument, where the Explanatory Memorandum is part of the text of the instrument.

Lord Clement-Jones: Will that take place after 29 March 2019?

Lord Ashton of Hyde: Yes.

Lord Pannick: May I add to this fascinating debate? Does this not illustrate one of the problems of the withdrawal Bill—that in many areas, of which this is one, there will be two potentially conflicting sources of English law? There will be this Act, on data protection, and the direct implementation through the EU withdrawal Bill on the same subject. The two may conflict because this Act will not contain the recitals.

Lord Clement-Jones: My Lords, all I can say is that I do not know how the legal profession will cope in the circumstances.

Lord Ashton of Hyde: One thing we can all be certain of is that the legal profession will cope.

Lord Clement-Jones: I beg leave to withdraw the amendment.

Amendment 79 withdrawn.

Clause 14 agreed.

Schedule 2: Exemptions etc from the GDPR

Amendments 79A and 79B not moved.

Amendment 80

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

80: Schedule 2, page 125, line 41, leave out paragraph 4

Lord Clement-Jones: The Minister will be delighted to hear that I will speak only briefly to this amendment, because I do not want to steal my noble friend Lady Hamwee's thunder. This amendment would remove exemption to data subjects' rights where personal data is being processed for the maintenance of effective immigration control or for the investigation or detection of activities that would undermine it. The amendment would remove paragraph 4 of Schedule 2 in its entirety. There is no attempt to define this new objective; nowhere in the Bill or its Explanatory Notes are notions of effective immigration control, or the activities requiring its maintenance, defined.

The immigration exemption is new in the Bill; there was no direct equivalent under the Data Protection Act 1998. This is the broad and wide-ranging exemption that is open to abuse. The exemption should be removed altogether, as there are other exemptions in the Bill that the immigration authorities can, and should, seek to rely on for the processing of personal data in accordance with their statutory duties and functions. The current provision, under the heading "Immigration", removes all rights from a data subject that the Home Office wishes it did not have. Such removals are not restricted to those who have been found guilty of immigration offences, but apply to every data subject, including Home Office clerical errors. It is exactly those errors that data protection regulates.

In particular, there is a concern that the application of the effective immigration control exemption will become an administrative device to disadvantage data subjects using the immigration appeals process. Since the exemption has nothing to do with crime, national security, public safety or the protection of sources, such a prospect appears a distinct possibility without a rational explanation. The immigration authorities should be able to justify the inclusion of this exemption on the basis of hard evidence. The Home Office should be able to provide examples of subject access requests where personal data were released to the detriment of the public interest.

This is not the first time the Government have attempted to limit data protection rights on immigration control grounds. Clause 28 of the Data Protection Bill 1983 had an identical aim, setting out broad exemptions to data subject rights on grounds of crime, national security and immigration control. The Data Protection Committee, then chaired by Sir Norman Lindop, said that the clause would be,

"a palpable fraud upon the public if … allowed to become law",

because it allowed data acquired for one purpose to be processed for another. In the House of Lords, my late and much-missed noble friend Lord Avebury mounted a robust and ultimately successful opposition to Clause 28 in 1983. He raised concerns almost synonymous with those we raise today. His objections and those of several Members of the House have the same resonance now as they did then. I beg to move.

9.30 pm

Baroness Hamwee: My Lords, the Committee may realise that there are sometimes occasions when none of us quite prepare for amendments and others where more than one of us does, but, as my noble friend knows, I rarely pass over an opportunity to say how offensive the phrase "hostile environment" is. Data protection should be a force for good in dealing with the way our society is going.

My noble friend has reminded the Committee of the provisions of paragraph 4. Over the last few years the state has extended the mechanisms for immigration control very significantly to letting of property, employment, bank accounts, driving and so on. We may be told that the various departments have memoranda of understanding between themselves with the Home Office to deal with all this, but that is an inadequate way of dealing with them. I do not think I will be the only one in the Chamber to think that. Home Office errors are reported embarrassingly frequently. The exemption covers so many rights: rights held by data subjects to access rectification and erasure, and the right to know who is processing data and why, including when data is obtained from a third party.

Liberty, with its usual energy, has provided us with 13 pages of briefing on this amendment. I do not propose to read them all to the Committee. No doubt the Government have read them and are prepared to respond, but I reserve the right to do so on Report if necessary. It reminds us of the work, if we needed reminding, of Lord Avebury, who said that the equivalent, very similar provision with which he was dealing was,

"in danger of being oppressive, deeply worrying to the immigrant community living among us, and one which is in grave danger of infringing the provisions"—[*Official Report*, 21/7/1983; cols. 1274-75]—

of the European Convention on Human Rights. The Minister will be relieved that I have not yet succeeded in emulating my late, much-missed noble friend to the extent I would like—I never will, but I will continue to try. His words are even more pertinent now, extending beyond the immigrant community to families and employers, to give two examples.

Like my noble friend, I would be interested to know examples and justifications for how the exemption might be applied. Presumably it would facilitate sharing between public services used by an individual, government departments and the Home Office to check the individual's entitlement. The Government have said that they want to make the immigration system as "digital, flexible and frictionless" as possible. Initially that seems admirable, until one delves into issues such as this. Liberty asks whether the provision extends to activities such as running a night shelter or a food bank, which might well benefit undocumented migrants. Providing shelter and providing food could be construed as activities which undermine "effective immigration control"—to quote the Bill. Would a school have to provide a person's address without their knowledge and without their even having committed an immigration offence? Underlying all this, what effect could such a provision have on migrants' willingness to engage with public services?

Other noble Lords will probably have received a briefing from the Migrants' Rights Network. It is about a legal challenge which it is starting against the NHS's data sharing, but it is relevant here. The director of Migrants' Rights Network said:

"We are gravely concerned that immigration enforcement is creeping into our public services, especially the NHS. And therefore, it is important to challenge this data-sharing agreement which violates patient confidentiality, and discriminates against those who are non-British".

The lawyer acting for Migrants' Rights Network says in the press release what I have heard from many workers in the field: that the data-sharing arrangement,

"is leaving migrants too scared to access healthcare services they are entitled to, for fear their address and other public information may be passed onto the Home Office. This could have a particularly negative effect on children, pregnant women, people with disabilities and victims of trafficking and abuse".

It could have a severe effect on public health as well—we will debate all this when we deal with NHS charges in the regret Motion on Thursday.

The data subject will not know that data are transferred to the Home Office for immigration control purposes. The exemption seems to apply to immigrants and those connected with them, and those suspected of having an immigration offence in contemplation, thus turning them into an inferior class of citizen. It allows, or perhaps requires, data controllers, including the Home Office and its various arms, processing information for immigration purposes to ignore the principles on which the use of data is founded under the GDPR and the Bill and protection is applied.

I think that your Lordships might gather that we are very unhappy with this provision. It needs more justification than I think is capable of being provided, although we will of course wait and see.

Baroness Jones of Moulsecoomb (GP): My Lords, the Minister, who is not in his place at the moment, said earlier that he could not understand what I meant by repressive measures, but paragraph 4 of the schedule is exactly what I meant and it is why this amendment would remove it.

The inclusion of an immigration control exemption in the Bill is a brazen violation of the data protection and privacy rights of migrants—both documented and undocumented—and of their families and communities in the name of immigration control. In effect, it removes all the Home Office's data protection obligations as they relate to its activities to control immigration, as well as those of any other agency processing personal data for the same purpose or sharing data with another agency processing it for that purpose.

As the noble Baroness, Lady Hamwee, mentioned, it is not the first time that the Government have tried to limit data protection rights on immigration control grounds. In 1983, Clause 28 of the then Data Protection Bill had an identical aim, setting out broad exemptions to data subjects' rights on grounds of crime, national

[Baroness Jones of Moulsecoomb]
security and immigration control. The Data Protection Committee, then chaired by Sir Norman Lindop, said that the clause would be,

"a palpable fraud upon the public if … allowed to become law",

because it allowed data acquired for one purpose to be processed for another; and here is another power grab by this Government.

Clause 28 was rightly removed from the 1983 Bill, but today we see it resurrected with even more breadth and even less definition of its objectives. No attempt whatever has been made to define the new objective: nowhere in the Bill or its Explanatory Notes are the notions of effective immigration control or the activities requiring its maintenance defined. I simply do not understand the colossal cheek this Government have to put something such as this into a Bill and then present it in this House—I can understand it going through the other place but certainly not here. It is virtually impossible to come up with an exhaustive list of all the activities that might be included under this, or of individuals who might be affected. The potential list, as, again, the noble Baroness, Lady Hamwee, pointed out, could go far beyond the immigrants themselves and could apply to almost anybody, including some in your Lordships' House—at least, I hope that some in your Lordships' House might be involved in shelters and food banks.

I urge the Government to think again. This is probably one of the really nasty bits that the Government have an option to take out, so I hope that they will listen to us.

Lord Lucas: My Lords, I thoroughly support this amendment. I really hope that the Home Office has noticed that the Bill is starting in this House and that therefore this is a paragraph we can kill—and should, as we did in 1983. If the Home Office needs something more, it should make a case for it and we should listen, but to have a blanket provision such as this is very destructive of data collection as a whole. To take again the example of the NPD, the fact that data is passed from the NPD to the Home Office has made the bits of data that are being passed totally corrupt: one can no longer rely on that data because so many schools, not unnaturally, are unwilling to shop their parents and drop their parents into what can be extremely difficult circumstances. You destroy the purpose of the data that you pollute in this way; you make it unreliable. I suspect that you also undermine the research exemption: if data is actually being collected to give to the Home Office, how can you claim that it is for research? You start to undermine the Bill in all sorts of insidious ways by having such a broad and unjustified paragraph—unjustified in the sense that no one has made a justification for it. I really hope that the Home Office will think again.

Lord Kennedy of Southwark (Lab (Co-op)): My Lords, first, I welcome the noble Baroness, Lady Williams of Trafford, back to the Committee. Every time I get to the Bill I speak either to her or to the noble Lord, Lord Bourne of Aberystwyth, so I am glad we are back again in Committee.

Amendment 80, moved by the noble Lord, Lord Clement-Jones, would delete paragraph 4 from Part 1 of Schedule 2 to the Bill, as we have heard. I have added my name to the amendment, as have the noble Lord, Lord Paddick, and the noble Baroness, Lady Jones of Moulsecoomb. The amendment deletes the whole paragraph which exempts personal data from the GDPR provisions as they relate, first, to the maintenance of effective immigration control and, secondly, to the investigation or detection of activities that would undermine the maintenance of effective immigration control. I want to be very clear that the intention of this amendment is to enable the Government to explain to us why they think the paragraph is necessary. As we have heard, it is very wide ranging and has been rejected in the past, so I hope the Minister can explain why it is so important that this paragraph gets through in the Bill. The noble Lord, Lord Clement-Jones, raised important points about the broad potential risks to data subjects' rights, as did the noble Baroness, Lady Hamwee, and my noble friend Lady Jones of Moulsecoomb.

I certainly want an effective immigration service and policy, along with proper immigration controls. Having said that, I am not happy with many aspects of the policies being pursued by the Government with respect to immigration. They are ones that I do not support and they have damaged our reputation as a generous country that has been respected around the world. Unfortunately, that is not the only area where the Government have damaged our reputation. I should like the noble Baroness to explain very carefully why she believes that there is a need for this provision and where it differs from what is already in force. As we have heard, under other provisions the Government have what they need in terms of ensuring that these matters are dealt with properly. The exemptions certainly appear to be wide ranging and I want to be convinced that they are absolutely necessary. As I said, there are provisions in other Acts that the Government can rely on. At this stage, I await the response of the noble Baroness.

9.45 pm

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I thank all noble Lords who have taken part in the debate. There is clearly a lot of interest, as is evident from what has been said. I am also glad to be back opposite the noble Lord, Lord Kennedy of Southwark, as we have been on so many occasions, and I am sure we will be in the future. It is probably worth addressing some of the evident misunderstandings that have arisen around the purpose and the scope of this provision, and I hope to be able to persuade the Committee that this is a necessary and proportionate measure to protect the integrity of our immigration system.

The Government welcome the enhanced rights and protections for data subjects afforded by the GDPR and in negotiating, it was accepted by all parties that at times these rights needed to be qualified in the general public interest, whether that is to prevent and detect crime, safeguard legal professional privilege or journalists' sources, or in this case maintain an effective system of immigration control. A number of articles

of the GDPR therefore make express provision for such derogations, including article 23, which enables restrictions to be placed on certain rights of data subjects. Given the extension of data subjects' rights under the GDPR, it is necessary that we include in the Bill an express targeted exemption in the immigration context. The exemption would apply to the processing of personal data by immigration officers and the Secretary of State for the purposes of maintaining effective immigration control or the detection and investigation of activities which would undermine the system of immigration control. It would also apply to other public authorities required or authorised to share information with the Secretary of State for either of those purposes.

It is important that it is clear to the Committee what paragraph 4 of Schedule 2 does not do. It emphatically does not set aside the whole of the GDPR for all processing of personal data for all immigration purposes. The opening words of paragraph 4 make it clear that only "the listed GDPR provisions" may be set aside. The listed GDPR provisions are those set out in paragraph 1 of Schedule 2. The provisions in question relate to various rights of data subjects as provided for in chapter 3 of the GDPR, such as the rights to information and to access to personal data, and to two of the data protection principles: those relating to fair and transparent processing and the purpose limitation. Except to that extent, all the data protection principles, including those relating to the lawfulness of processing, data minimisation, accuracy, storage limitation, and integrity and confidentiality will continue to apply. So too will all the obligations on data controllers and processors, all the safeguards around cross-border transfers and all the oversight and enforcement powers of the Information Commissioner. The latter is particularly relevant here as it is open to any data subject affected by the provisions in paragraph 4 of Schedule 2 to lodge a complaint with the Information Commissioner, which the commissioner is then obliged to investigate.

Moreover, paragraph 4 does not give the Home Office carte blanche to invoke the permitted exceptions as a matter of routine. The Bill is clear: the exceptions may be applied only to the extent that the application of the rights of data subjects or the two relevant data protection principles,

"would be likely to prejudice … the maintenance of effective immigration control, or … the investigation or detection of activities that would undermine the maintenance of effective immigration control".

This is a significant and important qualification. The noble Lord, Lord Clement-Jones, asked why we have not listed exactly what we mean by,

"the maintenance of effective immigration control".

The maintenance of that control does not merely encompass physical immigration controls at points of entry but, more generally, the arrangements made in connection with a person's entry into and stay within the United Kingdom. A system of effective immigration control depends on our ability to control the entry and stay of those who wish to come to our country; to identify those who should not be admitted; and to pursue enforcement action against those who are liable to removal for failure to comply with restrictions and conditions on their stay, or otherwise in the public interest.

To use the example of the right conferred by article 15 of the GDPR, each subject access request would need to be considered on its own merits. We could not, for example, and would not want to limit the information given to visa applicants as to how their personal data will be processed as part of that application. Rather, the restrictions would bite only where there is a real likelihood of prejudice to immigration controls in disclosing the information concerned. It is equally important to dispel one other myth. Some of the briefing I have seen on this provision suggests that it creates new information-sharing gateways. This is simply not the case. As I have indicated, Schedule 2 sets out certain exceptions from the GDPR; it does not in and of itself create new powers to share data between data controllers. However, where personal data is shared between controllers for the limited immigration purposes specified in paragraph 4, it does mean that the data subject does not need to be notified if to do so would be prejudicial to the maintenance of effective immigration control.

It may assist the Committee if I explain the kind of information that it might be necessary to withhold from data subjects, and offer a couple of examples of the circumstances requested by the noble Baroness, Lady Hamwee, where to do so would be necessary to maintain the effectiveness of our immigration controls. The classes of information which the Home Office may need to withhold include a description of the data held, our data sources, the purposes for which the data was held, and details of the recipients to whom the data has been disclosed. There will be circumstances where the disclosure to data subjects of such information could afford them the opportunity to circumvent our immigration controls. Two examples will, I hope, help to illustrate where the disclosure of such information may have precisely the adverse effect.

First, in the case of a suspected overstayer, if we had to disclose in response to a subject access request what we are doing to track their whereabouts with a view to effecting administrative removal, it is clearly possible that they might then be able to evade enforcement action. A second example relates to circumstances where we seek to establish the legitimacy of a particular claim, such as an extension of leave to remain in the UK, and suspect that the claimant has provided false information to support that claim. In such a case, we may contact third parties to evidence the claim. If we are then obliged to inform the claimant that we are accessing records held by third parties, they may abscond and evade detection. Such procedures may then become common knowledge and further undermine our ability to maintain effective controls.

Immigration is, naturally, a very sensitive subject area and a topic of huge importance to the public, to the economic well-being of this country and to the social cohesion of our society. Being able to effectively control immigration is, therefore, in the words of the GDPR,

"an important objective of general public interest".

[Baroness Williams of Trafford]
As I have indicated, having a new data protection regime which seeks to give broader rights to data subjects is to be welcomed. But in an area as sensitive as the immigration system, we need to make appropriate use of the limited exemptions available to us so that we can continue to maintain effective control of that system in the wider public interest.

I hope that I have been able to satisfy noble Lords that this provision is necessary and proportionate. It is not the wholesale carve-out of subject access rights that some have suggested but a targeted provision wholly in line with the discretion afforded to member states by the GDPR, and it is vital to maintaining the integrity of the immigration system.

Having given this provision a good airing, I hope the noble Lord, Lord Clement-Jones, will feel happy to withdraw his amendment.

Baroness Hamwee: My Lords, there is a lot that demands careful reading and careful thought. I have three questions which I can raise now. First, in the examples which the Minister gave it struck us on these Benches that she was talking about things which are, in fact, criminal offences being dealt with under Part 3, which is the law enforcement part of the Bill.

Secondly, how is all this applied in practice? How does the controller know about the purposes? I am finding it quite difficult to envisage how this might work in real life. Thirdly, the Minister referred to the lawfulness of processing. I wonder whether this is not circular because paragraph 4, in disapplying listed provisions—by the way, I think those listed provisions include many which are very important indeed—makes it lawful, so I have a bit of a problem around that. Of course, I and others will carefully read what the Minister said, but I am sure we will want to return to this at the next stage.

Lord Lucas: My Lords, I felt entirely comfortable with my noble friend's examples, but they do not fit with what the Home Office has been doing. What it has done with the national pupil database is not to ask targeted questions when it has a problem with an individual but to collect the whole lot so that it has the ability to trawl, look at, match and use the whole of the dataset. That is a much more dangerous thing because of the consequences it has for the integrity of the data and for the way in which the lawfulness of gathering it is questioned. It is that sort of practice that troubles me. I had not read this clause in the narrow way in which my noble friend described it. I will obviously go away and read it again carefully, but if she would add a letter to her noble friend's letter enlarging on why this is a narrow provision and giving us comfort, that would be worth while for me.

Baroness Williams of Trafford: I thank my noble friend for that. In the meantime, I think my words should be reread, particularly my point about it not being a wholesale carve-out but quite a narrow exemption. I will write to noble Lords. I thought I might home in on one question that the noble Baroness, Lady Hamwee, asked about relying on this in the investigation, detection and prevention of crime. Of course, that is not always the correct and proportionate response to persons who are in the UK without lawful authority and may not be the correct remedy. I will write to noble Lords, and I hope that the noble Lord will feel happy to withdraw the amendment.

Lord Clement-Jones: My Lords, I thank the Minister. For a Home Office Minister she has a wonderful ability to create a sense of reassurance, which is quite dangerous. I am afraid that for all her well-chosen words, these Benches are not convinced. In particular, I noticed that she started off by saying, "This is only a very limited measure; it does not set aside everything". But paragraph 1 sets aside nine particular aspects, all of which are pretty important. This provision is not a pussycat; it is very important.

I thank all those who spoke, including the noble Baroness, Lady Jones, and the noble Lord, Lord Lucas. I thought the support from the noble Lord, Lord Kennedy, for this amendment—I called him the right name this time—was rather more equivocal, and I hope he has not been persuaded by the noble Baroness's siren song this evening. This is a classic example of the Home Office dusting off and taking off the shelf a provision which it has been dying to put on the statute book for years. The other rather telling point is that the noble Baroness said there is express provision for such derogation in the GDPR. But that is no reason to adopt it—just because it is possible, it is not necessarily desirable. But no, they say, let us adopt a nice derogation of this kind when it is actually not necessary.

As my noble friend pointed out, the Minister has not actually adduced any example which was not covered by existing exemptions, for instance, criminal offences. We will read with great care what the Minister has said, but I do not think that the "Why now?" question has really been answered this evening. In the meantime, I beg leave to withdraw the amendment.

Amendment 80 withdrawn.

Amendment 80A not moved.

Amendments 81 to 83

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

81: Schedule 2, page 126, line 29, leave out "is necessary"

82: Schedule 2, page 126, line 30, at beginning insert "is necessary"

83: Schedule 2, page 126, line 31, leave out from "proceedings)," to "establishing" in line 32 and insert—

"( ) is necessary for the purpose of obtaining legal advice, or

( ) is otherwise necessary for the purposes of"

Amendments 81 to 83 agreed.

Amendments 83A and 83B not moved.

Amendments 84 to 86

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

84: Schedule 2, page 127, line 33, leave out from "bankrupts" to end of line 38

85: Schedule 2, page 127, line 38, at end insert—

"1A. The function is designed to protect members of the public against— (a)dishonesty, malpractice or other seriously improper conduct by persons who carry on any activity that brings them into contact with members of the public, or (b)the unfitness or incompetence of persons who carry on any activity that brings them into contact with members of the public.	The function is of a public nature, or is exercised in the public interest."

86: Schedule 2, page 130, line 2, at end insert—

"A1. The Commissioner	By or under— (a) the data protection legislation; (b) the Freedom of Information Act 2000; (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (S.I. 2003/2426); (d) the Environmental Information Regulations 2004 (S.I. 2004/3391); (e) the INSPIRE Regulations 2009 (S.I. 2009/3157); (f) Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC; (g) the Re-use of Public Sector Information Regulations 2015 (S.I. 2015/1415); (h) the Electronic Identification and Trust Services for Electronic Transactions Regulations 2016 (S.I. 2016/696).
A2. The Pensions Ombudsman.	By or under Part 10 of the Pension Schemes Act 1993 or any corresponding legislation having equivalent effect in Northern Ireland.
A3. The Board of the Pension Protection Fund.	By or under sections 206 to 208 of the Pensions Act 2004 or any corresponding legislation having equivalent effect in Northern Ireland.
A4. The Ombudsman for the Board of the Pension Protection Fund.	By or under any of sections 209 to 218 or 286(1) of the Pensions Act 2004 or any corresponding legislation having equivalent effect in Northern Ireland.
A5. The Pensions Regulator.	By or under any enactment."

Amendments 84 to 86 agreed.

Amendments 86A to 86D not moved.

Amendment 87

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

87: Schedule 2, page 135, line 42, at end insert—

"( ) the placement (or prospective placement) of the data subject as a volunteer,"

Amendment 87 agreed.

Amendment 87ZA

Moved by ***Lord Black of Brentwood***

87ZA: Schedule 2, page 136, line 40, leave out "only"

10 pm

Lord Black of Brentwood (Con): My Lords, I will be as brief as I possibly can in moving this amendment and speaking to the group, which relates to paragraph 24 of Schedule 2 to the Bill, in Part 5, and the exemptions for journalistic, academic, literary and artistic purposes. I declare my interest as director of the Telegraph Media Group and draw attention to my other media interests. However, I underline that these amendments are not simply of importance to what we used to call the print media, but have the support of a range of broadcast and online media organisations as well as the Media Lawyers Association, the News Media Association and the Society of Editors, as the Bill has a very wide impact on them all.

In Committee last week, the Government reiterated their strong commitment to the,

"operation of a free press",

as a,

"fundamental principle of any liberal democracy",

in relation to this Bill and journalistic exemptions.

My noble friend the Minister also sought to make it clear that the Bill seeks to preserve the important "balance" between privacy and free speech found in the 1998 Act, the operation of which has been so successful, as well as ensuring that the journalists remain, in his words,

"exempt from compliance with certain data protection requirements where to do so would undermine the operation of a free press".—[*Official Report*, 6/11/17; col. 1675.]

These amendments seek to build on those commitments by proposing some ways in which journalistic safeguards can be made clearer and strengthened further. Some of them seek to ensure consistency in application of the journalistic exemption between the 1998 Act and the Bill; some would extend journalistic exemption, but always subject to the Bill's conditions, to match new requirements of the GDPR which would otherwise threaten freedom of expression and journalism; and some are intended to avert potential exploitation of the new regime, especially where legal action—often on spurious grounds—can bypass the freedom of expression protections crafted so carefully by those in this House under the Defamation Act 2013, a point I highlighted at Second Reading.

The amendments are intended to safeguard investigative journalism, publication and archives, both domestic and international, for all news media, print and online. In particular, they would prevent the Information Commissioner becoming a statutory regulator of the media, with dangerous and unprecedented prepublication powers. Where the accuracy of what has been published is challenged, they would adopt the approach of defamation law, rather than undermining it. I hope that my noble friend will give serious consideration to the issues and suggested amendments.

I turn briefly to the operation of the amendments. Amendments 87ZA, 174A and 174B would mean that the Bill no longer stipulated processing "only" for the special purposes. This is because article 5 of the GDPR, which mandates exemptions for the purposes of journalism and for academic, literary and artistic purposes, does not require that processing take place "only" for those purposes to benefit from the exemptions. If there is ancillary processing, the exemption should not be vulnerable to any claim that it might be lost.

For example, the media should not be penalised under data protection law in this way if, say, the police sought the pre-broadcast disclosure of journalistic material in relation to an undercover investigation because they wanted to see whether the alleged wrongdoing uncovered by the broadcaster's investigation

[Lord Black of Brentwood]
merited further police investigation. Furthermore, if broadcast media fund their activities through regulator-approved activities such as Ofcom's product placement, this should not prevent them benefiting from the exemption.

Amendments 87AA, 87AB and 87AC would amend Schedule 2, part 5 and paragraph 24(2)(a), as the current wording of the Bill arguably represents a narrowing of the application of the exemptions from those in the Data Protection Act 1998, which apply to,

"processing … undertaken with a view to publication by any person of any journalistic, literary or artistic material".

The amendments would ensure that both the specific personal data and the related material which forms part of the background research are protected.

Amendment 87CA, adding a new subsection to paragraph 24(2), is another aimed at consistency in the transition to the new Act, in this case relating to how to judge where the application of the GDPR principles is incompatible with the special purposes, including journalism—hence the all-important circumstances where the media can rely on the exemption. This amendment would bring the Bill in line with non-binding guidance from the Information Commissioner, which already recognises that media organisations can form the reasonable belief that compliance would be incompatible with the special purposes where it would be, "impractical or inappropriate".

Amendments 87DA and 87DB to paragraph 24(3) are intended to ensure proper safeguards for journalism and freedom of expression. The provision currently fails to reflect that the exemption applies where the data controller reasonably believes that publication would be in the public interest. In addition, the provision refers to what the controller "must take into account"—quite properly, the special importance of freedom of expression. However, it should also be made clear that the public interest in freedom of expression and information itself, in the widest sense—from the trivial to the most serious—must be taken into account by the Information Commissioner and the courts, again to maintain consistency of approach with the 1998 Act.

Amendments 89C to 89F and 91B address the need for further exemptions, as permitted by GDPR article 85. This is because the GDPR provisions could otherwise have serious, albeit unintended, consequences for all the media. These are additions to the list under Schedule 2, part 5 and paragraph 24(8).

Amendments 89C and 91B are perhaps more procedural and technical in nature. I will come to those but, first, Amendments 89D 89E and 89F raise serious issues concerning the maintenance of integrity of investigations, publications and archives.

Amendment 89D to Schedule 2, Part 5, paragraph 24 (8)(b), would provide a vital exemption from article 36—the requirement for prior consultation set out in chapter IV of the GDPR. Without such an exemption, there would be an obligation to consult the ICO up to 14 weeks or more in advance, where a "data protection impact assessment" indicates that the proposed processing would result in high risk to data subjects in the absence of measures to mitigate that risk. Put simply, this could be a huge risk to investigative journalism, particularly by broadcasters. It could impact their public interest undercover investigations and use of covert filming techniques, such as when investigating allegations of abuse against vulnerable residents at a care home or conditions at a detention centre.

The existing regulatory codes already require them to believe use of such methods to be necessary in the public interest. It is a dangerous departure of principle from the protections in the Data Protection Act 1998 against pre-publication interference, and is at odds with the fundamental traditions of UK journalism and legal safeguards for freedom of expression. It is wholly inappropriate to require the broadcasters or other media to consult the ICO and seek approval prior to investigations requiring use of secret filming techniques and similar emerging technology, such as drone use or wearable technology. Article 36 could stifle investigative journalism and add yet another unprecedented pre-publication power to the Information Commissioner's potential armoury of statutory pre-publication tools. That is why the amendment states that there must be an exemption from the article 36 prior consultation requirements, provided that the media can satisfy the exemption conditions set out in the relevant provisions in this part of the Bill.

Amendments 89E and 89F have been tabled to put beyond doubt the public interest protections for journalistic activity and publication across borders and media archives through the freedom of expression exemptions mandated by Article 85. Amendment 89E to paragraph 24(8)(b) in Schedule 2 would add a journalistic exemption consistent with satisfaction of the conditions in paragraph 24 of Schedule 2 from the requirements of chapter V of the GDPR concerning transfer of personal data to third countries outside the European Economic Area or international organisations. Third country transfers, of course, include online publication itself. This exemption would enable international publication by UK online publishers, be they the BBC, the *Guardian* or any other UK news brand sought out by international audiences. The journalistic exemption is also needed to allow collaborative investigative journalism, swiftly sharing data across borders where appropriate, such as with the Panama papers or, as we have seen just recently with the Paradise papers. The journalistic exemption is also required for communications between the media and their foreign correspondents wherever they might be situated outside the EEA.

Amendment 89F would provide the explicit safeguard for news media archives which is currently lacking from the Bill. This would ensure that media archives, whose role and importance the noble Viscount, Lord Colville, described so well at Second Reading, constitute archiving in the public interest and receive the protection of the exemptions. This would be in line with recital 153 of the GDPR, which provides that the protection to be afforded to freedom of expression and information should apply,

"in particular to the processing of personal data in the audio visual field and in news archives and press libraries".

There are two procedural but none the less important amendments completing this group. Amendment 89C to paragraph 24(8)(b) would add an exemption to

article 19 of the GDPR, which requires data controllers to inform the data subject about the recipients of personal data subject to rectification or erasure, if requested by the data subject. While exemptions might apply, the media do broadcast and publish corrections and take other measures. It would be entirely inappropriate to say that article 19 might require the provision of information about individual "publishees" and could be in breach of such individuals' freedom of expression and data protection rights, as well as in breach of privacy notices.

Finally, Amendment 91B is a measure to mirror the improvements made to defamation law and to protect against the undermining of their freedom of expression safeguards, by attempted exploitation of the data protection laws instead. This, as legal expects among you—I am not one—will instantly recognise is akin to the introduction of a rebuttable single publication rule and a limitation period of one year subject to further amendment to the Limitation Act 1980. Any complaint concerning accuracy of material processed for journalistic, academic, literary and artistic purposes can and should be brought promptly. Some complainants already attempt to abuse data protection law by bringing complaints many years after material is first published, when it will be more difficult for the media, as data controller or processor, to substantiate the accuracy of the publication and the veracity of the complaint. To maintain consistency with the defences under the Defamation Act 2013, this amendment proposes that a limitation period be introduced to prevent complaints about accuracy being brought outside a period of one year after the date of first publication. If adopted, the Limitation Act 1980 should be accordingly amended. This time limit would then apply to both ICO enforcement action and legal claims. Such measures are needed to protect against libel claims being dressed up as data protection actions, to the detriment of freedom of expression and information.

10.15 pm

As I said at Second Reading, I am extremely grateful to my noble friend the Minister, and to the DDCMS, for the constructive way in which they have approached the media issues arising in this Bill and the helpful, dialogue that they have maintained throughout. These amendments are proposed in the spirit of that dialogue to ensure that the Government's clear intention to maintain the correct balance between privacy and freedom of expression and information is as robust and effective as possible. I beg to move.

Lord McNally (LD): My Lords, when the famous French long-serving Foreign Minister Talleyrand died and the news was taken to his long-term rival Prince Metternich of Austria, Metternich looked at the telegram and said, "What does he mean by this?". Some of my friends have a similar reaction to any amendments that carry the name of the noble Lord, Lord Black, but I am not among them. I think that we share a common belief in a free and a vigorous and independent press. He knows that when at Second Reading he referred to the Defamation Act 2013, my ears pricked up, because it is one of the things that I am most proud of from my time as a Minister. With my noble friend Lord Lester as my mentor, we piloted that Bill into legislation. I am certainly very interested in any amendment that would prevent this Bill becoming a backdoor to getting around the protections that the Defamation Act gave to free comment and academic freedom to have peer comment, and so on. The Act has worked—we are no longer considered the libel capital of the world—and there is a great deal more freedom in the academic world for peer comments and criticisms, without the threat of libel actions, which had a chilling effect.

The problem is that this is an alphabet soup of amendments, which the noble Lord, Lord Black, has put forward with great clarity, so we will be able to study what exactly he wants to do and how he wants to do it. I am interested in a number of things; I am interested in the idea, which he quite rightly pointed out, of investigative journalists having to give prior notice of what they are doing, which seems rather counterintuitive to the idea of investigative journalism. I have certainly received that point of view from the BBC and other forms of journal about the effect of that proposal. The noble Lord, Lord Black, is quite right. We have seen only recently the Paradise papers as another example of investigative journalism exposing things that people would rather keep quiet, which is massively in the public interest. He also referred to the number of exposés of care homes, prisons and young offender institutions, all of which are massively in the public interest. It would be wrong to allow the Bill to bring into law provisions that would chill, prevent or curb the great traditions of a free and vigorous press. In the spirit of Committee stage, I would like to look carefully at what the amendments of the noble Lord, Lord Black, seek to do. As he knows, after Second Reading I offered to collaborate with him on amendments but that would probably have been too great a shock to both our constitutions. However, I would certainly be interested to see where we can work together on the broad aim of ensuring that the Bill contains no accidental curbs on the activities of a vigorous and free press and media.

As I have said before, the noble Lord, Lord Black, and his friends would be in a stronger position if the background to this was not one of previous criminality and invasion of the privacy of people who had every right to see their privacy protected. Therefore, there is bound to be a certain scepticism about whether these proposals give overgenerous access to overbroad exemptions. But let us have a look at them and at some of the issues that have been raised in other quarters—as I say, by the BBC and journals that are not members of IPSO that have expressed the concerns raised by the noble Lord, Lord Black. Following that and what the Minister is about to tell us, we can then make judgments about how we shall approach these issues on Report.

Lord Stevenson of Balmacara: My Lords, we are all very grateful to the noble Lord, Lord Black, for his very full introduction to these amendments. I shall read very carefully what the noble Lord, Lord McNally, said and take his remarks on their merits. I have no problem with that.

I am sure that the noble Lord, Lord Black, will not mind if I quote what he said in Committee only a week ago and pose a question to him. He said:

[Lord Stevenson of Balmacara]

"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".—[*Official Report*, 6/11/17; cols. 1667-68.]

What a difference a week makes to one's thinking. The noble Lord was pressed by a number of noble Lords, including his noble friend Lord Attlee, to come up with a much more detailed and engaged critique. We would love to hear from him again if he is prepared to tell us why there has been a change in his thinking. However, I do not think that gets in the way of what he is saying, which is that some issues need to be addressed. We will look at them carefully when we have the chance to see them in print. I shall also be interested to hear what the noble Baroness makes of this when she replies.

Baroness Chisholm of Owlpen (Con): As my noble friend Lord Black and the noble Lord, Lord Stevenson, said, the Government are firmly committed to preserving the freedom of the press, maintaining the balance between privacy and the freedom of expression in our existing law that has served us well.

I shall try to reply to my noble friend as I go through the many amendments—a soup of amendments, as the noble Lord, Lord McNally, said. As we heard, Amendments 87ZA, 87AA, 87AB and 87AC would enable the special purposes exemptions to be used when processing for other purposes in addition to a special purpose. The use of the word "only" in the Bill is consistent with the existing law. Examples have been given of where further processing beyond the special purposes might be justified without prejudicing the overall journalistic intent in the public interest. None the less, the media industry has been able to operate effectively under the existing law, and while we are all in favour of further clarity, we must be careful not to create any unintended consequences.

Paragraph 24(3) of Schedule 2 concerns the test to determine whether something is in the public interest. Amendment 87CA seeks to define the compatibility requirement, and Amendments 87DA and 87DB seek to clarify the reasonable belief test. The Bill is clear that the exemption will apply where the journalist reasonably believes that publication would be in the public interest, taking account of the special importance of the public interest in the freedom of expression and information. To determine whether publication is in the public interest is a decision for the journalist. They must decide one way or another. It is not necessary to change the existing position.

Amendments 89C to 89F seek to widen the available exemptions by adding in additional data rights that can be disapplied. Amendment 89C seeks to add an exemption for article 19 concerning the obligation to give the data subjects notice regarding the processing carried out under articles 16, 17 and 18 of the GDPR. The Bill already provides exemptions for the special purposes for these articles, rendering article 19 irrelevant in this context.

Amendment 89D seeks to add an exemption for article 36. This requires the controller to give notice to the Information Commissioner before engaging in high-risk processing. My noble friend Lord Black and the noble Lord, Lord McNally, both argued that this might require the commissioner to be given notice of investigative journalistic activity. This is not the case. We do not believe that investigative journalism needs to put people's rights at high risk. Investigative journalism, like other data-processing activities, should be able to manage risks to an acceptable level.

Amendment 89E concerns the need for journalists to transfer data to third countries. We are carefully considering whether the GDPR creates any obstacles of the type described. We certainly do not intend to prevent the transfers the noble Lord describes.

Amendment 89F seeks to add an exemption from the safeguards in article 89 that relate to research and archiving. Following the interventions of the noble Lord, Lord Patel, the Government have agreed to look again at these safeguards. Once we have completed that, we will assess whether any related derogations also need reconsidering.

Amendment 91B seeks to introduce a time limit by which complaints can be brought. The Government agree that complaints should be brought in a timely manner and are concerned to hear of any perceived abuses. We will consider this further and assess the evidence base.

The Government are firmly committed to preserving the freedom of the press and preventing restrictions to journalists' ability to investigate issues in the public interest. We will continue to consider the technical points raised by my noble friend, and I hope—at this late hour, and with the view that we will further consider points that have been raised—that he feels able to withdraw his amendment.

Lord Black of Brentwood: I am grateful to my noble friend for those words and to all noble Lords who have taken part in this short debate at this late hour. Apart from anything else, it has given me an opportunity to say words which I never thought I would hear myself say: I agree with virtually everything that the noble Lord, Lord McNally, said this evening.

Lord McNally: Then I certainly must read *Hansard* carefully in the morning.

Lord Black of Brentwood: I am particularly pleased that the noble Lord mentioned Prince Metternich, who of course was no great fan of liberal democracy. I understand that he once said that the best way to protect the freedom of the press was for nothing whatever to be published over the course of the next five years. That may indeed be the case.

I say to the noble Lord, Lord Stevenson, that in Committee last week we talked about a very different set of amendments from the one that I am proposing this evening. Those amendments were about press regulation. I argued then, and I argue now, that that should not have anything to do with this Bill. My amendments this evening do not undermine what I believe to be a very good balance, and I absolutely stick by my words; they merely provide clarification in some important areas.

I think I sense from the Committee that it would be useful to look in more detail at what I have proposed. I would be happy to talk about it further with noble Lords and to take up my noble friend's offer to continue constructive dialogue. With that, I beg leave to withdraw the amendment.

Amendment 87ZA withdrawn.

Amendments 87A to 88 not moved.

Amendment 89 had been withdrawn from the Marshalled List.

Amendments 89A to 89F not moved.

Amendment 90

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

90: Schedule 2, page 137, line 45, leave out sub-paragraph (9)

Amendment 90 agreed.

Amendments 91 to 91B not moved.

Amendments 92 and 93

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

92: Schedule 2, page 138, line 10, at beginning insert "For the purposes of this paragraph,"

93: Schedule 2, page 138, line 30, at beginning insert "For the purposes of this paragraph,"

Amendments 92 and 93 agreed.

Schedule 2, as amended, agreed.

House resumed.

Northern Ireland Budget Bill

First Reading

10.32 pm

The Bill was brought from the Commons, endorsed as a money Bill, read a first time and ordered to be printed.

House adjourned at 10.32 pm.