Vol. 787
No. 66

Monday
11 December 2017

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

House of Lords

Monday 11 December 2017

2.30 pm

Prayers—read by the Lord Bishop of Carlisle.

Brexit: EU Citizenship

Question

2.37 pm

Asked by ***Lord Teverson***

To ask Her Majesty's Government what discussions they are having with the European Union concerning whether those United Kingdom citizens who wish to retain their European citizenship post-Brexit may do so.

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, EU treaty provisions state that only citizens of EU member states are able to hold EU citizenship. Therefore, when the UK ceases to be a member of the European Union, British nationals will no longer hold EU citizenship unless they hold dual nationality with another EU member state. We are content to listen to proposals, but this is not a matter within the scope of the current negotiations with the EU.

Lord Teverson (LD): I thank the Minister for that extensive reply, although I find it disappointing. It is really important to many people in this country to retain the rights of their European citizenship—so, given the new and cordial relationship between the Government and the European Commission and institutions, would it be possible to open up this discussion to find a mutually beneficial way to move this agenda forward? We have a friend also in the European Parliament in this regard.

Lord Callanan: We are content to listen to proposals on this; we are not ruling it out. The problem is, as the noble Lord will know very well, that you can only be an EU citizen if you are the citizen of an EU member state. To get what he wants would involve changing treaties—and he will know how difficult that is in the European Union. The other side has shown no interest whatever in doing it. I am aware of the proposals from the European Parliament, and we will look at any proposals, but our EU negotiating partners so far have not expressed any interest in it. It would be a long, difficult and complicated process and, I suspect, would set a precedent that they do not wish to set.

Lord Pearson of Rannoch (UKIP): My Lords, can the Government confirm that before last Christmas, we offered continuing residence to the 3.5 million EU citizens living here if our 1.2 million people living there also got it? The Eurocrats refused the offer, even having the nerve to accuse us of using their people as bargaining chips. Is this not further proof that Herr Juncker and Co. are interested only in keeping their failing project afloat, however much it damages the real people of Europe?

Lord Callanan: The noble Lord makes an important point, but it is not that helpful to look back over what might have happened in the past: best now to celebrate the excellent achievements that we have gained in reaching agreements last week, whereby EU citizens in the UK will have their rights guaranteed and vice versa.

Lord Skelmersdale (Con): My Lords, may I take my noble friend back to his original Answer, which presumably means that passports will be required? Have Her Majesty's Government decided whether that is so; secondly, whether a new one will be required; and, thirdly, whether it will be charged for?

Lord Callanan: I think the noble Lord will have to wait for the Home Office's proposals on a new immigration system for an answer to that question.

Lord Tomlinson (Lab): As the Minister said that the noble Lord, Lord Pearson, made an important point, perhaps he could spell out what the important point was to him—because, as far as I am concerned, I missed it.

Lord Callanan: My Lords, all noble Members make important points in this House.

The Earl of Clancarty (CB): My Lords, is the Minister aware that an arrangement such as this would be hugely beneficial to many working in the creative industries, for whom free movement around Europe is essential?

Lord Callanan: If the noble Earl means the proposal suggested by the noble Lord, Lord Teverson, I have said that we are happy to entertain proposals in this area. But I think it would be extremely difficult for the EU to concede that citizens from non-EU member states would have citizenship.

Baroness Ludford (LD): My Lords, the Government rightly value the integrity of the United Kingdom—as indeed do these Benches. Do they therefore think it is right that there will be an imbalance in that most citizens of Northern Ireland will be able to retain EU citizenship through their right to an Irish passport? Should the Government not therefore support the call my noble friend proposed making to the European Parliament, for the EU 27 to examine how all UK citizens can retain the benefits of EU citizenship?

Lord Callanan: As the noble Baroness is aware, special arrangements have always applied between Northern Ireland and the Republic of Ireland, given the troubled history of that island. I repeat that we are not ruling out the idea—but she will know, as well as I do, how difficult it would be to achieve consensus in the 27 to change the treaties to enable that to happen.

[LORD CALLANAN]
It would set a precedent that citizens from non-EU member states can have EU citizenship, with its rights and obligations. I am sure she will agree that it is difficult to see how that would come about.

Baroness Hayter of Kentish Town (Lab): My Lords, on Thursday the noble Lord, Lord Ashton of Hyde, said in regard to the likely problems of our youth orchestras in travelling to the EU after March 2019:

"Much more important is the visa requirements that will be needed after Brexit".—[*Official Report*, 7/12/17; col. 1156.]

Can the Minister update the House on such anticipated problems, of youth and amateur orchestras needing visas to go to the EU after Brexit, and outline the steps being taken to mitigate this problem?

Lord Callanan: These are of course matters that will be discussed in the next phase of the negotiation. As I said in response to an earlier question, the noble Baroness will have to wait for the proposals for a new immigration system that the Home Office will announce in due course.

Lord Dubs (Lab): My Lords, I am not sure that it would be a precedent to achieve what the noble Lord has suggested. For example, I remind the Minister that in Moldova, which is not an EU country, a large number of Moldovans have the right to Romanian passports and therefore entry into the EU—so the precedent is already there.

Lord Callanan: I think that that is because they have Romanian passports. Romania is an EU member state and takes those obligations accordingly. As I said, it is very difficult to see how the treaties would be changed to enable this to happen. I am aware of the proposal from the European Parliament. We are not against the idea—we would be happy to consider it—but I think that there is very little chance of it happening.

Lord Roberts of Llandudno (LD): My Lords, I am very proud that I was born Welsh, and I am very proud that I was born British as well. By what right can the Government or anybody else deny those who are born after we joined the European Union of their citizenship in Europe? How can we deny it to them?

Lord Callanan: Because, my Lords, we had a referendum on the subject of leaving the European Union and the people of the United Kingdom—and, indeed, the people of Wales—voted to leave.

Local Welfare Assistance

Question

2.45 pm

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

To ask Her Majesty's Government what assessment they have made of the effectiveness of local welfare assistance schemes in meeting need.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Buscombe) (Con): My Lords, since 2013 we have given local authorities the flexibility to develop their own local emergency provision for people in their areas. Local authorities are best placed to design and target this discretionary support, alongside their own local services, ensuring it reaches those who need it most at the right time.

Baroness Lister of Burtersett (Lab): Ah, my Lords, the Pontius Pilate response. When the Government devolved crisis and community care support from the Social Fund to local authorities, they placed no duties on the authorities and refused to ring-fence the money. According to the Centre for Responsible Credit, about one in six authorities has abolished its scheme altogether, and many more have cut them back drastically, leading to some people facing destitution for lengthy periods. Will the Government now therefore accept, in the words of the Work and Pensions Committee, that they maintain,

"an ongoing obligation to ensure provision of a safety net which prevents vulnerable people from falling into severe hardship",

starting with an urgent evaluation of what is now the final safety net?

Baroness Buscombe: My Lords, it is important to say that the national welfare system provides robust safeguards. These include: short-term benefit advances or universal credit advances for people in urgent financial need; Social Fund budgeting loans or universal credit budgeting advances to help with one-off and unforeseen expenses; and hardship payments for people who are sanctioned. But by abolishing the Social Fund crisis loans, which themselves had huge problems, we have now empowered local authorities to develop and deliver new provision to meet the needs of the most vulnerable people in their local communities.

Lord Watts (Lab): My Lords, does the Minister think that it is irresponsible to delegate powers to local authorities and at the same time savage their budgets so that they cannot meet those responsibilities?

Baroness Buscombe: No, my Lords. The Government believe that councils are best placed to decide how to support local welfare needs. Local authorities in England will receive more than £200 billion to deliver those and other community services between this year and 2019-20, and will have the certainty to plan ahead through our four-year funding settlement.

Lord Stoneham of Droxford (LD): According to the report from the Centre for Responsible Credit, in one year, my own city of Portsmouth has reduced the amount it spends on welfare assistance from £700,000 to £30,000. Do the Government intend to review the impact of these sorts of changes? If not, why not?

Baroness Buscombe: It is important that I stress again that, under the national system, there are strong safeguards in place. We expect local authorities to concentrate the funding on those facing the greatest difficulty in managing their income and to enable a

more flexible response to an unavoidable need, perhaps through a mix of cash or goods and aligning with the wider range of local support that local authorities' devolved administrations already offer. In short, the funding is to allow them to give flexible help to those in genuine need.

Lord Howarth of Newport (Lab): The noble Baroness says that local authorities are best placed and they have £200 billion. Will she confirm that the Government have cut funding for local authorities by some 40% since 2010?

Baroness Buscombe: My Lords, perhaps I could quote the Local Government Association's own study:

"Councils have managed the available budget effectively; reduced the potential for abuse, and created schemes which better meet the underlying needs of applicants and reduce repeat demand. This has enabled them to provide vital, timely support to some of their most vulnerable and deprived residents".

Baroness Lister of Burtersett: My Lords, I still have not heard how those authorities that have abolished their schemes are going to meet the needs that the noble Baroness referred to. As she herself said, these are some of the most vulnerable people. There are 26 local authorities where there is no scheme that can meet those needs.

Baroness Buscombe: My Lords, the noble Baroness had already referenced the issue of ring-fencing. Government policy is not to ring-fence amounts in the local government finance settlement, as local councils are the best judge of needs and priorities within their areas. As I have already said, local authorities are in receipt of £200 billion. Part of that is to fund these emergency services, in addition to the safety net that we provide at national level.

The Earl of Listowel (CB): My Lords, although recognising the tremendous work of local authorities to rise to the challenge, I have concerns which I hope the Minister shares. I listened to a very experienced, long-time child and family social worker in one of the committee rooms here two months ago. He expressed concerns about all the ancillary services being cut back for families, as the statutory services just about hold out. As these are cut, more and more children come into care, and more and more families are at risk of breaking down, so it is a very difficult situation. Of course the Government are doing important work to address these things, but we cannot deny that this is a huge challenge and is harming many people in this country.

Baroness Buscombe: My Lords, what the noble Earl has said about family breakdown and what this leads to is quite right. Indeed, that is why we have a strong focus now on the family parental conflict programme, to which we will be contributing £30 million in the coming two years. We have also invested up to £200 million in universal support, which provides budgeting advice and digital support to claimants, delivered by local authorities. This support is tailored to local needs and our work coaches, who gauge claimants' financial needs from their first interview. We are doing a variety of things to help people at a local level. The noble Lord, Lord Foulkes, shakes his head, but we are doing an awful lot more that his Government ever achieved. I am proud of what we are doing.

Baroness McIntosh of Hudnall (Lab): My Lords, will the noble Baroness please have another go at answering the question put to her by my noble friend Lord Howarth? Can she confirm that local authority budgets have been cut by 40%, and if she cannot, what figure does she think is the right one? Can she further say whether she thinks that—if that figure or anything like it is correct—it is at all likely that there has been no major impact on services that were previously provided?

Baroness Buscombe: My Lords, it is a great shame that under the Labour Government so much taxpayers' money was wasted, leaving our local councils bereft of funds. We have worked hard to ensure that there are emergency provisions in place. Although there may be cuts to local authorities, we are ensuring that there is proper provision, but we are leaving it to local authorities to decide the best way to provide for the needs that people have at local level.

Kinship Carers: Two-child Limit Policy

Question

2.53 pm

Asked by ***Baroness Sherlock***

To ask Her Majesty's Government why kinship carers who subsequently have their own child are not exempt from the two child limit.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Buscombe) (Con): My Lords, the Government acknowledge the immense value of care provided by kinship carers. We are working to ensure that they are supported by enabling them to access benefit entitlement in the same way as parents. We have introduced a number of exceptions to the policy providing support for a maximum of two children, to protect claimants who are unable to make choices about the size of their family. These already protected certain groups, including kindship carers. The department will keep, and is keeping, the impact of its policies on kinship carers under consideration.

Baroness Sherlock (Lab): My Lords, the reason why kinship carers were exempted from the two-child policy is that this House voted that it should be so. The Minister will be aware of the case, raised by my honourable friend Melanie Onn, of Alyssa Vessey. When Alyssa was 18, her mother died suddenly so she gave up college to care for her three younger siblings. This year, four years later, she has had her own baby. She applied for tax credits and a Sure Start maternity grant but she was turned down under the two-child policy. The reason is that the Government chose to implement the exemption in such a way that if Alyssa already had her own child and then took on her siblings she could get benefits for them, but because

[Baroness Sherlock]
she took her siblings on and then had her own baby she was denied that support. Can the Minister explain this? When will the Government put it right?

Baroness Buscombe: My Lords, I think the noble Baroness opposite is aware that we are very much cognisant of this particular case. Indeed, my honourable friend in the other place who is the Minister responsible for this area, Caroline Dinenage MP, has responded with considerable sympathy with regard to this particular case. However, the Government believe all children should be treated equally and encourage parents to take the decision to have more children based on whether they can afford to support additional children.

Baroness Pinnock (LD): My Lords, do the Government understand and accept that the callous restriction of this policy penalises children by putting a further 300,000 of them into poverty by 2022? Is that government policy?

Baroness Buscombe: My Lords, the Government are looking at this policy at the moment, as I have already said. We do not believe we are being callous. The Government's view is that providing support for a maximum of two children in universal credit and child tax credit will ensure fairness between claimants on the one hand and, on the other hand, those taxpayers who support themselves solely through work.

Lord Mackay of Clashfern (Con): My Lords, I had understood when this matter was discussed that the theory underlying the proposal was that those who by their own choice landed themselves with more than two children had to support the extra children with whom they had landed themselves. However, the case that we have just been talking about is not that; there was at the very least a moral obligation for that lady to take her siblings. It would therefore be right to say that it is not in accordance with the principle underlying the proposal that this case should be treated as it apparently has been so far. I hope the Government will reconsider it.

Baroness Buscombe: I thank my noble and learned friend for his question.

Lord Foulkes of Cumnock (Lab): Reconsider it.

Baroness Buscombe: I have to say that we have already said that we have responded with enormous sympathy to this. The policy is currently under review, but it should also be made clear that the Government have assessed the impact of the policy from an equality and human rights perspective throughout its development and in its implementation, thus meeting our obligations under the public sector equality duty and ensuring compliance with human rights and other international obligations.

The Lord Bishop of Carlisle: My Lords, the Government have chosen to pursue a deficit-reduction strategy by opting for a fiscally cautious welfare policy. However, has the Minister considered that some British families are larger for reasons of faith or principle? Speaking on behalf of people of all faiths in this country, my question is: what plans does the Minister have for ensuring that such families and children are not discriminated against by the policy?

Baroness Buscombe: My Lords, as I have already said, there is nothing to stop anyone having a large family. There is total freedom of choice to have a large family. However, the Government's view is that we have to be fair between those claimants on the one hand and, on the other hand, those taxpayers who support their own children solely through work.

Baroness Hayman (CB): My Lords, will the Minister take the temperature of the House on this issue and listen with great care to the words of the noble and learned Lord, Lord Mackay of Clashfern? Can she really defend the Government's view that this policy, which is a technical misinterpretation of the will of the House and Parliament when it put these provisions in, can possibly be, as she says, fair and in the interests of equality for the children in this or any other family in these very unusual and, I suspect, not very expensive situations?

Baroness Buscombe: Given her long experience and expertise in this House, the noble Baroness will understand that, as a Lords Minister, my position is somewhat constrained. As I said, my honourable friend in another place is very aware of this case, and this policy is being considered as we speak.

Baroness Drake (Lab): Will the Government honour their promise to this House on 27 January 2016 that children in kinship care should be exempt from the two-child limit on benefits and tax credits? The limit is intended to deter people from having more than two children where they cannot afford them, not to deter or punish kinship carers who take on the care of vulnerable children who might otherwise go into care. That distinction was accepted by the Government. Will they please now implement the commitment that they gave to this House on 27 January 2016, quite explicitly and without reservation?

Baroness Buscombe: My Lords, I ought to make it clear that, as the noble Baroness will be aware, there is no punishment. If a family has already had two children of their own, there is nothing to stop them taking on other children as kinship carers. In that case, those children will be exemptions to this rule.

Foreign and Commonwealth Office: Ministerial Guidance

Question

3.01 pm

Asked by ***Lord Soley***

To ask Her Majesty's Government what guidance is given to Ministers in the Foreign and Commonwealth Office concerning the diplomatic skills required for the performance of their duties.

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, all Ministers are bound by the Ministerial Code, which sets out the standards of conduct expected of Ministers in how they discharge their duties. The Foreign and Commonwealth Office does not provide any specific additional guidance. The Permanent Secretary is responsible for discussions with Ministers about what is expected under the umbrella of the Ministerial Code, and for advising them on routine day-to-day issues as they arise.

Lord Soley (Lab): Is the Minister aware of the immense damage being done to Britain's reputation abroad, and to the rights of British citizens abroad, by the tendency of the present Foreign Secretary, Boris Johnson, to speak first and think afterwards? Can he and his colleagues in government please convey to him that he needs to reverse that process, because he has a bad reputation for it both in this country and overseas, and it is damaging Britain's relationships and damaging individuals?

Lord Ahmad of Wimbledon: My right honourable friend the Foreign Secretary, as I am sure that many in this House acknowledge, represents our country and the Foreign Office in exemplary fashion, and this weekend's example is testimony to that. Over the past week, he has raised some important issues of counterterrorism and countering violent extremism. This again demonstrates the importance that he attaches to representing the Government abroad, as do I in my responsibilities as a Minister of State who serves with him on that team. I have seen him in operation directly as a Minister within his team; he operates with a strategic outlook and in a very positive fashion.

Viscount Hailsham (Con): Does my noble friend agree that, however accomplished the Foreign Secretary may be, the influence of the United Kingdom will be reduced if we are generally seen as the demandeur in negotiations rather than a leading voice in a settled group?

Lord Ahmad of Wimbledon: My Lords, I think Britain is recognised as a country that provides balance and leadership through various international fora. Let us not forget that we are a P5 member on the UN Security Council. My noble friend will be aware that the Commonwealth summit and Commonwealth Heads of Government Meeting is around the corner in April. Again, the United Kingdom is honoured to be hosting it and working with the Commonwealth Secretariat to set the agenda for what will be a positive example of global Britain in action.

Lord Collins of Highbury (Lab): My Lords, an issue of concern—to me and I think many noble Lords—has been the capacity of the Foreign and Commonwealth Office to deliver on behalf of this United Kingdom with the necessary tools to do the job; the noble Viscount referred to that. It is an important issue that the Minister needs to address. Only last week, when we were discussing President Trump's decision on Jerusalem, the Foreign Secretary made a speech in which our concern was to be included but that section was omitted. That is not a matter of capacity; it is clearly a matter of design. Will the Minister explain why such an important position of the United Kingdom was ignored by the Foreign Secretary?

Lord Ahmad of Wimbledon: My Lords, I draw attention not to myself but, in looking to my right and around this Chamber, I am sure that all noble Lords would acknowledge the tremendous service to this Government that my predecessors have given as Ministers of State in the Foreign Office. My noble friends Lord Howell, Lady Warsi and Lady Anelay are examples of how the voice of the Foreign Office is heard not just in this House but across—oh! The noble Baroness, Lady Chakrabarti, is perhaps casting aspersions on my performance; that remains to be seen.

The noble Lord raises an important point about international issues. I draw his attention and that of my noble friend to the statement given by Ambassador Rycroft at the United Nations, where we stood side by side with other European nations to make clear our position on the issue of east Jerusalem. I understand that that question was raised here. We remain consistent with all Governments in saying that we need a two-state solution where the capital of Jerusalem is shared by both states. That point has been made consistently by all Governments of all sides. We should focus on challenges facing the Foreign Office such as retaining the nuclear deal with Iran. The Foreign Secretary has led the way in ensuring that balance, communication and contact is retained on an international front on that very important issue.

Lord Wallace of Saltaire (LD): My Lords, the Israeli press comment on the recent visit was rather critical, and I have seen many other critical comments on the Foreign Secretary's performance in other foreign media over the last year. Can the Minister try to redress the balance by telling us about the Foreign Secretary's close, mutually confident relationships with any particular senior Ministers of foreign Governments?

Lord Ahmad of Wimbledon: If I started talking about the Foreign Secretary's close and constructive relationships—there are many I could name—I fear it would take us beyond the 30-minute limit. We shall be coming to the subject later, but I can say briefly that the Foreign Secretary has just returned from a very important and constructive visit to Iran and the Middle East, where I am sure noble Lords will agree that we have important relationships. He is leading from the front in ensuring that those relationships are not just sustained but strengthened.

Lord Kirkhope of Harrogate (Con): Does my noble friend agree, in answer to the Question of the noble Lord, Lord Soley, that diplomacy does not require guidance or any teaching at all? We have been fortunate in this country to have had many interesting individuals who have carried out the role of Foreign Secretary over centuries. Not all of them have been straitjacketed by guidance or anything coming from an official level.

[Lord Kirkhope of Harrogate]
Surely my noble friend agrees that the only way in which we can judge the success of diplomacy is whether it serves the best interests at any time of this country.

Lord Ahmad of Wimbledon: I agree with my noble friend and add that in the role of Foreign Secretary, any Foreign Office Minister—or, for that matter, any Minister—personality also counts.

Combined Authorities (Mayoral Elections) (Amendment) Order 2017

Local Authorities (Mayoral Elections) (England and Wales) (Amendment) Regulations 2017

Motions to Approve

3.08 pm

Moved by ***Lord Young of Cookham***

That the draft Order and Regulations laid before the House on 13 November be approved.

Considered in Grand Committee on 6 December

Motions agreed.

Pharmacy (Preparation and Dispensing Errors—Registered Pharmacies) Order 2018

Motion to Approve

3.09 pm

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

That the draft Order laid before the House on 13 November be approved.

Relevant documents: 11th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 6 December.

Motion agreed.

Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2017

Motion to Approve

3.09 pm

Moved by ***Lord Bourne of Aberystwyth***

That the draft Regulations laid before the House on 1 November be approved.

Considered in Grand Committee on 6 December

Motion agreed.

Electronic Communications Code (Jurisdiction) Regulations 2017

Communications Act 2003 and the Digital Economy Act 2017 (Consequential Amendments to Primary Legislation) Regulations 2017

Motions to Approve

3.09 pm

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

That the draft Regulations laid before the House on 1 November be approved.

Considered in Grand Committee on 6 December

Motions agreed.

Data Protection Bill [HL]

Report (1st Day)

3.10 pm

Relevant documents: 6th and 9th Reports from the Delegated Powers Committee

Amendment 1

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

1: After Clause 1, insert the following new Clause—

"Protection of personal data

(1) The GDPR, the applied GDPR and this Act protect individuals with regard to the processing of personal data, in particular by—

(a) requiring personal data to be processed lawfully, on the basis of the data subject's consent or another specified basis,

(b) conferring rights on the data subject to obtain information about the processing of personal data, and

(c) conferring functions on the Commissioner, giving the holder of that office responsibility for monitoring and enforcing their provisions.

(2) When carrying out functions under the GDPR, the applied GDPR and this Act, the Commissioner must have regard to the importance of securing an appropriate level of protection for personal data, taking account of the interests of data subjects, controllers and others and matters of general public interest."

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, it is with some degree of anticipation that I open the debate on the first day of Report on this Bill with amendments relating to the EU Charter of Fundamental Rights. While we have, in the great tradition of this House, managed to discuss and settle many of our differences over recent weeks while debating this legislation, it was this topic, concerning the charter, where we first found ourselves at odds, really since arguments at the other end of the Palace were sent here to tease us.

Since we last considered this matter, the European Union (Withdrawal) Bill has been making progress in the other place. On 21 November, there was an extensive debate on the future of the charter. My honourable friend the Minister of State for Justice and my honourable friend the Solicitor-General explained at length that the charter is not the original source of the rights contained within it; it was only intended to catalogue rights that already existed in EU law. Those rights, codified by the charter, came from a wide variety of sources, including the treaties, EU legislation and, indeed, case law, which recognised fundamental rights as general principles. All those substantive rights, of which the charter is a reflection not the source, will already be protected in domestic law by the European Union (Withdrawal) Bill. It is not necessary to retain the charter in order to protect such substantive rights.

Last week, on 5 December, the Government published a detailed memorandum setting out how each article of the charter will be reflected in UK law after we leave. That document explains in detail how the right to data protection is already reflected in our law. The Government are well aware of the economic benefit of ensuring that, once we have left the EU, we preserve the free flow of personal data with our main trading partners. Indeed, that is one of the guiding principles that underpins this legislation. On 7 August, when we published our statement of intent before we introduced this Bill, we set that out clearly, and we have repeated this time and again. Every amendment that noble Lords have proposed to this Bill has to be considered against that key test. Will it support or will it harm our arguments that we have wholly implemented the necessary data protection reforms to support the free flow of personal data?

There is no doubt in our minds that we have fully implemented the right to data protection in our law. No one has convincingly put forward any counter argument. None the less, our Amendment 1 is designed to provide additional reassurance on this point. Not only will it be clear in the substance of the legislation and all of the statements and announcements around the legislation; it will also be written into the Bill. This Bill exists to protect individuals with regard to the processing of personal data. Personal data must be processed lawfully. Individuals have rights, and the Information Commissioner will enforce those. The Bill does what it says on the tin.

3.15 pm

The Government's Amendment 1 does not confer new rights. We already have them. However, Amendment 1 should provide reassurance to noble Lords, as well as those beyond who will judge whether we have appropriate protections in place, that the UK has not just implemented EU law to the extent necessary but has gone further in legislating for a complete and total legal framework that covers all personal data processing across every sector of our economy.

I should say at the outset that, while I cannot agree to the noble Lord's amendment, we have made significant progress in recent weeks through our discussions. I will reply to the noble Lord, Lord Stevenson, after he has spoken to his amendment, but I commit to continuing discussions after today and we may return to this at Third Reading. I beg to move.

Lord Stevenson of Balmacara (Lab): My Lords, I thank the Minister for moving his amendment and for his concluding remarks, which I will return to. I welcome this amendment, and the implication it carries that the Government have listened to the discussions we have had in the last few weeks and have moved from their initial position.

I will speak to Amendment 2, which I am delighted has also been signed by the noble Baroness, Lady Ludford. I am sure that your Lordships' House will recognise that, in bringing forward a revised draft, we have reflected very deeply on the points made by noble and noble and learned Lords in the debate on the original amendment moved in Committee. In addition to noble Lords who spoke on that occasion, I thank the academic and practising lawyers—as well as many in industry—who have contributed to our emerging thinking on this topic. Before it was submitted to the gruelling process that happens to all amendments when they go to the Public Bill Office, I sent an earlier draft of this amendment to many Members of this House who spoke in that earlier debate. I am grateful for the comments I have received.

It is unusual to have two amendments bearing on very similar points. It is an advantage to be able to see the conflicting, and often overlapping, thinking that has gone into this. It is clear to all who have read both and thought about them that, while we are not yet in full agreement, we are very close. Indeed, I venture to suggest that there is more that unites us on this issue than divides us. What do we agree on? We both recognise that the key data protection rights currently enjoyed by citizens in the UK crucially underpin any assessment of adequacy that might need to be made by the EU post Brexit. They are crucial for the future of our successful data-handling industry. We both want the key data protection rights currently enjoyed by citizens in the UK to continue once the Bill becomes law, while the GDPR is in force, and then after Brexit—if that happens. We agree that the key question to be determined is not the exact wording of one or other but whether it is necessary for these key rights, currently enjoyed by UK citizens through Article 8 of the EU Charter of Fundamental Rights, to be expressed clearly for all to see on the face of the Bill, or whether their existence in various parts of the Bill—and in the GDPR and its recitals—is sufficient.

By putting down their own amendment on this issue, the Government seem to agree that explicit references in the Bill will be helpful, for the reasons given above. We now need to get together to find a form of words which will achieve this aim and which we can both support. I therefore agree with the noble Lord that the right thing to do is for both sides to withdraw their amendments on this issue today and for the Minister to confirm—as he has done—that the matter is of sufficient importance to be brought back for further consideration at Third Reading. If he will agree to that, I will not move my amendment when it is called.

Baroness Ludford (LD): My Lords, I also welcome the fact that we are in touching distance of an agreement on this matter. I thank the Minister for bringing

[Baroness Ludford]
forward Amendment 1. However, there is a little way to go. Amendment 1 is declaratory of what is contained in the Bill, whereas Amendment 2 is rather stronger and clearer.

Embedding a general right to data protection inspired by the Charter of Fundamental Rights is not only important for UK citizens but, as we have agreed in many debates and exchanges in this House, it is crucial for unhindered data flows between the UK and the European Union if we Brexit. It is absolutely crucial for business and law enforcement to be able to exchange data and have access to EU databases, such as the Schengen Information System, Europol and so on. The Government's review of the charter, which was also most welcome and was produced last week, says that,

"domestic courts will be required to interpret retained EU law consistently with the general principle reflected in Article 8, so far as it is possible to do so".

Is the Minister able to elucidate what that caveat leaves out? What would not be possible?

In the Watson case, to which the Brexit Secretary was a party until he became the Brexit Secretary, the European Court of Justice found that the current UK data protection regime in relation to data retention and acquisition was incompatible with Article 8 of the charter. This demonstrated the deep importance that the European Union places on charter rights in the protection of privacy. The draft resolution that the European Parliament is due to debate and vote on this Wednesday, on the joint report on the phase 1 divorce agreement that was reached last Friday,

"underlines that it will accept a framework for the future EU-UK relationship as part of the Withdrawal Agreement only if it is in strict concordance with the following principles",

including the,

"United Kingdom's adherence to the standards provided by international obligations, including fundamental rights … data protection and privacy".

So we can expect this to be a very important matter, on which there will be a spotlight in the consideration of an adequacy assessment by the European Commission, which I think we all agree it is essential to achieve.

As I said in Committee, the adequacy assessment will be wide-ranging, taking in all aspects of law and practice in the United Kingdom. Of course, this will include the law and practice in terms of national security, which at the moment—rather ironically, or perversely—are excluded under the EU treaties. Once we are outside—if we are—there will be closer examination of how privacy fares in relation to the demands of national security than there is while we are in the EU. In that context, the national security issues in the Bill, which will be further debated as well, will perhaps take on a heightened importance.

On these Benches we believe that the rights under the charter in relation to data protection should be reflected in the Bill so as to have a general right to the protection of personal data in UK law. I very much agree with the course advocated by the noble Lord, Lord Stevenson, to reflect further and to accept the Government's offer to come forward at Third Reading with something that we could all agree on.

Lord Pannick (CB): My Lords, the Minister said that Amendment 1 is designed to provide reassurance that existing EU law rights are fully protected under the Bill. I, too, welcome the Minister's assurance that further work will be done on this amendment prior to Third Reading. I will suggest four points that need to be considered and included in this amendment.

First, subsection (1)(a) of the proposed new clause refers to the need for data "to be processed lawfully", but it does not refer to the obligation under Article 8.2 of the charter for data also to be processed fairly. That needs to be included.

Secondly, Amendment 1 does not refer, in subsection (1)(b), to the right to have personal data rectified. Again, that right is conferred by Article 8.2 of the charter.

Thirdly, the government amendment uses weak language in subsection (2), which says that,

"the Commissioner must have regard to",

and uses "taking account of". The Minister will know that Article 52 imposes a much tougher standard for limitations. It is a test of necessity, which is echoed in Amendment 2 in subsection (6).

Fourthly, government Amendment 1 makes no mention of the principal of proportionality. Again, that is an important element of Article 52.1 of the Charter, which, again, is mentioned in Amendment 2.

If the objective of the government amendment is to echo the rights that are currently enjoyed under the charter, these issues need to be further considered and, I hope, can be included in the redrafted Amendment 1 that the Government will bring forward at Third Reading.

Lord Faulks (Con): My Lords, I do not wish in any way to spoil the degree of harmony that appears to have grown up over these issues in Amendments 1 and 2. When I looked at both amendments, I was not convinced of the need for either. If, as the Minister rightly says, Amendment 1 does not create any new rights, given that we have a Bill of 242 pages with a number of complex provisions, it seems surprising that we need to restate the principles. Of course, if we restate them, we run into the danger of attracting the attention of the noble Lord, Lord Pannick, who can say, "If you're going to restate the principles, you may restate them rather better". Surely it is much more desirable to specify precisely what the Bill is intended to do in those bespoke provisions rather than resort to generality, which inevitably has imprecision.

On Amendment 2, I am not a great fan of the European Charter of Fundamental Rights. The position of the party opposite when it was first advanced was entirely correct: it should not add rights to any protection that already exists in our law. On this so-called right to protection of personal data, if an amendment is to be introduced at this rather late stage of the proceedings, surely the first question is: does it add clarity to the Bill? It does not. Does it provide better protection, doing something that is otherwise not covered by the Bill but ought to be? If that is the case, let us by all means have an appropriate amendment. Why does it not provide clarity? These provisions must ultimately

be interpreted by a court, as is recognised by proposed new subsection (7) in Amendment 2, which invites the court to,

"take into account any relevant judgment, decision, declaration or advisory opinion of the … Court of Justice of the European Union; and … European Court of Human Rights".

Interestingly, the word "must" is used rather than "may", which is the way that Section 2 of the Human Rights Act invites courts to have regard to the jurisprudence of the Strasbourg court. So a court is going to have to try to make sense of the relevant decision judgment of the Court of Justice of the European Union or the European Court of Human Rights. The ECHR does not have quite the same system of precedent that we have, and courts have often found it difficult to distil from the jurisprudence precisely what they should or should not be following. What if there were a difference between the interpretation of the Court of Justice of the European Union and the ECHR? That would provide further difficulties for a court.

3.30 pm

The noble Baroness, Lady Ludford, posed the question: what does "so far as it is possible to do" mean? The Minister will be invited to respond to that but presumably it means in so far as it is not inconsistent with the specific legislative provisions contained in the Bill—I do not know; the Minister may have a better answer than that. However, it seems to me that by invoking broad generalisations there is almost an admission that the Bill is not doing the proper job. It may satisfy a number of people's understandable concerns about somehow striking the right balance between protecting personal data and allowing free access to data that is appropriate, but inserting, rather at the last minute, two general provisions of this sort does not seem to me to be making good law.

Lord McNally (LD): My Lords, I follow with some trepidation my successor at the Ministry of Justice, the noble Lord, Lord Faulks. I do so because, for the three years before he took up his office, I was the Minister of State at the Ministry of Justice who had responsibility for the negotiations around the GDPR in its early stages. It is interesting that this debate reflects very much the early gestation of the GDPR. At that point, there was a very clear division between what I would describe as the Anglo-Saxon approach—which the noble Lord, Lord Faulks, has expounded—and the continental approach. I suspect that is something that has bedevilled our approach to law-making in the EU over 40 years.

The truth of the Anglo-Saxon approach is this: of course we believe in these things, and if we look here, there and everywhere we will find that they are all covered; but hold that against points made by people who have only very recently experienced the power of the state and its abuse of the law by the Stasi and others. They want a much clearer definition that can be clearly observed. Thanks mainly to the hard work of my noble friend Lady Ludford in the European Parliament, we got a GDPR that was not overprescriptive in that direction but satisfied those very real concerns. We are at the same point again in this Bill.

Of course the noble Lord, Lord Faulks, is undoubtedly right about the various guarantees found in this and other legislation, but the politician in me says that if we are to get the adequacy we want in due course, we must not—to use a phrase of an old mentor of mine, Joe Gormley—build platforms for malcontents to stand on. We must not leave in everybody's mind the question of why they did not want this in the Bill, when it is such a clear statement of their beliefs and our beliefs.

To revert to my old job as a political adviser, my advice to the Minister is this. In doing what he has been asked to do—to withdraw the amendment—he should work with the amendment tabled by the Opposition and bring through at Third Reading something that will cover our Anglo-Saxon desire to see these things in law but also reassure in a very political way those who have genuine concerns and want to see us carry out and stand by these responsibilities.

Lord Mackay of Clashfern (Con): My Lords, I find this situation slightly difficult because it looks to me as though what is wanted is to say that there is something in the charter that is not already in the Bill; otherwise it does not seem very much to the point. If it is already in the Bill, the two proposed new clauses—which are not intended to be additional but optional—are unnecessary. If it is not in the Bill, surely we should put it in the Bill and not leave it. I do not know whether I am Anglo-Saxon, Celtic or what, but I do not distinguish between these various matters. As for being political, I am not sure that I want to be that either.

I want the Bill to be as precise as it can be in a difficult area. Both the government amendment and the opposition amendment strike me as vague. I will say a few words about the opposition amendment because the government amendment, as the Minister says, is not intended to confer any new rights. That is a clear situation. Proposed new subsection (5) of the opposition amendment states:

"Restrictions on the rights of a data subject and any limitation on the exercise of the right to the protection of personal data under this section must be provided for by legislation".

I would like to see it stopping there. I do not see how you can start to judge the legislation that has already been passed by considering whether it respects the essence of that right. If it does not, it should not have been passed as legislation.

Proposed new subsection (6) has the same effect. It states:

"Subject to the principle of proportionality, the restrictions and limitations under subsection (5)"—

these are restrictions brought in by statute, according to subsection (5)—

"may be made only if they are necessary to support a democratic society",

and so on. I think I know where that comes from. The point is that if that is right, it should not be in the legislation. This is a requirement about the nature of the legislation which, on the theory of proposed new subsection (5), has already been passed.

It is not appropriate for the Bill to try to control legislation which, according to this, does not seem to have been passed, unless it is already in this Bill, in which case we should accept it.

Lord Ashton of Hyde: My Lords, I turn first to the amendment of the noble Lord, Lord Stevenson. During the course of the Bill I met the noble Lord frequently, both formally and informally. When I met him two weeks ago he told me that he was working on his Amendment 2 and he had a look of foreboding about him. He said, "Wish me luck". I had sympathy with his position—I almost felt sorry for him—because this is a legally and constitutionally complex area. Amendment 2 reads well—it sounds attractive and has seductive packaging—but when taken out of that packaging and slotted into this Bill it is not only ineffective but damaging. It is rather like pouring diesel into a petrol engine.

The amendment makes great play of creating a new and freestanding right. Unlike the government version it is not framed within the context of the Bill. It is a wider right. Indeed, it is far wider even than article 8 of the charter. It is not constrained to the context of EU law but applies to everything. It is attractive, perhaps, but it is seriously problematic.

How is the court to interpret this new right? If this was in the context of the Human Rights Act, there is a framework within which to operate, so if a court finds primary legislation to be incompatible with a convention right, it will make a declaration of incompatibility. The Human Rights Act sets out the effect of that finding on the validity, continuing operation and enforcement of the legislation. This simply would not exist if we were to agree Amendment 2, so the consequences of any finding would be unclear. That could create legal, regulatory and economic chaos.

How would data controllers operate if they could not tell whether the apparently incompatible legislation they were operating under was still effective or not and there was no mechanism to fill any gap? What if the courts found parts of the GDPR incompatible with this new super-right? Rather than enabling the free flow of data we could be crippling it. Further, how would the courts approach other legislation in light of this new right and how would they approach other rights? Could this new right be balanced against other rights, and if so, would it carry additional weight?

Apart from these legal problems, in our view Amendment 2 is simply unnecessary. The general principles of EU law will be retained when we leave the EU by the European Union (Withdrawal) Bill for the purposes of interpretation of retained EU law. The GDPR will be retained. Indeed, this Bill firmly entrenches it in our law. The right to protection of personal information is a general principle of EU law and has been recognised as such since the 1960s. The European Union (Withdrawal) Bill requires our courts to interpret the GDPR consistently with the general principle reflected in article 8, and with retained CJEU case law so far as it is possible to do so. In that context, the jurisprudence of the CJEU will continue to have influence in much the same way as the judgment of a court in Australia might have an influence on how common legal principles should be applied.

The amendment also refers to the status of judgments of the European Court of Human Rights. This is completely unnecessary and unwelcome. Section 2 of the Human Rights Act already requires our courts to take into account relevant judgments of the Strasbourg court. If we write this here, where else must we write it? We do not want to cast doubt on our absolute and total respect for human rights on any issue, not just data protection. The Government have reaffirmed and renewed our commitment to human rights law. It is reflected through UK national law as well as in a range of domestic legislation that implements our specific obligations under UN and other international treaties, from the convention against torture to the Convention on the Rights of the Child. Of course, the principal international treaty most relevant to the UK's human rights laws is the European Convention on Human Rights. I am happy to repeat the commitment made by my fellow Ministers in recent months that the Government are committed to respecting and remaining a party to the ECHR. There will be no weakening of our human rights protections because we are leaving the EU.

All of these issues interlink. Article 6 of the Treaty on European Union makes clear that due regard must be had to the explanations of the charter when interpreting and applying it. The explanations for article 8 of the charter confirm that the right to data protection is based on the right to respect for private life in article 8 of the ECHR. The European Court of Human Rights has confirmed that article 8 of the ECHR encompasses personal data protection.

It is easy to conclude that we are spiralling in circles on this matter, and in a sense, we are. We believe that there is simply no problem here of any substance. The right to data protection is fully implemented in our law and it is fully enforceable. Government Amendment 1 makes it clear that this is the case. While Amendment 2 seeks to do the same it trips and falls, creating confusion rather than the clarity the noble Lord is after. So I hope that he will feel able to withdraw his amendment. I wish to press government Amendment 1. As the noble Lord, Lord Pannick, said, we are seeking to provide reassurance. I said at the beginning that we would remain open for discussions on this, and if we can provide any further reassurance, taking into account some of the four points made by the noble Lord, Lord Pannick, we will do so.

The noble Baroness, Lady Ludford, gave a long explanation of why adequacy is important and some of the extra issues that will be taken into account when we have to approach an adequacy decision from the EU, including for example areas of law which at the moment are not susceptible to EU jurisdiction, such as national security. I agree completely that that will be taken into account when we go for an adequacy arrangement. That is exactly why we have tried to apply the GDPR principles to all our laws, so that we have a complete and systematic data protection regime. On that basis, I accept the four questions asked by the noble Lord, Lord Pannick. We will consider those issues in the discussions.

3.45 pm

Baroness Ludford: I thank the Minister for his response. I was glad that he addressed the question of an adequacy assessment at the end of his remarks, but with respect, it is not enough—or adequate—to address an adequacy assessment only at the point of asking

for it. We must lay the foundations now. I cannot see the point in storing up potential problems when we could solve the problem of the basis. We ought to do everything in that prism. We can have delightful legal discussions—it is important to get the law right—but this is also crucial to business. We have had so many representations on that point. I am sure that the Minister's colleague, the Secretary of State for Digital, Culture, Media and Sport, is preoccupied with this question. Surely we need to front-load our response? We cannot wait until the UK applies for an adequacy assessment to be told, "Well, it's a pity that you didn't enshrine the principles and the essence of article 8 of the charter". We have a chance to do that now and ensure a solid platform for requesting an adequacy assessment. I admit that I am puzzled as to why the Government would not want to do that; it is important for law enforcement as well. Why would we not want to solve that problem now, instead of finding later that we have entirely predictable problems as a result of not doing so?

Lord Ashton of Hyde: I completely agree with the noble Baroness. We have applied the GDPR principles to areas such as defence, national security and the intelligence services in different parts of the Bill so that when we seek an adequacy arrangement, we can say to the EU that we have arranged a comprehensive data protection regime that takes all the GDPR principles into account, including areas that are not subject to EU law. That is why, contrary to what we said in Committee, we have taken the arguments on board and tabled government Amendment 1 to provide reassurance on that exact point. We originally said that the rights under article 8 were contained in the Bill, but we are now putting further reassurance in the Bill. Other areas of the Bill, without direct effect, signpost how the Bill should be regarded.

The noble Baroness supports the amendment but would like, I think, to create a free-standing right. I have explained why we do not agree with that. Before Third Reading, we will try to seek a form of words in our amendment that provides more reassurance, so that when it comes to seeking an adequacy decision—we cannot do that until we leave the EU—there will be no doubt about what this regime provides. That would be the best way to do it, I think.

Lord Pannick: Does the Minister also agree that a further answer to the points made by the noble Lord, Lord Faulks, and the noble and learned Lord, Lord Mackay of Clashfern, is that it is absolutely inevitable that the detailed provisions of the Bill will be, on occasion, the subject of dispute, uncertainty and litigation, and that it would be very helpful to have a statement of principle on what is intended at the commencement of the Bill? This would not be the first time that a Bill has done that. Everybody would then know what the principles were. Of course, the Minister still needs to consider before Third Reading what that statement should be, but that is the point, as I understand it, of government Amendment 1.

Lord McNally: Why does the Minister feel it so necessary to push ahead with his amendment when it is quite clear that the best and most constructive way forward would be for both amendments not to be pressed to allow constructive discussion and resolution at Third Reading?

Lord Ashton of Hyde: Government Amendment 1 provides a basis for the discussion that we will have before Third Reading. Of course, I accept that it could be amended at that stage.

As for the remarks of the noble Lord, Lord Pannick, I will have to read my noble friend Lord Faulks's words. I was not entirely sure that he was as supportive as the noble Lord feels, but I may have misinterpreted him.

Lord Faulks: My Lords—

Lord Pannick: As I understand them, both the noble Lord, Lord Faulks, and the noble and learned Lord, Lord Mackay, doubt the need for any amendments of this sort. I am suggesting to the Minister that there is a real need for a statement of principle—that is all.

Lord Ashton of Hyde: I thank the noble Lord. As I said in Committee, we too saw no need for this. The Government have moved because they are always listening and we hope that we can make this more acceptable. I will read what was said by the noble Lords, Lord Pannick and Lord McNally, and my noble friend Lord Faulks, but I would like to press my amendment so that we might have it as a basis for further discussion before Third Reading.

Lord Stevenson of Balmacara: My Lords, the Minister has received quite a lot of comment from around the Chamber on this and I made it clear in my opening remarks that I though the best solution was to have neither amendment. If we are to have a genuine discussion, it does not seem helpful to have in the Bill the wording which the Minister has alighted on at this stage in his conversion. It would be much better to start with a blank sheet and try to work to a common solution. I beg him to reconsider his view and withdraw his amendment; I will not press mine. We could then move to Third Reading with a clean slate.

Lord Ashton of Hyde: My Lords, I understand what the noble Lord is saying. This amendment has been around the houses in government; it has had many people from many departments looking at it from top to bottom. The feeling of the Government at the moment is that it is better to have something on paper as a basis for discussion. I would like to press my amendment.

3.52 pm

Division on Amendment 1

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Low of Dalston, L.
Ludford, B.
Macdonald of River Glaven, L.
MacKenzie of Culkein, L.
Maclennan of Rogart, L.
Masham of Ilton, B.
McAvoy, L. [Teller]
McDonagh, B.
McIntosh of Hudnall, B.
McKenzie of Luton, L.
McNally, L.
Monks, L.
Morgan of Huyton, B.
Morris of Aberavon, L.
Morris of Handsworth, L.
Murphy of Torfaen, L.
Newby, L.
Northover, B.
Ouseley, L.
Palmer of Childs Hill, L.
Pannick, L.
Pendry, L.
Pinnock, B.
Pitkeathley, B.
Prashar, B.
Prescott, L.
Puttnam, L.
Quin, B.
Radice, L.
Ramsay of Cartvale, B.
Randerson, B.
Rosser, L.
Rowe-Beddoe, L.
Scott of Needham Market, B.
Sheehan, B.
Sherlock, B.
Shipley, L.
Simon, V.
Slim, V.
Smith of Basildon, B.
Smith of Finsbury, L.
Smith of Gilmorehill, B.
Soley, L.
Stevenson of Balmacara, L.
Stoneham of Droxford, L.
Taverne, L.
Taylor of Bolton, B.
Taylor of Goss Moor, L.
Teverson, L.
Thornton, B.
Tomlinson, L.
Tonge, B.
Touhig, L.
Tunnicliffe, L. [Teller]
Wallace of Saltaire, L.
Warwick of Undercliffe, B.
Watkins of Tavistock, B.
Watts, L.
West of Spithead, L.
Wheeler, B.
Williams of Elvel, L.
Woolmer of Leeds, L.
Wrigglesworth, L.
Young of Old Scone, B.

4.07 pm

Amendment 2 not moved.

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

Amendment 3

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

3: Clause 6, page 4, leave out line 34

Baroness Chisholm of Owlpen (Con): My Lords, I am pleased to be moving the Government's technical amendments this evening, and, in particular, Amendments 3, 4 and 5 which respond to the concerns raised by the noble Baroness, Lady Royall, and others on behalf of the UK's universities, schools and colleges. They were worried that the Bill would restrict their ability to process the data of alumni for fundraising purposes. As the noble Baroness explained in Committee, universities, schools and colleges were concerned that being badged as public authorities by Clause 6 would mean they could not rely on the legitimate interests processing condition in article 6(1)(f). This is because the final sentence of article 6(1) states:

"Point (f) … shall not apply to processing carried out by public authorities in the performance of their tasks".

Universities also doubted whether, in the context of alumni relations, they could rely on article 6(1)(e) of the GDPR which relates to processing necessary for the performance of a task carried out in the public interest. Although there is a good argument that any fundraising or similar activity which allows universities to improve facilities for students would be considered a "public interest" task, the Government can see why universities might doubt whether all their fundraising work would fall into that category. If universities could not rely on articles 6(1)(e) or 6(1)(f), they say they would be left without an obvious processing condition in situations where obtaining the data subject's consent, at least in the GDPR sense of that term, was not a realistic option.

Government Amendments 3, 4 and 5 address these concerns by making it clear that public authorities will be treated as public authorities for data protection purposes only when they are carrying out their public tasks. To the extent that they carry out non-public tasks, they would not be defined as a public authority for the purposes of the GDPR and would not be prevented from relying on the legitimate interests processing condition.

We recognise the amendment does not refer to universities, schools or colleges by name. This is deliberate, meaning that any public authority which is processing data for non-public functions will be able to rely on this provision. The education sector is not the only one to have these worries. I know, for example, that our museums and galleries would welcome the same degree of flexibility, and this amendment will ensure they have it. I am grateful to the noble Baroness for raising this matter and I hope these amendments will provide universities and other similar organisations with the reassurance they need.

I will not go through the remaining amendments in the group one by one, but instead pick out a few which I think may be of broader interest—for example, Amendments 145 and 146. In Committee, my noble friend Lord Hunt of Wirral was among those to express concerns about the inclusion of the term "other adverse effects" in the definition of damage in Clause 159. He asked whether this was broader than the definition in the GDPR. As I set out then, the Government's intention in including a definition of damage in Clause 159 was to provide clarity, specifically in relation to the inclusion of distress. Clause 159 does not seek to provide a wider definition of damage than is currently provided in the GDPR; nor indeed could it.

None the less, in light of the concerns expressed by my noble friend, the Government have reconsidered this issue and decided to amend the definition to ensure that it is as clear as possible and to minimise the risk of any uncertainty such as that which concerned noble Lords. The amended definition now simply states that the reference to "non-material damage" in the GDPR includes distress. The definition of damage for the purposes of the law enforcement and intelligence services regimes is set out separately in Clause 160. Amendment 146 makes a similar change to that definition so that it is as clear as possible and no longer refers to "other adverse effects". I beg to move.

Lord Patel (CB): My Lords, I will comment on Amendments 3, 4 and 5. The Minister and the noble Baroness may well feel that I do not give up, and I agree: I do not. I of course understand clearly what the Government are trying to do with the amendment from the noble Baroness, Lady Royall of Blaisdon—that they have agreed to get that into the Bill. It is helpful to know that public bodies need to be defined as such when they are processing data for tasks that are not defined as tasks in the public interest. This opens up the possibility of their instead using legitimate interests as a legal basis under some circumstances: for example, as has already been mentioned for universities, contacting alumni for fundraising purposes.

My point is different: universities and their research activities and how that is recognised, which we discussed. Here, it is more pressing to be clear on what counts as a task in the public interest, since public bodies will need to determine which legal basis is appropriate to the processing they are undertaking in different circumstances. For example, is research conducted in universities a task in the public interest, in which case the university would be considered as a public body for the purposes of the Bill, or is it not? In the latter case the university is not a public body for research purposes, and the research is therefore conducted on the legal basis of legitimate interest.

These differences matter, particularly as the GDPR requires data controllers to be clear on the legal basis they are using. How are public bodies such as universities to make this determination? The clearest answer would be, as I indicated in Committee, that the ICO gives guidance. I understand that the Government cannot direct the ICO to give guidance, so a way needs to be found to clarify which tasks fall under the public

[LORD PATEL]
interest basis, specifically using the example of university research to provide that clarity. I would be grateful if the Minister commented on that.

4.15 pm

Lord Macdonald of River Glaven (LD): As the Minister knows, I put my name to the amendments from the noble Baroness, Lady Royall, to which this amendment is a response. I am grateful to the Minister for meeting a group of us to discuss this issue, for bringing forward this amendment, and particularly for the clear way in which she has indicated one of its purposes, which is that when universities are not acting in the public interest in the exercise of their official functions they will be permitted and empowered to rely upon the legitimate-interest condition, which was our original concern. I believe this amendment meets that concern, and I am very grateful.

Lord Smith of Finsbury (Non-Afl): My Lords, I remind the House of my interest as master of Pembroke College, Cambridge. I give a warm welcome to Amendments 3, 4 and 5, and I am grateful that the Minister and her noble friend the Minister have listened to the concerns of universities and colleges and very helpfully addressed them in these amendments. I know I speak also for the noble Baroness, Lady Royall, in this respect.

The two most important issues that have been of concern to universities and colleges have been, first, maintaining good relationships with alumni and the way in which that can lead to successful fundraising for universities and, secondly, the need constantly to improve what we do in outreach work to schools and the widening of participation from the broadest base of potential students to draw them into the best of our universities. In both these respects, relying on legitimate interests, as we do at the moment, is going to be extremely helpful. I very much hope that that is the Government's understanding of the purpose and effect of the amendments.

Lord Clement-Jones (LD): My Lords, I hope to be as brief as the Minister, who I thought was admirably so in introducing the government amendments. However, there are some issues that arise. I applaud the noble Baroness, Lady Royall, and others who have been so instrumental in persuading the Government on this. As the noble Lord, Lord Patel, indicated in various ways, there are ambiguities; the particular way in which the Government have chosen to amend the Bill potentially leaves a gap. I wonder, for instance, whether alumni fundraising for, say, a research institute can never be in the public interest. Is there not a possibility that it might fall outside the exemptions as a result? Perhaps the Minister can give me the correct interpretation. It is very important that this is on the record and that it is very clear what the formulation means. It would have been much more straightforward to have approached the subject directly in the Freedom of Information Act, but that is not the way the Government have chosen to help alumni fundraising in universities. In talking about universities, I should declare an interest as chairman of the council of Queen Mary University as well.

Another question arises. By and large there is nothing particularly controversial in the remainder of the amendments, but I do not quite understand why new Section 76C of the Freedom of Information Act, which was introduced in the original version of the Bill, is now being taken out by Amendment 198. Is it because Clause 127 already provides the necessary duty of confidentiality of information by the commissioner and employees of the Information Commissioner's Office? The Minister might have given us a bit of explanation about that, which would have been extremely helpful.

Otherwise, many of the other provisions are welcome. Amendments 119, 182 and 197 demonstrate that it would be a good idea to have prompt enactment or implementation of legislation, so that weird and wonderful new clauses such as are introduced by those amendments would be unnecessary.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I thank the noble Baroness, Lady Chisholm of Owlpen, for her explanation of the government amendments in this group, which are largely in response to issues raised in Committee. I do not intend to speak for long on this group, because the amendments are largely to be welcomed. I want to pay particular tribute to my noble friend Lady Royall of Blaisdon, who raised the concern of the university sector during Committee that, under the Bill, universities could find themselves in difficulty over fundraising activities with alumni. We were pleased to see today that the Government have listened and addressed that. My noble friend cannot be with us today because of the weather making it difficult for her to travel to London. Generally, the higher education sector and others are grateful for what is proposed, although a couple of noble Lords have raised particular concerns, so it would be useful if the Minister could address those in her response. There may be one area that has not quite been resolved.

There are a couple of issues to mention. We are happy to support the amendment on police sharing of information for law enforcement purposes, as I am the amendment in respect of the Prisoner Ombudsman for Northern Ireland and the technical amendments on tribunals and courts to ensure consistency of language.

I shall not go on any further, because I am conscious that we have two Statements today and one will take at least an hour and the other 40 minutes, and the dinner break business for an hour, which will eat in to our time for Report today. I shall leave it here and say well done to the Government: thank you very much for that. It is better that we spend our day looking at issues that we have not quite resolved.

Baroness Chisholm of Owlpen: My Lords, I thank all noble Lords for the points they made. In answer to the noble Lord, Lord Patel, as my noble friend Lord Ashton explained in previous debates, Clause 7 was never intended to provide an exhaustive list of public interest tasks but, rather, to ensure continuity with respect to those processing activities that cover paragraph 5 of Schedule 2 to the 1968 Act. However, I am happy to reiterate that medical research—and other types of research carried out by universities for the benefit of

society—will almost always be seen as a public interest task. I appreciate the sector's desire to have greater guidance from the Information Commissioner on the issue, and I shall certainly pass that on, but the noble Lord will appreciate that it is not for me to dictate the Information Commissioner's precise programme of work from the Dispatch Box.

I thank the noble Lords, Lord Smith and Lord Macdonald, for their kind words. I think we have put universities on a safe footing in this regard. I reiterate my thanks to them for coming to see us and helping us with that amendment.

The noble Lord, Lord Clement-Jones, asked: is alumni fundraising always in the public interest, and what about medical research?

Lord Clement-Jones: No, can it sometimes be in the public interest?

Baroness Chisholm of Owlpen: I think that gets more rather than less muddling, but I think I see where the noble Lord is coming from.

The amendment should relate to and rely either on Article 6(1)(e) or (f). That should solve any possibility raised by the noble Lord.

Amendment 3 agreed.

Amendments 4 and 5

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

4: Clause 6, page 4, line 36, leave out ", subject to subsection (2)"

5: Clause 6, page 4, line 37, at end insert—

"subject to subsections (1A) and (2).

(1A) An authority or body that falls within subsection (1) is only a "public authority" or "public body" when performing a task carried out in the public interest or in the exercise of official authority vested in it."

Amendments 4 and 5 agreed.

Clause 7: Lawfulness of processing: public interest etc

Amendment 6

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

6: Clause 7, page 5, line 11, after "enactment" insert "or rule of law"

Amendment 6 agreed.

Baroness Chisholm of Owlpen: My Lords, as it is 4.25 pm and the Statement is due sometime after 4.30 pm, it would be unwise to start on another amendment now, particularly a very long amendment, so I need to adjourn the House during pleasure for four minutes until 4.30 pm.

4.26 pm

Sitting suspended.

Brexit Negotiations

Statement

4.30 pm

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, with the leave of the House I shall now repeat a Statement made by my right honourable friend the Prime Minister in another place. The Statement is as follows:

"With permission, Mr Speaker, I would like to update the House on the negotiations for our departure from the European Union.

On Friday morning, the Government and the European Commission published a joint report on progress during the first phase. On the basis of this report and following the discussions I held throughout last week, President Juncker is recommending to the European Council that sufficient progress has now been made to move to the next stage and begin talks on the future relationship between the UK and the EU. President Tusk has responded positively by proposing guidelines for the next phase of the negotiations.

I pay tribute to my right honourable friend the Secretary of State for Exiting the European Union and our whole negotiating team for their calm and professional approach to these negotiations. We have argued robustly and clearly for the outcomes that we seek: a fair and reciprocal deal that will guarantee the rights of more than 3 million EU citizens living in the UK and 1 million UK nationals living in the EU so they can carry on living their lives as before; a fair settlement of the accounts, meeting our rights and obligations as a departing member state, in the spirit of our future partnership; and a commitment to maintain the common travel area with Ireland, uphold the Belfast agreement in full, and avoid a hard border between Northern Ireland and Ireland while upholding the constitutional and economic integrity of the whole United Kingdom.

I shall set out for the House the agreements we have now reached in each of these areas. More than 3 million EU citizens make an extraordinary contribution to every part of our economy, society, culture and national life, and I know that EU member states similarly value the contribution of the 1 million UK nationals living in their communities, so from the outset I have made protecting citizens' rights my first priority. However, for these rights to be truly reciprocal, they need to be interpreted consistently in both the UK and the EU. The European Union started by wanting all EU citizens' rights to be preserved in the UK by a prolongation of EU law; it said these rights should not require any UK process to implement them, and that they should be supervised by the Commission and enforced by the European Court of Justice. Those proposals were not acceptable. When we leave the European Union, our laws will be made and enforced here in Britain, not in Luxembourg, so the EU has accepted that we will incorporate the withdrawal agreement into UK law. Citizens' rights will then be enforced by our courts when appropriate, paying due regard to relevant ECJ case law, just as they already decide other matters with reference to international law when it is relevant.

[Baroness Evans of Bowes Park]

In the interests of consistent interpretation of citizens' rights, we have agreed that, when existing law is not clear, our courts, and only our courts, will be able to choose to ask the ECJ for an interpretation prior to reaching their own decision, but that will be a very narrow remit and a very small number of cases—and, unlike now, they will not be obliged to do so. This will be voluntary. The case itself will always be determined by the UK courts, not the ECJ, and there will also be a sunset clause so, after eight years, even that voluntary mechanism will end.

The end-point of this process is very clear. EU citizens living in the UK will have their rights enshrined in UK law and enforced by British courts, and UK citizens living in the EU will also have their rights protected. The jurisdiction of the ECJ in the UK is coming to an end. We are taking control of our own laws once again, and that is exactly how it should be.

I turn to the financial settlement. Following some tough conversations, we have agreed the scope of our commitments and the principles for their valuation. We will continue to pay our net contributions under the current EU budget plan. During this time, our proposed implementation period will see us continuing to trade on current terms. We will pay our fair share of the outstanding commitments and liabilities to which we committed during our membership. However, this is conditional upon a number of principles we have negotiated over how we will ultimately arrive at a fair valuation of these commitments, which will bring the actual financial settlement down by a substantial amount.

This part of the report we agreed on Friday, like the rest of it, is also subject to the general reservation that nothing is agreed until everything is agreed. This means we want to see the whole deal now coming together, including the terms of our future deep and special partnership, as I said in Florence. These are the actions of a responsible nation honouring the commitments that it has made to its allies, having gone through those commitments line by line as we said we would. It is a fair settlement for the British taxpayer, who will soon see significant savings compared with remaining in the European Union. It means we will be able to use that money to invest in our priorities at home, such as housing, schools and the NHS. It means the days of paying vast sums to the European Union every year are coming to an end.

Our departure from the European Union presents a significant and unique challenge for Northern Ireland and Ireland, so it is absolutely right that the joint report makes clear we will uphold the Belfast agreement in full. This agreement, including its subsequent implementation agreements and arrangements, has been critical to the progress made in Northern Ireland over recent decades. Our commitment to those agreements, the principles that underpin them, the institutions they establish and the rights and opportunities they guarantee remains steadfast.

The joint report reaffirms our guarantee that there will be no hard border between Northern Ireland and Ireland. So much of daily life in Northern Ireland depends on being able to cross the border freely, so it is right that we ensure that no new barriers are put in place. We have been absolutely clear that nothing in this process will alter our determination to uphold the constitutional and economic integrity of the whole United Kingdom. It was right that we took time last week to strengthen and clarify the joint report in this regard, listening to unionists across the country, including the DUP. On Friday, I reinforced this further by making six principled commitments to Northern Ireland.

First, we will always uphold and support Northern Ireland's status as an integral part of the United Kingdom, consistent with the principle of consent. As our Northern Ireland manifesto at the last election made clear, the Government I lead will never be neutral when it comes to expressing our support for the union. Secondly, we will fully protect and maintain Northern Ireland's position within the single market of the United Kingdom. This is by far the most important market for Northern Ireland's goods and services and Northern Ireland will continue to have full and unfettered access to it. Thirdly, there will be no new borders within the United Kingdom. In addition to no hard border between Northern Ireland and Ireland, we will maintain the common travel area throughout these islands.

Fourthly, the whole of the United Kingdom, including Northern Ireland, will leave the EU customs union and the EU single market. Nothing in the agreement I have reached alters that fundamental fact. Fifthly, we will uphold the commitments and safeguards set out in the Belfast agreement regarding north-south co-operation. This will continue to require cross-community support. Sixthly, the whole of the United Kingdom, including Northern Ireland, will no longer be subject to the jurisdiction of the European Court of Justice.

As the joint report makes clear, our intention is to deliver against these commitments through the new, deep and special partnership that we are going to build with the European Union. Should this not prove possible, we have also been clear that we will seek specific solutions to address the unique circumstances of the island of Ireland. Because we recognise the concerns felt by either side of the border and we want to guarantee that we will honour the commitments we have made, we have also agreed one further fallback option of last resort, so if we cannot find specific solutions, the UK will maintain full alignment with those rules of the internal market and the customs union which, now or in the future, support north-south co-operation, economic co-operation across the island of Ireland and the protection of the Belfast agreement.

The joint report clearly sets out that cross-community safeguards and consent are required from the Northern Ireland Executive and Assembly for distinct arrangements in this scenario, and that in all circumstances Northern Irish businesses will continue to have full and unfettered access to the markets in the rest of the United Kingdom on which they rely, so there can be no question about our commitment to avoiding borders both north-south and east-west. We will continue to work with all Northern Irish parties and the Irish Government in the second phase of the talks, and continue to encourage

the re-establishment of the Northern Ireland Executive so that Northern Ireland's voice is fully heard throughout this process.

Finally, in my Florence speech, I proposed an implementation period to give Governments, business and families the time they need to implement the changes required for our future partnership. The precise terms of this period will be for discussion in the next phase of negotiations. I very much welcome President Tusk's recommendation that talks on the implementation period should start immediately and that it should be agreed as soon as possible.

This is not about a hard or a soft Brexit. The arrangements we have agreed to reach the second phase of the talks are entirely consistent with the principles and objectives that I set out in my speeches in Florence and at Lancaster House. I know that some doubted we would reach this stage. The process ahead will not be easy. The progress so far has required give and take for the UK and the EU to move forwards together, and that is what we have done. Of course, nothing is agreed until everything is agreed, but there is, I believe, a new sense of optimism now in the talks and I hope and expect that we will confirm the arrangements I have set out today in the European Council later this week. This is good news for people who voted leave, who were worried we were so bogged down in tortuous negotiations it was never going to happen, and it is good news for people who voted remain, who were worried we were going to crash out without a deal. We are going to leave but we are going to do so in a smooth and orderly way, securing a new deep and special partnership with our friends while taking back control of our borders, money and laws again. That is my mission, that is this Government's mission, and on Friday we took a big step towards achieving it".

I commend this Statement to the House.

4.42 pm

Baroness Smith of Basildon (Lab): My Lords, I am grateful to the noble Baroness for repeating the Statement. I listened with interest when she said that there was now a new sense of optimism, because, if ever the term "political rollercoaster" was apt, it has to be now.

We welcome an agreement that—subject to this week's European Council—allows the UK to proceed to the next stage of these talks, allowing exploration of what the future relationship will look like and providing certainty about how our exit will impact individuals, consumers and businesses. It is important now for negotiators not to have their hands tied by unhelpful and ephemeral red lines, but to keep options on the table. Swift progress on a time-limited transition, rather than implementation, is essential. We have always said that these negotiations are complex. On both sides, integrity and honourable behaviour are essential, as is competence. The Government must be serious in both intent and actions—and that is all the Government, not just some Ministers. There can be no freelancing on this and the Prime Minister has the right to insist that her Ministers back her.

Last week, many of us cleared our diaries for Tuesday in expectation of a Statement regarding an agreement on a deal with the EU that would allow us to progress to the second crucial phase of the Brexit negotiations. On Monday evening, it became clear, in the most spectacularly embarrassing way, that such optimism was misplaced, as the Prime Minister's DUP colleagues who keep her in government would not support the arrangements. It is hard to understand how such a humiliating failure could have been allowed to happen. But then, after renewed and long, intensive discussions by the Prime Minister and her team, it was finally announced that the Government had reached agreement with the EU to move to phase 2. We welcome the fact that talks will move on. However, there is a fear that this seems to be unravelling quicker than a hand-knitted Christmas jumper.

Can the noble Baroness confirm the status of the agreement that has been reached? Yesterday the Brexit Secretary, David Davis, said that the agreement was not legally binding unless there was a final deal and that it was instead a mere statement of intent. Today, however, he said that the agreement is a legal guarantee that will be honoured whatever the outcome. Which is correct?

Is this agreement conditional or not? In all three areas—the honouring of obligations through the financial settlement, on citizens' rights and the border with Ireland—there needs to be clarity on whether there is a genuine, lasting agreement or a possible agreement dependent on the next stage of negotiations and our future relationship with the EU 27. That has to be made crystal clear so that there can be no misunderstanding at any time. In her response the noble Baroness may find it useful to clarify the implications for this agreement of the phrase:

"In the absence of agreed solutions",

in paragraphs 49 and 50 of the joint report with regard to the border with the Republic of Ireland.

Given that the European Council has yet to formally accept the Commission's recommendations, does the noble Baroness consider that the comments by David Davis will help or hinder in future negotiations? Even today he confessed on the radio that, "I don't have to be very clever. I don't have to know that much. I do just have to be calm". That does not seem to be a great strategy for proceeding. Across the country many businesses do not feel at all calm. They need certainty to plan for their future, and the Government have a duty to provide such certainty. Given that the Brexit Secretary is all over the place and hardly a safe pair of hands, can I seek assurances that there is now ongoing engagement with the European Parliament given its role in advising the Commission and the Council, and its power of veto on the withdrawal agreement?

The Prime Minister previously declined an invitation to address the European Parliament and recently had her session with its Conference of Presidents cancelled at the last minute due to political group presidents being unable to find diary space. Can the noble Baroness indicate whether the Prime Minister has scheduled a new meeting with representatives of the European Parliament given the importance of engaging with them? To return to a point made earlier, does the noble Baroness also agree that when continuing such negotiations it is unwise to set unrealistic red lines?

[Baroness Smith of Basildon]

The Commission's communication to the European Council notes that "significant divergences remain" on future governance and enforcement and, specifically on the border between Northern Ireland and the Republic of Ireland, it questions the agreement regarding the border. On page 9 it says that the intention to avoid a hard border,

"seems hard to reconcile with the United Kingdom's communicated decision to leave the internal market and the Customs Union".

I heard what the noble Baroness said regarding Northern Ireland. Can she tell us whether this is a commitment, an agreement or merely a statement of intent?

The Government's future partnership paper outlined a number of potential dispute settlement methods without committing to or endorsing any of them. Can the noble Baroness tell us when we can expect the Government to commit to a specific approach?

On citizens' rights, both the joint report and the Prime Minister's open letter to EU citizens earlier today leave many questions unanswered. For example, when will this new independent national authority—I have never heard of it before—be created, and will separate primary legislation be required? It was not mentioned in the previous Queen's Speech. Clearly, there has been some consideration of its role; how much will it cost? The noble Baroness spoke of significant amounts of money coming back to the UK that would not be spent in Europe, and I recall that significant financial savings of £350 million a week would be made available to the National Health Service. Can she tell us specifically how much of that will be spent on this new agency or authority?

The Prime Minister's Statement talks of,

"a fair and reciprocal deal that will guarantee the rights of more than 3 million EU citizens living in the UK and 1 million UK nationals living in the EU so they can carry on living their lives as before".

Can the noble Baroness confirm whether this is absolutely accurate? The joint report makes no reference to preserving the ability of UK citizens living in the EU 27 to continue moving freely between those countries. For example, will a UK citizen working for a company in Frankfurt with offices based in Milan and Paris still be able to be posted to any of those offices to live and work or will it just apply to the country that they live in now?

Finally, in my lifetime there has been no more important negotiations for the future of this country than these. We need wisdom and thoughtfulness, not just wishful thinking. Take the events of the last week or so, particularly those over the weekend. Not only do they not inspire confidence for British business and in Parliament but, equally seriously, they may damage our reputation and standing with the other EU countries. When the noble Baroness is sitting round the Cabinet table with her colleagues later this coming week, will she read the riot act to squabbling, inconsistent Ministers? It is not just themselves and their party that they are damaging but the national interest.

Lord Newby (LD): My Lords, I begin by congratulating the Prime Minister on an achievement which many —including many of her colleagues—thought was impossible. She has survived to fight another day and on that she is to be congratulated. The deal she struck last week, however, is not the stuff of congratulations. Before we look at it, can the Leader of the House confirm its status, to take up the point made by the noble Baroness, Lady Smith? Is it a mere "statement of intent", which the Brexit Secretary believed it to be yesterday, or "more than legally enforceable", which he believes this morning? Or does its status change with the Secretary of State's mood?

There are three main pillars of the deal, and the first is citizens' rights. Friday's agreement confirms that there will be no certainty until any final deal is reached, leaving EU citizens in the UK and UK citizens in the EU as continuing bargaining chips. How then can the Prime Minister claim that this is her top priority? This uncertainty is compounded by the provision that all 3 million EU citizens in the UK will then have two years to submit applications for registration. Until these applications are satisfactorily processed, their status will be unconfirmed. Can the Government give the 3 million any assurances as to when they hope to complete the registration process? A charge is payable also by those who currently do not have permanent residency. How much will that charge be and how many people do the Government estimate will have to pay it?

On the financial settlement, the Government argue that the payment will be up to £40 billion. Can the Leader confirm that this figure does not include over £10 billion of contingent liabilities and could, therefore, be significantly greater?

I have mentioned so far issues that are capable of resolution, albeit at significant cost. The issue of the Northern Ireland border is not. As Jonathan Powell put it in Saturday's *Financial Times*:

"In fact, the problem of the border is not resolved at all but simply left hanging".

The Government's preferred solution to the border issue appears to involve agreeing with the EU that we remain effectively, if not in name, inside the single market in terms of rules and regulations. In other words, we will supinely accept whatever rules the EU adopts. Can the Leader confirm that this is indeed the Government's preferred outcome? If so, will she accept that far from taking back control of our markets and trade, we have completely lost control, and in doing so made it practically impossible to carry out independent trade deals which improve on EU trade deals because we have agreed to follow EU rules?

One aspect of the Northern Ireland agreement is particularly troubling to me. People in Northern Ireland will retain EU citizenship. They will, in the words of Leo Varadkar,

"have the right to study in Paris, buy property in Spain, work in Berlin".

They will also retain an EU passport. I and my children are denied these rights. I will be reduced to waving to friends from Northern Ireland, with as cheery a hello as I can muster, as they sail past me in European airport passport queues—they in the EU citizens' line and me with the rest of the world. I will be furious, and I suspect that many millions of citizens of Great Britain will also be furious, when they learn that they have become second-class citizens in their own country.

However, despite all the flaws, the Government will now move on to the trade talks. I realise it is pointless asking the Leader what the Government hope the outcome will be as they have not made up their mind but, before they do, I suggest that she has a quiet word with the Brexit Secretary. In his interview yesterday on "The Andrew Marr Show", he said that he would take the best bits of existing EU trade deals and,

"add to that the bits missing, which is the services".

Could she point out that services represent 40% of our exports to the EU and that this share is growing rapidly? Far from being the bits which are missing, free access to EU markets for our service exporters would be vital to the economic prosperity of the UK were we to leave the EU.

The Prime Minister deserves a celebratory glass for surviving until Christmas. She should savour it because the difficult part of the EU negotiations is now about to begin.

Baroness Evans of Bowes Park: I thank the noble Lord and the noble Baroness for their comments and for their support and recognition that we have indeed moved on.

The joint report about which they both asked sets out the agreement we have reached in phase 1 and we are clear that we want to honour the agreement made, as we believe are the EU. However, we now need to turn this into a withdrawal agreement, which we have said we will put into primary legislation. So this is a report on phase 1; we are all committed to what is in the report and the agreements made; and we now need to turn that into a withdrawal agreement, to which we have committed. We will bring that forward in legislation, and that will be the opportunity for Parliament to discuss and scrutinise that agreement.

On Northern Ireland, which again both the noble Baroness and the noble Lord asked about, we have been consistently clear that there will be no return to a hard border in Ireland, and we have always said that the details of how we maintain an open border will be settled in phase 2 of the negotiations, which we hope to confirm we are moving to on Friday, where we can agree our future relationship with the EU. I can confirm to the noble Lord, Lord Newby, that the whole of the UK, including Northern Ireland, will leave the EU customs union and the EU single market, and nothing in the agreement alters that fundamental fact. However, we are confident that, working together, we will ensure that we have no hard border in Northern Ireland. We have said, as I outlined in the Statement, that there is a fall-back option if that does not happen, but we are confident that we will come to an agreement that suits us all.

On monitoring compliance, the EU Commission will retain its existing role in monitoring compliance with EU law in member states, and this will extend to compliance with the withdrawal agreement. The Commission will not monitor compliance in the UK. We will create a new independent authority to do this and will set out details in due course.

The noble Baroness, Lady Smith, asked about onward movement for UK citizens in the EU. She is right that that has not yet been resolved, but we have been very clear that it is something we want to come back to in the next phase of the negotiations.

The noble Lord, Lord Newby, asked about the new settled status scheme. We have been clear that we will introduce the scheme under UK law for EU citizens and their family members. The scheme will provide a transparent, smooth and streamlined process, and it will incorporate appropriate criminality checks. The application will cost no more than a British passport, and EU citizens will have two years to apply. The Home Office will be bringing forward a scheme on a voluntary basis to enable EU citizens and their family members to confirm their status as soon as possible.

Finally, on trade, we have always been clear that we are not looking for a Canadian or Norwegian-style deal, but one that is specific to UK circumstances and is specific to the fact that we are starting off in a completely different position in terms of our relationship with the EU from that of any other country so far.

5 pm

Lord King of Bridgwater (Con): My Lords, I welcome the Statement repeated by my noble friend. It seems to me that, whatever side of the argument you were on, it was necessary to get through into the proper discussion of what our future relationship will be. The fact is that the EU had set down preconditions before that could start, so I am delighted that those have now been overcome and we can move on to the further procedures. Perhaps I may say again what I said last week about Northern Ireland. It is a very difficult problem, and it is impossible to see how it is going to be settled until we know what the future final trading arrangement is going to be. That must be the logical consequence. It should never have been inserted as a precondition to resolve this issue in advance of the trade talks going forward. The case of EU citizens and the financial arrangements are now agreed. I hope that everyone, on whichever side they are on, will get on with the talks in order to find a satisfactory way through for all concerned, both in the EU and in the UK.

Baroness Evans of Bowes Park: I thank my noble friend for his comments. He is absolutely right to say that this is all still subject to the Council agreeing that sufficient progress has been made, which we hope and expect to be able to hear later this week. He is also absolutely right about Northern Ireland. We have always been clear that the details of how we maintain an open border will be settled in phase 2 of the negotiations where we agree our future relationship. We are confident that, with good will on both sides, we will be able to do this.

Lord Liddle (Lab): My Lords, on the point that nothing is agreed until everything is agreed, and looking at the paragraph which refers to the financial settlement, I see that it states,

"we want to see the whole deal now coming together, including the terms of our future deep and special partnership".

Can the noble Baroness confirm that what she is talking about is the framework for the future relationship which is set out in Article 50? She is not talking about the conclusion of a trade deal, because that will take many years beyond 2019. Given that, next autumn the Government will be signing up to pay £40 billion as a

[LORD LIDDLE]
divorce settlement, but essentially on trade by the time we leave the European Union it will be a pig in a poke and we will have no idea of what eventual deal will be agreed.

Baroness Evans of Bowes Park: The Prime Minister has said that the money we have discussed is in the context of agreeing our future partnership. We have also been very clear in setting out the valuations and we have agreed the important principles that will apply to how we rely on them. Further, we have agreed a fair settlement with the final bill estimated to stand at around £35 billion to £39 billion, which noble Lords will be aware is at least half of the reports we have had previously about how much money would be involved in the financial settlement. This is a good deal and it also means that we can begin to unlock the talks in order to start talking about the deep and special relationship and our future trading partnership.

Lord Hannay of Chiswick (CB): My Lords, can the Minister respond to one point that occurs to me very sharply? The statement that nothing is agreed until everything is agreed seems to apply to all three pillars of this first-phase agreement. Is it really conceivable that the Government will take away the agreement that is reached on the status of EU citizens here and our citizens across Europe if there is no agreement? Is it their position that they will remove that? If that is the case, what assurance is being given to those 4 million citizens since they will then know that they will not have clarity until the last minute of the last hour of the last day of the negotiations?

Secondly, on the Irish issue, could not the Minister perhaps apply a common-sense rule which is that the text, it seems to me, states clearly that if there is no agreement, the regulatory alignment will apply in order to avoid a hard border? Is that the position, or is it also subject to being taken off the table if no agreement is reached?

Baroness Evans of Bowes Park: The Statement was very clear, and I hope that I was also very clear in my response to the noble Baroness and the noble Lord, that we all want to honour the agreements set out in the joint report. We have also said that the withdrawal agreement and implementation Bill, which we will bring forward, will set out what is in the withdrawal agreement—including citizens' rights, any financial settlement and the details of an implementation period—which will be implemented directly into domestic law by primary legislation.

On Northern Ireland, the Statement made clear that we have agreed a fall-back option of last resort. We simply do not believe that we will be unable to find specific solutions to the border issue; we are confident that we will do so. If we cannot, the UK will maintain full alignment with internal market and customs union rules, which currently support north/south co-operation, economic co-operation across the island of Ireland and the protection of the Belfast agreement—and will do so in future. The joint report also clearly sets out that cross-community safeguards and consent are required from the Northern Ireland Executive and Assembly for any distinct arrangements in this scenario. As I said, we do not believe that it will come to that.

Baroness Ludford (LD): My Lords, in respect of that quote that the Minister has just given from paragraph 49 on the rules that support north/south co-operation and the all-Ireland economy, have the Government done a sectoral analysis or impact assessment on which aspects of the single markets would not be covered by the commitment to "full alignment"? Presumably, it is a very wide field, covering agriculture, sanitary standards, consumer protection, transport, competition and environmental standards—I believe that about 142 issues were identified as being covered by north/south co-operation in Ireland. Which single market rules would not be covered by the promised full alignment? If they are rather small in number, would it not be simpler all round to stay in the single market and customs union, instead of things being so complicated?

Baroness Evans of Bowes Park: I am afraid that the noble Baroness's question is predicated on us not reaching a suitable outcome that we all want. I just do not accept that.

Lord Howell of Guildford (Con): My Lords, does my noble friend accept that the agreement and report not only carry forward the negotiation process, as we know was intended, but introduce a very welcome degree of flexibility to what has been a rather over-polarised situation and debate? Does she agree that, under the principle of mutual recognition negotiated long ago—which has allowed all EU member states to vary rules, regulations, taxes and other provisions very widely, as long as they share and respect the broad aims of the EU—this means that, in practice, "alignment" can be interpreted in any way that we choose, provided that it is consistent with the deep and special relationship and common sense? Is this flexibility not greatly welcome and does it not allow us to get on to the next phase in a constructive way?

Baroness Evans of Bowes Park: I agree with my noble friend. As I say, we hope very much that the Council will agree sufficient progress on Friday so that we can move on to what we all want to do: talk about our future relationship. It is important for us to agree those terms now. As we have made clear, we are starting from a unique position of full regulatory alignment and we want to maintain our current high standards. This is a good basis for a constructive, deep and special future trading partnership.

Lord Lea of Crondall (Lab): My Lords, will the Leader accept that this Statement is still facing both ways? In saying that we are not going to stay in the single market, it is trying to put a sticking plaster over a rabbit hole which is not there. Given the deal that we struck in good faith with the Irish Republic whereby all parts of the United Kingdom will be in the same position, it is essential to stay within the single market. No trade deal, such as that referred to by the noble Lord, Lord King, can alter that fact.

Baroness Evans of Bowes Park: No, I am afraid that I do not agree with the noble Lord. As we have made clear, the whole of the UK, including Northern Ireland, will leave the EU customs union and the single market,

and nothing in the agreement alters that fundamental fact. I would have thought that noble Lords would be pleased that we have made progress, have reached the end of phase 1, have come to an agreement together and are looking to move forward. It would be nice if we all did that in a constructive and positive manner because we all want the best for this country and to make sure that our future is bright.

Lord Low of Dalston (CB): My Lords, if the Government are committed to full regulatory alignment between Northern Ireland and the rest of Ireland, and there is no distinction to be drawn between the position of Northern Ireland and that of the rest of the United Kingdom, does it not follow that there must be full regulatory alignment between the United Kingdom as a whole and the European Union?

Baroness Evans of Bowes Park: We have been clear that maintaining alignment means that we may have the same objectives but that they may be met in different ways.

Viscount Hailsham (Con): My Lords, may I congratulate the Prime Minister through my noble friend on the pragmatism that she has shown thus far? I urge my noble friend to urge the Prime Minister to show similar pragmatism in the future, because does she understand that, despite the voices of some prominent members of my own party, there is very limited support for a hard Brexit? Consequently, if we are to get approval for the ultimate outcome of these negotiations, it has to be on the basis of a very close alignment between the institutions of the European Union and those of the United Kingdom.

Baroness Evans of Bowes Park: My Lords, as the Prime Minister's Statement said, this is not about a hard or soft Brexit; it is about ensuring that we have a deep and special new relationship with the European Union, because we want a deal that works both for our citizens here and for the European Union. It is in all our interests to work towards that. I hope that, come Friday, when it has been acknowledged that sufficient progress has been made, we can begin taking those steps into phase 2 of the negotiations.

Lord Wigley (PC): My Lords, the Minister implied that if the agreement is confirmed, goods and people will move totally freely between Ireland and Northern Ireland—and likewise between Northern Ireland and Great Britain. This being so, will she confirm that goods and people will move equally freely, as they do today, between Dublin and Holyhead?

Baroness Evans of Bowes Park: As I have said, we want to ensure that we maintain the constitutional and economic integrity of the United Kingdom. We will be working in phase 2 to look at the details of how we deal with the border issues that we have discussed. However, we have been categorical that there will be no hard border within the island of Ireland.

Lord Kilclooney (CB): My Lords, having been through the agony of the negotiations on the Belfast agreement, I have every reason to know what the phrase "nothing is agreed until everything is agreed" means. There are two things about the border: one is the movement of people and the other is the movement of trade. Trade must obviously be retained until the next stage of the negotiations with Brussels, but in so far as the movement of persons and the reference to the common travel area are concerned, can the Minister assure me that the thousands of Irish citizens who are EU citizens and who move into the United Kingdom because they want all the benefits of being British will continue to have those benefits under the common travel area?

Baroness Evans of Bowes Park: The joint report sets out that the common travel area with Ireland will be maintained.

Lord Wallace of Saltaire (LD): I note that the Statement gives a lot of importance to getting out from under any jurisdiction of the European Court of Justice. I find that a little surprising in view of the recent report by the Institute for Government, which shows that the British Government have fewer cases before the European Court of Justice than do most other members of the European Union—and, indeed, that most of those are decided in favour of the UK. I am puzzled also as to whether the deep concern with national sovereignty and the willingness to make financial and economic concessions in order to regain this sovereignty applies to other international courts. The Leader of the House may be aware that President Trump has just attacked the arbitration tribunal of the World Trade Organization, suggesting that it is biased against the United States, that it does not respect American sovereignty and that the United States might have to leave the World Trade Organization. Do the British Government sympathise with President Trump in that suspicion of international courts, or is it is just the European Court of Justice that we object to?

Baroness Evans of Bowes Park: EU citizens' rights in the UK will be upheld by implementing the agreement in our law, instead of continued EU law enforced by the EU courts. Our courts will pay due regard to EU case law as agreed at the point of exit to interpret that law as needs be, just as they decide our law now in reference to international law, where relevant, such as the UN Convention on the Rights of the Child.

Lord Campbell-Savours (Lab): My Lords—

Lord Faulks (Con): My Lords—

Lord Taylor of Holbeach (Con): My Lords, it is the turn of the Labour Benches and I suggest that we hear from the noble Lord, Lord Campbell-Savours.

Lord Campbell-Savours: My Lords, the Leader of the House is a member of the Cabinet and therefore I am sure that she will know the answer to my question: is it the Government's intention that at the ferry port at Belfast there will be no customs officials or immigration

[LORD CAMPBELL-SAVOURS]
officers in attendance with the remit or ability to check non-UK citizens travelling to ports in Scotland, England or Wales?

Baroness Evans of Bowes Park: The noble Lord asks a question about implementation. I am not in a position to answer that at the moment.

Lord Deben (Con): Will my noble friend answer a very simple question? The Statement says that there will be a large sum of money available to Britain because of our leaving the European Union. Will she promise to place before the House the details of that sum of money, how the addition is done and how it is that the Government make that statement in full and flat opposition to every independent commentator in this country?

Baroness Evans of Bowes Park: We have agreed a number of important principles that will apply as to how we arrive at valuations in due course. These will ensure that the process is fair to the UK. As we leave and pay off our commitments, there will be significant sums left to spend on our priorities and a precise schedule of payments will be agreed in the second phase.

Lord Pearson of Rannoch (UKIP): My Lords, when we come to negotiate our future trading relationship, why do the Government not say that we will be generous and offer continuing free trade? That is, after all, much more in their exporters' interest than it is in ours. I say this because, as the excellent Civitas analyses show, there are about 6 million jobs in the EU exporting to us and we have about 3.5 million jobs exporting to them. If the Eurocrats are selfish enough to force us to the WTO conditions instead, their exporters will pay us some £13 billion in new tariffs, whereas we will pay them only about £5 billion. As to what cash we should pay them, surely we should leave that to the very end of the negotiation, and its amount should depend on whether they have tried to mess around with the City of London in the meantime.

Baroness Evans of Bowes Park: We are committed to seeking continuity in our current trade and investment relationships, including those covered by EU FTAs and other preferential trading arrangements. We are working to agree arrangements with those partner countries to replicate, as far as possible, the effects of these agreements.

Lord Pannick (CB): My Lords, the agreement envisages that our courts will have a discretion to refer cases about citizens' rights to the European Court in Luxembourg. Do the Government intend that legislation will provide any guidance to our courts as to how they should exercise this discretion? If the Government do not provide guidance, our courts will be required to decide issues of very considerable political sensitivity.

Baroness Evans of Bowes Park: The ability of our courts to ask the ECJ for a view will be voluntary, very narrowly defined and time limited. Our courts can choose to ask the ECJ for a legal view on the law in relation to citizens' rights where there is a point of law that has not arisen before. If the past is a guide, we would not expect this to happen very often; it currently happens for about two or three cases a year in this area of law. This ability will be strictly confined to those citizens' rights as exercised under the withdrawal agreement by EU citizens who were settled here before we leave the EU. It will not extend in any way beyond that.

Lord Faulks: The noble Lord, Lord Wallace of Saltaire, suggested that the response of the UK Government to the continued relationship with the ECJ might be typical of a general hostility towards international tribunals. Will my noble friend the Leader of the House confirm that it means no such thing and that the fact that we will no longer have a relationship with the ECJ is simply because we will no longer be a member of the European Union? We therefore do not need the ECJ to determine disputes that arise out of that membership, save for that important and limited exception referred to in relation to EU nationals, and subject of course only to whatever may be in the implementation agreement that is to follow.

Baroness Evans of Bowes Park: I entirely agree with my noble friend, who said it far better than I did.

Lord Davies of Stamford (Lab): My Lords, the noble Baroness has got her sums wrong. The country is already 15% poorer as a result of the devaluation which followed Brexit and our growth rate has gone down by 1% per annum—about £20 billion, which is twice our annual contribution to the EU. We shall in fact have fewer resources for all those good causes, such as the NHS, education and housing, that she mentioned as a result of leaving the EU, not more. I ask the noble Baroness a simple question. Is it not the case that if you have no customs controls between Northern Ireland and the Republic, then Northern Ireland and the Republic are within a common customs area or customs union and that if you have no customs controls between Northern Ireland and Great Britain, then Northern Ireland and Great Britain are within a common customs area or customs union? In those circumstances, we in Great Britain are in the same common customs area or union as the Republic of Ireland and, since the Republic of Ireland will remain in the European Union, we, the Republic of Ireland and Northern Ireland as well would all be in the same EU common customs area. Irrespective of the declarations which the Government might like to make to the contrary, no doubt for party management reasons, is the reality not that as a result of these negotiations we will, de facto, remain—and if so, I congratulate the Government on it—within the common customs area of the European Union?

Baroness Evans of Bowes Park: I am afraid that I cannot be clearer that I have been already. The whole of the UK, including Northern Ireland, will leave the EU customs union and the EU single market. Nothing in the agreement alters that fundamental fact.

Lord Kerr of Kinlochard (CB): Given the Minister's non-answer to the question of the noble Lord, Lord Deben, and her rather worrying answer to that of the noble Lord, Lord Pearson, will she confirm that

the United Kingdom Government, having agreed the definition of their financial obligations, will under no circumstances refuse to honour them, as a matter of honour?

Baroness Evans of Bowes Park: As the Prime Minister has made clear, the money is on the table in the context of agreeing our partnership for the future. If that is not agreed, then the financial offer is off the table.

Lord Cormack (Con): My Lords, we should all thank and congratulate the Prime Minister but might I appeal to my noble friend? We have had Ministers at the Dispatch Box saying time and time again that they cannot give a running commentary on negotiations—fine. But can we please have a cessation of the running commentary from members of the Cabinet?

Baroness Evans of Bowes Park: All I can say to my noble friend is that the Cabinet are united in their happiness that we have reached phase 1—

Noble Lords: Oh!

Baroness Evans of Bowes Park: Thank you. We hope to have reached sufficient progress on phase 1 negotiations by the end of the week and we look forward unitedly to helping to ensure that this country has the best future ahead, with a strong relationship with the EU on different terms.

Lord Higgins (Con): My Lords, is it not increasingly apparent that there is in reality no way to avoid a hard border unless we remain in the single market or some equivalent to it? What has happened in these discussions is that the issue has been effectively passed to where it ought to have been in the first place, namely, the negotiations on trade. I welcome that fudge because it means that the process continues, but at the end of the day there is no way to avoid a hard border without the equivalent of the single market.

Baroness Evans of Bowes Park: I am afraid that I do not accept that premise because we believe the best way to avoid a hard border is to negotiate the right trading relationship between the UK and the EU, and that is what we will now be able to do. Discussions on the border will be a critical part of the phase 2 negotiations.

Lord Soley (Lab): Correct me if I am wrong, but I believe I heard the Minister say that during the period of payments—which I welcome, incidentally—trade will continue on current terms. I think that was the phrase that was used. If that is right, what does that mean if it does not mean either the single market or the customs union or something of that nature? Admittedly it is only for the period in which the payments continue, but for that period, trade continues under current terms, which is, I think, the Statement the Minister read out.

Baroness Evans of Bowes Park: It is actually during the implementation period that the UK's and the EU's access to each other's markets could continue on current terms. During the implementation period, we would stay in all EU regulators and agencies and take part in existing security measures.

Baroness Neville-Rolfe (Con): My Lords, it was very interesting to see how worried the European Union became when there was a risk of the UK crashing out, showing, I think, that we have a stronger negotiating hand than some might think, if we keep our nerve. Contrary to what some have said, some fear that regulatory alignment means a soft Brexit by stealth, making us a rule taker in relation to all future EU rules rather than a rule maker. Is this a valid concern?

Baroness Evans of Bowes Park: As I have said, maintaining alignment means that we may have the same objectives but we may well want to do something in a different way. However, in discussing our future trading relationship, we should also understand that we are in a unique position with full regulatory alignment at this point. We want to maintain high standards going forward, so we believe this is an excellent basis for a strong future relationship.

Baroness Kramer (LD): My Lords, perhaps I can ask the Minister for clarity. She talked about the situation going forward. Is it correct—I shall be glad for her to correct me if I am wrong—that the European Union has trade treaties, I think 58, with other countries, most of which include a most favoured nation clause so that any if offer of a trade treaty is made to a third party, such as the UK, similar terms have to be made available to every country on that most favoured nation list? Is that not the reason why the notion of Canada-plus-plus-plus becomes an extremely difficult challenge?

Baroness Evans of Bowes Park: We are discussing with our trade partners how to ensure continuity and provide certainty for businesses by transitionally adopting existing EU trade agreements. This will be a technical exercise rather than a renegotiation of existing terms. The Trade Bill will provide measures to ensure that agreements with third countries can carry over and be fully implemented within UK law.

Lord Naseby (Con): My noble friend will understand that there is deep concern about the financial settlement, but should the guiding light of Her Majesty's Government not be value for money? It is not the absolute figure that is important but that any money spent is real value for money for the British people.

Baroness Evans of Bowes Park: My noble friend is right that the Prime Minister has also been clear that the UK will honour its commitments and obligations. We have agreed a fair settlement of commitments we have made while a member of the EU in the spirit of our future partnership.

Lord Brown of Eaton-under-Heywood (CB): My Lords, I welcome the fact that over the next eight years, our courts will be able, in the event of dispute as to citizen's rights, to refer the case to the ECJ for interpretation. But are there any circumstances in

[Lord Brown of Eaton-under-Heywood]
which the Minister could foresee that, having obtained such an interpretation although the case itself would be determined by the UK courts, they could actually refuse to follow it?

Baroness Evans of Bowes Park: As I have already said, the ability of our courts to ask the ECJ for a view will be voluntary, very narrowly defined and time limited. The courts can choose to ask the ECJ for a legal view on the law in relation to citizens' rights where there is a point of law that has not arisen before, but our courts will make the final judgment on each case, not the ECJ.

Lord Borwick (Con): My Lords, will my noble friend comment on media reports that the financial settlement outlined in last week's report is substantially lower than many earlier estimates of what the EU was demanding from us?

Baroness Evans of Bowes Park: We have agreed a number of important principles that will apply on how we arrive at valuations in due course. Our commitment, in terms of the numbers that are out there, is the equivalent of around four years' full membership, two of which will be covered by the implementation period. We have agreed with the EU the scope of the UK's commitments. The bills cannot go wider than that, and the noble Lord is absolutely right that we expect the settlement to come in significantly below many of the initial projections made.

Baroness Donaghy (Lab): My Lords, will the Leader of the House tell us what will be implemented during the implementation period?

Baroness Evans of Bowes Park: The implementation period will ensure that the changes necessary for the new relationship will be put in place, as well, as I have said, as a framework based on the existing structure of EU rules and regulations.

Lord Bridges of Headley (Con): My Lords, I obviously applaud the Prime Minister for getting us to the base camp of the negotiations. It is much to her credit that she showed such persistence last week. Following on from the last question, however, I urge my noble friend to urge her colleagues to bring as much honesty and clarity as possible to the next phase of the negotiations. There is still talk of the implementation period being one in which we implement the final treaty. With due regard to the noble Lord, Lord Kerr, I struggle to find within Article 50 any reference that gives the European Union the remit to negotiate a full new treaty between now and the end of March 2019. Therefore my understanding is that at best the British Government would be able to negotiate a heads of terms with the European Union, but nothing more. Would my noble friend care to clarify whether that is or is not the case?

Baroness Evans of Bowes Park: My noble friend is correct that there will be many elements during the implementation period. We will now start to discuss that with the EU—hopefully come Friday, once we have made sufficient progress. We are extremely pleased that Donald Tusk has indicated that he wishes to get on with discussions on the implementation period as quickly as possible, because we need to clarify all these issues so that we can move on.

Viscount Ridley (Con): My Lords, I listened carefully to the comments from the Benches opposite, including those of the noble Baroness, Lady Smith. Can my noble friend go a little beyond her remit and speculate as to what she thinks the Labour Party's position is on any of these issues this week?

Baroness Evans of Bowes Park: I am afraid I would struggle to do that.

Lord Tugendhat (Con): My Lords, does my noble friend agree that it is not helpful to keep talking about a Norwegian, Swiss or Canadian model in the way that people are, since we are much bigger than Norway, we have many much closer links with the EU than Switzerland and we are much closer than Canada? One of the most important two things that she said in answer to a number of questions was that we are looking for a bespoke deal that reflects the particular circumstances of the United Kingdom and its relationship with the other members of the EU. The second was that we are not starting from scratch. We are starting with a common edifice, and the question will be how much of the edifice we maintain and how much is taken away. That is a very central point, which a number of people have failed to grasp.

Baroness Evans of Bowes Park: My noble friend is absolutely right. We are indeed in an unprecedented position of starting with the same rules and regulations in our discussions and will of course maintain our unequivocal commitment to free trade and high standards.

Lord Mackay of Clashfern (Con): My Lords, it may be of help to think of the implementation period as one during which, knowing what the ultimate position is going to be, we prepare to reach it.

Baroness Evans of Bowes Park: My noble and learned friend is right.

Lord Thomas of Gresford (LD): Will the noble Baroness help me on this question of full regulatory alignment between Northern Ireland and the Irish Republic? Who is going to determine that? Will it be the Supreme Court of Ireland, the Supreme Court of the United Kingdom or the European Court of Justice? She said about 10 minutes ago that the present situation is one of full regulatory alignment. What happens if the status quo changes?

Baroness Evans of Bowes Park: As I have said on a number of occasions, alignment is about pursing the same objectives. The same goals can be achieved by different means, and it does not need to mean regulatory harmonisation. Indeed, the Taoiseach has said that not everything has to be the same.

Lord Hamilton of Epsom (Con): My Lords, the Prime Minister's Statement twice repeats that nothing is agreed until everything is agreed. Does the noble Baroness not think it a good idea that the Government should work up a plan B, for no deal, because in that way we will get a much better deal with plan A? The great advantage of plan B, and leaving with no deal, is that we cease to pay into the European budget.

Baroness Evans of Bowes Park: We are absolutely focused on getting a good outcome that works for both the UK and the EU. We believe it is in both sides' interests to do that, but yes, we have a duty to plan for the alternative, as any responsible Government would.

Lord Blackwell (Con): My Lords, the House will note my particular interest in financial services. I welcome the Statement. Will the Government pay particular attention in phase 2 of the talks to the benefits to both the UK and the European Union of continuing trade in financial services and the role that the City of London plays as an asset for the whole of Europe?

Baroness Evans of Bowes Park: Yes, we most certainly will.

Visit to Oman, UAE and Iran

Statement

5.37 pm

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, with the leave of the House, I shall now repeat a Statement made by my right honourable friend the Foreign Secretary. The Statement is as follows:

"Mr Speaker, with your permission I will make a Statement on my visit to the Middle East, from where I returned this morning.

This is a crucial time in the region. On the one hand we have a moment of hope, with scores of countries having come together to break the corrosive grip of Daesh on Iraq and Syria. Britain's Armed Forces have played a proud role in a military campaign that has freed millions, and Iraq's government declared on Saturday that all of its territory had been liberated. During her successful visit to Iraq last month, my right honourable friend the Prime Minister thanked the British service men and women who have helped to bring about the territorial defeat of Daesh. In Jordan, she reaffirmed Britain's absolute commitment to the peace and stability of one of our closest allies in the region.

But the setbacks inflicted upon Daesh have coincided with a dangerous escalation of the war in Yemen, where one of the worst humanitarian crises in the world is now unfolding. This morning, I returned from my first bilateral visit as Foreign Secretary to Oman, the UAE and Iran. My aim was to take forward Britain's response, diplomatically and economically, to the crisis in Yemen. The Government strongly believe that the only way of bringing this tragic conflict to an end is through a political solution. His Majesty Sultan Qaboos of Oman, whom I met in Muscat last Friday, entirely shared this analysis. The Sultan and I discussed in detail the tragedy in Yemen, with which Oman shares a 180-mile border. The Sultan and I also agreed on the importance of settling the dispute between Qatar and its neighbours, and I was pleased to see that the summit of the Gulf Cooperation Council went ahead in Kuwait last week.

From Muscat I travelled to Tehran where I met Iran's senior leadership, including President Rouhani, Vice-President Salehi and the Foreign Minister, Javad Zarif. I was frank about the subjects where our countries have differences of interest and approach, but our talks were constructive none the less. The latest chapter of Britain's relations with Iran opened with the achievement of the nuclear deal, the JCPOA, in July 2015. In every meeting I stressed how the UK attaches the utmost importance to preserving that agreement. For the JCPOA to survive, Iran must continue to restrict its nuclear programme in accordance with the deal—the International Atomic Energy Agency has verified Iran's compliance so far—and other parties must keep their side of the bargain by helping the Iranian people to enjoy the economic benefits of re-engagement with the world.

The House knows of Iran's disruptive role in conflicts across the region, including in Syria and Yemen. Our discussions on these subjects were frank and constructive, though neither I nor my Iranian counterparts would claim that we reached agreement on all issues. If we are to resolve the conflict in Yemen, Houthi rebels must stop firing missiles at Saudi Arabia. The House will recall that King Khalid International Airport in Riyadh, Saudi Arabia's equivalent of Heathrow, was the target of a ballistic missile on 4 November. I pressed my Iranian counterparts to use their influence to ensure that these indiscriminate and dangerous attacks come to an end.

On bilateral issues, my first priority was the plight of the dual nationals behind bars. I urged their release on humanitarian grounds where there is cause to do so. These are complex cases involving individuals considered by Iran to be their own citizens, and I do not wish to raise false hopes. However, my meetings in Tehran were worth while and, while I do not believe it would be in the interests of the individuals concerned or their loved ones to provide a running commentary, the House can be assured that the Government will leave no stone unturned in our efforts to secure their release.

I also raised with Mr Zarif the official harassment of journalists working for BBC Persian and their families inside Iran. I brought up Iran's wider human rights record, including how the regime executes more of its own citizens per capita than almost any other country in the world. Still, where it is possible to be positive in our relations with Iran—for instance, by encouraging scientific, educational and cultural exchanges—we should be ready to do so.

I then travelled to Abu Dhabi for talks yesterday with the leaders of the UAE, focusing on the war in Yemen, joined by the Saudi Foreign Minister, Adel al-Jubeir, and colleagues from the US. We agreed on the importance of restoring full humanitarian and

[LORD AHMAD OF WIMBLEDON]
commercial access to the port of Hodeidah, which handles over 80% of Yemen's food imports. We also agreed on the need to revive the political process, bearing in mind that the killing of the former President, Ali Abdullah Saleh, by the Houthis may cause the conflict to become even more fragmented. We discussed how best to address the missile threat from Yemen, welcoming the United Nations investigation into the origin of the weapons that have been launched.

Our concern for the unspeakable suffering in Yemen should not blind us to the reality that resolving a conflict of this scale and complexity will take time and persistence, and success is far from guaranteed. However, it is only by engagement with all the regional powers, including Iran, and by mobilising Britain's unique array of friendships in the Middle East, that we stand any chance of making headway. I am determined to press ahead with the task, mindful of the human tragedy in Yemen, and I shall be meeting my regional and American colleagues again early in the new year. I commend this Statement to the House".

5.43 pm

Lord Collins of Highbury (Lab): My Lords, I thank the Minister for repeating the Statement. I recognise the huge effort that the Foreign Secretary has put in in recent days on these issues.

I start with the case of Nazanin Zaghari-Ratcliffe. I am very pleased, as I think all Members of this House are, that the Foreign Secretary met her husband, Richard Ratcliffe and spent the weekend seeking to secure her release. Everyone in this House will wish the Foreign Secretary every success in his endeavours to ensure that she is returned to her family without delay. While I appreciate the Foreign Secretary's statement that he did not wish to give a running commentary, could the Minister indicate whether meetings were held in Iran with those with the power to change the fundamentals in Nazanin's case, including representatives of the revolutionary courts, the Interior Ministry or the Ministry of Justice? Of course, the Foreign Secretary rightly says that Nazanin's is not the only consular case of concern in Iran. Was the Foreign Secretary able to make concrete progress in securing the release of Kamal Foroughi and in the other consular cases referred to in the Statement?

Many in this House were concerned at reports from the BBC World Service about the intimidation of Persian Service journalists and their families by the Iranian authorities. What representations had been made to the Iranian authorities before the visit, when these concerns were raised? If we did make those concerns known, did we receive a response prior to the visit and did the Foreign Secretary get a response in Tehran?

On the Iran nuclear deal, the Opposition welcome the Foreign Secretary's statement that Britain will continue to honour our side of the deal as long as Iran continues to do the same. However, as many noble Lords have said, it is not our commitment that is in doubt. What steps are the Government taking in working with our European allies to get the US back on board with the deal?

Turning to Yemen, I very much welcome the fact that as well as visiting Tehran, the Foreign Secretary visited the UAE, Abu Dhabi and Oman, and I appreciate that Yemen was high on the agenda there. What is the plan to get the blockades fully lifted and enable full access for humanitarian relief? What is the plan to secure a ceasefire agreement and make progress to a long-term political solution? Where is the plan for a new UN Security Council resolution, 14 months after the UK first circulated its draft? Last week, the UN Security Council cancelled the scheduled open meeting and instead ran one in private. While I appreciate that progress is often made behind closed doors, the people of Yemen have been waiting two years for any kind of progress to end the war and their suffering, which just gets worse. I hope that today the Minister, in the light of last week's closed Security Council session, can update us and give us a more concrete idea about a definite road map leading to peace before thousands more die.

The Foreign Secretary said that in Iran he had very frank exchanges with the Iranian Government on Syria. Were any conclusions reached from these exchanges? Is there a more positive assessment of the prospects of a political solution to end the fighting in Syria? Is there any prospect of Iran withdrawing its support for the fighters there? Obviously, the UK and Iranian Governments have considered their red lines, but has the situation changed and have the relationships improved? And have the Government assessed the prospect of holding to account those who have committed the most horrendous crimes in the war in Syria?

Baroness Northover (LD): My Lords, I, too, thank the Minister for repeating the Statement. I start by referring to the Foreign Secretary's visit to Iran. I welcome the fact the Minister's right honourable friend made that visit, and it is surely right that we seek to improve the relationship with Iran. The nuclear deal, to which the noble Lord, Lord Collins, just referred, in which our colleague the noble Baroness, Lady Ashton, played such a key role, was a major milestone. Does the Minister agree that we undermine it at our peril? Does he hope that those around the American President will restrain him when he seeks to do so? Is this a point that his right honourable friend will make when he meets American colleagues in the new year? Does he agree that we need to work very closely with our European allies on this matter?

I am extremely glad that the Foreign Secretary raised the cases of our dual nationals in Iran. The House will know that I have raised the case of Nazanin Zaghari-Ratcliffe in your Lordships' House on a number of occasions, and I am very glad that he urged the release of Nazanin and other dual nationals on humanitarian grounds. I am glad that he says that no stone will be left unturned; surely that is what is required. I sincerely hope that we will see Nazanin's release imminently, along with other dual nationals, and I note the quiet dignity with which Richard Ratcliffe raises his wife's case. Can the Minister assure us that his right honourable friend emphasised Nazanin's dire health situation? Does he have hope that she might be reunited with her family in the UK for Christmas?

As we seek to normalise relations with Iran, what is the situation with regard to enabling the Iranian embassy here to open a bank account? What is being done to strengthen trading links?

As we all know, the Middle East is such a tinderbox, and it is therefore vital that we strengthen our relations across the region. In the light of that and of the unpredictable nature of the current American regime, might Oman or others in the region play a part in bringing peace in Yemen? Can the Minister update us on what the world can best do, given the terrible situation there? Also, what assessment have the Government made of the impact of the blockade against Qatar on the stability of the UAE?

In conclusion, will the Minister reiterate that his right honourable friend will indeed continue his focus on Nazanin Zaghari-Ratcliffe? We will all be looking for a positive resolution to her case.

Lord Ahmad of Wimbledon: My Lords, I thank both the noble Lord, Lord Collins, and the noble Baroness, Lady Northover, for welcoming the initiative and visit of my right honourable friend the Foreign Secretary. They rightly raised various consular cases, including the case of Nazanin Zaghari-Ratcliffe. Let me assure all noble Lords that these issues were raised with all relevant parties, including the President, the Foreign Minister and the representatives of the National Security Council. In repeating the Statement, I made a point well made by the noble Baroness when she pointed to the humanitarian grounds in the case of Nazanin Zaghari-Ratcliffe. The sentiments she expressed are ones we all share. We hope and pray for an early resolution of that case and, indeed, all consular cases. I reassure all noble Lords that we continue to raise these issues on a regular and consistent basis, as they were by my right honourable friend in a candid and constructive manner. We will of course continue to update your Lordships' House as appropriate on progress in this regard, but I particularly thank the noble Lord and the noble Baroness for their appreciation of the sensitivity of all consular cases.

To make a general point about consular cases—I assure noble Lords that I ask for this information myself whenever I am travelling around the world—all Ministers raise issues about consular cases, the number of which may range between 2,000 and 3,000 at any given time. It is important that, wherever people are held, humanity prevails and we see their release expedited.

The noble Lord, Lord Collins, raised the issue of BBC Persian. He was quite right: as I again mentioned in repeating the Statement, there have been reports of harassment of BBC Persian staff and their families in Iran, which is very concerning. This has been raised consistently with the Iranian authorities. This is part of a key focus for my right honourable friend on the wider human rights agenda. I can confirm that he raised the particular concerns about BBC Persian with both the Iranian Foreign Minister Zarif and Vice-President Salehi during the recent visit.

Both the noble Lord and the noble Baroness raised the issue of the JCPOA. I thank them for their continued support. It is important that Britain speaks as one on this important issue. As all noble Lords will be aware, my right honourable friend the Prime Minister has reaffirmed to President Trump the UK's strong commitment to this deal, which is vital for the UK and for regional security. My right honourable friend the Foreign Secretary repeated this to opposite numbers in Washington during his November visit.

The noble Lord also asked what other groups and countries we are working with. I assure him that we continue to enjoy close co-operation on Iran with the US but also with our E3 partners. Where we have differences, we raise them. It is right that we debate them openly, as my right honourable friend the Prime Minister has done, but I remain of the opinion expressed by both the noble Lord and the noble Baroness that retaining and sustaining that deal is extremely important not just to the region but to stability across the world.

The noble Lord also raised the issue of Syria and the importance of holding parties to account, particularly for the atrocities committed by Daesh. I am sure that we all welcome the news over the weekend that not just in Syria but in Iraq Daesh has been defeated. However, no one should be complacent. Organisations such as Daesh continue to rear their head elsewhere in the world, but on Daesh's accountability specifically in Syria the noble Lord will be aware that we progressed positively on the Security Council resolution in September and allocated £1 million for follow-up of those held for crimes committed by Daesh in that country.

The important issue of Yemen was raised by both the noble Lord and the noble Baroness. We continue to make representations across the piece: this issue was discussed by my right honourable friend in all the countries he visited. We all share deep concern about the humanitarian crisis. We continue to implore for the opening of all humanitarian corridors, and we raise that issue consistently with Saudi Arabia as well as other players in the region, including Iran. The continued support of different groups in that country is ultimately leading to the humanitarian suffering that we have seen, which has been all too apparent. The recent killing of the former President has led to a further escalation of the political vulnerability on the ground. That said, this is a major issue, a key priority and I assure noble Lords that we will continue to represent the voice of humanity in resolving this conflict at the earliest opportunity. We continue to work with other countries in the region to seek an early resolution.

The noble Baroness also raised more general points about our trade relationship and the specific issue of the Iranian bank account. These continue to be part of the discussion. She will be all too aware that there are certain phases of compliance within the nuclear deal that was struck. We are certainly minded to consider that all agencies and authorities have reported Iran's adherence to the deal, and continue to move forward in a constructive pattern. As any decisions are made, I will of course share that with the noble Baroness as appropriate.

That said, I can say to all noble Lords that the visit to all the countries was positive. With Iran specifically, discussions were open and candid but also, importantly, constructive.

5.59 pm

Lord Lamont of Lerwick (Con): My Lords, I refer to my entry in the *Register of Lords' Interests*, being both the chairman of the British-Iranian Chamber of Commerce and the Government's trade envoy to Iran. I wholeheartedly agree with what is being said about Nazanin Zaghari-Ratcliffe and Mr Foroughi. I have been in touch with Mr Foroughi's son about this tragic case.

First, will my noble friend confirm that, on 14 and 15 January, President Trump has to decide whether to waive the sanctions against Iran under the nuclear deal? If he fails to do this, secondary sanctions, which have been lifted in the United States, will spring back into action, and that will legally be a breach of the JCPOA, and will certainly be regarded by Iran as such. That will make it even more difficult for Europe to trade further with Iran.

Secondly, on the question of the Iranian embassy bank account, have the Government considered using the Bank of England there? Does it have sovereign immunity? It is difficult to imagine the Bank of England being prosecuted by the American authorities.

Lord Ahmad of Wimbledon: My Lords, my noble friend speaks from a deep knowledge of the bilateral relationship between the United Kingdom and Iran, and I commend his efforts. He raises the important issue of the nuclear deal. We have certainly been clear. I alluded earlier to the fact that the Prime Minister has been very clear to President Trump on the implications of the decision of the United States. On the specific dates my noble friend mentioned, I shall check the implications and what is pending. I believe that he is correct. The United States, not being part of the nuclear agreement, puts strain on the continuing sustainability of that deal. In saying that, I refer to a point I made earlier: it makes it even more vital to consolidate our efforts and collaborate with other partners, including our efforts through the E3 to ensure that the deal is sustained.

On my noble friend's point on the Bank of England's status vis-à-vis the bank account, perhaps I can write to him. Having spent 20 years in financial services, I know that various rules and regulations govern both the central bank and other private banks that may be operating.

Lord West of Spithead (Lab): My Lords, I wonder whether there was discussion on Lebanon. Hezbollah has trained up to a very high level in the fighting within Syria, and all the intelligence reports point to the fact that Lebanon is again about to degenerate into civil war. Was there any discussion between the Foreign Secretary and the Iranians, who, of course, are pushing Hezbollah very strongly?

Lord Ahmad of Wimbledon: The noble Lord is right to raise that issue. Yes, there were wide-ranging discussions on all the places where Iran has an influence. Certainly Lebanon featured, as we have been concerned about the situation that has been unfolding, particularly with the leadership and the resignation of the Prime Minister in Lebanon. All those issues were raised bilaterally, as was the importance of ensuring greater stability—that wherever Iran has an influence, it brings it to bear in the positive implications of regional stability, including in the important country of Lebanon.

Lord Hannay of Chiswick (CB): My Lords, will the Minister accept my view that the Foreign Secretary was very wise to have gone to Tehran? He seemingly, from the Statement, handled the meetings there well, and his measured handling of the public presentation of the visit is also excellent, which is not invariably the case. Does the Minister accept that it was also good that the Foreign Secretary raised the Persian service issue, as well as the issue of the dual nationals? What has been done to the Persian service and to the relatives in Iran is pretty horrifying, so I am very glad he was able to do that.

I have two questions. First, on the JCPOA, does the Minister agree that probably the most important thing that the British Government could do between now and when President Trump has to take the next decision about sanctions is to make it absolutely clear that, whatever decision he takes, we will not reimpose sanctions and will stick to the JCPOA as long as the Iranians stick with it, and that if the Americans wish to isolate themselves in this context, it will be against our wishes and we will not be swayed by it?

Secondly, does the Minister share the view of the International Relations Committee of this House that nothing is served in terms of British interests by an intensification of the rivalry and tension between Iran and Saudi Arabia? Our interest is surely to use our influence with both those countries and their friends to reduce the tension and to try to come to some kind of modus vivendi in the Gulf region which is better than the current state of intense rivalry.

Lord Ahmad of Wimbledon: My Lords, I thank the noble Lord for his kind remarks, and I shall endeavour to convey them to my right honourable friend the Foreign Secretary. The point he makes on the JCPOA is very pertinent, and that is why both my right honourable friends the Prime Minister and the Foreign Secretary have raised these issues directly with colleagues and US representatives in Washington, including directly with President Trump. As I have said repeatedly from this Dispatch Box—as have Ministers in the other place—the UK is firmly committed to retaining the JCPOA for exactly the reasons mentioned by the noble Lord. We will continue to lobby the US in that respect.

The noble Lord's second point was on Iran and Saudi Arabia. I have always maintained that the importance of Britain's role is to have that sense and strength of diplomacy. We have that strength of communication in retaining those vital links with the likes of both Iran and Saudi Arabia. Never have those links been more important than in the current challenges we face. As noble Lords know, there is a deeply embedded issue that goes beyond just political rivalries, but it is equally important that we not only sustain communication channels bilaterally but continue to strengthen them in calls to the wider region for greater stability.

Lord Soley (Lab): My Lords, the conflict in Yemen is essentially conflict between Saudi Arabia and Iran. I know that the Government are aware of that. One of the problems is that the countries in the region are unable to operate effectively against either party to get some sort of agreement. Also, many of their friends outside the region, including the UK and the US, are in a difficult position because they are not seen as wholly independent. Sadly, the UN is unable to be very effective here. I wonder whether the Government have thought a bit outside the box. One of the countries on the edge of the region which has great influence in the UN, and also in peacekeeping operations, is India. Does it have any interest in adding to the pressure on Iran and Saudi to basically back off because the dangers of the spread of conflict are very great?

Lord Ahmad of Wimbledon: On the issue of Yemen specifically, the noble Lord is quite correct that the UK continues to make representations. I am sure he will appreciate that our focus—indeed, that of the Foreign Secretary—has been working with countries in the immediate vicinity. For example, the noble Lord may be aware that the Foreign Secretary hosted a meeting of the quint—that is, the United Kingdom, the US, the UAE, Saudi Arabia and Oman—as well as the UN special envoy, which took place a couple of weeks ago on 28 November. The noble Lord mentioned the role of India. That is very much a question for India to answer, but I note his constructive suggestion in that regard.

Because of the nature of how the conflict is evolving and how we have seen the different parties who may be involved in supporting the rival factions in Yemen, it is important to bring in all international players to ensure security and stability there. As I have already said in answer to a previous question, that is more vital now than perhaps it has been for a very long time.

Lord Howell of Guildford (Con): Does my noble friend agree that we all appreciate the efforts of the Foreign and Commonwealth Secretary to deal with the dual nationals' imprisonment and to uphold the nuclear deal, despite the doubts coming from Washington, and so on? But can we be crystal clear about Iran's other activities in the Middle East? I appreciate what the noble Lord, Lord Hannay, said about the need for both sides to be more peaceful, but there really will be no prospect of a wind-down of the horrific situation in Yemen—the assassinations appear to be ordered, and then there is the horrific starvation and the constant bombardment by the Houthis—until those revolutionary elements in Iran that are backing it back away themselves, and the more moderate elements, which I am sure exist in Iran, which I am sure that the Foreign Secretary has encouraged, can assert a more reasonable approach. Until that happens, we will see the horrors in Yemen continue, which is a real tragedy.

Lord Ahmad of Wimbledon: My noble friend speaks with great experience. I agree with him. As he will be aware, we issued a Statement in November about the missile attack on Riyadh, to which I alluded in the Statement. I agree that the UK has long-standing concerns about Iranian involvement in other regional conflicts, but particularly in Yemen, which we have raised directly with the Iranian Government. I alluded to the constructive yet candid exchanges that we had—and on this occasion, those that my right honourable friend the Foreign Secretary had—particularly in light of the provision of weapons to the Houthis and forces aligned to former President Saleh. This is very much contrary to Security Council Resolution 2216 and the Security Council's embargo on the export of weapons by Iran. My noble friend raises some very valid points, but I reassure him and all noble Lords that we continue to raise these issues of concern about Iran's wider influence—including, as we heard from the noble Lord, Lord Soley, in areas such as Lebanon—to ensure that Iran takes its responsibilities seriously. When we see suggested violations of any provisions or embargos, we raise them proactively in our bilateral exchanges with Iran.

Lord Kilclooney (CB): My Lords, does the Minister agree that one of the more recent matters of concern in the region is the complete breakdown in communications between Saudi Arabia, the UAE and Bahrain, and Qatar? This was raised earlier, but there was no answer to it. Is he aware that Qataris cannot go to funerals in Saudi Arabia any longer, that Qataris who are being educated in Saudi Arabia can no longer complete their education courses there, and that sick children receiving specialist medical treatment in Saudi Arabia can no longer go there to complete their treatment? Is he aware that that means that both Iran and Russia are showing an interest in what is happening in Qatar? When the Foreign Secretary was in the UAE, did he observe any lessening of the division between those countries, or is the separation and lack of communication going to continue?

Lord Ahmad of Wimbledon: The noble Lord is right to raise this issue. We continue to raise the issue of relations with Qatar with the rest of the GCC. The noble Lord will be aware of the efforts that Kuwait has been making in that respect, to which we have certainly lent our strong support. In the recent visits to the UAE by the Foreign Secretary, the very point that the noble Lord raised about the importance of constructive engagement, to ensure that the current status with Qatar can be addressed very quickly—not just by the UAE but by the wider GCC—was very much part of the discussions that took place. I assure the noble Lord that that remains an area of focus for the British Government.

Lord Judd (Lab): My Lords, clearly there is much in the Statement to be welcomed. It is equally clear that the visit by the Foreign Secretary had a number of highly commendable outcomes. Is it acceptable to emphasise that we should put on record our appreciation of the immense hard work that has gone on in the Foreign Office to prepare the way for this visit? Does this not illustrate several crucial points for the future of our foreign policy? Is it not unfortunate that on human rights—and I am very glad that the Foreign Secretary raised the issue of executions and the treatment of prisoners in Iran; it is an appalling story—there is no difference between that issue and that of the nuclear

[LORD JUDD]
agreement? If the nuclear agreement goes wrong, there will be immense potential consequences for the people of Iran, and for others throughout the world. The success of the deal is very much a human rights issue for ordinary people across the world.

On Yemen, can the Minister assure us that the Foreign Office is in constant contact with the humanitarian agencies that are courageously endeavouring against all the odds to try to meet the humanitarian challenges there? Does not that raise the issue that we must keep our strategic approach towards Saudi Arabia under review? We cannot on the one hand be sycophantic towards Saudi Arabia and, on the other, recognise the part that it plays in what is happening in the tragic events of Yemen.

Does not all this show that, in our future foreign policy, whatever the outcomes of Brexit, we must have the closest possible collaboration with our European partners because, in the years ahead, the issues that may arise in the United States are deeply troubling?

Lord Ahmad of Wimbledon: My Lords, the noble Lord raises an important point, as he has illustrated, about keeping and retaining communication. The sheer fact that my right honourable friend the Foreign Secretary visited Iran sends a very clear message about the importance and nature of British diplomacy. Yes, we are strong allies of Saudi Arabia, but it is very much the relationship and alliance that we have with Saudi Arabia that allows us to address some important matters.

The noble Lord raised a very practical point about working closely with other EU countries. I can give no better example than the United States' recent declaration of Jerusalem as the capital of Israel. The statement made at the UN Security Council reflected the unity of other members of the Security Council, including our European allies. We stood shoulder to shoulder to say that, yes, we wish to see a secure and safe Israel but, equally, we want to see a viable Palestinian state. The Government's objective was reflected in the unity that we saw with other members of the Security Council. Notwithstanding our strong and deep relationship with the United States, when we have disagreements we will raise them and we will show that we will be distinct in our status, as we have shown over east Jerusalem. Therefore, I hope the noble Lord recognises—I know he does—the efforts that the Foreign Office has made. He will be all too aware, as a former Foreign Office Minister, of the importance of British diplomacy in this regard. When I look around the world, British diplomacy is quite incredible. Our ambassadors and high commissioners are an important link, and it is those relationships that we nurture across the piece that allow us to have the candid and honest discussions that we have on the international stage.

Lord Dear (CB): My Lords, at the conclusion of this short debate, may I change the focus to Oman and immediately declare an interest? Two or three weeks ago, I spent two weeks there as a guest of my son-in-law, who is the senior British Army officer in that theatre. With him, unofficially, I met a number of very high-ranking Omani officials, including some at ministerial level, and a lot of Omanis at what one might loosely call street level. What came through very clearly from that wide spectrum of association was the tremendous warmth that exists towards this country and the value that they place on our military support. Recognising that there is no formal signed treaty between this country and Oman—nothing has ever been formalised in the many years that we have had that close association—does the Minister recognise, and can he reassure the House, that the warm bilateral relationship going both ways, from the Omanis to us and vice versa, will continue, and we recognise the importance of that relationship in the Gulf?

Lord Ahmad of Wimbledon: The noble Lord is right to raise Oman. I know from my own experience that it is not only a friend but a long-standing British ally in the region, with many shared interests. The noble Lord alluded to various relationships. We share common interests with Oman in the economic, military, counterterrorism and intelligence fields, to name but a few. Let us also not forget that Oman was instrumental in ensuring that Iran came to the table for the historic agreement nuclear deal to which I referred. I reassure the noble Lord that we continue to strengthen our working relationship with Oman. From his previous role he will be very much aware that we have recently increased our support for international best practice by training Omani police in UK police techniques.

Data Protection Bill [HL]

Report (1st Day) (Continued)

6.20 pm

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

Amendment 7

Moved by ***Baroness Kidron***

7: Clause 8, page 5, line 19, at end insert—

"(2) The Secretary of State must as soon as practicable after the passing of this Act by regulations require the Commissioner to set standards for the age-appropriate design of relevant information society services accessed by children and that such standards are to be set out in a code in accordance with section *(Age-appropriate design code)*."

Baroness Kidron (CB): Before I turn to the amendments in my name and that of the Minister, the noble Lord, Lord Stevenson, and the noble Baroness, Lady Harding, I would like to recognise the extraordinary role of children's charities led by the NSPCC; the Duke of Cambridge Task Force; child experts John Carr and Professor Sonia Livingstone; the Children's Commissioner; and the remarkable support of colleagues on the Communications Committee and from all sides of this House, especially the noble Lords, Lord Storey and Lord Clement-Jones. Without these powerful voices, we would not be introducing a statutory code of age-appropriate design to the Bill.

These amendments are a step towards a better digital future for children. They introduce a code that will set out the standards by which online services

protect children's data. They set standards that are directly related to a child's age and the vulnerabilities associated with that age. They clarify the expectation on services to design data practices that put the "best interests" of the child above any other consideration, including their own commercial interest. They establish the standards by which the Information Commissioner will judge services on behalf of child users. Crucially, they connect design of services with the development needs of children, recognising that childhood is a graduated journey from dependence to autonomy.

Amendment 109 states that the Information Commissioner must consult widely on an age-appropriate design code, in particular capturing the voice of children, parents, child-development experts, child advocates and trade associations. In doing so, she will have to determine if the use of GPS location services to hold, sell or share a child's current or predicted location is in a child's best interest. She will have to consider if privacy settings for children should be automatically set to private. She will have to consider if the service can justify the collection of personal data, such as a child's school or home address, their birth date, their likes, dislikes, friends or photographs, in order to facilitate a specific activity being undertaken by that child. She will have to deconstruct terms, conditions and privacy notices in order to make them understandable by, and appropriate for, children of different ages. A six year-old needs different protections and information from a 15 year-old. She will have to consider, with the development stages of childhood in mind, whether paid-for activity such as product placement and marketing is transparent to a child user and what reporting and resolution processes should be offered to children.

Responding to the concern raised by my noble friend Lord Erroll, the code will set out the duty of online services to facilitate the child's right to erasure under the GDPR, with or without the help of an adult. Perhaps most importantly, the commissioner will—for the first time—consider strategies used to encourage extended user engagement; that is, those design features variously called sticky, reward loops, captology and enrapture technologies that have the sole purpose of making a user stay online. These will be looked at from a child development point of view. The opportunity cost, the need for a rich balance of varied online experiences as well as the need to get offline with ease will all be given weight.

Finally, the amendment invokes the UNCRC. The age-appropriate design code must incorporate all the rights of children, and the responsibilities of adults to them, as set out in the charter. The code created by the amendment will apply to all services,

"likely to be accessed by children",

irrespective of age and of whether consent has been asked for. This particular aspect of the amendment could not have been achieved without the help of the Government. In my view it is to their great credit that they agreed to extend age-appropriate standards to all children.

Amendment 111 states that the code must be laid before Parliament as soon as practicable, but no later than 18 months from the passing of the Bill. Amendments 112 and 113 confirm the negative resolution procedure. Amendment 114 allows the commissioner to update the code. In Committee, my noble friend Lady Howe raised the question of enforcement. Although the code is not mandatory for online services, it is mandatory for the ICO to take it into account when investigating breaches and taking enforcement action.

Amendment 110 puts the age-appropriate design code into Clause 121 and, consequentially, into Clause 123. This means that online services facing a complaint of any kind, which have not complied with the age-appropriate code, risk enormous enforcement consequences, including the spectre of fines of up to €20 million or 4% of annual global turnover. In Committee, doubts were raised that it was technically possible to regulate the digital environment, so I am particularly grateful to the noble Baronesses, Lady Lane-Fox and Lady Shields, to Sky and to TalkTalk, for making it clear that there is no technological impediment to effective design; it is simply a question of corporate and legislative will.

Self-regulation has not provided a high bar of data protection for children. On the contrary, we have seen a greedy disregard of children's needs from some sections of the tech sector in their eye-watering data collection policies. The introduction of a statutory code makes very clear what is required of them, and although data protection is crucial, it is not the only issue that confronts children in the digital environment. The principle which these amendments establishes—that a child is a child, even online—must now be established in every aspect of a child's digital life, as a cultural and legal norm.

On this subject, I urge the Government to take one further step in the Bill: the introduction of a super-claimant procedure provided for by article 80(2) of the GDPR, and supported by the ICO. Children need advocates in all areas of life, including the digital. We will, no doubt, return to that in the new year. In the meantime, I thank the Minister, DCMS officials, the Bill team, the Minister for Digital and the Secretary of State. Along with those whom I have already mentioned, they have reason to be proud of introducing age-appropriate design standards to the Bill. Above all, it is a necessity for a 21st century child to access the digital environment knowledgably, creatively and fearlessly.

I support my noble friend Lord Clancarty, who has an amendment in this group. I look forward to hearing from the Minister of the Government's commitment to the aspects of design that the commissioner will consider; that children's needs will be at the heart of this code; and a clear indication that enforcement will be a priority for the commissioner and robustly applied. I beg to move.

6.30 pm

Baroness Harding of Winscombe (Con): My Lords, I remind your Lordships of my register of interests in the digital space, not least as the ex-chief executive of TalkTalk and trustee of Doteveryone. I add my thanks to those of my noble friend Lady Kidron. I also thank her for her tireless campaigning on behalf of children, and the energy, drive and commitment that she has shown in bringing all of us on this journey. We definitely would not be here today without her. I also thank my noble friend the Minister and the ministerial team

[Baroness Harding of Winscombe]
both here and in the other place and the noble Lord, Lord Stevenson. This is genuinely a team effort, both within this House and, as the noble Baroness, Lady Kidron, set out, among all the charities and organisations which work tirelessly to ensure that we protect the vulnerable in the digital world—most importantly in the case we are discussing today, our children.

A code of practice for age-appropriate design for digital services is a hugely important step. Every time I speak in this House I talk about how much I believe that the digital world is a force for good and of the opportunity it presents us, particularly as an open country which embraces new technology. We have a history of not just embracing new technology but of protecting the vulnerable as we do so. This amendment is an important landmark in that journey for the digital world as we need the digital space to be civilised, every bit as civilised as the physical world, and we struggle in debating how we ensure that the physical world is civilised.

Data is at the core of digital and therefore this amendment is at the core of building a civilised digital society as it recognises that children's data needs must be addressed and that children need to have special protections in the digital world, just as they do in the physical world. We are taking a hugely important moral as well as legal step in our digital journey. However, a code of practice will make a difference only if it changes behaviours, and, in this case, changes the behaviours of very big and very small digital service providers. Sadly, we are debating this issue because self-regulation is not working. I certainly think it is sad that that is the case. I very much hope that this amendment will start to drive the right behaviours but it will do so only if has teeth. Therefore, when my noble friend the Minister replies, I would be interested to hear his interpretation of the powers that this amendment would give the Information Commissioner. We need it to give her position teeth. We need to ensure that the ICO has sufficient resources to conduct the consultation properly in a reasonable period of time to provide commercial businesses big and small with sufficient time to enable them to implement this measure for children. A code will be effective only if tech companies subsequently change their behaviour.

I still very much hope that this debate and the amendment itself demonstrate to technology companies big and small our commitment as a country to protect our children online, and our expectation that all businesses will play their part. I still firmly believe that the free market works in most cases. I hope that simply by setting this process in train, technology companies will start to implement some of the basic protections for children that we discussed in Committee. It will be so much easier for the ICO to implement these standards if many of the basic protections are already in place but, much more importantly, our children would be safer from tomorrow rather than in 18 months' or two years' time. I am delighted to see this amendment supported on all sides of the House.

Baroness Howe of Idlicote (CB): My Lords, I am glad to support Amendment 7 and the related amendments in the name of my noble friend Lady Kidron. Like others, I commend her for her perseverance and commitment in ensuring that we see children flourish as they grow from the early years of digital interaction to adulthood.

In 2010, the annual Ofcom media report made no mention of tablet computers. In 2017, 21% of three year-olds have their own tablet. This is the world in which our children are growing up. We use the global term "children" easily, which under the United Nations Convention on the Rights of the Child means a person under the age of 18. As those years encompass such diverse development, the Information Commissioner has a considerable challenge ahead to identify design suitable to cover all those needs. I for one wish her well.

As I have made clear on many occasions, I am for positive use of the internet by children, and for resources which help parents raise their children in the digital age. With that preface in mind, I would like to ask some questions about these amendments to clarify the intentions and the way forward.

First, during the debates we have had on Clause 8, we have talked about children aged between 13 and 16. Amendment 109 refers to a code being developed for sites,

"which are likely to be accessed by children".

I hope that my noble friend and the Minister will clarify which age group we are referring to, since there is no definition of children in the Bill but the terms "child" and "children" are used in the headings of Clauses 8 and 191, where the relevant age of the child is 13 and 12 respectively. As Amendment 109 refers to the UNCRC, I assume that the intention is that the age-appropriate design code of practice will cover all children up to the age of 18. However, it would be very helpful for a definition of children to be included in the relevant clauses so that there is no uncertainty.

Secondly, I hope that there will be clarification of which sites will fall within the requirements of the code. Clearly, the expectation is that the code will go beyond sites which would require the consent of children, but will it apply only to sites whose primary intention is to reach children? For instance, in the last couple of weeks, Facebook has launched a chat app for children who are not old enough to be signed up to Facebook. The new app is aimed at six to 12 year-olds. Will the new code apply just to this app or to the version of Facebook that permits access by those aged 13 and above as well?

On 23 November, this House discussed online problem gambling. A number of interventions were made by noble Lords on online gambling sites that have games involving cartoon characters which look similar to characters in children's TV, and most certainly appeal to children. When the *Times* reported on these games, the chief executive of the Remote Gambling Association said that companies were not deliberately targeting children but that some nostalgic games might inadvertently be attractive to them. I hope that the position of these sites under the code, which in theory should not be accessible to children but clearly are, will also be addressed.

Thirdly, how will sites complying with the age-appropriate design be obvious to parents, especially to parents who consent to their child's use of any data?

In this context, will the new code be incorporated into the next draft of the Internet Safety Strategy? Finally, how will the code be enforced? Without some good enforcement mechanism, it is likely that it will not have as wide-reaching an impact as this House hopes that it will.

These amendments have come at a late stage in our consideration of this Bill. I look forward to hearing what my noble friend and the Minister have to say in response to my questions. I hope that the other place will continue to reflect on the proposal before us today and refine it if necessary. I hope too that it will continue to ask questions about whether the digital age of consent of 13 is the most appropriate age, and that there will be satisfactory evidence that 13 is in the best interests of our young people.

The internet puts the world at the fingertips of our children. I commend my noble friend Lady Kidron for working to ensure that children are able to make the most of this amazing resource in a way that supports child development.

Lord Arbuthnot of Edrom (Con): My Lords, I thank the noble Baroness, Lady Kidron, for moving these amendments with such incredible clarity that I was able to understand what they were saying. My question follows on from the point made by the noble Baroness, Lady Howe, about how these amendments would be enforced. As the noble Baroness, Lady Jay of Paddington, said in Committee, all these issues arise in an international context. How will the international dimension work with regard to these amendments? I would be concerned if we were to impose rules in this country which might create divergence from the GDPR and hence make it more difficult to achieve the eventual accommodations with the European Union that would allow us to continue to do business with it in the longer term. There is an international dimension to all this and I do not understand how it would work with regard to these amendments.

Lord McNally (LD): My Lords, not for the first time in her distinguished career in this House, the noble Baroness, Lady Howe, has asked some pertinent questions, the answers to which I look forward to. First, however, I pay tribute to the noble Baroness, Lady Kidron. It is quite often difficult for a parliamentarian to know whether they have made a difference; we all get swept up in the tide of things. However, I have looked at the Bill as it has moved through both the other place and here, and without her intervention, her perseverance and her articulate exposition of the case, we would not be where we are today. She should take great credit for that.

In some respects, there is a sense of déjà vu. I am glad to see the noble Lord, Lord Puttnam, in his place; I was on his committee 15 years ago which looked at the Communications Act and the implications of what were then new technologies. However, looking back, the truth is that we had only an inkling of the tsunami of technology that was about to hit us and how we would control it. There are some things that we might have done during the passage of that Bill to anticipate some problems that we did not do. However, it is always difficult to know the future. Indeed, of all the things I have had a bit to do with, the creation of Ofcom is one that I take great pride in. For all its problems, Ofcom has proved itself a most effective regulator, and these days it seems that it is asked to do more and more.

That brings us to what is being suggested with the ICO. It is extremely important that the ICO is given the resources, the teeth and the political support to carry out the robust tasks that we are now charging it with. That was not thought of for the ICO when it was first created. We are therefore creating new responsibilities, and we have to will the ends in that respect.

One of the good things about the amendments in the name of the noble Baroness, Lady Kidron, is that this is beginning slightly to impinge on the tech companies—they cannot exist in a kind of Wild West, where anything goes. I think I said at an earlier stage that when I hear people say, "Oh well, the internet is beyond political control and the rule of law", every fibre of my being as a parliamentarian says, "Oh no it's not, and we'll show you that it's not". This is a step towards making it clear to the tech companies that they have to step up to the plate and start developing a sense of corporate social responsibility, particularly in the area of the care of children.

6.45 pm

I share with the noble Baroness, Lady Harding, the confidence that with these new technologies we have an enormous potential for good. However, the jury is still out on whether we will create a civilised space or not. It would depend on how we legislate, what powers we give to the regulator, which we give teeth to, and on how smart the tech companies are in responding to this genuine public concern. If they do not understand that people are concerned, and that once they get concerned they will get angry, they will diminish their opportunities to play a constructive role in what can be a quite transforming technological revolution, which we are about to experience.

Lord Puttnam (Lab): My Lords, I add my voice in congratulating the noble Baroness, Lady Kidron, on her amendment and on the way it was presented. I will try to add additional value to the discussion. I, along with the noble Baronesses, Lady Harding, Lady Shields, and Lady Lane-Fox, have spent a lot of the time—in my case, 20 years—defending and promoting the tech industry. I believe in the tech industry and in its educational capacity and many of the developments it can produce. I also have many friends in the tech industry, which makes it doubly difficult. That is why I find it so difficult to understand why they are not part of this.

One reason, which is important but which has not been mentioned, is that these are the UK subsidiaries of major global businesses. When well-meaning people in the UK look at this problem and would probably like to address it, they get barked at down the phone by someone who has no conception of the strength of feeling in this House or in the UK and Europe, and so they do not get a sympathetic hearing. By passing this amendment, this House can send a message back to the west coast of the United States to say, "I'm very sorry—your values do not prevail here. We're looking

[LORD PUTTNAM]
for something different: a tech industry that supports, enhances and encourages the type of society that we all want to be part of". It is important to get that message back.

It is not just us saying that. David Brooks, the eminent journalist for the *New York Times*, ended his piece on 20 November by saying:

"Tech will have few defenders on the national scene. Obviously, the smart play would be for the tech industry to get out in front and clean up its own pollution".

That is the intelligent view. The tech industry I have promoted and believe in will get out in front and understand the signal that is being sent from this House, and will begin to do something about it. It will be quite surprising what they can do, because in a sense we may well be helping the senior executives in Europe to get their message back to the west coast of the United States. That is one important reason why I support the amendment.

The Earl of Erroll (CB): My Lords, I cannot add much to what the noble Baroness, Lady Kidron, said when she took us on her concise comprehensive canter through her amendments, but I will mention two things.

The first is in response to the noble Lord, Lord Arbuthnot, who is right to say that enforcement is essential, particularly because it is international—the internet is international. We faced this with Part 3 of the Digital Economy Act in trying to prevent children getting pornography. One of the things that became apparent is that the payment services providers are good on this sort of thing, and if it looks right and the community agrees it, they will withdraw payment services from people who do not comply. As most websites are out there to make money, if they cannot get the money in, they quickly come into line. So there may be some enforcement possibilities in that area, as it ends up being international.

The other thing we noticed is that the world is watching us in Britain because we are leading on a lot of these things. If we can make this effective, I think other countries will start to roll it out, which makes it much easier to make it effective. It is a big question because at the end of the day we are trying to balance the well-meaning desire of the developers and those producing these apps, who want to deliver a ubiquitous, useful utility everywhere, with the protection of the young. That is a difficult thing to do, which is why this has to remain flexible. We have to leave it up to someone who is very wise to get us there. If we get it right, this could be a very good step forward.

Lord Best (CB): My Lords, I rise in support of these amendments, as if any further support were needed. I speak as the Member of yours Lordships' House who chaired your Communications Committee when we produced our report, *Growing Up With the Internet*. My noble friend Lady Kidron was a most distinguished member of the committee and greatly helped us in formulating our recommendations. Alongside support for parents and schools and other measures, the committee sought government intervention in curbing the poor practices of the organisations providing content and delivering the internet's services to children, especially through social media. This group of amendments takes forward that central theme from the committee's report, and I thank my noble friend and congratulate her on her foresight and tenacity in pursuing this. I also thank the Minister, backed by his Secretary of State, for supporting these amendments today.

The underlying significance of the amendments is that they establish a process for government—for society—to intervene in determining the behaviour of those responsible for internet services that can have such a huge impact on the lives of our children. In particular, the new process will cover the activities of huge global companies such as Facebook and Google, among the most prosperous and profitable organisations on the planet, which have the power, if only they would use it, to ensure the safety and well-being of children online. The process set in train by these amendments involves empowering the Information Commissioner to set the standards that all the key players will be expected to adopt or face significant sanctions. The amendments mark a necessary shift away from depending on good will and purely voluntary self-regulation. They represent a breakthrough in holding to account those mighty corporations based far away in Silicon Valley, to which the noble Lord, Lord Puttnam, made reference, and others closer to home. It is good to see major organisation such as Sky and TalkTalk supporting such a change, alongside the major charities such as the NSPCC.

Your Lordships' Communications Committee and the whole House owe a huge debt of gratitude to my noble friend Lady Kidron for so diligently taking forward the arguments that have led to the significant change which these amendments herald. I know that the committee, as well as all those concerned with the safety and well-being of the nation's children, will greatly welcome this big step towards ensuring better behaviour from all the relevant commercial enterprises. I suggest that this is a major step in protecting not just children in the UK but children around the world as the value of this kind of intervention becomes recognised, as the noble Earl, Lord Erroll, mentioned. The amendments get my fulsome support.

The Earl of Clancarty (CB): My Lords, I will speak to Amendment 117 in my name, but before I do I warmly congratulate my noble friend Lady Kidron on obtaining this important code of practice for children. I apologise for not having spoken in the debate on this Bill previously, but Amendment 117 is significant and is also a children's rights issue.

If there is to be—correctly—a sensitivity concerning age-appropriate understanding by children in relation to information services, the same should be no less true in the school setting, where personal data given out ranges from a new maths app to data collected by the DfE for the national pupil database. A code of practice needs to be introduced that centres on the rights of the child—children are currently disempowered in relation to their own personal data in schools. Although not explicitly referred to in this amendment, such a code ought to reflect the child's right to be heard as set out in Article 12 of the UN Convention

on the Rights of the Child. Among other things, it would allow children, parents, school staff and systems administrators to build trust together in safe, fair and transparent practice.

The situation is complicated in part by the fact that it is parents who make decisions on behalf of children up to the age of 18; although that in itself makes it even more necessary that children are made aware of the data about themselves that is collected and every use to which that data may be put, including the handing on to third-party users, as well as the justification for so doing. The current reality is that children may well go through life without knowing that data on a named basis is held permanently by the DfE, let alone passed on to others. There may, of course, be very good research reasons why data is collected, but such reasons should not override children's rights, even as an exemption.

It is because there is no clear code of practice for a culture of increased data gathering in the school setting that we now have the current situation of growing controversy, enforcement and misuse. It is important, for instance, that both parents and children, in their capacity to understand, are made aware—as schools should be—of what data can be provided optionally. However, when nationality and place of birth were introduced by the DfE last year, many schools demanded that passports be brought into the classroom. In effect, the DfE operated an opt-out system. The introduction of nationality and place of birth data also raises the question of the relevance of data to improving education and its ultimate use. Many parents do not believe that such data has anything to do with the improvement of education. Last week, Against Borders for Children, supported by Liberty, launched an action against the Government on this basis.

There is now also considerable concern about the further expansion of the census data in January next year to include alternative provision data on mental health, pregnancy and other sensitive information without consent from parents or children, with no commitment to children's confidentiality and without ceasing the use of identifying data for third-party use.

It was only after FOI requests and questions from Caroline Lucas that we discovered that the DfE had passed on individual records to the Home Office for particular immigration purposes. As defenddigitalme said, such action,

"impinges on fundamental rights to privacy and the basic data protection principles of purposes limitation and fairness".

I appreciate that as the Bill stands such purposes are an exemption, but teachers are not border guards.

In 2013, a large number of records were passed to the *Daily Telegraph* by the DfE. In an Answer given on 31 October this year by Nick Gibb to a Question by Darren Jones, he incorrectly said that individuals could not be identified. There is no suggestion that there was any sinister intent, but many parents and schoolchildren would be appalled that a newspaper had possession of this data or that such a transfer of information was possible. Moreover, in the same Answer he said that he did not know how many datasets had been passed on. This is unacceptable. There needs to be a proper auditing process, as data needs to be safe. It is wrong too that a company may have more access to a pupil's data than the pupil themselves, or indeed have such data corrected if wrong.

It is clear that from the Government's point of view, one reason for having a good code of practice is to restore confidence in the Government, but this should not be the main reason. In September, Schools Week reported that the Information Commissioner's Office was critical of the current DfE guidance, which is aimed at schools rather than parents or children and is, in the main, procedural. It said that rights were not given enough prominence. Both children and parents need to be properly informed of these rights and the use to which data is put at every stage throughout a child's school life and, where applicable, beyond.

Lord Clement-Jones (LD): My Lords, I add my very strong welcome for this amendment to the very strong welcome from these Benches. I endorse everything that my noble friend Lord McNally said about the noble Baroness, Lady Kidron, and her energy and efforts. In fact, I believe that she was far too modest in her introduction of the amendment. I agree with the noble Lord, Lord Best, that, quite honestly, this is essentially a game-changer in the online world for children. As he said, the process of setting standards could be much wider than simply the UK. As the noble Lord, Lord Puttnam, said, these major tech companies need to wake up and understand that they have to behave in an ethical fashion. Having been exposed to some of the issues in recent weeks, it is obvious to me that as technology becomes ever more autonomous, the way tech companies adopt ethical forms of behaviour becomes ever more important. This is the start of something important in this field. Otherwise, the public will turn away and will not understand why all this is happening. That will inevitably be the consequence.

7 pm

Perhaps I may add something to what the noble Baroness, Lady Kidron, said. As I said, she is too modest. I have read her report, *Digital Childhood—Addressing Childhood Development Milestones in the Digital Environment*, which contains lessons the Government should take on board for their internet safety strategy. I hope the Minister will read it himself. There is a useful passage which states:

"We cannot solely rely on the digital resilience of children. Industry and government must adapt the digital environment to make it fit for children by acting above and beyond commercial consideration".

That is exactly what the amendment does. However, it is applicable also to many other aspects of the internet safety strategy. Many other points are made in the report: that the Government should use childhood development milestones to determine their policy-making process, that industry should commit to delivering an age-appropriate digital agency to children even when it challenges its own commercial interests, and so on.

The noble Baroness is far too modest. I read the report with huge admiration for the work that has gone into it and the principles enunciated in it, which can inform a future digital safety strategy. I hope it is required reading for anyone within the DDCMS who is charged with taking forward the digital safety strategy.

[Lord Clement-Jones]

On Amendment 117, tabled by the noble Earl, Lord Clancarty, I come rather late to the party. However, he made a strong case—there is a crucial case to answer. I know that 20 organisations have written to the Prime Minister on this issue today. The new national data collection in the alternative provision census comes into effect in January, with new labels being added to children's records and the national pupil database. This database is currently in use. Apparently more than 1,000 requests for the use of confidential pupil records in the database have been approved by the Department for Education since March 2012. It is not a theoretical database and the Department for Education has to take responsibility for it. The points made by the noble Earl need answering—if not by the Minister then certainly by the Department for Education.

Lord Stevenson of Balmacara (Lab): My Lords, we have had a good discussion this evening about topics raised in Committee, where the strength of feeling and expertise displayed was highly instrumental in persuading Ministers to think again about the approach they were taking towards the regulatory process for children's data being transferred into the internet. It shows that well-argued cases can get through even the most impervious armour put on by Ministers when they start battling on their Bills. I am delighted to see it.

The noble Lord, Lord Clement-Jones, commented on Amendment 117, tabled by the noble Earl, Lord Clancarty. I wondered why that amendment had been included in the group because it seemed to point in a different direction. It deals with data collected and used by the Government, having cleared what would presumably be the highest standards of propriety in relation to it. However, the story that emerged, endorsed by the noble Lord, Lord Clement-Jones, is shocking and I hope that the Minister will be able to help us chart a path through this issue. Several things seem to be going wrong. The issues were raised by my noble friend Lord Knight in Committee, but this amendment and the paperwork supplied with it give me a chill. The logic behind the amendment's being in this group is that this is the end-product of the collection of children's data—admittedly by others who are providing it for them in this case—and it shows the kinds of dangers that are about. I hope that point will be answered well by the Minister when he comes to respond.

I turn to the substantive amendment; it is an honour to have been invited to sign up to it. I have watched with admiration—as have many others—the skilful way in which the noble Baronesses, Lady Kidron and Lady Harding, and others have put together a case, then an argument and then evidence that has persuaded all of us that something can be done, should be done and now will be done to make sure that our children and grandchildren will have a safe environment in which they can explore and learn from the internet.

When historic moments such as this come along you do not often notice them. However, tonight we are laying down a complete change in the way in which individuals relate to the services that have now been provided on such a huge scale, as has been described. I welcome that—it is an important point—and we want to use it, savour it and build on it as we go forward.

I first sensed that we were on the right path here when I addressed an industry group of data-processing professionals recently. Although I wowed them with my knowledge of the automatic processing of data and biometric arguments—I even strayed into de-anonymisation, and got the word right as I spoke in my cups—they did not want anything to do with that: they only wanted to talk about what we were going to do to support the noble Baroness, Lady Kidron, and her amendments. When the operators in industry are picking up these debates and realising that this is something that they had always really wanted but did not know how to do—and now it is happening and they are supporting it all they can—we are in the right place.

The noble Baroness, Lady Harding, said something interesting about it being quite clear now that self-regulation does not work—she obviously has not read Adam Smith recently; I could have told her that she might have picked that up from earlier studies. She also said, to redeem herself, that good regulation has a chance to change behaviour and to inculcate a self-regulatory approach, where those who are regulated recognise the strength of the regulations coming forward and then use it to develop a proper approach to the issue and more. In that sense she is incredibly up to date. Your Lordships' House discussed this only last week in a debate promoted by the noble Baroness, Lady Neville-Rolfe, on what good regulation meant and how it could be applied. We on these Benches are on all fours with her on this. It is exactly the way to go. Regulation for regulation's sake does not work. Stripping away regulation because you think it is red tape does not work. Good regulation or even better regulation works, and that is where we want to go.

There are only three points I want to pick out of the contribution made by the noble Baroness, Lady Kidron, when she introduced the amendment. First, it is good that the problem we saw at the start of the process about how we were going to get this code applied to all children has been dealt with by the Government in taking on the amendment and bringing it back in a different way. As the noble Baroness admits, their knowledge and insight was instrumental in getting this in the Bill. I think that answers some of the questions that the noble Baroness, Lady Howe, was correctly asking. How do the recommendations and the derogation in the Bill reducing the age from 16 to 13 work in relation to the child? They do so because the amendment is framed in such a way that all children, however they access the internet, will be caught by it, and that is terrific.

The second point I want to make picks up on a concern also raised by the noble Baroness, Lady Harding. While we are probably not going to get a timescale today, the Bill sets a good end-stop for when the code is going to be implemented. However, one hopes that when the Minister comes to respond, he will be able to give us a little more hope than having to wait for 18 months. The amendment does say,

"as soon as reasonably practicable",

but that is usually code for "not quite soon". I hope that we will not have to wait too long for the code because it is really important. The noble Baroness,

Lady Harding, pointed out that if the message goes out clearly and the descriptions of what we intend to do are right, the industry will want to move before then anyway.

Thirdly, I turn to the important question of how the code will be put into force in such a way that it makes sure that those who do not follow it will be at risk. Yes, there will be fines, and I hope that the Minister is able to confirm what the noble Baroness asked him when introducing her amendment. I would also like to pick up the point about the need to ensure that we encourage the Government to think again about the derogation of article 82. I notice in a document recently distributed by the Information Commissioner that she is concerned about this, particularly in relation to vulnerable people and children, who might not be expected to know whether and how they can exercise their rights under data protection law. It is clear that very young people will not be able to do that. If they cannot or do not understand the situation they are in, how is enforcement going to take place? Surely the right thing to do is to make sure that the bodies which have been working with the noble Baroness, Lady Kidron, which know and understand the issues at stake here, are able to raise what are known as super complaint-type procedures on behalf of the many children to whom damage might be being done but who do not have a way of exercising their rights.

If we can have a response to that when we come to it later in the Bill, and in the interim get answers to some of the questions I have set out, we will be at the historic moment of being able to bless on its way a fantastic approach to how those who are the most vulnerable but who often get so much out of the internet can be protected. I am delighted to be able to support the amendment.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, first, like other noble Lords, I pay tribute to the noble Baroness, Lady Kidron, for her months—indeed, years—of work to ensure that the rights and safety of children are protected online. I commend her efforts to ensure that the Bill properly secures those rights. She has convinced us that it is absolutely right that children deserve their own protections in the Bill. The Government agree that these amendments do just that for the processing of a child's personal data.

Amendment 109 would require the Information Commissioner to produce a code of practice on age-appropriate design of online services. The code will carry the force of statutory guidance and set out the standards expected of data controllers to comply with the principles and obligations on data processors as set out by the GDPR and the Bill. I am happy to undertake that the Secretary of State will work in close consultation with the Information Commissioner and the noble Baroness, Lady Kidron, to ensure that this code is robust, practical and, most importantly, meets the development needs of children in relation to the gathering, sharing, storing and commoditising of their data. I have also taken on board the recommendations of the noble Lord, Lord Clement-Jones, on the internet safety strategy. We have work to do on that and I will take his views back to the department.

The Government will support the code by providing the Information Commissioner with a list of minimum standards to be taken into account when designing it. These are similar to the standards proposed by the noble Baroness in Committee. They include default privacy settings, data minimisation standards, the presentation and language of terms and conditions and privacy notices, uses of geolocation technology, automated and semi-automated profiling, transparency of paid-for activity such as product placement and marketing, the sharing and resale of data, the strategies used to encourage extended user engagement, user reporting and resolution processes and systems, the ability to understand and activate a child's right to erasure, rectification and restriction, the ability to access advice from independent, specialist advocates on all data rights, and any other aspect of design that the commissioner considers relevant.

7.15 pm

The new age-appropriate design code interlocks with the existing data protection enforcement mechanism found in the Bill and the GDPR. The data protection principles apply equally to children and are applied by data controllers on the basis of guidance provided by the commissioner. The GDPR makes clear that children merit specific protection with regard to their personal data as they may be less aware of the risks and consequences. The code will establish the standards required of data controllers to meet this obligation. The status of a statutory code means that any organisation that ignores it is taking a significant legal risk.

The Information Commissioner considers many factors in every regulatory decision, but non-compliance with this code will weigh particularly heavily for a non-compliant website or app maker. Organisations that wish to minimise their risk of being penalised up to £18 million or 4% of global turnover will apply the code; it would be foolhardy not to do so. I hope the noble Lords, Lord McNally and Lord Puttnam, can take some comfort from that. The new code on age-appropriate design will have the same proven enforceability as our codes on direct marketing and data sharing, issues we take extremely seriously. My noble friends Lady Harding and Lord Arbuthnot, the noble Lord, Lord Puttnam, and the noble Baroness, Lady Howe, along with many other noble Lords, have asked in effect whether the codes have teeth. We say that they do.

The principle-based regulatory approach sets few rules so the ICO produces guidance as to how those principles must be observed. Organisations may find alternative ways of meeting the requirements, but will need to demonstrate compliance. If they do nothing, they risk breaking the law. While all ICO guidance has teeth, statutory codes have sharper teeth. They can be used in evidence in any legal proceedings, not only data protection proceedings. In determining a question arising from proceedings, courts and tribunals must take into account any part of the code that appears to them relevant to that question. In carrying out her functions, the Information Commissioner must also take the code into account. When investigating a breach of data protection law, the commissioner has to decide whether the data controller acted reasonably.

[Lord Ashton of Hyde]
In conducting this balancing test, the failure to comply with a statutory code will weigh heavily against the controller. In areas where there is competing guidance such as that produced by self-regulators—for example, the Institute of Fundraising, IPSO and so on—statutory guidance takes precedence.

It is proven to work. The new age-appropriate design code will be the commissioner's third statutory code. The first was the data sharing code, which was originally provided for in the Coroners and Justice Act 2009 and will be re-enacted by Clause 119 of the Bill. This is a key tool to ensure that data controllers comply with the law. The commissioner asked for her guidance on direct marketing to be given the status of a statutory code to enable tough enforcement. The Government delivered the statutory code in the Digital Economy Act 2017 and it will be re-enacted by Clause 120 of this Bill.

Amendment 111 makes clear that the new code will be laid as soon as possible and no more than 18 months after the passing of the Bill. I have noted the comments of the noble Lord, Lord Stevenson, and I have said that it will be laid as soon as possible. The Information Commissioner, working with the Government, the noble Baroness, Lady Kidron, and a range of concerned stakeholders, will use that time to get it right and to ensure that they are the best possible rules to protect children while allowing them to continue to enjoy the benefits of the internet and be full citizens of the digital age. I hope the House can see that this position has been developed with a concern to ensure that children in the UK are granted a robust data regime so that they can access online services in a way that meets their age and development needs. This is and will remain a top priority for the Government. Again, I thank the noble Baroness for her amendments and, much more importantly in some ways, her leadership on this matter.

Before I leave this, the noble Baroness, Lady Kidron, and the noble Lord, Lord Stevenson, mentioned article 80(2) on representation of data subjects. This is coming up. Our view is that the Data Protection Bill provides sufficient recourse for data subjects by enabling them to give consent to non-profit organisations to represent their interests in the event that their rights have been infringed. As I said, I am sure we will have a chance to debate that on the third day of Report.

While we are very pleased to support the noble Baroness's Amendments 109, 111, 112 and 114, we also have a number of government amendments in this group. Amendments 110, 113, 115 and 116 are technical amendments to ensure that the noble Baroness's amendments are correctly stitched into the framework for creating and enforcing codes of practice, consistent with other statutory codes that the commissioner must produce. I will move those amendments.

Finally, we believe that Amendment 117 in the name of the noble Earl, Lord Clancarty, is unnecessary. The sharing of individual-level pupil data is already highly regulated in law, specifically in Section 537A of the Education Act 1996. The Department for Education takes its data protection responsibilities seriously. To comply with the law, it has developed a rigorous process around data sharing of individual records. It does not share data simply because it is lawful to do so; it shares data only where it is both lawful and ethical to do so. As part of the approvals process, officials, including legal experts and senior civil servants with data expertise, assess the application for public benefit, proportionality—ensuring the minimum amount of data is used to meet the purpose—and legal underpinning, and so that the strict information security standards we enforce have been satisfied.

The Department for Education goes to great lengths to be transparent and accountable in data sharing. Since December 2013, it has provided summary information about data sharing requests that have been approved through the existing NPD Data Management Advisory Panel, providing public transparency about the sharing of individual pupil-level data.

In preparation for the GDPR coming into force, the department is actively reviewing its data-sharing processes with third parties to ensure greater security, consistency, accountability and transparency around data sharing. Before May 2018, the department will review its existing arrangements and processes for sharing sensitive personal data to date to ensure they are compliant with the incoming regulations, and review them regularly thereafter. As part of that work and to ensure citizens have even greater oversight of the department's data, on 14 December the department is publishing an oversight of all DfE external personal-level data sharing to date and will continue to update this publication regularly. In view of this reassurance, I would be grateful if the noble Earl did not press his amendment.

Baroness Kidron: My thanks to the noble Lord the Minister. The wonderful thing about having the Minister's name to your amendments is that he has answered all the difficult questions. I thank everyone who spoke for their very kind words, not on my behalf, but on behalf of all the people who work to protect children, online and offline. I accept noble Lords' thanks. It is very moving.

I would like to say three things. I was overwhelmed this weekend when the news broke that we had come to terms on the amendment. I received many emails from other parts of the world. To those who said in the debate that this may be a first step not just for us, but for the world—or at least in Europe—all indications are in that direction. I also reassure everyone that this amendment in no way threatened adequacy. Officials and I have been through this issue at great length. We had the kind and generous advice of Jonathan Swift QC, who is a great expert in this matter. We are quite sure of adequacy. On the question of enforcement globally, this is a challenge not for this amendment alone, but one for the Bill as a whole.

In the meantime, I look forward to working with the Government and others to make sure this is a meaningful first step to creating a digital world in which children can thrive. I beg leave to withdraw Amendment 7, and note that the other amendments will be moved as they appear.

Amendment 7 withdrawn.

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

Amendment 8

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

8: Clause 9, page 5, line 37, at end insert—

"( ) The processing of biometric data meets the requirements of Article 9(4) of the GDPR for authorisation by the law of the United Kingdom or part of the United Kingdom only if it meets the condition in paragraph 11A of Part 2 of Schedule 1."

Lord Clement-Jones: My Lords, in moving Amendment 8 I will speak to Amendment 21. I will be a little longer than perhaps those waiting on their dinner would like. I apologise for that, but this is an important set of amendments for those wishing to make use of new technologies using biometrics.

In Committee the Minister focused on the use of biometrics in a clear context, such as using a fingerprint to unlock a mobile device. In that context he may be correct to say that the enabling of this security feature by the user constitutes consent—although without a record of the consent it would still fall short of GDPR requirements. However, the contexts I was aiming to cover are those where the biometric data processing is an integral part of a service or feature, and the service or feature simply will not function without it.

Other contexts I was looking to cover include where banks decide to use biometric technology as extra security when you phone up or access your account online. Some banks offer this as an option, but it is not hard to envisage this becoming a requirement as banks are expected to do more to protect account access. If it is a mandatory requirement, consent is not appropriate—nor would it be valid. HMRC has begun to use voice recognition so that people will not have to go through all the usual security questions. If HMRC does this after 25 May 2018 it could be unlawful.

This is certainly the case with biometric access systems at employment premises. It is also the case where biometrics are used in schools and nurseries, such as for access controls and identifying who is picking up a child. In schools, biometrics are sometimes used to determine entitlements, such as free meals, in a way that does not identify or risk stigmatising those who receive them, and avoids children having to remember swipe cards or carry money.

In these contexts, providing an alternative system that does not use biometrics would probably undermine the security and other reasons for having biometrics in the first place. Without any specific lawful basis for biometric data, organisations will rely entirely on the Government, the ICO and the courts, accepting that their uses fall within the fraud prevention/substantial public interest lawful bases and within the definition of "scientific research".

The amendments are designed to meet all these objections. In particular, the research elements of the amendments replicate the research exemption in Section 33 the Data Protection Act 1998. The effect of this exemption is that organisations processing personal data for research purposes are exempt from certain provisions of the Act, provided that they meet certain conditions. The key conditions are that the data is not used to support measures or decisions about specific individuals and that there is no substantial damage or distress caused by the processing.

In this context—I am afraid this is the reason for taking rather longer than I had hoped—it is important to place on the record a response to a number of points made in the Minister's letter of 5 December to me about biometric data. First, he said:

"As you are aware, the General Data Protection Regulation … regards biometric data as a 'special category' of data due to its sensitivity".

This is precisely why the amendment is needed. The change in status risks current lawful processing becoming unlawful. This type of data is being processed now using conditions for processing that will no longer be available once it becomes sensitive data.

7.30 pm

Secondly, the Minister said:

"In order to process such data, a controller must satisfy a processing condition in Article 9 of the GDPR. The most straightforward route to ensure that processing of such data was lawful would be to seek the explicit consent of the data subject".

But consent is not the most straightforward route. Consent under GDPR has to meet certain conditions to be valid, which sets the bar high. It is valid only where it is a genuine choice, and many aspects of business processing are not a choice for individuals.

Thirdly, the Minister said:

"You explained that many businesses, such as banks, already make use of biometric identification verification mechanisms. Some devices, such as computers and smartphones, allow users to access the service using fingerprint recognition, for example".

This statement confuses two things: the use of fingerprint or other biometrics as a way to access devices such as smartphones or laptops, which is an optional feature provided by the manufacturer; and the use of biometrics by service providers such as banks to allow customers to access their accounts.

Some service providers piggyback on the smartphone or laptop functionality to offer this as an option to customers if they have already enabled it for access to the device. However, banks use biometrics, such as voice recognition, for account access over the phone so that their customer services team can authenticate you, which is unrelated to biometrics used to access a device.

Fourthly, the Minister said:

"Generally speaking, such mechanisms are offered as an alternative to more conventional forms of access, such as use of passwords, and service providers should therefore have no difficulty in seeking the data subjects' GDPR-compliant consent".

This is the case as long as you believe that service providers can continue to make it optional. We are already seeing a move to replace passwords with biometrics, given their weakness and the increase in the number of data hacks that compromise passwords. The more user names and passwords are compromised, the more we will demand that banks do more to prevent unauthorised access, so it would seem sensible to future-proof data protection law so that banks can seamlessly move to a system where biometric access for certain services or transactions is mandatory.

[LORD CLEMENT-JONES]

Fifthly, the Minister said:

"However, you explained that problems may arise for example when employers or schools decide to secure access to their premises with ID verification mechanisms and employees and pupils do not have real choice about whether to use the devices"—

I am sorry. I am just finding the right place in my notes.

Lord Ashton of Hyde: Keep going.

Lord Clement-Jones: I may have to add later to what I have said, which I think the Minister will find totally unpalatable. I will try to move on.

The Minister also said:

"You are concerned that if consent is not a genuine option in these situations and there are no specific processing conditions in the Bill to cover this on grounds of substantial public interest. Processing in these circumstances would be unlawful. To make their consent GDPR compliant, an employer or school must provide a reasonable alternative that achieves the same ends, for example, offering 'manual' entry by way of a reception desk".

Consent is rarely valid in an employment context. If an employer believes that certain premises require higher levels of security, and that biometric access controls are a necessary and proportionate solution, it cannot be optional with alternative mechanisms that are less secure, as that undermines the security reasons for needing the higher levels of security in the first place: for example, where an employer secures a specific office or where the staff are working on highly sensitive or confidential matters, or where the employer secures a specific room in an office, such as a server room, where only a small number of people can have access and the access needs to be more secure.

Biometrics are unique to each person. A pass card can easily be lost or passed to someone else. It is not feasible or practical to insist that organisations employ extra staff for each secure office or secure room to act as security guards to manually let people in.

The Minister further stated:

"You also queried whether researchers involved in improving the reliability or ID verification mechanisms would be permitted to carry on their work under the GDPR and the Bill. Article 89(1) of the GDPR provides that processing of special categories of data is permitted for scientific research purposes, providing that appropriate technical and organisational safeguards are put in place to keep the data safe. Article 89(1) is supplemented by the safeguards of clause 18 of the Bill. For the purposes of GDPR, 'scientific research' has a broad meaning. When taken together with the obvious possibility of consent-based research, we are confident that the Bill allows for the general type of testing you have described".

It is good to hear that the Government interpret the research provisions as being broad enough to accommodate the research and development described. However, for organisations to use these provisions with confidence, they need to know whether the ICO and courts will take the same broad view.

There are other amendments which would broaden the understanding of the research definition, which no doubt the Minister will speak to and which the Government could support to leave no room for doubt for organisations. However, it is inaccurate to assume that all R&D will be consent based; in fact, very little of it will be. Given the need for consent to be a genuine choice to be valid, organisations can rarely rely on this as they need a minimum amount of reliable data for R&D that presents a representative sample for whatever they are doing. That is undermined by allowing individuals to opt in and out whenever they choose. In particular, for machine learning and AI, there is a danger of discrimination and bias if R&D has incomplete datasets and data that does not accurately represent the population. There have already been cases of poor facial recognition programmes in other parts of the world that do not recognise certain races because the input data did not contain sufficient samples of that particular ethnicity with which to train the model.

This is even more the case where the biometric data for research and development is for the purpose of improving systems to improve security. Those employing security and fraud prevention measures have constantly to evaluate and improve their systems to stay one step ahead of those with malicious intent. The data required for this needs to be guaranteed and not left to chance by allowing individuals to choose. The research and development to improve the system is an integral aspect of providing the system in the first place.

I hope that the Minister recognises some of those statements that he made in his letter and will be able, at least to some degree, to respond to the points that I have made. There has been some toing and froing, so I think that he is pretty well aware of the points being raised. Even if he cannot accept these amendments, I hope that he can at least indicate that biometrics is the subject of live attention within his department and that work will be ongoing to find a solution to some of the issues that I have raised. I beg to move.

Baroness Hamwee (LD): My Lords, I wonder whether I might use this opportunity to ask a very short question regarding the definition of biometric data and, in doing so, support my noble friend. The definition in Clause 188 is the same as in the GDPR and includes reference to "behavioural characteristics". It states that,

"'biometric data' means personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of an individual, which allows or confirms the unique identification of that individual, such as facial images or dactyloscopic data".

Well:

"There's no art
To find the mind's construction in the face".

How do behavioural characteristics work in this context? The Minister may not want to reply to that now, but I would be grateful for an answer at some point.

Lord Ashton of Hyde: My Lords, I thank the noble Lord, Lord Clement-Jones, for engaging constructively on this subject since we discussed it in Committee. I know that he is keen for data controllers to have clarity on the circumstances in which the processing of biometric data would be lawful. I recognise that the points he makes are of the moment: my department is aware of these issues and will keep an eye on them, even though we do not want to accept his amendments today.

To reiterate some of the points I made in my letter so generously quoted by the noble Lord, the GDPR regards biometric data as a "special category" of data due to its sensitivity. In order to process such data, a data controller must satisfy a processing condition in

Article 9 of the GDPR. The most straightforward route to ensure that processing of such data is lawful is to seek the explicit consent of the data subject. However, the GDPR acknowledges that there might be occasions where consent is not possible. Schedule 1 to the Bill makes provision for a range of issues of substantial public interest: for example, paragraph 8, which permits processing such as the prevention or detection of an unlawful act. My letter to noble Lords following day two in Committee went into more detail on this point.

The noble Lord covered much of what I am going to say about businesses such as banks making use of biometric identification verification mechanisms. Generally speaking, such mechanisms are offered as an alternative to more conventional forms of access, such as use of passwords, and service providers should have no difficulty in seeking the data subject's free and informed consent, but I take the point that obtaining proper, GDPR-compliant consent is more difficult when, for example, the controller is the data subject's employer. I have considered this issue carefully following our discussion in Committee, but I remain of the view that there is not yet a compelling case to add new exemptions for controllers who wish to process sensitive biometric data without the consent of data subjects. The Bill and the GDPR make consent pre-eminent wherever possible. If that means employers who wish to install biometric systems have to ensure that they also offer a reasonable alternative to those who do not want their biometric data to be held on file, then so be it.

There is legislative precedent for this principle. Section 26 of the Protection of Freedoms Act 2012 requires state schools to seek parental consent before processing biometric data and to provide a reasonable alternative mechanism if consent is not given or is withdrawn. I might refer the noble Lord to any number of speeches given by members of his own party—the noble Baroness, Lady Hamwee, for example—on the importance of those provisions. After all, imposing a legislative requirement for consent was a 2010 Liberal Democrat manifesto commitment. The GDPR merely extends that principle to bodies other than schools. The noble Lord might respond that his amendment's proposed subsection (1) is intended to permit processing only in a tight set of circumstances where processing of biometric data is undertaken out of necessity. To which I would ask: when is it genuinely necessary to secure premises or authenticate individuals using biometrics, rather than just cheaper or more convenient?

We also have very significant concerns with the noble Lord's subsections (4) and (5), which seek to drive a coach and horses through fundamental provisions of the GDPR—purpose limitation and storage limitation, in particular. The GDPR does not in fact allow member states to derogate from article 5(1)(e), so subsection (5) would represent a clear breach of European law.

For completeness, I should also mention concerns raised about whether researchers involved in improving the reliability of ID verification mechanisms would be permitted to carry on their work under the GDPR and the Bill. I reassure noble Lords, as I did in Committee, that article 89(1) of the GDPR provides that processing of special categories of data is permitted for scientific research purposes, providing appropriate technical and organisational safeguards are put in place to keep the data safe. Article 89(1) is supplemented by the safeguards in Clause 18 of the Bill. Whatever your opinion of recitals and their ultimate resting place, recital 159 is clear that the term "scientific research" should be interpreted,

"in a broad manner including for example technological development and demonstration".

This is a fast-moving area where the use of such technology is likely to increase over the next few years, so I take the point of the noble Lord, Lord Clement-Jones, that this is an area that needs to be watched. That is partly why Clause 9(6) provides a delegated power to add further processing conditions in the substantial public interest if new technologies, or applications of existing technologies, emerge. That would allow us to make any changes that are needed in the future, following further consultation with the parties that are likely to be affected by the proposals, both data controllers and, importantly, data subjects whose sensitive personal data is at stake. For those reasons, I hope the noble Lord is persuaded that there are good reasons for not proceeding with his amendment at the moment.

The noble Baroness, Lady Hamwee, asked about behavioural issues. I had hoped that I might get some inspiration, but I fear I have not, so I will get back to her and explain all about behavioural characteristics.

Lord Clement-Jones: My Lords, I realise that, ahead of the dinner break business, the House is agog at details of the Data Protection Bill, so I will not prolong the matter. The Minister said that things are fast-moving, but I do not think the Government are moving at the pace of the slowest in the convoy on this issue. We are already here. The Minister says it is right that we should have alternatives, but for a lab that wants facial recognition techniques, having alternatives is just not practical. The Government are going to have to rethink this, particularly in the employment area. As more and more banks require it as part of their identification techniques, it will become of great importance.

We are just around the corner from these things, so I urge the Minister, during the passage of the Bill, to look again at whether there are at least some obvious issues that could be dealt with. I accept that some areas may be equivocal at this point, only we are not really talking about the future but the present. I understand what the Minister says and I will read his remarks very carefully, as no doubt will the industry that increasingly uses and wants to use biometrics. In the meantime, I beg leave to withdraw the amendment.

Amendment 8 withdrawn.

7.48 pm

Consideration on Report adjourned until not before 8.48 pm.

Sudan and South Sudan

Question for Short Debate

7.49 pm

Asked by ***Baroness Cox***

To ask Her Majesty's Government what is their assessment of recent developments in Sudan and South Sudan.

Baroness Goldie (Con): My Lords, the dinner break business is down at least one speaker—the right reverend Prelate the Bishop of Salisbury has scratched—and the noble and right reverend Lord, Lord Harries, may be detained in getting here. That means that speeches can be slightly extended, but please show due balance and understanding and do not go over the top. Six minutes, or a little more, will be perfectly all right.

Baroness Cox (CB): My Lords, I am very grateful to all noble Lords who are contributing to this debate on two countries where people are suffering so much, but for very different reasons.

I begin by focusing on Sudan because through my small NGO, Humanitarian Aid Relief Trust, or HART, we work with local partners who can provide information not readily available, especially in South Kordofan's Nuba mountains and Blue Nile state, known as the Two Areas. I visited the Nuba mountains earlier this year and witnessed the destruction perpetrated by the GOS—Government of Sudan—armed forces, including the destruction of homes, in which many civilians were killed, a school and the office of the local commissioner. I climbed for two and a half hours up a mountain to visit civilians forced to flee their homes by GOS military offensives and live in caves with deadly snakes. I listened to many people who described their anguish including a father, five of whose children had been burned alive when a bomb from a GOS Antonov set the hut ablaze. His sixth child, whom I met, is suffering from burns and mental trauma. I also met a girl who survived a cobra bite; most do not.

Where fighting has subsided, the humanitarian situation in the Two Areas continues to deteriorate: 23.9% of children suffer from acute malnutrition and 8.4% from severe malnutrition, increasing the risk of child mortality. Overall, stunting rates are a staggering 38.3% with severe stunting at 14.7%, creating a high risk of physical and mental developmental disorders. GOS troops still occupy vast tracts of ancestral farmland, displacing a substantial proportion of the population. Farmers who plant in these areas risk losing their lives or crops. Many villages remain ghost towns, as the 2016 offensive forced civilians to flee to the mountains. In many places I have seen, schools, churches and markets remain in rubble and people still live with the inherent fear of further attacks by the GOS. Episodic attacks continue. For example, on 10 October a long-range missile was fired from Dilling into Hejerat village and, according to local monitors, a significant amount of houses, farms and pastoral land have been destroyed by fire along front lines in South Kordofan.

In Blue Nile, 39% of households had reached levels of severe food insecurity in July and 11% are at the highest possible level of household hunger. Those numbers are expected to rise. There are also acute health problems. For example, there was concern over the spread of acute watery diarrhoea just north of the border and going into Blue Nile, where such few clinics as there are have no drugs to treat this condition. The internal SPLA-North conflict in Blue Nile ceased in October, allowing relatively free movement of civilians and goods. However, tensions remain high as the two SPLA-North factions have shown no signs of reconciliation. There is therefore an urgent need for initiatives to bring an end to this conflict, which has undermined the planting of crops and will lead to even more severe food insecurity in coming months. My small NGO, HART, has been one of very few NGOs enabling aid to be taken into Blue Nile. May I again—I have done this before—request that Her Majesty's Government increase efforts to allow cross-border aid to reach these people? I appreciate the political complexities, but those heighten the need for an emergency response by the international community to fulfil the mandates to provide protection for vulnerable civilians.

I do not have time to discuss Darfur, where GOS aggression continues, but much of that aggression is well reported. I turn briefly to examples of concern elsewhere in Sudan. On 6 December, Sudan's security forces or their apparatus kidnapped Mr Rudwan Dawod, a leading member of the Sudanese Congress Party, an adviser to the "Sudan of the Future" campaign—SoF—and a well-known human rights defender. He has been taken to an unknown place after he showed solidarity with the people of Elgiraif, who are struggling to protect their land as the GOS has been illegally confiscating lands from indigenous people to give to so-called foreign investors. Several other supporters of the SoF campaign have also been arrested. Will Her Majesty's Government urge the Government of Sudan to release these civilians immediately and stress that President Omar al-Bashir will be held responsible if they are subjected to torture or any other harm? Is the UK embassy in Khartoum aware of the GOS policy of land confiscation from Sudanese civilians and has it made representations to the GOS regarding this serious violation of human rights?

A recent report by Global Justice Now shows the UK providing £400,000 from CSSF funds to strengthen the capacity of the Sudanese armed forces. Is this accurate and, if so, what is the justification for this support? Regarding all discussions with GOS, especially in the context of the Sudan strategic dialogue and the conditions for lifting sanctions, will Her Majesty's Government ensure that there will be a thorough, accurate monitoring of compliance and genuine, demonstrable proof of the meeting of these conditions for the lifting of sanctions?

I turn briefly to South Sudan, where the UK has an important role as the second-largest bilateral donor and a member of the troika. I offer a brief overview of the situation there nationwide: 7.5 million people are in dire need of humanitarian assistance, with 6 million severely food insecure; 1.8 million have fled to neighbouring countries, more than 85% of whom are women and children; there are 2 million displaced internally. Disease outbreaks, including cholera, kala-azar and measles, along with more than 2 million cases of malaria, were reported between January and November 2016, with at least 246 deaths from cholera since June 2016. More than 1.17 million children aged three to 18 have lost access to education due to conflict and displacement, while about 31% of schools have suffered attacks. An adolescent girl is three times more likely to die in childbirth than to complete primary school and 76% of school-aged girls are not in school.

Our HART partner, Archbishop Moses Deng Bol, sent this update from Wau in Bahr el-Ghazal. He said:

"The most pressing issues in South Sudan are as follows: Insecurity has increased all over South Sudan. Dr Riek's rebel movement the SPLM-IO is still fighting inside South Sudan and still considers him as its leader. More rebel groups have also been formed, including the National Salvation Front. As a result of the insecurity and hunger caused by the wars, thousands of civilians are still crossing the borders daily. More than 2 million people are now internally displaced in IDP Camps. New camps are being established, including one on the outskirts of Wau town and hundreds of civilians are entering the camp daily. The UN has stated that over 6 million people will be in need of food assistance in the coming year. The Inter-Governmental Authority on Development (IGAD) has initiated a process known as High Level Revitalization Forum (HLRF) to try to revitalize the peace agreement by asking the warring parties to recommit themselves to the agreement and to bring new rebel groups on board.

It is very important that the UK Government, especially with TROIKA, uses the forthcoming meetings to ensure sustained pressure on the warring parties to revive the collapsed peace agreement; to recommit themselves to permanent ceasefire; to open humanitarian corridors so that civilians can be given food aid; and to reach a political settlement so that the millions of refugees and IDPs can return to their homes and rebuild their lives".

The archbishop also highlights problems of bureaucratic procedures for emergency funding—for example, food to save the lives of starving IDPs. When many hundreds of IDPs flooded into Wau earlier this year, he had to borrow money from local traders to obtain food and save them from starvation. Might Her Majesty's Government urge DfID to consider working more with local partners such as the churches, which have the confidence of local communities, and to make the application process more user-friendly and the response to emergencies more rapid? The archbishop urges the UK to ensure that the HLRF process is genuinely inclusive and gives a strong platform to the voices of grass-roots South Sudanese groups, including churches, traditional leaders, women's and youth groups. He also urges the UK's approach to conflict resolution not to focus solely on the high-level peace process but to address root causes of conflict on the ground, investing in community-based peacebuilding and locally led reconciliation initiatives.

I greatly appreciate this opportunity to put on record some of the problems causing such suffering to the peoples of Sudan and South Sudan. I am very grateful to those noble Lords who will be able to highlight issues I have not had time to mention or discuss adequately. I sincerely hope that the Minister will be able to reassure the people of these countries so that when I send them this debate, they will see a response by the UK Government compatible with the responsibilities which we have a duty to fulfil.

8 pm

Baroness Anelay of St Johns (Con): My Lords, I will confine my remarks today to South Sudan, which I visited as a Minister at the Foreign Office in May this year. I congratulate the noble Baroness, Lady Cox, on securing this timely debate. It comes not only as we approach a grim milestone—four years since the outbreak of the current conflict in South Sudan—but as we expect the high-level revitalisation forum to meet in Addis Ababa on Friday of this week to try to relaunch the peace process. Also, on Friday, the annual mandate of the UN peacekeeping mission in South Sudan will expire. Will the Minister say whether we expect the UN Security Council to renew that mandate, or is there a danger of just a technical rollover until early 2018?

I shall refer briefly to three issues on which I hope the Minister will be able to update the House today: the peace process, security for civilians and humanitarian relief. IGAD, to which the noble Baroness has referred, has a vital role to play in the peace process, as does the troika. While I was in South Sudan, I was able to discuss the process with President Mogae, chair of the Joint Monitoring and Evaluation Commission of the peace agreement, and have no doubt of his determination. I was also able to meet representatives of the troika and the EU to learn of their work to encourage both parties to make genuine efforts to cease the fighting. My visit to Juba and Malakal coincided, by chance, with the declaration by President Kiir of a unilateral cessation of hostilities.

Yet both sides continued to rearm. Conflict continues because both sides have yet to demonstrate leadership, commitment and urgency to secure a peace agreement and end the people's suffering. For example, just last month in Duk, Jonglei state, at least 40 people were killed and many women and children were abducted. The South Sudanese Government and the UN announced that they would conduct a quick emergency assessment of the situation of those affected by the attack. Does the Minister have any information on the progress of that assessment and whether food, medicine and non-food items have been able to reach the area quickly? I welcome the fact that the UK has provided expertise and more than £2 million to support both the talks and the monitoring and verification mechanism. I am not suggesting that we should give up on the search for peace—far from it; but I wonder what more can be done to produce results. Will the Minister update us today on the Government's views about whether progress may be made on peace?

A key role for the international community has been the protection of civilians who have suffered appalling violations of human rights, with reports of villages being razed to the ground and widespread ethnic and sexual violence. South Sudan has been a priority country for PSVI work by the UK Government and one of our four priority countries for women, peace and security. Can the Minister confirm that is still the case for the forthcoming year? When I flew north to Malakal in Unity state I visited the UNMISS protection of civilians camp where 35,000 people have taken refuge, having fled from what used to be the second city of South Sudan. The remainder of its population has either died, been killed or fled further afield. Now it is a ghost city with nothing left worth looting. I met the UK troops who had recently joined the UNMISS contingent. Their professionalism is highly respected. I was also able to see some of the important work carried out by DfID. The UK has played a significant role in the humanitarian response to the crisis in South Sudan, being the second-largest contributor. Is that still the position?

Humanitarian relief is desperately needed across the country. More than half the population now lacks enough food to feed themselves and their families, as

[Baroness Anelay of St Johns]
the noble Baroness, Lady Cox, detailed. Tens of thousands have been killed and almost 4 million people, a third of the population, have been forced to flee their homes. I met some of them when I visited Uganda in February and went to Kiryandongo settlement where 50,000 refugees were sheltered, with more than 2,000 more arriving each day, mostly from South Sudan. DfID works alongside UN agencies and the international community there, and I was impressed by their effectiveness.

The resilience of the people is astonishing, but they need peace. Ultimately, it is the region, and most importantly the leaders in South Sudan, who must take the initiative to end the conflict, but I hope that we, along with our partners in the international community, will continue to give our full support to the peace process and to the security of those who are suffering in South Sudan.

8.04 pm

Lord Harries of Pentregarth (CB): My Lords, I am very grateful to the noble Baroness, Lady Cox, who has drawn our attention so vividly to the terrible suffering of the people in South Sudan, and it is on South Sudan that I wish to concentrate. If I may say so, it is particularly good to have the noble Baroness, Lady Anelay, taking part in this debate because as a Front-Bench spokesman she was always very sensitive to human rights issues and took them very seriously.

The parish in which I take services most Sundays has very close links with South Sudan, and what we hear above all is the cry of a suffering people—innocent civilians who bear the pain of political failure and who are intimidated by those with tribally based armies. There is a widespread desire for a new generation of leaders not implicated in the crimes of the past, for more younger people and more women, but reality dictates that we have to deal now, and urgently, with those who command the armies: President Kiir, those who lead the rebel group IO and new, emerging rebel groups.

With this is mind I shall ask the Minister four brief questions. First, how far advanced is the deployment of the regional protection force, the RPF? We understand that the Ethiopian advance party has arrived and the Ethiopian battalion is on its way, but how much of the main Rwandan infantry is in place towards the target of 4,000 troops? Before anything else can happen in South Sudan, there must be a UN force present which is strong enough, has the authority and the will to deter any further outbreaks of fighting and, especially, offers protection to civilians in areas of tension. The situation continues to be volatile, and any further moves towards a negotiated political future must not be allowed to be dashed by further armed clashes.

Secondly, what progress has been made by IGAD—the Intergovernmental Authority on Development—towards the revitalisation of the peace process? With the breakdown of past arrangements for a more representative Government in mind, what new arrangements are envisaged, at least as a first step? Will it be a priority to try to bring in more women and those not implicated in the human rights violations the people have suffered since 2013?

Thirdly, given these well-documented and well-known violations by all parties—the massacre of civilians, the silencing of Government critics, rape and pillage—what is being done to address these outrages? They cannot just be ignored. The African Union Commission has yet to establish the hybrid court envisioned in the August 2015 peace agreement to investigate and prosecute international crimes committed in the conflict. Its establishment would be a clear sign that continuing atrocities are totally unacceptable to the international community and that the perpetrators will not be forgotten.

Fourthly, is humanitarian aid now getting through? In November, President Kiir ordered free, unhindered access to such aid, but has that order been effective?

The situation in South Sudan is a real tragedy after the hopes expressed following independence. It is also complex and difficult, but for the sake of its suffering people the will of the international community to resolve these issues must remain firm and determined.

8.08 pm

Lord Alton of Liverpool (CB): My Lords, I should declare that I serve as an officer of the All-Party Parliamentary Group on Sudan and South Sudan. My noble friend Lady Cox is persistent, courageous and dedicated in her commitment to the people of Sudan and South Sudan. Her timely debate takes place on the eve of the United Kingdom-Sudan Trade and Investment Forum, which seeks to encourage British companies to do business in Sudan. It is also the same week that more Sudanese newspapers have been seized, and dissenting voices remain incarcerated in prison.

Sudan ranks joint 170th with Yemen, Syria and Libya out of 176 countries on Transparency International's corruption index, just ahead of North Korea. Any businessperson who thinks they can safely invest in Sudan without not only reputational damage but actual financial loss clearly does not know the country. The Sudanese Government allocate around 76% of the national budget to defence, police and security expenditure, with just 8% earmarked for agriculture, manufacturing, health and education services combined. The latest report by Global Justice says that the United Kingdom is providing £400,000 from the conflict, stability and security fund to strengthen the "capacity" of the Sudanese armed forces. I would be most grateful if the Minister, the noble Lord, Lord Ahmad of Wimbledon, said whether that money is being provided, and whether he has seen reports that Sudanese-made weapons have reached Boko Haram, as we were told during a meeting in which my noble friend Lady Cox and I participated, when we took evidence for a report prepared by the all-party group.

Let us set aside our apparent lack of scruples in bolstering a country whose campaign of terror and aerial bombardment has caused a man-made catastrophe in Blue Nile and South Kordofan—described so eloquently by my noble friend—and had catastrophic consequences in South Sudan, as alluded to by the noble Baroness, Lady Anelay of St Johns, in her eloquent contribution a few minutes ago and by my noble and right reverend friend Lord Harries of Pentregarth. As well as that catastrophe—a humanitarian disaster of extraordinary consequences—the regime

that has perpetrated that aerial bombardment has simultaneously been arresting, flogging and criminalising tens of thousands of its own women for indecency every year, for so-called crimes such as wearing trousers. Surely it would be more prudent to make British Klondike enthusiasm for commercial activities at least contingent on Sudan fulfilling certain benchmarks for reform, rather than chasing trade deals down very dark alleys.

The country is led by Field Marshal Omar al-Bashir. He is subject to multiple indictments by the International Criminal Court, for genocide and crimes against humanity in Darfur, which I have visited and where between 200,000 and 300,000 people were murdered. It is a place where 2 million to 3 million people were displaced because they were the wrong kind of Muslims. Genocide is the crime above all crimes. Will it not compromise the authority of the International Criminal Court if court supporters such as the United Kingdom seize every opportunity to put together trade deals with indicted leaders?

Beyond the genocide, the World Bank points out that Sudan is a country where corruption is endemic. The bank rates corruption in the judicial system as high; it takes 810 days to enforce a contract; there is negligible regard for the rule of law; and property laws are interpreted to suit the Khartoum regime—illustrated by the confiscation and destruction of dozens of churches. Minority investors are unprotected, and it is almost impossible to start a business without paying generous bribes. The banking system is deeply suspect.

A hugely experienced, formerly highly placed British official made five brief points to me. First, any UK business trying to set up in Sudan will be told by members of the ruling Khartoum regime exactly which companies and sectors to invest in. The same members of the regime have stakes in those companies, and they will then strip out the profits before the UK shareholders get a chance to benefit. Secondly, we say our aim in engagement is to help Sudan develop. But development has never been the concern of the ruling elites. They tell us what we want to hear. During the boom years of oil production, they treated the economy as their personal financial resource, manipulated for their own enrichment. Thirdly, the former official says it is hubris to imagine we influence Khartoum through engagement. Khartoum repeatedly confirms to its own citizens and armed forces that it is guided by Islamism. What they tell the West is calibrated to keep aid flowing to the regime. Fourthly, Bashir is said by insiders to have only one objective now: avoiding the ICC. Evidently, he is consumed by this, and uninterested in anything else. Finally, Bashir is Janus-faced: while telling us one thing, he tells his armed forces they are engaged in a jihad against the nation's unwanted minorities and tells President Putin in Sochi:

"We are in need of protection from the aggressive acts of the United States".

He also tells the Iranians that he has traded them in for the Saudis.

Bashir is not a man to trust but a man who should be brought to justice; he is certainly not a man with whom the UK should be shamelessly promoting business, and the Government are wrong to do it.

8.15 pm

Lord Luce (CB): My Lords, if you put the two Sudans together, we face probably the biggest humanitarian crisis in the world, ranging from the Blue Nile, South Kordofan and Darfur to South Sudan. Like other noble Lords, I have nothing but admiration for my noble friend Lady Cox and the remarkable work that she has done consistently and with great courage over many years to expose the gross abuse of human rights in both Sudan and South Sudan. I also greatly support Her Majesty's Government, who have been persistent in their work in support of the Sudanese people, through the UN, through the contribution of troops, through DfID and humanitarian aid and through the excellent work or Mr Trott, who is our UK special representative.

Thinking about and listening to this debate makes me feel hugely privileged for the fact that when I was in my teens and my father was a British administrator in the Sudan, I had a chance to see it in better times, whether in Khartoum, the Blue Nile province or the south of Sudan. That makes me realise that Sudan can be a wonderful place—because it was in those days, under a framework of the rule of law. But in the last year of British rule, the first signs of civil war and conflict started in the south. It was a rebellion against having northern, Arab officers in the armed forces working in the south that sparked the start of a very long and drawn-out civil war.

I want to make a very general reflection. Many people have rightly highlighted the abuses of human rights, but of course there can be no end to these humanitarian crises until the countries have a framework for peace and stability, which should be buttressed by strength and the support of the people at local level. The dilemma that we face the whole time is how to persuade elites, dictators and regimes that it is in their interest to go. That really turns out to be a battle between realism and hope.

Sometimes there is a small ray of hope. Last week we debated Zimbabwe, where we saw the people, with the support of the army, persuade Mugabe to go. We have seen that with a vote in Gambia its dictator, who was an army officer, was turned out in democratic fashion. In Angola we have seen President dos Santos turned out and now the dismantling of his family empire. We even see in Uganda today—others such as the noble Baroness, Lady Anelay, who has been there recently, will know this better than me—that there is an upsurge of public opposition to Museveni renewing his term as president through legislation.

How do we seek the dismantlement of these dictatorships and the rebuilding of these countries? We have heard from many noble Lords about the atrocities committed by President Bashir, and of course we know the ICC has a warrant for his arrest. There has been a national dialogue that he instituted but it was not inclusive, and all its recommendations have been rejected. We now see in the President's foreign policy that he is veering between the US and Russia. He has fallen out with the leading Gulf countries, including Saudi Arabia. He seems like a cornered animal, and one has to ask oneself whether it is the fear of arrest if he is no longer president or whether it is simply the love and corruption of power, or both.

[LORD LUCE]
We do not know the answer but it is a serious question because elections are due in 2020. A group of highly intelligent Sudanese have made representations to me to ask that there should be moves towards a new constitution with a transitional period and a truth and reconciliation commission, but none of that can happen unless the President and his regime are prepared to make a move in that direction. There have to be incentives given by the international community.

Ghana is an interesting example. In former times it was in a deep mess but it managed, through a carefully worked-out transitional period, to move towards a much happier condition today.

If we look at South Sudan, we see a manmade disaster with the outside world firefighting the whole time, its politicians having created a failed state. As we have heard, there is a peace process, the high-level revitalisation forum, but the question is how we help them to rebuild and create a framework of institutions that will enable peace and stability to return, buttressed of course by work at local level. Here, the civil societies and churches of the south are very strong and can do a lot.

We have a precedent in Sierra Leone, where the UN, the regional powers of Africa and the UK played a leading role in the early part of the century in restoring order and stability. We see even in Somaliland an oasis of stability. It is possible in Africa, and we must not give up hope. It is a great credit to the British Government that we help to keep the flame of hope alive. There must be African solutions for African problems, but the whole of the international world must be ready to give our support if we are asked to do so.

8.22 pm

Lord Hussain (LD): My Lords, I join others in thanking the noble Baroness, Lady Cox, for securing this debate. She has been persistent over the years in highlighting issues of Sudan and South Sudan.

I have had the opportunity to visit both countries in recent years. In a cross-party visit by parliamentarians, I visited South Sudan soon after its independence five years ago. South Sudan is an oil-rich country with enormous potential. During our visit to the Juba and Rumbek districts, we witnessed the legacy and scars of decades of civil war, including devastation, insecurity, shortages of food, poverty, unemployment, a lack of skills, refugees, corruption and a border dispute with Sudan. Among other things, the frightening reality observed was the tribal and fragile coalition of different armed groups, some of which had formed the first Government under the presidency of Mr Salva Kiir, who lacked any experience of leading a country.

However, we noticed hope in the eyes of the people of South Sudan, many of whom thought independence was going to bring them peace, stability and prosperity. We saw huge interest in education and learning new skills in agriculture and science. We also saw some interesting and inspiring projects funded by DfID. The locals were very pleased to participate in these projects.

Sadly, that hope was short lived, as the violence erupted again in 2013 between rival armed groups. So far it has killed thousands of people and injured and displaced many more. The country has gone from bad to worse, and there is no end in sight. According to the report from the Food and Agriculture Organization of the United Nations published this month, 4.8 million people are severely food insecure, 20,000 people are facing famine conditions and 4 million people are displaced by conflict.

Turning to Sudan, I have taken part in cross-party visits to Sudan, which has an image portrayed in the media and by some politicians here in Britain of a banana state under a cruel and oppressive regime whose army is engaged in killing its own people, with no rights for women and the country's armed forces controlling the streets. Sudan was hampered by sanctions imposed by the United States due to reports of human rights violations.

However, we saw a complete contrast with that image during our visit to Sudan. We were pleased to see men and women working freely side by side, from the airport to the hotel, from shops to schools, colleges and the university. Our visit included meeting with the women's caucus in the Sudanese Parliament, visiting the University of Khartoum, meeting with parliamentarians and representatives of the opposition, visiting a hospital, and visiting Darfur, the Merowe dam built by the Chinese and archaeological sites near Jebel Marra mountains. During the visit, we had full co-operation from the British embassy in Khartoum.

We found Sudan to be a beautiful country with untapped natural resources including all kinds of minerals, from copper to gold, oil and gas, with huge business potential and geographic importance, a country with a diverse culture and an open society, with females making up 30% of its Members of Parliament. The Sudanese hold a huge amount of respect for the British people and are eager to do business with them.

Since that visit in 2016, I am pleased that Sudan is beginning to see light at the end of the tunnel. Last June, the UN Security Council voted to reduce the United Nations forces in Darfur by 40%. The region which was portrayed by the Enough Project and Eric Reeves as hell on earth is now a safe haven for South Sudanese refugees. According to the United Nations, 453,258 South Sudanese arrived in Sudan since the beginning of the 2013 civil war there, and many of them have not yet gone back.

Speaking at Chatham House last June, Matthew Hollingworth, director of the United Nations WFP in Sudan, viewed Sudan as "an anchor in a sea of instability". The combination of stability and lifting of US sanctions has resulted in a surge of investment and trade opportunities. A US Corporate Council on Africa business delegation visited Khartoum. An American gas company has already signed an agreement to help extract the proven 3 trillion cubic feet of reserves in central Sudan. An all-party group on Sudan has been established in the British Parliament—I declare an interest as one of the vice-chairs. A major British-Sudanese investment forum will take place in London tomorrow. I am pleased about all of that.

In conclusion, I ask the Minister two questions. First, what assistance are Her Majesty's Government providing to bring peace and reconciliation between

the warring factions in South Sudan? Secondly, what steps are the Government taking to report the warlords of South Sudan to the International Criminal Court?

8.28 pm

Lord Collins of Highbury (Lab): My Lords, I too thank the noble Baroness, Lady Cox, for initiating what is a timely debate. The UN Office for the Coordination of Humanitarian Affairs estimates that 4.8 million people are in need of humanitarian assistance in Sudan. The UK-Sudan strategic dialogue, which has been mentioned, initiated in March 2016, provides a forum for discussing mutual bilateral issues and concerns. The last meeting was in October, which also marked the recent decision by the US to lift economic sanctions. On lifting sanctions, what has the UK done to support efforts to tackle corruption? Sadly, the trade dividend is unlikely to reach the average Sudanese person, as the noble Lord, Lord Alton, mentioned. Sudan ranks 170 out of 176 on the Transparency International corruption index. As we have heard, there are built-in review periods to the decision which link continued sanctions relief to improvements in humanitarian access and respect for human rights—concerns again raised by the noble Lord, Lord Alton.

Does the Minister accept that rigorous, enforceable human rights benchmarks, together with engagement with a young, diverse civil society in Sudan, are key to maintaining the progress that we in this debate all want to see?

In South Sudan, as the conflict enters its fifth year in 2018, the humanitarian crisis continues to intensify, as we have heard from all noble Lords. According to the humanitarian needs overview for 2018, released only last week, 7 million people inside the country—almost two-thirds of the remaining population—still need humanitarian assistance. About 1.9 million are internally displaced, even though more than 2 million people have fled South Sudan as refugees over the past four years of conflict, and 1.25 million people are in the emergency phase of food insecurity. In early 2018, half of the population will be reliant on emergency food aid. The ERC noted that the alarming level of food insecurity in South Sudan is directly linked to restrictions on people's freedom of movement, their access to humanitarian assistance and their ability to plant or harvest.

What steps have the Government taken through the UN Security Council to ensure that the parties comply with their obligations under international humanitarian law to respect and protect civilians, including humanitarian workers, and to ensure that the parties allow and facilitate humanitarian relief operations and people's access to assistance and protection? As the noble Baroness, Lady Anelay, said, over 1 million South Sudanese refugees currently live in Uganda—a rate of 1,800 per day over the last year. It is clear that the United Kingdom must support Uganda to provide a safe haven for those refugees. What steps are the Government taking to ensure that that support is given on a much longer-term basis because undermining the host nation would be particularly disastrous for the future.

Despite the 2015 peace agreement—the ARCSS—and a Transitional Government of National Unity being formed in 2016, the conflict erupted again in Juba in July that year, and 2017 has seen, as noble Lords have described, escalating conflict and heightened tensions.

The Government of South Sudan have demanded that there be no renegotiation of the ARCSS and have shown little political will towards a sustainable resolution. As the noble Baroness, Lady Cox, said, the dry season will normally bring an upturn in violence due to ease of movement and travel, so any ceasefire must be sealed before that violence re-erupts. As the noble Baroness, Lady Anelay, said, there is hope that the resumption of the high-level talks will mark some progress. Does the Minister accept that perhaps the UK's approach should not only focus on the high-level peace process but address the root causes of conflict on the ground by supporting civil society and freedom of expression? The noble Lord, Lord Alton, highlighted the fact that repression and closing down newspapers is beginning to be increasingly evident. It is important that we support civil society, which is critical to sustaining meaningful peace and dialogue for the future.

8.34 pm

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, I join noble Lords in thanking the noble Baroness, Lady Cox, for tabling this important debate and in acknowledging her long-standing commitment to humanitarian issues, not just in Sudan and South Sudan but beyond. The two countries that we have discussed share a common history, but today each faces its own unique challenges.

I shall start with Sudan. Ending internal conflict remains a priority, and we welcome the Government of Sudan's extension of their unilateral cessation of hostilities until the end of this year. We have encouraged them to extend it further. In Darfur, while the security situation remains fragile, there has been a reduction in fighting this year, and better access and security for humanitarian agencies. The joint UN-African Union Mission in Darfur is making progress with reconfiguration, and has begun to redirect its forces away from regions that are now more stable and focus on some of the more challenging areas—for example, on the Jebel Marra area. We are continuing to monitor the reconfiguration closely. Less encouraging, however, is the fact that the Government of Sudan have yet to formally agree to a new base in that area, as mandated by the UN Security Council. Together with other Security Council members, we will continue to urge them to do so.

In the two areas of South Kordofan and Blue Nile, the peace process continues to be hampered by internal divisions within the Sudan People's Liberation Movement. Civilians in opposition-held areas remain cut off from outside aid. I assure noble Lords that we have continued to urge both factions to move towards a permanent cessation of hostilities and a humanitarian agreement with the Government. In Darfur and the two areas that the UK continues to support, there are African Union efforts to negotiate a comprehensive and mutually

[Lord Ahmad of Wimbledon]
agreed peace settlement. I assure noble Lords that we will continue to urge all parties to engage constructively with that process.

I shall pick up on some of the questions that noble Lords have raised. If I cannot answer the questions in the time allocated, I shall of course write to noble Lords. The noble Baroness, Lady Cox, asked about representations that the UK has made specifically on the kidnap of Rudwan Dawod and other supporters of the "Sudan of the Future" campaign. The British embassy in Khartoum is aware of Rudwan Dawod and supporters of that campaign. Improving the human rights situation is a top priority of our engagement with the Government of Sudan. We regularly raise our concerns about specific human rights cases and will continue to do so.

The noble Baroness also asked whether the British embassy in Khartoum was aware of the Government of Sudan's policy of land confiscation from Sudanese civilians. The embassy is aware, and officials from the embassy continue to raise our concerns about the issue with the Government of Sudan as part of our ongoing bilateral dialogue.

The noble Baroness, Lady Cox, and the noble Lord, Lord Alton, raised the issue of financial support to the Sudanese armed forces to strengthen capacity. I assure noble Lords that the UK does not provide any support to the Sudanese armed forces that could improve their military capacity. All engagement with the Sudanese armed forces is centred on compliance with internationally recognised human rights standards. One of the UK's defence objectives in Sudan is to promote the observance of international humanitarian law by the Sudanese armed forces through the delivery of a range of courses focused on international standards, human rights and international humanitarian law. I assure noble Lords that the UK is not providing support to the Sudanese armed forces for capacity building.

The noble Lord, Lord Alton, raised the issue of Boko Haram. I shall of course look into it and, if I may, write to him in that respect.

Lord Alton of Liverpool: I am most grateful to the Minister, but could he confirm the figure that I was given of £400,000 from the CSF fund?

Lord Ahmad of Wimbledon: We are providing support through the fund. Perhaps I may confirm both elements of that in my letter to the noble Lord.

The noble Baroness also raised the issue of the UK Government ensuring that the Government of Sudan are complying with the conditions of the US lifting sanctions. We welcome the decision, to which the noble Lord, Lord Collins, also referred, that progress had been made in five key areas. As noble Lords are aware, these include humanitarian access to conflict-afflicted regions, non-interference in South Sudan and maintaining the Government's cessation of hostilities in Darfur and the Two Areas. I assure noble Lords that we used the fourth session of the strategic dialogue on 16 October to agree steps that the Government of Sudan would take to address human rights issues—a point raised by the noble Lord, Lord Collins—and to discuss specific issues, including sexual and gender-based violence, freedom of religion or belief, freedom of expression and the convention against torture. We also used it to discuss corruption, a point also raised by the noble Lord, Lord Collins.

The noble and right reverend Lord, Lord Harries, focused his contribution on the important element of the humanitarian situation in Sudan. I assure noble Lords that we acknowledge and recognise that over one-third of Sudan's population lives in poverty, and nearly 5 million Sudanese are in need of support. The UK is an important donor: we give £50 million a year to Sudan, focusing on providing life-saving humanitarian assistance to over 550,000 internally displaced people and South Sudanese refugees every year. The noble Lord, Lord Collins, also raised this concern. We continue to work with the international community to reform the approach to the long-term displaced in Darfur.

The noble Baroness, Lady Cox, and the noble Lord, Lord Luce, raised the issue of the UK Government considering working more closely with local partners, including the churches, in South Sudan. The UK Government are clear that the renewed peace process in South Sudan, led by IGAD, must allow full engagement of non-armed actors including, importantly, faith groups such as the South Sudan Council of Churches. The UK has recently agreed a package of funding that will help that council to implement its action plan for peace, which promotes the development of neutral forums in South Sudan where an inclusive dialogue can take place.

The noble Lord, Lord Alton, also mentioned the trade event that is taking place. This is a private event and I can assure the noble Lord that the Government have not provided any financial, logistical or administrative support for it. We believe that opening up trade can help isolated political and economic systems and thereby help to improve human rights. I further assure the noble Lord that, in this regard, the position of President Bashir is clear. The UK remains a strong supporter of the ICC and encourages all states to act on its indictment.

Lord Alton of Liverpool: Will any British officials be speaking at that private event?

Lord Ahmad of Wimbledon: I can confirm that our ambassador to Sudan will be speaking.

The humanitarian situation in South Sudan is very grave, as we have heard from various noble Lords. My noble friend Lady Anelay spoke very poignantly and with great expertise and insight. The noble Lord, Lord Hussain, has also visited the region. In response to my noble friend, the UN Security Council has renewed the mandate and the UK strongly supports the UN mission in South Sudan. All members of the Security Council have also agreed with the Secretary-General's recommendation for a two-month technical rollover of the mandate. This will allow for the UN strategic review to report to the Security Council on detailed recommendations for the mission's mandate. My noble friend also raised the issue of the IGAD-led peace process through a sustained campaign of engagement by Ministers and senior officials. We continue to put pressure on all sides of the conflict to engage meaningfully with IGAD's revitalisation forum to end hostilities, negotiate a ceasefire and allow full humanitarian access.

My noble friend also asked whether we are working closely with our troika partners. We are doing so, and with key actors in the region, to drive forward peace talks. My noble friend was the special representative on preventing sexual violence in conflict under the previous Prime Minister. I have now taken over that role. I commend her valuable work in this regard and assure her and the noble and right reverend Lord, Lord Harries, that South Sudan remains a priority country for preventing sexual violence and is one of the focus countries for the fourth UK national action plan.

Furthermore, through our humanitarian response and resilience in South Sudan programme, and working with our UN and NGO implementing partners, the Department for International Development is providing another £443 million in aid to support the provision of food and emergency shelter.

The noble Lord, Lord Collins, and my noble friend Lady Anelay also asked about the insistence on compliance with international humanitarian law and human rights. I assure noble Lords that the UK Government are clear—as a Minister responsible for human rights, I am also clear—that human rights abuses committed in South Sudan are unacceptable and that all sides must make concerted efforts to bring them to an end. Our concerns are raised forcefully with the Government of South Sudan at every available opportunity.

If I may, I will write to noble Lords on the remaining questions. The noble and right reverend Lord, Lord Harries, raised the regional protection force. The RPF is in the process of deployment and the UK Government continue to support it, but I will write in more detail in this respect.

Several noble Lords, including the noble and right reverend Lord, Lord Harries, raised the importance of humanitarian aid. This year, the UK's humanitarian response will provide drinking water to 300,000 people and food to over 500,000 people. We are also supporting neighbouring countries hosting 2 million South Sudanese refugees.

In conclusion, I assure all noble Lords that the UK remains fully committed to working towards peace, security and prosperity for the people of both Sudan and South Sudan and the protection of human rights, ensuring that the perpetrators of sexual violence are brought to justice. In Sudan there are promising signs that continued constructive engagement with the international community can, over time, lead to greater security and prosperity for the Sudanese people. In South Sudan the outlook is far less promising. Without outside help many South Sudanese will continue to suffer in the most appalling conditions. I assure noble Lords that the UK will not stand idly by. Through our dialogue and through UK aid we will continue to provide vital assistance to those most in need, and we will continue to do all we can to encourage both parties to cease fighting and start talking about peace. The people of the world's youngest country have the right to a better future and the UK Government take their role very seriously in this regard.

8.47 pm

Sitting suspended.

Data Protection Bill [HL]

Report (1st Day) (Continued)

8.49 pm

Amendment 9

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

9: Clause 9, page 6, line 5, leave out paragraphs (a) and (b) and insert—

"(a) amend Schedule 1 —

(i) by adding or varying conditions or safeguards, and

(ii) by omitting conditions or safeguards added by regulations under this section, and

(b) consequentially amend this section."

Baroness Chisholm of Owlpen (Con): My Lords, before I launch myself into the detail of these many amendments, I will express our thanks and gratitude for the detailed report of the Delegated Powers and Regulatory Reform Committee. We are also grateful for the extensive and informative discussions in Committee, and we have reflected on the views expressed by all noble Lords during the debates. We have carefully and comprehensively considered each of the committee's recommendations, and none of our decisions have been reached lightly. A theme that noble Lords have heard me express previously is the extraordinary pace of change in the digital and data economy. I am very conscious that the Bill needs to provide a framework for the constant evolutions and developments in how we use and apply data. It must support rather than stifle innovation and growth and, primarily for this reason, in some areas we have deviated from the committee's full recommendations.

I will speak to the key points. In its report, the committee raised concerns about the Henry VIII powers in Clauses 9(6), 33(6) and 84(3), which enable the Government to make regulations to "add to, vary or omit" the processing conditions and safeguards for sensitive data set out in Schedules 1, 8 and 10 respectively. Amendments 9, 90, and 99 respond to these concerns and narrow the regulation-making powers in these clauses. Amendment 9 removes the Government's power to omit processing conditions and safeguards in Schedule 1. Amendments 90 and 99 remove the Government's ability to vary or omit processing conditions in Schedules 8 and 10 respectively. We reflected at length as to whether we could go further than this but, on balance, considered it necessary to maintain the powers to add new processing conditions and to vary those in Schedule 1.

Many of these powers are not new. The 1998 Act already provides a power to add to the conditions for sensitive processing. In addition, many of the provisions in Schedule 1 in respect of which these powers will apply are currently set out in secondary legislation. This means that they can currently be added to, varied or omitted through other secondary legislation. Our experience under the 1998 Act and, indeed, in Committee, has highlighted the frequency with which scenarios can arise which require new processing conditions for sensitive data. Accepting the Committee's recommendations in full would leave the Government unable to accommodate

[Baroness Chisholm of Owlpen]
developments in data processing and the changing requirements of certain sectors. This in turn could render the UK at a disadvantage internationally if, for example, we were unable to make appropriate future provision for sectors, including those such as insurance, where the UK is a world leader, to reflect advances and changes in their approach to data processing.

The committee also raised concerns about Clause 15 of the Bill, which enables the Government by regulation to add to, vary or repeal the exemptions from certain specified data protection principles and data subject rights set out in Schedules 2, 3 and 4. Clause 111 contains a similar power to add, vary or repeal the list of exemptions in Schedule 11. The Government listened carefully to the debate in Committee, where the noble Lords, Lord Stevenson and Lord McNally, recognised the challenge of future-proofing the legislation to take account of changing technology. The noble Lord, Lord Stevenson, further suggested that,

"the most egregious issue here is when the Government seek to omit legislation which has been passed as primary legislation by secondary legislation".—[*Official Report*, 6/11/17; col. 1639.]

I am hopeful that our amendments will set the noble Lord's mind at rest.

Government Amendments 67 and 68 will remove the Government's power in Clause 15 to omit provisions in Schedules 2, 3, and 4. It also removes Clause 15(1)(d) in its entirety. Amendment 103 removes the corresponding power in Clause 111(2) to vary or omit the existing provisions in Schedule 11. I am aware that there are some who would like us to go further than this, but it would not be a good idea for a number of reasons. First, a number of the provisions in Schedules 2 to 4 have been added to the Bill to address specific requirements arising from the new regime and have not yet been tested in operation. Others have been carried over from secondary legislation, where they can at present be added to, varied or removed. The Government therefore consider it prudent to retain the ability to amend Schedules 2 to 4 if it proves necessary. There is also a technical issue here. Schedules 3 and 4 contain a large number of references to subordinate legislation. The power to make and amend the instruments referred to does not always include the power to make consequential amendments to primary legislation. This provides a further, technical reason to retain the power in Clause 15 to vary these provisions.

Government Amendment 71 provides that any regulations made under Clause 17 will now be subject to the affirmative rather than negative resolution procedure. In cases of urgency, there is provision for the "made affirmative" procedure to be used if accompanied by an urgency statement. There is precedent for such an approach; for example, in the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Amendments 168, 169, 170 and 184 make consequential provision later in the Bill.

I turn now turn to Amendments 130, 133, 134 and 136, which respond to the Committee's concerns that the powers in Clauses 142 and 148 were too broad and gave the Government unlimited powers to determine types of additional failure that could attract the Information Commissioner's enforcement powers, including unlimited penalties. Clearly, this was never the Government's intention, and these amendments make it clear that any additional failures must be failures to comply with data protection legislation. They clarify also that the regulations making provision about the penalty for an additional failure will provide for the penalty to be either the standard maximum amount or the higher maximum amount referred to in Clause 150.

Amendment 144 provides that the Information Commissioner's guidance about regulatory action will be subject to the negative resolution procedure when first produced. Generally, the Government believe that guidance of this kind should not be subject to parliamentary procedure. However, exceptionally in this instance, and in recognition of the large and ever-growing number of organisations for which this guidance will be relevant, on reflection the Government agree with the Committee that the negative resolution procedure would be appropriate. Amendments 139, 140, 141, 142 and 143 make consequential provision to ensure that the relevant clause functions as intended.

Amendment 166 reflects the concerns raised by noble Lords in Committee that regulations made under the Bill should be subject to consultation, not only with the Information Commissioner but also with consumer organisations and others who represent data subjects. Accordingly, we are including a requirement in Clause 169 that when the Secretary of State makes regulations under the Bill, she must consult "such other persons" as she considers appropriate. This will apply to all regulations save for those listed in new subsection (2A). We have also tabled consequential Amendments 126, 131, 135 and 138 to remove the equivalent requirement from Clauses 133(1), 142(9), 148(6) and 152(3) to avoid unnecessary duplication in the light of the new general requirement in Clause 169.

9 pm

Finally, Amendment 171 narrows the regulation-making power in Clause 170 which provides for the Government to update the relevant parts of the Bill once the negotiations are completed on the revised convention 108 to only those parts of the Bill which the Government consider may require amendment. The Government always considered this part to be time limited and Amendment 172 introduces, in line with the committee's recommendation, a sunset clause so that the regulation-making power in Clause 170 expires three years after Royal Assent.

I again express my gratitude to the committee for its detailed report and recommendations. They gave us much food for thought and I hope noble Lords will agree that we have adopted its recommendations where it was possible to do so. I thank all noble Lords for listening to me for what seems to have been forever.

On Amendment 10 in the name of the noble Lord, Lord Clement-Jones, I shall listen with interest to what he and other noble Lords have to say before responding. For now, noble Lords will be relieved to hear me say that I beg to move.

Lord Clement-Jones (LD): My Lords, the noble Baroness having sat through my last speech, I am in no position to judge. That was a skilful summary of the

memorandum put to the Delegated Powers and Regulatory Reform Committee and it is useful to have it on the parliamentary record.

I remind the House that the amendments we have brought forward do not take the ultra position, if you like. They are about having an appropriate level of parliamentary control over delegated legislation in a field where these are important matters—rights which are inextricably linked to human rights. To boil down a long memorandum, the Minister's arguments are about flexibility and future proofing. However, the horse has bolted. In previous legislation such regulations were permitted to be made by government and therefore we should roll over and put them into the next bit of legislation.

The one essence that I take away is that the consultation duty is enshrined. I accept that it is a considerable improvement that the Secretary of State must consult the commissioner and such other persons as the Secretary of State considers appropriate. It would be useful at this stage at least to have on the record the kinds of bodies the Minister thinks are appropriate in these circumstances.

The real issue and the reason why we have tabled our amendments—I am not saying they are perfect but they allow for a parliamentary process in which there is an ability to suggest amendments and to have a full consultation on regulation changes—is the controversy about "omission", "addition" and "varying". The Government have clearly come to the view that omitting provisions is permissible in certain circumstances but they are relying on adding or varying. They say that varying is a light-touch aspect but why, in certain circumstances, is it permissible to omit provisions added by regulations? Is this a kind of second thoughts aspect, whereby regulations are brought forward under this Bill and then the Government think they want to omit some of them? I do not quite understand the rationale behind that.

I accept that in some of the crucial cases they are limiting themselves to "adding" or "varying". However, variation can be extremely broad and virtually equivalent to omitting. It seems that one can vary a right all the way down to a minuscule situation which can impinge on the human rights of an individual, even though it is not technically an omission where a safeguarded is provided. These are very broad rights. They are broad powers to create new exemptions to data protection rules as they affect a data subject and they can add exemptions to safeguards for processing sensitive personal data. These matters could have a powerful effect on individuals.

I should remind the Minister of a sad aspect, which is that in its procedures, the Delegated Powers and Regulatory Reform Committee does not seem to have a second bite of the cherry—something I am sure the Minister approves of entirely. But for those of us who relied on the very useful original DPRRC report, it is unfortunate that the committee has not come back and said what it thinks of the ministerial memorandum. In the original report the committee went as far as to say:

"We consider that clause 9(6) is inappropriately wide and recommend its removal from the Bill".

That is pretty heavy stuff, even for this useful committee. It had even more to say about Clause 15:

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

I must put on the record that we on these Benches do not think that the Government have discharged the onus of proof, showing why they need these extraordinary powers under the Bill, and we hope that they will further reduce their regulation-making powers.

Lord Kennedy of Southwark (Lab Co-op): My Lords, this group of overwhelmingly government amendments seeks to address issues raised by the Delegated Powers and Regulatory Reform Committee in its sixth report, published on 24 October this year, the only addition being Amendments 10 and 69 in the names of the noble Lords, Lord Clement-Jones and Lord Paddick. As we have heard, the Delegated Powers and Regulatory Reform Committee is widely respected in the House and I am pleased that the government amendments address the concerns raised by the committee. But as we have heard from the noble Baroness, Lady Chisholm of Owlpen, those concerns have not been accepted in full, and she has given the reasons for that.

I was particularly pleased to see government Amendments 9, 67 and 68, among others, which would limit the powers to amend the processing conditions and exemptions found in various schedules to the Bill. I am equally pleased to see the Government act in respect of the powers to make regulations. This will be done using the affirmative rather the negative procedure, starting with government Amendment 71. It gives Parliament the right level of scrutiny and the ability to reject or express regret about a particular decision, and allows for a proper level of scrutiny, a debate having to take place in both Houses.

In respect of Clauses 9 and 15, Amendments 10 and 69 seek to change the scrutiny procedure from the affirmative, as presently in the Bill, to the super-affirmative. I am not convinced that this is necessary as we have the tools at our disposal to scrutinise the proposals using the affirmative procedure. Starting with government Amendment 130, we have a series of amendments relating to the enforcement powers of the ICO, and again these are to be welcomed.

As I say, in general I welcome the government amendments and the explanation given by the noble Baroness.

Baroness Chisholm of Owlpen: I thank the noble Lord for those kind words. The noble Lord, Lord Clement-Jones, asked who would be consulted. While it is clearly impossible to be specific, the Secretary of State might consider it appropriate to consult, for example, representatives of data subjects or trade bodies, depending on the circumstances and regulations in question. I hope that that answers his question.

On why it is permissible to admit provisions added by regulations, we believe it is qualitatively different from admitting those added during the extensive parliamentary debate and scrutiny afforded to primary legislation. As I said, many other powers are not new. The 1998 Act already provides a power to add to conditions for sensitive processing. We feel it is prudent

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to retain the ability to amend Schedules 2 to 4 if necessary. As I said, this is a fast-moving area. We want to make sure that the Bill provides a framework for the constant evolution and developments in how we use and apply data, but it must be supportive rather than stifle innovation and growth.

Lord Clement-Jones: With the greatest respect, the point I was making was whether the right to vary was not omission by the backdoor. Perhaps I was not clear enough.

Baroness Chisholm of Owlpen: No, we do not believe it is omission by the backdoor.

Amendment 9 agreed.

Amendment 10 not moved.

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

Amendment 11

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

11: Schedule 1, page 114, line 9, leave out from "rights" to ", and" in line 11 and insert "which are imposed or conferred by law on the controller or the data subject in connection with employment, social security or social protection"

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, in Committee the noble Earl, Lord Kinnoull—I am very grateful to him for his help and that of the industry bodies that I have now met—told us that the language in the Bill enabling the processing of sensitive data relating to employment might be interpreted more narrowly than the similar wording in paragraph 2 of Schedule 3 to the Data Protection Act 1998. This was never the Government's intention and I thank the noble Earl and the noble Lord, Lord Clement-Jones, for bringing the issue to the Government's attention. Amendments 11 and 12 to address these concerns by reverting to the wording used in the 1998 Act, thereby removing any doubts as to their proper interpretation. I will sit down and wait for the noble Earl to propose his amendments and reply to them after. I beg to move.

The Earl of Kinnoull (CB): My Lords, I am very grateful to the Minister for that news on those government amendments. It is very helpful and will prevent a lot of insurers having to redo their administrative systems. I shall speak to Amendments 25 and 26, which are another pair of insurance amendments. I declare my interests as set out in the register of the House, particular those in respect of the insurance industry.

I thank the noble Lord, Lord Clement-Jones, who has been very helpful. He brings great clarity at all times of day to our discussions. Although he is the chairman of the Artificial Intelligence Select Committee, his intelligence is far from artificial and is most helpful. Also, I see the Bill team over there. They have been excellent. Given the amount of fire coming in they are very calm, collected and user-friendly. I thank them for everything they have done so far on the Bill.

The Lloyd's Market Association, the British Insurance Brokers' Association and the Association of British Insurers, among other insurance associations, have helped in the preparations of some of these remarks. The insurance industry is trying to deliver products in the public interest. Indeed, some major classes of insurance, such as motor insurance and employers' liability insurance, are compulsory. There is a long list of other insurances that are quasi-compulsory. For instance, one cannot get a mortgage without buying household insurance. It is greatly to society's benefit that a wide choice of good products is available at a reasonable price.

9.15 pm

The amendments seek broadly to achieve two things. The first is to amend the Bill so that the ordinary person and the ordinary small business can continue to have the best access to a choice of good insurance at a good price, while being consistent with the GDPR, and the second is to ask the Information Commissioner, who works for Parliament, to provide the insurance sector with the specific guidance necessary in this area and not guidance on a one-size-fits-all basis, which does not provide sufficient clarity.

The root of the issue is that the threshold for valid consent under the GDPR will now be much higher, which impacts the handling of special-category personal data. 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 both in taking policies on and in handling claims. As I remarked previously, the ABI estimates that the ability to process such data helped in detecting around £1.3 billion in fraudulent claims in 2015 alone. The LMA estimates the size of the Lloyd's market alone where health data are required at £2.3 billion of premiums annually.

The ICO draft guidance suggests 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. This gives rise to a chicken-and-egg problem for insurance. In Committee, I gave several examples of undesirable results, which I do not propose to revisit.

There are many examples where ordinary citizens and small businesses would have problems were the Bill to be unamended. Where society asks for insurance to be bought, be it the compulsory classes of motor insurance or employers' liability insurance, or the quasi-compulsory classes, of which there are many—household insurance with a mortgage in place is one—there is a substantial public interest in allowing heavily regulated insurers to process special-category personal data.

As I have said before, trying to shoehorn insurance business into the GDPR consent environment under article 9.2(a) is far from being in the public interest and the public would be best served to use the derogation under article 9.2(g)—that is,

"processing is necessary for reasons of substantial public interest".

The amendments set out one way in which the issues might be tackled while being wholly consistent with the GDPR. While our detailed and highly constructive discussions continue, the eventual solution may or may not look like them, but I hope that it will have the same effect. Under Amendment 25, the new "insurance" paragraph would continue to sit within the "Substantial Public Interest Conditions" sub-heading in Schedule 1, Part 2, as do the current paragraphs 14 and 15, but the substantial public interest derogation for processing special-category personal data would be used rather than the consent derogation. Further, it makes it clear that special-category personal data can be used only for "necessary … purposes" and not, let us say, for a marketing drive. Sitting over the top will be the ICO and FCA, which I have no doubt will patrol matters with their usual thoroughness.

The other amendment would ask the ICO to prepare insurance-specific guidance and in doing so to consult. In its September response to the consultation on consent, the ICO noted the differing worries of various sectors but said that it did not intend to give any sector-specific guidance. The amendment asks them to do so. Given that the sectors named by the ICO included health and social care, education and charities as well as insurance, it is right that Parliament should ask its Information Commissioner to be as helpful as possible to all sectors. The case for that has grown strongly in the many days of debate that we have had on this Bill, and again today and tonight. I therefore ask the Minister to confirm that these issues will be brought back at Third Reading.

Lord Clement-Jones: My Lords, it is a pleasure to follow the noble Earl, Lord Kinnoull, who has very impressively pursued these issues with considerable care and determination. He has said pretty much everything that needs to be said. Processing special category data, including health data and criminal convictions is, as he said, fundamental to calculating levels of risk and underwriting. I hardly need to say that to the Minister. His amendments are welcome, but of course the essence of the noble Earl's amendments is to get from the Minister a progress report on how things are moving on in terms of enabling the continued processing of special category and criminal conviction data and whether we can get something along the right lines that allows a derogation for processing of special category and criminal conviction data where it is necessary in relation to insurance policies and claims. That would prevent disruption to consumers in the way the noble Earl mentioned. Then, of course, there is the guidance produced by Amendment 26; this is what you might call a sprat to catch a mackerel and I hope that the Minister will deliver the mackerel.

Lord Kennedy of Southwark: My Lords, I welcome government Amendments 11 and 12. As we have heard, they address some of the concerns that were raised in Committee. The Government have said that they never intended to have a narrow interpretation and they have put back the words of the 1998 Act, which is very welcome. As was said earlier, the noble Earl, Lord Kinnoull, has laid out in great detail the issues addressed in his Amendments 25 and 26. He makes a very important and clear case and raised some important issues. I hope that the noble Lord, Lord Ashton of Hyde, will respond to those. I certainly think that there is a case for bringing these things back at Third Reading to address the points the noble Earl has raised.

Lord Ashton of Hyde: My Lords, I am grateful to everyone who has spoken in this debate. As we have just heard, Amendment 25 would replace the existing processing conditions:

"Insurance and data concerning health of relatives of insured person",

and:

"Third party data processing insurance policies and insurance on the life of another",

with a broader insurance processing condition. Amendment 26 would require the Information Commissioner to produce sector-specific guidance for the insurance sector. These processing conditions are made under article 9(2)(g), the substantial public interest derogation. When setting out the grounds for such a derogation, the Government are limited by the need to meet this substantial public interest test. We are also required to provide appropriate safeguards for data subjects.

The Government recognise the importance of insurance products, in particular compulsory classes and the protection afforded by third-party liability. As the noble Earl mentioned, engagement between the insurance sector and government officials has continued since this matter was discussed in Committee and, indeed, since I met him and representatives of the insurance industry after Committee. There is still some work to do on the precise drafting of the relevant provisions, but I am grateful for the opportunity to place on record the Government's intention to table an amendment addressing this issue at Third Reading, if we can finalise the drafting in time and the House is content for us to do so. At the moment I am not aware of any insuperable problems in that regard, but noble Lords will recognise that this is a complex issue and one that we want to get absolutely right.

As for the Information Commissioner producing sector-specific guidance, as proposed by Amendment 26, I will certainly take that back and pass it on to the department. With that reinsurance, or rather reassurance—"reinsurance" was a bit of a Freudian slip there—I respectfully invite the noble Earl not to move his amendments this evening. I beg to move.

Amendment 11 agreed.

Amendment 12

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

12: Schedule 1, page 114, line 17, leave out ""social security law" includes the law relating to" and insert ""social security" includes"

Amendment 12 agreed.

Amendments 13 to 15 not moved.

Amendment 16

Moved by ***Lord Brown of Eaton-under-Heywood***

16: Schedule 1, page 115, line 25, at end insert—

" This condition is met if the processing is—

(a) in the exercise of a function of either House of Parliament, and

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

Lord Brown of Eaton-under-Heywood (CB): My Lords, this group of amendments in my name, prompted by House officials, covers a number of issues concerning parliamentary privilege. The Bill in its present form contains some exemptions to its application to Parliament, but these are considered rather too narrow in scope. The group relates to four areas which have been raised by officials—that is, counsel and clerks of both Houses—as giving rise to concerns about how the Bill as drafted risks infringing parliamentary privilege. These concerns have been discussed extensively with the Bill team and the Leader's office at official level, and drawn to the attention of the Senior Deputy Speaker, who is of course chairman of the Committee for Privileges and Conduct of this House. I say at once that these discussions have been most helpful and constructive. I pay tribute to the Bill team for its co-operation throughout.

Happily, the Bill team is now, as I understand it and as I expect the Minister shortly to confirm, satisfied that amendments to the Bill in all four areas of concern are appropriate, so that those will be forthcoming before Third Reading in the new year. I recognise and accept that those amendments may not follow the precise wording suggested in the present proposals but, provided they address the substance of these various specific concerns, we shall obviously be disposed to accept them.

In these circumstances, and given that we shall obviously not divide the House at this stage, it is unnecessary to outline the detailed nature of each of these proposed amendments. It is, I hope, sufficient to indicate that they include, for example, meeting concerns lest the Information Commissioner take enforcement action against Members or the corporate officers of either House—here, the Clerk of the Parliaments—in respect of the processing of personal data in parliamentary proceedings. Such action could lead to very substantial administrative penalties amounting to millions of pounds. There are concerns, too, about the liability of both corporate officers to prosecution for certain specified offences for things done on behalf of the two Houses of Parliament. I hope that that is sufficient, and at this stage I beg to move Amendment 16 and ask that the eight other amendments be accepted.

Baroness Hamwee (LD): My Lords, from these Benches I support the noble and learned Lord, who is absolutely the right person to pursue this matter. If I might simply add to what he said, it is important that we bear in mind that in the same way as legal professional privilege is the privilege of the client, these provisions would be for the benefit of the public, the running of good democracy, good scrutiny and holding the Government to account. It is not a personal benefit that is proposed here and I hope—I trust, because this is very important—that the Government can find a way through this. I look forward to hearing from them, as the noble and learned Lord said, early in the new year.

Baroness Chisholm of Owlpen: My Lords, I am grateful to the noble and learned Lord, Lord Brown, for raising these amendments and for the words of the noble Baroness, Lady Hamwee. His amendments address concerns about the interaction of the Bill with parliamentary privilege. I agree wholeheartedly with him that parliamentary privilege should continue to be safeguarded and maintained for future generations, as it has been for centuries past. As I said in Committee, the Government's view is that the Bill contains adequate protections to ensure that this is the case. However, we recognise the concerns that, in some areas, these protections could be enhanced and clarified, and we will bring forward amendments at Third Reading to address some of the points that the noble and learned Lord has raised in his amendments.

With that in mind, I will now turn briefly to the amendments themselves, starting with Amendments 16, 17 and 185. The Government recognise the concerns raised in these amendments about the way the conditions for processing sensitive personal data apply in respect of parliamentary proceedings, and liability under Clause 193(5). I am happy to reassure noble Lords that the Government intend to bring forward amendments to address these points at Third Reading.

9.30 pm

Amendment 47 would create an exemption for personal data breaches which occur in the context of parliamentary proceedings from the requirement in article 34 of the GDPR. This article requires the data controller to notify data subjects about breaches of their personal data if the breach is likely to result in a high risk to their rights and freedoms. I understand the concerns raised by the noble and learned Lord, Lord Brown, which my officials have discussed with the House authorities. Having reflected on this further, the Government have decided to table an amendment to this effect at Third Reading.

Amendments 128, 129, 132 and 137 would preclude the Information Commissioner from exercising any of her enforcement functions in respect of personal data that is being processed for the purposes of proceedings in either House of Parliament. It is worth highlighting two points to noble Lords. First, the commissioner has all of these enforcement functions under the 1998 Act. While the scale of the penalties that can be levied under the GDPR will increase, there is no fundamental change to the nature of the commissioner's enforcement functions. Secondly, the protections afforded for parliamentary privilege in the 1998 Act have been broadly mirrored and, where appropriate, developed in the Bill. There is no absence of protection where it was previously provided. To the extent possible, the Bill maintains the status quo for parliamentary privilege. However, we recognise the concerns that the enhanced scale of penalties that the commissioner will be able to apply under the GDPR may inadvertently have a

chilling effect on freedom of expression in either House. While the Government cannot accept Amendments 128, 129, 132 and 137 in their current form, given the stringent requirements of the GDPR, the Government will work with the House authorities and look to bring forward an amendment which speaks to these concerns at Third Reading.

I hope that I have reassured the noble and learned Lord and the noble Baroness, Lady Hamwee, that the Government understand the concerns raised through these amendments and will undertake to work with the House authorities to, where appropriate, bring forward amendments to address them at Third Reading.

Lord Stevenson of Balmacara (Lab): Before the Minister sits down, I put it to her that, in the considerations that will take place between now and the return in January, one thing that changes between 1998 and today in terms of the Act is something we have not looked at specifically, although it comes up in the Bill. It is the need to ring-fence the Information Commissioner from any involvement with Parliament or the Government. She is answerable to Parliament, but she should not be in that sense exposed to considerations that might adversely affect her. I hope that might be taken into account as well.

Baroness Chisholm of Owlpen: I agree with the noble Lord, and we will take that into account.

Lord Brown of Eaton-under-Heywood: My Lords, I am most grateful for the reassurance given to us by the Minister. On the basis that all these matters will be brought back in some shape or form at Third Reading, I beg leave to withdraw the amendment.

Amendment 16 withdrawn.

Amendment 17 not moved.

Amendment 18

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

18: Schedule 1, page 115, line 32, at end insert "or rule of law"

Amendment 18 agreed.

Amendments 19 to 23 not moved.

Amendment 24

Moved by ***Baroness Neville-Jones***

24: Schedule 1, page 118, line 33, at end insert—

"Processing by patient support groups

(1) This condition is met if the processing—

(a) is necessary for the purpose in accordance with the conditions listed in sub-paragraph (2), and

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

(2) The processing is carried out—

(a) in the course of its legitimate activities with appropriate safeguards by a foundation, association or other not for profit body with a patient support aim, and

(b) on condition that—

(i) the processing relates solely to the members or former members of the body or to persons who have regular contact with it in connection with its purposes, and

(ii) the personal data is not disclosed outside that body without the consent of the data subjects."

Baroness Neville-Jones (Con): My Lords, I introduced the same amendment in Committee and do not intend to repeat what I said then. I am glad to say that, since I put down that amendment, there has been a very helpful meeting between DCMS officials, the Genetic Alliance UK and UNIQUE. I very much hope that that meeting will form the basis of a solution on which we can build for Third Reading. I thank my noble friend the Minister for his personal contribution to the progress that we have made.

My understanding is that at that meeting it was accepted that an amendment would have to be brought forward to ensure the legality of the work of patient support groups. My understanding also is that the Government would prefer to do this by their own amendment, and I am certainly very happy to accept that. I also hope that it will be possible to agree such an amendment before Third Reading.

My noble friend has said that he is concerned about defining the scope of the amendment. I certainly accept that that is a legitimate issue. The family of patient support groups is quite large, but I accept that it is right to prevent any amendment becoming a loophole for evasion of the Bill's provisions. I am conscious of that issue. However, the purpose of the amendment is not controversial and I am happy to look to finding words and drafting that will both safeguard the points that we want to make and provide the right scope for the amendment. It would be highly desirable to be able to deal with this matter in our House.

I hope and trust that my noble friend will be able to confirm that he shares my understanding of the point that we have now reached and that he will be able to give me an assurance at least of best endeavours to present a government amendment at Third Reading. I might say that Genetic Alliance and other patient support groups stand ready to help in any way that they can to meet this deadline.

Lord Clement-Jones: My Lords, I will speak briefly to support the noble Baroness, Lady Neville-Jones, in her amendment. Clearly, this is of great importance to patient groups. I very much hope that the Minister will carry on the good work and come back at Third Reading with something substantive for the benefit of patient organisations that collect vital health information from their members, so that they will not be required to destroy or anonymise data. Without amendment, the Data Protection Bill has the potential to seriously damage the work of these patient support groups and hinder the work of certain public agencies, too, such as Public Health England and NICE—so I very much support the noble Baroness.

The Earl of Erroll (CB): My Lords, I will say a couple of things on this in full support of the proposition made by the noble Baroness, Lady Neville-Jones. These issues are very complicated. We tend to try to brush them aside and hope that they will be dealt with by the person who is enforcing and regulating. But that can be dangerous, because they will find it very difficult as well, and sometimes, if you do not have the intention in the Bill, it may just not happen.

This is important because, while I fully support the intention and objectives of the GDPR in the Data Protection Bill in front of us, which is there for all the right reasons, we have to be careful not to throw out the baby with the bathwater. This is one of those instances where, in trying overzealously to introduce a rules-based system in a complex world and a complex society, you find unexpected consequences. Some of them cannot be defined terribly easily in regulation, but I think it would be wise to put this in an amendment.

We in this House tend to think in principle much more than another place. To try to deal with this in another place when it gets there may be unwise in case they run out of time. It would be good to put something in the Bill in this House at Third Reading, if the Minister were so minded, and I would wholeheartedly support that.

Lord Patel (CB): My Lords, I have already spoken on this at length and I do not intend to repeat myself, but I support the amendment from the noble Baroness, Lady Neville-Jones. This is a very important database. It is not just national but international, and it is difficult to collect. That is why I am glad that an accommodation has been made to support the amendment.

Lord Stevenson of Balmacara: My Lords, I add my voice in support of the noble Baroness's amendment and wish it well. I suspect she has run into the logjam that constitutes the waiting list to see the Bill team and the Ministers, who have been worked so hard in the last few months. But I hope it will be possible, given that there is a bit of time now before Third Reading, for this matter to be resolved quickly and expeditiously before then.

Lord Ashton of Hyde: My noble friend Lady Neville-Jones explained in Committee that Unique plays a hugely important role in providing advice and support to sufferers of rare chromosomal disorders and their carers. Some of these charities have large databases dating back many years, so we understand their desire to maintain these when the GDPR comes into force without necessarily obtaining fresh consent to GDPR standards for each data subject included on the database. When families are providing support to their loved ones, some of whom may need round-the-clock care, filling in a new consent form may not be high on their agenda.

However, they may still value the support and services that patient support groups provide and would be concerned if they were removed from the charities' databases. If charities such as Unique had to stop processing or delete records because consent could not be obtained, they worry that this would impede the work they do to put patients and their families in touch with others suffering from rare genetic conditions, help clinicians to deliver diagnoses and facilitate research projects. We recognise that this could be particularly damaging when there is barely any knowledge of the condition other than what they may hold on their database.

Let me be clear: if there is a grey area in the Bill that puts this work at risk, the Government are fully prepared to amend it. Legislating in this area is not straightforward and I am keen that the policy and legal teams in the department are able to continue with the constructive discussions they have been having with Unique and the UK Genetic Alliance to ensure that the legislation adequately covers the specific processing activities they are concerned about, while providing adequate safeguards for data subjects. I assure noble Lords that we will use our best endeavours to work on this legislative solution as quickly as possible. If it is not ready by Third Reading, and I am afraid I cannot promise it will be, the Government will endeavour to introduce any necessary provisions at the next possible amending stage of the Bill. I will of course ensure that my noble friend gets the credit she deserves for her persistent efforts on this subject when that time comes.

Government Amendments 72 to 77 are the products of detailed discussion with the noble Lord, Lord Patel, the noble Baroness, Lady Manningham-Buller, and representatives of the Wellcome Trust. I thank them very much for those constructive and helpful discussions. In Committee we discussed the operation of the safeguards in Clause 18 and the potentially damaging impact they would have on pioneering medical research. As I explained at the time, it was never the Government's intention to undermine such important work, so it is with great pleasure that I table these amendments today.

Noble Lords will recall that the greatest concern stemmed from the safeguard in what is currently Clause 18(2)(a). That paragraph was designed to prevent researchers using personal data to make measures and decisions in respect of particular data subjects but, as the noble Lord explained, there are certain types of medical research where this is inevitable. In the context of a clinical trial, for example, a data subject might willingly agree to participate, but in the course of the trial researchers might need to make decisions about whether the treatment should continue or stop, with respect to some or all data subjects. Government Amendment 77 addresses this concern by making it clear that the safeguard is automatically met where processing is necessary for the purposes of approved medical research. Approved medical research is defined in the new clause and includes, for example, research approved by an ethics committee established by the Health Research Authority or relevant NHS body. Importantly, the new clause also contains an order-making power so that the definition of approved research can be kept up to date.

9.45 pm

We have also taken the opportunity to make a small change to the safeguard in Clause 18(2)(b), which currently states that processing for research purposes should not occur if it causes substantial damage or distress to "an individual". The Wellcome Trust and

others pointed out that this language is different from that used in the Data Protection Act 1998, which talked about damage or distress caused to "a data subject"—namely those participating in the research. We did not set out to alter this safeguard, nor to jeopardise research that might conceivably offend far removed from the actual activity. Amendment 76 therefore reverts to the tried and tested language of the 1998 Act.

The amendments have been developed in close liaison with the Wellcome Trust and I am grateful to it for its help. On that note, I hope my noble friend feels able to withdraw her amendment and that all noble Lords feel able to support the government amendments in the group.

Lord Patel: Before the Minister sits down, I thank him and his team immensely for taking on board the concerns that I and others expressed about the interventional medical research that the government amendments will now allow. It cannot be overstated: this will now allow important research, including clinical trials, to be undertaken that will advance medical research in the United Kingdom, making it an attractive place to do such research. I thank him immensely; I am most grateful.

Baroness Neville-Jones: My Lords, I am extraordinarily grateful to noble Lords who have spoken in support of my amendment, and for the comprehension that the Minister has shown for the work of the patient support groups. They will have greatly appreciated hearing how much the Government support what they do.

I very much hope that we can work on an amendment that will both meet the Government's concerns and effectively cover the work of those organisations, which, as I think the Minister understands, work in difficult circumstances. They stand ready to participate with the Government in getting language that will both cover their concerns and ensure that we do not open the door to those for whom it is not intended. On that basis, I beg leave to withdraw the amendment.

Amendment 24 withdrawn.

Amendments 25 and 26 not moved.

Amendment 27

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

27: Schedule 1, page 121, line 27, at end insert "and any additional activities determined to be appropriate by the Electoral Commission"

Lord Kennedy of Southwark: My Lords, I tabled this amendment to keep the issue that I raised in Committee on the agenda. I spoke about it at some length in Committee. I think it is better determined by your Lordships' House, rather than going off to the other place. I know the Minister has kindly agreed to a meeting. We have not had a chance to have it yet, but we will later this week.

I know that the noble Lord, Lord Hayward, who sits on the Government Benches, fully supports this issue being debated. He, like me, hopes it can be sorted out here by Third Reading, rather than going to the other place. The basic problem is that provisions in the Bill potentially conflict with legislation in respect of elections and other matters already on the statute book. I went through those in Committee. I am sure we do not want to pass legislation that conflicts with existing legislation, but we risk doing that here. That cannot be right. What political parties, campaigners and politicians need—and certainly what the regulators need—is crystal clear legislation and regulation that they can apply. To pass something that is in direct conflict with the Representation of the People Act would be unwise. We need to have our meeting later this week and I hope we can bring something back at Third Reading. These are important issues that we need to get right to ensure that all legislation is working together. I beg to move.

Baroness Hamwee: My Lords, I am very glad that the noble Lord is keeping this on the agenda. I had a note to ask what was happening about the meeting to which lots of people were invited at the previous stage. I do not believe that we have heard anything about it. This is not a whinge but a suggestion that it is important to discuss this very widely.

I find this paragraph in Schedule 1 very difficult. One of the criteria is that the processing is necessary for the purposes of political activities. I honestly find that really hard to understand. Necessary clearly means more than desirable, but you can campaign, which is one of the activities, without processing personal data. What does this mean in practice? I have a list of questions, by no means exhaustive, one of which comes from outside, asking what is meant by political opinion. That is not voting intention. Political opinion could mean a number of things across quite a wide spectrum. We heard at the previous stage that the Electoral Commission had not been involved in this, and a number of noble Lords urged that it should be. It did not respond when asked initially, but that does not mean it should be kept out of the picture altogether. After all, it will have to respond to quite a lot of what goes on. It might not be completely its bag, but it is certainly not a long way from it.

We support pinning down the detail of this. I do not actually agree with the noble Lord's amendment as drafted, but I thank him for finding a mechanism to raise the issue again.

Lord Ashton of Hyde: I am grateful to the noble Lord, Lord Kennedy, for raising this issue, and to the noble Baroness for her comments. These issues are vital to our system of government, and we agree with that.

Amendment 27 seeks to expand the umbrella term "political activities" to include any additional activities determined to be appropriate by the Electoral Commission. Noble Lords will agree that engaging and interacting with the electorate is crucial in a democratic society, and we must therefore ensure that all activity to facilitate this is done in a lawful manner. Although paragraph 18(4) includes campaigning, fundraising, political surveys and case work as illustrative examples of political activities, it should not be taken to represent an exhaustive list.

Noble Lords will be aware that the Electoral Commission's main areas of expertise concern the regulation of political funding and spending, and we are of the opinion that much, if not all the activities they regulate will be captured under the heading "political activity". As I have just set out, fundraising is included as an illustrative example, which ought to provide some reassurance on this point. Moreover, the greater the number of activities denoted by the Electoral Commission, the less likely it is that any other activity would be considered by a court to be a political activity by dint of its omission. The commission, a body which as far as I am aware claims no expertise in data protection matters, would find itself in an endless spiral of denoting new activities as being permissible under the GDPR. Nevertheless, in recognition of the importance of such processing to the democratic process, the Government are continuing to consider the broader issues at stake and may well return to them in the second House. In this vein, the noble Lord made a number of good points, and I look forward to meeting him with the Minister for Digital, my right honourable friend Matt Hancock, on Thursday this week to discuss the matter in more detail than the parameters of this debate allow. We will see what the noble Lord feels about the timing of that after the meeting.

As for the noble Baroness, Lady Hamwee, we talked about having bigger meetings, and I am sure the time will come. This is just a preliminary meeting to decide on timings and to give the noble Lord, Lord Kennedy, the chance to discuss this with the Minister for Digital. I envisage that further meetings will include the noble Baroness.

I appreciate the sentiment behind the noble Lord's amendment. In the light of our forthcoming discussions, I hope he feels able to withdraw it.

Lord Kennedy of Southwark: I thank the Minister for his response. I tabled the amendment to keep the issue live and to illustrate the problem we have here. In his response, he talked about the responsibilities of the commission and data protection responsibilities and how they may conflict, belonging to different bodies. That begins to highlight the problem that we potentially have here. You could have different regulators trying to enforce different bits of legislation, all on the statute book at the same time and equally legitimate. We have got a real problem here.

I look forward to the meeting on Thursday. It is very important that we have a meeting after that, though, with a much wider group of people from different parties and campaigns. It is a genuine problem that affects every political party represented in this House and the other place and those that are not in either House. There is no advantage here—it is a question of getting a procedure in place that allows political parties to campaign and do their job properly and fairly. Equally, it protects the volunteers so that they understand what they can and cannot do so that they do not unintentionally get themselves in difficulty. I look forward to the meeting, but there are one or two things to sort out before then. I hope that it can get done by Thursday but, if it cannot, we have the other place. But it would be much better to sort it out at this end rather than the other end. I beg leave to withdraw the amendment.

Amendment 27 withdrawn.

Amendment 28

Moved by ***Lord Brown of Eaton-under-Heywood***

28: Schedule 1, page 122, line 29, at end insert—

"( ) A member of the House of Lords is to be treated as an elected representative for the purposes of this paragraph and paragraph 20."

Lord Brown of Eaton-under-Heywood: My Lords, this pair of amendments, like the earlier group that I proposed, promoted by House officials, concerns another aspect of parliamentary privilege. Unlike the earlier group, these amendments have failed thus far to attract the support of the Bill team and government. Also unlike the earlier group, they relate only to this House, and not the House of Commons. But I shall have to address the issue at a marginally greater length than previously.

As will readily be apparent from the text of the two amendments, they propose that, with regard to a particular aspect of the processing of sensitive personal data, a Member of this House should be treated in the same way as a Member of the other House—or, for that matter, as Members of every other elected body in the country down to the smallest local authorities. There are really compelling reasons why in this context we should be treated on the same basis as elected representatives.

I begin with two acknowledgements. First, I readily concede that, unlike all the other representatives in public life, Members of this House are not elected. I put aside the Minister's observation in Committee that he speaks as an elected Member,

"albeit with a fairly small electorate".—[*Official Report*, 13/11/17; col. 1818.]

Secondly, I recognise that the Bill as drafted would essentially continue the position that has existed for the past 15 years, established under the Data Protection Act 1998 by secondary legislation in a ministerial order which followed in 2002.

The benefit of the particular provisions in Schedule 1 to the Bill which we are now seeking to amend by our proposed inclusion of Members of this House is that it would better enable elected representatives by dispensing in certain limited circumstances with the need for the express consent of the data subject to campaign on behalf of individuals.

10 pm

Of course, Members of your Lordships' House do not have constituency casework in quite the same way as Members of Parliament do. However, it surely cannot be doubted that many Members of this House—the noble Baroness, Lady Hamwee, whose name has been attached to this group, is obviously one such—do champion individual cases and causes on behalf of a variety of interest groups.

Since the ministerial order of 15 years ago, passed in the wake of the 1999 reform, by which we became a House largely of life Peers, an increasing number of the appointed Members have previously been elected representatives in one body or another, such as the House of Commons, devolved Parliaments and Assemblies, the European Parliament or local authorities. Doubtless, at least partially because of that background, they have been more inclined to pursue various causes.

Consistent with this, an increasing number of Members over the last 15 years have been undertaking activities in support of pressure groups and action groups, including the advancing of individual cases. The Government surely do not now want to inhibit these activities or to discourage or dissuade Members from pursuing these cases. I therefore urge the Government to reflect and, indeed, welcome this new reality and put Members of this House, in this strictly limited context, on the same footing as elected representatives so that they are not henceforth disadvantaged in the discharge of these duties.

Finally, unlike the earlier group of amendments concerning parliamentary privilege, this group relates exclusively to the work of your Lordships' House. Although the Bill eventually goes from here to the House of Commons, that House will perhaps have little interest in this issue—so, par excellence, the question should be considered here. Even if the Minister will not give ground today—I recognise that he may be under clear instructions not to—I hope he will recognise that there is sufficient force and merit in these arguments to agree at least to have another look at this issue before Third Reading. In that case, I suspect that we will not be pushing it further at this stage.

Baroness Hamwee: My Lords, I have put my name to this amendment. I stumbled on the omission of Members of this House during debate in Committee, when I asked what I thought was an innocent question. I was asked to appear on the BBC's "Question Time" after the list of Peers of which I was one was announced but before I actually arrived here. It was a fairly difficult occasion, which I remembered when I was thinking about this issue at lunchtime today. When I referred, during the discussion, to Members of Parliament, Nicholas Ridley said, "You are a Member of Parliament". We are all Members of Parliament. We happen to be Members of the House of Lords; those who are normally called MPs are Members of the House of Commons. I regard myself as being in a representative position, even though I am not elected.

I disagree with one comment of the noble and learned Lord, which was about the amount of casework that I do. I am so conscious of the problems of getting it wrong, particularly in the area of immigration, that I try not to do that work. However, it is notable how the number of requests to Peers to intervene in individual cases has grown over the last few years. I suppose that reflects the fact that MPs are taking on more and more of what a few years ago one might have called social work. There are not the same demarcation lines as perhaps there used to be.

The casework, among other things, informs our general response to policy issues and specific proposals put before us, so we cannot exclude ourselves from all this. Ten days or so ago, in response to a request to pursue a particular case, I made the point that the individual should approach her own MP. The answer came back, through an intermediary, "She's an asylum seeker. She doesn't have an MP. We're looking for anyone who can help".

In Committee, questions on this issue were asked round the House. I recall that the noble Lord, Lord Lucas, took up the point after I had asked a question. I am very grateful to the noble and learned Lord for pursuing this matter. I hope that the Minister will accept his suggestion that this should be considered further between now and Third Reading, and that it should be dealt with at this end. I hope that the Minister will this evening assure us that it will remain on the agenda and that we can return to it at the next stage of the Bill in this House.

Lord Stevenson of Balmacara: My Lords, we do not need to think very hard about this issue in terms of providing evidence that might be helpful to Ministers given that at Oral Questions today, at which I think the Minister and the noble Baroness were present, a case was raised by a Peer on our side of the House, in a Question to the DWP Minister, which verged on picking up a particular case. It was very useful in terms of making a broader political point. Are we saying that that will not be possible in future, as it raises significant questions? Secondly, as the noble Baroness, Lady Hamwee, said, irrespective of whether we have been an MP or a Member of the other House, we receive letters and emails almost daily offering individual data and information which, if we used it, would, I think, fall into the category mentioned by the noble and learned Lord.

At the weekend, I had the privilege of seeing the RSC perform the "Imperium" plays, adapted from the books of Robert Harris. These deal with a well-known orator, Cicero. Noble Lords will not be surprised to learn that he recommends to his clients—at one stage, he gives a tutorial to fellow citizens of Rome who intend to seek high office—that it is always helpful, and always catches the attention of an audience, if you give the specifics of an individual case and rise from that to the general. So if there is a possibility of placing a constraint on the ability of Members of this House to raise cases in an effort to improve the quality of life for citizens to whom we owe a duty of care and responsibility, that must be wrong. I hope that the Minister will take this away and work with the noble and learned Lord, Lord Brown, to bring something forward at Third Reading.

Baroness Chisholm of Owlpen: My Lords, Amendments 28 and 29 create a new processing condition for Members of this House. The Government's view is that the provisions in paragraphs 19 and 21 of Schedule 1 are intended to reflect the unique and special nature of the relationship between an elected representative and their constituent.

Like the noble Baroness, Lady Hamwee, and the noble and learned Lord, Lord Brown, I am very aware of the important and valuable work that many noble Lords carry out on behalf of members of the public, advocating for their rights, taking up their cases with

government departments and representing their interests in any number of scenarios. However, this relationship between a Peer and a member of the public is of a different nature and order from that conferred on an elected representative by their constituents. Elected representatives have particular rights and duties to act on behalf of the citizens they represent. The Government therefore consider it appropriate for them to be able to deal with urgent situations where they could not reasonably be expected to obtain consent; for example, in the case of an individual facing imminent deportation. There is no such need for Peers to be exempted from the provisions on consent. I stress again that nothing in the Bill or the GDPR prevents Peers undertaking casework if they first obtain the consent of the individual concerned.

I emphasise that these provisions are not new. The position under the 1998 Act is very similar and, in answer to the point made by the noble Lord, Lord Stevenson, it has not prevented Peers who are interested in undertaking casework doing so. Indeed, I have not found difficulty in this respect; I have just obtained consent first.

I hope I have reassured the noble and learned Lord that the Government understand the concerns raised, and that in this instance he will withdraw his amendment.

Lord Brown of Eaton-under-Heywood: I confess to being disappointed by the Minister's response to this. I dealt with the fact that things have changed over the 15 years since the 2002 order. Of course there will continue to be circumstances in which it is possible to get, without inhibiting problems, the express consent of the person concerned. However, it will not always be possible, and to that extent it will inhibit the future ability of Members to discharge a function they have been discharging. Of course I will not divide the House at this stage; nevertheless, I urge the Government to reread the arguments and submissions that the noble Baroness and I have advanced today and see whether they cannot bring themselves to recognise that there is a substantial point here. Although there is a natural reluctance to treat us as elected Members, they should for this limited purpose do so; that is justified in the narrow circumstances in which this point arises.

Baroness Hamwee: Before the noble and learned Lord finishes, if the House permits me, I will raise something with the Minister. A number of individual cases are brought to us through other organisations, which may have the consent of the individuals. We would want to pursue a matter in the way the noble Lord, Lord Stevenson, just mentioned—I was not at Question Time today but I can imagine the kind of situation. It would add considerably to the difficulty of doing that if the consent obtained by the organisation was thought not to extend to a Peer taking up the matter. I do not know how we would deal with that. It would be a considerable barrier to our doing what I regard as our job.

Lord Brown of Eaton-under-Heywood: I am grateful to the noble Baroness, who puts forward a dimension to the problem that she is much more alive to than I am. However, there it is. I urge the Minister to reread these speeches and, in the meantime, I have no option but to beg leave to withdraw the amendment.

Amendment 28 withdrawn.

Amendment 29 not moved.

Amendment 30

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

30: Schedule 1, page 124, line 1, at end insert "or tribunal"

Amendment 30 agreed.

Consideration on Report adjourned.

House adjourned at 10.15 pm.