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PARLIAMENTARY DEBATES
(HANSARD)

# HOUSE OF LORDS
## OFFICIAL REPORT

*ORDER OF BUSINESS*

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

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# House of Lords

*Monday 10 September 2018*

*2.30 pm*

*Prayers—read by the Lord Bishop of Chester.*

## Child Sexual Abuse: Safeguarding Failures

*Question*

*2.36 pm*

*Asked by* ***Baroness Walmsley***

To ask Her Majesty's Government how they plan to respond to the report of the Independent Inquiry into Child Sexual Abuse regarding safeguarding failures at Downside and Ampleforth schools, published in August 2018.

**The Parliamentary Under-Secretary of State, Department for Education (Lord Agnew of Oulton) (Con):** My Lords, before answering the noble Baroness's Question, I inform the House that various members of my wife's family attended Ampleforth. I have never visited the school nor had any other connection with it.

The report of the independent inquiry into child sexual abuse regarding Downside and Ampleforth schools did not make specific recommendations to my department. However, a regulator of independent schools is carefully considering the inquiry's findings. We have asked inspectors to pay close attention to the matters in the report at the next inspection of Downside. Ampleforth is currently under regulatory action and must improve or face further action, which could include closure.

**Baroness Walmsley (LD):** My Lords, is the Minister aware that the committee had evidence that one of the schools consulted its legal adviser as to whether it was legally obliged to report the abuse that it knew about. Having learned that it was not so obliged, it decided to cover it up. How much more evidence do the Government require of the need for mandatory reporting of child abuse in regulated activity? Of course, that does not include social workers, because social work is not a regulated activity. Will the Government now follow the evidence and respond with legislation?

**Lord Agnew of Oulton:** My Lords, it is absolutely unacceptable for anyone to conceal abuse. The Government are committed to ensuring that legislation can adequately deal with this. We will scope this issue fully during the current Parliament. What individuals and organisations should do is already clear in statutory guidance. The guidance also makes it clear that there is a legal duty on employers to make a referral to the Disclosure and Barring Service in certain circumstances.

**Lord Campbell-Savours (Lab):** My Lords, have the Government considered how IICSA's current inquiry with the 13-strand remit to examine the role of institutions, including educational institutions, has decided to single out and give priority to the case of the late Greville Janner, where there was no arrest, no proceedings and therefore no challenge on evidence, no conviction, all civil claims collapsed and where the deceased's family has been denied the right to cross-examine and test the evidence? On what possible basis has IICSA been allowed to decide to identify Janner uniquely, effectively trying a dead man in his absence? Do I detect a hint of institutional anti-Semitism here? This is a question about process, and something is very wrong.

**Lord Agnew of Oulton:** I can assure noble Lords that there is no religious prejudice of any kind. I am happy to take this matter up with the independent inquiry and write to the noble Lord.

**Baroness Meacher (CB):** My Lords, we know that many faith schools, and the great majority of non-faith schools, provide an excellent service. Will the Minister institute a full-scale investigation into the potential risks in some of our faith schools, not only of child sexual abuse but of homophobic attitudes and behaviour and, in some schools—often different ones—the promotion and encouragement of the cruel practice of female genital mutilation? These practices are utterly unacceptable in our country and reform should surely begin in our schools.

**Lord Agnew of Oulton:** My Lords, where independent schools are charities they are regulated by the Charity Commission. We regulate all of them in terms of their right to run a school. The noble Baroness mentioned female genital mutilation; that is one of the few areas where there is a mandatory requirement to report any suspicions or evidence of it to the police. We take that very seriously and awareness of it is growing in schools.

**Lord Lexden (Con):** My Lords, appalling things happened at these two schools, for which the most profound sense of shame must always be felt. Has my noble friend noted the appointment of Ampleforth's first female head, Deirdre Rowe, an expert in child safeguarding, who has said that she will lead the school into a new era? More generally, does he agree that boarding schools today are among the most thoroughly regulated and stringently inspected schools in the world?

**Lord Agnew of Oulton:** My Lords, I agree with my noble friend that the degree of oversight of boarding schools in this country is probably one of the most stringent anywhere in the world. I am delighted that Ampleforth has appointed a female head. As part of the Charity Commission's oversight of that school, it has appointed an independent observer, Emma Moody, who has the rights and powers of a trustee and is there specifically to oversee safeguarding.

**Lord Watson of Invergowrie (Lab):** My Lords, the independent inquiry investigated history cases of appalling child sexual abuse. However, in April this year, the Charity Commission announced that it had stripped the charities that run Ampleforth School of their ability to have safeguarding oversight. A recent audit at Downside School by the Social Care Institute for

[Lord Watson of Invergowrie]
Excellence found that there were still several important weaknesses in safeguarding. Yet the last two reports by the Independent Schools Inspectorate gave both schools a clean bill of health on safeguarding. Given that the inspectorate is monitored by Ofsted on behalf of the Department for Education, what efforts will Ministers make to ascertain how it managed to miss the continuing failings at those wretched establishments?

**Lord Agnew of Oulton:** My Lords, the noble Lord is right that the ISI is overseen by the Department for Education and is also monitored by Ofsted. The Ampleforth matter is not over yet; there will be another inspection shortly. Everyone realises that that school is in the last chance saloon on the matter of safeguarding.

**Baroness Brinton (LD):** My Lords, the Minister has talked about the last chance saloon and said that schools know what they should be doing. However, they are still not reporting all cases. When will the Government introduce mandatory reporting for regulated activities?

**Lord Agnew of Oulton:** My Lords, I know that there are calls for mandatory reporting and the noble Baroness, Lady Walmsley, who asked the Question, is a keen advocate of it. All noble Lords will be aware that we have consulted on this matter. We had 760 responses from social workers, police officers and other connected parties. Some 70% of them felt that mandatory reporting would have an adverse impact; 85% said that it would not, in itself, lead to the appropriate action being taken. However, over the last few years we have prioritised sexual abuse as a national threat, to empower police forces to maximise skills and expertise. This is one of only six such threats that require prioritisation.

## Advisory Committee on Business Appointments
*Question*

*2.44 pm*

*Asked by* ***Lord Hunt of Kings Heath***

To ask Her Majesty's Government what action they are taking to ensure that all former Ministers seek advice from the Advisory Committee on Business Appointments before taking up appointments within two years of leaving ministerial office.

**Lord Young of Cookham (Con):** My Lords, the Ministerial Code was updated in January 2018 to underline the importance of the business appointment rules to both current and former Ministers, and reiterating the requirement to seek advice from the independent advisory committee before announcing or taking up any new appointments. In addition, the Minister for the Cabinet Office has recently written to ministerial colleagues reminding them of the importance of the rules in maintaining public confidence in the integrity of our public servants.

**Lord Hunt of Kings Heath (Lab):** My Lords, I am grateful to the Minister for that response but he will know that the committee so ably chaired by the noble Baroness, Lady Browning, is an advisory committee, not a statutory committee, and can impose no sanctions on any former Minister who does not seek the committee's approval. Essentially, it remains as a code of honour. We should not be surprised, I suppose, that the latest transgressor of this system is Mr Boris Johnson, who perhaps seems to have a rather distant acquaintance with the notion of honour. When will the Government agree to make this a statutory committee and be able to impose sanctions in order to make the system work?

**Lord Young of Cookham:** I join the noble Lord in paying tribute to my noble friend Lady Browning, who chairs ACOBA. Until I read its annual report, I had not realised quite how much work it did—some 230 appointments in a year—or how complex some of the cases were. The noble Lord suggests that the system should be statutory. ACOBA has been non-statutory since it was established in 1975. I see two problems in making it statutory. First, it would be much more difficult to amend it and bring it up to date—it would become less flexible; at the moment it can be updated overnight. Secondly, if you make it statutory I suspect that decisions would take longer to deliver but, crucially, they would then be justiciable: they could be challenged in the courts. I think there is a real risk of crystallising a potential conflict between the rules of ACOBA and the common-law right that individuals have to earn a living in their own right.

**Lord Wallace of Saltaire (LD):** My Lords, the Ministerial Code clearly states that,

"Former Ministers must ensure that no new appointments are announced, or taken up, before the Committee has been able to provide its advice".

It goes on to say,

"Former Ministers must abide by the advice of the Committee which will be published by the Committee when a role is announced or taken up".

Of course, there is a minimum three-month waiting period on resignation. Boris Johnson breached all these elements of the Ministerial Code, which explains the very strong tone of this letter. Should there not be some comeback when Ministers who have signed the Ministerial Code breach it within days of leaving office?

**Lord Young of Cookham:** The noble Lord refers quite rightly to the stern rebuke from my noble friend in her letter to the Foreign Secretary:

"The Committee considers it to be unacceptable that you signed a contract with *The Telegraph* and your appointment was announced before you had sought and obtained advice from the Committee, as was incumbent on you on leaving office".

The former Foreign Secretary should not have treated with such insouciance the rules, which had been brought to his attention and which he acknowledged he had read as recently as January this year. I am not an apologist for the former Foreign Secretary—that requires a portfolio of skills that I do not have. However, in his defence, the rules are designed to prevent a Minister, using the knowledge he acquires and the relationships

he develops in the department, from rolling the pitch for a lucrative job subsequently in a related organisation. In the case of the former Foreign Secretary, after two years he reverted back to a career in journalism, a career for which his qualities are perhaps better suited. Therefore, while I do not in any way undermine the seriousness of his offence, what he did was not quite the revolving door that one normally sees—and the revolving door ended up with him back where he started.

**Baroness Browning (Con):** My noble friend will be aware that the full ACOBA rules were appended to the Ministerial Code at the request of the ACOBA Committee. The point about honour is very well made: any non-statutory body, whether it involves the Ministerial Code or the ACOBA rules, will only work if it is dealing with people of honour. I commend to my noble friend the definition of honour made at the funeral of the late Senator John McCain. Perhaps my noble friend could communicate to the Cabinet Office that as far as the Ministerial Code is concerned, for which I have no authority whatsoever at ACOBA, consideration should be given to in some way debarring people who do not behave with honour, or a penalty should be imposed so that they cannot hold public office for a limited amount of time—two years would probably be a good idea—after they have flagrantly ignored both the Ministerial Code and the ACOBA rules?

**Lord Young of Cookham:** My noble friend makes a good point about honour. When one joins your Lordships' House we subscribe to the Code of Conduct, and part of that is an injunction to act,

"always on … personal honour".

Those words have been used for centuries to describe the conduct that one should follow in the House. The former Foreign Secretary seems to defy the laws of political gravity. I certainly take my noble friend's point: once you are no longer a Minister you are not subject to the Ministerial Code, so there is no formal sanction. However, as my noble friend suggested, I will certainly pursue her suggestion with the Cabinet Office. But at the end of the day, a Prime Minister is free to appoint whomever he or she wants, but I hope that whoever may hold that office will take into account the behaviour of Ministers when they defy the Ministerial Code.

**Lord Morris of Aberavon (Lab):** My Lords, some years ago I served on this committee and grew increasingly frustrated by the revolving doors, but could not interest the then Prime Minister in any changes. Is it not the time to have an independent and thorough review of its workings; to tighten things up and lengthen the period before which officeholders can take up new posts—and, better still, to warn them early in their careers that they will not be able to glide as quickly into new posts; and to have sanctions where there are breaches?

**Lord Young of Cookham:** I take very seriously the suggestions of the noble and learned Lord, who served on this committee. The ACOBA is monitored closely by a Select Committee in the other place—the so-called PACAC committee—which has produced a series of reports making a number of recommendations, to which the Government have responded. We propose to tighten the current non-statutory scheme with increased transparency, awareness and monitoring, and we are also sharing any letters with prospective employers so that they are aware of any restraints on those who join their organisations. Finally, most of the people who come before ACOBA are people in public life with a high profile—indeed, many of them are Members of your Lordships' House—and I suspect that many will not want to take the reputational hit of being publicly criticised by ACOBA. The prospective employer may wonder why they should take on somebody who has so recently flouted the rules of their previous employer.

## Immigration Policy: Children and Parents

*Question*

*2.52 pm*

*Asked by* ***Lord Kennedy of Southwark***

To ask Her Majesty's Government what assessment they have made of the extent to which the implementation of immigration policy has led to the separation of children from their parents.

**The Minister of State, Home Office (Baroness Williams of Trafford) (Con):** My Lords, the family Immigration Rules and the policy on exceptional circumstances provide a clear basis for considering applications to remain in the UK. Individuals with no leave to remain are expected to leave voluntarily. We may enforce their removal if they do not. Our family separation guidance makes clear that staff must consider the best interests of any children, including their needs and caring arrangements, before taking enforcement action.

**Lord Kennedy of Southwark (Lab Co-op):** My Lords, how many children are presently separated from their parents or carers in the UK as a result of decisions taken by the immigration authorities to implement the policies of the Government?

**Baroness Williams of Trafford:** I am afraid that I cannot provide the noble Lord with that exact detail, as it is not available. However, we have done dip sampling in the cases of 84 foreign national offenders from July 2017 to July 2018, and two family separations were detected. It is not clear whether they were temporary or whether we were seeking to remove one parent from the UK.

**Baroness Hamwee (LD):** My Lords, the noble Baroness referred to the best interests of the child, no doubt reminding us of Section 55 of the Borders, Citizenship and Immigration Act and the Convention on the Rights of the Child. What records are kept of the factors considered in applying Section 55 and the convention when the child is separated from his or her parents? Are the records available to the parent and the representative of the child, despite the exception regarding immigration in the recent Data Protection Act?

**Baroness Williams of Trafford:** As I just said to the noble Lord, we do not keep official records of the numbers, but the Office of the Children's Commissioner will look at every case where such decisions are considered—the complex cases—so that those interests are weighed before any decisions are taken.

**Lord Harris of Haringey (Lab):** My Lords, can the Minister clarify that answer, because the noble Baroness, Lady Hamwee, asked whether records were kept of the considerations taken into account in reaching the decisions? Are they kept or not?

**Baroness Williams of Trafford:** I apologise to the noble Baroness and the noble Lord for not being clear. Clearly, safeguarding records and records of decisions taken are kept. I was trying, in the first instance, to refer back to the question of the noble Lord, Lord Kennedy; I cannot tell the noble Baroness and the noble Lord how many of those decisions were made.

**Lord Bassam of Brighton (Lab):** Will the Minister comment on the estimate by BID—Bail for Immigration Detainees—that there are at least 170 cases where children have been separated from their parents as a result of them being detained? Will she also go back to her department to check those figures and perhaps produce a more accurate answer that Members of this House can take on board and inspect?

**Baroness Williams of Trafford:** I understood that the numbers were 155. I do not have the details of the cases but if any noble Lords were to give me details of such cases I would be very happy to take them up. It is, however, important to consider in the round that if children are separated from their parents it is not necessarily for immigration reasons: it may be because of safeguarding issues—a parent is violent and the child needs to be separated from them—or for temporary reasons, such as the illness of the parent.

## UK-EU Future Relationship: Young Voters

*Question*

*2.57 pm*

*Asked by* ***Lord Foulkes of Cumnock***

To ask Her Majesty's Government what opportunities there will be for United Kingdom citizens who have reached the age of 18 since the European Union referendum to have a say on the United Kingdom's future relationship with the European Union.

**The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con):** My Lords, we continue to take a cross-Whitehall approach to engagement with young people, working closely with the Department for Digital, Culture, Media and Sport to ensure that we speak to stakeholders who represent a range of groups and opinions. DExEU Ministers and officials have held bilateral meetings and a round table with youth organisations that represent a cross-section of young people, and this engagement will continue as negotiations progress.

**Lord Foulkes of Cumnock (Lab):** Oh. But may I invite the Minister to join the growing tide in favour of a people's vote, not because the referendum was corrupted—although it was—but because this will be the first opportunity we will all have to choose between the result of the negotiation, on the one hand, and the status quo on the other? It will be the first time that 18, 19 and 20 year-olds will have had a chance to play any part in it, not having had a chance to do so in the referendum. It matters so much more to them than to us lot.

**Lord Callanan:** I remind the noble Lord that we have had a people's vote already. I do not know what he thinks, but I thought that the people voted in the first referendum. David Cameron said, in 2015, that it would be the final decision: a once-in-a generation choice. To use a more personal example, I was not old enough to vote in the 1975 referendum, in which he no doubt participated. I cannot remember much about what happened then, but I might well have voted no, and I have had to live for 40 years with the decision that his generation took. That is in the nature of binary referendums: those old enough and eligible at the time participate.

**Lord Forsyth of Drumlean (Con):**My Lords, does my noble friend not think it absurd that the noble Lord should be arguing for a second referendum on our decision to leave the European Union while at the same time arguing against a second referendum on Scottish independence?

**Lord Callanan:** None of the positions that the noble Lord takes strikes me as particularly more absurd than any of his other positions.

**Baroness Smith of Newnham (LD):** My Lords, your Lordships' House voted for 16 and 17 year-olds to be enfranchised in the 2016 referendum. The then Prime Minister was determined that they should not be enfranchised. As the noble Lord, Lord Foulkes, said, those people have now reached maturity. In a general election, one would expect to be able to vote to kick out the Government and, at the age of 16 or 17, be able to vote at the next general election. The same is not being said of the referendum. For how long is the 2016 referendum meant to be valid? If we stopped holding general elections, I might have stopped the clock in 2010 and we would have had Liberal Democrats in government in perpetuity.

**Lord Callanan:** I am not sure how popular that would have been. Of course, young people who are 16 or 17 will be able to vote in the next general election. No doubt they will have the option, if they are particularly crazy, of voting Liberal Democrats—who may well put the option of rejoining the European Union in their manifesto. We will see how many votes they get on that basis.

**Lord Haselhurst (Con):** My Lords, is that not tantamount to the noble Lord suggesting that it would be possible for 16 and 17 year-olds to have a chance, two years after a general election, to record their opinion?

**Lord Callanan:** People have opportunities to record their opinion all the time. It is the nature of a democratic society. As people reach maturity, they vote in local council elections—or some do—and in general elections, and occasionally, one or two of them might even vote Liberal Democrat.

**Baroness Hayter of Kentish Town (Lab):** The Minister's colleague until very recently, Steve Baker, warns of a Conservative split if we stick to Chequers. Boris Johnson used his usual rather distasteful language also to undermine Chequers, and this morning, Simon Clarke of the ERG seemed to want anything other than Chequers, whereas the noble Lord, Lord Maude, in this House now supports the EEA. Whether the final deal is agreed by the Commons or by the people, is it not time that the Minister fessed up and admitted that this Chequers deal will simply never fly?

**Lord Callanan:** The noble Baroness has illustrated the breadth of opinion that there is on the subject in her party as well as in mine. All we can do as a Government is to set out a credible, realistic proposal. We are negotiating on that basis and waiting for a formal response from the European Commission. We will negotiate the best possible deal that we can for the United Kingdom and then, as we have said, we will put that agreement to a vote in the House of Commons and MPs will determine whether it meets with their approval.

**Lord Newby (LD):** The Minister is keen to talk about the Government respecting the will of the British people. How does that square with the fact that every recent opinion poll has shown that a significant majority want a vote on any deal, or lack of deal, and that if there were such a vote, a majority say that the country would vote to remain? Are the Government respecting the current will of the British people?

**Lord Callanan:** It might surprise the noble Lord to know that we do not have government by opinion poll. If we did, we might have some strange results, such as on capital punishment, which he might not support. As I said, we are taking forward the proposals that we put forward in good faith. We are negotiating on them and will put the result of the negotiations to a vote in the House of Commons and a take-note debate in this House, and then we will see where we go from there. That is what we have said, and we can only do our best in those circumstances.

**Lord Lansley (Con):** My Lords, has my noble friend noted that, by spring next year, the number of young people who will have attained the age of 18 since June 2016 will exceed in number the majority in the referendum that took place in 2016? Those nearly 2 million young people know that the referendum determined that we should leave the European Union, but it is evident from the debates in this House and the other place that the nature of our future relationship with the European Union is anything but settled. Does my noble friend have a suggestion as to how all those young people might have the opportunity to express a view and perhaps give their consent, if necessary, to whatever conclusion Parliament reaches about the nature of that future relationship?

**Lord Callanan:** I assume that that was an obtuse reference to having another referendum. I think that the practical difficulties of that are immense. For a start, there are a number of opinions in this House and elsewhere about what any question should be. It would take at least a year—and possibly longer—to get the legislation through. I can imagine all of the arguments; it took 13 months for us to have the last referendum. There would have to be opinions from the Electoral Commission on what the question should be. Some people want a vote on the principle of leaving or not; others want a vote on the final deal. In the meantime, we are leaving the European Union on 29 March next year. What is supposed to happen in the meantime? The whole thing would be chaos. We are going to negotiate the best deal that we possibly can in the interests of this country. As I said, we will put that deal to a vote in both Houses.

**Lord Hughes of Woodside (Lab):** How can it make sense to have a referendum on what might be, but refuse to have a referendum on what it actually is? What is the difference between the previous referendum and the one we are thinking of now? You will be asked to judge on what actually is the case for leaving, not on the hypotheticals one way or the other.

**Lord Callanan:** I think that if there was a referendum, people would vote to leave just the same. Anyway, we are not going to have a referendum, so we are not going to find out. We are going to put the deal that we negotiate to the House of Commons, as is proper in a democracy, and it will take a decision about whether it accepts it or not.

**Viscount Waverley (CB):** My Lords, will the Government give an undertaking that in the event of a referendum on the final outcome, nobody will be disenfranchised, particularly in relation to the 15-year rule?

**Lord Callanan:** We do not need to give an assurance on such matters because we are not going to have another referendum.

**Lord Harris of Haringey (Lab):** My Lords, in his initial Answer to this Question the Minister talked about the various engagement activities that were taking place with young people. Could he tell the House how he personally has engaged with the people whom we are talking about now, who were disenfranchised because of their age at the last referendum? Could he tell us whether the minutes of those discussions are available and what he personally learned from those discussions? If it transpires that he has not had any discussions, is it not rather odd that a Minister from his department has not been engaged in talking with young people, who are most affected by these decisions?

**Lord Callanan:** We as a Government as a whole have regular engagement with young people's organisations. As I said, the lead for that is taken by the Department for Digital, Culture, Media and Sport; but we regularly hold round-table meetings, and surprisingly young people come to some of those as well. I have had meetings with religious and business organisations, and others. We will continue to engage with all sorts of different organisations. It is not just young people who vote in these referendums; other people also have a say and are entitled to have their opinion heard. We made a decision as a country, as a whole, and that opinion will be respected.

## Ivory Bill

*Committee (1st Day)*

*3.07 pm*

*Relevant document: 31st Report from the Delegated Powers Committee*

***Clause 1: Prohibition on dealing in ivory***

*Amendment 1*

*Moved by* ***Lord Cormack***

**1:** Clause 1, page 1, line 5, at end insert "unless it has been certified that the object containing the ivory was created before 1918"

Member's explanatory statement

This amendment is designed to ensure that steps taken to enforce the Bill are directed primarily at those who poach, use and trade in poached ivory.

**Lord Cormack (Con):** My Lords, this Bill, which received its second reading in July, is far-reaching and has real implications for many people whom this House does not always consider. Before I move the amendment and explain why I think it is important, perhaps I might strike a note that I am sure will receive the approbation of everyone in the House and also those who have now quitted it—namely, that we wish to send our warmest good wishes to my noble friend Lord Carrington of Fulham, who is in hospital at the moment. We hope to see him back in full fighting form by the time that this Bill reaches Report.

I thought it would be sensible to table, at the very beginning of this Bill, an amendment that enables us to discuss the fundamental, controversial point. I do not think that anyone in your Lordships' House, present or absent, does not wholly subscribe to the aims of the Bill as they have been enunciated over the past year or more. We all deplore the poaching of elephants and we all wish to see those noble creatures, both in Africa and in Asia, preserved. We wish to see them multiply and we should have absolutely no compunction about treating those who poach these animals with the utmost severity. Equally, we should treat with the utmost severity those who work the tusks of the animals and those who profit from what has been worked. That, I think, is common ground across the House.

But one does not save an elephant from being poached by effectively forbidding people to own and treat as proper property ivory items that are one, two, three, four or five centuries old. It is true that the Bill has certain limited exemptions: items of supreme museum quality and those which contain, in the case of furniture and so on, less than 10% ivory, while in the case of musical instruments, less than 20% ivory, as well as miniatures, as long as they are less, I believe, than 320 centimetres in size. The very recognition that there should be exemptions creates a situation which is arbitrary in the extreme. The Government accept these exemptions and they therefore acknowledge that it is entirely proper for antique objects of either great importance or which have a small percentage of ivory to be saved. But where does the ivory come from? It is ivory that has come from elephants in the past and the recognition of this makes a nonsense of the proposition that all other antique ivory should, in effect, not be allowed to be kept or traded or sold. What I am saying in the amendment is that we should look at this carefully before proceeding.

I shall give your Lordships one or two examples. Only the other day, when I tabled my amendment, I had a letter from a body of which I had not previously heard: Chess Collectors International. Many people in our country enjoy playing chess, and until the beginning of the 20th century a very large number of chess pieces were made of ivory. Perhaps the most famous of all in this country are those made of walrus ivory, the Lewis chessmen in the British Museum. But there are many others, many of them made from elephant ivory. Often these chess collectors have purchased these sets not only because they wish to play chess with them but because they regard them as some of the finest small sculptures in existence and objects of beauty and importance.

*3.15 pm*

It is not difficult for somebody who has a collecting instinct to decide that he or she will try to collect various sets of whatever they are interested in, and so it is with chess collectors. It is not difficult, therefore, to have a collection worth many thousands of pounds. As I explained to the Secretary of State when he kindly telephoned me on Saturday morning, there may be many people in his constituency and in other constituencies around the country who have a collection of that sort.

We are in effect, by saying that after this Bill comes into force they cannot dispose of those sets for monetary gain, sequestering private assets. That ought to be inimical to any true democrat—the confiscation by legislation of legitimately acquired and entirely legal private property. As my correspondent points out in his notes to me, over a lifetime of collecting the average collector can have a number of sets worth £20,000 or £30,000, often acquired with the knowledge that there is a little nest egg if he or she hits hard times, or something to leave to the children. There is something to cover the costs when that person goes into care. If we, at a stroke, take away the value of that, we are confiscating private property because we are making it worthless.

The immediate consequence, even of the Bill being before your Lordships' House, is that we have already apparently lost a royal ivory set from early to mid-19th-century design by Edward Bird of the Royal Academy and carved in London. That has gone to Switzerland. At risk is an 1860 set known as the Lord Lyttelton set, named after George Lyttelton, the fourth

Baron Lyttelton, Under-Secretary of State for War and the Colonies at the time of Sir Robert Peel. It is an object not necessarily of museum quality in itself, but of real historical interest and importance. There are many others as well. I merely mention chess sets as an example, because there is no point, in this House where there so many experts, in merely mouthing platitudes and generalities. One wants to give specific examples.

Another was brought to my attention by a lady who is a great expert on netsuke, those little Japanese toggles. Sometimes they have the most extraordinary tiny carvings of great beauty and importance. They are not all ivory; some are wooden and some are stone, but there are ivory ones. As the lady who wrote to me said, it is possible over a lifetime to have amassed a collection worth many thousands of pounds. From the moment this Bill comes into force as an Act of Parliament, unless it is amended along the lines that I am suggesting, that property will be worthless.

Later, we will debate exceptions for things of museum quality, but all I will say at this stage is that a thing does not have to be of museum quality to be interesting, beautiful or historically important. Also, what is of museum quality in Lincoln, where I have the honour of living, is not necessarily of museum quality in London. Again, it is arbitrary. We have not addressed this issue with the detailed attention it deserves. The Bill smacks of gesture politics. If we forbid the sale of virtually all ivory objects, we are doing something and are seen to be doing something, but this is a question not of doing something, but of doing the right thing.

The noble Baroness, Lady Quin, will address an amendment later in our deliberations on a specific exemption that causes her concern. I am trying to point out that there are many such examples. In the amendment, I set a cut-off date of 1918. Anything certified as having been made before 1918 should be exempt because we will enter a bureaucratic quagmire if we do not do something such as this. Ivory will have to be certified or it will be got rid of. What about those of your Lordships with grandmothers' ivory-handled fish knives, hairbrushes or perhaps—my favourite example—like a friend of mine, who had a large collection of those little ivory tokens that were used to gain admission to the race track and London theatres in the 18th century? These are not objects of great beauty or great intrinsic worth, but they are very important to the historic fabric of our country. It seems important that we address this.

I want to use an analogy. I suspect we are all as anxious that the rainforests should be preserved as we are that elephants should be preserved, but do we seriously think it would be sensible to mount a campaign or introduce a Bill to forbid the sale of 18th-century mahogany furniture? One has only to state the proposition to illustrate its absurdity. It is important that we address this basic fact at this stage of the Bill. We are talking about the legitimate rights of ordinary, decent people to realise their assets if they need or wish to do so. As so many people will be caught up unwittingly in the tentacles of bureaucracy which it will be necessary to establish after the Bill becomes law, it would be in the good interests of all if we said that what was made before 1918 is not our concern because it will save no elephants and punish no poachers.

Of course, those who deal in ivory, such as auction houses and dealers, should have to pass a strict certification process. For those who transgress—and some will, just as some people fake paintings by great artists—the full weight of the law should come upon them. I submit to your Lordships' House that this is a sensible way to proceed. It does not in any way demolish the Government's good intentions in respect of elephants, but passing the amendment—or something similar to it—will produce a Bill that conforms far more to the principles of common sense. I beg to move.

**Baroness Jones of Whitchurch (Lab):** My Lords, I echo the good wishes to the noble Lord, Lord Carrington, that the noble Lord, Lord Cormack, expressed, and of course we wish him a speedy recovery.

I have the greatest respect for the noble Lord, Lord Cormack, and I have listened very carefully to his arguments, but he will not be surprised to hear that, on this amendment, we really cannot support the position that he has put forward. I think that, on this issue, he has his priorities wrong because this is a debate about where our energies and our loyalties should lie. I think that the whole emphasis, the reason that we had the consultation and have this Bill before us today, is that it was felt that the previous legislation was not working and therefore more stringent steps needed to be taken to stop the trade as concerns elephants.

I have listened carefully to what the noble Lord is saying, but I do not see that he is doing anything to help stop that trade. If anything, he is making the situation worse.

**Lord Cormack:** Can the noble Baroness give one single piece of evidence where the sale of a genuine piece of antique ivory has created the problems to which she alludes?

**Baroness Jones of Whitchurch:** The noble Lord will know that that is not the issue. The issue has always been that the market is flooded with some legitimate pieces and some illegitimate pieces, and the market has not been able to distinguish between the two. This is why we have to restrict the sale of goods more stringently than we have done. That is the issue. If we introduced his date of 1918 rather than 1947, we would be back to square 1 because everyone would suddenly reclassify their ivory as being pre-1918. We would be in the same ball game of trying to distinguish between what was legitimate and what was illegitimate. The problem is of being able to date what comes on to the market effectively. The legislation as it stands has had a problem with that, which is why we are taking these further steps, so we are having a debate at cross purposes. I am trying to do something that protects elephants. The noble Lord is trying to protect inanimate objects. I think that, at the end of the day, the elephants win that argument. They are a higher priority. That was the view of the vast majority of people who responded to the consultation. I will not rehearse all those arguments; we argued them through in the Second Reading. He will know that there was a huge response to the Government's consultation, and the vast majority of

[Baroness Jones of Whitchurch]
people supported tighter restrictions because they could see that, without those, elephants are being hunted down and massacred to extinction. Nothing that he is saying today is going to stop that.

**Lord Cormack:** I have the figures here. Of the people who responded to the consultation exercise—and incidentally, 35,000 were identical emails—99% were from three organisations dedicated to the preserving of elephants. We all agree with the elephants' being preserved, but you do not need to ban the sale of genuine antique items to preserve genuine living elephants.

**Lord Berkeley (Lab):** Can the noble Lord explain how to tell pre-1918 ivory from more modern ivory? Is there a kind of test that experts can do? Is it reasonably sound, or is it a matter of opinion?

**Lord Cormack:** I hesitate to respond when the noble Baroness has the floor, but, as the question was directed at me, yes, there are people who are expert in this and who are able to assess ivory very carefully. I am not saying that the test is infallible, because nothing is infallible. I referred to faked pictures when I was moving this amendment. It is, however, a very good test. It would pass "Fake or Fortune?" pretty comprehensively every Sunday evening.

*3.30 pm*

**Baroness Jones of Whitchurch:** My Lords, that is not the issue. The problem is that we simply do not have the resources to go around carbon-dating every single piece of ivory on the market. That is why we have to find some way of restricting it. If not, people will put their own classification on the ivory; sometimes it will be correct and sometimes it will be incorrect. We do not have the wherewithal or the facilities to manage that effectively. That is why the Bill is before us today: it gives us a structure for managing what ivory is coming on to the market and a more authenticated version of whether it is legitimate.

I take issue also with what the noble Lord said about the consultation. Around the Chamber, there are noble Lords who represent a number of the elephant charities whose members care passionately about the issue, but if we were to ask anybody in the street what they thought the priorities were, I think that the vast majority would say that they cared more about the elephants than the issues that he is raising today. That is the reality; the noble Lord has a very niche view of it, but I think that most people care more about seeing elephants and other animals living at peace in the wild.

The issue is not whether people own ivory. The noble Lord put great emphasis on sequestration and confiscation, but that is not what this Bill is about; it is about the buying and selling of ivory. People can own all the lovely pieces that he was talking about; they can pass it down through the family, but it is only when they want to buy or sell it that it becomes an issue. The Bill does not stop people valuing, loving and caring for family heirlooms. It is only the commercial market that is under question.

There are very good reasons for our trying to put in the Bill tightly worded exemptions—we shall talk about those shortly. The restrictions have to be extremely tight and the rarest and most precious items have to be recognised and distinguished. Not all items produced prior to 1918 are beautiful or valuable. There would be that cut-off date, but to allow all ivory unrestricted circulation in an unrestricted market would skew the market and undermine the wider intent of the Bill. The very existence of such markets would encourage fraud in a similar way to that which made the 1947 date unworkable. With a free flow of pre-1918 ivory, I think that everybody would start to reclassify ivory and the whole date would become blurred.

I am summarising—I am sure that Minister will do it better than me. We had a huge debate on this at Second Reading. I did not persuade the noble Lord; he did not persuade me, and I think that we will carry on the debate as the Committee proceeds. At the end of the day, it is about priorities. As far as I am concerned, the priority is the elephants living in the wild. On this issue, the noble Lord has his priorities wrong.

**Lord Clement-Jones (LD):** My Lords, due to illness in the family, my noble friend Lady Bakewell is not present for this part of Committee, although I believe that she will be along later. In her absence, I want to intervene briefly in support of the remarks of the noble Baroness, Lady Jones.

The noble Lord, Lord Cormack, has started off Committee in fine, eloquent style, but the phrase "coach and horses" springs to mind as a result of what he had to say. The noble Baroness is absolutely right: the kind of amendment that the noble Lord is putting forward would serve only to introduce further ambiguity and uncertainty into a Bill which has been designed to make sure that we do not have the ambiguities and uncertainties of the current legislation. The noble Lord, Lord Berkeley, had it absolutely right: the difficulties in identifying the difference between pre-1947 and pre-1918 ivory are rife. John Betjeman disapproved strongly of fish knives—

**Lord De Mauley (Con):** I draw the noble Lord's attention to Clause 7, for example, which already contemplates differentiating by date. The Government are obviously aware of a way in which this can be done.

**Lord Clement-Jones:** My Lords, I am sure the Minister will deal with that issue as far as this amendment is concerned, but to introduce further differentiation into the Bill is extremely unhelpful, particularly in the light of its intentions and the fact that the CITES convention will take place later next month. I do not think that that would be a particularly good symbol.

I am the proud owner of a set of fish knives—I do not believe that John Betjeman would have approved of them. I am firmly in the category that the noble Lord, Lord, Cormack, has identified as being caught by this provision. I am very relaxed about it. I do not believe one should be able to trade, deal or sell that kind of commodity. It is the sort of thing you pass on to your descendants. I very much hope this provision will remain part of the Bill.

**The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con):** My Lords, I join all noble Lords in saying that I very much look forward to the early

return of my noble friend Lord Carrington of Fulham and, indeed, the noble Baroness, Lady Bakewell of Hardington Mandeville, for later stages.

My noble friend's amendments intend to allow pre-1918 ivory objects to be bought, sold and hired within the United Kingdom, regardless of whether they meet one of the exemptions. Indeed, my noble friend—and this has been raised already—used words such as "confiscation" and "loss of ownership". These measures precisely do not affect the right to own, gift, inherit or bequeath ivory. They are precisely not for that purpose.

As this is the beginning of Committee stage, I reiterate the overriding purpose of this Bill. Its intention—and the noble Lord, Lord Clement-Jones, also made this clear—is to introduce one of the strongest ivory bans in the world, with narrow and limited exemptions, to curtail the demand for ivory that currently threatens the elephant with extinction. As your Lordships know—a number of noble Lords have referred in different ways to the public consultation—there is overwhelming public support for this ban. I say to my noble friend in particular that we have worked extensively with conservation NGOs, the arts and antiques sector, and musician and museum sectors to help shape this Bill, and we believe it is a proportionate response.

The exemptions outlined in the Bill have been included to allow limited dealings in ivory to continue where they are unlikely to contribute to the poaching of elephants. To allow all pre-1918 ivory items to be bought, sold and hired, regardless of whether they meet one of the exemptions, would significantly undermine the aim of the Bill and the carefully balanced package of exemptions. My noble friend is, of course, conversant with Clause 2, which we will address in more detail later. We have specifically created an exemption so that pre-1918 ivory items that are of outstandingly high artistic, cultural or historical value, and which are the rarest and most important examples of their type, can continue to be traded.

I suggest to my noble friend that his other amendment concerns the offences of buying or hiring ivory as the owner within the UK only. Subsection (4)(b) concerns selling and hiring ivory as the lender both in and outside of the United Kingdom. My noble friend and my noble friend Lord De Mauley have raised a number of issues about the antiques sector. A 2016 report by TRAFFIC, the wildlife monitoring network, on the UK's domestic ivory trade, showed that consumers of UK antique ivory are increasingly from Asia, particularly China, Japan and Hong Kong. This constitutes a change since the last UK ivory market report in 2004, which found that most buyers were from Europe and the United States. This worrying shift demonstrates that the UK antique ivory market is increasingly connected to the Far East, where the demand for ivory is highest, further fuelling the demand for ivory, and its social acceptability.

I also want to refer to a point in the discussion between the noble Baroness, Lady Jones of Whitchurch, and my noble friend Lord Cormack. As I mentioned at Second Reading, the 2010 report from the United Nations Office on Drugs and Crime concluded:

"The trade in illicit ivory is only lucrative because there is a parallel licit supply".

This is precisely why we are having to introduce a ban, with only tightly drawn exemptions that are unlikely to continue to fuel the illegal trade and poaching of elephants. To allow all pre-1918 ivory items to be traded would further perpetuate the demand for ivory and undermine the effectiveness of the ban. I agree with what the noble Baroness, Lady Jones of Whitchurch, and the noble Lord, Lord Clement-Jones, said: we have got to bear down on the situation in which 20,000 elephants a year are being slaughtered. We saw only last week reports from Botswana of this slaughter continuing, and the status quo at the moment is simply not acceptable. This country has to lead. We have a responsibility to lead. We are one of the world's largest exporters of ivory and we must act. So, for the reasons I have given, I am not able to support my noble friend's amendment and I respectfully ask him to withdraw it.

**Lord Cormack:** I had hoped we might have a rather longer debate on this, but of course I listened very carefully to what my noble friend the Minister said and I obviously have no intention of dividing the House today. I believe very much in the unwritten convention in your Lordships' House that it is better to have divisions on Report than in Committee. However, I shall certainly be framing amendments for Report because I have not been convinced by anything that my noble friend or the noble Baroness, Lady Jones, have said that we are assisting the elephants by forbidding the sale of genuinely antique ivory items. I just do not accept that, and although I accept that there have been consultations with the antique trade, with which I have no pecuniary connection and no interest to declare—I have bought the odd thing in an antique shop, although not ivory—I know that those who have been part of these negotiations have not been entirely convinced that their point of view has been really seriously taken on board.

I think that my noble friend must also realise that we are one country. Quite shortly, much to my regret, we will not be part of a European group of countries, and what will happen, as I have already quoted from the note from the chess collecting chairman, is that things will be sent abroad: they are going abroad quite quickly now. I think it is a pity that we are taking this real sledgehammer to this; nevertheless, there is no point in prolonging discussion now and I beg leave to withdraw the amendment.

*Amendment 1 withdrawn.*

*Amendment 2 not moved.*

*3.45 pm*

*Amendment 3*

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

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

"( ) For the avoidance of doubt, nothing in this section shall be deemed as applying to bona fide insurance or re-insurance transactions involving UK-licensed insurers."

Member's explanatory statement

This is a technical amendment designed to address various insurance and re-insurance problems.

**The Earl of Kinnoull (CB):** My Lords, I declare my interests as set out in the register of the House, in particular as a director or trustee of several museums and in respect of the insurance world.

This is a technical amendment to do with some insurance issues, so I hope to gallop through it, as I am sure not many of your Lordships would be that interested. I should like to add my own thoughts to the messages to the noble Lord, Lord Carrington, because I was going to start by citing something that he said in his Second Reading speech. He quoted a figure, which I have also seen, of there being somewhere between 2 million and 3 million objects that have an ivory content in the UK in personal collections and museum collections. He said that he felt that was an underestimate, and I agree with him that it probably is an underestimate. The UK is a heavy buyer of insurance. I can say with confidence that the majority of those objects are the subject of insurance, so I am talking about a large number of objects all round.

As I looked at the Bill, there were three areas where I felt there could be problems for the way in which the insurance world works today. The first was in simply paying a claim. I am sure that many of your Lordships have not made a claim and so may not realise this, but the point is that, when paying a claim, the insurer will pay out a sum of money, but the title of the object insured will transfer to the insurer. There would probably also be another agreement, a release agreement, between the insured and the insurer. Therefore, there is a tremendous amount of consideration moving and, certainly, the title of the object moving. That knowledge was with me as I read Clause 1(3), as I was very worried that the paying of the claim may be problematic under the way the Bill is currently drafted. For museums and private individuals, I thought that was regrettable.

Secondly, another thing that goes across to the successful claimant is a right of repurchase. Certainly all of the specialist insurance markets grant this right and I think all markets now in the UK grant it. This is a right whereby, if an object is stolen and comes back—quite a lot of stuff does come back, particularly the more valuable stuff, because if there are photographs of it, it is difficult for people to dispose of it—people have the opportunity to repurchase the object at the lower of the market value or the amount of money that was paid out in the insurance claim. For private individuals, that is often very attractive because many people are underinsured, so maybe they can buy something back that is worth more at a lower price. Certainly, for many private individuals, it is attractive because the sorts of things that are stolen are often things with great sentimental value to them. This is a very valuable right for private insurance. For the museum-insured area, which I am deeply involved with, it is important because often what is stolen is the key part of one or other of their collections, and it is very difficult to source replacement parts. I feel that this repurchase right is very difficult under Clause 1(3).

A third problem, which is much more technical, is to do with the way that insurance companies and Lloyd's syndicates set themselves up, and that is that they move around the salvage rights within themselves. Naturally, this happens in a series of transactions that take place—most famously in the Lloyd's syndicates, where there is a fresh syndicate every year—and so they move around these rights of repurchase further down. A Lloyd's syndicate will need to be able to trade with a successor syndicate in order to preserve this right of repurchase. Of course, there are many latent rights of repurchase out there at the moment, which will all be covered, I assume, by this Bill. So this is not about fresh thefts but about stuff that comes back.

Those three issues were circulating in my mind, and I feel that there is a difficulty. I do not think it is the intention of the Bill to stop people from being able to rebuy their own stuff following an insurance loss. That can have nothing to do with the admirable intentions of this Bill, so I drafted a probing amendment, merely to just raise the debate, but not to settle on the precise language of how we deal with this problem that I have identified. I have limited it to providing some sort of route for just the 200 or so professional insurers in the UK. These are carriers who are all regulated by the FCA and who, I can assure your Lordships, if they saw any naughtiness, would be out with the fines book straightaway. I beg to move.

**Baroness Vere of Norbiton (Con):** My Lords, the noble Earl's amendment would insert a declaratory statement into the Bill confirming that prohibitions in the Bill would not apply to insurance and reinsurance transactions. I am very grateful to him for our helpful conversation over the weekend, and I confirm that it is indeed the Government's intention that insurance and reinsurance activities will be able to continue as usual.

As the noble Earl has pointed out, this sector is very important with regard to items containing ivory. We are mindful of the types of transactions that may occur, and indeed we are further investigating other types of transactions and the associated transfers of ownership and the considerations paid and received in the ordinary course of these transactions. We are therefore considering ways of making it clear that financial transactions associated with the insurance and reinsurance of ivory items are not prohibited by the Bill, and we look forward to working with the noble Earl and other noble Lords to ensure that that is the case.

I hope that, in the light of what I have said the noble Earl feels able to withdraw his amendment.

**The Earl of Kinnoull:** I am very grateful to the Minister, with whom I had a number of amusing conversations over the weekend that involved lawn-mowing as well. I think this is a very constructive approach, and I hope we will be able to deal with the matters quickly when we get to meet. I beg leave to withdraw the amendment.

*Amendment 3 withdrawn.*

*Amendment 4*

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

**4:** Clause 1, page 1, line 23, at end insert—

"( ) Except in regard to sections 8 and 9, the exemptions referred to in subsection (6) do not apply in circumstances where the dealing in question has taken place online."

Member's explanatory statement

This amendment would prevent the sale of otherwise exempted items comprising or containing ivory from taking place online. This, alongside other measures in the Bill, would help to prevent illegal trade of ivory. The online ban would not apply to the items exempted under sections 8 and 9.

**Lord Clement-Jones:** My Lords, there is ample evidence that illegal ivory trading frequently takes place online. The arguments against committing online trading have been rehearsed many times: the difficulty of policing online transactions; descriptions of ivory being disguised to avoid search-term filters; and the near impossibility of checking every parcel dispatched from the UK.

Surely all online dealing in ivory should be banned. Allowing only physical sales, combined with the exemption certificates and registration process, would considerably reduce illegal trade and make the enforcement authorities' job far easier. A recent study published earlier this year by the University of Kent illustrates the problem. It found that, in fact, barely any ivory or other illegal wildlife products are being sold via the so-called dark net, where there is a flourishing criminal market in drugs and firearms. Instead, the researchers found that ivory is being sold openly on conventional auction sites, including eBay. Traders have exploited the previous complex rules, which were meant to restrict the trade in Britain to pre-1947 antiques but can act as a cover for the sale of items fashioned from poached elephant tusks.

Despite perfecting a prototype software scheme that can pinpoint potentially illegal ivory with 93% accuracy, the University of Kent team has been told by law enforcement agencies and wildlife protection groups that they cannot afford to fund its deployment on the front line. I very much hope the Minister will be able to look at that allegation by the University of Kent and give a response. Dr David Roberts, a conservation scientist at the University of Kent and co-author of the study into illegally traded wildlife, has been quoted as saying:

"The surface web is being used by criminals because they have found they can trade there for the most part with impunity. Unlike those selling drugs or guns, they don't feel they have to move to the darknet. What is frustrating is that tackling this online trade does not seem to be priority. It falls between boots-on-the-ground enforcement against poaching in Africa and reduction of demand in south east Asia. We have had enforcement agencies and campaign groups say they would like to have our software as an enforcement tool but they don't have the funding to progress it further".

The fact is that the illegal wildlife trade is a rapidly evolving environmental crime that is expanding through e-commerce. Because of the nature of the internet, the detection and enforcement of online illegal wildlife trading has proven to be difficult and time-consuming, often based on manual searches through the use of keywords. This is aggravated by the fact that, as a result of scrutiny, traders in elephant ivory now use code words to disguise the trade, thus adding an additional level of complexity. Rather than blatantly advertising items as "elephant ivory", online traders use alternative key words recognised by buyers, at least some of whom are likely to know that they may be purchasing illicit items.

In his letter after Second Reading, the Minister said—I will quote extensively:

"Several Noble Lords have called for a total ban on all online ivory deals, I understand the concerns that differentiating legitimate and illegitimate sales online can often be difficult, but we believe it would be disproportionate to ban online sales, given that existing regulations on other products such as alcohol and medication, which do pose a threat to human health do not have their online sale banned. The Bill has been drafted from the outset with both online and physical sales in mind. The Bill makes it clear that it will be an offence to cause or to facilitate a sale of ivory that either does not meet an exemption, or has not been properly registered or certified. This will apply equally to any website or online forum which hosts or facilitates an illegal sale. It will be the responsibility of any online forum to ensure that ivory items sold on its site are legitimate in exactly the same way we will expect of a high street shop or auction house".

Those are very reasonable words and I am sure that the Minister was being utterly genuine when he talked about the need for proportionality. However, what assurance can the Minister give about the energy devoted to enforcement online? How will the online dealing ban be enforced in practice? Will the resources be in place? Otherwise, surely it will be necessary in due course, if not now, to have an online ban if it is seen simply to be the easiest way of ignoring the legislation and engaging in dealing in these ivory items.

I am pessimistic that any enforcement situation can cope with the sheer volume of trade online and be able to distinguish online between legitimate and illegitimate sales. I do not believe that the alcohol and medication examples that the Minister has given should be brought into account. This is a much more difficult situation. It is much more difficult to distinguish between legitimate and illegitimate sales of ivory than in either of the two other cases that the Minister has cited. I hope the Minister will rethink the Government's decision not to include online sales. I think an insistence that all sales were physical would make life a great deal easier. I beg to move.

**Lord James of Blackheath (Con):** My Lords, I wholly support the words of the noble Lord, Lord Clement-Jones. However, one serious aspect that may have been overlooked is a nasty little market which may escape the whole of this affair, and that is the casinos' use of roulette balls. This is a very big, constantly renewing market. The life of a roulette ball in ivory is only about five weeks and they cost £100 each. They can only be obtained from the Far East at present through the dark market.

I do not know what the solution is, but we should not be ignorant of this big market. It is likely to continue and will be very persistent. The only alternative for a casino is to use a Teflon ball, which is fine but it bounces too much. It is too easy to use a Teflon ball which has a steel interior which can then be mixed up with a magnetisation of the roulette wheel's rim and give easy distortion for fraud. This is why casinos do not want Teflon balls and they do want ivory balls. We should be on guard against this because it is going to be a big, dark market.

*4 pm*

**Lord Inglewood (Non-Afl):** My Lords, I think that the amendment in the name of the noble Lord, Lord Clement-Jones, is intended to cover items described in Clause 7—those that contain de minimis quantities of ivory. In his remarks, he kept talking about "ivory

[LORD INGLEWOOD]
items". These are actually slightly different. They are not ivory items but other sorts of items containing an element of ivory which is integral to the whole. There are many more of those than there are pure ivory items.

**Earl Attlee (Con):** My Lords, I have sympathy with the amendment. I have nothing further to add but the noble Lord, Lord Clement-Jones, has come up with a convincing set of arguments. I hope that the Minister will come up with some rather more powerful arguments than were contained in his letter.

**Lord De Mauley:** As noble Lords have heard, despite a ban on international trade in ivory, tens of thousands of elephants are killed each year for their tusks. It is a tragedy and every respected antique dealer would wholeheartedly agree that everything possible must be done to bear down on it. Having in an earlier phase of my life been the Minister responsible for the UK's efforts to bear down on illegal wildlife trafficking, I now find myself as chairman of LAPADA, the art and antique dealers' trade association and, as such, declare an interest. Although my remarks represent my own views, they are informed by what I have learned in that capacity, as well as that of a former Minister.

As with countless other businesses today, antiques are marketed and promoted online and professional antique dealers increasingly use the internet to sell antiques and works of art. Amendment 4 would be extremely unfair on some who may deal with exempt ivory. Furthermore, it is not necessary to give effect to the Bill. In addition, to underline the fact that it is unnecessary, I point out the inconsistency of exempting musical instruments from these restrictions. I take it that anyone advertising an item online who has been granted an exemption certificate, or who has registered the item under the Clause 10 provisions, would be advised to indicate the existence of the certificate or registration as part of their promotional material.

**Baroness Jones of Whitchurch:** My Lords, I am grateful to the noble Lord, Lord Clement-Jones, for raising this issue today. We touched upon it at Second Reading and noble Lords have referred to the letter from the Minister that we received in response to that. The noble Lord will know that we have considerable sympathy with the arguments that he has put forward this afternoon. The online sale of items containing ivory is undoubtedly the most difficult market to police. The Committee has already heard that the worst violations of existing restrictions take place online. It is a global trade, using global communications. As the noble Lord said, the poachers and middlemen have sophisticated communication networks, including codes and jargon to conceal the real nature of the goods being traded. This is happening globally, across borders. This is why, ultimately, we need a global response to close these markets down. It is an area for the UK Government alone to be effective in doing this.

We also know that, as the noble Lord said, we have limited resources to police these sales. This issue is covered in amendments to the Bill which we will come to later. I also like to think that the measures already in the Bill and the additional amendments we propose would at least bring the legitimate UK online trade under control. The requirement for exemption certificates; the need for registration and photographs; the oversight of professional institutions; the removal of the defence of ignorance for buyers and sellers and the tightening up of enforcement should help to deliver more watertight controls. I understand the argument about proportionality and we need to bear it in mind quite sensitively.

Although I am sympathetic to the noble Lord, I wonder if, at this time, we should let the current proposals run and then use the reviews we are proposing in later amendments to the Bill—for example, working with the National Wildlife Crime Unit and border police—to assess how effective the Bill has been. That would give us the opportunity to look at whether we still have an online problem. The onus is on the Minister to reassure the Committee that this is going to be effective in tackling online trade. Otherwise, the whole Bill will be effectively undermined if all the trade moves towards there.

I would like to think that the checks and balances are there. It may be that we have been proved wrong. I would like to hear more from the National Wildlife Crime Unit about whether it thinks it can manage within the existing constraints. If it feels it can do it, albeit it will probably need some extra resources—we are all well aware of that—then I am inclined to take it on trust at this moment. However, it is certainly an important issue to get right.

**Baroness Vere of Norbiton:** I thank the noble Lord, Lord Clement-Jones, for initiating this debate on whether to ban certain types of exempted, and therefore legally saleable, ivory items through online channels. The noble Lord has read out much of my answer already but it does bear repeating. From the very outset, the Bill was drafted with online and offline sales in mind. The Bill prohibits all commercial activities in ivory, regardless of where those activities take place, subject, of course, to the exemptions in the Bill.

Equally, anyone who breaches the ban, be it online or not, will be committing an offence and will face the same range of sanctions, including a criminal sanction of up to five years in prison and/or an unlimited fine. There are a number of further provisions included in the Bill that will assist in tackling illegal online sales. It will be an offence to facilitate breaching the ban. Therefore, this would include, for example, a UK-based online sales forum which facilitates the sale by allowing sellers to advertise their item, make contact with buyers and accept payment.

In that example, those responsible for such online sales forums, which would include corporate bodies, would be found to be in breach of the ban if they could not show that they had taken reasonable steps to prevent an illegal sale taking place. These steps would include, for example, ensuring that the item for sale is exempt and had been registered or had an accompanying exemption certificate. We therefore expect such online forums to take all actions to ensure that they and their users act in compliance with the ban, in the same way that we expect offline channels to do the same. The Bill also prohibits the deliberate misrepresentation of ivory during a sale—for example,

as bovine bone. This issue was raised by the noble Lord and it is very important. Both the seller and the buyer could be committing an offence if one or both of the parties knew or suspected that it is ivory.

Noble Lords will be aware that other items subject to restrictions, such as kitchen knives, are allowed to be traded online. Indeed, I am not aware of any item that is singled out for such a ban depending not on the legality of the sale but on the channel—that is, online or offline—through which the sale is transacted. We believe it would be disproportionate to completely ban the commercial dealing in exempt ivory items online and that it would shut off a relatively transparent means of monitoring the extent to which trading is happening online. As a noble Lord mentioned earlier, there are 2 million to 3 million items containing ivory and it would be utterly wrong to ban the sale or the legal trading of those items online. Indeed, as my noble friend Lord De Mauley pointed out, the auction houses use the online environment as a very valuable way of marketing the items they have for sale.

We agree that enforcement is extremely important. We cannot have online trading in ivory if we are unable to enforce properly. Online sales are a priority for the National Wildlife Crime Unit regarding the illegal wildlife trade. There will be much more on enforcement and funding in due course. However, this issue is so important that I will recommend that we write to noble Lords on enforcement, on what we can do in the online environment and on the resources we intend to put into that enforcement.

I turn briefly to the point raised by my noble friend Lord James of Blackheath about roulette balls. I understand that he has been in touch with officials about this and that they have written to him. These balls will be caught by the ban but, as was mentioned, there are alternatives. I hope with this explanation I have reassured the noble Lord that we have considered—and, indeed, are considering—the matter of online sales and that he will therefore see fit to withdraw the amendment.

**Earl Attlee:** My Lords, can the Minister explain how we can take action against a forum that is based, say, in the Russian Federation? She talked a lot about the ability to prosecute people for contravening the law—the provisions of the Bill—but it is not clear how we would be able to take action against forums domiciled overseas.

**Baroness Vere of Norbiton:** My noble friend is quite right. If a forum is domiciled overseas, it will be up to enforcement to look at those advertising their wares and those who are looking to buy those items. However, we should also consider that in due course, the items for sale online will either be registered or will have an exemption certificate. We will be able to see clearly whether those items are legitimate, and that additional level of security for buyers and sellers is the most important thing when it comes to online sales.

**Lord Clement-Jones:** My Lords, I thank the Minister. In particular, that last sentence was extremely important in the circumstances, and the noble Baroness, Lady Jones, made the same point: that that will be the essence of the online sale as well. I thank the noble Earl, Lord Attlee, for his intervention and the noble Baroness, Lady Jones, for her positive words. In response to the noble Lord, Lord Inglewood, the amendment is meant to do what it says on the tin: certain of the exemptions are exempt, and certain others are not, and Clauses 8 and 9 are excluded from the ban on online sales for a purpose.

To come back to what the Minister said, I am of course reassured about the provisions of the Bill, and it is precisely the resources and the activity around enforcement which are absolutely crucial. A provision about banning online sales is not disproportionate if enforcement is inadequate. If enforcement is adequate, then of course it would be disproportionate, but this is in a sense designed to prevent the mischief of online sales taking place without adequate enforcement. I look forward to the letter from the Minister. In particular, the noble Baroness, Lady Jones, mentioned the National Wildlife Crime Unit and other aspects of enforcement, and I very much hope that they will be fully apprised of the importance of making sure that online sales are scrutinised and that these keywords—these coded words—are understood and combated in accordance with the research from the University of Kent. This is not some figment of the imagination of those who are against ivory poaching but respectable research, and we should pay heed to it. I look forward to the letter from the Minister and obviously I reserve the right to come back on Report if necessary. In the meantime, I beg leave to withdraw.

*Amendment 4 withdrawn.*

*Clause 1 agreed.*

### *Clause 2: Pre-1918 items of outstanding artistic etc value and importance*

*Amendment 5*

*Moved by* ***Lord De Mauley***

**5:** Clause 2, page 2, line 11, leave out "pre-1918" and insert "pre-1947"

**Lord De Mauley:** My Lords, I will deal with Amendments 5, 6, 8 and 9 in this group, and start with Amendment 5. Clause 2 represents a feature of the Bill that has resulted in the largest number of concerned comments from people who handle antiques, so it is no coincidence that we have today several amendments that address this clause.

The dateline chosen for Clause 2—for objects of,

"outstandingly high artistic, cultural or historical value"—

is, as I say, causing considerable concern. According to Clause 36(3)(a), only cultural objects made before 1 January 1918 would be eligible for an exemption certificate. It is mystifying that 1918 has been used for this exemption when it appears that even an ordinary upright piano made in 1965, with keys faced in ivory, would qualify for exemption, yet a great work of art created by a leading artist from the 1920s or 1930s would not. As things stand, no items from the Art Deco movement

[Lord De Mauley]
would gain an exemption certificate. Art Deco is greatly celebrated in the fields of architecture and artistic design, and in 2003, the Victoria and Albert Museum devoted a major exhibition to the subject.

The Minister in another place has previously expressed the desire not,

"to unduly affect artistic and cultural heritage".—[*Official Report*, Commons, Ivory Bill Committee, 14/06/18; col. 98.]

Is my noble friend the Minister aware that modern British art of the 20th century, by artists both living and dead, is a thriving, distinctively British and well-respected genre? On 20 June, the auctioneer Christie's devoted its entire day's sale to the subject. The sculptor Richard Garbe worked in a number of different media in the 1930s, including bronze and ivory. His monumental work includes sculpture in the collection of the National Museum of Wales in Cardiff, and many of his works would be considered pre-eminent by the panel that considers acceptance of historical objects in lieu of tax. The effect of the 1918 cut-off date would be to prevent his great works being sold or exported by their owners.

*4.15 pm*

Since objects for which an exemption certificate is being sought have to pass the inspection of a prescribed institution, there is very little chance that a work by Garbe would be by an impostor. Many such works will already have full provenance, describing the art galleries where they have been displayed previously and their previous ownership, particularly if they formed part of a well-recognised private collection.

The Clause 8 exemption for musical instruments allows the continued sale of musical instruments dating from as recently as 1974. If the intrinsic features of the ivory contained in post-war musical instruments are not seen as having a direct or indirect connection with modern-day poaching, it is difficult to see why a moving sculptured tablet, fashioned by Eric Gill in the 1920s, should not be afforded the same protection.

Having 1947 as a common dateline for the Clause 7 and Clause 2 exemptions would be logical and sensible and would recognise the great contribution of 20th century art to the cultural life of the United Kingdom. For those reasons, therefore, I am intrigued to know why 1918 was chosen, and I do urge on the Government a rethink in respect of this anomalous date.

I turn to Amendment 6. As things stand, the restricted way in which Clause 2 has been couched means that ivory carvings containing an amount of ivory incapable of meaningful reworking, such as small Japanese netsuke, have to meet the "outstandingly high" quality criteria. I question why this needs to be the case.

Perhaps I should first debunk one oft-repeated myth—referred to on Second Reading by the noble Lord, Lord Grantchester, at col. 1147, and the noble Lord, Lord Clement-Jones, at col. 1157—that the United Kingdom is the world's largest legal ivory exporter. Indeed, my noble friend the Minister referred to the United Kingdom, in the debate on the first group of amendments today, as one of the largest exporters. The ivory export data submitted by the Animal and Plant Health Agency to CITES in respect of 2016, unlike data for the previous year, categorised ivory carvings under two headings. Of a total of 5,050 commercial and personal exports of worked ivory items, an incredible 4,284—that is, 84%—comprised piano keys. This represents about 82 pianos. The Government do not publish a breakdown of the remaining 766 worked ivory items exported that year, but doubtless these will include portrait miniatures, antique furniture with ivory inlay as well as solid ivory carvings. Of the items that were not piano keys, 367 were destined for China and Hong Kong. That year, Belgium exported sufficient raw ivory tusks to China and Hong Kong to create more than 20,000 small carvings and trinkets.

I understand that Hong Kong's official stockpile of ivory tusks and worked ivory amounts to the equivalent of between 1 million and 1.5 million ivory carvings. The TRAFFIC report about the trade in antique ivory recorded a considerable drop in the number of objects made in ivory offered for sale in London between 2004 and 2016, and a fall of 47% in respect of like-for-like visits to the same antiques markets, streets or premises. That does not suggest that the presence of antiques for sale in the UK is fuelling a market for objects made from ivory, whether for home purchase or overseas consumption.

Regardless of whether some exports of low-value large ivory carvings may have been bought for recarving by workshops in the Far East, the same cannot be said of small carvings such as Japanese netsuke. They are already too small to be worth purchasing with the intention of turning them into something else and invariably have a hole passing through them, which would also make recarving pointless. As I said, our ivory export numbers are small, so the UK is not supplying large numbers of these to buyers in the Far East. Likewise, objects that incorporate small amounts of ivory mixed with other materials, such as small pieces of inlay in wooden Vizagapatam boxes from India, will never be reused, and these objects are not sought by buyers in the Far East.

Amendment 6 would continue to require all objects that contain 10% or more ivory to come under scrutiny and be issued with an exemption certificate. However, where the finite ivory content is less than 30 cubic centimetres, the item would not need to meet the "outstandingly high" criterion. Assessors would simply confirm that the object predated 1918 or 1947. Small trinkets bought 30 years ago in East Africa would not pass that test and would not be granted a certificate.

On Amendment 8, the question of religious items fashioned from ivory was raised on Second Reading, and rightly so. Many antique ivory items have religious relevance, the most obvious being ivory crucifixes. The inspiration of faith has drawn many artists to generate some of Europe's most significant works of art. Great religious paintings come to mind, but within the field of sculpture, there are many thousands of representations of biblical scenes carved from ivory. The very early ones—15th century pieces—would undoubtedly fall under the "outstandingly high" heading, but there are many works from later centuries that have been finely executed. And we should not forget other religions. Hindu gods are frequently represented in ivory—a material that was readily available in India from its own indigenous Asian elephant. In Judaism, the handles on the end of the antique wood poles that help unroll

the Torah scroll sometimes incorporated ivory. All of these items are devotional in nature, and, with this amendment, the Bill would recognise an entire field of human creativity inspired by religion.

Finally, I turn to Amendment 9. Under the Bill as drafted, unless it is a musical instrument, any antique object containing 10% or more ivory would have to pass the test of being,

"of outstandingly high artistic, cultural or historical value".

It is not entirely clear just how many items the Government envisage would fall into that exemption, but we have been given the impression that very few would do so. It may be helpful to give just a few examples of the types of objects of historical interest that contain 10% or more ivory and which would appear unlikely to meet the Government's proposed test. Red and white Victorian chess pieces, for example, are often contained in the drawer of a Victorian chess table—my noble friend referred to those earlier. These are of the classical type drawn by Tenniel in his illustrations to Lewis Carroll's *Through the Looking Glass.* Reference has also been made today to Sheffield sterling silver English cutlery with carved handles. The list also includes Victorian needle cases and pin boxes; Georgian theatre tokens which gained the possessor admission to a particular seat or box for the season; 18th-century fans with ivory sticks and painted paper leaves; and Anglo-Indian sewing boxes and tea caddies, particularly those made in the 18th and 19th centuries in Vizagapatam on India's eastern coast—the East India Company often arranged their supply to the UK. The list is pretty endless and a source of enormous concern to many people who value our heritage.

Does Parliament really need to restrict, in the way proposed, the sale of objects not connected with the trade in poached ivory? An individual who does not wish to purchase an antique containing ivory has the right not to do so. Equally, a person who owns an antique silver tray with ivory handles may feel uncomfortable converting it into money. That is their choice. Without a pattern of evidence showing that there is a link between the demand for ivory as a commodity in the Far East and the sale of genuine antique objects such as those that I have described, is it really Parliament's place to tell the owners of those items that they can no longer sell them, or indeed that antiquarians can no longer buy them? After all, these are objects that it would be perfectly possible to have checked by those who have specialist knowledge.

We need to understand, too, that the objects at threat from an overly restrictive Clause 2 include the cultural inheritance not just of Europe but of Asia—including the great civilisations of India, Japan and China—and of Africa. Though many ordinary tourist souvenirs may have come from Africa, there are plenty of examples of the continent's own great art, including its indigenous population's commentary on the colonial era. That is exemplified by West African Loango carved tusks, such as those from the 19th century, depicting vignettes of life at the time they were carved. These show images of enslaved Africans, as well as missionaries and colonial officers. They serve as a reminder of past injustices and it would be perverse if they were to be lost to future generations.

There is also considerable concern among those who appreciate our cultural and social history about the ultimate loss of the objects that fail to meet the Clause 2 exemption test. There appears to be a lack of understanding about what is likely to happen to these objects, particularly the quirky and interesting items. Such objects provide us with a commentary on our past. I am sure that existing owners will continue to look after them, but when they are no longer able to do so, perhaps because they have to go into a care home, or when they die, what fate will then befall these objects? It is absolutely certain that the museums of this country do not have the capacity or the funds to accept or care for every single antique incorporating ivory that may be offered to them. There is no guarantee that the children or relatives of owners will be interested in historical objects—so how will they deal with their inherited items? Like any item that holds little interest to a younger generation, many of these historical objects will simply be put in the dustbin.

It is well established that when no financial value is associated with an object, it will most likely be discarded. Carrier bags are a good current example. As with real estate, when an antique retains a monetary resale value, that helps to ensure that its owner maintains and cares for it. Objects that are 100 years old certainly need looking after, and there are specialist colleges and institutions whose raison d'être is to restore and conserve them. Are we really saying that we want these objects, which help to describe our social and cultural history—objects that originate from an earlier era—to be thrown into the dustbin of history? Surely we are all sufficiently well informed these days to recognise that a silver teapot would not be made with ivory insulators today, but we can understand that 90 years ago ivory was the plastic of its era. It is perfectly possible to appreciate and continue to buy and sell historical objects that happen to incorporate old ivory while appreciating that we do not wish to make such items today.

To rectify these concerns, the exemption certificates could be extended to cover objects that are of a standard suitable for acquisition only by qualifying museums—that is, by UK-accredited museums or members of the International Council of Museums. The Bill already defines the meaning of qualifying museums and so, who better than museum curators and other specialists, who handle antique objects on a regular basis, to judge whether an object containing ivory has the qualities that would be required for acquisition by any of these government-recognised and properly constituted museums?

It has been suggested that the term "museum standard" is too subjective, but it is no more subjective than the existing wording,

"outstandingly high artistic, cultural or historical value".

The proposal does not change the subsection (3) factors that must be taken into account by the Secretary of State and the prescribed institutions when deciding whether to grant an exemption certificate. The Clause 2 exemption would remain a very narrow one. It would mean that low-grade tourist souvenirs, such as letter openers and carved African figures from the 20th century, or mass-produced items of the type that could be

[LORD DE MAULEY]
bought in the ivory-carving shops of the Far East, would not be on sale in the UK. It would also mean that we are respecting our history. Owners of legally acquired objects such as a silver teapot with an ivory handle could be able to sell their possessions. Art collectors, who may have put part of their pension investment into antiques incorporating ivory, would not suddenly find that they are without funds for their retirement. I beg to move.

*4.30 pm*

**Lord Cormack:** My Lords, I have two amendments in this group, Amendments 7 and 11. I agree with everything that my noble friend Lord De Mauley has said and I will not speak at length because I made many similar points when I introduced my earlier amendment. However, it is terribly important that we do not unwittingly pass into law an Act of Parliament that would, as its inevitable consequence, lead to the destruction of part of the fabric of our rich artistic heritage and civilisation. That is something which we should all take very seriously.

We should also take seriously the point made by my noble friend Lord De Mauley about religious significance, not just in the Christian context but in that of many religions. Of course, in the European and Christian context we should remember the school of ivory carvers that existed in Dieppe for centuries and produced, among other things, some wonderful devotional objects. They are part of the warp and weft of domestic civilisation in Europe. Just as in our churches we would throw up our hands in horror at the thought of the despoiling of monuments and other wonderful objects which happened in the 16th and 17th centuries at the time of the Reformation and the English Civil War, surely we in the 21st century do not want to connive in the despoiling of domestic objects of devotion such as those made in Dieppe.

My two amendments have a similar aim to that of my noble friend Lord De Mauley in that I would delete the words "outstandingly high" so that that paragraph in Clause 2(2) would refer to the item being of,

"artistic, cultural or historical value".

I would of course accept "religious value" as well. That is much more objective, much less subjective, and easier to determine. In Amendment 11 I would take out the word "important" and replace it with "significant" because again that is a little less subjective and thus easier to determine.

When I spoke earlier in moving Amendment 1, I referred to the fact that there is a different application for what is an item of museum quality in my native city of Lincoln than there would be in London. There is nothing right or wrong about that, it is just a fact, and we do not wish this Bill to penalise smaller museums in places like Lincoln at the expense of London. Of course I want wonderfully important objects that naturally would go to the London museums to continue to do so—they house our great national collections. Equally, however, items from historic families in Lincolnshire, although they might be less important, nevertheless in the context of Lincolnshire history are of incalculable wealth. I hope that when the Minister replies, he will recognise the force of the many points made by my noble friend Lord De Mauley and that within this group of amendments there are things that could improve the Bill without in any way diluting its central purpose.

**Baroness Rawlings (Con):** My Lords, I wish to speak to Amendment 9 and I declare my interest as a former president of the British Antique Dealers' Association, which is still superbly run by the secretary-general, Mr Mark Dodgson.

We are all, and when I say "all" I mean in this Chamber and outside, appalled by the disgraceful poaching of elephants in Africa and elsewhere. The reports last week of the slaughter of so many elephants in Botswana are beyond belief. Although the Government announced extra funding last July, in the joint statement from the Foreign Office, Defra and DfID, I wonder whether even more direct help can be provided to range states in Africa. I hope all your Lordships agree that we want Britain to play its part in protecting elephants.

When I spoke during the Second Reading, I expressed the view that the Bill provides a framework for preventing the sale of modern ivory trinkets in this country, which is desirable, but we surely must bring a sense of proportion to how we protect elephants. As Clause 2 is presently worded, the requirement that cultural property may be sold only if it is of "outstandingly high" cultural value is so restrictive that it will have a damaging effect on the cultural life of this country and will prevent the sale of many items of historical significance.

The allegation that the UK is supporting a large commercial ivory trade conjures images in the public's mind of a trade in ivory as a modern commodity, which is how it is thought of in Africa and Asia. I am not aware, however, of any evidence to suggest to any significant extent that modern poached ivory is imported into this country, offered for sale here or exported. I will explain this further since this is important to grasp in the context of this clause.

We have already heard from my noble friend Lord De Mauley that the number of worked ivory antiques exported from the UK is not as large as some of us imagine. Additionally, the TRAFFIC report made clear that large-scale seizures of African ivory tusks and bangles at UK airports are relatively rare. Furthermore, when they occurred, they represented items in transit to other countries, not destined for buyers or workshops here. Of course, some modern ivory carvings may have made their way to the United Kingdom, which TRAFFIC says are brought here by private individuals from trips abroad, not as part of smuggling rings. In the context of the hundreds of thousands of antique items incorporating ivory owned by people in Britain, there is no evidence that modern poached ivory is prevalent. Furthermore, as the antiques trade is aware, any seizures of exported ivory objects that occur do so because someone is attempting to export them without the required CITES permits, not because they represent examples of poached ivory.

Lucy Vigne, a conservationist and ivory trade researcher working in east Africa, is the author of a number of respected reports, including one recently for Save the Elephants looking at China and the trade in ivory there. She is on record in the press as saying that:

"This recent issue in the West has been taking away valuable time and resources from dealing with the big issues we are facing urgently",

by which she meant,

"the trade in new ivory in Asia and poaching in Africa".

In case the Committee feels that I have diverted from the points in hand, I say that I am not aware of anyone having demonstrated that the UK is awash with poached ivory. Precisely the same result would be achieved without sacrificing so many cultural items. For this reason, I support this amendment proposed by my noble friends Lord Carrington of Fulham and Lord De Mauley. I add that the debate is not "elephants or history"; both need preserving and should be dealt with together to be successful.

I was recently written to by Mary Kitson, who is honorary secretary of the Fan Circle International, an antique fan study group whose membership includes collectors, dealers, museum curators, conservators and art historians. She is extremely concerned about the impact that the Bill will have on this delightful part of our social history, and indeed the history of fashion. She explained that a collector of antique fans is likely to include in their collection fans whose sticks are made from a variety of materials such as mother of pearl, ivory, wood or metal. A fan's sticks give strength to what is termed the leaf—the part of the fan that is exposed when the fan is fully opened. Fans with ivory sticks certainly comprise more than 10% ivory.

Other items of our social history include games that incorporate ivory components. The immediately obvious example is Victorian chess pieces, as mentioned earlier by my noble friend Lord Cormack. Then there are children's games such as bagatelle, where the small balls can be fashioned from ivory, or the cup-and-ball game bilboquet, where the cup can likewise be made of ivory. Some of your Lordships may argue that these items could be given to museums, but they would not welcome thousands of duplicates. What is more, observing objects located behind a rope cordon or in a glass cabinet is not always the best way to appreciate them properly. There is no substitute for owning and handling antique objects in one's own home, which is one of the best ways to interact with and appreciate our history. If we cannot recognise properly the way in which different materials were used historically, we can lose touch with our past.

It is very sad that people should even contemplate exchanging original materials in genuine antique objects with modern substitutes. The recent replacement of ivory with ivorine, a form of celluloid, in a Chippendale cabinet is a case in point. I worry about where all this is heading. Next, someone will suggest that bone or leather should be outlawed. Therefore, I support the proposal that exemption certificates should be issued for not only objects of outstandingly high historical value but also for those that are of the same calibre as objects found in our officially recognised museums. This would include not just the British Museum or the National Museum of Scotland but other wonderful collections, such as those of the Fan Museum in Greenwich or the Museum of Childhood in Bethnal Green.

**Lord Inglewood:** My Lords, I want to make a few brief comments. When I last intervened, I should have explained that I am the president of the British Art Market Federation.

I commend the introduction in Amendment 8 of the word "religious" because there is too much religious bigotry about. It is important to respect other peoples' views as well as thinking that your own are important. I should explain that I quite like what my children call "old stuff". For a number of years, I had the very good fortune of chairing the Reviewing Committee on the Export of Works of Art. One thing that struck me during that time was how tastes change. Can my noble friend the Minister ensure that the way in which these things are examined recognises that tastes can change? Sometimes, items that are considered of enormous global significance were more or less unrecognised even just a few years ago. That is very important to the way in which these arrangements—which will inevitably be capricious and arbitrary to some degree—are exercised.

**The Duke of Wellington (Con):** My Lords, I apologise to the House for not being able to be present at Second Reading. Clearly, the Bill is a most important piece of legislation, as expressed at Second Reading and this afternoon. I am sure that everybody in this House supports the main objectives. I read the report of the Second Reading in *Hansard*, and I particularly commend the speech of my noble friend Lord Hague, who clearly, when he was Foreign Secretary, contributed significant movement to this attempt to control the undesirable trade in recently slaughtered elephant ivory.

*4.45 pm*

I would like to speak in support of Amendment 5. What concerns me is that to choose any date is clearly going to be slightly arbitrary. The Government have chosen 1918, but other international agreements refer to 1947. My noble friend Lord De Mauley made a very well-researched speech about the importance of works of art containing ivory produced in the 1920s and 1930s. It seems very strange that trading in these objects should suddenly become illegal, so I hope the Government will think again.

An earlier amendment tabled by the noble Lord, Lord Cormack, did not find support from the noble Baroness, Lady Jones, and the noble Lord, Lord Clement-Jones. I was saddened by this, because it seemed that neither of them appeared to appreciate the importance of the beautiful works of art that have over centuries been produced using ivory and many other materials.

I find myself in a difficult position. I do not want to disagree with the Government on a matter like this. I do not think it should in any way be a party political point, but I hope they will think very seriously as to whether they have chosen the right date. It seems there are very strong arguments for a later date. Of course we will not vote on this today, but should a similar amendment be proposed on Report, I would be most inclined to vote for it.

**Baroness Jones of Whitchurch:** My Lords, I shall speak to Amendment 10 in this group. I rather resent the implication that the noble Lord, Lord Clement-Jones, and I do not understand the significance of beautiful works of art. That is clearly not the case. The debate

[Baroness Jones of Whitchurch]
that we are having is about—and we are repeating this time and again—how we can stop the illegal poaching of elephants to create, if you like, imitations of beautiful works of art.

We take a very different view from other noble Lords who have spoken to amendments in this group who have in some way wanted to water down the application of the Bill. We believe that the current definition of,

"outstandingly high artistic, cultural or historical value",

is too subjective and too widely framed and therefore too difficult to apply with any certainty. We therefore believe that we should set the bar higher and make the definition clearer. These categories were all debated during the consultation and were framed by examining global best practice in this sector in terms of how you apply and enforce these definitions. They are designed to cover items that, when sold, do not directly or indirectly fuel the poaching of elephants, so we are back to that issue again.

We are concerned that the test has been toned down, given that there was an earlier form of wording. The earlier wording talked about the "rarest and most important" pieces, which appears to have been changed to a consideration of an item's rarity and the extent to which it appears to be an important example of its type. Our concern is that that is difficult phraseology to apply with any certainty.

It is important that we get this wording right. If we do not, there may be other consequences that do not help what we are trying to achieve. We know that the sale of items that seem to be important and the best of their type is fuelling the market in Asia by making some items more desirable. Those who cannot afford the items classified as best of their type go out and try to find imitations, which is where we come back full circle to the reason for the Bill and the need to ensure that whatever we do does not carry on fuelling the demand for newly poached ivory. Despite what noble Lords have said, there is a link between antique and modern ivory and, therefore, a need to close that market. As I have said, the exemptions in the Bill have to be rigorously defined and enforced.

Although I shall not go to the wall on this, I would expect religious items to be covered by the current definitions. I am not convinced that we need a separate category; I would have thought that the cultural definitions covered that.

The noble Lord, Lord Cormack, said that he was worried about local and regional significance not being taken into account. Again, I think that the professionals assessing whether items meet the grade for an exemption certificate would be expected to take account of those local variations rather than just assuming that everything has a value only in the London markets.

Noble Lords are right that whatever we do in the UK is only part of tackling the problem. In many ways, we are only the middle people in an international trade that is passing through our country. That is why the Secretary of State is right in wanting to use the forthcoming international wildlife crimes conference as a means for the UK to put pressure on other countries. There is no point in us trying to do it in isolation; we have to make sure that other countries follow suit, as a number already have. This legislation is only part of the jigsaw, but we have to play our part in all this. To do that, we have to get rigorous, enforced definitions right. I am not sure that we have got them right at the moment and worry that there is too much room for subjectivity, but I am sure that the Minister will reassure me and others that the current definitions hold up.

**Lord Gardiner of Kimble:** My Lords, my noble friends' amendments would widen the scope of Clause 2 to allow more items to fall under this category of exemption, while the noble Baroness, Lady Jones of Whitchurch, strives to tighten it. As noble Lords will know from Second Reading, the Government came forward with the current set of exemptions in discussion with the antiques and museum sector.

The Bill's intention is to prohibit commercial activities concerning ivory in the UK and the import and re-export of ivory for commercial purposes. My noble friend Lady Rawlings and other noble friends mentioned the UK's market. Between 2005 and 2014, 31% of ivory exported from the EU for commercial purposes was from the UK; the number of worked ivory items exported to mainland China increased from 2,000 to 11,000 between 2010 and 2014, and the UK Border Force recorded 602 seizures of illegal ivory items moving into and out of the UK in the four years between 2013 and 2017.

This is the scenario in which we exist and why what we have had before is simply not good enough. I emphasise that we intend this to be one of the toughest bans in the world. We are clear as a Government that this is the right thing to do in terms of leadership. We also recognise—I feel that my noble friends in particular as owners of ivory see this differently from me—that the public interest of saving the elephant has the supremacy on these matters. However, we have sought as a responsible and reasonable Government to ensure exemptions that we think are proportionate. That is why the limited and targeted exemption from the prohibition on dealing for pre-1918 ivory items which are of outstanding,

"artistic, cultural, or historical value",

have a rarity value and are important examples of their type is legitimate.

As has been said before, it is not the Government's intention to affect our artistic and cultural heritage unduly. This exemption recognises that a certain stratum of ivory items are traded not because they are made of ivory, but due to their artistry or rarity. I assure both my noble friends and the noble Baroness, Lady Jones of Whitchurch, that the Government have worked extensively with conservation NGOs and the arts and antiques sector to shape this exemption. We believe that the clause, as it stands, is a proportionate approach and any change would undermine this carefully balanced position. Indeed, the chairman of the Society of Fine Art Auctioneers welcomed the distinction our proposals make,

"between the market for ivory as a substance … and the market for works of art whose significance lies in their status as works of art, not for what they are made of".

The criteria which must be met for an item to qualify under this exemption are intentionally narrow and will be detailed in statutory guidance. My noble friends Lord De Mauley, Lord Cormack and Lord Inglewood referred to religious significance being a key factor for consideration when determining whether to issue an exemption certificate. We consider religious significance to be a factor of both cultural and historic significance—a point that the noble Baroness, Lady Jones of Whitchurch, made—so we do not believe that it is necessary to reference it separately in the Bill.

On the rationale behind the 100 years backstop, this date has been chosen as it is in line with the commonly agreed definition of "antique" as being items that are 100 years old. It represents 100 years before the Bill was introduced. The amendment from my noble friend Lord De Mauley seeks to widen this exemption to items,

"suitable ... to the collection of a qualifying museum".

We believe that this is too broad a definition to be included as part of what is intended to be a clearly defined exemption. It is worth noting that any accredited museum may purchase an item of ivory whether or not it meets one of the categories of exemption under Clause 9. This ensures that the decision to purchase rests with the relevant experts at accredited museums.

I repeat that the rationale behind this Bill is the need to curtail the demand for ivory that is driving the disastrous poaching of elephants in increasing numbers. I noted in my Second Reading speech and, indeed, today, that this demand is fuelled by both the illicit and the licit trade. This is what the African leaders are asking to do. It is what is coming out of the UN report. It is not a Minister just saying it. People in Africa and the UN are saying to us: "Please will you bear down on your licit trade because it is part of the problem".

I am sorry to disappoint my noble friends, but I am sure they will understand that this is designed as a narrowly drawn exemption. I am not in a position to accept the amendments and I emphasise that a great deal of attention has been paid to what are tightly defined packages of exemptions, of which this is one. I believe that the Government have produced something that is proportionate and on those grounds I ask my noble friend to withdraw his amendment.

*5 pm*

**Baroness Byford (Con):** My Lords, I want to follow up on the figures the Minister has given us. I apologise that I could not take part in Second Reading, but I am listening very carefully to the debate today. If I heard him correctly, he said that 31% of exports within the EU came from the UK. That struck me, and I wonder if it is possible to know whether those items that were exported would have fallen under the category of,

"high artistic, cultural or historical value",

or whether they were much more ordinary, everyday exports. That might have a bearing on some of our discussions. I do not expect him to answer now, but it might be helpful to those of us who are concerned and feel sympathetic towards some of the amendments if that information could be made available.

**Lord Gardiner of Kimble:** I will, of course, look into what my noble friend said and write a letter, which I will place in the Library.

**Earl Attlee:** My Lords, I apologise to the Committee for not giving my counsel on this group of amendments: I am conflicted out, but it has nothing to do with ivory.

**Lord De Mauley:** My Lords, I have listened carefully to what my noble friend the Minister said and I shall read it in *Hansard* as well. I did not hear him or, indeed, the noble Baroness, Lady Jones, address, for example, the matter of the greatly respected art deco movement, which is all post-1918 and therefore not covered by the 1918 exemption, or the misleading 2016 export figures that are often trotted out. I just hope that the Government know what they are doing. I shall not press these amendments today; I reserve the right to bring them back on Report, but for now I beg leave to withdraw the amendment.

*Amendment 5 withdrawn.*

*Amendments 6 to 11 not moved.*

*House resumed.*

## Victims Strategy

*Statement*

*5.02 pm*

**The Advocate-General for Scotland (Lord Keen of Elie) (Con):** My Lords, with the leave of the House I shall now repeat a Statement made by my honourable friend the Parliamentary Under-Secretary of State for the Ministry of Justice. The Statement is as follows:

"With permission, Mr Speaker, I should like to make a Statement. Today, the Secretary of State and I are launching the Government's victims strategy. which sets out our vision for victims of crime in England and Wales. That vision is one of a justice system that supports even more victims to speak up, with the certainty that they will be understood, that they will be protected, and that they will be supported, whether or not they report a crime and regardless of their circumstances or background. However, no single department, agency, or emergency service alone can provide the services victims rightly expect to receive, as shown by recent major incidents such as the Grenfell Tower fire and terrorist attacks in London and Manchester.

To truly deliver on our vision we must all work together, and that is why we have today published, for the first time, a cross-government victims strategy, further delivering on this Government's commitment to ensure that victims of crime get the support they need. This strategy is the latest milestone in improving the support for victims and builds on important progress over the last few years, such as the establishment of the first Code of Practice for Victims of Crime in 2006, the appointment of the first Victims' Commissioner to champion the interests of victims and witnesses in 2010, and the publication of *Getting it Right for Victims and Witnesses: The Government Response* in 2012, setting out the Government's approach for making sure that victims and witnesses get the support they

[Lord Keen of Elie]
need. The victims strategy consolidates and builds on that progress but recognises that more needs to be done. I want to thank and pay tribute to all those victims, groups and experts who have willingly shared their experiences and sat on the victims' panel and their work, and to my predecessor, who initiated this work.

The nature of crime is changing and we must adapt our response to meet that challenge. While overall crime has fallen, some of the most serious crimes have risen. Serious violent crime has increased and reporting of sexual offending has also risen. In the year ending March 2018, there was a 24% increase in reported sexual offences compared to the previous year. The message from victims is clear: they want to be treated with dignity, humanity, and compassion; they want clear, timely and accurate information about what is happening with their cases from day one; and they want the opportunity and support to make their voices heard as justice is done. To help achieve this, the strategy sets out a system-wide response to improving the support offered to all victims of crime throughout the criminal justice process, and incorporates actions from all criminal justice agencies, including the police, CPS and the courts. We must ensure that those who are a victim of crime do not become a victim of the process.

First, we want to strengthen the victims' code and make it fit for the future. Our data tell us that fewer than 20% of victims are even aware of the code. Those who are often find it too lengthy, too confusing, with too many agencies involved. We will therefore revise the code, making it more user-friendly, reducing contact points, and strengthening entitlements in key areas such as the victim personal statement and support for victims of mentally disordered offenders. We will test the proposed changes to the code in a public consultation in early 2019 and aim to have a revised code in place by the end of 2019.

We have also reaffirmed our manifesto commitment to a victims' law. The consultation will also consider how best to enshrine victims' entitlements in law and the detail of the necessary legislation, and will include boosting the powers of the Victims' Commissioner, who plays a vital role in holding those agencies to account already. I pay particular tribute to my noble friend Lady Newlove for all her work over almost six years to promote and protect the interests of victims and witnesses.

The criminal injuries compensation scheme must reflect the changing nature of crime. We will therefore be reviewing the entire scheme, with a particular focus on how we treat the victims of child sexual abuse and terrorism. That will include examining eligibility criteria and abolishing the arbitrary and unfair 'same roof' rule so that victims can get the compensation they are rightly due.

From Hillsborough to Grenfell, there have been too many failures to properly support those affected by disasters. So, we have today in this strategy set out our purpose for an independent public advocate and have in tandem published a consultation on the detail of the role, supporting bereaved families so that those failures cannot be repeated and we can properly support victims from the beginning of a disaster right through to the application of justice and beyond.

Building on the work we commenced earlier this year to improve the parole process, the strategy sets out how we will improve communication and support for victims during what can be for many a difficult time when memories of crimes committed years ago are relived. We will simplify the victim contact scheme and improve the quality of communication. We will make it easier for victims to make victim personal statements at parole hearings, and roll-out revised training for victim liaison officers, so that they are better equipped and prepared to support victims through parole hearings. This can and should ensure that past failings can never be repeated.

The strategy highlights the extra funding that we are providing for victims, including increasing spending to improve services and pathways for survivors and victims of sexual violence and abuse, including spending £8 million on interventions to ensure that support is available to children who witness domestic abuse. Some of the other measures are: improved training for the police, including guidance on supporting victims through the interview process and collecting evidence; trialling body-worn cameras for taking victim personal statements so that victims have a choice in how their story is heard; expanding support for families bereaved by gang violence—the recent spate of gang-related violence, particularly in London, has shone a spotlight on the devastation that gun and knife crime can cause to families, and we will be bringing in new funding for advocacy support for those affected by domestic homicide—and new guidance on pre-trial therapy to reduce the perception that it will damage the prosecution case.

In developing the strategy we have engaged extensively with victims, victims' groups and the Victims' Commissioner. This has ensured that the strategy is informed by those who have had direct experience of being a victim as well as those with front-line expertise. The strategy is not a quick fix. It is about building on the work to date so that we can better support victims in the future, and it is about giving them the confidence that, no matter their background, their individual circumstances or the crime that has been committed against them, the support that they need will be available.

This is the first time that we have looked in such detail and in such a joined-up way at how we treat victims in the wake of crime. This strategy is a marker for the way that we see ourselves as a nation—one that offers dignity, empathy and compassion to people when they are at their most vulnerable. It is something on which there is broad consensus across this House. Delivery of the strategy will now commence in earnest as we continue to progress towards a system that supports even more victims to speak up by giving them the certainty that they will be understood, supported and protected throughout their journey".

*5.11 pm*

**Lord Beecham (Lab):** My Lords, I thank the Minister for repeating the Statement. I join him in congratulating the noble Baroness, Lady Newlove, who is not in her place today, on her role in representing victims. I am sure all noble Lords will recognise the great contribution that she has made over the last few years.

Welcome though the publication of a victims strategy is, as my honourable friend Gloria De Piero pointed out in the House of Commons, it comes three years

after being promised and in the shape of secondary legislation rather than the primary legislation envisaged. Even now, as we have heard, further consultation is to take place—for example, in relation to the victims' code and the creation of the post of independent public advocate. Could the Minister indicate the nature of such consultation and its potential timescale?

Will the Government review the position in relation to judicial review where the cuts to legal aid over the last few years have in some cases prevented the pursuit of justice? The Statement is made on the same day that the Metropolitan Police have revealed a drop in the investigation of serious crimes, including sexual offences and violence. How is this supposed to help the victims of such brutality?

We are all aware of the enormous strain on police forces up and down the country, not least in London. There is no indication of additional funding to meet the challenges in the rise of serious crime, including violent crime and sexual offences. Indeed, the Police Superintendents' Association is warning of a "perpetual state of crisis". Surely this is unacceptable.

We welcome the promise to revise the victims' code. How will that exercise be carried out, and what is the timescale envisaged? We also welcome the proposed changes to the criminal injuries compensation scheme. Again, could the Minister indicate the process and timescale for that exercise? We also support the idea of an independent public advocate in major disaster cases. The experience of these over the years has been, to put it mildly, very unsatisfactory for the many people involved in some of those disasters.

What is the estimated cost of the changes, and where will it be paid from? Will the Minister confirm that it will not be financed by cuts in other areas of the justice system? I remind the Minister that the female offender strategy, for example, was underfunded by £15 million. Will the Government look again at their funding of that important initiative?

The Minister described for the first time a cross-government victim strategy. To what extent will other departments be involved? I presume that the Ministry of Housing, Communities and Local Government, the Department for Education, the Department of Health and Social Care and, of course, the Home Office will all have a role. Will the custodial and probation services be involved in the approach to the new environment being created for the victims of crime? In dealing with offenders they will, I hope, be promoting the need for offenders to avoid such conduct in future, particularly where they have been involved in offences of this kind.

The proposals in the Statement are welcome as far as they go but will come to little without adequate funding and adequate engagement with all interested parties. I look forward to seeing how the proposals develop in practice, particularly in terms of adequate funding across the piece envisaged by the Statement. We look forward to that and I hope that the department succeeds in persuading the Treasury that investing in the ideas in the Statement and presumably to be debated across the justice system will be adequately met. Without that, any hope of change will be lost in practice.

**Lord Marks of Henley-on-Thames (LD):** My Lords, we too welcome the publication of the victims strategy and I join the noble Lord, Lord Beecham, in thanking the noble and learned Lord for repeating the Statement. The strategy certainly builds on the work done by government, by agencies across the criminal justice system over a number of years and by campaigners. I join in paying tribute to the noble Baroness, Lady Newlove, for her work and also mention the work of my noble friend Lady Brinton in this area.

The measures to strengthen the victims' code are extremely necessary. It needs revision. We accept that there should be consultation before revision, but it needs to be made easier to understand, easier to access and there needs to be a great deal more awareness of the existence of the code and its provisions among members of the public. The aim should be to ensure support and co-ordination of that support across the criminal justice system. It is also right that the Government propose boosting the powers of the Victims' Commissioner to hold the agencies to account. However, the main commitment of the victims strategy is to enshrine victims entitlements into a victims law. We look forward to the consultation as to how that will be framed.

I mention in passing two further points that I have picked up. The involvement of victims in the parole process plainly needs to be increased. We need to put behind us the failures of the system of the type that led to the decision in the Worboys case and to the feeling among the public that they had been let down by an inadequate and secretive process.

I also mention the proposed improvements to the criminal injuries compensation scheme which are extremely necessary. I welcome the proposed abolition of the absurd "same roof" rule, whereby victims were debarred from compensation if they lived under the same roof as the person who perpetrated violence against them; very often they lived under the same roof only because they were forced to do so by financial deprivation.

We are left with one very serious area of concern: the legal enforceability of the victims strategy. It does not commit to imposing legally enforceable duties on the agencies involved, justiciable at the instance of victims. It pledges to hold agencies to account through improved reporting, monitoring and transparency on whether victims are in fact receiving their entitlements, and to make the responsibilities of the agencies clearer. However, it is more likely that the victims strategy will succeed in ensuring that agencies meet their obligations, and victims receive their entitlements, if those agencies can be held legally accountable to victims. Will the Minister assure us that the consultation on the victims law will explore ways in which legal enforceability might be achieved? The victims strategy is a good one, but to make victims' rights a reality needs resources, as the noble Lord, Lord Beecham, pointed out. It also needs the victims law to have real teeth.

**Lord Keen of Elie:** My Lords, I am most obliged for the contributions from the noble Lords, Lord Beecham and Lord Marks. I understand their expressions of concern about various areas of the strategy which are going to

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be the subject of consultation. I sense a perception, across the House, that we need to move forward on this matter and that we may be moving in the right direction, without looking at the detail that we are immediately concerned with.

The noble Lord, Lord Beecham, raised a point about the conduct of the Metropolitan Police regarding certain matters of prosecution and the pursuit of certain investigations. That is clearly an operational matter on which I cannot comment. Ultimately, the conduct of the Metropolitan Police in that regard is a matter for the commissioner and the Mayor of London. I turn to the other matters raised. First, we intend to amend the victims' code to address the questions of complexity and accessibility that were referred to. We hope to consult on that in early 2019 and intend that an amended code is in place by the end of that year.

Both noble Lords touched on the victims law. There is already key legislation in place to support victims but we want to go further. It is clearly important that new legislation should be pursued as rapidly as is reasonably possible. We are committed to consulting on the detail of the victims law and that consultation will take place in 2019. We will work closely with the parliamentary authorities to identify legislative slots once we are clearer on what proposals there will be for legislation. We must make sure not to put the cart in front of the horse. We want to complete the consultation process, determine what legislative measures are going to be taken and then decide how best to take that forward.

On the point touched on by the noble Lord, Lord Marks, I stress that we do not want to pre-empt the consultation but we wish to carefully consider, among other things, strengthening enforcement of the victims' code, to make sure that victims receive the services that they are entitled to and that it is more than just black letters on a piece of paper. That is at the forefront of our minds. We also wish to look at strengthening the powers of the Victims' Commissioner, and the consultation will explore increasing those powers so that she can better hold government to account in these matters.

I will touch on one or two of the other issues raised. First, again we wish to consult on the criminal injuries compensation scheme; that is likely to be in early 2019. We understand the need to look at the "same roof" issue, and I touched on that in the Statement. Clearly, we will have to consider how this scheme can better serve victims of child sexual abuse and explore, among other things, the concerns raised and recommendations made by the Independent Inquiry into Child Sexual Abuse, which recently made its interim report.

Regarding the independent public advocate, as noble Lords will be aware, we have launched that consultation today and that will close at the beginning of December this year. We would hope then to publish a government response to the consultation process in March 2019. Clearly, it is important to take this forward to ensure that after tragic events such as Grenfell or the Manchester bombing, there is a party in place who can take an overview of where and when parties who are bereaved, who are victims, have been given—or should have been given—the opportunity to be heard and considered.

Finally, on parole, which was touched upon, steps clearly have to be taken to address what occurred following the Worboys case, and the concerns expressed about, in particular, the victim contact scheme and the way in which victim liaison officers may deal with victims in that context. We hope to have a training programme rolled out by the end of 2018 and are looking at changes to the code by the end of 2019 concerning that. We are particularly concerned to ensure that victims will be properly consulted in the context of the parole process. Again, I would not wish to pre-empt the consultation process. We are alive, however, to the need to ensure that change and improvement is made. With that, I hope I have responded to the points made by noble Lords. I welcome their contributions to the debate and to the consultations that will follow.

*5.27 pm*

**Baroness Brinton (LD):** My Lords, I also thank the Minister and the Government for finally announcing this victims strategy and consultation document. Nearly two years ago, in December 2016, your Lordships' House voted on strengthening the victims' code and encoding it in law, and we supported making sure that the agencies had to deliver that code. Noble Lords will remember that the matter went back to the Commons and the Minister returned to your Lordships' House in January 2017 saying that a victims strategy and proposals would be published within six months and implemented by the end of 2017. We are running a bit behind that schedule but in the interim I compliment the previous Victims Minister for coming to consult with a large number of victims' groups. Over the past 18 months, I met him and some of them and the time has not been wasted.

I will not repeat the comments made by other noble Lords on the strengths of the strategy. For those groups I have been working with, it is not simply a matter of fewer than 20% of victims being aware of the victims' code, as I am afraid that there are a significant number of people working in the criminal justice system itself who are not aware of the details and who do not assist victims. I am reminded of one victim saying that when she reported her case of rape, the alleged perpetrator was given breaks from questioning, tea breaks and meal breaks, but there was absolutely nothing—not even a glass of water—provided for her as a victim when giving her statement. That is the sort of fundamental misunderstanding happening at the front line of the criminal justice system at the moment for victims, and we absolutely must make sure that it is changed.

I also echo the congratulations to the Victims' Commissioner, the noble Baroness, Lady Newlove. I welcome the new support and strengthening proposed for her role, but it will all be utterly worthless unless there is a duty on the agencies to deliver the victims' code and the new proposed victims law. I note with some concern that on page 18 of the strategy the words used are,

"improved reporting, monitoring and transparency on whether victims are receiving entitlements".

We will not make progress until all parts of the criminal justice system have to deliver the victims' code and a proposed victims law for all victims.

I will raise one other point, on a final omission. At every meeting of the victims' forum that has met in Parliament over the two years, we have heard the

organisation Murdered Abroad speak eloquently. There is a hole in the current system for victims whose family members have been murdered abroad, and the British system back here, even through the coroners' court system, completely fails them. The Foreign Office does what it can, but at the moment there is no link at all back into our criminal justice system, and I hope that as part of the consultation the Government will seriously look at mending this hole.

**Lord Keen of Elie:** Again, I am obliged for the contribution from the noble Baroness, Lady Brinton, on this matter. While we may appear to be slightly behind schedule, I am relieved by her suggestion that time time has not been wasted. There is a concern to ensure that we take this forward as rapidly as possible but that we do it in the best-informed way possible. We will of course look at the scope of legislation that we will take forward to ensure that powers are available—whether they are direct legal powers or powers for the Victims' Commissioner—which can be employed to ensure that all relevant parties are in a position where they are not only capable of enforcing the victims' code but understand their obligation to do so as well.

**Baroness Fookes (Con):** My Lords, reference has been made to an increase in the powers of the Victims' Commissioner, about which I am delighted, but I am not clear what they will be. Could my noble and learned friend flesh it out for us?

**Lord Keen of Elie:** My Lords, the intention is that the consultation should do that, and I will not pre-empt the consultation process.

**Baroness Warsi (Con):** My Lords, I take this opportunity to welcome this Statement, and I pay tribute to my noble friend Lady Newlove. I will spare her blushes—we were all speaking about her just before she took her place in the Chamber, but I am sure that she will read *Hansard* and realise that the whole House pays tribute to the work she has been doing over a number of years. Can my noble and learned friend say something at the Dispatch Box which will send out a message to victims of sexual violence, and specifically to young girls who were children at the time they were subjected to sexual exploitation? We have seen the cases across the country. What will these new measures do for them, how will they be taken seriously, and how will the experience—which, sadly, is sometimes quite horrific—of people subjected to these crimes be different?

**Lord Keen of Elie:** I thank my noble friend Lady Warsi for her observations. With regard to that question, the whole idea is that the victims' code should first be made more accessible, that victims should be aware of its existence, and that those who engage with the victims should be properly aware, not only of its existence but of the way in which it ought to be implemented. Victims should be able to pause, consider and then come forward, in many instances seeking guidance on how they should go about making their complaints, and those complaints should be received sensibly, reasonably and openly. It is a difficult area, particularly where one is dealing with matters of historic sexual abuse. Nevertheless, we hope to achieve a situation in which people will not feel that any barrier or inhibition prevents them coming forward with those concerns.

**The Lord Bishop of Chester:** My Lords, I wholeheartedly endorse and support what has been said about this strategy. I know from my pastoral work how the effects of crime can resonate throughout people's lives, not least when it comes to sexual abuse that happened a long time ago. Nevertheless, can the noble and learned Lord comment on the term "victim" and when its use is appropriate and when it is not? Occasionally in the report the term "victim/survivor" is used, and of course we have the report from Lord Justice Henriques into the Operation Midland case, which contained some warnings about the premature use of the word "victim"; in that case it is clear that those who were accused were the victims, and I understand that the person who was widely described as the victim is himself now facing criminal charges. The same was said by the noble Lord, Lord Carlile, in his report on the Bishop Bell case. Is there a way of defining the term? At the end of the report there is a glossary of about 29 or 30 terms, but the term "victim" itself is not defined in it. Perhaps the strategy might be strengthened if there was at least some recognition that people who are falsely accused can equally be victims.

**Lord Keen of Elie:** I thank the right reverend Prelate for his observation. It is of course difficult in this situation, because if we simply proceed with the term "complainer", people have certain perceptions about that, and that in itself appears to inhibit them from coming forward. They are perceived to be merely complainers rather than, as they are in reality, victims. Terminology is therefore important here, but it is also difficult. However, I entirely endorse the right reverend Prelate's observation that those who are falsely accused of crime are also victims. Of that there can be no doubt whatever, and we should always remember that.

**Baroness Scott of Bybrook (Con):** My Lords, I also welcome this strategy from the Government. I will ask the Minister about major incidents and their victims: places such as Grenfell, of which I have some knowledge, but also Manchester and even Salisbury. I hope that in the strategy the Government acknowledge the role of local government in supporting the victims but I also hope that they challenge local government and look to support it in its role as supporting victims of these major incidents.

**Lord Keen of Elie:** I thank my noble friend for that. Indeed, the noble Lord, Lord Beecham, raised this very same point about the need to ensure that all agencies which may be involved in these matters should be properly engaged and consulted. I certainly acknowledge the role of local government in dealing with disasters such as Grenfell, the Manchester bombing or Salisbury. There have to be clear lines of engagement between central government and local government to ensure that that can be achieved, and I anticipate that that matter will be addressed in the course of the consultation process.

# Ivory Bill

*Committee (1st Day) (Continued)*

*5.37 pm*

*Amendment 12*

*Moved by* ***Lord De Mauley***

**12:** Clause 2, page 2, line 25, at end insert ", which must be an institution with expertise in identifying and dating objects incorporating or made entirely from ivory"

**Lord De Mauley (Con):** My Lords, Clause 2 currently leaves to the Secretary of State the choice of bodies that will perform the task of authorising the issue of exemption certificates. However, it is imperative that the Secretary of State appoints bodies that represent specialists who know their subjects and have expertise in their field. This amendment will require the Secretary of State to appoint only institutions which have expertise in objects that contain ivory. The incorporation of this requirement would also protect the Secretary of State from an accusation that he has appointed an inappropriate body. I beg to move.

**The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con):** My Lords, my noble friend's amendment seeks to define the type of institution the Secretary of State can prescribe to provide advice under Clause 2, and I hope to reassure my noble friend that this will not be required.

Subsection (5) confers a delegated power for the Secretary of State to prescribe a list of advisory institutions. Any assessment of an item's artistic, cultural or historical value is to a degree subjective. This is why the Secretary of State will seek the advice of the country's foremost experts in different forms of ivory items, from the UK's most prestigious museums. Indeed, eminent institutions such as the Victoria and Albert Museum and the British Museum, which have world-renowned expertise in areas and periods of artistic history relevant to ivory artefacts, have already confirmed that they would like to be involved. These institutions provide advice to government on matters of pre-eminence and national importance, for instance under the export licensing regime for cultural objects. They will also be required to ensure that their best-qualified experts are engaged to assess the items.

If needed, the Secretary of State may, over time, update regulations prescribing advisory institutions if, for example, a source of expertise moves from an institution or a new centre of expertise emerges. Under no circumstances would we prescribe an institution which did not hold the relevant expertise. I hope that with that reassurance about expertise my noble friend will withdraw his amendment.

**Lord De Mauley:** My Lords, I thank my noble friend. What he has said sounds helpful. I will give his response consideration before Report, so for today I beg leave to withdraw the amendment.

*Amendment 12 withdrawn.*

*Clause 2 agreed.*

***Clause 3: Applications for exemption certificates***

*Amendment 13*

*Moved by* ***Lord De Mauley***

**13:** Clause 3, page 2, line 38, at end insert "but with no requirement to proceed with the dealing in the item in the future"

**Lord De Mauley:** My Lords, I will speak to Amendments 13 and 28. The Bill appears to require an exemption certificate application to be accompanied by an expectation that "dealing" in an item is due to occur. This expectation is created by subsection (1)(f), which requires an applicant to provide information about,

"any dealing in the item that is expected to take place".

From this wording it is not entirely clear whether it is a strict requirement of the Bill that dealing must happen. An owner of an object may wish to obtain a certificate as a precaution, so that if they decide to offer it for sale in the future they will already have all the necessary paperwork in place. Furthermore, for any number of reasons, the owner of an item may subsequently decide, having obtained a certificate, that he does not wish to proceed with the sale.

I realise that the word "any" in "any dealing" could suggest that information about dealing needs to be provided only when such information exists, but this amendment makes it absolutely clear that to obtain a certificate an item does not need to be offered for sale or sold, least of all to the museum or institution advising on the exemption certificate, with all the conflicts of interest that could lead to. In summary, therefore, it should be possible to gain an exemption certificate for an item that may end up remaining in a private collection.

I turn to Amendment 28. Clause 9(1) refers explicitly to the sale of an ivory item to a museum, but unlike the definitions of "dealing" in Clause 1 it makes no specific reference to "offering for sale". Clearly, no sale to a museum can occur without an object having been offered to that museum. The problem with the current phrasing is that it makes it appear as though an exemption applies only if a sale is "concluded". Until an agreement is reached, there can be no certainty that an object will be acquired by a museum: the trustees may be asked for approval and decline to give it. Often the whole process can be very protracted and negotiations can break down at any stage. The purpose of the amendment, therefore, is to clarify that if an ivory item is offered to a museum the seller is under no obligation to complete a sale. If the meaning of subsection (1) is that the seller must complete the sale regardless of the sum that the museum is prepared to pay, no museum would offer more than the barest minimum. I beg to move.

**Baroness Vere of Norbiton (Con):** My Lords, Amendments 13 and 28 appear in the name of my noble friend Lord De Mauley. Their intention is to clarify that where an item has an exemption certificate or has been registered, perhaps—but not necessarily—with the intention of selling the item, there is no obligation to proceed with a sale. I assure him that there will be no such obligations on applicants. Indeed, we recognise that there may be many reasons for an application. For

example, we anticipate that owners of certain items may wish to apply for an exemption certificate before valuation for insurance purposes, not for any sale.

The primary intention of the registration and exemption certificate processes is to ensure that items meet the criteria for the applicable exemption before they can be subject to commercial dealing, but there is no obligation to undertake any commercial transaction following certification or registration. It is also worth bearing in mind that neither certification nor registration is time limited and can exist over a long period. In the light of this clarification, I hope that my noble friend will feel able to withdraw his amendment.

**Lord De Mauley:** I thank my noble friend for that response, which it is helpful to have on the record. I am, therefore, happy to withdraw the amendment.

*Amendment 13 withdrawn.*

*Clause 3 agreed.*

*5.45 pm*

### *Clause 4: Further provision about exemption certificates*

*Amendment 14*

*Moved by* ***Baroness Jones of Whitchurch***

**14:** Clause 4, page 4, line 11, at end insert—

"(5A) Subject to subsection (5B), the Secretary of State may not issue a replacement certificate in respect of an item if a replacement certificate has previously been issued in respect of the same item.

(5B) Subsection (5A) does not apply where—

(a) an exemption certificate has been applied for under section 3, and issued, in respect of the item since the last instance of a replacement certificate being issued,

(b) the owner of the item has changed since the last instance of a replacement certificate being issued, or

(c) it seems to the Secretary of State that there are extraneous circumstances that warrant issuing a further replacement certificate."

Member's explanatory statement

This amendment creates a limit of one replacement certificate being issued for an item. After one certificate is issued, a further replacement certificate can be issued only if a new certificate is applied for under section 3, or if the owner of the item changes, or if there are extraneous circumstances that warrant issuing a replacement certificate.

**Baroness Jones of Whitchurch (Lab):** My Lords, I am moving Amendment 14, on the subject of replacement certificates, because we believe that more safeguards are needed, since the Bill would allow multiple certificates to be issued for a particular item, and these could then be used to sell similar items illegally. We feel strongly that no loopholes should be allowed and that nothing in the Bill could result in unscrupulous dealers misusing these certificates. Given that the point of the Bill is to stop illegal ivory trading, and that—as we have discussed—unscrupulous people will exploit loopholes, it is important that these rules are extremely tight.

When this was discussed in the other place, the Minister made the point that because exemption certificates would apply only to unique peices—and therefore a limited number—there was an exceedingly low risk that a certificate, which will include a photograph, could be used fraudulently for another item. So far, so good, but this does not protect against the production of replicas, so we could end up with something that looks very similar to the photograph but is not the original item: you would have a replica item with a duplicate certificate.

Although such activity would of course be an offence under the Fraud Act 2006, and subject to criminal sanctions or a custodial sentence, this may well not deter those involved in the illegal ivory trade, where we know that millions of imitation antique pieces are already floating around and making very high profits.

This is really just a probing amendment to learn from the Minister how this will work in practice and whether he can provide reassurance that there are sufficient safeguards built into the system of issuing replacement certificates to prevent fraudulent duplication of them. I beg to move the amendment.

**Lord De Mauley:** My Lords, I do not fully understand the desire of the noble Baroness, Lady Jones, to limit the number of times the duplicate exemption certificate can be applied for. In the internet age, any sensible person would want to check that a paper certificate was genuine and would perhaps ask for confirmation from Defra, quoting the certificate's unique reference code. Perhaps the Minister can confirm that. If someone loses his passport more than once, I would imagine that he could still obtain a replacement from Her Majesty's Passport Office. I am not sure why replacing an ivory exemption certificate deserves a more limited approach. Surely, whether the piece of paper is the first one issued or a second replacement, each will show the same information, presumably with the same unique reference code and image of the item. It is the fact that the item has been exempted, and that the piece of paper indicates as much, that is important.

I am not clear what misdemeanour would occur if, in error, an object owner found that they had two certificates for the same object. Whether second duplicates can or cannot be issued would not stop a criminal from attempting to produce a falsified certificate.

**Lord Gardiner of Kimble:** My Lords, the noble Baroness's amendment recognises an important issue: to ensure that we avoid any loopholes that could be exploited by those wishing to circumvent the ivory ban and continue to trade ivory illegally. I understand the concern that an individual may exploit the provision included in the Bill to issue replacement exemption certificates under the exemption for the rarest and most important example of its type. The concern is that an individual might fraudulently use replacement exemption certificates for non-exempt items, and I am clearly interested in ensuring that that is not possible. But I say to the noble Baroness and my noble friend Lord De Mauley that such an action would be an offence under the Fraud Act 2006 and may be subject to criminal sanctions—a custodial sentence or a criminal fine.

[Lord Gardiner of Kimble]

The Bill is clear that a replacement certificate will be issued only if the original has been lost, the original was not passed on by the original owner when the item was sold, or for any other reason that the Animal and Plant Health Agency acting on behalf of the Secretary of State considers appropriate. I reassure the noble Baroness that the process that an individual must follow to request a replacement certificate will be carefully developed with APHA to avoid any potential loopholes that could be exploited by unscrupulous individuals.

First, the owner will need to declare why a replacement is required. APHA should also be able to check the application against a database of exempt items. Secondly, a unique identification number will be included on the certificate which associates it with the exempt item. Certificates will include photographs of the item as originally submitted when applying for the exemption and a narrative description of the item. Given the nature of items exempted under this category, it is highly unlikely that there would be another item of such close similarity that it could reasonably be taken to be covered by a certificate issued for another item. Officials will be working with APHA because this is an area that we are clear on. We do not want to find any loopholes in what we do. I am grateful to the noble Baroness for raising this issue, but we are very much alive to the need to ensure that the replacement certificate regime is robust and, at the same time, that replacements can be issued.

**Baroness Jones of Whitchurch:** I thank the Minister and the noble Lord, Lord De Mauley, for those comments. I am grateful for the Minister's reassurance. The situation that we envisaged is that there would be more than one certificate and more than one item that looked similar in the market. There would then be the problem of identifying which was the original and which was the fake. As we develop our exemption certificate regime, I can imagine that they will have some kudos abroad. They will not just be used for enforcement under our regime but could give some additional value to properties that are traded in other countries as proof of the item being of the highest quality and so forth. I would like to look a little more at the Minister's comments, but I will not pursue this any further today so I beg leave to withdraw the amendment.

*Amendment 14 withdrawn.*

*Clause 4 agreed.*

***Clause 5: Fresh applications and appeals***

*Amendment 15*

*Moved by* ***Baroness Jones of Whitchurch***

**15:** Clause 5, page 4, line 34, at end insert—

( ) Subsection (1)(b) does not apply if an appeal has already been made against the decision to refuse an application for an exemption certificate or to revoke an exemption certificate, and the original decision was upheld.

Member's explanatory statement

This amendment would permit a person to appeal against a decision to refuse an application for an exemption certificate or to revoke an exemption certificate only once.

**Baroness Jones of Whitchurch:** As drafted, the Bill allows an infinite number of appeals. This concern was raised specifically by the David Shepherd Wildlife Foundation, which argued the case for deleting the unprecedented and unnecessary appeals provision. That is what we have tried to do with this amendment.

The amendment would streamline the appeals provisions for sales exemptions for items of outstanding artistic or cultural value. It would permit applicants a formal right of appeal against the original decision to reject an application only once. If the appeal was unsuccessful, the applicant would be able to make a fresh application, and pay the appropriate fee, if they wished an item to be considered again.

The cost of an application fee is intended to be cost neutral. However, under the current provision, if an individual refused to accept the decision that an item does not qualify for an exemption, they could effectively frustrate the appeals process with successive appeals, each of which would require detailed consideration and a response. If a number of people submitted repeated appeals, that would inevitably have implications for resources and could have a detrimental impact on other activities, including enforcement of the regime. We believe that limiting the right to appeal against a decision to only once is sufficient to protect individuals' property rights. There are many examples across government where decisions on applications can be appealed only once, including visa applications and school places. I am sure that there are many more. Furthermore, this would avoid establishing a new precedent under UK law that would introduce a convoluted formal appeal process for what is in effect a specialised form of wildlife trade licensing.

There is no appeal system for any other wildlife trade licence issued in the UK, including those under CITES, let alone anything wider than that. We therefore hope that the Committee will feel able to support our amendment.

I have a quick comment on Amendment 16 in this group. On the face of it, I do not have a problem with this amendment. I would have thought that it made sense for appeals to be heard by someone with expertise, and it may be that the Minister is able to reassure noble Lords on this issue so that they do not feel it necessary to pursue the amendment. I beg to move.

**Lord De Mauley:** My Lords, I shall speak to both amendments in this group but deal with Amendment 16 first. Rightly, the Bill makes provision for circumstances where the owner of an item disagrees with the decision of the Secretary of State to refuse to grant an exemption certificate. Under the existing wording, the Secretary of State could simply appoint a lawyer with no knowledge of, or expertise in, ivory artefacts in order to determine the appeal. The intention of the amendment is to make sure that the appeal is heard by someone who has expertise and experience in assessing ivory works of art. An understanding of cultural property and of the methods used by curators or art market professionals to decide on the authenticity and age of such objects

would be vital skills for the appointee. He or she would need to understand the reasons for the rejection and ask all the right questions. It would be unjust for all concerned if the person appointed to this role is someone unfamiliar with the relevant issues.

I turn to Amendment 15, tabled by the noble Baroness, Lady Jones. To my mind, refusing further appeals beyond the first appears to fly in the face of natural justice. Take an object such as one which an applicant understood had been owned by a famous person such as Admiral Nelson. At the time the first appeal was heard, it may be that the extent and quality of the evidence in the possession of the applicant to back up the purported provenance was deemed insufficient. Further irrefutable evidence may later come to light. Surely the applicant should be given the opportunity to present this information a second time.

**Lord Gardiner of Kimble:** My Lords, I thank the noble Baroness for her amendment, which would prevent a person applying for a Clause 5 appeal more than once. As drafted, the Bill will allow applicants to appeal a decision either to revoke or refuse the issuing of an exemption certificate for a pre-1918 ivory item that is a rare and important example of its type, so that it can be protected by an exemption. Clause 5 will enable the details of the grounds to be set out in secondary legislation. Noble Lords will be aware that the Delegated Powers and Regulatory Reform Committee has questioned this approach and recommended that more details should be set out in the Bill. We are grateful to the Committee for its consideration of the Bill. We are carefully considering its recommendations and will respond in due course and, if necessary, seek to amend the Bill on Report.

*6 pm*

We would of course be concerned if unnecessary, vexatious or frivolous appeals undermine confidence in the exemption certificate regime or create uncertainty for those wishing to submit their own applications. However, a person who launched an unsuccessful appeal would not be able to apply for a second appeal if he or she simply disliked the decision of the appeal body. There would have to be a legal basis for the second appeal, such as an alleged material error in the appeal body's decision. In such cases, it would be appropriate for an application for judicial review to be made before the court, so that the court can hear the case against the appeal body's decision. That would be the appropriate judicial process, as opposed to restricting one's right of appeal on the face of the Bill.

The grounds on which a failed applicant could make an appeal application will be set out in legislation. I would refer, as an example, to paragraph 2(6) of Schedule 1, where a person questioning the decision to impose a monetary civil sanction would have to ensure that a ground of appeal has been satisfied. The grounds of appeal would include circumstances where the decision was based on an error of fact, was wrong in law or was unreasonable.

My noble friend Lord De Mauley's amendment would provide that appeals may be heard only by qualified experts in the item that is subject to the appeal. Such matters may be set out in regulation, but the Delegated Powers and Regulatory Reform Committee has recommended that an appeal body should be named on the face of the Bill. As I have already mentioned, we are carefully considering the Committee's report and will respond before Report. I should say—I think this is an important point for my noble friend—that the appeal body will be able to call on evidence from experts.

The amendment may also limit the options around granting the appeal role to an existing body. Setting up a new independent appeal body purely to hear appeals under Clause 5 would be disproportionate and costly, in our view, and would push up the overall costs of the ivory regime.

I hope that I have reassured the noble Baroness about the legal position on the matter of an appeal in this instance and that she will feel able to withdraw her amendment.

**Baroness Jones of Whitchurch:** My Lords, I am very grateful to the Minister for that response. He has gone some way to reassuring me that appeals will have to be legally watertight and based on fact—that is very helpful. I look forward to the Minister coming back with a further report from the Delegated Powers and Regulatory Reform Committee. On that basis, I beg leave to withdraw the amendment.

*Amendment 15 withdrawn.*

*Amendment 16 not moved.*

*Clause 5 agreed.*

### *Clause 6: Pre-1918 portrait miniatures*

*Amendment 17*

*Moved by* ***Lord Cormack***

**17:** Clause 6, page 5, line 4, leave out "with a surface area of no more than 320cm "

Member's explanatory statement

Not all miniatures would be covered by this limit. This amendment would allow more flexibility in judging miniatures.

**Lord Cormack (Con):** My Lords, this amendment and Amendment 18, which are grouped together with a number of other amendments, are succinctly explained thanks to the new custom in your Lordships' House of being able to add a sentence of explanation. As the one for Amendment 17 says:

"Not all miniatures would be covered by this limit. This amendment would allow more flexibility in judging miniatures".

There is clearly going to be a considerable amount of bureaucracy following the enactment of the Bill. Anything that can be done to reduce that must be good for everyone, and good for the public purse. If we are going to have experts—and it will only be experts—looking at miniatures, and they have to worry because a miniature is 325 square centimetres rather than 320, that really is preposterous. Therefore, I suggest that this is a constructive, simple and sensible amendment.

[Lord Cormack]

Similarly with Amendment 18, we have this arbitrary figure of 10% in the Bill. Brief reference has already been made in your Lordships' House today to a recent case that came about as a result of a presidential edict in another country. I refer to a wonderful piece of 18th century Chippendale furniture from which, because it fell foul of the United States' regulations, the owner felt obliged, in submitting it for auction to one of the major London auction houses—I think it was Christie's—to remove the ivory escutcheons and substitute celluloid. It was the desecration of one of the finest pieces of English furniture of the 18th century. What an act of vandalism—an act committed because of the perception of regulations in another country. The consequence was that the piece failed to sell, although when it was sold some years before it was recorded as the most expensive piece of English 18th century furniture ever sold.

Reference has been made in our debates to some of the wonderful inlaid boxes from India. Many of them came from Goa, the Portuguese enclave. They are inlaid with ivory, and some are incredibly intricate and beautiful. But how do you really determine whether the volume of ivory is 10% or not? My noble friend Lord De Mauley has tabled a more sensible amendment than mine, given that he wants to make the figure 50%. I feel slightly ashamed of my own modesty in putting down only 20%, and applaud his adventurism in putting down 50%. However, we are dealing with a Government who seem hardly sympathetic to aesthetic considerations, who seem to be in the process of branding themselves as desecrators and champions of vandalism.

The figure of 20% is indeed very modest. Are we really going to endanger some fine artefacts from another age, albeit not necessarily of museum quality, because they have ivory from an elephant long, long dead? Here is a case, if ever there was one, of the best being the enemy of the good. Just imagine if we said that in our churches only monuments by Rysbrack and Nollekens would be allowed to remain from the 18th century and the others would have to go. That would be absurd. Why, therefore, do we have to say that something which may not be superlative but is still incredibly good, still part of our history, should be endangered by this arbitrary limit?

I hope that some sympathetic consideration will be given to these two points as well as to the others covered in the amendments which have been grouped with my two amendments. I like to think that we are a civilised country, and I feel that this is a civilised House. I do not want us to put on to the statute book something that, in fact, runs counter to civilisation. I beg to move.

**Lord De Mauley:** My Lords, I should like to speak to Amendments 18, 19, 21, 22 and 23 in this group. I will not deal at length with Amendment 17 moved by my noble friend except to say that I have considerable sympathy with it.

Starting with Amendments 18 and 19, the 10% threshold chosen for the Clause 7 exemption is another major aspect of the Bill that has caused enormous concern among those who handle antiques. In Committee in the other place, the Minister, David Rutley, rightly explained that objects,

> "such as inlaid furniture or a dish or a teapot with a small ivory handle are not valued on the basis of their ivory content. Further, in such pieces, the ivory is incidental and integral to the item. It cannot be easily removed, so it is not vulnerable to recarving".—[*Official Report*, Commons, Ivory Bill Committee, 14/6/18; col. 92.]

The Minister also made it clear at column 98 that the Government have no intention of unduly affecting artistic and cultural heritage.

There are plenty of objects with, say, 20% or 30% ivory content, and thus where ivory is still not the predominant material, such as inlaid or veneered Indian boxes and antique silver coffee pots, to which precisely the same characteristics apply; they are not valued on the basis of their ivory content. The ivory is incidental and integral to the item and thus not vulnerable to recarving. The Minister in the other place also said:

> "It was refreshing and encouraging to hear in evidence that the 20% threshold will work for the vast majority of musical instruments, and that the enforcement agencies feel comfortable that that is a way to take the process forward".—[*Official Report*, Commons, Ivory Bill Committee, 14/6/18; col. 109.]

It is therefore a mystery why the Government have opted for a 10% threshold for one group of items and 20% for another. It is inconsistent and it is illogical.

What are the particular features of an object such as an inlaid Georgian tea caddy with 12% ivory inlay that renders it any more likely to be reused or valued for its ivory content than a musical instrument such as a baroque lute containing the same proportion of decorative ivory inlay? In the Second Reading debate in the other place and in the Public Bill Committee sittings, no examples were given by the Minister there of known cases where antique objects inlaid with ivory had been valued based on their ivory content or had been bought for the purpose of having their ivory removed. Neither do I believe were Art Deco bronze and ivory sculptures cited, nor were antique silver tea and coffee services demonstrated to have been sold for these purposes. In fact no evidence has been brought forward by anyone in any of the debates to suggest that where ivory represents less than half of the volume of a historical object, it contributes to poaching.

To discover whether items made from a mixture of ivory and other materials are being bought by people from the Far East, it would be helpful to have some data. Unfortunately, as I have already mentioned, the readily accessible UK export data for ivory held by the CITES secretariat distinguishes only piano keys from other carved items, so we do not know how many inlaid wooden boxes or bronze and ivory sculptures are being exported to China, but I would hazard a guess that the number is very low. It would be surprising if the Animal and Plant Health Agency had evidence of antique items where ivory is not the principal material being purchased in vast numbers and at prices well above the value of their ivory content, with a view to removing the ivory in China and selling it at the low price commanded by second-hand ivory.

The witness from the International Fund for Animal Welfare to the Bill Committee in the other place spoke on 12 June 2018 at column 14 and quoted $450 per kg as the price of raw ivory. A Georgian sterling silver tea pot worth £2,000 might contain an ivory handle weighing 80 grams. Using the IFAW figure, that 80 grams would

currently be worth £36. As an old and pre-shaped piece, it would be worth even less, perhaps only £10. Why would someone pay £2,000 for the purpose of acquiring ivory worth just £10? If they removed the ivory they would also damage the integrity, and thus reduce the value, of the item for which they had paid £2,000.

How should we respond to the grandmother who owns a genuine early Victorian silver coffee pot with an original ivory handle or insulator, who is prevented from selling it and using the £1,800 proceeds to contribute to her grandchild's university education? No one has demonstrated how a genuine antique of this nature has any connection to the poaching of elephants, so why should its owner be penalised in this way? The Minister in the other place referred in Committee at column 92 to the federal system in the US having a 50% by volume limit combined with a 200 gram weight threshold. It is understood that this restriction applies only in respect of objects that are not antiques.

*6.15 pm*

For interstate sales of genuine antiques there is no de minimis requirement at all. A visual inspection of an object will usually be all that is necessary to decide whether the ivory content falls above or below a 50% threshold. A 50% cut-off would therefore in fact lead to better levels of compliance by the public. In contrast, a 10% threshold falls right across the middle of the range of ivory contents found in boxes decorated with small pieces of ivory inlay. That 10% means that both the owners of these items and enforcement officers will invariably be required to perform complex calculations to determine the proportion of ivory they contain. There will be uncertainty as to the accuracy of the assessments. All of this is entirely unnecessary because regardless of whether the ivory content falls above or below 10%, small slithers of inlay have no possible re use. It should be noted that the cases where wildlife groups have questioned the age of ivory have always focused on solid ivory carvings and not on objects such as bronze and ivory sculptures or measuring instruments where ivory does not represent the majority material.

While on this subject, I must comment on the misleading information contained in the report recently prepared by the pressure group Avaaz and referred to at Second Reading by the noble Baroness, Lady Jones of Whitchurch. The report involved the radiocarbon dating of 109 solid ivory trinkets acquired from 10 European countries. It found that three-quarters of the items tested were dated after 1947. Its sampling and data presentation left a great many questions unanswered. In fact, it is doubtful whether its approach to data interpretation would have passed the scrutiny of a GCSE statistics candidate. For example, the ivory items chosen were clearly not selected at random because had that been the case, antique cutlery, inlaid boxes or even piano keys would have featured in the results.

The group made one purchase in the Republic of Ireland and managed to conclude on a bar chart that 100% of the ivory in Ireland is antique. Furthermore, not one of the trinkets tested represented the types of historical objects anyone would wish to see exempted from the Bill. Although described in the report as "fake antiques", these objects were not pretending to be anything other than the bangles, beads and unsophisticated tourist mementoes that they clearly were. They certainly would not have been described as being of artistic, cultural or historical merit by an experienced professional antiques dealer. For the UK, just five suspicious-looking carvings, including two letter openers, were tested. The most recent of all these was found to date from between 1954 and 1956, a time when there were no restrictions on the cross-border trade in ivory, and British tourists to Africa and the Far East regularly returned from their holidays with ivory souvenirs.

I mention all of this in the context of the de minimis concept to underline that it would be far more effective if the Bill were to focus on solid ivory carvings and objects where ivory is the predominant material. No one has demonstrated problems with objects where ivory is incorporated with other old materials. The dating of such items is easier because the ivory can be judged in the context of the age, craftsmanship, wear and style exhibited by the other materials and the object as a whole. I should also ask: just how is this problematic 10% threshold realistically going to be policed? The register envisaged by Clause 10 will contain many thousands of images of antiques whose ivory content will sway around the 10% mark. A wildlife crime officer sitting at a desk will be unable to make a compliance judgement based solely on a couple of images posted online. Every time officers view one of the many borderline cases, will they be compelled to dispatch an accredited civilian officer to check it out? Would that really be a sensible use of resources for wildlife crime personnel? Choosing a threshold that results in fewer borderline cases would surely represent a much better approach as it would enable officers to direct their energies towards the solid ivory trinkets that represent the area of higher risk.

In summary, so far as the UK is concerned objects comprising less than 50% ivory are no more likely to pose a threat to elephants in the wild than objects containing less than 10% ivory, and the higher threshold would enable a more focused deployment of resources. In France, 20% is the level below which items containing ivory do not need a sales permit. Those with more than 20% ivory need a permit confirming that the items date from before 1947. New York state has a more restrictive arrangement, but also uses a cut-off of 20%. All these other countries seem comfortable with assessing a 20% cut-off and the Minister is happy to use 20% for musical instruments. If my noble friend finds it hard to go over 50%, it would at least bring consistency to what is already a complex piece of legislation if both the musical instrument and Clause 7 thresholds were brought in line at 20%.

Amendment 21 relates to Clauses 7 and 8. To be valid, the exemptions for items of low ivory content and musical instruments require the owner to register them under the provisions of Clause 10. I am concerned that, as it stands, this registration requirement will cause two significant problems. The first I alluded to at Second Reading. My concern was for the many items of domestic antique furniture and other objects that contain very small amounts of ivory, for example the escutcheons around locks on a Victorian mahogany chest of drawers or a small sliver of ivory running

[Lord De Mauley]
around the edges of a jewellery box. Many of the owners of such items could well sell them without even noticing these features and yet, if they did so without registering them, they would be breaking the law.

The Minister's response to this, in *Hansard* on 17 July 2018, at col. 1197, was to explain, if I understood him correctly, that the package of penalties would be tailored to the level of misdemeanour. The implication of this was that the penalties would be low for breaches that represented genuine mistake and complete ignorance. With respect to my noble friend, I do not believe it is a wise use of officers' time and Defra's or the police's resources to have to deal with such cases. Whether the fine is £50 or £5,000, forms still have to be completed and statements taken. The hapless people who have made the error will feel aggrieved and resentful, end up wasting a great deal of time, and to what end? It is all because an antique box with a tiny bit of ivory, similar to countless other boxes, was not registered on a government database.

The second problem with registration is that it has the potential to result in the destruction of low-value furnishing items, such as antique furniture acquired by businesses that carry out house clearances. If the charge for registration were set at the current fee level for CITES re-export permits, which is between £37 and £59, it would prove a significant deterrent to the sale of items such as a Georgian toilet mirror with small amounts of ivory inlay and ivory knobs. Ordinarily such an item could fetch just £100 to £150 and bring in a profit of perhaps £50. The time taken by a dealer or auctioneer to register it and the charge for doing so would wipe out their profit and be wholly disproportionate to the problem the Bill aims to address, particularly when these types of items are so remote from anything connected to the poaching of elephants.

If registration proves financially unviable for the seller or their agent, to comply with the law such antiques would need to have the ivory prised from them and be replaced with another material. To be done properly would involve the work of a skilled craftsman, the cost of which would not be recouped from the proceeds of sale of the object—besides which the object would lose its integrity. A toilet mirror with ivory escutcheons on its integral drawers would probably sell for the same price as one featuring decorative wooden inlays and ebony knobs. The one featuring ivory could end up being thrown away by the owner or the dealer because the cost of selling it would outweigh the profit. Is discarding such items truly necessary or appropriate?

Some years ago, there was a campaign to educate the public on the green or environmentally friendly credentials of owning and reusing antique furniture. It went under the title "Antiques are Green". Work was commissioned to look into the environmental impact of new and antique furniture. The results showed that a modern chest of drawers has a carbon impact 16 times higher than its 1830s antique equivalent. Surely we, and Defra in particular, should be encouraging green behaviour in respect of these items and certainly not forcing them into landfill.

There is clearly no link between offering for sale in the United Kingdom an 1830s chest of drawers containing tiny ivory elements and demand in China for ivory as a commodity, nor is there a link with the poaching of elephants in Africa. As my noble friend Lady Rawlings said at Second Reading, Chinese buyers are unfortunately not drawn to English antique furniture, so they are not buying such items for their own market. Besides, why would anyone pay several hundred pounds to ship to Hong Kong a table for which they may only have paid £200 to an antique dealer in the UK? Dispensing with the need to register those Clause 7 and 8 objects and musical instruments that incorporate very small amounts of ivory would go some way towards addressing the two problems I have described.

Turning to Amendment 22, when assessing the proportion or ivory contained in an object, Clause 7(1)(b) requires the ivory to be "integral" to the piece. "Integral" is then defined as being when the ivory cannot,

"be removed from the item without difficulty or without damaging the item".

The impact would be that those ivory components that can be readily removed, or were intentionally designed to be removed and reattached, would be treated as separate from the rest of an item, even if the ivory element overall amounted to just 5% of the whole. The removable components would presumably be considered as substantially or even 100% ivory in their own right and would not benefit from the Clause 7 exemption. If the item is one of historical value, but not necessarily of outstandingly high historical value, it would not be saleable without the detachable ivory elements being removed and its integrity compromised.

This seems to me to be mildly absurd. This definition of "integral" is far removed from how the term is normally understood. Take the case of the small ivory knob on an antique mercury barometer, used both to adjust the Vernier on the mercury scale and to adjust the bag of mercury in the reservoir at the foot of the barometer. This is designed as an essential and, in my use of the word, integral part of the original object. The same would apply to the thin ivory lids on the small wooden containers that fit snugly into the compartments of a 19th-century Indian sandalwood sewing box. Those components are no less integral to those pieces than were the inlaid letters in the Chippendale commode I referred to earlier. What is important is that they should be original to the piece.

I fail to see the purpose of the restriction as drafted in the Bill. Is there some fear that components that are detachable are being replaced with modern alternatives? If so, what is the evidence of this? If the knobs or lids I have referred to are no longer attached to the original object for which they were made and are being sold separately, I accept that they should be treated as ivory objects in their own right, but where it is clear they form part of a single object of low ivory content, all the ivory and the entire object should be included in the calculations for de minimis purposes.

On Amendment 23, I have already highlighted the problems that arise from the choice of a low de minimis threshold. Irrespective of the precise drawing of that line, there will always be difficulties in accurately

computing the proportion of ivory found in complex and unusually shaped antique objects. Some may contain voids, the volume of which would be impossible to ascertain without taking the object apart and probably damaging it. In the case of a silver fork with an ivory handle, the metal from the prongs would fit into a drilled hole the size of which can vary considerably between such items and be impossible to ascertain without forcing the two materials apart.

In the art world, both the physical condition of an object and the extent to which its components are original are crucial factors. In this year when we celebrate the 300th anniversary of the birth of the great cabinet-maker Thomas Chippendale, there has been no more painful example of the importance of these factors than the recent revelation that the original inlaid ivory lettering was prised out of a Chippendale cabinet and replaced by ivorine prior to offering it for sale. My noble friend referred to that earlier. In the event, the piece valued at several million pounds failed to sell. That the climate of uncertainty and panic caused by overzealous legislatures should make the owner of a masterpiece of that nature consider such an action is frightening and should serve as a flavour of the problems that lie ahead if we rush into this. Even if no physical damage was caused by the removal process, the damage to the integrity of the piece represented nothing short of vandalism, as my noble friend said.

I hope that the Minister would thus accept that, in order to ascertain the proportion of ivory in an object, it should not be necessary for anyone even to consider carrying out any act that could run the risk of irreversibly damaging it. It should be accepted that this should apply to both the owner and any officer checking their calculations. This could mean that the actual proportion of ivory and the readily measurable proportion sometimes differ, but I see no reason why this should present a problem.

**The Duke of Wellington (Con):** My Lords, when I spoke earlier on Amendment 5, I meant to declare an interest in that my family's collection of works of art contains many objects containing ivory. That is true of all historic collections. In a sense, it is a non-interest because neither my family nor I have any intention to sell these objects, so I have no direct financial interest in the outcome of the Bill.

However, I would like to comment in some detail on Amendment 17, moved by the noble Lord, Lord Cormack. The Government have accepted that portrait miniatures are a definable category and should be treated separately, as they are in the Bill, but I cannot understand why they have been so precise on the definition of the size. This morning, I went to look at a miniature in our collection that is considerably more than 320 square centimetres in size. In any event, as we know, all portrait miniatures are really valued by the quality of the painting or identity of the sitter, rather than the very limited amount of ivory on which it is painted.

*6.30 pm*

I realise that the Minister at the Dispatch Box has little flexibility on any of these matters, but no principle is involved in the amendment. The principle of a portrait miniature has been accepted, so it seems strange that what is in effect a technical definition of size should be on the face of the Bill. For that reason, I hope that the Minister will feel able at least to say that he, with his officials, will reconsider the definition of size. If it would be helpful, I would be happy to supply details of the object I was looking at this morning.

**Lord Inglewood (Non-Afl):** My Lords, in speaking to the amendment I will speak to Amendments 20, 29 and 32, which are in my name. My suggestion is that the requirement to register Section 7 exemptions—that is, objects with the de minimis amount of ivory in them, which are not made of ivory per se but are ornamented with it—should be removed. I should declare that I am also the owner of a few ivory objects but, as a mere Baron, the extent and quantity of my ivory objects is probably less than that of most Dukes.

I hope that your Lordships will forgive me, but I want to go back to the Bill and look at the Explanatory Notes in particular, because sometimes we lose sight of what we are trying to do and why. Paragraph 5 states:

> "The aim of the Ivory Bill is to help conserve elephant populations, specifically by reducing poaching, through significantly limiting the legal market for ivory in the UK. This is intended to reduce demand for ivory both within the UK, and overseas through the application of the sales ban to re-exports of ivory from the UK. This aim is in line with the 2017 Conservative Manifesto commitment to 'protect[ing] rare species'".

I am sure that the noble Baroness, Lady Jones, can subscribe to that, as well as the noble Baronesses on the Liberal Front Bench and equally, I would hope, the Minister. I am confident that he can. The end of the next paragraph states:

> "Finally, the ivory ban will demonstrate the UK does not consider commercial activities in any ivory that could fuel poaching to be acceptable and it sends a message that similar actions should be taken globally".

I do not think that anybody would take exception to that either. It seems that there is a direct correlation between the sale of ivory and poaching.

Finally, the end of paragraph 16, which talks about exemptions, states:

> "Strictly-defined exemptions will therefore apply where a ban on the commercial use of items is unwarranted. This is considered to be the case when it is understood that both the continuation of sales of certain categories of items would not contribute either directly or indirectly to ivory poaching, and the intrinsic value of that item is not due to its ivory content".

Here we have an acceptance from the Government that, in certain circumstances, some items that contain ivory do not contribute in any way to the poaching of elephants. I am as enthusiastic as anyone about preserving elephants. Equally, I am interested in old things. It seems clear that this policy begins with the proposition that we should protect elephants, then says as an instrument of policy that the way in which we wish to do that is by introducing a ban on ivory that encourages the poaching of elephants. At the same time, it also spells out expressly that certain categories of items containing ivory do not do that. I am saying that the de minimis exception does not affect the market for ivory which threatens elephants.

That being the case, what is the purpose of the registration? On the Government's own admission, this category of items does not contribute directly or indirectly to ivory poaching. Against that background, we have an embryonic system whose scope is very

[Lord Inglewood]
unclear. We have heard talk about 2 million to 3 million items, possibly more, that might fall within this category. Of course, not all of them will be sold—certainly not all at once—but we are not talking about a few rich and rare items, such as Byzantine ivories. We are talking about a very substantial quantity of, for want of a better way of putting it, household goods across the country. Given that the value of many of these items is small, as pointed out by the noble Lord, Lord De Mauley, the cost of registration will inevitably be big, relatively speaking.

I know from the Minister that the system and how it would work has not yet been finalised, but it will be expensive, time-consuming, bureaucratic and potentially iconoclastic. We have heard how items will be damaged or have the ivory removed if they are valuable. I cry no crocodile tears for the very rich man, whoever he was, who tried to sell the Chippendale cabinet in New York and found himself frustrated because it did not make as much as he wanted. If you buy works of art as an investment, they may go up or down in value, like all investments. The vandalism of that particular piece of furniture is a tragedy because, once you remove the original aspects, you degrade the inherent quality and characteristics. It is no good saying that a piece of furniture adapted in this way is the same as it was before. That is like saying that an original work of art is just the same as a photograph of it. It is not. This proposition intrudes into people's ordinary lives. The other problem, as has been touched on, is that a lot of items in this category—such as chests of drawers with escutcheons or boxes with ivory inlay—are effectively, if not actually, the same. So, the argument for registration so that you can trace items will be more or less impossible in practice, even if it were worth doing.

Finally, you could say that at least we will know whether ivory is capable of being sold lawfully, but that is a pretty thin argument. If you can measure it once, you can measure it twice. Given the context and the fact that these items, by the Government's own admission, do not contribute to the poaching of elephants, I also wonder whether it may be in breach of Article 1 of Protocol 1 to the European Convention on Human Rights:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions".

I would have thought that being told that you had to do this to sell some of your household possessions is pretty close to a breach, if not already so. Echoing comments made on both of the main Front Benches, I am worried that a bit of collateral damage here is thought to be all right somehow. As I have said, I am as enthusiastic as anybody about preserving the elephants. I think, however, that it also matters that these items should not be indiscriminately and pointlessly put at risk and possibly destroyed or damaged. It is like a warlord saying, "We have got to take out that particular strongpoint in order to win the battle. If we happen to zap a lot of innocent civilians at the same time, it does not really matter. The end justifies the means". I do not think that is right, and I think we need to be a bit more subtle in our thinking and sophisticated in our approach to this. This kind of "New lamps for old" attitude does not seem to fit the case of the world we are in. I would like to think that we should remove the registration requirement, not least because it seems to be a classic case of "de minimis non curat lex".

**Lord Crathorne (Con):** My Lords, I will briefly comment on Amendment 17, from the noble Lord, Lord Cormack, and Amendment 18. We have heard from the noble Duke, the Duke of Wellington, about items in his collection which exceed 320 square centimetres. That seems enormously restrictive. It would surely be better to remove that restriction so that anyone judging a miniature would have the ability to decide whether it was something worth saving and looking after. It is very restrictive to set the threshold at 320 square centimetres.

On Amendment 18, I think it is going to be so difficult to accurately assess the 10% threshold. I am at a slight loss to know why, if musical instruments may have up to 20% ivory content, it cannot be 20% across the board. As we have heard, in such countries as France, it is already 20%. I urge the Minister to perhaps give that a little more thought.

**Lord Berkeley of Knighton (CB):** My Lords, I wonder if I might add another sentence or two to what we have just heard and to what I spoke about at Second Reading. I reiterate that there are several hundred thousand bows for string instruments in the United Kingdom alone. They have ivory or mammoth faces weighing less than one or two grams. Some of these will be 200 years old—

**Baroness Vere of Norbiton:** We will be discussing musical instruments in the next group.

**Earl Attlee (Con):** My Lords, I have listened with interest to the debate. On the subject of inlays and escutcheons, what consideration has the Minister given to having a de minimis test of thickness? If the inlay or the escutcheon is less than a certain thickness, surely it has no use for recarving at a later stage. Perhaps the Minister could write to me on that point in due course.

**Baroness Bakewell of Hardington Mandeville (LD):** My Lords, I have listened to the debate this afternoon with great interest. I have received briefings from the World Wildlife Fund and from the Environmental Investigating Agency, the Born Free Foundation, the David Shepherd Wildlife Foundation, the International Fund for Animal Welfare, the Natural Resources Defense Council, Stop Ivory, Tusk Trust, the Wildlife Conservation Society and the Zoological Society of London. None of them appears to agree with the previous speakers in this debate.

On Amendment 17, the size of the miniature should be defined in the Bill. Otherwise, arguments will arise as to exactly how big a miniature can be. It is important to have this defined in the Bill and not left to some arbitrary decision.

With reference to Amendments 18 and 19, many of the artefacts listed by the noble Lord, Lord De Mauley, are simply not in the same class as musical instruments, to which we will return in a later group. Musical instruments are used on a regular basis and are the tools of a musician's trade and are not an item of antique beauty. They may be that as well, but their main purpose is as a tool of a musician's trade.

I am disappointed that a university student should accept their fees being paid for by their grandparents selling an antique item which could have been decorated by the body of a dead elephant. I doubt whether many of their fellow students would find this acceptable. The noble Lord, Lord Cormack, believes that we live in a civilised society. It is still a civilised society that allows 50 elephants a day to be killed for their ivory. Whatever the percentage of ivory is set at, it will need to be examined and verified. I could not support, and nobody on these Benches could support, a 20% limit and certainly not a 50% limit.

**Lord Grantchester (Lab):** I will speak on the amendments in this group. They are amendments to Clauses 6 and 10 regarding other exemptions to the ban on ivory sales and can be categorised as reducing the criteria and extending the number of ivory items that would escape the ban. We do not agree with these amendments.

*6.45 pm*

I remind noble Lords, from the Second Reading debate on the Bill, that both the Conservative Party manifesto in 2015 and our Labour manifesto in 2017 included a ban on ivory sales. In last year's consultation, with more than 71,000 respondents, 88% supported a ban, 50% were against an exemption for musical instruments and 47% were against the de minimis or low-ivory-content dispensation. These are considerable numbers.

Against this background, the Government have listened to those who have argued coherently against the almost blanket ban on ivory sales. The Minister spoke well in response to the amendment earlier in group four proposing to extend exemptions to pre-1918 items of outstanding artistic, cultural and historical value. We agree. Clear definitions, implemented by the relevant expertise, are needed. The ivory ban is intended to curtail trade in both licit and illicit items. We think the Government have got the balance right in defining further exemptions to restrict the trade.

As regards Amendment 17, it might be helpful to remind the noble Lord, Lord Cormack, that the Government added the category of portrait miniatures to the list of exemptions in Committee in the other place. Emma Rutherford, the representative of Philip Mould and Company, who is an expert on portrait miniatures, gave evidence on how the exemption for portrait miniatures could be refined to add a size limit. She said:

"The suggestion of 6 inches by 8 inches … is very sensible. … Six inches by 8 inches will cover 90% or 95% of portrait miniatures".—[*Official Report*, Commons, Ivory Bill Committee, 12/6/18; col. 45.]

Perhaps I may ask the Minister when he replies to translate that into centimetres for me. The Government have listened to that expert evidence and to other views expressed in drafting Clause 6.

It is also worth reiterating that Clause 7, the de minimis exemption, recognises that items with very low ivory content, such as inlaid furniture or a dish or a teapot with a small ivory handle, are not valued on the basis of their ivory content. Furthermore, in such pieces, the ivory is incidental and integral to the item. It cannot be easily removed, so it is not vulnerable to recarving. The 10% de minimis threshold is supported by the key non-governmental organisations, including the World Wildlife Fund, the Tusk Trust and International Fund for Animal Welfare, which recognise it as a tough and commensurate measure.

Needless to say, registration is necessary for enforcement. The proposed system places a small administrative responsibility and a small financial cost on the seller, who in turn will gain from an exemption to the ban on dealing in ivory. Crucially, by registering an item through this system, the applicant will be confirming that, to the best of their knowledge, all information provided is correct and that the item therefore meets the exemption.

The APHA, the regulator, and the police will have access to the registration system to enable them to carry out any enforcement and monitoring action necessary. The APHA will also carry out spot checks on items registered to check for accuracy and compliance. This is also a very key and necessary part of the regulations.

Amendments 20, 29 and 32 would remove the requirement to register pre-1947 items with de minimis content. As I have already expressed, I contend that this would unnecessarily extend the exemption and potentially greatly increase the volume of ivory on sale. If the item is valued, it should be registered.

**Lord Gardiner of Kimble:** My Lords, these amendments relate to exemptions. As I said previously, this part of the Bill has involved close consultation and dialogue with all interested parties.

A considerable number of amendments are in this group. That in the name of my noble friend Lord Cormack would remove the size qualification, set at 320 square centimetres, from the portrait miniatures exemption. As the noble Lord, Lord Grantchester, said, this exemption came out of the consultation and formed a further exemption that perhaps had not been identified before.

During the House of Commons evidence session, an expert on portrait miniatures gave evidence on how the exemption for portrait miniatures could be refined by the addition of a size limit. It is important to ensure in legislation that we have as much precision and certainty as possible. The evidence provided to the committee suggested that a size limit of six inches by eight inches for portrait miniatures would be very sensible, as it would cover the vast majority—I say to my noble friend Lord Crathorne that the expert thought this to be 90 to 95%—of pre-1918 portrait miniatures.

The Government were persuaded by this new evidence to include a size limit to this exemption and for it to apply to the visible ivory surface. We have again taken the suggestion of the expert to whom the noble Lord, Lord Grantchester, referred of six by eight inches, converted this to metric—when I took advice, I was told that this is now the way in which official bodies conduct themselves, but I do not want to get into imperial and metric—and expressed it as a total surface area in recognition of the high number of portrait miniatures which are circular or oval in shape. Further—I do not know whether this will be helpful to my noble

[Lord Gardiner of Kimble]
friend the Duke of Wellington—the Bill makes it clear that the frame will not be included in the calculation of the surface area of a portrait miniature. In consultation with stakeholders, we will issue detailed guidance on the exemption criteria, which will include simple steps on how to measure surface area. This amendment was widely supported in the other place.

On the amendments about "de minimis", I have previously mentioned the extensive work that we have carried out with stakeholders to shape this Bill and we have come to a proportionate response—mindful of what the noble Lord, Lord Grantchester, said about my own party's 2010 and 2015 manifesto commitments to press for a total ban, referred to in the Explanatory Notes. As such, the de minimis exemption is part of a wider package of narrow and carefully defined exemptions which accounts for a range of views. To broaden the scope of the de minimis exemption would therefore not only weaken the ban but undermine this carefully balanced package. It is important to note that, in determining this package, exemptions for portrait miniatures and the rarest and most important items of their type were included. The exemptions allow for items that would have otherwise been excluded if only the de minimis exemption applied. We can tout percentages, but some states in the United States, including California, have put in place a 5% threshold for their de minimis exemption, setting an even higher bar.

The Government agree with the points made by noble Baroness, Lady Bakewell, and the noble Lord, Lord Grantchester. We believe that a 10% de minimis threshold demonstrates a robust but proportionate approach to this exemption. For example, the exemption will allow the dealing in items such as inlaid furniture to continue, but it will prevent dealing in items containing larger amounts of ivory.

My noble friends have also suggested that we specify volume in cubic centimetres, below which any item may be considered exempt. This could, I am afraid, act as a loophole for those wishing to export solid pieces of ivory to major-demand markets in the Far East. These items are at risk of being re-carved to suit local tastes, thereby further fuelling the demand for ivory and its social acceptability—we have to go back to the public interest in all this; the public interest is to do all we can do across the world to prevent the extinction of the elephant in the wild.

I recognise noble Lords' interest in how the de minimis exemption will be applied and can assure them that information on how the volume should be assessed will be outlined clearly in guidance. For example, when registering an item, the owner will make their own assessment of the percentage volume of ivory, meaning that no damage is likely to take place. It will also be made clear that any voids which are integral to the item— for example, in a chest of drawers—will be included in the overall volume of the item.

Enforcement bodies have made clear from their experience with existing legislation that a percentage volume is the most practical measurement in assessment and enforcement, as it allows assessments to be carried out by eye. To assess the total weight of ivory in an item would be far more difficult and could even mean that ivory needed to be removed to be weighed, thereby possibly damaging the item. I hope that my noble friends will understand that we do not seek to damage such items.

My noble friends, in particular my noble friend Lord De Mauley, also raised a number of points about the definition of "integral". I want to explain how we have arrived at this definition and why we are unable to accept his amendment. Evidence provided to us during the public consultation demonstrated a significant risk associated with any de minimis exemption if the right protections are not put in place. Criminals could, for instance, attach a large, solid piece of ivory to another product for it to meet the volume threshold of the de minimis exemption. For example, solid pieces of ivory may be added as a handle to a wooden walking stick, or larger pieces may be attached and presented on a large plinth in order for the ivory to be only 10% of the total volume. Such solid pieces of ivory could subsequently be removed, re-carved and sold in major-demand markets of the Far East, thereby further fuelling demand for ivory.

**Lord De Mauley:** I am not sure that I fully understand my noble friend. Would not these then be modern creations?

**Lord Gardiner of Kimble:** Not necessarily, my Lords.

For this reason, the criteria of the de minimis exemption include a point about the ivory needing to be integral to the item. To avoid a potential loophole being created, it is necessary that the definition of "integral" is sufficiently strict. I recognise my noble friend Lord De Mauley's points in regard to certain items that this may affect, but we believe that the risk of the exemption being exploited by criminals to sell what should be illegal ivory items is too great.

I am not sure whether I should now refer to the noble Lord, Lord Inglewood, as my noble friend or as the noble Lord, but, whatever he is, he is my noble friend. Taken together, his amendments would remove the requirement to register pre-1947 items with less than 10% ivory by volume. We want a robust yet proportionate compliance process. I want to explain how we have ensured this in the Bill and why the Government do not feel it right to accept the amendment. I have already made clear the intention of this ivory ban and why we have decided to include narrow and targeted exemptions. These will facilitate a limited ongoing trade and allow owners of exempt ivory objects, and those involved in their sale, to continue ongoing commercial activities in ivory. It is, however, crucial that such activities are limited to objects that are unlikely to contribute to the poaching of elephants and that these exemptions are not exploited by those wishing to deal in illegal elephant ivory products.

*7 pm*

As a result, a compliance process is essential for all exemptions. The Government consider that an online self-registration system represents the most proportionate means of ensuring compliance with this Bill. It places a small administrative responsibility and financial cost on the seller—the person who will benefit financially

from the exemption. This is indeed a small cost when considering the critical objectives this compliance process will help us to achieve. Requiring objects to be registered as exempt prior to their sale or hire will encourage people to engage with the new measures and to think carefully about whether their item meets the particular category of exemption.

Registration will also allow the ongoing commercial activity to be monitored over time, which I believe is important and is not currently possible. It will also significantly aid identification of breaches of the ban compared to current rules, as enforcement officers will be able to use material submitted to the online system to help determine whether an item meets the exemption category and whether it has been registered using false information. Failure to register an item and registering false information under the registration system would be an offence in each case. Registration will also facilitate the ongoing dealing in exempt items and will provide support to legitimate buyers and sellers. It will enable sellers to demonstrate that their items meet the relevant exemption and will reassure potential purchasers that they are acting in accordance with the ban.

My noble friend suggested that de minimis items should not be subject to registration. As I have explained, I believe that there are benefits for those enforcing the ban and for those wishing to comply with it. It is critical that all exempt items are subject to registration. To allow one exemption not to be subject to registration would undermine the ban and, most critically, could allow that exemption to be exploited by those wishing to sell illegal ivory objects. This is the problem with the current system and is exactly why we need to put a more robust restriction in place.

I recognise that my noble friends have raised the issue that a high volume of items will need to be registered and that some of these will fall into similar categories, such as inlaid furniture. It is important to say that we are working with stakeholders to develop the system so we can make sure it meets the needs of all users. The registration system will be designed to account for this. Each registration certificate will provide an identification code and will require other information such as photographs and descriptions to identify the exempt item. Furthermore, by registering each item before a sale is made, we can make transparent the ongoing dealing in exempt items, demonstrate the legality of such commercial activity and better identify illegal dealing.

Although I will ask my noble friend Lord Cormack to withdraw his amendment, I hope I have taken the opportunity to outline why we are strongly of the view that it is in the interests of everyone that all exemptions should be registered. It gives probity to the seller and buyer and makes our position much safer. Indeed, it is in the interests of those who, through the exemptions, are able to continue commercial activity.

I think it is appropriate now that I ask my noble friend Lord Cormack to withdraw his amendment.

**Lord Cormack:** My Lords, I have sat in the other place and this House now for some 48 years. I do not think I have ever been more depressed by a Bill put forward by a Government to whom I give support. I do not think that I have ever heard a more obdurate reply from the Front Bench. I beg my noble friend—I have always regarded him as a friend in every sense—to have a little bit of the pragmatism and flexibility which have been defining characteristics of the Conservative Party and, I believe, of all good democrats through the ages.

I have to confine my remarks to Amendment 17—the one that deals with miniatures. My noble friend the Duke of Wellington indicated to me, so that I knew in time to wind up, that the miniature that he examined this morning, and which he has offered to show to my noble friend, is significantly larger than the limit prescribed. Frankly, it is no good to say that the exemption covers 90% of miniatures. When people buy a miniature, they are buying a work of art because they want to own that particular image because of the subject or the artist, and sometimes both. They are not buying it because it is painted on velum, ivory or anything else. They are buying it for the picture. It just so happens that for a couple of centuries many of the best miniaturists painted on ivory and some of the finest miniatures in our national and local collections and in private collections in houses open to the public are painted on ivory. Some of them—among them some of the very best—will be bigger than the limit prescribed in the Bill.

This way madness lies and I beg my noble friend—whose invitation to withdraw the amendment I shall have to accept—to talk to my noble friend the Duke of Wellington and others between now and Report and to see that the case we are advancing in your Lordships' Chamber today is not nonsensical but has at its heart a love for our national heritage and for these objects and miniatures that form a very important part of it. This is not a question of doing damage to any elephant. All the elephants on whose ivory the miniatures are painted are long dead. With a heavy heart, I beg leave to withdraw my amendment.

*Amendment 17 withdrawn.*

*Clause 6 agreed.*

***Clause 7: Pre-1947 items with low ivory content***

*Amendments 18 to 23 not moved.*

*Clause 7 agreed.*

***Clause 8: Pre-1975 musical instruments***

*Amendment 24*

*Moved by* ***Lord Cormack***

**24:** Clause 8, page 5, line 21, leave out "20%" and insert "30%"

Member's explanatory statement

This amendment is designed to simplify the bureaucratic arrangements which will follow the enactment of this Bill.

**Lord Cormack:** I am sorry it is me again but I feel strongly about these things. In my two amendments and the one tabled by the noble Baroness, Lady Quin, we are looking at music and musical instruments. I was encouraged to take an interest in this because of the admirable, although brief, speech that my noble friend—that is what I am going to call him—Lord Berkeley made at Second Reading. He indicated that,

[Lord Cormack]
here again, the ivory happens to be the material but it is incidental. People do not buy a particular violin, a particular piano or set of Northumbrian pipes—I shall give the noble Baroness, Lady Quin, a trail, because I do so agree with her—because of the ivory content. Nevertheless, the ivory content is integral and is important.

I had representations only last week about bows. I was told things that I did not necessarily know. The small piece of ivory in a bow for a stringed instrument—a violin, cello or whatever—can be less than 1% and is gradually being replaced, through wear, with plastic in the cheaper ones, or permafrost mammoth. There was a quite preposterous suggestion at Second Reading that we should outlaw the use of ivory from mammoth, which have been extinct for millennia—God help me. My correspondent goes on to say that requiring all extant bows to be registered with Defra, and a de minimis rule, will swamp both Defra and the other offices concerned. She points out that there are 30,000 members of the Musicians' Union in this country, the vast majority of whom make their profession from the use of bows. New legislation would make it difficult for them to tour with their bows or to sell them.

If the 30,000 professional musicians are not a sufficient concern, consider the amateurs. Consider how often, in this House, Members in all parts get up and lament what is happening to music in schools. We are dealing here with something where the ivory content is not only incidental, it is insignificant. We cannot have a situation where not only the artistic heritage of our country is put at risk but the musical heritage as well. I have suggested in Amendment 24 that we should put the content up from 20% to 30% and I hope we will be able to debate that in greater detail on Report. I stress that Amendment 26A is the most modest proposal of all—and I do not mean that in the sense of Jonathan Swift. Again, I beg and urge my noble friend to show some sympathy, as a man who, I believe, loves music, and recognise that we are not doing anything here that could conceivably endanger any living elephant. I beg to move.

**Baroness Quin (Lab):** My Lords, Amendment 26 is in my name and is part of this group. I had very much hoped not to speak in Committee, or bring forward an amendment, as I had hoped that the problems that the Bill poses for the sale of second-hand Northumbrian pipes bought entirely legally in the first place would have been addressed at earlier stages, even in the other place. However, I do wish to speak to my amendment today, and it may be helpful if I put on record once again the fact that I am president of the Northumbrian Pipers' Society. This is a role that involves no financial payment whatever, and although I do own two sets of pipes, neither of the sets contains any ivory. At Second Reading I explained some of my concern about the Bill's provisions while strongly giving the Bill my overall support. In fact, I have been in favour of an ivory ban for many years and it is somewhat upsetting to be suspected of not supporting a ban simply for raising a rather narrow issue and a valid concern.

*7.15 pm*

In rereading the debate at Second Reading I detected a misunderstanding about the pipes in the remarks of my noble friend Lady Jones of Whitchurch, to which I want to draw attention, when she described the pipes as "domestic, not commercial instruments". It is true that during the debate I described the pipes as a domestic instrument, but I meant simply to underline the point that they are normally played indoors, in a domestic setting. I did not want to imply that they are not a commercial instrument, because the pipes can be bought and sold and can be hired out. Accordingly, therefore, they are very much affected by this legislation, even though pipes bought entirely legally risk becoming valueless and removed from the market for purchase or hire at a time when we have a market for pipes and new pipes are in very short supply, simply because pipe makers are now, sadly, in short supply. Some have retired and some have, sadly, passed on, so the market is particularly dependent on second-hand pipes being available for sale or hire.

My noble friend Lady Jones of Whitchurch said in the debate that the pipes could of course be gifted, and that is true, but it seems unjust that pipers who bought pipes legally are simply going to be banned from selling or hiring them in the future. Again at Second Reading the noble Earl, Lord Attlee, who is in his place, said that,

"elephants win over business and wealth"—[*Official Report*, 17/7/18; col. 1184]—

a view with which I have a great deal of sympathy. I assure him that the majority of Northumbrian pipers I have met are not rich. If he, the Minister, or indeed my noble friends doubt my word, I can invite them to meet many pipers of my acquaintance. Indeed, I chaired a recent annual general meeting of the pipers' society and the members' concern at the legislation was very evident on that occasion.

Two specific points were made that I want to bring to the attention of the Minister and my noble friends. The percentage requirements do not really work in the case of the Northumbrian pipes. What is perhaps more worrying is that there does not seem to be much evidence that anyone in government has looked seriously at the issue of percentages in relation to the Northumbrian pipes. At Second Reading I asked the Minister specifically about percentages and how they were arrived at but I did not get a reply to that specific point, although I recognise that the Minister did address many of the points that were made. There do not seem to be any guidelines about the pipes. Given their unique nature, the existing exemptions, as far as I can see, do not seem to help. If the Government would at least examine the problem with representatives of the pipers' society, that at least would be an important start. Officials who have been responsible for drafting the legislation could look at these issues in some detail.

The second point that was made chimes with some of the points made earlier today in relation to inlay, or to ivory that is integrated very much into the particular object. That applies to the pipes. It would be very difficult to somehow unpick the ivory content of the Northumbrian pipes. In some ways that is a good thing: they cannot be unpicked to sell on the ivory,

because the pipes would become unplayable. That, therefore, adds to the problematic situation of the supply of new instruments in the piping market, due to the lack of pipe makers making new sets of pipes.

It is because the percentage rule does not help and is not really clarified with regard to the pipes that I have phrased my amendment in the way that I have, and asked for an exemption for any pipes that were made legally before the legislation comes into force. Given the limited number of pipes, I do not think that is a huge ask, but there may be ways of working out a narrow exemption to help the pipes—technically speaking—but this would mean that the officials and Ministers responsible for the Bill would really need to look at this issue much more closely than seems to be the case so far. I welcome the fact that no new pipes will ever be made with ivory, but I repeat that simply banning entirely the sale or hire of second-hand instruments risks causing great damage to our musical tradition.

The Minister and my noble friends today have on many occasions mentioned the consultation that took place. The Northumbrian Pipers' Society responded to the consultation in a measured and thoughtful way, but no response came to it from the Government. It put its views into the consultation and heard nothing more. There was no evidence that anyone took any notice of its views and, therefore, I am still very anxious that its views should be taken into account, even at this stage.

During the debate today, a number of points were made by the Minister and by others, which I should like briefly to address. One of the important ones was the coach-and-horses point: that an exemption could drive a coach and horses through the Bill. However, I cannot see that a narrow and limited exemption for the pipes could drive such a coach and horses through the Bill, particularly given the very distinctive nature of what we are talking about.

Another point that has been mentioned many times during the debate has been the fear—which I share—of fuelling the international demand for ivory, particularly in the Far East. I have to say that I cannot remotely imagine that allowing the sale of sets of second-hand Northumbrian pipes could possibly fuel the demand for ivory in the Far East and I cannot believe that far eastern traders or consumers will be clamouring for such second-hand sets of Northumbrian pipes, particularly given that, if you tried to dismantle the ivory, you would ruin both the pipes and the ivory. The pipes, I should stress, are small instruments. The alternative name for the Northumbrian pipes is the Northumbrian smallpipes, and that describes what we are talking about.

The Minister has, rightly in my view, said that the Bill provides for narrow and limited exemptions. That is precisely what I am asking for here: a narrow and limited exemption. I share the view that has been expressed that we want to make swift progress with this Bill; I certainly was not wanting to delay its passage through either House of Parliament. But one of the strengths of your Lordships' House as a revising Chamber is precisely the fact that it goes through legislation carefully. I think that, in this case, we need to be more careful about the effects of what it is that we are proposing. As the chairman of the Northumbrian Pipers' Society, Andrew Davison, has said, this is not a plea to be able to continue to trade in ivory. It is a plea to be able to continue to sell and hire a distinctive musical instrument that was purchased perfectly legally and whose continued availability is crucial to our musical tradition in the north-east of England.

The purpose of my amendment is simply to bring this issue once again to the attention of the Government, with the hope that, between now and Report, a way of addressing the pipers' concerns, and safeguarding our precious and unique regional heritage, is found. I hope that the Minister and my noble friends will respond sympathetically.

**Earl Attlee:** My Lords, my noble friend Lord Cormack is an extremely experienced parliamentarian, but his arguments would be a little more convincing if he avoided describing my noble friend the Minister's response as obdurate.

One of the complaints that we hear about the House of Lords is that we are far too London-centric. I hope that the Minister will pay attention to the suggestions of the noble Baroness, Lady Quin, about the Northumbrian pipes. Perhaps there is something that the Minister could do—some special arrangement. I hope that my noble friend will think about that.

**Lord Beith (LD):** My Lords, it is a great pleasure to follow the noble Baroness, Lady Quin, and I thank her for bringing this amendment forward. Throughout most of my adult life I have had much pleasure from hearing the Northumbrian pipes. They are a sweet sounding, relatively quiet instrument—often played indoors—and were the musical instrument of many shepherds and farmworkers in the area that I used to represent. Subsequent generations of pipers have often come from other walks of life—teachers who have been in a variety of professions—but the core of people on whom the musical repertoire of the pipes has depended, and whose tunes are recorded, came from the farming life of Northumberland.

I want the Minister to understand how important this is to us and how strongly we are pleading for him to do something about what is now seen as a threat, particularly to the new pipers—young people and, sometimes, those in retirement—who have to acquire an instrument. We are talking about an instrument of which there are not large numbers. The noble Lord, Lord Berkeley of Knighton, mentioned how many thousands of violin and cello bows there are in this country. The sets of Northumbrian pipes are numbered in hundreds—not thousands—and it is quite hard to acquire a set now that there are so few remaining craftsmen who make these instruments. Most of the people who are involved in this activity are not wealthy and if the supply is artificially restricted by the exclusion of so many instruments which were made before 1975 and have ivory content, it would be a very serious threat.

I confess that I have difficulty understanding how the 20% exemption could be applied in the area of Northumbrian pipes, although the Minister gave me a moment of hope when he referred to integral voids, such as the area of an interior of a drawer in a chest of

[LORD BEITH]
drawers. My mind immediately went to the bag in which the air is pumped in from the bellows, which the piper operates with his or her arm. The bellows could at least be inflated when the judgment is made as to what the integral void is and whether it passes the 20% exemption. Describing that illustrates how worrying it would be if we have to depend on such a concept in order to get a reasonable exemption, which I am sure most people, looking at it rationally, would realise was necessary and was not a coach and horses.

What worries me is that there has been a lot of engagement and discussion with various trades and activities about this Bill. Not all of it has led to the outcomes that some would have desired, as the noble Lord, Lord Cormack, has pointed out. I am not convinced that there has been enough engagement yet with Northumbrian pipers and those who are concerned for their welfare. I want the Minister to give us some assurance that he will try to ensure that that engagement takes place and that, by the time we reach Report, there is some way of dealing with this problem. I know that there is pressure not to amend this Bill so that it sails back to the House of Commons, but we are a revising Chamber and it is our job to discover if there are areas where the Bill does not meet the practical requirements of our society. If it is necessary to make a small amendment to the Bill better to meet the needs of Northumbrian pipers, the Minister must be ready to make that amendment, unless he finds a non-statutory way of achieving it. I have not yet seen that, so I think we will need an amendment at a later stage and I hope the Minister will apply himself to the task of finding a solution.

**Lord Berkeley of Knighton:** My Lords, I apologise for jumping the gun earlier—perhaps I should say for coming in on an upbeat rather than a downbow. I support Amendment 26A tabled by the noble Lord, Lord Cormack, which is very precise. I reiterate that there are several hundred thousand bows in the United Kingdom alone that have either ivory or mammoth faces weighing less than 1 or 2 grams, which is really minuscule. Some of these will be 200 years old and as musicians buy and sell bows regularly, this volume of permits will have to be redone every few years. The resources required for that would surely be much better directed towards the problem itself, towards protecting elephants and prosecuting the criminals who try to make money out of ivory. I say to the Minister that I completely understand and endorse the desire to make the Bill strong and as watertight as possible but surely there has to come a point, when we are talking about such a tiny thing that does not threaten living elephants in the slightest, where we have to apply common sense.

Lastly, I know there was a meeting of some of the ivory team at Defra, and they indicated to a bow maker that they would not be entirely against this. I can give the Minister more information on that if he would like it.

*7.30 pm*

**Baroness Bakewell of Hardington Mandeville:** My Lords, I shall speak to Amendment 26. Given the information that the noble Baroness, Lady Quin, has provided about the dwindling number of Northumberland pipe makers, it would be a great shame if this delightful pipe were to fall into disuse. I thank my noble friend Lord Beith for his description of the sweet sound that the pipes make and I agree completely with his description, having been dragged along—no, having gone along with my husband—to many concerts where the Northumberland pipes were playing. I urge the Minister to talk to his colleagues to see whether some compromise could be reached to secure the future of the Northumberland pipes.

**Lord De Mauley:** My Lords, noble Lords would expect me to deal with Amendments 25 and 27 in this group. However, they are almost identical to Amendments 21 and 23 respectively, which were in the last group that we debated. Normally in my experience it is Back-Benchers who try to degroup and the Government who try to group up, so this situation must be somewhat unusual. Noble Lords will be pleased that despite the Minister's response, which did not really address the issues, I do not propose to make the same points again. Instead I will simply say that they apply here as well.

**Lord Grantchester:** My Lords, this group of amendments relates to the exemption definition of musical instruments with less than 20% of ivory content. The backstop date at which Asian elephants were first listed in Appendix I of CITES was 1975, before the poaching crisis of the 1980s. Evidence provided through the consultation, including from the Musicians' Union, showed that that the vast majority of commonly played and traded instruments, including violins, pianos and bagpipes, contain 20% ivory or less by volume. Unfortunately, I understand that Northumbrian pipes would not qualify under this category due to their size. I appreciate the high esteem that these pipes enjoy and the passion with which my noble friend Lady Quin has spoken, but I gently suggest to my noble friend that there might be other ways in which that tradition can be kept alive for future generations. Instruments containing ivory can still be gifted, donated and bequeathed—perhaps, for example, to a dedicated local organisation or even the Northumbrian Pipers' Society itself—to enable future pipers to enjoy their music. The region could also grant or fundraise for newly manufactured instruments to use ethical alternatives for ivory. I would like the Minister to confirm that that solution would be possible for the Northumbrian pipers. I also reiterate my previous comment that the registration of any exempted items, including musical instruments, is necessary to ensure compliance.

**Lord Gardiner of Kimble:** My Lords, this group of amendments relates to the musical instrument exemption. I say again that the formulation of the exemption has been extensively considered with the music sector. I think I am permitted as Minister to say that when I hear some of my noble friends, I wonder whether they have quite understood that much consideration has gone into the Bill and that the exemption package has involved a considerable amount of intricate detail.

I have never thought of myself as obdurate and I am not going to be so, but we have to go back to the rationale of the Bill, which is to have narrowly defined exemptions to what is a ban on dealing in ivory. If I may say so, my party's manifesto in 2010 and 2011

contained a total ban on ivory. That is what we fought that election on. We have come forward with a package that we believe is appropriate and should be seen to be so. In all this, I am interested that so many of the people with whom we are working have recognised that the Government have sought to command this great rationale that we want from the Bill but are also seeking to find ways of common sense prevailing. I hope my noble friends will allow me to put on record that I actually do not identify with many of the comments that they have made about the Government's intention and seeking to make life difficult; in fact we have sought to find a common-sense resolution.

The amendments include a maximum volume in cubic centimetres below which any item may be considered exempt, and propose we increase the volume of ivory allowed in an instrument to 30%. I make it absolutely clear again that the Government's intention is not to impact unduly on the livelihoods of professional musicians or indeed amateur musicians. This exemption will allow musical instruments made before 1975 and containing less than 20% of ivory to be exempt from the prohibition on the trade of ivory in the UK. Furthermore, items used as an accessory to play a musical instrument—for instance, a violin bow—also fall within the definition of this clause.

In Committee in the Commons, Paul McManus from the Music Industries Association warmly welcomed the exemption under Clause 8 as it stands. Echoing the responses that we received through our public consultation, he stated that the majority of commonly played and traded musical instruments and accessories, such as the bows of stringed instruments, which my noble friend refers to in his amendment, contain less than 20% of ivory. We recognise that some items such as violin bows may be sold, and therefore need to be registered, in higher volumes. In designing the registration system, we are talking to a range of people likely to be frequent users of the system—for example, representatives from the Association of Art and Antique Dealers and the Music Industries Association—so that we can consider their needs. On the suggestion that we include a maximum volume in cubic centimetres below which any item may be considered exempt, I reiterate what I have previously said: I am afraid that an exemption of this type would act as a loophole for those wishing to export solid pieces of ivory to major-demand markets in the Far East.

I turn to the amendment in the name of the noble Baroness, Lady Quin. I am always conscious that when my noble friend Lord Attlee expresses support I am in for serious trouble. I respect what the noble Baroness and indeed the noble Lord, Lord Beith, have said about this matter. I would be interested to know about the numbers of instruments involved. If I am allowed to go off piste, I am going to ask my officials to ensure that there is a full and proper discussion with the Northumbrian Pipers' Society about these matters. I hope your Lordships will understand that in saying that, I can give no promises because it would not be right for me to do so and indeed I am not in a position to. However, I want to ensure that the Northumbrian Pipers' Society feels that after today it has had a proper session individually with officials so that we can understand the aspects of what the noble Baroness and the noble Lord have said.

**Lord Beith:** I am grateful to the Minister for making that suggestion. I put it to him that one of the things that he and his officials might explore when they meet the society is how many instruments, and what proportion of the total stock of instruments in existence, would be affected if the law remained as is currently proposed, and whether that could be affected by any amendment in a helpful way.

**Lord Gardiner of Kimble:** The noble Lord and I are on the same page. That is exactly the sort of requirement that I think we should have so that we can understand the points that noble Lords have made.

Some Northumbrian pipes may contain over 20% ivory and therefore may not meet the musical instruments exemption. I obviously cannot commit to this, but having heard what the noble Baroness and the noble Lord have said, is it possible that they could be considered under the rarest and most important items exemption, for instance, because of what the pipes mean in the community? I emphasise that the 20% measurement is applied to the whole instrument, including in the case of the pipes, the bag. I asked this question this morning: it does not include the inflated bag, but it does include the bag. I hope that detail is helpful.

I am a great champion of local traditions. This provision would not stop the pipes being played or enjoyed. As the noble Lord, Lord Grantchester, has said, the ability to pass on and to donate these instruments so that the next generation can enjoy those that are not under 20% is still available. On that matter, not just because it was raised by the noble Baroness but because I recognise that I want the Northumbrian Pipers' Society to feel that it has had a proper hearing, I will ask for that meeting to take place.

**Baroness Quin:** I would like to put on record how grateful I am to the Minister for listening to the concerns and for at least showing willingness to address some of these issues before the Bill receives Royal Assent.

**Lord Gardiner of Kimble:** As ever, the noble Baroness is very generous in saying that.

I wonder whether my noble friend Lord De Mauley disagrees with my remarks, rather than my not having responded. One of the things I try to do is always to ask whether we have we answered the question. It may be that he and other noble friends simply do not agree with the analysis.

**Lord De Mauley:** The Minister answered a different question.

**Lord Gardiner of Kimble:** Given the hour and the debate that follows, perhaps we could explore that another time.

We have sought to bring forward a proportionate proposal on the musical instrument exemption. We are not in a position to support any further extensions of the exemption in what we believe is a very carefully considered package. I want to explore further the question raised by the noble Baroness. On that basis, I ask my noble friend to withdraw his amendment.

**Lord Cormack:** Of course, I shall withdraw my amendment in a moment. As I said before, I regard my noble friend as a friend in every sense but I think it is a pity when your Lordships' House has a reputation for scrutiny that he has to get up at the Dispatch Box in Committee and virtually rule out any reflection on anything other than the Northumbrian pipes. I am very glad that he is going to reflect on the Northumbrian pipes and I hope he comes up with a good solution. However, the other points made in the debate—not just by myself but by many colleagues—merit more consideration than they appear likely to get. I beg leave to withdraw the amendment.

*Amendment 24 withdrawn.*

*Amendments 25 to 27 not moved.*

*Clause 8 agreed.*

***Clause 9: Acquisitions by qualifying museums***

*Amendment 28 not moved.*

*Clause 9 agreed.*

***Clause 10: Registration***

*Amendment 29 not moved.*

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

## Poverty Premium

*Question for Short Debate*

*7.45 pm*

*Asked by* ***Lord Hodgson of Astley Abbotts***

To ask Her Majesty's Government what assessment they have made of the implications of the decline in the use of cash for the "poverty premium" payable by the most financially disadvantaged.

**Lord Hodgson of Astley Abbotts (Con):** My Lords, modern technology has delivered many important benefits to us individually and to society as a whole. But some among us have not been able to take advantage of these trends, in some cases because of unfamiliarity with the particular technology and in other cases, more importantly, because the individual's personal financial position is too stressed to allow them to do so. I focus my remarks on this last group.

I draw the House's attention to my entry in the register. I am chairman of CMS Ltd—Cash Management Solutions. The company provides analytical services to banks and retailers on the best methodologies for cash handling. The work of the company has no direct relevance to our debate tonight, but it has given me an insight into the interaction of cash and credit in our society. I say "no direct relevance" except in one sense. It is often argued, as my noble friend may argue shortly, that non-cash transactions—credit cards, direct debits et cetera—are cheaper than cash payments. I am afraid that this assertion is wrong. Non-cash transactions can be safer, more secure and leave a better evidence trail, but they are not cheaper. There is general agreement that non-cash transactions cost about 0.25%—one-quarter of a per cent—to fulfil. By comparison, cash costs are about 0.15%, just over half.

The practical implications of a paper-based payment system were brought home dramatically to me when I was a member of the Secondary Legislation Scrutiny Committee of your Lordships' House. We examined Instrument 2017/427 entitled the Universal Credit (Tenant Incentive Scheme) Amendment Regulations. Under this statutory instrument, the East Lothian Housing Association wanted to reward its tenants by reducing their rent by £10 if they paid by direct debit or standing order and a further £20 per month where the tenant had no rent arrears.

The purpose of the regulation was to ensure that the reduction in rent payable did not affect the benefits payable under universal credit. They were clearly a trial run which, if proved successful, was likely to be rolled out across the whole UK. So far, so good, but I wondered why there were two rewards and not one. Enquiries with the relevant department revealed that there was, in fact, only one reward. If the tenant did not or could not sign a direct debit or a standing order, they were not eligible for the second £20 reduction, even if they were up to date with the rental payments due.

Inevitably, families on low incomes have to budget very carefully. Signing direct debits cuts across such budgeting because, as will be familiar to the House, a direct debit mandate allows the deduction of the sum due on the date agreed without any reference to the account holder. Many people on low incomes, aware of the ebbs and flows of personal expenditure, not to mention the inevitable emergencies, will be reluctant to sign up to the open-ended commitment of a direct debit. Apart from anything else, if a direct debit is refused and has to be re-presented, there will be a further charge to the account holder by the bank of between £10 and £20. One of the dangers of these regulations was that the most financially stretched in our society were apparently never going to be able to take advantage of the additional room for financial manoeuvre that the proposals would offer. It is not a small amount: £30 a month is £360 over a full year.

That is only the beginning. Noble Lords may care to examine their utility bills carefully. They will see substantial savings for those who can, or are prepared to, sign direct debits. I do not like direct debits and I do not sign them. I have here my recent utility bills. One says: "You will save £33.36 a year on your electricity standing charge if you pay by direct debit". Another says: "You will get a continuous discount as a lower daily standing charge when you pay by direct debit. Over a year you will receive a discount of £40 on our electricity charges and £50 on your gas charges". Looking across the whole piece, there are substantial numbers of other things such as council tax, telephone and utility bills generally. It is quite possible to argue that the poorest members of our society are paying £500 to £600 more than those who can sign a direct debit for precisely the same service.

In fairness to the Government, they are aware of some of these charges. The Department for Business, Energy and Industrial Strategy published a Green Paper in April this year—Command Paper 9595—which has a section headed:

"Ensuring vulnerable consumers are treated fairly",

which, over a series of paragraphs, explains the problem. It will be very important that, in the follow up to the Green Paper, the Government move from statements of good intent which recognise the problem to implementing policies which actually provide some answers to the issue. These solutions must also apply across all government departments. While this Green Paper is being discussed, other departments are implementing policies, such as those affecting the East Lothian Housing Association, which will accentuate the disadvantage faced by the poorest in our society.

For example, my noble friend's department, the Treasury, also has a consultation out on cash and digital payments in the new economy. Perhaps inevitably, there is a good deal of focus on the way the use of cash facilitates money laundering and tax evasion. However, the paper also points out that, across the UK, no fewer than 2.7 million people are entirely reliant on cash. Even more significantly, half that number—1.35 million people—have household incomes of less than £15,000 per annum. Any inability to sign direct debits or standing orders is likely to make a significant reduction in the disposable incomes of these groups.

To conclude, it would be facile to deny the conflicting pressures that exist. No one wants to encourage tax evasion or impose unnecessary administrative and paperwork burdens. However, there is a need for a joined-up, cross-departmental government approach if we are to create, in the words of the Prime Minister,

"a country that works for everyone".

*7.53 pm*

**Lord Empey (UUP):** My Lords, I congratulate the noble Lord, Lord Hodgson of Astley Abbotts, on securing this debate. I had the privilege of serving as a member of your Lordships' Select Committee on Financial Exclusion, which was very ably chaired by the noble Baroness, Lady Tyler of Enfield, in 2016. I commend its report to your Lordships. We looked at a range of issues that were causing financial exclusion. One issue to which we drew attention was the closure of so many bank branches—which has accelerated in the 18 months or so since the committee reported. Even last week we heard of substantial further closures. We understand the trends in how finance works. We would all love to see a situation where people could get bank accounts. A lot more people have them than used to, but there are still about 1.5 million who do not and are still struggling. The irony is that they get into a trap where the less you have the more things cost. That cannot be right. We took evidence from a range of bodies and went to see organisations in Coventry and the east of London which were helping people. We had piles of written evidence.

More than one government department is involved in this and we need to join things up. I draw noble Lords' attention to the point made by the noble Lord, Lord Hodgson, about direct debits going out on a specific day. Many people who are on zero-hours contracts have periods when they are paid erratically. For them, it is extremely difficult to tell in advance whether they will have a particular amount in their account when they do not know how many hours they are going to be working that week or month. The banks have a basic bank account which we know does not make them money. We discovered that very little effort was made to promote it and I can understand why.

There is a need for joined-up thinking. We also discovered that the primary source of taking people to court for non-payment of rent or anything else was the public sector. It was the public sector that was leading the charge in this. I have a big disagreement with the Government in how they handle housing benefit here; we do it differently at home. I believe that rent should be paid to the landlord, not to the tenant. I understand that it is very nice to be able to say that we teach people to manage their own accounts. That is all very well, but anyone who has served a constituency over the years, and run advice centres, knows the sorts of people who are vulnerable. Think of the pressures on a young mum who is on her own with two or three youngsters. Back home, on the day when the money was due to be paid the sky would darken with all the vultures ready to pounce. There were crooked lenders and all sorts. There was an army of bailiffs running around trying to chase people down for rent. That is a disincentive to bring housing stock into the rental market.

Rent should be paid directly to the landlord. At least that would guarantee a roof over the family's head, which would be some progress. That system works far better than leaving it open for someone to pounce on a vulnerable person, who is often a woman on her own with children. They may have addiction problems or all sorts of other issues. Under our system, at least the roof over their head is paid for and there is therefore no need for bailiffs to go chasing round trying to track people down. There are so many temptations because of the demand to get hold of that cash, and in an admittedly small number of cases, exorbitant lenders go round chasing after people, particularly those with addiction issues. The people who suffer most in those circumstances are the children in the family. In some cases, they are in a bad enough condition as it is.

I ask the Minister to take account of this issue, which was raised by some members of the committee when it was sitting. There are bank closures and the only way to have a card is to have an account. But if your account is charging exorbitant rates of interest then if you draw down cash on the card you pay even more than if you are making a purchase. It is a vicious cycle and I hope that the Government can join up and break it, once and for all.

*7.59 pm*

**Baroness Bottomley of Nettlestone (Con):** My Lords, I congratulate my noble friend Lord Hodgson on bringing this debate to the House. He has a great track record for identifying those who are vulnerable or those in need in an otherwise prosperous society, which speaks for itself.

[Baroness Bottomley of Nettlestone]

There should be no doubt over the Government's commitment to fighting poverty. We all recognise that progress has been achieved. Since 2010, there are 1 million fewer people in poverty, including 300,000 fewer children. The record high employment rate is a key part of that positive story. The House will be aware that there are now 600,000 fewer children living in workless households. No one here needs me to remind them about the cycle of deprivation where no one in the house has work, no one has an example of work and there is little hope. So having 600,000 more children living in a household where someone is in work is hugely important.

Nevertheless, I have a great deal of sympathy with the words of the noble Lord, Lord Empey, because in the 1970s, in the last century, I worked for many years as a social scientist for Frank Field at the Child Poverty Action Group. He employed me to undertake a longitudinal study of the incomes, spending patterns and lives of families below or at the poverty line. For inclusion, a household had to have at least three children and to live at or below national assistance. At one primary school, St Matthias in Bethnal Green, a third of the children qualified. My task was to get them to write expenditure diaries. It became extraordinarily obvious, in the way that some of us have also seen in our constituencies, that if you have a low, unpredictable, unreliable income, it is incredibly difficult to live within your means. If your income is totally predictable and your expenditure is predictable, then maybe it is easier but you cannot buy massive bargain containers of food, you are living from hand to mouth, buying products from the corner shop, borrowing money where you can.

More than that, there is no scope for an emergency, a disaster, a high day or a low day. If your child gets picked up and taken to prison somewhere far from home, no one is going to pay your expenditure. A further quality, which I was so aware of, is the pressures of being poor and feeling you have to do the right thing by your children. It may be cheaper to wear national health spectacles—it may be that I, working at the Child Poverty Action Group, had my children wearing national health spectacles—but the families I worked with said to me, "You wouldn't expect my children to wear poverty on their face, would you?"

The poverty premium is all too clear. The less money you have and the less reliable the source of income, the more difficult—and, frequently, the more costly—it is to budget economically. The concept of the poverty premium was first used in 1963 by American sociologist David Caplovitz. More recently, the Social Market Foundation defined it as,

"the extra cost that households on low incomes incur when purchasing the same essential goods and services as households on higher incomes".

The core components include access to cash, access to credit, choice of fuel tariff, paper billing for fuel and telecommunications, area-based premiums and insurance costs. There has been a great deal of debate about Wonga, but Wonga was used by very many people who had no other means or option to raise the money they did. The University of Bristol a couple of years ago found that the most punishing aspect was failing to switch to the best fuel tariff, accounting for almost half of the total premium. The cost to the average low-income household was an extra £233 every year.

The poverty premium includes factors imposed on low-income people often as a result of the areas in which they can afford to live. Examples include accessing affordable shops and retailers, and the use of expensive fuel prepayment meters, particularly common among social housing tenants. Others are discretionary factors: low-income individuals make choices which are more costly, frequently as a consequence of less knowledge or education. I often think of rail transport: all these students can manage to get from the north to the south of the United Kingdom for what looks like a minute amount of money, but the low-paid, the less educated and the more pressed people with less time, who cannot spend hours on the internet, pay very large fees indeed.

We are witnessing powerful trends in the UK. In 2017, there were more transactions made by debit cards than cash for the first time. This trend is expected to continue as more customers and retailers become more comfortable with contactless payments. I am not decrying the advantages, relating to money laundering, theft, and all sorts of other advantages. Of course, young people hardly know what cash is: they are huge users of contactless payments. However, as the noble Lord mentioned, a very substantial number—2.7 million people—still rely on cash. People from low-income households, and many others, rely on cash. Indeed, only today I talked to a noble friend who said that he could cope only with cash and he could not cope with the internet, digital media and so on.

It is easy to expect that everyone is going in this new exciting direction without realising that, inadvertently, it has the potential of creating more gaps, more divisions and more difficulty. The higher cost of accessing money is a component of the poverty premium but only accounts for a small share. This cost is incurred largely by utilising pay-to-use ATMs. Historically, that has been an issue with deprived areas lacking free-to-use cash machines. I am pleased that LINK is beginning to look at these difficulties and differences.

I urge the Minister to listen to the comments raised in the debate. We are excited by the financial exclusion working party. It met once in March and is about to meet again. Of course we welcome progress and the opportunities of the new digital world, but we must not forget those who are disadvantaged or left behind and potentially become more vulnerable as a result of these strides forward.

*8.06 pm*

**Lord Bird (CB):** My Lords, I thank the noble Lord, Lord Hodgson, for the opportunity to talk about the poverty premium. It is a very important debate. I do not know if the noble Lord picked up the good news that Lloyds is not going to charge people for unplanned overdrafts or the announcement over the weekend that Jeff Bezos and Bill Gates have got together behind Fair by Design to support the wage stream so that, if you are working and have earned some money, you could draw it down at a flat rate on a number of occasions throughout the week. Therefore, in a sense, pay day never really arrives; it is when you need it.

Maybe there is a problem that, when you are the poorest of the poor, you find it very difficult to get the deals and the good food necessary to keep you and your children healthy. Instead, you end up with loads of stuff full of salt and sugar, badly put together, that in the end will affect your health and ability to function. Therefore, we know that these are really interesting developments.

My own Bill, the Creditworthiness Assessment Bill, which has passed on to the other place—I do not know if I am allowed to mention it—is a simple attempt at stopping people who need credit paying through the nose. It is all part of the poverty premium.

I come from the poverty premium. My mother, for instance, was a lovely Irish lady who if you gave her a pound, it burned a hole in her pocket and she would have to go out and spend it. She knew where all the bad deals were. She knew how to waste her money. She knew how to cry when we were dragged before the court. So I come from this kind of background and what I find very difficult is that, when people talk about the poor, I am sorry to say that they seem to talk about another species: "The poor will always be with us". We are not in the Victorian period, where we were telling the poor off; we have gone the other way. We have embraced them. We love them. We actually really like them because they do good stuff for us. They make us feel good. They make us feel that, if we can do something for the poor, then there has been a good reason for us to pass through life. I do not really like that, nor do I like the old method. I would like to find a way that, instead of ducking and diving and bobbing and weaving, lets us recognise that if you are poor all the doors are closed.

So how do you break open the doors and bring about a change in somebody's life? I was very fortunate, because I could use the prison system. Every time I got nicked, I learned something—somebody was there to teach me. Unfortunately, we do not have that opportunity now. If you go into prison, you go in bad and come out worse, because rehabilitation has gone down the tubes. We do not have those social workers, or the NHS sending out wonderful paramedics to go into the community to help mother nurse her child. We do not have all that kind of pastoral care that we used to have when I was in my early years and in my teens. We have got rid of all that, and instead we have a poor who we embrace, and who in a sense we would like to find a way of indulging. But every time we do that, we do not move them away from poverty and, instead, we tie them up.

Interestingly, in Brazil, President Lula brought in something called the family allowance. It was a simple thing: you gave the mother $104 a month, but she had to do two things—it came with strings attached. One was that mummy had to go to the hospital and to the doctor regularly, because if she died and the children were left on their own, they would go feral, and then the police would get involved and there would be murders, and all sorts of things like that. The other condition was that the children had to go to school.

If we really want to do something about poor people, we have to break their poverty. We—as a Government, as a party, and as a Parliament—have to find ways of breaking through those doors, and we will not be able to do that in a liberal, loving sort of way. We are going to have to impose some order and structure on people's lives who do not have order and structure. We have to find a way of breaking through those doors so that we can move them out of this miasma, out of this place where we are quite happy to keep coming up with wonderful new ducking and diving, bobbing and weaving—things that change nothing.

*8.12 pm*

**Lord Sharkey (LD):** My Lords, I too congratulate the noble Lord, Lord Hodgson of Astley Abbotts, on securing this debate and on his eloquent and forceful opening speech.

The poverty premium—the poor paying more—is a very serious problem, and it is highly likely to be made worse as the use of cash continues to decline. But there are other factors that will make the poverty premium worse. There is the widening gap between household income and household expenditure—on average £900 last year, and likely to get worse. Figures due to be released this week will show wage increases to be once again lower than inflation, intensifying the squeeze on just-about-managing families. This comes at a time when there is a huge lack of financial resilience.

The FCA's excellent report on the financial lives of UK adults, published in October last year, makes for worrying reading. The survey shows that around 15 million people have no or low financial resilience. The survey also shows that 4 million of these people are already in financial difficulty: they have not paid domestic bills or met credit commitments in three or more of the last six months. In addition, 4 million of these financially vulnerable people have never used the internet. All these figures are worrying. They remind us of the existence of real poverty, of the huge numbers in or on the edge of real financial difficulty, and, importantly for this evening's debate, they remind us about the lack of digital access in a society that is becoming increasingly digital. I will return to that theme in a moment.

The 2016 University of Bristol study, already referred to by the noble Baroness, set out its views about what constituted the poverty premium. It saw it as the poor paying more for energy, telecoms, insurance, food and grocery shopping, access to money and use of credit, and it estimated the poverty premium at £490 per household per year, but with a huge variation within that average—for some households, as much as nearly £800 a year. These are all lower than the £1,300 per annum estimate made by Save the Children in 2010, but Bristol cites methodological differences for the different outcomes, which raises the question of the need for reliable data if we are to advance this kind of discussion.

The Social Market Foundation, in its paper of March this year, acknowledges the need for better measurement and puts forward its own proposals for a reliable set of metrics. I commend this approach. If we are to measure the effect of the decline in the use of cash or, indeed, of any factor on the poverty premium, it is vital that we have an agreed set of metrics. Do the Government agree with that? If they do, what can they do to help establish proper tools for assessment?

[LORD SHARKEY]

The Government are in fact, slightly indirectly, already engaged in this area. The big society may have all but disappeared with its inventor, but its legacy lives on in Big Society Capital. The fund is developing what it describes as,

"a targeted holistic programme designed to eliminate the poverty premium by 2027".

HMG are the majority shareholder in Big Society Capital. Can the Minister say what part they are playing in this project, and how advanced the project is? Is it, for example, considering tonight's question on the impact of the decline in the use of cash? On this issue, I note that the Treasury has just concluded a consultation on cash and digital payments in the new economy. Perhaps the Minister can tell us when we are likely to see the report.

In the call for evidence to that inquiry, the Government recognise the use of cash as an entirely legitimate choice. It is certainly that, but it is also often an entirely rational choice or a matter of necessity for people in poverty. There is, furthermore, no justification for those with least money paying more by using cash than by using other means to buy the same services. This has special force when what people are buying with cash are vital and basic necessities. There is no real justification for the premium. It should not exist, and it certainly should not be allowed to get worse as cash usage declines. The premium is either exploitative—it frequently is—or the consequence of poor market practices: neither situation is desirable or fair.

The Government will need to take action as cash usage declines. In particular, the Government will have to take urgent steps to remove or ameliorate the digital disadvantages of the poor. It is the lack of digital access and/or digital savvy that is most likely to preserve, or worsen, the premium as cash usage declines.

Critically, free access to cash must be maintained, especially for those living in financially deprived areas. This is a current concern. The recent disputes over the transfer fees in the ATM system between banks and the operators involved raise the prospect of the removal of ATMs and the introduction of more pay-to-use machines. This problem is likely to become more acute as cash usage declines. What is at risk is both free access to cash and the creation of areas in which there is effectively no access, free or paid.

I am aware that the LINK organisation has promised to maintain free access ATMs where needed and to replace any machines withdrawn by operators from disadvantaged areas. I worry, however, about what this promise is worth if LINK's shareholders can override it at will, as they can. This will present a key test for the Government. Removal of free-to-use ATMs from financially deprived areas will lead to a decline in the use of cash and will certainly worsen the poverty premium. It would be good to hear the Minister say that he will not allow that to happen.

*8.19 pm*

**Lord Davies of Oldham (Lab):** My Lords, I congratulate the noble Lord, Lord Hodgson, both on securing this debate and on introducing it so precisely. As he identified, those dependent on cash are living in an increasingly disadvantageous world, and the use of cash has reduced very significantly over the last decade. The rate of decline, as new technologies are employed, will mean that quite a small proportion of the population will be dependent on cash. Those people are, however, dependent on a disadvantageous system, as was so clearly identified in this debate by the noble Lord, Lord Hodgson, supported immediately by the noble Lord, Lord Empey, who pointed out just why the poor can be at such an obvious disadvantage. One obvious aspect is that direct debit has its rewards—we all know the incentives to choose it—but you need a regular income and certainty of payment before you can take advantage of it.

The noble Baroness, Lady Bottomley, emphasised the fact that we live in a society where unemployment figures are relatively low. The trouble, however, is that an awful lot of our fellow citizens are in employment but not under the old criteria—they are on zero-hours contracts, and a person with an uncertain income, on basic wages, can only be in a position of extreme disadvantage when making payments. The advantages of direct debit, of not having to pay excessively for credit and being able to access money easily are not available to those who are on uncertain incomes and poor.

That is why we need considerable action by the Government, as has been called for in this debate. It is comforting that the Government are at least aware of the problem and addressing certain aspects of the decreasingly cash-using society. Action will be necessary, and the Government are not shaping up to the requirements. The noble Lord, Lord Bird, emphasised with his usual accuracy and passion the extent to which people living on very low incomes are a burden on society to which society pays only lip service. If not, in an economy in which we are supposedly making so much progress, food banks would not be proliferating all over the country. Furthermore, some people with clear earning patterns are dependent on food banks, because their pay is below the necessary level of income.

That is why I think we have to do what the noble Lord, Lord Bird, identified. We have to take responsibility for getting people out of poverty. We have to address ourselves to crucial issues such as the question of the minimum wage, which needs to be at a level that guarantees that households can avoid poverty. We need to tackle the question of zero hours, and change our employment laws so that this particular malign development, which has occurred over the last decade in such profusion, is brought under control. We also need to tackle how benefits are paid. Universal credit seems to be engineered to guarantee that people are plunged into poverty in certain circumstances. It cannot be right that we have a benefit that renders people vulnerable at crucial times through the way in which it is paid.

This has been a stimulating debate, which has addressed the issue of the poor. We all ought to feel the greatest concern about that: we cannot constantly talk about an economy that is making progress when child poverty, and poverty generally in our society, is as pronounced as it is today.

*8.25 pm*

**The Minister of State, Department for International Development (Lord Bates) (Con):** My Lords, I, too, thank the noble Lord, Lord Hodgson, who started this debate by setting out very clearly the paradox with

which we are faced. On the one hand, he said that there are 2.7 million people who are entirely dependent on cash, and then he used a series of excellent examples, drawn from his own experience, that show the great benefit to be achieved by those who can make payment in other forms—in his examples, direct debit mandates.

The noble Lord, Lord Empey, drew on his experience from the excellent work of the Financial Exclusion Committee in your Lordships' House, and talked about the need to secure access to banking services. The noble Baroness, Lady Bottomley, drew on her experience from her time with the Child Poverty Action Group, and made the hopeful point about the significant reduction there has been in the number of workless households in this country. The noble Lord, Lord Bird, gave positive examples from Lloyds Bank about the cost of credit, but talked about the impact of that on health and the need for people to have order and structure in their lives. I thought of his memorable maiden speech in this House, when he said, if I am correct, that the reason he was able to do so much to help the poor in this country, which he undoubtedly has, was because he did not have a sentimental bone in his body about poverty. That is not a contradiction. Indeed, it is important that we look correctly at those people we are seeking to help. The noble Lord, Lord Sharkey, talked about another level of exclusion, particularly digital exclusion, and the 4 million people who have never used the internet. The noble Lord, Lord Davies, talked about how uncertainty of income flow can exacerbate the disadvantage that people feel.

I will set out briefly what the Government are doing in these important areas and then come to some of the questions that have been raised. When it comes to tackling poverty in general, a key element was acknowledged by the noble Lord, Lord Davies. I assure the House that the Government are focused on lifting people out of poverty. Indeed, the proportion of people in absolute poverty both before and after taking into account housing costs is now at a record low. Additionally, real disposable household income per person is above its pre-crisis peak and is 3.4% higher than at the start of 2010. We know that over 3 million more people are in work, and that there have been improvements in the national living wage, and of course we have seen a rise in the tax thresholds.

That said, I appreciate the concerns which have been expressed around the isolation felt by people who are unfamiliar with the digital payment services that are becoming ever more prevalent. We know that 8.4% of adults have never used the internet—instead of a percentage, we were given an absolute number by the noble Lord, Lord Sharkey—while many more people are missing out on the opportunities that the digital world offers, from online banking to easier access to direct debit payments. We want to make sure that everyone can access all the benefits of digital banking. To that end, the Government are actively committed to tackling the root causes of digital and financial exclusion. The digital strategy, which was published last year, committed the Government to enabling people in every part of society and irrespective of age, gender, ethnicity or socioeconomic status to access the opportunities of the internet. That point was brought out by my noble friend Lady Bottomley when she used the illustration of students searching the internet for travel fares. Many apps can provide those services, but if you are digitally excluded, clearly you are not going to be able to take advantage of those deals.

The Government have now established the Digital Skills Partnership, which will bring together stakeholders from the private, public and charitable sectors in a joint effort to help people increase their digital skill levels. This will build on the free digital skills training opportunities that our corporate partners have pledged as part of the digital strategy. Some 4 million training opportunities were pledged, with 2 million having already been delivered.

Similarly, reducing financial exclusion is a key government priority. After the noble Lord, Lord Empey, and his committee had done their work we created the Financial Inclusion Policy Forum, which was referred to by my noble friend Lady Bottomley. It met for the first time in March and is due to meet again soon. This is driving better co-ordination across the sector. Government Ministers, regulators, industry and consumer groups are working together through the forum to ensure that people, regardless of their background or income, have access to useful and affordable financial products and services. For example, the forum recognised that a key challenge is tackling the issue of a lack of access to affordable credit. A sub-group of forum members has been established to look at how that work can be taken forward.

The noble Lord, Lord Bird, referred to his Creditworthiness Assessment Bill. I often pay tribute to him because in the course of the Bill, without the legislation actually making it on to the statute book, he managed to get £2 million out of the Treasury for the rent recognition challenge, which has been launched as a way of coming up with innovative solutions to precisely the challenges that his Bill identifies.

The Government recognise that people are increasingly moving away from cash and towards digital payments, as my noble friend Lord Hodgson set out. While the Government support these developments, we also recognise the continuing importance of cash, especially to the more vulnerable members of society. For those people who depend on cash today and in the future, we will need to ensure that that access is continued. An individual reliant on cash will be penalised if they can access cash only at an ATM which charges for cash withdrawal. That is why the point made about the LINK system is so important and I shall come back to it when I respond to the questions. The UK has today one of the most extensive free-to-use ATM networks in the world. Around 80% of the ATM network is free to use and 97% of all ATM transactions are conducted through free-to-use ATMs. The Government continue to work with industry and the regulators to ensure that widespread free access to cash is maintained.

I turn now to some of the important questions raised in the debate. My noble friend Lady Bottomley asked specifically about the LINK programme and its availability. In January 2018, LINK announced that it would enhance its financial inclusion programme to include all ATMs that are a kilometre or further from the next free-to-use ATM. The Government have been engaging and will continue to engage with regulators

[Lord Bates]
and industry, including LINK, to ensure that widespread free access to cash is maintained. The noble Lord, Lord Bird, talked about people paying for high-cost credit. The Government welcome the FCA's update and its proposal to cap the cost of the rent-to-own programmes that have been introduced. It is important that these measures are effective and the Government will continue to work with the FCA to ensure that all customers are treated fairly.

The noble Lord, Lord Empey, talked about the closure of bank branches. While of course that is a commercial decision, I know that the Economic Secretary to the Treasury, John Glen, recently visited several small and remote communities in Scotland to experience at first hand what they were going through as the result of a lack of access to banking services. That is why the Government support the industry's access to banking standard, which sets out the steps that banks must follow when they decide to close a branch, including giving at least 12 weeks' notice and providing information on how customers can make alternative arrangements. Moreover, we have the post office banking framework agreement set up with 28 high-street banks. This enables 99% of personal banking and 95% of small business customers to carry out their everyday banking at one of the Post Office's 11,500-plus branches.

The noble Lord, Lord Sharkey, talked about improving the incomes of the poorest. The statistics he used on real household incomes are those on which we should focus, and are the reason that we supported the national living wage. The lowest-paid, those in the fifth percentile, saw their wages grow by almost 7% above inflation between April 2015 and April 2017. Over 1 million people, the lowest earners, have been taken out of income tax altogether since 2015.

The noble Baroness, Lady Bottomley, asked about access to credit and gave the example of Wonga. The Government are committed to facilitating sustainable financial services to give consumers greater choice in accessing credit. This includes support for the credit union sector, which provides an accessible alternative to high-cost credit. In the Autumn Budget, the Government announced their intention to help the sector expand by increasing the number of potential members of credit unions from 2 million to 3 million. The call for evidence has been issued and is now closed. The helpful note on this I received from colleagues simply says that a formal response will be made "in due course", which I know is not going to add a great deal to the sum of human knowledge, but it recognises that we have taken this subject seriously, we are calling on the evidence and are reviewing it as we speak.

The noble Lord, Lord Sharkey, also asked about maintaining access to LINK ATMs. I have given that answer in response to the question from the noble Baroness, Lady Bottomley, on the same point.

The noble Lord, Lord Davies, talked about the use of food banks. We recognise this and are constantly reviewing research carried out by organisations including the Trussell Trust to add to our understanding of food-bank use, and will consider requirements to add further to the evidence base. Food banks are not unique to the United Kingdom but are an international phenomenon and an important element of our society. They are a civil-society response to people in need and we ought to recognise that, but also redouble our efforts to ensure that people do not have to access their services as far as possible.

The Government recognise the profound impact that the rapid rise in digital payments is having on our country, with which the noble Lord, Lord Hodgson, began our debate. As technology plays an ever-greater role in our lives, we recognise that the Government must support innovation and make the most of new technology, while ensuring that no one is left behind. That is the importance of cash. As I hope I have made clear to noble Lords today, the Government are working with industry and regulators to ensure that all members of our society benefit from the potential of digitalisation and that cash continues to be accessible to all who rely on it, and in that sense this continues to be a country that works for everyone.

*8.38 pm*

*Sitting suspended.*

## Ivory Bill

*Committee (1st Day) (Continued)*

*8.45 pm*

*Amendment 30*

*Moved by* ***Lord De Mauley***

**30:** Clause 10, page 6, line 40, at end insert ", such fee not to exceed £5"

**Lord De Mauley (Con):** My Lords, many of the objects that will require registration under the Clause 10 requirements will be low in value. This will include old pianos offered for sale privately for £50 or small domestic objects such as mirrors with surrounds in mahogany inlaid with thin ivory strips selling for perhaps £30. As I previously indicated, there is no compelling reason for us to discourage the reuse of such antiques. If the registration fee is set too high, only the more valuable ivory items would be worth registering, and lower-value ones would end up being thrown away. Whether or not it is intended to charge the fee as a fixed percentage of the value of the item or a flat fee, I believe it is sensible to impose a cap. If nothing else, it will encourage efficiency in those who operate the database system. I beg to move.

**The Earl of Kinnoull (CB):** My Lords, I shall be brief. I will speak to Amendment 31, which is purely a probing amendment. Following Second Reading, it struck me that the success of this Bill would very much depend on the take-up rate of the use of the register, so my amendment is aimed at trying to probe a bit of that. I noted that in the Bill, while plenty of powers are given to the Secretary of State to charge fees for registration, there is no duty alongside that, telling the authorities what they should be trying to do. My amendment is aimed at trying to put a bit of duty alongside the powers.

I notice that the success of curbing drink-driving in the UK has been very much driven by the fact that people in the country now expect people not to drink-drive. We need to ensure that nothing stands in the way of people developing a feeling that ivory has a special and difficult thing associated with it. Therefore, they should comply with this law enthusiastically, because it will help the problem that we have all been talking about. I do not think I can add any more.

**Baroness Jones of Whitchurch (Lab):** My Lords, I shall speak briefly on these two amendments. I think we all accept that the cost of registration should not be prohibitive. Equally, I have to say that I think a blanket fee of £5 is unrealistic. It should not, however, be used as a money-raising opportunity, as some government fee systems have been found to do. In his letter to us after Second Reading, the Minister made it clear that the fees would be based on a cost-recovery calculation. Fine, but he went on to say that the calculation would be based on the cost of building a new IT system. At that point, alarm bells started to ring. I am sure that the Government would accept that they have a rather shaky reputation for delivering IT systems on budget.

I therefore hope that the Minister will take this opportunity to reassure us that the cost will not be prohibitive and that it will take into account the ability to pay of a wide range of potential traders who might want to use the system, taking on board the points that have been made that they will not always be the professionals and those who are able to pay large fees.

We have referred to the registration scheme several times and I know that the Minister says that we will have further details of it, but it would be helpful if he could clarify the timescale for it. Will we definitely have more details before Report?

**Baroness Vere of Norbiton (Con):** My Lords, both amendments relate to the fees that can be set by the Secretary of State when registering an item containing ivory. When owners register their items under the exemptions for items of low ivory content, musical instruments, sales to museums and portrait miniatures, it is only right that they pay a fee for the service provided. This fee will contribute to the cost of building and administering the registration system.

On my noble friend Lord De Mauley's amendment, we need to be careful about setting a fee on the face of the Bill—that is, in primary legislation—as, over time, circumstances which will need to be taken into account may change and mean that it is necessary to revise the fee—in either direction.

To reiterate, the Government intend that the fee will be small and proportionate, but I cannot agree with my noble friend that a fee of £5, set out in primary legislation, is appropriate. The fee will be dependent on the cost of the IT system and its administration and will be determined in accordance with Her Majesty's Treasury's guidelines with regard to cost recovery. I hope that alarm bells are not now ringing. We aim for the system to be as simple to use as possible.

On Amendment 31, in the name of the noble Earl, Lord Kinnoull, I recognise his interest in ensuring that fees are not set at a rate that would discourage registration and entirely share his view. The Government are finalising the specifications for the registration system. Further details will be available in due course, but I do not have a time for them as yet. If I get one, I will write to noble Lords and advise them. Work to date has included input from a range of stakeholders, including those most likely and most frequently to use the system; for example, representatives from the Association of Art & Antiques Dealers and the Music Industries Association. We want to ensure that we understand their needs. Our aim will be to develop a system that is simple to use and cost effective.

We recognise that many items registered under these exemptions are likely to be of a lower value than those that qualify as exempt under Clause 2, so I can assure noble Lords that the registration fee will reflect that. As I have said, the Government are taking into account a wide range of opinions. I reassure noble Lords that we recognise the intent behind the amendments and acknowledge that it is in no one's interest to have fees that are unacceptably high. I hope that my noble friend will feel sufficiently reassured to withdraw his amendment.

**Lord De Mauley:** My Lords, I suppose that I shall have to be happy, at least for this eventing, with my noble friend's assurance that the fee will be small. For this evening, I beg leave to withdraw the amendment.

*Amendment 30 withdrawn.*

*Amendments 31 and 32 not moved.*

*Clause 10 agreed.*

***Clause 11: Further provision about registration***

*Amendment 33*

*Moved by* ***Lord Cormack***

**33:** Clause 11, page 7, line 13, leave out from "section 10" to the end of line 15 and insert "remains valid if the ownership of the item passes by inheritance to a member of the family of the registered owner."

Member's explanatory statement

This amendment is designed to simplify the bureaucratic arrangements which will follow the enactment of this Bill.

**Lord Cormack (Con):** My Lords, my noble friend Lord De Mauley has been made tolerably happy for the moment. I am delighted about that, even if it is in a very small matter. I hope that on an equally small matter, although one with real repercussions, I can be made happy, because, as I explain in the explanatory statement:

"This amendment is designed to simplify the bureaucratic arrangements which will follow the enactment of this Bill".

This amendment does not really concern elephants at all, and I hope that my noble friend—whichever noble friend responds—will be able to accept it. It provides that the certificate,

"remains valid if the ownership of the item passes by inheritance to a member of the family of the registered owner".

[Lord Cormack]
I am not even asking that it should remain valid if it is given to somebody outside the family or is left in a will to somebody without a family connection.

Many such objects will be on the premises. Although I hope it will be many years before our noble friend the Duke of Wellington goes to a higher place, if the things that remain his property in No. 1 London or at Stratfield Saye pass to his son or another member of the family by inheritance, it seems quite unnecessary to have to go through the bureaucratic rigmarole again. I really hope that I will get a sympathetic response to this extremely modest—but I believe entirely sensible—proposal. I beg to move.

**Baroness Jones of Whitchurch:** My Lords, I understand what the noble Lord, Lord Cormack, is trying to achieve but, with the best will in the world, I am not sure that it is practical. If an item is important enough to be passed down through inheritance to another family member, it is also important that the new owner has an up-to-date registration certificate for it.

The Bill requires that if there is a change of owner a fresh application should be made to register the item. This is important because it will ensure that the registration system has an up-to-date record of the name of the owner and their contact details and so on. Without this change of ownership recorded on the register, we are concerned that confusion might arise as to who has the legal obligations of ownership spelled out elsewhere in the Bill. If an item appears on the market or if it is suspected of being a forgery, the enforcement officers will not know whom to contact to clarify the position.

I am trying to give the noble Lord something to be cheerful about but I do not think that this is the way to go about it. I do not think an automatic transfer of an item and the registration certificate would work without the associated paper trail to show the current ownership.

**The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con):** My Lords, the intention behind my noble friend's amendment is to provide that a person who inherits a registered ivory item from a family member would not need to reregister it under Clause 10, regardless of whether he or she intends to deal in the item themselves. Clause 11(2) places duties on a registered owner to notify the Secretary of State when he or she becomes aware of any relevant information relating to the registered item becoming invalid or incomplete. A person inheriting a registration in an ivory item would therefore be subject to this duty at the point he or she became responsible for the registration. I think the noble Baroness, Lady Jones of Whitchurch, outlined very compelling reasons. If a person inheriting or taking possession of an ivory item is unaware that the item is registered, the Government would expect that person to decide whether he or she wants to sell or hire the item and to register it accordingly.

The main point I want to reference is that we are working extremely hard with all concerned to ensure that the self-registration of ivory items will be straight-forward and as simple as possible for those expected to use the registration system. For the security of the next generation in ensuring the item is as it should be and is properly registered, I am very sorry to have to disappoint my noble friend. It is in the interest of the next generation that we have the provisions for the points that the noble Baroness, Lady Jones of Whitchurch, outlined rather better than I have. On that basis, I respectfully ask my noble friend to withdraw his amendment.

**Lord Cormack:** I am sorely tempted to divide the House. I say to my noble friend that all you need is a simple form that informs that the new owner is by inheritance the Marquess of This or Mr That. That is all that has to be done. You do not have to go through a whole paraphernalia of reregistering. That is what I am against. I hope we can come up with a formula, my noble friend and I, which will be acceptable on Report. With that hope, which is almost certainly a vain one, I beg leave to withdraw the amendment.

*Amendment 33 withdrawn.*

*Clause 11 agreed.*

*9 pm*

*Amendment 34*

*Moved by* ***Baroness Jones of Whitchurch***

**34:** After Clause 11, insert the following new Clause—

"Verification of exempted items

(1) The Secretary of State may by regulations made by statutory instrument provide for the verification of the exempted status of an item containing ivory.

(2) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament."

Member's explanatory statement

This new Clause would allow the Secretary of State to create a verification system to enable a person intending to purchase an item containing ivory to check that it has been registered as exempt or has an exemption certificate.

**Baroness Jones of Whitchurch:** My Lords, this proposed new clause would allow the Secretary of State to create a verification system to enable a person intending to purchase an item containing ivory to check that it has been registered as exempt or has an exemption certificate. That is imperative to ensure that the exemption process is robust and deliverable. Defra has stated that:

"The compliance processes will enable sellers to demonstrate that their items meet the relevant exemption, and thus that their use in commercial dealing is permitted under the Bill. The processes will also enable potential purchasers to assure themselves that they are acting in accordance with the ban".

The term "assure themselves" is interesting and seems to indicate that a buyer has less responsibility to ensure compliance with the ban than a seller. Given that the definition of dealing in Clause 1 specifically includes buying ivory, we believe that a trustworthy system needs to be available so that buyers can ensure that they are complying with the law.

There are many reasons why a buyer may need to verify that an item is exempt; for example, when purchasing an item online. A buyer may not even be

aware of what a legitimate exemption certificate should look like and may seek the reassurance of an independent confirmation. We are also aware of cases involving legal CITES Article 10 certificates and fraudulent copies being used to conceal illegal ivory. Sadly, unscrupulous dealers may well attempt to contravene the ban though such tactics. At the same time, an added advantage would be that a failed verification check could bring an individual to the notice of the authorities and be used to support a prosecution.

I hope that noble Lords will see the sense of the proposals we are making today, and that the Minister will feel able to take this proposal away and come back with suggestions as to how a robust verification process could be implemented. Of course, key to that will be the infamous IT system, when it is in force, and the issue of data, data protection and access. I realise that there are more complications to this than I am suggesting, but we feel nevertheless that buyers should have the right to make those checks and I therefore beg to move.

**Lord De Mauley:** My Lords, I think that this is a most sensible suggestion. The definition of "dealing" includes buying ivory objects, so how else is a buyer to avoid breaking the law, unless they have a means of verifying either that a de minimis object has been registered, or that an exemption certificate has been issued for an outstanding one?

**Baroness Vere of Norbiton:** My Lords, the intention of this amendment has been set out by the noble Baroness, Lady Jones, so I will not repeat it. The Government agree that a potential buyer must be able to verify that it is legal to purchase the item before finalising the sale. If the purchase is in person, the buyer will need to examine the exemption certificate issued for a rare and most important item, as this will need to accompany the item at the point of sale. The buyer will also be able to confirm that it is genuine via the online system. For online sales, the seller should confirm that an exemption certificate has been issued and will be transferred with the item. As with offline sales, the buyer will be able to confirm that it is genuine.

A buyer wishing to check the legality of selling or hiring an item registered as being exempt under Clause 10 will be able to look it up on the database, through the item's reference number. This number should be provided by the seller. It is in the seller's interest to ensure that the information is available to provide the buyer with confidence. The potential buyer will then be able to compare the photos and the description on the registration system with the object that they intend to purchase. The registration system is currently being developed, in consultation with many of those who are likely to use it, as we have just discussed. We are able to do this without making regulations and, as I have set out, we intend to include this functionality in the new system. Guidance will set out the best way for a seller to assure a buyer that they are able to legally purchase an item, and enable a buyer to satisfy themselves that they are able to legally purchase that item. With this explanation, I hope that the noble Baroness will withdraw her amendment.

**Baroness Jones of Whitchurch:** I thank the Minister for that reply. I am pleased to hear the stages that she set out and confirmation that there will be that access to a verification system. I was disappointed in her last comment that we do not need regulation on this, which is part of what our amendment proposes. I think this is straying into the whole area of the Delegated Powers Committee report; it queried the extent to which information like this should be in the Bill rather than just being taken in the form of guidance, which I think is what she said. I would like to look at this in more detail. Again, it comes back to when we will have more detail before Report but, obviously, at the moment I beg leave to withdraw my amendment.

*Amendment 34 withdrawn.*

*Amendment 35*

*Moved by* ***Lord Grantchester***

**35:** After Clause 11, insert the following new Clause—

"Report on exemptions to the ivory ban

(1) As soon as reasonably practicable after the end of each calendar year, the Secretary of State must prepare a report on certified and registered exemptions to the prohibition; and—

(a) lay a copy of that report before both Houses of Parliament, and

(b) publish the report.

(2) Subsection (1) does not apply in relation to a year if section 3 of this Act has not been in force at any time in that year.

(3) A report prepared under this section must include the following information—

(a) the number of applications received;

(b) the number of applications rejected;

(c) the number of appeals received;

(d) the number of exemptions granted on appeal;

(e) the number of exemption certificates and registered exemptions revoked; and

(f) any other information that the Secretary of State considers appropriate.

(4) The information listed in subsection (3) must be listed by category of item.

(5) The Secretary of State is responsible for prescribing the categories referred to in subsection (4).

(6) The Secretary of State is not required to include in a report any information that, in his or her opinion, it would be inappropriate to include on the ground that to do so—

(a) would or might be unlawful, or

(b) might enable the identification of the owner."

Member's explanatory statement

This amendment would require the Secretary of State to prepare and publish an annual report on exemptions to the ivory ban. The report must provide statistical information about applications, appeals and revocations by category of item as determined by the Secretary of State.

**Lord Grantchester (Lab):** My Lords, I rise to move Amendment 35 standing in the name of my noble friend Lady Jones. We need as much transparency as possible about whether this system that has been devised for granting exemptions is operating as intended. While the Government have committed to publishing headline

[Lord Grantchester]
figures about the number of exemptions granted, we believe that breaking down these figures into more meaningful categories of exemption and item type would provide us with important data and allow for confidence in the Act.

We recognise, however, that there is a balance to be struck between transparency and privacy, given that we have been led to expect that only a small number of items will be exempted on the grounds that they are the rarest and most important of their type and that it could therefore prove quite easy to identify these items and link them to certain individuals. When this point was debated in another place, the Parliamentary Under-Secretary of State, David Rutley MP, advised that it was unlikely the Government could publish more detail on the specific items exempted for data protection reasons but gave an undertaking to consider whether the headline figure could be broken down further to cover broad categories of items, such as statues, reliefs or furniture, for example.

Given that there was such an overwhelming support for a total ban, better transparency is needed on how the ban will work, how effective each exemption has been, and how workable the regulations and monitoring have proved to be. This amendment reflects the pledge by instructing the Secretary of State to prescribe the appropriate categories for the purpose of publication and specifically to preclude the release of any information that would be unlawful or might lead to the identification of the owner. I am sure the Minister will agree that such transparency can be assured through amendments such as this one. I beg to move.

**Baroness Vere of Norbiton:** My Lords, the Government are in full agreement with the principle of this amendment. We acknowledge the importance of transparency and providing information to the public. That is why, once the ban is in force, we intend to share publicly information on how the ivory ban is working in practice, as this will be essential to ensuring public confidence in the ban and the supporting systems. I therefore assure the noble Lord that we already intend to publish headline data on the number of registered items and exemption certificates issued and revoked each year, as well as the appeals, in line with the Data Protection Act.

Furthermore, regarding subsection (4) in the amendment, I confirm that we will further break down headline figures as far as we are able—for instance, to cover broad categories of items such as statues, reliefs and furniture. In light of these assurances, I ask the noble Lord to withdraw his amendment.

**Lord Grantchester:** I am very happy to receive such assurances and feel that maybe I have been the lucky one to be satisfied tonight. I am grateful to the Minister. Perhaps we can examine on Report how this may be put in the Bill so that more substance can be given to her reassurances. With that, I beg leave to withdraw the amendment.

*Amendment 35 withdrawn.*

*House resumed.*

*House adjourned at 9.10 pm.*

# Grand Committee

*Monday 10 September 2018*

## Crime (Overseas Production Orders) Bill [HL]

*Committee (2nd Day)*

*3.31 pm*

**The Deputy Chairman of Committees (Lord Lexden) (Con):** My Lords, if there is a Division in the Chamber while we are sitting, the Committee will adjourn as soon as the Division Bells are rung and will resume again after 10 minutes.

**The Minister of State, Home Office (Baroness Williams of Trafford) (Con):** My Lords, before we start today's proceedings I will take the opportunity to correct something that I said last Wednesday in response to Amendment 16. I said that Section 8 of the Police and Criminal Evidence Act 1984 requires a justice of the peace to be satisfied that material on the premises is likely to be of substantial value before authorising a production order. In fact, Section 8 concerns the authorisation of a search warrant, not a production order. A production order is made under Schedule 1 to the Act. None the less, there is still reference to a judge needing to be satisfied that the material is likely to be of substantial value to the investigation, whether by itself or with other material, before issuing a production order. I apologise for that.

### *Clause 5: Contents of order*

*Amendment 20 not moved.*

*Amendment 21*

*Moved by* ***Baroness Hamwee***

**21:** Clause 5, page 6, line 21, at end insert—

"( ) the mechanism for enforcement."

**Baroness Hamwee (LD):** My Lords, this amendment is grouped with Amendment 22 in the name of the noble Lord, Lord Rosser. We are both interested in how orders are to be enforced. I have to say that I think both amendments are slightly circular. That might mean that they are elliptical—I am not sure. However, we are probing at this stage; I hope that the Minister will take that point.

There are obvious difficulties with enforcement in respect of data held by an entity that is not in the UK and which does not have a base or assets in the UK. We are told in Clause 6(4)(a) that the provisions apply regardless of where the data is stored. I do not know whether "extraterritorially" in the sense of outside the earth, as distinct from in another country, applies here. I simply do not understand how the technology works.

It seems to me that the enforcement will have two aspects: a sanction for non-compliance and ensuring the actual production of the data. So my first question is: will the mechanism for enforcement be in the co-operation arrangement and, generally, how are we to expect the issues that I have raised to be dealt with? I beg to move.

**Lord Rosser (Lab):** I shall speak to the amendment in my name, which, as the noble Baroness, Lady Hamwee, said, has in effect the same objective as the amendment which she has just spoken to and moved. The purpose of our amendment is likewise to find out to what extent and by what means overseas production orders can and will be enforced where there is a bilateral or wider international agreement for an overseas production order made by a court in this country and one made in another country and served on a provider in the UK.

In Committee last Wednesday the Government stated that the reference at Second Reading that,

"UK-based providers will not be compelled to comply with overseas orders",—[*Official Report*, 11/7/18; col. 929.]

meant that while,

"UK companies are not compelled by UK law",

to comply with a production order,

"they may be compelled by the other jurisdiction … depending on the country in question".—[*Official Report*, 5/9/18; col. GC 143.]

Bearing in mind that considerable progress appears to have already been made towards concluding a bilateral agreement on overseas production orders with the United States in line with the Bill, will an overseas production order made by our courts in respect of an American-based service provider be enforceable—and, if so, how, by whom and with what sanctions available if there is non-compliance?

Likewise, in the light of the Minister's comment last Wednesday that UK companies might be compelled by the other jurisdiction to comply with their production order, how will such an order made by an American court in respect of a British-based service provider be enforceable, by whom and with what sanctions available if there is non-compliance? In addition, what do the Government consider would be the basis of appropriate and acceptable enforcement arrangements in both directions for any other countries with whom we might conclude bilateral arrangements in respect of production orders under the Bill?

Last Wednesday in Committee, the Government said that,

"it is reasonable to expect that some form of dispute resolution mechanism would be in place to help determine any differences in the event that there is a dispute over compliance with an order".—[*Official Report*, 5/9/18; col. GC 141.]

That statement was, of course, in line with what the Government had said in the Minister's letter of 20 July following Second Reading. That letter referred to the Government expecting any bilateral agreement to include a mechanism for escalating any dispute over compliance.

But should the letter not have said that the Government "will" require a bilateral agreement to include such processes and procedures, rather than just that they expect that it will? Would the decision of such a dispute resolution mechanism be legally binding? If so, on whom? If not, what would happen if the dispute resolution mechanism failed to resolve the dispute?

[Lord Rosser]
As I understand it, some service providers have welcomed the Bill because it will provide them with cover when making available electronic data, if done under the Bill's provisions, from other potential legal proceedings. If that is the case, would that legal protection be provided by the Bill if it was not capable of being legally enforced in one or both directions?

What kind of issues in dispute could be addressed through the suggested dispute resolution procedure mechanism? Who would mediate or arbitrate if such a mechanism was in place? Would there be legal representation? How would the mechanism be activated and by whom? Who would pay the costs? Would the dispute procedure have to reach a conclusion or decision within a fixed maximum timescale? Would the dispute resolution mechanism for any bilateral agreement on production orders with the United States be the same in the United States and the UK, working to the same standard and principles and applying or not applying the same sanctions? If there is to be any enforcement by the courts, through which court would an overseas production order made in this country be enforceable, and through which court would an overseas production order made in the US or another country in respect of a British service provider be enforceable? After at least two years of discussion with the United States on the proposed agreement, the Government must have some specific answers to these questions.

**Baroness Williams of Trafford:** I thank both noble Lords for their points. As they said, overseas production orders will be used where an international co-operation arrangement exists and, as such, orders will be used in an environment where they are readily complied with or where there is confidence that such orders will be complied with.

As I explained when the Bill was read for a second time, the Bill provides an alternative route to accessing evidence to the existing mutual legal assistance channels. However, those channels will still be available. As such, if there is any doubt about compliance, appropriate officers may well opt to seek the evidence required via that existing route to ensure that compliance can be effected through another country's own domestic sanctions.

Amending this provision to include the means by which an order could be enforced would be a departure from legislation in relation to existing production orders. It goes without saying that non-compliance of an order is a breach of such an order. To answer one of the noble Lord's questions, the very nature of this being a Crown Court order is that it attracts contempt of court proceedings if there is non-compliance—which will be dealt with by way of court rules.

Failure to comply with an overseas production order made by an English judge will carry the same consequences as failure to comply with a domestic production order—namely, the person will become liable to punishment for contempt of court in the same way as if an order of the Crown Court had been breached. Specifying on the face of the order the means by which contempt proceedings will be brought will not change the legal position.

On the point made by noble Lords about enforcement. I accept that the Bill does not provide an enforcement mechanism in respect of Clause 13(1), which prohibits a person from concealing, destroying, altering or disposing of the data, or disclosing the application to anyone else once they are given notice of the application. This is currently the case with domestic orders made under Schedule 1 to PACE. As I mentioned, these orders can be made only where the relevant international arrangement exists. Orders will be applied for and used in an environment where they are readily complied with and where there is confidence that such orders will be complied with.

In reality, enforcement mechanisms for such requirements are unlikely to be needed—again, this reflects the domestic position. I say this because, where there is a risk that a person on whom an order is served might tip off a subject of interest or destroy evidence, a search warrant is likely to be used or the evidence would not be sought at all. Therefore, where there is a risk of concealing, destroying, disposing of or altering the data, an overseas production order will not be an appropriate method of obtaining that information. As I said, MLA will still be available and, where there is doubt about compliance with an overseas production order, appropriate officers may well opt to seek the evidence required via the MLA route to ensure that the information can be obtained by other means.

The noble Lord, Lord Rosser, asked whether the enforcement mechanism would be in the co-operation agreement. We envisage that the co-operation arrangements will require obstacles to compliance to be removed, but the requirement to comply with an order will be a matter for the law of the jurisdiction in which it is made. We have provided for enforcement orders in the Bill via the contempt of court mechanism.

The noble Lord also asked about dispute resolution. Any mechanism for dispute resolution will be subject to negotiation with any country with which we wish to enter into an agreement. Therefore, it would not be appropriate to speculate on the terms of such dispute resolution mechanisms—although I can of course discuss this further with noble Lords ahead of Report. With those explanations, I hope that the noble Baroness will feel able to withdraw her amendment.

**Lord Rosser:** Perhaps I may ask for clarification. As I understand from what the noble Baroness said—I may well have misunderstood it—if an overseas production order made in this country had to be enforced, it would be on the basis of contempt of court. That would be enforced against a provider in America if we were talking about the agreement with the States. How would contempt of court proceedings against a court decision in this country work in practice in relation to a provider in the United States who did not comply?

*3.45 pm*

**Baroness Williams of Trafford:** I think it would be made under Schedule 1 of PACE—no, I am wrong. The answer is winging its way to me. While I am waiting, clearly if there was any doubt about that—

**Lord Rosser:** In the other direction, would an order made in an American court against a British provider that is not complied with lead to contempt proceedings in a United States court, and how would that court enforce it against a British provider?

**Lord Paddick (LD):** While we are waiting, am I right in thinking that in the recent Facebook case it was not that the service provider did not want to provide the information that would be of use to UK law enforcement but that domestic law in America did not allow it to provide that information, and that in the overwhelming majority of cases to which this legislation would apply we anticipate that the service provider would be more than keen to provide the data, provided it can be done lawfully, and that this mechanism provides the lawful means of doing that?

**Baroness Williams of Trafford:** I think the noble Lord is probably quite right. It goes back to what I was saying at the beginning of my response. If there were doubts about compliance, or that began to become apparent, MLA would be the process that we would revert to if this was not forthcoming. Ditto, the American side would probably institute the MLA process to ensure compliance.

**Lord Rosser:** On the point the noble Lord, Lord Paddick, made, does it stand up that the service provider—he spoke about the situation in America, I think—would be protected from any other legal action if it provided the data under a law that it did not have to comply with?

**Baroness Williams of Trafford:** The current Facebook case is a good case in point. There is no requirement for it to provide the information because of its terms, conditions and processes. I am sure that this would ensure that it had to comply with the process, because we are introducing this agreement with the US which places an obligation on CSPs to comply—whereas at this point in time they do not have to.

**Baroness Hamwee:** My Lords, perhaps when I read all this I will understand it a little better than I have while listening to it. It is not how I had approached the Bill. As it has been described, there is an element of optionality which I had not expected.

We will want to ask our colleagues who practise in this area to comment on how contempt of court is dealt with. I have just turned up the notes made by my noble friend Lord Thomas of Gresford, who had a look at the Bill before Second Reading. He wrote—I assume this is rhetorical—"Is contempt of court a realistic and effective sanction in respect of international bodies?" Of course we will discuss this, as the Minister said, before Report. This is certainly going to be a matter on which we will want to put down another amendment for Report in order to tidy up, as far as we can, in the Bill, or to get on the record in *Hansard*, the quite unusual situation which we are discussing.

**Baroness Williams of Trafford:** I do not usually intervene on noble Lords but, if I may, the noble Baroness is absolutely correct when she talks about optionality. There is now optionality. There is MLA, which by its very nature is a longer process—and this is the option for a much speedier access to data requirement.

**Baroness Hamwee:** Indeed it is optional, but one expects there to be an effective sanction. In this context, contempt of court really amounts to little more than a slap on the wrist, with probably nothing much to follow.

**Baroness Williams of Trafford:** But of course—I am sorry to interrupt the noble Baroness again—there is also reputational damage, as for example with Facebook.

**Baroness Hamwee:** Yes, I take that point. I had wondered whether I should have apologised at the beginning of this debate that I had so little to say, in comparison with the stacks of paper which officials behind the Minister have in front of them. However, perhaps we have given this more of an airing than I expected. I look forward to discussing it further and beg leave to withdraw the amendment.

*Amendment 21 withdrawn.*

*Amendment 22 not moved.*

*Clause 5 agreed.*

### *Clause 6: Effect of order*

*Amendment 23*

*Moved by* ***Baroness Hamwee***

**23:** Clause 6, page 7, line 6, leave out from second "data" to end of line 8

**Baroness Hamwee:** My Lords, Clause 6(4)(c) provides that the requirements in the Bill have effect,

"in spite of any restriction on the disclosure of information (however imposed)".

This amendment seeks to understand what the impact is of that. I am not of course impugning what the Minister said about compliance with human rights and so on, but can we be sure, given that exception, about how that will fit in with legal and human rights protections? What if there is a clash with the local laws or the terms of the co-operation agreement? Given our previous discussion, I wonder whether, if there were to be such a restriction, this route would be not taken at all. Specifically, does this subsection allow for Clause 3, which is about excepted data, to be overridden? That would be concerning. I beg to move.

**Baroness Williams of Trafford:** I thank the noble Baroness for her amendment, which gives me the opportunity to set out to the Committee the intention of Clause 6(4)(c). First, let me stress that the aim of an overseas production order is to provide law enforcement officers and prosecutors with the ability to apply to the court to acquire electronic data that can be used in proceedings or an investigation into serious crime. The effects of such an order are outlined in Clause 6.

[Baroness Williams of Trafford]

The Government accept that a company may have obligations to the customers who use its services. The effect of subsection (4)(c) is to make it clear that, in spite of those obligations or any that a company may owe to its shareholders, for example, it is obliged to comply with the requirement to give effect to an overseas production order. Of course, there will be duties on those who are served an order to adhere to data protection obligations, but the Government are satisfied that the rights and duties that would be imposed by the provisions of the Bill are compliant with data protection legislation. On receipt of any evidence, for example, the appropriate officer would be required to handle such data in accordance with the Data Protection Act 2018—as they would any other data, including that sought under an existing production order issued under PACE for data held in the UK for the purpose of investigating or prosecuting serious crime.

Any international arrangement that is concluded will be premised on a requirement that the two contracting countries will make compliance possible. The purpose of this clause is therefore to ensure that the recipients of a disclosure can comply with it even where there is conflict in the law of the UK. For example, where the recipient owes a duty of confidence in respect of a third party, Clause 6(4)(c) will allow the recipient to produce the data without breeching that duty. This approach reflects the domestic framework used for making and granting production orders under Schedule 5 to the Terrorism Act 2000 and Section 348(4) of the Proceeds of Crime Act. A judge cannot issue an overseas production order unless it meets the criteria set out in the Bill. The provision in Clause 6(4) of the Bill is only about ensuring that a lawful order has absolute effect. It does not provide that the courts can sidestep other statutory provisions such as the Data Protection Act 2018 when making an overseas production order.

The noble Baroness asked about safeguards. The Bill contains robust safeguards governing the application and issuing of an overseas production order. The judge must be satisfied that there are reasonable grounds for believing that the data sought is likely to be of substantial value to the investigation, and that it would be in the public interest for this data to be produced before an order is granted. The judge is also required to exercise the power to consider and grant orders compatible with human rights obligations, including privacy.

These orders are intended to be used where law enforcement officers and prosecutors are investigating terrorism or have reasonable grounds to believe that an indictable offence has been committed, or proceedings in respect of an offence have been instituted. The Bill does not provide access to any data that is not already available through mutual legal assistance. It simply ensures that the data can be obtained more quickly.

The noble Baroness, Lady Hamwee, talked about clashes with local laws. The point of an agreement is that an international arrangement removes those barriers to compliance, as I have already said, so it will be a prerequisite for a country to ensure that compliance is possible. The noble Baroness also asked whether this paragraph allows for Clause 3 on "excepted data" to be set aside. Clause 6(4)(c) does provide that an overseas production order made by the court has effect in spite of any restrictions. A court will not make an order in respect of excepted data as the Bill provides that it cannot—so Clause 6(4)(c) does not allow for orders to be made in respect of excepted data.

The noble Baroness looks quite confused, but I hope that I have satisfied her and persuaded her that her amendment can be withdrawn.

**Baroness Hamwee:** My Lords, this is another occasion when I shall have to read the reply carefully. But, with regard to the relationship between Clause 6(4)(c) and Clause 3, can I be clear that the Minister said that it does not allow for Clause 3 provisions to be set aside? I see the Minister is nodding. I thank her for that and, as I said, I will read the response. I beg leave, for the moment, to withdraw the amendment.

*Amendment 23 withdrawn.*

*Clause 6 agreed.*

*4 pm*

### *Clause 7: Variation or revocation of order*

*Amendment 24*

*Moved by* ***Baroness Hamwee***

**24:** Clause 7, page 7, line 12, after "revoke" insert "(in whole or in part)"

**Baroness Hamwee:** My Lords, my Amendments 25, 26, 28 and 35 are also in this group. The noble Lord, Lord Rosser, has given notice that he intends to oppose Clause 7 standing part of the Bill. I assume that that is to probe the operation of the clause. I am sure he takes the view that I do—that one would not want to accept that these orders can be made without the possibility of variation, revocation or, in the most general sense, appeal.

On Amendment 24, I am ready to be told that it is not necessary to spell out that revocation or variation can be,

"in whole or in part".

I realise that a part-revocation is probably a variation. We also find the non-disclosure requirements rather troublesome. Amendment 25 seeks to probe the procedure for opposing the non-disclosure requirements. Amendment 26 is part of the same question about how you appeal against them.

Clause 8 provides for non-disclosure of the existence of an order, as distinct from non-disclosure of its contents. There is something rather concerning about not being able to say that an order is in existence. If a data subject asks the internet service provider, it cannot even say, "We will have to refer to the judge"—or can it? I am not sure. The sanction here, presumably, would be contempt of court. I have already referred to whether that is an effective sanction in the case of an overseas or international body. I was reminded of

super-injunctions when I read this. They do not have the greatest reputation. Presumably the Minister will remind us that disclosing the existence of an order to a subject could hamper the work of law enforcement or security. All my instincts are that somebody who is affected by an order should know about it. Perhaps the Minister could take this opportunity to explain the operation of it.

Amendment 35 is another probing amendment, about how one appeals, in this case against Clause 13. But my major concerns are around Clause 8. I beg to move.

**Lord Rosser:** As the noble Baroness, Lady Hamwee, said, I have tabled a Clause 7 stand part debate, which is intended to provide an opportunity for the Government to explain in a bit more detail why this clause is deemed necessary and how and in what circumstances it is intended to operate. In what kinds of circumstances do the Government envisage it being necessary to vary or revoke an overseas production order, and how many times has that happened in respect of domestic production orders, compared to the number of such domestic orders issued? Does the varying or revoking referred to in Clause 7 apply to overseas production orders made in this country or to such orders made in the country with which we have a bilateral agreement and applying to British service providers—or, indeed, does it apply to both? In what circumstances would the Secretary of State, rather than the appropriate officer who applied for the order or any person affected by the order, be likely to seek to vary or revoke an overseas production order?

Will the application to vary or revoke be heard by the judge who made the original order, and what information, or indeed anything else, will be required from an applicant seeking to vary or revoke an overseas production order before court time is granted to hear their application? What will be the test, if any, in terms of the extent or otherwise of a proposed variation being sought before it can be considered or granted? Does the reference in Clause 7 to the requirements in Section 4(2) to (6) continuing to be fulfilled, or being fulfilled, apply to the variation that is being sought or to the original overseas production order as altered by the variation?

Once an overseas production order has been served, the recipient has, I believe, as a standard, seven days to act on it. Presumably that means that an application to vary or revoke by the recipient as a person affected by the order has to be made within those seven days. Is that in fact the case? If it is, is it not a very short period of time, particularly if it is also envisaged that a judge will have to deal with any application to vary or revoke within that seven-day period, or will a judge be able to extend the period already laid down for the electronic data specified in an overseas production order to be produced if an application to vary or revoke has been made?

Finally, what will be the maximum period of time within which applications to vary or revoke must be determined by a judge, and who will be given notice of an application to vary or revoke an overseas production order, and in what circumstances, and thus have the opportunity to support or contest the application?

**Baroness Williams of Trafford:** I thank the noble Baroness and the noble Lord for their points. I will give them a very long answer because a full explanation is being sought. I shall speak first to Clause 7 standing part of the Bill and then cover the individual amendments.

The purpose of Clause 7 is to allow an appropriate officer who applied for the order, or an equivalent officer, any person affected by the order, the Secretary of State or the Lord Advocate the ability to apply to a judge to vary or revoke an overseas production order. The clause broadly reflects the existing domestic framework; for example, a production order made under the PACE Act 1984 does not contain provision about applications that can be made to vary or revoke a production order. However, court rules allow for the respondent of an order, or any person affected by it, to apply for the order to be varied or discharged. In addition, a judge's decision to make a domestic production order may be challenged by way of judicial review.

Inclusion of this clause is an important safeguard to ensure that anyone affected by an order has an opportunity to challenge it and its contents, especially because appeal rights as such do not exist in respect of production orders. The intention behind Clause 7 was to make clear the existence of the power to vary or revoke an overseas production order and the circumstances under which that power might be used, and to set out the categories of persons who might apply for such variations or revocations. These persons include the person subject to the order, who is therefore required to produce the data sought, the person who applied for the order and anybody else who might be affected by it; for example, the person to whom any personal data sought relates. For example, where notice is given, an innocent third party who was communicating with the suspect over email may not want certain data to be disclosed or may challenge the existence of the order to protect information of a private nature disclosed to the suspect. Ultimately, a judge, when considering whether such an order should be varied, will need to be satisfied that the requirements in Clause 4 continue to be fulfilled.

Clause 7 also recognises that in some cases an appropriate officer may wish to apply to vary or revoke an order; for example, the electronic data sought may not be valuable to the investigation any more or the data may have been sourced elsewhere. In addition, the power to apply to vary or revoke an order exists for the Secretary of State and the Lord Advocate. Given that they are responsible for serving an order on a person, they will need to ensure that the order reflects the international co-operation arrangement terms.

It is right that any application to vary an order should satisfy the same requirements as those that should be satisfied when an application for such an order is made in the first instance. This will include specifying the international co-operation arrangement and specifying or describing the electronic data for which the varied order is sought. Similarly, an application may not be made to vary an order to include data which the applicant reasonably believes consists of or includes excepted electronic data. When considering a varied order, the judge will need to take into account

[Baroness Williams of Trafford]
the same factors as when the order was originally granted. This will ensure that the data sought still serves a purpose to the investigation.

Amendment 24, moved by the noble Baroness, Lady Hamwee, seeks to clarify that the power to vary or revoke an overseas production order given to a judge under Clause 7(1) can be used to revoke part of an order. I reassure her that the amendment is not needed. Subsection (1)(a) already gives a power to vary an overseas production order, which would include revoking it in part—for example, by narrowing the scope of electronic data to be produced—and I therefore hope that she will withdraw the amendment.

The noble Baroness asked whether a provider can say that it will refer this to the judge. The noble Lord, Lord Rosser, asked a similar question. The provider must refer to the judge but cannot actively say it is doing so because of a potential non-disclosure requirement. It is up to the judge whether an order can be disclosed, including the fact of it.

On Amendment 25, when making an overseas production order, a judge may also include a non-disclosure requirement as part of that order, in line with my previous comment. It is not mandatory and whether a non-disclosure requirement is necessary will depend on the facts of each case. Clause 7(1) already includes a provision for revoking or varying an overseas production order. Where a non-disclosure requirement is part of that production order, Clause 7(1) will also apply, allowing the judge to consider an application to vary the order so that it no longer includes such a requirement. There are further provisions in subsections (4) and (5) of Clause 8 that provide a discretion for the judge, when revoking an overseas production order, to order that an unexpired non-disclosure requirement continues to operate. The judge can specify a time when the non-disclosure requirement is to expire that is different from that specified in the revoked overseas production order.

It is the Government's intention that such orders—that is, an order which maintains a non-disclosure requirement even when the overseas production order has been revoked to ensure that an ongoing or future investigation is not prejudiced—should be capable of being varied or revoked on application. We intend to use court rules to provide for this. The Government will review whether these provisions can be made in court rules and will come back to this issue on Report.

On Amendment 26, the Bill makes it clear that a non-disclosure requirement can be imposed as part of an overseas production order. With the leave of the judge under Clause 8(2)(a), or with the written permission of the appropriate officer who applied for the order or an equivalent officer under Clause 8(2)(b), a person who is subject to a non-disclosure requirement could disclose the making of an order or its contents to any person.

Therefore, a mechanism exists by which a person against whom the order is made has a route to challenge and disapply the provisions of the non-disclosure order under Clause 8. Furthermore, when a non-disclosure requirement is included as part of an overseas production order, that order is capable of being varied under Clause 7 in its entirety as it currently stands. No further clarification is needed for non-disclosure requirements separately, as is proposed by Amendment 25.

*4.15 pm*

On Amendment 26, notice provisions can be dispensed with,

"with the leave of a judge",

as provided by Clause 13(2)(a) or,

"with the written permission of the appropriate officer who made the application",

or any equivalent appropriate officer, as provided by Clause 13(2)(b), to remove the prohibitions put in place following notice.

On Amendment 28, Clause 8 seeks to protect the confidentiality of any request for electronic data which would otherwise compromise an investigation or prosecution. There may be valid operational reasons for not exposing any request. In light of those operational reasons and if a judge is satisfied that it is necessary, a non-disclosure requirement can be made as part of an order. Amendment 28 would have the effect of allowing those on whom the order is served to disclose that the order exists, albeit retaining the confidentiality of the contents of an order. I am very concerned that if a company was able to disclose to a customer that it had received a request for data from a UK law enforcement officer, and it did so, the investigation for which the data is being sought could be jeopardised.

For example, where an order has been made against a person but there is only a requirement not to disclose the contents of that order, there would be nothing to stop that person from disclosing the making of an order to the suspect or subject of interest. In my view, the risks to investigations associated with this are fairly clear. The subject of interest could abscond or stop using the service in question and a vital line of inquiry could be lost.

A non-disclosure requirement may be included in an overseas production order at the discretion of the judge. They will be charged with making a proportionate decision as to whether a non-disclosure requirement is necessary and the risks to an investigation should no such requirement be imposed. Where a non-disclosure requirement is included in an order, an expiry date for the non-disclosure requirement must be specified. This ensures that an indefinite requirement to keep confidential an order being imposed will be unreasonable, especially where an investigation or proceedings have concluded. While it is not directly relevant to the non-disclosure provisions set out in the Bill, I also point out that a defendant would have the opportunity to challenge the admissibility of any evidence in a case which comes before a court if the prosecution seeks to rely on it. Again, this is consistent with existing legislation.

On Amendment 35, Clause 13 imposes certain duties on a person served with notice of an application for an overseas production order. These are: the duties not to conceal, destroy, alter or dispose of the electronic data specified in the application; and the duty not to disclose the existence of the application to any other person. It is open to the judge to order that either of these duties should continue to apply, even where the application does not result in an overseas production order being

made or where such an order is made but is revoked before it is served. As I have indicated, a person can, at any point while subject to these duties seek leave from a judge or obtain written permission from the relevant appropriate officer, if the person needs to do something which would otherwise put them in breach of the duties set out in the order.

Clause 7 says that one can vary or revoke a non-disclosure requirement only where it relates to an overseas production order. As I have mentioned, we intend to use court rules to provide for the amendment of such requirements. The Government will review whether these provisions can be made in court rules and come back to the House on Report.

I will pick up some questions that I may not even have looked at and probably have not answered. The noble Lord, Lord Rosser, asked about the circumstances in which the Secretary of State might vary or revoke. The Secretary of State is required to serve an order under the Bill. As part of this, they will need to ensure that any order does not contradict the international co-operation arrangement. For example, they might find that an order does not comply with such an arrangement and might need to vary or revoke it. He also asked what legal tests apply to variation or revocation applications. The same legal requirements are required to be satisfied in respect of a varied order—that is, a judge cannot grant variation unless the requirement for the original application continues to be met, which may be public interest, substantial value or no excepted data.

The noble Lord asked about the seven days to action an order. The period to comply with the order is seven days, which is a standard timeframe. The respondent would therefore need to apply for a revocation in those seven days if they did not wish to be in breach of that order. We consider the timeframe to be proportionate given the purpose of these orders and the need for information to be produced quickly. With that quite lengthy explanation, I hope that noble Lords will be happy not to press their amendments.

**Lord Rosser:** Could I ask for some clarification? Do the seven days apply at present for domestic orders? In other words, has a view been taken that if seven days is sufficient for a domestic order, it is presumably also sufficient for an order made in this country affecting somebody in the States to apply within seven days? Will it not be a rather more complicated process to apply within a seven-day period, if it is an order made in this country applying to somebody in the States? Does this clause work in the situations of an overseas production order made in this country and orders made in the country with which we have a bilateral agreement applying to British service providers, or does it apply in only one direction?

**Baroness Williams of Trafford:** As I understand it, seven days is a standard timeframe. I totally take what the noble Lord says in the sense that we are talking about overseas production orders, but the whole purpose of the Bill is that it is a simpler process in the governing of electronic data. It is a standard period of time that we feel to be proportionate.

**Lord Rosser:** Would the Minister not agree that somebody in the United States must have a pretty good working knowledge of our legal system to know where to apply if they want to revoke or vary an order within seven days?

**Baroness Williams of Trafford:** I take the noble Lord's point. I imagine that all of that would be laid out in the agreement, given that it would be set out, but I can certainly have a think about that. Perhaps we can talk about it when we meet.

**Baroness Hamwee:** My Lords, I am grateful for the long explanation. I had correctly anticipated what the Minister would say about non-disclosure and the impact it might have on an operation. Perhaps I may pursue what happens if a customer asks, "Is there a non-disclosure order in force?" When receiving that inquiry should the answer be, "No comment", which implies yes? What should it be and how is this dealt with in the real world?

**Baroness Williams of Trafford:** My guess—I am sure that the Box will correct me if I am wrong—is that if a non-disclosure order is in train then nobody can comment on it, so whether one was in train or not it would be a "no comment" procedure anyway because there would otherwise be a breach.

**Baroness Hamwee:** I thank the Minister. I beg leave to withdraw the amendment.

*Amendment 24 withdrawn.*

*Amendments 25 to 27 not moved.*

*Clause 7 agreed.*

***Clause 8: Inclusion of non-disclosure requirement in order***

*Amendment 28 not moved.*

*Clause 8 agreed.*

***Clause 9: Restrictions on service of order***

*Amendment 29*

*Moved by* ***Lord Rosser***

**29:** Clause 9, page 9, line 3, leave out "3" and insert "2"

**Lord Rosser:** I will be very brief. Clause 9(1) states that an overseas production order that is not served within a period of three months is automatically quashed. My Amendment 29 would reduce the three months in the Bill to two months. The purpose of the amendment is to give the Government the opportunity to say why it is felt that as long a period as three months is needed before an order is quashed if it has not been served.

As the Minister said in the previous discussion, the purpose of the Bill is to provide a much faster means of obtaining electronic data than is currently available under the mutual legal assistance process, which can and does take months. Bearing in mind the need for

[Lord Rosser]
greater speed in respect of serious crime and terrorism offences or investigations, why could it then take as long as three months to serve an overseas production order once it had been made, and for the specific requirements set out in Clause 4(2) to (6) to be met? Why would two months, as suggested in this amendment, be insufficient, and if it is deemed by the Government to be insufficient, in what kind of cases or circumstances would that be the position? I beg to move.

**Baroness Hamwee:** I have not got a lot to say on this—but I will say it nevertheless. On Amendment 29, I agree with the noble Lord, Lord Rosser, that if there is an order it should be served quickly—although my reaction was, "If it's so objectionable that the period should be reduced, there shouldn't be an order at all". However, in light of his remarks, perhaps I misunderstood the direction in which he is going.

Amendments 36 and 37 are grouped with Amendment 29 and relate to Clause 14, which is about "means of service". Clause 14(3) refers to service on a person outside the UK by delivering the order or notice, or whatever it is, to that person's office or place of business. I wonder whether a person could be outside the UK but at the same time have an office in the UK—unless its base is outside. I am not quite sure what those words mean in context.

Amendment 37 relates to Clause 14(3)(a), which says that service can be made by delivery to a place,

"in the United Kingdom where the person carries on business or conducts activities".

What does "conducts activities" mean if it does not amount to carrying on business? Is this just a bit of belt and braces? If it is, I would not take exception, but I wonder whether the phrase is normally used, because it seems to be part of carrying on business.

*4.30 pm*

**Baroness Williams of Trafford:** I thank the noble Baroness and the noble Lord for their comments. The noble Lord, Lord Rosser, made a valid point about consistency. The aim of the Bill is to strike a balance between the operational need to have flexibility for serving such an order and the legal certainty of the obligations that are placed on those who are subject to an order. There is a similarity with PACE, which also provides a three-month time limit from the date an order is issued for an entry and search to be completed. The Government do resist the amendment—but, given what the noble Lord pointed out, I would be open to discussing this ahead of Report.

On Amendment 36, the notice provisions under Clause 14 have been drafted to allow for flexibility, and reflect the complexity surrounding the service of notices on those based overseas. A "person" is taken to mean an individual or a body corporate. In addition, the Government have been careful to construct the clauses in such a way as to avoid persons hiding behind corporate identities and structures, where they may be based or registered elsewhere in one place but operate out of another country. If a person is located outside the UK and the other conditions for granting a production order are fulfilled, a production order can be served. Adding terminology such as "resident" will confuse what is otherwise a straightforward matter of being able to serve on those persons, legal or otherwise, based outside the UK.

On Amendment 37, Clause 14(3)(a) seeks to reflect the model in the Investigatory Powers Act 2016 where the availability of a method of service is not based solely on the establishment of a business pursuant to any domestic or foreign law but instead should depend on where a person actually conducts their business activities. Amendment 37 would narrow the availability of the method of service described in Clause 14(3)(a) in cases where the person is outside the UK but has no principal office here. The Bill currently provides that that service could be effected by delivering the notice,

"to any place in the United Kingdom where the person carries on business or conducts activities".

The amendment would restrict this to places where the person carries on business. I hope that that is not too complicated. I think that the restriction would be unhelpful. Perhaps it would help if I explained what is intended by "conducts activities"—which is the very question the noble Baroness asked.

The Government intend that "activities" in this sense would mean the corporate activities or business activities according to a common interpretation of the provision. The Government have been careful to construct the clauses in such a way as to avoid persons hiding behind corporate entities and structures, where they may be based or registered elsewhere in one place but operate out of another country. If a person is located outside the UK and the other conditions for granting a production order are made, a production order can be served. Limiting the service to places where business is conducted will introduce complexity where it is not required. However, if there is more we can do to make clear what is intended by "conducts activities", I am happy to consider whether it is possible to clarify these terms further in the Explanatory Notes.

**Baroness Hamwee:** I am grateful for that. Reading the clause, it occurs to me that one could avoid being served by moving around from place to place, whether "carrying on business" or "conducting activities", because at the point of service you might no longer be conducting activities in that place. The terminology is in the present tense. Has thought been given—I am sure it has, because officials are always way ahead of me—to whether that is an issue?

**Baroness Williams of Trafford:** As I said, if the noble Baroness is confused, that is an indication to me to look at what the Explanatory Notes say—because if she is confused by it, others will be, too.

**Baroness Hamwee:** I am a bit confused, but that last point is not something to answer now. It is about whether we are talking about the present or whether, having been at an address in, say, Newcastle at one point, and you have moved to Liverpool, there can be service in Newcastle.

**Lord Rosser:** Bearing in mind that the Minister has said, without making any commitment, that she will reflect further on the amendment, I beg leave to withdraw it.

*Amendment 29 withdrawn.*

*Clause 9 agreed.*

***Clause 10: Retention of electronic data and use as evidence***

**The Deputy Chairman of Committees:** I have to inform the Committee that if Amendment 30 is agreed to, I cannot call Amendments 31 or 32 for reason of pre-emption.

*Amendment 30*

*Moved by* ***Baroness Hamwee***

**30:** Clause 10, page 9, line 16, leave out from "necessary" to end of line 18 and insert "for its use as evidence in proceedings in respect of the offence which is the subject (under section 4(3)) of the overseas production order in question."

**Baroness Hamwee:** I do not suppose that that will trouble us in Grand Committee.

Clause 10 deals with the retention of data and its use as evidence. Clause 10(1) provides that data,

"may be retained for so long as is necessary in all the circumstances. This includes retaining it so that it may be used as evidence in proceedings in respect of an offence".

"Necessary in all the circumstances" is quite a wide term. It may be unkind of me but, when I reread it yesterday, it felt as though the writer had run out of steam. One example is given but I would have expected more information about protections and clarification; otherwise, how does one challenge this? Therefore, the amendment is intended to ask the Minister how the Home Office envisages that this clause will operate in practice.

Given the example included, I wonder whether the Home Office anticipates producing guidance regarding retention, and that is the subject of Amendment 31. Amendment 32 is intended to probe the term "an offence". Does this mean any offence? In particular, if an offence other than the object of this exercise is disclosed, is a fresh application needed or can this be—I will use the extreme term—an unending fishing expedition? I beg to move.

**Lord Kennedy of Southwark (Lab Co-op):** My Lords, the noble Baroness, Lady Hamwee, raises three important amendments here and I look forward to the Minister's response. She is right that, as written, the provision appears to be very wide in scope, and it would be better to have more clarification. The terms "in all the circumstances" and "an offence" are very wide, and it would be good to hear what they are. As the noble Baroness said, it would appear that there could be a never-ending fishing expedition, which in itself would not serve justice. I look forward to hearing the response to the very valid points raised.

**Baroness Williams of Trafford:** I thank the noble Baroness and the noble Lord for their points. I turn to the first point that the noble Lord, Lord Rosser, made—I am sorry, he did not speak, so it must have been the noble Baroness, Lady Hamwee; they do not look anything like each other. Where material is provided in compliance with a PACE production order, police are in principle able to use that material where it is relevant and necessary for another policing purpose, including a separate criminal investigation. The intention behind the overseas production order is basically to replicate the powers available to law enforcement under current domestic production powers. Under the Bill, the same will apply to electronic data obtained under overseas production orders. This ensures that law enforcement officials can use their independent discretion to consider what is appropriate to help with the conduct of their duties.

The effect of Amendment 32 would be to restrict the retention of the evidence produced in respect of an overseas production order to the offence for which the order was made. The Bill's provisions do not dictate when an officer should apply for a new production order in respect of data received that is to be used for a different purpose. Again, this is consistent with existing practice. The Bill simply makes the same provisions in relation to orders which can be served on an entity outside the UK, where a relevant agreement is in place, as in relation to orders which can be served on a company based here.

It will always be appropriate for law enforcement officers and prosecutors to consider what can be used in an investigation and for evidential purposes. They will assess the likelihood of challenge in court where evidence produced in relation to a production order is adduced for a separate criminal offence. That is already their bread and butter. In all likelihood in those situations an appropriate officer may well decide that it would be more appropriate for a new production order to be obtained for the material produced that points to a separate offence.

A question was asked about guidance. The Government will consider whether it is necessary to produce policy guidance to assist an appropriate officer in these circumstances but, given that the Bill reflects existing practice in relation to production, I do not see that it brings about a new challenge for our law enforcement or prosecution professionals and I do not think it is necessary to mandate it in the Bill. For these reasons, I ask the noble Baroness to withdraw the amendment.

**Lord Kennedy of Southwark:** That was a very long explanation of why the clause is as it is and I thank the Minister for it. She referred to how this in effect mirrors what we have in PACE. Is guidance provided on PACE?

**Baroness Williams of Trafford:** There is a code of practice for PACE. We will look at whether some guidance is necessary for this replicated process.

**Lord Kennedy of Southwark:** I thank the Minister for saying she will look at those points. If we are mirroring PACE then we can mirror the guidance as well.

**Baroness Hamwee:** My Lords, I think I am going to have to spend some time between now and Report familiarising myself with PACE or hand this over to my noble friend Lord Paddick, whose bread and butter it was at one time. I take the point made by the noble Lord, Lord Kennedy, but I remain faintly uneasy about how open this is. Nevertheless I thank the Minister and I beg leave to withdraw the amendment.

*Amendment 30 withdrawn.*

*Amendments 31 and 32 not moved.*

*Clause 10 agreed.*

*Clause 11 agreed.*

***Clause 12: Notice of application for order: confidential journalistic data***

*Amendments 33 and 34 not moved.*

*Clause 12 agreed.*

*4.45 pm*

***Clause 13: Effect of notice of application***

*Amendment 35 not moved.*

*Clause 13 agreed.*

***Clause 14: Means of service***

*Amendments 36 and 37 not moved.*

*Clauses 14 and 15 agreed.*

***Clause 16: Regulations***

*Amendment 38 not moved.*

*Clause 16 agreed.*

*Amendment 39*

*Moved by* ***Lord Paddick***

**39:** After Clause 16, insert the following new Clause—

"Priority

In the event of any conflict between this Act and the Data Protection Act 2018 ("the DPA") or the General Data Protection Regulation 2018 ("the GDPR"), the provisions of the DPA or the GDPR shall prevail."

**Lord Paddick:** My Lords, Amendment 39 is in my name and that of my noble friend Lady Hamwee. I am grateful for the briefing from techUK, which raises concerns about how this legislation might affect a deal between the EU and the UK on adequacy should the UK leave the European Union. We are unsure how to address those concerns and this amendment is very unlikely to be the means by which to do so, but at this stage it is a means of raising them. It is a bit of a Second Reading amendment, if noble Lords get my drift.

Throughout our debates it has been emphasised that the sole purpose of this legislation is to enable UK law enforcement agencies to find a faster legal means to secure data held overseas that may contain vital evidence in serious criminal cases being prosecuted in the UK than the current mutual legal assistance treaty process. Data handled in the UK is subject to the protections of the Data Protection Act 2018 and the EU general data protection regulations. Indeed, the Data Protection Act ensures that the GDPR continues to have effect, even if the UK does leave the EU.

Throughout our debates on this legislation we have expressed our concerns that the designated international co-operation arrangements that enable overseas production orders to have effect in the target state will give as much right to overseas law enforcement agencies to demand data from UK service providers as the right this legislation will give UK law enforcement agencies to demand data from a service provider in a foreign state. Those foreign states, such as the United States of America, are not bound by the Data Protection Act or the GDPR.

For a third country to exchange data with the EU it must persuade the EU that it has adequate protections for personal data equivalent to or exceeding the standards that EU countries have to comply with under the GDPR. Indeed, EU states are not bound by EU regulation relating to data used for national security purposes, but third-party states are. For the first time, if we leave the EU, the EU will scrutinise the way we handle data in relation to national security because we will become a third-party country, involving more scrutiny than currently takes place. I think that is called "taking back control". Whether in relation to national security or not—we have already debated the weaker safeguards proposed in relation to terrorism offences—such arrangements could result in personal data from an EU country and shared with a UK service provider being passed to a law enforcement agency in a state that falls short of the protections provided by the GDPR.

In summary, our concern is that, by entering into international co-operation agreements enabling overseas law enforcement agencies directly to access personal data held in the UK by UK service providers, sensitive personal data will be accessed by overseas law enforcement agencies whose standards fall below those set out in the Data Protection Act and the GDPR, thereby jeopardising the EU granting the UK an adequacy certificate. Could the Minister explain what discussions have taken place with the EU on this issue and how the UK's adequacy status will be protected? I beg to move.

**Lord Kennedy of Southwark:** My Lords, I fully support the amendment moved by the noble Lord. I recall our debates in the Chamber on the GDPR and how important it is to get the adequacy certificate to make sure that we are compliant with all these regulations, and we cannot put that at risk in subsequent legislation. I am looking for the Minister to address that point. The noble Lord has raised a very valid point. We need to get this right before this legislation reaches the statute book.

**Baroness Williams of Trafford:** I thank the noble Lord, Lord Paddick, for the point that he has made, and the noble Lord, Lord Kennedy, for backing it up. I smiled when the noble Lord, Lord Paddick, asked about countries that fall short of our data protection laws. We are probably at the top of the EU league table in terms of the rigour of our data protection legislation—I can think of some countries that might fall into the category that the noble Lord talks about—but the Bill will put on an equal footing the means by which UK law enforcement officers or prosecutors can apply to the court for access to electronic evidence, irrespective of whether the data is held by an entity based in the UK or based elsewhere in the world. UK law enforcement will be bound by the very robust Data Protection Act 2018 when processing personal data obtained pursuant to an overseas production order or where access has been given to data pursuant to such an order.

The noble Lord asked what discussions have been taking place. Those discussions are above my pay grade. I have not been involved in them personally but I know that they will have been going on, certainly in the background. However, the noble Lord makes a very good point about the adequacy decision. He also asked how we will ensure that data is used for the correct purposes. That is all part and parcel of what our Data Protection Act provides for. I am absolutely convinced that we in the UK have the right data protection safeguards in place and, when it comes to data protection and other countries, we will ensure that the same rigour is in place in the country with which we have made an agreement.

Clause 6(4)(c) states that an overseas production order,

"has effect in spite of any restriction".

The noble Lord asked whether that means that UK CSPs do not need to comply with data protection. Having effect "in spite of any restriction" relates only to the effect of an order served on a CSP outside the UK, so the restrictions can only be in UK law, as we obviously cannot seek to override laws in other countries.

It might be helpful to reiterate that, when making a production order, a judge must consider the requirements set out in Clause 4. In doing so, he or she will need to consider whether the evidence is of substantial value to the investigation or proceedings and whether it is in the public interest to produce the information, balancing these factors with the right to privacy. It stands to reason that the more sensitive the data, the harder it will be for the applicant to justify the public interest test. I hope that the noble Lord will be happy to withdraw his amendment.

**Lord Kennedy of Southwark:** The noble Lord's amendment seeks to put it into the Bill that, in cases of dispute, the GDPR shall prevail. Is the noble Baroness saying that this is implied anyway, or not necessary? If we end up with this on the statute book as it is now, and the matter of which Act applies were to become a matter of dispute in the courts, that is not where we would want to be.

**Baroness Williams of Trafford:** I agree with the noble Lord, but I am saying there would be an underlying basis for data protection, which is the Data Protection Act. Therefore, while there are many things we could put on the faces of many Bills, it is not necessary in this case—we already have laws governing the protection of data.

**Lord Kennedy of Southwark:** With that comment, is the Minister saying that, actually, GDPR will prevail?

**Baroness Williams of Trafford:** Yes, I am.

**Baroness Hamwee:** My Lords, as the Minister is responding, it seems that this falls into a similar category to a point we raised last week about how one balances the different public interests involved. I think the Minister is saying that there is a public interest in the application of the Data Protection Act and the GDPR, which takes us back to the clause about assessing public interest. The Minister is nodding at that. Perhaps, before Report, we should go back and look at how that might apply in this context as well.

**Lord Paddick:** My Lords, I am grateful to the Minister, and to other noble Lords, for their contributions. In essence, my question is: if the EU has to assess whether we are safeguarding its data, yet we are entering into agreements to give away that data to another country, will the EU need to be satisfied that that other country also has standards of data protection equivalent to or better than the GDPR? If not, we might be putting the adequacy judgments at risk. That is the essence of the amendment. I would be grateful for an opportunity to discuss this further with the Minister in the meetings between now and Report but, at this stage, I beg leave to withdraw the amendment.

*Amendment 39 withdrawn.*

***Clause 17: Interpretation***

*Amendment 40 not moved.*

*Clause 17 agreed.*

*Clauses 18 to 20 agreed.*

*Bill reported without amendment.*

*Committee adjourned at 4.59 pm.*

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