Vol. 793
No. 186

Tuesday
9 October 2018

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

HER MAJESTY'S GOVERNMENT

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Parliamentary Secretary to the Treasury and Chief Whip—The Rt. Hon. Julian Smith, MP

Attorney General—The Rt. Hon. Geoffrey Cox, QC, MP

Minister for Energy and Clean Growth—The Rt. Hon. Claire Perry, MP

Minister for Immigration—The Rt. Hon. Caroline Nokes, MP

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Sam Gyimah, MP (Minister for Universities, Science, Research and Innovation) §

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Richard Harrington, MP (Minister for Business and Industry)
The Rt. Hon. Lord Henley

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§ Members of the Government listed under more than one department

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THE
PARLIAMENTARY DEBATES
(HANSARD)

IN THE FIRST SESSION OF THE FIFTY-SEVENTH PARLIAMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
COMMENCING ON THE THIRTEENTH DAY OF JUNE IN THE
SIXTY-SIXTH YEAR OF THE REIGN OF

HER MAJESTY QUEEN ELIZABETH II

FIFTH SERIES **VOLUME DCCXCIII**

ELEVENTH VOLUME OF SESSION 2017-19

House of Lords

Tuesday 9 October 2018

2.30 pm

Prayers—read by the Lord Bishop of Newcastle.

PC Palmer Inquest

Announcement

2.36 pm

The Lord Speaker (Lord Fowler): My Lords, I would like to offer a few words following the recent inquest hearing for PC Keith Palmer after the terrorist attack on Parliament in March last year. PC Palmer died ensuring the safety of Members of both Houses, the staff who work here and the members of the public on the estate at the time. He ran towards danger to keep each of us safe. The events of that day shocked and saddened the whole country. Our thoughts and prayers are with the family, friends and colleagues of PC Palmer and those who lost their lives on Westminster Bridge.

We need to take all possible action to prevent a similar tragedy in future. Carriage Gates are now kept closed, and opened only to allow vehicles in or out. The Parliamentary Security Department and the Metropolitan Police will continue to work hard to protect us from danger, but our co-operation is required. In that light, I encourage all Members to wear their security pass when on the estate. We should remember that security in Westminster is everyone's responsibility.

National Accident Prevention Strategy

Question

2.37 pm

Asked by ***Lord Jordan***

To ask Her Majesty's Government what steps they are taking to implement the forthcoming National Accident Prevention Strategy.

The Earl of Courtown (Con): My Lords, the Government look forward to the publication of the Royal Society for the Prevention of Accidents' National Accident Prevention Strategy and will consider the report carefully when it is published. We are pleased that RoSPA has worked with a range of experts in developing the strategy, including Public Health England on the evidence. The Government remain committed to promoting action to reduce accidents and are pleased to see that the report recognises the progress that has been made.

Lord Jordan (Lab): I declare an interest as deputy president of RoSPA and thank the Minister for his reply. Deaths from accidents, overwhelmingly in the home, are at an unacceptable level and rising. There has been a 16% increase in such deaths between 2013 and 2017 in England and Wales, with an average of over 13,000 each year. Does the Minister agree that it is imperative that the National Accident Prevention Strategy being launched tomorrow is linked to the NHS 10-year plan? Does he also agree that to ensure the strategy's success, it is vital that accident-related data collected by hospital emergency departments are made accessible to monitor trends and set priorities for preventive action?

The Earl of Courtown: I congratulate the noble Lord and RoSPA on all their good work in this important field. I will start where the noble Lord finished and refer to emergency unit data. Public Health England is working with NHS England and RoSPA to look at how we use the data from emergency datasets. This is a terribly important issue; we know where there are problems and we can act accordingly. Regarding the 10-year plan, no decisions have been made on how the additional funding recently announced by the Government will be distributed across the NHS. That important issue costs the taxpayer an incredible amount of money, which will be taken into account.

Baroness Jolly (LD): My Lords, through their public health function, local authorities have responsibility for accident prevention, and any accidents should show in their annual joint strategic needs assessments. How much money does Public Health England earmark annually for accident prevention and how much of that money reaches local authorities?

The Earl of Courtown: My Lords, I cannot answer the noble Baroness in detail, but as far as the funding of Public Health England, which drives this policy, is concerned, local authorities will receive more than £16 billion for public health over the spending review period to invest in public health services to improve the health of the local population, as the noble Baroness is aware. One must not forget the world-leading national immunisation screening programmes, ring-fenced funding of more than £1.2 billion, as well as the world's first national diabetes prevention programme. I will write to the noble Baroness with any further information I can give her.

Baroness Thornton (Lab): My Lords, following on from the question of the noble Baroness, Lady Jolly, now that the Prime Minister has announced the end of austerity, would the noble Earl care to inform the House when the cuts to the public health budget will be restored—and more than restored—so that the preventive work required to cut the number of deaths and injuries from accidents can take place?

The Earl of Courtown: My Lords, as I told the noble Baroness, Lady Jolly, the targeting of the additional funding for the NHS is under review. This will continue and it will be announced in due course where this money will be spent.

Lord McKenzie of Luton (Lab): My Lords, I draw attention to my interests in the register. We know that the most vulnerable to accidental injury are the youngest in society, the oldest and the poorest. Although we have seen significant reductions in injury in workplaces and on the roads, that has not been mirrored in leisure activity and in the home. How does the Minister account for that difference in outcomes?

The Earl of Courtown: My Lords, as the noble Lord said, there are areas where there have been improvements in the figures. Road traffic incidents where people have been severely injured or have, sadly, died have reduced over the years. In addition, for the over-65s, there has been a marked reduction in hip replacements, which are often a result of falls. The whole point of Public Health England in this area of data accumulation is to find out where there are variations in injuries and where work can be targeted at the areas where it is needed.

Lord Turnberg (Lab): My Lords, may I express a personal interest? Last week I tripped on a raised paving stone, breaking my radius and smashing my face. I am sorry to bring that to your Lordships' attention, but it struck me that raised paving stones are not uncommon and that people trip every day. Local public services need to get on with repairing the roads.

The Earl of Courtown: I sympathise with the noble Lord: four years ago I fell off a ladder while cutting my hedge and ended up in resus with rather a nasty headache. He is quite right—if you look at the pavements around towns and villages there are many trip hazards. Work should be done to improve them.

Lord Hunt of Kings Heath (Lab): My Lords, I take the noble Earl back to his comment that the Government were now considering how to allocate the additional funds for the NHS in light of the announcement this summer. Will he confirm that public health funding through local government has been expressly excluded from that increase in funding, along with education programmes? Can he tell me why?

The Earl of Courtown: The noble Lord knows a great deal more about this subject than I do: I will have to write to him with that information.

UN: Global Goals for Sustainable Development

Question

2.45 pm

Asked by ***Lord McConnell of Glenscorrodale***

To ask Her Majesty's Government when they will publish their plans for the United Kingdom Voluntary National Review on the United Nations Global Goals for Sustainable Development, due to be presented to the United Nations in September 2019.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, the UK will present its voluntary national review of progress towards the global goals at the UN in July 2019. Preparations are under way. The Government are committed to an inclusive process, to produce a strong voluntary national review. Yesterday, the Government launched a website, www.gov.uk/sustainabledevelopmentgoals, setting out our plans and asking for input from people and organisations across the UK.

Lord McConnell of Glenscorrodale (Lab): I thank the Minister for that Answer and look forward to contributing to that consultation. One key element of the sustainable development goals, which was missing from the millennium development goals, is the commitment to take more action on disaster resilience. In the last two weeks we have seen the impact that a natural disaster, such as an extreme weather event, can have on development in Indonesia, with the recent tsunami and earthquake. Will the Government ensure that, while it is important that we send aid to Indonesia, we are also acting internationally on disaster resilience to ensure that countries such as Indonesia, which face

these extreme weather events regularly, are better able to prepare for, and therefore pre-empt, some of the impacts?

Lord Bates: I can certainly do that and I pay tribute to the work the noble Lord has done over many years in this area, as co-chair of the All-Party Parliamentary Group for Sustainable Development Goals. He is right that we have responded generously, as is usual with the UK, via the Disasters Emergency Committee appeal, to the situation in Indonesia. The resilience element is something we have been very much aware of, not least because of the effect of the hurricanes in the Caribbean last year. Those led us to work very much on resilience and building back better in that area. I will certainly ensure that that remains a very strong part of our response in terms of the sustainable development goals.

Baroness Sheehan (LD): Of the countries that have already published their voluntary national reviews, there are some that stand out. Japan has established a new cabinet body, the SDGs Promotion Headquarters, headed by the Prime Minister and composed of all Ministers. In Germany, the Federal Chancellery is the lead agency for the national sustainable development strategy. Will the Minister confirm that delivery of the universal SDGs in the UK will have a similar high-level, cross-cutting commitment?

Lord Bates: I will, of course. David Cameron, when Prime Minister, was a member of the high-level panel that set up the sustainable development goals. The report will be presented to a high-level panel in July by the Secretary of State for International Development. Indeed, further to that, the Prime Minister will take part next September in the first stocktake of sustainable development goals at the UN General Assembly. That shows that commitment to the SDGs comes from right at the top of this Government and will continue to do so.

Lord Naseby (Con): My noble friend referred to Hurricane Irma and our response, which was not quite up to scratch. In light of the review that was undertaken, I ask him to look again at the request that I and others, particularly in the Caribbean, have made that that review's findings, even with people's names removed, should now be published.

Lord Bates: I take issue a little with my noble friend. As he knows, we do not quite see the response that way. I think the response of the UK to those unprecedented two category 5 hurricanes in the Caribbean last year was incredibly effective, with the delivery of support, advice and resilience building. We have done a lot in that area and continue to keep it under review. My noble friend Lord Ahmad and I, and the Ministry of Defence, have put in a substantial amount of work to prepare for this year's hurricane season, which I think will ensure that that resilience continues.

Lord Collins of Highbury (Lab): My Lords, the universal nature of the SDGs is obviously vital. It is about co-ordination in this country to ensure that we respond positively to them. I have a specific question about the consultation. The Government need to be more proactive about the involvement of civil society. The last time DfID undertook a review, there was no mention of trade unions, although they are critical for sustainability and keeping pressure on Governments. Will the Minister undertake that there will not just be a website inviting participation but that the Government will go out and actively seek involvement in the process?

Lord Bates: The noble Lord has raised this before. He is absolutely right that if the SDGs are to be met, they will not be met by Governments alone; they have to be met by civil society. That means business getting involved, as well as church groups, trade unions and charities. It is impossible to assess our progress towards the SDGs by looking simply at government entities in this country. Therefore, the trade unions will be a very important element in that. Individual departments will be reaching out to trade unions to ensure that their voices are heard. Proactively, however, there is also the opportunity through the website launched yesterday for trade unions and other parts of civil society to make sure that their contribution to meeting those goals is recognised in our voluntary national review.

The Earl of Sandwich (CB): My Lords, in view of all the bad news about climate change that we have been reading, are the Government making more effort and looking harder at sustainable development goal 13, which is about climate change? What action will they take?

Lord Bates: We have taken a number of pieces of action. Some of the action required of us is under the Climate Change Act, which was introduced in 2008 under the previous Labour Government. Of course, a major step forward was the Paris agreement. There will be a follow-up to that agreement. We have introduced international climate finance as a way of scaling up the amount of investment available for that very important area. The IPCC made those announcements in Seoul, South Korea, just a couple of days ago, which grabbed the headlines. They will be followed up at a special meeting in Katowice in Poland in December and we will play a full and leading part in that.

Baroness Jones of Moulsecoomb (GP): My Lords, I am sure the Minister knows that yesterday's UN report said that we would have to be carbon-neutral by 2040 to survive a lot of catastrophes, and something like $2.4 trillion would have to be spent on future-proofing ourselves. Do the Government really think that their plans are ambitious enough?

Lord Bates: The point with all the sustainable development goals is that they are absolutely essential but they are long-term strategic goals. That is why the Government have a 25-year environmental plan. They also require huge amounts of capital. The noble Baroness mentioned $2.4 trillion. The global aid packages which go around the world amount to $150 billion—and we are looking for $2.4 trillion. These are huge amounts.

[Lord Bates]
We cannot do that without scaling up investment from the private sector; individual Governments need to step up as well. We will continue to urge that course of action.

Recycling
Question

2.53 pm

Asked by ***Baroness Neville-Rolfe***

To ask Her Majesty's Government what proportion of goods sorted for recycling by households in England eventually ends up in landfill.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, English local authorities collected 11.1 million tonnes of waste for recycling in 2016-17, the most recent year for which figures are available. Around 90% of this was from households. An estimated 1.3% of the 11.1 million tonnes ended up in landfill in this country. We will publish plans to increase recycling and boost the UK recycling industry in our resources and waste strategy later this year.

Baroness Neville-Rolfe (Con): My Lords, I certainly welcome the second part of my noble friend's reply. We must examine how we can progress these issues. I hope he agrees that we need to draw on expertise from all sources and provide greater consistency and clearer labelling to avoid recycling chaos. I find the figure he gave me encouraging—it is low—but does he agree that we should also be concerned about UK recycling ending up in landfill overseas, as recently reported in Poland and previously in China?

Lord Gardiner of Kimble: My Lords, I entirely agree with my noble friend that our ambition is to handle much more of our waste. We will set out proposals in precisely that area in our resources and waste strategy. Of course, across the European Union we and all other member states are working on the circular economy package. The aim is to have a 65% recycling rate by 2035. We in this country are ambitious and wish to meet or exceed those environmental benefits.

Baroness Jones of Whitchurch (Lab): My Lords, is it not time that the Government introduced a national system for recycling? There is a huge problem with recycling bins being contaminated with items that are not appropriate to be recycled. A recent BBC report found that 97% of rejected recycling that had got mixed up was then sent to landfill. We know that part of the problem is that people do not understand what is appropriate to be put in the bins in their area. Surely the time has come to have a national scheme for this. It happens in other countries; if they manage to do it, why are the Government so slow to act on this? We have debated this issue time and time again. The solution seems clear and the Government just need to act.

Lord Gardiner of Kimble: My Lords, that is exactly what we wish to do. We wish to accelerate the consistency of what is recycled across England. Of course, we want to learn lessons from other countries where it has gone well, but we are clear that, for our environment and the world environment, we need to reuse and recycle very much more. Some local authorities have very high recycling rates while others have very low ones. We need to work on that because consistency is precisely what will be so important, along with increasing food waste collection.

Lord Teverson (LD): My Lords, while I welcome very much the Government reminding us that landfill has gone down substantially, the real risk in waste disposal is that energy from waste will very soon exceed recycling. When we build energy-from-waste units, should we not make it mandatory to have recycling centres at the front end of that process so that we burn less and recycle more?

Lord Gardiner of Kimble: The noble Lord hits upon the waste hierarchy and the importance of reuse and recycling before considering incineration as an energy source—and of course landfill is a very last resort. That is why our ambition is to have zero waste in landfill, and why we all need to work on the circular economy and getting recycling rates much higher across the piece.

Baroness Gardner of Parkes (Con): My Lords, is the Minister aware—I doubt that he will be—that many years ago when we were in opposition, I put this point to the Labour Minister at the time? I asked why we could not have a national scheme and the reply from the Labour Government, which I am sure noble Lords can check in *Hansard*, was "No—why would we want a nanny state?". So could the Opposition now explain how and why they have come around to thinking the other way—which I tried to convince them of many years ago?

Lord Gardiner of Kimble: My Lords, on this side of the House we believe in localism; we believe that local communities and local authorities are the best people to look after these matters. But we think that there should be consistency, precisely to ensure that as much as possible can be recycled and that there is clarity for residents and businesses about what can be recycled. It is in all our interests that we reuse and recycle more; I do not believe that that symbolises the nanny state.

The Countess of Mar (CB): My Lords, there is a serious problem with the recycling or disposal of larger household items, such as carpets and furniture that have had flame-retardant chemicals put on them. Many of these chemicals have now been banned, but the furniture is still in use or needs to be disposed of. The current flame retardants contain organophosphates, and I know quite a lot about them. What advice is given to people who own these items of furniture and carpets about disposing safely—I repeat, safely—of their materials?

Lord Gardiner of Kimble: My Lords, I think that I had better write to the noble Countess with the absolute requirements. Clearly, any hazardous waste of that sort needs to be disposed of responsibly. Bearing in mind the examples that she raises, I will write to her and put a copy in the Library.

Lord Boateng (Lab): My Lords, is it not a fact that nanny is sometimes right? The gentle exhortations of the Minister are, I am sure, appreciated by local authorities—but when was the last time that his department issued a directive on this issue and what did it say?

Lord Gardiner of Kimble: My Lords, we are working in collaboration with local authorities because we think that that is the civilised way in which we will get the results that we are expecting. Indeed, that is why there are local authorities recycling 65%, which is a very high figure, and others that are not, and why we are working with local authorities, particularly in inner cities and towns, where this is proving a problem. We need to address that, which is why the resources and waste strategy, the clean growth strategy and the industrial strategy will all be engaged on getting a better situation.

Lord Bird (CB): My Lords, is it possible to bring back the totter? Could we not have all those little microconsumers going around picking up goods that have some value, such as bottles and cans? Could we not get manufacturers to put a value on them so that we could bring that stuff back into the community and use it?

Lord Gardiner of Kimble: My Lords, what the noble Lord said is important. That is precisely why, subject to consultation, we will be introducing, for instance, a deposit return scheme in England which will be an important part of our collaboration with business to ensure that we reuse and recycle more.

NHS: Diabetes

Question

3.01 pm

Asked by ***Lord Morris of Aberavon***

To ask Her Majesty's Government what steps they are taking to ensure that the National Health Service receives adequate funding to provide treatment to those with type 2 diabetes and to manage their increased risk of developing cancer.

The Earl of Courtown (Con): My Lords, it is for local organisations to commission services to meet the healthcare needs of their populations, taking account of local and national priorities, including for diabetes and cancer. Funding has been made available through to 2020-21, and we expect it to be spent in line with the priorities set out in NHS England's mandate, including for diabetes.

Lord Morris of Aberavon (Lab): My Lords, I repeat my previous declaration of interest. Since diabetes has doubled in 20 years, making it the fastest growing modern health crisis, should not one Minister be put in charge and report annually to Parliament, coupled with a new fund to support greater adoption of new technologies? The Prime Minister proudly wore her flash monitoring device at the Mansion House; regrettably, the device is available on the NHS in only 63% of areas—others have to pay about £100 a month for the device. The hold-up of universal access is not with the clinicians but with the clinical commissioning groups. Will the Secretary of State take a personal interest in the development of this problem?

The Earl of Courtown: I thank the noble and learned Lord for that question. In particular he raised the issue of flash monitoring units. As the noble and learned Lord is aware, they are a very useful tool in the management and control of the problems people have with diabetes. Many CCGs perform very well, but some do not provide this service. They are being encouraged to do so.

Baroness Chisholm of Owlpen (Con): My Lords, as the grandmother of six extremely greedy grandchildren, I know how difficult it sometimes is to get children to eat healthily, but surely it is best if no weight is gained in the first place. What advice is being given to young children and those who look after them about what is good healthy food and bad food?

The Earl of Courtown: My Lords, my noble friend makes a very valid point. One in three children are now overweight or obese by the time they leave primary school. Early intervention is very important whether we are talking about cancer or about diabetes. At the moment, we are reviewing how to encourage children to be more active and are consulting on proposals to limit further the advertising of unhealthy food to children, to change the way unhealthy products are sold, to improve the information provided in restaurants and to ban the sale of energy drinks to children.

Baroness Symons of Vernham Dean (Lab): My Lords, does the Minister recognise that some people suffer from forms of cancers that do not allow them to eat orally so they have to be intubated and the food with which they are intubated very often causes type 2 diabetes? Could more research not be done into forms of nourishment for people suffering from cancer who cannot eat orally?

The Earl of Courtown: My Lords, the noble Baroness makes a very good point. Diabetes UK has reported that if you have diabetes you can be more at risk of developing certain types of cancer, while some cancer treatments can affect diabetes and make it harder to control. In partnership with Macmillan, Diabetes UK has produced an information booklet for anyone who has been diagnosed with cancer and is living with diabetes. I am glad the noble Baroness raised this point and I will ensure that my noble friend the Minister is aware of it.

Lord Rennard (LD): My Lords, does the Minister accept that funding for the kind of structured educational programmes that are necessary to support people with diabetes is actually threatened by the reductions in provision for public health, and that a survey by GPonline showed that 30% of practices are reducing provision for weight management courses? Is this not counterproductive to a strategy that should be based on prevention?

The Earl of Courtown: My Lords, I agree with the noble Lord when he mentions prevention. He is right that, as I said earlier, early intervention prevents further problems later on in life. I should also add that we are spending another £5 million that will produce a number of specialist nurses in around 70 different hospitals throughout the country. As the noble Lord will also be aware, we have rolled out the national diabetes treatment and care programme, a countrywide programme that is the only one in the world.

Lord Robathan (Con): My Lords, is this not a case where people in this country must take responsibility for their own health? The huge majority of type 2 diabetes cases, though not all, are caused by eating the wrong food, eating too much food, drinking too much and not taking exercise. Surely we must send out the message that each individual must take responsibility for him or herself.

The Earl of Courtown: My Lords, my noble friend makes a very good point. This is why I go back to the childhood obesity plan and reiterate that we have to intervene early to stop this problem gathering apace and introducing more people in the population suffering from diabetes. The plan is to educate children and their families on how they should eat. We have to look at what children are eating and discourage them from eating things that are harmful to them.

Lord Winston (Lab): My Lords, the evidence coming from the DevOS study in Singapore shows that the incidence of gestational diabetes—diabetes during pregnancy—is about twice as common as is generally recognised in maternity units across the world. Can the Government do something better about screening for diabetes during pregnancy? That is a clear and important point. It may not be cancer but other diseases that follow later on as a result of that in the children.

The Earl of Courtown: I speak from family experience of gestational diabetes: my wife had gestational diabetes with our third child, and I might add that all three children's blood sugar was in double figures when they were born. She had diabetes then and she is also being screened on a regular basis by the local practice—the sugar level in her blood is being measured on a regular basis. I take on board what the noble Lord says; he makes a very good point.

Jamal Khashoggi

Private Notice Question

3.08 pm

Tabled by ***Baroness Northover***

To ask Her Majesty's Government what assessment they have made of media reports of the disappearance and possible murder of the Saudi Arabian journalist Jamal Khashoggi in Turkey.

Baroness Goldie (Con): My Lords, we are very concerned by reports of the disappearance of Jamal Khashoggi. The Permanent Under-Secretary to the Foreign and Commonwealth Office conveyed this message to the ambassador yesterday, as did the Foreign Secretary earlier today. We are working urgently to establish the facts and co-operating with our international partners. We call on the Government of Saudi Arabia to support a thorough investigation into Mr Khashoggi's disappearance and to share the outcome of that investigation.

Baroness Northover (LD): I thank the Minister for her reply. The Government have rightly responded very strongly to Russia's recent actions. Does she agree that the disappearance and possible murder of the Saudi journalist within the Saudi consulate in Turkey raises equally important issues? What assurances on critics' freedom of expression and on the use of diplomatic premises are now being sought from the Saudis? What action will be taken if no satisfactory assurances are received?

Baroness Goldie: An attempt is still being made to ascertain the facts, and I would not want either to speculate or hypothesise without knowing those facts. Let me make it clear that we would be very concerned if the allegations were to be substantiated. I believe that violence against journalists worldwide is rising, and that is a grave threat to freedom of expression. If the media reports prove correct, we will certainly treat the incident seriously. I make it clear that friendships—we have an established friendship with Saudi Arabia—depend on shared values and respect for those values.

Lord Collins of Highbury (Lab): It is a fact that it has taken four days for the Foreign Secretary to respond to this incident—unlike the other examples that the noble Baroness cited. We have seen action in Yemen from the Saudis, the roughing up and forced resignation of the Lebanese Prime Minister, the increased use of capital punishment and more laws repressing people in Saudi Arabia. It is precisely that repression and open interference in other countries' affairs that makes this incident seem more likely. The Opposition condemn it absolutely, and I hope that the Minister will today, on behalf of the Government, condemn this outrageous act.

Baroness Goldie: I respect the passion exhibited by the noble Lord, but I repeat what I said to the noble Baroness: there is an investigation. We do not know the facts. We are anxious to establish them, and we are

working with Turkey and the United States to try to ascertain them. We need to establish the facts and then determine how we should respond to the situation, whatever it may be.

Lord Green of Deddington (CB): My Lords, I declare an interest as a former ambassador to Saudi Arabia. Does the Minister agree that the changing nature of the Saudi regime is a matter of regret? Does she further agree that, given the economic, political and strategic importance of Saudi Arabia, we should tread gently in public and speak firmly in private?

Baroness Goldie: The noble Lord gives wise counsel. Saudi Arabia is the United Kingdom's second largest trading partner in the Middle East. Indeed, Saudi Arabia and the United Arab Emirates together are the UK's second biggest export market outside Europe, after the United States. Let me make it clear that it is that strong bilateral relationship with Saudi Arabia which means that we can—and do—discuss a wide range of issues frankly and openly with it. I share the noble Lord's view: these conversations are most effective when they are held privately.

Baroness Hussein-Ece (LD): My Lords, the Minister said that there have been some discussions. Has there been any explanation why a man, Jamal Khashoggi, who had already expressed fear for his life and had been critical of the Saudi regime walked into an embassy and never came out? There is footage of him going in; no footage has been produced of him coming out. In fact, there are now reports that he went to the embassy in Washington for the papers he required because he wanted to get married, and he was directed to the embassy in Istanbul. Obviously, we do not have proof yet, but it seems that he was lured there. What robust discussion is taking place to say that it is simply unacceptable for a journalist to walk into an embassy and just not come out again?

Baroness Goldie: I repeat what I said: at the meeting this morning, the message was conveyed to the Saudi Arabian ambassador that we are very concerned about the reports—essentially, media reports—that we have heard. We have called on Saudi Arabia to support a thorough investigation. We need to find out what has happened. Saudi Arabia is obviously well placed to contribute to that investigation. We have also made it clear to Saudi Arabia not only that we want that investigation to be undertaken and that it must be robust and thorough, but that we want it to share the outcome. People understandably wish to know what has happened.

Lord Lamont of Lerwick (Con): My Lords, is my noble friend aware that in addition to this case, a recent BBC documentary listed several possible examples of illegal rendition of people from Europe to Saudi Arabia by Saudi forces or elements? In addition to this case being investigated, as the noble Baroness, Lady Northover, has requested, could the allegations made in this BBC programme be considered? They too were extremely serious.

Baroness Goldie: The Government would be concerned about allegations of illegal renditions, and I have noted what my noble friend has said. I am sure the department will pay close attention to his remarks.

Viscount Waverley (CB): My Lords, is the case building to question the whole issue of conveyance either through pouches or vehicles by diplomatic means, for whatever reason? Is there any suggestion that any state might be abusing the system whereby this whole regime might be looked at more carefully?

Baroness Goldie: The protocols and conventions surrounding the status of diplomatic presences in different countries are well established, and I think the noble Lord will be as well aware as anyone of what these conventions are. Clearly, if there were any suggestion that these conventions were being abused, that would be a very serious issue indeed. But I repeat: in relation to this case—the issue raised by the noble Baroness, Lady Northover—we do need to ascertain the facts.

Act of Union Bill [HL]

First Reading

3.16 pm

A Bill to provide a renewed constitutional form for the peoples of England, Scotland, Wales and Northern Ireland, to continue to join together to form the United Kingdom, to affirm that the peoples of those nations and parts have chosen, subject to and in accordance with the provisions of this Act, to continue to pool their sovereignty for specified purposes, and to protect social and economic rights for citizens.

The Bill was introduced by Lord Lisvane, read a first time and ordered to be printed.

Rural Economy Committee

Membership Motion

3.16 pm

Tabled by ***The Senior Deputy Speaker***

That Baroness Hodgson of Abinger be appointed a member of the Select Committee in place of Baroness O'Cathain, resigned.

The Principal Deputy Chairman of Committees (Lord Boswell of Aynho) (Non-Afl): My Lords, on behalf of the Senior Deputy Speaker, I beg to move the Motion standing in his name on the Order Paper.

Motion agreed.

Counter-Terrorism and Border Security Bill

Second Reading

3.17 pm

Moved by ***Baroness Williams of Trafford***

That the Bill be now read a Second Time.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, no Government take any pleasure in having to put before your Lordships' House another counterterrorism Bill. Like its predecessors, this Bill is borne out of necessity. Regrettably, the threat to this country from terrorism is ever present.

[Baroness Williams of Trafford]
Indeed, the threat level has been at severe or higher for over four years, meaning that a terrorist attack is highly likely. The police and security services now assess that over the last two years we have seen an enduring shift in the threat, rather than simply a spike.

It is easy to reel off statistics. Seventeen Islamist or far-right terrorist plots have been thwarted since March 2017; as of June, there were some 3,000 subjects of interest known to the police and intelligence agencies, and 412 arrests for terrorism-related offences in 2017. But dry statistics can never bring home the pain and sorrow suffered by individual victims of terrorism. Over recent weeks, we have heard the harrowing testimony at the inquest into the deaths of the five victims of last year's terrorist attack on Westminster Bridge and at the gates of this very building. In this and the four subsequent attacks in 2017, in Manchester, London Bridge, Finsbury Park and Parsons Green, a further 31 innocent victims lost their lives, and in total over 200 others were injured. The family and friends of those who lost their lives will have to live with this painful loss for the rest of their lives, while the victims who survive have to deal with the ongoing mental anguish and, in some cases, life-changing physical injuries.

As a Government, we must do all we can to prevent such tragedies happening again, although regrettably there can be no guarantee that every plot will be foiled. One way we can do this is to make sure that our counterterrorism legislation remains fit for purpose. Much of the current legislation dates back to Acts passed in 2000 or 2006. In the intervening years, the nature of the threat has evolved. We have seen new patterns of radicalisation, the widespread use of social media to spread hateful ideology, and the draw of the so-called caliphate in Syria. We have also seen more rapidly evolving plots using everyday items such as vehicles and knives as weapons, which although still deadly are less sophisticated and complex than the plots of previous years. This has led to a lowering of the barriers to entry and a decrease in the time taken to plan and prepare by those with murderous intent.

Against this evolving threat, it is only right that we should bring our counterterrorism legislation up to date so that our law enforcement and intelligence agencies have the necessary, but proportionate, powers to help counter the threat as it manifests itself today, and not the one they had to contend with nearly 20 years ago. The provisions in Part 1 are directed to this end. In reviewing existing legislation, we have listened carefully to our operational partners: the police, prosecutors and the intelligence services, but also the current and former Independent Reviewers of Terrorism Legislation—I am pleased to see the noble Lord, Lord Anderson of Ipswich, in his place. We have also listened and responded to the debates on these provisions during the passage of the Bill in the House of Commons.

The Bill closes a number of gaps in existing terrorism offences. Under Section 12 of the Terrorism Act 2000 it is already an offence deliberately to invite support for a proscribed terrorist organisation, whether expressly or by implication. However, there are demagogues who, without intending to encourage others to support such groups, or at least without the prosecution being able to prove such an intention, nevertheless recklessly choose to voice their own support, knowing full well that the effect of their words will be to do just that. It is right that the criminal law should bite in such cases.

The Bill also updates Section 13 of the 2000 Act which criminalises the display, in public places, of a flag or other emblem of a proscribed organisation in such a way, or in such circumstances, as to arouse a reasonable suspicion that the person is a member or supporter of a proscribed organisation. The provision in Clause 2 makes it clear that the publication of an image of such a flag or emblem online, in circumstances which arouse that reasonable suspicion, comes within the ambit of Section 13. So, for example, a person would commit the offence if he or she posted on social media a picture of themselves taken in their bedroom and displaying a Daesh flag in the background, thereby making the image available to the public, and, if taking all the surrounding circumstances into account, such a display aroused a reasonable suspicion that he or she was a member or supporter of Daesh.

We are also strengthening the existing offence, in Section 58 of the 2000 Act, of collecting or possessing information likely to be of use to a terrorist. Here again, we need to ensure that the criminal law reflects how people now make use of the internet. If someone were to download a document containing information likely to be useful to a terrorist, it would be in their possession and they would therefore be committing the Section 58 offence. If, instead of downloading the document, they were to view it online or to stream a video or audio recording containing the information, without any record being made on their device, the offence would not apply. This cannot be right. This loophole is a clear illustration of how criminal law has not kept pace with the digital age. Clause 3 therefore provides that a person who views or otherwise accesses terrorist material online is within the ambit of the Section 58 offence. But it is not the intention here to criminalise a person who unintentionally views such material, so the clause provides that it is a defence for a person to show that they did not know, or had no reason to believe, that the material is likely to be useful to a person preparing or committing an act of terrorism.

This part of the Bill also helps us to respond more effectively to the threat posed by foreign terrorist fighters—an issue which I know is of great interest to my noble friend Lord Marlesford. We already have a number of powers to disrupt travel to conflict zones overseas but here, as elsewhere, we need to ensure that the coverage is as comprehensive as it should be. Accordingly, the Bill provides for a new offence of entering or remaining in a designated area overseas. The Home Secretary may make such a designation where he or she is satisfied that it is necessary to restrict UK nationals and residents from travelling to, or remaining in, the area for the purpose of protecting the public from risk of terrorism. Any regulations designating an area will be subject to the affirmative procedure; consequently, after they have been made and come into force, they will need to be debated and approved by both Houses if the designation is to remain in effect.

The designated area offence will be subject to a reasonable excuse defence. We are clear, for example, that the defence would apply to a person travelling to a designated area for the purpose of providing humanitarian aid or to carry out work as a journalist. This defence will operate in the same way as the existing reasonable excuse defences in the Terrorism Act 2000. Accordingly, once a defendant has raised the defence, the onus will be on the prosecution to disprove the defence to the criminal standard.

The Bill also seeks to tackle the phenomenon of foreign terrorist fighters by extending the reach of the UK courts. It is not for the law enforcement agencies in this country to police the world but, when someone has travelled from the UK and committed a terrorist offence abroad, it is right that they should be brought to justice if they return here. Many terrorist offences are already subject to extraterritorial jurisdiction. We are now extending the jurisdiction of the UK courts to cover further terrorism offences committed abroad, including activity that we have seen conducted by those who have joined Daesh, such as the dissemination of terrorist publications to individuals back in the UK and the possession of explosives for the purposes of an act of terrorism.

It is not enough that we prosecute and convict those who commit terrorist offences; we also need to ensure that the punishment properly reflects the seriousness of the crime and that our communities are protected by the courts having the scope to hand down appropriately lengthy sentences. New sentencing guidelines which came into force in April will go some way in this direction, but the Sentencing Council and the courts necessarily have to operate within the current maximum penalties set out by Parliament.

Having reviewed the maximum penalties for some terrorism offences, we are satisfied that they no longer adequately reflect the seriousness of the offending behaviour and the high level of harm that can be caused. Accordingly, the Bill increases to 15 years' imprisonment the maximum penalty for four offences, namely: collecting terrorist information; eliciting, communicating or publishing information likely to be useful to a terrorist about a member of the Armed Forces; encouragement of terrorism; and dissemination of terrorist publications. In response to representations from Max Hill QC, the outgoing Independent Reviewer of Terrorism Legislation, we are also increasing to 10 years' imprisonment the maximum penalty for the offence of failure to disclose information about acts of terrorism. As now, it will be for the courts to determine the appropriate sentence in each individual case.

In addition, we are bringing preparatory terrorism offences within the scope of the extended sentence regimes in England and Wales, Scotland and Northern Ireland. Where an extended sentence is imposed by the court, the offender is not released automatically at the halfway point of the custodial term, and is instead only released ahead of the end of the custodial term when the independent Parole Board considers it safe to do so. They are then subject to an extended period on licence.

These changes to the sentencing regime will be further reinforced by a strengthening of the notification requirements, which can apply for up to 30 years following conviction. Registered terrorist offenders will be required to notify the police of a wider range of information, including banking and passport details and details of any vehicle they have use of, to enable the police to better manage the risk of reoffending.

As I said, the Government greatly value the work of the Independent Reviewer of Terrorism Legislation, and we are fortunate to have in this House two former occupants of that office. I look forward to hearing the speech of the noble Lord, Lord Anderson, and I hope that we will also be able to hear from the noble Lord, Lord Carlile, during the course of the Bill.

I am pleased that this part of the Bill gives effect to two recommendations made by the noble Lord, Lord Anderson, when he was the independent reviewer. First, it introduces a statutory bar on the admissibility in criminal trials of verbal admissions made during an examination at a port under Schedule 7 to the Terrorism Act 2000. Secondly, it provides for the "detention clock" to be paused where a person arrested or detained under the Terrorism Act 2000 is taken to hospital for treatment. This brings the 2000 Act into line with the long-standing provisions in the Police and Criminal Evidence Act. It is right that the police should have the full time allowed under the law to question a suspect before they are released or charged.

Clause 19 is further evidence that this Government are receptive to reasoned arguments for changes to counterterrorism legislation. Noble Lords will recall that what is now the Counter-Terrorism and Security Act 2015 put the Prevent duty and Channel panels on to a statutory footing. I have no doubt that we will hear more about the Prevent programme during the debate today and subsequently, but for now I just pay tribute to the prescience of the noble Baroness, Lady Hamwee, who argued back in 2015 that local authorities, as well as the police, should be able to refer to a Channel panel a person at risk of being drawn into terrorism. It might have taken us three years to take on board that suggestion but I hope that she can take some satisfaction from the fact that her proposal is now being given effect.

Finally on this part of the Bill, I want to mention the amendment to the Reinsurance (Acts of Terrorism) Act 1993 made by Clause 20. That Act enables the Government to extend an unlimited guarantee to the terrorism reinsurer, Pool Re. This in turn enables the insurance market to provide insurance to businesses for loss caused by damage to commercial property from terrorist attacks. The Bill will amend the 1993 Act to enable Pool Re to extend its business interruption cover to include losses from terrorist attacks that are not contingent on damage to commercial property.

The threats to our national security are not confined to terrorism; they also come from hostile state activity, and we have seen recent devastating evidence of this threat in our communities. In March, we saw the poisoning in Salisbury of Sergei and Yulia Skripal and Detective Sergeant Nick Bailey using a military-grade nerve agent. The Crown Prosecution Service has now charged two men for this attack, and the Government have concluded that they are officers in the Russian military intelligence service, the GRU. This was not a rogue operation. It was almost certainly approved

[Baroness Williams of Trafford]
outside the GRU at a senior level in the Russian state. The same two men are now the prime suspects in the case of Dawn Sturgess and Charlie Rowley.

The events in Salisbury are part of a pattern of behaviour by the Russian Government, and they are not alone in engaging in hostile activity that threatens the United Kingdom. Given this, the time has come to harden our defences against hostile state activity. As a first step, Part 2 of the Bill provides for a new power to stop, question, search and detain persons at ports, airports and the Northern Ireland border area to determine whether they are, or have been, engaged in hostile activity by or on behalf of a foreign state.

These provisions will serve to address a current gap in our ability to tackle the threat posed by hostile state actors and will mirror in many respects the existing powers to stop and question persons at the border for counterterrorism purposes. Indeed, this is another area where the Bill reflects a proposal made by the noble Lord, Lord Anderson, in his previous role as independent reviewer. In his report on the terrorism Acts in 2015 and subsequently in evidence to the Home Affairs Select Committee, he argued for a power to determine whether a port user is engaged in national security threats such as espionage or proliferation.

No one wants their travel plans disrupted, or to be subjected to intrusive questioning as they enter or leave the country. As with existing border powers in the Terrorism Act, those afforded by Schedule 3 to the Bill will be subject to a number of checks and balances to ensure that they are not used in an arbitrary fashion, but are subject to rigorous independent oversight—in this case by the Investigatory Powers Commissioner. The important safeguards on the face of the Bill will be augmented in a statutory code of practice, and I can give an undertaking to the House today to publish a draft of the Schedule 3 code of practice before we reach Part 2 of the Bill in Committee.

It is incumbent on the Government of the day to keep the people of this country safe and secure from the threats posed by terrorism and hostile state activity. As part of this, it is inevitable that from time to time we need to refresh our laws to ensure they remain up to date for present-day threats. Faced with the horrors of the five terrorist attacks last year, it is inevitable that such events can act as a catalyst for change. It is right, however, that your Lordships' House should consider the provisions in this Bill dispassionately. Such individual tragedies should not cloud our judgment, but we must remain alive to the fact that the decisions we make as legislators have real world consequences. This Bill will help reduce the risk of tragedies similar to the ones we saw in London, Manchester, Salisbury and Amesbury from happening again, and on that basis, I commend this Bill to the House.

3.36 pm

Lord Rosser (Lab): My Lords, I thank the Minister for her explanation of the content and purpose of the Bill, and of the thinking behind the Government's proposals. We too would like to take this opportunity to express our thanks to our security agencies and the police for the work undertaken to protect us from acts of terrorism. We are aware of the significant number of major acts of terrorism—potential and intended—that have been prevented. We also express our thanks to the staff of the emergency services, including hospital staff, who are called into action when incidents—perhaps one should say atrocities—occur. Our thoughts remain with the victims of those atrocities and their families. We accept the need for the Government to update counterterrorism legislation to reflect changing situations and circumstances as well as technological changes and developments.

We expressed our broad support for the Bill in the House of Commons, did not divide on it at Second Reading and supported it at Third Reading. We did, however, table substantial amendments, some of which led to alterations in the Government's position and government amendments to the Bill, to address concerns we had raised, including those in respect of human rights, which cannot simply be brushed aside.

One feature of the passage of the Bill to date has been the Government laying down amendments of some import just prior to Report stage and Third Reading in the House of Commons. That did not suggest that counterterrorism and security legislation is always being considered and evaluated by the Government in quite the calm and measured way they would like us to believe, but in some areas is being rushed to meet deadlines—even though the events that have weighed most heavily on the Government's mind in formulating the Bill have not all occurred within the last few weeks or months.

We have no objection to late amendments when the case for their wording and intent is clear. However, it is hardly satisfactory if such amendments are to a Bill that has been through the Commons without there having been time for proper consideration and debate in the other place about the necessity and—equally significantly—appropriateness of the wording of those late amendments. That is the situation we are in with the Bill. A new clause was laid by the Government, with a number of consequential amendments, just prior to Report. It provides for an offence under the Terrorism Act 2000 of entering or remaining in an area outside the United Kingdom that has been designated in regulations made by the Secretary of State. There was an exchange of views in the Commons about where the burden of proof lay in the light of the wording of that new clause, which states:

"It is a defence for a person charged with an offence under this section to prove that the person had a reasonable excuse for entering, or remaining in, the designated area".

The Minister for Security and Economic Crime stated in the debate, on behalf of the Government, that,

"we have provided for a reasonable excuse defence. Once such a defence has been raised, the burden of proof, to the criminal standard, will rest with the prosecution to disprove the defence".—[*Official Report*, Commons, 11/9/18; col. 656.]

The Minister has, in effect, repeated that statement in her opening speech today. However, the wording of the Bill and the Minister's statement appear to be in conflict. I say that not as a legal authority but as someone whose legal career began and ended with the apparently now steadily diminishing lay magistracy.

Will the Minister indicate why the Bill does not appear to say the same on burden of proof as was said by the Commons Minister when moving the new clause on Report in the Commons and again by the Minister here today? Will she also tell us, assuming that the Commons Minister's statement is correct on burden of proof under the new clause, whether it will be sufficient for the prosecution to prove that the individual was not in reality engaged in a claimed valid activity for a reasonable excuse defence or whether the prosecution will also have to prove that the individual was also involved in a terrorist or terrorist-related activity, which I thought was something that the prosecution could already seek to prove under the existing law to secure a conviction?

I raise this point in the context of a further statement made on Report by the Minister for Security in the Commons that,

"breaching a travel ban and triggering the offence will provide the police and the Crown Prosecution Service with a further tool to investigate and prosecute those who return to the United Kingdom from designated areas, thereby protecting the public from wider harm".—[*Official Report*, Commons, 11/9/18; col. 656.]

Can the police and the Crown Prosecution Service not already investigate an individual returning to the UK from a potential future designated area if they have reasonable doubts as to the true reasons for their being in those areas or countries, or will it, under this Bill, be sufficient for imposing up to 10 years' imprisonment to show that the individual concerned was not there for a claimed reasonable excuse defence activity or purpose?

The Government appear to have some reservations of their own about this late new clause, which they expect will lead to only a "few people" being prosecuted. In the Commons on Report, the Minister for Security said that,

"I recognise that we have introduced this measure into the Bill late, and I apologise for that. However, we are in the Commons, and the Bill will no doubt go to the other place, and I am happy to discuss further how we can clarify it and safeguard it and make sure that it is not abused as a system, and that the reasonable excuse issue is further explored. I think that is appropriate".—[*Official Report*, Commons, 11/9/18; col. 658.]

We will indeed need to look at the process, procedures and criteria against which the Government seek, by affirmative statutory instrument, to designate these areas, and consider the adequacy or otherwise of the safeguards for those with legitimate business in these designated areas, such as aid workers and journalists or those who went there without appreciating what they were getting involved in and came back disillusioned.

In the Commons, the Government were asked by John Woodcock MP if they had,

"an estimate of how many of those 800 Brits who we know went over to Raqqa during the recent conflict could have been prosecuted under this legislation, had it been on the statute book at the time".—[*Official Report*, Commons, 11/9/18; col. 658.]

The Minister for Security said that he would write to the Member with a specific number—will the Minister tell us what that figure is? I assume that the figure will also, by definition, be for those who could not be prosecuted under existing legislation. Will the Government also indicate how many designated areas or countries they anticipate there will be under the new clause? It looks as though there will be quite a few, since the Commons Minister, during his opening speech on Report, referred to Turkey, Syria, Iraq, "parts of Africa", "parts of the Philippines" and,

"areas of conflict where there is a risk of terrorism".—[*Official Report*, Commons, 11/9/18; col. 656.]

A further government amendment on Report relates to the seizure of flags or other activities associated with a proscribed organisation, and would give the police the option of seizing such items on suspicion of an offence being committed under the Terrorism Act 2000 without having to make an arrest, subject to that course of action being needed to prevent the evidence for a potential subsequent prosecution being concealed, lost, altered or destroyed. Such a course of action could still have the effect of raising the temperature at a march or demonstration, even though that is what the provision is designed to avoid, and not least in Northern Ireland. We will need to consider how the proposed course of action might work out in practice.

Further government amendments on Report changed the Bill's original provisions on the viewing of terrorist material online so that the provision applies to information that is accessed online rather than covering only information that is downloaded first. We will need to consider that issue further since the Bill now provides, instead of the much-criticised three clicks test, for a reasonable excuse defence if the person does not know and has no reason to believe that the information they are accessing is likely to be useful in connection with terrorism or terrorist-related activities. We will need to probe the position of those who might look at such material for legitimate and non-terrorist or terrorist-related intent, such as journalists or academics, or those who look at it inadvertently. The issue of proportionality has to be considered.

A further government amendment on Report increased from five to 10 years, as the Minister said, the maximum penalty for failing to disclose information about acts of terrorism. It would be helpful if the Minister could expand on the reasons that led the Government to believe that the original maximum penalty of five years should be increased to 10 years, apart from it being also the view of Max Hill QC.

Apart from legislation, a further aspect of the Government's approach to addressing the threat of terrorism is the Prevent programme. It has been in operation for some time now and has been the subject of both positive and negative comments. On the latter point, there is some doubt about whether all sections of the community have confidence in the programme and whether its aims and objectives, which include diverting people from involvement in terrorism and terrorist activity and strengthening community cohesion are always being achieved. Some appear to regard Prevent as primarily an intelligence-gathering exercise.

There is also an issue about the impact on the Prevent programme and its ability to deliver its stated aims and objectives of the cuts in local government services, including those for younger people. As part of the counterterrorism strategy, there should be provision in the Bill for an independent statutory review of the Prevent programme to look at and evaluate the extent to which it is or is not achieving its objectives and the

[Lord Rosser]
support that it has or does not have across the community, with a view to making changes and improvements to the programme where deemed necessary to enhance our ability to counter the threat and reality of terrorism. Counterterrorism, after all, is not just about creating new offences and fixing maximum penalties.

We will wish to pursue other matters during the passage of the Bill. The European arrest warrant is an important weapon in countering terrorism. Following the attacks in Salisbury and the identification of the two suspects, we have recently obtained a European arrest warrant and either already have or are about to issue an Interpol red notice. Yet the Government opposed an amendment on Report in the Commons that simply required them to adopt the continued participation of the UK in the European arrest warrant in relation to people suspected of terrorist offences as a negotiating objective in the withdrawal negotiations with the European Union.

On Report in the Commons, the Government, in response to the shadow Minister's concerns in relation to border stops where there is no reasonable suspicion in relation to an individual said that they would look at the situation in Northern Ireland and accountability for the number of stops. That border represents 3% of the passenger numbers for the whole of the UK, but 18% of the stops. There has to be transparency in how the stop power is used—a power to stop, question and detain without reasonable suspicion exercised by officials. We do not want to create a situation that looks like something akin to a hard border on this aspect between the north and south. When do the Government intend to come back with the results of their further consideration on this point? Perhaps the Minister will say.

A further issue raised on Report by the shadow Minister concerned legal professional privacy and the provision in the Bill for an officer not only to watch someone receiving legal advice, which is not new, but to hear that legal advice being given. The shadow Minister suggested that to overcome the government concerns that have led to this provision, there should be a panel of lawyers regulated by the Solicitors Regulation Authority and the Law Society. The Minister for Security said that he would look at the proposal before the Bill's introduction into this House. It would be helpful if the Minister could say what the Government's position now is on this issue.

While we supported the Bill at Third Reading in the Commons, there are a number of outstanding issues that we flagged up on Report, many of which I have referred to, including the need to look in more detail in this House at the significant late amendments tabled by the Government just prior to Report, which could not receive the consideration they should have done in the Commons. We will wish to pursue these points during the passage of the Bill through this House; nevertheless, it would be helpful if the Minister could respond to the specific points and questions I have raised. Surely we all have an interest in ensuring that the Bill is balanced and proportionate, that its provisions are all necessary, and that it strengthens our hand in countering terrorism and terrorist activity while safeguarding human rights.

3.50 pm

Lord Marks of Henley-on-Thames (LD): My Lords, I am grateful to the Minister for the clear and helpful way in which she opened the debate on this very difficult subject—and indeed I agree with much of what the noble Lord, Lord Rosser, said, and I join with him and the noble Baroness in paying tribute to the work of the police and security services in combating terrorism. I also look forward to the maiden speeches of my long-standing friend the noble and learned Lord, Lord Garnier, and of the noble Lord, Lord Tyrie.

On these Benches we agree with the Government in acknowledging the need for strong legislation to counter terrorism and to protect the public, so we accept the principles underlying many of the measures in the Bill. However, the approach we take to this legislation, as to all counterterrorist legislation, is that we must balance the security imperatives to protect the public and to combat terrorism against the liberal imperative to safeguard our freedoms as citizens in a democratic society. We assess each of the measures proposed with the following questions in mind. First, what is the purpose of the measure and what is the mischief it seeks to address? Secondly, is the measure necessary to achieve that purpose? Thirdly, is the measure a proportionate response to the mischief, having regard to the restrictions on liberty that it entails, and in particular would a more limited response achieve the purpose in a more proportionate way? Fourthly, will the measure be effective in achieving its purpose?

I also suggest that we should approach these new powers having in mind that we may in the future have not a Government with genuine respect for liberty and democratic values but a Government who are prepared to ride roughshod over our freedoms as citizens. If the tests I set out are not met in the context of such a Government, the powers proposed should be opposed or limited by Parliament. In a number of areas we believe that these tests are not met in this Bill. Some measures may be capable of amendment while others, we believe, are irredeemably bad.

Clause 1, creating a broad offence of expressing support for terrorist organisations, is drawn in very wide terms. We share the concerns of the Joint Committee on Human Rights that the offence must be restricted so as not to criminalise legitimate freedom of expression. As presently drafted the clause is demonstrably not proportionate or sufficiently limited. I would add at this stage that Parliament has every reason to be extremely grateful to the Joint Committee on Human Rights for its careful work on this Bill. Its existence and thoroughness help us to ensure that human rights are respected when we consider legislation and its reports deserve our closest attention.

Clause 2 would criminalise the publication of images of clothing or articles arousing reasonable suspicion of membership of a proscribed organisation. Again, this is insufficiently restricted and disproportionate. It could catch honest and fair reporting, cultural work and international and political study, and stifle genuine discussion. Clause 3, relating to use of the internet, is targeted at the legitimate objective of preventing the internet being used for terrorist purposes. But again, it is insufficiently limited. In spite of the reasonable

excuse defence, there is a risk that the clause will operate to restrict innocent and harmless research and journalism.

As was pointed out by the noble Lord, Lord Rosser, Clause 4 was added late by an amendment in the House of Commons. It gives the Government power to designate areas outside the UK and prohibit travel to such areas by UK citizens—a radical restriction of individual liberty. Outside wartime, such a curtailment of citizens' rights is very difficult to justify. I do not believe that the availability of a reasonable excuse defence adequately mitigates the violence that the creation of this offence would do to our liberties.

The provisions in Clause 6 on extraterritorial jurisdiction seem to risk injustice to both UK citizens returning to this country and foreign nationals travelling here. Much more thought needs to be given to the proper limits on the ability to prosecute here for offences committed abroad.

I turn next to the sentencing provisions, starting with Clause 7. I and many others in this House, in the senior judiciary and throughout the criminal justice system have pointed out many times the dangers of sentence inflation, yet elements of the populist press still urge their readers and politicians to push for longer sentences. No one would argue that prison is not the proper punishment for terrorist offences, but longer and longer sentences are not the answer. Our prisons are overcrowded, understaffed and violent. They do not function as places of reform and rehabilitation. Educational facilities are limited or non-existent. It is a fact that our prisons tend to radicalise their inmates. Sending those guilty of terrorist offences there for ever-longer terms is more likely to encourage others to commit such offences than to reduce the threat to the public. The Government will need to produce a stronger case before I will be prepared to support these provisions. We will look at the numerous other powers and requirements proposed in the Bill in the same spirit, seeking to ensure that any new powers meet the tests I outlined earlier. Where they do not, we will oppose or seek to amend them.

Finally, it is one of the ultimate contradictions of this extremely difficult period that while our Government struggle to improve domestic counterterrorist legislation, they nevertheless risk through Brexit abandoning most of the UK's international work in this area over decades. With our active participation, the EU has painstakingly constructed the most comprehensive and effective international network ever devised, certainly in a democratic context, to combat terrorism and safeguard public security. It has achieved this with great sensitivity to protecting democratic freedoms, supported by the requirements that EU legislation have regard to the Charter of Fundamental Rights and that its implementation be monitored by the Court of Justice of the European Union.

The Government prepared Part 2 of the Bill in response to the poisoning of Sergei and Yulia Skripal, as the Minister pointed out. We should remember the co-operation of our friends and neighbours across Europe in resisting Russian aggression in the wake of the Salisbury poisoning. Is it not ironic that on 5 September the Prime Minister pointed out in the House of Commons that although Russia resisted any extradition, we obtained a European arrest warrant to ensure that, if the two suspects ever travelled to Europe, we would be able to secure their arrest and bring them swiftly to justice in the United Kingdom?

We hope that the Government will get a deal to retain the European arrest warrant system, but they are also planning for no deal. In those circumstances, it is not just the European arrest warrant system that is at risk. Access to the Prüm database, which was secured in 2016 just before the referendum, would also be at risk. An Interpol DNA search takes 143 days on average. Through Prüm, it takes 15 minutes, a fingerprint match comes back within 24 hours and car registration numbers are searched in just 10 seconds.

Europol, the European law enforcement agency, which was led until May by an energetic and effective British director, Rob Wainwright, and into which we opted back in December 2016, is also at risk. So is Eurojust, the network for co-operation between judges and prosecutors across the EU to combat serious cross-border crime. Then there is the Schengen Information System, which enables enforcement agencies to exchange information about risks presented by serious criminals and suspected terrorists. Although the UK is not part of the Schengen agreement, under the treaty of Amsterdam it has access to the Schengen Information System for law enforcement purposes.

By this Bill the Government seek to introduce new measures to protect the security of the UK public. Yet by risking our co-operation with the EU on terrorism and cross-border security through the imposition of arbitrary and indefensible red lines—for example, on the role of the European Court of Justice—the Government threaten to undermine the very security they seek to protect.

4 pm

Baroness Manningham-Buller (CB): My Lords, as the Minister said in her introduction, it is sad in a way that we are here again dealing with counterterrorism legislation. In the 10 years that I have been in your Lordships' House, I have lost count of how many times we have come back to this subject. Indeed, in my maiden speech 10 years ago, I spoke against detention without charge for 90 days for terrorist suspects, then a government proposal. I very much look forward to hearing the maiden speeches of the noble and learned Lord, Lord Garnier, and the noble Lord, Lord Tyrie, on this subject. The need for this legislation is well argued and, during the course of the Bill's passage through this House, we will certainly want to pick up on a number of the details of it.

In the wake of last year's attacks there was serious scrutiny of my former organisation and, indeed, of the police and their performance in responding to those attacks. A number of lessons were learned and changes were made. Scrutiny of my former service was overseen by the noble Lord, Lord Anderson. This legislation attempts to fill various gaps arising from some of that scrutiny. It covers a pretty wide range of things, from detection, sentencing, management of offenders, borders, territorial scope, DNA retention and others. What is different is that, for the first time that I can recall,

[Baroness Manningham-Buller]
there is specific information about the rise of extreme right-wing terrorism, which I am sure we will come back to in the course of our discussions, and of course—I have some familiarity with this from my past, which I thought was over—Russian activity and criminality in this country. I spent a year of my life interviewing a defector from the GRU 30 years ago; I did not expect that that information would still be current.

The issues that will give rise to scrutiny in this House are very familiar to us. The noble Lord, Lord Marks, mentioned some of them. I do not always acknowledge a balance between security and liberty. I think that there is no liberty without security—I would say that, of course—and the right to life in the first section of the European convention argues that we should look very carefully at the suggestions being made to try to improve that. We will think about what the threats are—as I said, they are not just terrorism, but the affairs of state—what is necessary and what is proportionate, and where our state should draw the line. These are important issues.

I could go on. During the course of our discussions, I will certainly pick up on the points from the noble Lord, Lord Marks, on our relationship with our European friends on these subjects, which was of critical importance throughout my former career and which I am sure people are working hard to ensure is not damaged.

At this early stage, I will touch on what the Home Office calls the contemporary pattern of radicalisation. We know that the terrorist threat from Islamist terrorism is severe. We also know that the pace of radicalisation is quite different from what it was a decade ago. It is very rapid indeed. It can be between breakfast and lunch. When I was in charge of a number of operations with my noble friend Lord Blair of Boughton, the colleague on my right, we often had plenty of time to consult the Crown Prosecution Service, to decide who was chargeable, to develop operations over weeks and indeed months. That is now rare, as I understand it, and that makes the life of those trying to detect these attacks in advance much more difficult. So the pace has changed and the scale has changed.

I have said in this House before that I can scarcely imagine the figures: 3,000 people of security interest is way beyond the capacity of any security service or police force to monitor on a regular basis, and there are at least 500 active investigations into terrorist plots. It is also worth remembering—some of the questions already raised are key—that a great deal is stopped that we do not hear about. Unless we are paying attention to when cases come up in the courts, we do not know how many are stopped, but it is substantially more than occur. One question has to be: will the provisions of the Bill increase the opportunities of preventing more of them? I think that is what we will be focusing on later in the debates.

4.06 pm

The Lord Bishop of Newcastle: My Lords, first I too want to say how much I am looking forward to the maiden speeches of the noble and learned Lord, Lord Garnier, and the noble Lord, Lord Tyrie. The noble Lord, Lord Tyrie, will be well acquainted with these Benches, having worked closely with my most reverend brother the Archbishop of Canterbury on the Parliamentary Commission on Banking Standards, which the noble Lord so ably chaired.

In opening this debate, the Minister spoke powerfully and movingly about the terrible consequences of terror, the effect on people's lives, the suffering that is lifelong for people. It is in this context that I broadly welcome the Bill. I certainly recognise the difficulty of drafting and steering this kind of legislation. It is to walk something of a tightrope, as described by the noble Lord, Lord Marks. The current national security situation is complex, as is seen so sharply in our news headlines this morning. At Second Reading, I would like us to stay alert to that tightrope we walk, to proportionality and, perhaps especially, to the danger of unintended consequences.

For example, I echo the concern of the noble Lord, Lord Marks, that in implementing Clause 1 we may end up criminalising the mere expression of a thought or a belief, as opposed to action. Freedom of thought and expression is a treasured value in this country. As a Bishop in the Church of England, it is perhaps not surprising that I hold dear Elizabeth I's assurance in relation to religious freedom that,

"I would not open windows into men's souls".

We need to keep a watchful eye so as not to imperil something that is so precious to us.

On Clause 3, as well as the questions raised by the noble Lord, Lord Rosser, I ask a genuine question: are these powers responsive enough to keep pace with technology and communication channels, or are we giving powers to the Secretary of State and judges that are designed to fight the last, rather than the current, battle?

Finally, I raise a wider concern. As we work to ensure that we are safe from something, are we thinking enough about what we want to be safe for? As we work to ensure that we are safe from terror, we need to check that we put an equal emphasis on being safe for a compassionate society. Safety from terrorism is of absolute importance and, when we get this wrong, the consequences are disastrous. However, it is equally important that we foster a society in which all our citizens are able to feel safe and secure and can be free to flourish.

Just last week, I met with Tyne & Wear Citizens. We met in Newcastle Central Mosque and what we heard was distressing. We heard from some women in the mosque that, over the last period, there has been a sharp rise in the instances of women wearing hijabs being abused on public transport in Newcastle and the surrounding area. They are having to gather up a lot of courage to travel on the Metro. This abuse is unacceptable in our society. Our desire to keep our borders secure should never jeopardise the safety of any of our citizens as they go about their day-to-day lives. In all the complexities of the Bill—and I do not underestimate the complexity of the issues—it is important that we carefully nuance our discussions to avoid any religious or ethnic group being associated with those who wish to do our country and its citizens harm.

My prayers continue to be for those who draft our legislation and those who will administer justice in the light of it for years to come. I also pray for those who keep this nation secure. It is my hope that we will continue to build a country which will allow all our citizens to feel safe and in which kindness, respect and courtesy abound.

4.11 pm

Lord King of Bridgwater (Con): My Lords, it is a great privilege to follow the right reverend Prelate. In her relatively brief remarks I think she impressed the whole House with the quality of her contribution. I wonder whether any of her predecessors as Bishop of Newcastle would have dreamed of standing up in your Lordships' House and saying, "I have just had a meeting in Newcastle Central Mosque". That drew attention to the challenges and differences that we now face in our country and in the world. I am grateful to her for carrying on what has been an extremely impressive start to this important debate.

I support my noble friend the Minister, who took exactly the right approach in her introduction to this complicated and difficult issue. I will make only one criticism. The paperwork that has come out has been outstanding, explaining all the issues involved, but there is one thing there which I do not believe for a minute: the impact assessment. Some bright gentleman has said that it will cost £49.8 million over 10 years. Who came up with that wonderful figure? If the Minister cannot answer that today, will she write and tell me who worked out this calculation and what it is meant to mean?

I was struck by the debates in the other place, in which a tribute was paid to Ben Wallace, the Minister, for the consensual approach that the Government took to this legislation. I pay tribute to the noble Lords, Lord Rosser and Lord Marks, for the approaches they took in recognising that there are issues. I agree with every one of the tasks that the noble Lord, Lord Marks, set out. We will not necessarily agree on the answers, but he is absolutely right that these tasks have to be addressed. We are very lucky to have my noble friend the Minister, who I think will carry on the tradition of Mr Wallace and take a consensual approach to these difficult issues, which are very important to our country.

When the House of Commons at Third Reading said—rather cheekily, I thought—that it had adopted a consensual approach and hoped the other place would as well, I thought that we were rather more likely to do that than the Commons in normal circumstances—and to bring it forward. The quality of the contributions in this House can be exceptional. We have already had the viewpoint of the noble Baroness, Lady Manningham-Buller, who is uniquely qualified. We are going to have maiden speeches from two very distinguished former Members of the other place: my noble and learned friend Lord Garnier and the noble Lord, Lord Tyrie. It is also a great pleasure to see the noble Lord, Lord Anderson, who knows more about some of this legislation than any of us will ever know. So this House is uniquely placed to carry it through.

Looking through the legislation, I have learned a lot. Having had some years in Northern Ireland and some in defence—and having chaired the ISC for seven years—I am very conscious of how much the situation has changed. The noble Baroness, Lady Manningham-Buller, referred to the pace and scale of what is happening. That absolutely sums it up. I also noted the phrase that my noble friend used at the start: this is an enduring shift in the challenges of terrorism, not a spike. I think we would all agree with that.

At the end of its Third Reading, the other place said that it had done quite a bit of work but there was still quite a bit to do. The noble Lord, Lord Rosser, spelled out the things that were not dealt with in the other place and which we now have to take on. The advantage is that we at least start from a common understanding of the threat that we face. Take the threat assessment with which we live all the time: noble Lords will know that it is at "severe". What does "severe" mean? It means that an attack is "highly likely" and we have no excuse for not knowing that, having been through what happened tragically on Westminster Bridge and in our own Parliament. We went right on to the tragedies in Manchester, at London Bridge and in Finsbury Park. What happened at Parsons Green could have been very bad indeed, in my understanding, if the bomb had been put together correctly; we were extremely lucky in that respect. Since then, I understand that 12 serious Islamic threats have been thwarted and, I think, four right-wing threats as well. If I have the right figures, we have had 441 terrorism-related arrests and 72 people were convicted of terrorism last year. There are 228 people in prison at this stage for terrorist-connected offences.

Against that, we now have the challenge of the pace to which the noble Baroness, Lady Manningham-Buller, referred. Undoubtedly, the impact of social media is quite enormous. Some of us sat through part of the debate on the Investigatory Powers Bill, when I quickly realised that ISIS knew a lot more about WhatsApp than I ever did and was using it to great effect. The speed with which extremist propaganda and intelligence, along with the knowledge and instructions on how to make weapons and bombs, can turn up on social media is a major threat for us at this time.

Taking it on further, I see the scale of the challenge and some new complications. I understand that 74 groups are currently proscribed in this country. I have also tried to understand the phrases that turned up in the Explanatory Notes. Everybody will now know that an RTO is a "registered terrorism offender". That is somebody at large in our community who is guilty of a terrorism offence and has to report in under certain regulations. The term SOPC means "sentences for offenders of particular concern". The other interesting phrase is ATTROs, which refers to "antiterrorism traffic regulation orders". We know what that means: it means putting barriers up on bridges to stop cars running into them and killing a lot of people. At the same time, there is the completely new dimension which we live with at the moment of state-sponsored terrorism. Whatever happened at the Organisation for the Prohibition of Chemical Weapons or in Salisbury, those are threats that we have faced in only the last week. I understand that the Islam Channel—a major

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UK-based TV channel—has been subjected to Russian hacking, causing considerable difficulty. So we have these occurrences weekly.

I think that the noble Baroness, Lady Manningham-Buller, said that she had lost track of all the Bills and Acts of Parliament that there have been. I have written them down. We have had Acts trying to address the problems of terrorism in 2000, 2006, 2008, 2010, 2011 and 2015. We are now heading for one in 2018. The noble Lord, Lord Anderson, knows much more about some of those than I do. We know there is a need for effective action to counter terrorism. We cannot allow the protection of the public to fail for lack of effective legal power, but at the same time a challenge for this House is to ensure that when this legislation comes out we have the balance right on the proper protection of individual rights and freedom of speech. This House is uniquely placed to achieve that.

I will add two further points. One interesting suggestion has been promoted by Policy Exchange to meet the challenge of those who are betraying our country and are going out to fight and kill our forces. Australia and New Zealand have already taken action against people who are aiding the enemy by adapting the ancient law of treason to give a penalty of life imprisonment for people in that situation. I imagine that during the course of our discussions this may come up. I do not expect that I am the only person to whom Policy Exchange made this suggestion.

Although I do not agree that there should be amendments on this in the Bill, I agree about Europol and the European arrest warrant. It would be a travesty if in the negotiations between us and European Union we do not come out with a satisfactory continuing arrangement for the European arrest warrant. The figures are absolutely enormous. I think that I saw 12,000 arrests. We receive eight times as many requests to find criminals who have committed offences of one sort or another in the European Union as we make. It is almost compulsory to say something about Brexit, so I will say that whatever comes out of the Brexit negotiations must include some continuing arrangement for the European arrest warrant in the interests of all the countries around that table who have benefited from the present arrangement.

This is an important Bill, there are some very important discussions, and I hope that we can now go consensually forward.

4.22 pm

Baroness Hamwee (LD): My Lords, I, too, thank the Minister for her introduction. I agree with the noble Lord, Lord King, that the speeches we have heard so far have given us a thoughtful and helpful context for the Bill. I speak from the Liberal Democrat Benches, but also as a member of the Joint Committee on Human Rights. The two positions are not incompatible, as my noble friend Lord Marks has indicated; indeed, the reverse is true.

As background to some of my remarks, I shall quote two paragraphs from the report on the Bill that the committee published earlier this year. It stated:

"Our Committee recognises the need for the Government to have strong powers to defend our national security, prevent individuals from being drawn into terrorism and to punish those who prepare, commit or instigate acts of terrorism, or encourage or connive with others to do so. However, when these powers interfere with human rights, they must be clearly prescribed in law, necessary in the pursuit of a legitimate aim, and proportionate to that aim".

It went on:

"We are concerned that some of these 'updates'"—

that is, updates to existing offences—

"extend the reach of the criminal law into private spaces, and may criminalise curious minds and expressions of belief which do not carry any consequent harm or intent to cause harm. In doing so, some of these offences risk a disproportionate interference with the right to privacy, the right to freedom of thought and belief, and the right to freedom of expression".

I think our Minister will understand that approach, but I am afraid I am not being consensual in this and I cannot let today pass without responding to comments made by the Security Minister, Mr Wallace. At Third Reading in the Commons he criticised the JCHR for not taking wider evidence. He said:

"It took evidence from Cage and other such groups".

I do not know who he was referring to among the 13 who, in response to an open call, gave written evidence. They included such dodgy characters as the National Union of Students, the Muslim Council of Britain and Clive Walker, adviser to successive Independent Reviewers of Terrorism Legislation. The committee took oral evidence from Max Hill, still—just—the current independent reviewer, and from Liberty, and invited oral evidence from the Metropolitan Police, the Commission for Countering Extremism and the Investigatory Powers Commissioner. There was a very tight timetable and, although they were invited, they were unable to attend.

Not only did Mr Wallace impugn our witnesses, he went on to say of the committee that,

"I think its duty was to be balanced",—[*Official Report*, Commons, Counter-Terrorism and Border Security Bill Committee, 11/9/18; col. 717.]

and said in a letter to the committee that our report was not set in the context of current threats. I accept that liberty requires security, and I resent very much the suggestion that the committee was not balanced. I resent that too on behalf of our witnesses who, on the basis of their own experience and backgrounds, would have been irresponsible if they had not voiced their concerns. Max Hill went out of his way to give credit, as he put it, to the Government before his more negative comments. He said:

"There are some good, pragmatic solutions here for the modern world, but there are some aspects of the extension of existing offences that give me serious cause for concern".

I also resent the suggestion that the committee ignored or was unaware of the threats, which have of course been referred to and described in this debate. I hope that by the end of the debate the Minister will have found a different formula to describe the committee's work, including acknowledging that—like human rights, which are a matter of proportion and balance and are the scale against which we measure propositions—the committee's approach has been balanced.

It is in the nature of scrutiny that we focus more on issues of concern in these debates. At this stage there is time only to give a flavour of these; we will have opportunities later. I say that particularly to those outside this place who have sent us briefings. Not referring to those briefings and organisations does not mean that they are ignored; on the contrary, they are very much appreciated.

I start with the new offence in Clause 1. We are troubled by the lack of clarity coupled with the low threshold of recklessness. I am also unclear whether expressing an opinion using social media—I might plagiarise the observation that ISIS knows more about it than I will ever do—and directing that opinion to someone when it is on social media, and open to whoever cares to look at it, comes within the offence. There is a lot of material for the lawyers who will help us on matters of construction. However, I will say now that arguments from the Government that we should be reassured by the prosecution's sensible use of the public interest test are unlikely to convince me, because that is no substitute for getting the legislation right.

The new offence in Clause 2 also seems to have a low threshold. What if the suspicion is reasonable but wrong? We will no doubt spend time on the reasonable excuse defence to accessing material in Clause 3. The point was made in the Commons that in legislating for a reasonable excuse without including a lack of terrorist intent as an excuse, we could be thought to be intending that not to be an available excuse. Additionally, here and elsewhere we seem to be in the territory of reverse burdens, the burden being on the defendant—guilty until proved innocent.

One of the reasons given by the Minister in the Commons for Clause 4 was,

"to strengthen the Government's … advice to British nationals … against all travel to areas of conflict where there is a risk of terrorism".—[*Official Report*, Commons, Counter-Terrorism and Border Security Bill Committee, 11/9/18; col. 656.]

I am not sure that it is necessary to create an offence to make it clear that the advice is to be taken seriously. I also wonder whether there will be a correlation with what are regarded as safe places for the purposes of deportation.

Reasonable excuse is a defence. What thought have the Government given to getting their defence in first? I doubt that a comprehensive list could be assembled, but some situations are obviously relevant. If your objective is journalism or humanitarian work, the clauses provide for the designation of areas but there is no arrangement for licensing travel, if I can use that term rather broadly.

I have one specific example which I do not think has been mentioned: funerals. Certain faiths require funerals to take place very soon after a death, and families will be in some difficulty in that situation. This seems to be a provision which makes it an offence to think and to be, as distinct from doing.

My noble friend Lord Marks has been very persuasive about sentences and sentence inflation. Is there any evidence of a deterrent effect of such increases, which seems to be part of the rationale here? Conversely, should we not be aware of the potential for people to be presented as martyrs?

Border control provisions take up about half of the Bill's length, although they may not take up half of our time in the Chamber. I look forward to hearing the analysis of the noble Lord, Lord Anderson, of the restrictions on the use of what someone says when he is stopped at the border and the limits of those restrictions, both in the Bill and as applied to the continuing Schedule 7 procedures.

We shall need to be clear about how the Schedule 3 powers are expected to be operated. It seems that decisions to stop and search individuals will be informed—and known to be informed—by intelligence of travel patterns, which seems to me to weaken the argument for a no-suspicion power, which is inherently unchallengeable.

We will need very persuasive arguments about the extensive definition of a hostile act. The economic well-being of the UK in a wide sense will be discussed in other contexts at the same time as the passage of the Bill. I simply ask here whether that phrase is intended to address cybersecurity.

Serious crime is obviously not to be condoned, but is not the most serious if it attracts only a three-year sentence. As defined, it is crime which may be on behalf of another state. Are we now to have stops if there is suspicion—or no suspicion—of someone travelling while Russian or travelling while Asian?

This House has previously made clear its view of the importance of access to a lawyer and the confidentiality of the relationship between a client and his lawyer as to both advice and material. I am sure that we will do so again and ask why the existing protections against dodgy lawyers are insufficient.

I knew that the Minister would tease me about the role of local authorities on Prevent. I have looked at the exchange on my amendment during the passage of the 2015 legislation. I am very flattered that anyone recalled it and took the trouble to look it up and brief the Minister on it. I have to say that I do not understand why my amendments were resisted then but are now in the Bill. They put local authorities and the police on a similar footing. There are a lot of issues about the powers, duties and functions in what I would call a safeguarding as well as a security activity, as well as resources, of which local authorities have a good deal less than they did in 2015. That thread runs through everything.

In conclusion, it is not surprising that lawyers, academics, journalists and people generally concerned with free thought, free speech and human rights have raised issues about the Bill. These Benches and the Joint Committee on Human Rights on a cross-party basis look forward to a vigorous Committee aimed at achieving a balanced Bill.

4.35 pm

Lord Janvrin (CB): My Lords, it is a pleasure to follow the noble Baroness, Lady Hamwee, and I look forward to her contribution to the detailed scrutiny of this Bill, which I am sure will be extremely important. I thank the Minister for her introduction, and apologise for being a couple of minutes late for the start of her speech. I welcome this debate and especially look

[LORD JANVRIN]
forward to the maiden speeches of the noble and learned Lord, Lord Garnier, and the noble Lord, Lord Tyrie, both accomplished parliamentarians who I am sure will contribute a huge amount both to this debate and in the future.

I should begin by drawing attention to my membership of the Intelligence and Security Committee. That said, this Bill mainly concerns the work of the police and other criminal justice agencies, which are not directly scrutinised by the ISC. I am speaking for myself and not on behalf of the Committee.

I welcome the debate because I think it entirely right to look at the scope of our existing legislation covering counterterrorism and hostile state activity, particularly in the light of last year's attacks and the Skripal attack earlier this year. I too would like to take this opportunity to express my heartfelt sympathy to those affected by these attacks. The human dimension is all too apparent.

I support the broad terms of the Bill, which is an important legislative response to recent developments in the threat both from terrorism and hostile state activity, and I look forward to detailed scrutiny of it. I would like to add my voice to those acknowledging the outstanding work of the intelligence agencies and the police at the present time. They face an unparalleled range of threats on three broad fronts: terrorism, particularly but not only in the name of radical Islamic extremism; hostile state activity, particularly but not only from Russia; and on the cyber front, this growing threat across a whole range of interests and spectra. I would like to take this opportunity to pay tribute to the leadership of the intelligence agencies and the Metropolitan Police in ensuring unprecedented collaboration between their two organisations at every level—a collaboration I judge to be world class.

In scrutinising this draft legislation, I can see that much attention will necessarily be focused on some of the legal issues to which it gives rise. There are many people in this House more qualified than me to debate these issues, and I look forward to hearing their views. I will confine myself to one general point on what is proposed, and three specific points on the detail of the legislation. My general point is, in giving powers to the police and other agencies, are we confident that they have the additional resources to carry these powers out?

The noble Lord, Lord King of Bridgwater, rightly drew attention to the impact assessment. The figure of £5.3 million a year, which caught my eye, seems on the modest side. Even if modest, it needs to be seen against other competing priorities, particularly, for example, as determined by the internal reviews the intelligence agencies conducted after last year's terrorist attacks. Could the Minister, in winding up, say something about the resources being made available against the many other competing priorities of the intelligence community?

My first specific point concerns the internet and the new offences around obtaining or viewing material. I do not have difficulty with the new offences as drafted following the debate in the other place, but I look forward to the comments of others on some of the issues raised. However, there is another side to the story, which concerns the responsibilities of the communications service providers. In the past these providers have been slow to recognise their responsibilities in taking down extremist material—a point to which the ISC report on the murder of Fusilier Lee Rigby drew attention as long ago as 2014. Could the Minister say something about recent discussions with the CSPs around these responsibilities?

My second point concerns radicalisation in prison. The Bill proposes increasing the maximum sentences for terrorist offences. I have no difficulty with what is proposed, but has there not been evidence in the past of a serious problem of radicalisation within our prison system? There are some very real issues concerning how we tackle this—other noble Lords are more qualified than me to comment on this—for example with the creation of separation units, and problems associated with prisoners not of a Muslim background who become drawn into this world of extremist ideology while in prison. If the intention of the Bill as proposed is to convict more terrorists and for longer sentences, have we the resources and techniques to ensure that we can prevent the creation of terrorist incubators in our prisons?

My third point concerns the new designated area offence, which has already been commented upon. I entirely understand that the aim is to deter some of those who will in future try to travel abroad to support terrorist movements which threaten this country. Both Denmark and Australia have similar offences on their statute books. But despite some 900 individuals travelling from the UK to Syria, we have hitherto not pursued this option. So there is an obvious question: why now? There are also questions of detail. What kind of criteria will be used to determine both the imposition of a designated area and the lifting of that designation? How will evidence that is useable in court be obtained? And, as other speakers have mentioned, will the introduction of this offence have a chilling effect, particularly on humanitarian work? In other words, will it discourage genuine and much needed humanitarian relief activities in designated areas, if there is a risk that those engaged in supporting terrorism increasingly try to claim some humanitarian cover in case they are detected?

In conclusion, these points in many cases concern clarification of what is proposed. As I have said, others better qualified than me will wish to comment on many of the legal points. I look forward to the debate on what I see as a modest, incremental but very necessary adjustment to our current legislation to take account of dynamic developments in the threat from both terrorism and hostile state activity. But even if it is modest and incremental, it deserves our closest scrutiny.

4.43 pm

Baroness Jones of Moulsecoomb (GP): My Lords, it is a pleasure to follow the noble Lord, Lord Janvrin. As he and other noble Lords were speaking, I began to have some sympathy for the Government on this issue. It is one of those areas where it is incredibly difficult to get the sort of balance that is needed to satisfy the

whole of society. Although I have had dealings with the police in the past and I understand in some small way the problems of terrorism and the threat of terrorism, I speak as somebody who, like a lot of other people outside this place, might come out on the wrong end of this legislation through innocence and through no fault of their own, simply because the areas are just too broad.

Clause 1 is a classic example. We have to be very careful when we legislate about terrorism; we cannot throw out our values of freedom and democracy when trying to protect against those who attack them. There is a careful line to walk. We need only look at recent history to see how regularly Governments and security services have mislabelled people as terrorists—an example is the iconic image of Jeremy Corbyn being dragged away by police when carrying an "end apartheid" banner, at a time when the Government viewed Nelson Mandela as a terrorist and many on the Conservative Benches were calling for him to be hanged.

However, it is not just recent history that puts heroes up against the full force of the state; this is happening literally today, as 15 people—the Stansted 15—are in court, charged with terror offences for locking themselves to a plane to stop people being deported in the midst of the Windrush scandal. I am horrified that they are there on terrorist charges. It is totally wrong that peaceful protestors, who cannot in any way be thought of as terrorists, should be caught up in the net of terrorism legislation. It proves to me that the warnings and concerns voiced by so many of us in the activist world have come to pass. Terrorism laws are being used and abused by the state to suppress peaceful protest and political dissent.

Other laws too are being deployed against peaceful political activists and campaigners. The "Frack Free Four" have been sentenced to 16 months in prison for sitting on top of a fracking lorry. These brave activists have had their futures destroyed for taking a peaceful stand against the fracking dangers being forced on their community; these are live cases. It would be wrong if your Lordships' House considered expanding the laws without bearing in mind the fact that these laws are being used and abused.

I believe that, if the suffragettes were to rise against patriarchy today and fight for women's rights, they would face probably even greater violence and oppression than that levelled against them by the state 100 years ago—indeed the provisions of this Bill would be levelled against them. History celebrates the suffragettes as heroes but, at the time when they were active, they were thought of as dangerous heretics who wanted to destroy British society.

I am very concerned about Clause 1. I was delighted to hear the noble Lord, Lord Marks, the right reverend Prelate the Bishop of Newcastle, and the noble Baroness, Lady Hamwee, talking about our rights and freedoms and the fact that we must not compromise them when we try to legislate against people who wish to take them away. This Bill will make it a crime to express an opinion or belief that is supportive of a proscribed organisation. When the noble Lord, Lord King, spoke about ISIS knowing more about WhatsApp, or whatever, than he does, I thought to myself that that sort of comment could actually fall within the parameters of this legislation—you do not have to intend to support a particular organisation, or intend to support terrorism, you have only to be reckless.

Would anyone who tweeted or retweeted support for an independent Kurdistan be guilty of terrorism? It would amount to a belief supportive of the proscribed organisation PKK. What about someone who says they support the withdrawal of Israeli troops from occupied Palestine? We have already seen some of the vitriol levied against people who support peace in Palestine, who are repeatedly accused of supporting Hamas and Hezbollah—both proscribed organisations. This Bill opens the door for terrorism charges to be brought against peace activists for the simple crime of advocating peace in a war-torn country.

I was looking forward to hearing noble and learned Lords talk about the slight changes in Clause 1 between "supported" and "supportive"; I look forward to hearing them in subsequent debates. These parts of the Bill curtail legitimate political debate about major geopolitical issues and risk exposing anyone who expresses a view contrary to the UK Government's foreign policy. It is not conspiracy theory to suggest that these types of provisions could be used in an undemocratic and oppressive way. It is a simple fact that the more powers we give to the Government, the more they are used to crack down on dissent and protest.

I want to be able to speak my mind, to protest and to debate the kind of future that we want to see; I want to be able to criticise British foreign policy if necessary; I want to fight for peace at home and abroad; and I want to protect our fundamental rights against a Government who seem hell-bent on taking away our freedoms and use the cover of terrorism to do so. If I want to overthrow this Government, I want to do it peacefully through the ballot box; nevertheless, I could be accused of being a terrorist, and of course I have been accused of being a domestic extremist. There are proscribed organisations which my beliefs could be argued to support and, in expressing those beliefs, I could be said to be reckless as to whether listeners could be encouraged to support a proscribed organisation.

I will not vote for a Bill that risks people being charged with terrorism simply for expressing criticisms of British foreign policies. Protest and dissent are essential components of a well functioning democracy. I will be tabling amendments to the Bill to protect those fundamental rights and to restore the balance between the state and its critics.

4.51 pm

Lord Garnier (Con) (Maiden Speech): My Lords, I made my maiden speech in the other place 26 years ago. I was not entirely sure whether I would make the right, the wrong or any impression, but I need not have worried. My turn came to speak well after midnight, and we were debating the Maastricht legislation. It seems that the relationship between the European Union and the United Kingdom has dogged my political life like two squabbling passengers at the back of a bus—no matter where you sit, you can still hear them. However, on that occasion the hour and the subject worked to my advantage because I addressed an almost empty Chamber.

[Lord Garnier]

The few people present were, with one exception, there only because they had to be: the Deputy Speaker; the Clerk at the Table; the Government and Opposition Whips, playing some demented game of chicken to see who would give up and go home first; the junior Minister from the Foreign Office, who sensibly was concentrating on his correspondence; and a handful of Back-Benchers, who were waiting to speak and certainly not listening to me. The exception was Douglas Hurd, my noble friend Lord Hurd of Westwell, then the Foreign Secretary, who kindly came from his room to sit on the Front Bench as I mumbled at the back. Sadly, he has retired from this House but, to me, he represents so much of what is good in our public life.

On this occasion, I find myself speaking to a fuller House at a much earlier hour than last time, following speeches of great quality and great depth. However, I do not want to try anyone's patience, not least because of the list of speakers due to speak after me, who have far greater expertise than I do, and because I want to hear my good friend, the noble Lord, Lord Tyrie, make his maiden speech as well.

However, I want to record that in the very short time that I have been a Member of your Lordships' House I have been struck by the kindness, not least during today's debate, that I have received from noble Lords on all sides of the House and from members of staff in every department. Despite the fact that my peerage was announced on the evening before Prince Harry's wedding, and therefore the *Harborough Mail* had other things to report, I was delighted to find that one or two people were expecting me when I got here. I particularly want to thank my noble friends Lord Goodlad and Lord Young of Cookham for supporting me at my introduction. They were friends in the Commons and they have stood fast to that friendship here.

I have taken my territorial designation, Harborough, from the constituency in south-east Leicestershire which I represented for 25 years. Although I come from Norfolk, my wife's family have lived in Rutland, Leicestershire and Lincolnshire for many years, so I was delighted to be adopted by a constituency that covers most of south-east Leicestershire between the city of Leicester and Northamptonshire.

Despite my 25 years in the other place and my experience there as a Back and Front-Bencher, both in opposition and in government, there is much that is new to me here. The lines of communication between the two Houses are not always well maintained. This is a very different place, with its own characteristics, procedures and traditions, but we should celebrate these differences. Let it not be thought that because our parliamentary system is old, it must therefore be bad. Our system is old because it is good, not bad because it is old.

One of the defining features of our country is a general respect for the rule of law, and today's debate demonstrates that justice and the rule of law remain in the forefront of our public discourse. Freedom of expression—political and otherwise—has been protected by the common law and the vigilance of Parliament every bit as much as by the European convention. Parliament and the law should be vigilant to ensure that our right to comment freely and honestly, and even offensively and idiotically, is never cut down. But terrorism—and the threat of terrorism—tests our freedoms and our tolerance of others' opinions. The first four clauses of this Bill, with suitable safeguards, adjust the limits of acceptable conduct—where freedom of expression ends and where crime begins—just as the increased sentences in Clauses 6 to 10 make it plain how unacceptable we find these criminal acts to be.

There is no one answer to the questions posed by terrorism, by those who commit terrorism offences and by those who persuade others—or who are persuaded by others—to commit these hideous crimes. Ironically, at a time when electronic communications and information technology have allowed for the creation of highly sophisticated weapons and remote triggering systems, there is, as my noble friend the Minister indicated at the outset, a greater use of simple weapons such as vehicles and kitchen knives. The attacks are planned in days, not over months, and it is remarkably easy to buy bomb parts and chemicals, and to research targets online. This makes it harder to detect terrorist crime in advance, but with greater information sharing between those tasked with our protection, things could improve.

I understand—the Minister has indicated as much—that there are currently about 500 terrorist plots at various stages of development, and I think the noble Baroness, Lady Manningham-Buller, made the same point. I further understand there are about 3,000 people of interest, as the noble Baroness mentioned. Further, there are about 20,000 people on the fringes called closed suspects—the 2017 offenders were, I gather, in that category. We therefore need to provide the security services and the police with the resources to allow them to review everyone in that group.

As the shadow Attorney-General when my noble friend Lord Hague and David Cameron were leaders of the Opposition, and as Solicitor-General in the coalition Government when Mr Cameron was Prime Minister, I spent a good deal of time on matters to do with terrorism and the sometimes conflicting rights under the European convention. There are a number in your Lordships' House who, like me, are members of the former law officers' club. Forty years ago, I was led by Lord Rawlinson of Ewell, a former Solicitor-General and Attorney-General, for the *Daily Mail*, in a libel action brought by the Moonies. He told me that when he was appointed Solicitor-General in 1962, the Prime Minister, Harold Macmillan, gave him a learned seminar on the history and constitutional role of the law officers. It was made clear that as Solicitor-General, his first duty was to the rule of law, his second was to Parliament and only his third was to Macmillan's Administration. Mr Cameron appointed me Solicitor-General in 2010 during a three-minute telephone call. Had he had the time to think about it, I am sure he would have agreed with Macmillan. I certainly tried to keep Harold Macmillan's advice to Peter Rawlinson to the forefront of my mind when I was Solicitor-General.

To many Ministers, the law officers are—with the exception now of Geoffrey Cox— either mysterious, barely-known creatures, or an inconvenient reminder that the law of the land applies to them. Like lawyers

in private practice, law officers cannot talk in detail about their work, which is confidential to their client: the Government. But nor should they only say "no"—they should try to be imaginative and help the Government navigate through their difficulties. Their power—if they have any at all—lies in speaking truth unto power and in resignation. The law officers are more like submarines than the ships of the line in the Cabinet: you know they are down there somewhere, unseen and unheard, quietly going about their business, but if they surface and their concerns or disagreements become known to the wider world, either the Government are in trouble or they are.

Shortly after my appointment in 2010, I was showing off to the then Lord Chief Justice, the noble and learned Lord, Lord Judge, that one of my ancestors, Sir William de Grey, had been successively Solicitor-General and Attorney-General from 1763 until 1771, under five Prime Ministers. After that, I told him, my ancestor became Lord Chief Justice of the Common Pleas. The noble and learned Lord smiled engagingly and gently reminded me that some apparent precedents are easily distinguished upon their facts.

After reading history at Oxford, I went to the Bar. In 1976, I joined a set of chambers in the Temple that specialised in media and information law—it still does. Leon Brittan, a Member of Parliament and a shadow Minister, was then the junior silk in Chambers. My friend Lord Brittan is sadly now dead, but he taught me that it is possible to be a practising barrister and a conscientious Member of Parliament and that, although lawyers are not everyone's favourite, we have our uses. In response to my persistent questions about politics he said, "Stop talking about it; just go and do it". He also demonstrated that it is possible to maintain one's dignity in adversity. In the last months of his life, he was cruelly assailed by baseless allegations that would have broken healthy men. It is sad that he did not live to witness his own exoneration, but I hope it is of some comfort to his widow, Diana, that his reputation has, without question, been restored to its rightful place.

Somehow, I have arrived here among you all. I am honoured to be here and I hope to play my part in shaping the legislation that comes before us. Now is not the time for me to say much more about this Bill. Although it amends and adds to criminal law—a prospect that usually makes me worry for the judges and the lawyers who will have to apply it—for a modern statute, it is mercifully short. Its intentions are properly confined and the policy behind it is clear. I am not a fan of creating new offences, renaming existing offences or increasing sentences to send a message, when those who are hell-bent on killing police officers, soldiers and ordinary citizens, or encouraging others to do so, will pay no attention, seeing themselves as warriors for their hideous cause. Nor do I forget that, if the prison sentences set out in the Bill come to be used, we will have failed to educate, influence, inhibit or prevent those who have committed terrorist acts. However, I believe that this Bill is more than a message. It is part of a practical approach to countering terrorism and to protecting our borders; problems that we, but more acutely those whose job it is to protect us, face daily. I wish it well and I look forward to considering it further in due course.

5.02 pm

Lord Faulks (Con): My Lords, my noble and learned friend Lord Garnier has given us a taste of things to come. I have had the privilege of knowing him since we were adolescents, so it is a particular pleasure for me to see him in his place today—yes, lawyers were children once.

It is a matter for celebration that so many of our current politicians are the sons and daughters of immigrants and that people come into politics from all sorts of backgrounds. My noble and learned friend, on the other hand, comes from a family with a long tradition of public service, and this country is richer for that tradition. He has managed to combine a quarter of a century as a Member of Parliament with a successful practice at the Bar, where he has been for some time one of the leaders in the field of defamation and media law. He was also instrumental in the introduction of deferred prosecution agreements to the prosecutorial armoury; a valuable weapon against corporate economic crime. Further, he has sat for some time as a recorder of the Crown Court.

Despite all these achievements, and a term as Solicitor-General, my noble and learned friend has a quality that is all too rare in barristers: modesty. I am confident that his contributions to debates in your Lordships' House will be relevant and brief, and that, unlike some of us, he will not consider it necessary to give the House the benefit of his views on every subject. My noble and learned friend Lord Gamier is a most welcome addition to your Lordships' House.

I now turn to the Bill. The scale of the terrorist threat to this country can hardly be overstated, whether from extremists claiming allegiance to the Muslim faith or from state-sponsored terrorism as we witnessed in Salisbury. We should pay tribute to the contribution that the police and the security services make to keep us as safe as they can in increasingly challenging circumstances.

One fact that I took away from the Home Secretary's recent speech in Birmingham was that an estimated 800,000 people who currently live in this country do not speak English. I am not of course suggesting for a moment that if you do not speak English you are likely to be a terrorist. However, it is a considerable challenge for our security services simply to understand what is going on in communities where English is not spoken or not spoken much, and where there is little or no loyalty to British values or traditions.

In its report on the Bill, the Joint Committee on Human Rights was critical of it in a number of respects, identifying various potential violations of human rights. Of course, that is the remit of the committee, of which I was once a member, and I do not for a moment impugn the integrity of the process, as it was suggested the security Minister did in the other place. However, I wish us to bear in mind that, in this country, there was a long-established respect for free speech before Article 10 of the European Convention became part of our law through the medium of the Human Rights Act in 1996. If we must look at issues through the prism of the Human Rights Act, can we bear in mind Article 2, the right to life, and Article 8, the right to a family life, in the context of those affected by terrorism? The first

[LORD FAULKS]
duty of a Government is to keep their subjects safe. To do so, there must sometimes be restrictions on individual rights.

The primacy of individual rights is such that loyalty to one's country seems in some quarters to be regarded as something of an option, coming below loyalty to one's religion or even one's football team. Many would agree with EM Forster, who wrote in 1938 that he hoped, given the choice, that he would have the guts to betray his country rather than his friends. But if you choose to live in this country, is it so unreasonable to expect you to show some loyalty to it and not to give assistance to our enemies?

The word "treason", mentioned by my noble friend Lord King, has a dated feel about it, but may I also commend the recent Policy Exchange publication, *Aiding the Enemy: How and Why to Restore the Law of Treason*? Its authors include two Members of Parliament, one Labour and one Conservative, and it has a foreword by the noble and learned Lord, Lord Judge. It provides a compelling case for the return to the statute book of a modern law of treason—the 1351 statute is plainly no longer fit for purpose.

The new offence of entering or remaining in a designated area may help but clearly needs further scrutiny. For British subjects who leave this country to serve with ISIS or the Taliban, for example, is a maximum sentence of 10 years really enough? What about Anjem Choudary, sentenced to five and a half years in prison and due out this month? Even though this Bill promises, rightly, to end in certain circumstances automatic release on serving half a sentence, that is too late for Choudary and others. Does the current statutory framework adequately capture the gravity of being a recruiting sergeant for ISIS at a time when it is engaged in combat with our forces and actively trying to attack the United Kingdom? The time may well have come to update the law on treason as Australia, Canada and New Zealand have done.

As the noble Lord, Lord Janvrin, pointed out, radicalisation in prison is a real threat. Government policy is to imprison those who pose a threat to national security in separate units to minimise the risk of other prisoners being radicalised. Very few have in fact been separated, apparently because of apprehension in the Prison Service about human rights litigation. Perhaps the Minister would care to comment on that.

This Bill deserves careful scrutiny, and it is clear that there is the expertise in this House to do just that. There are certainly improvements that can be made. For example, the Law Society has made some powerful points about the erosion of legal professional privilege at border interceptions, referred to by the noble Lord, Lord Rosser. For my part, I need convincing that all those restrictions are currently justified. But, for the most part, I welcome the Bill and hope that it receives support across the House.

5.10 pm

Lord Thomas of Gresford (LD): My Lords, I join the noble Lord, Lord Faulks, in his welcome to the noble and learned Lord and former submariner, Lord Garnier. I have a wonderful picture of the two of them as adolescents together discussing football and human rights over a pint. I welcome the noble and learned Lord's strong expression of his belief in the rule of law and of freedom of expression. I am sure that we shall hear a lot more from him about that.

There are many aspects of this Bill that we shall no doubt consider in Committee, but I will confine myself to three. First, I consider Clause 1 to be unnecessary and a disproportionate interference in the right to free speech. Secondly, I want to emphasise the importance of private consultations with legal advisers. Thirdly, I have some comments about the proposed designated areas offence.

Clause 1 penalises the expression of an opinion or a belief that is supportive of a proscribed organisation. The state of mind of the accused must be that, in expressing that opinion, he is reckless as to whether a person is encouraged to support that proscribed organisation. There is already an offence, under Section 12(1) of the Terrorism Act 2000, of inviting,

"support for a proscribed organisation".

As for hate preachers, Section 12(3) of the 2000 Act reads:

> "A person commits an offence if he addresses a meeting and the purpose of his address is to encourage support for a proscribed organisation or to further its activities".

The same words in that legislation appear in the Bill before us, so what lacuna does this new offence fill? It adds "reckless" to "purpose", but "reckless" is a word that has caused difficulties in the past in defining its meaning.

Back in 1981, I argued the case for a Mr Caldwell against the Metropolitan Police Commissioner before the Judicial Committee of this House. Caldwell had in a drunken moment broken a window and set fire to a hotel. The flames were quickly extinguished and no serious damage was caused, but he was charged with the aggravated criminal damage offence of being reckless as to whether life was endangered. His defence was that he had been so drunk that he had given no thought as to whether life would be endangered and was therefore not reckless. The issue was whether recklessness should be judged objectively or subjectively. The problem with the subjective test is that the prosecution has to prove the defendant's state of mind—that he foresees the risk of harm. The problem with the objective test is that it criminalises those who genuinely did not foresee a risk of harm, including young children, people whose mental capacity is impaired and indeed drunks. Lord Diplock in the Judicial Committee, contrary to my argument in favour of a subjective test, held that the defendant was reckless if he had not given any thought to a risk which he should have appreciated. At that time, the committee plumped for the objective test. It was not until 2003, in the case of R v G and Another, that my argument succeeded and the Judicial Committee, in a rare exercise of its powers, overruled Caldwell and decided that the subjective test was appropriate. The case involved two 11 year-old boys who had set fire to a wheelie bin; the fire spread to the roof of a Co-op store and caused £1 million worth of damage. They had given no thought at all to the risk that might be involved by what they did.

So what does "reckless", under its current definition, mean in the context of Clause 1? It means that the prosecution will have to prove that the defendant foresaw the risk that the person to whom his opinion or belief was directed would be encouraged to support a proscribed organisation but nevertheless went on to express it. What does that add to the current criminal acts of speaking or writing with the purpose of encouraging or inviting such support? The use of "reckless" does not catch a person who does not realise the effect of his words on the listener or reader of a column. The test of recklessness is no longer objective.

Simply expressing your opinion is not enough, as the right reverend Prelate the Bishop of Newcastle's apt quotation from Elizabeth I pointed out earlier. A person at Hyde Park Corner can say, "I believe in Scottish independence, and I think the best way to achieve this is through Scottish Dawn", which is a proscribed organisation; perhaps that could also be said by someone from a Wee Free pulpit. That person would not be committing an offence under the proposed clause; he is merely opening the window into his soul, as Elizabeth I put it. If what he says is an invitation to join Scottish Dawn, he would commit an existing offence under Section 12(1) of the present Act. If his purpose in so speaking is to encourage listeners to join Scottish Dawn, it is already covered by Section 12(3) of the existing law.

My noble friend Lord Marks set out a number of tests, one of which asks, very appropriately, what mischief the clause is aimed at. In the Choudary case, the Court of Appeal considered whether Section 12 of the Terrorism Act offended against the European Convention on Human Rights. The court said:

"When considering the proportionality of the interference, it is important to emphasise that the section only prohibits inviting support for a proscribed organisation with the requisite intent. It does not prohibit the expression of views or opinions, no matter how offensive, but only the knowing invitation of support from others for the proscribed organisation. To the extent that section 12(1)(a) thereby interferes with the rights protected under article 10 of the Convention, we consider that interference to be fully justified".

Clause 1 seeks to punish the expression of an opinion with up to 10 years' imprisonment. I suggest to your Lordships, as I will argue in Committee, that it is a disproportionate interference in the right to free speech protected by Article 10.

I turn to legal professional privilege. Paragraph 26 of Schedule 3 mirrors Schedule 7 to the 2000 Act. Under paragraph 23(1) of Schedule 3, there is the right to consult a lawyer "privately … at any time", but paragraph 26(1) states:

"A direction under this paragraph may provide that a detainee who wishes to exercise the right under paragraph 23",

to consult a lawyer privately may, if the direction is made,

"consult a solicitor only in the sight and hearing of a qualified officer"—

that is, an eavesdropping officer. That direction may be made by a senior officer in certain circumstances, such as interference with evidence or the alerting of a person who is suspected of having committed an offence but has not been arrested for it. Maybe a tiny minority of legal professionals pass on illicit information—there are rogues in any profession. If caught, they will go to prison and be struck off or disbarred. The noble Lord, Lord Rosser, talked about the suggestion made in the other place of an approved panel of lawyers being set up to advise people detained under the Bill. I fully support that. I look forward to hearing more about it.

If criminal lawyers want to make a successful living, they need to get the truth from their client. There must be a firm platform on which to base a defence. Initially, the client might not be open with his own lawyer. He might tell lies through consciousness of guilt, fear or a misplaced desire to cover up for somebody else. Perhaps he says he cannot remember. But when his own lawyer rubs his nose in the evidence, the story frequently changes. It should be remarked that, of the cases that appear in the Crown Court, between 60% and 70% plead guilty, very largely due to this activity carried out by the defendant's own lawyer. It is obvious that this sometimes subtle, sometimes vigorous process cannot take place in the presence of someone listening in from the investigating authority. The provision that appears in this schedule, as it appears in Schedule 7 to the 2000 Act, is contrary to the public interest in the wider sense.

I remember being in the Court of Appeal when we lost an appeal in a murder case. Afterwards, my client turned to me and said, "Well, now I'll tell you the true story". He gave me an account entirely consistent with the prosecution case, which would have provided him with a defence, but he had not told me and there was nothing I could do about it. It is important for people to realise that defence solicitors and barristers need to have professional privilege to see their client privately to carry out the sometimes rough interrogation of their own client, which can lead only to the proper result.

Finally, on Clause 4 on designated areas and the reasonable excuse defence, your Lordships should remember that, although the Minister, Ben Wallace, now says that a reasonable excuse will,

"cover persons entering or remaining in the designated area … for the purpose of providing humanitarian aid; to carry out work for a foreign government … or the UN; to work as a journalist; or to attend a funeral of a close relative",

he said:

"It would be for the defendant to demonstrate that the defence applied. Once a defendant has raised the defence the burden of proof (to the criminal standard) to disprove the defence would rest with the prosecution".

That is right, but there has to be some evidence to support the defence. It cannot be raised simply by argument, so a burden is placed on the defendant in these circumstances to explain why he was in the designated area. I agree with Rowan Popplewell of Bond and with my noble friend Lady Hamwee that there should be a system of pre-visit authorisation of people who wish to visit designated areas for a particular purpose. Nothing could be simpler to arrange and it could avoid unnecessary prosecution of a person.

There is much further to discuss as the Bill goes through.

5.24 pm

Baroness Howe of Idlicote (CB): My Lords, I warmly congratulate the noble and learned Lord, Lord Garnier, on his excellent maiden speech, and I look forward

[Baroness Howe of Idlicote]
with equal enthusiasm to hearing that of the noble Lord, Lord Tyrie, which I am sure will be of equal quality.

Clearly, as other noble Lords have said, it is only right, after the terrorist attacks of last year, that the Government should work hard to make sure that our anti-terrorism legislation is fit for purpose, so I welcome the fact that through the Bill they are seeking to discharge this important responsibility. The challenge that they face in doing so is a difficult one. On one hand, we must do all we can to keep our citizens safe. On the other hand, we do not want to introduce changes that fundamentally change the nature of our society. It would be the supreme irony if, in seeking to preserve our society, we end up changing what it means to be British. In particular, it is very important that, in developing legislation and attendant guidance, great care is taken to ensure that it does not jeopardise the enjoyment of human rights.

In July 2018 the Joint Committee on Human Rights published a report highlighting serious concerns over the new powers in the Bill. Among other things, the report raised concerns about the Prevent programme, which is engaged by Clause 19, on which I shall concentrate. Clause 19 amends Section 36 of the Counter-Terrorism and Security Act 2015 to impose a new duty on local authorities. In addition to being responsible for assessing individuals vulnerable to being drawn into terrorism, through panels mandated by Section 36, Clause 19 also gives local authorities the power to refer people to the panel. The discharging of this new duty will be informed by the relevant guidance pertaining to the Prevent duty, namely the Prevent duty guidance of 2015, the *Counter-terrorism Strategy*, the newest version of which was published in June 2018, and the *Counter-Extremism Strategy* of 2015. My difficulty with this arrangement is that while the statute is narrowly focused on terrorism, the Prevent duty guidance, the *Counter-terrorism Strategy* and the *Counter-Extremism Strategy* engage with extremism in all its forms, including non-violent extremism, which has no statutory definition.

The lack of a definition of non-violent extremism in law, and the lack of any sanction against non-violent extremism in law, is a very good thing. If someone espouses violence, they cross a very clear threshold. I find it hard to imagine that any Member of your Lordships' House would have any difficulty in having very robust laws against such practice. The idea, however, that we should target people espousing non-violent views seems deeply problematic to me. The only content we are left with is that the view is "extreme", but in whose opinion? What is extreme to one person is sensible to another. Unless we are to fundamentally change the nature of the society in which we live and start policing speech in a way that would be deeply inimical to the British tradition. I do not think that we should introduce sanctions against opinions that do not espouse violence.

I appreciate that the Bill does not ask us to endorse directly the Prevent duty guidance and the *Counter-Extremism Strategy*. We are, however, being asked to indirectly endorse these documents because they provide the guidance according to which local authorities will be required to take on the new responsibilities that we will ask them to assume in sanctioning Clause 19.

The difficulty that this presents is compounded further by a critical development in the courts. In July 2017, in his judgment in Salman Butt v Secretary of State for the Home Department, Mr Justice Ouseley stated very clearly that the Prevent duty does not refer to all forms of extremism as defined in the Prevent duty guidance of 2015 and the *Counter-Extremism Strategy* of 2015. Mr Justice Ouseley rightly said that extremism is,

"the active opposition to fundamental British values",

which,

"must in some respect risk drawing others into terrorism before the guidance applies to it. If there is some non-violent extremism, however intrinsically undesirable, which does not create a risk that others will be drawn into terrorism, the guidance does not apply to it".

Thus the Prevent duty does not apply to all forms of extremism, and specifically not to non-violent extremism if there is no risk of people being drawn into terrorism.

However, that is not what the Prevent duty guidance, the *Counter-Extremism Strategy* or the *Counter-terrorism-Strategy* say. Mindful of this, I very much hope that the Government will introduce an amendment in Committee to the effect that Clause 19 will not be implemented until the Prevent duty guidance, the *Counter-Extremism Strategy* and the *Counter-terrorism Strategy* have first been subjected to a review and updated in light of the judgment of Mr Justice Ouseley. Let us uphold the right to non-violent free speech and fight terrorism by preserving rather than compromising our own heritage.

5.32 pm

Baroness Warsi (Con): My Lords, I am grateful to my noble friend Lady Williams for introducing the Bill. I could not think of anybody better to do that and it will certainly make expressing any concerns that I have much more difficult. I am also grateful to my honourable friend the Security Minister, Ben Wallace. I consider them both to be not just political colleagues but friends. I congratulate my noble and learned friend Lord Garnier on his maiden speech and look forward to my noble friend Lord Tyrie's maiden speech. Both are unfashionably expert and inspiringly principled and have the ability to be politely awkward. They will fit in well.

I wholeheartedly support measures designed to keep us safe. As someone who has been targeted by extremists throughout most of my public life, from being attacked by al-Muhajiroun and its supporters in Luton to numerous threats by email and on social networks—and who for the past two and a half years has been on a target list for ISIS—I, along with my family, have had to live in the shadow of some of those who seek to cause Britain harm. So although I support some of the Bill's provisions—for example, the increase in the custodial sentence for those who were aware of and do not disclose information on terrorist offences—as a lawyer, I am also concerned that we should make more criminal law only if the current law and policy are simply incapable of being applied or, indeed, applied better.

Sadly, I have some concerns about the drafting of the Bill, both in the mischief it seeks to remedy, as outlined by the noble Lord, Lord Marks of Henley-on-Thames, and the way in which it seeks to do so. We must not become a country that polices thought, as was explored by the right reverend Prelate the Bishop of Newcastle. As Liberty succinctly put it, the Bill,

"pushes the law even further away from actual terrorism, well into the realm of pure speech and opinion".

We must not cite exceptional circumstances to justify a blanket law change.

Of course, we are just over a year on from a seven-month series of terror attacks on UK soil. Five attacks led to 36 deaths and dozens more injured. A further 17 both religiously inspired and far-right inspired attacks have been thwarted since. It is entirely right in these circumstances for the Government to look again at what more could be done to prevent such attacks in the future. Much commentary has taken place since the attacks and recommendations have been made, yet, interestingly, some of the most informed voices, including eminent academics such as Professor Clive Walker—who has been researching and writing about Britain's counterterrorism laws since the 1980s, and who also happens to be my former university tutor—have argued that new laws are not the answer. Professor Walker has said:

"The failure to identify major legal gaps is further emphasised by the findings of the three weighty reports"—

post the attacks—

"none of which called for major legal changes".

There is much to concern us in the individual clauses and I hope that we will have the opportunity to scrutinise these further as the Bill passes through the House. Concerns include the proposed three clicks offence, which has become the one click offence—an offence which reverses the burden of proof and, rather than focusing on the ill-intentioned creators and well-resourced publishers of material, seeks to criminalise end users, whether innocent or not. The proposed publication of images offence creates a new offence of the publication of an image,

"in such a way or in such circumstances as to arouse reasonable suspicion that the person is a member or supporter of a proscribed organisation".

Apart from the obvious point, as stated by the Joint Committee on Human Rights, that what this offence seeks to cover is already covered by existing legislation, it risks criminalising a broad range of legitimate behaviour by academics, journalists and human rights activists—a concern voiced by the UN special rapporteur on human rights. A person risks imprisonment not for being a member or supporter, but for merely publishing an image that could be construed as arousing reasonable suspicion. This is in a space where images can have a historical context and meaning far broader than a relatively modern and often cynical adoption by a terrorist group; the Irish flag is one such example.

Today I want to focus in detail on one aspect: the lack of debate, engagement and consultation surrounding the Bill—an issue raised by the noble Lord, Lord Rosser. Taking the example of the late-introduced proposed designated area offence, there was a lack of engagement with those groups likely to be disproportionately impacted by the Bill, such as journalists, human rights activists, British citizens with family in areas of the world that could be so designated, aid workers working in areas of acute humanitarian crisis, a community I am a part of—British Muslims—and, of course, a community which most Members of your Lordships' House are part of: the naturally curious. Alongside the potential for mistakes and the clumsy application of this proposed offence, the scope for abuse of the use of designated areas is real—as a carrot or a stick to pressurise or seek favour with foreign countries and to legitimise or deem illegitimate political disputes around the world. Selective use of this provision would leave people helpless even where there is no risk of harm to the United Kingdom and, for example, could deter the proper reporting of a conflict. The much simpler answer would be something I have advocated for many years: that in a globalised world with multiple identities, many of which overlap borders, rather than zoning no-go areas, make a simple "no fight" rule and criminalise any person who travels abroad to take up arms in any conflict for any foreign despot, group or even Government, so that if you are British you fight for and on behalf of the British Armed Forces and no one else.

Intervention at an earlier stage is one of the reasons cited for the Bill in the Government's explanatory factsheet. This early-stage intervention is nothing new: it is the Prevent strand of the four pillars of the Contest strategy, alongside Prepare, Protect and Pursue. It is a policy which has been in play since 2003 and in the public domain since 2006. It is a policy which fundamentally was about communities leading the battle of ideas to challenge some of the views and behaviour that could become the basis for terrorism. It is a policy which has significantly shifted over the past decade. I agreed with all four strands of the original Contest strategy, including the early thinking behind Prevent. For me, the Prevent policy was—and still should and could be—a battle between violence and democracy, based on a belief that everyone has a right to their view, providing that it does not break the law or incite or encourage someone else to break the law. Democracy, if it works, should be able to temper unsavoury views—although the latest US presidential election has left many questioning that notion.

The battle of ideas about violence and the justification of it is one in which government need to be a player and quite rightly stand against groups that promote such. It is right that the battle of ideas and views on everything from tax to torture, from farming to family to foreign policy, and from welfare to wind farms is debated and accommodated through our parliamentary democracy. The battle of ideas was but one part of the Prevent work, alongside tackling discrimination, engaging communities and addressing grievances. The Prevent strategy, however, over time slowly started to shift its emphasis.

The process of understanding—not accepting, but understanding—why British Muslim communities themselves felt that people were being drawn into violent extremism became a less important issue for politicians and policymakers. The Muslim communities' views, which themselves were varied and broad on the drivers of terrorism, were sidelined and we saw the start of a process of disengagement between government

[Baroness Warsi]
and British Muslims. Rather than doing counterterrorism with British Muslims to defeat the menace of terrorism collectively, we chose to do counterterrorism to Muslim communities. Through this approach we both created an obstacle to confronting and defeating terrorism and alienated a large community of law-abiding citizens. We "othered" them.

Putting Prevent on a statutory basis in the last months of a coalition Government, with both Labour and Liberal Democrat eyes being on an election rather than legislation, has been the subject of much criticism and mistrust. It is a policy which I as well as academics and senior police officers, along with many others including the noble Lord, Lord Anderson, as the ex-Independent Reviewer of Terrorism Legislation, have called to be independently reviewed. That policy is opaque and inconsistent—its flaws were outlined by the noble Baroness, Lady Howe—while the published statistics on referrals which lead to action act as a net, which catches and has damaged as many lives as it has potentially saved. In this climate, with much respect to the noble Baroness, Lady Hamwee, I believe that it would be entirely inappropriate and counterproductive to expand its reach. If the Government are genuinely committed to early intervention then they must start by engaging openly, honestly and transparently. A cohesive country is a more secure country. Engaged communities are more cohesive.

Let me end on an issue that I have been arguing for while inside government and since, in private conversations with colleagues and in detail in a book. I now raise it on the Floor of your Lordships' House. It is time for the Government to end their policy of disengagement with British Muslims, which started under the last Labour Government and the leadership of the then Secretary of State for Communities and Local Government, Hazel Blears, in 2007. John Denham tried to restore sanity when he replaced Hazel Blears in 2009 but months later, when the coalition Government were formed in 2010, the policy returned. It continues to be applied today.

Successive Governments have adopted that policy of non-engagement with a wide range of Muslim community organisations and activists. More and more groups and individuals have, over time, simply been seen as beyond the pale, often for something they said or did in the past, or for what someone they were associated with said or did. Time and again the message from government is: if you are a British Muslim and have ever believed, thought, said or even flippantly commented on an issue in a way which could be seen as extremism today, then however historic your view there is no road to rehabilitation. There is no path to redemption, no meeting, no engagement. So if in your youth or your heady days of activism—or simply during your political journey—you have not believed and said exactly what we, the Government, say and believe right now on the issues of politics, faith, women, minorities or homosexuality, then you are persona non grata. Imagine if that approach was used against us politicians. Certainly, many in this House have moved on in their views on many issues: the rights of women and minorities and LGBT rights, to name a few. We have all made mistakes. I have made mistakes.

This policy is ludicrously impractical at a time when the need for engagement with and understanding of our Muslims is greater than ever before. It is also dangerously counterproductive. Over half of British Muslims are under the age of 25; a third are under the age of 15. They are in the media spotlight almost daily. They have access to more connections, information and travel than ever before. Last year, terrorist offences were either done by individuals who purported to belong to a faith that they follow, or aimed at the Muslim community itself. They are in the front line and have seen a 77% increase in attacks against them in 2017, and they are disengaged by government.

The issues around terrorism can be properly responded to only with a whole-community response. This includes the Government, the police and the communities of which British Muslims are an essential component. The policy was originally driven by a small number of politicians and commentators influenced by the now much-discredited and failed neo-conservative thinking from the United States, although the election of Donald Trump has planted this divisive thinking into the mainstream. There is real unease about it at the heart of the Civil Service, at senior police officer level and within local authorities, to name a few examples. Over a decade into this approach, I am yet to be convinced that not engaging with and not listening to a community is the best way to influence it.

I said at the outset that we should make criminal law only if the current law and policy is simply incapable of being applied, or applied better. Ending the policy of disengagement is a simple and necessary step that requires no legislation. It would be a start with immense security benefits, possibly even more so in the long term than the offences proposed in this Bill.

5.46 pm

Lord Tyrie (Non-Afl) (Maiden Speech): I have just heard the latest in a long line of extremely interesting and informative speeches. The enormous expertise in this House is clearly on view and I have learnt a great deal already. It is certainly an honour to follow the noble Baroness, Lady Warsi, who spoke from considerable personal experience. This is also an opportunity to say how impressed I was, if that is permitted from one maiden to another, by the maiden speech of the noble and learned Lord, Lord Garnier. I know him as a reliable and thoughtful person—one of the most reliable and thoughtful people in public life—but much more importantly he is also a very good friend.

For me, this House is a curious mixture of the familiar and the surprisingly new. On the latter, I have benefited a great deal from the guidance of the staff: doorkeepers, librarians and clerks among them. I would particularly like to thank my sponsors, one of whom is sitting next but one to my right: the noble Lords, Lord Luce and Lord Turnbull. They have been very kind to me and are two people who have made exceptional contributions to public life, and on whose advice I have been fortunate enough to call on a good number of occasions not only in recent weeks but over many years. They are two outstanding public servants.

I am making this speech from the Cross Benches because, as chairman of the Competition and Markets Authority, that is the right place for me to be. The

CMA has some major challenges ahead, not least Brexit—I have to mention it somewhere—but those will be manageable because the CMA has, as I am now discovering, some exceptionally able and dedicated people aboard. Those challenges, and competition policy more widely, are not for now; they are for another day.

I have just completed an exhilarating 20 years in the other place and it was a great privilege to represent Chichester. More important than the beauty of the area, or even the fact that it returned me five times with increased majorities, has been the chance to make many deep friendships. I hope and intend to keep those for life. As I was clearing out my office at the other end of the building last year, I came across a letter from a resident of the parish of Tyrie in Aberdeenshire, which I received shortly after I was first elected. I have it here and it reads:

"If you ever went into the House of Lords … you could become Lord Tyrie of Tyrie. And, if you moved up here",

the correspondent went on—I suppose there were perhaps some properties for sale up there—

"you would be Lord Tyrie of Tyrie, Tyrie".

I am grateful to that citizen of Tyrie for his suggestion, but I hope he will understand that I would rather stick to Chichester, where I have put down deep roots and to which I owe a great deal.

About the same time that I got that letter 20 years ago, the Conservative Party, reduced to 165 MPs, was locked in a bitter row with itself about Europe, much as it was when the noble and learned Lord, Lord Garnier, arrived five years earlier. At about that time, I happened to hear a speech by the late Sir Denis Thatcher. He was asked from the floor how the Tory party was going to get out of that mess, to which he replied: "Well, it's all very straightforward. All we have to do is stick to our values". He then thought for a bit and said, "But don't ask me what they are".

In today's debate, and particularly with respect to anti-terrorist legislation generally, it is the values not of a political party but of the country that are at stake. I have no particular expertise in that field, but it seems to me that legislation is certainly needed to respond to the digital age, so I shall not oppose the Bill and I welcome its intent. None the less, the noble Lord, Lord Marks, made a trenchant point with his four tests and I think the noble Lord, Lord King, acknowledged the same point. As both of them implied, the issue before us is to reconcile the requirements of a free society and the needs of those who work to protect us from terrorism. We should bear in mind that they do that work in an outstanding manner and in very difficult circumstances.

Rather than examine that issue in depth in relation to the Bill, I prefer to take advantage of the licence I am told is afforded to a maiden speech and the Long Title of the Bill, which is very broad, to raise one aspect of anti-terrorist policy where successive Governments have fallen short.

In the years following 9/11, Britain facilitated a US programme of extraordinary rendition. Just to be clear what we are talking about, in the 21st century Britain facilitated the kidnapping of people and having them taken to places where they could be maltreated and, in some cases, brutally tortured. I was shocked when I first heard those allegations, and I still am. That is why in 2005 I founded the All-Party Group on Extraordinary Rendition. My purpose was to find out the scope and limits of Britain's complicity, to establish who authorised it and to do whatever was required to give us greater confidence that it would not happen again.

Since 2005, there have been three inquiries, all of them at least partly prompted by the group I founded. The first, by the ISC in 2007, completely erroneously concluded that Britain had not been involved at all. The second, a judge-led inquiry that I persuaded David Cameron to establish in the months before the 2010 election, was closed down before it had a chance to get very far. The third, another by the ISC, has just completed its work and has done its best but, by its own admission, has not been able to get to the bottom of the issue. That it failed to do so is scarcely surprising. The Prime Minister blocked the ISC's access to almost all the relevant witnesses. It is clear from the report that in response to that the ISC closed down its inquiry. The ISC did not examine some of the toughest cases, such as Belhaj, who was rendered with UK assistance to Libya, nor detainee transfer in theatre.

How involved were Ministers in those decisions? We still do not know, and we still do not know what really happened. For much of the past 13 years, it has been an uphill struggle to elicit much information. Denials were frequent and often pretty comprehensive, if completely wrong. Here is Jack Straw's in 2005, when he was Foreign Secretary, in response to a question I asked a colleague to ask at the Foreign Affairs Committee:

"Unless we all start to believe in conspiracy theories and that the officials are lying, that I am lying ... there simply is no truth in the claims that the United Kingdom has been involved in rendition full stop".

Only a couple of years ago, I was assured by a very senior civil servant that there were only a handful of cases. Now the ISC has established that the UK was involved in more than 70. I do not think this issue can be left unaddressed. The question is how to address it. More than a decade ago I concluded that only a judge-led inquiry could hope to clear this up and enable us to move on. That inquiry is still needed, and I am very pleased that Ken Clarke, the former Justice Secretary who suspended the first judge-led inquiry, now agrees.

Freedom of information will not achieve much in the UK on rendition now that its effectiveness has been greatly curtailed by the Justice and Security Act, but in the US the group's FOI requests are now eliciting significant further information which the group will put into the public domain. It could be that FOI in the US becomes the best remaining source on UK involvement, given that so many domestic avenues towards more information have been closed off. But best of all would be a judge-led inquiry, which would also be able independently to assess what can reasonably be put into the public domain and what must not be. Clearly, much of the information might carry operational risk for those in the security services today and should remain secret.

[Lord Tyrie]

It is not just that kidnap and torture is deeply repugnant or even—which is the case—that it is probably ineffective as a means of gathering information. It is much worse than that. Complicity in kidnap and torture eats away at the moral authority of the perpetrators. To the extent that the UK has facilitated such practices, we have diminished ourselves and we have undermined the values that we seek to export. That is why getting to the truth about rendition is not some recondite backwater but goes to the heart of the kind of society that we aspire to be. In the age of Trump, Putin, fake news and the erosion of trust in the electorates of western democracies that is now taking place, it is all the more important that we stick to our values and on that issue, unlike Sir Denis perhaps, we know what those values are. That is why we now need to stick to those values and get to the truth on rendition.

5.57 pm

Lord Stunell (LD): My Lords, it is a privilege to follow the speech by the noble Lord, Lord Tyrie. I congratulate him on it and welcome him to the House. I am sure the whole House will be looking forward to his future contributions. In the other place, he had a reputation for and record of original thinking, forensic inquiry, plain speaking and ruthless honesty, and we saw some of that in his maiden contribution in this House. Even his most severe critics would never describe him as a yes-man. Witnesses who sat in front of him in the Treasury Select Committee at the other end of this building would be ready to testify to that, even if they did not always wish to testify to his committee. His words today illustrate a thoughtful, analytical and fearless approach to the issues that come before your Lordships' House, and I am sure his future contributions will continue that. It was also a pleasure to hear the maiden speech of the noble and learned Lord, Lord Garnier. His contribution was well up to the quality of this debate, which has, so far, been excellent and well informed.

Turning to the Bill, I associate myself with the words of my noble friends Lord Marks, Lady Hamwee and Lord Thomas and those of the noble Baroness, Lady Warsi. In coalition days, she and I had many a quiet chat to see whether we could restore some sanity to the situation, but we did not always succeed as we wished. The noble Baroness, Lady Howe, said wise words about how extremism without violence must not be tangled up in our thinking about offences.

I want to focus on Clause 19. It is a very minor provision in the Bill; indeed, it appears under the subheading "Miscellaneous". It deals with the granting of enabling powers to local authorities to nominate people who should go to Channel panels. The noble Baroness, Lady Howe, commented on this to some extent. The Explanatory Notes to the Bill explain that, in 2016-17, 6,093 people were referred to Channel panels, and that 332 of those 6,093 were given support as a result of discussion in those Channel panels. Channel panels are established and run by local authorities, and up to now referrals to them have been exclusively in the hands of the police. The proposal in Clause 19 is to allow local authorities to have that right to refer people to the Channel panels that they themselves organise. It could be seen as just operational tidying up, but there is a little more to it than that. The Government's impact assessment says of it that it is a magic provision; the word "magic" does not appear but it does say the provision will provide a saving to the police and no additional cost to anybody else. So what could possibly be wrong with it?

I suggest to your Lordships that there are some aspects that need to be looked at a bit more carefully than this entry under "Miscellaneous" currently grants: first, the reputation and effectiveness of Prevent itself—the noble Baroness, Lady Warsi, has said some powerful things about that; secondly, the workloads and competences of those running Channel panels; and, thirdly, something about their success rate and performance.

First, on reputation and effectiveness—this case has already been strongly made by the noble Baroness, Lady Warsi, and apart from saying "Hear, hear" I cannot add much more—Prevent is counterproductive and its apparent impact is skewed. A careful reading of the report by the Joint Committee on Human Rights, especially page 24, sets out the case again.

Secondly, on workloads and competences, I make the point that those 6,093 referrals in a year mean 115 referrals a week to Channel panels. The outcome of those Channel panels is that six people a week receive support after referral. Let us just take those figures again: 115 cases come up each week, of which six are, on inspection, decided to be appropriate to receive Channel support. My first question is whether the Minister is satisfied that the 6,000 who are being referred in the first place are in fact an appropriate 6,000, and whether she is satisfied that only 6% of them subsequently being seen as requiring intervention by Channel panels suggests that the right people are coming forward and being selected.

My second question is: what analysis has the department done on which participating agencies are most likely to produce the false positives—the 109 people that week who are referred to a panel but for whom Channel support is not thought to be appropriate. Who are the people who are getting it wrong, and what can be done for them to get it right? What feedback and learning is there from the cases that do not get Channel support, and where evidently those nominations were inappropriate for one reason or another? What change is Clause 19 expected to produce to those outcomes? Is the clause's intention that there will be more referrals as a consequence of local authorities having the right to refer, or is it supposed that in some way there will be more priorities for action by Channel panels as a consequence of those referrals? What is the driver for the change, something on which the Explanatory Notes are completely silent?

That brings me to the success and performance of Channel panels and the Prevent system as a whole. What happened to the 332 who received Channel support in 2016-17? Who was missed? The Explanatory Notes quite rightly point out that there were five terrorist incidents where deaths occurred, and seven terrorists were directly involved there. The noble Lord,

Lord King, brought forward some other figures about the quite substantial number of attacks that were intercepted and where plots were foiled. Had any of those people come into the 6,093? Had any of them come into the 332 who were referred to Channel? In other words, is Prevent actually doing what the name suggests it should be doing, or is it simply a cosmetic overlay on a system that is widely seen as clumsy and counterproductive at best?

The Joint Committee on Human Rights wanted to see an independent inquiry. The Government's rejection of that was really quite abrupt; they said such a claim was unfounded because there had been so many external and internal reviews that basically everything was fine and everything was known. I therefore hope that the questions that I have posed can be simply answered by the Minister today or, if not, that she is ready to answer them in Committee when we get there. It is necessary for the Government to justify the change that is proposed and the base from which that change is being made. What in fact is happening to the 94 out of every 100 people who are referred who have no further action taken regarding their case? I hope that when we get to Committee the Minister will be able to fill in some of those gaps. If not, I will certainly be returning to these matters at that time.

Food Labelling

Statement

6.07 pm

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, with the leave of the House I shall repeat as a Statement an Answer given to an Urgent Question in the other place by my honourable friend the Parliamentary Under-Secretary of State for Food and Animal Welfare on UK food labelling and allergy-related deaths. The Statement is as follows:

"First, Mr Speaker, I wanted to say how deeply upsetting the deaths of Celia Marsh and Natasha Ednan-Laperouse are and that my heart goes out to their families, friends and loved ones affected by those tragedies. This House will appreciate that investigations into Celia Marsh's death are ongoing, and it would be inappropriate for Ministers to make further comment on that particular incident at this stage.

Honourable Members should be under no doubt how seriously we take these issues. It is essential that all UK consumers have complete trust in the food that they are eating. Current food labelling law is set out in the EU's food information to consumers legislation. This legislation includes a list of 14 allergens, including milk and sesame, which are legally considered to be mandatory information that must be available to consumers. The regulations currently allow for some flexibility at a national level as to how this information is provided on food that is not pre-packed and on that which is pre-packed for direct sale. The former includes products such as loose cookies, or sandwiches that are prepared and wrapped directly for the customer. The latter category—pre-packed for direct sale—includes products such as freshly prepared sandwiches made on site, compared to packaged food such as a chocolate bar or ready meal that you find in a supermarket.

I must make absolutely clear that under the current regulations information must be made available to the consumer in all cases. However, whereas packaged food must include all allergens in bold in the ingredients list, information about non-pre-packed food, as well as pre-packed food for direct sale, can be made available by any means that the operator chooses. This includes the use of clear signs indicating that the customer should speak to a member of staff who will provide the information orally.

As the Secretary of State announced at the start of this year, we have been looking at developing new approaches to food labelling to ensure that consumers have the information they need. The death of Natasha has shone a harsh spotlight on the issue of allergen labelling in particular and whether the current framework is still suitable. Natasha's parents have made a powerful case for change, and I am sure that the whole House will join me in paying tribute to the tremendous grace and strength that they have shown in these particularly challenging circumstances.

The Secretary of State has asked the department for urgent advice on how we can strengthen the current allergen labelling framework. That review is under way, and Defra is working closely with the Food Standards Agency and the Department for Health and Social Care. This morning we received the coroner's report into Natasha's death and we will study it very carefully as part of that review. Tomorrow Defra is holding talks with the devolved Administrations to see what approach they may wish to take, as this is a devolved matter.

We take this issue very seriously. I can assure honourable Members that we are working at pace to review the current rules and will set out our proposed way forward as soon as possible".

6.10 pm

Baroness Jones of Whitchurch (Lab): My Lords, I am grateful to the Minister for repeating that response and echo him in sending our deepest condolences to the friends and family of Natasha Ednan-Laperouse and Celia Marsh, who both died tragically following fatal allergic reactions.

In Natasha's case, she had been reassured that the baguette she had purchased was safe for her to eat by the lack of specific allergen information on the packaging. Unbeknown to her, it contained sesame, to which she was allergic. Celia Marsh died after consuming food labelled as dairy-free which was found to contain dairy protein.

As these cases demonstrate, it is imperative that food labelling is both accurate and complete. At present, however, UK food regulations relating to allergen information appear to be seriously lacking, resulting in entirely avoidable deaths. It is clear that we need urgent change to the current legislation.

As the Minister explained, under the current rules, foods packaged on-site before sale do not require a specific allergen label attached. Natasha's parents have been campaigning to change food labelling laws, which they describe as having played "Russian roulette" with their daughter's life. Will the Minister commit to amending

[Baroness Jones of Whitchurch]
the regulations to require all produce to be individually labelled with allergen and ingredient information, and will he ensure that such information is meaningful? It is not enough to have a default warning placed on all products, such as the unhelpful "may contain nuts" warning, which appears to be more about protecting businesses from liability than assisting the consumer to make an informed assessment of whether an item is safe for them to consume. This is a public health issue which should have the protection of the welfare and lives of allergy sufferers at its heart.

Finally, I should also be grateful if the Minister could clarify the responsibility of suppliers involved in the manufacture and preparation of food in relation to allergy labelling. Celia Marsh died after consuming guaranteed dairy-free flatbread at Pret A Manger. Although the inquest has not yet been held, I am aware that CoYo, which manufactures the dairy-free coconut yoghurt used in the flatbread prepared by Pret, disputes that its produce was contaminated.

There is a danger of blame being passed up and down the line here, which raises important questions about checks in the supply chain. Can the Minister make clear who is ultimately responsible for the content and accuracy of labelling in such cases, where a number of suppliers and subcontractors are involved? I look forward to his response.

Lord Gardiner of Kimble: My Lords, I echo a great deal of what the noble Baroness said. The urgency of this is imperative. The Secretary of State has been in touch with Natasha's parents. Obviously, we want to ensure that what happened to Natasha, and her parents, wider family and loved ones, does not happen again. That is why the review will be urgent. We will be working closely with the Food Standards Agency and the Department for Health and Social Care and, as I said in the Statement, we will be communicating with the devolved Administrations tomorrow. We will look at the coroner's report in Natasha's case, which was received this morning. I should say that in the case of Celia Marsh, as the noble Baroness alluded to, not only is the coroner's investigation in process but there is a legal dispute between Pret A Manger and CoYo. In those circumstances, I should not want to go any further on that case.

I assure your Lordships that, whether it is suppliers or retailers, the importance of this, as the noble Baroness outlined, is that it is a public health matter. People in this country, particularly those with allergies, should have the right information to know whether something is safe for them to eat. The FSA has campaigned on this over a considerable period. It is not only about raising awareness and issuing guidance for businesses but raising awareness among people with allergies that they must ask—because, as I said, the requirement is that all shops should be in a position to advise the consumer by signs and verbally. I assure your Lordships that we shall look at this with rigour and urgency.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I too thank the Minister for repeating the response to the Urgent Question this afternoon, and extend my sympathies to the families of Celia and Natasha. I declare my interest as a lifelong coeliac, so I understand completely the implications of inaccurate food labelling. All consumers must be able to trust that food labelling is comprehensive and correct. It is simply unacceptable, after taking the time to read through the list of ingredients, subsequently to find that an ingredient has been inaccurately recorded or omitted.

I highlight a slightly different aspect of this matter. As the Minister reiterated, the Statement refers to freshly prepared food and the need to check with members of staff before buying. I know from experience that staff are not always aware of exactly which foods contain allergens. Although training is much better than it was, cross-contamination can still occur in some cases.

I am really pleased that the Minister said that the Food Standards Agency is to be involved, but I should like him to reassure us that, following these tragic events, as well as food labelling being a top priority, the handling of food to prevent cross-contamination will be included in the review of advice currently taking place. This is now an urgent priority, before there is any more unnecessary suffering.

Lord Gardiner of Kimble: My Lords, that is imperative and, as I said, we are working with all those involved. I should say that the FSA has responsibility for allergen labelling; that is precisely why it is an essential part of the review. The noble Baroness rightly refers to training of staff. Again, businesses are in all circumstances under a duty. We must ensure—this is one of the key areas of enforcement—that all businesses are mindful of their responsibilities. All producers of food and food products should be mindful of cross-contamination. That concerns food safety more generally, but these are all areas which we take very seriously.

Baroness Byford (Con): My Lords, I follow the two noble Baronesses in extending my condolences to the families, because this is a great tragedy that could have been avoided had the information been available. My sister suffers, although not to that degree, from a problem with nuts, and it is extremely difficult to find out whether nuts have been involved somewhere along the line in the production of any food.

Perhaps, when the review comes to a conclusion, it will set national standards so that we do not fall into the gap of when it was "best before" to sell food by or recommended by a date to be sold. It should be clearly set out what is or is not included in that food. My slight, perhaps personal, fear is that different manufacturers or food producers will put a different aspect on the labelling. We need clearly identifiable labelling that everybody will be able to understand.

Lord Gardiner of Kimble: My Lords, nuts are one of the 14 allergens; the labelling law as set out in the EU's food information to consumers legislation includes nuts, and is therefore considered to be mandatory information that must be available to consumers. As one of the 14 allergens, nuts must be included in information.

Baroness Tonge (Non-Afl): My Lords, I feel that I should know the answer to this question myself, but excuse me for asking it. Are the Government planning or funding any research into these food allergies that seem to be an epidemic nowadays? Certainly when I was in general practice, there were very rare cases—they hardly ever happened. Now we hear about them on a weekly basis. Are the Government tackling this at the source?

Lord Gardiner of Kimble: I thank the noble Baroness. I think I should discuss this with my noble friend in the Department of Health and Social Care, but clearly the noble Baroness is absolutely right. We are always hearing of those who have allergies, and indeed many friends and relations. This is a very important area, and I will write to the noble Baroness about what work is going on through government and through private and charitable sources. And, of course, as is normal, I will place a copy in the Library.

Overseas Development Aid

Statement

6.21 pm

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, with the leave of the House I will repeat the Answer to an Urgent Question given by my right honourable the Secretary of State for International Development in the other place earlier today.

"The combined global aid spend totals $150 billion dollars, leaving a funding gap of $2.5 trillion to deliver the global goals. We are adrift on the global goals—80 years off nutrition, 100 years off education, 200 years off poverty. We must ask ourselves: do we want to deliver the global goals? If we want to, we have to let others help, including the private sector.

We have had good returns from investing in developing countries. CDC's average annual investment return is 7%. The City of London manages over £8 trillion in assets, but little is invested in the poorest countries. Even a small increase could have a huge impact on these economies. For example, if we could redirect just 1% of the total assets to investment opportunities in Africa, that would generate an additional investment of around $110 billion. By contrast, global aid flows to Africa in 2016 were worth just $50 billion. I believe the public would be interested in their savings and pension funds being used to deliver the global goals. Why can British people not go to banks and invest their savings in pensions and products that will invest in the global goals, or open up an app on their phone and select which global goals they would most like to invest in?

We have lots of tools to do this. As we outlined today, the World Benchmarking Alliance, which I unveiled at the UN General Assembly will rank companies on their contributions to the global goals, so people can decide which companies they want to buy from, invest in or work for. We have the expertise to do this: the City of London in the financial services sector, in DFID and elsewhere in development and impact investment. Today I have announced that I want to start a national conversation with financial institutions, but also with savers, pensioners and the wider public. We will announce the findings of that conversation at the UK Africa investment conference next year. We will work with the Organisation for Economic Co-operation and Development to make sure that the aid rules incentivise private sector investment where it is needed. This is the only way we will collectively deliver the financing necessary to meet the global goals. In future years, as the amount of funding coming back into our own development financial instruments increases, we should be open to using these profits to count towards 0.7%. I am exploring the scope to reinvest those funds with DAC—the Development Assistance Committee—to maximise the value of our investments."

6.24 pm

Lord Collins of Highbury (Lab): I thank the Minister for repeating the response to the Urgent Question. It is a pity this is an Urgent Question and not a Statement from the Government, because if it had been a Statement we could have had a little more time to probe exactly what the Secretary of State meant this morning when she spoke at the CDC. The Minister knows that I have repeatedly asked questions about the Government's intention with the DAC definition of ODA, since immediately after the election and of course in November. The clear intentions were never really apparent, but in the debate we had on the CDC Bill in this House it was made perfectly clear that we supported it because we wanted the CDC to leverage more investment. Everyone knows we will not achieve the SDGs simply on ODA alone. For the Secretary of State to preach to the Opposition about how that can be achieved is nonsense. The fact is that we need greater additionality. There should never be a case where we are using CDC investment, getting a return and then counting the return as ODA-accountable. It is double counting. It is wrong. What we want to do is use the CDC to leverage more.

I want to ask the Minister a very specific question on how the Government intend to move forward. Will he give an assurance that we will not take unilateral action to change the definition of ODA, and that we will continue to work with our partners in the DAC and maintain a consensus? This country has led the way, and it would be a shame if we broke that consensus.

Lord Bates: The noble Lord is right to say that the development assistance community works by consensus. That is how it arrives at its conclusions. Regarding this debate, I feel that a few issues are being conflated. One is the SDGs, to which we are all committed and which we discussed earlier today. The second is the realisation—I readily accept that the noble Lord has regularly made a point of it—that that cannot be achieved by public flows alone. It has to be catalytic to leverage in private sector investment. Then there was the question about impact investing, and whether something else could be done in the future so that more private citizens could leverage in capital.

The final issue comes to the heart of the noble Lord's question, about CDC funding. This is where we have had a lot of debate. If, for example, your £1 billion

[Lord Bates]
is put into CDC and over time the investments make a profit which is then returned into the fund—it is 100% UK-owned, so it is public sector in that sense—and then that profit is reinvested, should that reinvestment score? It is a debate that has to be had. We believe there is a case for doing that, but we have to do it by working with our partners and discussing it with them. This is one of a range of points on this issue. I hope that that has been helpful.

Baroness Sheehan (LD): My Lords, I confess to being a little confused. In her speech to the CDC today, the Secretary of State says we should be open to using profits from UK development finance instruments, "to count towards the 0.7%",
and as we have heard, the current ODA rules do not allow this. However, earlier in her speech, the Secretary of State outlined why it was important to get private investment into developing countries, given that $150 billion of annual aid will never measure up to the $2.5 trillion needed to achieve the SDGs. Like the noble Lord, Lord Collins, I agree wholeheartedly with that. However, the fact is that unless profits from DFIs and any other development funds that may in future be raised in the City of London are powered back into developing countries we will lose the advantage of any leverage gained, as well as the opportunity to power back profits to help developing countries, and in the process compromise efforts to achieve the SDGs.

In my view, the Secretary of State is being disingenuous. This is an attempt to undermine the 0.7%, breaking the Conservative manifesto commitment. Does the Minister agree?

Lord Bates: The noble Baroness will not be surprised to hear that I do not agree, and neither do I agree with the suggestion that the Secretary of State is being disingenuous. Far from it—I think she was very clear, although how those remarks have been interpreted is clearly another matter. So this is a good opportunity for us to make it absolutely clear that we are committed to the SDGs and to 0.7%. The DAC element counts only public sector investment, so it cannot count private sector investment towards the 0.7% target to which we are committed. But, as the noble Baroness and the noble Lord said, we are at one in recognising that you will not provide the 18 million jobs that Africa needs every year between now and 2050 without the private sector engaging with this. You will not bridge the $2.5 trillion gap in meeting the SDGs without getting the private sector involved. That is why the Secretary of State was absolutely right to say that we need to do more to leverage and catalyse that investment which the UK has an expertise in.

Lord Campbell-Savours (Lab): My Lords, DfID projects have historically been subject to post-project evaluations for economy, efficiency and effectiveness—in other words, to make sure that we are not wasting public money. In the event that private investment were to be levered in, in the way that is being suggested—as I understand it, it would be within the 0.7%—what post-project evaluations would take place, not because it is public sector project money but to ensure that that investment meets overseas development criteria, and that it is not simply being attributed to overseas development criteria as a way of spending the money?

Lord Bates: An example is impact funds, many of which already exist within the City of London; many civil society groups and organisations such as the UN Global Compact scrutinise how that is accounted for in accounts. With the CDC it is a different process. We were quite specific when we discussed the raising of the threshold—the capitalisation of the CDC—as the legislation went through this House, that no investments could be made under that without a business case being prepared, which then has to be signed off and reviewed at the end of it to ensure that the outputs it was envisaged would be delivered were achieved, and if not, why not? These are therefore all important elements in the exploration of these issues. More can be done, but again, it needs to be done transparently.

The Earl of Sandwich (CB): My Lords, I concur very much with what the noble Lord, Lord Collins, was saying, and I well remember the CDC Bill and the criticisms that we made then. One can raise a slightly different issue about the CDC. Does the Minister recall the comments of ICAI—the Independent Commission for Aid Impact— about the impact of aid? You can put in the rubric that poverty alleviation is a purpose, but what about the measurement of that purpose, and where is the evidence of impact? We still have to wait for this to come from the CDC.

Lord Bates: The impact comes in three levels that we specifically target. One is the amount of money which catalyses money to come in from the private sector: if we invest £1, does it bring in £10 of private investment? We look at it in terms of the taxation it generates for revenue in the country where the investment is taking place, and we look at the number of jobs that are created by that. In alignment with the SDG requirement on this for aid, this is for decent work, so I accept all that. That is how we do it. The point which the noble Earl was right to highlight was addressed substantially by the change in the new investment strategy, which the CDC was required to have alongside the new investment. That has a much greater focus on the most fragile and most affected states, because we do not want it—not that it has ever done this in its illustrious, 70-year history—to cherry pick the investments. We want it to go where no private sector capital is going so that it can make the greatest impact. That impact and that change in the investment strategy will see results in the years to come.

Brexit: Negotiations

Statement

6.35 pm

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

"With permission, Mr Speaker, I would like to update the House on the progress in negotiations to leave the EU and the Government's planning for no deal. Since I last updated the House, our negotiations with the EU have continued and intensified. Over the recess break we have been engaging constructively with our EU counterparts. Let me take the main areas of the negotiations in turn.

On the withdrawal agreement, while there remain some differences, we are closing in on workable solutions to all the key outstanding issues, building on the progress we made during the summer on issues such as data and information, the treatment of ongoing police and judicial co-operation in criminal matters, and ongoing Union judicial and administrative procedures after exit. We have also been discussing proposals on the linkage needed between the withdrawal agreement and the future relationship, and the EU is engaging constructively.

On the Northern Ireland protocol, we remain committed to the undertakings we made in the joint report in December to agree a backstop in case there is a delay between the end of the implementation period and the entry into force of the treaty on our future relationship. That was agreed to avoid any risk of a return to a hard border in the intervening period. But we will not accept anything that threatens the constitutional or economic integrity of the United Kingdom. Creating any form of customs border between Northern Ireland and the rest of the UK, which is what the EU had proposed, would put that at risk, and that is unacceptable. As my right honourable friend the Prime Minister has said, it is not something that she, or any British Prime Minister, could conceivably agree to. We are engaging with the EU on our alternative proposals that preserve the integrity of the United Kingdom. They will be in line with the commitments we made back in December, including the commitment that no new regulatory barriers should be created between Northern Ireland and the rest of the UK unless the Northern Ireland Executive and Assembly agree.

On the future relationship, we continue to make progress: for example, on both the internal and external security arrangements for future co-operation, although there is still some way to go. As the House will know, the Prime Minister presented our proposals on the economic partnership to EU leaders at the Salzburg summit. We understand that the EU has raised some concerns, particularly around the distinction between goods and services under the common rulebook, and with respect to the facilitated customs arrangement. We continue to engage constructively with the EU, and we continue to press our case. The UK's White Paper proposals are the best way of ensuring there is continued frictionless trade in goods after Britain leaves the EU, while fulfilling the joint commitment to avoid a hard border between Northern Ireland and Ireland, and of course respecting the referendum.

These negotiations were always bound to be tough in the final stretch. That is all the more reason why we should hold our nerve and stay resolute and focused. I remain confident that we will reach a deal this autumn, because it is still in the best interests of the UK and the European Union. It is the best way of protecting trade between Britain and the EU—which underpins millions of jobs across Europe. It is the best way of making sure we continue to co-operate seamlessly on security matters to tackle crime and terrorism to keep UK and EU citizens safe. It is also the best way to avoid a hard border between Northern Ireland and Ireland that would adversely affect communities living there, or separating Northern Ireland from Great Britain, which we will not countenance.

To achieve these aims, the UK has brought forward serious and credible proposals. We continue to engage with the EU to press our case and to better understand the nature of some of its concerns. Equally, it is time for the EU to match the ambition and pragmatism that we have shown.

While we intensify negotiations to secure the deal we want, and the deal we expect, we are also expediting preparations for no deal, in case the EU does not match the ambition and pragmatism we have demonstrated. As the Prime Minister stated on 21 September after Salzburg, the Government have made clear that we will unilaterally protect the rights of EU citizens in the UK in the event of no deal. To the 3 million here, we say: you are our friends, our neighbours, our colleagues; we want you to stay and we will be setting out the details as soon as possible. We also now urge the EU and all its member states to step up and give UK citizens on the continent the same reassurances. It is time, on both sides, to provide all our citizens with that comfort and confidence.

Since I last updated the House in September, we have published 52 more technical notices, in two further batches. They inform people, businesses and other key stakeholders of the steps they need to take if we do not reach a deal with the EU. They cover a wide range of sectors, building on other work that has taken place across Government over the past two years. They enable us to prepare the UK for Brexit irrespective of the outcome of negotiations. They acknowledge that there are risks to a no-deal scenario. But they also demonstrate the steps we will take to avoid, mitigate and manage any potential short-term risks and disruption.

Overall, we have now published 77 technical notices which form part of the sensible, proportionate steps we are taking to prepare the country for every eventuality. Our most recent batch was published on 24 September and is set out in a Written Ministerial Statement today. There are 24 and they range from aviation and the advice for airlines on the impact of no deal and actions for them to consider to maintain services on the day we leave the EU, through to car insurance and the arrangements to ensure green cards will be available free of charge from insurance companies to enable UK drivers to continue to drive on the continent.

The publication of the technical notices enables further engagement as part of our no-deal planning. For example, our earlier technical notice on VAT set out the VAT changes that companies will need to prepare for when importing or exporting goods from the EU, when supplying services to the EU, or interacting with EU VAT IT systems. It was welcomed by the British Chambers of Commerce, and we are grateful to it and all our stakeholders for their constructive, ongoing engagement on that necessary planning.

[Lord Callanan]

More broadly, I met the British Chambers of Commerce, the CBI, the IoD, the EEF and the Federation of Small Businesses as part of the Government's business advisory group on 17 September to make sure we are explaining our negotiating proposals and no-deal planning, and listening to UK businesses of all sizes, and across all sectors. We will keep providing people and businesses with the advice they need as we negotiate our exit from the European Union. We also keep working with the devolved Administrations on all aspects of our planning for exit.

I attended the Joint Ministerial Committee on 13 September. It has now met 12 times and our last meeting was a valuable opportunity to give the devolved Administrations a full update on the negotiations, as well as to discuss the necessary no-deal planning. We continue to listen very carefully to all their views. That is the way, with concerted effort on all fronts, that we have put ourselves in the best possible position to make the best of Brexit. I commend the Statement to the House".

6.43 pm

Baroness Hayter of Kentish Town (Lab): I thank the Minister for repeating the Statement but I wonder whether the Government actually own a calendar. After 18 months, and just 171 days before we are due to leave, we have more pages on no deal than on the deal, or indeed on the framework for our future relationship. Do the Government really want us to crash out despite the warm words we just heard in the Statement, or dare they not set out their plans given their fear of the Eurosceptics on their own party Benches?

The Government promised that the deal to be put to Parliament will include a "clear blueprint" for our future relationship with the EU. When will we see this blueprint? I had thought we would see a draft tomorrow but I gather it has now been delayed—perhaps because it is so vague that it is more a leap into the unknown than a blueprint for future policy. Or does the Minister think there is a third way—neither Chequers nor no deal—as David Davis set out today in his letter to MPs, albeit one he was not able to negotiate himself during two years as Secretary of State? Or perhaps the Minister thinks, along with Jacob Rees-Mogg, that we should have a "supercalifragilisticexpialidocious Canada"—hardly a game for serious negotiators.

Given that the Government have effectively and finally retreated from their claim that a deal would be done by October, could the Minister be a little more specific than "autumn" as to when he anticipates it will be done and when the deal will be brought to this House, as required in legislation? What assurances can he give the House that the Government's solemn commitment to a legally binding backstop in Northern Ireland "in all circumstances" will be honoured? Have the Government accepted the view of this House that the UK should be in a customs union with the EU to ensure frictionless trade? This is not only important in itself, but the only viable solution to the Irish border.

The Statement includes,

"the commitment that no new regulatory barriers should be created between Northern Ireland and the rest of the UK unless the Northern Ireland Executive and Assembly agree",

which leaves the door open. This possibility is, of course, what would lead to a border in the sea despite the assurances just given in the Commons and repeated. Different rules in two areas mean checks between the two. That possibility—mentioning only the Northern Ireland Executive and the Assembly—also raises questions about the role this Parliament would have in any such change, and it challenges earlier government undertakings of no diminution of standards or rights, since any regulatory boundaries between Belfast and London sounds like different standards between the two.

The Statement says:

"The UK's White Paper proposals are the best way of ensuring there is continued frictionless trade in goods after Britain leaves the EU".

It still sounds like "Chequers or no deal" despite, as we know, Chequers being acceptable to neither this Parliament nor our EU allies. The no-deal option is not acceptable to business, the public, our allies or, indeed, to Parliament, let alone to the people of Ireland and Northern Ireland, where there would have to be an immediate border.

The last time I asked the Minister whether he had been to the port of Dover, he said he had not. Has he now been, and has he discussed a no-deal option at the port? I was in Rotterdam yesterday, where thought, planning and preparation is in hand at its massive port to deal with a no-deal outcome—preparation to safeguard its economy and trade. Has the Minister any shame about how less prepared the UK—the country that filed for divorce—is for such an eventuality? Has he digested, as I have had to, these 77 technical notices, which alert us to green cards being reissued? Many in this House are old enough to remember those—down the other end, less so.

There is also the possibility of new driving licences being needed; the end of free movement of trade, with customs and tariff checks; the adoption of new classifications of goods, with a wonderful example given of how a grand piano would be classified if exported to the EU; the end of "goods on the market" rules; data exchange challenges; drastic changes to civil law enforcement; the end of mutual recognition of testing for safety of consumer goods; and uncertainty over travel to the EU. Are these all issues that the Minister feels it is reasonable to threaten at the end of March? As the CBI states, serious disruption will be caused to business and families. Is the Minister really serious that that is a realistic option for our country, and is it useful for the Government to threaten to refuse to pay the £39 billion divorce settlement if the EU fails to give Britain a precise future trade deal within weeks, when it is the UK that cannot get unity on its own Benches within its own Parliament on a future trade deal?

This House needs to know where the Government stand on the deal they want, and particularly on our future relationship. It needs to know whether they are with Steve Baker, who seems to prioritise a trade deal that leaves us independent over and above a trade deal that is good for the economy, or with Boris Johnson, who says that we should "chuck Chequers" and have a super-Canada FTA, spending money on,

"all the customs procedures … needed to ensure … frictionless trade, and to prepare … for a WTO deal".

It seems he does not understand that frictionless trade comes from having the same regulations and rules rather than having a barrier of border agents checking for all the disparities in rules and regulations.

Regrettably, we are no clearer from this Statement than from what we have been reading in the press over the summer. Because I am a great optimist, I just hope that beneath everything that is going on there is serious negotiation taking place below the water level so that we can find a deal that is neither Chequers, as that is not acceptable, nor no deal, but a deal that is good for the whole economy across the whole country.

Lord Wallace of Saltaire (LD): My Lords, I start by remarking that I went to the Printed Paper Office to ask for a copy of the Written Ministerial Statement and technical notices that have been published today, but they were not available. I find that very regrettable, as we need to be informed about these things, and I hope that the Minister will ensure that on the next occasion the Written Statement is available.

I find this a profoundly worrying and in some ways surreal Statement. It talks about preparing the UK for Brexit, irrespective of the outcome of the negotiations—in other words, if necessary at the end of March to break all our relations with the European Union. Can the Minister assure us that the British Government are really prepared for that? As the noble Baroness has just said, Rotterdam is well in advance of the port of Dover in its preparations. We are beginning to train the extra customs officials that we would like and to reverse the cut in the number of Border Force officers that the Government have pushed through in the last three years, but there is no way that we can do that between now and March.

I find the confusion within the Government deeply worrying. For example, the Home Secretary has said that we will have the same visa regime for European exchanges as we have now for the rest of the world. In the last two weeks, I have been collecting a certain amount of evidence on how far universities are suffering from the refusal of the visa authorities to allow academic and scientific researchers from outside the EEA to attend conferences in Britain. If we start doing that to the EEA next April, we shall blow up half the networks for scientific research that we have in this country. I speak with particular passion because my son is involved in many of them.

There are elements here which one can really only be humorous about. I congratulate the Government on the element of irony in the Statement with the reference to their pragmatism and the suggestion that it is the European Union that is being rigid while the Conservative Party, which is so well represented on those Benches, is being entirely pragmatic.

On the Northern Ireland issue, I recognise that this is the Conservative and Unionist Party, which by its rigidity in dealing with the Irish problem over 100 years ago contributed to the division of Ireland. It seems to me that now its rigidity may well risk losing not only Northern Ireland but also potentially Scotland. I wonder whether the Government have considered taking more seriously Boris Johnson's proposal to build a bridge across the Irish Sea. It would have a number of advantages. We could maintain the temporary customs arrangement until the bridge was completed and opened, which would certainly take us 20 or 30 years, and if one were to construct the bridge in such a way that there was room for customs arrangements to be conducted on the bridge, it could become a garden bridge in the event that those arrangements were not needed.

To move on, my wife has just been to a conference in Geneva to discuss as a model EU-Swiss relations, on which she has been an expert for some years, and the question of whether the Liechtenstein model should be taken more seriously. As some people will know, it has a customs union with both Switzerland and the European Union. That seems almost as attractive as the Jersey model, which has been talked about by various sources. The Government refer to their "ambition", but ambition that would perhaps take us as far as being like Liechtenstein or Jersey is really beyond a joke.

On the question of how we get from here to April, I ask the Minister how far the Government will take the other parties into their confidence over the management of the business that is required. We do not know what has happened to the Trade Bill. When are we going to continue with its Committee stage? What other major pieces of legislation do we need to take through between now and March? The Institute for Government has just produced a report on the very large number of statutory instruments that we will need to consider between now and March. Can the Minister assure us that both Houses will be given time to consider these legislative instruments properly and that they will not be bulldozed through in a panic at the last minute?

I should like to move on to the subject of the future relationship. There was no reference to it in this Statement or to any sort of declaration about our future foreign policy and defence relationships. Again, the Government seem to be in great confusion on this. We have a new Foreign Secretary, who compares the European Union to the Soviet Union. Clearly, we would not wish to maintain foreign policy and defence relationships with an area that was naturally so hostile, yet for the last 40 years much of Britain's foreign policy and security relationships externally have been conducted multilaterally in partnership with the European Union. When will the Government tell us a little more about what they consider to be important and what sort of pattern they intend the future relationship to have?

Perhaps most worrying is the reference in the Statement to a potential gap, in the case of a delay, between the end of the implementation period and the entry into force of the treaty on our future relationship. Do the Government consider that there may well be a hole whereby we have come to the end of the implementation period but have not yet negotiated a treaty on the future relationship and there is somehow a void, with no firm treaty foundation for the relationship between, say, 2021 and 2024 or 2025? If so, that is deeply worrying. I presume that that is the point at which we would go back to WTO terms, or perhaps that is another piece of loose wording in the Statement.

Lord Callanan: I thank the noble Baroness and the noble Lord for their comments. I shall deal first with the questions from the noble Baroness, Lady Hayter. I

[Lord Callanan]
reiterate that our blueprint is the White Paper and we continue to negotiate on that basis. We are convinced that it offers frictionless trade, which is what we want to achieve. We are taking forward discussions on that basis and are waiting for a formal response to those proposals from the EU.

On the timescale, as soon as we have an agreement we will bring forward a debate in this House and a vote in the other place on the so-called meaningful vote, and we will then introduce legislation as quickly as possible to implement the withdrawal agreement. We are mindful of the short timescale between then and our leaving date of 29 March to get that legislation through, but considerable planning is being carried out on that basis. Of course, we produced the White Paper before the summer to illustrate that.

With regard to the backstop, the Commission proposal was unacceptable. We will shortly produce our counterproposal, which will meet the requirements as set out in the joint statement in December.

I have not visited the port of Dover. I and ministerial colleagues have visited European capitals and considerable discussions are going on between officials to make sure that there is minimal disruption at Dover.

With regard to no-deal notices, to reiterate the point, we do not want or expect a no deal, but we think a responsible Government should plan for the possibility, and we will continue to publish the no-deal notices to take account of that unlikely possibility.

Lastly, I agree with the noble Baroness's final point: that we are seriously negotiating at pace. Negotiations in Brussels are ongoing as we speak, and detailed discussions on all the outstanding issues are proceeding.

I can only apologise to the noble Lord, Lord Wallace, if he was not given an advance copy of the Statement—he should have been. I have already raised it with officials and I will ensure it does not happen again, but please accept my apologies for that. He referred to the no-deal notices. I do not know if there is some confusion; we are not publishing any additional no-deal notices today, but there was a Written Ministerial Statement accounting for the no-deal notices that were published a couple of weeks ago.

Lord Wallace of Saltaire: They could not find the Written Ministerial Statement.

Lord Callanan: I apologise; you should have been given a copy of that.

Regarding the immigration system, the Home Secretary will be setting out our proposals for a future immigration system shortly.

There are no plans of which I am aware to build a bridge between Scotland and Northern Ireland; maybe other parts of the Government are working on it, but if they are, nobody has told me.

I am not quite sure of the noble Lord's point on Liechtenstein. I have never heard anybody else talking about a Liechtenstein model, apart from himself. He will of course be aware that Liechtenstein is a member of the EEA, which was rejected a number of times as an option in House of Commons votes. The population of Liechtenstein is about 39,000—about 1/10th of the population of Bradford. I hope he is not seriously suggesting this could be a model we would wish to follow.

Regarding the Trade Bill, our position is that Parliament is likely to be asked to take decisions on amendments relating to the UK's future relationship. We think it is in Parliament's best interest to know the terms of the UK's future relationship with the EU when being asked to take decisions on the Trade Bill, so there will be a pause before we resume progress on this Bill, to ensure we can operate our independent trade policy in all scenarios.

7.02 pm

Lord Cormack (Con): My Lords, naturally I wish my noble friend and his colleagues in government well; we all do. But could he give the House some indication of what he expects the timetable to be between now and the rising of the House for the Christmas Recess? Could he also have a gentle word with the Foreign Secretary and point out that, while it is humorous if he confuses Japan and China, it is serious if he confuses the European Union with the Soviet Union?

Lord Callanan: On my noble friend's last point, I am not sure I am in a position to give the Foreign Secretary advice. But, to be fair, I looked at his comments, and he did not compare the EU to the Soviet Union; he was making a point about how difficult it is to leave various organisations. I think afterwards he withdrew the exact words he used.

Regarding timescales, it is difficult to be precise. We are still trying to target an agreement by the October summit. As I mentioned in my answer to the noble Baroness, Lady Hayter, we are conscious of the need for proper parliamentary scrutiny of the withdrawal Act, and we are preparing for that, but we need appropriate time to get the legislation through both Houses before 29 March. We have made the EU aware of that timescale, but of course we want to ensure we get the right deal for the United Kingdom. As soon as I have more information on the timescale, the noble Lord will be the first to hear about it.

Lord Lea of Crondall (Lab): My Lords, a question has been raised regarding various studies going on in Whitehall about what happens from next year onwards. Can the Minister clarify the reason for some questions being part of the scope of Whitehall studies and apparently some not? For example, a point was made about a month ago concerning the European Economic Area and scenarios of us being part of it. I thank the Minister for his letter to me about it, in which he confirmed we would in any event continue to be part of the EEA for some time after next year. Is it not sensible to have full studies done by Whitehall on the perfectly possible scenarios of what might be dubbed EEA-plus, given some of the discussions swirling around in Europe about reform of the whole EEA? And would it not be sensible for the Minister to acknowledge the case for some flexibility in the way Whitehall operates in this very novel situation?

Lord Callanan: As I said in previous answers, the House of Commons has rejected the option of remaining in the EEA, and our legal position is that we will leave the EEA when we leave the EU. Seeking to remain in the EEA does not pass the test that the Prime Minister has set for our future partnership. It would not deliver control of our borders or our laws, and it would mean continuing to accept all EU single market rules, so I do not think that is the right future for Britain.

Lord Wigley (PC): My Lords, the Minister has stressed once again that the Government are considering and planning for every possibility. In that case, will he confirm that the Government are planning for the possibility of a no-deal Brexit and in those circumstances for a vote in Parliament requesting a confirmatory vote by the people? Can he confirm how long it would take for a confirmatory vote of that sort to be properly organised and take place?

Lord Callanan: I said we are planning for a no-deal Brexit. I do not know what the noble lord means by a "confirmatory vote". If he means a second referendum, then, no, we are not planning for a second referendum, because we have already had a referendum and the vote was clear.

Lord Kerr of Kinlochard (CB): My Lords, the noble Lord, Lord Wallace, drew attention to the possibility of a black hole between the end of the implementation period and the entry into force of the future relationship treaty. As I understand it, the present draft of the withdrawal treaty contains no extension provision. Would it not be as well to include in the treaty the possibility of its extension? I can see that might be controversial with some in this country and with some lawyers across the Channel, but building in the flexibility to be able to bridge that gap could be very valuable. The noble Lord, Lord Wallace, is certainly right that it will take several years to negotiate the agreement, but probably another year to ratify it, since it will be a mixed agreement. So the possibility of extending it being built into the draft—both parties would clearly have to agree—is surely desirable.

Lord Callanan: The terms of the implementation period are already agreed and both sides agreed with the proposal to end the implementation period co-terminous with the end of the current multiannual financial framework. There is no possibility of extending that built into the agreement.

Lord Pannick (CB): My Lords, can I ask the Minister whether the Government will be participating in the forthcoming Court of Justice of the European Union proceedings on whether there is power unilaterally to revoke the Article 50 notification? If the Government are participating, will they be submitting that there is such power or there is not?

Lord Callanan: This is the subject of legal proceedings, as the noble Lord is well aware. I am not going to answer his question because I am not sure we have made a decision about how we are going to proceed on that yet, but as soon as I know more I will come back to him on it.

Baroness Young of Old Scone (Lab): Will the Minister give me a little practical advice? I have been approached by a number of small and medium-sized enterprises that are rather confused by the technical notes. At what stage would the Minister say that these small and medium-sized enterprises should start in earnest to implement the suggestions made in those notes—now, in a couple of months or never? I would like some advice, please.

Lord Callanan: As with all these things, it is difficult to be precise. However, the noble Baroness will be as aware as I am of the necessary parliamentary timetables that will be involved in passing the appropriate legislation. If we do not have a withdrawal agreement in place in enough time to get it passed by Parliament then we will clearly be looking at a no-deal scenario, given the timescale. I do not want to be any more precise than that. The noble Baroness will probably want to push me on it, but I think she will now have some idea of where we are going.

Counter-Terrorism and Border Security Bill

Second Reading (Continued)

7.10 pm

Lord Tebbit (Con): My Lords, I thought the House might like to be reminded of just three of our parliamentary colleagues who were the victims of terrorism: Airey Neave, the Reverend Robert Bradford and Ian Gow. After all, in this debate today we have not heard much about the victims.

There has been a degree of consensus in the debate, but it is a consensus that I do not in any way share. Of course I agree that this is a complex Bill with an ambitious purpose. To quote from the Queen's Speech of June 2017, that purpose is,

"to ensure that the police and security services have all the powers they need, and that the length of custodial sentences for terrorism-related offences are sufficient to keep the population safe".

In other words, it is a contribution to the first and second of the key obligations of government. The first obligation is to maintain the borders of the kingdom securely and to bar entry to those who do not share our purposes in life in this kingdom. The second purpose is to maintain the Queen's peace.

As we all know from our long experience of grappling with the terrorist movement of the Irish Republican Army and Sinn Féin, these are difficult tasks that have been costly in both treasure and blood. However, the threat today is unlike that from the Irish dimension. There was a simple logic to that threat. Unable to persuade the people of Northern Ireland to vote for a union of Ulster with the Irish Republic, Sinn Féin conducted a terrorist campaign of violence by its armed organisation, the IRA, towards that aim. Fortunately, the courage of the people of Ulster and the skill and bravery of the Royal Ulster Constabulary, the Police Service of Northern Ireland and the Armed Forces of the United Kingdom demonstrated that the ambition of the republican movement could not be

[Lord Tebbit]
attained by violence either. That task was made no easier by the support given to IRA/Sinn Féin by what was then the hard left in this country and is now the leadership of the Labour Party today.

The nature of the threat today is different, and it is made worse by the rise of so-called social media, which provides an open platform for—what shall we call them?—the proponents of terrorism. Some of the threat is directed to bringing about a worldwide caliphate. Much of it is largely directed from overseas, bringing a requirement for extraterritorial action—and I welcome that particularly in this Bill. Some of the threat arises from Islamist extremists resident or born in this country. But a great deal of it springs from a love of violence, and uses the language of Islam to justify inflicting violence in its name. That may well prompt others of unstable mind to inflict violence on peaceable followers of Islam.

The provisions of the Bill well deserve support. There may be ways in which it might be improved, but I hope we will not see nit-picking in the name of liberty by those who have sympathy with the aims of those who inflict terrorist violence, whether from political or religious conviction or because of mental illness.

There was talk today, and in the other place before the Recess, of the need to protect free speech, freedom of assembly and association, and all that. There was talk also of the effects on the meanderings of the European Court of Justice. I speak tonight, as nobody else seems to have done so far, for those who died at the hands of terrorists. I support the Bill, and others who have suffered at the hands of terrorists and survived will undoubtedly support it, too. There are many who will support this Bill from beyond the grave. I speak for them tonight.

7.17 pm

Lord Blair of Boughton (CB): My Lords, like others, I think that this has so far been an excellent debate, and I shall try not to spoil that record. It is an honour to follow the noble Lord, Lord Tebbit. His views and mine do not normally coalesce in any way whatever—except on terrorism.

As far as I can see, I welcome the Bill in its entirety. We all remember with sadness the lives lost and the lives horrifyingly changed by the attacks in Britain in 2017. This Bill is part of our nation's response to those events. I thought that the decision by the Government, MI5 and the police to put in train the operational improvement review—carried out by the then David Anderson QC, now my noble friend Lord Anderson of Ipswich—was wise and proportionate, and this Bill reflects that position.

In the same way as the noble Lord, Lord King, said, I appreciate the bipartisan approach taken by both Houses to this matter. It has not always been thus. As a rather famous namesake of mine once said, I have "scars on my back" from the times in which there was not a bipartisan approach to terrorism.

The Bill recognises that terrorist behaviour and terrorist threats are changing, particularly, as my noble friend Lady Manningham-Buller said, in the way in which terrorists are using less sophisticated methods, radicalising more quickly and more often acting alone. The Bill takes account of the increasing number of ungoverned spaces in the world and of the evolving nature of the internet, from downloading to streaming. In addition, the background to the Bill is that not all the changes in circumstance represent the new. We are seeing old threats returning, particularly the rise of the far right, which we should not underestimate, and the presence on British soil of state agents with malign intent.

Perhaps the most important feature of the Bill, however, is its implicit recognition, as the present Commissioner of the Metropolitan Police and the noble Baroness both said, that what is happening in the UK is not a spike in terrorist criminality but a shift to what appears to be a long-term, higher intensity of activity, with more than one arrest a day for terrorism occurring in the year to March 2018. Even with all the passion and doubts expressed by the noble Baroness, Lady Warsi, I welcome the way in which the Government, faced by this and by the speed with which individuals can move from being at risk of radicalisation to direct action, have continued to support the Prevent arm of the world-leading Contest strategy. I really look forward to the involvement of non-central parts of government in that endeavour. I thoroughly agree with that proposition and I will explain why.

I was involved at the very beginning of the discussions about what became Prevent. I passionately argued that it was inappropriate for the police to have fundamental responsibility outside government for making Prevent work. It seemed to me absurd that communities, especially at that time Muslim communities in the aftermath of 9/11 and 7/7, should be asked to report suspicious behaviour to an arm of the police when that might mean that another arm of the police—literally an armed unit of the police—might eventually respond to what they had said. I argued fiercely that local authorities and education authorities should be co-responsible for Prevent, and I am really glad to see that happening.

However, in addition to that, our past comes back to haunt us as previously convicted terrorists are now being released, having served prison sentences for which too short a maximum sentence had been prescribed in earlier legislation. I welcome the increasing length of sentences for preparatory behaviour short of actual action. I am not normally in favour of lengthening maximum sentences for anything, but I am when we talk about terrorism. Beyond that, I still believe that the terrorist prevention and investigation measures, TPIMs, remain of too short a duration, and I hope that the Government will look again at that issue during the passage of the Bill through the House.

I congratulate the Government on their decision to keep this important legislation coming through both Houses in the middle of the tensions of Brexit, and I hope that the Bill completes its full legislative passage as soon as possible. I also hope that, by the time its provisions come into effect, they do not do so in a Europe in which Britain has lost most of its ability to co-operate effectively with EU countries on security

and policing, particularly on the European arrest warrant, Schengen and the Prüm arrangements—but that is probably for another day.

7.23 pm

Lord Ahmed (Non-Afl): My Lords, all of us share the same objective when it comes to the safety of our country and our citizens. Since the tragic acts of 9/11 and 7/7, the United Kingdom, like many countries around the world, has put in place many laws to ensure that the police and security services have all the powers and means to arrest terrorists and stop terrorist acts in our country and around the world. In rightfully making such provisions, it is critical that we do not allow legislative provision to go forward that fundamentally undermines who we are and what we stand for—our rights of freedom of speech and thought and our right to freedom of religious belief.

Britain has the most wide-ranging terrorism laws in Europe. Since 1998, a raft of terrorism laws has been passed in the UK. Despite these laws, the summer of 2017 saw major terrorist incidents, which were mentioned earlier. So, politically motivated violence remains a problem from which the state must safeguard its citizens. However, while the law needs to target criminals and their acts and plots, constantly widening laws and offences to bring more people within the definition of terrorism and treating them as a security threat will ultimately prove counterproductive, as that alienates the very people whose support is needed for an effective counterterrorism strategy. The Bill again widens the scope of terrorism, which will affect every citizen, and when we come to look at the details, we will see that innocent citizens could be caught by the proposed new laws.

My concerns are shared by many, including human rights organisations such as Amnesty International, which has voiced concerns over Clauses 1, 2 and 3 as well as Clause 20 and Schedule 3. The Government's own inadequate impact assessment does not even refer to the fact that this major piece of legislation will have a differential impact on many citizens and communities. Legislation already on the statute book has already been widened by our courts. For example, the definition of terrorism in Section 1 of the Terrorism Act 2000 has already been criticised for being too wide, and its scope has been widened by the Supreme Court.

For a moment, I will highlight the impact on the Muslim community. This proposed legislation would place Imams, scholars and Muslim speakers in a difficult position when they are talking about overseas conflicts in which Muslim communities are suffering and local scholars have already declared resistance as legitimate. As a consequence of the definition of terrorism and the extra offences created in the Bill, speakers and comments may be deemed terrorist or seen to be encouraging terrorism when they are discussing matters overseas and pose no threat to the UK whatever. Clauses in the Bill make this even more likely.

The provisions covering expressions of support for a proscribed organisation extend the offence of inviting support for a proscribed—terrorist—organisation to cover expressions of support that are reckless regarding whether they will encourage others to support the organisation. Creating an offence that criminalises "expression of support" as opposed to "invitation to support" a terrorist group—this can also be "reckless"—will draw into criminal activity people who may be speaking, writing and discussing political affairs around the world. The law seems to be moving away from criminalising people for their acts to their thoughts and expressions.

There is also an underlying acceptance in this clause of the conveyor belt to violence theory—that there is a straight-line progression from expression of political ideas, leading to joining groups and/or violence. That theory has been rejected by a host of security and academic experts. Such a clause will have a chilling effect on freedom of expression and opinion. One can still hold an opinion, but if it cannot be expressed, then individual freedom has effectively been curtailed. This clause also appears to be in contradiction with Article 19 of the ICCPR and Article 10 of the ECHR, according to the UN Special Rapporteur for the Protection of Human Rights in her submission to consultation on the Bill.

New provisions covering the obtaining or viewing of material over the internet have been mentioned on many occasions. They update the offence of obtaining information likely to be useful to a terrorist to cover terrorist material that is just viewed or streamed over the internet, rather than downloaded to form a permanent record. The existing "reasonable excuse" defence will apply in circumstances where a person did not know that the documents would contain terrorist material. However, the clause now seeks to extend the current offence of downloading or distributing terrorist materials to capture people who may not download but view streamed materials online. This would mean that a person who clicks online rather than downloads may be committing a terrorist offence. The offence was meant to apply to three clicks, which has been mentioned, and even if someone did not click directly but was looking over someone else's shoulder. In an interconnected world where social media provide the platform to meet people's intense interest in what is going on, there is a real potential to criminalise them for their curiosity or legitimate interest in general research for journalism purposes. Innocent people may click on links sent on Messenger but may not actually view them. For example, my inability to understand IT means that I click everything that is sent to me on my mobile phone.

Terrorist materials are categorised as tier 1, tier 2 or tier 3 and can include literature, articles and lectures by prominent personalities. They can also include videos of conflict battle scenes. Without a definitive published list of terrorist materials and personalities, how do we know whose lectures and work should not be viewed? Many people, particularly children and young people, may not know what constitutes terrorist material and may be unaware that they are committing an offence. For example, in communities originating from conflict zones such as Syria and Libya, viewing and sharing conflict scenes from those areas is common as they have a legitimate interest in the conflict and want to keep up to date, or their families are affected by them. Some of these viewings and materials may be deemed terrorist in nature. Even if an investigation

[Lord Ahmed]
takes place and no prosecution is brought, the burden of proving "reasonable excuse" will cause much distress, especially to young people.

Between 2000 and 2015 Parliament passed six counterterrorism laws; this Bill will be the seventh. Many human rights groups have argued that there are enough laws to deal with the current threats posed to the UK. At some point there will need to be a new debate and thinking around how we tackle violence with political motives, which is essentially how the law defines acts of terrorism. We can continue to enact more legislation to tackle the challenges of terrorism, but the truth is that until we work with our communities to counter the evil of terrorism, we can have as many new laws as we want and spend as much public money as we want, but we will never rid ourselves of the scourge of terrorism. We will not be successful in meeting the challenges of terrorism until we work with all communities, as mentioned by the noble Baroness, Lady Warsi, and our communities take on the challenge of fighting terrorism with our Government. Our police and security services may need more powers, but equally important is that those powers do not erode our fundamental freedoms. Urgent thought and action is required to engage with our communities and unite them behind our fight against terrorism.

7.33 pm

Baroness Barran (Con): My Lords, I am aware that my remarks stand between your Lordships and the much anticipated speech of the noble Lord, Lord Anderson, so I will focus my comments on the proposed changes to the Prevent duty, as set out in Clause 19. As we have heard, they will allow local authorities as well as the police to make a referral to a Channel panel. Before I do so, I congratulate my noble and learned friend Lord Garnier, and the noble Lord, Lord Tyrie, who has moved, on their excellent maiden speeches. I am not sure what the collective noun is for maiden speeches, but I suggest that it should be "a brilliance", based on what we have heard in the debate.

I also acknowledge the many community groups, head teachers, including one whose school overlooks Westminster Bridge, and Prevent leads from around the country who shared their practical experiences of Prevent and the Channel panels with me, both good and bad. It is fair to say that a majority value how Prevent is working in their communities, but all are worried that its reputation will limit its impact. The fears we have already heard expressed are about securitising our schools and communities, identifying the wrong people, stigmatising in particular Muslim communities, stifling debate and a general lack of transparency about the effectiveness of the approach. I will try to address some of those issues.

Allowing local authorities as well as the police to make a referral to a Channel panel should help to reduce the sense of securitising or criminalising those who are referred and will rather focus on the safeguarding aspects of the referral. That is not to say that safeguarding is without fear or stigma as well. Any of us who are parents will know that conversations with a professional about one of our children about abuse, neglect, sexual exploitation, drug use, criminal behaviour or violent extremism are not conversations that we are keen to have. However, we need to recognise the context: difficult conversations about safeguarding and referrals to children's services happen more than 640,000 times a year, with Prevent referrals making up less than 1% of that figure. While they are important, we need to see them in that context. I hope that a conversation with a social worker rather than a police officer, with the greatest respect to the former police officers in this House, will feel more about safeguarding and less about criminalising. That was confirmed by the feedback from the Dovetail projects that have taken place over the past year. One of the key points that came out was that real care was taken over communication with families if a member of the family was being referred to a Channel panel. My main concern about this change is that where we are working in local authority areas that are already struggling with all their duties, this additional one will represent a real challenge. I hope that my noble friend the Minister will consider whether additional resources are required to fulfil those new duties.

I turn now to the second criticism, which is whether Prevent identifies the right people. Like any preventive programme, the short answer is that we do not know exactly, but from looking at the data, it is encouraging that Prevent appears to identify people with a real vulnerability to different forms of grooming, of which violent extremism is one. It is much less compelling when we look at the young people referred to by the noble Baroness, Lady Manningham-Buller, who apparently could be resilient but could be quickly radicalised. However, we still need to find those vulnerable people. I read the data rather differently from the noble Lord, Lord Stunell. Of those identified by Prevent, two-thirds were identified as needing support, 14% went to a Channel panel, 50% got some safeguarding support and just over a third were not in receipt of any support. That proportion of a third is identical to all other safeguarding referrals. Moreover, in relation to the noble Lord's point about who gets screened in and who is screened out, the people we want to see being screened in are those who are being screened in. You are almost twice as likely to go from a referral to a Channel panel if the referral comes from educational or children's services than if it comes from the police, again pointing to more of a safeguarding focus. We lack clarity, however, on what interventions happen at a panel. More data here would be extremely helpful.

Finally, and importantly, critics of Prevent rightly point to the risk of stigmatising Muslims, stifling debate and creating more divisions in our society—points picked up on by my noble friend Lady Warsi. Although the data may point to an increase in referrals of right-wing extremists, who now account for about 25% of the total referrals, the perception in too many communities remains that Prevent is, to quote a Muslim community worker I spoke to, "a stick to beat Muslims with". The workers who gave me their time varied in their views: some were staunchly supportive of Prevent, some equivocal and some fiercely opposed to it. The key lies as much in the legislation as in the quality of the implementation.

Everybody I spoke to came up with the same recommendations on how to address that quality, whether they were supportive or sceptical and whether they came from the voluntary or the statutory sector. First, they all stressed that Prevent will succeed only if it is built on a foundation of community cohesion and tolerance in our schools and in our communities more widely. Secondly, they stressed the need for high-quality training. Many people mentioned how tired the training is; one former head teacher described it as "tired, boring and patronising". For my sins, I did some of the online training, thinking that I ought to eat my own cooking, and I can only agree. They also suggested that the training needs to cover not only how to deliver Prevent but how to engage with hard-to-reach groups, and should be delivered by people from the most affected communities. I would be more than happy to share some of the great examples I heard.

Thirdly, there was a universal call for greater transparency. A number of noble Lords mentioned the call for an independent review. I am concerned about the delay this might create. I am also concerned that the answer it will find is that in areas where Prevent is implemented well, it works pretty well, and in areas where it is implemented badly, it does not. Instead, we need to build quickly on the data published last year by the Home Office and put ourselves in a position where we can be more confident in the effectiveness of both identification and intervention. That needs to be reinforced by the national Prevent oversight board.

Finally, the word that was used most frequently in relation to Prevent, as mentioned by the right reverend Prelate the Bishop of Newcastle, was a call for "compassion" in its implementation. There is currently a stark gap in the Prevent and Channel guidance. Nowhere does it mention the need to acknowledge the stigma and fear that will inevitably accompany being identified as needing support in relation to extremist or terrorist activity; nor does it guide agencies on how to respond to those fears in an empathetic and kinder way.

The changes set out in Clause 19 give a solid opportunity to move both the reality and the perception of Prevent from one of securitising to one of safeguarding. If implemented with compassion, I hope it will have a wider impact and help to rebuild trust in our communities. I hope the Minister will consider the points made to me about training, data and improved guidance when the materials for Prevent and Channel are updated.

7.44 pm

Lord Anderson of Ipswich (CB): My Lords, I congratulate the twin maidens on their enviably assured and elegant speeches. I thank the Minister, noble Lords and the noble Baroness, Lady Barran, for the overly kind comments they addressed to this near-maiden.

The noble Lord, Lord King, referred ruefully to the number of anti-terrorism laws that have come before this House in recent years. He can perhaps take comfort from the fact that he has not been sitting in the Australian federal Parliament, which last time I checked —on Thursday last week—had passed 74 counterterrorism statutes since 9/11. It was my privilege to assist MI5 and counterterrorism policing last year in drawing the necessary lessons from the atrocities perpetrated in London and Manchester. The most important of those lessons relate to the gathering and processing of intelligence, but it is right to ensure also that our laws are in the best possible shape.

In support of the Bill on the whole, I will make two comments. First, whatever its faults, it is based on the criminal justice approach to counterterrorism that has served this country so well. Our freedoms are better protected by the common sense of a jury than they are by an expansion in the range or volume of Executive commands such as control orders, and now TPIMs, which are imposed by Ministers and reviewed in court only months after the event and on the basis of evidence that cannot be shown to the subject.

Secondly, I welcome the conclusion, to which I was reluctantly driven when I was the Independent Reviewer of Terrorism Legislation, that the existing law may not deal sufficiently with radicalisers. Anjem Choudary has been mentioned, with good reason. As many as 25% of British jihadis convicted between 2001 and 2015 were associated with his organisations, outnumbering the 10% linked to al-Qaeda and the 5% linked to ISIS, or Daesh. His organisations also had great influence in northern Europe, yet although the police reported his activities to the Crown Prosecution Service 10 times between 2002 and 2015, no prosecution could be brought, whether for incitement to religious hatred, indirect encouragement to terrorism, inciting terrorism overseas, incitement to murder or proscription offences. In my mind, his eventual conviction in 2016 does not excuse us from seeking to improve the law in this area.

The Bill has some troubling features. I will refer to three of them which have so far been touched on only lightly or not at all. The first relates to proscription offences, which are supplemented or strengthened in Clauses 1, 2, 6 and 9 to 11. Whatever the merit in extending these offences, we should do so only if we can be sure that proscribed organisations are proscribed lawfully because they are, in the words of the Terrorism Act 2000, "concerned in terrorism". Unfortunately, we have no such certainty; rather, the reverse. In 2013, the Home Office admitted to me that up to 14 proscribed international terrorist groups did not appear to be lawfully proscribed. It allowed me to publish the fact and commenced a programme of deproscription, but as I recorded in my report of December 2016, that initial honourable resolve on the part of the then Home Secretary soon foundered, I suspect under the influence of another great department of state. So it is likely that at least 14 international groups remain proscribed despite not meeting the statutory requirements for proscription.

We do not know how many of the 14 Northern Irish groups, every one of which has been proscribed continuously throughout this century, are in the same position. There, as the Committee on the Administration of Justice pointed out, the flags of proscribed organisations fly everywhere and their symbols cover memorials, appear on gable walls and decorate banners hanging from lamp posts. The law is applied to them only partially and occasionally, inadvertently injecting an unwanted political element into the exercise of police

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and prosecutorial discretions. It is true that proscribed organisations are eligible to seek deproscription, but this is a rarely invoked and extremely costly process, as was shown by the PMOI case—the only one in which such an application has ever gone to trial.

Then, to make it worse, the Government abandoned the regular reviews that they used to conduct until 2013, despite those reviews having been described by a High Court judge in the PMOI case as,

"certainly a practice that the Secretary of State should continue to adopt".

As I wrote at the time, they seem to have discontinued these reviews out of embarrassment at their own inability to act on their conclusions.

It is surely unjust to expose a person to prosecution for a proscription-related offence when the organisation that he or she is said to support does not meet the statutory conditions for proscription. There are solutions to this, but would the Minister accept in the meantime that we are confronted with a tricky problem that is exacerbated rather than relieved by the Bill?

My second point, much more briefly, is on Clause 4, which would create the so-called designated area offence. I was quoted on Report in another place as a vigorous opponent of this idea, but, to set the record straight, the comments in question came from my former special adviser Professor Clive Walker and, despite their distinguished source, were never adopted by me. But some of his words at least ring true. I have spoken, as I know others have, to organisations and individuals engaged in humanitarian and peacebuilding activity in conflict zones who are not at all reassured by the discretions that Clause 4 would confer on the Secretary of State and prosecutors. The Government have cited Australian and Danish precedents for this law, so I hope that the Minister will consider adopting either some more precise conditions for designation and defences, as in Australia, or a pre-authorisation regime, as in Denmark, or both.

My third point is on the new Schedule 3 port power. When I was independent reviewer I noted that, over a five-year period, between 13% and 25% of all intelligence reports resulting from stops under the existing Schedule 7 were concerned not with terrorism, which is the object of Schedule 7, but with nuclear proliferation or espionage. Ports officers sometimes expressed to me their unease at being invited to stop people who could be described as possible terrorists only on the most elastic interpretation of that already broad definition. The case of David Miranda is a well-publicised example.

I am glad that the object of the Schedule 7 power is being extended to counterproliferation and counter-espionage, but the Schedule 3 powers do not stop there. It is proposed that they might be used to determine whether a person appears to have engaged in "hostile activity", including acts that threaten the economic well-being of the country in the interests of a foreign state, whether or not those acts constitute criminal offences. That is far too broad a basis on which to allow these extremely extensive no-suspicion powers to be exercised. Then there are the additional powers exercisable at the Irish border under paragraph 2 of Schedule 3, which will also need to be elucidated.

Each of my three points echoes concerns expressed by the Supreme Court in the 2013 case of R v Gül about the very broad discretions already given in this area to prosecutors and to police. In particular, the court warned against Parliament delegating to the DPP or to the Attorney-General the power to decide whether an activity should be treated as criminal for the purpose of prosecution. That, as the Supreme Court puts it, leaves citizens unclear whether their actions or projected actions will be judged to be criminal and risks undermining the rule of law. I do not wish to embarrass the noble and learned Lord, Lord Hope, but he put his name to that judgment.

I will keep those comments in mind throughout our scrutiny of this important Bill. Flexibility is useful, but when behaviour is criminalised we all need to know where the line is drawn.

7.54 pm

Lord Kirkhope of Harrogate (Con): My Lords, in the same way that my noble friend Lady Barran indicated that she would be a form of warm-up act for the noble Lord, Lord Anderson, I suppose I serve the function of offering an anticlimactic effect following his excellent speech. I too congratulate my noble friend Lord Tyrie and my noble and learned friend Lord Garnier on their excellent maiden speeches. They are old friends in many ways and they are still operating as effectively as they ever did at the other end of the Corridor. They are very welcome indeed. I declare an interest in this debate as a lawyer, a former spokesman for justice and home affairs for many years in the European Parliament and a former Home Office Minister here responsible for, among other things, immigration and control of our borders.

I make it clear that I agree that terrorism, without doubt, is an evil that must be met with determination by democracies and by all those who value freedom. It is a matter of the greatest priority that that should be the case. But when I look at the nature of the legislation—indeed, I was interested to hear remarks by the noble Baroness, Lady Manningham-Buller, about the number of pieces of legislation; that was referred to by others, including by the noble Lord, Lord Anderson, a moment ago—it is interesting to note that we are by no means a country without a continuing concern and interest in legislation to keep us up-to-date with the challenges we meet. As far as I am concerned, it is vital that we keep abreast and catch up, if you like, with the changes in the approach of terrorists and major criminals. Andrew Parker, the director-general of MI5, said about a year ago that the ongoing threat was,

"multidimensional, evolving rapidly, and operating at a scale and pace we have not seen".

It is quite clear from that that the terrorist seems always to have an advantage over democracy, justice and the way in which we operate our laws.

Our response in recent times has of course been to have independent reviews under the control and leadership of the noble Lord, Lord Anderson, and, until recently, Max Hill QC. While those reviews are very valuable as an ongoing consideration, it is still difficult to keep our legislative programme up to date. That rapid evolution has to be met. I have always thought that we

need to review how we legislate to keep up to date. I had previously described the need for what I call "smart legislation", where either the law itself is required to be examined at a set point and that is written into the legislation, or we have a more flexible system where we can make changes not to the principles that we have already agreed but to some of the practical elements that run alongside them.

When the French state of emergency ended last November following the Paris attacks, President Macron introduced new counterterror laws that some might say were more draconian than the provisions of the Bill before us—but at least they included very clear understandings that the law had to be not only continually monitored but revised or reviewed by Parliament within two years after that monitoring. That is an important element that we see very much in other countries. I saw it in my work in the European Parliament. Now written into almost all legislation are these necessary reviews or, in some cases, sunset clauses, depending on what sort of legislation it might be.

At the same time, President Macron looked carefully at the co-ordination between the domestic and the foreign intelligence agencies and the police forces in France, because one of the elements of difficulty after the Paris attacks—certainly in Belgium, where I was located—was that there were issues regarding co-ordination between the police services and the intelligence agencies. There was an element of confusion and concern that these were not properly co-ordinated and that there were competitive elements between them that were not in the interests of detecting and dealing with terrorism. That is something we always ought to consider.

In the same way, we ought to consider the issue of scrutiny. I know that to some people the word "scrutiny" is not particularly attractive. Sometimes it looks as though they cannot do what they think they must do because someone is always going to be looking over their shoulder. But if you want to get a balance between the security of the state and its citizens and the civil rights of those suspected of threatening it, you have to allow for scrutiny—not only scrutiny of an official nature, organised by government, but an understanding that we are now, inevitably, in this modern world, scrutinised constantly, whether we like it or not, by the media, by NGOs and by international partners and players. We need to be sure that whatever we do measures up to the sort of scrutiny and the balance I have referred to.

I will mention the need for something that has been referred to by several speakers: the criterion of necessity and proportionality has got to apply not only in terms of what we do about terrorism but in how we consider it. Noble Lords would be surprised if I did not mention international relations briefly. We have not really got anything here, because of course our legislation on terrorism is a national matter. However, it is necessary to refer again to the ongoing partnerships that have allowed us to deal with what is a worldwide phenomenon in an effective manner. In fact, there is plenty of evidence that we have been able to deter and detect terrorists on the basis of information we have received from our neighbours.

Of course, we have a trusted position, currently, with our EU neighbours, but also, through the Five Eyes arrangement with Australia, Canada, New Zealand and the United States, we have been able to obtain information and intelligence which has assisted us to protect our citizens. As one of the authors, or rapporteurs, involved in developments in the EU such as SIS II—the Schengen Information System that has been referred to—Prüm and PNR, passenger name records, I feel very strongly that whatever the Brexit process brings, it must ensure that there is no gap or uncertainty, even for one hour, in the ongoing full exchange of intelligence. That includes intelligence exchanges in real time, because the whole point of terrorism is that terrorists get away with it if we delay taking action and using information that we have. This is important—indeed, it is more than important, it is vital.

I dare not quote, perhaps, Sir Bill Cash, the Member of Parliament and chair of the House of Commons European Scrutiny Committee—not necessarily the greatest Europhile, I have to say—who said, when asking for clarity about the Government's intentions in these measures:

> "We can see no justification for this reticence. We expect the Government to be far more forthcoming about their intentions in relation to SIS II"—

and, I would add, all the other areas in which we have close co-operation with Europe.

My last area deals with legal issues. Very briefly, as a solicitor, as a lawyer, I have always believed in the right of an accused to have a lawyer to support them at the earliest possible opportunity. When we dealt with measures in a directive on access to lawyers in Europe, we made it clear that this access had to be without undue delay: I think it was quite clear what sort of thing that meant. I would like some reassurance on this because I think there is some confusion. It was referred to earlier. The confusion lies, of course, in our Schedule 3, where there is some contradiction. First, there is an issue regarding the privacy and confidentiality of lawyers with clients, where the presence of a "qualified officer" seems to be required even when a lawyer is present to take instructions. That is quite a serious matter. The Law Society and others are deeply concerned about it. Yet it is contradicted by Schedule 3(24)(2) which says, as has also been referred to:

> "The examining officer may not question the detainee under paragraph 1 or 2 until the detainee has consulted a solicitor".

So there is confusion—there is no certainty about this, and I think we need to clarify and make sure that the protection of the rights of the defendant are always in place.

Finally, on the issue of recklessness, I am a little curious. Other noble Lords here are far more distinguished lawyers than I am, and have been over many years—I concentrated on knowing Rylands v Fletcher and one or two other interesting cases—but it nevertheless seems to me rather odd that we have a new approach that makes recklessness in itself criminal in this context. In my understanding of what is required for a crime, there is mens rea, which is made up of intention or knowledge of wrongdoing. That is fairly clear, but it constitutes only part of the crime. The rest of it is action and conduct. Apart from strict liability, where

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no mens rea is required, I cannot find myself particularly sympathetic to the term "recklessness" as being conclusive in relation to somebody's intention, and enough for criminal liability.

Having said all that, I support the Bill; I think it is important that we keep the legislation going. I would like to see it more mobile and more flexible. But, in the meantime, we rightly carry out our duties—the responsibilities we have to protect our citizens from crime and from terrorism at every opportunity.

8.05 pm

Lord Bew (CB): My Lords, I support the general purposes of the Bill and I thank the Minister for her introduction, in which she stressed that the focus is on the new terrorism. Matters have evolved, she said; things have changed since 2006 and we are not dealing with the same problems we dealt with in the latter part of the last century with respect to Irish terrorism. But she also expressed her concern about those who act with hostile intent on the Irish border and, of course, there is the question of the activity of dissident republican organisations. I would add the slightly surprising point that has come to me in preparing for this debate: there is another dimension to this question of people with hostile intent on the Irish border.

I have taken to reading intensely the Irish expert writers on matters of intelligence and security. They argue two things. One is that Ireland simply cannot have the intelligence infrastructure that the United Kingdom has—the incredible skills of our intelligence services, GCHQ and so on. These simply cannot operate in Ireland. The second is that people of extremist and Islamist views know this and therefore have in some ways made Ireland the backdrop for the unfortunate and tragic events that have happened in this country. Therefore, when the Minister talked about her fears of people with hostile intent on the border—the only land border between the United Kingdom and the European Union—she is entirely right to have a concern, and it might unfortunately be a little broader than I suspect was in her mind when she made the point.

In talking about the Bill, I must express a degree of surprise. The House is well aware of the intensity of the recent debate in this Chamber about a possible Brexit hard border. It was a deeply passionate event and I well remember the noble Lord, Lord Alderdice, explaining that there were circumstances in which he would not be content with Liberty Hall on the Irish border; there were circumstances in which there would have to be checks, which he could envisage without too much stretching of his imagination. Yet the House chose to vote down the Government's proposal on that day. I think the majority was 65. The general feeling was that any check of any sort on the Irish border was a hard border. Yet tonight, who is saying this?

I was very pleased by the tone of the debate in the other place, which was largely consensual. The points raised by the Opposition Front Bench were perfectly reasonable. Matters that it was suggested we should consider here included the concern about aspects of accountability for actions on the Irish border. But the intensity of the emotion, which the noble Lord, Lord Alderdice, will recall, and the certainty of moral conviction about checks on the border seem to have disappeared entirely, and I do not quite know why. For the Irish Government, I might be able to offer a kind of answer but, believe me, within Ireland itself hackles have been raised by this proposed legislation.

The noble Lord, Lord Anderson, mentioned the Committee on the Administration of Justice. Its objections go far beyond the significant point to be discussed about proscribed organisations and how we handle them. That is a serious point, but its objections go far beyond that. The objection of the influential Committee on the Administration of Justice is that this is another hard border, which we all apparently promised that there would not be. That is its objection. Articles have appeared in Irish newspapers saying that we are establishing a double standard for citizenship between citizens who live on the border and who may be stopped and citizens who live in Ulster and are not likely to be stopped. The phrase "border area", which appears in the legislation, also requires some comment. I am not referring to these points because I necessarily agree with them, I am saying simply that there is a debate and hackles have been raised.

On the Parliament website there is a description of the Bill:

> "To make provision in relation to terrorism; to make provision enabling persons at ports and borders to be questioned for national security and other related purposes; and for connected purposes".

That last phrase has been seized on in Ireland: "Ah, this is about smuggling". Frequently, smuggling is a connected purpose with respect to Irish terrorism. It would not be a stretching of the language for an officer to interpret it in that way because it frequently is and the money is used for the purposes of terrorism. So there has been finger-wagging and the claim that this is indeed a hard border and, not only that, it is actually concerned with matters—well, to be honest, smuggling is a trade in Ireland. Paragraph 9 of Schedule 3 refers specifically to the apprehension of goods. There is no question that that is part of the intention of the Bill.

Personally, I support this but I wonder where all the other people are who were so indignant only a few weeks ago in this Chamber and are so indignant about it in general. I wonder where the Irish Foreign Minister is, who I recall saying on "The Andrew Marr Show" that there could be no checks of any sort on the island of Ireland. This was a moral and psychological blow that no decent Irish nationalist should be forced to live with even the contemplation of. There is a problem with that in that the Irish Government currently carry out checks on their side of the border on individuals they do not want entering their labour market, on quite an extensive scale. All right, perhaps he had temporarily forgotten that, but he was very indignant on this point. But the Irish Government have been silent about the Bill.

The Irish Government do have a difficulty and I will explain what it is. It is in United Nations Security Council Resolution 1373, passed shortly after 9/11, which I know some academic lawyers do not like because they think it is the United Nations Security

Council making itself a legislator, but it has remained, with some modification and some further reflection, the byword for the international approach in this matter. Incidentally, just before the turn of the year, the European Union, whose standards on these questions have been invoked many times in the debate, issued a document on Resolution 1373, broadly expressing solidarity with its purposes. The purpose of the resolution was to have border security in the fight against terrorism. Clause 2(g) talks explicitly about the need for "effective border controls" and checks. The problem for the Irish Government is that Ireland was a non-permanent member of the Security Council that passed it—we, of course, are permanent members—and they are now trying to get on the Security Council again as a non-permanent member and it is not particularly good advertising for such a campaign to say, "The last time we were here, we thought this resolution was a fantastic idea. Now we want to get back on the Security Council, we did not mean a word of it", so they are circumscribed to some degree.

I also hope that another reason the Irish Government have been so calm on this matter is that we are moving towards a compromise on these very difficult issues. There is so much writing by all the informed commentators, all the national and international think tanks, about the damage that will be done to the Irish economy by a hard Brexit that the need for a compromise is becoming painfully obvious. I am hoping that for these reasons we are moving away from the intense and angry mood in which these issues were discussed. But the dog has not barked in the night in the case of the Irish Government. I suspect that if we get a relatively benign resolution—that will be no perfect one—over the next few months, the dog will not bark in the night. But I warn the Minister that we are still in a difficult circumstance because the formal position of the European Union was, "You must stop our internal market being polluted by goods coming over the border from Northern Ireland but you are not allowed to have any checks to stop our internal market being polluted". It is a brilliant Catch-22 and the only solution is to semi-detach Northern Ireland in a way that the Prime Minister has said is unsatisfactory.

Something has to give here. There has to be a compromise. I very much hope that there will be a compromise. I think there are some signs that there will be one. I end my remarks by saying to the Minister—unkindly, perhaps—that rough tides may be returning to the discussion of this issue; rough tides that we have seen and the noble Lord, Lord Alderdice, saw that night, have infected the way we talk about this issue in this House. I am glad we are in such calm waters and that there was such a significant degree of cross-party consensus in the other place.

8.15 pm

Lord Marlesford (Con): My Lords, I would like to say, first, what a wonderful brief the Library produced for this debate and, secondly, how excited I am that we now have my noble and learned friend Lord Garnier and my noble friend Lord Tyrie with us. They are a great addition. I have never been an MP, but I know them both and have huge admiration for them.

The Home Secretary said in the Commons Second Reading debate that,

"the wide-ranging Counter-Terrorism and Border Security Bill … is about keeping the people of this country safe".—[*Official Report*, Commons, 11/6/18; col. 630.]

I strongly support the Bill, as it seeks to widen and deepen action against terrorism. But for the purpose stated, some of its provisions seem to be rather theoretical and almost metaphysical rather than practical. They risk, as we have heard during the debate today, allowing the argument to be between lawyers and libertarians. The result is likely to be slow and amorphous. In short, it bears the hallmarks of Home Office drafting.

I hope during the passage of the Bill to fill in some of the gaps with a couple of practical steps that can and should be taken. This is a subject in which I have been involved for well over a decade, and I am afraid that I have found, under successive Governments, that the Home Office constantly resisted taking the steps necessary to keep the people of this country safe. I remember that, in 1997, I got Parliament to agree to the introduction of a centrally held electronic register of all legitimate firearms, and I got Ministers in successive Governments to support that. The Home Office resisted and resisted it; the provision eventually came into force in 2006 and is working extremely well.

Even when I have convinced Home Office Ministers, the trouble is that the officials usually oppose them. In fact, the attitude of the Home Office to its own Ministers sometimes reminds me of my early youth, when I started my national service as a recruit at the Caterham guards depot. In those days, probably rightly, the response to any of us who began a statement, "Sergeant, I thought …", would be—I am deleting the expletives—"You are not here to think. You are here to do what you are told". Of course no civil servant would dream of addressing a Minister in that way, but the attitude of the Home Office reflects that approach all the same. I hope that the appointment of Sajid Javid as Home Secretary, with the advantages that he has over some of his predecessors, may produce a more effective counterterrorism policy.

But let me first mention the backdrop we face. There is no need for parliamentarians to be made aware of the scale of the threat, surrounded as we are by dozens of armed police. But it is not just we who work or live in London who have suffered a monstrous intrusion into our normal way of civilised life. It has been bad enough to lose the former ease and flexibility of air travel; now it appears that we may face a similar challenge to road travel.

The cost to the economy of terrorism is a serious and growing factor. In May this year, the European Parliament published a report by the RAND Corporation which makes some estimates of the human, physical and GDP cost of terrorism in each EU member country. The highest cost is in France: some €38 billion for the four years from 2013 to 2016. The UK comes second at €16 billion, which is €4 billion a year. This is over 25% of our total annual spending on foreign aid, which is around €15 billion. Of course, the opportunity cost to public spending is a significant factor in keeping down the standards of our social services. There is no

[Lord Marlesford]
doubt that the threat of terrorism and the cost of countering it has expanded rapidly since those figures were calculated for 2016.

We used to have enough problems with the IRA, but that was nothing compared with the threat of Islamist jihad. That of course became a whole new dimension in April 2014 with the formation of the Islamic State from the Iraqi franchise of al-Qaeda. It called itself ISIS—Islamic State of Iraq and Syria. It has as its stated and implacable aim the installation of a worldwide caliphate under sharia law. Although its military forces have suffered heavy defeats, it is active in many other countries. In Europe I suspect that the main country in which it is making progress is Spain.

Let me turn to a couple of proposals which really need to be taken seriously by the Home Office and could be incorporated in the Bill. First, a nation state, even one at peace, needs to know who its citizens are—and by citizens I mean inhabitants, whether of UK or other nationality. I do not advocate identity cards. They are dangerous because they can be forged and thus convince those who need to know of a false identity. This applies especially if there are biometrics in the card because of course any competent criminal or terrorist—and by competent I do not mean the amateurs who now operate for the Russian GRU—can ensure that their biometrics are on the identity document. What is needed is a national identity number with centrally held biometrics of the holder. These could enable the holder to be checked against the central record. This would replace the plethora of other ID numbers used, including those on driving licences and passports.

My second point is on something that I have been advocating for a long while. I believe it has long been essential that the UK passport authority should know what other passports are held by British passport holders. I emphasise that I am not for one moment suggesting that people should not be allowed a second, third or even fourth passport. All I am asking is that their possession of such passports is recorded in such a way that the scanning of a passport at the UK border reveals their existence; otherwise, as I was told years ago, people travel to a place on one passport and do things that they should not do on another passport.

I believe that the powers to take some action envisaged in Clause 4 are long overdue, but rather than designating areas of no travel I prefer the approach suggested by my noble friend Lord Faulks of introducing modern treason legislation. We should look more closely at some of the proscribed organisations. In this context, I think particularly of the Muslim Brotherhood. It was founded in 1928, and practically its first action was to kill the Prime Minister of Egypt in 1947, I think. Its leader was then assassinated and it has been behind huge troubles all over the world, but it keeps its face clean. It is really like Sinn Féin was to the IRA.

We should be more discriminating over those to whom we grant refuge. When David Cameron proposed to take 20,000 refugees from Syria, some of us asked for priority to be given to Christians and Yazidis, who were particularly subject to persecution. Up to now, the Government have resisted this.

It is a disgrace that more than 1,200 members of the UK Muslim community were able to join ISIS and it is an even greater mistake that 400 of them have been allowed to return to the UK. To take up arms against forces of which Her Majesty's military form a part should be grounds for the immediate withdrawal of UK citizenship.

A national identity number system would be of value not only for national security but also for the administration of social services and health services where the present mess of identity through national insurance numbers and NHS numbers is laughable. The potential saving in that area would easily pay for the introduction of national identity numbers.

Finally, I shall comment on what my noble friend Lady Warsi said. She wants the Government to re-engage with the Muslim community. I am all in favour of that, of course, but the best way to do that would be for the leaders of that community to exclude and excommunicate those who support Islamist jihad. Only then can we really get together to prevent and fight terrorism.

8.27 pm

Lord Ramsbotham (CB): My Lords, with so many distinguished experts contributing to this Second Reading, including the noble and learned Lord, Lord Garnier, and my noble friend Lord Tyrie, both of whom I congratulate on such outstanding maiden speeches, I am conscious that by speaker number 25 all that could be said has been said and that all I can do is make some additional points. Like other noble Lords, I thank the Minister for her comprehensive introduction and express my thanks to Russell Taylor for his excellent Library briefing, particularly because it included analysis of the very detailed and penetrating report of the Joint Committee on Human Rights and of the passage of the Bill through the other place. Like the noble Lord, Lord King, I was very sceptical about the impact assessment. Impact assessments seem to be done incredibly badly by all ministries. I have to admit that, like other noble Lords, while I recognise and support the Government's intention behind the Bill—to keep people safe and to update legislation—I remain uneasy about some of the detail.

My noble friend Lady Manningham-Buller, who mentioned the increased pace and size of the threat, reminded me that my practical experience of counterterrorist operations is somewhat dated, but the principles have not changed and include the need for any action taken to be balanced and proportionate. As my noble friend Lord Anderson was speaking, I remembered being frustrated, when commanding troops in Belfast between 1978 and 1980, that the conspiracy law was so inadequate that we could not arrest those who incited people to violence when making speeches at IRA funerals.

I have two general comments as well as some detailed ones. First, having been critical for many years of the Home Office's failure to direct and oversee the systematic processing of legal asylum and immigration applicants, I am concerned about how any of its fragile systems will cope with the demands made on them by both legal and illegal immigration after Brexit. Having lost sight of at least 631,000 legal applicants—a figure that the then Minister confirmed during the passage of the

last immigration Bill through this House—and having no record of who has left the country, how on earth will border officials identify, let alone question and detain, individuals suspected of involvement in hostile activity for or on behalf of another state?

Like the Joint Committee on Human Rights, I believe that the definition of "hostile act" is extremely wide, and I worry about the lack of any threshold test before a person is detained and examined. The Minister confirmed that the Government intend to publish a draft code of practice before Committee, which I suggest will need the closest scrutiny.

In responding to proposed amendments to Clause 21 and Schedule 3 of the Bill, the Security Minister in the other place set out in some detail the Government's riposte to the human rights committee's concern that access to a lawyer was not adequately protected. The fact that access to such lawyers is currently patchy suggests that his explanation will need to be scrutinised in Committee.

My second general concern is about the European arrest warrant, which many noble Lords have mentioned. The other day I listened to a lecture by the EU's head of counterterrorism, in which he deplored the potential loss to other European countries of UK intelligence in particular after Brexit, emphasising how vital an ingredient it was to all their antiterrorist operations. Of course, bilateral arrangements can be made with each one of them, but there can be little doubt that in the context of European security the European arrest warrant is a vital ingredient. The Security Minister in the other place alleged that the proposed amendment was not needed because the Government were already negotiating for the European arrest warrant, or something as identical as possible, to apply. Could the Minister please confirm that this is so?

I turn to my other concerns. I share the human rights committee's concern about the wide scope of Clauses 1 and 2, and echo its view that to criminalise the publication of an article that may be worn or displayed in a private place risks catching a vast amount of activity and being disproportionate. The Minister indicated that the Government intend to update Section 13 of the Terrorism Act 2000, on which Clause 2 of the Bill is based, for the digital age. I hope that update will be available before Committee. In that connection, I note the Government's reassurance that the existing safeguards were adequate following the human rights committee's concern that Clause 3 may capture academic and journalistic research as well as those with inquisitive or even foolish minds. I hope that is true.

Acknowledging the views of the noble Lord, Lord Faulks, about the need for convicted terrorists to be sent to prison but also the concerns of the noble Lord, Lord Marks, about the current situation in our overcrowded and understaffed prisons, I am concerned that insufficient thought has been given to the implications of the increased sentences in Clauses 7 to 11. As Chief Inspector of Prisons I inspected both HMP Maze, which housed terrorists in Northern Ireland, and the special separation unit in HMP Belmarsh, which housed both Northern Ireland prisoners, some of whom were on hunger strike, and others convicted of terrorist offences. In both cases, I was very concerned about the lack of support for staff, who were put under immense strain, particularly mentally, because of the intensity of their task and their subjection to propaganda. Do the Government intend to separate terrorists from other prisoners and, if their numbers build up, do they intend to establish a Maze? Either way, consideration needs to be given to what regime might be imposed on terrorist prisoners and what additional resources, including management, support and training, ought to be provided for their guards.

Finally, I agree with all those who have recommended that the Prevent strategy be independently reviewed. I am very glad that the noble Baroness, Lady Warsi, said what she did, because Muslims risk being demonised by the failure to engage with them. If the Government are so keen on revising the legislation as a whole, why not all of its parts, including Prevent?

8.36 pm

Lord McInnes of Kilwinning (Con): My Lords, I, too, begin by congratulating my noble and learned friend Lord Garnier and my noble friend Lord Tyrie on their excellent maiden speeches this evening. We have had a good glimpse of the contribution that they will make to your Lordships' House in the coming days, weeks, months and years. The noble Lord, Lord Ramsbotham, mentioned the difficulty of being the 25th speaker. The 26th discovers that he has no original thought whatever. However, I will try to let your Lordships know what I think about our discussion this evening.

The priority of any Government must be the protection of their people. I am therefore very pleased to see this Second Reading before your Lordships' House. The updating of our counterterrorism legislation following the horrific terrorist attacks in Manchester and London last year is essential. It is fortuitous that the Bill comes before us at this time, when it can incorporate measures that, in Part 2, reflect our response following the deplorable Salisbury attack.

The very nature of terrorism is that those who wish to wage war on innocent people and spread terror will always try to find means to circumvent existing legislation. It therefore behoves all of us to ensure that the legislative framework within which our excellent and brave security forces need to work is flexible and not only up-to-date but predictive in identifying future threats to our country.

As the Bill makes progress through your Lordships' House, it will, correctly, face significant scrutiny. Some aspects of this scrutiny have already been requested at Third Reading in the other place, when many Members there gave their support to the Bill contingent on the scrutiny of your Lordships' House. It will therefore lie with this House to ensure that freedom and safety are maintained within the confines of the Bill.

Given the breadth of legal and security knowledge and expertise in the Chamber, which we have already heard today, I shall limit my remarks to three areas. The first is Clause 1 and expression of support for proscribed organisations. Like my noble friend Lord Faulks and the noble Lord, Lord Anderson, I agree that the Bill as drafted allows the correct balance between ensuring freedom of expression and allowing

[Lord McInnes of Kilwinning]
our security services to pursue those who seek to radicalise others and use expressions of support in a reckless manner.

As the noble Lord, Lord Anderson, intimated, it took nearly 15 years before Anjem Choudary, the so-called preacher of hate, could be imprisoned, and of course he is about to be released. The same man is widely acknowledged as having radicalised many, leading to their deaths as well as the deaths of others. He maintained his freedom by using the law and keeping ahead of it, moving from one proscribed organisation to another. I hope that the Minister will resist significant dilution of the clause, and so ensure that our justice system can adequately deal with the Choudarys of the future.

I turn to Clause 4, which deals with designated areas. I am pleased to see that among the reasonable excuses that will be considered are those of humanitarian workers and those who work for the United Nations. Many of the best professionals and NGOs across the world are British, and it is important that we do not allow that soft power to be undermined or stopped because they happen to work in the most dangerous parts of the world. The very reason a location may be designated often goes hand-in-hand with the humanitarian requirements of a failed state. I seek reassurance from my noble friend the Minister that, provided there is stringent verification of the humanitarian nature of the work, the Government would consider the kind of pre-registration used in Denmark, mentioned by the noble Lord, Lord Anderson, this evening, or consider the suggestion made by the noble Baroness, Lady Hamwee, of pre-authorisation for those who work in NGOs, journalism or other fields where we need to ensure that British subjects are able to go into dangerous areas of the world.

Finally, I shall deal with Clause 19, on Prevent. I have listened very carefully to the noble Lord, Lord Stunell, and the noble Baroness, Lady Howe, as well as my noble friends Lady Warsi and Lady Barran. Of the four pillars of the Contest strategy, the effectiveness of Prevent is always the most difficult to measure. This has led to regular and some well-founded public criticism of Prevent, and an amplification of publicly embarrassing cases. It is also clear, as my noble friend Lady Warsi told the House, that the Prevent strategy has failed to engender confidence in many of the communities with which it was originally suggested it would build cohesion, specifically our Muslim communities. But we need to keep this criticism in context. As my noble friend Lady Barran intimated, in 2016-17 there were no fewer than 6,033 referrals through Prevent, 20% of which made it to a Channel panel. That is over 1,000 vulnerable people, while 300—as the noble Lord, Lord Stunell, said—were able to receive further Channel support after that referral.

At the same time, some 2,700 were signposted to alternative services, mostly in education. That suggests to me that there is a government pathway that is providing, as my noble friend Lady Barran suggested, safeguarding to very vulnerable, often young, people in this country. I would be very suspicious and concerned if we were to undermine that process in any way before we were clear that internal review and the opportunity to build confidence in communities—using the local government mechanism that will be available, should the Bill pass this House—will allow us to build community cohesion, and allow the Prevent strategy and safeguarding to continue.

I appreciate that Prevent is not perfect and has significant hurdles to overcome if it is to properly build confidence with many. But there is an opportunity, and I hope the Minister will take it to ensure that the priority of reviews within the Home Office is building confidence in Prevent among communities across the UK.

It is also worth emphasising and dealing with the perception that Prevent is there to deal only with Islamic extremism. An increasing stream of Prevent's work deals with right-wing extremism, often directed at Muslim communities. We cannot allow that to be forgotten as we move forward.

Lord Tebbit: What is this right-wing extremism? Is it people who want to reduce taxes and have smaller government and greater liberty?

Lord McInnes of Kilwinning: I thank my noble friend for his intervention. I refer to the 1,000 cases out of the 6,000 in 2016-17 that the Home Office report identified as providing a channel for those with extreme right-wing views that could lead to terrorism.

I therefore hope that the Minister will be able to reassure me that the focus of building public confidence will be a core element of continuing internal review.

The Bill protects the freedoms and liberties we all enjoy while fulfilling the state's responsibility to protect all our citizens from harm. The Government must continue to do all they can to ensure that we have a flexible and fit-for-purpose framework that our security services may work within, keeping ahead of those who wish to cause harm. I look forward to the Bill's progress through your Lordships' House.

8.45 pm

Lord Hogan-Howe (CB): My Lords, I support the intentions of the Bill. I will say a little about the context that has not already been covered by the many speeches we have heard today, and will then say little about three of the clauses that have been mentioned. Before that, I will respond to the excellent speeches of the noble and learned Lord, Lord Garnier, and the noble Lord, Lord Tyrie, both of which were informed and entertaining. The noble Lord, Lord Tyrie, who is not here at the moment, referred at the end of his speech to extradition cases. Although he talked about three of the inquiries that have taken place, he did not refer to one police investigation which delayed the conclusion of the first inquiry. Should there ever be a judge-led inquiry, as he would prefer, I hope that the Belhaj case that the Crown Prosecution Service decided not to pursue will be made available to that inquiry, as it would provide vital information that would help inform any future decisions in that area.

Secondly, the noble Baroness, Lady Warsi, has concerns about Prevent. I do not particularly share those, but I agree with her that cohesion and integration are a vital

element in preventing terrorism in the future. Usually we see two elements where we get radicalisation: a lack of integration and Middle East foreign policy. Those two things tend to repeat time and time again. This is not necessarily my view of Prevent, but minority communities have become so concerned about it, and it is a strong thing, not a weak thing, to review something. The time has come to at least look at it and perhaps move on. It has achieved a lot but may yet achieve more if we are able to be flexible.

We are still reaping the effects of two civil wars which started more than seven years ago: one in Syria in 2011 and the other in Iraq a few years later. At least 12,000 people travelled from Europe to fight, particularly in Syria but also in Iraq. We know that at least 15% of the 900 UK people who went died, and that about 55% of them have returned. Some went for humanitarian purposes and some to fight. We have seen the effects of that terrorism on the streets of Brussels, Nice, Paris and, sadly and more recently, London. The next phase of our fight against terrorism is now evolving. I suggest that the Bill is a good time for us to reflect on our preparations for that future.

It will have three distinct elements that we need to plan to combat. The first is the potential for those foreign fighters to return. They are brutalised, and dangerous because of their training and their motives but also because they are now in contact with a network of other terrorists, and they may still perpetuate conspiracies. The second is the release in the coming years, and even now, of the first wave of prisoners convicted of terrorist offences during the last five to seven years. Sometimes they were convicted of other criminal offences, because, although we believed that they had a terrorist motive, we could convict them only of a criminal offence.

In prison they met people called criminals. Many of the people who we are suspicious of and worried about do not have a criminal background. That is of great benefit, because it means that they do not have access to organised criminals, who are the means by which criminals generally get hold of firearms. They have now met a lot of people in prison, and on their release they will still have those associations, along with the people they met in prison who may have become radicalised.

Finally, the terrorists will have learned from the first series of prosecutions, because the prosecutor reveals the tactics by which they were caught, and that means that they will adapt. We see that with various generations of terrorists, who adapt their tactics to meet their failures, as they see them, when successful prosecutions occur.

I will not repeat the numbers we have already heard for what I always think of as the pyramid of doom: the 20,000 subjects of interest, the 3,000 subjects of current interest, and, as we heard from the noble Baroness, Lady Manningham-Buller, the 500 security service operations. There are a further 600 counterterrorist police operations, so that is over 1,000 live operations dealing with this threat.

The point I am supporting is that it is clearly fair to say that we have a serious threat now, as described in the threat assessment, but the numbers alone are concerning. It is a real threat that we must all think about. It is, of course, evolving, and the vectors through which the threat operates are evolving too. We need to respond in a proportionate and incremental way; I would argue that, in legislative terms, the UK has responded incrementally. We have not seen the mistakes that, sadly, those with more experience of terrorism in Northern Ireland saw, when general internment caused more problems than it solved. We should approach the problem incrementally and see whether we can adapt; then, if we need to legislate, let us legislate to the problem, not use generic legislation. We need always to keep a majority in our society—and our minority communities in particular—on side.

The question is: if the threat has evolved in a way that requires new legislation, what is it that we are trying to address? The simplicity and volatility of the threat require us to intervene earlier to protect the public, individuals and groups. We need to make sure that a process that goes from planning to attack in a matter of hours is interrupted quickly. Also, offences previously considered peripheral and minor are now seen as indicative of a volatile, unpredictable actor. We do not want to wait for high-level offences before taking action, given how rapidly that threat can escalate; we need lasting disruptive impact and control of offenders, which is where lengthier prison sentences can have an impact.

The noble Lord, Lord Marks, is not in his place, but I agreed with a lot of what he said; the tests he applied were sensible. I agreed with an awful lot, but one of the reasons he gave for not extending sentences, if I understood him correctly, was that our prisons are already full and therefore we cannot get more prisoners in. If that is the case, we none the less ought always to find room for terrorists, even if that means excluding other people. In fact, the prison population is starting to drop now—albeit, I would argue, not enough, but we must always find space for terrorists if we consider that they are committing serious offences.

We must also think about technological changes; a significant amount of our coverage of people involved in terrorism concerns their online persona and methods of communication. As we have heard, it is 20 years since legislation set out the various ways in which we can monitor that technology. Particularly in the streaming area, this is a good time to make sure that we can monitor in the way that we need to, and prove offences. We know that radicalisation is happening in a very powerful and influential way by streaming video. It seems to be an incredibly useful way for people to get over quickly some very dangerous methods of implementing terrorist attacks.

There have been some criticisms of the Bill already and we have heard more of them today; I do not necessarily support them all. In the debates to come, I am sure that improvements will be made forensically to the eventual Act when it is concluded. There is a concern that the Bill will capture innocent or accidental online activity, but none of the proposed offences is absolute, as they are in child sexual exploitation offences. Intent has to be proved. In any event, all cases must pass three tests, including sufficiency of evidence and public interest. I know the noble Baroness, Lady Hamwee,

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was not convinced by the public interest test, but I am; I think it is a thorough test, supplied by an independent prosecutor, with good lawyers in the CPS, and my experience is that they are quite hard to persuade of something I might find blindingly obvious.

Baroness Hamwee: Perhaps I could explain that my concern about the public interest test is that we should not be forced to rely on it; we should get the legislation certain and reliable rather than look to public interest as the mechanism to catch what we have not been able to solve in the legislation.

Lord Hogan-Howe: The noble Baroness did make that point, and I accept it. My third point is that the prosecution has to overcome any reasonable excuse defence. That is the third measure which I think is helpful in reassuring those who might not be persuaded by the first two tests. Only rarely will a single action or statement be a basis for a charge, as we have seen on many occasions. We heard of the Choudary case, which I shall come back to. In that case, it took an awfully long time to prove a criminal offence, and I think that this strikes the right balance between protecting society and protecting the rights of the suspect.

I will mention a couple of clauses which I particularly support. The first is Clause 4. I argued for this measure about two or three years ago and it relates to the concerns of the investigators. I argued that having a designated area is particularly helpful. Investigating an offence that has occurred within a failed state, such as Syria or Iraq, can be particularly difficult. There is no one at the border keeping a clear register of people who have travelled across it, and there is no easy state mechanism for gathering evidence, particularly from number plate recognition, CCTV, hotel records or anything else that you might want to access. That is particularly difficult in a failed state. So saying "Please give me all the evidence to prove that offence" when people return is a particular challenge for investigators.

I accept that we have intelligence, but the distinction between intelligence and evidence is that we can use intelligence to gain evidence but only evidence can be put before a court. So this is an important change. I understand that some amendment might be needed in relation to humanitarian cases, which I do not think anyone is seeking to stop in any way, but I think that it is a particularly helpful development, and certainly I support it. In my view, it should have happened quite some time ago. Of course, it will not capture the people who are presently in Syria or Iraq, but that is not the intention here, and there is a cooling-off period of, I think, one month for future offences.

The second thing is that putting a responsibility on the traveller to explain why they went to a certain place would not be unreasonable. The Foreign Office will usually have issued a travel advice warning and a designated area warning—and finally there is the reasonable excuse defence. Given the threat that we face, these are not unreasonable things to ask of someone who chooses to travel to a war zone and is acting in a potentially treasonable way, as has been suggested in the past.

I also support Clause 1. I will not say a lot more about it, as others have covered it better, but I think that we have to capture the Choudary-type offence. Clever interlocutors or demagogues will adapt to the latest movement of the law and we have to adapt with them. They will always be clever and try to find a new way round it, so that we have to adapt. Although not the only one, Choudary was an example of where, no matter how hard the security services tried, they could not persuade the prosecutor that they had a case. I do not think that there was a lack of evidence; the law was not helpful and did not allow something that we all agreed was wrong to be prosecuted.

My final points are small ones. The noble Lord, Lord Rosser, mentioned the legislation relating to flags and the fact that removing a flag could cause tension. That is a fair point, but most police officers use discretion when making an arrest or an intervention. The display of a flag can cause tension too. People might remember an incident about four years ago in Parliament Square. When I was in charge of it, the Met was criticised for not taking from someone what appeared to be an ISIS flag. The officers were quite right to decide not to do so. First, the person involved was a seven year-old child and, secondly, the officers could not be absolutely sure that the flag they saw with Arabic writing on it was in fact a proscribed flag. They made a perfectly reasonable decision based on discretion. We expect that of officers and I do not see this as a particular problem.

I hesitate to make my final point because it concerns resources—although the noble Lord, Lord West, raises these points, so I do not see any reason why I cannot. I entirely accept that the Government have supported the police and the security services by maintaining resourcing for counterterrorism policing. That is a fair point and there is no argument about it. However, when you lose 20,000 police officers and probably 10,000 police community support officers, it is a real challenge. There are other things as well, but two-thirds of Security Service leads come from community contacts. That comes through neighbourhood policing, and that is the first thing to go when you lose 20,000 cops. So it is an important point and it needs to be considered.

Finally, I remind the House that the threat remains severe and is evolving. The society that we live in has progressed since the Terrorism Act 2000 and this Bill is a reasonable response. It should command the support of the majority and minority communities and, I argue, of this House.

9.00 pm

Lord Bethell (Con): My Lords, I would like to start by saying what a memorable pair of maiden speeches they were. I am a newcomer, so I can say—quite literally—they were the best I have ever heard, a real showcase of two great parliamentary careers, and I welcome them both. I would also like to thank the Minister, who did an excellent job of capturing the essence of the dilemma facing us. How do we protect public security while simultaneously safeguarding civil liberties, and at a time when technology is changing very quickly?

My noble friend Lady Warsi and the noble Lord, Lord Ahmed expressed very well the challenge to the Muslim community in the UK and the noble Lord, Lord Hogan-Howe, talked very interestingly about the strategic challenge the police face. I want to come at it from a different direction and declare an interest. I am a founder of a campaign against neo-Nazi fascist and racist extremism, sometimes called far-right extremism, but we will be careful about that epithet. I would like to give the perspective of someone who has worked as a volunteer on the front line against the threat of that kind of extremism, against the kind of people who spend their time online trying to recruit, foster hate and agitate for violence. I ran a campaign 10 years ago to challenge the distasteful and disruptive politics of that kind of extremism. It brought me face to face with supremacists, neo-Nazis and agitators for terror. I spent a lot of time personally rebutting and challenging these keyboard warriors, and have some first-hand experience of how that kind of online extremist propaganda is deliberately calculated to foment civic rage and acts of violence. I came to realise that from a legal and technical point of view, we are really struggling to keep up. Many of the activists of the extreme far-right are thoughtful, systematic strategists who study the law, network technology and human psychology deliberately to create turmoil in our society and to groom individuals into their ideology and potentially into acts of criminality.

I went into this enterprise keen to preserve democratic values and free speech, but came to understand that our laws need to be updated. With some regret, I realised it was necessary to prosecute those who, through their words, images and videos, were spreading hate, and to counter the advantage they had through modern technology. I wrote a report 10 years ago, *A Shadow over Democracy*, which projected a lot of our fears at the time. I am concerned that those predictions have come true. I remember earlier this year Mark Rowley, the outgoing Assistant Commissioner of the Metropolitan Police, warning about four foiled right-wing terrorist attacks, the potency of leaders like Tommy Robinson, 24% of Channel panel referrals earlier this year being from extremist groups at the neo-Nazi end of the scale, and this awful interdependent ratchet between Islamist terrorism and far-right terrorism that we need to try to break. The internet has played a central role in these developments. It has provided these groups with a network to spread their hate, to leap borders, to raise money to recruit people and to circumvent the societal norms and laws around incitement to hate and violence. I keep a watchful eye on what is happening in Europe and America, and fear we may be looking at an increase in this area. It is for that reason I welcome this Bill, and in particular Clause 1, which makes reckless statements of support for proscribed organisations illegal. I took on board what the noble Lord, Lord Marks, said—I thought he put it very well—but from my experience, it feels like we need to tighten up the law in this area.

I welcome Clause 3, which tightens up the law around streaming and downloading materials useful to committing or preparing an act of terrorism. I have seen how individuals have been inspired by words and videos to perform acts of violence. However, I was one of those researchers who clicked on these videos a lot, and I do not want to be captured by this law. Therefore, I urge the Minister to stretch every sinew to reassure people like me that we have a reasonable excuse and that this measure will not somehow be lost because of that. The noble Baroness, Lady Hamwee, made very good points on that.

Lastly, I welcome Clause 5, which strengthens the Terrorism Act 2006 and measures concerning the dissemination of material that might encourage people to commit acts of terrorism. Ten years ago, we were warning that self-radicalised, lone wolf, white-supremacist terrorists were a big threat, but it seemed distant and unlikely. However, since then, we have seen Anders Breivik, the Norwegian far-right terrorist, Darren Osborne, the Finsbury Park mosque attacker, and Thomas Mair, the far-right terrorist who killed Jo Cox. In that context, Clause 5 seems both proportionate and timely.

The one nudge I would give the Minister concerns the culpability of the distribution network—the tech giants who own the networks. It is obviously beyond the ambit of this Bill to cover that, but I know that the DCMS is looking at its White Paper and at potential legislation in this area. I urge the Minister please to look at that. A lot has been done, I know, but a lot more needs to be done.

9.06 pm

Lord Paddick (LD): My Lords, this has been an interesting and well informed debate. We also had the joy of listening to two excellent maiden speeches. While listening to the noble and learned Lord, Lord Garnier, I wrote down the words, "Amusing and informative". Unlike during his previous maiden speech, noble Lords were riveted by what he had to say. I am sure the noble and learned Lord will prove that he has his uses in this House. "Generous and thoughtful" is what I wrote while listening to the speech from the noble Lord, Lord Tyrie. His electoral record in Chichester speaks volumes about the esteem in which he is held generally. Judging by what he said this evening, I am in no doubt that he will be fearless in his future contributions in the House. I also thank the Minister for comprehensively introducing the Bill.

I pay tribute to the police and the security services. During consideration of previous legislation, I had the privilege of going both to GCHQ and to the security services headquarters. I was impressed not only by the capability of those working in the services but by their integrity. The noble Lord, Lord Hogan-Howe, and others talked about the numbers involved—the number of suspects and the number of operations going on—which just goes to prove how successful the police and the security services have been, despite the tragic events that we have seen in recent years.

I am not wrong in saying that there has been a general consensus, on all sides of the House, that the legislation—whatever it ends up as—needs to pass the test of being necessary and proportionate. The noble Lord, Lord King of Bridgwater, the noble Baroness, Lady Howe of Idlicote, and even the noble Baroness, Lady Manningham-Buller, all suggested that that was

[LORD PADDICK]
necessary. There were perhaps two notable exceptions to that consensus, as that was not something that the noble Lords, Lord Blair of Boughton and Lord Tebbit, would support.

I say to the noble Lord, Lord Tebbit, in particular that I was the police spokesman after the bombings on 7 July 2005. I was in this House when the terrorist incident happened in which one of our police colleagues was killed. I was at home, a 10-minute walk away from London Bridge, when that attack happened. That is not the first-hand, tragic experience that the noble Lord has had, and I completely understand that his experience has deeply affected him. We should not lose sight of the impact that these incidents have had on the victims.

So there is a consensus, generally. Clearly, as the noble Lord, Lord King, said, there may be some differences of opinion as to what is necessary and what is proportionate. Obviously, we accept that this legislation has already been through the other place. But, as the noble Lord, Lord McInnes of Kilwinning, said, some in the other place said that they agreed to the legislation being passed subject to it receiving scrutiny in this House, and that is clearly what we must do.

We on these Benches will support any necessary and proportionate measure that makes the United Kingdom safer or will help defeat terrorism, but we will not support measures that we consider to be disproportionate and counterproductive. Colleagues on these Benches, particularly my noble friend Lady Hamwee, highlighted evidence from the Joint Committee on Human Rights—concerns that not only we share but the current Independent Reviewer of Terrorism Legislation, Max Hill, also shares. We offer a similar view to his. There are some good, pragmatic measures in the Bill, but there are others that go too far.

As the noble Baroness, Lady Jones of Moulsecoomb, suggested, only in the most extreme cases should the police be given such wide discretion that they can arrest someone engaged in potentially completely innocent activity where the person arrested has to rely on a reasonable excuse defence. Having a reasonable excuse defence in legislation is no protection from an innocent person being arrested and potentially charged.

I echo the concerns of the noble Baroness, Lady Warsi, and the right reverend Prelate the Bishop of Newcastle. If I understand my noble friend Lord Thomas of Gresford correctly, with "reckless", either it is an objective definition of reckless, in which case we are into the realms of people being arrested for what they think or simply for expressing their view, or we are looking at a subjective definition of reckless, which is what the current law says. In that case, the provision is superfluous to what is already in existing legislation. Clearly, we need to consider these issues carefully.

Similarly, in terms of other provisions in the Bill, it is not too difficult to think of circumstances where a teenager innocently takes a selfie in a mate's bedroom not realising that there is an ISIS flag on the wall behind him and posts that photograph on Facebook. The next thing, that individual is in police custody—a completely innocent action that results in them being arrested.

Under this Bill, it would also be an offence to click on a page on the internet that has,

"information of a kind likely to be useful to a person committing or preparing an act of terrorism".

Just one attempt to look at the document could result in that individual being arrested, with a potential term of imprisonment not exceeding 15 years. The Minister said that previous legislation covered only situations where documents were downloaded and now we have a situation where people are streaming or simply just looking at documents. Not too long ago, we in this House considered at length internet connection records. Surely that sort of thing will provide the necessary evidence, even if people are looking at or streaming information rather than downloading documents. There is a lot to be considered here in terms of whether the legislation is necessary or whether it goes too far. Of course, it was only at the last minute that that particular provision about looking at things on the internet was changed from being one where someone looks at a page on the internet, goes back to it and goes back to it again before they can be convicted to being a one-click offence.

The other last-minute provision that we have serious concerns about is the Secretary of State designating areas overseas as being illegal for UK citizens or residents to travel to. It could become illegal for a Syrian refugee who is resident in the UK but whose family still lives in Syria to visit them, even though his mother or father could be dying. Again, the Government will say that there is the "reasonable excuse" defence, but how sick does your mother have to be before it is considered reasonable for you to travel to a designated area? There would be no reason in law why you should not be arrested and charged, whatever the circumstances. The Government will say that the police are not going to arrest innocent people, but the history of policing is littered with cases of innocent people being wrongly arrested where legislation has been drawn too broadly. Sometimes they have even been charged and wrongly imprisoned.

Surely there must be a way for academic researchers to get permission in advance in order to look at offending pages on the internet, or that grieving family members or humanitarian workers can get permission to visit these areas in advance. As my noble friends Lady Hamwee and Lord Thomas of Gresford said, should there not be an opportunity to get the "reasonable excuse" defence in first?

Clearly, offences should carry a penalty that both deters and keeps innocent people safe, but sentence inflation, as suggested in this Bill, will simply add to the crisis in the Prison Service, as my noble friend Lord Marks said. Contrary to what the noble Lord, Lord Hogan-Howe, said, this is not about the fact that prisons are full and therefore we should not put terrorists in prison. This is about the difference between prisons being a place where people with extremist views can be rehabilitated and prisons being a place where radicalisation can become endemic because of overcrowding and the lack of ability of prison staff to carry out any sort of

rehabilitation. Surely a smaller prison population would be better, in that we know that prisons are places where people, being at their most vulnerable, are more easily radicalised. Keeping people in prison for longer periods of time surely gives more opportunity for that to take place.

As many noble Lords have said, in some communities there is deep suspicion about Prevent, and along with Independent Reviewers of Terrorism Legislation, the noble Lord, Lord Ramsbotham, and the noble Baroness, Lady Warsi, we support not only an independent review of Prevent but a recasting of the programme with a much more community-based approach that is incorporated into other safeguarding functions. Those at risk of being radicalised are also in danger of being exploited sexually or being drawn into criminal gangs. Prevent should be part of a broader safeguarding process rather than people being potentially stigmatised as a result.

I have to say that there was a bit of conflict between what my noble friend said and what the noble Baroness, Lady Barran, said in terms of the statistics around referrals to Channel panels. On one reading, it would seem that only a small proportion of people who are referred are actually considered to be at risk of being radicalised, while on another reading it seems to be a rather higher proportion. Again, we need to consider those issues very carefully.

Finally, there is the extension of Schedule 7. We agree with the former Independent Reviewer of Terrorism Legislation, the noble Lord, Lord Anderson of Ipswich, that Schedule 7 powers and the powers in this Bill should be limited to those who are reasonably suspected of being involved in the commission, preparation and instigation of acts of terrorism.

Lord Anderson of Ipswich: On a point of order, I have always accepted that the Schedule 7 power to stop should be exercisable without the need for reasonable suspicion. I said that some higher threshold should perhaps be required for some ancillary powers, for example those to detain and examine electronic devices.

Lord Paddick: I am grateful to the noble Lord, but the fact is that at the moment, if you are crossing the UK border, you can have your mobile device or computer seized and examined even without any reasonable suspicion. Extending that to those who are now engaged in hostile activity would seem to make this issue potentially worse.

I understand that the Bill is a response to the Prime Minister promising to harden the country's defences against all forms of hostile state activity following the attempted assassination of the Skripals, but can the Minister confirm whether that was an act of terrorism covered by the existing Schedule 7?

As I have said, we on these Benches will support any reasonable and proportionate response that makes this country of ours safer. However, we believe that large parts of the Bill are unreasonable, disproportionate and could potentially make us less safe, although we look forward to being convinced otherwise.

Finally, I completely agree with the noble Baroness, Lady Warsi, on the Government's disengagement with Muslim organisations. Individual members of those communities may have said things that they now regret, but as a result the Government refuse to engage at all with those communities. At the end of the day, a former head of police counterterrorism said that the police and security services alone will not combat terrorism, but organisations working closely with communities will defeat terrorism. If communities are to work with us to defeat terrorism, we need to engage with them.

9.22 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, the first duty of a Government is to keep their citizens safe and have legislation on the statute book that gives powers to the appropriate authorities to keep people safe. I will always support the work of the Government in this regard. That is not to say that I will not question and probe them and seek to amend legislation when we believe that they are not striking the right balance. That is the point of our being here: to make legislation better and more effective; to fully understand the Government's intentions; and to avoid as far as possible the problems caused by unintended consequences —a point made earlier by the right reverend Prelate the Bishop of Newcastle.

The noble Lord, Lord Anderson of Ipswich, speaks with great knowledge and experience of these matters and the House will benefit enormously from his contributions. I hope the Minister will answer the points he made.

It would not be right to respond to a debate on counterterrorism and border security without putting on record our thanks to and gratitude for the members of the security services and the police who have done so much to keep us safe, as well as those of the other emergency services, such as the fire brigade and the ambulance service, who are there when they are needed. They save people's lives, as do NHS staff—not only doctors and nurses but the other healthcare professionals and ancillary staff who work together to deliver the services we all rely on, particularly in times of emergency.

We have seen terrorism on our streets too many times, most recently on Westminster Bridge and at Carriage Gates, at Manchester Arena, London Bridge and Borough Market, and at Parsons Green. There were also the terrible events in Salisbury—the poisoning of Sergei and Yulia Skripal, then the poisoning of Dawn Sturgess and Charlie Rowley on 30 June, leading to the death of Dawn Sturgess on 8 July. I express my sympathy to all victims of these terrorist incidents and their families. This is very real and we are lucky that many more plots and plans have been prevented, as the noble Baroness, Lady Williams of Trafford, mentioned in opening the debate. The noble Lord, Lord King of Bridgwater, set out in his contribution the number of offences and convictions and the potential terrorist operations that have been prevented. We thank all those heroes for their bravery and professionalism; they were there when we needed them to keep us safe.

The noble Lord, Lord Tebbit, was right to remind us of the names of parliamentary colleagues who lost their lives and were murdered by terrorists. I would add the name of Jo Cox, MP for Batley and Spen, who was murdered by a terrorist with links to the far right

[Lord Kennedy of Southwark]
in her constituency on 16 June 2016. The terrorist shouted "Britain First" as he stabbed her to death outside the library in Birstall, where she was due to hold a surgery.

Lord Tebbit: The noble Lord referred to the murder of our parliamentary colleague Jo Cox by a far-right terrorist. He was not a far-right terrorist. He was an unbalanced man who was obsessed with the Nazis, the National Socialist German Workers' Party—a left-wing party.

Lord Kennedy of Southwark: We will have to disagree on that point.

As I said, I support the Bill and will always seek to make a contribution in your Lordships' House that supports the work of those who seek to protect us and to provide constructive opposition to improve legislation before us, as does my noble friend Lord Rosser.

Before we get to the Bill itself, I join other noble Lords in congratulating both noble Lords who made their excellent maiden contributions today. They bring considerable experience from the House of Commons where they served for many years with distinction. The noble and learned Lord, Lord Garnier, served as the Solicitor-General in the first part of the coalition Government. I lived and worked in the east Midlands for many years and, although I am a Londoner, I have much affection for my time there and in Leicestershire. I know the noble and learned Lord's former constituency very well.

The noble Lord, Lord Tyrie, was the formidable chair of the Treasury Select Committee for the last seven years of his time in the House of Commons, having succeeded my noble friend Lord McFall to that position. In a previous life some years ago I appeared before a House of Commons committee. It was a scary experience. I am very pleased that the noble Lord was not a member of that committee; I would have been very worried about his forensic questioning. I am now worried about some forensic interventions in future debates, but I know that we all look forward to both noble Lords' contributions in this House, which they will make many times.

We can support the Bill in general and will seek to make improvements during its passage through this House, building on issues raised in the other place and in today' debate. The Bill is in two parts, with the first making changes to the law following reviews by the Government of their counterterrorism strategy and of counterterrorism legislation in force, while Part 2 seeks to provide new powers in respect of the detention and questioning of people at ports and border controls suspected of being involved in hostile acts on behalf of and in the interests of another state outside the United Kingdom.

As my noble friend Lord Rosser pointed out, a number of amendments to the Bill were tabled fairly late in the day in the Commons and were added with little scrutiny. Those amendments in particular will require detailed examination by the House. There are Members on all Benches, many of whom have spoken today, who are expert in providing scrutiny and challenge. In particular, I refer to the amendments made to the Bill in the other place covering entering and remaining in a designated area, the publication of images, obtaining or viewing material over the internet, increases in maximum sentences and extended sentences for terrorism offences.

My noble friend Lord Rosser outlined concerns about proportionality, particularly arising from amendments introduced in the House of Commons. The noble Lord, Lord Marks of Henley-on-Thames, drew out some contradictions in the Bill that will need to be examined further. The noble Lord, Lord Janvrin, made a very important point about people being radicalised in prison. I hope that the noble Baroness, Lady Williams of Trafford, will address that in her reply. That is not to say that we do not agree with the proposals but they need proper scrutiny, which they have not received so far.

Legitimate concerns have been raised by Bond, the UK network for organisations working in international development, humanitarian aid and peacebuilding. Can the noble Baroness tell us what the protections for aid workers in high-risk jurisdictions are? She may not think that these proposals pose any risk to them, but that view is not shared by everyone: we need to address the legitimate concerns raised by NGOs in this regard.

It would also be useful if the noble Baroness addressed the protection afforded by "reasonable excuse". Is she really satisfied that it provides protection to mitigate the impact on individuals? The wider point was made about banks and other financial institutions taking derisking measures such as stopping bank payments and closing the bank accounts of NGOs. Journalists and foreign correspondents of UK news organisations can sometimes find themselves in very difficult and dangerous places. What they find and report on is vital, shining a light on those individuals, organisations and Governments, including dictatorships, who work in the dark, who abuse, oppress, terrorise and murder people, and who do not want their activities to be widely reported on. These activities can be against their own citizens or citizens of another country.

I made the point earlier about unintended consequences of legislation. We must be very mindful of that during the passage of the Bill, which I hope the whole House can see could have far-reaching effects on both international aid and journalism if not handled properly. I very much support the protection of press freedom and journalistic sources, as I support the victims of press abuse and their right to proper redress. Again, it will be important to clarify the intention of some of the clauses so that legitimate investigative journalism and reporting is not caught up and criminalised. It may be that, through regulation and guidance, protections will be sufficiently strong, but this is an important area for our deliberations.

The noble Baroness, Lady Warsi, made a powerful speech which the Government would be wise to listen to carefully. Getting the balance right on this legislation will be crucial. I was very sorry to hear about the abuse the noble Baroness has received on social media, which I condemn. The internet and social media is a wonderful thing and can enrich our lives, but the

darker side and the abuse must be stopped. The Government really have to address that issue separately from the Bill.

Of course, we fully understand that the Government have to deal with the issue of foreign fighters returning from abroad, but any suggestion of updating and using the concept of treason, a law dating from 1351 and not used since 1945, is misplaced. There are other, more appropriate means of addressing these issues. I also think that we undermine, not uphold, the rule of law by removing the right to private legal advice. My honourable friend in the other place, Nick Thomas-Symonds MP, reminded us that the Appeal Court upheld this principle recently in the case of the Serious Fraud Office v Eurasian Natural Resources Corporation. Lawyers are subject to professional standards and it is right that they are. Illegal activities should be dealt with appropriately, but we should not lose the principle of being able to seek advice from a lawyer in private. Proposals in the Bill seek to change that, and the reasons given are that the person in question may want to contact someone in order to alert them that they have been stopped at a border crossing, or that a lawyer would not adhere to proper professional standards and would pass information on or would leak information inadvertently. There is a better solution, which is to establish a panel of lawyers, subject to proper rules and regulations, who would be able to give legal advice. The advice would remain private, retaining an important legal principle but also safeguarding against a person misusing the right to seek advice from a lawyer in private.

My noble friend Lord Rosser referred to the European arrest warrant and the important role it plays in bringing suspects quickly into the criminal justice system. We need a deal to secure the European arrest warrant and it will be a disaster if this cannot be assured. Criminals will be the only beneficiaries. It is worth noting that the Government sought a European arrest warrant against the suspects in the Skripal incident.

I fully endorse the comments of the noble Lord, Lord Kirkhope of Harrogate: there must not be even one hour's gap in the work of sharing information with other European partners, as to allow this will benefit only the terrorist who is seeking to harm our country, citizens and residents.

The noble Baroness, Lady Manningham-Buller, made an important point about getting the balance right and the importance of co-operation with our partners. I accept the point she made about the pace and scale of operations and the need to plug a number of gaps in our legislation to address certain issues.

My noble friend Lord Rosser spoke about the Prevent programme and I fully endorse his comments.

In conclusion, this is an important Bill covering many serious issues for this House to consider over the coming period. I look forward to working with others to improve what is before the House today and to send a much better Bill back to the other place for its agreement. With that in mind, I hope the Government will continue to work in the consensual manner they have demonstrated to date.

9.36 pm

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I thank all noble Lords who have taken part in this very serious debate. We should never forget the nature of the issues we are discussing. Contributions throughout the debate have reminded us just what we are dealing with. I echo the tributes paid to not just the police but the emergency services, who dealt so bravely with the terrorist threats we faced last year, and to my noble friend Lord Tebbit, who spoke not only as a victim of terrorism but for the victims who can no longer speak.

It was particularly pleasing to hear the two maiden speeches. When my noble and learned friend Lord Garnier told the House that he had made his maiden speech in the middle of the night, I did not know whether he had actually engineered that because I arranged for my maiden speech to be in the Moses Room so that not many people would hear it. He brings to this House many years of experience practising at the Bar and of course was Solicitor-General for two years. Drawing on his experiences, he has given us some valuable insights into the provisions in the Bill, particularly those relating to the changes to the criminal law and sentencing. We also heard from the noble Lord, Lord Tyrie. I am glad he is not "Lord Tyrie of Tyrie, Tyrie", because that might be a bit of a mouthful. But I know he will hold the Government to account in this House with the same vigour that he showed during his 20 distinguished years in the House of Commons, including seven years at the chair of the Treasury Select Committee. I note that one of the accolades he earned in that time was,

"The most powerful backbencher in the House of Commons",

so it was with some trepidation that I listened to his speech, but I was very interested in some of the things he said and I look forward to further discussions with him.

The many other contributors to the debate demonstrated yet again the considerable experience that the Members of your Lordships' House bring to bear when scrutinising legislation such as this. I am sure that, given the length and breadth of the debate, noble Lords will appreciate that I cannot possibly answer every single question but, in addition to responding to the debate, I will endeavour to write a fulsome letter, which I will place in the Library. We have had the benefit of insights from a former Independent Reviewer of Terrorism Legislation, a former director-general of the Security Service, two former Metropolitan Police Commissioners, a former Chief Inspector of Prisons, and current members of the Intelligence and Security Committee and the Joint Committee on the National Security Strategy. We are so lucky to have such expertise, while other noble Lords bring to this debate their highly relevant experiences as members of the legal profession or academia.

As this Bill has already been through the House of Commons, where it was given a Third Reading by an overwhelming majority of 376 votes to 10, noble Lords have quite properly approached this debate from the perspective of our role as a revising Chamber. We have heard a range of views, as I have said. It was most

[Baroness Williams of Trafford]
important that the noble Baroness, Lady Manningham-Buller, my noble friends Lord King and Lord Tebbit, and the noble Lords, Lord Blair and Lord Hogan-Howe, reminded us how very real the threat of terrorism is. I welcome the broad measure of support for the Bill from the Opposition Front Bench and from many who spoke from the Cross Benches, while accepting that they, like other noble Lords, will want to scrutinise the detail of the Government's proposals. I think we are in for an interesting Committee stage. I sense from the Liberal Democrats that they might be more sceptical in nature but, even in that, there were expressions of support from noble Lords there. I am sure that they will approach Committee in the same constructive manner that we have heard in the Second Reading speeches.

It is evident that noble Lords will want to probe some of the changes to terrorism offences, the increase in maximum penalties—that was clear—and aspects of the new hostile-state activity ports powers in Schedule 3. I welcome the opportunity to explain these provisions in more detail and respond to some other points that have been raised in the debate.

Regarding Clause 1, "Expressions of support for a proscribed organisation", and the concept that these provisions might be an attack on the freedom of speech, noble Lords are absolutely right to raise that issue. The noble Lords, Lord Marks, Lord Thomas and Lord Ahmed, and the noble Baroness, Lady Jones, expressed concern that the extension of the offence of inviting support for a proscribed organisation would undermine that freedom of speech. The right reverend Prelate the Bishop of Newcastle also spoke about this issue. It is of course right that we uphold the right to freedom of expression, something which we value so highly in this country and is part of our core values. People are free to express any view they wish, even ones which the wider public might find distasteful, as long as they do so within the law and do not harm others. However, we are clear that any groups or individuals that cause harm to our society and promote hatred and division will not be tolerated. This measure is aimed at those who are reckless—"reckless" being quite a well-established word in law—as to whether statements that they make will encourage others to support a proscribed terrorist organisation. That type of activity is very serious. It can have a strong influence on individuals who are vulnerable to radicalisation, as some noble Lords pointed out, and can create a real risk of harm to the public. As such, it is vital that we are able to target those who seek to exploit others and lure them into terrorism, so that they can no longer skirt the fringes of legality—something that noble Lords have talked about extensively today.

Moving to Clause 4, the noble Lords, Lord Rosser and Lord Anderson, my noble friend Lord McInnes and the noble Baroness, Lady Hamwee, raised the designated area offence that it provides for and sought reassurance that it would not apply to those with legitimate reason to travel to a designated area. I can absolutely confirm that the offence as drafted includes a reasonable excuse defence, which will be available to individuals who travel to a designated area solely for a legitimate purpose—such as, as noble Lords have said, to deliver humanitarian aid or journalism, or indeed to attend a family funeral. The police, the CPS and the courts are familiar with this approach, and it works well in other contexts where an offence has a reasonable excuse defence. In practice, such cases are unlikely to come to court as they would not get beyond the police investigation or scrutiny by the CPS, which would be unlikely to conclude that there was a reasonable prospect of securing a conviction. We do not consider it necessary or helpful to take a different approach for this offence. Whether a particular excuse is reasonable will be highly dependent on the facts and circumstances of the individual case and cannot be prescribed in advance in the abstract.

The noble Lords, Lord Janvrin and Lord Hogan-Howe, asked whether the police have the resources to implement the provisions in the Bill. It is of course important that we ensure that counterterrorism policing has the resources needed to deal with the threat we face. That is why the counterterrorism policing budget has gone up by £50 million of entirely new money in 2018-19 to at least £757 million. This follows the £28 million of new money the Government provided in 2017-18 to forces across the country for CT policing to meet costs relating to recent terror attacks. I totally get the point made by the noble Lord, Lord Hogan-Howe, about the pipeline of people required to fulfil those roles.

The noble Baroness, Lady Hamwee, and the noble Lords, Lord Ramsbotham and Lord Anderson, talked about the definition of hostile state activity and questioned whether the definition in Schedule 3 is sufficiently precise. For the purposes of this power, hostile activity has been defined as the "commission, preparation or instigation" of an act that threatens the national security or economic well-being of the UK or is a serious crime,

"carried out for, or on behalf of, a State other the United Kingdom, or … otherwise in the interests of a State other than the United Kingdom".

That may seem broad, but I am afraid that the threat posed to the UK from hostile state activity is wide-ranging and includes espionage, sabotage, coercion, assassination and subversion. Consequently, the definition of hostile activity must necessarily be broad to encompass the range of threats this country faces from nefarious states.

The noble Lord, Lord Bew, talked about Schedule 3 and the creation of a hard border. He pointed to concerns that have been raised in some quarters about how the provisions of Schedule 3 will operate on the Northern Ireland border. As the noble Lord, Lord Rosser, indicated, the issue was raised on Report in the Commons and the Minister for Security has written to Tony Lloyd on this question. I will make sure that noble Lords receive a copy of that letter rather than me repeating it this evening.

My noble friend Lord Faulks and the noble Lords, Lord Thomas of Gresford, Lord Kirkhope of Harrogate and Lord Kennedy, raised detainees' right to consult their lawyer in private in the context of Schedule 3. In exceptional circumstances there may be a need for a more senior police officer to restrict that right by requiring that the consultation take place in the sight and hearing of an officer who has no connection to the detainee's case, for instance, where there are reasonable

grounds to believe that private consultation will result in interference with evidence, gathering of information, injury to another person, alerting others that they are suspected of an indictable offence or hindering the recovery of property obtained by an indictable offence. The aim of the restriction is to disrupt and deter a detainee who seeks to use their right to a solicitor to trigger activity that would lead to those consequences. It could be achieved by the detainee using their solicitor to pass on instructions to a third party by, for example, intimidating the solicitor or using a coded message of which the solicitor is unaware. However, the shadow Security Minister has put forward an alternative proposal for dealing with this issue, and we can explore it further in Committee.

There were a lot of contributions on Prevent, expressing support for aversion to it, or suggesting review of it. In particular the noble Lords, Lord Stunell, Lord Rosser and Lord Ramsbotham, and my noble friend Lady Warsi called for an independent review. Prevent is fundamentally about safeguarding and supporting vulnerable individuals to stop them supporting terrorism or becoming terrorists, regardless of whether that is in support of Islamist, far-right or any other form of terrorism. That point was extremely well made by my noble friends Lady Barran and Lord McInnes. When considered from this perspective, Prevent is working and we do not accept the need for an independent review. It has had a significant impact on stopping people being drawn into terrorism. Indeed, the Commissioner of the Metropolitan Police, Cressida Dick, said recently:

> "There have been hundreds of people who have been turned away from violent extremism by their engagement with Channel and other aspects of Prevent, and that is all positive".

It is clear that those who work to keep us safe from the terrorist threat back Prevent.

The noble Lords, Lord Janvrin, Lord Kennedy and Lord Rosser, and in particular my noble friend Lord Bethell, talked about online harms and ensuring that tech companies are responsible for rapidly taking down terrorist content that is posted online. That point about rapid takedown is very well made. The then Secretary of State for Digital, Culture, Media and Sport announced in May that at the next possible opportunity the Government will bring forward online safety legislation that will capture online terrorist content. We need a comprehensive online safety strategy, not one that tackles specific harms in a piecemeal fashion. That is why the Home Office is working closely with DCMS to publish a White Paper later this Session that will set out proposals for new online safety laws to ensure that the UK is the safest place in the world to be online.

A number of noble Lords, including the noble Lords, Lord Rosser, Lord Kennedy, Lord Marks, Lord Blair and Lord Ramsbotham, and my noble friends Lord King and Lord Kirkhope, talked about co-operation on counterterrorism after Brexit. That is a crucial point and I think that the whole House is in agreement on it. It is something that the Government are absolutely focused on working towards. The government White Paper provides an ambitious and comprehensive vision for our future security relationship with the EU and reinforces the Prime Minister's message that the UK remains unconditionally committed to maintaining Europe's security, both now and after our withdrawal from the EU.

Some interesting points were made about updating the treason laws to reflect what is happening, particularly in foreign states, by my noble friends Lord King, Lord Faulks and Lord Marlesford. We have a comprehensive range of terrorism offences and other powers that the Bill will update for the digital age. That will provide the police and intelligence services with the powers that they need to protect the public from terrorism. We do not consider it necessary to create new treason offences for this purpose, but I know exactly where my noble friends are coming from. The Prime Minister announced on 14 March that the Government will consider the need for new counterespionage powers, including legislation to harden our defences against hostile state activity. Where relevant, treason offences may be considered as part of that work.

A number of noble Lords talked about combating radicalisation in prisons, which is a very good point. I must first point out that those convicted of terrorism offences have already themselves been radicalised, but it is important that we do not exacerbate the problem, as noble Lords said, while defenders are serving their sentences. A joint HM Prisons and Probationary Service and Home Office extremism unit was created in April 2017 to lead the response to extremism and terrorism in prisons and probation. We make every effort to ensure that terrorist offenders are given the best possible chance to rehabilitate while in prison and on probation, and all offenders of extremist or terrorist concern are managed actively as part of a comprehensive counterterrorism case management system.

In conclusion, all sides of the House recognise the real threats that we face, whether from terrorism or the hostile acts of foreign powers. As those threats evolve over time, so must our response. We must ensure that our law enforcement and security agencies have the powers and capabilities that they need to disrupt the activities of those who would do the people of this country harm. The safety and security of those who live in this country must always be our paramount concern, but I recognise that the laws that we create to help ensure such security are a matter of legitimate debate and should rightly be subject to proper scrutiny. In that spirit, I look forward to our further deliberations on the Bill, but it is the Government's firm belief that its provisions are a necessary and proportionate response to the ongoing threats that we face. On that basis, I have no hesitation in commending the Bill to the House.

Bill read a second time and committed to a Committee of the Whole House.

House adjourned at 9.58 pm.

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