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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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House of Lords

Monday 12 November 2018

2.30 pm

Prayers—read by the Lord Bishop of Chelmsford.

Brexit: Government Position

Question

2.37 pm

Asked by ***Lord Dykes***

To ask Her Majesty's Government what statement on Brexit they will present to the next meeting of heads of state or government of the European Union.

Baroness Goldie (Con): My Lords, our position has always been the same. We want to get a deal, as soon as possible, agreed in the autumn. We will continue to work constructively and intensively, together with the EU, to make this happen. Some 95% of the withdrawal agreement is now agreed, with 5% still outstanding on the issue of the backstop. We also have broad agreement on the structure and scope of the future relationship.

Lord Dykes (CB): My Lords, I quote:

"The UK is making a spectacular demonstration of how to make a fool of yourself with the entire world looking on".

Those are the wise words of a leading European journalist writing in the UK press on 6 November. Armed as they are also by the wise words of Jo Johnson, does the Minister not yet grasp the reality that the Government are leading this great country to an unforgettable disaster?

Baroness Goldie: I profoundly disagree with the noble Lord. Against repeated challenges throughout the last two years, the Government have been able consistently to produce evidence of good progress. The 95% to which I referred is not imaginary. A number of your Lordships attended the briefing meeting for Peers last week; it was a very constructive discussion at which we looked at the recent White Paper, and that is a most substantive document. The Government have shown determination and conviction and are straining every fibre with the EU to get an agreement.

Baroness Hayter of Kentish Town (Lab): In wishing the Chief Whip a happy 75th birthday, can we also congratulate him on not having received a resignation from the noble Lord, Lord Callanan, today, despite ministerial resignations being all the rage elsewhere? More seriously, on a day when the former Foreign Secretary calls for a mutiny despite the whole country remembering what a country united can do in the cause of peace, can the Minister confirm that the Government will never allow a no-deal exit which, it is now abundantly clear, would be a complete disaster?

Baroness Goldie: The noble Baroness will be very well aware of the Government's position. We want a deal, and we believe that we can get a deal. That is what we are trying to achieve and are negotiating for with great energy. Neither the UK nor the EU wants a no deal but, as is entirely appropriate and sensible, the Government have made preparations for a no-deal scenario. The noble Baroness will be aware of what those preparations are, and of the various notices that have been issued and the other discussions that have been engaged upon. I was rather struck by her reference to ministerial resignations. If I am correct, at the last count, reportedly, the number of resignations from Jeremy Corbyn's Front Bench has topped 100. I very much hope that the noble Baroness will not be adding to those.

Lord Tugendhat (Con): My Lords, does my noble friend agree that not only has a great deal of progress been made so far but everything hinges on the final details and the neuralgic points, and that until those have been resolved and we know exactly what the Prime Minister is bringing back and exactly what has been agreed, it is quite futile to take up a position and attack the Government on what is as yet not known? Therefore, the best thing to do is to leave Ministers to negotiate and then to form a judgment.

Baroness Goldie: My noble friend undoubtedly speaks with huge authoritative experience and with great wisdom. There were two certainties at the beginning of this process. One was that the negotiations would go to the wire; the other was that not everybody would be content with the progress of the negotiations. However, we are awaiting the outcome and remain very optimistic.

Baroness Smith of Newnham (LD): My Lords, it is rare that I disagree with the noble Lord, Lord Tugendhat, but I fear that on this occasion I have to make an exception. Should the Minister, and indeed the Prime Minister, not recognise that the views of Johnson and Johnson are perhaps accurate—that the Prime Minister has managed to unite remainers and leavers in an understanding that the deal likely to be on offer will be worse than remaining—and that it is time to look again and perhaps conclude that leaving is not really necessary?

Baroness Goldie: The noble Baroness's reference sounds more like an advertisement for toilet products.

Noble Lords: Oh!

Baroness Goldie: I repeat what I said earlier and reaffirm what my noble friend Lord Tugendhat has just said. These are sensitive negotiations. Everyone can see that significant progress has been made—if some people were honest, they would say unexpected progress, but that progress is substantive and real. We are very optimistic that we can get a deal but these are sensitive times and we must be sure that we do nothing to imperil these negotiations.

Lord Tomlinson (Lab): My Lords, does the Minister agree that the noble Lord, Lord Dykes, was somewhat harsh in his Question when you consider that he is talking about the next Heads of State meeting, yet Her Majesty's Government have had to cancel tomorrow's Cabinet meeting because they cannot agree a position to put to it? So Mr Dykes has been too harsh on the Heads of State.

Baroness Goldie: It is Lord Dykes. I thank the noble Lord, Lord Tomlinson, for his question. He might have a crystal ball, which I do not possess. All I can do is reaffirm that the negotiations are live and energetic. People will be aware of how extensive they were yesterday, reaching into the small hours of this morning. These negotiations are happening and we remain very hopeful that there will be a good outcome for the UK.

Lord Cormack (Con): My Lords, at these difficult and delicate moments do we not all, whether we are leavers or remainers—the House knows that I was very sad when the referendum went the way that it did—have an obligation to follow the advice of my noble friend Lord Tugendhat, and should not his strictures apply particularly to members of the Cabinet? They should exercise Cabinet responsibility until a result has been determined and then we can all make up our minds on it.

Baroness Goldie: My noble friend speaks with wisdom, for a great many people. This is a time for hard-headed focus, holding firm, holding our nerve and keeping calm. It also a time for respecting, implementing and demonstrating collective responsibility.

Baroness Ludford (LD): My Lords, is not the Minister being completely disingenuous when she says that 95% has been agreed because the 5%—the Irish backstop and its relationship to the single market and the customs union—is key? It is that which unites the Johnson brothers in agreeing that it would be vassalage to take all the EU rules without any say in them. That is why we need a people's vote for people to reassess their opinions.

Baroness Goldie: In response to the noble Baroness's latter point, I say no we do not. I take the view that we had a vote. Like many, I was disappointed—it was not what I chose as an outcome but it is what happened. In Scotland we have a real sensitivity to referenda and what it means to have a referendum. By golly, I expect the result of a referendum to be respected. That is what the Government are doing. The Government have put forward a very substantive proposal to the EU. I do not agree with the noble Baroness—I think that 95% agreed is excellent news. I do not dispute that the remaining 5% is tough but at the same time the Government are the only ones who have put a workable proposal on the table and that is what we are arguing very determinedly for.

Operation Conifer: Sir Edward Heath

Question

2.46 pm

Asked by ***Lord Lexden***

To ask Her Majesty's Government, further to the reply by Baroness Williams of Trafford on 11 October (HL Deb, col 179), whether they will commission an independent assessment of the seven allegations against Sir Edward Heath left open at the end of Operation Conifer.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, as my noble friend Lord Young of Cookham said in the House on 18 October, the Home Secretary has concluded, after careful consideration, that there are no,

"grounds to justify review or intervention by Government".—[*Official Report*, 18/10/18; col. 566.]

He set out that view in a letter to the noble Lord, Lord Armstrong, on 10 October and a copy has been placed in the Library.

Lord Lexden (Con): Do the Government realise that they are defying the wishes of this House? Not one point has been made in their support during the long series of Questions that have been asked about the injustice done to Sir Edward Heath. Do the Government realise that Prime Ministers occupy a prominent position in history and it is their obligation to help establish the truth about the unsubstantiated allegations that have stained a deceased Prime Minister's reputation, particularly since they subsidised the now discredited Operation Conifer with more than £1 million of taxpayers' money? Finally, do the Government realise that we the living have a duty to this deceased Prime Minister that must not be shirked? We must have an independent inquiry.

Baroness Williams of Trafford: My Lords, I of all people cannot be in any doubt as to the feelings of this House on this matter. I agree that former Prime Minister Sir Edward Heath occupied a prominent position in public life, but I think I have outlined on several occasions why the Government do not feel that they should be the body responsible for carrying out a review. Any review or inquiry, should one be carried out, should be the decision of the PCC.

Lord Thomas of Gresford (LD): My Lords, the Minister will be aware of the Answer of 1 November to my Written Question in which I asked whether any of the 40 complainants in Operation Conifer had applied for compensation under the criminal injuries compensation scheme. The Answer was that:

"The information requested could only be obtained at disproportionate cost".

Does she agree that it is precisely that sort of information that an independent inquiry would find very pertinent in considering the motivation of the complainants?

Baroness Williams of Trafford: The noble Lord is right that an inquiry may well look into such a matter but, as I have just outlined, an inquiry is a matter for the police and crime commissioner.

Lord Campbell-Savours (Lab): My Lords, I understand that the review of Operation Midland cost approximately £200,000. That was a review of Nick's accusations against Sir Edward Heath and others. What does the Civil Service or others estimate it would cost to review

Operation Conifer? If Ministers are not able to give us that figure today—I suspect it is available within the department—can we be assured that we will be given it in a Written Answer?

Baroness Williams of Trafford: It would be hard for me to give the cost of a review of Operation Conifer, given that a review has not been commissioned.

The Countess of Mar (CB): My Lords, several weeks ago I offered to the Minister a contact who has a great deal of information which would entirely refute every one of these seven allegations. Has she made contact with that person?

Baroness Williams of Trafford: My Lords, I am still looking forward to hearing from the noble Countess. If she has sent me an email I have not received it. Perhaps we can catch up on this after this Question.

Lord Howell of Guildford (Con): My Lords, it is not only a question of the opinion of this House—although that is, I hope, valuable and respected; it is also a question of continuity and the web of history. If we allow the slandering of the dead on an unsubstantiated basis to be thrown around and damage our reputation as a nation and how we have been governed, is that not a matter where the Government should use their best offices to put it right? They cannot stand aside on this matter. There must be action.

Baroness Williams of Trafford: In terms of slandering the dead, I am not sure that, legally, the dead can be slandered. However, I am not taking away from the strength of feeling that both my noble friend and the House express in this matter. As I say, there is a route open for an inquiry. There have been several levels of scrutiny of Operation Conifer, and I really can say no more about it.

Lord Morgan (Lab): My Lords, an American political scientist once said that the curse of public life in this country is the curse of secrecy. Is this not a classic example of it? The Government are, in effect, colluding with the police and refusing to divulge evidence. The real victims—if you think about it—are the police, whose spokesman so far has been a tittle-tattling chief constable and not someone who is capable of giving a rational and legal view of this grave and dishonourable situation.

Baroness Williams of Trafford: I totally refute, both from my own and the Government's point of view, that there has been any cloak of secrecy around this. The Home Office has given information to IICSA in the past and there is a clear route for any inquiry. As I say, Operation Conifer has been subject to extensive scrutiny.

First World War Commemoration: Pakistan

Question

2.52 pm

Asked by ***Lord Ahmed***

To ask Her Majesty's Government what plans they have to commemorate the contribution during World War One of people from what is now Pakistan.

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, throughout the centenary the Government have focused on ensuring that communities commemorate the contribution made by men and women from across Africa, Asia, the Caribbean and Europe. Our projects have highlighted the lesser-known stories and voices of servicemen and women whose contribution is rarely acknowledged. The battlefields in France and Belgium saw Muslims, Hindus, Sikhs, Zoroastrians, Jains, Baha'is and people of all faiths and none, fall side by side with their Christian and Jewish comrades on the fields where they fought and died together.

Lord Ahmed (Non-Afl): I thank the noble Lord for his reply. Yesterday we remembered the sacrifice of millions of brave men and women who fought in the Great War to end all wars. One of those brave soldiers—the first recipient of the Victoria Cross—was from south Asia, from Chakwal, Pakistan. Subedar Khudadad Khan was one of the 1.5 million British Indian soldiers, of which 430,000 were Muslims, mainly from what is now Pakistan. Can the noble Lord say how important it is for our children to learn about our shared history and to understand the diversity in the United Kingdom?

Lord Bourne of Aberystwyth: My Lords, the noble Lord is absolutely right about the importance of yesterday and the importance of the contributions of people who were from what is now Pakistan. Subedar Khudadad Khan's VC is commemorated in the doorway of the shared entry for Defra, the Home Office and my own department the Ministry of Housing, Communities and Local Government. It is important to tell the continuing story of the contribution of people from what was the British Empire, then the British Commonwealth and now the Commonwealth. We make sure that people of all heritages in this country are aware of that. It was strongly underlined yesterday, and I hope very much that that continues.

Baroness Warsi (Con): My Lords, I too pay tribute not only to Khudadad Khan, but also to Subedar Shahamad Khan and Subedar Mir Dast, who were also awarded VCs for their contribution, along with others in the Second World War. I think specifically of people like my maternal and paternal grandfathers who both served in the British Indian Army for the freedoms that we all enjoy today. Will my noble friend speak to his colleagues in the Department for Education to ensure that this part of our shared history is included in the curriculum because it is an important aspect of the fight-back against the narrative of those of the far right, who too often try to appropriate the good name of our Armed Forces to peddle their own hate?

Lord Bourne of Aberystwyth: My Lords, my noble friend is right to say that this is very much our shared history and about the three holders of the VC from what is now Pakistan, along with a significant number of others from elsewhere on the subcontinent and the rest of the world. The department has been honouring VC holders 100 years after the VC was awarded, in all

[Lord Bourne of Aberystwyth]
cases throughout the war—the most recent one being just last Friday, 100 years after 6 November when that VC was gained. She is also right to point out the importance of the continuing story. I will ensure that the message is relayed to the Department for Education, which is very much aware of how important it is. As I say, I think that it was underlined graphically yesterday when the all aspects of the nation came together—people from all religions and no religion, and from all races—to commemorate the First World War and the Second World War.

Lord Wallace of Saltaire (LD): My Lords, the Minister will recall that I was on the advisory board for the commemoration of the First World War. Given that education for the younger generation was absolutely one of our objectives, I regret that we did not manage to symbolise more, in the ceremonies and events held at the national level, the links between the role of the British Indian Army and our south Asian population today, a great many of whom are the descendants of people who served in the British Indian Army. Would DCMS take back for further consideration whether in the future the Cenotaph commemoration could be a little more diverse? It seems to be very British and in some ways very white and English. It would be much better if the commemoration reflected the diversity of our history and of the contribution made to our wars.

Lord Bourne of Aberystwyth: My Lords, I am grateful to the noble Lord for the question, although I am not a Minister in DCMS. However, I will ensure that the message goes forth. On the point about diversity, I can speak to that because I personally headed up the effort to ensure broader representation at the Cenotaph. For the first time, we had seven faiths that had been previously been unrepresented, along with humanists: we had representatives of the Baha'is, Coptic Christians, Jains, Mormons, Spiritualists and Zoroastrians. An effort has been made to widen representation. I am sure that lessons will continue to be learned, and I pay tribute to what the noble Lord has done. We are making every effort to make the ceremony more diverse and to ensure that the true nature of what happened is reflected in our commemorations.

Lord Singh of Wimbledon (CB): My Lords, undivided Punjab played a substantial part in the greatest volunteer army in history. One of the reasons that was done was because people were promised a substantial measure of independence following the end of the war. Instead, there was fierce repression under the Rowlatt Act and, following that, in the Jallianwala Bagh massacre of several hundred unarmed civilians. We British are justly known for our sense of fair play and justice. Given that, should we not now make an unequivocal apology to the people of the subcontinent?

Lord Bourne of Aberystwyth: My Lords, now is the time for the country to come together to commemorate the end of the Great War 100 years ago. That is important. As I indicated, people of different religions from what was then undivided India played a significant role; that contribution is readily acknowledged. That is the measure of what we need to do in the light of the country coming together yesterday. Going forward, we must learn lessons from that on the importance of this being reflected in our national education.

Lord Kennedy of Southwark (Lab Co-op): My Lords, it is important that we never forget the horror of war and why those who came before us took up arms in both the First and Second World Wars. It is also important to ensure that history is told accurately. The contribution of Muslims in what was then India and is now Pakistan should have greater prominence. At a time when there are those who want to divide us, trade in fake news and seek to spread misrepresentation of faiths and communities, does the Minister agree that we should work to ensure that the heroic efforts of citizens of different faiths and no faith from the Commonwealth and elsewhere, who stood shoulder to shoulder with the people of this country, should be properly reflected in the reporting of these events? I am sure that the Minister will agree. In particular, could he go back to the Department for Digital, Culture, Media and Sport on the question of arts funding—perhaps we should look there for better funding in future so that our broadcasters can properly reflect what happened in the two World Wars?

Lord Bourne of Aberystwyth: My Lords, I readily agree with the basic sentiment put forward by the noble Lord. We have had many programmes throughout the First World War commemorations, such as the VC paving slabs and Remember Together, which have been very important in bringing the country together. I hope that they will continue and I hope that the VC paving slabs for the First World War commemorations continue for those for the Second World War. It is important that the country comes together and that we learn lessons. That has happened in the past week, as people up and down the country would readily acknowledge.

Legal Aid, Sentencing and Punishment of Offenders Act 2012: Review

Question

3.01 pm

Asked by ***Lord Bach***

To ask Her Majesty's Government when they expect to complete and report on their review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Lord Bach (Lab): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and declare my interest as the police and crime commissioner for Leicester, Leicestershire and Rutland.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, the Government remain committed to publishing the findings of the post-implementation review of LASPO by the end of the year. The evidence-gathering phase of the review concluded in September and we are considering the evidence submitted. During that phase we engaged more than 70 organisations.

This review process also represents an opportunity for the Government to consider what the future of legal support should look like.

Lord Bach: I thank the noble and learned Lord for his reply and commend those in the Ministry of Justice who are carrying out the review for their courtesy and willingness to meet with all interested parties. I thank Lucy Frazer MP personally for meeting with me and members of the Bach Commission, which proposed some sensible changes that the Government could make very quickly. Is the Minister aware that there is a broad consensus among senior judges, practising lawyers, parliamentarians of all colours and none, and many others, that Part 1 of LASPO was a serious mistake that has led to many of our fellow citizens being deprived of access to justice—and if people cannot access justice, why should they in the long run consent to live under the rule of law?

Lord Keen of Elie: My Lords, we are conscious of the importance of access to justice. I thank the noble Lord and those who sat with him on his commission for their contribution to the debate, but I will not anticipate the outcome of a review that will be published by the end of the year.

Viscount Hailsham (Con): My Lords, I no longer practise at the criminal Bar, so I have no present interests to declare—but I know very many people who do, and I can tell my noble and learned friend that there is a real sense of crisis in the criminal Bar. Does my noble and learned friend accept that unless the Government urgently and fully address the anxieties expressed by the Criminal Bar Association—of which I was a member—and articulated fully in the book *The Secret Barrister*, there is a real danger that the independent criminal Bar will cease to exist, which would be a very great loss to the administration of justice in this country?

Lord Keen of Elie: My Lords, of course we have the highest regard for the independent criminal Bar and are concerned to ensure that it is sustained in a suitable way—but, again, I will not anticipate the outcome of the present review.

Lord Marks of Henley-on-Thames (LD): My Lords, nobody is asking the noble and learned Lord to anticipate the review. This is an internal MoJ review, which many regret. However, since it is an internal review, have Ministers told officials conducting it how much could be available to boost the resources for legal aid in view of the mistakes that have been widely acknowledged and, in particular, how much they would be able to spend of the estimated extra savings from LASPO over and above what the Government predicted—currently estimated at about £500 million a year? I asked a similar question on 19 April. May we now have a reply?

Lord Keen of Elie: My Lords, I say again that I am not going to anticipate the outcome of a review that is due to be published before the end of this year.

Lord Howarth of Newport (Lab): My Lords, does the Minister accept that justice delayed is justice denied? Does he also accept that, following the Chancellor's Budget Statement, we are looking at the prospect of justice indefinitely denied, with further real-terms cuts to the already ravaged budget of the Ministry of Justice, continued gross underfunding of the courts and—the most flagrant systemic injustice—the continuation of the Government's scorched-earth policy on legal aid?

Lord Keen of Elie: My Lords, we face economic challenges. I remind the noble Lord opposite that it was the last Labour Prime Minister who announced the end of boom and bust. He did so without consulting either the markets or even the Delphic oracle. One Labour Minister pithily observed as he left government that,

"there is no money left".

The coalition Government had to pick up the pieces of an economy blown to pieces by the last Labour Government and we have been putting it back together. We are doing so responsibly. We are not the cause; we are the cure.

Baroness Deech (CB): My Lords, just three years ago we came together in this country with representatives from the common-law world and the Royal Family to mark Magna Carta and celebrate the rule of law. However, in family law, does the Minister realise that husbands and wives are going to court with one often having legal representation and the other, usually the wife, not, and that judges have to spend their time carrying out the job that barristers should be doing because they cannot be afforded? Is this not an injustice to women? Does he further realise that altruistic, young would-be barristers are being put off going into criminal and family law because they are unable to earn a living, which is destroying social mobility and the rule of law?

Lord Keen of Elie: My Lords, there are challenges facing those who seek to deliver legal services in our country today. We are conscious of that, which is why the review of LASPO has been undertaken. In the context of matrimonial matters, I observe that we have at least introduced a digital portal for undefended divorces, which has been a considerable success. In addition, we have seen a very significant increase in the provision of legal aid in cases involving domestic violence.

Lord Faulks (Con): My Lords, Part 1 of LASPO, referred to by the noble Lord, Lord Bach, covers third-party funding by the state. But there is another source of third-party funding: that is, those who invest in litigation, which is a growing field. It used to be unlawful. Many are concerned that it distorts the whole business of litigation. Can my noble and learned friend the Minister tell me whether this is a matter for consideration, either in this report or generally by the Ministry of Justice, and whether there is not room for more regulation of this area?

Lord Keen of Elie: My Lords, the matter of third-party funding has now become well established and makes a contribution to the delivery of legal services in this country, but it is a matter that is the subject of

[Lord Keen of Elie]
consideration as we go forward. I cannot say that it is directly addressed in the context of the LASPO review that is to be published by the end of the year.

Children Act 1989 (Amendment) (Female Genital Mutilation) Bill [HL]

Report

3.08 pm

Report received.

Counter-Terrorism and Border Security Bill

Committee (3rd Day)

3.09 pm

Relevant documents: 35th Report from the Delegated Powers Committee, 11th Report from the Joint Committee on Human Rights, 14th Report from the Constitution Committee

Clause 15 agreed.

Clause 16: Evidence obtained under port and border control powers

Amendment 42

Moved by ***Lord Paddick***

42: Clause 16, page 20, line 2, after "controls)" insert —

"(a) in paragraph 2(4) leave out "whether or not" and insert "if",

(b) in paragraph 3 at end insert "if he has reasonable grounds for suspecting that the person falls within section 40(1)(b),

(c) "

Lord Paddick (LD): My Lords, Amendment 42 is in my name and that of my noble friend Lord Marks of Henley-on-Thames. I shall also speak to Amendments 46, 64 and 65 in this group. Clause 16 seeks to amend Schedule 7 to the Terrorism Act 2000 on port and border controls, as does our Amendment 42.

Schedule 7 allows a constable, immigration officer or designated customs officer to question anyone entering or leaving the UK at a port in the border area between Northern Ireland and the Republic of Ireland for the purpose of,

"determining whether he appears to be a person falling within section 40(1)(b)",

that is, a person who is or has been concerned in the commission, preparation or instigation of acts of terrorism. The person questioned must give the examining officer any information the officer requests, must prove his identity, declare whether he has any documents of any kind specified by the officer and hand them over on request. The officer can stop anyone, remove them from, and search any ship, aircraft or vehicle they are in, detain them for up to six hours, search them and anything that belongs to them, including a strip search if necessary, seize any property for up to seven days, just to examine it, and make a copy of anything, including the contents of mobile phone and computers. In addition:

"An examining officer may exercise his powers under this paragraph whether or not he has grounds for suspecting that a person falls within section 40(1)(b)".

Representations have been made to me that completely innocent people are being detained for hours and missing flights because of powers exercised under Schedule 7, with no compensation payable. Bearing in mind the extent of the powers Schedule 7 confers, our amendment deletes "whether or not" and inserts "if", so that Schedule 7(2)(4) of the 2000 Act would read: "An examining officer may exercise his powers under this paragraph if he has grounds for suspecting that a person falls with section 40(1)(b)"—that is, that the person is a terrorist.

The amendment similarly amends the schedule by adding to the power of an examining officer to question a person in the border area for the purpose of determining whether his presence in the area is connected with entering or leaving Northern Ireland,

"if he has reasonable grounds for believing the person falls within section 40(1)(b)"—

again, if there are reasonable grounds for believing that the person is a terrorist. Other random stop-and-search powers under counterterrorism legislation which are far less intrusive have been repealed—namely, Section 44 of the Terrorism Act 2000—leaving Section 43 of that Act, which requires reasonable suspicion before an intervention can take place. This amendment brings Schedule 7 into line with the other powers under the Terrorism Act.

Amendment 46 similarly introduces a reasonable suspicion requirement to the powers to stop and search a person or vehicle and detain a person under Schedule 7 of the 2000 Act. We support Amendments 64 and 65, in the name of my noble friend Lady Hamwee. These amend Schedule 3 to the Bill, which reflects Schedule 7 to the 2000 Act but relates to "hostile activity" as distinct from terrorism, again introducing a requirement that there must be reasonable grounds for suspecting that a person is or has been engaged in hostile activity, and where, in Amendment 65, it is necessary and proportionate to do so, although I am not sure whether the "necessary and proportionate" amendment is strictly necessary. I beg to move.

3.15 pm

Baroness Hamwee (LD): My Lords, again on behalf of the Joint Committee on Human Rights, I have Amendments 64 and 65 in this group, as my noble friend Lord Paddick has trailed. The Bill gives powers, as does the Terrorism Act 2000, whether or not there is a suspicion. The JCHR's amendment would insert a test of reasonableness—that is, a threshold of reasonable suspicion—to stop, search and detain for the purpose of determining whether an individual is involved in the commission of a hostile act, and would allow the exercise of these powers only when it is,

"necessary and proportionate to do so".

My noble friend said that he was not sure whether the second of those words was necessary, or possibly even proportionate. I find it quite difficult to know when one should articulate those criteria. We are told that they must always apply but sometimes it seems necessary to have the debate.

The committee identified five potential interferences with Article 8 rights in the case of a person subject to the power: he must provide any information or document requested—failure to do so is punishable by a substantial fine and imprisonment; he can be stopped and searched; his personal belongings may be copied and retained; he may have biometric data taken; and he may be detained for questioning. These are of course existing provisions but there are distinctions from the 2000 Act. Under this legislation the purpose of the Schedule 3 power is broader and, we think, more ambiguous than the Schedule 7 power in the 2000 Act, giving a greater risk of arbitrary use of the power.

Professor Clive Walker, whom I have quoted before, has suggested that if the real mischief behind these powers is the Salisbury attack, the purpose should be confined to powers to stop, question and detain without reasonable suspicion on the basis that the person has information or is carrying materials which might relate to crimes under the Official Secrets Act or chemical, biological, radiological, nuclear and explosive crimes. Under the schedule to this Bill, there are also broader powers to retain articles and make copies of materials, including "confidential material", compared to Schedule 7. Under that schedule to the 2000 Act, material cannot be reviewed or copied unless officers have reasonable grounds to believe that it is confidential.

Under Schedule 3, there will be the oversight of the Investigatory Powers Commissioner, which is of course welcome. The Government also point to the fact that the decisions of the commissioner are subject to judicial review as a safeguard but, as the European court has commented, where statutory powers are wide, applicants can face formidable obstacles in proving that decisions are ultra vires. For that reason, among others, we think it is necessary that the statutory powers are clearly defined and sufficiently circumscribed.

Lord Rosser (Lab): We have Amendment 65A in this group. I shall speak to it briefly. Paragraph 1(4) of Schedule 3 states:

"An examining officer may exercise the powers under this paragraph whether or not there are grounds for suspecting that a person is or has been engaged in hostile activity".

As has already been said, under Schedule 7 to the Terrorism Act 2000, an officer can stop a person without having grounds for suspicion that the individual is involved in terrorist activity. However, the draft guidance published by the Government states that stops under Schedule 3 cannot be arbitrary and must be informed by the threat of hostile activity to the UK. The purpose of Amendment 65A is simply to enshrine the wording in the draft guidance in the Bill. The precise wording in the draft guidance is:

"the decision to select a person for examination must not be arbitrary. An examining officer's decision to select a person for examination must be informed by the threat from hostile activity to the United Kingdom and its interests posed by foreign States and hostile actors acting for, on behalf of, or otherwise in the interests of, those States, whether active in or outside the United Kingdom".

The objective of this amendment is simply to put that wording in the draft guidance, which provides some sort of safeguard, into the Bill rather than leaving the Bill with, as it appears to be at the moment, effectively a random stop-and-search power.

Lord Anderson of Ipswich (CB): I support the Government's position on Amendments 42 and 46. In a report of July 2013, *The Terrorism Acts in 2012*, I recorded the result of an extensive inquiry conducted with MI5 and counterterrorism police into the value of no-suspicion stops under Schedule 7 to the Terrorism Act. I started from a position of, I hope, healthy scepticism, but noted three useful functions of the no-suspicion stop: deterring and detecting the use of "clean skins" to transport terrorist material; avoiding alerting travellers that they were the object of surveillance; and enabling the travelling companion of a person suspected of involvement in terrorism to be stopped and questioned. I followed this up with several real-life examples, which I had verified, of no-suspicion stops that had brought significant benefits in terms of disrupting potential terrorists. More to the point, perhaps, in the case of Beghal in 2015 a majority of the Supreme Court held that having regard to the many safeguards on its exercise, the absence of a suspicion requirement was not such as to render the basic Schedule 7 power inconsistent with the principle of legality. That judgment contained a lengthy comparison of Schedule 7 with the former Section 44, to which the noble Lord, Lord Paddick, addressed some remarks.

These few words should not be understood as a rejection of some enhanced threshold for the use of more specialised powers under Schedule 7 to the 2000 Act, or Schedule 3 to this Bill, such as downloading a phone or, indeed, taking a person into detention. Still less should it be understood as support for no-suspicion powers of stop and search in more orthodox areas of policing where threats to national security are not in issue. I hope, however, that it explains why I do not support these amendments.

Baroness Hamwee: The noble Lord reminds us about the draft code of conduct. It spells out considerations that relate to the threat of hostile activity and lists a number of factors, one of which, in the context of the stop not being arbitrary, is to have consideration of "possible current, emerging … hostile activity", which is understandable, and "future hostile activity". Can the Minister explain the distinction between emerging and future hostile activity?

Lord Blair of Boughton (CB): I support the words of the noble Lord, Lord Anderson. As long as these powers are restricted to the extreme circumstances of national security and are not a passport to a widening of stop and search without justification, I think this is about hanging a notice around the UK—particularly, as he said, in relation to clean skins and travelling companions—saying that this is a hostile place for people with deeply malign intent.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I thank noble Lords who have raised a number of important issues relating to the ports and border powers under Schedule 3 to the Bill and Schedule 7 to the Terrorism Act 2000. While it is incumbent on the Government of the day to keep the people of this country safe and respond to a range of evolving threats—as the noble Lord, Lord Blair, says, that is what it is all about—it is also critical

[Baroness Williams of Trafford]
that we are mindful of the wider impact that these measures can have if exercised arbitrarily or without due care.

As noble Lords will be aware, the powers under Schedule 3 have been introduced to address a gap in our capability to tackle the threat posed by hostile state actors. As with the equivalent powers under Schedule 7 for counterterrorism purposes, they will provide the police with the tools that they need to counter the threat from hostile states. I have listened carefully to the points made at Second Reading and today about the powers and the concerns about how they might be used. The Government share the view that the arbitrary use of any police power is objectionable, as the noble Lord, Lord Rosser, says, which is why they will be subject to a number of checks and balances.

Amendment 64 would ensure that an examining officer may exercise examination and detention powers under Schedule 3 only where he or she has reasonable grounds to suspect that a person is or has been engaged in hostile activity. Amendments 42 and 46 would make similar changes to Schedule 7. Noble Lords may recall that in relation to the powers under Schedule 7 the Government have consistently rejected the introduction of such a threshold. We share the view of our operational partners that to amend the legislation in this way would fundamentally undermine the utility of capabilities that the police rely on to keep the public safe.

There are three key reasons for that and they apply to Schedule 3 in equal measure. First, we would risk disclosing to hostile actors the extent of our intelligence coverage and capabilities, as the noble Lord, Lord Anderson, pointed out. These powers are and will be used to examine individuals who have been identified by operational partners as working with or for terrorists or hostile actors, which could also include foreign intelligence operatives or agents of a foreign intelligence service. Any person examined under a power subject to a suspicion threshold could infer that they were of active interest to the police and intelligence agencies and the tradecraft behind that intelligence coverage. Port officers may also be required to explain to these individuals the reasons for stopping them. In such an event, it is likely that terrorists or hostile actors would use this information to reverse-engineer our methods, bypass future security checks and increase their reliance on clean skins, as the noble Lord, Lord Anderson, pointed out.

Secondly, requiring grounds for suspicion would in effect remove a key tool to identify and disrupt previously unknown terrorists or hostile actors. In giving evidence to the Commons Public Bill Committee, Assistant Commissioner Neil Basu explained that the police are often in possession of intelligence that is "fragmented" or "incomplete" and is not always focused on a specific individual. Such intelligence may instead point to trends or patterns of travel, or an active threat linked to a particular destination and timeframe. The introduction of a suspicion threshold would limit the availability of these powers to known individuals, or those who have demonstrated suspicious behaviour at a port. It would prevent port officers from selecting individuals for examination who are potentially exploiting travel routes that have been uncovered by intelligence or are heading to a specific destination within an identified threat window.

3.30 pm

To put it another way, if intelligence indicated that an unidentified individual of terrorism or hostile activity concern, who belonged to a certain nationality, would be arriving at a particular destination within a particular timeframe, those powers would be critical to identifying that person. There would not necessarily be sufficient material in respect of any particular person to amount to reasonable grounds to suspect involvement in terrorism or hostile activity, nor would the code permit the selection of any person on the basis of their nationality alone. Yet taken together, the nationality, arrival destination and arrival time would be sufficient under a no-suspicion power for the critically important purpose of allowing the port officers to stop and question a person, and following up on the intelligence concerning terrorist or hostile state activity risk. Finally, these amendments would also severely limit any secondary gains from use of these powers, such as excluding individuals from further investigation, acquiring additional intelligence on subjects of interest, or deterring those involved in such activity from travelling to and from the United Kingdom.

A short port examination may be the difference between identifying or excluding a person from further investigation, allowing the police and intelligence services to focus their limited resources on monitoring those individuals of most concern. The intelligence benefit would be dramatically reduced by the unavailability of these powers with respect to unknown individuals and may be eliminated altogether if officers are required to disclose to the person the reasons for their selection.

The approach taken in Schedule 3 and Schedule 7 is supported by no less of an authority than the Supreme Court. The noble Lord, Lord Anderson, alluded to the case of Beghal. The court said that,

"it is clear that the vital intelligence gathering element of Schedule 7 would not be achieved if prior suspicion on reasonable grounds were a condition for questioning".

For completeness, it is worth also quoting from a later passage in the same judgment:

"it is easy to understand why Schedule 7 does not limit the right to stop and question to those people who give rise to objectively explicable suspicion. The fact that officers have the right to stop and question unpredictably is very likely to assist in both detecting and preventing terrorism, and in deterring some who might otherwise seek to travel to or from this country for reasons connected with terrorism".

It is a powerful endorsement of the approach taken in Schedule 7 and, by extension therefore, Schedule 3 to the Bill.

Amendment 65 would require that an examining officer exercise Schedule 3 powers only where "necessary and proportionate". Amendment 65A, in the name of the noble Lord, Lord Rosser, covers similar ground. This would require that the decision of a port officer to select a person for examination must not be arbitrary and must be informed by the threat from hostile activity. The Government agree with the sentiment behind these two amendments, as it is important that any police power is exercised only where it is necessary

and proportionate to do so. It is not the case, however, that without these amendments examining officers would exercise Schedule 3 powers arbitrarily or disproportionately. Not only are these the same officers who are trained and accredited to exercise Schedule 7 powers, and have done so for many years to the highest professional standards, but there are also a number of important safeguards to prevent misuse of the powers. For example, officers will be trained and accredited to a national standard before being able to use Schedule 3 powers. These will be separate courses and examinations to those currently undertaken by officers exercising the Schedule 7 powers. Exercise of these powers must also comply with the standards and obligations set out in the statutory code of practice and will be subject to the oversight and scrutiny of the Investigatory Powers Commissioner, who will be required to report annually on his findings.

I must remind the Committee that Schedule 7 powers have consistently been judged necessary and proportionate due to the location of their application and their impact on what is a small subsection of the travelling public. In another passage in the Supreme Court judgment in the case of Beghal, the court supported the principle that,

"those who pass through our ports have always been adjusted to border controls, including the requirement to identify oneself and to submit to searches and answer questions in aid of general security".

By extension, this logic must also apply to the new port power under Schedule 3 to the Bill.

In addressing the other amendments, I have already touched on the possible reasons for selection under the new port powers, which will be informed by considerations including the current threat to the UK from hostile activity, available intelligence and trends or patterns of travel in relation to a known security threat. Again, this demonstrates that use of the powers will not be for arbitrary or discriminatory reasons.

The draft Schedule 3 code of practice makes the position clear on this issue. It is important to remember that the Bill provides that although the failure of an examining officer to observe a provision of a code does not of itself make the officer liable to criminal or civil proceedings, a code is admissible in such proceedings and is to be taken into account by a court in any case in which it appears to the court to be relevant. Therefore, any departure by an officer from a provision of the code may have to be defended in court as necessary, reasonable and proportionate in all the circumstances.

I have an answer to the noble Baroness, Lady Hamwee, but I cannot read it and therefore do not know what the question was. Whatever the question was, I shall write to her about it.

Lord Rosser: On Amendment 65A, as I understand it, the Government are not arguing that the amendment in any way compromises the position of the security agencies but it would make clear in the Bill that such considerations need to be taken into account. They have been written into the draft guidance. What is the objection to putting them into the Bill in place of the current wording, which looks a bit like a random stop and search?

Baroness Williams of Trafford: Because they are implicit in the Bill and, I guess, Schedule 7.

Lord Paddick: My Lords, I am grateful to all noble Lords who have contributed to this short debate. Perhaps reasonable suspicion of a particular individual is going too far, but I suggest to the Minister that the nationality of those suspected of coming to the UK to do harm to the UK, their arrival time and where they have come from might be the sort of intelligence that Assistant Commissioner Basu was talking about as fragmented and incomplete, not information about a particular individual. Whether that amounts to reasonable suspicion is arguable.

To give a personal example, every time I tried to go to the United States, I was taken to one side and all my personal property was gone through. This addresses the point about alerting people to the fact that they may be under suspicion. If it happens once, you think it might be random; when it happens every time, you begin to think that there might be some suspicion. There is a redress system where you write to the Department of Homeland Security. It writes back to you some months later saying, "We can't say whether you were under suspicion or not, whether you are on the list or not, or whether you have been taken off the list or not". This is not giving away the methodology, or giving some intelligence to terrorists, but insisting that there is something more than simply an arbitrary approach to the situation.

I am getting increasing reports from individuals suggesting that examination might be being used arbitrarily or without due care, which is the other expression used by the noble Baroness. The noble Lord, Lord Rosser, makes a very powerful point. If the guidance says that stop and searches should not be arbitrary, why not have that in the Bill? I understand what the noble Baroness says, but how many people have the time, inclination or means to take civil action against the Border Force in circumstances where they feel that they are being improperly targeted? Surely it would be much better to have it in the Bill.

In summary, I will carefully reflect on what the noble Baroness and other noble Lords have said, and at this point I beg leave to withdraw the amendment.

Amendment 42 withdrawn.

Amendment 43

Moved by ***Lord Paddick***

43: Clause 16, page 20, line 9, at end insert "committed on the occasion on which the person was questioned"

Lord Paddick: My Lords, in moving Amendment 43 I shall speak also to Amendments 44 and 45 in my name and that of my noble friend Lord Marks of Henley-on-Thames.

Clause 16 arises out of a recommendation from the former Independent Reviewer of Terrorism Legislation, the noble Lord, Lord Anderson of Ipswich, that,

"there should be a statutory bar to the introduction of Schedule 7 admissions in a subsequent criminal trial".

[LORD PADDICK]
I am looking to the noble Lord for assistance because I find this piece of the legislation somewhat impenetrable—but I will give it a go.

The amendments in this group seek to probe whether the clause does what the noble Lord, Lord Anderson, intended. Amendment 43 would ensure that a Schedule 7 admission can be used in subsequent proceedings for an offence under paragraph 18 only if the admission relates to an offence committed on the occasion to which that questioning relates. For example, if a person wilfully obstructs a Schedule 7 search and makes an admission relevant to that search, the admission will be admissible. If the admission related to a previous Schedule 7 search at a different time or at a different port, it would not be admissible.

Amendments 44 and 45 would ensure that paragraph 5A of Schedule 7 to the Terrorism Act 2000 at sub-paragraph (2)(c) does not thwart the former independent reviewer's intention. Sub-paragraph (2)(c) seeks to make an exception of admissions made during a Schedule 7 encounter if, on a prosecution for some other offence that is not a paragraph 18 offence, the person makes a statement that is inconsistent with what he said during a Schedule 7 encounter. This, on the face of it, seems to me to counter what the independent reviewer intended.

However—here we are into the realms of the BBC Radio 4 "Today" programme's puzzle for the day, at least for someone like me who is not legally qualified—sub-paragraph (3) appears to suggest that the admissions under sub-paragraph (2)(c) are admissible only if the defence introduces a Schedule 7 admission or asks a question in relation to a Schedule 7 admission during proceedings arising out of the prosecution. Can the Minister confirm that I am correct, or explain what Schedule 16 actually means? I beg to move.

Lord Kennedy of Southwark (Lab Co-op): My Lords, Amendment 43, in the names of the noble Lords, Lord Paddick and Lord Marks of Henley-on-Thames, seeks to add a clarification at the end of the sub-paragraph that would make it clear that when someone is charged with the offence of refusing to co-operate, this must have happened at the same time as when the oral answers were given for it to be admissible. That seems to me to be a fairly sensible clarification. I agree with the noble Lord, Lord Paddick, that for someone who is not legally qualified, the legislation is very detailed and difficult to understand. The amendments are very good in probing the points that the Bill is getting at, so I look forward to the Minister's response.

3.45 pm

Baroness Williams of Trafford: As the third person to be not legally qualified to respond to this, I thank both noble Lords for raising some important issues with respect to Clause 16. As we have heard, the clause provides for how oral answers or information given to examining officers in response to questioning under Schedule 7 to the Terrorism Act 2000 can be used in subsequent criminal proceedings. Noble Lords will be aware that the powers under Schedule 7 are essential to help the police to tackle the threat posed by terrorism. I have listened carefully to the points made today about these powers and the concerns about how they might be used. One important check and balance for port and border powers is the statutory bar that we are introducing in Clause 16, which is also mirrored in Schedule 3. Under Schedule 7 there is a legal duty on those examined to give the examining officer any information that the officer requests. It is an offence under paragraph 18 to wilfully fail to comply with this duty. Unlike where someone has been arrested and has a right of silence, an examinee under Schedule 7 is compelled, under pain of prosecution, to answer questions put to him or her.

By introducing a statutory bar on the admissibility, as evidence at criminal trials, of any answers or information given orally in the course of a Schedule 7 examination—where the suspect will not have been arrested or cautioned—we are providing greater clarity and therefore comfort to the subjects of these examinations, and helping police to exercise their powers under Schedule 7. We are including a corresponding statutory bar in Schedule 3. The bar will provide that reassurance to examinees who might be unwilling to answer questions for fear of incriminating themselves that their oral answers or the information they provide will not be used against them.

The principle of excluding material from criminal proceedings on fairness grounds is reflected in Section 78 of the Police and Criminal Evidence Act 1984, which already provides the courts with the discretion to exclude such evidence if it would have an adverse effect on the fairness of proceedings. In the case of Beghal in 2015, the Supreme Court held that criminal courts would almost inevitably use Section 78 to exclude from criminal trials any answers or information given in Schedule 7 examinations. This clause puts the position beyond doubt and, in doing so, fulfils our commitment to the former Independent Reviewer of Terrorism Legislation, the noble Lord, Lord Anderson, to legislate in this way.

However, the statutory bar is not absolute—a point that the noble Lord, Lord Anderson, recognised, as did the Supreme Court in the Beghal case. There are three exceptions. First, the bar will not apply where the individual is charged with an offence under Schedule 7 of wilfully obstructing or failing to comply with an examination. Secondly, it will not apply where an individual is prosecuted for perjury. Finally, the bar will not apply for another offence where, in giving evidence in relation to that offence, a defendant makes a statement inconsistent with their oral response to questioning under Schedule 7—provided that the defendant is the party to adduce evidence relating to that information or asks a question relating to it.

Amendment 43 seeks to narrow the first of the three exceptions to that bar that I have just described. The amendment is intended to ensure that oral answers or information given in an examination are used as evidence against the person in criminal proceedings only where they are charged with wilfully obstructing or failing to comply with a duty arising during that particular examination, and not as evidence in proceedings for the obstruction of any earlier or subsequent examination.

We are of the view that this amendment is unnecessary, as what it seeks to provide for is already the case in practice. This is a consequence of the way the paragraph 18 offence is drafted, requiring as it does "wilful"—that is, "knowing"—obstruction or breach of an obligation. It is not possible for a person's answer or information given in one examination to represent a knowing obstruction of, or non-compliance with, any previous or subsequent examination. At the time the answer or information is given, the person is beyond the point in time at which he or she can knowingly obstruct a past examination—nor can it be known that he or she will be subject to a future examination, so they cannot knowingly obstruct it. The current drafting of the Bill therefore secures the outcome that the noble Lords intend: namely, that answers given in an examination can be used in evidence only in a prosecution for wilful obstruction of that examination, and not any other examination. We believe that this is the right outcome.

Amendments 44 and 45 seek to remove the third exception to the statutory bar in its entirety. This is an important exception, which allows the prosecution to challenge a defendant where they have provided statements to the police in a Schedule 7 examination which are inconsistent with, or contradict, statements made later in criminal proceedings. To accept these amendments would give defendants in such situations the confidence to knowingly mislead the court in the case of another prosecution, as any contradictory statements they made during a Schedule 7 examination would not be admissible.

This third exception to the statutory bar reflects the legal exception that already exists in other legislation—for example, Section 360 of the Proceeds of Crime Act 2002 and, more recently, Section 22C of the Terrorism Act 2000, which was inserted by the Criminal Finances Act of 2017. It is not unique to terrorism legislation and, consequently, I see no case for removing the third exemption.

This clause introduces an unambiguous fair-trial safeguard. But, in putting the almost inevitable application of Section 78 of the Police and Criminal Evidence Act beyond doubt by means of this statutory bar, it is right that we reflect the legitimate exceptions that the Supreme Court has itself contemplated, in confirming that the statutory bar should apply other than,

"in proceedings under paragraph 18 of Schedule 7 or for an offence of which the gist is deliberately giving false information when questioned".

I hope that that is a clear explanation of what the noble Lord asked and that he will be content to withdraw his amendment.

Baroness Hamwee: Before my noble friend responds, as I recall, the draft code of practice has provisions on giving information to people who are stopped as to their rights. I had some difficulty in opening and reading the draft code and so I have been able to do so only quickly, but the points that have been discussed require hot towels and quite a lot of time. In drafting the explanation of individuals' rights, has the Home Office subjected, or might it subject, the explanation of how these provisions work to, say, the Plain English society, which comes to mind, or Citizens Advice —in other words, to people who are concerned with clear explanations?

Baroness Williams of Trafford: My Lords, I am always conscious of the Plain English society when I say some of the things that I do during the passage of legislation.

Baroness Hamwee: No criticism is intended.

Baroness Williams of Trafford: Then I shall just agree.

Lord Paddick: My Lords, I am grateful for the explanation that the noble Baroness has given. Obviously, Schedule 7 does not allow a suspect the right to silence that is normally afforded to somebody who is suspected. Safeguards therefore need to be put in place. My query is on new subsection (3), at line 14 on page 20 of the Bill; what does this mean? It says:

"An answer or information may not be used by virtue of sub-paragraph (2)(c) unless … evidence relating to it is adduced, or … a question relating to it is asked, by or on behalf of the person in the proceedings arising out of the prosecution".

I accept that the Minister read that out very slowly and carefully, but it reminds me of my mother, who, when speaking to somebody who does not speak English, speaks loudly and clearly in English again to try to get them to understand, but unfortunately it does not really help. Perhaps the noble Baroness, together with officials, can see whether there is some way in which that can be deciphered for me.

Baroness Williams of Trafford: I certainly will, although I resent being compared to the noble Lord's mother.

A noble Lord: She is a lovely lady.

Lord Paddick: It has nothing to do with age at all. At this point, I beg leave to withdraw the amendment.

Amendment 43 withdrawn.

Amendments 44 to 46 not moved.

Clause 16 agreed.

Clauses 17 and 18 agreed.

Schedule 2: Retention of biometric data for counter-terrorism purposes etc

Amendment 47

Moved by ***Baroness Hamwee***

47: Schedule 2, page 29, line 5, leave out paragraph 2

Baroness Hamwee: My Lords, Clause 18, which has just been agreed, and Schedule 2 amend existing powers to retain fingerprints and DNA samples for counterterrorism purposes, and the JCHR has proposed a number of amendments.

As regards Amendment 47, currently under the Police and Criminal Evidence Act a person who is arrested but not charged or convicted of a terrorist offence may have his data retained for three years for

[Baroness Hamwee]
security purposes with the consent of the Biometrics Commissioner. The Bill removes the requirement for that consent. In the view of the JCHR, the oversight of the commissioner is a matter that gives confidence to the public that the powers are used only where "necessary and proportionate", and we are not aware that this oversight impedes the ability of the police to undertake counterterrorism work.

The Government responded to our first report, stating that they did not agree that,

"it would be appropriate or responsible to reduce the powers available to the police",

but we did not propose the removal of those powers. We recognise the logic in harmonising the retention periods for biometric data so that cases are treated in the same way, whether an individual is arrested under PACE or under the Terrorism Act, but we were concerned about removing the requirement for the consent of the Biometrics Commissioner, and I have not seen a response from the Government to that point.

Therefore, the obvious question is: what is the justification for the biometric data of a person unlawfully or mistakenly arrested being exceptionally stored rather than destroyed? If the aim is to align the procedures, why not add to the protection by the commissioner having oversight of both categories of DNA retention under both powers? The JCHR made the comment, and did not make it lightly, that it was concerned about a race to the bottom of human rights protections. I beg to move.

Lord Paddick: My Lords, I support what my noble friend Lady Hamwee has said. The report of the Joint Committee on Human Rights talks about the oversight of the Biometrics Commissioner giving the public greater comfort that such powers are used only where necessary and proportionate, and it would seem that no valid reason has yet been presented by the Government for removing that oversight.

4 pm

Lord Woolf (CB): My Lords, I intervene here only because—like the noble Baroness, Lady Hamwee—I am a member of the Joint Committee on Human Rights and, for the reasons she has given, I think the matter requires clarification.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, I am grateful to the noble Baroness, Lady Hamwee, for tabling this amendment and I understand both her concern and that of the Joint Committee on Human Rights. However, I stress, as the Government did in their response to the Joint Committee's first report on the Bill, that this measure to enable biometric data to be retained when an individual is arrested under the Police and Criminal Evidence Act 1984—PACE—for a qualifying terrorist offence is both proportionate and necessary to help protect the public.

Schedule 2 contains amendments to the laws governing the retention, review and deletion of fingerprints and DNA profiles by the police for counterterrorism purposes. This is a complex area of law, and it may assist the Committee if I first spend a short while explaining the current position. The relevant statutory framework was introduced by the Protection of Freedoms Act 2012, which established the principle that the biometric data of people who have not been convicted of any offence should no longer be kept indefinitely. This means that for the vast majority of people who are arrested and whose fingerprints and DNA are taken by the police, that biometric data will be promptly deleted if they are not convicted. This system is overseen by the independent Biometrics Commissioner, currently Professor Paul Wiles.

When passing the 2012 Act, Parliament recognised that it would be irresponsible, and would put the public at risk, to make this a blanket requirement in every case, regardless of the risk the individual might pose. So it made limited and tightly circumscribed provision for biometrics to be retained for limited periods in certain circumstances in the absence of a conviction. For example, if a person is arrested using the general power of arrest in the Police and Criminal Evidence Act 1984 and is charged with a qualifying sexual, violent or terrorist offence, but is not ultimately convicted, it was recognised that there may be a range of reasons why they were not convicted and that they could still pose a risk of harm to the public, despite the discontinuance of the case.

In these circumstances it would be inappropriate, and indeed complacent, to ignore this risk to public safety and to require the police to immediately and automatically delete the individual's DNA profile and fingerprints once a case is discontinued or the suspect is acquitted. The 2012 Act in these circumstances provides for a clearly limited three-year retention period before the data must be deleted. Similarly, if a person is arrested on suspicion of being a terrorist under the Terrorism Act 2000, whether or not they are subsequently charged, there is also a three-year retention period. This means that the police are better able to identify whether the individual is involved in terrorism, or other activity that poses a threat to the public, during that period. But it also means that the individual's biometrics will not simply be held indefinitely.

In counterterrorism cases a person's biometric data can be retained beyond the point when it would otherwise have to be deleted only if the chief officer of police of the area in which the material was taken personally considers that this is necessary for national security purposes. In these circumstances he or she can make a national security determination—or NSD—authorising retention for a further limited period, subject to a maximum of two years currently, and renewable if retention continues to be necessary. NSDs will, of course, be made only where it is proportionate to do so. This determination must then be reviewed and approved by the independent Biometrics Commissioner, who has the power to order deletion of the data if he is not satisfied that the determination is necessary. An NSD can be renewed for a further period, but only if the legal tests continue to be met and if the commissioner approves the renewed NSD. The assessment is made on the basis of intelligence and other relevant information about the threat the individual poses. We shall, of course, come to national security determinations in the next group of amendments, but it is helpful to provide an overview of these provisions up front to inform the debate on Amendment 47.

The amendments to existing legislation contained in Schedule 2 do not depart from these principles. Rather, they are intended to strike a better balance between on the one hand enabling the police to use fingerprints and DNA in an agile and effective way to support terrorism investigations and protect the public, and on the other ensuring that this continues to be subject to proportionate safeguards, regular case-by-case review and robust independent oversight.

We should not underestimate the value of biometric data in helping to secure convictions in terrorism cases. Such information played a vital role in the conviction in June of this year of Khalid Ali. Noble Lords will recall that Ali was arrested not far from this House and was subsequently convicted of terrorism offences, including his involvement in the use of explosive devices against coalition forces in Afghanistan.

Paragraph 2 of Schedule 2—which Amendment 47 would delete—will harmonise the retention periods for biometric data obtained when an individual is arrested on suspicion of terrorism, but not subsequently charged, under PACE and the Terrorism Act 2000. At present, an individual arrested under the Terrorism Act may have their biometric data automatically retained for three years. However, this automatic retention would not be available if the same individual were arrested in relation to the exact same activity under PACE.

In a terrorism case, retention for national security purposes would require the police to make an NSD with the approval of the Biometrics Commissioner, or would otherwise require the consent of the Biometrics Commissioner under Section 63G of PACE if retention was necessary solely for the prevention or detection of crime generally. However, the noble Baroness's amendment would mean that this inconsistency between the retention regimes under the Police and Criminal Evidence Act and the Terrorism Act 2000 would remain. This could therefore result in the situation where the police are deprived of information that could prove vital to keep the public safe. The measure as drafted will remove this anomaly and ensure a consistent approach to the retention of biometric data for all those arrested on suspicion of terrorism, by providing for the same retention period regardless of the power of arrest used.

I do not accept the noble Baroness's argument that this is a race to the bottom in terms of civil liberties. I say that because, as the Committee would expect, we have consulted the Biometrics Commissioner about this and other provisions in Schedule 2. In relation to this particular provision, perhaps I may read out what Professor Wiles has said:

"In my 2017 Annual Report I mentioned several issues that I thought the Government might wish to consider reviewing as part of the CT legislation review ordered by the Prime Minister ... I … noted in my Report my concerns about the police applying for 'pre-emptive' NSDs, often where a person has been arrested under PACE on suspicion of a terrorism offence. It is proposed in the CT Bill to allow biometric material taken after a PACE arrest for a terrorism offence to be retained automatically for three years (with the possibility of extending this period by making an NSD), as is already the case for the biometrics of those arrested on suspicion of terrorism offences under TACT"—

that is, the Terrorism Act. He goes on:

"It seems to me to be a sensible approach to bring the retention periods for arrest on suspicion of terrorism offences into line".

Given that authoritative opinion, which we sought expressly from the Biometrics Commissioner, and his view that this aspect of the Bill adopts a "sensible approach", I hope the noble Baroness will feel able to withdraw her amendment.

Baroness Hamwee: My Lords, the Biometrics Commissioner's response does not seem to go to the question of oversight. As I have heard and read it, it is about the period of retention. I am not sure, but the Minister may be saying that through this amendment I have produced another failure to make the two regimes consistent, and that would certainly be an oversight on my part. If the commissioner has powers of oversight under PACE, that immediately throws into question the proportionality, and maybe the necessity, of this Bill's provision in omitting the oversight.

What the Minister has had to say will require careful reading and I will do that. However, there has been a temptation to slide from the issue of oversight into other aspects of the arrangements, and I am not sure that the Committee has quite been answered. We will look at it, and I beg leave to withdraw the amendment.

Amendment 47 withdrawn.

Amendment 48

Moved by ***Baroness Hamwee***

48: Schedule 2, page 29, line 29, leave out sub-paragraph (4)

Baroness Hamwee: My Lords, Amendments 48 to 53 would remove the proposed extension of national security determinations, which the Minister has explained, for the retention of biometric material to five years in six existing provisions. The Minister has also explained the role of the chief police officer and the rolling determinations, if necessary, but a review every two years for a fresh determination is required. The Bill will change that to five years. We are not questioning the retention as a legitimate aim, rather we are questioning the period of time and whether five years is proportionate for retaining the biometric data of people who have never been convicted of a crime, particularly in the absence of the possibility of a review. The Government have told us that operational experience has shown that in many cases the two-year period is too short and that cases of national security concern will often pose a more enduring threat. That does not entirely go to answer the point of the initial period.

The retention of biometric data is a significant intrusion on an individual's right to privacy. It is lawful as long as it is not blanket and indiscriminate, but is it proportionate without the possibility of a review? We think not. I beg to move.

Lord Paddick: My Lords, I rise briefly to support these amendments. Other than for the convenience of senior police officers in having to review these cases every five years as opposed to every three, I do not understand what is to be achieved operationally by extending the period from three years to five when the period of retention can be extended every three years.

Lord Hope of Craighead (CB): My Lords, it is perhaps worth reflecting on the fact that when the whole issue of retention came up about 10 years ago, the system in place in this country was for indefinite retention. That was regarded as contrary to the convention rights and was quite rightly addressed by the Government. With respect, it seems to me that here we are dealing with a matter of fine detail where what really matters is the operational necessity for retention. To suggest that there is some inconsistency with an individual's human rights is possibly going too far provided that an operational case can be made for the length of the period that is in issue. That is a broader perspective in order to put this amendment into its overall context.

4.15 pm

Earl Howe: My Lords, I am grateful to the noble Baroness, Lady Hamwee, for explaining that the amendments seek to strike out the provisions in Schedule 2 extending the maximum duration of a national security determination from two years to five years. In responding to her previous amendment, I explained to the Committee the circumstances in which such a determination can be made. I will not cover that ground again but I reiterate that all such determinations are reviewed by the independent Biometrics Commissioner, who may order the deletion of a person's fingerprints and DNA profile if he is not satisfied that a determination is necessary.

Schedule 2 extends the maximum length of a national security determination from two years to five years. In his most recent report, the Biometrics Commissioner commented that in some cases,

"the evidence/intelligence against the relevant individuals is such that they could be granted for longer than two years",

and suggested that the Government may want to consider legislating on this issue. We have considered the issue carefully and agree that it would be appropriate to introduce a longer maximum period. I am grateful to the noble and learned Lord, Lord Hope, because his comments put this issue in its proper context.

Operational experience has shown that the current two-year length is too short in many cases and that those involved in terrorism—such that it is necessary and proportionate for the police to retain their biometric data—will often pose a more enduring threat than this. The views of those who embrace terrorism can be very entrenched. Individuals who hold such views can disengage and re-engage in terrorism unpredictably and without warning over a period longer than two years, and so can pose an ongoing risk. Individuals who travel overseas to engage in terrorist training or fighting may remain there for more than two years and are likely to pose a particularly high risk to the public on their return. There is a broad range of circumstances in which a person who presents a terrorist risk today may continue to pose a sufficient risk in two years' time such that it will still be necessary and proportionate for the police to retain their fingerprints and DNA to help them identify if the person continues to engage or re-engages in terrorism.

This provision will therefore ensure that if a chief officer reasonably judges that the case before him or her is such a case, they will be able to authorise retention for a period of up to five years if this is necessary and proportionate. I emphasise that this will be the maximum period; it will be open to the chief officer to specify a shorter period if they consider that more proportionate. In every case, the NSD will need, as now, to be reviewed and approved by the Biometrics Commissioner, who has the power to order deletion of the data if he is not satisfied that its retention is necessary.

This measure will retain the key principle that biometric data should not be retained indefinitely where the individual has not been convicted. It will continue to provide that ongoing retention should be authorised at a senior level on a case-by-case basis, and subject to approval by the independent Biometrics Commissioner. Where ongoing retention is approved, this will not be open-ended but will continue for a finite period, with review and further authorisation needed if it is to be extended beyond the expiry of the NSD. But it will strike a better balance between these important safeguards, on the one hand, and, on the other, enabling the police to use biometrics to support terrorism investigations and identify suspects without placing a disproportionate burden on themselves. The increased maximum length of an NSD will ensure that, in appropriate cases, the police do not have to review cases and reaffirm necessity and proportionality more frequently than is necessary.

I hope that I have been able to explain the operational challenge which this provision is intended to address in a proportionate manner and to reassure the noble Baroness that we are not removing the important oversight of all national security determinations by the Biometrics Commissioner. For that reason and the others that I have advanced, I ask her to consider withdrawing her amendment.

Baroness Hamwee: My Lords, as the Minister said on the previous amendment, these amendments have to be read with that one. NSDs and their oversight are to some extent part and parcel of the same debate. As my noble friend said, it is perhaps a debate about convenience or inconvenience. It would probably be naive of me not to accept that there is an issue of resources here, but balancing how resources are applied and human rights does not always produce immediately obvious answers. This may be a matter of fine detail or where we place the line—that, too, can be a challenge.

Thinking of challenges and listening to what the Minister had to say about the period not necessarily being two years, I wonder how an individual would challenge the period applied and how many times over recent years NSDs have been of less than two years. That may be something that the Minister is able to tell me after today's debate. For now, looking at these two groups of amendments together, I beg leave to withdraw the amendment.

Amendment 48 withdrawn.

Amendments 49 to 53 not moved.

Amendment 53A

Moved by ***Lord Rosser***

53A: Schedule 2, page 38, line 17, at end insert—

"_(1) A person whose biometric data is retained under the provisions of this Schedule may appeal to the Commissioner for the Retention and Use of Biometric Material ("the Commissioner") for the destruction of that data when the conditions in sub-paragraph (2) are met.

(2) The conditions referred to in sub-paragraph (1) are—

(a) that the retention of the biometric data has not been previously authorised by the Commissioner or a court of law; and

(b) that the biometric data was taken from the person—

(i) in circumstances where the arrest or charging of the person was substantially due to a mistake, whether of identity, place or other material fact; or

(ii) the person was arrested but never charged for the relevant offence.

(3) On receiving an appeal under sub-paragraph (1), the Commissioner must seek representations from the chief officer of police in the area in which the biometric data was taken as to whether the data should be destroyed or not.

(4) The Commissioner must determine an appeal under sub-paragraph (1) within three months of receiving the appeal."

Lord Rosser: Much of this Bill is about the appropriate balance between liberty and security in the present climate, where acts of terrorism are a reality rather than a distant or remote possibility. The differences of view over some parts of this Bill are in effect over where that appropriate balance between liberty and security should lie, since I presume that we are all in agreement with the principle that there has to be such a balance. Amendment 53A is also about where that balance should lie.

Clause 18 and Schedule 2 amend existing powers to retain fingerprints and DNA samples for counterterrorism purposes. The amendment would enable a person whose fingerprints and DNA profiles are retained under a power amended by Schedule 2 to apply to the Biometrics Commissioner for the data to be deleted.

The amendment highlights and addresses two scenarios. The first is where there has been a mistake, such as over identity, place or any material fact or in the intelligence. The second scenario is where a person has been arrested but not charged for the offence. Under the terms of the amendment, an application can be made to the commissioner for the destruction of data where one of those two scenarios has been met as well as the requirement that the retention of the data has not been previously authorised by the commissioner or a court of law.

On receiving an appeal from the person whose biometric data has been retained, the commissioner would then be required to seek representations from the relevant chief officer of police as to whether the data should be destroyed, with the commissioner having to determine the appeal within three months.

If people's data are retained in circumstances where a mistake might have been made or where they have not ultimately been charged with an offence, they should be able to appeal to have it destroyed. That right of appeal is surely quite important. At present, the Police and Criminal Evidence Act states that biometric data must be deleted by the police if it was taken where,

"the arrest was unlawful or based on mistaken identity".

As far as I can see, the Police and Criminal Evidence Act does not provide for a personal right to appeal, which is what this amendment would give. This is surely an important principle. This amendment does not overturn the principle that there should be a period of automatic retention following a lawful and correct arrest on suspicion of terrorism. Indeed, it does not remove anything from Schedule 2.

Under Schedule 2, the time period for national security determination is amended. An NSD allows a chief police officer to determine that it is necessary and proportionate to extend the retention period for biometric data for the purposes of national security for an extra two years to five years, where it would otherwise be destroyed. An increased period of five years is a long time to retain the data of persons who have never been charged with a crime, particularly in the absence of a right of appeal. The amendment seeks to provide such an appeal through the Biometric Commissioner, who would make a decision on retention of data or otherwise based on whether it was necessary and proportionate to do so.

I hope that the Government will feel able to accept that, in the changed circumstances provided for in the Bill, the right of appeal being sought in this amendment should be taken up. I beg to move.

Earl Howe: My Lords, as the noble Lord, Lord Rosser, has explained, this amendment would provide for a person whose fingerprints and DNA profile are retained under a power amended by Schedule 2 to apply to the Biometrics Commissioner for the data to be deleted if the commissioner or a court have not previously authorised its retention.

One of the circumstances in which this new process would apply is where an individual had been arrested or charged as a result of a mistake, such as mistaken identity. I am pleased to be able to tell the noble Lord that existing legislation already addresses such cases of mistaken identity, providing a stronger safeguard, in fact, than the one he is proposing. Section 63D(2) of the Police and Criminal Evidence Act 1984, or PACE, provides that biometric data must be deleted by the police, without the individual needing to appeal, if it was taken as a result of an unlawful arrest, or an arrest based on mistaken identity. Given this existing provision, I believe that this aspect of the amendment is not necessary.

The second limb of the amendment covers cases where a person has been arrested but not charged with an offence. Of course, we touched on this ground in debating Amendment 47, tabled by the noble Baroness, Lady Hamwee. As I indicated in response to that earlier debate, the Government's view is that where someone has been lawfully arrested for a terrorism offence but not charged with that offence, it is none the less appropriate, necessary and proportionate that their fingerprints and DNA profile are retained by the police for three years. That approach has been firmly established for some years, through the Terrorism

[Earl Howe]
Act 2000, and we are now extending it to cover persons arrested for exactly the same terrorism offences under PACE. Consequently, I am not persuaded that we should now introduce a right of appeal to the Biometric Commissioner in such cases.

I stress that the Bill does not depart from the principle established by the Protection of Freedoms Act 2012 that the biometric data of a person who is arrested but not charged should not normally be retained indefinitely, as had previously been the case. In passing this legislation in 2012, Parliament recognised, rightly in my view, that in certain circumstances it is appropriate and in the public interest for biometric data to be retained for limited periods in the absence of a conviction. This includes when an individual is arrested under the Terrorism Act 2000 on suspicion of being a terrorist but is not subsequently charged. The law provides for a three-year automatic retention period in this situation. However, the retention of biometric data for any longer than this would require a national security determination to be made by a chief officer of police and approved by the independent Biometrics Commissioner.

As we have already debated, Schedule 2 makes an equivalent provision for a case where the same person may be arrested on suspicion of the same terrorist activity but under the general power of arrest in PACE. The flexibility to arrest an individual under the Terrorism Act or PACE is a decision to be taken by the police, one which will be based on operational considerations. It is a gap in legislation that the same biometric retention rules do not follow the two powers of arrest in terrorism cases, despite the fact that there may otherwise be no material difference between two such cases. Schedule 2 closes that gap. While I support the principle that biometrics taken following a mistaken or unlawful arrest should be deleted—that is the position at law already—I am afraid I cannot agree that we should remove the equally well-established principle that there should be a limited period of automatic retention following a lawful and correct arrest on suspicion of terrorism.

4.30 pm

It might be helpful if I can briefly outline to the Committee some of the reasons why a charge may not be brought in relation to an individual arrested on suspicion of terrorism but why it might still be necessary to retain their biometric data. An individual might have been reasonably suspected of involvement in terrorism, backed up by extensive intelligence to indicate that they pose a real threat. However, it would not be possible to produce that intelligence in open court. Should it have come from interception then it cannot be used to support a prosecution; should it have come from sensitive sources, which would be compromised, there may be strong reasons not to rely on such intelligence in court. Although the person will, quite rightly, be treated as innocent as a matter of law, given the intelligence picture it would be wrong for the police to do nothing further to protect the public.

It is therefore right that there should be a limited automatic period during which their fingerprints and DNA profile can be retained, so that the police can identify their involvement in any further suspected terrorist activity. Should there be no information to suggest that the individual poses a threat at the end of this limited period, it would be neither necessary nor proportionate to retain the data under a national security determination. The data would therefore have to be deleted. I believe that this current approach strikes the right balance. While I appreciate the spirit in which the noble Lord has tabled his amendment, I am afraid that it would raise a number of difficulties.

Given the existing limited automatic retention period and the need for both a chief officer and the Biometrics Commissioner to approve any further retention under a national security determination, it is not, I suggest, necessary to introduce an additional review of each case in advance of that which would occur before the expiry of the three-year point, should a national security determination be considered. An additional review would place a disproportionate and unnecessary burden on the police and the Biometrics Commissioner. The existing safeguards provide a proportionate approach. The Biometrics Commissioner has raised no concerns about them in the case of arrests made under the Terrorism Act and they have not been found to disproportionately infringe the rights of suspects. Furthermore, as I have indicated, the Biometrics Commissioner has made it clear that he supports the measure in the Bill which will harmonise the automatic retention periods following an arrest under PACE with those existing under the Terrorism Act. As I have already said, he has commented:

"It seems to me to be a sensible approach".

I turn to a more fundamental difficulty which would stem from this amendment. It would be very difficult to have a meaningful and transparent application process in which the reasons for decisions could be provided to applicants. The noble Lord's amendment does not specify the basis on which the Biometrics Commissioner would consider an appeal under this provision. I presume that it would be under the same test for determining whether data should be retained under a national security determination: that is to say, whether it is necessary to do so.

The Biometrics Commissioner and his staff have the security clearance required to allow them to make this assessment on the basis of all relevant information including, where necessary, sensitive intelligence. However, in such a case as the one which I outlined earlier, where there is intelligence that clearly suggests that a person poses a risk but where this cannot—or for source protection reasons, should not—be adduced in open court, this would mean that the commissioner would be constrained in what he was able to say to the applicant. To inform an applicant of a decision on whether to retain or delete their data could compromise sensitive sources of information or reveal the extent of intelligence coverage of the individual. The simple fact of a decision to retain or delete the data could reveal the existence or absence of a hitherto covert investigation into them, as well as the level of interest in their activities from the police and other law enforcement or intelligence agencies.

This information would clearly be valuable to an active terrorist, as it could provide them with enough insight to enable them to disguise their activities and

avoid intelligence coverage. Equally, it might provide them with assurance that the authorities were not aware of their activities. I am afraid that this would not be in the public interest and would strike the wrong balance. Similarly, it would make such an application scheme very difficult to operate.

For all those reasons, I hope that I have been able to persuade the noble Lord, Lord Rosser, that the existing framework, as modified by Schedule 2, offers sufficient safeguards to address the points he has raised, and consequently that he will be content to withdraw his amendment.

Lord Rosser: I thank the Minister for that reply. Reference was made to the arrangements under PACE and the fact that biometric data must be deleted by the police if it was taken where the arrest was unlawful or based on mistaken identity, but what happens if it is not deleted in such circumstances?

As I understand it, there is no right of appeal for the individual under PACE, and I am not quite sure whether that is what the Minister was telling does exist as opposed to a duty on the policy to delete it where the arrest was unlawful or based on mistaken identity. There is a distinction between the police having a duty to do it if the arrest was unlawful or based on mistaken identity and the individual having a right to appeal on those grounds because it may be that that individual has information which for some reason or other the police did not have which might change their view on the matter. I am not clear whether the Minister was telling me that under PACE the individual has a right of appeal or whether it is just something that the police should do. I think there is a big difference between something the police should do and an individual having the right to challenge, which is what my amendment provides for, so I do not think that on that issue the Government have provided much of an assurance.

Reference was made to the basis on which the Biometrics Commissioner would consider the matter. I appreciate it is not in the amendment, but I said in my contribution that the decision on the retention or otherwise of data would presumably be on the basis of whether it was necessary and proportionate which, as the Minister said, is the basis on which the security issue and the extension of data would be based in the first place.

On the last point that the Minister made on behalf of the Government about the security issue of not being able to tell an individual the reasons for declining an appeal, which is presumably what we are taking about, in my amendment I am not suggesting that very sensitive and crucial information should be disclosed in announcing a decision. If the Government's only real objection to the amendment is that if the reasons for the decision have to be declared in full it would cause difficulty, which I can understand, surely the matter could be looked at on the basis that the reasons given for the decision would be such as not to disclose sensitive information related to counterterrorism. I beg leave to withdraw the amendment.

Amendment 53A withdrawn.

Schedule 2 agreed.

Clause 19: Persons vulnerable to being drawn into terrorism

Amendment 54

Moved by ***Baroness Howe of Idlicote***

54: Clause 19, page 21, line 19, at end insert—

"(4A) Section 37 (membership and proceedings of panel) is amended in accordance with subsections (4B) and (4C).

(4B) At the end of subsection (1)(b) insert ", unless they are the person who referred the particular identified individual for an assessment under section 36, in which case they must appoint an alternative person to represent them on the panel in accordance with subsections (2) and (2A)."

(4C) After subsection (2) insert—

"(2A) The representative appointed under subsection (2) must not be the person who referred the particular identified individual for an assessment under section 36.""

Baroness Howe of Idlicote (CB): My Lords, my amendment proposes that those who refer an individual for assessment under the Channel programme are different from those who assess the individuals once they have been referred. For reasons that I will set out, the amendment constitutes a crucial safeguard to protect the integrity of the programme. Amendment 54 addresses the issue concerning Clause 19 that was identified by myself, the noble Lords, Lord Stunell and Lord McInnes of Kilwinning, and the noble Baroness, Lady Barran, during Second Reading: namely, granting local authorities the additional powers to refer individuals for assessment under the Channel programme, an assessment that they themselves would undertake if Clause 19 were accepted with its current wording.

It is important, moreover, that this concern about Clause 19 is seen in the broader context of the concerns raised by the Joint Committee on Human Rights in commenting on the Counter-Terrorism and Border Security Bill. In relation to Clause 19, the report says that the committee is,

"concerned that any additional responsibility placed on local authorities must be accompanied by adequate training and resources to ensure that the authorities are equipped to identify individuals vulnerable to being drawn into terrorism".

However, these recommendations cannot address the challenge flowing from the imposition of the extra duty arising from Clause 19, which, for reasons that I will explain, is likely to lead to the creation of perverse incentives.

Clause 19 amends Section 36 of the Counter-Terrorism and Security Act 2015 to impose a duty on local authorities to play an additional role to assess individuals vulnerable to being drawn into terrorism. This is a function that under the current wording of Section 36(3) of the 2015 Act rests with a chief officer of police. In accordance with Clause 19, apart from assessing—by way of a self-established panel—the extent to which identified individuals are vulnerable to being drawn to terrorism, local authorities will also have an extra power to refer individuals to its panel.

Ultimately, the safeguard that currently arises from splitting the responsibilities between a chief officer of police, responsible for referring individuals, and the panel, responsible for assessment, will no longer obtain.

[Baroness Howe of Idlicote]
While the local authorities should be more involved in countering terrorism, the amendment of Section 36 of the 2015 Act through Clause 19 of this Bill introduces a dangerous model that may be abused where the referral and assessment are conducted by the same person.

My concern about Clause 19 in its current form is that if a person refers an individual for assessment and then sits on the panel assessing that individual, there is a risk that the person, even if unintentionally, may steer the assessment panel in a direction that would help to justify their prior decision to refer the person for the assessment. If an individual is wrongly referred and then wrongly assessed, that could significantly jeopardise the process and lead to its abuse.

4.45 pm

In presenting this concern, I highlight questions asked during Second Reading by the noble Lord, Lord Stunell, which, together with the amendment, point to the fact that the Government need to proceed with greater care with Clause 19. He asked:

"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 it is not thought to be appropriate that they need Channel support? 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?"—[*Official Report*, 9/10/18; col. 56.]

These questions need to be addressed before local authorities are given the power to refer. One also has to consider the potential effects of these unanswered questions, and the scope for perverse incentives for those referring people under the Channel programme and wanting to validate their referral decision, on the individuals being assessed. Will they believe in the process when the accuser and the judge are the same people? Aware of the flaws in the process will they want to assist or will they refuse to collaborate because of lack of faith in the process? There is a high risk that such an approach, without any reasonable safeguards put in place, will have an adverse effect on communities already significantly affected by the flawed Prevent strategy and divided as a result.

The Bill does not propose any solutions to minimise the risk posed by equipping local authorities with the power to refer and the power to assess. My amendment rises to that challenge by ensuring that those who refer an individual for assessment do not assess the individual. For all the reasons I have set out, this is a very important amendment and I hope that the Government will support it. I very much look forward to the Minister's reply. I beg to move.

Lord Carlile of Berriew (CB): My Lords, first, I support the basic intention behind my noble friend's amendment, but I will in a few moments try to put it into a much more contemporary context than, with respect, she did. In any event, I ask the Minister to advise the House whether such an amendment is necessary at all. If somebody makes a reference to a panel and then sits on the panel, to me as a lawyer with quite a lot of experience dealing with judicial review, that would be immediately judicially reviewable as a plain example of apparent bias, and the decision would likely be overturned and have to be reconsidered from the beginning. I hope that we will hear the Minister tell the House that that is indeed the way in which the situation is perceived, and that it is not the practice for people making the recommendation, if they are local authority employees, to sit on the panel, though of course their recommendation is part of the evidence—that is what we will call it—that the panel hears.

I turn to my point about context. I urge your Lordships to regard this as an important change that has taken place over the years. Both before 2011—when I ceased to be the Independent Reviewer of Terrorism Legislation and was succeeded by my noble friend Lord Anderson, who did such a wonderful job in that role—and since, I have visited many Channel projects around the country. In the early part of my time visiting those projects, they were run by the police and their involvement was deeply resented by some local communities. In some areas, the police were very sensitive; in some, they were less so; but they always were seen by many communities, particularly in the West Midlands, as threatening to prosecute people and going outside their role of dealing with reported or suspected crime, investigating it and charging people.

In the best local authorities, where there must be a Prevent co-ordinator, this work has been devolved to ward level. Birmingham, the largest local authority in Europe, I think, is a very good example—despite the Trojan horse issue—of that being done with great success. In Birmingham, local authority staff—often social workers but sometimes those involved in education and sometimes those given offices to act only with the Channel project—identify vulnerable individuals and refer them for consideration by panels. In such cases, the police do not have to be involved at all. Indeed, as I understand it, in the majority of cases they are never involved. This is dealt with as a problem to be handled before any question of crime is considered and, in most cases, there is no need for police involvement because there is no crime. The reference takes place before crime. That is a successful Channel reference, almost by definition.

In the areas I visited, the police have acquiesced in that approach, recognising that their role is to become involved only if a reference is, first, unsuccessful and, secondly, moves into the area of potential crime. I urge your Lordships to take the view that the changes set out in the Bill simply reflect changes in the context of Channel since the 2015 Act was brought into force.

We heard from my noble friend Lady Howe about "false positives". I think we should be wary about that phrase. I say this with great respect to the noble Lord, Lord Paddick. He was a very distinguished operational police officer for decades. I am sure that during that time, he arrested or authorised the arrest of a fair number of people who were acquitted. That is normal in the world of policing. In the very difficult world of

counterterrorism, it is also normal. It would not be right to be hung up on statistics about false positives when one bears in mind the clear evidence of the considerable success of the Channel project.

Lord Stunell (LD): My Lords, first, I thank the noble Baroness, Lady Howe, for giving me such full attention in her speech: I appreciate that. According to paragraph 3.2 of the Prevent report that the Government published in March this year, the police made 1,946 referrals to the Prevent programme, which was 32% of the nominations made. The education service, by which I think they mean schools and colleges, made an almost identical number of referrals, 1,976, also described in the government publication as 32%. The question that I am happy to hear repeated by the noble Baroness, Lady Howe, is: are those figures appropriate? Is the net catching too many fish? I understand the point made by the noble Lord, Lord Carlile, which is perfectly fair, but the same paragraph of the same report says that 2,199 cases "required no further action", which is 36% of those referred. The total of those referred to "other services" is 2,748, which is 45%. If one adds those two together, over 80% are referred or require no further action.

Where are they referred to? Thirty per cent are referred to education, 17% to the police, and 29% to local authorities. Exactly what all this means will come up in the debate on the following amendment, as will whether the reporting system is giving us the kind of information and insight that the noble Lord, Lord Carlile, just tried to throw on the subject. I await the Minister's response with great interest. I certainly support the noble Baroness, Lady Howe, in moving the amendment today.

Lord Kennedy of Southwark: Clause 19 provides for a local authority to have the power to refer a person who is vulnerable to or at risk of being drawn into terrorism to a Channel panel for support. Amendment 54 in the name of the noble Baroness, Lady Howe, would place a requirement in the Bill that the person who previously referred the individual cannot be the representative of the local authority on the panel.

The noble Baroness set out a clear and compelling case for the amendment, and I will be happy to support her. She addressed a number of points that need to be responded to by the Minister in this short debate. The noble Lord, Lord Carlile, also made an important point about the risks to decision-making if you are the person making the referral and you make decisions as well. It may be that the Minister will say that the points made by the noble Lord will be taken into account by the local authority anyway, so it would not get into that situation, but he made a very valid point.

Baroness Williams of Trafford: I thank the noble Baroness, Lady Howe, for explaining her amendment. It might be helpful if I begin by briefly explaining how an individual is referred to a Channel panel, before turning to why it is important that we do not preclude someone who refers an individual from sitting on the panel itself. I apologise to noble Lords who know precisely how someone is referred to a Channel panel.

When talking about referrals to Channel, it is important to recognise that it is a two-stage process, the second of which is covered by the Counter-Terrorism and Security Act 2015. The first stage is the initial raising of a concern that someone might be vulnerable to being drawn into terrorism. I take slight exception to the noble Baroness, Lady Howe, describing the person as the "accused"; they are not accused but are being referred because they are vulnerable.

This referral can be done by anyone at all, such as, but not limited to, a social worker—referred to by the noble Lord, Lord Carlile—a teacher, a police officer, a healthcare worker, a family member or, indeed, a friend. All such concerns will eventually, if they make it that far, be assessed by the police, often using information provided by local partners to help them. The police will decide whether there is a genuine vulnerability that merits the attention of a Channel panel and, if there is, make a referral to the panel. This second-stage referral is covered by the 2015 Act. The purpose of Clause 19 is to allow a good deal of that assessment process and second-stage referral to be carried out by local authority staff.

The chair of the Channel panel can invite local partners to the panel, and this will almost certainly include the professional who has made the second-stage referral, and perhaps the individual who raised the initial concern, particularly if they are both from one of the panel's statutory partners. Both of these professionals are likely to have important information on the subject of the referral. I mentioned social workers—as did the noble Lord, Lord Carlile—because noble Lords will be able to see that in other contexts where the referring person may be involved, such as safeguarding, it is important and not a conflict.

5 pm

The Channel chair can also invite other individuals to parts or all of the panel discussion if they can further the aims of the multiagency arrangements by sharing information about the individual who has been referred. To exclude from the Channel panel a professional who might know most about a person who has been referred would be counterproductive to the aims of a multiagency safeguarding arrangement, as it could result in the panel being unaware of crucial information when determining the nature of support that a vulnerable individual requires to help them turn away from terrorism. The Committee will move on to talk about Prevent, but Channel is a very important mechanism for helping vulnerable individuals receive appropriate support.

I hope that, with those explanations, the noble Baroness will feel it appropriate to withdraw the amendment.

Baroness Howe of Idlicote: My Lords, I am most grateful to the Minister, and to all noble Lords who have taken part in this short debate. The assessment that has been made will lead one to consider all the comments carefully. As for withdrawing the amendment, I am pretty certain that I will return to this at a later stage, when the issue is looked at in more detail. In the meantime, there is a lot to think about. In particular,

[Baroness Howe of Idlicote]
the comments of the noble Lord, Lord Carlile of Berriew, set the tone for the debate. I beg leave to withdraw the amendment, at least temporarily.

Amendment 54 withdrawn.

Amendment 55

Moved by ***Lord Stunell***

55: Clause 19, page 21, line 19, at end insert—

"( ) After subsection (3) insert—

"(3A) The Secretary of State must ensure the collection and annual release of statistics on—

(a) the religion, and

(b) the ethnicity,

of identified individuals referred under subsection (2).""

Lord Stunell: Amendment 55 relates to the recording of information about those who are referred into the system and provides that we should collect information on ethnicity and religion. The amendment's current phrasing of "religion" may not be the most elegant way of putting it, and "what religious belief, if any, the individual professes" might capture the purpose more clearly. In any case, I see the amendment as a ranging shot for the debate on Amendment 57 which will follow. Its purpose is to give some meaningful and useful additional information which would be published in the annual statistical review to which I referred in the debate on the previous amendment.

There are numerous statistics at the moment, some of which have already been quoted. Perhaps the most outstanding is that, in 2016-17—the statistics for 2017-18 have not yet been published—6,093 people were referred to the process. As has already been said, a very much smaller number actually went into a Channel programme: some 6% of those who were referred. There are various staging posts along the way, which meant that some 36% of people were filtered out because nothing needed to be done and 45%—almost half—were referred in a different direction not related to terrorism at all, although they might have had vulnerabilities that needed to be addressed. That left 19% who got as far as serious consideration, of whom approximately one-third were directed into a Channel programme.

All that is in the current summary. The summary also states the gender of those referred, says something about the age profile, and says quite a lot about the region of the country from which they come. However, it says nothing about the ethnicity, culture or religion of those who are referred. As was said earlier and is well known, at a time when there are significant community fears and suspicions about the way that this programme operates, the absence of that information makes it very difficult for anybody, including the Minister, to rebut their fears that the system operates in a discriminatory way, possibly as a result of unconscious bias or as a result of people looking slightly too Muslim. How do people actually get into the programme? We do not know how it works. Are there groups of the population who find themselves disproportionately targeted, or not? Given that 94% of those who are referred do not finish up in the Channel programme, is the ethnicity of the 94% who do not make it into the Channel programme different from that of the 6% who get through all the filters?

At Second Reading I made a number of points about the referral rate and a procedure which I described as producing duds. However, I should qualify that immediately by saying that only 36% of referrals were duds, 45% showed vulnerabilities but had nothing to do with terrorism, and 19% merited further investigation on grounds of potential vulnerability to terrorism. The police made 32% of all the referrals. Therefore, my first question to the Minister is: did they get it more right than schools, universities and colleges, which also referred 32%? In other words, is it stop and search revisited, or did most of the Channel cases which finished up in the Channel programme itself come from the police referrals, indicating that the police were in fact uniquely good at getting it right? We do not know because we do not have the fundamental information needed to assess it.

We therefore do not know whether communities are proportionately or disproportionately referred or which referring agency is better or worse at hitting the target—that is, getting relevant people referred in the first place and through to Channel programmes at the end of the process. Are Asian men disproportionately reported and therefore in the 94% but then not seen as at risk? That would perhaps be evidence of unconscious bias in how referrals are made. Or perhaps that is not the case, in which case the Minister could stand and face community representatives and say that the evidence supports the contention that it is always done fairly and proportionately. There is also a small subset where more information might be useful operationally anyway. The religion and ethnicity crossover is relevant when there are converts and newly radicalised white referrals. How many of those have there been? We do not know the answer to that either.

The Minister might say that to extend the statistical reach in this way is costly and disproportionate and all those kinds of things. However, the public good that would come from being able to answer these questions is substantial, and it is well worth recording something that would be blindingly obvious to the people on the Channel panel, who will automatically take into account the ethnicity and the religious and cultural background of the people they are assessing. In case the Minister goes the other way and says that the amendment is too narrow in the information it would add to the statistical summary, I should add that Amendment 56 is the catch-all that would allow Ministers to tell us what other factors need to be taken into account to make this a meaningful document. I beg to move.

Lord Sheikh (Con): My Lords, I will talk about the Prevent strategy in greater detail when we discuss Amendment 57. At this stage, I would like to say that there is disquiet among Muslims regarding the application of the Prevent strategy and it is felt that a review is necessary.

The Home Office should gather and publish figures to see whether the strategy is disproportionately affecting any particular ethnic group or religion. I understand

that the Government publish data on the age, gender and region of residence of those referred under the Prevent programme, together with the type of concerns raised. It is important that there is complete transparency and people are given all the appropriate information, including details regarding ethnicity and religion. This will enable us not only to have a complete understanding of all the issues but to take appropriate remedial action. As regards Muslims, we need to involve members and leaders of the community, the mosques, the imams, Muslim centres and the media. We can then make arrangements for all the people to get involved and provide the necessary guidance and support.

Islam is indeed a religion of peace and forbids any form of suicidal act or terrorism. We need to explain to people who are misled about the true principles of Islam, once we have examined the total extent of the problem. I therefore support the amendment.

Baroness Hamwee: My Lords, I support my noble friend. I do not know whether he used the words "confidence", "trust" and "perceptions" but he certainly alluded to them when speaking about the operation of Prevent—that is something we will come to in the next group of amendments. He referred to the public good that comes of transparency. I understand that local authorities that are in receipt of freedom of information requests about the local operation of Prevent are advised by the Home Office to say that they cannot answer, on grounds that include national security, health and safety and—something I was particularly puzzled by—commercial interests.

When questions are asked about the delivery of Prevent projects, the generic answer is apparently that to disclose information could reveal commercial interests and negatively affect the commercial viability of the organisations that deliver the projects. I am sure that the Committee will be interested in how the Home Office suggests that requests for information of this sort should be answered. I do not expect the Minister to disclaim the way in which the Home Office has been advising, if it has been—or at any rate not without taking some advice. But the issue of commercial confidentiality throws a light on this that I had not expected to see.

Baroness Barran (Con): I just want to clarify one point. I believe that the information about the difference in referrals to Prevent that end up at a Channel panel is in the Home Office information bulletin. So the answer to the noble Lord's question about whether a police referral is more likely to get through than education or local authority referrals is that it is just over half as likely to get through if it is initially a police referral. Therefore, I think that your Lordships can take some comfort from this being, as the noble Lord, Lord Carlile, suggested, genuinely about safeguarding rather than a criminal justice intervention.

5.15 pm

Lord Kennedy of Southwark: My Lords, Amendments 55 and 56 in the names of the noble Lords, Lord Paddick and Lord Stunell, seek to insert amendments to Clause 19. As we have heard, Amendment 55 would require the collection and release of data which details the religion and ethnicity of a person referred to a panel. This could provide valuable and meaningful data to help the Government in dealing with these very difficult matters, and I very much agree with the noble Lord, Lord Stunell, in this respect. When he listed what is included, it was even more interesting to reflect on the fact that these two pieces of information are not collected. I am sure that the noble Baroness, Lady Williams of Trafford, will address that point in her reply.

On the face of it, Amendment 56 seems very sensible—but it may well be that it is not necessary, so I will listen carefully to the Government's response.

Baroness Williams of Trafford: My Lords, I shall start by addressing Amendment 55. I wholeheartedly agree with the noble Lord, Lord Stunell, that it is very important that both the Prevent programme and the Channel process are open to public scrutiny, and, to this end, we support calls for greater transparency. Indeed, we have already published two years-worth of Channel statistics, covering 2015-16 and 2016-17—the latter in March of this year. We are committed to publishing these statistics on an annual basis, and expect to publish 2017-18 data towards the end of this year.

The data is extensively quality assured before publication to ensure accuracy. However, due to the provisional nature of the dataset and the need to further develop and improve our data collection, it is currently published as "experimental statistics", indicating that the information is, as I said, at an early stage of development. As such, we look for feedback from users on what information is included, while working to improve training and guidance for those responsible for providing the data and assessing its quality and limitations.

We absolutely appreciate that figures on ethnicity and religion are likely to be of interest to users of these statistics, for all the reasons that noble Lords have outlined. Working through the Home Office Chief Statistician, we are happy to explore the inclusion of such data in future publications. However, I should stress that whether this proves to be possible will depend on a number of factors, including the quality and completeness of the data. To give an example, currently at least half of the records supplied to the Home Office do not include ethnicity or religion, so publication of such variables could be misleading at this stage. However, that is not a no; it is saying that we will work on statistics that will be useful to the public and provide for wider transparency.

Turning to Amendment 56, I am pleased that the noble Lord, Lord Stunell, recognises the significant role that a Channel panel can have in helping to safeguard very vulnerable individuals. Although the Government agree wholeheartedly with the intent of the amendment, I will set out why we do not think it is needed to achieve this end.

Section 36(4) of the Counter-Terrorism and Security Act 2015 requires the Channel panel to prepare a plan for an individual whom the panel considers appropriate to be offered support. Section 36(5) sets out what information must, as a minimum, be included in such

[Baroness Williams of Trafford]
a support plan—that is, how consent is to be obtained; the nature of the support to be provided; the people who will provide the support; and how and when the support will be provided.

The current wording of the Act does not preclude other information being included in the support plan, but it should also be recognised that this is not the only place where information about the individual being discussed is recorded. The vulnerability assessment framework, for example, contains relevant information about the particular vulnerabilities of the individual, drawing on all the information from the various panel members. Panel minutes will contain the record of the multiagency discussion and a risk assessment is also completed. All these documents are brought together within the case management file.

The Government agree entirely with the thrust of the amendment, which is that it is essential that the panel is aware of, takes account of, and indeed records, all matters relevant to the safeguarding needs of the individual. As noble Lords will know, that is the bread and butter of what Channel panels are about, and I reassure the Committee that the statutory Channel duty guidance makes it clear that this is the case. Paragraph 71 of the guidance, for example, says:

"The panel must fully consider all the information available to them to make an objective decision on the support provided, without discriminating against the individual's race, religion or background".

However, the support plan is not necessarily the right place to record that information. It is intended instead to be a simple, unambiguous document that sets out exactly who will do what and when with regard to the actual support being provided. Requiring panels to include other information here, rather than in other parts of the case management file, would be likely to diminish rather than add to its value within the process.

The noble Lord asked whether Prevent was discriminatory. The statistics reflect the type of extremism being referred and what happens at each stage of the process. It is important to note that one-third of all cases provided with support were actually referred for far-right concerns. He also asked which agencies had the highest and lowest conversion rates from referral to support. I will be happy to look at the underlying statistics and see whether that analysis is actually possible, and I will get back to him on that.

I hope that I have given the noble Lord sufficient information so that he will feel that he can withdraw his amendment, on the understanding that the Home Office Chief Statistician is looking precisely at the issue that he raised in Amendment 55.

Lord Stunell: My Lords, I thank all noble Lords who contributed to the debate, and I particularly thank the Minister. If I may say so, for a ranging shot we seem to have done very well. We look forward very much to seeing the Minister convince the statisticians that the much-needed information can be made available in a timely fashion. On that basis, I beg leave to withdraw the amendment.

Amendment 55 withdrawn.

Amendment 56 not moved.

Amendment 57

Moved by ***Baroness Hamwee***

57: Clause 19, page 21, line 25, at end insert—

"( ) After section 40 (indemnification), insert—

"40A Independent review of preventing people being drawn into terrorism and support for those vulnerable to being drawn into terrorism

(1) The Secretary of State must make arrangements for an independent review of the Government's Prevent strategy for preventing people from being drawn into terrorism and for supporting those vulnerable to being drawn into terrorism within 6 months of this provision entering into force.

(2) The Secretary of State must report on the findings of the review. This report must be laid before both Houses of Parliament within 18 months of this provision entering into force.""

Baroness Hamwee: My Lords, Amendment 57 is another amendment that I am moving on behalf of the Joint Committee on Human Rights. The noble Baroness, Lady Jones, my noble friend Lord Stunell and the noble Baroness, Lady Lawrence—who is also a member of the committee—have their names to it as well. This amendment calls for an independent review of Prevent. We are by no means the first to call for such a review.

The Government have said that, in the Bill, extending to local authorities the power to refer to the Prevent programme individuals regarded as vulnerable to being drawn into terrorism is not an expansion of the scope of Prevent but just a sensible measure to streamline the process of referrals. As the Minister may point out again, I proposed that in 2015. It seemed to me then—and in some ways does now—that it is odd that local authorities, which through social services and other services are at the heart of prevention and safeguarding, should be excluded from that part of the process. As I have said before, and will go on saying, the important word here is "safeguarding". Other important words are "trust" or "mistrust", "perception" and "independent".

The committee took evidence earlier in the year on the issue of Prevent. Again perhaps to pre-empt it being pointed out, we reported—because we wanted to report fully on the evidence—that although a number of stakeholders had reiterated the call for an independent review there were concerns. A doctor and academic expressed concerns about local authority involvement. She said that healthcare professionals and local authority processes can mean that people go down the track into,

"incidences of dissent and illiberal political beliefs–rather than vulnerability to abuse in persons with formal care needs … People have a right to their beliefs without them being interpreted and medicalized as 'vulnerabilities'".

I agree that beliefs should not be medicalised, but what she describes is not what should be the catalyst for safeguarding.

The noble Lord, Lord Carlile, who I am sure will intervene in this discussion, conducted a one-off independent review of the Prevent strategy in 2011. However, unlike many aspects of counterterrorism law or terrorism law, this is not subject to continuous

review or oversight. I hope that the noble Lord, Lord Anderson—I am sure he will—may refer to his work. It is inevitable that I will trail his comments and pray him in aid, but I hope not to pre-empt him. In a submission to the Home Affairs Select Committee of the Commons two years ago, he said that he thought that,

"Prevent could benefit from independent review. It is perverse that Prevent has become a more significant source of grievance in affected communities than the police and ministerial powers".

Two years ago, the Joint Committee picked up the subject when we expected there to be a counterextremism Bill. The noble Lord, Lord Carlile, said then,

"reviewers can help the Government by challenging them … I cannot see anything being lost by reviewing the Prevent policy".

I take that as at least not opposition. It may be support. I hope that it was not damning with faint praise.

Lord Carlile of Berriew: The noble Baroness has managed successfully to provoke me on to my feet. Could she give her view on the following? There is about to be appointed a new Independent Reviewer of Terrorism Legislation—the advertisement was on the Cabinet Office job site last week. Can she see any reason why the review, which I and she share the opinion would be sensible, cannot be carried out by the same Independent Reviewer of Terrorism Legislation as is appointed as a result of that advertisement? Does she see any utility in having another reviewer with overlapping responsibility? Also, given that she has taken a great interest and shows great expertise in these matters, can she cite to the Committee by identity any Prevent projects that have given rise to the mistrust—that was the word she used—and can she tell us whether she has visited them in order to make her own assessment?

Baroness Hamwee: I would have denied the expertise in any event. I shall not go into what I have visited but I have not visited any of the projects that would fall into that category. If the people affected tell us—not only me—that they are unhappy and mistrustful, that answers the question in itself.

Lord Carlile of Berriew: I promise to intervene only once more. Has the noble Baroness had cited to her projects—and will she tell us which ones if that is the case—that fall into the mistrust category? I have a sense that Prevent is being demonised as a campaigning route and not on an evidential basis.

5.30 pm

Baroness Jones of Moulsecoomb (GP): My Lords, I have visited several Prevent schemes and I have heard from people who are deeply mistrustful of them. That is set out in various reports from the London Assembly if noble Lords would like to look them up. It is not simply campaigning and I think that is a slur.

Baroness Hamwee: My Lords, I cannot cite schemes but I do not think that undermines my argument because Prevent is wider than individual schemes. As it happens, I agree with the noble Lord on his first point. My amendment does not propose a separate independent reviewer and I have noticed some frustration among past reviewers at their having to be somewhat at arm's length, or slightly detached, from Prevent because it does not fall within their terms of reference. Perhaps I may say that I hope an appointment is made soon so that there is not too much of a gap in the process.

Where was I? I quoted the noble Lord and I think he still supports the proposition. I have mentioned the comment of the noble Lord, Lord Anderson of Ipswich, about the lack of transparency and we have just debated an amendment on that. Whether it is on individual schemes or as a result of demonisation—if that happens, that is a problem too—there is clearly mistrust of the regime; perhaps I can put it as widely as that. On sensitive issues such as this, in my view, perceptions are fundamentally important.

In evidence to the Joint Committee, the Muslim Council of Britain—I am choosing to quote the council only because it is a convenient quotation; I know it has its fans and its critics—referred to,

"an undermining of trust and human rights and civil liberties in Muslim communities. The resulting self-censorship"—

something I have heard about from others as well—

"the lack of transparency and expansion of 'Prevent' risk being a threat to cohesive societies that can effectively respond to terrorism".

In oral evidence to the committee, Liberty said:

"The Government have ignored calls"—

for an independent review—

"and seek to extend and reinforce the Prevent strategy without looking back at questions like what its interaction is with other legal duties in the criminal law … How is personal information being dealt with in the Prevent programme?".

Keeping the strategy under review internally, to anticipate what we may hear from the Dispatch Box, or by anyone seen to be close to the programme, is not enough. It needs to be someone who is accepted as being independent. A challenge—that does not mean opposition—to the Government on this is important. We need to know what is working and what is not working. Who knows? The Government could gain a great deal of credit not just from the process of review but from its outcome. However, we do not have the review to reassure us. I beg to move.

Baroness Jones of Moulsecoomb: My Lords, I have attached my name to this amendment because it is an issue that goes to the heart of civil liberties in this country. The Prevent strategy is of great concern to me and to tens of thousands of others, particularly campaigners and those from ethnic minorities. As a Member of the London Assembly and the Metropolitan Police Authority, I visited Prevent projects and heard from local people and the practitioners themselves. I can assure noble Lords that there is mistrust, and even distrust, of Prevent in many places. One project I saw appeared to work well, but many did not.

A person is referred for political re-education through the Prevent strategy for opposition to so-called "fundamental British values". I think it is the Government who are undermining fundamental British values and I should be referring them to Prevent. The Government are challenging informed debate and transparent

[Baroness Jones of Moulsecoomb]
government. They cannot continue to justify Prevent with their internal Home Office reviews; it is time to shine the light of public scrutiny on the whole process.

I must ask: why would the Government say no to this amendment? If the Prevent strategy is a success, if it does not discriminate against Muslims, ethnic minorities and campaigners of all sorts, and if it does not infringe too far our rights and freedoms, what is the problem with holding a proper review and what is there to hide? An independent review would surely prove the Government's case and force all doubters, like me, to back down. The Government would be celebrating Prevent in all its glory, not trying to cover up the facts.

In the absence of reliable assessments of the Prevent strategy, we are forced to conclude the exact opposite. The fears expressed by the Muslim Council of Britain—that Muslims are being disproportionately targeted and are increasingly fearful of unjustified state intrusion in their lives—must therefore be accurate. The concerns of social workers, teachers and academics that they have been conscripted as oppressive counterterrorism officers must be taken seriously, and the idea that the Government are wasting money and scarce police resources on chasing people who pose absolutely no threat of harm must be assumed to be true.

The Prevent definition of "extremism" is,

"vocal or active opposition to fundamental British values".

Such a broad and meaningless definition means that too many people are getting caught in a trap. I urge the Minister to adopt this amendment and prove to us sceptics that Prevent is operating lawfully and effectively. As is often said in support of the Government whenever they want to curtail our rights, "You have nothing to fear unless you have something to hide". I therefore have to ask: what are the Government hiding?

Lord Carlile of Berriew: My Lords, with great respect to the noble Baroness who has just spoken, we should put the record straight about what happened in the London Assembly. Its report, *Preventing Extremism in London*, published in December 2015, at which time I was chairman of the London Policing Ethics Panel, was broadly very supportive of Prevent. I gave evidence to the panel, including to the noble Baroness, who was its deputy chairman at the time. I gave my opinions and the panel took evidence from various sources. The noble Baroness produced a dissenting report, which is to be found on page 38 of the document. It excoriated Prevent, but she was in a minority of one. Since then the new Mayor of London—new since 2015—has produced statements broadly very supportive of Prevent, albeit of course seeking to secure improvements.

My second point concerns something I raised when I interrupted the noble Baroness, Lady Hamwee. I have been involved in many debates in which it has been said as a general proposition that Prevent is dangerous, that it is alienating communities and so on. If you say it often enough, people will start to believe it. But every single time I have challenged in such a setting, as I have this evening—I say this with great respect to the noble Baroness, Lady Hamwee—with the argument that Prevent programmes should be named so as to provide evidence for such criticism, evidence there is none.

I heard the reference to the Muslim Council of Britain; I respect it greatly, although not on this subject, I am afraid, where it generalises as badly as anyone else. If individual programmes in Prevent cause real concern, I urge those who have identified them to take their evidence to the Prevent group at the Home Office, which will deal with their concerns. The Home Office does not want to waste its precious money on Prevent programmes that prove not only unproductive but counterproductive. It is an absurdity to suggest that the Government, or anyone involved in this complicated field, wish to see money wasted in that way.

As somebody who has followed Prevent since it started—as was said, I wrote the review of the coalition Government's policy on Prevent in 2010-11—I have been approached by people from government sources all over the world saying, "How do you do this? We wish to adopt this kind of policy". Indeed, at one stage the United States placed in its embassy in London a very distinguished legal academic, Quintan Wiktorowicz, who worked with Waltham Forest London Borough Council in particular on its Prevent strategy. On a couple of occasions, I was present at discussions in Waltham Forest founded on the work done by Professor Wiktorowicz, who was placed in the London embassy to try to create a Prevent policy for the United States of America; he was sent there by the Obama Government. The reason he failed—if he will forgive my using that word—when he went back to America had nothing to do with what he found out in the UK; it was because of the extremely devolved nature of US government, which made it impossible to produce the sort of Prevent policy that exists in Great Britain.

I am not saying that Prevent is perfect, of course. Constructive criticism is always welcome. Those of us who spent our time buried in Prevent and going to see Prevent programmes all over the country—some of which were unbelievably successful—are always prepared to listen to criticism and lobby the Government to change some of the Prevent strategy. However, in this debate, as in many others, I have heard no evidence for that so far. We need to ensure that there is a proper review of Prevent. In my view, the Independent Reviewer of Terrorism Legislation is perfectly capable of spending a few extra days, for which he or she will be paid, carrying out such a review. That would make it part of a holistic review process, which would certainly meet the concerns of the noble Baroness, Lady Hamwee, and most other noble Lords who have put their names to these amendments.

Baroness Manningham-Buller (CB): My Lords, I will comment briefly on this important subject. I was the director-general of MI5 in 2003 when we produced the terrorism strategy. At that stage, it was not public. Of the four Ps—Prevent, Pursue, Protect and Prepare—Prevent was the one on which we spent the most time. We did not feel qualified to be very helpful on it, although we had established a behavioural science unit in the service to look at why people were drawn into this course.

Whatever the criticism, it seemed noble to go back to what was causing some of this, to stop young people in particular being groomed into the profession

of terrorism. If through this channel we have saved a number of young people from that route and diverted them into other, productive lives, that is a very valuable achievement. I note that a substantial number of people who are now in this process are being seduced and drawn into extreme right-wing activity. Again, if we can divert some of those—largely young—people from that course, it is right.

That is not to say that all these things cannot be done better. I do not know about that; I do not have the insight of my noble friend Lord Carlile. However, I know that of the four Ps, Prevent is the most difficult one. It is challenging but, since it was initiated in 2003, a great deal of progress has been made in refining and improving it.

5.45 pm

Lord Anderson of Ipswich: My Lords, I support the amendment. The independent review of terrorism law in this country dates back to the 1970s. It offers us in Parliament an assurance that in return for consenting to some exceptionally strong laws, whose operation is often shrouded in secrecy, a security-cleared person will be appointed to report on their application.

More recently, in a development pioneered by the noble Lord, Lord Carlile, the post of reviewer has become a token of good faith to the general public. Successive reviewers have criticised the Government where it is justified but their approval, when offered, has proved most helpful in dispelling myths and reconciling all sections of the public to controversial aspects of these sadly necessary laws, whether or not they are found to have been mistakenly applied in particular instances.

However, as has been said, Prevent has never been subject to the remit of the independent reviewer and is expressly excluded from the remit of the counterextremism commissioner. I would be the first to accept that policies must be decided by Ministers accountable to Parliament, but external review of the operation of a policy can be of particular value when potential conflicts between state power and civil liberties are acute but information about the use of those powers is tightly rationed.

Prevent is a well-intentioned, voluntary strategy that has achieved striking success, without a doubt, but it is handicapped from reaching its full potential by mistrust, in terms of both individuals and organisations that are willing to work with it. Criticism can fairly be aimed at some of the groups that devote themselves to promoting that mistrust. In my experience, such criticism is generally returned with interest, but blaming others is not enough. One has to ask why an anti-Prevent narrative, promoted by a controversial few, has been allowed to become so prevalent, not only in Muslim circles but more generally among the chattering classes of liberal Britain, and why there appears, from what I am told, to be more mistrust of anti-radicalisation programmes in this country than in comparable places, such as the Netherlands and Denmark.

For some years, I have thought that the Government should combat this hostile narrative through more transparency, wider engagement and commissioning a no-holds-barred independent review. On transparency, they have acted; I applaud the personal efforts of the Security Minister, Ben Wallace. The resulting, regularly published figures are a very good start and are now central to any informed debate, as indeed they were in previous debate on amendments to Clause 19.

On the other two fronts, we have further to go. This strategy is too important not to do as well as we can. An independent operational review with comparative reach would provide public reassurance where it is justified and constructive challenge to the Government where improvement is possible. I accept that it would be more useful if the Government wanted it, but the argument for a review does not depend on the prior identification of specific defects. I hope that the Government will agree to work with the amendments in a spirit not of self-harm but of self-help.

Baroness Jones of Moulsecoomb: I am not sure whether the noble Lord includes me among the chattering classes, but I forgive him anyway. Does he accept that those who feel mistrust are not the sort of people to make formal complaints and put their views on record, which is perhaps part of the problem with having cases where we can point a finger and say, "This is a problem and this is where the mistrust comes from"?

Lord Anderson of Ipswich: We have heard echoes of mistrust within this Chamber today from a number of noble Lords, so I do not suggest that it is limited to those who are incapable of expressing themselves or have no outlet by which to do so. Nor, for the sake of emphasis, do I suggest that such mistrust is justified. That would be precisely the point of a security-cleared independent review: to get to the bottom of whether things are as they seem and as they should be.

Lord Sheikh: My Lords, I want to make some comments relating to the Muslim community in the United Kingdom. There are more than 3 million Muslims in the country, who have come here from different parts of the world. The population is youthful in comparison with other communities. Muslims have done well in every walk of life and contributed to the advancement and well-being of the country. Nearly all of them are law-abiding people, but unfortunately a tiny minority has caused problems. They have been radicalised and committed terrorist acts.

What those misguided persons are doing and have done is totally un-Islamic. They have misunderstood our glorious religion and what they have done is not in accordance with Islamic principles. In the Holy Koran it is written: "Whoever kills an innocent person it is though he has killed all mankind, and whoever saves a life it is as though he has saved all mankind". It is therefore imperative that we guide such people and tell them about the true principles of Islam. The Muslim community has a role to play in this regard, and I shall expand on this point later.

I have been actively involved in combating radicalisation among the community. In this regard, I prepared a report setting out the various problems and suggesting my recommendations. It was sent to the Prime Minister and a number of Muslim centres and mosques. In addition, I have had numerous meetings and conversations with members and leaders of the community, imams, teachers, parents and the media.

[LORD SHEIKH]

I want to emphasise that I support the Prevent strategy in principle but it is necessary for a review to be undertaken. I therefore support the amendment. To deal with issues concerning radicalisation, we need input and participation from local authorities, the police, schools, prisons and members of the community at all levels. I am trying to raise awareness that the onus is on the Muslim community to be honest and to realise that there are problems among a tiny minority and that it is therefore necessary to take positive action to remedy the issues. This means that a holistic approach must be taken by the community in conjunction with others. The involvement of the community is imperative. We must secure its co-operation to make the Prevent strategy work without problems.

I have travelled to various parts of the country and talked to leaders of mosques, imams, heads of community centres and members of the communities. The Prevent strategy has caused concerns and raised objections. Some critics of the strategy have said that there is racial profiling, excessive spying and the removal of basic civil liberties from innocent individuals.

It has also been mentioned to me that Prevent is perhaps a toxic brand. Not everyone in the community is convinced that the strategy is right, and the concept is difficult to sell to them. It has also been said that only self-appointed community leaders have been involved rather than members of groups which represent the community. The community therefore feels that it needs to be a part of the strategy in whatever form it may be constructed.

I said earlier that Islam is a religion of peace and that any form of terrorism is unacceptable in it. It is therefore imperative that Muslim leaders and imams guide people who may have been misled and are confused about Islamic values. The community therefore has a role to play.

At one of its annual conferences, the National Union of Teachers asked the Government to withdraw the Prevent strategy with regard to schools and colleges and to develop an alternative scheme to safeguard children and identify risks posed to young people. Teachers have said that the strategy causes,

"suspicion in the classroom and confusion in the staffroom".

It has also been mentioned that Prevent is affecting education and undermining trust between teachers and pupils. It appears that about 65% of a total of some 5,000 Prevent referrals are Muslims. Muslims have a one-in-500 chance of being referred, hence the chances are 40 times greater than for someone who is not a Muslim. Furthermore, a very small number of referrals are acted on. These figures indicate that there is perhaps over-referral of Muslims, which needs to be looked into thoroughly. I have been made aware of some unpleasant incidents in schools where it was proven that Muslim children had been picked on for no good reason. This has led to anguish and anger. School authorities may have acted in good faith, but their actions were wrong.

It appears that the total cost of the Prevent strategy is more than £40 million. One needs to examine whether the money is spent effectively and we are getting proper value for our expenditure. The amount spent may be excessive and perhaps lucrative for some people. Furthermore, it is important that we apply suitable criteria before an organisation receives a contract for undertaking the work. We should ensure that proper checks and balances are applied to organisations granted contracts.

Lord Carlile of Berriew: I have been listening with great care to what the noble Lord has said—he obviously has great knowledge. Can he give the Committee some examples, first, of Prevent projects which have given rise specifically to the kinds of mistrust and poor reputation that he has referred to; and, secondly, of Prevent projects which have been, as he describes them, a waste of money?

Lord Sheikh: These comments have been made to me in general. What I am trying to say to your Lordships' House is what I have been told. When I go up and down the country and talk to people, I find disquiet and unhappiness about the strategy, so I feel that we need to undertake a review of it.

There is to some extent a lack of transparency about the strategy which has led to mistrust and is affecting its effectiveness.

I have identified a number of issues which are relevant and believe that there are good reasons for an independent review to be undertaken. The review must be a thorough examination and it must be undertaken after discussions with everyone involved, including relevant organisations and members of the community. The review must arrive at a conclusion which I hope will have the agreement of everyone, as much as possible. I end by emphasising, as I said at the outset, that I agree with the strategy in principle but it needs to be reviewed and an alternative must be found after appropriate consultation and discussion.

6 pm

Lord Stunell: My Lords, I support the amendment proposed by my noble friend Lady Hamwee, and I see it as being on behalf of the Joint Committee on Human Rights. That committee's report set this out very clearly. For most of the last 45 years the noble Lord, Lord Carlile, and I have been on the same side of the enterprises we were jointly engaged on, but on this occasion, not so much. I very much prefer the evidence provided to the Committee by the noble Lord, Lord Anderson, to that of the noble Lord, Lord Carlile, on this occasion. We have the evidence of concern and I personally, if challenged, cannot say that I have seen a project which was not successful or which was delivered with distorted priorities, but the debate in the Committee so far has been about much more than individual projects and how well an individual project does or does not deliver, just as a debate about education in this House is not about how one particular school does or does not deliver. It is about the quality of the product overall, and that is surely what this review should be aiming to assess.

I note that at Second Reading the Minister said in winding up that there was evidence that Prevent was working well, and she cited the Metropolitan Police Commissioner. At the same time, the Government's

Explanatory Note says that the specific changes in Amendment 19 will save police resources. Clearly, there is a need to save police resources, and therefore we had the discussion earlier about whether the amount of effort the police are putting in, capturing fish that are then thrown back into the sea, is the right strategy or tactic to follow. It is clearly appropriate to ask that question in relation to other referring agencies as well.

The fact is that at the moment we do not know the answer. Statistics will be part of the answer, but we also need to look at outcomes. What we have at the moment is not an annual evaluation but an annual tabulation, which is not very useful, in some ways. It is as though an Ofsted report were produced in which the only information was the attendance register, with no attempt to evaluate the curriculum or the attainment level. There is nothing so far available to the Committee or to policymakers about the choices, the content or the outcomes of the programme as a whole and I believe that there certainly should be. I entered the search term "Prevent strategy evaluation" into the GOV.UK website and it brought up two documents. The first was the annual statistical review, which as I pointed out is not actually doing that job, and the second and only other document was a Youth Justice Board report, *Preventing Religious Radicalisation and Violent Extremism*, published under the imprimatur of the DCLG back in 2010. There may be other evaluations—there may, indeed, be very useful reports drawn up by various other people—but the Government have not seen fit to reference them on the website and in that sense they have certainly failed the transparency test, even if stuff has been going on.

It might be worth while quoting a couple of paragraphs from that Youth Justice Board report of 2012:

"The review found that the evidence base for effective preventing violent extremism interventions is very limited. Despite a prolific output of research, few studies contained empirical data or systematic data analysis".

Then, after some examination of overseas projects, and the tos and fros of that:

"These programmes provide some potential learning points for future UK programmes, chiefly around the need for those engaging with radicalised individuals to carry authority and legitimacy, and to be equipped with profound ideological knowledge".

An immediate question arises as to whether, in the subsequent six years, that paragraph's lessons have been carried through, making sure that those who are delivering the programme or, indeed, carrying out the filtering process that we have been discussing this afternoon are in fact,

"equipped with profound ideological knowledge".

I have a sense that that may not be true in all cases, although no doubt it is in some.

When one starts a process which, as the noble Lord, Lord Sheikh, and at Second Reading, the noble Baroness, Lady Warsi, very eloquently explained, arouses the concerns of the community that it is supposed to safeguard, and at the other end we see the inability of the Government to demonstrate that they are producing results at the far end of the project, the time for an independent review is clearly now.

Baroness Barran: My Lords, I shall speak very briefly to this amendment. It is an understatement to say that noble Lords feel strongly about Prevent and the need for an independent review. I agree with noble Lords who have talked about a lack of trust in Prevent. My own experience has been of talking to some very successful Prevent projects which, when I suggested that I might refer to them in my speech at Second Reading, asked me not to refer to them in public. Those are ones I wished to cite as doing a fantastic job, so I think that an effort to address some of that mistrust is very well placed.

My reflection is that there is a lot of existing information which, as the noble Lord, Lord Stunell, suggests, might help to fill some of the gaps that noble Lords have talked about. Critical within that is the role of the new Independent Reviewer of Terrorism Legislation, but also, from the police perspective, there is what I used to call HMIC, Her Majesty's Inspectorate of Constabulary, but now have to remember is called HMICFRS, Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services. The first annual review of the counterterrorism independent advisory group will be published in June next year. Through a more multiagency lens, which I think is really important in this area, there are the local strategic oversight boards and the scrutiny panels. I confess to the noble Lord, Lord Carlile, that I have not yet attended one—it is clearly in my plan—but I understand that the scrutiny panels are open to the public. There have also been some multiagency peer reviews as well as some more recent independent evaluations, such as that by the University of Huddersfield.

I want to hear the thoughts of my noble friend the Minister about the potential to aggregate and analyse this information. It feels to me like a missed opportunity to bring data transparency to the programme, but also for those who are implementing Prevent on the ground to share learning—and then, of course, potentially to share some much more publicly. I appreciate that this may not address the full range of concerns raised by noble Lords, but I think it could go some way towards a practical solution that can be delivered quite quickly ahead of a more formal independent review.

Baroness Lawrence of Clarendon (Lab): My Lords, I speak as a member of the Joint Committee on Human Rights. Most of what I was going to say has already been said by the noble Baroness, Lady Hamwee, as we are both on the committee. I want to add to what has been said that the Joint Committee is concerned that the Prevent programme is being developed without first conducting an independent review of how it is currently operating. We are also concerned that any additional responsibility placed on the local authority must be accompanied by adequate training and resources, to ensure that the authorities are equipped to identify individuals who are vulnerable to being drawn into terrorism. We also reiterate our recommendation that the Prevent programme must be subject to an independent review.

Lord Kennedy of Southwark: My Lords, Amendment 57A, tabled by me and my noble friend Lord Rosser, is similar to Amendment 57. However, the amendment in my name seeks to require the Secretary of State to

[Lord Kennedy of Southwark]
produce a statement to accompany the review, when it has reported to Parliament, which responds to each recommendation made.

First, I place on record my thanks to all those who work to divert people from a life of terrorism and keep them on the path to a constructive life where they contribute positively to the community. We should all recognise the good work that has been done. It is, though, an important part of good governance to review matters regularly to see whether policies are working as intended or improvements can be made. That is in no way intended as a criticism of any particular programme, or of the generality of the programme.

The noble Lord, Lord Anderson of Ipswich, made important points about transparency and the need for a review. I very much agree that this strategy is important and we must make sure that we get it right. The Independent Reviewer of Terrorism Legislation would seem to be the right person to undertake this review when they are appointed. I agree with the noble Lord, Lord Stunell: I have seen no project—the noble Lord, Lord Carlile, intervened on this—that is actually failing. The review should be much more about the programme generally than specific projects.

There is a concern about the programme's aims. We have to be clear as to those aims and look at whether communities have lost confidence in the programme. If they have, what are we going to do about that? Trying to understand the positives and the successes, as well as the failures, is a good thing to do. Further, the Prevent programme has the aim of community cohesion but concern has been expressed about whether this is deliverable in the light of spending reductions among local authorities, as my noble friend Lady Lawrence of Clarendon make clear in her contribution.

It is necessary to review the programme. As I said, that is not a criticism but it is important to review it to understand whether we are getting the programme right.

Baroness Williams of Trafford: My Lords, perhaps I may start with a statement about our common values. A comment was made at the beginning that I or the Government were against British values. I state for the record that I am in absolutely no way against British values or the common values that we hold in this country, but the Government are committed to doing everything they can to protect communities from the threat of terrorism. That is a noble aim. It is vital that we use all the means at our collective disposal to divert people from terrorist-related activity.

As the noble Baroness, Lady Manningham-Buller, said, Prevent is one of the four pillars that comprise Contest, the UK's counterterrorism strategy. It is designed to safeguard and support those vulnerable to radicalisation, and to prevent their becoming terrorists or supporting terrorism. To put this into context, it might help if I initially explain Prevent's aims and the reasons that the Government have maintained the programme. It has three overarching aims. The first is to tackle the causes of radicalisation and respond to the ideological challenge of terrorism. The second is to safeguard and support those most at risk of radicalisation through early intervention, identifying them and offering support. The third is to enable those who have already engaged in terrorism to disengage and rehabilitate. I do not think anyone could disagree with those aims.

6.15 pm

This Government believe that preventing people being drawn into terrorism in the first place is crucial if we are to protect the public from the harm caused by such poisonous ideologies. That is why we have maintained the Prevent programme and continue to invest in it. Not only is it important; it works. It has made a significant impact in preventing people from being drawn into terrorism. In 2017-18, 181 community-based Prevent projects were delivered, reaching more than 88,000 participants. Almost half of these projects were delivered in schools and aimed at increasing young people's resilience to terrorist and extremist ideologies.

As the noble Lord, Lord Carlile, said, I would be very interested to hear evidence from both noble Baronesses who mentioned it and my noble friend Lord Sheikh about which projects concern them. They can do that in writing to me if they do not wish to talk about it on the Floor of the House but I would be very interested to hear about the specific projects that concern people.

Since 2012, more than 1,300 people have been supported through the voluntary, confidential Channel programme, and since April 2015, more than 500 individuals who have received Channel support have left the process with no further terrorism concerns. To put this into perspective, it takes just one person to launch an attack—to drive a van across a bridge into pedestrians. The fact that more than 500 people have been diverted from terrorism demonstrates the immense value of this programme in keeping those vulnerable to terrorism and extremism safe. It also shows the potential for the damage that might have been done without it.

However, we face new challenges and a shifting threat landscape. In 2016-17, over a third of individuals who received support through Channel were referred for concerns related to far-right extremism. This is a higher proportion than in 2015-16, when just over a quarter of people who received Channel support were referred for concerns relating to far-right extremism. It is vital that we continue to tackle terrorism, regardless of its ideology. There are other areas of Prevent where we can point to real successes and I should draw the Committee's attention to them. More than 150 attempted journeys to the Syria-Iraq conflict area were disrupted in 2015. Since the start of the conflict, around 100 children have been safeguarded by the courts from being taken to areas under Daesh's brutal regime.

What we are seeing with Prevent is a considered set of measures designed to protect the most vulnerable in our society, and stop them being harmed by the malign influence of terrorism. Prevent is not the beginnings of state surveillance, as it has sometimes been portrayed. It is a safeguarding programme which works. I take my noble friend Lady Barran's point about sharing the learning across the country because we know that there are areas and local authorities in which there is some very good practice.

In response to the specific amendments tabled by the noble Baroness, Lady Hamwee, and the noble Lord, Lord Rosser, I point out that Prevent continues to be open to public scrutiny. A number of noble Lords drew on this. While Prevent is successful at safeguarding individuals from becoming radicalised, it is not always well understood, so we have been increasing our transparency. We have already published details of Prevent's work in the Contest annual report, which is laid before Parliament. We have made our Prevent training publicly available through an e-learning tool. We have increased the number and geographical reach of community round-table discussions, from 12 events facilitated in 2016-17 to 27 in 2017-18. We have undertaken a number of engagement events—12 in 2017-18—with locally elected politicians, university students and academics. We have increased engagement with parliamentarians from all parties, led by my right honourable friend the Security Minister, to whom praise has been given this afternoon. We have published the Prevent duty toolkit for local authorities and partner agencies to provide practical information and examples of best practice to support local authorities and their partners in their work to implement the Prevent duty, and last November we published data on Prevent and Channel referrals for the first time to increase the transparency of the programme. We published further data on Prevent this March and will continue to publish data on an annual basis.

The Prevent programme is updated to reflect the current threat level, and it has taken account of other recent reviews, both internal and independent, across the breadth of our counterterrorism strategy, Contest. As such, the need for an independent review of Prevent is unfounded. Maintaining Prevent as one of the four Ps in Contest demonstrates the Government's confidence in the programme and our commitment to an effective, joined-up and comprehensive counter- terrorism strategy.

I understand the concerns of noble Lords, but we do not believe a review is necessary at this time, nor do we believe a lengthy one-off snapshot review will be of much utility. As it currently exists, Prevent is fit for purpose and, rather than being reviewed or abolished, its value should be recognised, and it should be maintained. The Committee should not just take my word for it. In evidence to the Public Bill Committee, we heard Assistant Commissioner Neil Basu describe Prevent as,

"the most important pillar in the Government's strategy",

and the Commissioner of the Metropolitan Police, Cressida Dick, praised the work of Prevent for turning individuals away from terrorism in her evidence to the Home Affairs Select Committee.

I also challenge noble Lords seeking a review of Prevent to articulate what they would put in its place. What different approach would they expect to come out of a review? I have not heard any this afternoon. Again, Assistant Commissioner Neil Basu hit the nail on the head when he told the Home Affairs Select Committee just last month:

"We need to understand that … every time somebody calls Prevent toxic and tries to come up with a new brand or a new set of tactics, the tactics are exactly the same as the ones that are currently in place. I am not sure that changing the brand of something when the tactics are the same is a particularly wise thing to do".

Of course, we must continue to explore how we can do things better and, in the normal way, the fifth anniversary of the passage of the Counter-Terrorism and Security Act 2015 affords us the opportunity to undertake a post-legislative review of the provisions in Part 5 of that Act, which provides the legislative framework for Prevent. I hope my explanation of some of the positive impact that Prevent has will assuage any lingering concerns and that the noble Baroness will feel free to withdraw her amendment.

Lord Anderson of Ipswich: Since the Minister mentioned Assistant Commissioner Basu and what he had to say about the Prevent strategy, is she familiar with the interview he gave, I think to an American periodical, a few weeks before he was appointed to his current role in relation to counterterrorism in which he made a number of constructive suggestions for changing the Prevent strategy, in particular to make it more, as he put it, community focused and less top down?

Baroness Williams of Trafford: I shall read it with interest.

Baroness Hamwee: This has been an interesting debate. I do not think anyone other than the Minister has opposed the amendment, even if the routes to support it have been slightly different. The amendment is not about scrapping Prevent, nor is it about particular projects. I am sorry that the Minister felt the need to be so defensive. We have rightly been reminded of the breadth of what underlies terrorism by the noble Baroness, Lady Manningham-Buller. We might not always agree on the means, but of course we agree that the Government's commitment to do all they can to protect the community and divert people from terrorism is a hugely important objective. The Government assert that a review would not lead to a different outcome. I do not know how one can assert that. I prefer to go down the route that we must not miss opportunities, which is in effect what the noble Baroness, Lady Barran, said, and that the strategy is too important not to do it as well as we can, as the noble Lord, Lord Anderson, said.

The Minister has, perhaps understandably at this point, not responded to the suggestion about extending very slightly the remit of the Independent Reviewer of Terrorism Legislation. I wonder whether after today she might be able to respond to that. It seems a very useful opportunity for the Government to consider it. As several noble Lords said, challenge can be useful. The more the Government oppose the proposition of a review, the more worried I become because I do not know what we do not know. I would prefer the reassurance of a review, which is in the circumstances quite a moderate proposal. We are only in Committee, and no doubt there will be some further discussions. I beg leave to withdraw the amendment.

Amendment 57 withdrawn.

Amendment 57A not moved.

Clause 19 agreed.

Clause 20 agreed.

Amendment 58

Moved by ***Lord Marlesford***

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

"Review: national identity numbers

(1) Within the period of 2 years beginning with the day on which this Act is passed, the Secretary of State must lay a report before both Houses of Parliament reviewing the case for the introduction of national identity numbers to assist in countering terrorism and ensuring border security.

(2) The review must consider whether unique national identity numbers should be linked to a secure and central database containing biometric data to assist with establishing and verifying the identity of possible terrorism suspects or those engaged in hostile state activity, accessible by the relevant national authorities."

Lord Marlesford (Con): My Lords, in moving Amendment 58, which is a very simple and, I hope, practical amendment, I am not putting forward anything original or clever or anything like that. It is a purely practical proposal. In recent days we have all been talking about not just the horrors of war but the need to prevent war. Of course, terrorism is a form of war. I was very encouraged a few minutes ago when the Minister said that the Government will do anything they can to prevent terrorism. This amendment is a simple proposal to help prevent terrorism.

I start with the basic assumption that the state needs to be able to identify its citizens with certainty. I define citizens for this purpose as UK passport holders and those permanently resident in the United Kingdom. Over the years, there has been much discussion about identity cards. The noble Lord, Lord Campbell-Savours, who is in his place, has often talked about them. I was in favour of identity cards at one time, but I will explain why I am not now and why what I want now is something different.

The two big changes over a long period of years are the emergence of new technologies of identification. In the old days, 100 or more years ago, there were just the photograph and the fingerprint, and then more sophisticated things such as blood groups, DNA and all that. The second change is the extent to which we can record all this data electronically and access it electronically in real time, which is not particularly new either.

6.30 pm

The talk of biometrics and identity cards immediately makes me worried. I am talking about identifying with certainty who someone is, and of course an identity card that has biometrics enables a person's biometrics being looked at to be compared with the biometrics on their card. That is a very dangerous arrangement. If a professional terrorist, perhaps sponsored by a great state apparatus, or a very serious criminal has an identity card of some sort on which there are biometrics and they put a name on it that is not who they themselves are, the one thing that they will ensure is that the biometrics on the card will be their own biometrics. An identity card is a very weak thing to have nowadays.

I therefore want the biometrics to be held centrally. All that we need—this is in my amendment—is a secure identity number that identifies the person; you may or may not need a piece of paper to remind you of your number. The identification, confirmation or investigation would be based on real-time access to the central register of biometrics, which would be far more secure. That is something used all the time now.

I was involved many years ago in advancing this cause a little. Years ago, when people had a firearm—a shotgun or rifle—the police of course had a record of it. If a firearm was found or the police wanted to know who had it, they looked in their record and then wondered if they had to ask another police force and so on. I think it was in 1997 that I proposed, and got the House to agree to, a central electronic record of all firearms. I am afraid the Home Office did not like it very much, and it said no. However, the Government of the day, a Conservative Government, agreed and it was put into the Act. It took very nearly 10 years to be put into practice, partly because I am afraid that the Home Office simply did not want to be told what to do, but it is now in existence, and any police officer with access would be able to know if any of us had a firearm, or if they find a firearm they will be able to find its history wherever it is in the UK—very simple.

Another very obvious example that has been in practice for a very long time is what used to be called the DVLA at Swansea. In the early days it was merely used to see who owned a car, but now of course many basic checks, such as whether the licence is up to date, whether the insurance has been paid or whether the MOT is up to date, can instantly be done. That makes for a much more efficient use of police facilities.

All that I ask for in the amendment is that the Government make a study of the feasibility and desirability of having such a system of identity. The first part states that I want it done in two years, which is not an unreasonable amount, and continues:

"the Secretary of State must lay a report before both Houses … reviewing the case for the introduction of national identity numbers to assist in countering terrorism and ensuring border security".

The second point is that:

"The review must consider whether unique national identity numbers should be linked to a secure and central database containing biometric data to assist with establishing and verifying the identity of possible terrorism suspects or those engaged in hostile",

acts.

Of course there would be many other uses that would be desirable as well. The health service has a shortage of money, and one of the problems is that a lot of people are getting health treatment on its limited budget that they are not actually entitled to. Europe has quite a good system whereby there is a reciprocal arrangement: if UK people get treated medically in European countries, that is provided free under the local health service and the bill is sent to the UK for that treatment. In the last year for which I have figures, the British Government sent some £500 million for the treatment of UK citizens in Europe. The system is reciprocal but the interesting thing is that in that same year the total amount of money that the British Government received was £50 million. We all know that that is because there is no system in place for establishing whether or not people are entitled to medical treatment. On the non-EU citizen front, just to mention them, this is a far bigger problem; there is

estimated to be a loss of over £1 billion. All that is based on the state simply not having an easy method of knowing who people are.

In this Bill we are talking about terrorism and the need to secure our borders. That is what I am proposing the review for, and any other uses there might be for the system would no doubt be taken into account by those doing the review. This is not the first time that I have mentioned this issue in this House but the Government have been totally silent on what they think about it. I hope that on this occasion they will accept this modest amendment, which says merely that they should consider the possibility and desirability of what I have outlined. I beg to move.

Lord Campbell-Savours (Lab): My Lords, the noble Lord's amendment does not refer to what he described in his speech as the "other uses". Of course, it is the other uses that make this proposition more saleable. The amendment in its current form, as I read it, would require a national database to be set up with DNA information simply for the purpose of dealing with terrorism and crime. That is what the amendment says. I think that goes over the top. We already have forensics, surveillance, criminal data transfer between enforcement authorities, access to international databases, security services co-operation, diligent policing on the street and immigration and border control—mechanisms to deal with precisely the problem that the noble Lord has identified in his amendment, which, as I say, is confined to crime.

However, I will take this a little further. I was unable to intervene on the Clause 15 stand part debate because of a misunderstanding, so perhaps I can briefly comment at this point with what I would have said, while adjusting it to the context of this amendment. After the landmark judgment in 2008 by the European Court of Human Rights and the subsequent 2012 Act, we now have a far more restrictive regime in terms of DNA. Yet I ask myself constantly, "Why are we so worried about the collection of this data? Why are we so suspicious? Why are we so preoccupied? What great civil liberty is being lost?" In my view, individual identifiers in the form of a signature, a photo on a passport and a DNA sample are all equally important. There is no difference—they identify a person—yet we pick out DNA. We have this huge national argument and legislation introduced to restrict its use as if somehow we are interfering with people's individual freedom. I dispute that.

I see no difference between the three examples that I have quoted. Indeed, I hope that one day, to get this whole argument off the ground in context, we will set up a voluntary system of DNA collection and registration with a national DNA database. I have nothing to hide. I have no problems. I think millions of people feel like me about these things: they do not mind having their photograph on a passport or signing a document, and they would take exactly the same view on DNA. We are simply going over the top. I hope at some stage in the future the Government will be sane enough to recognise that we need to make changes in this area, because it goes to the heart of the national identity card which many of us have asked for. I do not believe that a national identity card can work unless it carries a DNA sample.

Earl Howe: My Lords, I am grateful to my noble friend Lord Marlesford for again setting out his arguments in favour of establishing a national identity register. I give way to the noble Lord, Lord Kennedy.

Lord Kennedy of Southwark: That is very kind. It is my fault. I thought that the noble Lord, Lord Paddick, was going to jump up—but obviously he did not in the end. The noble Lord, Lord Marlesford, raises an important point with his amendment and it is important that we have this discussion. We have moved on from identity cards—that was a policy that my party certainly at one time supported—but our data is held by all sorts of organisations. In many cases non-government organisations have more data and know more about us than government organisations. As the noble Lord said, his amendment calls only for the possibility and desirability of a review. In that sense, I hope that he will get a reasonable response from the noble Earl.

Earl Howe: Once again, I thank my noble friend for the amendment. As he will recall, in 2010 the Conservative-Liberal Democrat coalition decided to end the identity card scheme and the associated national identity register because it was expensive and represented a substantial erosion of civil liberties—and I have to tell him that this Government have no plans to revisit that decision. There are good reasons for that. We have not seen any evidence that a national identity number or database would offer greater protection against terrorism or greater control at the border. There is no evidence that it would have prevented the 2017 terrorist attacks in the UK, and it has not prevented the attacks in France and Belgium, where national identity registers are in place. If my noble friend's concern relates to people entering this country from abroad, I simply say that the UK is not in the Schengen area: we retain full control of our border and can carry out the necessary checks on those entering the UK.

UK citizens' biometric data that is already held is stored in different government databases for specific purposes, with strict rules on how they can be used and retained. We cannot foresee any benefits that would justify the expense of introducing a national identity number for everyone in the country linked to a centrally held database which, if it were biometric, would presumably hold the biometric data of all of us indefinitely—an idea which, as I mentioned earlier, Parliament has expressly rejected. Protecting the public and keeping citizens safe is a priority for the Government. We are making big investments to those ends. We believe that the investment that we are making in better security, better use of intelligence and cybersecurity is a more effective use of our resources.

Lord Campbell-Savours: The Minister referred to some terror attacks early on in his contribution. Would he accept that, if the United States Government had held DNA material at the time of 9/11, it would have been flagged up when those criminals embarked on the planes, which led to the disaster? If it had been flagged up, they would have been stopped from getting on the plane.

Baroness Manningham-Buller: If the terrorists came from Saudi Arabia, how would the Americans have had their DNA?

Lord Campbell-Savours: I understand that two of the terrorists were known to the American authorities: at the time they were identified following the incidents.

6.45 pm

Earl Howe: My Lords, the noble Baroness, Lady Manningham-Buller, has made a very pertinent point in this context. I am not capable of debating that particular terrorist atrocity because I do not know all the circumstances surrounding it. One of the shortcomings I do know of was a distinct lack of process in admitting passengers on to planes in New York, which might still have been the case even if a DNA register had been in operation in the United States. So we can try to particularise this argument, but I have yet to see evidence that the terrorist attacks we have seen recently on these shores, or indeed in France and Belgium, could have been prevented by a system such as the one proposed by my noble friend. So, against that background, I hope that, having again aired this issue, my noble friend will be content, at least at this stage, to withdraw the amendment.

Lord Marlesford: The answer is that at this stage I will withdraw the amendment. It is, I believe, a totally valid point. I know that the Home Office is opposed to it. I know that it does not like these things. I just go back to the example of the 10 years it took to get the firearm thing. This will come. It is inevitable. As the noble Lord, Lord Campbell-Savours, says, basically no legitimate person is frightened of having their identity known. We do not live in a dictatorship. We cannot behave as though apparatus that would be useful for a dictatorship should not be provided in case we have a dictatorship. We are fighting a battle against terrorism. We are fighting on many fronts and this is something that could be useful. I find it extraordinary that the Home Office will not even look at it. However, as I said, for the moment I will withdraw the amendment.

Amendment 58 withdrawn.

Amendment 59

Moved by ***Lord Anderson of Ipswich***

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

"Review of proscription

(1) Section 3 of the Terrorism Act 2000 is amended as follows.

(2) After subsection (6), insert—

"(6A) In respect of each organisation listed in Schedule 2, the Secretary of State must at least once in every calendar year, starting in the calendar year following its listing—

(a) review the activities of that organisation,

(b) determine whether that organisation satisfies the conditions for proscription in subsections (5) to (6),

(c) decide whether to vary or revoke the listing or to take no action with respect to it,

(d) publish each such decision, and

(e) lay a record of such decision before Parliament.""

Lord Anderson of Ipswich: My Lords, I am sure that all noble Lords will agree that it is unjust to expose a person to prosecution for supporting a proscribed organisation when that organisation does not meet the statutory condition for proscription. That condition is being "concerned in terrorism", a phrase defined in the Terrorism Act 2000 and elucidated by the Court of Appeal in the PMOI case—the only case on deproscription to have reached a final judgment. The Bill does not seek to amend that condition. Yet precisely such an injustice exists today and will be worsened by the Bill, and in particular by Clauses 1 and 2, which extend the substantive reach of the proscription offences, and by Clause 6, which extends their geographical reach.

No sensible person would deny that the likes of al-Qaeda, Daesh or indeed National Action, three of whose adherents were convicted this morning, are concerned in terrorism. However, our ever-lengthening list of terrorist groups features quite a few that, to put it bluntly, simply should not be there. In June 2013, as independent reviewer, I reported publicly that a preliminary analysis by the Home Office itself had identified 14 groups, some of them already removed from equivalent lists in other countries, that no longer met—or appeared no longer to meet—the statutory test.

Some of them had not done so before the Terrorism Act 2000 came into force. To the 14 should no doubt be added some Northern Irish groups. I cited the example of the women's group, Cumann na mBan—any involvement in violence far in the past and its centenary celebrations recently attended by the Irish President—in debate on Amendment 32.

Confronted with this evidence and recognising that there was no track record of deproscription by the Home Office, even in those rare cases when someone was brave enough to ask for it, the then Home Secretary, the current Prime Minister, came up with a principled solution: a programme of deproscription to be completed during the first part of 2014 and to be informed by the internal reviews that were, at the time, still conducted every year, and which a High Court judge had described as,

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

But principles were not enough. The solution failed, despite the best efforts of the Home Office, because proscription of international organisations, particularly separatist organisations, is seen in some quarters as a cost-free way to please foreign Governments—although I suggest that it could not be described as cost free for members of the relevant communities in the UK, who are liable to find themselves under enhanced suspicion when an organisation claiming to represent their community is deemed to be a terrorist group. I reported also on that.

Furthermore, in Northern Ireland, where, as far as I know, there has never been a system of annual review, the non-statutory solution was never even attempted. Embarrassed by its failure, the Home Office discontinued even its former practice of annual review, because it was apparent that reviews determining that the statutory condition was not met were simply never acted on.

This sorry state of affairs persists today. I described it in my final report of December 2016—I am sorry if the phrase is strong, but it is the strongest phrase I ever used in six years as independent reviewer—as an,

"affront to the rule of law".

Fortunately, there is a solution—and by no means a radical one. The amendment would reinstate the internal reviews that the Home Office always used to operate and extend them to Northern Ireland. By placing the Home Secretary and the Northern Ireland Secretary under a statutory duty to publish and act on the conclusions of their reviews, it would allow them to resist those who, for reasons of foreign policy or because the topic is simply too difficult, would frustrate the clear application of the law.

The amendment will do nothing to endanger us. On the contrary, it will preserve us from the unfortunate tendency, born of misplaced expedience, to use anti-terrorism powers in circumstances where Parliament itself has decided that they should not apply. I beg to move.

Lord Judge (CB): My Lords, it is very simple really, is it not? We spent time in Committee rightly debating the problems of trying to criminalise expressions of opinion or belief and identifying that a proscribed organisation should be one that none of us should support or encourage. Fine. The essence of the problem, however, is this. We should be allowed to express opinions and beliefs about organisations which are not proscribed. That is elementary, and this House will not need a disquisition from me about the importance of being able to do so. The problem is this. We are not in a position to express opinions about organisations which are currently proscribed which should no longer be proscribed or whose proscription should have been removed years ago. That is an affront to the rule of law, and I therefore support the amendment.

Baroness Manningham-Buller: I, too, support the amendment. As the noble Lord, Lord Anderson, said, the criteria for proscription are clear. They are concerned with terrorism commission, promotion, participation and engagement. As the noble and learned Lord, Lord Judge, said, much hangs on proscription because of the offences that follow from it, so it is critical that we get it right.

I was not entirely surprised to hear from the noble Lord, Lord Anderson, that the Home Office had agreed that up to 14 international organisations were wrongly proscribed, not including those in Ireland. From my past experience, I remember pressure from the Foreign Office, in particular, to consider as terrorists groups who were just serious irritations to the conduct of foreign policy. Because I have not kept in touch with these things, I did not imagine that that was still a problem, but it clearly is.

It seems to me that the amendment is pretty easy and patient for the Home Office to follow. It is more than just good housekeeping. If we make decisions in the context of the Bill on the basis of wrong information on who is proscribed, the whole system is drawn into disrepute and natural justice is offended. Looking back through the papers, at one stage the Home Office defended itself by saying that there should be a cautious approach to deproscription. That is indefensible if it itself admits that a number of the organisations proscribed should not be.

Lord Paddick: My Lords, briefly, I support the amendment. If, as other noble Lords have suggested, organisations are proscribed for other than legal reasons but to do with foreign policy, the Government should at least be honest enough to say that that is why organisations that meet the legal criteria are still being proscribed.

Lord Carlile of Berriew: My Lords, I too support the amendment moved by my noble friend Lord Anderson. There is no known system at the moment for reviewing the proscription list. The Peasants' Revolt would still be proscribed under the current absence of a system, and that is just unacceptable. I could live with it if the Minister were to make a commitment from the Dispatch Box to introduce a system of review of the proscription list. Let us not forget that if a deproscription is found to be mistaken, there can be a reproscription of that organisation in any event, so almost nothing is lost by what is proposed.

Lord Pannick: My Lords, I, too, support the amendment. I find it shocking that the Home Office should be continuing the proscription of organisations which it recognises do not satisfy the statutory criteria. I have only one suggestion to those who tabled the amendment for their consideration for Report. In new paragraph (d), should it not require the Minister to publish not simply each such decision but the basic reasons for such a decision? That would add a further level of accountability and discipline of the Secretary of State in this context.

Lord Brown of Eaton-under-Heywood (CB): My Lords, I, too, support the amendment—looking around, it would be almost eccentric not to. The reasons already given are, I suggest, compelling, but in addition we had a debate in Committee on Clause 1, which is intimately linked with this issue, as the noble Lord, Lord Anderson, made plain at the time. Floating around at the time was Amendment 7 to Clause 1 which provided that it would not be an offence to support the deproscription of an organisation—on the face of it an altogether more compelling argument if the present amendment of the noble Lord, Lord Anderson, is accepted. If one has a defence to Clause 1 supporting deproscription, think what damage—some of us made this point in Committee—that does to the basic objective, which is that you should not be expressing an opinion supporting such an organisation, something which would inevitably be linked with any attempt to have it deproscribed. This is very important also for Clause 1 purposes.

7 pm

Lord Rosser: I will listen to what the Minister says in response to the amendment, but from what I have heard so far, the case for it appears somewhat compelling.

Baroness Williams of Trafford: My Lords, it is never nice to stand up and feel defeated on a matter. I shall outline the various points on proscription. As noble Lords will know, the effect of proscription is that the

[Baroness Williams of Trafford]
organisation is added to Schedule 2 to the 2000 Act, and that a number of offences bite in relation to membership and support for it. In practice, the Home Secretary is responsible for proscriptions relating to international and domestic terrorist groups, and the Northern Ireland Secretary for Northern Ireland-related terrorist groups.

Under Section 4 of the 2000 Act, either a proscribed organisation itself, or a person affected by its proscription, may apply to the Secretary of State for it to be deproscribed. Section 5 establishes the Proscribed Organisations Appeal Commission to consider appeals against refusal of an application under Section 4, and there is a route of appeal on a point of law from the commission to the Court of Appeal.

Amendment 59 would place a duty on the Secretary of State to review every proscribed organisation on an annual basis, to determine whether it continues to meet the legal test for proscription. The Secretary of State would, further, be required to decide whether each organisation should remain proscribed or should be deproscribed, and to publish that decision. As the noble Lord, Lord Anderson, has explained, his amendment reflects recommendations he made in his former role as Independent Reviewer of Terrorism Legislation—a role which he performed with great eminence and authority, and in which he made a great contribution. I do not think that he will agree with me just because I have said that.

The noble Lord will, of course, be familiar with the Government's long-standing policy on removing terrorist organisations from Schedule 2 to the 2000 Act, from the responses of successive Home Secretaries to his reports as independent reviewer. However, for the wider benefit of your Lordships, I will, if I may, spend a short while setting this out. The Government continue to exercise the proscription power in a proportionate manner, in accordance with the law. We recognise that proscription interferes with individuals' rights—in particular the rights protected by Articles 10 and 11 of the European Convention on Human Rights: freedom of expression and freedom of association. That is why the power is exercised only where necessary.

We should recall that organisations are proscribed for a reason—because they are concerned in terrorism. Our first priority is to protect the public and support our international partners in the fight against terrorism, and the power to disrupt a proscribed organisation by preventing it from operating or gaining support in the UK is an important one in this struggle. Where the Home Secretary has decided on advice, including from operational partners, that this test is met, with the serious consequences that flow from that, we consider it appropriate to continue to take a cautious approach when considering removing terrorist groups from the list.

While we take extremely seriously our responsibility to protect the public and to prevent terrorist groups from operating in the UK, it is not the Government's position that once a group has been proscribed that should simply be indefinite, without the prospect of ever being removed from the list. To this end, Parliament provided a clear route for any proscribed organisation, or any person affected by an organisation's proscription, to submit an application to the Home Secretary for the organisation to be deproscribed. Indeed, three groups have been deproscribed following such applications.

This, I believe, is the most appropriate and balanced way to deal with the question of deproscription. It ensures that any person who believes that any proscription is inappropriate has a clear route to challenge that proscription, so that groups which are not concerned in terrorism and no longer pose a risk to the public can be deproscribed. But it also avoids placing the public at risk, or causing alarm, through precipitate decisions to lift restrictions on organisations with a significant terrorist pedigree but which may have, for example, become less visibly active in recent times. It is an enduring feature of the terrorist threat that both individuals and organisations with a terrorist mindset can disengage and then re-engage in terrorist activity, potentially without warning. Such individuals and groups will continue to pose a threat, and to be properly characterised as terrorist, during both their fallow and active periods, and it would not be responsible for the Government to remove the prohibitions and stigma that apply to proscribed organisations unless we are truly certain that they have changed and no longer pose a threat.

The Government are committed to ensuring that the right groups are proscribed and that the public are protected. But we are not persuaded that introducing regular formal reviews of past proscription decisions would in practice prevent any injustice, particularly given the existence of a review system on application, whereas such a system of formal reviews could lead to perverse outcomes and would have a significant operational impact in terms of diverting investigative and intelligence resource from current threats to public safety in order to carry out the reviews.

Lord Pannick: I am very grateful to the noble Baroness. Her argument appears to be that there is a power to apply for a review. She will be aware that under the Sanctions and Anti-Money Laundering Act 2018, which Parliament approved earlier this year, where a person is subject to sanctions, they can apply for a review, but nevertheless there is an obligation on Ministers to conduct a periodic review to ensure that the process is properly applied, and that sanctions are continued only against those who deserve to continue to be sanctioned. What is the difference in this context?

Baroness Williams of Trafford: My Lords, I am not entirely sure. They are different procedures. I shall write to the noble Lord on the difference because he makes a valid point.

Lord Anderson of Ipswich: I am grateful to the Minister. While she is writing to the noble Lord, Lord Pannick, could she perhaps answer my question? Even if she is correct that the ability to apply to have an organisation deproscribed is a substitute for my amendment—the track record very much suggests that it is not—and assuming that in her favour, could the Minister explain in the letter, or in person if she prefers, what consolation that could be to the innocent

member of the community in London who comes under suspicion for alleged links with a proscribed organisation but who has no connection with it and could not in 100 years have been expected to be the person who makes that application?

I am trying to avoid naming specific communities, although I have spent plenty of time in London with Tamils, for example. For them, the fact that the LTTE remains a proscribed organisation—rightly or wrongly; I have no judgment on that—can be a significant impediment on how they go about their everyday life. What consolation could it be for the Tamil greengrocer in London to know that, had they wished to do so, the top brass of the LTTE, or others intimately connected with it, might have made an application for deproscription?

Baroness Williams of Trafford: They could have done. I do not know whether or not it is a consolation, but they could have done.

The point made by the noble and learned Lord, Lord Brown of Eaton-under-Heywood, does not conflict with Clause 1 because there is no offence to suggest that a group should be deproscribed under Clause 1. Is that what he was referring to?

Lord Brown of Eaton-under-Heywood: Unless you are saying that it should be deproscribed because it is actually doing good work and certainly no harm.

Baroness Williams of Trafford: The first part of that would not conflict with Clause 1, but the second part of that statement would, as you are then promoting it as an organisation. Perhaps we can talk about that subsequently.

I move on to Northern Ireland, because I want to talk about the amendment in that context. Any change to the current regime must be carefully considered, paying particular regard to the unique historical and current security context and challenges in that part of the United Kingdom. Paramilitary activity has a greater impact in Northern Ireland than in any other part of the UK. Because of this complex environment, proscription remains an essential tool in the wider, strategic approach to tackling the continued and widespread existence and impact of paramilitary groups in Northern Ireland.

Terrorism legislation, including the proscription regime, is of course an excepted matter in Northern Ireland—it is reserved to the UK Government—but the impact of this amendment cannot be divorced from what is happening at the devolved level. Any change to the proscription regime would have a significant impact on wider efforts to tackle paramilitary activity currently being undertaken at a devolved level and supported by the UK Government and multiple agencies and bodies through the Tackling Paramilitarism programme. A decision to change the proscription regime in Northern Ireland could not, and should not, be taken in isolation from these other initiatives and without detailed prior consultation with the devolved Administration and security partners.

Given the current suspension of the Northern Ireland Assembly and Executive, the opportunity to undertake such consultation does not present itself at this time. We simply cannot ignore the operational, policy, resourcing and wider political ramifications of this amendment. These implications arise in relation to the proscription of international terrorist organisations, but are particularly acute in relation to Northern Ireland-related terrorist organisations. I know that this is a sensitive area, and that this House is rightly concerned to ensure that we strike the right balance, both in relation to the proposed new clause and to the other clauses in the Bill which amend proscription offences.

Finally, I suggest that noble Lords proceed with great caution in this area, given the considerations which I have just outlined. The learned position which the noble Lord has set out needs to be balanced against the reality that these are serious and, in some cases, unpleasant terrorist groups. They have been proscribed with good reason and the Government are anxious to ensure that they do not pose a resurgent threat to the public. I hope that, at this stage, the noble Lord will be content to withdraw the amendment.

Lord Anderson of Ipswich: My Lords, I am grateful for the flattering words with which the Minister began and overwhelmed by the distinguished support for the amendment from so many noble Lords. With great respect to the noble Lord, Lord Carlile, I hope that the Minister will not only carefully consider the amendment—as improved by the noble Lord, Lord Pannick—but see the benefits to the Government of having it enshrined in law and not just in an undertaking, so that there can be no doubt who wins in any future conflict within the Government of the sort that the noble Baroness, Lady Manningham-Buller, and I have experienced in our different capacities.

In case it was in any doubt, I clarify that the amendment seeks not to change the proscription regime in Northern Ireland but simply to ensure that the existing regime, as written very plainly in law, is applied. I beg leave to withdraw the amendment, but fully expect to return to it on Report.

Amendment 59 withdrawn.

Amendment 59A

Moved by ***Lord Rosser***

59A: After Clause 20, insert the following new Clause—

"Continued participation in the European Arrest Warrant

(1) It is an objective of Her Majesty's Government, in negotiating the withdrawal of the United Kingdom from the European Union, to seek continued United Kingdom participation in the European Arrest Warrant in relation to persons suspected of specified terrorism offences.

(2) In this section, "specified terrorism offences" has the same meaning as in Schedule 15 to the Criminal Justice Act 2003."

Lord Rosser: My Lords, the effect of this amendment is to insert a new clause into the Bill which would make it an objective in the Brexit negotiations to continue participation in the European arrest warrant. European arrest warrants are valid in all member states of the European Union and can be used to ask a state to arrest and transfer a criminal suspect to be put

[LORD ROSSER]
on trial, or to ask for someone who is sentenced to custody to be transferred to the UK to complete their sentence. In the calendar years from 2010 to 2016, the United Kingdom issued 1,773 requests. Of these, 11 related purely to terrorism and a significant further number to organised crime including human trafficking, child sex offences and drugs trafficking.

Extradition outside the European arrest warrant can cost four times as much and take three times as long. It would also mean an end to the significant exchange of data and engagement through Europol. In counterterrorism investigations, speed is of the essence and it is thus vital that we have the objective of continuing to play a key role on the European security scene. Recently the European arrest warrant has been obtained in respect of the two suspects in the Salisbury attacks, which means that if they set foot in the European Union they will be remanded to the UK to face justice.

7.15 pm

The Government themselves have admitted that existing extradition arrangements between the EU and third countries, which is what we shall be on departure from the EU, do not provide the same level of capability as the European arrest warrant. This amendment does not bind the hand of those doing the negotiating since it simply says in clear terms that continued participation in the EAW is a negotiating objective. That is important, not least in the light of the reality that the current Brexit Secretary had a record of voting against home affairs and justice co-operation before taking up his current post. Continued participation in the EAW is vital for the security of this country. This Bill is about security: the EAW and the tools it gives us should not be excluded when considering security issues. The amendment is relevant and should be in the Bill at this time. I beg to move.

Lord Paddick: My Lords, although I agree with the amendment in principle, I have a couple of issues with it. First, no country that is not a full member of the European Union participates in the European arrest warrant. It is, therefore, unlikely that the UK would be made an exception. Iceland and Norway, which are both members of the European Economic Area and the Schengen area, applied for membership of the warrant over a decade ago and have still not been granted participation. I understand that there are legal obstacles to a non-EU country's participation in the European arrest warrant—for example, changes required to the German constitution.

As the noble Lord, Lord Rosser, said, the European arrest warrant clearly has benefits for bringing criminals to justice, in terms of the speed and cost effectiveness with which this can be done. However, on the positive side, the exchange of counterterrorism intelligence tends to be done on a bilateral basis between the UK and one other country, rather than between the UK and the European Union. Our leaving the European Union will, we hope, not impact on the vital exchange of intelligence data in relation to persons suspected of specified offences, which is separate from the European arrest warrant.

Lord Hope of Craighead: My Lords, I am in sympathy with the idea behind the amendment but I fear that the noble Lord, Lord Paddick, is right that one cannot participate in the framework decision which sets up the arrest warrant without being a member state. When you read the framework decision, it is perfectly clear that that is what you must be. The advantage to us of the present system is that it gets over the constitutional problem of Germany, which agreed to the framework decision but is most unlikely to be able to extend the benefit to something else. Having said that, I hope that the Government can achieve, by treaty arrangements, something as close as possible to the present system.

Baroness Williams of Trafford: My Lords, I thank all three noble Lords for their points on the European arrest warrant and our future law enforcement, internal security and criminal justice relationship with the European Union following our exit from it. The Prime Minister has repeatedly made clear that the UK is unconditionally committed to maintaining Europe's security now and after our withdrawal from the EU. We are proposing a comprehensive security relationship which preserves that mutually important operational capability that enables UK and EU operational partners to work together to combat fast-evolving security threats, including in respect of terrorism and hostile state activity.

In July, the Government published a White Paper on our future relationship with the EU. It sets out how we are seeking a relationship that provides for mechanisms for rapid and secure data exchange, practical measures to support cross-border operational co-operation, and continued UK co-operation with EU law enforcement and criminal justice agencies. We continue to value our co-operation and information sharing on issues such as extradition, and believe that a pragmatic solution is in the interests of EU member states and the UK. Our primary objective is to keep our citizens safe.

While I welcome this opportunity to reiterate the Government's commitment to maintaining a strong security partnership with the EU after exit, the nature of the future relationship is a matter for negotiations. As such, it would not be appropriate or necessary to include in primary legislation any measure that pre-emptively binds the Government's hands by setting our negotiating objectives. That point was accepted when this matter was voted on in the House of Commons in September, and was accepted by both Houses when the European Union (Withdrawal) Bill was enacted.

We are clear that we want a security partnership that maintains co-operation in these areas but negotiating objectives are just that, and not a matter for this or any other Bill. Parliament will agree the final form of the withdrawal agreement when legislation to give effect to it is brought forward in due course. Therefore, at this stage, I ask the noble Lord to withdraw his amendment.

Lord Rosser: I thank the Minister for her reply and other noble Lords for their participation in this brief debate. From what has been said in response, I am not entirely clear whether that meant that it was part of

our negotiating position that we would continue to participate in the European arrest warrant, or whether the Government are accepting that, under whatever deal is done, it will not be possible to continue to participate, for some of the reasons that have already been voiced in this evening's debate. I do not know whether the Minister is able to help me on that and say whether it is our negotiating position to try to remain within the European arrest warrant system or whether the Government accept that we cannot, and the hope is that something comparable can be the subject of negotiation.

Baroness Williams of Trafford: I said to the Committee that that aspect of security co-operation was absolutely vital, and therefore some sort of security agreement was being worked on at the time. I cannot pre-empt what that will look like, but all the co-operation we enjoy now should continue, although, as the noble Lord, Lord Paddick, said, it may not be in the form of a European arrest warrant, given that no other non-EU states have been able to avail themselves of it. But it should certainly align closely with what we have now.

Lord Rosser: I thank the Minister for that clarification. This short debate has been useful; one thing it has shown—by the way, I do not suggest that it has only just come to light—is that the future of the European arrest warrant is in doubt at present, which is potentially quite serious from our nation's point of view. Let us hope that that does not come to pass. I beg leave to withdraw the amendment.

Amendment 59A withdrawn.

House resumed.

Stop and Search Powers

Statement

7.24 pm

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, with the leave of the House, I will now repeat as a Statement an Answer given by my right honourable friend the Policing Minister earlier in another place. The Statement is as follows:

"The Government fully support the police to use their stop and search powers when they have lawful grounds to do so; it is a vital policing tool when used correctly. We will always ensure the police have the necessary powers to keep people safe. This is why we work very closely with the National Police Chiefs' Council to keep under review the stop and search powers the police need to help keep the public safe.

This House should be clear that we have no plans to change the requirement that 'reasonable grounds for suspicion' are needed before a routine stop and search is carried out. We are, however, working with the police, including the national police lead for stop and search, to see how we can reduce bureaucracy and increase efficiency in the use of stop and search. The Home Secretary has been clear that this is something we are looking at and that he will say more on this in due course.

The House will be aware that the Government introduced a comprehensive reform package to stop and search in 2014, in response to evidence that the power was not used fairly, effectively and, in some cases, lawfully. Since introducing these reforms, the arrest rate following a stop and search has risen to 17%—the highest since records began. As the Home Secretary has said, he wants police officers to feel confident, trusted and supported when they are using stop and search powers lawfully. If there are things getting in the way of them using those powers, then this needs to be looked at.

The Government are determined to do all they can to break the deadly and dreadful cycle of violence that devastates the lives of individuals, families and communities. That is why we will always look to ensure the police have the powers they need and our support to use them".

7.26 pm

Lord Rosser (Lab): I thank the Minister for repeating the Answer to the Urgent Question, which was prompted by media reports that the police want changes in the "reasonable suspicion" requirement before using stop and search powers. The vast majority of those stopped turn out to be innocent, and the Prime Minister, while Home Secretary, was concerned that it eroded the trust that ethnic minorities have in the police and in Britain as a fair society. The reality is that intelligence-led stop and search does work, but random stop and search does not work.

I note what was said in the Answer so will simply ask: have any discussions taken place between the Home Office and senior police representatives, including the national police lead for stop and search, at which the issue has been raised of changing or amending the requirement of "reasonable grounds for suspicion" before police use their stop and search powers?

Baroness Williams of Trafford: Regarding conversations, the British Transport Police hosted a police and public consultation forum on 2 November. It was a policing seminar on stop and search where debates were had on the effectiveness of stop and search on emerging knife crime and violence. As part of the seminar, the possibility of removing the requirement for reasonable grounds was debated within the group, but it was not put forward by senior officers and was only part of an informal discussion with stakeholders. The Home Office was not in attendance, and the NPCC issued a corrective statement to editors.

Lord Paddick (LD): My Lords, I also thank the Minister for repeating the Statement. She talked about government reform of stop and search, and the noble Lord, Lord Rosser, referred to action taken by the former Home Secretary, now the Prime Minister. Is the Minister aware that there has been a 75% reduction in stop and search since 2010-11, but no reduction in the number of black people stopped and searched, so that black people are now nine times more likely to be stopped and searched for certain offences than white people?

[Lord Paddick]

The argument is put forward that stop and search tends to be in high crime areas with socioeconomic deprivation, which have a higher percentage of minority groups. Is the Minister aware that the top-ranked forces for black/white disproportionality are Dorset and Suffolk? We are facing a knife-crime crisis in this country. In 2010-11, half of stop and search was for drugs. In 2016-17, almost two-thirds of stop and search carried out by police was for drugs, not for weapons, and the rate at which drugs were actually found was lower for black people being stopped and searched than for white people.

The Statement that the Minister has just repeated said that stop and search is a valuable tool provided that it is used properly. Does the Minister agree that these statistics tend to suggest that stop and search is not being used properly to deal with the epidemic of knife crime? If so, what do the Government intend to do to address the problem?

Baroness Williams of Trafford: As the noble Lord, Lord Rosser, rightly pointed out, the move to a much more intelligence-led stop and search has been more effective. But on the point about the number of black people being stopped and searched, we are quite clear that nobody should be stopped on the basis of their race or ethnicity. Forces must make sure that officers use those really quite intrusive powers in ways that are fair, lawful and effective.

The figures cited by the noble Lord, Lord Paddick, were highlighted by the *Race Disparity Audit*. I am sure he knows that. They make clear the importance of the transparency introduced by the reforms to stop and search which enable forces to monitor and explain the use of the power. He has just outlined a couple of forces in which there is a huge increase in the proportion of black people stopped and searched compared with the rest of the population. It is absolutely right that the police must explain the use of the power and make efforts to improve it.

Baroness Hamwee (LD): My Lords, is the Minister able to answer my noble friend's question about knife crime?

Baroness Williams of Trafford: My Lords, I apologise; I did not deliberately leave it out. The noble Lord is right to make that point. We are acutely aware of it, as is the Home Secretary. Recent stories in the papers have not made for good reading. There are several reasons why knife crime is on the increase, not least the link to drugs, I am afraid. Through the Offensive Weapons Bill and the strategy that we have recently produced, we are absolutely determined to tackle it.

Lord Marlesford (Con): My Lords, knife crime normally involves carrying a knife, knives are normally made of metal, and metal is very easy to detect. Why do the police not ensure—not in a discriminatory way, but for everybody in particular areas—that people are subjected to the same system as is used in airports? Mobile arches could be set up outside Underground stations where everybody passes through—in St James's Street as well as in Peckham. Search everyone; you would at least make it much more difficult to carry a knife around London. Why not have a go?

Baroness Williams of Trafford: My Lords, the notion of searching everybody who goes through an Underground station would, I am afraid, be unfeasible. In addition to knives, there are other metal things that people might carry in their pockets. I can foresee that system as being entirely unworkable. I go back to the point made by the noble Lord, Lord Rosser: intelligence-led stop and search is the most effective way to deal with some of the problems we are seeing.

Lord Paddick: As nobody else appears to be burning to ask a question perhaps I may ask the noble Baroness to comment on the fact that the percentage of stop and search that is done to look for weapons is abysmally small and that drugs are the reason given for 75% of stop and search, notwithstanding the link between the two?

Baroness Williams of Trafford: I agree that the percentage for weapons is not high, but the percentage is an awful lot higher in terms of the number of arrests made. It is becoming a more effective system. I agree with the noble Lord that the number of arrests made as a consequence of stop and search could be higher.

Social Media Services

Question for Short Debate

7.35 pm

Asked by ***Lord Stevenson of Balmacara***

To ask Her Majesty's Government what plans they have to (1) impose a statutory duty of care upon large providers of social media services within the United Kingdom in respect of the users or members of those services; and (2) establish a regulator to enforce such a duty.

Lord Stevenson of Balmacara (Lab): My Lords, in some senses this short debate today is a continuation of good and important discussions we had during the Digital Economy Act 2017 and the Data Protection Act 2018—the same stars, perhaps, a smaller audience and a much smaller scale, but nevertheless the points may be similar. In particular, the debate that I hope we shall have tonight builds on concerns about the approach being taken under the Digital Economy Act to require age verification for access to commercial pornography; it picks up on the pioneering work led by the noble Baroness, Lady Kidron, during the Data Protection Act 2018, requiring all internet providers to have age-appropriate systems in place, and it relates to discussions we had in the same Bill about the possibility of introducing a personal copyright for data and the question of whether individuals could be data controllers of their own data—issues which I hope will be picked up by the new Centre for Data Ethics and Innovation.

The three areas I want to concentrate on tonight are: first, who is responsible in government for this whole area of policy and what is the current timetable? Secondly, what is the ambition? Is it a charter, a voluntary code or primary legislation? What is it?

Thirdly, I want to use this debate to suggest that the Government should legislate to place a duty of care on social media companies, enforced by a trusted regulator and underpinned by direct responsibility and regulations, to protect people from reasonably foreseeable harms when they are using social media services.

On the first point of who is in charge, we welcomed the Government's May 2018 response to the Green Paper consultation, announcing a White Paper in the near future and setting out plans for legislation that will cover:

"the full range of online harms, including both harmful and illegal content".

That is a quote from the Statement. I read, in an interview in the *Daily Telegraph*, that the Home Secretary is now promising new laws to regulate social media firms, saying:

"We will therefore be bringing some form of legislation which we will set out in a White Paper on online harms in the winter".

I take that to be a way of saying "soon"—hopefully, the curious phrase "some form of legislation" is something the Minister can unpick when he gets up to respond later this evening. Having said that, legislating to ban illegal content is one thing, and difficult enough, but defining, let alone banning, what is "harmful" is brave and will be leading us into subjective decisions about material which is always going to be problematic.

The previous DCMS Secretary of State was fond of referencing an idea for a digital charter. That has gone a bit quiet recently. Can the Minister give us an update? What is it? How is it to be established? Will it have the effect of primary legislation? Is this the legislation the Home Secretary is referring to in his gnomic Statement? Will there be powers to fine and ban?

Who else is prowling around in this jungle? The new Secretary of State for Health is calling for action on online harms, focusing on the mental health impacts of social media on young people and announcing, at the time of his party conference, that he had asked the CMO to draw up screen-time guidelines. Artificial intelligence is also a concern here, so BEIS has an interest. What happens in Scotland, Wales or Northern Ireland? It is a crowded field. In a sense, all this activity is good, but it leaves open the question of who is leading on this? The Home Office does not normally share responsibilities willingly, and joint legislation is not a model that generally works well in Whitehall. Can the Minister confirm whether DCMS is still in the lead and what is the current timetable? Would spring be a fairer assessment than winter?

Secondly, what is the ambition? Over the last few months, more evidence has emerged from authoritative sources of the harms caused by social media. Ofcom and the ICO jointly published some research on the harms experienced by adult internet users, with 45% indicating that they have experienced some form of online harm.

Last week we heard in the other place the Information Commissioner's startling evidence to the Select Committee about the Cambridge Analytica scandal, and there is more to come on that. Only 10 days ago, the Law Commission published a very interesting scoping review of the current law on abusive and offensive online communications, confirming that there were weaknesses in the current regime. It is doing more work on the nature of some of the offending behaviour in the online environment and the extra degrees of harm that it can cause. It is also looking at the effective targeting of serious harm and criminality, and at eliminating overlapping offences and the ambiguity of terminology concerning what is or is not "obscene". The NSPCC has recently highlighted what it calls the "failure" of self-regulation in this area. The Children's Commissioner has also called for action, saying:

"The rights enjoyed by children offline must be extended online".

One problem here is clearly evidence, which is vital to drafting effective legislation, but it is not easy to pin down evidence on fast-moving, innovative services like the internet. The software of social media services changes every week and perhaps more often—every day—and it will be difficult to isolate long-term impacts from particular services through "gold standard" randomised control trials. The potential range is very wide. In their response to the Green Paper consultation, the Government said:

"Potential areas where the Government will legislate include the social media code of practice, transparency reporting and online advertising".

They also referred to,

"platform liability for illegal content; responding to the … Law Commission Review of abusive communications online; and working with the Information Commissioner's Office on the age-appropriate design code".

They added that a White Paper would also allow them to incorporate,

"new, emerging issues, including disinformation and mass misuse of personal data and work to tackle online harms".

That all sounds great but questions remain. Will this result in a statutory code and regulations? Will there be penalties for non-compliance or breaches? If so, will they be on the right scale, and by whom will they be administered? Will it be Ofcom or a new regulator? And what about companies based outside the UK?

We come back to the basic question of how we regulate an innovative and fast-moving sector, largely headquartered outside the UK, and what tools we have available. If it is true that the technologies in use today represent only 10% of what is likely to be introduced in the next decade or so, how do we future-proof our regulatory structures? This is where the idea of a duty of care comes in. Following public health scares in the 1990s, the Health and Safety Executive adopted a rigorous version of the "precautionary principle", requiring a joint approach to as yet unknown risks and placing the companies offering such services in the forefront of efforts to limit the harms caused by products and services that threaten public health and safety, but always working in partnership with the regulator.

We might find that this principle is already in play in this sector. In response to a Written Question that I put down earlier this year, the noble Baroness, Lady Buscombe, confirmed that a duty of care contained in the Health and Safety at Work etc. Act 1974 applies to artificial intelligence deployed in the workplace. Therefore, robotic machines are caught by the Act.

[Lord Stevenson of Balmacara]

That principled approach is now being advocated by a growing number of organisations and individuals—indeed, it was mentioned by the Home Secretary in the interview I have already quoted. The Carnegie UK Trust has suggested that the way to do this is for primary legislation to place a duty of care on the social media companies to prevent reasonably foreseeable harm befalling their customers or users. This builds in a degree of future-proofing and encompasses the remarkable breadth of activity that one finds on social networks.

This approach is based on a long history of legislation protecting against harms: the Occupiers' Liability Act 1957, which is still in force today; the Health and Safety at Work etc. Act 1974, which contains three duties of care; and the Health and Safety Executive, the regulator, which has stood the test of time. It is interesting that both regimes defend the public interest in areas that might at first glance be considered remote from the public interest—private land and commercial workplaces—but in truth they should serve as an example to us in regulating, in the public interest, these newly powerful technologies. After all, social networks are environments built in code by private companies for what are often super-profits. Everything that happens in those environments either is governed by code that the company has provided or takes place under the terms and conditions that the companies set.

Imposing a duty of care on social media companies might produce a mutual advantage in practice. A duty of care is not about total risk reduction, stifling all innovation; it is about a company having a legal responsibility to have a clear grasp of what risks are inherent in its current and future products and services, and then taking the right steps proportionate to the severity of those risks: highly risky activity with high-potential harms requires strong action; low-risk activity, far less or even none. The companies that can show they are taking reasonable actions to mitigate the harm that their services can cause will have a competitive advantage. The Ofcom/ICO study shows that there is considerable concern among users about what the social media companies are doing.

We all care about red tape. Bad regulation is to be avoided, not least because it represents cost to the economy. However, good regulation is an investment: a company investing in actions to prevent reasonably foreseeable harms is following the most economically efficient route to reducing those harms. Otherwise the costs fall on society. If it is right to operate a "polluter pays" principle, whereby the costs of pollution prevention and control measures are met by the polluter, why is that principle not equally valid in the social media companies?

Finally, the choice of regulator will be important. Under this proposal, the regulator does not merely fine or sanction but plays an active role to help companies help themselves. The regulator should gather and broker best practice across the industry. We probably need to look at best practice in financial services and environmental regulation, and even at the Bribery Act 2010 and the strong penalties under the Health and Safety at Work etc. Act 1974. We should also consider whether personal liability should attach to the directors and executives of the companies that are guilty of transgression.

In conclusion, I put it to the Minister that we now have enough credible evidence of harms emerging to invoke the well-established precautionary principle, and that the answer to many of the problems we can see in this fast-developing sector, many of which are raised by the Green Paper, may lie in moving to a joint system of risk-based regulation for social media companies operating in the UK, backed by a powerful regulator. We look forward to the Government's White Paper, as well as to the answers to my initial questions, and to debating these issues further.

7.46 pm

Baroness Kidron (CB): I thank the noble Lord, Lord Stevenson of Balmacara, for introducing this timely debate and illustrating why it is so important. I also thank him for his kind words. I refer the House to my broad interests in this area.

The statutory duty of care as set out by Will Perrin and Professor Lorna Woods is an important and very welcome prospect. A duty of care is proportionate. The higher the risk, the greater the responsibility of the company to consider its impact in advance. A duty of care is a concept that users themselves can understand. It offers an element of future-proofing, since companies would have to evaluate the risk of a service or product failing to meet the standard of "reasonably foreseeable harm". It would also ensure that powerful global companies that hide behind the status of being "mere conduits" are held responsible for the safety of the online services they provide. However, a duty of care works only if it applies to all digital services, all harms and all users.

The risks of drawing too narrowly the parameters to which services must comply is highlighted by the provisions of the Digital Economy Act 2017, which sought to restrict children's access to pornography based on scale and yet failed to bring platforms such as Twitter within scope, despite 500,000 pornographic images being posted daily. Equally, if the duty of care applies to some harms and not others, the opportunity to develop a systemic approach will be missed. Many headlines are preoccupied with the harms associated with content or contact but there is a host of others. For example, behavioural design— otherwise known as "nudge and sludge"—is a central component of many of the services we use. The nudge pushes us to act in the interests of the online service, while the sludge features are those deliberately designed to undermine or obfuscate our ability to act in our own best interests. It is designed to be addictive and involves the deliberate manipulation of free will.

It is also necessary to consider how a duty of care characterises whom we are protecting. We know that children often experience specific harms online differently from adult users. Some categories of people whom we would not consider vulnerable in other settings become targets online—for example, female MPs or journalists. Some harms are prejudicial to whole groups. Examples are the racial bias found in algorithms used to determine bail conditions and sentencing terms in the US, or the evidence that just a handful of sleep-deprived children

in a classroom diminishes the academic achievement of the entire class. Of course, there are harms to society as whole, such as the undeclared political profiling that influences electoral outcomes.

I understand that the proposal for a duty of care policy is still under consideration, but I would be grateful if the Minister would outline the Government's current thinking about scope, including the type and size of services, what harms the Government seek to address and whether they will be restricted to harms against individuals.

When setting out their safety strategy in 2017, the Government made a commitment that what is unacceptable offline should be unacceptable online. That is an excellent place to start, not least because the distinction between online and offline increasingly does not apply. The harms we face are cross-cutting and only by seeing them as an integrated part of our new augmented reality can we begin to consider how to address them.

But defence against harm is not the only driver, we should hope that the technology we use is designed to fulfil our rights, to enable our development and to reflect the values embodied in our laws and international agreements. With that in mind, I propose four pillars of safety that might usefully be incorporated into a broader strategy: parity, safety by design, accountability and enforcement. Parity online and offline could be supported by the publication of guidance to provide clarity about how existing protections apply to the digital environment. The noble Lord, Lord Stevenson, mentioned the Health and Safety at Work Act and the Law Commission recently published a scoping report on abusive and offensive online communications.

Alongside such sector-by-sector analysis, the Government might also consider an overarching harmonisation Bill. Such a Bill would operate in a similar way to Section 3 of the Human Rights Act by creating an obligation to interpret legislation in a way that creates parity of protection and redress online and offline to the extent that it is possible to do so.

This approach applies also to international agreements. At the 5Rights Foundation we are supporting the United Nations Committee on the Rights of the Child in writing a general comment that will formally outline the relevance of the 40-plus articles of the charter to the digital environment. Clarifying, harmonising, consolidating and enhancing existing agreements, laws and regulations would underpin the parity principle and deliver offline norms and expectations in online settings. Will the Minister say whether the Government are considering this approach?

The second pillar is the widely supported principle of safety and privacy by design. In its March 2018 report *Secure by Design* the DCMS concluded that government and industry action was "urgently" required to ensure that internet-connected devices have,

"strong security … built in by design".

Minimum universal standards are also a demand of the Department for Business, Energy and Industrial Strategy and the consumer organisation Which?. They are also a central concern of the Child Dignity Alliance technical working group to prevent the spread of images of child sexual abuse. It will publish its report and make recommendations on Friday.

We should also look upstream at the design of smart devices and operating systems. For example, if Google and Apple were to engineer safety and privacy by design into Android and IOS operating systems, it would be transformative.

There is also the age-appropriate design code that many of us had our names to. The Government's response to the safety strategy acknowledges the code, but it is not clear that they have recognised its potential to address a considerable number of interrelated harms, nor its value as a precedent for safety by design that could be applied more widely. At the time, the Minister undertook that the Secretary of State would work closely in consultation with the Information Commissioner and me to ensure that the code is robust and practical, and meets the development needs of children. I ask the Minister to restate that commitment this evening.

The third pillar is accountability—saying what you will do, doing what you said and demonstrating that you have done it. Accountability must be an obligation, not a tool of lobbyists to account only for what they wish us to know. The argument made by services that they cannot publish data about complaints, or offer a breakdown of data by age, harm and outcome because of commercial sensitivities, remains preposterous. Research access to commercial data should be mandated so that we can have independent benchmarking against which to measure progress, and transparency reporting must be comprehensive, standardised and subject to regulatory scrutiny.

This brings me to enforcement. What is illegal should be clearly defined, not by private companies but by Parliament. Failure to comply must have legal consequences. What is contractually promised must be upheld. Among the most powerful ways to change the culture of the online world would be the introduction of a regulatory backstop for community standards, terms and conditions, age restrictions and privacy notices. This would allow companies the freedom to set their own rules, and routine failure by a company to adhere to its own published rules would be subject to enforcement notices and penalties.

Where users have existing vulnerabilities, a higher bar of safety by default must be the norm. Most importantly, the nuanced approaches that we have developed offline to live together must apply online. Any safety strategy worth its title must not balk at the complexity but must cover all harms from the extreme to the quotidian.

While it is inappropriate for me leap ahead of the findings of the House of Lords committee inquiry on who should be the regulator, it is clear that this is a sector that requires oversight and that all in the enforcement chain need resources and training.

I appreciate the Government's desire to be confident that their response is evidence-based, but this is a fast-moving world. A regulator needs to be independent of industry and government, with significant powers and resources. The priorities of the regulator may change but the pillars—parity, safety by design, accountability and enforcement—could remain constant.

The inventor of the web, Sir Tim Berners-Lee, recently said that,

"the web is functioning in a dystopian way. We have online abuse, prejudice, bias, polarisation, fake news, there are lots of ways in which it is broken".

[Baroness Kidron]

It is time to fix what is broken. A duty of care as part of that fix is warmly welcome, but I hope that the Minister will offer us a sneak preview of a much bolder vision of what we might expect from the Government's White Paper when it comes.

7.57 pm

Baroness Grender (LD): My Lords, I thank the noble Lord, Lord Stevenson of Balmacara, for initiating this debate on such an important subject. It is timely because while so much seems to be at the stage on initiation, very little has reached a conclusion, so it is good to take stock. It is good that he has led us through a complex debate with his usual clarity. As ever, it has also been a real treat to hear in more detail about the work that the noble Baroness, Lady Kidron, has been doing in this area. She has already achieved so much in her work on the age-appropriate design code, with full support from these Benches and in particular from my noble friend Lord Clement-Jones. As we have heard, she is not satisfied with that and is pushing on to bigger and better achievements.

As a mum of a Generation Z 13 year-old, I am grateful for everything that the noble Baroness and the noble Lord, Lord Stevenson, are doing in this area. I guess the danger is that we will have sorted this only by the time we get to—what I believe we are now calling—Generation Alpha. It is possible we will look back on this time with horror and wonder what we did, as legislators who failed to move with the times, to a generation of children. While real joy comes from the internet, for a child the dangers are only too real.

The ICO call for evidence regarding the age-appropriate design code is very welcome, and I look forward to hearing the commitment that the noble Baroness, Lady Kidron, will be included every step of the way. An obligation will be placed on providers of online services and apps used by children. I just add that one of the difficulties here is dealing with children playing games such as "Assassin's Creed"—which many under-18s play but is rated 18 due to bad language and serious gore—in the same way that for years children have watched movies with a slightly older age restriction.

Bar one other child, mine was the last of his contemporaries aged 11 to move from brick to smart phone. The head teacher of his secondary school asked all parents to check their children's social media every night. It will come as no surprise to the expert and knowledgeable speakers here tonight that literally no one checks, so groups of children without the knowledge of how to edit themselves are not unusual on platforms from which they are all banned but still manage to sign up to. The five rights correctly identify that they will struggle to delete their past and need the ability to do just that.

As we know, kids are both tech wizards and extremely naive. You set screen times and safety measures and then discover they have created a new person. You have to release security to download stuff but you then realise they have accepted the kind of friends who call themselves David Beckham or whatever. On my last training for this, for safeguarding as a school governor, I was taught that children above 11 are now getting more savvy about online dangers, but it is the 8, 9 and 10 year-olds—or, as I prefer to call it, the Minecraft generation—who have an open door to literally everyone.

It is the school-age child we should continue ask ourselves questions about when we look at whether the legislation is working. As every school leader or governor knows, safeguarding is taken so seriously that we are trained again and again to check on safeguarding issues the whole time. However, the minute a smartphone is delivered into a child's hand—or to the sibling of a friend, which is much more of a problem—the potential to cut across the best safeguarding rules are gone and the potential for harm begins. When the NSPCC tells us that children can be groomed through the use of sexting within 45 minutes, we have to act.

I would like us to cast our minds back to 2003—which, in internet years, I guess would be our equivalent of medieval times—when the Communications Act placed a duty on Ofcom to set standards for the content of programmes, including,

"that generally accepted standards are applied to the content of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material".

That requirement stemmed from a consensus at the time that broadcasting, by virtue of its universality in virtually every home in country—and therefore its influence on people's lives—should abide by certain societal standards. Exactly the same could be said now about social media, which is even more ubiquitous and, arguably, more influential, especially for young people.

However, it was striking to read the evidence given recently to the Communications Select Committee by the larger players—which, I must point out, is still in draft form. When those large social media companies were asked to ensure a similar approach, they seemed to be seeking greater clarity and definition of what constitutes harm and to whom this would happen, rather than saying, "Where do I sign?"

When the Minister responds, perhaps he could explain what the difference is now from 2003? If in 2003 there was general acceptance relating to content of programmes for television and radio, protecting the public from offensive and harmful material, why have those definitions changed, or what makes them undeliverable now? Why did we understand what we meant by "harm" in 2003 but appear to ask what it is today?

The digital charter was welcomed in January 2018 and has been a valuable addition to this debate. We hope for great progress in the White Paper, which I understand will be produced in early 2019. However, I am sure that others know better than me and perhaps the Minister will tell us. When he does, will he give us a sneak peek at what progress the Government are making in looking at online platforms—for instance, on legal liability and sharing of content? It would be good to know whether the scales are now moving towards greater accountability. I understand that Ofcom was a witness at the Commons DCMS Select Committee last week. It said that discussions had been open and positive and we would like to hear more.

I recently had the privilege of being on the Artificial Intelligence Select Committee. Our report *Ready, Willing and Able?* made clear that there is a need for much greater transparency in this area. Algorithms and deep neural networks that cannot be accountable should not be used on humans until full transparency is available. As the report concludes:

"We believe it is not acceptable to deploy any artificial intelligence system which could have a substantial impact on an individual's life, unless it can generate a full and satisfactory explanation for the decisions it will take".

I look forward to the debate on that report next week.

As with the AI Select Committee investigation, it is clear in this debate that there are many organisations in the field—from the ICO to Ofcom, from the Centre for Data Ethics to the ASA. The question becomes: is a single body is required here, or do we, as a Parliament, increase resource and put greater responsibility into one existing organisation? The danger of the lack of clarity and consistency becomes apparent if we do not.

I would welcome a comment from the Minister on the latest efforts in Germany in this area with its network enforcement law and its threatened fines of large sums if platforms do not rapidly take down hate speech and other illegal content. Does the Minister believe that it is possible to do that here? I was interested to hear that, as a result of such changes in German law, Facebook has had to increase its staff numbers in this safeguarding area—by a disproportionately large number in comparison with anywhere else in Europe.

The need for platforms and larger players to reform themselves regularly is starting to show. In the Lords Communications Select Committee session, Facebook was keen to point out its improvements to its algorithm for political advertising. Indeed, the large players will be quick to point out that they have developed codes and ethical principles. However, the AI Select Committee believes, as the Minister will have seen, that there is a need for a clear ethical code around AI with five principles. First, AI should be for the common good; secondly, it should be intelligible and fair; thirdly, it should not be used to diminish the data rights of individuals, families or communities; fourthly, everyone has the right to be educated to flourish alongside AI; and, fifthly, the power to hurt, destroy or deceive should never be vested in AI. Who could argue with that?

In a warm up for next week's debate, I wonder whether the Minister believes, as I do, that whether we are pre-Brexit, post-Brexit, or over-a-cliff-without-a-parachute-Brexit—which is currently looking more likely by the day—we in the UK still have the capacity to lead globally on an ethical framework in this area. In the committee we were also able to provide clarity on responsibility between the regulatory bodies. It was useful work.

One of the first pieces of legislation I successfully amended in this place with colleagues on these Benches was the Criminal Justice and Courts Act 2015. A friend of mine who had been a victim of revenge porn had found how inadequate the legislation was and that the police were unable to act. The debate around it was typical of so many of the debates in this area. A whole generation of legislators—us—born well before the advent of the smartphone was setting laws for a generation who literally photograph everything. The dilemma became about how far ahead of what is already happening in society we need to be. It should be all the way and it is now a criminal act with an automatic sentence of two years. Unfortunately, awareness of this law is still quite low, but I would like to guide us towards the deterrence factor in this discussion.

While I have concentrated most of my comments on the future generations, a word needs to be said for the parents. The Cambridge Analytica scandal and the investigation into the spending by Brexit campaigners in the referendum suggest that the general public as well as children need help to protect them from micro-targeting and bias in algorithms—all delivered through social media platforms. There is a danger that this will further break the trust—if there is any left—in the political processes. It is a reminder that while fines and investigations highlight such practices and behaviours, they are not the only steps to take to deal with them.

The forthcoming White Paper will look at institutional responsibilities and whether new regulatory powers should be called on by either existing regulators or others. Again, any clarity on the thought process and, of course, the timescale from the Minister will be welcome. While we wait for that White Paper, we can all reach the conclusion that the status quo does not work. Governments cannot wait until this regulation debate becomes outdated. If "harm" as a definition was good enough for TV and radio content in 2003, it is good enough for content on social media platforms today.

8.09 pm

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, that was brief but fun. As the noble Lord, Lord Stevenson, said, it is nice to have a sort of flashback to the many interesting debates we have had. Although not many noble Lords are in the Chamber, these are important issues and in a way I feel that I could answer the points made by all noble Lords by saying, "This is very important. I agree that the status quo is not acceptable. We understand that. The points raised will be actively considered. We have not made any final decisions and we will reach an answer in the White Paper". I could then sit down, but I shall try to be a bit more reassuring and helpful than that.

The temptation is always to try to get the Minister to commit to things that he should not. However, the fact is that the White Paper is not finished and we have not made decisions in a lot of these cases. We are actively considering everything that has been brought up in this debate and we are certainly ready and willing to talk to all noble Lords. The noble Baroness, Lady Kidron, will have heard the Minister give evidence at the session of the Lords Communications Committee earlier today. She talked about these issues, and in a sense the noble Baroness is probably ahead of me. However, we are very happy to continue talking.

As I say, we will be publishing the White Paper on online harms this winter. Although the noble Lord, Lord Stevenson, said generously that perhaps we should suggest the spring, we mean the winter—I think we all

[Lord Ashton of Hyde]
know what winter means. That is the current plan and it will be a precursor to legislation if it is required. We will set out our plans to ensure that social media platforms take more responsibility for online harms, which is what we are all aiming for. It is a complex area and we are considering carefully all the options, including but not limited to a statutory duty of care and a regulator.

However, we have to bear in mind that the internet offers huge benefits. We sometimes spend our lives talking about the problems and the harms, but it is important to note that not only here in this country but in developing countries the internet makes a tremendous difference to growing economies, making us more productive and raising living standards. In many cases it enhances the quality of life. It is also true that the industry has taken significant steps with existing industry-led initiatives, in particular through the application of technology. We are not saying that it is perfect, which is why we are producing the White Paper. We know that in some cases legislation may be needed, but there are technological solutions and it would be wrong not to acknowledge that.

In part because of the influence of noble Lords and parliamentarians more widely, there has been a movement towards a "Think safety first" approach, which has been mentioned. In that, the safety considerations are embedded into the product development. For example, Facebook, Instagram and Apple have all recently brought in tools for users to monitor and limit their screen time. That shows the clear role that technology has to play in tackling online harms. However, we agree that more can be done and we will set out our plans in the White Paper to support the development and adoption of safety technologies, and more importantly to empower and educate users.

We have already said that as a Government we will bring forward legislation if that is necessary. We have pointed to a social media code of practice and transparency reporting as areas where we think that legislative action may be required. We are also exploring whether additional measures are needed. We know that there is public concern about a broad range of online activity ranging from terrorism to child sexual exploitation, along with children's access to inappropriate but legal content. Of course, the boundary between the legal and the illegal is not always easy to define. We will set out a clear and coherent framework to tackle these issues in a proportionate and appropriate manner, but which importantly will also support the continued growth and innovation of the digital economy. We also do not want to stifle legitimate free speech or prevent innovation, where the UK is a significant global leader.

The White Paper will also address public concerns and ensure continued confidence in the digital economy. We know from a joint report by Ofcom and the ICO that eight out of 10 internet users have concerns about going online. Noble Lords will be aware that the Communications Committee, to which I have just referred, is undertaking an inquiry in this area and we look forward to its conclusions. We support and accept the range and openness of the debate taking place. A great deal of research is being done and we are engaging with industry as well. We have read a lot of the proposals which have been put forward but we are also engaging face to face with stakeholders. For example, the Home Secretary was in Silicon Valley just last week talking to tech companies with particular reference to child sexual exploitation as well as looking at the role of advertising, which was mentioned by the noble Baroness.

The problem with the duty of care model is that while in some cases it seems to be an easy and good answer to the problem, it is not as straightforward as it sounds and needs careful thinking through. We are not against it. We are certainly considering the different models of duty of care because it does not have a fixed meaning in English law. There are different areas, such as health and safety, environmental protection and common law; we are looking carefully at all those. Of course, that includes the model mentioned by the noble Lord, Lord Stevenson, and others, which was put forward recently by Professor Woods and Mr Perrin at the Carnegie Trust. In fact, their proposal applies only to social media companies and focuses on the processes put in place by companies to protect users. We are certainly looking at that and have not written it off in any way.

That is not the only regulatory model that might be appropriate to tackle online harms. We are looking more broadly at a range of options and examples from a wide range of sectors. I cannot be more specific than that at the moment except to say that we are keeping an open mind. We are considering the whole spectrum, from self-regulation on the one hand to a duty of care, a regulator and prescriptive statutory regulation on the other; there are several ways in which that might be put in place. I acknowledge the point made by noble Lords that a duty of care has the benefit of an element of future-proofing, which is another thing we have to consider rather than specific statutory regulation.

The other factor to bear in mind is the international aspect of this. We are working closely with like-minded countries as we design solutions. We are among the leading countries in trying to tackle this issue. Obviously, we have looked at and are considering measures such as the e-safety commissioner in Australia, an ombudsman-like model that can issue fines. The possible problem with an ombudsman is that it is a complaints-based solution and things may need to be done quicker than that; we are looking at that. Similarly, the noble Baroness, Lady Grender, talked about the German rules on taking down illegal content. We think that there are possible conflicts there with EU law but, again, we have not written that off and we are studying it carefully.

I want to take up a number of specific questions. I will allow myself a little more time—not too much longer, do not worry—because we have a whole hour and there are only four of us. The noble Lord, Lord Stevenson, asked about who is in the lead on this. The publication will be a joint effort between the DCMS and the Home Office. Despite what the noble Lord said about the lack of success, the Data Protection Act, which was a joint effort with the DCMS, worked well. Obviously, the wide range of harms that we are

looking at are relevant to the Home Office and the DCMS; we are also working closely with other departments.

The digital charter is part of a rolling programme of work. The online harms White Paper is part of the digital charter, which we will continue to update and which includes things such as the Centre for Data Ethics and Innovation Consultation, our age-verification work—that will come before your Lordships' House very soon—and the White Paper itself.

Noble Lords have asked to whom companies owe a duty or responsibility. We think that platforms should be responsible for protecting their users from experiencing harms through their services. However, defining that in an online environment is complex. We are thinking carefully about the problem of how this might look in an online environment where half a billion people, say, are online, if we say that there is a responsibility in that environment. We have to look at the theory behind this as well as the practicalities. We are considering that.

How will we enforce compliance with whatever regulations we propose? We think that we will need a proportionate suite of graduated, effective sanctions, with the aim of securing future compliance and remedying the wrongs. That comes with a variety of challenges, such as international enforcement. We are considering regulation in other areas, including with international partners in forums such as the G20 and the OECD.

On the companies that are in the scope of the proposed regulatory framework, we are looking methodically at the platforms that will be affected and on which platform users are exposed to the greatest risk. We accept that looking at a risk-based approach would be sensible. That will include, but may not be limited to, social media companies because we want this to be future-proofed and not limited to today's business models. We are exploring how we might develop a future-proofed approach. We will seek to take a proportionate approach depending on the size of businesses and the risks associated with their activities.

I was asked whether we are looking beyond platforms and about operating systems. We need to influence the development of new and emerging platforms. As part of the design process for any new website or app, all companies should actively ensure that they build a safe experience for their customers. We will promote a "think safety first" approach for all companies and in the forthcoming White Paper set out how we will work with industry to ensure that start-ups, SMEs and other companies have the practical tools and guidance they need.

As for harmonisation of legislation, we have said—and noble Lords have repeated it—that what is illegal offline should be illegal online. As has been mentioned, the Law Commission's recent review of abusive and offensive online communications reported on the parity between legislation offline and online. It concluded that,

"for the most part … abusive online communications are, at least theoretically, criminalised to the same or even a greater degree than equivalent offline offending … Practical and cultural barriers mean that not all harmful online conduct is pursued in terms of criminal law enforcement to the same extent that it might be in an offline context".

Therefore we welcome the second phase of the Law Commission's review.

The scope of online harms in the White Paper has not been finally settled, but we are looking to address the full range of harms, from the clearly defined illegal to the legal but harmful. Boundaries between such harms are sometimes hard to define. We are taking a pragmatic approach. There is clearly a place for technology in educational efforts as well as legislation. We will set out a clear and coherent framework that tackles that.

On what I said on the previous Bill about the Secretary of State's commitments on parity, safety by design, accountability and enforcement, I see no reason to detract from that, albeit we have a new Secretary of State. I have no reason to believe that anything has changed and we will certainly look at those questions.

I repeat to noble Lords that we are trying to keep a very open mind; it is not settled. We welcome all input from noble Lords, particularly those here tonight. We look forward to the Communications Committee's report on safety on the internet.

Our approach will be guided by some key considerations, including the responsibilities that tech companies should have to prevent and protect against online harms, the importance of innovation to the digital sector, upholding a free and open internet, and the international scale of this challenge. We will set out the details of our approach this winter.

House adjourned at 8.27 pm.

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