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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

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

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

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

House of Lords

Monday 3 December 2018

2.30 pm

Prayers—read by the Lord Bishop of Carlisle.

Agricultural Subsidies

Question

2.38 pm

Asked by ***Baroness Jones of Moulsecoomb***

To ask Her Majesty's Government what consideration they have given to linking agricultural subsidies to the creation of buffer zones between farmland and rivers, to reduce pollution and encourage wildlife corridors.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I declare my farming interests as set out in the register. Defra recognises that riparian buffer strips are an extremely effective measure to improve the natural environment. They link riverside habitats, provide a valuable resource for plants and wildlife, and enhance water quality. We are working with farmers and other stakeholders to design an environmental land-management system that will pay public money for public goods, delivering an environmental outcome and contributing to achieving the 25-year environment plan.

Baroness Jones of Moulsecoomb (GP): I thank the Minister for his reply, which sounds very optimistic. However, will these be compulsory? Will there be legislation about it? Will this sort of thing be in the Agriculture Bill so that re-wilding and creating such buffer zones can be absolutely everywhere, rather than just here and there?

Lord Gardiner of Kimble: My Lords, that is precisely why Clause 1 of the Agriculture Bill sets out that the Secretary of State may give financial assistance for, or in connection with, a number of purposes. One of those is,

"managing land or water in a way that protects or improves the environment".

There is no doubt that there are nearly 100,000 acres of land in riparian buffer strips beyond two metres. We wish to continue with this because there are a lot of benefits to it.

Lord Robathan (Con): My Lords, I declare an interest as a farmer. I endorse what the noble Baroness, Lady Jones, said. It is important that this money is devoted to things such as buffer strips. I also beg my noble friend that, when the new design is put into place, it is simple for everybody to understand and to pay. As he will know from the Rural Payments Agency, payments on the HLS have been disastrous for some farmers.

Lord Gardiner of Kimble: My Lords, having declared my interests, I have considerable sympathy with my noble friend. That is precisely why we are working and will be working with farmers, land managers, environmental experts and other stakeholders so that we get this precisely right and it is not over-bureaucratic but environmentally outcome-focused, which is so important.

Baroness Jones of Whitchurch (Lab): My Lords, agriculture is now the number one cause of water pollution and is responsible for the largest number of serious pollution incidents. Of course, most farmers act responsibly to prevent soil run-off, pesticides and slurry polluting watercourses. However, does the Minister accept that to deal with the worst offenders—those who do not act on a voluntary basis—there must be a credible threat of enforcement of the regulations, whether now or in the future? At the moment that is sadly lacking.

Lord Gardiner of Kimble: Certainly, the "polluter pays" principle is very current, and this is obviously why we are consulting on the environmental principles and governance issue. The draft legislation on that will be published before Christmas, along with consultation results. It is important that everyone, wherever they are, concentrates on reducing pollution. That is of course one of the great advantages of riparian buffer zones of a certain dimension, because you get an enhanced advantage from that.

The Countess of Mar (CB): My Lords, I declare my interests, as in the register. While I entirely endorse what the Minister said about improving the environment, could he please make sure that the waterways themselves are kept clear to prevent flooding? When riverbeds become swamped with weeds and things, the water will not flow through and away, which causes flooding.

Lord Gardiner of Kimble: The noble Countess raises an interesting point about pollution and the growth of algae and so forth in watercourses. Clearly, there is a balance to all of this, because part of the use of natural capital is indeed slowing the flow. The noble Countess is absolutely right that we need to ensure that watercourses are positioned so that there is a proper flow of water, but we also need to be mindful of the slowing of flow and the use of natural capital.

Lord Clark of Windermere (Lab): My Lords, as the Minister knows, there is a considerable body of opinion among farmers that if they have to plant trees, they have failed in agriculture. What plans do the Government have to get across to farmers that forestry, woodland planting and farming are all part of the same show?

Lord Gardiner of Kimble: My Lords, I agree with the noble Lord; it is absolutely clear, coming from a farming background, as I do, that farming and the environment should be in harmony. To get the best produce, you need to look after the environment, soils and fertility—all this is interconnected. I have planted a few trees and they are immensely valuable, not only to the landscape but for shelter, enhancement of the environment and production.

Earl Cathcart (Con): Would my noble friend agree that such environmental work has been undertaken by many farmers over many years? Some of the work is paid and some is not—like mine. Would he agree that food production must remain the prime objective for farmers, although not at any cost, obviously?

Lord Gardiner of Kimble: My noble friend outlines the importance of harmony. The economic benefit of pollinators and riparian strips, for example, to UK fruit, vegetable and oilseed rape production is estimated to be between £600 million and £700 million GVA per annum, so he is absolutely right. Yes, there are many examples of farmers, whether paid or unpaid, who have done a lot of environmental work. What we want to do with the environmental land management system is to enhance the environment and work with farmers.

Baroness Parminter (LD): My Lords, Dame Glenys Stacey's review of farmland inspection and regulation shows that farmers currently face a one-in-200 chance of being inspected because the Environment Agency has only 40 such officers nationwide. In the future, how will the Government ensure—particularly since the RPA will not be around to monitor cross-compliance—that the regulation of farming is properly funded so that wildlife and watercourses do not get damaged?

Lord Gardiner of Kimble: My Lords, I had the privilege of meeting Dame Glenys only last week, and I thank her for the considerable work she has undertaken for the nation. Clearly, it is important that farmers do the right thing and, coming from a farming background, my understanding and knowledge is that overwhelmingly, that is what they wish to do. They are overwhelmingly questioning what they should do, and that is one of the responsibilities that we need to undertake. Clearly, anyone who pollutes the land wilfully and negligently needs to be brought to book; that is important.

Global Fund to Fight AIDS, Tuberculosis and Malaria

Question

2.46 pm

Asked by ***Baroness Barker***

To ask Her Majesty's Government what assessment they have made of the results achieved in saving lives by the Global Fund to Fight AIDS, Tuberculosis and Malaria.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, the Global Fund to Fight AIDS, Tuberculosis and Malaria has helped to save 27 million lives since 2002. Deaths caused by the three diseases have been reduced by one-third in countries where the Global Fund invests. Despite impressive progress, however, there are significant challenges which require us to go beyond "business as usual" to achieve the 2030 targets.

Baroness Barker (LD): I thank the Minister for his Answer. Successive UK Governments should be proud of the role this country has played in the Global Fund, which has a huge effect, not just by keeping millions of people alive, but also on the search for new medicines and vaccines. What do the Government intend to do to support the Global Fund in its upcoming sixth replenishment?

Lord Bates: The noble Baroness is right. This is an area where we can be proud cross-party of the commitment that has been made since the fund was started in the early 2000s. Successive Governments have committed to this, and the UK is now a leading force in this whole area. We are coming up to a crucial moment with the sixth replenishment of the Global Fund, which will take place next year. The investment case will be presented to potential donors in New Delhi in February and then it will be important for all countries to step up to the plate. The UK's position—I am absolutely confident of this without prejudging it—will continue to be one of leadership and commitment, because it is working.

Lord Cashman (Lab): My Lords, does the Minister agree that it is vital we maintain our commitment to the Global Fund and encourage other partners to do so if we are to achieve our ambition of zero HIV diagnoses by the year 2030 in line with the sustainable development goals?

Lord Bates: That is absolutely right. On the sustainable development goals to which all 193 nations are signed up, goal 3.3 is the specific commitment. If it is going to be met, nations will have to step up and put more funds on the table to ensure people get the treatments that are needed. In 2017, those diseases killed approximately 2.6 million people, so we are a long way off 2030. We have the technologies, but we need to make sure the resources are there so that they are delivered.

Baroness Hayman (CB): My Lords, there is another commitment to which the Government are a party and that is the commitment made at the Commonwealth Heads of Government Meeting to halve malaria in the Commonwealth by 2023. The Global Fund has been absolutely crucial so far in the enormous achievements that we have made against malaria but, as the Minister said in his Answer to the Question, the achievements are in jeopardy if we do not go forward. Can he be even more positive about both the Government's commitment to the sixth replenishment round and to persuading other Governments to meet their commitments too?

Lord Bates: I think that that is one reason we were party to the high-level meeting in the margins of the UN General Assembly in September, which sought to gather some momentum behind this issue. There are other challenges with malaria, which the noble Baroness, as someone who has championed this cause over many years in this House, will know, and they include antimicrobial resistance and insecticide resistance. The challenges, particularly in relation to malaria, are getting more difficult, and that is why we need the resources.

Lord Black of Brentwood (Con): My Lords, can my noble friend tell us what plans the Government have to improve access to HIV treatment for children? Globally, only 52% of children living with HIV have access to antiretrovirals and, tragically, half of those without treatment will die before their second birthday. There will soon be a high-level discussion on scaling up early HIV diagnosis and treatment for children. Will the Government be sending a delegate to it?

Lord Bates: I cannot give an answer on that point, but I am very happy to write to my noble friend. He is absolutely right. We believe that this issue will be addressed in the investment case. It is also touched upon in the political declaration that accompanied the UN General Assembly high-level meeting. However, I will certainly write to him on the specifics of the issue and I thank him for raising it.

Lord Collins of Highbury (Lab): My Lords, as many low-income countries graduate to middle-income countries, that could have a disproportionate effect on women and girls in particular where programmes require ongoing funding. Is DfID working with the Global Fund to ensure that transition policies are complementary and that no one is left behind?

Lord Bates: The noble Lord is right. Some middle-income countries, such as China, India and Indonesia, show the highest incidence of TB. The highest incidence of HIV/AIDS is to be found in South Africa, with an increasing number of instances in the countries of central and eastern Europe due to drug-related infections, so this has to be part of the overall effort. The noble Lord and I have often talked about the fact that the SDGs are very important because they focus on eradicating the disease rather than focusing on a particular geographic area.

The Earl of Listowel (CB): My Lords, how has the Global Fund contributed to reducing the transfer of HIV/AIDS from mother to infant, and what progress has been made with regard to reducing maternal transfer?

Lord Bates: I do not have a specific answer to that, so perhaps I may deal with it in my written response to my noble friend Lord Black.

Baroness Sheehan (LD): My Lords—

Viscount Ridley (Con): My Lords—

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, I am sorry to prevent the noble Baroness asking a question, but I feel it is the turn of the Conservative Benches.

Viscount Ridley: My Lords, further to the question from the noble Baroness, Lady Hayman, about malaria, my noble friend will be aware that malaria mortality has halved in this century, which is a remarkable achievement. Seventy per cent of that reduction was due to a surprisingly low-tech innovation—namely, the insecticide-treated bed net, although, as my noble friend said, resistance is becoming a problem. Is he aware of research that is going on to improve the efficacy of insecticide-treated bed nets, and is this something that the British Government support?

Lord Bates: I am aware of the research. Precisely because of the insecticide and antimicrobial resistance that I mentioned, this issue will be addressed in our antimicrobial resistance strategy, which will be refreshed next year. However, I know that my noble friend takes a close interest in this technology, and I would be grateful if he would keep us informed of any initiatives or new ventures that he is aware of.

Airports: Disabled People

Question

2.54 pm

Asked by ***Baroness Campbell of Surbiton***

To ask Her Majesty's Government what action they are taking to encourage all United Kingdom airports to provide appropriate facilities for disabled people, particularly the provision of both self-propelled and non-self-propelled wheelchairs.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, regulations protect the rights of disabled people and all passengers with reduced mobility travelling by air. The regulations require that assistance to meet their particular needs should be provided at the airport, as well as on board aircraft, by employing the necessary staff and supplying equipment. Currently, the regulations do not specify the provision of particular equipment, but the aviation strategy Green Paper will consider how to improve the experience of disabled passengers throughout their journey.

Baroness Campbell of Surbiton (CB): I thank the Minister for her reply. Is she aware that according to data from the Civil Aviation Authority's own accessibility survey, out of 3 million requests for assistance made in UK airports last year, half a million people were unhappy with the assistance provided to them, and of those, one in 10 said that it was very poor? Examples include being left in a wheelchair, being left on an aeroplane, expensive wheelchairs being broken and, in my case, being left on an aeroplane for two hours because they refused to bring my chair to the plane door. In the light of this, can the Minister assure the House that the Government's aviation strategy will contain more stringent ways to address this outrageous discrimination with more than just guidance and regulations that we know do not work? Will she also tell me how many disabled people were involved in developing the strategy?

Baroness Sugg: My Lords, I assure the House that the aviation strategy Green Paper due to be published in the coming weeks will indeed address these issues. The noble Baroness is right that, in a recent CAA survey,

[Baroness Sugg]
one in 10 passengers who requested assistance were fairly or very dissatisfied with the service provided. That is obviously not good enough. The Green Paper will propose a passenger charter, which will clarify what can be expected from airlines, airports and airside services, including on wheelchair damage and waiting times, and will improve the standards of service for passengers with reduced mobility.

Lord Hunt of Kings Heath (Lab): My Lords, why do the Government not focus on enforcing the regulations that the Minister referred to? Surely that is what they ought to be doing at the moment.

Baroness Sugg: My Lords, it is important that we look carefully at the regulations. They include provisions, but, as I mentioned in my original Answer, some of them do not specify exactly what is needed. That is why we are looking to introduce a passenger charter, to more clearly set out what we think the standard should be. Through the strategy, we are also looking at strengthening the CAA's range of enforcement powers to deal with instances where airlines or airports have not met their legal obligations. At the moment, we are not sure whether those are right, and so we are looking to strengthen those enforcement powers.

Baroness Brinton (LD): My Lords, I thank the Minister for including me in the aviation round table earlier this year, where I had some hopes that both Heathrow Airport and some of the air companies were improving their practice. A fortnight ago, however, I travelled from Heathrow to Madrid and back. My experience included staff telling me that they could not lift my suitcase because they were not insured to lift suitcases on check in, and, despite a large orange label on my chair saying, "Bring to the plane at Madrid", when I arrived I was told that I did not have a chair on the plane at all. I was then passed from pillar to post and was dumped in a corner facing a concrete wall by staff who were trying to sort out what was going on. I ended up in tears while they tried to find my wheelchair. If this were an unusual occurrence, it would be horrific, but it is not. What is even more horrific is that this happens every day to air passengers. Charters butter no parsnips: when will the regulations be enforced to stop air travel being a ghetto for disabled people?

Baroness Sugg: My Lords, I am incredibly sorry to hear of the noble Baroness's experience. She is absolutely right that these occurrences happen far too often, and that is what we need to change. Today is the United Nations International Day of Persons with Disabilities, and it is important that we as a country continue to work with international forums to promote greater accessibility to air travel for those with reduced mobility. One of the main reasons for some of these issues is the provision of information, particularly on inbound flights and when people travel internationally. That is absolutely something that we should get right, and we will work with our international partners to try to do so.

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, it is clear that some passengers can travel only if they are in their own wheelchair, as they are able to do on buses and trains. Why can the aviation industry not catch up with the rest of the transport sector?

Baroness Sugg: My Lords, we want to improve accessibility, not only at airports but in aircraft and we are working closely with industry to deliver changes in aircraft design. That will be for the slightly longer term. A number of issues are stopping people from travelling in their own chairs on planes—from ensuring that chairs can be tethered safely and safety issues around batteries to investigating flexibility in cabin seating to make it commercially viable for airlines. But I know that in order for some passengers to fly they of course need their own wheelchairs. I recently chaired a round table on that specific issue. We are working closely with the aviation industry, the CAA, wheelchair manufacturers and disability organisations to achieve the long-term goal of enabling wheelchair users to travel with their own airworthy wheelchair on a plane.

Lord Berkeley (Lab): Is it not about time that the security rules were proportionate to the services? My stepson lost a leg some time ago and was forced to take off his prosthetic leg in Newquay airport in front of a lot of passengers and his family when he was flying on an international service to the Isles of Scilly. For goodness' sake, surely there should be a rule to apply a little more common sense to such searches.

Baroness Sugg: My Lords, as well as setting the right standards for service, we need to ensure that all staff are properly trained to address these issues. We are including a proposed measure for training programmes to improve disability awareness for all customer-facing staff, be that at the border or for ground handlers, but including security staff as well.

Baroness Deech (CB): My Lords, does the Minister not agree that the Government are lacking in sincerity in their attitude towards transport and the disabled? Although they have said that it is their wish to get more disabled people into work, not only is it difficult on aeroplanes, it is difficult on trains and taxis where the Government have failed to insist that every local authority has cabs that are designated to carry disabled people—it is a matter of chance. I hope that the Minister will agree that the Government simply must make more of an effort to get disabled people and older people on the move.

Baroness Sugg: My Lords, I absolutely agree that it is important to ensure that disabled people can access all modes of travel. In July this year, we published the Government's inclusive transport strategy that sets out all our plans to make every mode of transport in the system more inclusive and better for disabled people. That includes the awareness and enforcement of passenger rights, staff training and improving information. I can reassure the noble Baroness that we are absolutely sincere in improving things. The department is working hard and I am personally committed to make flying by air better for disabled passengers.

Palace of Westminster: Restoration and Renewal

Question

3.02 pm

Asked by ***Baroness Rawlings***

To ask Her Majesty's Government which Government-owned properties the Office of Government Property has discussed with Parliament as possible relocation sites as part of the Restoration and Renewal programme.

Lord Young of Cookham (Con): My Lords, as part of the Joint Committee work that helped to prepare for the restoration and renewal programme, the government property unit discussed potential temporary relocation sites with the R&R programme team—namely Richmond House and the Queen Elizabeth II conference centre. The Government Property Agency has continued to provide advice on those relocation sites, and of course the final decision will be a matter for Parliament.

Baroness Rawlings (Con): My Lords, I declare my interests as set out in the register, and I thank my noble friend for his Answer. But can he give noble Lords an assurance that the grade 2* listed Richmond House, completed as recently as 1998, which is a major work by the architect William Whitfield, will not be substantially or partly demolished to make way for a temporary House of Commons Chamber; and, as importantly, that a full feasibility study of the alternative options and locations for this temporary Chamber will be carried out?

Lord Young of Cookham: My Lords, ownership and responsibility for Richmond House has now been transferred to the other place, where it forms part of its northern estate strategy. The other place is now looking at how Richmond House might be reconfigured to meet its needs. Any changes will require planning permission and listed building consent, and the other place is working very closely with Historic England in view of the importance of the building, which my noble friend has rightly pointed out.

Lord Howarth of Newport (Lab): Does the Minister recall that when Richmond House was built 30 years ago, it was greatly admired; and as the noble Baroness has just said, it is only three years ago that it was listed grade 2*? The Minister talked delicately about reconfiguring, but would it not be an awful waste effectively to destroy the greater part of it to accommodate a temporary decant? Will he give the House an assurance that a full feasibility study of all other options will be carried out, including the suggestion that a temporary House of Commons Chamber be erected in the atrium of Portcullis House put forward by its architect, Sir Michael Hopkins?

Lord Young of Cookham: That suggestion by Sir Michael Hopkins was looked at by the Joint Committee and discounted for the reasons it has set out. As I said in response to my noble friend, the responsibility for Richmond House now rests with the other place because it is the legal owner. It will take on board the heritage issues which have just been mentioned. The building was, of course, substantially reconfigured in the 1980s before it became the headquarters for the Department of Health.

Lord Wallace of Saltaire (LD): My Lords, do the Government have a plan for the development of Whitehall? In the past 25 years, three government blocks in and around Whitehall have been transferred to private ownership and converted into hotels. I wonder if they intend to move that further along Whitehall and take more departments out towards Marsham Street and Horseferry Road, or whether they think that the historic context of Whitehall departments grouped together is something that we ought to attach importance to at a point when the Department of Health has just had to move further away.

Lord Young of Cookham: The decision to transfer Admiralty Arch on a 99-year lease was one taken by the coalition Government. I think it was the right thing to do because that building was no longer required by the Government. It was costing nearly £1 million a year to maintain, and it needed substantial renovation. It has now been tastefully renovated in the private sector according to the original designs by Sir Aston Webb. Moreover, the Government still retain the freehold. That was a sensible decision which was taken by the coalition Government. More broadly, the number of civil servants is reducing. There are still 78,000 civil servants in London but many thousands will be relocated outside London as part of our industrial strategy. Those who remain will require some 20 buildings instead of the 65 that we have at the moment. But the core Whitehall estate will be sensitively managed with advice from the Government Historic Estates Unit. And as the noble Lord said, some government departments are already doubling up. The Treasury, DCMS and HMRC are co-located, as are the Home Office and MHCLG.

Lord Haselhurst (Con): My Lords, does my noble friend agree that as long as the security level remains high, our choice of alternative accommodation is drastically curtailed unless one is going to consider further steps to enlarge the security circle around the parliamentary and other historic buildings in Parliament Square?

Lord Young of Cookham: My noble friend is absolutely right. One of the reasons why Richmond House was selected was the direct access to the rest of the Parliamentary Estate from that building, for security reasons.

Baroness Smith of Basildon (Lab): My Lords, we all agree that it is important that we keep the costs down and ensure value for money during the restoration and renewal project. I turn to two specific areas, not about the Chambers but about the office location for Peers following decant. First, is it correct that available

[Baroness Smith of Basildon]
offices in government departments in Whitehall which were identified by the Joint Committee as possible office space have now been blocked and ruled out by the Government because they are being used by the additional staff who have had to be brought in for Brexit, thus forcing more expensive options to be considered for office space for Peers? Secondly, can he quantify the extra costs incurred by delay not only in terms of the additional maintenance and prevention work that is needed but also the increased costs of the work involved?

Lord Young of Cookham: On value for money, the Government have published a draft Bill. Under Clause 2(4), the sponsor body must ensure that the works represent good value for money. I was not aware of what the noble Baroness has just said about the government departments blocking access to buildings but I will make inquiries. If the noble Baroness is referring to the overall cost of the project, which is now estimated at some £3.52 billion, the overall management of the project is a matter for Parliament. It is not a matter for the Government. Responsibility will rest with the sponsor body, which is now being set up, and the delivery body. But, ultimately, it is not a matter for the Government; it is a matter for Parliament as to how this matter is progressed.

Counter-Terrorism and Border Security Bill

Report (1st Day)

Relevant documents: 35th and 40th Reports from the Delegated Powers Committee

3.09 pm

Clause 1: Expressions of support for a proscribed organisation

Amendment 1

Moved by ***Baroness Jones of Moulsecoomb***

1: Clause 1, page 1, line 8, leave out "is supportive of" and insert "supports"

Baroness Jones of Moulsecoomb (GP): My Lords, I will speak at rather more length than I do normally. I thought that my amendment was explained clearly in Committee yet I had to table another amendment for today because the problem still exists. Therefore, I will try to explain it carefully, although I am not a lawyer. This issue depends on clear thinking and some common sense.

As I made clear in Committee, I am completely opposed to people encouraging the membership and support of terrorist organisations. I am also deeply opposed to the terrorism bogeyman being used to justify laws that are disproportionate and which undermine the rights of law-abiding citizens without good justification. The Minister did not adequately address my concerns in Committee, which reinforced my view that Clause 1 is currently far too broad, represents an unacceptable breach of human rights and risks criminalising a range of perfectly innocent speech. Amendments 1 and 2 in my name would make the new criminal offence a reasonable one. I believe that not making significant changes to this clause would be a clear breach of the European Convention on Human Rights. As drafted, the offence is too vague to accord with the law and too broad to be a proportionate way to achieve a legitimate aim.

The Minister confirmed to the Committee that the clause is a direct response to the case of R v Choudary, in which the Court of Appeal considered the existing Section 12 offences. The Explanatory Notes state:

"The Court of Appeal was clear that a central ingredient of the offence was inviting support from third parties for a proscribed organisation and that the offence 'does not prohibit the holding of opinions or beliefs supportive of a proscribed organisation; or the expression of those opinions or beliefs' … This clause therefore provides for a new offence which criminalises the expression of an opinion or belief that is supportive of a proscribed organisation".

I covered the case in some depth in Committee so I will not repeat it in detail here, but the fact that the Government made it clear that the new offence is in response to the difficulties of prosecuting Choudary means that your Lordships' House must understand Clause 1 in the light of that judgment. Let us not forget that Choudary was found guilty and his conviction was upheld by the Court of Appeal, so it is not as though there is some loophole through which he was able to slip.

I tabled two amendments to Clause 1 with the purpose of tightening this new offence to ensure that only people guilty of some wrongdoing will be guilty of a crime. The purposes of law and justice are not only to convict the guilty but to ensure that the innocent go free. In Committee, it was telling that the Minister, in response to my example of a political activist expressing support for an independent Kurdistan, had only,

"a very high level of confidence that they would not fall foul of the Clause 1 offence".

Anything short of absolute certainty is proof that the new offence is far too broad and will criminalise perfectly innocent behaviour.

The new subsection is best understood when contrasted against the existing Section 12 offence in the Terrorism Act 2000. There are three key differences between the two offences: there is no requirement to "invite" in the new offence; the expression of an opinion which "is supportive of" rather than "supports"; and the watering down of the guilty mind from intention to recklessness. In my analysis, each of these three changes represents a significant broadening when compared to this existing offence. The proper change is the first: the legal requirement of having to invite support was too tight and allowed people such as Choudary to rigorously support terrorist organisations, as long as they did not invite anyone else to do so. The other two changes make this new offence far too wide, in a way that goes beyond the Government's stated purpose.

3.15 pm

In Committee, the Government's response to my amendment, which is now Amendment 1, was a one-line remark:

"I make it clear that none of this analysis would be any different if 'is supportive of' were replaced with 'supports'".—[*Official Report*, 29/10/18; cols. 1147-48.]

That was not at all sufficient as an explanation of the change in wording between the existing offence and the Clause 1 offence. In Choudary, the Court of Appeal had to interpret the meaning of the existing Section 12 wording "supports". It used its normal dictionary definition of providing assistance, encouragement, advocacy and endorsement. As Clause 1 is drafted wholly in response to the Choudary judgment, any difference in wording chosen by the people who drafted the Bill must be deliberate and have a specific intended effect. It is why the new Clause 1 offence omits "invites", because the intended offence is the very act of expressing an opinion, rather than inviting any specific outcome.

Why, then, does the Bill use "is supportive of", rather than the now familiar "supports"? What is the intended effect? In Committee, the Minister did not give an explanation for the difference in wording and stated that there was no difference in their effect, but I can almost guarantee that very senior lawyers will soon be in the Supreme Court arguing that Parliament very obviously chose different wording to give a different and much broader meaning. The *Oxford English Dictionary* definition of "supportive" is indeed broader than "supports", as is its ordinary usage in the English language. For example, I could say that I am broadly supportive of an organisation, but that I do not necessarily support it. In the context of Clause 1, expressing an opinion that is supportive of an organisation could cast the net very wide, beyond those people who actually intend wrong or harm.

I therefore ask the Minister to make clear what the Government's intention is with the difference in wording. Was there some deficiency in "supports" that was improved by "is supportive of", or does the Minister maintain her position that these phrases and words have exactly the same meaning and application in the courts? If this is nothing more than splitting hairs, why does the Minister not adopt my amendment in the name of certainty and consistency so that the question never has to raise its head in the courts? I can see a lot of very expensive lawyers arguing over that.

My Amendment 2 would change the mens rea of the Clause 1 offence from recklessness to intention. The Minister told the Committee that this would effectively nullify the utility of the clause and that we might as well strike it from the Bill. My amendment is not intended to defeat the purpose of Clause 1. The Minister's remark perhaps mischaracterises its effect. As I set out previously, there are three crucial differences between the existing Section 12 Terrorism Act offence and this new offence. The guilty act is no longer inviting support, but expressing an opinion.

I worry that the Government have been so tenacious in their attempts to fight terrorists they have not stopped to think about how this new offence would risk criminalising other people who have not done anything wrong. I feel that Parliament should not pass a law that leaves perfectly innocent people with even the slightest degree of risk that they might commit a criminal offence. This argument is all the stronger when it comes to freedom of expression, freedom of religion and political speech. This is actually an unprecedented criminal offence. I asked in Committee whether there was a single existing criminal offence where a person could be found guilty for speaking recklessly. I did not get an answer, so I would like one this afternoon. If we are to create a new criminal offence we have to be clear that that is what is happening.

My final point comes to the Minister's arguments about the practicalities of proving intention, compared with proving recklessness. She said that, as the first was easier and the second harder, this House should opt for the latter, but that is not a justification. We write the law to criminalise that which is criminal and to protect that which is innocent. I am sure that it would be much more straightforward from a practical perspective if the crime of murder required only recklessness rather than intention, but that would be to redefine what murder means.

These are not just my opinions; I believe that they are mirrored by the Court of Appeal's judgment in Choudary. When considering whether the existing Section 12 was an unjustifiable breach of human rights, Lady Justice Sharp stated:

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

I worry that the Government have a tendency to overreach when it comes to issues such as terrorism—nobody wants to look soft on terrorism. At the same time, we have to protect innocent people. This clause invites criminalisation of innocent people. It is in that light that I seek to amend it. I beg to move.

Baroness Hamwee (LD): My Lords, my noble friend Lord Paddick has added his name to this amendment. I want from these Benches to support the noble Baroness. At the previous stage of the Bill, I tabled a number of amendments, including to this clause, on behalf of the Joint Committee on Human Rights. I am not suggesting that it has in any way abandoned concerns about the Bill, but I do not now speak on its behalf, simply because we have not had an opportunity to consider further where the Bill has got to.

One of those amendments would have imported "supports" rather than "supportive". "Supportive" seems far more open to interpretation than "supports", the former being much more subjective than the more active "supports", which is, as the noble Baroness said, the term used in Section 12 of the Terrorism Act 2000. Like her, I looked back at the debate in Committee and noted that the term used by the Minister during much of it was "supports".

New paragraph (b), adding recklessness or intention to "supports", creates a new and separate offence, although it occurred to me only yesterday that we might have amended "a proscribed organisation" to "the proscribed organisation".

The existing Section 12 offence is very direct, referring to "invites support", and in the context of a meeting, albeit a small, private meeting. Under new subsection (1A)(a), it will be an offence to express an opinion without mentioning a proscribed organisation. Many people in this Chamber could probably advise

[Baroness Hamwee]
me of the answer to the following question. If were to say that I could understand that a 15 year-old girl in London might find herself persuaded or groomed to travel abroad to support freedom fighters in an area where Daesh was active and there had been plenty of press reports of the situation—I refer noble Lords to the splendid novel *Home Fire* by Kamila Shamsie if they want to be provoked to think further about what might underlie such a situation—would I be committing an offence? The answer is probably not in this Chamber, but if I did so at a meeting at a university with a young audience, I am not sure what my position would be.

Turning to "reckless", I believe that I would be unable to rely on a defence similar to that in the existing Section 12(4) of the Terrorism Act, allowing a person to prove, with the application of Section 118, that he or she had no reasonable cause to believe that an address to a meeting would support a proscribed organisation. I would be hard put to think of a context—which I think was the term used by the noble Baroness, Lady D'Souza, at the last stage—other than something like this debate, where one could be fairly confident of expressing an opinion and not being reckless. The Minister in Committee focused on recklessness and said little about support or being supportive, so I look forward to hearing the response today.

Like the noble Baroness, we are not happy with how the Government appear to be moving against freedom of speech in this clause, but we have the opportunity here to make it somewhat more proportionate. I thought I should look at Article 10 of the Convention, on freedom of expression. Article 10.2 reminds us that the right is qualified— understandably, of course—in such a way as is,

"necessary in a democratic society".

That phrase really struck home to me. I would like to think that what we are doing through the Bill is necessary in a democratic society. I am not persuaded by Clause 1 as it stands.

Lord Harris of Haringey (Lab): My Lords, in considering the amendment of the noble Baroness, Lady Jones, we have to look at the two new paragraphs (a) and (b) together. In the Bill, the Government seek to eliminate various routes by which an ingenious individual who wants, in effect, to incite people to support a terrorist organisation might create a defence. It is a combination of the two new paragraphs that seems to me to be important. An individual might claim that that they are not supporting a terrorist organisation, but merely supportive of its objectives. They might express that supportive nature of the objectives in such graphic and bloodcurdling terms that it might be deemed to have an effect on those listening to those descriptions. But of course, if they then went on to claim that they had no intention of making people act and follow that particular terrorist organisation, they would be permitted to do so.

By including both being "supportive of" the general objectives and at the same time being reckless as to the consequences of that, the Bill seems to attempt to avoid those ingenious individuals proclaiming that in fact they are not encouraging people to join a particular terrorist organisation, but are merely being supportive of the objectives of that organisation and have no intention at all of making people take action on that. The fact remains that that they have been supportive of the organisation and at the same time reckless as to the consequences. My concern with the amendment is that it actually allows two routes by which people can claim a defence when they have clearly, in the most common terms, been trying to persuade people to support a terrorist organisation. That is why I think the combination of "supportive" with the reckless intent makes a degree of sense.

Lord Blair of Boughton (CB): My Lords, I rise very briefly to say that it is a pleasure to follow the noble Lord, Lord Harris of Haringey, and that I completely agree with him.

Lord Carlile of Berriew (CB): My Lords, I too agree with the noble Lord, Lord Harris. It seems to me that this clear provision provides four steps which have to be proved before somebody can be convicted of the crime set out in Clause 1. The first step is that they must say something deliberately, whether orally or in writing in some form, including on the internet. That requires them to act purposefully—it is a deliberate expression. Secondly, it must be supportive of something. Thirdly, it must be supportive not of anything at all but of a proscribed organisation—one that is forbidden by law to join in any event. Fourthly, they must consciously disregard the risks flowing from their action. That is the component of recklessness. So, with great respect to the noble Baroness who moved the amendment, I fear that she may have misunderstood what is provided by assuming that some vague general expression might be taken as committing the offence.

3.30 pm

I also draw your Lordships' attention to the very important component in such cases of the Crown Prosecution Service code test, which requires sufficient evidence to give rise to the likelihood of a conviction. There is also the application of the public interest test so that trivial or inappropriate cases—for example, something said by a 13 year-old on the internet from their bedroom—plainly would not be prosecuted. Indeed, it is worth adding that when Sir Keir Starmer was Director of Public Prosecutions, there was a general presumption—and I believe this has been followed by his two successors—that any prosecution of a very young person for an offence of this kind, which carries a maximum of 10 years' imprisonment, has to be considered at a very senior level. So, with respect to the noble Baroness, this seems to be an entirely proportionate provision, as the noble Lord, Lord Harris, said—rather more briefly.

Lord Paddick (LD): My Lords, I will not go over the arguments again. The noble Baroness, Lady Jones of Moulsecoomb, and my noble friend Lady Hamwee made clear the points that the Supreme Court had concerns about in the case of Choudhary and that the Joint Committee on Human Rights expressed regarding the provisions in the Bill.

Of course, these are two separate amendments. They propose either something more definitive than "is supportive of", or, if you keep "is supportive of", that there should be a degree of intention. I saw the Minister nodding vigorously when the noble Baroness, Lady Jones, suggested that Amendment 2 would actually be no change from the status quo and therefore would in effect nullify the provision, and I have some sympathy with that, but these are two separate amendments and therefore can be taken separately.

In response to the noble Lord, Lord Harris of Haringey, yes, one can see how this is constructed so that an ingenious speaker might wheedle their way through and evade justice, but the problem that my noble friend has identified is that a naive 13 year-old who innocently makes a remark would be caught by this. I accept what the noble Lord, Lord Carlile of Berriew, says about the CPS code of charging but that would not stop that 13 year-old being arrested and detained by the police. I will come back to this theme when we debate the next group of amendments. I do not want to develop that argument now.

Lord Carlile of Berriew: I say this with great deference to a former senior police officer, but surely the arrest conditions would not apply to that 13 year-old and the arrest would therefore be unlawful. The police cannot arrest unless the arrest conditions apply, and one is necessity.

Lord Paddick: I am grateful for the noble Lord's intervention but, as I say, I am not going to address that point now but in the next group. However, we feel that it is necessary for one or other of these amendments to be adopted. Therefore, if the noble Baroness, Lady Jones, decides to divide the House, we will support her.

Lord Judge (CB): My Lords, I cannot agree with everybody. The noble Lord, Lord Harris, made the crucial point that both these provisions have to be read together. This is a single policy decision. We have talked about 13 year-old boys but let us try a different example: the ANC when Mr Nelson Mandela, one of the heroic figures of the last century, was a member of that organisation. Undoubtedly it did, and was minded to, use what we would all call terrorism in the cause of defeating apartheid. There is no problem about arresting him. I consider it perfectly possible for an individual to say, "I entirely agree with the aims of the ANC—the idea that a man or woman should be distinguished against because of the colour of his or her skin is simply unacceptable. But I disagree with using bombs to achieve that objective". They would therefore, using perfectly ordinary English language, not be supporting the ANC. But in saying, "I find that its objectives are entirely admirable and I agree with them", they would be supportive of it. The distinction between these two words is rather significant and merits consideration. I respectfully suggest that we should go to either "supports" and "reckless", or "supportive of" and "intent". Either way, those alternatives would have identified a significant piece of conduct which ought to be criminalised.

Lord Kennedy of Southwark (Lab Co-op): My Lords, Amendments 1 and 2, in the names of the noble Baroness, Lady Jones, and the noble Lord, Lord Paddick, concern issues that we discussed in Committee. I listened carefully to the debate then and have listened carefully to the debate this afternoon. I have great respect for the noble Baroness but I want to make it clear that if she puts her amendment to the vote today and divides the House, we will not be with her. For me, the crucial word is "and", which links new subsections (1A)(a) and (1A)(b). My noble friend Lord Harris of Haringey made the point that we need to read and consider both paragraphs together.

In Committee, the noble Lord, Lord Carlile, put it much more eloquently and succinctly than I can and he has done so again today. In Committee, he said:

> "First, it recognises that even in this relatively gun-free",

society,

> "if someone expresses support in a certain way for a proscribed organisation, it may put some of our fellow citizens in mortal danger of their lives.".

He went on:

> "It does not criminalise the expression of support, rather it forbids and criminalises the expression of support on certain terms as set out in proposed new Section 1A(b), and that is the test of recklessness. Recklessness requires awareness of the risk that is being taken by the speaker".—[*Official Report*, 29/10/18; cols. 1130-31.]

I agree very much with that position and, on the basis of it and what I have heard today, we will not support the noble Baroness in the Lobbies today. I did not accept at all her point that you can be supportive of an organisation but not support it. I think that if you are supportive of it, you do support an organisation. The clause as drafted is reasonable and, for me, it strikes the right balance.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): I thank noble Lords who have spoken in this debate and particularly the noble Baroness, Lady Jones, for moving her amendment. She has set out her position on this clearly and consistently, but I hope that your Lordships will indulge me if I rehearse the reasons why the Government cannot support the amendments.

As the noble Baroness said, Clause 1 amends Section 12(1)(a) of the Terrorism Act 2000, under which it is currently an offence to invite another person to support a proscribed terrorist organisation. An invitation in this context may be explicit or indirect, and may be implicit or opaque, but for a conviction to be secured the prosecution must be able to prove that the person intended to influence others to support the terrorist organisation. I recognise that, when considered in the abstract, this may appear to be the right threshold for the offence. However, in its operation it has been shown to leave a significant gap in the ability of the police, the CPS and the courts to act against hate preachers and radicalisers, as noble Lords have pointed out. This is because such individuals will often be careful to err on just the right side of the law. They will express opinions and beliefs which, in the judgment of a reasonable person, would be likely to have the effect of encouraging others to support proscribed terrorist groups but will stop short of statements which would go far enough to allow the CPS to prove that they intended such encouragement. This is despite them clearly and unambiguously risking harm to the public by virtue of their expressions.

[Baroness Williams of Trafford]

This gap is illustrated by some of the cases to which I have previously drawn the House's attention, and which were described by Assistant Commissioner Neil Basu in his evidence to the Public Bill Committee in the House of Commons. I urge noble Lords to examine that evidence carefully. In those cases, it was not possible to prosecute prolific and high-profile preachers of hate who had made highly inflammatory public speeches which were very clear about the speaker's own support for terrorist organisations and methodology and which were on any reasonable assessment likely to cause their audience to be influenced to support a proscribed organisation. They included open admiration for Daesh and other terrorist groups and praise for their methods, ideology and activities.

However, I hope I will reflect the views of many noble Lords when I say that the current position strikes the wrong balance if it allows such obviously harmful behaviour to go unchallenged. This is behaviour that can have a powerful effect in initiating or moving along the process of radicalisation. There are radicalisers and hate preachers who have, time and again, been shown to have played a prominent and influential role in the backgrounds of those who have been convicted of planning or carrying out terrorist attacks.

Clause 1 is intended to close the gap I have described by bringing within the ambit of the Section 12(1)(a) offence individuals who are reckless as to whether they will cause this harm to arise. We have previously debated what is meant by "reckless", but I think it is worth briefly setting this out again, before I turn to my concerns with the noble Baroness's proposed amendments to Clause 1.

To answer the noble Baroness's question, the term "reckless" is a well-established and well-understood concept in the criminal law, and one with which the courts are familiar, in particular as a result of clear case law established by the then Appellate Committee of this House in 2003 in the case of R v G and another. A person acts recklessly where he or she is aware that in the circumstances there is a risk that their conduct will result in the proscribed outcome, and they none the less engage in that conduct in circumstances where a reasonable person would not.

So, under Clause 1, a person might act recklessly if, in the course of addressing an audience consisting primarily of individuals whom he believes are of an Islamist extremist mindset, he speaks of his own support for Daesh, believing he has a degree of influence over the audience and being aware of the risk that members of the audience will be influenced by him to support Daesh. I hope noble Lords will not disagree when I say that a reasonable person would not, and should not, proceed to make that speech in those circumstances. A person who none the less does so would therefore be doing so recklessly. It may not be possible to prove beyond reasonable doubt an intention to influence their audience to support Daesh, but I consider it appropriate and proportionate that the courts can hold them to account if they are reckless in this way. Clause 1 will ensure that this is the case.

Turning now to Amendment 1, the noble Baroness, Lady Jones, set out a concern that the reference to a statement that is "supportive" of a proscribed organisation might risk a person being found guilty of a terrorism offence having tweeted their support for a legitimate political objective which happens to be shared by a proscribed terrorist organisation. She gave the examples of support for an independent Kurdistan and for the withdrawal of Israeli troops from the Occupied Territories, both of which are entirely legitimate standpoints but which are also objectives of, respectively, the PKK and the military wings of Hamas and Hezbollah. I have previously assured her, and I am happy to repeat those assurances, that this is not the case. In her example, there would be no suggestion that the person supported terrorist methods to achieve the political objectives to which they aspired or that they supported any proscribed terrorist organisation. There would, therefore, be no basis on which a reasonable person might equate such a statement with support for the PKK or for the proscribed wings of Hamas or Hezbollah or might anticipate that a listener would be influenced to support those organisations. As such, the statements would not meet the recklessness test and would clearly not be caught by Clause 1.

The noble Baroness further highlighted in Committee that the existing Section 12(1)(a) offence refers to,

"inviting support for a proscribed organisation",

whereas Clause 1 refers to,

"opinion or belief that is supportive of a proscribed organisation".

She suggested that "supportive" is, intentionally, a broader wording, which will cast the net of the offence more widely than would be the case if the word "supports" were used instead.

I think we are all clear that there is no difference in meaning in the context of the drafting. The existing Section 12(1) offence criminalises those who invite others to support a terrorist group. That word has the wider meaning that the noble Baroness described, repeating what the court said in Choudary, but in the new offence, we are talking about an opinion or belief. As a matter of syntax, an opinion or belief cannot support an issue; a person supports something. That is why parliamentary counsel has used the word "supportive" here. There is no intention to introduce a wider concept than the existing offence. Crucially, new Section 12(1)(b) requires that a person will be encouraged to support a proscribed group by the expression.

However, I can offer the noble Baroness a clear assurance that it would in any event have no meaningful impact on the effect of the clause, the scope of the offence or the range of causes that would be caught by it. This would be exactly the same whichever formulation were used.

Amendment 2 would remove the recklessness test and replace it with one that effectively repeats the existing position in the Section 12(1)(a) offence, so it would still be necessary to prove the same deliberate act of invitation to support.

The noble Baroness has made it clear that she does not support the purpose of Clause 1, and I respect that view, even if I do not agree with it, but I should make it clear to noble Lords that the amendment would entirely nullify the utility of this clause and, as such, were it to be made, we might as well simply strike the whole clause from the Bill.

I hope that with that explanation, noble Lords are satisfied and the noble Baroness will feel able to withdraw her amendment.

Lord Paddick: Before the noble Baroness sits down, perhaps she might address the remarks of the noble and learned Lord, Lord Judge.

Baroness Williams of Trafford: I heard what the noble and learned Lord, Lord Judge, had to say, but I do not agree. I hope that the reasons I set out explained why I do not agree.

Baroness Jones of Moulsecoomb: I thank the Minister for her assurances. I do not accept that Amendment 1 nullifies Clause 1; that is not true. I thank the other noble Lords who have spoken this afternoon.

I feel that I represent in this House someone against whom the law has been used illegally on other occasions. I am very law-abiding, I am extremely respectful of the law, but, at the same time, I have been targeted by the police. Therefore, I come from a particular perspective, which is that if definitions are not tight enough, they can be used against the innocent. This is personal. I have been in your Lordships' House for five years and feel passionately about a lot of issues and have moved amendments to many Bills, but this is the first time that I am moved to divide the House.

3.49 pm

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4.02 pm

Amendment 2 not moved.

Clause 2: Publication of images and seizure of articles

Amendment 3

Moved by ***Lord Paddick***

3: Clause 2, page 2, line 2, after "if" insert "without reasonable excuse"

Lord Paddick: My Lords, Amendment 3 is in my name and that of my noble friend Lady Hamwee. I will speak also to our other amendments in the group, Amendments 4, 5, 8 and 9.

It is a little confusing, but Amendment 15, in the names of the noble Lords, Lord Rosser and Lord Kennedy of Southwark, was initially in this group, because it deals with it not being an offence to go to a designated area if you have good reason to do so. However, because Amendment 15 also contains a list of reasons that would make it legitimate for you to go to a designated area, it conflicts with the government amendment in group five and has therefore been placed in that group. However, with the leave of the House, I will address in this group the element of Amendment 15 that relates to something not being an offence.

I will start with the offence of being in a designated area, which is the subject of Amendments 8, 9 and 15. Noble Lords are rightly exercised about humanitarian aid workers, journalists and others going to a designated area and committing an offence—to which charge there is a defence, but apparently the defence cannot be mounted unless and until somebody has been charged. This means that those wishing to see a seriously or terminally ill relative, to use another example, may well be deterred from making the journey as, in the way the law is currently drafted, they will commit an offence whatever reasonable excuse they may have.

Our Amendments 8 and 9, and Labour's Amendment 15, which we will debate in group five, effectively seek to put the reasonable excuse up front so that people are able to travel to a designated area with good reason, safe in the knowledge that, provided that the purpose of their visit is reasonable and legitimate, they will not be committing an offence. The wording we have used is similar to that in the Prevention of Crime Act 1953: the offence of possessing an offensive weapon in a public place,

"without lawful authority or reasonable excuse".

In the case of offensive weapons—there is a precedent for this approach—a person does not commit an offence if they have lawful authority or reasonable excuse. This is instead of committing an offence and being able to use a reasonable excuse defence if and only if charged.

As the Bill is drafted, the person charged with an offence can tell the court that they have a reasonable excuse and the prosecution would have to prove that this was not the case. Section 118 of the Terrorism Act 2000 states that if the accused,

"adduces evidence which is sufficient to raise an issue with respect to the matter the court or jury shall assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not".

What then would be the drawback of saying that someone does not commit an offence, if they have evidence that is sufficient to raise an issue that amounts to a reasonable excuse with respect to entering or remaining in a designated area? If the police have evidence that the person is not intending to travel for the purpose for which there is a reasonable excuse, or that they did not engage in the activity that they said was the purpose of their visit, when they return to the UK the person can be arrested on the grounds that the police have reasonable cause to suspect that they may be about to commit, or have committed, an offence: that is, travelling to or remaining in a designated area without reasonable excuse.

At this point, I will address an issue raised by the noble Lord, Lord Carlile, on a previous group. The fact is that the grounds on which a police officer can make an arrest are very low. A constable can, for example, arrest somebody whom they have reasonable cause to suspect may be about to commit an offence. That is a very, very low threshold, and much lower than in the CPS charging guidelines. I give way.

Lord Carlile of Berriew: The noble Lord has read out only part of the grounds for arrest. There has to be a necessity for arrest. If he is going to read out the arrest conditions to your Lordships' House, he should read them all, because necessity is essential.

Lord Paddick: I know that I am taking my life in my hands by arguing with a lawyer, but I believe that the noble Lord is referring to the Human Rights Act, which requires necessity and proportionality before the officer exercises the power of arrest. However, under the Police and Criminal Evidence Act, the constable can arrest somebody if they have reasonable cause to suspect that they may be about to commit an offence—which is what I have just said.

The advantage of legislating this way round, as proposed in the amendments, is that, if people are visiting sick or dying relatives, or are aid workers or journalists and have a genuine reason for travelling, they will not be committing an offence and will not be unreasonably deterred by the fear that they may be arrested, either on their way to or their return from a designated area.

Lord Carlile of Berriew: I am sorry; I cannot let this pass. If the noble Lord were to look at Section 110 of the Serious Organised Crime and Police Act 2005, he would find that one of the arrest conditions is that there has to be a necessity. Section 110(4) includes the words,

"exercisable only if the constable has reasonable grounds for believing that for any of the reasons mentioned in subsection (5) it is necessary to arrest the person in question".

That is why reasonable suspicion is not a sufficient ground for arrest—and we need to be clear about that.

Lord Paddick: Sadly, I do not have the legislation in front of me, so I cannot comment. No, I will not accept the noble Lord's offer of taking his iPad to look at the legislation. I do not think that that is reasonable in all the circumstances.

If we accept that this is a reasonable way to approach the issue—that someone does not commit an offence if they have a reasonable excuse—what, then, is the difference between that and a journalist or academic being able to access material on the internet? They would be safe in the knowledge that, provided the purpose for visiting a website containing information that might be of use to a terrorist was reasonable and legitimate, they would not commit an offence.

I argue that the only difference is that here someone is entering into or remaining on a designated website rather than a designated area. Websites that contain information that might be of use to a terrorist are, if you will, designated areas of the internet, so entering or remaining on that website is an offence. Our Amendment 4 would ensure that it would be an offence only if a person collected, made a record of, possessed a document relating to, viewed or otherwise accessed by means of the internet information of use to a terrorist and they did not have a reasonable excuse for having or accessing that information.

Amendment 5 is consequential in that it would remove the "defence if charged" provision, which would be redundant were Amendment 4 accepted.

Turning to Amendment 3, similar arguments apply to the innocent or inadvertent publication of an image of a uniform or a flag. The ISIS flag on a friend's bedroom wall that goes unnoticed when a selfie is posted on Facebook, which may well arouse reasonable suspicion that those in the picture support a proscribed organisation, could very well be an innocent or stupid mistake. Should the young person responsible be able to provide a simple and compelling excuse for his actions to the police officer on the doorstep rather than in an interview under caution, would that not be a better outcome?

There is nothing to be lost in having offences that are offences only if there is no reasonable excuse for the suspect's actions. Police officers who fail to be convinced that the excuse is reasonable at the time they decide to make the arrest or who feel that the excuse might sound reasonable but needs to be verified would still have reasonable cause to suspect that the person might have committed an offence and arrest the person if it is necessary and proportionate to do so. However, it also provides the person accused of committing the offence with a legal remedy, and the police with a good reason to act reasonably, if there is clearly a reasonable excuse that is blatantly obvious and easily verifiable at the time of the arrest, yet the person is still deprived of their liberty.

I admit that the designated area offence and the obtaining or viewing of material offences have a more compelling claim for a "reasonable excuse means no offence" modification but there are circumstances where there might be a reasonable excuse for publishing an image in such a way or in such circumstances as to arouse suspicion that the person is a member or supporter of a proscribed organisation when they are neither of those things, and this will be immediately apparent to the officer sent to investigate. In my view, it is too late in the chain of events that could ensue for the reasonable excuse to be available only as a defence once charged.

No doubt the Government will say that the police can be trusted not to arrest in circumstances where a reasonable excuse is immediately apparent. With over 30 years of police experience and having witnessed at first hand the devastating consequences of innocent people being arrested and detained on the flimsiest of evidence, I am very concerned about the potential for abuse that this legislation as currently drafted provides.

Unless the Government can provide compelling reasons as to why the "reasonable excuse" defence should not engage at the beginning of the investigative process rather than at the end, I suggest that they might want to consider these arguments and undertake to discuss them further with interested Peers before Third Reading. If, however, when we come to debate his amendment in the fifth group, the noble Lord, Lord Rosser, decides that in the case of designated areas the arguments are compelling and the Minister's response is inadequate, we will support him if he decides to divide the House on that issue. I beg to move.

4.15 pm

Lord Rosser (Lab): We support the concerns that have been expressed by the noble Lord, Lord Paddick, that, under the wording of this Bill, a person could

[LORD ROSSER]
potentially be deemed to have committed an offence even though they were pursuing a legitimate business or activity, or, in the case of a designated area, simply by entering the area itself. That specific issue is addressed in Amendment 15, to which the noble Lord, Lord Paddick, referred. As I say, we support the concerns expressed about the extent to which people with legitimate business or activity could potentially find that they have committed an offence under the provisions of this Bill.

Lord Judd (Lab): My Lords, I declare an interest because of my professional and voluntary past, as recorded in the register. We are touching on immensely significant issues. I have great respect for those responsible for the grouping of amendments, and have seen its effectiveness over many years, but there are occasions when the overlap between two different groups becomes particularly significant.

I note that the amendment from the noble Lord, Lord Paddick, which deals with the matter that I am about to raise in specific terms, is equally significant and perhaps more controversial in this area. I am talking about the invaluable and courageous contribution made by dedicated people to the long-term task of peacebuilding. They go into an area for a long period of time and become what might be referred to in other spheres as embedded—they become part of the local population by the very nature of their work. They are trying to build the reconciliation and understanding which is necessary for a long-term solution.

Unfortunately, we are limited by the grouping of the amendments. I have had a certain amount of discussion with those responsible and very much value, as I always do, their advice. However, it is fair to say that I am uneasy. It seems to me that by the very nature of the work of peacebuilding—sometimes having to get close to people who are not necessarily very attractive or who are controversial—people could give a police officer grounds for arrest on the basis that we have heard explained.

It is therefore absolutely essential that at every moment in our relevant discussion of this part of the Bill, the Minister is at pains to spell out that bona fide peacebuilders are exempt and protected. Otherwise, this could have terrible dumbing-down effects on those who would be anxious to do such work. It would put great strain on them in terms of what could happen to them and would therefore hamper their work considerably. If that were to happen, it would be a great loss. No matter how important the humanitarian dimensions—humanitarian aid and the rest, to which I will take second place to nobody in terms of my support—it is very often in this area of peacebuilding that the really significant work for the future is undertaken. I therefore hope that the Minister will take this point seriously and perhaps take the opportunity to pay tribute to those who sometimes undertake this work, and that we can be sure that exemptions in any other sphere, in all aspects of the operation of the Bill, apply in this case.

Baroness Williams of Trafford: My Lords, I thank the noble Lord, Lord Paddick, for taking us through an explanation of his amendment and explaining it with reference to Amendment 15 and his point about people who have a reasonable excuse.

In relation to viewing terrorist information in Clause 3 and entering or remaining in a designated area in Clause 4, the amendments would reconfigure the offences. Rather than the person who committed the offence of engaging in prohibited conduct being acquitted because they use the defence of having a reasonable excuse, there would instead be an exception—they would not be capable of committing the offence in the first place in circumstances where they have a reasonable excuse.

In relation to the offence of publishing images under Clause 2, there is currently no "reasonable excuse" defence. Rather, the offence is committed only if an image of an article is published in such a way or in such circumstances as to arouse reasonable suspicion that the person is a member or supporter of a proscribed organisation. Amendment 3 would insert the same reasonable excuse exception that I have just described, which would operate in addition to the reasonable suspicion requirement concerning the circumstances in which the image is published.

Noble Lords have set out their arguments that there should be, at the outset, no question that a person might be guilty of an offence if they have a reasonable excuse for engaging in the activity covered by these offences. It has been argued that that approach will prevent the CPS from charging a person in these circumstances rather than the person potentially being charged and then having to invoke a "reasonable excuse" defence. I recognise that the approach of structurally rearranging the legislation may seemingly provide a greater degree of comfort to a person who finds themselves under suspicion in respect of one of these offences despite having a reasonable excuse, but I am not persuaded that these amendments would secure the outcome sought in relation to Clauses 3 and 4.

Amendments 4, 5, 8 and 9 are unnecessary as they would, in practice, make no material difference to the position of subjects of investigations and of defendants facing a charge under these clauses or on the matters that the prosecution will need to prove and that the court will need to resolve.

We have debated how the existing safeguards influence investigative and prosecutorial discretion, and how they prevent cases from proceeding where there is evidence that the person has a reasonable excuse. The amendments in my name which expand on these provisions in Clauses 3 and 4, and which we will shortly come to, will strengthen these safeguards further by providing indicative lists of reasonable excuses.

I shall go briefly over this ground again. Charges may be brought only if the CPS determines that the full code test is met. This is met only if there is evidence to provide a reasonable prospect of conviction, and if so, whether a prosecution would be in the public interest. Those are very important points. If there is evidence to suggest that the person has a reasonable excuse for engaging in the otherwise prohibited conduct, there will not be a reasonable prospect of conviction because they will be able to successfully invoke the "reasonable excuse" defence. Furthermore, it would not be in the public interest and would be fundamentally inappropriate for prosecutors to charge a person who they believe is likely to be innocent of any criminal conduct as a result of having such a defence.

The effect of this is the same as that envisaged by the noble Lord's amendments. In either case, the CPS will not bring a prosecution if there is evidence that the person has a reasonable excuse which the CPS considers could not be disproved by the prosecution beyond reasonable doubt.

Furthermore, neither the existing model nor that proposed by the noble Lord provide immunity from either investigation or prosecution purely on the basis that the person states that they have a reasonable excuse. Under either model, the police will need to investigate the person to establish what activity they have been involved in and whether they may have a reasonable excuse for it, and to gather evidence.

It will rightly remain open to the CPS to prosecute if it believes, following the investigation by the police and on the basis of the evidence gathered, that the person does not have a reasonable excuse, despite any assertion that the person might make to the contrary. Under either model it would then be for the person to advance their reasonable excuse, for the prosecution to disprove it beyond reasonable doubt, and ultimately for the jury to determine whether or not it is a reasonable excuse. Unless we were to introduce a unilateral immunity from prosecution for any person who declares themselves to be innocent, this must always be the position and the noble Lord's amendments would not change it.

Although these amendments would not make a significant change to the practical operation of the law in this area, they would depart from the commonly taken approach in the criminal law where offences provide a "reasonable excuse" defence. In particular, they would overturn what is a well understood and settled position, with clear case law, in relation to Section 58 of the Terrorism Act, which Clause 3 amends. I do not think that it would be wise to do so unless there was a very persuasive case for it, which I do not think is being made here.

I turn finally to Amendment 3. Clause 2 in its current form does not make any provision in relation to reasonable excuses. But it is not an offence of strict liability and it cannot be committed by the mere fact of publishing an image. Rather, it is committed only in particular circumstances which the prosecution is required to prove beyond reasonable doubt. These are where the image is published in such a way or in such circumstances as to arouse reasonable suspicion that the person is a member or supporter of a proscribed organisation.

We have previously debated the operation of this aspect of Clause 2, and I am happy to reiterate the Government's clear position that it will provide both certainty and protection for those who have a legitimate reason to publish images of flags or other articles associated with proscribed organisations, and who are not themselves members or supporters of the organisation. This clear limitation on the scope of the offence is the best way to provide a safeguard for individuals such as journalists or historians, and the addition of a reasonable excuse provision is not necessary in addition. Indeed, it would be likely to overcomplicate and undermine the operation of the offence.

The Government do not consider that a person should in fact have a reasonable excuse for publishing such an image in circumstances which do not meet the criteria of the offence; that is to say, where a court is satisfied that the circumstances give rise to a reasonable suspicion that the person is a member or supporter of a terrorist organisation. Indeed, I would query whether there is a scenario which would not be covered by the existing safeguard but which should be considered a reasonable excuse. I cannot think of one. For those reasons, I invite the noble Lord to withdraw his amendment.

Lord Paddick: I am grateful to the Minister for her explanation. The Government seem to be relying on the CPS charging decision, which is very different from the decision that an operational police officer in an uncontrolled environment makes at the time about whether to arrest or not to arrest. The Minister said that there was no material difference, which there is not in terms of successful prosecution. However, it makes a difference to the likelihood of a person being arrested or people being deterred from engaging in completely legitimate activity for fear that they may be arrested, whether they have confidence in the police making the right decision or not.

The Minister talked about a commonly taken approach in law, yet I gave the example of the Prevention of Crime Act 1953, where a person does not commit an offense of possessing an offensive weapon if they have "lawful authority" or "reasonable excuse"; that is determined by the operational officer on the street at the time. I am afraid that I find few of the Minister's arguments compelling. However, we will return to this issue, particularly in relation to designated areas, when we come to the fifth group of amendments. I beg leave to withdraw the amendment.

Amendment 3 withdrawn.

4.30 pm

Clause 3: Obtaining or viewing material over the internet

Amendments 4 and 5 not moved.

Amendment 6

Moved by ***Earl Howe***

6: Clause 3, page 2, line 44, at end insert ", or

(b) the person's action or possession was for the purposes of—

(i) carrying out work as a journalist, or

(ii) academic research."

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, we have had detailed and insightful debates on Clause 3, particularly on the operation of the "reasonable excuse" defence in Section 58 of the Terrorism Act 2000, which Clause 3 amends. Amendment 6 responds to arguments made in both Houses that we should provide greater certainty that particular categories of legitimate activity will constitute a reasonable excuse.

[Earl Howe]

As I explained previously—and as my right honourable friend the Minister for Security and Economic Crime explained in the House of Commons—it is clear that those engaged in legitimate journalism and academic research have been able to rely on the "reasonable excuse" defence provided by the Section 58 offence in its present form since it was passed in 2000. The Government have been equally clear that this will continue to be the case under Section 58 as it will be amended by Clause 3.

We have also set out the longstanding legal position, codified by the Appellate Committee of this House in a 2008 judgment, that it is for the jury to determine whether a particular excuse in a particular case is reasonable on the basis of all the evidence in that case. Such a determination will always be highly fact-specific; it is not possible to prescribe particular exemptions or reasonable excuses in advance and in the abstract. The Government have therefore taken the approach until now that it has not been necessary to write these categories of reasonable excuse into the Bill.

However, we have heard the points made by your Lordships and reflected on the concerns raised. We recognise that the Government's assurances have not satisfied noble Lords thus far as to the protection afforded to journalists and academics by Section 58, and which will apply following Section 58 as amended by the Bill. It is clear that the Government need to go further and provide greater assurance. In that spirit, we tabled Amendment 6.

The amendment will make it clear in the Bill that it will be a reasonable excuse for a person to access terrorist material falling under Section 58 for the purposes of academic research and carrying out work as a journalist. This will apply both to the existing limbs of Section 58—that is, the collection, possession or making a record of such material—and the new limb of viewing material online, which Clause 3 will insert. The amendment will underline and put beyond doubt the position already set out by the Government. I hope that it will be welcomed by your Lordships as providing the necessary assurance to those working in the fields of journalism and academia who have a legitimate reason to access terrorist material.

The amendment has been carefully drafted so as to complement, rather than overturn, the existing legal position relating to reasonable excuses. Clause 3(4) already provides one example of a case that may constitute a reasonable excuse, which is where the defendant did not know and had no reason to believe that the material in question contained information likely to be useful to a terrorist. The amendment expands on that to additionally provide the two examples I mentioned.

I stress that this is an indicative rather than exhaustive list of cases that may constitute a reasonable excuse, and it will remain open to defendants to advance other types of reasonable excuse. This will ensure that we retain the flexibility to cover other unforeseen circumstances that may arise, and that we do not inadvertently close off the "reasonable excuse" defence to those who may have an equally reasonable excuse of a different nature. I appreciate this construction is not self-evident from the Government's amendment, so I understand why the noble Lord, Lord Paddick, tabled Amendment 7. But key here are the words,

"but are not limited to",

in new subsection (3A) of Section 58 of the Terrorism Act 2000. That qualification will apply to the new paragraph (b) inserted by the Government's amendment. All will become clear once the Bill is reprinted after Report.

Amendment 6 does not provide an absolute and automatic exemption for any person who states that they are a journalist or academic. That would not be appropriate, and it would move away from the position established in case law by this House. In Committee, a number of your Lordships highlighted the difficulties in legislating to differentiate legitimate journalism from that which may be carried out by a person with more nefarious intentions, whether as a cover for their true activities or as a platform to propagate their terrorist views. The approach we are taking will ensure that juries will be able to make such distinctions in individual cases, based on the particular facts.

I hope that Amendment 6 will be welcomed as addressing the concerns that have been raised, and as offering a meaningful compromise to those noble Lords who have raised them. I commend it to the House and I beg to move.

Amendment 7 (to Amendment 6)

Moved by ***Baroness Hamwee***

7: Clause 3, in paragraph (b), leave out "the purposes of" and insert "purposes including"

Baroness Hamwee: My Lords, the noble Earl says that all will become clear. I am afraid that I have another question for him that occurred to me quite close to the debate: where do you put paragraph (a) in new subsection (3A)? I can see three places where it might go. Depending on the answer I will be even more welcoming of the Government's amendment. It could go after the words "subsection (3)", after,

"but are not limited to",

or after "action or possession". There might be other places as well. The noble Earl might want an opportunity to consider that.

We welcome the explicit safeguard, but our concern is that streaming by someone through,

"foolishness, inquisitiveness or curiosity, without intending to do harm",—[*Official Report*, 29/10/18; col. 1168.]

were actions for which the Minister expressed "sympathy". He went on to say that the offence was,

"aimed at those of a terrorist mindset".—[*Official Report*, 29/10/18; col. 1167.]

Journalism, academia and, no doubt, other appropriate applications of inquisitiveness are relatively limited. If you are inquisitive, you will very probably have had reason to believe that the record is likely to contain information useful to someone preparing an act of terrorism. I do not ignore the CPS code test, but I am left with an uncomfortable feeling that the government amendment might narrow the offence and that Clause 3 remains rather wide.

Baroness Jones of Moulsecoomb: My Lords, I want to put on record my thanks to the Government for listening to the concerns expressed in Committee on this issue and welcome the amendment with the caveats that we have just heard from the noble Baroness, Lady Hamwee.

The Marquess of Lothian (Con): My Lords, as my noble friend the Minister will know, the committee which I have the honour to serve on behalf of this House along with the noble Lord, Lord Janvrin, produced a report 10 days ago on the lessons to be learned from terrorism incidents last year. One of the points that we made was that in most of, if not all, those incidents, the perpetrators had had access to the type of extreme material covered by this Bill and clause. We therefore support the way in which the Bill is being amended and developed today, because it provides another safeguard against one area where radicalisation can take place leading to terrorism incidents in due course. That is the position of my committee—I am sure that the noble Lord, Lord Janvrin, would accept that.

Can we have a definition of "academic"? I presume that it is not limited just to professional academics, because that would be very restrictive. There is a lot to be said for learning lessons from terrorism incidents, with those doing that type of work, including the committee of which I am a member, having access in order to see what type of material is leading to the radicalisation taking place. I hope that the Minister will be able to reassure me that "academic" would cover that area.

My other point relates to "journalist". I may be behind the times and not know how it is defined in law, but "journalist" seems a very broad definition. There are professional journalists—I quite accept that this amendment should cover them—but there are in my experience other journalists, some of whom call themselves bloggers and others who call themselves contributors to particular types of publications. It might not be in the interests of security that those people have access to such material. Can the Minister respond to those two points?

Earl Attlee (Con): My Lords, I thank the Minister for tabling the amendment. It is hard to think of any reason other than journalism or academic research, but it is good that the legislation as it will be drafted allows for that possibility. As for my noble friend's point about journalism, it has never been accurately defined. Other terrorism legislation refers to journalism, but the drafting of my noble friend's amendment makes it quite clear that it has to be journalistic work.

Lord Kennedy of Southwark: We fully support government Amendment 6 in the name of the noble Baroness, Lady Williams of Trafford, and moved by the noble Earl, Lord Howe. As we have heard, it responds to concerns raised during consideration of the Bill in Committee in this House and the other place. It is a helpful amendment, as it puts in the Bill a specific provision making it clear that a person has a reasonable excuse for possession of certain material where it is for the purpose of carrying out journalistic or academic research.

Amendment 7 is an amendment to Amendment 6. I have considered it carefully and can see the point being made the noble Lord, Lord Paddick, and the noble Baroness, Lady Hamwee, but the amendment is unnecessary and would add nothing to the clause as amended by Amendment 6. As the noble Earl said, "but … not limited to" covers the other points made. As amended the clause is fine; I do not think that we need the other amendment. The noble Marquess, Lord Lothian, made some important points which I hope the Minister will respond to, but we support the government amendment.

4.45 pm

Earl Howe: My Lords, I am grateful to all noble Lords who have spoken, especially for the supportive comments from the noble Baroness, Lady Jones, and my noble friend Lord Attlee, but also for the very helpful remarks from the noble Lord, Lord Kennedy. I shall endeavour to cover all questions that have been put.

The noble Baroness, Lady Hamwee, asked a drafting question. She asked where paragraph (a) will actually fall in the text. I can tell her that paragraph (a) will begin with the words after line 40 on page 2, so I hope that it will run in the broad way rather than the narrow way in which she hoped it would.

Baroness Hamwee: The last words of line 40 read,

"in which at the time"

and the next line starts, "of the person's action". As I said, I identified two places in line 40 where paragraph (a) might be inserted. It is a drafting point but also a point of substance, because where paragraph (a) starts actually affects the whole of the point. Can the Minister give a little more assistance?

Earl Attlee: My Lords, perhaps if my noble friend the Minister is not absolutely certain on this point we could return to it at Third Reading to clarify the drafting amendment.

Earl Howe: My Lords, I was not as precise as I should have been. The words after,

"(but are not limited to) those in which",

will become paragraph (a). So it will read,

"(but are not limited to) those in which (a) at the time of the person's action or possession, the person did not know",

et cetera. Paragraph (b) will follow after line 44. I hope that that clarifies the point.

My noble friend Lord Lothian asked a series of very reasonable questions about the meaning of the words "journalist" and "academic". The distinction between journalism that constitutes a reasonable excuse and that which does not, for the purpose of this offence, will inevitably be highly fact-specific. As several noble Lords commented in earlier debates on the Bill, it is just not possible to provide in advance an exhaustive definition of a journalist or of a legitimate journalist. This is something that we are clear needs to be determined by a jury in particular cases on the basis of all the evidence. We have made it clear that our amendment adds an indicative list of categories of reasonable excuse and does not provide either an exhaustive list or an absolute exemption. It is important to remember that juries will retain their existing discretion to decide

[Earl Howe]
whether a particular excuse is reasonable on a case-by-case basis. The same logic would apply to the meaning of the word "academic". The category of person that my noble friend described might or might not be considered by a jury to be an academic: it would depend on the facts of the case. The jury might consider that there was still a reasonable excuse for a particular individual. I hope that that is helpful.

Baroness Hamwee: My Lords, I am grateful to the Minister for that explanation because it answers my point and deals with my amendment. I am sorry to have been tedious and to have consolidated my reputation for pedantry—the noble Lord, Lord Harris, says that is impossible—but I think it was a substantive point. I beg leave to withdraw the amendment.

Amendment 7 (to Amendment 6) withdrawn.

Amendment 6 agreed.

Clause 4: Entering or remaining in a designated area

Amendments 8 and 9 not moved.

Amendment 10
Moved by ***Lord Rosser***

10: Clause 4, page 3, line 13, at end insert—

"( ) If the person adduces evidence which is sufficient to raise an issue with respect to the matter, the court or jury shall assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not."

Lord Rosser: Clause 4 inserts, in new Section 58B of the Terrorism Act 2000:

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

We have been told by the Government that the wording in this new section does not mean exactly what it says and that the burden of proof that they had a reasonable excuse will not rest with the person entering or remaining in the designated area. However, the Government have so far resisted the idea that, if that is the case, it would be better that this new section actually said what it apparently means—which, I understand from the Government, is that the person concerned would have to provide only some evidence that they had a legitimate reason for being in the designated area and it would then be for the prosecution to prove beyond reasonable doubt that that was not the case for the defence to fail.

Our amendment intends to set that out as the position and puts in the Bill wording used in the Terrorism Act 2000, which the Government say is what would apply, rather than the wording on its own in new Section 58B, which I quoted earlier. The amendment would add to new Section 58B the following words:

"If the person adduces evidence which is sufficient to raise an issue with respect to the matter, the court or jury shall assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not".

The wording in our amendment clarifies what the proposed wording currently in the Bill actually means when it refers to the person charged having to prove that they had a reasonable excuse for entering or remaining in the designated area. I hope that the Government will feel able to accept the amendment—or, if they cannot, will agree to bring forward their own wording at Third Reading. Surely it is in everyone's interests to make legislation as clear as possible to all in its meaning. I beg to move.

Lord Anderson of Ipswich (CB): My Lords, the burden of proof should be on the prosecution and should be seen to be on the prosecution. Lawyers who know where to find Section 118 of the Terrorism Act 2000 may be untroubled by the point made by the noble Lord, Lord Rosser. However, the existence of that section is not widely known. Indeed, only last week I found myself in that great deliberative assembly, Twitter, correcting the damaging and widespread misapprehension, advanced in good faith, that the Terrorism Acts reverse the burden of proof. I support the idea behind the amendment, although—as I am sure the noble Lord, Lord Rosser, would accept—if it is to produce clarity, it would have to be applied a little more widely to a variety of existing offences under the Terrorism Act, including Sections 57 and 58.

Lord Paddick: My Lords, I agree with both noble Lords. The amendment seems to be common sense. As the noble Lord, Lord Anderson of Ipswich, said, while Section 118(2) places the burden of proof on the prosecution to disprove the reasonable excuse, you have to hunt pretty far to find it. Currently it does appear, if one takes an ordinary, common-sense meaning from what the legislation says, that the burden is actually reversed.

Lord Judge: My Lords, Section 118 got somewhat lost in the discussions earlier. I support this amendment but I wonder whether, when the Minister comes to reflect on it, we would need the words,

"the court or jury shall assume that".

It is a straightforward point of drafting but, with respect to the matter, "the defence is satisfied unless" would seem adequately to cover the amendment.

Lord Carlile of Berriew: My Lords, with great respect to my noble friend, and indeed to my noble and learned friend on my right, I wonder why one needs to say something twice in the same statute.

Earl Howe: My Lords, Amendment 10 returns us to an area on which we have previously had helpful and extensive debates: namely, the question of how much evidence is required to establish a reasonable excuse defence under Clause 4, on whom the burden of proof falls and how this is set out in the legislation. As the noble Lord, Lord Rosser, rightly said, these issues have previously caused some uncertainty as they require Clause 4 to be read in conjunction with Section 118 of the Terrorism Act 2000, which sets out how the burden of proof applies to a number of defences to criminal offences within the 2000 Act including, but not limited to, the new designated area offence. It may therefore be helpful if I remind your Lordships of how these provisions operate.

The approach taken in relation to proving a reasonable excuse defence under Clause 4, which inserts the designated area offence into the Terrorism Act 2000, is the exact same formulation that is used elsewhere in various defences to offences contained in the 2000 Act, including the defence to the Section 58 offence which is amended by Clause 3. Clause 4 refers to a defendant proving that they have "a reasonable excuse". We must then turn to Section 118, which makes further provision on what is required to "prove" a defence in this context. The noble Lord, Lord Rosser, has previously raised a concern that the wording of the two provisions might be out of step, and that Clause 4 might place a greater burden on defendants to make out a reasonable excuse than is envisaged by Section 118. I have addressed this in previous debates and have written to him following our most recent debate in Committee. I hope that I have been able to reassure him that this is definitely not the case.

Section 118 provides that if a defendant,

"adduces evidence which is sufficient to raise an issue with respect to the matter"—

that is to say, the matter has to be proved under the wording of the defence—

"the court or jury shall assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not".

This, together with relevant case law, has the effect that if a defendant puts forward sufficient evidence to reasonably support a suggestion that he or she has a reasonable excuse, the burden of proof shifts to the prosecution to disprove that defence, which it must do to the normal criminal standard of "beyond reasonable doubt". If the prosecution fails to do so, the jury must assume that the defence is made out.

Amendment 10 would insert this wording from Section 118 into Clause 4. The noble Lord has suggested that this would make the operation of Clause 4 clearer and would put beyond doubt what is required of a defendant to establish a reasonable excuse defence. I have every sympathy with the noble Lord's desire for clarity. This is not the most straightforward of the Bill's provisions, requiring as it does two different provisions in the 2000 Act to be read in conjunction, but I can assure him that there was a good reason for drafting it in this way. It is very simply that, as the noble Lord, Lord Anderson, said, Section 118 makes the same provision in relation to eight other provisions in the 2000 Act which include similar defences. Each of those defences points back to the same single place—Section 118—rather than including eight repetitions of the same wording in eight different places. This is a standard drafting practice where a common principle governs the operation of multiple provisions. It is considered to be the best way of providing clarity and consistency, and of not unnecessarily adding to the length and complexity of legislation.

In practice, the noble Lord's amendment would have little or no impact on the operation of the reasonable excuse defence as it would simply duplicate the wording of Section 118, which already has effect. However, I must respectfully say that I am unable to support the amendment. As I have set out, the formulation used in the Bill as drafted, and in the 2000 Act, reflects normal drafting practice, and I do not see that there is sufficient reason to depart from this in relation to Clause 4. The courts have successfully operated Section 118 for 18 years in respect of the eight existing offences in the 2000 Act to which it also applies without anyone complaining that its effect is unclear or uncertain. There is clear case law and a settled and well-understood position.

5 pm

As drafted, Clause 4 will slot into this settled position, and its operation should be equally smooth, whereas to take a different approach here could unsettle that position and potentially raise questions about whether Parliament intended for the courts to apply the reasonable excuse defence in a different way under Clause 4. I am sure that that is not the noble Lord's intention, but I fear that it could be an unintended consequence of his amendment. I add that, in Committee, the noble and learned Lord, Lord Judge, confirmed that the Bill, including the amendment to Section 118 made by paragraph 38 of Schedule 4, achieved the right result—if I am not misreporting him.

I am grateful to the noble Lord for his suggestion, and I appreciate the spirit in which it is intended. However, on the basis of my assurance that it is not needed to achieve its intended effect and of the concerns that I have raised that it could reduce rather than increase the clarity and certainty of this aspect of Clause 4, I hope that he will be content to withdraw it.

Lord Rosser: I am obviously disappointed by the Government's response, although it would be wrong of me to suggest that I am entirely surprised by it, since they have defended the position stoutly ever since we started discussing it. I probably do the noble Earl a disservice, but it seems to me that the Government's argument is that we have made this error eight times and now we are going to make it a ninth, because apparently it is too big a problem to rectify the previous eight.

I do not intend to push this to a vote, but I will conclude by saying once again that surely we need legislation to be clear not just to lawyers but to all. I think somebody who reads this will not put the interpretation on it that they have to turn to another piece of legislation to find out that what new Section 58B says is not meant but that there was another intention and that the burden of proof in reality rests with the prosecution. I shall not pursue the matter any further. I am just sorry that the Government have not been prepared to take the bull by the horns and rectify it on this occasion—even if it means rectifying it in relation to the other eight instances at the same time. I beg leave to withdraw the amendment.

Amendment 10 withdrawn.

Amendment 11

Moved by ***Earl Howe***

11: Clause 4, page 3, line 19, at end insert—

"(3A) The cases in which a person has a reasonable excuse for the purposes of subsection (2) include (but are not limited to) those where—

(a) the person enters, or remains in, a designated area involuntarily, or

(b) the person enters, or remains in, a designated area for or in connection with one or more of the purposes mentioned in subsection (3B).

(3B) The purposes are—

(a) providing aid of a humanitarian nature;

(b) satisfying an obligation to appear before a court or other body exercising judicial power;

(c) carrying out work for the government of a country other than the United Kingdom (including service in or with the country's armed forces);

(d) carrying out work for the United Nations or an agency of the United Nations;

(e) carrying out work as a journalist;

(f) attending the funeral of a relative or visiting a relative who is terminally ill;

(g) providing care for a relative who is unable to care for themselves without such assistance.

(3C) But a person has a reasonable excuse for entering or remaining in a designated area by virtue of subsection (3A)(b) only if—

(a) the person enters or remains in the area exclusively for or in connection with one or more of the purposes mentioned in subsection (3B), or

(b) in a case where the person enters or remains in the area for or in connection with any other purpose or purposes (in addition to one or more of the purposes mentioned in subsection (3B)), the other purpose or purposes also provide a reasonable excuse for doing so.

(3D) For the purposes of subsection (3B)—

(a) the reference to the provision of aid of a humanitarian nature does not include the provision of aid in contravention of internationally recognised principles and standards applicable to the provision of humanitarian aid;

(b) references to the carrying out of work do not include the carrying out of any act which constitutes an offence in a part of the United Kingdom or would do so if the act occurred in a part of the United Kingdom."

Earl Howe: My Lords, the government amendments in this group will make a number of changes to Clause 4. Clause 4 provides a power for the Secretary of State to designate an area outside the UK which he may exercise if it is necessary, for the purpose of protecting members of the public from a risk of terrorism, to restrict UK nationals and residents from entering or remaining in that area. It will be a criminal offence for a UK national or resident to enter or remain in a designated area without a reasonable excuse.

Much of the debate on Clause 4 has, of course, focused on that reasonable excuse defence, both on its application in various scenarios where a person might have a legitimate reason to enter or remain in a designated area, and on the certainty which will be provided to such a person that they will not subsequently be prosecuted.

The points of principle here and the legal position are very similar to those which we have already debated on the reasonable excuse defence in relation to Clause 3. I will therefore not detain your Lordships by repeating myself, save to say that the Government are equally clear that, under Clause 4, individuals with a legitimate reason to enter a designated area of the kind we have been discussing will have a reasonable excuse.

However, I undertook at the conclusion of Committee to reflect on the concerns that had been raised that the existing approach might not provide adequate certainty and assurance. We have also engaged with representatives of the charitable sector, who have made points similar to those made in this House. Following this reflection, we have concluded that we should bring forward amendments to provide further assurance that those with a legitimate reason to enter a designated area will have a reasonable excuse. I trust that this will be welcome news to your Lordships.

Amendment 11 therefore introduces an indicative list of cases which may give rise to a reasonable excuse. Similarly to that which we have introduced to Clause 3 through Amendment 6, which we have just debated, it is not an exhaustive list, and it will be open to defendants to advance other categories of reasonable excuse. It will ultimately be up to the jury to determine whether a particular excuse is reasonable, on the basis of all the evidence in that case.

This will provide significantly greater assurance to legitimate travellers, but it will not preclude those who travel to designated areas for terrorist purposes under cover of, for example, journalism or charitable work from being prosecuted. Defendants will also not be able to rely on a reasonable excuse defence if they travel for a legitimate purpose and then engage in other activity which is not legitimate while within the designated area.

The categories of reasonable excuse provided by the amendment are: where the person enters or remains in the designated area involuntarily because, for example, they are detained; to carry out work as a journalist; to provide humanitarian aid; to attend the funeral of a relative or to visit a terminally ill relative; to provide care to a relative who is unable to care for themselves without such assistance; to satisfy an obligation to appear before a court; or to work for a foreign Government, the UN or an agency of the UN. This indicative list of reasonable excuses adds to the existing automatic exception for those who are working for or on behalf of the Crown. Where this list refers to a relative, Amendment 16 defines this as a spouse or civil partner, sibling, ancestor or lineal descendant.

A further area on which greater assurance has been sought is reviews of designations. As drafted, the Bill requires the Secretary of State to keep under review whether the condition for designating an area continues to be met, and to revoke the designation if he considers that it is no longer met. The Government have been clear that this will be a meaningful and ongoing review. I reiterate the point that in the kind of exceptional scenario in which this power is likely to be used, the Government will invariably pay very close attention to the circumstances on the ground, and will keep their response across every aspect of the system under continuous review and subject to recalibration as necessary.

Several noble Lords tabled amendments for Committee which would have tightened this further by introducing either a requirement for annual reviews of designations, as proposed by the noble Lord, Lord Anderson, or a sunsetting provision so that regulations designating an area would cease to have effect after three years, as suggested by the noble Lord, Lord Rosser. This latter

approach would mirror the equivalent Australian legislation. I indicated in those debates that I considered an annual review to be unnecessary to ensure rigorous and effective review of designations, and that this would not serve the public interest or be an effective use of resources. I have reflected further and, with all respect to the noble Lord, Lord Anderson, I remain of that opinion.

However, I also indicated that I could see merit in the suggestion of a three-year backstop sunset period, with the option to make new regulations designating the same area if that is appropriate. I undertook to consider this ahead of Report. Following that consideration, I find myself persuaded that this would be a sensible and helpful addition to the Bill, and Amendment 18 therefore introduces such a provision. As a result, regulations designating an area will automatically cease to have effect and will fall away after three years. The amendment makes it clear that this is without prejudice to further regulations being made designating the same or a similar area. Any new regulations would of course then be subject to approval by Parliament. This will provide a powerful extra safeguard to ensure that the designation of an area cannot be indefinite, and that this power will be used to manage risk only in exceptional circumstances. While regulations remain in force, they will also be subject to the existing requirement that they be kept under review and that they be revoked sooner than after three years if the condition for designating the area is no longer met.

Amendments 20 and 21 implement recommendations made by the Delegated Powers and Regulatory Reform Committee of your Lordships' House in their report on the Bill. Amendment 20 requires the Secretary of State, when laying regulations before Parliament designating an area, to issue a statement setting out the reasons why he considers that the legal test for designation is met in relation to that area. The Government have always been clear that we will provide an explanation to Parliament of why we seek to designate any area under this power, and we are happy to place a requirement to do this in the Bill.

Amendment 21 makes any regulations revoking a designation subject to the negative resolution procedure. Under the Bill as drafted, regulations that purely revoke an existing designation would not be subject to any parliamentary approval and would simply come into force immediately upon being laid. The Government took that approach on the basis that lifting the designation of an area, and therefore also the operation of the criminal offence in relation to entering it, would have no adverse impact on any person. The committee wisely identified that lifting a designation could in fact have an impact on those for whose protection the area was designated—that is to say, the public. On that basis the committee recommended that such regulations should actually be subject to negative resolution in both Houses. The Government are persuaded of the committee's view on this matter and are happy to implement its recommendation. I am grateful to your Lordships' Delegated Powers and Regulatory Reform Committee for its scrutiny of the Bill and for its assistance in improving it in these two respects.

I am also most grateful to noble Lords, and to the noble and learned Lord, Lord Judge, for their contributions to the debates on this important but sensitive new power and for their assistance in identifying the sensible improvements that the Government are bringing forward today in response to those debates. I hope your Lordships will be happy to support these government amendments.

There are a number of other amendments in this group, including amendments to the government amendments. I will wait to hear what noble Lords have to say about Amendments 12, 13, 14, 17 and 19 before responding. For now, I beg to move Amendment 11.

Amendment 12 (to Amendment 11)

Moved by ***Baroness Hamwee***

12: Clause 4, in subsection (3B)(a), leave out "nature" and insert "or peacebuilding nature, or for connected purposes"

5.15 pm

Baroness Hamwee: My Lords, we also have Amendments 13, 14 and 17 in this group as amendments to the government amendment. We welcome the indicative non-exclusive list that the Minister has put before your Lordships. At the last stage the noble and learned Lord, Lord Judge, made the point that we should not rely on guidance or some other executive action in this connection, and that must be right. However, we must also be confident in the list. The more examples are given, the less easy it may be to argue for additions which are not spelled out. I was going to refer to the array of lawyers opposite me, but their numbers have been reduced by half in the last few minutes. Nevertheless, I am sure they can tell me whether I am wrong to be worrying about the sui generis rule, because I am.

The Government's amendment refers to,

"internationally recognised principles and standards".

Will the Minister give an explanation or example of those? Alternatively, what might contravene that criterion—in other words, not meet the standard? Humanitarian aid is referred to. Peacebuilding was talked about in Committee. We are not confident that humanitarian work includes peacebuilding and would like an assurance or acceptance of our amendment on that. Humanitarian work probably covers development and cultural purposes, which were also referred to during the last stage. Will the Minister comment on that?

We have added "for connected purposes", which is a little wider than "in connection with", which is limited to the stated purposes—we would be adding a purpose. It is appropriate to mention concerns expressed before these amendments were tabled, not just about the "reasonable excuse" defence which the House has been debating. There are also concerns on the part of banks and other companies which provide services to organisations which provide aid, such as insurance—I am amazed that insurance might be available in some of these connections—and travel companies. Apparently they are concerned that the measure will exacerbate the diminishing of their appetite to support humanitarian activity, due to the increased legal ambiguity around travel to designated areas. They are also concerned

[Baroness Hamwee]
about a possible chilling effect on humanitarian aid surrounding those areas. The list which the Government propose includes visiting a terminally ill relative. It is not always clear when an illness is terminal. In this context, it might be particularly difficult to get medical support for that proposition. We suggest adding "very seriously ill", as a matter of common sense.

Amendment 14 was an excess of zeal on my part. I shall not be pursuing it, as I realise that the point is already there. On Amendment 17, the House has heard the assurances about the designations being kept under review. We welcome the sunset provision in Amendment 18 and support Amendment 19, which would shorten it. However, this does not mean that reporting to Parliament is not necessary. The noble Earl has just referred to a "meaningful and ongoing review", but we must be aware that when a finite period is referred to there comes a temptation to address the point thoroughly only every three or two years, depending on that period. The proposal to report formally to Parliament is a matter of transparency and accountability. I hesitate to say so, but it might give the independent reviewer something to bite on. That amendment is certainly not a backstop.

The Earl of Sandwich (CB): My Lords, I offer my support for Amendment 15. I will speak on behalf of humanitarian aid workers following the remarks made by the noble Lord, Lord Judd, and I do so because it seems to me profoundly wrong that aid workers should potentially come under suspicion and be bracketed with potential criminals simply because they are travelling to and from a sensitive area. Of course, I realise that the Government understand in principle they are not in that category, so they have put down their own amendment with an indicative list, which the JCHR acknowledges is a step forward. Nevertheless, the Bill still potentially subjects aid workers and journalists to every sort of interference, which can only mean that aid will inevitably be held up and that people living in distressed conditions will suffer more. If aid workers in government programmes, including those of Governments in the designated areas, are protected, why on earth should non-governmental organisations and their beneficiaries suffer? What is the logic of that?

This clause has to be amended. Imagine what would happen in a country like the DRC today if people monitoring the Ebola virus had to consider the prospect of being arrested for having dealings with the Mai Mai or the Interahamwe militia. The noble Lord, Lord Judd, and the noble Baroness, Lady Hamwee, have already mentioned peacebuilding, which often involves the Red Cross and the Churches. What would be the climate of suspicion surrounding not only them but the whole aid programme? The noble Lord, Lord Paddick, quite rightly mentioned the "deterrent effect".

I speak with feeling, having worked with several aid agencies over the years, and knowing the conditions in which they already have to work. No wonder that 21 organisations are protesting. These are in many cases the front line of our aid programme, whether they work with government or not. I will repeat two sentences of what they said in a signed letter:

> "Unless urgently amended, the bill … will make it impossible for civil society organisations to deliver much needed humanitarian, development and peacebuilding support to people desperately in need … it is vital that the government and peers amend the bill so that it exempts aid workers and others with a legitimate reason to travel to designated areas".

Let us not forget the cost of this exercise. We do not of course know the parameters of the designated regions, but we know that, for obvious reasons, many aid workers tend to be in sensitive areas of the world, so the overlap between political sensitivity and humanitarian commitment will be vast.

The noble Earl mentioned the possibility of the terrorist who intends to assume the disguise of an aid worker and become a wolf in sheep's clothing. Obviously, that is quite different; he or she must be stopped on the grounds laid down in the Bill, and will not ultimately pass the test of reasonable excuse. I realise the difficulty the Government are in here, having to act on behalf of society. But it is quite irresponsible to risk the professional lives of all aid workers leaving those areas, with all the consequences for the programmes concerned, as a means towards that end.

Earl Attlee: My Lords, I am grateful to the Minister for these amendments, and in particular for his response to my amendments moved in Committee on journalism. When we are trying to convince people like President Erdoğan of Turkey not to persecute his journalists, it would be a complete disaster if we accidentally arrested a legitimate journalist in the UK.

I have worked overseas on international aid—in theatres unlikely to have been designated—but I think the noble Earl, Lord Sandwich, has slightly misinterpreted the Minister's amendment. New Clause 3B(a) excludes providing aid "of a humanitarian nature", so his concerns are absolutely met by the Minister. I believe the Minister has the balance right, both in principle and in the drafting of his amendment.

Lord Judd: My Lords, I strongly support the amendment; indeed I welcome the moves the Government have already made. Looking back on my life outside this House, it is impossible to express strongly enough my respect for the courage and dedication of some of those working on the front line. We ought to be ensuring that they have all possible support, rather than being put through greater anxiety about their own futures. The point about de-risking by banks and other relevant authorities is, of course, very important. Development assistance is crucial and sometimes—if not more often than not—the most important development assistance is long term, because it builds human and institutional resources that will be essential for the future.

Alongside that, the point I made in my earlier intervention is crucial: peacebuilding is vital. Are we just going to have industries and charities whose activities are dependent on failure, or are we supporting charities, voluntary organisations and others who say we have to understand the causes of the problems that confront us and tackle those causes at root? That means sometimes dangerous, controversial work with a wide cross-section of people. I hope that the Minister will be able to respond positively to the amendment and underline in

specific terms the Government's commitment to the support and well-being of the bona fide, responsible organisations that engage in the crucial task of peacebuilding.

I said that I had a range of interests in the register, and I should specifically say that I have been an adviser to International Alert and subsequently a trustee. International Alert is respected by a great number of Peers across the House for the work it does. It is deeply concerned about the need to make explicitly clear that peacebuilding is high on our list of considerations.

Lord Hylton (CB): My Lords, I am happy to follow my noble friend Lord Sandwich. I welcome the Government's amendments but suggest that the additional amendments in this group are needed for the avoidance of doubt. The Bill may make it necessary for an accused person to prove his innocence, which is nearly always undesirable. I should add that I have in the past travelled to Iraq, Syria and Gaza, disregarding Foreign Office travel advice. However, in those days there were no designated areas—one could take one's chance.

I support the amendments—in particular, Amendment 19, which calls for frequent review of areas—and I look forward to the Government's reply.

5.30 pm

Lord Anderson of Ipswich: My Lords, although, I hope, properly grateful for Amendment 11, I support Amendment 15. Also in this group, I support Amendment 12 on peacebuilding, and the Government's Amendment 18 on the sunset period, subject to Amendment 19 in my name. I shall take them in that order.

Amendment 15 tracks the Government's Amendment 11 with one important difference—the carving out of conduct rather than the provision of a reasonable excuse—in that it echoes the amendment that I tabled in Committee with the support of the noble and learned Lord, Lord Judge. I do not believe that Amendment 15 makes the job of the police or the CPS any more difficult. Where it is not clear whether the reason advanced for travel is true, there should be no more obstacle to a suspected person being questioned and, if necessary, prosecuted under this scheme than there is under the Government's Amendment 11. However, the listed grounds are reasons to travel to dangerous areas, not excuses. The Australian law recognises this and so should ours. The only fault in Amendment 15, if I may say so, is that it makes no reference to peacebuilding, which brings me to Amendment 12, which I support and to which I would have put my name had I been alert enough to see it in time.

As the noble Lord, Lord Judd, and others have said, there are charitable groups based in this country with a remarkable track record in peacebuilding and conflict resolution, which might include talking to or negotiating with active terrorist groups in areas where conflict is never far away. I should like to share the conviction of the noble Baroness, Lady Hamwee, and the noble Earl, Lord Attlee, that their work can be described as humanitarian, but this should surely be put beyond doubt, as the noble Lord, Lord Hylton, said. Their efforts and even their successes are not always well publicised but they are no less useful and important for that.

I had the privilege of speaking for such groups for several years—notably the group Conciliation Resources—and helped them to initiate a dialogue with the Home Office, the purpose of which, perhaps partially achieved, was to allay some of their fears of contravening the existing anti-terrorism law. However, the new designated area offence could hit some of their most sensitive and valuable work if they are not exempted from its scope or at least, as a second best, brought expressly within the scope of reasonable excuse. That is why my amendment in Committee, now overtaken by Amendments 11 and 15, made express reference to peacebuilding.

It is hard enough for charitable trustees to manage the physical risks to their staff of this kind of work, and it would be wrong to add to those risks the possibility of being convicted or imprisoned in the UK for doing it. Surely no one engaged in such work would really be prosecuted for it, so why not acknowledge that in the law?

I turn to Amendments 18 and 19. Once an area has been designated, it will be a brave Secretary of State who gives priority to its dedesignation. It is important to acknowledge the freedom of travellers, including adventurous ones, to go to places that are still at least moderately dangerous, but one can imagine how aversion to risk might in practice be given priority.

For that reason, in Committee I tabled an amendment that would have provided for annual review. It was a little more elaborate than Amendment 17 but with the same aim in mind. Although that way of doing it did not find favour with the Government, I welcome the sunset provision in Amendment 18, as well as the Minister's words regarding the rigour of the review that will take place under new Section 58C(4). My reservation, which I have expressed in Amendment 19, is that three years seems too long to wait for the sunset.

It is hard to believe that annual review would be unduly onerous, as the experience of Australia and Denmark has been that very few areas are designated and as one would hope that, if the Government were doing their job, the degree or risk attached to those areas at any given moment would be well known. However, Amendment 19 goes for the very moderate option, as I hope your Lordships will see it, of two years.

I am sure that the Minister will respond that the provision is modelled on the Australian criminal code, which provides at Section 119.3(4) for a three-year sunset. However, the Australian law has other protections that are not present in Clause 4: a ban on designating an entire country; an express duty on the Minister to revoke a designation if he ceases to be satisfied that a listed terrorist organisation is engaging in hostile activity there; and provision for Australia's Parliamentary Joint Committee on Intelligence and Security—the equivalent of the Intelligence and Security Committee of this Parliament—to conduct its own review of declarations.

Therefore, I invite the Minster, whether today or subsequently, to look kindly on what I venture to call an improvement to the welcome Amendment 18.

Lord Judge: My Lords, I support Amendment 19. I cannot think of anything I can say that would improve on what the noble Lord, Lord Anderson, has said, so I shall not say it. However, when the Government look at their own amendment and the very helpful way in which they have reconsidered this rather urgently introduced provision in the House of Commons, they should consider whether new subsections (1), (2) and (3) run in the right order. New Section 58B(1) sets out the offence; new subsection (3), or proposed new subsections (3A), (3B), (3C) and (3D) are not offences; and new subsection (2) sets out the defence. Logically, it might be better and easier—and it might deal with the sui generis point raised by the noble Baroness, Lady Hamwee—if the order ran new subsection (1), the current new subsection (3) and then new subsection (2).

Lord Rosser: I have two amendments in this group. One is Amendment 15 and I have added my name to Amendment 19 in the name of the noble Lord, Lord Anderson. As I am sure the noble Earl will remind me, if it is he who is to respond, in Committee we moved an amendment based on the Australian model that provided for a sunset clause after three years, so it would be wrong of me not to thank the Government for having taken heed of what we said.

If the Minister is wondering why I attached my name to the amendment of the noble Lord, Lord Anderson, reducing the three-year sunset period to two years, it was because we thought that his case for doing it every year, which he proposed in Committee, was quite powerful in relation to the quite exceptional powers that the Bill provides over travel for UK residents and citizens to designated countries. That power would rest with the Secretary of State. The noble Lord, Lord Anderson, has not come back with an amendment proposing a sunset period of one year but he has come back with a proposal to change the sunset provision to two years, and we have a lot of sympathy with that in the light of the arguments that he advanced in Committee in favour of one year.

I think that the noble Lord, Lord Anderson, ended up by saying that he hoped that the Government might reflect on his amendment if they did not feel able to agree to it, as well as reflecting on the frequency and reality of which Parliament should be required to give its approval if the Government wished to continue to exercise this power over the movement of UK citizens. I too hope that that is something that the Minister might feel able to reflect on further.

With regard to Amendment 15, to which a number of noble Lords have already made reference, the amended reasonable excuse defence, with its indicative list tabled by the Government, still does not really provide adequate protection either to those with a legitimate reason for being in a designated area or indeed, in some aspects, to some organisations that employ them. For example, an aid worker or news reporter can invoke the reasonable excuse defence only once they have been accused of or charged with an offence. The onus is then on the individual and organisation to provide evidence or proof to the authorities that they were in a designated area for a legitimate reason. Prior to being charged—if that is what happened—the individual could have been questioned by the police on their return from the designated area and they might conceivably have been placed under arrest. For a law-abiding citizen, that would potentially be an unnerving experience, and likewise for their employer or organisation, which could face a degree of reputational damage as a result.

It is correct that anyone returning from a country—for example, Syria—can already be questioned or investigated by police and asked for justification for their travel. However, at the moment, that person will not have committed an offence simply by having entered an area or country such as Syria. If the provisions of this Bill become law, the risk of investigation, and the perception of that risk faced by individuals and their employer, will be much higher. It is not clear either what will count as proof of a legitimate reason for being in a designated area. Would it be a letter on headed paper from an employer or more substantive evidence? Carrying such evidence in and out of a war zone could pose security risks for the individual and those in the conflict area. If the risks of going to a particular area are increased for UK nationals or residents, then their organisation, national or international, is less likely to want to send them. After all, those organisations have a duty of care towards their staff. Creating further potential threats and obstacles for UK nationals and residents to travel would put a greater onus on local staff or staff of other nationalities, and would add an extra provision to life-saving humanitarian support for those in a designated area and for work to address the root causes and drivers of conflict.

Further difficulties may arise as well. The legal position around entering designated areas, created by the new offence of simply being in such an area, may, as has already been said, further reduce the willingness of banks to provide financial services for activity, including humanitarian activity, in high-risk areas. That is a potential consequence that could also extend to the services provided by travel and insurance companies. If an organisation—one is talking here about primarily, but not solely, a humanitarian organisation—cannot get travel insurance for its employees or transfer funds into a designated area, it will be less able to deliver support in a safe and effective manner, even if it is prepared to take the risk of sending a UK national or resident to the designated area concerned, in the knowledge that just being in that area is an offence for which that UK national or resident could be charged.

The Government must surely be aware of the impact their intentions would have on travel to a designated area in the absence of clear exemptions from committing an offence simply by being in those areas for those on legitimate, and in some cases life-saving, business or activity. Amendment 15, in my name, minimises these potential difficulties and unintended consequences by stating that individuals undertaking the activities listed in the amendment, which are the same as the Government have set out in their amendment in respect of which a reasonable excuse defence can be argued, would not be committing an offence of being in a designated area without legitimate cause, and would not have to provide a defence after the fact.

As the noble Earl said, the Bill already contains an exemption for those working for or on behalf of the Crown. That would extend to the small number of NGO staff working on UK government contracts, but many more such staff will be working on projects supported by grants from other bilateral, multilateral or private donors, or by funds donated by the British public, who will not be covered by any exemption from the provisions of Clause 4.

As the noble Earl will know, our amendment goes down the road of the Australian model of providing exemptions. However, an alternative method operates in Denmark, providing for prior authorisation to be given for those with legitimate business to be in a designated area. There is obviously a need for a procedure that enables an application for an authorisation to be dealt with quickly under that alternative method, since clearly some of those with legitimate business in a designated area, such as humanitarian aid workers or news reporters, need to get out there at short notice. However, under this Bill, such a procedure would mean that those returning from a designated area without being able to show prior authorisation would potentially face investigation and action for an offence, as would those for whom there was a suspicion that they had not been to the designated area solely for the purpose claimed and for which they had been given prior authorisation.

The Government should surely accept that their proposals as they stand on designated areas, and the new offence of simply being there, risk having significant unintended consequences, which may result in individuals and organisations we would accept as having legitimate business in a designated area not going or being represented at all, to the detriment of potentially life-saving aid activity and of providing transparency over what is happening, as in the case of aid workers and news reporters respectively.

I hope that the Government will be prepared to at least reflect further on this issue prior to Third Reading or the matter being considered further in the Commons, and look at either exemptions from the new offence of being in a designated area as provided for in my amendment, or, if they prefer, at a system of prior authorisation for travelling to such a designated area, or a combination of both.

5.45 pm

Lord Paddick: My Lords, very briefly, I completely agree with my noble friend Lady Hamwee, who has addressed all the amendments in this group other than Amendment 15. I have added my name to Amendment 15 and made clear my reasons for supporting it during our debate on the second group of amendments. I do not wish to add further to my comments.

Earl Howe: My Lords, the noble Baroness, Lady Hamwee, has argued for the expansion of the Government's list of indicative reasonable excuses to include peacekeeping and visiting a very seriously ill relative. I understood her not to have spoken to her Amendment 14, which proposed that we include in Clause 4 a power to further add to the list of reasonable excuses by regulations—I hope I was right in understanding that.

The first point I make is to stress again that this is an indicative and not an exhaustive list. I am not suggesting that the amendments from the noble Baroness are without merit, but, in a phrase, we need to draw the line somewhere. I firmly believe that Amendment 11 draws it in the right place. In this regard, we have taken into account the Australian precedent. Trying to put more and more situations beyond doubt—the argument put forward by the noble Lord, Lord Hylton—is simply unnecessary in this context. As I have argued before, we are consciously not creating an exhaustive list of reasonable excuses; it would be quite wrong to try. Juries will be able to make up their own minds on the reasonableness of particular excuses in the light of the circumstances of the case.

I entirely accept the importance of peacebuilding activity, and I am sure noble Lords would agree with me that it is vital that such activity continues. However, as I have explained, the government amendment does not preclude a person advancing this or any other category of reasonable excuse. I am of the view that legitimate peacebuilding activity could very well be a reasonable excuse. However, I must say again that it will ultimately be up to the jury to determine whether a particular excuse is reasonable on the basis of all the evidence.

Much the same arguments apply to Amendment 13, which would add visiting a seriously ill relative to the list of reasonable excuses. I am not sure how fruitful it would be to get into a debate about the difference between being "seriously ill" and "terminally ill". Again, the line has to be drawn somewhere. Given that the Foreign Office would inevitably advise against any travel to a designated area, it is right that we set the bar at a high level. But I say again that it would be open to any person to advance as a reasonable excuse the fact that he or she was visiting a seriously ill relative.

Amendment 17 seeks to place on the Home Secretary a duty to lay before Parliament an annual report on the outcome of the review of a designation. This amendment misunderstands the nature of the duty on the Home Secretary to keep a designation under review. The requirement does not imply a set piece review with a beginning and an end, culminating in a report which can then be published.

Rather, the ongoing duty to keep a designation under review will ensure that, as the situation on the ground changes, the Government can react and make a judgment, as and when required, as to whether to alter any designation to reflect a change in the threat. However, I reassure the noble Baroness that, should the Government need to amend a designation, that will require a new regulation to be made, which in turn, by virtue of Amendment 20, would require the Secretary of State to issue a statement setting out the reasons why he considers that the legal test for designation is met.

The noble Baroness referred to international humanitarian standards. As she said, there are various commonly recognised international humanitarian standards. The point to appreciate is that the government amendment provides flexibility and future-proofs against developments in this area. She may know, for example, that the UN Office for the Coordination of Humanitarian

[Earl Howe]

Affairs provides guidance on principles and standards relating to humanity, neutrality, impartiality and independence. I say to the noble Earl, Lord Sandwich, that the concerns he expressed are satisfactorily addressed by government Amendment 11 as well as by the explanations that I have already given for the provisions of Clause 4 in Committee.

Amendment 15 in the name of the noble Lord, Lord Rosser, is in many ways similar to government Amendment 11. There is, however, a key difference, as he carefully explained. This is not an indicative list of reasonable excuses, but an exhaustive list of exclusions from the offence. We have already debated the difference between these two approaches when we considered Amendment 3 in the name of the noble Lord, Lord Paddick, in an earlier group, but it may be helpful to remind ourselves of the issues in play.

I reiterate that under either approach a person returning to the UK from a designated area abroad would not have immunity from investigation and possible prosecution. The police would still need to investigate to determine whether, under one approach, an offence had been committed or, under the other approach, whether the person has a reasonable excuse such that the investigation can be discontinued. It is worth noting that the police have been extremely clear for some time—since well before this new power was introduced—that any person returning from Syria who has travelled there for any reason can expect to be investigated to establish what risk, if any, they may pose. That is simply common sense given the level of risk associated with such areas.

That would likely also be the approach in any future scenario analogous to the Syrian example in which an area might be designated under Clause 4, whether or not an area is in fact designated. While I appreciate that the intention of the noble Lord's amendment is to provide greater comfort and assurance to legitimate travellers so that humanitarian aid workers, for example, would not have the prospect of police investigation hanging over them, that would not in fact be the result. The only circumstances in which it could be achieved would be if we were to go further still and provide for any person who travels to a designated area simply to declare that they did so for a specified legitimate purpose, thus unilaterally providing themselves with immunity from any investigation or prosecution. However, that would be wide open to abuse by those who travel for terrorist purposes and would render the new power in the offence entirely unusable.

That leads on to my second point. I have explained that the noble Lord's amendment would make little difference from the perspective of a potential defendant, and I appreciate that that may beg the question why we should not then accept it. That is simply because the Government's preferred approach in providing for a reasonable excuse defence fits better with the grain of the Terrorism Act 2000. That approach has been in place for 18 years in Section 58 of the Terrorism Act 2000, which Clause 3 of the Bill amends as well as other provisions in the 2000 Act. As I previously said on the noble Lord's closely related suggestions for changes to the burden of proof for these offences, which we have already debated today, that approach is well understood by the police, prosecutors and the courts, and clear case law on it is provided by the then Appellate Committee of this House, no less. It has not resulted in judicial concerns, inappropriate prosecutions, upheld appeals or any credible complaints that it has been unfair or inappropriate in its operation. I therefore reiterate that we are not approaching these matters from a neutral starting position. Rather, if we were to adopt the noble Lord's amendment, we would be choosing to depart from the settled, long-standing position in relation to the Terrorism Act 2000, and I am simply not persuaded that there is any need or good reason to do so.

Furthermore, I am concerned that in unsettling that existing position we could create more uncertainty for defendants and judges in relation to Clause 4, not less, and we could also call into question the currently settled approach that the courts take to Section 58 of the 2000 Act as well as other provisions for similar offences, creating instability and uncertainty in our ability to prosecute serious terrorists. Those strike me as quite undesirable outcomes and risks that we should not run.

The noble Lord, Lord Rosser, asked me what would count as proof that an aid worker was employed by a legitimate NGO. The police have been clear that they will investigate any person returning from Syria to establish what risk they may pose. That would likely be the case in relation to any area designated under Clause 4, including investigating whether an offence has been committed under Clause 4. It will be an operational decision for the police as to how they would conduct that investigation and what proof they would seek. It is not possible for me to set out those considerations in advance.

Finally, Amendment 19, in the name of the noble Lord, Lord Anderson, would provide for the sunsetting of any regulations after two years rather than three. He seeks to split the difference between the one year he advocated in Committee and the three years proposed by the noble Lord, Lord Rosser. Again, this comes down to judgment. There is clearly no absolute right or wrong in this case; it is just that, on balance, the Government consider that three years is the right timeframe. Again, I pray in aid the Australian criminal code and, as I have already indicated, if the situation changes after six months, a year or two years, the Government would inevitably want to review the regulations well before the three-year period was up. The Government agree with the amendment put forward by the noble Lord, Lord Rosser, in Committee that three years is the appropriate period and I hope that other noble Lords are similarly persuaded. I realise that he has shifted his position since Committee, but I hope that on reflection he will feel content to revert to his original view.

I invite the House to agree with the government amendments in this group and I hope that I have been able to persuade the noble Lord, Lord Rosser, not to move his Amendment 15. If he is minded to do so, I invite the House to reject it.

Amendments 12 (to Amendment 11) withdrawn.

Amendments 13 and 14 (to Amendment 11) not moved.

Amendment 11 agreed.

Amendment 15

Moved by ***Lord Rosser***

15: Clause 4, page 3, line 19, at end insert—

"(3A) A person does not commit an offence under this section of entering, or remaining in, a designated area where—

(a) the person enters, or remains in, a designated area involuntarily, or

(b) the person enters, or remains in, a designated area for or in connection with one or more of the purposes mentioned in subsection (3B).

(3B) The purposes are—

(a) providing aid of a humanitarian nature;

(b) satisfying an obligation to appear before a court or other body exercising judicial power;

(c) carrying out work for the government of a country other than the United Kingdom (including service in or with the country's armed forces);

(d) carrying out work for the United Nations or an agency of the United Nations;

(e) carrying out work as a journalist;

(f) attending the funeral of a relative or visiting a relative who is terminally ill;

(g) providing care for a relative who is unable to care for themselves without such assistance.

(3C) But a person does not commit an offence of entering or remaining in a designated area by virtue of subsection (3A)(b) only if—

(a) the person enters or remains in the area exclusively for or in connection with one or more of the purposes mentioned in subsection (3B), or

(b) in a case where the person enters or remains in the area for or in connection with any other purpose or purposes (in addition to one or more of the purposes mentioned in subsection (3B)), the other purpose or purposes provide a reasonable excuse for doing so under subsection (2).

(3D) The Secretary of State may by regulations add a purpose to or remove a purpose from subsection (3B).

(3E) Regulations under subsection (3D) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(3F) For the purposes of subsection (3B)—

(a) the reference to the provision of aid of a humanitarian nature does not include the provision of aid in contravention of internationally recognised principles and standards applicable to the provision of humanitarian aid;

(b) references to the carrying out of work do not include the carrying out of any act which constitutes an offence in a part of the United Kingdom or would do so if the act occurred in a part of the United Kingdom."

Lord Rosser: I thank the Minister for his response, but obviously there is a difference of opinion. We feel that there should be certain situations in which an individual who goes to an area designated by the Secretary of State should not by that very act of going there commit an offence. They would commit an offence for which they would have to provide evidence of a reasonable excuse if charged on their return to this country. I think I heard him say that one of the Government's arguments for their stance with their indicative list was that it fits better with the grain of the Terrorism Act 2000. Perhaps if I was a lawyer I would be moved by that argument, but I am not.

I think that this was a comment made earlier by the noble Lord, Lord Anderson of Ipswich, but if I am misrepresenting him I hope that he will correct me. He said basically that we should have reasons for travelling to designated areas which mean that you do not commit an offence, rather than excuses—that is what we have, reasonable excuses—under the Government's proposal. I therefore wish to test the opinion of the House.

6.01 pm

Division on Amendment 15

Contents 220; Not-Contents 191.

Amendment 15 agreed.

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6.13 pm

Amendment 16

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

16: Clause 4, page 3, line 26, at end insert—

""relative" means spouse or civil partner, brother, sister, ancestor or lineal descendant;"

Amendment 16 agreed.

Amendment 17 not moved.

Amendment 18

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

18: Clause 4, page 4, line 18, at end insert—

"(4A) Regulations under this section cease to have effect at the end of the period of 3 years beginning with the day on which they are made (unless they cease to have effect at an earlier time as a result of their revocation or by virtue of section 123(6ZA)(b)).

(4B) Subsection (4A) does not prevent the making of new regulations to the same or similar effect."

Amendment 19 (to Amendment 18) not moved.

Amendment 18 agreed.

Amendments 20 and 21

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

20: Clause 4, page 4, line 27, at end insert—

"(6ZAA) Regulations laid before Parliament under subsection (6ZA) designating an area outside the United Kingdom must be accompanied by a statement setting out the grounds on which the Secretary of State has determined that the condition for making the regulations referred to in section 58C(2) is met in relation to that area."

21: Clause 4, page 4, line 36, at end insert—

"(6ZD) Regulations under section 58C that only revoke previous regulations under that section are subject to annulment in pursuance of a resolution of either House of Parliament."

Amendments 20 and 21 agreed.

Clause 4, as amended, agreed.

G20 Summit

Statement

6.15 pm

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

"With permission, Mr Speaker, I would like to make a Statement on the G20 summit in Argentina. Before I do, I would like to put on record my thanks to President Macri for hosting such a successful summit. This was the first visit to Buenos Aires by a British Prime Minister and only the second visit to Argentina since 2001. It came at a time of strengthening relations between our two countries when we are seeking to work constructively with President Macri.

As we leave the European Union, I have always been clear that Britain will play a full and active role on the global stage as a bold and outward-facing trading nation. We will stand up for the rules-based international order, strive to resolve with others challenges and tensions in the global economy, work with old allies and new friends for the mutual benefit of all our citizens and remain steadfast in our determination to tackle the great challenges of our time.

At this summit, we showed that the international community is capable of working through its differences constructively, and the leading role the UK will continue to play in addressing shared global challenges. We agreed —along with the other G20 leaders—on the need for important reforms to the World Trade Organization to ensure it responds to changes in international trade. We pursued our objective of making sure that the global economy works for everyone and the benefits are felt by all. We called for greater action in the fight against modern slavery and tackling climate change. I held discussions with international partners on security and economic matters, including on the progress of our exit from the European Union and the good deal an orderly exit will be for the global economy.

Let me take each of these in turn. At this year's summit, I came with the clear message that Britain is open for business and that we are looking forward to future trade agreements. Once we leave the EU, we can and will strike ambitious trade deals. For the first time in more than 40 years, we will have an independent trade policy, and we will continue to be a passionate advocate for the benefits that open economies and free markets can bring. We will forge new and ambitious economic partnerships and open up new markets for our goods and services in the fastest-growing economies around the world. During the summit, I held meetings with leaders who are keen to reach ambitious free trade agreements with us as soon as possible. This includes Argentina, with whom I discussed boosting bilateral trade and investment, and I announced the appointment of a new UK trade envoy. I also discussed future trade deals with Canada, Australia, Chile and Japan, with which we want to work quickly to establish a new economic partnership based on the EU-Japan Economic Partnership Agreement.

[Baroness Evans of Bowes Park]

On the global rules that govern trade, we discussed the importance of ensuring an equal playing field and the need for the rules to keep pace with the changing nature of trade and technology. There is no doubt that the international trading system, to which the United Kingdom attaches such importance, is under significant strain. That is why I have repeatedly called for urgent and ambitious reform of the World Trade Organization; at this summit, I did so again. In a significant breakthrough, we agreed on the need for important reforms to boost the effectiveness of the WTO, with a commitment to review progress at next year's G20 summit in Japan.

On the global economy, we recognised the progress made in the past 10 years, with this year seeing the strongest global growth since 2011; but risks to the global economy are re-emerging. In particular, debt in lower-income countries has reached an all-time high of 224% of global GDP, so I called on members to implement the G20 guidelines on sustainable finance that we agreed last year, which increase transparency and encourage co-operation. At this year's summit, I continued to pursue our mission to make the global economy work for everyone and the need to take action in our own countries and collectively to ensure that the benefits of economic growth are felt by all.

Around the world, we are on the brink of a new era in technology which will transform lives and change the way we live. This has the potential to bring us huge benefits, but many are anxious about what this means for jobs. That is why in the UK, alongside creating the right environment for tech companies to flourish through our modern industrial strategy, we are investing in the education and skills needed so that people can make the most of the jobs and opportunities that will be created. We made strong commitments to improving women's economic empowerment, and alongside this I called on G20 leaders to take practical action to ensure that by 2030 all girls, not just in our own countries but around the world, get 12 years of quality education.

To build fair economies and inclusive societies we must tackle injustice wherever we find it. Around the world, we must all do more to end the horrific practice of modern slavery, and protect vulnerable men, women and children from being abused and exploited in the name of profit. Two years ago I put modern slavery on the G20 agenda at my first summit and this year I was pleased to give my full support to the G20's strategy to eradicate modern slavery from the world of work.

I announced that next year the Government will publish the steps we are taking to identify and prevent slavery in the UK Government's supply chains in our own transparency statement. This is a huge challenge. Last financial year, the UK Government spent £47 billion on public procurement, demonstrating just how important this task is. I urged the other leaders around the G20 table to work with us to ensure that their supply chains are free from slavery as we work to bring an end to this appalling crime.

I made clear the UK's determination to lead the way on the serious threat that climate change poses to our planet. We need a step change in preparing for temperature rises, to cut the cost and impact of climate-related disasters, and to secure food, water and jobs for the future. As a UN champion on climate resilience, the UK will continue to pursue this agenda at next year's UN climate summit. Nineteen of us at the G20 reaffirmed our commitment to the Paris agreement, but it remains a disappointment that the United States continues to opt out. I also announced that the UK will be committing £100 million to the Renewable Energy Performance Platform, which will directly support the private sector in leveraging private finance to fund renewable energy projects in sub-Saharan Africa.

This summit also gave me the opportunity to discuss important matters directly with other leaders and raise concerns openly and frankly. In that context, I met Crown Prince Mohammad bin Salman; first, to stress the importance of a full, transparent and credible investigation into the terrible murder of Jamal Khashoggi and for those responsible to be held to account, a matter which I also discussed with President Erdoğan; and, secondly, to urge an end to the conflict in Yemen and relief for those suffering from starvation, and to press for progress at the upcoming talks in Stockholm. Our relationship with Saudi Arabia is important to this country, but that does not prevent us putting forward robust views on these matters of grave concern.

I also discussed the situation in Ukraine with a number of G20 leaders. The UK condemns Russian aggression in the Black Sea and calls for the release of the 24 Ukrainian service personnel detained and their three vessels.

At this year's summit we reached important agreements, demonstrating the continued importance of the G20 and international co-operation. It also demonstrated the role that a global Britain will play on the world stage as we work with our friends and partners around the world to address shared challenges and bolster global prosperity. I commend this Statement to the House".

6.23 pm

Baroness Smith of Basildon (Lab): My Lords, I thank the noble Baroness the Leader of the House for repeating today's Statement. Aboard her flight to Buenos Aires, the Prime Minister told waiting reporters that she was off to sell UK trade to world leaders. It is hard to understand what exactly the Prime Minister means by this, considering that we have no idea what our trading status will be after March. The Government's withdrawal agreement looks set be voted down, a third of the Prime Minister's own trade envoys oppose her plans for future trading arrangements, and, with the Attorney-General refusing to publish his full legal advice on the backstop, it is fair to say that we are a long way off negotiating any kind of trade policy. Yet we are told that, from Canada to Japan, one by one the Prime Minister sat down with world leaders to set out future trade deals. I hope that the noble Baroness will say a little more about this and detail to the House exactly what the Prime Minister could have discussed in these bilaterals.

We are told that trade at least was not on the cards during the Prime Minister's bilateral with Crown Prince Mohammad bin Salman. Did she have a frank discussion

over the UK's sale of arms for use in the brutal Yemeni civil war? The UK is not a spectator; as long as we are selling arms to be used in that war we are very much involved. The Prime Minister says in her Statement that one of the reasons for the meeting was,

"to urge an end to the conflict".

Surely we can do better than that. Crucially, the Prime Minister needs to put an end to the flow of British arms for use in this civil war. It is now time for action. We have a moral obligation to help the people of Yemen. Ahead of the Stockholm talks in the coming days, the Government should do everything possible to bring about a permanent end to the barbaric bombardment of Hudaydah. As an urgent priority, she needs to fully support humanitarian relief to find a route to allow food and medicine to reach the 14 million starving Yemenis. Can the noble Baroness the Leader tell us whether any of these issues were raised by the Prime Minister in her bilateral meeting?

We welcome confirmation that the Prime Minister raised the murder of Jamal Khashoggi with the Crown Prince. During the summit, President Macron told the Crown Prince that international experts must be part of the investigation. Turkey called for a full UN-led investigation into the incident. We are told that the Prime Minister asked for transparency. Can the noble Baroness expand on this and clarify what the Prime Minister's exact demands are for the Khashoggi investigation?

Prior to the summit, it was well briefed that the Prime Minister would use the trip to engage in a new security partnership as part of her preparations for the UK's new satellite system that would rival Galileo. That raises several immediate concerns. What will be the cost of creating a new, separate system? Will it be as effective and will we have full access by 2026, as was the plan with Galileo? Despite all the pre-briefing, there is nothing in the Statement. Can the noble Baroness confirm that, given all the pre-briefing, it was discussed at the summit?

On climate change, the Prime Minister told the summit that the UK was determined,

"to lead the way on the serious threat that climate change poses to our planet",

to quote from the Statement. That is a worthy aim, but it needs more than just words. For example, did the Prime Minister urge President Trump to reconsider his rejection of the Paris agreement in her informal discussions with him?

Aside from the bilateral meetings, after hours of negotiations it emerged on Saturday that the G20 had agreed a joint communiqué that reaffirmed the commitment to a rules-based international order, which I am sure all of us would welcome. However, we need just to scratch the surface of the declaration and we see that the actions of some of the signatories are at odds with the spirit of the agreement. The UK has a responsibility to support and to defend these values of multilateralism, and the Prime Minister must encourage our international partners to do the same.

Against the backdrop of the communiqué, the US and China agreed a trade war truce, which the White House has labelled "a wonderful humanitarian gesture". However, apparently this "wonderful humanitarian gesture" includes support for the expansion of the death penalty in China for those importing the opiate drug fentanyl to the US. Meanwhile, in the face of Russia's arrest of Ukrainian soldiers, Kiev has suggested that democratic elections could be suspended. Neither of these is consistent with the principles of a rules-based international order.

The Prime Minister must seek to use any influence the UK has to encourage all countries to genuinely and honestly abide by this agreement in both domestic and international policy. There has to be real value to such summits. For that to be the case, the communiqué cannot be just warm words to be discarded when they are inconvenient.

Lord Newby (LD): My Lords, I too thank the Leader for repeating the Statement, but am rather disappointed that it contains an omission. We are told that all the leaders had a bit of downtime during their stay in Argentina, during which they demonstrated national character traits. Angela Merkel went to a steak house for a good meal; President Macron went to a bookshop for a meeting with writers and thinkers; and President Modi held a public yoga session in front of several thousand—no doubt somewhat surprised—Argentinian residents. Can the Leader tell us what the Prime Minister did to reflect our current national mood and character?

More seriously, the Statement contains a number of references to Brexit which are rather curious. First, it says that the Prime Minister held discussions on,

"the good deal an orderly exit will be for the global economy".

How is that compatible with the Government's own long-term economic analysis, published last week, which showed that even if the Government get free trade agreements with every single country with which they do not currently have one, there will be a reduction in GDP in the UK because there will be a reduction in trade? The inevitable corollary of that is that there will be a reduction in GDP in the rest of the world because there is a reduction in trade.

Secondly, the Prime Minister said:

"Once we leave the EU, we will strike ambitious trade deals".

Given that the EU has rejected the Government's proposal for a facilitated customs agreement, how can we strike trade deals on our own while keeping a frictionless border in Northern Ireland? The Prime Minister had specific discussions on trade with a number of Heads of State and Government, including that of Japan. In her conversations with the Japanese Prime Minister, did she discuss the commitment given to Nissan some two years ago guaranteeing that it would be no worse off under Brexit? If so, what assurances did she give, or could she give, to Japanese companies in the UK that they would not face additional barriers to trade, particularly those working in the services sector, not least the financial services sector, after Brexit?

Finally, the Prime Minister said that the UK was,

"creating the right environment for tech companies to flourish",

after Brexit. Why then does the Prime Minister think that, last week, a letter was delivered to 10 Downing St signed by more than 2,300 tech entrepreneurs warning that, under the Government's plans for Brexit, the

[Lord Newby]
industry would be hit by a drastic reduction in market access and difficulty in attracting new talent and investment from outside the UK?

The Prime Minister is living in a fantasy world increasingly at odds with reality. Fortunately, with next week's votes, reality is about to intrude.

Baroness Evans of Bowes Park: I thank the noble Baroness and the noble Lord for their comments. Both of them asked about the conversations that the Prime Minister had on trade. In her bilateral with President Abe, both leaders reaffirmed our commitment to work quickly to establish a new economic partnership between Japan and the UK in the future based on the EU-Japan Economic Partnership Agreement. She met Prime Minister Morrison of Australia for the first time at the summit, and we are stepping up engagement with the Indo-Pacific, with new missions in Samoa and Tonga and an enhanced relationship with ASEAN. We also laid the foundations for an ambitious future UK-Australia free trade agreement. The Prime Minister also met President Piñera of Chile. They welcomed the constructive discussions to date on transitioning the current EU-Chile agreement and reaffirmed the commitment of both sides to conclude it swiftly. The Prime Minister also held talks with Prime Minister Trudeau. She therefore had a lot of constructive engagement with our global partners.

As the Statement made clear, for the first time in more than four decades, we will have an independent trade policy working through the WTO. As we have said on numerous occasions in the House, during the implementation period we would be able to negotiate, sign and ratify deals across the world.

The noble Baroness, Lady Smith, rightly asked about the situation in Yemen. I assure her that we are fully focused on bringing an end to hostilities there to address the worsening humanitarian crisis and build a lasting political solution. Diplomacy and negotiation remain the only path to ending the conflict. The indications are that, in the coming days, the sides will come together in Stockholm to hold meaningful talks. They open a window of opportunity to work with all parties towards a cessation of hostilities. The Prime Minister made that point forcefully to the Crown Prince in her bilateral with him. The noble Baroness will also know that the UK is the fifth largest donor of humanitarian assistance to Yemen this year. We have committed £570 million since the conflict began.

The noble Baroness asked also about the Prime Minister's conversation with the Crown Prince about Jamal Khashoggi. She stressed again the importance of ensuring that those responsible for the murder are held to account and that Saudi Arabia takes action to build confidence that such an incident could not happen again. She made it clear that both the Turkish and Saudi investigations should be carried out thoroughly until responsibilities were clearly established, and that there should be proper accountability and due process for any crimes committed. She made it clear also that we expect Saudi Arabia to take measures to ensure that such violations of international and national laws do not happen again. We have also been clear that we will work with the EU and member states to consider how we can act together to take appropriate measures against those responsible once the investigations have concluded.

Our defence export procedures are among the strictest in the world. A licence will not be issued to Saudi Arabia or any other country if to do so would be inconsistent with any provision of the consolidated EU and national arms export licensing criteria. In July 2017, the High Court ruled that our sales to Saudi Arabia were compliant with those regulations.

The noble Baroness asked also about the Paris agreement. Certainly, the Prime Minister has had a number of conversations about it with President Trump and has urged him not to withdraw. We remain committed to the Paris agreement and were pleased that the other 19 members of the G20 all reinforced their strong commitment to it. The noble Baroness will know that the UK is decarbonising more quickly than any other G20 country and is honouring its climate finance commitments. At the G20, the Prime Minister announced £100 million for the renewable energy performance platform to support small-scale renewable energy projects in sub-Saharan Africa.

The noble Baroness rightly talked about some of threats faced by our rules-based system. We are clear that we are committed to upholding it. Despite difficulties, the G20 provides an opportunity collaboratively and openly to discuss the challenges. The system is being openly questioned, so we must redouble our efforts to defend it. That involves delivering UN reform, fairer burden-sharing in NATO and reform of the WTO—which was a part of the discussion at the G20. The World Bank's governance must change to reflect the changing balance of the global economy. There need also to be reforms within the decision-making process of the Commonwealth. There is much to do, but it was a constructive summit and a communiqué was agreed by consensus.

6.38 pm

Lord Howard of Lympne (Con): My Lords, in the context of the reference in the Statement to the need for an orderly exit from the European Union, can my noble friend help me on the following point? We know that the UK Government are making preparations for the possibility—some might say the probability—of a no-deal Brexit. The European Union is making similar preparations. Are those preparations being co-ordinated in any way? If not, why not?

Baroness Evans of Bowes Park: We remain committed to the deal that we have negotiated with the EU and believe that it is the best deal, but my noble friend is absolutely right: both we and the EU are preparing for no deal. There have been many conversations, both bilaterally and with the EU, about preparations. We are taking forward our plans, as are the Europeans, but certainly conversations have been had.

Lord Hannay of Chiswick (CB): My Lords, will the Minister accept a warm welcome for the reference in the communiqué to supporting a rules-based international order, even if some of the signatories are somewhat unlikely supporters of that proposition? I welcome the Prime Minister's efforts on that, with many of

her colleagues. I have two questions. Reform of the World Trade Organization is obviously a sensible way to go, but the United States has made no secret of the fact that it wishes to dismantle the dispute settlement procedures of the World Trade Organization, so will the noble Baroness say that the Government will under no circumstances accept a weakening of the dispute settlement proceedings and will, indeed, think about ways of circumventing the US tactic of failing to appoint new members to the panel? On migration, there are two rather obscure passages in the communiqué —paragraphs 17 and 18. Will the noble Baroness say how Britain is going to be represented next week at Marrakesh at the meeting to sign up to the UN compact on migration?

Baroness Evans of Bowes Park: I thank the noble Lord. He is right that there was agreement that reform is needed to improve the WTO's functioning. A step forward was that progress on this will be reviewed at the next G20 summit. The G20 has given the WTO a strong mandate for reform and we now want to see everyone working together. I can certainly assure him that our priorities for WTO reform include ensuring the continued effectiveness of the dispute settlement mechanism, including the role of the appellate board. We want to enhance transparency in the system to improve trust and to enhance the rules by ensuring clear disciplines on distortive subsidies and state-owned enterprises. We will be taking these forward strongly. He asked about migration. I can say that we will indeed be at the upcoming intergovernmental launch of the global compact. We support this compact, both in terms of international co-operation and as a framework to help us deliver our commitments under the sustainable development goals.

Lord Soley (Lab): My Lords, in view of the rather chaotic state of the Government, this might seem a slightly premature question, but the Statement refers to various attempts to make deals with other countries on trade. There are some interesting references to how that might be done. Given that we are going to be a rule taker from the EU for quite some time—some of those rules are very good: data protection rules, for example, are of a very high standard—is it our intention to negotiate trade deals with other non-EU countries using those rules, or are we going to have different rules for every country we negotiate a deal with?

Baroness Evans of Bowes Park: Obviously, we will have discussions with different countries and work out trade deals that work best for both parties, but we have been very clear that we will not be lowering our standards in a whole array of areas, because we have been world leaders in setting them and we want to remain so.

Lord Howell of Guildford (Con): Does my noble friend agree that this summit and the Commons Statement are remarkably forward looking—although one would not guess it from some of the curmudgeonly responses we have heard? Does it not mention both future trade deals under an independent trade policy, fundamental changes in the nature of trade, which do not seem to have reached a number of people talking about the subject, new areas of technology, women's economic empowerment and, as we have already mentioned, the benefit of orderly exit from the EU? Should not excitable Brexiteers, and indeed the opposition parties, reflect a little on all that is really happening and important in the world before they try to destroy the Prime Minister's perfectly sensible compromise?

Baroness Evans of Bowes Park: I thank my noble friend. As I mentioned in my answer to the noble Baroness, a communiqué was adopted by consensus at this G20, which showed the constructive nature of the meeting. Of course, the G20 is vital to international economic co-operation. It brings together countries that collectively constitute 85% of gross world product and two-thirds of the world's population, so it is essential that we continue to work collaboratively together to tackle some of the global issues that we all face.

Baroness Goudie (Lab): My Lords, I welcome the Statement, most particularly on modern slavery. May I ask that this issue be placed on the agenda of all meetings of the Prime Minister and Ministers when they talk to other countries about trade agreements? It is vital because, although we like to think that modern slavery is ceasing, it is not: it is actually on the rise, particularly in America itself. Perhaps pressure could be put on the American Government as well.

Secondly, I welcome the Statement on women's empowerment. As we know, more and more women are going to be in difficulties with climate change, because it is women who will be most affected by climate change, in terms of their work: those who work in agriculture will have to walk much further to get water and those who have certain jobs will have to move because of climate change. Women and children will be most affected, so we need further education money, some of which should be used for education in whatever place they have to move to. It should be remembered that people do not leave where they live because they want to but because they have to, so they must be respected as refugees.

Baroness Evans of Bowes Park: I thank the noble Baroness for her comments. I am sure she will recognise that two of the issues she raised are very close to the Prime Minister's heart and that she has been a leader internationally in these areas. On modern slavery, the call to action has now been endorsed by more than 80 countries, including 13 of the G20, and we will continue to push that forward. We were very pleased with the G20 strategy as a positive step to tackling modern slavery and reducing exploitation. Indeed, it set out a number of commitments, particularly around global supply chains, where modern slavery unfortunately remains rife. The noble Baroness may well also know that Australia, for instance, is introducing legislation based on our Modern Slavery Act; so we are indeed leading the world and we will continue to push for this. As she rightly said, we will focus on empowering women and on gender equality: that remains a priority for DfID.

Lord Bridges of Headley (Con): My Lords, I very much welcome the Statement and in particular the focus on future trade arrangements. However, before

[Lord Bridges of Headley]
we get carried away with the future, will my noble friend take a moment to update the House on the progress that the Government have made on grandfathering over existing EU/non-EU trade agreements? It is imperative that this is done before we leave. Furthermore, how are we doing with grandfathering over the 750—at the last count—trade-related agreements with 168 countries that are also important to keep trade flowing?

Baroness Evans of Bowes Park: I do not believe that that kind of detail was discussed at the G20, but I am very happy to investigate further and write to my noble friend.

Lord Harris of Haringey (Lab): My Lords, I am not sure that the Leader of the House answered my noble friend Lady Smith's point about a replacement for the Galileo system, which was highly trialled as being one of the subjects under discussion. Given that, as I understand it, to have a proper global positioning system you have to have in the air around 24 satellites, how quickly is this going to happen and what is going to be the cost to the United Kingdom? What progress was made in discussing this with other nations?

Baroness Evans of Bowes Park: As I said in a couple of previous EU Statements, we are developing our own system. Galileo was apparently not discussed in the G20 plenary sessions.

Lord Berkeley (Lab): My Lords, I think the noble Baroness said that we were giving £570 million of aid to Yemen, which is obviously wonderful—but of course we are also supplying bombs that have caused the damage in the first place. There is very strong evidence that some of the arms that we export go straight to Yemen and cause the trouble that we are now trying to put right. What really happened at the discussion—the cosy fireside chat—with the Crown Prince about how not to murder people in too public a way and how to cut the arms down? I think that most other countries that were there were probably trying to avoid talking to the Crown Prince because of what has happened there.

Baroness Evans of Bowes Park: I think we need to engage with people in order to change their opinion and to put our ideas over forcefully. I do not think that avoiding difficult discussions is a particularly good way forward. As I said, the Prime Minister raised the issue of Yemen with the Crown Prince. There is a window of opportunity now, through the talks that we hope will start in the next few days in Stockholm, where we can bring the parties together. We want them to work in good faith in order to cease hostilities. As I said, we have committed £570 million since the conflict began in 2015. We are the fifth-largest donor of humanitarian assistance and we are working with our international partners to try to bring this conflict to an end—but I think that robust conversations are needed in order to make sure that these points are forcefully put across.

Lord Marlesford (Con): My Lords, although we can indeed strike new trade deals when we leave the EU on 31 March, is not the bitter truth that they remain no-deals until they can be implemented, and that they will not be able to be implemented until the implementation period ends and we have not joined the backstop?

Baroness Evans of Bowes Park: As I have said, during the implementation period we will be able to negotiate, sign and ratify trade deals, and we will be able to bring these into effect after the implementation period. If the backstop were ever to come into effect—which of course no one on either side wants—we would be able to enact those aspects of trade agreements that do not affect the functioning of the backstop, such as services, investment, financial services and digital.

Brexit: Legal Position of Withdrawal Agreement

Statement

6.50 pm

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, with the leave of the House, I will repeat a Statement made in the other place by my right honourable and learned friend the Attorney-General. The Statement is as follows:

"Mr Speaker, with your leave, I wish to make a Statement to the House. I should make clear the context in which I consider that I am to do so. My Statement today is intended to inform the debate that is shortly to commence on the Motion to approve the withdrawal agreement, and the political declaration on the future relationship, concluded with the European Union by my right honourable friend the Prime Minister.

It is important to understand how the Law Officers habitually give their advice, which may be a mixture of oral and written communications given at different times during fast-developing events. Ministers are advised by their own departmental lawyers, and the points that arise for consideration by the Law Officers are invariably limited to the relatively few of particular importance to the policy decision of the Government.

Therefore, my Statement today is complemented by a detailed legal commentary, prepared for the purpose of the debate and published this morning, which analyses the effect of the agreement as a whole. That legal commentary has been produced with my oversight and approval, and I commend it to the House as both an accurate examination of the provisions of the agreement and a helpful exposition of some of the salient issues that arise from them. There is, of course, no want of other sources of helpful commentary available to the House.

In making this Statement in these unusual circumstances, and in answering any questions that honourable Members may have, I consider that I have a solemn and constitutional duty to this House to advise it on these legal questions objectively and impartially and to place such legal expertise as I have at its disposal. The House may be sure that I shall discharge this duty with uncompromising and rigorous fidelity.

If this agreement is to pass this House, as I strongly believe it should, I do not believe it can pass under any misapprehension whatever as to the legal matters on which that judgment should be based.

It is important to recall that the matters of law affecting the withdrawal agreement can only inform the essentially political decision that each of us must make. This is not a question of the lawfulness of the Government's action but of the prudence, as a matter of policy and political judgment, of entering into an international agreement on the terms proposed.

In the time available to me, it is impossible to have covered each of the matters of law that might arise from 585 pages of complicated legal text, and no Attorney-General—certainly not this one—can instantly possess the answers to all the pertinent questions that the skill and ingenuity of honourable Members may devise. However, I am aware that there are certain parts of the agreement whose meaning attracts the close and keen interest of the House, and it is to some of these that I now turn.

The first is the Northern Ireland protocol and some of the other provisions of the withdrawal agreement relevant to it. The protocol would come into force, if needed, on the conclusion of the implementation period on 31 December 2020, unless, pursuant to Article 132 of the agreement, both the United Kingdom and the EU agree to a single extension for a fixed time of up to one or two years.

By Article 1, the protocol confirms that it would affect neither the constitutional status of Northern Ireland nor the principle of consent as set out in the Belfast—or Good Friday—agreement. The statutory guarantee that a majority in Northern Ireland would be required to consent to a change in its constitutional status as part of the United Kingdom, and the associated amendment to the Irish constitution to remove the Republic of Ireland's previous territorial claim, remain in place.

Once in force, by Article 2(1) of the protocol, the parties would be obliged in good faith to,

"use their best endeavours to conclude, by 31 December 2020, an agreement which supersedes this Protocol".

There is a separate but closely related duty on the parties under Article 184 of the agreement to negotiate expeditiously and use their best endeavours in good faith to conclude an agreement in line with the political declaration. Having regard to those obligations, by Article 1(4), the protocol is expressly agreed not to be intended to establish a permanent relationship but to be temporary. That language reflects the fact that Article 50 of the Treaty on European Union does not provide a legal basis in Union law for permanent future arrangements with non-member states.

If either party did not comply with its obligations of good faith, after the implementation period it would be open to them to bring a complaint, under the dispute settlement provisions set out in Articles 164 to 181 of the agreement. These include independent arbitration. Clear and convincing evidence would be required to establish a breach of the obligation.

If the protocol were to come into force, it would continue to apply in international law unless and until it was superseded by the intended subsequent agreement, which achieved the stated objectives of maintaining the necessary conditions for continued north-south co-operation, avoiding a hard border and protecting the Belfast agreement in all its dimensions. There is therefore no unilateral right for either party to terminate this arrangement. This means that if no superseding agreement can be reached within the implementation period, the protocol would be activated and in international law would subsist even if negotiations had broken down. How likely that is to happen is a political question to which the answer will no doubt depend partly on the extent to which it is in either party's interests to remain indefinitely within its arrangements.

Under the protocol, the United Kingdom would form with the European Union a single customs territory for goods for fiscal or tariff purposes. Accordingly, Northern Ireland would form part of the same customs territory as Great Britain, with no tariffs, quotas, or checks on rules of origin between Great Britain and Northern Ireland. However, Northern Ireland would additionally apply defined aspects of the EU's single market rules relating to the regulation and control of the supply of electricity on the island of Ireland; goods, including cross-border VAT rules; and the Union Customs Code.

These rules would be enforced as they are now, including preliminary references from Northern Ireland courts to the Court of Justice of the European Union. By these means, the need for any hard border would be avoided and goods originating in Northern Ireland would be entitled to free circulation throughout the EU single market. In all other aspects of its regulatory regime, Northern Ireland would follow the applicable UK legislation, save where these aspects were devolved. By Article 7, a Northern Ireland business would also enjoy the same free circulation of its goods throughout the United Kingdom, while its EU competitor, whether situated in the Republic of Ireland or elsewhere in the single market, would not.

I turn now to the role of Union law and the Court of Justice of the European Union under the withdrawal agreement and within the dispute settlement provisions to which I have referred. It is important to place these provisions in the context of the objectives of the agreement: the orderly exit of the United Kingdom from the EU for our citizens and businesses. To this end, following the implementation period, the agreement provides for the continued application of Union law in defined and strictly limited respects where it is necessary or desirable for legal certainty to do so.

Although we will legally leave the EU and cease to be a member state on March 29 2019, Part 4 of the agreement provides for an implementation or transition period of 21 months, which is designed to enable our people and our businesses to adjust to the changes that are coming. During that implementation period, so as to give the time, predictability and continuity that are needed, it is provided that Union law should continue to apply, and the laws, systems and institutions of the EU will have the same role and functions as before. But on the conclusion of this period, on 31 December 2020, that will come to an end.

[Lord Keen of Elie]

Thereafter, Union law and the European Court of Justice will possess a relevance in the UK only in so far as it is necessary, in limited and specific areas, for the winding down of the obligations of our relationship of 45 years. For example, the rights of our own citizens living in EU member states, and of EU citizens in the United Kingdom, are created and defined by Union law. If they are to be preserved in equal measure, and with the necessary consistency and certainty, it is inevitable that the mutually protected residence and social security rights of these particular groups of people must continue to be defined by reference to that law. These rights are provided for in Part Two.

Our citizens living in member states throughout the EU will continue, as is natural, to depend for their ultimate protection on the CJEU, while EU citizens living in the UK will look to the United Kingdom's independent monitoring authority, set up under Article 159, and to the UK courts. But they will no longer be able, as now, to require our Supreme Court to refer a question of interpretation of their rights under Union law to the Court of Justice of the European Union where the determination of such a question is necessary to resolve a dispute. Instead, pursuant to Article 158, for a fixed period of eight years only the UK courts may refer to the Court of Justice of the European Union a question of interpretation of Part Two of the agreement in the interests of achieving consistency in the enforcement of the rights the citizens of each enjoy, and while the new system is established. After that time our courts will, pursuant to Article 4.5, continue to interpret concepts and provisions of Union law, in the areas in which the agreement applies it, as they always have, and to have due regard to relevant post-implementation case law of the Court of Justice of the European Union where, for example, it may be required for the practical operation of the agreement, such as in regard to the co-ordination of social security rights for the protected EU and UK citizens.

Part Three deals with the lawful conclusion of judicial and administrative proceedings, transactions, processes and other matters that have arisen or commenced under Union legal frameworks before the end of the implementation period and to which Union law and the role of the institutions must continue to apply for their orderly disposition. It allows a four-year limitation period on the power of the Commission to refer to the Court of Justice of the European Union an alleged breach of an obligation incurred prior to the end of the implementation period.

Part Five deals with our agreed financial obligations. It provides under Article 160 for Union law and the jurisdiction of the Court of Justice of the European Union to apply beyond the implementation period only for the time and purpose of closing out the United Kingdom's financial obligations and entitlements incurred under Union law, again prior to the end of that period.

All of these are inherently time-limited functions and, once they are at an end, the Court of Justice of the European Union will have no jurisdiction in relation to disputes involving citizens and businesses in the United Kingdom.

A dispute between the EU and the United Kingdom about the systemic operation or interpretation of the agreement may be referred by either side to an independent arbitration panel, in which the Court of Justice of the European Union has no automatic role. But if the panel needs to, and a question of interpretation of Union law is relevant to the dispute, it can ask the Court of Justice of the European Union to resolve that question only. It is then for the panel to apply that interpretation to the facts of the dispute and thus decide how the dispute should be resolved.

The divorce and separation of nations from long and intimate unions, just as of human beings, stirs high emotion and calls for wisdom and forbearance. It calls also for calm and measured evaluation by the House of the terms of the separation agreement in the light of the complexity and difficulty of the task it is intended to achieve. I commend this Statement to the House".

7.03 pm

Baroness Chakrabarti (Lab): My Lords, I am of course grateful to the Minister for repeating that Statement and for advance sight of it and the position paper published today. However, all Members of this House and, even more importantly, all Members of the other place are at a major disadvantage when asking questions because they have not read the legal advice upon which the Statement is based. It is totally unacceptable that we are in this position when aspects of the Attorney-General's advice have been selectively leaked to the press over the weekend. Perhaps the noble and learned Lord can confirm that in the Attorney-General's letter to Cabinet Ministers last month, as has been reported, he declared in respect of the backstop arrangement:

"The protocol would endure indefinitely",

if trade talks broke down.

On 13 November in the other place, my colleagues the shadow Brexit Secretary and the shadow Solicitor-General were both crystal clear that what was sought was the final and full advice provided by the Attorney-General to Cabinet on any completed withdrawal agreement, made available to all Members of Parliament in good time for the vote on the deal. Offers short of that made by the Government, including the Attorney-General's Statement today, were roundly rejected and the House of Commons passed the Motion unanimously. The Government could have voted against it and did not.

The reality must be that the Government do not want MPs to see the advice for fear of the political consequences. There is no point in trying to hide behind the law officers' convention; the Ministerial Code and *Erskine May* are very clear that Ministers have a discretion, as part of that convention, to make advice available in exceptional circumstances. Surely few circumstances could be more exceptional than these. The economic, political and constitutional integrity of our country is at stake and the House of Commons is tasked with authorising the deal.

Paragraph 82 of today's position paper confirms that there is no unilateral exit mechanism from the backstop for the United Kingdom—I stress, no unilateral exit mechanism. Perhaps the Minister could point me

to a precedent for such a locked door with only one party as keyholder, which would not be us. Can he point to such a precedent in another treaty of recent times, or at all? The Government's argument that the backstop will be only temporary is a political one, and politics changes. It is not the same as a firm, legal position. But articles 1.4 and 2.1 of the backstop protocol are clear that its provisions,

"shall apply unless … they are superseded, in whole or in part, by a subsequent agreement".

Put simply, this means that parts of the backstop could become permanent even in the event that a trade deal were agreed. Can the Minister tell us of his view as to the parts of the backstop arrangement in this protocol that he considers most likely to become permanent?

There is then the impact on the Good Friday agreement. Page 305 of the withdrawal agreement refers to the need for this protocol to be implemented so as to,

"maintain the necessary conditions for continued North-South cooperation, including for possible new arrangements in accordance with the 1998 Agreement".

Can the Minister confirm what his view is about, first, new arrangements that he believes would be in accordance with the 1998 agreement and, secondly, which new arrangements he believes would not be in accordance with it?

It is of course for the other place to rule as to whether there has been an arguable case for contempt in what we on these Benches believe to be a failure to comply with the Commons Motion of 13 November. But for the sake of our economy, our jobs and our futures, all possible information should be made available to those asked to vote on this deal. The Government should do the right thing and make the advice available. With so much at stake for all our people and with eight days now before the vote on the deal, both Houses and the country deserve better from this Government.

Lord Thomas of Gresford (LD): My Lords, I too am grateful to the Minister for repeating the Statement and for giving me advance notice of what it contained. On 14 November, the Government published an explainer document in conjunction with the text of the draft withdrawal agreement. Paragraph 158 states that the agreement contains,

"assurances that we cannot be kept permanently in the backstop".

That is not the view of the Attorney-General as set out in this Statement. He says:

"There is … no unilateral right for either party to terminate",

the agreement. The Northern Ireland protocol places the whole of the United Kingdom in a single customs territory with the EU. As the Attorney-General's Statement says, that will continue to apply in international law unless and until it is superseded by a permanent agreement. Northern Ireland alone must additionally follow many of the EU's single market rules and will consequentially, whatever the DUP may say, have a different status from Great Britain.

The legal statement that has been produced today rightly focuses in particular on Article 20 of the protocol. It is not a break clause, which might in defined circumstances permit the United Kingdom to break the arrangements and walk away from the single customs territory; it is a review clause whereby one party, if it thinks fit, may seek agreement from the other that the protocol is no longer necessary essentially to protect the 1998 agreement in all its dimensions. If there is agreement, the single customs territory comes to an end but, in the absence of agreement, the dispute is to be resolved by an arbitration panel whose decision is binding on both parties. If a question of the interpretation of Union law arises, the panel cannot determine it; it must seek a definitive ruling from the Court of Justice of the European Union.

Paragraph 11 of the annexe to the legal position document suggests that the arbitration panel would be considering, for instance, whether the parties were acting in good faith or lawfully. I understand that the Attorney-General has expanded on this in another place today. I regard that as a distraction tactic. Does the Minister not agree that the real question the arbitration panel would decide is not whether the parties were acting in good faith but whether, in its opinion, maintaining the single customs territory was still necessary for the purposes of the 1998 agreement? Is not the whole purpose of the protocol to maintain frictionless trade between the whole of the United Kingdom and the EU in order to avoid a hard border in Ireland? Is it sensible to leave such a highly political and sensitive question for an arbitration panel to determine, even though it will get its law from the CJEU? If that arbitration panel says that it is still necessary to maintain the single customs territory, we remain in it. We remain in the backstop. We remain in the single customs territory. There will be no trade deals being brought into effect. Does the Minister agree that that is the legal position?

Lord Keen of Elie: My Lords, I am obliged to the noble Baroness, Lady Chakrabarti, and the noble Lord, Lord Thomas of Gresford, for their observations. I shall begin by saying clearly that I am not going to comment upon leaks to the media that may or may not have been made and may or may not be accurate, and I am not going to comment upon any correspondence that the Attorney-General may or may not have had with members of the Cabinet. Like the noble Baroness, Lady Chakrabarti, I observe that the issue of contempt is one for the Speaker and Members of the other place, and I make no further observation on that point.

The steps taken by the Attorney-General and the Government in respect of this matter are consistent with and correspond to the undertakings that were given in the other place by my right honourable friend the Chancellor of the Duchy of Lancaster.

A great deal has been said about the Northern Ireland protocol and the backstop. I begin by observing that it is the intention of the Government that the backstop should never be required and that during the implementation period we will engage in negotiation for an agreement that will mean that the backstop itself is not required. But of course there remains the possibility that it will be required; albeit it is one of two alternatives, because the alternative is to extend the transition or implementation period.

[Lord Keen of Elie]

Let us look at the backstop itself. The noble Lord is quite right to say that, on the face of it, there is no unilateral right to withdraw from the backstop. That is quite clear in the terms of the protocol to the withdrawal agreement. But that is not the end of the story by any means. There have been various suggestions that somehow the United Kingdom, including Northern Ireland, will be locked into the backstop indefinitely, for ever. The noble Baroness, Lady Chakrabarti, talked about the single keyholder being the European Union, which at its whim will simply decide to leave the door locked and walk away with us in the backstop for ever and a day. That is simply unsound as an analysis of the legal position.

Under the terms of the Northern Ireland protocol, and, in particular, Article 2, there is an express obligation on the parties to use their best endeavours to reach an agreement that will not require the maintenance of the backstop. The term "best endeavours" is well worn in both domestic and international law and imposes a strong obligation upon the parties to conduct themselves in such a way that they can realistically and reasonably achieve an alternative settlement. If that obligation is not obtempered or met by one or other of the parties simply because it wants to leave the backstop in place indefinitely, there is a dispute resolution mechanism. It is not just about acting in good faith or about whether or not the backstop is necessary; it is whether or not the backstop continues to be necessary because one or other party has not used its best endeavours to adopt or agree an alternative arrangement. That would be subject to arbitration in terms of the withdrawal agreement.

Pursuant to Article 178 of the withdrawal agreement, if there was a failure on the part of a party to obtemper the ruling of the arbitration panel, which can be arrived at by a majority, there would be the right on a temporary basis to suspend implementation of a part of the agreement that was being held in place simply because of a breach of that obligation of good faith. But it goes further than that. In the event that there was a persistent failure on the part of, for example, the EU to obtemper its obligation of best endeavours and to adopt what was plainly a suitable alternative arrangement for the Northern Ireland protocol, one would have regard to Article 60 of the Vienna Convention on the Law of Treaties, which provides that a material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part. You then look at the definition of a material breach.

So this is not a case of being locked in with the EU holding the key. It has clear, express and unambiguous legal obligations to obtemper in the context of the Northern Ireland protocol, and if it fails to do so then there are remedies available. I reiterate that it is not a case of one or other party having the unilateral right simply to walk away from the protocol. That would not be appropriate in any form of international agreement. There is a mechanism whereby the agreement cannot be abused by either party and whereby if it is abused, there can be a resolution involving termination or suspension of a particular provision.

Candidly, I do not believe that two bodies such as the United Kingdom and the European Union are going to find themselves in a situation in which, over a period of time, one or other is not going to act in good faith in the field of its international obligations and is not going to discharge its obligations to use its best endeavours to arrive at an alternative agreement.

I hope that that goes some way to meeting the points raised by the noble Baroness, Lady Chakrabarti, and the noble Lord, but I emphasise that, ultimately, I am seeking to address the legal issues that arise in the context of the withdrawal agreement and, like the Attorney-General, I am perfectly prepared to answer any question from this House on the law—albeit they may be better informed by other and better lawyers inside and outside this House. I have no difficulty in responding, in so far as I can, to legal issues raised with regard to the withdrawal agreement. The Attorney-General took exactly the same position in the House of Commons. He recognised his duty not only in government but to the House to give such legal assistance as he could to the House to resolve any issues that may arise in this context. That is where we stand.

I just add this. After 45 years, clearly there are issues to be worked out between the parties, and the withdrawal agreement will allow for the necessary time and legal means for that process to unfold in an orderly, peaceful and sensible way. I reiterate that I am at the disposal of the House to answer questions of law, although they might be better answered by other Members of the House. Thank you.

7.21 pm

Lord Morris of Aberavon: My Lords, I speak as a former Attorney-General. I adhere to the convention that it is not in the public interest to disclose the fact or the content of the law officers' advice. However, there have been exceptions, such as the debate on the Maastricht treaty and the exceptional circumstances of the Chilcot inquiry. We are grateful for the 43-page document setting out the legal position, but I ask specifically whether, in the public interest, without going into detail, the Attorney-General has reserved disclosure on any matters that he has advised on. Secondly, will the Minister confirm that there is nothing in the document incompatible with the advice that the Attorney-General has given to Her Majesty's Government?

Lord Keen of Elie: My Lords, I fear that to answer the first question would be to breach the relevant law officer convention, but with regard to the second, let me be clear: there is no inconsistency between any point made in the legal commentary and anything that might or might not have been said in government.

Lord King of Bridgwater (Con): My Lords, does my noble friend agree that there is a very good reason for the convention that advice from the Attorney-General can be kept confidential to the Government? Nobody who voted on that proposal for a contempt Motion has the slightest idea whether some of that advice might be advantageous to the people against whom—or with whom—we are negotiating. I do not know how

many noble Lords have listened in the past two hours to the extraordinary exposition by the Attorney-General—I think, quite without precedent—in which he undertook to answer any question from anybody in the House, seeing himself as responsible not merely to the Government but to Parliament, to the Commons, in his particular position. He discharged it effectively, and nobody who voted in the original vote that the papers ought to be published had the slightest idea that that was how the Attorney-General would approach his responsibilities.

Lord Keen of Elie: I thank my noble friend for his observations and entirely concur. I emphasise a point he touched on: we are engaged in continuing negotiations with the European Union to determine our future relationship. It would not be appropriate for us to disclose matters that would impact on the conduct of the negotiations, any more than we might expect the European Union to disclose to us the confidential legal advice that it may or may not have received in conducting those negotiations.

Lord Butler of Brockwell (CB): My Lords, in the giving of advice in any letter or papers that the Attorney-General submits to the Cabinet, does not good government require complete candour not only on the strengths but on the vulnerabilities of the Government's position? It would be impossible for the Attorney-General to write with such candour if he were aware that his advice would be published.

Lord Keen of Elie: I am obliged to the noble Lord, who draws on a great deal of experience where these matters are concerned. I entirely agree with his observation: it would render the law officers' position almost impossible when advising government fully, candidly and without reservation, if it was felt that that advice was then to be put into the public domain—let alone put into the public domain when we were carrying on relevant negotiations such as those we are carrying on with the European Union.

Lord Campbell of Pittenweem (LD): I regret to find myself in disagreement with the noble Lord, Lord Butler. I come back to the question of convention. No one can be in any doubt of the significance of the events that we are living through at the moment. Casting back in my memory, the only similar occasion I can think of is the decision to take military action against Saddam Hussein. On the eve of the debate in the House of Commons the noble and learned Lord, Lord Goldsmith, who I see in his place, answered a Written Question from—if my memory serves me right—the noble Baroness, Lady Ramsay of Cartvale, setting out the legal basis and justification for military action. Surely when the circumstances demand it, the convention can be dispensed with.

Lord Keen of Elie: With respect to the noble Lord, the circumstances in which the totality of the advice of the noble and learned Lord, Lord Goldsmith, came out were rather more complex than that, but let us address the immediate issue. What he was considering in that context was the lawfulness or unlawfulness of the action contemplated by the Government. That is not the position that pertains here.

Baroness Bryan of Partick (Lab): My Lords, in 2012 in Scotland we faced a huge decision—perhaps not on the scale that we face now—but the then First Minister claimed that he had received legal advice from the Lord Advocate on the question of an independent Scotland's relationship with the EU. He used the Ministerial Code to refuse to give details of that legal advice. Ruth Davidson, leader of the Conservative Party in Holyrood, said of this excuse that the,

"people of Scotland needed the truth".

Does the Minister agree that a similar statement could be made on our behalf here today—that we should understand the nature of the advice provided?

Lord Keen of Elie: With respect to the noble Baroness, the then First Minister's record on when he did and when he did not receive legal advice from the law officers was somewhat uncertain, if I can put it in those terms. I therefore do not believe that any of that sets a precedent for the present situation.

Lord Mackay of Clashfern (Con): My Lords, it has been the legal position for many years that when a legal adviser advises a client, that advice is confidential. It is not for me to criticise what went on earlier in the other place, but it seems to me that it had forgotten that the Attorney-General has an absolute duty to advise the House of Commons. It could have asked him to do so and answer any questions of law that it could think of putting to him. That is the correct way to deal with such a matter. Reference has been made to what happened in the past, which I believe was very much in accordance with that.

In my view, it is impossible as a matter of law for the legal adviser to say that he will publish legal advice which has been given to someone else in accordance with an obligation of confidentiality. So far as the Government and Parliament are concerned, that is no disadvantage, because they have the advantage that the Attorney-General is the adviser of the House of Commons—as he is the adviser of this House also. He is bound, in connection with that advice, to answer any questions that may be put to him on the relevant law. I cannot see any better system than that for reconciling the two fundamental problems about the position of a legal adviser.

The Attorney-General is responsible for keeping that confidentiality unless the client thinks the advice can be disclosed without any problem, but that depends on the nature of the arrangement. So far as I am concerned, by far the best arrangement is that the Attorney-General personally comes to the House of Commons and gives his advice, answering any questions that are required. That is what happened, as far as I understand it, today. There are enough problems with this Brexit business, which we are going to discuss over three short days in due course, without trying to complicate them with material about the conventions of the UK that, as far as I know, have lasted a long time and been extremely satisfactory.

Noble Lords: Question!

Lord Mackay of Clashfern: In my view, the fact that the House of Commons is entitled to get any advice from the Attorney-General that it wishes is the answer to this question.

Lord Keen of Elie: My Lords, I am obliged to my noble and learned friend, and I entirely concur with his observations. As I sought to indicate earlier, as a law officer I am willing to take questions on matters of law that the House deems it appropriate to render to me, albeit I understand and appreciate that they may have better sources of legal advice than me. Some of your Lordships who are aware of the proceedings in the other place will know that the Attorney-General made a clear and unambiguous undertaking to Members of that House to fully, properly and clearly inform them on legal questions that they pose with regard to the withdrawal agreement, and he would do so with fidelity.

Lord Kerr of Kinlochard (CB): My Lords, may I take the Minister back to his answer to the noble Lord, Lord Thomas of Gresford, who alluded to the statement in paragraph 158 of the explanation document published on 14 November? The Minister's answer built quite a lot on "best endeavours", which in diplomatic parlance is an oxymoron. The Attorney-General seems to me to have thrown a lot of very honest and clear light—in the memorandum, in his Statement and in what he said to the House after his Statement—on what is to me a desperately humiliating proposal.

If we were in the backstop, we would be observing the common external tariff and common commercial policy of the EU, policies in which we would have no say. The backstop makes clear that we would be informed about any changes in the tariff. We would be informed—not even consulted—about any changes in our external tariff. The potential longevity of the backstop is therefore quite an important issue. I thought the Attorney-General was very honest when he said it was a calculated gamble and he did not believe that we would be likely to be trapped in it for ever. In other words, he accepted the possibility that we might be trapped in it, wholly or in part, for ever. I myself would not wish to run that risk. The French have a saying, "Nothing lasts longer than the provisional". Would the Minister like to try to give a more complete answer to the question from the noble Lord, Lord Thomas? I do not think "best endeavours" is quite enough.

Lord Keen of Elie: I thank the noble Lord for his observations. He goes some way towards explaining why we arrange for these agreements to be interpreted by lawyers, not diplomats. Of course entering into something such as the Northern Ireland protocol involves an element of political judgment; we have to accept that, and the Attorney-General was entirely candid about that. There is a political judgment to be made. There is in the agreement no express right of unilateral withdrawal, and we accept that as well. However, if one or other party decides not to obtemper their obligations, there are mechanisms to address that.

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, I am sure the Minister will accept that this matter has major implications for Northern Ireland as an equal part of the UK and that the "best endeavours" that are spoken of today bring little comfort to us. So that we are not left to rely upon leaks from Cabinet papers, will the Minister confirm that the Attorney-General's legal advice contains a warning on the use of the Irish backstop, in that it will continue unless and until a trade agreement between the UK and the EU supersedes it?

Lord Keen of Elie: I thank the noble Lord for his question but I am not in a position to say that the Attorney-General has or has not given legal advice on any issue to the Cabinet.

Lord Goldsmith (Lab): My Lords, I do not intend to come back on the question of whether or not the Attorney-General's advice should be disclosed; my views on the undesirability of that in the past are well known. I want to come on to the question of substance, which is important. The Minister has talked about the backstop and how it may be avoided. Could he confirm that the backstop will come in unless there is a concluded agreement? Could he confirm that, as the Statement by the right honourable Attorney-General says, it would continue in force,

"unless and until it was superseded by the intended subsequent agreement"?

That corresponds with the provisions of Article 1.4 of the protocol and indeed of the recital. Does the Minister agree that there are obstacles to avoiding that? He says you can use the "best endeavours" obligation. The right honourable Attorney-General said you can prove that only with "Clear and convincing evidence". Does he agree with that? Does he also agree that simply finding a note dropped by President Macron saying "I don't want to do a deal with the UK" will not satisfy that requirement?

Could the Minister please explain how the arbitrators have the power to impose a deal on the EU or the UK? It is one thing to say that someone is in breach of a provision; it is another entirely to impose on us and the EU an agreement that we have not reached. I go back to the words,

"until it was superseded by the intended subsequent agreement".

I could find nothing in the 500-odd pages saying that the arbitral panel has the power to impose such an agreement. I see nothing that says anything other than that if the dispute is there, it can be passed to the arbitral tribunal. But how does the arbitral tribunal impose that, and why does the protocol state that it remains in force unless and until it is superseded by a subsequent agreement, rather than its saying unless and until it is superseded by a subsequent agreement or a decision of the arbitral tribunal?

Lord Keen of Elie: I thank the noble and learned Lord for his observations. His last comment is not the position under the agreement. It is not for the arbitral tribunal per se to simply impose an alternative agreement to the backstop, so let us clear that out of the way.

Let us look at the terms of the Northern Ireland protocol itself. If the backstop comes in, it will continue until superseded by an alternative agreement that the parties consider renders the existing backstop in the protocol no longer necessary. That is perfectly clear. It does not address the situation in which one or other of the parties simply fails to obtemper their legal obligations under the Northern Ireland protocol, including the obligation to use their best endeavours to arrive at a new arrangement in place of the existing backstop. In that event, the matter will ultimately go to the

arbitral tribunal. Pursuant to Article 178, it has certain powers. It can impose financial penalties, just as the EU can impose financial penalties on a member that does not obtemper its obligations under EU law. The arbitral panel will have the power to impose financial obligations on parties who are in breach. If they do not then obtemper their obligations, it has the power to allow for the suspension of an obligation under the terms of the protocol.

These are temporary measures that would be taken to ensure that a party ultimately performs its obligations under the treaty. Failing that, there is the issue of Article 60 of the Vienna convention. However, I do not believe that anyone anticipates that we are going to go down that road. It is very clear that, for political reasons, it would not be in the interests of the EU, any more than those of the United Kingdom, to prolong the backstop in the Northern Ireland protocol any more than is absolutely necessary to maintain the integrity of the Good Friday agreement and the open border on the island of Ireland.

Lord Howard of Lympne (Con): My Lords, the noble Baroness, Lady Chakrabarti, asked my noble friend whether he could identify any precedent for a country handing over such a wide range of vital issues affecting its national interest to a panel of arbitrators. Does he have an answer to that question?

Lord Keen of Elie: It is not uncommon for very material issues pertaining to the territorial integrity of a country to be put into the hands of a third party. I cite the recent case of Bolivia and Chile before the International Court of Justice, where judgment was delivered on 1 October this year, with regard to the failure to agree over the issue of access to the Pacific.

Sport: Drugs

Question for Short Debate

7.41 pm

Asked by ***Lord Addington***

To ask Her Majesty's Government what steps they are taking to prevent the use of image and performance enhancing drugs in amateur and junior sport.

Lord Addington (LD): My Lords, I put down this debate a good few months ago. The matters under discussion, and certainly my awareness of them, seem to have grown between then and now. I initially spoke about amateur sport and drug taking because I was receiving increasing amounts of information that amateur sport, and particularly rugby union, was finding an increasing number of people who were testing positive, particularly in the lower grades. I may be being a little unfair to my own sport, in which I still occasionally run out—although I have a nagging suspicion that the games I am playing in now are probably not the primary target for drug misuse at any level. However, it is a sport that encourages body mass, dynamic explosion and strength, as these are huge advantages when it is played at a competitive level.

The attitude of the sport seemed to be that it was not a big problem because it was all about gym bunnies who were into building themselves up, but that it was extending testing down the leagues. There are all sorts of implications of that: if it is only a few people and they are casual players, why are they putting in testing further down? Clearly there is a danger that drugs are getting into types of amateur sport. Some people have taken it seriously and put good programmes in place. Canoeing, rowing and cycling have been recommended to me and have been given a pat on the back from UK Anti-Doping.

As this debate approached and I started asking around for briefings, I got a series of communications from UKAD which made me think that my original title might be a little narrow. The only change I felt I could make was to add in image-enhancing drugs. I am talking about amateur sports, but it is quite clear that I am catching the edge of a bigger problem. Steroids, and other drugs like them, have become part of a fashion revolution to get people bigger and stronger. The easiest way to do that, and to enhance your image, is to use steroids. This affects sport in a certain way, but the evidence is incredibly difficult to gather. By its nature, these are amateur sportsmen who are not, in most cases, contractually bound. You cannot get at them; you cannot test them all the time; and a lot of the evidence is anecdotal.

What we have discovered is that the availability of performance-enhancing and image-enhancing drugs is incredibly wide—I would say almost endemic. You cannot go anywhere near this field without finding them available. I asked, but got very little support on, a question about the actual medical damage done to people who take them. When doing my own research, I discovered an article on a website which happened to be linked to somebody who was supplying drugs. It was very informative and said that oral steroids, in particular, are very bad for your kidneys and encourage cirrhosis of the liver: it is not surprising that they damage you. As I was going through the site, little flashes were coming up saying that somebody had purchased. There were three purchases in the London area in 10 minutes. So what comes across is how readily available these things are—and how it is almost impossible to find out what is going on. It is getting more complicated all the time; that is the problem we are hitting.

What can the Government do to support these sports and their governing bodies? It is clear that, at the moment, the huge amounts of money and effort that would be required for a coherent strategy are simply not available. Clubs often rely on amateur structures and they do not have the money to undertake coherent testing. They are dependent on the governing bodies, which would rather spend it on something else. How far down do you go? If casual use is coming in, what do you do? This is becoming incredibly difficult to play out. The only people who can take a coherent position at the top—on education, for a start—are the Government, and more has to be done.

There are lots of lists of nasty side-effects from acquiring muscle mass by using steroids and the other drugs that come into this. Acne is common for males

[Lord Addington]
and females; hair loss on the head; shrinkage of the genitals—not great fun; and the development of breasts. These are possibly not the best things to enhance your image. In the long term, and more seriously, there is an increased danger of heart attacks and kidney and liver failure. But there is still a lack of information behind simple statements that this is happening and this is nasty. We know that this type of campaign has to have something more behind it. You have to have somebody telling you that there is more to this and some way of enforcing compliance with sticks or carrots. At the moment there seems to be a combination of: "It's somebody else's problem; it's not really us; we haven't found anything"—though all the information suggests that you are not finding it because you have no way of testing and nobody has the incentive to look that hard and find out what is going on—and, "It's too difficult". Unless more information is made available about the damage being done, such as platelets in the blood causing heart attacks and strokes, you will not have an effective tool to get on the education pathway.

Another problem is that many of these drugs are taken by injection. All the problems associated with injecting any form of drug then come into play. Hepatitis C, HIV, you name it: everything that is tied in with needle sharing is there. There are also behavioural problems— "roid rage", I think it is called—and a great increase in the amount that people drink when they take steroids. So it is a confused picture.

I now come to probably the only bit that might get reported, which is the fact that gym culture is being personified and built up in the public mind. There comes a time when certain TV programmes capture the national zeitgeist or are seen to be the symbol of everything that is wrong; I am afraid that "Love Island", on ITV, seems to be the one that has got us here. So far, we have had complaints here, which have been followed through and acted on, about selling plastic surgery and excessive smoking on the programme. But it also personifies the gym and "body beautiful" culture that we have been talking about. UKAD wrote to the producers on 2 August of this year to ask what they were going to do about it, because one contestant on the programme, Frankie Foster, had been banned from playing rugby because of a doping offence. To date it has still not received a reply. Surely the Minister can tell us what the Government are doing to encourage those TV producers and everybody else to intervene there.

If you are saying that it is great to go for the gym body look, with everything else—often you will have to take other drugs to cover up some of the side-effects of the steroids or other bodybuilding drugs you are using—surely that cannot be right. We are just starting to see the tip of this situation. Can we please find out what the Government are doing to try to get further into it?

7.51 pm

Lord Moynihan (Con): My Lords, I thank the noble Lord, Lord Addington, for raising this vitally important area of key sports policy.

Your Lordships may recall that at the time of the London Olympic and Paralympic Games in 2012, Tina and Chris Dear set up the Matthew Dear Foundation. Tina Dear focused on the fact that any parent with a child who takes anabolic steroids should be aware that the drugs can be highly dangerous and addictive. Long-term use can lead to aggressive behaviour, mood swings, liver or kidney tumours, strokes, heart attacks, or worse. Tina Dear knows just how devastating the drugs can be. Her son Matthew was 17 when the young cadet started taking steroids in an attempt to "bulk up" and become a Royal Marine, but within weeks, he was dead. While the post-mortem was inconclusive, Tina believed that the muscle-building drugs, which he bought illegally, caused his brain to swell. He died just three months before he could take the selection test.

There have been many such deaths: drugs taken to enhance performance without proper medical supervision, taken through drug rings around body-building gymnasiums. Tina Dear said:

> "It just makes you realise that the message needs to be put out there that these drugs are dangerous. A lot of these youngsters who take steroids don't see them as drugs—they think they're some kind of supplement and don't see them as dangerous. It's important to raise awareness and show these youngsters they can still achieve the body they want the healthy, natural way, without steroids".

The noble Lord, Lord Addington, has highlighted the importance of that issue. Tina and her husband now run the Matthew Dear Foundation, which does vitally important work for hundreds of young people who have suffered as a result of taking a range of performance-enhancing drugs.

I will pick up on one of the points the noble Lord, Lord Addington, mentioned, by looking at the academic work that has been done to emphasise just how serious this issue has become. The use of anabolic-androgenic steroids—AASs, as they are called—by professionals and recreational athletes is increasing, not just in this country but worldwide. The underlying motivations are, as the noble Lord said, mainly performance enhancement and body image. AAS-using athletes frequently present with psychiatric symptoms and disorders, mainly somatoform and eating disorders, but also mood and schizophrenia-related disorders. They are also unfortunately linked to psychotic behaviour the length and breadth of this country. In fact, AAS use is no longer limited to a small number of athletes, bodybuilders or weightlifters, but currently extends to the general population, including young people, probably because of the highly competitive nature of school and college sport. In the States, Welder and Melchert reported that over half a million high school students have taken AASs for non-medical purposes. This raises serious concerns regarding the numerous adverse effects of these substances.

There are many such cases. The facts, as evidenced by the Advisory Council on the Misuse of Drugs, are that steroids have increasingly become the key issue for young men, who have gained access to them over the internet. The council has gone so far as to call for a ban on their sale from the hundreds of overseas websites that deliberately target users across Britain. Chief drugs adviser Professor Les Iversen says:

> "At the moment, information is much too easily available. The material available online is often contaminated",

which of course is dangerous in its own right. If you search online, as the noble Lord, Lord Addington, has, and I did earlier today once again, you will see endless offers. As Professor Iversen says, a ban on importation,

"would have a considerable dampening effect on demand".

I understand that it may be difficult to enforce, but it would act as a simple deterrent.

These steroids are manufactured to mimic the effect of the male hormone testosterone, and are taken to increase muscle mass and athletic performance. As I said, they can be highly addictive, and many of the performance-enhancing substances can also have serious side-effects, including infertility, an increased risk of prostate cancer, splayed teeth, high blood pressure, heart attacks and strokes, and tumours. They can also cause mood swings and hallucinations.

Even here, figures from the Crime Survey for England and Wales, published by the Home Office, estimate that 50,000 people in the UK use steroids to train harder and quickly build muscle. But researchers quite rightly claim that the real number could be far higher, because many people do not openly admit to using them. The real growth has come in young users who want to improve their body image, and steroids sit in the legal grey area between a medicine and a banned recreational drug.

Again, that point of body image was picked up by the noble Lord, Lord Addington, when he referred to the 2018 season of "Love Island", which featured, as he mentioned, Frankie Foster, a former rugby player, now a fitness coach and a star on the show, who was previously banned for 18 months from his sport for having tested positive for steroids. Television has a vital role to play, and a responsibility. It must understand that the impact this programme unwittingly has to date is to develop role models not to inspire good example, but in this case to damage lives.

To come back to sport, the rugby union point is important, and it is the area where we have the highest number of image and performance-enhancing drugs—IPED—cases. UKAD is doing excellent work in this area. It recognises that a key area in the anti-doping landscape is the risk and vulnerability surrounding young athletes transitioning to senior sport from the amateur ranks. Of course, many of those in transition are in higher education or universities, and too often, university gyms are the breeding grounds for banned performance-enhancing drugs. Many are unsupervised, with poor educational programmes, easy access to the drugs, a near total absence of spot testing, a lack of education and poor medical advice. They are the breeding grounds for far too many young people who want to migrate into the professional ranks of sport. They are also exceptionally dangerous, because in many respects, the lack of education means that the opportunity to access contaminated drugs is increased.

UKAD has a very good programme, called the Clean Sport Accreditation Scheme, which recognises higher and further education institutions that meet a set of minimum standards towards their anti-doping obligations. But only three universities are currently fully accredited, with an additional 25 colleges and universities in the accreditation process. I ask the Minister—not necessarily in his response, but following this debate—to look at whether more work can be done and more funding supported and directed towards this initiative, because there is a need to prioritise the work that UKAD is doing with universities in this area.

I have often argued—and I take this opportunity again to make the point—that using performance-enhancing drugs in sport should be a criminal offence, and should apply as a criminal offence only in circumstances where an athlete knowingly takes a prohibited substance with the intention of enhancing his or her performance, or where a member of an athlete's entourage encourages or assists an athlete in taking such a substance. Both the criminal offence and any sporting sanctions should apply simultaneously. This aims to enhance drug-free sport and create an awareness among young people that, if they start taking performance-enhancing drugs, they face potential criminal sanctions. It also would create a level playing field among athletes and would move English law into line with other European countries and fully recognise—as many people on all sides of this House recognise—that doping in sport to achieve competitive advantage through cheating is no different to defrauding a fellow athlete and should be covered by the same criminal sanctions as those applicable to fraud.

Finally, I ask the Minister wherever possible to highlight the importance of clean athletes being party to this debate. Beckie Scott, athlete committee chair for the World Anti-Doping Agency—WADA—claimed recently that she was bullied by Olympic movement officials at the meeting that saw WADA controversially reinstate Russia. It is vital that there be no opportunity, ever, for bullying members of athletes' commissions at whatever level—governing bodies, the International Olympic Committee or indeed WADA. I hope the Minister can fully support Beckie Scott and, through her, all athletes who want to participate fully and to be listened to in this critically important debate.

8.02 pm

Lord Goddard of Stockport (LD): I too thank my noble friend Lord Addington for instigating this debate. I will say at the outset that I am not going to use acronyms if I can help it.

I visit many schools and academies delivering the Lord Speaker's Peers in Schools outreach programme, and one of the questions I am asked by young people is: what is the relevance of this House? It is shown in debates such as this and other debates that touch on the uncomfortable aspects of society—subjects that Parliament tends puts in the "too hard to do" box, which we take on and deal with. An example was last year's debate on sexual abuse in sport; a difficult debate to listen to. In that debate, I highlighted the cases of footballers—David White, Paul Stewart and Ian Ackley to name but three—who had come forward and told their stories. Following a mammoth police investigation, the instigator Barry Bennell received a 30-year prison sentence. We can help to make a difference.

Today we ask Her Majesty's Government what steps they are taking to prevent the use of image and performance-enhancing drugs in amateur and junior sport.

[Lord Goddard of Stockport]
The reasons for the use of such drugs are many and varied for our young citizens: poor self-image; the need to fit in; peer pressure from the constant barrage of instant news from Twitter, Instagram, Snapchat and other platforms I have probably never heard of; the need always to feel perfect, with perfect body image, whatever that is—I have absolutely no knowledge. In my view, "Love Island" has exacerbated the situation, as has previously been commented on. Allowing someone who has been convicted of a drug offence to portray on television to millions of impressionable young people a vision of what they mistakenly think they should look like in order to be accepted in today's society does not create an appropriate role model. That needs to be dealt with.

There was a very interesting debate on knife crime last Thursday in this House. The noble Lord, Lord Harris of Haringey, told us:

"In 2010, £1.2 billion was spent across the country on youth work and youth services. Last year that had fallen to £358 million: a 68% cut. Other public services, such as probation, that help to reduce the risk of crime or support young people have suffered similarly, as has the funding available to charities and the voluntary sector. Our social fabric is being stretched so thin that it has become almost transparent".—[*Official Report*, 29/11/18; col. 773.]

It cannot be a coincidence: along with the reduction in support for young people, the use of image and performance-enhancing drugs and steroids has doubled or even trebled over the last few years. Our young people need real support, positive role models and a strategy that goes right back to the heart of family life and self-worth; in short, a truly holistic approach, not just a sticking plaster of one short-term fix after another.

Linford Christie, who served a two-year drugs ban from athletic competition, said that athletics,

"is so corrupt now I wouldn't want my child doing it".

That is a damming indictment, one we must challenge and change.

The BBC did a survey of 1,000 members of sports clubs and the results are truly frightening. Some 26% say they have previously consumed prescribed medications such as cortisone injections, or used asthma inhalers, to support their performance. One in seven, 14%, of sports club members say they have used recreational drugs for the same purpose, while 8% say they have used anabolic steroids. A sizeable proportion of sports clubs report that performance-enhancing drugs are frequently used and easily available. Some 50% of sports club members agree that taking substances which improve performance is widespread among people who play competitive sports, while the same proportion agree that performance-enhancing drugs are easily available for people who play sports regularly. To me, this survey is doubly worrying. It is not only about the percentages of drugs being used but the environment in which they are used, in the heart of our communities: sports clubs—places where our young people should be safe while taking their first steps in sport they love.

However, the problem is much larger than that. We usually associate certain sports with drug-taking: athletics, cycling and weightlifting. But now you can add to that list golf, show-jumping and—to the disgust of the noble Lord, Lord Addington—rugby. And the evidence jumps to another level: orchestra musicians are even taking blockers to prevent stage fright.

It is not too late to intervene: we must deal with the issue of steroids freely available online and the seemingly endless supply of drugs available to people of all ages, in particular impressionable young citizens who see it as the shortcut to success. I meet lots of young people who are fantastic, clean and desperate to do well in life and in sport, but we have too many too close to the edge. Now is the time for Government to step up and give them a real chance.

8.07 pm

Lord Griffiths of Burry Port (Lab): My Lords, we can only be grateful to the noble Lord, Lord Addington, for his perseverance in this cause. I have had occasion, as others have, of reading the Library briefing, and the piece de resistance was the debate in late 2015 when the noble Lords, Lord Addington and Lord Moynihan, and the noble Baroness, Lady Grey-Thompson, laid out the case perfectly. In a sense, all we need to do is resurrect what was said then in such an authoritative way. The Government in their response made it clear that they are aware of the seriousness of this question and are anxious to address it as creatively and as generously as they can.

In reading about all this I did not want to go over the ground so ably covered before me in so far as this problem affects sporting practitioners. For the very first time in my life, I read one of the annals of epidemiology—the things you get drawn to by membership of this House. One long article states that this is the very first meta-analysis of the global lifetime prevalence rate of anabolic-androgenic steroid use. I cannot oblige the wish expressed by the noble Lord, Lord Goddard, to avoid acronyms. I think that AAS is what that will have to be from now on.

However, the findings in that article suggest that the use of AAS is more prevalent among teenagers than among those older than 19 and that non-medical use of these steroids has steadily increased in recent years. Indeed, it has become a major global public health problem that requires the attention of policymakers and researchers. However, it is the spread from the focused sporting evidence to something rather more general that has really caught my attention.

When looking at the material put our way by UKAD, which is concerned with the use of drugs in sport, I found myself looking most specifically at the fact that it has found users as young as 14 indulging in these substances. The fact that we cannot yet control the internet sufficiently makes it possible for young people to access these drugs. As the noble Lord, Lord Addington, said, injecting has become normalised.

It is disturbing that UKAD sets out the programmes for dealing with the problem. For the 16 to 24 age group, there is a programme with gyms and leisure centres in mind; for the 16-plus age group, there is a programme with university and colleges of education in mind; for those aged 14 to 18, there is the Clean Games Policy, for use in major sporting events; for children of 11 to 16 years of age, there is Think Real, delivered in PE lessons with the collaboration of Sport England; and for those aged 10 to 14, in years 7 to 10 in

schools, the Get Set for the Spirit of Sport material is taught in the classroom. What worries me is the fact that all those strands of educational initiative have clearly been devised in response to what is perceived as a prevalent problem.

I was surprised to see turn up on my desk material from the Welsh Rugby Union, with its anti-doping protocol and guidance. We know that rugby lends itself to a massing of the body, and there is a great temptation for those who want to get on in the professional game to resort to that. However, in its protocol and guidance the WRU targets under-15 squads of amateur players, who are beginning to get the idea that using these drugs and massing their bodies in this way will help them when one day they turn to a more representative form of playing the game.

Out of all this, and without repeating what others have said, I have become aware of something that I want to leave as my contribution to this debate. I have been standing in this position at the Dispatch Box for only a few months and we have discussed doping in sport more than once, as well as how it affects children. Only a year ago, the Minister and I, together with my dear friend Wilfred—my noble friend Lord Stevenson—were engaged endlessly in discussing the Data Protection Bill, which became an Act. Significant parts of that legislation had children and the internet in mind, and a number of amendments were framed to help deal with the problem of children being exposed to possible misuse of the internet.

Only a month ago, I stood here talking about children and gambling, and the way that the advertising industry and television target children by exploiting their interest in sport and other events. I think that the number of children quoted was half a million. So children feature across all those fronts. We have also just heard about a debate that took place here last week on the subject of knife crime—again, involving teenagers—and only yesterday the head of Ofsted talked about obesity among children, as well as knife crime and bullying.

In all those things, I see a common thread. There is a need to take the specificity of this debate and incorporate it holistically with all the other concerns that have been expressed in this Chamber in recent times, recognising that perhaps the time has come for us to look generically at how the needs of children are addressed. The Children Act 1989 was a great step forward and a real turning point, and it seems that we are now ready to look generically at this question all over again. Therefore, I am delighted that my noble friend Lady Armstrong of Hill Top has tabled a debate for two weeks on Thursday that will simply ask us to look at the state of young people in our society today. It sounds vacuous and general but it could be the key to entering this very necessary area of consideration, looking at the needs of children in general across these fronts so that they might again just enjoy being young.

8.15 pm

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, I too thank the noble Lord, Lord Addington, for introducing this debate on image and performance-enhancing drugs. I think that it has moved on beyond that to a certain extent, and the noble Lord, Lord Griffiths, ended up with a more generic view of children. I shall come back to some of those points.

This is a reasonably easy debate to answer because I agree with practically everything that all noble Lords have said. I hope that I shall be able to show not only that we agree with many of the points that have been made but that we are doing something about them. When I say we, I mean we as a Government, because UK Anti-Doping is an arm's-length body of the DCMS, which is how we promote work in this area.

Like all noble Lords who have spoken, we recognise how important it is not only to protect the integrity of sport, which includes our commitment to keeping sport free from doping, but to protect people from the negative influences outside sport that could cause them harm. As the noble Lord, Lord Addington, mentioned, many young people who watch shows such as "Love Island" could be influenced by images of—how shall I put it?—apparent aesthetic perfection. These unrealistic portrayals of how the average healthy person is supposed to look could well be a reason for the increase in the use of image and performance-enhancing drugs. I will come back to "Love Island" in a minute.

The growth of social media has played a part in making young people feel under more pressure than ever about how they look and to perform at the highest level possible. UK Anti-Doping, an arm's-length body of DCMS that is widely thought of as one of the world's leading national anti-doping organisations, is working closely to combat this new trend. As has been said, the majority of anti-doping rule violations in the UK arise as a result of IPED use, particularly steroids. Of the 27 violations published by UKAD, 19 were related to IPEDs. Rugby union players were involved in the largest number of cases, which was as many as boxing and athletics combined.

Tackling the use and sale of IPEDs is part of the Home Office drug strategy, which states that it will take,

"coordinated action working with key partners … and independent experts to better understand the IPED using population".

In relation to the points made by the noble Lord, Lord Addington, it goes on to say that it will,

"raise awareness of the risks of IPED use, including the spread of blood borne infections; support local areas to respond effectively; and take action as necessary to disrupt the supply of IPEDs and any associated criminality".

In direct answer to the Question on the Order Paper from the noble Lord, Lord Addington, perhaps I can mention some of the measures being taken by UKAD to tackle the use of IPEDs through its various educational programmes. Earlier this year, DCMS led a tailored review of UKAD. One of the outcomes involved UKAD looking further into the health harms associated with the abuse of IPEDs. This was movingly mentioned by my noble friend Lord Moynihan, who gave a specific example. I am therefore delighted that we managed to secure additional funding of £6.1 million to help UKAD carry out the recommendations in the tailored review.

[Lord Ashton of Hyde]

Education and promoting a culture of clean sport in youth sport is important, as was mentioned by the noble Lord, Lord Griffiths. UKAD had a presence at this year's School Games, attending with national trainers to educate on the values of sport, anti-doping rules and responsibilities, and to give young athletes an insight into the testing process via a mock testing scenario. In accordance with UKAD's clean games policy, all British athletes attending the Youth Olympic Games and the Commonwealth Youth Games undertake mandatory specific education to support them through the anti-doping procedures during major games. As the noble Lord, Lord Griffiths, mentioned, UKAD has other schemes for even younger audiences, such as Get Set for the Spirit of Sport, a classroom-based education syllabus for children aged 10 to 14, and Think Real, a more advanced scheme for 11 to 16 year-olds. I take the point made by the noble Lord, Lord Griffiths: the fact that we are having to provide such schemes for children of that age is itself worrying.

UKAD offers a free online accredited adviser course, which is promoted through the national governing bodies, to provide those working with junior and amateur athletes the training required to be able to support athletes and their coaches in their anti-doping responsibilities. For a broader audience, Clean Sport Week in May was a public awareness campaign with the objective to educate athletes on the risks of using sports nutrition supplements. As has been highlighted in the debate, uneducated use of supplements is prevalent in amateur sport and presents heightened risks to amateur athletes. The campaign also used social media to better engage younger athletes. It was a partnership with national governing bodies and sports bodies, including the Rugby Football Union.

Several noble Lords, including the noble Lord, Lord Addington, and my noble friend Lord Moynihan talked about gym culture. UKAD recently agreed a research project partnership with ukactive, aimed at giving a clearer understanding of image and performance-enhancing drug use in gyms and leisure centres.

We believe that responses and action from a range of stakeholders are required to make an impact. That is why the Government have set up a working group for agencies to come together for the co-ordination of a prevention strategy. The group has a strong cast list, including devolved public health agencies, the National Crime Agency, the Home Office, the police, the Department of Health and the Department for Education among others. A meeting was held in September, and included a session on sharing activities, initiatives and the views of partners on IPEDS to help gauge the next steps on how best to integrate information and education on the associated health harms and risks. The Home Office, Public Health Wales and the Scottish Government agreed to share data on IPED use, which UK Anti-Doping will analyse to give the working group a steer on how best to target users and potential users outside sport.

I realise that there is a surprising interest on the Liberal Democrat Benches in "Love Island". Noble Lords will remember the Question of the noble Lord, Lord Storey, about smoking on "Love Island" after which it was banned in public places on the island, so it is true that highlighting the problems can have beneficial effects. But more seriously, because there is a valid point here, my answer to the noble Lord, Lord Addington, is the same as I gave to the noble Lord, Lord Storey. Editorial decisions such as drug testing on future contestants is up to the individual broadcaster. But broadcasters should be aware—I am sure they are—that they must adhere to Ofcom's broadcasting code, which includes standards to ensure that under-18s are protected in relation to content dealing with drugs, smoking, solvents and alcohol. The illegal use and abuse of drugs,

"must not be condoned, encouraged or glamorised in other programmes likely to be widely seen, heard or accessed by under-eighteens".

As the noble Lord, Lord Addington, said, UK Anti-Doping wrote in support of co-operation with the producers of these shows. I have seen a copy of the letter. I believe that noble Lords have not received a reply. Of course, is not for us to tell ITV how to answer letters, but it is a common courtesy to reply to a letter. I am sure that it will pay attention to that view.

My noble friend Lord Moynihan talked about UKAD's clean sport accreditation, which I am aware of. I certainly agree with my noble friend that it is another example of positive work from UKAD in this area. It is for UKAD to decide where to allocate its funding, but I have taken on board my noble friend's point and I will take it back. He also mentioned that we should ban imports. UK Border Force seized 5.2 million doses of anabolic steroids in 2016-17, an increase on the 4.9 million seized in the previous year. I mentioned the controlled drugs strategy published by the Home Office, which is reflective of the IPED challenge.

I nearly always agree with my noble friend, but we have talked about criminalisation before. The Sports Minister commissioned a review into the criminalisation of doping, which reported last year. Following the period of consultation, the review ultimately found that there was no compelling case to criminalise the act of doping in the UK. That reflected the strong consensus of those interviewed. But I accept and agree with his suggestion that it constitutes fraud on other competitors and probably sponsors, which may be a way forward.

My noble friend also asked whether I would agree that athletes should be involved in the process and in particular he mentioned Beckie Scott in WADA. I broadly support my noble friend's comments regarding taking the views of athletes more seriously. Athletes know their sport and they know what is going on in many cases, and they should at the very least be part of the drive for clean sport. It is important that WADA is doing all that it can to restore faith in clean sport for both athletes and fans around the world.

The noble Lord, Lord Goddard of Stockport, mentioned role models. I also mentioned that in response to a Question from the noble Lord, Lord Campbell. I agree that role models are important and it is important for athletes to be encouraged to educate and inform young people about clean sport.

The noble Lord, Lord Griffiths, raised the question of children, not just in sport but in the Data Protection Act, gambling and advertising. In a way, it is beyond the scope of this debate and of this Minister to decide whether to look again at the Children Act, but I take

his point. There are many areas of policy in which children are very important. I have another Question about children tomorrow, so I am sure that he will be in the Chamber for that.

I am grateful for all contributions. In outlining the Government's actions, I hope that I have assured noble Lords that the Government will be working closely with all the necessary stakeholders to ensure that work is done to prevent, educate and, I hope, to protect.

Counter-Terrorism and Border Security Bill

Report (1st Day) (Continued)

8.29 pm

Clause 5: Encouragement of terrorism and dissemination of terrorist publications

Amendment 22

Moved by ***Lord Alderdice***

22: Clause 5, page 4, line 40, leave out "and (4)" and insert ", (4) and (4A)"

Lord Alderdice (LD): My Lords, my noble friends Lord Paddick, Lady Hamwee and I have put down this amendment not so much for the purpose of tweaking the detailed wording of the Bill, but to raise a wider question about how much preparedness there is on the part of government and the authorities to seriously consider the rationale on which this Bill and counterterrorist policy as a whole is based. There is often a lack of welcome in general terms when people ask questions of a serious order about the whole direction of government policy, but in the area of terrorism it has been in my own experience quite regularly the case that when questions on it are raised, people are accused of being fellow travellers with terrorists. I frequently had that experience myself in Northern Ireland when I raised questions about the Government's approach. I would be accused, not particularly by government Ministers but by leading political figures in the unionist community, of being sympathetic to the IRA.

There are positive things about this Bill. There has been progress and developments in technology which mean that elements of it are necessary, and I do not argue about that. But in some other ways the Bill is regressive because it is sliding away from the traditional commitment in this country, as distinct from other parts of Europe, that things are legal unless there is a very good reason for them to be illegal. Particularly when it comes to freedom of expression and people being able to look at the other side of the question, it is absolutely critical that we should be able to do that with freedom. That is why I was so supportive of and glad to see that we have passed Amendment 15. There is huge concern on the part of the many NGOs that are working not only on humanitarian and peacebuilding efforts but on trying to understand why it is that people commit themselves to terrorist activities.

We had to do that in Northern Ireland. For many years the received wisdom in this House and the other place and indeed in government generally was that the only way to deal with terrorism was through suppression—to put it down. That is all very well if it works, but it did not work. When the noble Earl the Minister responded in an earlier debate on this Bill by saying, "We are going with the grain of the Terrorism Act 2000", the question for me was: yes, and has the 2000 Act worked? I do not mean has it worked in terms of the courts and there not being any adverse decisions, but has it worked in terms of terrorism being less of a threat to us now than it was when that Bill was passed in 2000? Terrorism has changed enormously over the period since 2000. At the time many things were happening that we are familiar with in this part of the world, but since then there have been two major developments in terrorism. Most terrorism in the world now is either Islamist of various kinds in its background or it is right-wing white terrorism, which is getting worse and is much less reported. The concern we are trying to express in this amendment is that we should be able to ask the difficult questions without being accused or in danger of questions being asked about our commitment to deal with the problem of terrorism.

When I listened to the noble Earl talking about "going with the grain of the Act", I could not help but think of the phrase for which I am afraid Lord Denning will always be remembered in Ireland. He said that if it was the case that the Birmingham Six and the Guildford Four were not guilty, then it was because the West Midlands police had been lying, and that was too appalling a vista to contemplate. It may have been a vista too appalling to contemplate, but eventually it had to be contemplated because the truth is that they had lied. Eventually Lord Denning himself accepted that.

The problem is this: there is a real danger that the whole direction of policy, which is about the suppression of terrorism, is based on a complete misunderstanding. The misunderstanding is that people behave in an extreme way because they think in an extreme way. That is not the case. People act in an extreme way because they have extreme feelings, not extreme thoughts. I know lots of people with all sorts of extreme thoughts who would not dream of acting on them. I often say that many people believe in heaven but if you say to them, "Would you like to go there this afternoon?" they say, "Actually, I'm not in any great hurry". People can have a lot of thoughts, but the question is whether they have the emotional motivation to act on them. I do not believe for a minute that the beliefs of people such as Gerry Adams and the late, lamented Martin McGuinness about a united Ireland, or even the strategy that they followed, changed but their feelings changed because they no longer felt that they, their people and their culture were being humiliated, disrespected and kept from making changes through democratic politics. The feelings about things changed. If we do not understand and address that, we will head into terrible trouble.

Some time ago, I had a long conversation with an old friend who ran the CIA for years. I asked him why America is making the same mistakes over and

[Lord Alderdice]
over again. It made the same mistakes in Afghanistan as it did in Vietnam. It made the same mistakes in Iraq as we did. When we went into Libya, we did not have to deal with things in the way we did. We made a right mess of it. The question of Syria has been spoken about. None of these things are getting better. They are all getting worse. At what point do we start asking serious questions about a rationale that says that stronger security measures are the way to deal with this issue? My friend said, "We no longer engage with people in the Middle East and listen to what they have to say so we don't really know what's going on with them. What's being done is completely counterproductive. Years ago, I used to spend my time going to meet the leadership of Hamas, Hezbollah, Israeli settlers and others". By the way, No. 10 was very happy to hear the results of those conversations at that time. Why did he have those meetings? It gave an insight into what is going on.

The Bill's approach says, "Don't engage with people. Ban everything they're saying. Stop everything that anybody is doing to engage with them. Isolate them more". There is no evidence that this works. In fact, I fear that the approach that has been taken is the kind that would be taken by a bad doctor who says, "If the medication is not working, double the dose". What usually happens there is that you end up poisoning the patient. There is a real danger in the Bill, which my colleagues and I felt it necessary to mark out—not because we expect the Government suddenly to say that they got it all wrong and should stop the Bill. That is not the purpose of the amendment. We are trying to see whether there is an understanding that we need to question the rationale for the approach to terrorism in the Bill and in other ways. Otherwise, we will find ourselves locked into a kind of groupthink, which will produce a negative outcome that none of us in this Chamber wants.

There is also a danger of not just illegality but a chill factor for people speaking and thinking about these things. For example, phrases such as "giving reasonable excuse" for some of the work done by NGOs and others are used. What kind of language is that? Should we tell people that they need to give reasonable excuse to the authorities or should we encourage them to go into dangerous situations and risk their lives because it benefits us and the global community? We should not expect them to provide that excuse. The chill factor is quite clear. What do I do with students who ask, "Should we go and do some research in the Middle East to try to find out what's going on?" After not just a Bill such as this one but recent events there, it is clear that this will be very discouraging, even for people at a post-doctoral level. That will mean that our approach will not be based on real evidence, understanding or appreciation of the problems.

We tabled the amendment to say, not just in the context of the Bill, that we can change some of the approaches, such as those in Amendment 15. We are also asking whether we can think more seriously about an alternative way of understanding what is going on when people engage in terrorism, rather than simply believing in suppression. Suppression did not work out in my part of the United Kingdom. Eventually, the Government had to do all sorts of things that they said they would never do because it was the only way to deal with what was ultimately a political problem, not merely one of law and order. I beg to move.

Lord Paddick (LD): My Lords, I support my noble friend's comments. We on these Benches have for some time had a concern about the so-called conveyor belt theory that radical, non-violent, extreme views necessarily lead to radicalisation and violence. Many groups in this country hold what most of us would consider to be extreme views, such as fundamentalist Christian groups and ultra-Orthodox Jewish groups, where we have no concerns at all that their extreme views will lead to radicalisation and violence.

There are other factors at play that receive no consideration as far as the Bill's measures are concerned. We also express our concern that the Bill would tend to put people off debating extreme views, during which the counternarrative can be expressed, peoples' dangerous views can be openly debated and their ideas shown to be false. The Bill and other measures like it are likely to close down that debate. Ultimately, a battle of ideas is the way to address the underlying issues rather than the approach the Bill takes.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): I thank both noble Lords for their explanation of these amendments. One of the things that the noble Lord, Lord Alderdice, challenged the Government on was the rationale behind our counter-terrorism work. Perhaps it would be useful to set out some of that for him.

As stated in Contest, government and academic research has consistently indicated that there is no single sociodemographic profile of a terrorist in the UK, and no single pathway or, indeed, "conveyor belt" leading to involvement in terrorism. Terrorists come from a broad range of backgrounds and appear to become involved in different ways and for differing reasons. Few of those who are drawn into Islamist terrorism, for example, have a deep knowledge of the faith.

While no single factor will cause someone to become involved in terrorism, several factors can converge to create certain conditions under which radicalisation can flourish. These include background factors such as aspects of someone's personal circumstances that might make them vulnerable to radicalisers, such as being involved in criminal activity; initial influences such as people, ideas or experiences that influence an individual towards supporting a terrorist movement; and an ideological opening or receptiveness to extremist ideology.

Most individuals who experience this combination of factors will not go on to become involved in terrorism because there are protective factors that safeguard against their doing so. These range from having no opportunity to develop extremist contacts to having other, more important priorities in their lives, such as their family, career or community. A small number of people who lack these protective factors may become radicalised. In these circumstances, a range of social and ideological influences can combine to intensify commitment to a terrorist cause and provide opportunities for them to act.

The process of radicalisation is driven by universal psychological needs for identity and belonging—those words are very important in this context—meaning and purpose, and, of course, self-esteem. Where these are met by constructive sources radicalisation will not flourish, but we also know that as a person deepens their involvement in terrorism this process will typically include voracious consumption of online propaganda. When in a group, further engagement in terrorism is also likely to include the individual isolating themselves from non-extremists and participating in low-level activity such as the radicalisation of others, or facilitation, fundraising, et cetera. There is some research to indicate that lone-actor terrorists have a higher incidence of certain mental and developmental health conditions than the general population, but I must stress that no one should assume that a terrorist suffers from a mental health condition or that a person with a mental health condition is a terrorist.

8.45 pm

This model of radicalisation draws on research from within government but also on academic studies. In our experience, it holds true for radicalisation within both Islamist and extreme right-wing terrorism.

It should be clear from what I have said that ideology is an important, but absolutely not the sole, factor in radicalisation. The effect of terrorist ideology, spread through its propaganda and especially online, spans both those involved in groups and lone actors and across all forms of terrorism.

Daesh and al-Qaeda have a common ideological lineage. Their shared ideological anchor is Salafi jihadism, a violent hybrid ideology, cherry picking from a broad range of religious and political influences. Both groups hold in common an absolute rejection of democracy, personal liberty and human rights, as well as a commitment to restoring a self-proclaimed "caliphate" and establishing a brutal and literalist interpretation of sharia law. They hold the West and its allies responsible for the suppression of Islam and oppression of Sunni Muslims around the world.

Daesh's media and propaganda capability has been significantly degraded, but its shift to a narrative of victimhood and seeking to weaponise people in their communities, rather than encouraging them to travel to the so-called caliphate, have led to a self-sustaining network of Daesh supporters who create and share unofficial motivational and instructional material online, and celebrate and encourage lone-actor attacks. This has increased the reach and potential threat that such groups pose.

We must not forget the extreme right wing. In the UK and Europe, those groups, including neo-Nazis, seek to exploit any anxieties that people might hold about globalisation, conflict and migration—including any that they are able to link to the Syria conflict—in an attempt to broaden their appeal. Such groups may vary considerably in their rhetoric, but they share the racist view that minority communities harm the interests of a "native" population. The ideologies and narratives perpetuated by Islamist and extreme right-wing groups have at times reinforced and even mutually benefited one other.

I could go on, but this is the basic background and rationale behind much of the Government's efforts to counter terrorism. It should be clear from it that no conveyer-belt theory of radicalisation is in use in government. It should also be clear why our counter-terrorism efforts need to cover such a broad range of activity on top of the work of the intelligence agencies and police to investigate and disrupt terrorists and terrorist plots. It is vital that we do all we can to stifle the online propaganda which fuels engagement in terrorism, that we work to break the "social cocoons" which terrorists form to continue their radicalisation, and that our Prevent work and programmes such as Channel continue to identify vulnerable people and provide them with the support that they need to address the background vulnerabilities and lack of protective factors that can make them prey to terrorist recruiters. With that explanation of the Government's rationale, I hope that the noble Lord will be content to withdraw his amendment.

Lord Alderdice: My Lords, I am grateful to the Minister for explaining the Government's rationale, none of which is particularly new to me. The disappointing thing about it is the limited perspective, on two or three fronts. First, terrorism is described almost exclusively as an individual phenomenon—individual people, this, that and the other thing. I started off in that position 30 or more years ago. What became clear to me in working with these situations was that it was a group phenomenon and not simply one of individuals.

The second thing is that the Minister emphasised again that a great deal of the Government's approach is towards effectively suppressing or limiting terrorism, rather than trying to understand why communities feel—for genuine reasons, on occasion—a disenchantment that leads them to respond in such a way. I make the appeal again for the Government to be prepared to engage in an exploration of the questions, because it is clear that the approach we have taken for the last 20 years has not worked. We are not safer, globally, than we were 20 years ago—on the contrary. However, I am grateful to her because, by making the explanation, she is in a way continuing a process of conversation and exploration. That was the purpose of the amendment and of the general appeal that we do not simply depend on something we do not believe is working well, as there are alternative ways. I regard her explanation as a positive thing and I hope that it is part of an ongoing conversation that will take us to a better understanding and a better way of dealing with the problem with which we are all struggling. On that basis, I beg leave to withdraw the amendment.

Amendment 22 withdrawn.

Amendment 23 not moved.

Clause 6: Extra-territorial jurisdiction

Amendment 24

Moved by ***Earl Howe***

24: Clause 6, page 5, line 17, leave out subsection (1) and insert—

"(1) Section 17 of the Terrorism Act 2006 (commission of offences abroad) is amended as follows.

(1A) Subsection (2) is amended in accordance with subsections (2) to (4) below."

Earl Howe: My Lords, I shall also speak to Amendment 25. Clause 6 will add a number of further terrorism offences to the list at Section 17 of the Terrorism Act 2006, to which extraterritorial jurisdiction, or ETJ, applies. This means that individuals can be prosecuted in UK courts for conduct that took place outside the UK which would have been unlawful under an offence listed at Section 17 had it taken place here. This will ensure that UK courts are able to prosecute terrorist fighters who travel to or return to the UK having joined terrorist groups and become involved in conflicts or other terrorist activity overseas. It will also ensure that we are able to prosecute people who base themselves overseas and seek to radicalise people in the UK.

In relation to this latter category of radicalisers, Section 13(1) of the Terrorism Act 2000 contains the offence of displaying in a public place an item of clothing or other article, such as a flag, in circumstances which arouse reasonable suspicion that the person is a member or supporter of a proscribed organisation. As a result of Clause 2 it will also contain, at new subsection (1A), the offence of publishing an image of such an article in the same circumstances. As currently drafted, the effect of Clause 6 is that a person could potentially be prosecuted under Section 13 in the UK, having displayed while in another country the flag of a terrorist organisation that is proscribed in the UK but not in that country. This is something about which the Joint Committee on Human Rights has raised concerns, and the noble Baroness, Lady Hamwee, tabled amendments on behalf of the JCHR in Committee which would have removed the Section 13 offence from the ETJ provisions entirely, or alternatively would have limited ETJ in relation to Section 13 to UK nationals and residents only.

These amendments return to issues on which we have had extensive and helpful debates. I have set out very clearly and at some length the Government's position on why this power is needed, but it is worth reminding ourselves of two key points. First, we have seen modern terrorist groups, such as Daesh, use slick and effective online propaganda, including activity covered by the Section 12 and 13 offences, which has been aimed at radicalising people in the UK, building support for terrorist organisations and ideology, and encouraging terrorist attacks in the name of such organisations. This activity is not currently within the jurisdiction of the UK courts where it occurs in another country, but as we have seen in the Syrian context, it can give rise to a very real and immediate threat within the UK. For this reason it is imperative that we extend ETJ to these offences, and that we do so in an effective and workable way which does not unduly limit the ability of UK courts to deal with serious terrorist activity. This is the effect of Clause 6.

However, I have considered and reflected carefully on the points raised previously by the noble Baroness, Lady Hamwee, on behalf of the JCHR, and by other noble Lords, about the breadth of Clause 6 as currently drafted, and I have recognised the strength of feeling on this issue. While I remain of the view that the safeguards I outlined in Committee will ensure that the power is used in a proportionate way, I accept that this has not provided sufficient assurance to your Lordships. I have therefore concluded that the extension of ETJ to the Section 12 and 13 proscription offences should be limited to cases where the individual is a UK national or resident, in line with the amendment proposed in Committee by the noble Baroness, Lady Hamwee.

Amendments 24 and 25 in my noble friend's name deliver this. Although the noble Baroness's earlier amendment focused on Section 13, the same principle arises in relation to Section 12 of the 2000 Act, which criminalises invitations of support for a proscribed organisation, and as a result of Clause 2 will also cover reckless statements of support. The government amendments therefore extend this limitation to both Sections 12 and 13. This will ensure that it will still be possible to prosecute in the UK courts a person who has travelled from the UK to join a terrorist organisation, and who has become involved in propaganda on behalf of the organisation while they are overseas. But it will exclude the type of case about which the noble Baroness has raised concerns, where a foreign national acts in support of an organisation which is not proscribed in his or her country—for example, if a Lebanese national living in Lebanon displays a flag associated with the military wing of Hezbollah or invites support for that wing of the organisation. These amendments will put beyond doubt that such a person will not be liable to be arrested or prosecuted should they subsequently travel to the UK.

I hope that these are welcome amendments and will answer the concerns that have been raised by a number of your Lordships. I beg to move.

Baroness Hamwee (LD): My Lords, I am indeed very grateful for the Government's amendments and their consideration of the points that have been made in Committee as well as by the committee, and at previous stages. They are very significant indeed. Amendment 26 is attributed to the Government on the groupings list but I will put that right. It would provide that, in connection with what we dealt with earlier today, the offences under paragraphs (ca) and (cb) will be relevant only where the actions are an offence in the country where they took place.

In Committee the noble and learned Lord, Lord Judge, who was very careful to be neutral about this, cautioned the Committee to take care:

> "The Bill risks criminalising a citizen of another country for doing something that is not unlawful in that country … there may be minor matters, in relative terms, which we criminalise here but are not unlawful by the laws of a different country. We need to be careful not to extend the criminal law further than it should go".—[*Official Report*, 31/10/18; col. 1368.]

The government amendments have indeed dealt with one aspect—the "who", if I can put it that way—but not with the "what".

9 pm

The Government may say that dealing with the "who"—who may be guilty of an offence—is enough. I urge them to make a further change to the Bill to make it complete. Of course, I am aware of the safeguards referred to by the Minister in Committee. He has alluded to them today, and I do not discount them, but whether these new offences should be brought

within extraterritorial jurisdiction if they are not an offence in the country where they took place deserves further consideration. The offences in Section 17, as it stands, are all high-level offences. I do not want to spend too long on this at this time of night, but following my noble friend Lord Alderdice I pose the question: do we want to deter UK nationals who have done offensive—I say that in a rather wide sense—and possibly pretty stupid things abroad from coming back to this country? There is a view that they should be allowed to stay out there and fester. I do not take that view. I think we would want to see them come back and become part of British society. That is why I tabled this amendment.

Earl Howe: Amendment 26 seeks to place a different limitation on the ETJ power in relation to the proscription offences at Sections 12 and 13 of the 2000 Act which would limit it to cases where the offending activity would also constitute an offence in the country where it occurred. I mentioned earlier one key rationale for the new powers we are seeking, which is that terrorist groups use propaganda as a means of radicalising people in this country while basing themselves abroad.

Additionally, it is a fact that terrorist groups are by their nature most likely to be based in areas of conflict and instability where there may not be functioning systems of government or criminal justice, or clearly defined and well-developed terrorism laws equivalent to those in the UK. This means that it is entirely possible for a person to act in support of a potentially very serious terrorist organisation outside the UK and for the laws in that part of the world to criminalise that activity in a different way from the UK, or potentially not at all. This is not a reason to take no action against that person if they travel or return to the UK, if prosecution would otherwise be possible and appropriate. We must engage with the world and the terrorist threat as it is, rather than as we would ideally like it to be, and it would simply not be responsible to tie the hands of the police and the courts in this way. I share the noble Baroness's wish that those who return to this country should repent, be reformed and form part of the society in which we all live and which we enjoy, but I say that without prejudice to the point I have just made that if they have acted in a way that profoundly harmed the people of this country, they should be brought to book.

I am afraid Amendment 26 would run a coach and horses through the idea that I have put forward, and it would most likely mean that it would not be possible to prosecute at all people who have engaged in such activity in places such as Syria. We might as well simply strike this provision from the Bill in its entirety if we are going to go down that road. For this reason I am unable to support the noble Baroness's Amendment 26.

Amendment 24 agreed.

Amendment 25

Moved by ***Earl Howe***

25: Clause 6, page 5, line 31, at end insert—

"( ) In subsection (3), after "citizen" insert "(subject to subsection (3A))".

( ) After subsection (3) insert—

"(3A) Subsection (1) applies in the case of an offence falling within subsection (2)(ca) or (cb) only if at the time of committing the offence the person is a United Kingdom national or a United Kingdom resident.

(3B) In subsection (3A)—

"United Kingdom national" means an individual who is—

(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,

(b) a person who under the British Nationality Act 1981 is a British subject, or

(c) a British protected person within the meaning of that Act;

"United Kingdom resident" means an individual who is resident in the United Kingdom.""

Amendment 25 agreed.

Amendment 26 not moved.

Schedule 1: Notification requirements: financial information and information about identification documents

Amendment 27

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

27: Schedule 1, page 28, line 8, at end insert—

"(ca) the cases in which a person "holds" an account include those where the person is entitled to operate the account;"

Baroness Williams of Trafford: My Lords, the noble Lord, Lord Paddick, helpfully proposed an amendment in Committee to close a gap he had identified on accounts which a terrorist offender is entitled to operate but does not hold in their own name—for example, because they are an authorised signatory to the account of the relative or employer. I recognised then that there might well be merit in the amendment and committed to take it away to consider it further. I have just done that and find myself in agreement with the noble Lord that this is indeed a gap in the current Bill and that his suggestion will close it and improve the Bill.

Amendment 27 therefore implements his suggestion, for which I am very grateful, and I commend the amendment to the House.

Lord Paddick: My Lords, I am very grateful to the Minister, but I cannot possibly claim credit for the amendment: it is actually the work of my noble friend Lady Hamwee. That having been said, we are very grateful that she listened to our arguments. We hope that noble Lords will realise that we on these Benches look to be hopeful, not necessarily negative about legislation. We hope that closing this loophole shows that we are working together to try to improve legislation.

Amendment 27 agreed.

Clause 13: Power to enter and search home

Amendment 28

Moved by ***Baroness Hamwee***

28: Clause 13, page 15, line 27, leave out from "assessing" to "and" in line 28 and insert "whether the person to whom the warrant relates is in breach of notification requirements"

Baroness Hamwee: My Lords, Amendment 28 repeats an amendment I proposed in Committee on behalf of the JCHR, which gathered considerable support from the noble Lords, Lord Anderson, Lord Judd and Lord Pannick, and the noble Baroness, Lady Kennedy, as well as my Front Bench and the Labour Front Bench. The noble Lord, Lord Carlile, said that he was,

"not convinced that the Government have got the proportionality of this right".— [*Official Report*, 31/10/18, col. 1409.]

That has encouraged me to raise the issue again.

This amendment is in connection with the search and entry provisions. It would provide that, rather than allowing search and entry to assess risk, it would be far more specifically to assess whether the subject of a warrant was in breach of the notification requirements applying to him.

The Minister said that the provision was proportional. The terminology used in Committee included "home visits" and the police "keeping in touch", which sounds much gentler than a power to enter and search under a warrant. I talked about what the noble Lord, Lord Anderson, called the human element—the impact on an individual's family—but, as other noble Lords pointed out, the impact is often much wider in such a situation.

We will consider the Prevent policy on the next day of Report and no doubt noble Lords will raise the importance of how a policy is perceived by the community affected. The infringement of the privacy of the individual and of the individual's family, who I think are at risk of considerable distress, which is part of the Government's proposals, is not just a matter of a lack of proportion. It also carries a significant risk of damaging, if not destroying, the trust of the community, which in turn impacts on everyone's security.

I acknowledge that there has to be a warrant. I am sorry if this sounds cynical, but can we be confident that a magistrate will always ask for details of compliance or otherwise with the notification requirements on the part of the subject of a requested warrant? Will a magistrate ignore the police's wish to go on a fishing expedition, if you like?

The Minister drew a comparison with registered sex offenders. As the noble Lord, Lord Anderson, is here, perhaps I should let him speak for himself if he wishes and intends to do so, having pursued this with Professor Clive Walker. I am looking to see whether he is going to because if not then I am going to quote Professor Walker—I am being told to go ahead. I am grateful to him for pursuing this matter. Professor Walker looked at the comparison with people on the sex offender register and distinguishes this situation from that one because of the additional ways of mitigating the risk where terrorist offenders are concerned. He also made the point that if he had realised what the provisions applying to sex offenders were, he would have been critical then. As he says,

"a bad precedent should not be used as a basis for more bad law … I still argue that it is unwarranted to treat terrorism offenders in this way in comparison to sex offenders because of the different designs now being applied to terrorism offenders … in terms of their periods of endurance and also possibilities of review".

He refers particularly to the extent of the respective orders—currently scrutiny over identity, residence, travel—and to the fact that the Bill imposes requirements as to mobile phone details, email addresses, vehicles, banks and identification documents. He says:

"If such information is provided, all of which can be checked against external records, should this not reduce the residual risk and so reduce the need for entry in order to check 'risk'? … If these extra demands do not adequately reduce risk, what is their value?"

That is another way of asking the question that I asked in Committee on whether the notification requirements in themselves were insufficient. If the answer is no, they are sufficient—and I would expect the Government to say that—then what is the justification for this, as I say, potentially damaging provision? I beg to move.

Lord Anderson of Ipswich (CB): My Lords, I support the amendment for the reasons that the noble Baroness has given. The only additional point that I would make, and I made it in Committee as well, is whether the person to whom the warrant relates being in breach of notification requirements constitutes a sufficient ground for the entry and search of the home of a TPIM subject—among, one must assume, the most dangerous of terrorists or suspected terrorists in this country. It is a little hard, at least for me, to see why it should not be sufficient in relation to the prisoners and those remanded in custody who are dealt with under this part of the Bill.

9.15 pm

Baroness Williams of Trafford: My Lords, as the noble Baroness pointed out, Clause 13 confers on police the power to enter and search the home address of a registered terrorist offender, under the authority of a warrant issued by a justice, for the purpose of assessing the risk the offender poses. Amendment 28 would narrow the purpose for which the power of entry and search may be operated, limiting it to assessing whether the offender is in breach of the notification requirements. There was a good debate on this in Committee, so I will not detain the House by setting out again the underlying purpose of the terrorism notification requirements, and their importance in helping the police to manage the risk posed by those convicted of serious terrorism offences. However, it may assist your Lordships if I briefly rehearse the purpose of this power, and why it is needed in its current form.

The purpose of the power of entry and search, as currently drafted and as intended by the Government, is to allow the police to assess the risk posed by a convicted terrorist who is subject to the notification requirements. The police consider that home visits are an important tool in managing and risk-assessing registered terrorist offenders during the time they are subject to the notification regime. Such visits allow them to ascertain whether the offender does in fact reside at the address they have notified to the police, and to check their compliance with other aspects of the notification regime. Home visits are also helpful, as they allow a broader assessment of risk to be made. They allow the police to identify any other factors that might contribute to the overall risk an offender poses to themselves or their community, and their risk

of reoffending. This might include their general living conditions, as well as any signs of mental health decline, or of drug or alcohol misuse.

It seems an entirely appropriate purpose for the police to wish to keep in touch with a registered terrorist offender. Indeed, given that the police are charged with protecting us all from such serious offenders, it would surely be irresponsible to do otherwise. However, Amendment 28 would mean that the new power could not be used for that purpose. The police will, of course, always seek to conduct such visits on a voluntary basis and the clause requires that this approach must be attempted at least twice before a warrant is sought. A positive and co-operative relationship is always preferable, and leads to more effective management of risk. However, a power of entry and search is needed because this is not always the reality, and registered terrorist offenders will often not comply with such home visits voluntarily. They will often be generally unco-operative and refuse to engage constructively with the police in conducting necessary checks.

In previous debates, I have highlighted that an identical power exists in relation to registered sex offenders. It was introduced by the Violent Crime Reduction Act 2006, by the then Labour Government. Indeed, the then Home Office Minister, the noble Lord, Lord Bassam, said at the time in reference to sex offenders that,

"we are now of the view that further powers are required to enable the police to gather all the information they need about a small but, it has to be said, determined group of offenders who, while in apparent compliance with the notification requirements, do all they can to frustrate the risk assessment process".—[*Official Report*, Commons, 22/5/06; col. 678.)

I can only echo the noble Lord's words.

The police report that their experience with registered sex offenders, as a result of this power being available, is that the offenders will normally comply voluntarily and that they are able to build a far more constructive relationship with them. This is simply because those offenders know that if they refuse to engage on a voluntary basis the police will be able to return with a warrant. We anticipate this power bringing similar benefits in the management of registered terrorist offenders, who are equally in a particular category of risk, such that monitoring of this kind is appropriate following a conviction. I cannot see that there is a rational argument for why the police should have less effective powers to monitor the risk posed by registered terrorist offenders than they do for registered sex offenders. I hope that the noble Baroness will withdraw her amendment in light of this explanation.

Lord Anderson of Ipswich: Before the Minister sits down, perhaps she can explain whether she is saying that, if there is no rational basis for providing this power in a different way from the way it was done in the case of sex offenders, the TPIM Act 2011 was not rational in how it approached the issue, and what does she say about that parallel with the TPIM Act?

Baroness Williams of Trafford: I would not like to say that the TPIM Act was not rational. I can write to the noble Lord to outline the significant differences here, but I think that the parallel with sex offenders that I posed is pertinent.

Baroness Hamwee: My Lords, as I said, two bad laws are twice as bad as one. The Minister said that the experience is that terrorist offenders are likely to be unco-operative when they are asked to host a home visit—and I wonder why they are unco-operative. This seems a very intrusive power. We are talking not only about entering a person's home but, to take just one of the purposes mentioned by the Minister, assessing their mental health. What is done when that visit, or entry, is made, to undertake that assessment? The power is much broader and deeper than it may appear on the surface. I will not repeat the debate that we had last time but I do not feel that I am any more enlightened or, I have to say, any more persuaded. However, I accept that we are where we are for tonight, and I beg leave to withdraw the amendment.

Amendment 28 withdrawn.

Amendment 29

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

29: After Clause 16, insert the following new Clause—

"Persons detained under port and border control powers

(1) Schedule 8 to the Terrorism Act 2000 (detention) is amended as follows.

(2) In paragraph 6, after sub-paragraph (3) insert—

"(4) A detained person must be informed of the right under this paragraph on first being detained."

(3) In paragraph 7, after sub-paragraph (2) insert—

"(3) A detained person must be informed of the right under this paragraph on first being detained."

(4) In paragraph 9—

(a) for sub-paragraphs (1) and (2) substitute—

"(1) This paragraph applies where a detained person exercises the right under paragraph 7 to consult a solicitor.

(2) A police officer of at least the rank of superintendent may direct that the right—

(a) may not be exercised (or further exercised) by consulting the solicitor who attends for the purpose of the consultation or who would so attend but for the giving of the direction, but

(b) may instead be exercised by consulting a different solicitor of the detained person's choosing.

(2A) A direction under this paragraph may be given before or after a detained person's consultation with a solicitor has started (and if given after it has started the right to further consult that solicitor ceases on the giving of the direction).", and

(b) omit sub-paragraphs (4) and (5).

(5) In paragraph 16—

(a) in sub-paragraph (8), omit "Subject to paragraph 17,", and

(b) after sub-paragraph (9) insert—

"(10) A detained person must be informed of the rights under sub-paragraphs (1) and (6) on first being detained."

(6) In paragraph 17—

(a) for sub-paragraphs (1) and (2) substitute—

"(1) This paragraph applies where a detained person exercises the right under paragraph 16(6) to consult a solicitor.

(2) A police officer not below the rank of superintendent may, if it appears to the officer to be necessary on one of the grounds mentioned in sub-paragraph (3), direct that the right—

(a) may not be exercised (or further exercised) by consulting the solicitor who attends for the purpose of the consultation or who would so attend but for the giving of the direction, but

(b) may instead be exercised by consulting a different solicitor of the detained person's choosing.

(2A) A direction under this paragraph may be given before or after a detained person's consultation with a solicitor has started (and if given after it has started the right to further consult that solicitor ceases on the giving of the direction).", and

(b) in sub-paragraph (3), in the opening words for "(1)" substitute "(2)"."

Baroness Williams of Trafford: My Lords, the government amendments in this group make a number of changes in response to the debates in both Houses regarding the ports powers under Schedule 3 to the Bill and Schedule 7 to the Terrorism Act 2000. They also respond to the reports of the Joint Committee on Human Rights, the Constitution Committee and the Delegated Powers Committee, and to representations from the Law Society and others.

During the course of the previous debates, there has been much focus on the important topic of a detainee's right to consult a solicitor in private, and on the exceptional power that would allow an officer to overhear that consultation to mitigate concerns that the detainee might pass on a message to a third party. While this power was not without safeguards—for example, it could only be authorised by an assistant chief constable where the officer had reasonable grounds for believing that allowing the detainee to exercise his or her right to consult a solicitor privately will have certain serious consequences—the Government have heard the concerns raised and are prepared to take a different approach.

Amendments 37 to 39, 41 and 42, would replace that power and instead allow an officer, in the situation that I have just described, to require the detainee to choose a different solicitor. The detainee will then be reminded of the right to free legal counsel from an approved duty solicitor who has met the standards and competence of the Law Society's criminal litigation accreditation scheme. This approach, which will apply to both Schedule 7 and Schedule 3 ports powers, will mitigate the concerns regarding the detainee's first-choice solicitor but will still allow the detainee to receive private legal counsel—in all likelihood, with a trusted solicitor from the duty solicitor scheme. It mirrors the provisions in PACE Code H with regard to the detention of terrorist suspects as proposed by the Law Society in its evidence to the Public Bill Committee in the House of Commons, and aligns with the proposals of the shadow Security Minister and noble Lords in this House.

The new power will also be subject to important safeguards. For example, it can only be directed by a superintendent and only where the officer has reasonable grounds for believing that allowing the detainee to exercise his or her right to consult a solicitor privately will have certain serious consequences: for example, interference with evidence or gathering of information; injury to another person; alerting others that they are suspected of an indictable offence; or hindering the recovery of a property obtained by an indictable offence.

Amendments 35, 36 and 40 concern the points raised in Committee by the noble Baroness, Lady Hamwee, regarding the information provided to a detainee about their right to access a solicitor. During that debate, I drew the House's attention to the draft Schedule 3 code of practice which, like its equivalent for Schedule 7, is clear that a person who has been detained under either power must be provided with a "notice of detention" that clarifies their rights and obligations. The examining officer must also explain these rights and obligations to the detainee before continuing with the examination. Furthermore, at each periodic review of the detention, the examining officer must remind the detainee of any rights that they have not yet exercised.

While the Government are satisfied that all the safeguards that the noble Baroness asked for are already in place through the codes of practice, Amendments 35, 36 and 40 will make it explicit in the primary legislation that a detainee has to be made aware of his or her right to access a lawyer at the moment of detention. We are in complete agreement that any person who is detained under these ports powers should be informed of their rights before any further questioning takes place.

Amendments 43 and 44 will address concerns raised by the Delegated Powers and Regulatory Reform Committee with respect to the scope of the regulation-making power in what is now paragraph 60 of Schedule 3. This power would allow the Secretary of State to specify additional persons who may be supplied with information acquired by an examining officer. The power mirrors an equivalent in Schedule 14 to the Terrorism Act 2000 relating to information acquired through a Schedule 7 examination. These regulation-making powers are an important means of future-proofing the mechanisms to share information with government bodies and operational partners. Currently this information can be shared, if needed, with the Secretary of State, HMRC, a constable or the National Crime Agency.

We recognise the concerns raised by the Delegated Powers and Regulatory Reform Committee that the powers as drafted could allow sensitive information to be passed to any organisations, including those in the private sector. That is not our intention. The Government are clear that such information should be held and managed responsibly and should not be made available to any person or organisation. Amendments 43 and 44 would ensure that the Secretary of State, in relation to either power, could specify a person to be supplied with this information only if the person exercised a public function, whether or not in the United Kingdom.

I hope that noble Lords are reassured that the Government have listened to a number of concerns raised during the debates and have acted to improve this legislation. I beg to move.

Lord Rosser (Lab): The shadow Security Minister in the Commons, it has been said, proposed that a list should be drawn up of lawyers properly regulated through the Law Society and the Solicitors Regulation Authority, who would be available to give legal advice and thus overcome the Government's concern that a person detained under the hostile activity ports powers

might seek the service of a rogue solicitor to give legal advice but, in reality, use that person to pass on information to a third party with potentially damaging consequences.

The Government in the Commons said they would consider this proposition and, as the Minister has just said, they have now tabled an amendment that takes out the reference in the Bill to consulting a solicitor,

"in the sight and hearing of a qualified officer",

and instead provides for a senior officer to be able to require a detainee to consult a different solicitor of the detainee's choosing. In her letter of 27 November setting out the Government's amendment, the Minister has said that in practice a different solicitor of the detainee's choosing is likely to be the duty solicitor. Can she say what will happen if the further different solicitor of the detainee's choosing is also deemed unacceptable? Will, in effect, the detainee be told either that they choose the duty solicitor or they will not have a solicitor to consult? It would be helpful if this point could be clarified in respect of persons detained under the port and border control powers.

We support the amendments and recognise that the Government have endeavoured to address the concerns expressed in the Commons by the shadow Minister, as well as the similar concerns expressed by noble Lords in this House.

9.30 pm

Baroness Hamwee: My Lords, we too support these amendments and recognise the steps that the Government have taken. Perhaps I may put on the record a couple of comments made by the Law Society on this general area. Unfortunately, its briefing arrived too late for us to build on it by way of amendment, but it comments on legally privileged material being retained for use as evidence or for deportation proceedings. It gives the view that:

"Legally privileged material should not be retained for any purpose other than a potentially urgent need to prevent death, injury or a hostile act".

It also comments on:

"The process by which material can be identified as constituting legally privileged material",

and asks who is responsible for making the determination, as that is not,

"explicitly clear in the Bill as drafted".

It continues:

"It is important that this determination is made by a legally qualified person who is capable of accurately assessing whether a given article is subject to legal professional privilege".

As I said, I thought that it was worth putting those comments on the record.

My noble friend Lord Marks is sorry not to be able to be here this evening and asks that his thanks to the Minister for building on the indication given at the last stage is recorded. He too asks about what he calls an "unacceptable, dodgy solicitor". I think that any dodgy solicitor is unacceptable—you do not have to fill two criteria. If an unacceptable dodgy solicitor is selected for a second time, he and I assume that the senior officer might give a further objection. My noble friend also asks whether the Government intend to issue a further draft code of practice relating to the considerations that senior officers should take into account when considering making these directions.

Baroness Williams of Trafford: I thank the noble Baroness for those questions. The noble Lord, Lord Rosser, asked what happens if the detainee chooses another solicitor, who is then of concern. I am trying to read the writing here. If concerns still exist, the superintendent is within his or her right to direct that the detainee should choose a different solicitor, and that applies not just to the first-choice solicitor. The point about confidential material—

Lord Rosser: I appreciate the difficulty with reading writing. I cannot read my own, let alone somebody else's. Does it mean that if the detainee chooses an unacceptable second solicitor, they will then be told, "It's the duty solicitor or you don't have a solicitor at all"?

Baroness Williams of Trafford: From what I understand, a panel of approved solicitors is available to detainees—I am sure that the Box will fly over with a piece of paper if I am wrong about that. However, if, for whatever reason, the first solicitor from the panel is given to the detainee—

Lord Carlile of Berriew (CB): May I make an effort to help out the noble Baroness? There was a time in my professional life when I used to be instructed by duty solicitors at London Heathrow Airport and London Gatwick Airport. The fact is that the duty solicitors at ports of entry are accustomed to dealing with all kinds of issues that arise there. Indeed, the quality of work that emanates from being a duty solicitor in significant ports of entry is high. Therefore, one can reasonably assume that one is getting not any old solicitor but a solicitor who has some understanding of the kind of work that can arise in that setting. There is also some training available, and it is usually done very co-operatively. Has that given the Minister enough time to be able to read the writing—or she may wish to just agree with me?

Baroness Williams of Trafford: I do agree with the noble Lord; that is absolutely brilliant. But I have just received another piece of information: if the detainee is still not satisfied, they can consult a solicitor by phone, so that is a third arm of the options for detainees. Between us, we have got there.

As for who approves the access to confidential material, it would be the Investigatory Powers Commissioner.

Lord Rosser: The reason for my asking the question is that, as I understand it, sub-paragraph (2)(b) of Amendment 41 states that the right of the detainee,

"may instead be exercised by consulting a different solicitor of the detainee's choosing".

I have nothing at all against duty solicitors and hold them in high regard. However, if the detainee then chooses another solicitor who is unacceptable—presumably not one of the duty solicitors—we are fairly clear that the detainee will then be told to use the duty solicitor or have no solicitor at all.

Baroness Williams of Trafford: He or she will be perfectly entitled to consult a solicitor by phone.

Amendment 29 agreed.

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

Amendment 30

Moved by ***Baroness Hamwee***

30: Schedule 2, page 29, line 16, at end insert ", and

(c) the Commissioner for the Retention and Use of Biometric Material has consented under section 63G to the retention of the material."

Baroness Hamwee: My Lords, the JCHR proposed a number of amendments on the subject of biometrics for the last stage. The Minister gave a long reply, quoting the Biometrics Commissioner's support for bringing the periods for retention of data for arrest on suspicion of terrorism offences into line with arrests under the Police and Criminal Evidence Act. At that stage, it seemed to me that this did not go to the question of oversight by the commissioner, and I still do not think that has really been dealt with.

I confess that I had to go by way of Beachy Head and along the byways of PACE to arrive at Amendment 30, so I am well prepared for criticisms of the drafting. However, it is intended to ensure that the retention of biometric data for a terrorism offence has consent from the commissioner. I am entirely open to a different way of achieving that end, but I am certain in my own mind that, whatever the basis of arrest, the retention of data should require this consent. I beg to move.

Earl Howe: My Lords, as the noble Baroness, Lady Hamwee, has made clear, this amendment returns to one of the issues raised in the reports on the Bill by the Joint Committee on Human Rights: the rules governing the retention of biometric data in national security cases. I am sorry that the noble Baroness remains unpersuaded by my previous response. I will do my best to be more persuasive today.

Without going over too much ground, it may be helpful if I briefly reiterate that Schedule 2 amends the laws that govern the retention, review and deletion of fingerprints and DNA profiles by the police for national security purposes. The intention of these provisions is 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 the retention of DNA and fingerprints continues to be proportionate and subject to appropriate safeguards. Schedule 2 delivers this and, importantly, it retains proportionate safeguards, including regular case-by-case review and the robust independent oversight provided by the Biometrics Commissioner.

The noble Baroness's amendment would amend paragraph 2 of Schedule 2, which harmonises the retention periods for biometric data obtained when an individual is arrested on suspicion of terrorism, but not subsequently charged, under the Police and Criminal Evidence Act 1984 and the Terrorism Act 2000. Paragraph 2 does so by providing for biometric data to be retained for an automatic period of three years when an individual is arrested under PACE for a qualifying terrorist offence.

As the noble Baroness is aware, currently an individual arrested under the Terrorism Act 2000 may have their biometric data automatically retained for three years. But the same automatic retention would not be available if the same individual were arrested in relation to the exact same activity under PACE. Rather, in that case, ongoing retention for national security purposes would require the police to make a national security determination with the approval of the Biometrics Commissioner, or would otherwise require the consent of the Biometrics Commissioner under Section 63G of PACE if retention were solely for the prevention or detection of crime generally.

Our position on this is that having two different retention regimes in such cases is quite simply anomalous. The Bill will provide for a more consistent approach to the retention of biometric data for all those arrested on suspicion of terrorism by providing for the same retention period in otherwise identical terrorism cases regardless of the power of arrest used. This is a proportionate and logical change.

The noble Baroness's amendment would mean that this inconsistency between the two retention regimes would persist. Particularly against the backdrop of the heightened threat picture we face today, I am clear that it is important that the police are not deprived of information that could prove vital to keeping the public safe. That is what underlies a lot of what we seek without removing, as I emphasised earlier, the safeguards that are in place.

As noble Lords would expect, we consulted the Biometrics Commissioner on this provision. He is clear that he supports the measure, and I quoted his words last time. The noble Baroness's amendment would have the effect not of modifying or improving this aspect of Schedule 2 but of effectively nullifying the provision and preserving the current anomaly. That disparity is not sustainable and I see no good reason for continuing it.

I sense that I have not persuaded the noble Baroness in what I have said, but I hope that she can at least see the logic of the Government's position and perhaps, on reflection, will feel able to withdraw her amendment.

Baroness Hamwee: My Lords, I think we want the same thing, but I confess that I do not understand how the Government have got here. The noble Earl did indeed quote the commissioner last time, but it seemed to me that that was on a different point. Perhaps I may check this. I think he is saying that the oversight through an NSD is equivalent to the oversight applied by PACE. I do not know whether he is able to answer that, but I am finding it difficult to understand how they are in fact exactly equivalent in the way that he is telling the House.

Earl Howe: The strict answer to the question put by the noble Baroness is that the two Acts provide for different kinds of retention regimes, one where it is automatic for three years under certain conditions and

the other where the Biometrics Commissioner has to give his permission; namely, under PACE. The point I was making was that that applies in cases which are otherwise identical and that it is simply anomalous to have that difference. The Biometrics Commissioner has actually said that it would be,

"a sensible approach to bring the retention periods for arrest on suspicion of terrorism offences in line".

If he is relaxed about it, I cannot see that we should not be either.

Baroness Hamwee: I have the *Official Report* of when the noble Earl quoted that last time, and it seemed to me then that that was about the retention period, not quite about the role of the commissioner. I do not think that we are going to make further progress and at this time of night it would be inappropriate for me to labour the point. It may be my fault for failing to follow the details. As I say, I have had to go by way of Beachy Head to get to the amendment that I put down. I beg leave to withdraw it.

Amendment 30 withdrawn.

Consideration on Report adjourned.

House adjourned at 9.47 pm.

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