Vol. 808
No. 149

Tuesday
24 November 2020

PARLIAMENTARY DEBATES
(HANSARD)

# HOUSE OF LORDS
## OFFICIAL REPORT

*ORDER OF BUSINESS*

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In Hybrid sittings, [V] after a Member's name indicates that they contributed by video call.

The following abbreviations are used to show a Member's 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 |
| Lab Co-op | Labour and Co-operative Party |
| LD | Liberal Democrat |
| LD Ind | Liberal Democrat Independent |
| Non-afl | Non-affiliated |
| PC | Plaid Cymru |
| UKIP | UK Independence Party |
| UUP | Ulster Unionist Party |

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# House of Lords

*Tuesday 24 November 2020*

*The House met in a hybrid proceeding.*

*Noon*

*Prayers—read by the Lord Bishop of St Albans.*

## Arrangement of Business

*Announcement*

*12.07 pm*

**The Lord Speaker (Lord Fowler):** My Lords, the Hybrid Sitting of the House will now begin. Some Members are here in the Chamber, respecting social distancing, others are participating remotely, but all Members will be treated equally. Oral Questions will now commence. Please can those asking supplementary questions keep them sensibly short and confined to two points. I ask that Ministers' answers are also brief.

## Adult Learning: Union Learning Fund

*Question*

*12.07 pm*

*Asked by* ***Lord Shipley***

To ask Her Majesty's Government what assessment they have made of the benefits of adult learning delivered through the Union Learning Fund.

**Baroness Penn (Con):** My Lords, the annual £12 million grant has allowed the Union Learning Fund to support around 200,000 people a year to access education and training opportunities. An assessment for Unionlearn by Exeter and Leeds universities found that Unionlearn's activities generated a return of £12.24 for every £1 of funding. However, a 2015 Department for Business, Innovation and Skills report found that each £1 of government investment in FE and skills as a whole produced a return of £14.

**Lord Shipley (LD) [V]:** My Lords, I thank the Minister for her reply. Since their inception just over 20 years ago, union learning schemes have proved very successful, not least because of their mentoring systems. Having promoted schemes on behalf of the Open University and then when I was leader of Newcastle City Council, I know from personal experience that they work. Might the Government look closely at the evidence that many low-paid workers develop their career prospects through union learning schemes? Would the Minister agree that union learning should be seen as a key part of the Government's levelling-up agenda?

**Baroness Penn (Con):** My Lords, the Government recognise fully the good work that Unionlearn has done with the funding it has provided in directing and supporting people to take advantage of education and training opportunities in the workplace. However, with millions of people in this country still lacking the basic skills that they need to progress, we need a solution at scale that can reach everyone, not just those able to access Unionlearn. We have created the £2.5 billion national skills fund and the £500 million skills recovery package to do just that.

**Baroness Prosser (Lab):** My Lords, I, along with other Members of the House, was extremely pleased to receive the letter from the Prime Minister in September setting out the Government's plans for increasing and improving FE provision. However, the letter did not say that that was to be funded in part by the loss of money currently given to the Union Learning Fund. A different taint would have been put on the letter had it been a little more open about that matter. The noble Baroness has already agreed that the Union Learning Fund reaches a group of people who have not been touched by other systems and measures—people who learn from concentrating along with colleagues who support them and give them confidence. What is the Department for Education going to do to ensure that these new ideas actually reach those people who, in the past, prior to the Union Learning Fund, were not reached at all?

**Baroness Penn (Con):** My Lords, in addition to Unionlearn, the European Social Fund has a lot of provision in place to make sure that those who are hardest to reach for skills training access it. That provision continues until 2023 and will then be replaced by the UK shared prosperity fund, where the Government have committed to matching the existing level of funding going into the future.

**Baroness Garden of Frognal (LD):** My Lords, we are all delighted to hear of the additional money going into FE—one wonders how that will pan out. However, as the noble Baroness already said, the Union Learning Fund reached people who are not otherwise reached by learning—250,000 of them, currently. Can the Minister say why this decision has been taken at this stage? Could it be seen as a politically motivated attack on trade unions and their members across the country, who are the very people who benefit from this tremendous fund?

**Baroness Penn (Con):** My Lords, I can reassure the noble Baroness that it is absolutely not a political decision. Many Conservative Governments have supported Unionlearn over the years with over £70 million of funding. The decision was taken based on the fact that we want to increase the scale and reach of our offer. The £2.5 billion national skills fund is illustrative of our ambitions in this area. One of the limitations of Unionlearn is that it is reliant on a trade union presence in the workplace, which can often be more focused on larger employers. For example, it does not necessarily reach unemployed or self-employed people, start-ups, tech, and many more small and medium-sized businesses that do not have union representation.

**Lord Bourne of Aberystwyth (Con) [V]:** My Lords, given that not just individual trade unions but major employers such as Tesco, Heathrow, Tata Steel, and

[LORD BOURNE OF ABERYSTWYTH]
indeed many others, have raised concerns, can my noble friend tell us what discussions there have been with the TUC and the CBI about the future of the Union Learning Fund?

**Baroness Penn (Con):** My right honourable friend the Secretary of State for Education met Frances O'Grady of the TUC to discuss this very matter in November.

**Lord Singh of Wimbledon (CB) [V]:** My Lords, in a fast-changing world we have to adapt and learn new skills to survive. The Union Learning Fund has helped many to do this. Does the Minister agree that it makes no sense to end this valuable way into adult learning, costing only £12 million a year, while increasing spending by billions on defence against imaginary enemies?

**Baroness Penn (Con):** My Lords, I do not agree with the noble Lord. In fact, we are spending billions of pounds on funding for skills and training, through a combination of the national skills fund and the skills recovery package, to make sure that people can get access to the support they need at this very important time.

**Lord Watson of Invergowrie (Lab):** My Lords, while I do not believe that the Minister herself had a hand in it, she has been sent out to defend what is nothing less than a gratuitous attack on trade unions and their members. We have heard about the benefits—indeed she expounded them herself in answer to the Question from the noble Lord, Lord Shipley—in cost terms alone, which take away any basis for this decision. Participating employers have urged the Secretary of State to reverse his decision, without success. Why did the Government fail to carry out in advance of their announcement any consultation with employers, trade unions, further education institutions or, indeed, anyone?

**Baroness Penn (Con):** My Lords, the funding for Unionlearn has been on a year-on-year basis and was considered as part of the spending review. It was considered right that we gave Unionlearn advance notice of the decision. I disagree with the noble Lord on our work with trade unions. We have worked with trade unions on the Government's industrial strategy, on the Low Pay Commission and on the Good Work Plan. We have worked with them and listened to them. We have taken a particular decision in respect of this fund to deliver the scale and reach that we need across the country.

**Lord Addington (LD):** My Lords, the Minister talks about this not being as good value for money as other schemes. What other scheme would be able to go into the workplace of a worker who is trapped in a low-skilled job without the basic requirements to get out of that job? When it comes to other projects, what start-up in the IT sector—she said that it could not reach them—needs basic English, basic maths and basic IT support?

**Baroness Penn (Con):** I believe that I have already pointed noble Lords towards the European Social Fund work in this area. Another provision that the Government make is through the National Careers Service. I reassure the noble Lord that, with respect to people on low wages, the Government have extended eligibility for those who are in work but on low wages to access fully funded adult education, whereas in previous years this was co-funded.

**Lord Taylor of Warwick (Non-Afl) [V]:** Adult learning is life-affirming, but the unemployment rate among those from BAME backgrounds is at 8.5%, almost twice that of their white counterparts. What more are the Government planning to do to help remove barriers to adult education and employment for those from BAME backgrounds?

**Baroness Penn (Con):** My Lords, I believe that education and employment is one of the topics that the Prime Minister's Commission on Race and Ethnic Disparities is looking at. The noble Lord talked about those who are unemployed needing access to adult education. That is absolutely right, and one of the challenges with Unionlearn is that only 11% of users are actually unemployed.

**Baroness Altmann (Con):** My Lords, I congratulate Unionlearn on its tremendous work. I also congratulate the Government on their £2.5 billion national skills fund. Following the question from my noble friend Lord Bourne, can the Minister give us some idea of what happened in the discussions with the unions in November and whether any consideration might be given to absorbing some of the Unionlearn operations into the national skills fund?

**Baroness Penn (Con):** My Lords, I was not party to those conversations. However, on taking forward the national skills fund and the lifetime skills guarantee, we are obviously consulting with businesses and with people across the sector about their effective operation, and we will continue to take that approach.

**Lord Bird (CB):** I declare my interest in the *Big Issue*. We have started something called the Ride Out Recession Alliance, which is working with unions, businesses, local authorities and politicians. This is the time for solidarity. May I suggest that it would be a waste of money to cut this fund at the moment, because the unions—Unite and all the other unions—are getting behind the whole idea that we all have to have solidarity in the workplace and in training over the next 20 years, if not more?

**Baroness Penn (Con):** My Lords, on the delivery of skills provision, the Government have taken the decision not to continue this funding, but that does not represent a cut to the funding of skills provision overall. In fact, this is being increased and we are making sure that it is available to a wider group of people.

**Baroness Blackstone (Ind Lab):** My Lords, does the Minister accept that this is a splendid example of co-operation and collaboration between employers and the unions? I notice that she did not answer one of her noble friend's questions about how much consultation

there was with employers; she only mentioned the TUC. My evidence is that employers are very upset about this change. Moreover, would she agree that increasing the scale and reach of the offer on training, which she keeps referring to, should not stop a small but successful scheme, where independent evaluators have shown just how high the return is on expenditure and how far it benefits those who are particularly hard to reach?

**Baroness Penn (Con):** My Lords, I believe that I have acknowledged the return on investment, but, as I also pointed out, the return on investment in FE in general is slightly higher than in Unionlearn. Of course, it is for businesses and trade unions to keep working together, if they so wish, to provide training for their employees; that is something that the Government would welcome.

**The Lord Speaker (Lord Fowler):** My Lords, all supplementary questions have been asked, and we now move to the second Oral Question.

## Palace of Westminster Restoration and Renewal Programme: Spending

*Question*

*12.19 pm*

*Asked by* ***Baroness Rawlings***

To ask the Parliamentary Works Sponsor Body how much money is being spent on the Palace of Westminster Restoration and Renewal Programme per week; and what is it being spent on.

**The Lord Speaker (Lord Fowler):** My Lords, the spokesperson of the Parliamentary Works Sponsor Body is the noble Baroness, Lady Scott of Needham Market.

**Baroness Scott of Needham Market (LD) [V]:** My Lords, in accordance with the annual estimate agreed by the commissions of both Houses, weekly spend to date has been £1.8 million. The current spend includes thorough surveys to fully understand the condition of the Palace, gathering detailed data to help inform the design options, and the scoping and costing of those options.

**Baroness Rawlings (Con) [V]:** I thank the noble Baroness for her Answer. Are HMG, through the sponsor board, really spending £2 million a week on this R&R project, as asserted by the PAC report? The late David Frost would have called this "monopoly money", as he did in "Frost over England", and £2 million is a huge amount of taxpayers' money. Can the noble Baroness tell your Lordships exactly what it is being spent on? Is it fees for architects and other professionals who have been working on the restoration and renewal programme since 2017 and still are in 2020? Can the noble Baroness tell your Lordships the budget figures for 2021? If they are unavailable, could she explain why? If she does not have them now, could she look into this later?

**Baroness Scott of Needham Market (LD) [V]:** My Lords, there are a lot of questions within that. The fact is that this project will be one of the most complex heritage restoration projects ever undertaken, anywhere in the world. All the advice, including from the National Audit Office and the Infrastructure and Projects Authority, is that thorough preparation—the surveys and so on that I have outlined—is essential to the planning. All our costings are available on the website for the noble Baroness to find, but I am happy for officials to contact her and talk her through them.

**Lord Young of Cookham (Con):** My Lords, part of the sponsor body's budget is spent on plans for the restored building. There are 12 storeys of accommodation in Victoria Tower, with spectacular views, occupied exclusively by archives, which are infrequently visited by noble Lords. Could the sponsor body save us the rent on 1 Millbank by converting that space into offices and moving the archives, which came here only in the 19th century, to somewhere less expensive and more accessible to those who need them?

**Baroness Scott of Needham Market (LD) [V]:** The noble Lord makes an interesting point about the use of Parliament as a whole Estate, not just separate Houses and buildings. Accommodation surveys show that there is a significant amount of accommodation potentially available in Victoria Tower. It will be for the Houses to determine how to use that space after R&R has taken place. The future location of the archive is also a matter for the House administrations, which is currently being dealt with by the archives relocation programme.

**Baroness Deech (CB) [V]:** The Joint Committee on restoration, in its report of September 2016, considered the possible use of Victoria Tower Gardens during the restoration. It said that they are likely to be required as a site for construction activities, such as plant, all of which are likely to have significant implications on traffic flows in and around the Palace. What consideration is being given to keeping Victoria Tower Gardens open and available for that period?

**Baroness Scott of Needham Market (LD) [V]:** The noble Baroness has raised an important point, highlighting just how constrained the Palace of Westminster will be as a site, once we start getting into the full restoration project. In February this year, the sponsor body wrote to the Holocaust memorial planning inquiry to request that, whatever is ultimately decided, consideration is given to mitigating impacts on access to the Palace, both from the construction of any memorial site and also its future operation.

**Lord Clark of Windermere (Lab) [V]:** My Lords, two months ago, the Public Accounts Committee of another place produced a comprehensive report on the R&R of Parliament, emphasising the massive and increasing cost involved. Has the sponsor body considered that report and, if so, what conclusions did it reach? Also, I understand that it was due to publish an initial review of its work this autumn. What is the state of that, as we enter winter?

**Baroness Scott of Needham Market (LD) [V]:** The sponsor body agrees with the recommendations of the Public Accounts Committee, has responded to them and is providing the information requested. As the noble Lord said, we are also undertaking a strategic review of the programme, which is almost complete now. It will go to the commissions of both Houses and the appropriate committees for consideration, and then will be discussed by Members early in the new year.

**Lord McNally (LD) [V]:** My Lords, will the commissions of both Houses have copies of *Mr Barry's War*, by Caroline Shenton, which records how the meddling of parliamentarians in the 19th century added to the costs and time to build this magnificent Palace? Will the noble Baroness assure me that she and her colleagues will keep their nerve and keep going, because we owe it to history and future generations to preserve this symbol of democracy in a troubled world?

**Baroness Scott of Needham Market (LD) [V]:** I assure the noble Lord that the sponsor body is well aware of the lessons learned. In fact, the first item of business at our first meeting was a presentation from Caroline Shenton. The National Audit Office has highlighted that, in fact, nothing has changed: there has to be consistent political buy-in for a project of this size, which will last this long. Further to that, we are spending around £127 million this year just on ongoing maintenance, so doing nothing is not a cost-free option.

**Baroness Smith of Basildon (Lab):** My Lords, I am grateful to the noble Baroness, Lady Scott, for her answers. She is answering for the sponsor body today, because of her commitment to this project. I wish that were the case for everybody making decisions on this project, but the point made by the noble Lord, Lord McNally, on political interference was one of the risks identified by the committee on which I served in 2016, which put the urgency of the work needed at centre stage. I ask that the information she just provided about £100 million-worth of repairs each year, and what that money has been spent on, is put in the public domain and circulated to noble Lords interested in this. The PAC reported that every week of delay costs the taxpayer £2 million and puts the safety of employees and visitors at risk. That should be a sobering thought for anybody who wishes to delay this project.

**Baroness Scott of Needham Market (LD) [V]:** The noble Baroness is right to highlight the need for consistent political support, which came across clearly from the NAO. It is difficult enough to work out the cost of doing something, but the cost of not doing something is more difficult. We are attempting precisely that because, when parliamentarians make their decisions, they must understand that doing nothing at all will be very expensive indeed.

**Lord McLoughlin (Con):** The noble Baroness, Lady Smith, just made a point about the ongoing costs of restoration. If the public look at the Palace of Westminster at the moment, they would think that the restoration programme is already under way, when it is a repair project and existing maintenance. It is essential that the proper work being taken on by the sponsor body, although it is costing a lot of money and is expensive, is done so that we get the best deal for the taxpayer in the long term. If this House or the Palace were to be involved in a fire, it would cost the country a great deal more.

**Baroness Scott of Needham Market (LD) [V]:** I can only agree with the points made by the noble Lord. There are not only significant maintenance costs involved on an ongoing basis, but significant risk of fire, risk from asbestos, risk from falling masonry and, most significantly, risk of a total collapse of the mechanical and engineering systems.

**The Lord Speaker (Lord Fowler):** My Lords, the time allowed for this Question has elapsed.

## LGBT Community: Domestic Abuse

*Question*

*12.30 pm*

*Asked by* ***Baroness Wilcox of Newport***

To ask Her Majesty's Government what steps they are taking to protect lesbian, gay, bisexual and trans people from domestic abuse.

**The Minister of State, Home Office (Baroness Williams of Trafford) (Con):** My Lords, the Government are committed to supporting all victims of domestic abuse, including through the provisions in the Domestic Abuse Bill. In 2020-21, the Home Office has provided £120,000 of funding for Galop's LGBT helpline, as well as £71,000 for Covid-related pressures. We continue to work closely with domestic abuse organisations, including those representing LGBT victims, to assess their ongoing needs and ensure that commissioning of services is fully inclusive.

**Baroness Wilcox of Newport (Lab) [V]:** My Lords, it is White Ribbon Day this week, and LGBT people experience disproportionately high rates of domestic abuse in Britain today. Despite this higher prevalence of abuse, LGBT survivors experience multiple barriers to accessing support services. In the new year the Domestic Abuse Bill will come before this House, presenting a prime opportunity to increase awareness of LGBT experiences of domestic abuse, and to increase provision of support, including specialist LGBT domestic abuse services, so that every LGBT person can access support when they need it. Does the Minister agree that this opportunity should be fully utilised, with the introduction of appropriate legislation?

**Baroness Williams of Trafford (Con):** I most certainly agree with the noble Baroness that the opportunity should be utilised, not only through the DA Bill, but also, I hope, through the international conference that we were due to hold. Whether it is virtual or real, it

will be a great opportunity for leaders from around the world to engage on what is so important in this area of equality.

**Baroness Armstrong of Hill Top (Lab) [V]:** My Lords, there is great variance of provision around the country. I am told that in places such as Brighton there is very good provision, ranging from specialist training of front-line responders to refuges, but in other areas, particularly non-metropolitan areas, there can even be no provision. Can the Minister ensure that she is working with the domestic abuse commissioner on these issues, and that the commissioner has a duty to support and hold all statutory agencies to account throughout the country in appropriately meeting the needs of LGBT survivors?

**Baroness Williams of Trafford (Con):** I do not disagree that the provision of domestic abuse support across the country is patchy. It has been that way for quite some time, hence the duty of care on first-tier local authorities in their provision of services. The domestic abuse commissioner, Nicole Jacobs, is undertaking an assessment of where the gaps might lie and where we can improve them, particularly for community-based services.

**Lord Mackenzie of Framwellgate (Non-Afl) [V]:** My Lords, domestic violence of all kinds often remains unreported because of the fear of retribution at the hands of the perpetrator. As the Minister knows, this is particularly acute during periods of lockdown. She will also be aware that a speedy police response can be life-saving in such a case. Is she satisfied that the dangerous, old-fashioned mantra that it is "only a domestic" is being expunged, and that the training of first responders emphasises the requirement for particular vigilance in this regard during the Covid-19 pandemic?

**Baroness Williams of Trafford (Con):** It is interesting that the noble Lord says that, because that is precisely the debate that we had yesterday. What some years ago might have been described as just a domestic is now being dealt with far more sensitively and properly by the police, including with the use of domestic abuse prevention orders, so that the moment that the victim—he or she, though it is usually a she—reports something to the police, it is immediately dealt with.

**Baroness Sanderson of Welton (Con):** My Lords, what are the Government doing to protect older LGBT people from domestic abuse? Will they consider collecting data on domestic abuse for all ages, not just those aged 74 and under?

**Baroness Williams of Trafford (Con):** My noble friend raises an important point, and raises the challenge of collecting that data, which is not present because older people are often less likely to engage with surveys done online. Additionally—it is a sad fact—some older people might be too frightened to admit abuse, particularly if it is from a younger person, and they may not even realise, because it has been going on for so long, that they are a victim of domestic abuse.

**Baroness Burt of Solihull (LD) [V]:** Less than 1% of refuges nationally provide LGBT+ domestic abuse survivors with specialist support. I heartily endorse what the Minister said earlier, and hope that she agrees that the role of the domestic abuse commissioner should include monitoring and evaluation of all statutory agencies, to ensure that LGBT+ victims and perpetrators get the help that they need.

**Baroness Williams of Trafford (Con):** As I said earlier, gaps in community provision are precisely what the domestic abuse commissioner is looking into as we speak, to ensure that there are none. It is important that everyone, regardless of who they are and their sexual orientation, has these services available to them.

**Lord Herbert of South Downs (Con):** My Lords, domestic abuse is one of the most alarming causes of homelessness, particularly among young people. In turn, LGBT young people, when made homeless, are especially vulnerable to further abuse. What are the Government doing about this issue, bearing in mind the commitment to tackle it in the LGBT action plan?

**Baroness Williams of Trafford (Con):** I wish I had spotted my noble friend when I answered the previous question. He will know that, during the Covid period, the issue of homelessness was paramount, in terms of protecting people. Of course, that will not stop after we have got through the pandemic. I am very aware of the various factors that might lead LGBT people to become homeless and subsequently be unable to get back on their feet, so I totally take his points on board.

**Lord Carlile of Berriew (CB) [V]:** Can the Minister assure the House that not only the rights, but also the interests of trans victims of domestic abuse will now be recognised, as they are potentially the most vulnerable, and worthy of a speedy and strong response from the police, including the 999 service, which is sometimes less than helpful to them?

**Baroness Williams of Trafford (Con):** I am glad that the noble Lord has brought this up. I recognise the particular problems that trans victims face in terms of credibility, for want of a better word, from our services. The fact that we now train front-line police officers to be not only sensitive but cognisant of the different types of domestic set-ups and to respond appropriately and sensitively is incredibly important. The noble Lord talked about trans victims. I am also minded of some lesbian victims of domestic abuse whom I have met who feel that, perhaps because some of them look more masculine, they will not be treated as victims and are more likely to be assumed to be perpetrators.

**Baroness Gale (Lab) [V]:** Does the Minister agree that there is a lack of support for elderly LGBT people who are victims of domestic abuse and face distinctive barriers in accessing domestic abuse services, including the criminal justice system? Can she confirm that the UK will comply with Article 4.3 of the Istanbul convention

[Baroness Gale]
regarding non-discrimination on gender identity and sexual orientation, and in doing so ensure that government support and funding is in place?

**Baroness Williams of Trafford (Con):** I absolutely recognise the noble Baroness's point about the barriers to accessing services, which are many and varied. I also acknowledge that in passing the Domestic Abuse Bill we will be complying with the Istanbul convention.

**The Lord Speaker (Lord Fowler):** My Lords, the time allowed for this Question has elapsed. We now come to the fourth Oral Question.

## Ministerial Code
*Question*

*12.41 pm*

*Asked by* ***Lord Tyler***

To ask Her Majesty's Government whether their Ministers are expected to abide by the standards of conduct in the discharge of their duties as set out in the Ministerial Code.

**The Minister of State, Cabinet Office (Lord True) (Con):** Yes, they are, my Lords. The Ministerial Code sets out standards of behaviour that Ministers are expected to maintain. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the code and for justifying their actions and conduct to Parliament and to the public to whom they are ultimately accountable. The Prime Minister takes any allegations about misconduct very seriously and is the ultimate arbiter of conduct.

**Lord Tyler (LD) [V]:** My Lords, on 2 November the Minister assured me and the House that the inquiry into bullying by the Home Secretary was wholly independent and free of all political and personal interference. Given that the Prime Minister prejudged that inquiry by expressing every confidence in her, promised to stick by her and then tried unsuccessfully to tone down the report before sitting on it for many months and rubbishing its recommendations, does the Minister now regret that he was misled? The Prime Minister promised that the Ministerial Code would outlaw bullying and harassment, but he has made the process a sham and the outcome shambolic. This is what Obama calls "truth decay". Why should civil servants—or, indeed, anyone else—now trust the Prime Minister's promises?

**Lord True (Con):** My Lords, I infer from his remarks that the noble Lord did not prejudge the outcome of the inquiry. The Cabinet Office published Sir Alex Allan's findings on the Home Secretary's conduct. The PM, as the arbiter of the code, considered all the findings carefully and, weighing up all the factors, the Prime Minister's judgment is that the Ministerial Code was not breached.

**Lord Howard of Rising (Con) [V]:** My Lords, just as Ministers take responsibility for their department, good or bad, so civil servants do not publicly criticise their Ministers. Does the Minister agree that Sir Philip Rutnam behaved disgracefully badly when he crossed that boundary by rubbishing a Secretary of State? He brought even further disgrace on our superb Civil Service by appearing on television. Does the Minister agree that in future snowflakes should be barred from being Permanent Secretaries or, indeed, holding any other senior position in the Civil Service?

**Lord True (Con):** Well, my Lords, my noble friend always asks his questions in a direct manner. I will not comment on any individual case, but it is certainly true that being at the top of a major department is a challenging role for Ministers and senior civil servants alike—and, frankly, I have not known many snowflakes in either of those capacities.

**Lord Butler of Brockwell (CB):** My Lords, it would have been good if the Minister had condemned the terms of the question asked by the noble Lord, Lord Howard. Under this Prime Minister, the conduct of the Government and their Ministers has been criticised by the Supreme Court, the National Audit Office in relation to their conduct of procurement, the Commissioner for Public Appointments, the chair of the Committee on Standards in Public Life and the Prime Minister's independent adviser on ministerial conduct. Do the Government take these criticisms seriously? If so, what proposals do they have to restore confidence in the probity of public life?

**Lord True (Con):** My Lords, I do not agree that confidence in the probity of public life, as the noble Lord puts it, is destroyed. The Government take all criticism and comment seriously and reflect on all comment, positive and negative. That is the wise thing to do, and I am sure the Government will continue to do it.

**Baroness Quin (Lab) [V]:** My Lords, are there any previous cases of Prime Ministers overruling and ignoring the results of an inquiry under the Ministerial Code?

**Lord True (Con):** My Lords, I would not characterise it in that particular way. The Prime Minister concluded in this case that the Ministerial Code was not breached. There was a prior case in 2012 when there was a finding that the code had been breached and the Minister also remained in office.

**Lord Wallace of Saltaire (LD) [V]:** My Lords, has the Minister read the lecture given by the noble Lord, Lord Evans, to the Institute of Business Ethics on 11 November? The noble Lord commented that

"too many in public life, including some in our political leadership, are choosing to disregard the norms of ethics and propriety that have explicitly governed public life for the last 25 years, and … when contraventions of ethical standards occur, nothing happens."

Does the Minister agree?

**Lord True (Con):** No, my Lords, I do not agree, because I do not consider that that generalised charge against people in public service is justified. I find high

standards of probity among the colleagues I work with and among the people I have had the honour of opposing in the past when they were in government.

**The Lord Bishop of St Albans:** I am proud to be part of a House that places such emphasis on standards and codes of conduct when working with civil servants and staff, and I take this opportunity to thank those who serve us so brilliantly in every aspect of this House. The Civil Service needs to attract the brightest and best, and at the moment it is in competition with many other organisations which, equally, are trying to attract young people. If it is widely perceived that they will not be valued and respected, will that not, in the long run, affect recruitment to the Civil Service?

**Lord True (Con):** My Lords, I am grateful for the right reverend Prelate's first comment. It is not the case that this Government do not value civil servants. Indeed, the joint letter sent out by the Prime Minister and the Cabinet Secretary yesterday reaffirmed their admiration for the work of civil servants.

**Baroness Noakes (Con):** My Lords, does my noble friend the Minister agree that a strength of the Ministerial Code is that it does not require the removal from office of a Minister who breaches it but emphasises that the Prime Minister is the final arbiter on whether a breach has occurred and, if so, what the consequences are, which then allows him to make considered judgments in cases that are not black and white?

**Lord True (Con):** Yes, my Lords, these things are a matter of judgment. No one has referred to the fact that my right honourable friend the Home Secretary has made a very strong apology for her actions.

**Baroness Smith of Basildon (Lab):** My Lords, I was disappointed with the Minister's response to the noble Lord, Lord Butler of Brockwell, who sought to place this issue in the context of how the Government see their role. The Prime Minister has to understand—as Donald Trump has had to do—that his saying something does not make it true. In his introduction to the Ministerial Code in 2019, the Prime Minister was resolute that there would be no bullying. Yesterday, in the extraordinary letter to civil servants and Ministers, he repeated that there is no place for bullying. He may be the final arbiter, but in the first test that he had, he overruled an independent report into a senior Minister who urges the rest of us to uphold the rule of law. Perhaps I may ask him one specific question on this. Did the Prime Minister seek—albeit unsuccessfully—to have the final report watered down before it was officially presented to him?

**Lord True (Con):** My Lords, I said in answer to an earlier question that I am not commenting on any part of the process. The Prime Minister's conclusion was that the Home Secretary was not a bully. That does not mean that there were not difficult circumstances, which were brought out in Sir Alex's report, or that bullying should not be something that we all take extraordinary seriously and combat.

**Lord Harries of Pentregarth (CB) [V]:** I absolutely accept that the Prime Minister should make the final decision on these matters, and I respect the fact that the Home Secretary has apologised, but does the Minister agree that the fact that the Prime Minister immediately sent round an email saying that there must be no bullying, against the background of rejecting the advice of his adviser, is bound to at least raise a great number of eyebrows?

**Lord True (Con):** I am afraid that I cannot follow the noble and right reverend Lord. I have answered that the Prime Minister did not consider that the Home Secretary was a bully, and the noble and right reverend Lord referred to the Prime Minister's views on the matter. I learned in Sunday school that forgiveness is a Christian quality, and I believe that we should accept the apology and move on.

**Lord Forsyth of Drumlean (Con) [V]:** My Lords, given that four senior civil servants who gave evidence under oath to the Salmond inquiry have had to return with corrections to their testimony, is my noble friend sure that the Civil Service Code is fit for purpose? On the enforcement of the Ministerial Code, does he share my concern that, unlike the Prime Minister, Sir Alex Allan was able to reach his conclusions without interviewing the Home Secretary himself?

**Lord True (Con):** My Lords, as I have said, I cannot comment on the details of the investigation or on who was involved. I think that many would be surprised by my noble friend's hypothesis. However, I can say again that the Prime Minister has reviewed the matter, including Sir Alex Allan's report, and does not consider that the code was breached. The Prime Minister and the Cabinet Secretary have issued a letter setting out the joint responsibilities of Ministers and Permanent Secretaries. As my noble friend implies, there is a duty on both sides to work together harmoniously. I believe that we should now all get on with the job of doing good public service.

**The Lord Speaker (Lord Fowler):** My Lords, the time allowed for this Question has elapsed and it brings Question Time to an end.

*12.53 pm*

*Sitting suspended.*

## Tigray Conflict

*Private Notice Question*

*1 pm*

*Asked by* ***Lord Alton of Liverpool***

To ask Her Majesty's Government what assessment they have made of the conflict in Tigray; and what steps they are taking to co-ordinate international action to prevent further violence.

**Lord Alton of Liverpool (CB):** My Lords, I beg leave to ask the Private Notice Question standing in my name on the Order Paper and in so doing, I declare my

[Lord Alton of Liverpool]
interests as the vice chair of the All-Party Parliamentary Group on Eritrea and as a patron of the Coalition for Genocide Response.

**The Parliamentary Under-Secretary of State, Foreign, Commonwealth and Development Office (Baroness Sugg) (Con):** My Lords, the UK is deeply concerned by ongoing violence between federal and regional forces in the Tigray region of Ethiopia. The Foreign Secretary spoke to Prime Minister Abiy on 10 November to emphasise the need to protect civilians and allow humanitarian access. He also urged de-escalation of the violence and swift moves to political dialogue. We remain in contact with the Ethiopians, the region and our partners in the international community to achieve these goals.

**Lord Alton of Liverpool (CB):** My Lords, in thanking the Minister for that reply, I know that she will have seen the reports I sent her about the threatened impending assault on the Tigrayan capital of Mekelle, and attacks on refugee camps—both are war crimes—along with the horrific violence against women and children, which one report suggests may be on the edge of genocide. Given that the Ethiopians say that they will "show no mercy" to Mekelle, with 500,000 in imminent danger, what will we do to fulfil our duties under the genocide convention to prevent, to protect and to punish? What urgent steps are we taking through the United Kingdom envoy for the Horn and Red Sea, with our allies in the Gulf, through the African Union and the United Nations to avert yet more deaths, carnage and instability, and more refugees?

**Baroness Sugg (Con):** I am grateful to the noble Lord for sharing the information he has received, which is among many concerning reports we have seen. Reports of an imminent push on to the city of Mekelle, with time-limited threats, are a very serious concern. We have been consistent in our messaging that civilians must be protected and humanitarian access granted. Given the continued conflict, and as a complement to the efforts of the region to press for mediation, we will continue to press these messages with all relevant international partners, including at the UN Security Council, where the issue is due to be discussed imminently.

**Lord McConnell of Glenscorrodale (Lab):** My Lords, this situation reinforces the critical importance of having an atrocity prevention strategy at the heart of the new Foreign, Commonwealth & Development Office. Can the Minister outline for us any commitments that the UK has through the Conflict, Security and Stability Fund to conflict prevention in Ethiopia and the region? In doing so, can she affirm the critical importance of United Kingdom overseas development assistance in conflict prevention and development, which we know is an absolute prerequisite for peace, and will she perhaps indicate to the Chancellor that he should not be breaking manifesto promises tomorrow?

**Baroness Sugg (Con):** My Lords, the noble Lord is absolutely right that conflict is a key part of our overseas development assistance. We have a conflict, security and stabilisation force programme in Ethiopia, which works to support a peaceful and inclusive political transition. We also have wider programmes in the region which support the peace process and work to stop conflict while promoting human rights, and delivering women, peace and security objectives. I hope noble Lords will forgive me if I do not speculate ahead of a fiscal event.

**Lord Chidgey (LD) [V]:** My Lords, it is reported that as many as 200,000 refugees are anticipated to cross into Sudan in the coming months through the Hamdayet border in Kassala state, the Lugdi in Gedaref state and the Aderafi border. With close to 2 million IDPs already in the region, will the Minister confirm that we are asking our UK representative in the UN to raise this conflict as a matter of urgency with the Security Council, while supporting the African Union's efforts to bring a halt to the fighting through the good offices of the senior African statesmen who have been allocated to it? Without delay, will the Government assist the UNHCR, the WFP and other agencies, providing the support they need to cope with this immediate crisis?

**Baroness Sugg (Con):** My Lords, we are working closely with the African Union to ensure that it is doing all it can to stop this conflict. We have actively supported the A3+1 to bring this on to the agenda at the UN Security Council. We are of course working with UN agencies such as the UNHCR, the WFP and UNOCHA to provide support for the many thousands of refugees who so desperately need it.

**Baroness Anelay of St Johns (Con) [V]:** My Lords, I welcome what my noble friend has just said about working closely with the African Union. What discussion has our ambassador, Dr McPhail, had with it regarding the work of the Intergovernmental Authority on Development, which could play a key role in conflict resolution, as indeed it has in South Sudan?

**Baroness Sugg (Con):** I agree with my noble friend. We have been engaging with the AU and IGAD, including when the Foreign Secretary spoke to the Prime Minister of Sudan, who is the chair of IGAD. He has also spoken to the Minister of International Relations in South Africa, which is of course the current AU chair. We share their view that de-escalation and political dialogue is needed. Our ambassador, Dr McPhail, will continue to co-ordinate with the AU and IGAD on finding a political solution to the conflict.

**Viscount Waverley (CB) [V]:** Does the Minister agree that indiscriminate shelling of Mekelle would be a war crime, and that we must galvanise international action to bring any perpetrators to justice? Is the world going to stand by yet again, knowing that mayhem is seemingly set to unfold, do nothing and then have to deal with the added consequences of regional instability and the combination of Somalia, Sudan and Yemen across the way ripe for Islamist groups or Governments to exploit?

**Baroness Sugg (Con):** My Lords, from the Foreign Secretary to our ambassadors in Ethiopia, Eritrea and Sudan, we are talking urgently to partners across the

region and the world to ensure that humanitarian support can reach those who need it most. We are also doing everything we can to de-escalate the conflict. Leaders on both sides must refrain from ethnic-based violence and discrimination. They must stress the importance of respecting human rights and avoiding civilian loss of life. I agree with the noble Viscount: there must be accountability for human rights abuses.

**Lord Collins of Highbury (Lab):** My Lords, after the conflict of the 1980s we are on the brink of another tragedy. Civilians are caught between violent rebels willing to die and a Government threatening to shell a city. Why has it taken until today for the UN Security Council to meet? What is the United Kingdom doing to secure critical humanitarian corridors and human rights access for NGOs? Does the Minister agree that this is exactly the wrong time to slash Britain's crucial 0.7% commitment to humanitarian aid?

**Baroness Sugg (Con):** My Lords, as I have said, we are deeply concerned by the unfolding humanitarian catastrophe. The figures that the UN estimates are heartbreaking. We must do all we can in international fora to bring this issue to the table, while continuing our diplomatic work. Regarding 0.7%, to me it is a source of great pride that the United Kingdom has been a development superpower and contributes so much to the world. Our support and leadership on development has saved and changed millions of lives; noble Lords can see that in the work and progress we have seen in Ethiopia.

**Lord Oates (LD) [V]:** My Lords, I welcome the Minister's comments on 0.7% and certainly hope that we will not see that budget cut to fund bombs and bullets in the defence budget. The Minister has recognised the dangers of the war spreading beyond Ethiopia's borders. Can she therefore tell the House whether the Government have been in communication with the Eritrean Government to commend their restraint following the TPLF rocket attack on Asmara, and to urge them to continue to avoid responding to provocations?

**Baroness Sugg (Con):** My Lords, we continue to engage with our partners in Ethiopia and across the regions. On Eritrea specifically, we continue to track the situation, raise our concerns about the deaths of civilians and raise the importance of respect for human rights in meetings with regional leaders.

**Baroness Chalker of Wallasey (Con):** My Lords, I ask my noble friend whether we have pressed for discussion with the Eritrean Government? I know that they now have a good relationship thanks to Prime Minister Abiy. They will have a very clear view of how to put down the insurrection that is going on in Eritrea, which is exacerbating the terrible situation in Tigray. I hope that the three eminent Africans will be able to bring some peace, as they have done in their own countries. I ask my noble friend whether we can work on the refugee and displaced person situation. They are mainly in Sudan, but they are coming from Eritrea as well as Tigray and the surrounding area, the whole of which is now in considerable jeopardy because of the action between Tigray and the Ethiopian Government.

**Baroness Sugg (Con):** My Lords, of course, we welcome the involvement of Eritrea to help to bring about an end to this conflict. We share the view of the African Union that de-escalation and political dialogue are needed, and we welcome the offers of mediation by the AU and President Ramaphosa of South Africa. While Abiy has agreed to meet with the envoys, he has so far declined offers of mediation. We encourage the Ethiopians to engage to help bring about a dialogue that ends conflict and focuses on a political solution. The latest figures we had this morning from UNHCR showed that, as of 22 November, over 41,000 people have arrived in Sudan. I am sure that, like me, many noble Lords will have seen the distressing footage of people fleeing for their safety. They must be supported, and that is what we are working to do.

**Lord Triesman (Lab) [V]:** My Lords, many years of close contact with Ethiopia taught me, as Minister for Africa, how vital it is to sustain security in the country. It is vital for the Horn of Africa, for the African Union, whose headquarters are in Ethiopia, and for avoiding humanitarian catastrophes. I welcome what the Minister has said about international links, and I hope that they will be pursued with the energy that she has conveyed. Will the Minister and the Foreign Secretary meet with me urgently to discuss steps to provide safety in the United Kingdom for the Tigrayan Ethiopian leaders and their families, who were key allies of ourselves and the United States at many vital times over the last 15 to 20 years and who now face ethnic purges that may be on the edge of genocide?

**Baroness Sugg (Con):** As the noble Lord knows from his previous role and as he highlights, Ethiopia plays an incredibly important role in stability across the region, not least through its contributions to the UN peacekeeping operations. A prolonged conflict could have further implications for regional stability in the Horn of Africa. I am very happy to meet with the noble Lord to discuss refugees.

**Baroness Kennedy of Cradley (Non-Afl):** My Lords, I declare an interest as a patron of Action on Poverty. The clock is ticking down on the threatened 72-hour ultimatum for the military assault on Tigray, where bombings and massacres have already driven 40,000 Ethiopians to flee to Sudan. What are the Government seeking to achieve from the imminent UN Security Council meeting to pull back the threatened offensive? What further steps are the Government planning to ensure free, safe and unhindered humanitarian access to the Tigray region and give the refugees the support they need?

**Baroness Sugg (Con):** My Lords, I share the noble Baroness's concern about the reports on the imminent push. As I say, we have been, and are delighted to be, supporting the UN Security Council to discuss the issue. Our objective is for the parties to de-escalate, to ensure the protection of civilians and to avoid further spillover into the neighbouring regions of Ethiopia. Of course, ensuring access for humanitarian actors is essential; we have pushed, and will continue to push, for that. As I said, the refugees desperately need our help.

[Baroness Sugg]

**Lord Lancaster of Kimbolton (Con):** My Lords, I was privileged to be the first Minister to visit Ethiopia, a few days after the election of Prime Minister Abiy in 2018. I left with a deep appreciation of just how vital a stable Ethiopia is to the wider stability of the Horn of Africa. I ask my noble friend what specific military and security assistance we are offering to try to ensure that the terrible events in Tigray do not stretch to a wider region.

**Baroness Sugg (Con):** My Lords, the conflict is currently focused on the Tigray region in northern Ethiopia, but, as my noble friend says, it is likely to have a negative impact on the political stability and security in other parts of Ethiopia. We strongly value our relationship with Ethiopia, and it has a key role to ensure that we promote stability and security across the region. I spoke earlier about the CSSF regional programming; we also work on capacity building in countries such as Somalia through the training of troops and will continue to work closely with our regional partners in order to assist their stabilisation efforts.

**Baroness Uddin (Non-Afl):** My Lords, on several occasions I witnessed at first hand the devastation of the torture, rape and murder of the Rohingya people at the hands of the Burmese Government. International communities were too slow to protect, and to punish and prevent the perpetrators of genocide and ethnic cleansing, leaving Bangladesh largely to manage a refugee population of 1 million. What are our Government doing to prevent a similar fate for the Ethiopian people on this occasion and to assist Sudan with the resources that it will so desperately need to manage the refugees?

**Baroness Sugg (Con):** My Lords, we are very proud to be one of the largest donors to the Rohingya people, and we will continue with that commitment to help them deal with the tragic situation that they find themselves in. We are monitoring the violence in Ethiopia very closely. As I say, we are clear that we need to see de-escalation and political dialogue, which we think is the only way forward to prevent further violence. As party to the UN Convention on the Prevention and Punishment of the Crime of Genocide, we are firmly committed to the prevention and punishment of genocide. We will continue to support the refugees; we are supporting them through our FCDO bilateral programmes and will carefully consider what further support is available for the UN agencies which are doing such vital work to help them.

**The Deputy Speaker (Lord Alderdice) (LD):** My Lords, the time allowed for this Private Notice Question has elapsed.

## Fixed-Term Parliaments Act Committee

*Membership Motion*

*1.17 pm*

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

That this House concurs with the Commons message of 11 November that it is expedient that a Joint Committee of Lords and Commons be appointed to:

(1) carry out a review of the operation of the Fixed-term Parliaments Act 2011, pursuant to section 7 of that Act, and if appropriate in consequence of its findings, make recommendations for the repeal or amendment of that Act; and

(2) consider, as part of its work under subparagraph (1), and report on, any draft Government Bill on the repeal of the Fixed-term Parliaments Act 2011 presented to both Houses in this session.

That a Committee of six Lords be appointed to join with the Committee appointed by the Commons and that the Committee should report by Friday 26 February 2021;

That, as proposed by the Committee of Selection, the following members be appointed to the Committee:

Beith, L, Grocott, L, Jay of Ewelme, L, Lawrence of Clarendon, B, McLoughlin, L, Mancroft, L.

That the Committee have power to agree with the Committee appointed by the Commons in the appointment of a Chairman;

That the Committee have power to send for persons, papers and records;

That the Committee have power to appoint specialist advisers;

That the Committee have leave to report from time to time;

That the Committee have power to adjourn from place to place within the United Kingdom;

That the reports of the Committee from time to time be printed, regardless of any adjournment of the House;

That the evidence taken by the Committee be published, if the Committee so wishes; and

That the quorum of the Committee shall be two.

*Motion agreed.*

## Immigration (Leave to Enter and Remain) (Amendment) (EU Exit) Order 2020

*Motion to Approve*

*1.17 pm*

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

That the draft Order laid before the House on 22 October be approved.

*Considered in Grand Committee on 18 November.*

*Motion agreed.*

*1.18 pm*

*Sitting suspended.*

## Fire Safety Bill

*Third Reading*

*Relevant documents: 25th and 29th Reports from the Delegated Powers Committee*

*1.31 pm*

**Lord Ashton of Hyde (Con):** My Lords, I have it in command from Her Majesty the Queen to acquaint the House that Her Majesty, having been informed of

the purport of the Fire Safety Bill, has consented to place her interest, so far as it is affected by the Bill, at the disposal of Parliament for the purposes of the Bill.

*Motion*

*Moved by* ***Lord Greenhalgh***

That the Bill do now pass.

**The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con):** My Lords, in moving this Motion, I want to thank all those around the House who have taken part in the Bill's passage so far. I am proud that this is the first Bill I have taken through your Lordships' House solo.

The Bill represents a significant step towards delivering meaningful change so that a tragedy like that at Grenfell Tower can never happen again. The Government are, and always have been, committed to implementing the Grenfell Tower Inquiry phase 1 recommendations. The Fire Safety Bill is the first legislative step in this process, and, as I have stated before, we are committed to delivering the Grenfell recommendations through regulations following the fire safety consultation.

The building safety Bill will also deliver significant change in both the regulatory framework and industry culture, creating a more accountable system. Taken together, the Fire Safety Bill, the building safety Bill and the fire safety consultation will create fundamental improvements to building and fire safety standards and ensure that residents are safe, and feel safe, in their homes.

Although this is a short, technical Bill, it is important to ensure we get the legislative sequencing right. I am therefore committed to delivering this Bill, which will pave the way for the Government to introduce regulations that will deliver on the Grenfell Tower Inquiry phase 1 recommendations. We received 200 responses to our consultation, and I thank everyone who responded. I beg to move.

**Lord Kennedy of Southwark (Lab Co-op):** My Lords, I thank the noble Lord, Lord Greenhalgh, for his engagement with myself and the House in general as we have considered the Fire Safety Bill. The noble Lord engaged with Members of all parties and none in his friendly, engaging style. I very much appreciate that; it is the only way to do business in this House. I think the noble Lord will have a long career on those Benches, and I wish him well there. The Bill goes back to the other place in a much better state than it arrived here in. Important amendments have been passed. I hope the Government will reflect carefully on those amendments and not just seek to overturn them in the other place.

It was good that the noble Lord again confirmed that the Government are committed to implementing the first phase of the Grenfell Tower Inquiry report. I am delighted to hear that, and we have passed amendments to facilitate that. I will say to the noble Lord and the Government that it is ridiculous that the Government keep voting against the pledges they make at the Dispatch Box and had in their manifesto. I hope they will take that on board in the other place. Surely it is right that a public register of fire risk assessments is available and kept up to date.

Finally, we must end the leasehold and tenant cladding scandal. These are the innocent victims; they must not bear the costs. The costs must be borne by the people who built the building—the warranty provider, the guarantors and the people who signed the buildings off as being fit for purpose—not by the poor tenants and leaseholders. All the amendments agreed by the House have gone to the Commons. I hope they will do the right thing in the other place and not just oppose them and send them back. I thank everybody who engaged in this Bill.

**Baroness Pinnock (LD) [V]:** My Lords, this short, two-clause Bill has provoked considerable interest across the House, which is surprising, as it is a Bill that seeks to remedy some of the system failures that led to the appalling tragedy at Grenfell Tower. I join in the thanks to the Minister for arranging meetings with those of us who wished, through amendments, to improve the Bill. I thank him very much for listening to the concerns we raised.

The Bill, as amended, provides greater protection for residents by implementing some of the recommendations of the Grenfell inquiry phase 1 report and requiring fire risk assessments to be made publicly available for potential residents. The Grenfell Tower Inquiry is, little by little, exposing the building practices that resulted in flammable cladding being attached to Grenfell Tower—and many other buildings across the country—with such tragic consequences.

Currently, there is a crisis involving people across the country who are in constant fear and anxiety because they are living in flats that are encased in flammable cladding. Currently, it is the leaseholders and tenants who are expected to pay towards the costs of making their homes safe. However, we have passed an amendment to stop that outrageous practice. They have been sold homes that were deemed to be safe but are not, because of building failures. The cost of putting those failures right must not be theirs. The amendment we passed on Report puts that principle into the Bill.

Since Report, I have had many emails and messages from desperate and distraught residents of these flats. Some are being asked to pay way over £40,000 towards the costs of putting these cladding and other building failures right. It is not fair and it is not just. I hope the Government will be able to accept the principle set out in the amendment. I very much look forward to the Minister's reply.

**The Earl of Lytton (CB) [V]:** My Lords, it is a great privilege to be invited to make some concluding remarks on the Bill on behalf of the Cross Benches, especially as I was not able to participate in the initial stages. We have covered a huge range of issues, such as those raised by the noble Lord, Lord Bourne of Aberystwyth, on electrical safety, and those raised by the noble Lord, Lord Stunell, and others, focusing on safety assessments and the perils of the deregulatory approach under permitted development rights. We have ranged from fire doors to liability issues and, of course, as

[The Earl of Lytton]
highlighted by the noble Baroness, Lady Pinnock, the effect on the innocent who are blighted by the costs of remediating cladding systems.

As a technician, first and foremost, I am particularly grateful for how some of my own points were received. With Dame Judith Hackitt's report ringing in our ears, even as we debated the Bill the ongoing inquiry under Sir Martin Moore-Bick reminded us of the construction culture that we need to address, along with the reputational challenges that have been the hallmark of what has come out post Grenfell. We must never forget the effect on those who were directly affected by that terrible tragedy. I pay tribute to the Labour Front Bench for constantly reminding us of the need for the Bill. I thank the Bill team and the Minister for keeping us on the critical path—expediting things at this stage is clearly an expression of our common wish.

Of course, some matters will now need to be reconsidered by the Commons, so it may not be the last we hear of this: the Bill needed improvements and I hope that, as mentioned by the noble Baroness, Lady Pinnock, the Commons will take due regard of the careful and considered points that have been raised in this House. Given the legacy of issues that have got us here, it is a tough call, demanding courage and a firm steer from the Government, and I hope the Bill will underpin that process.

**Lord Greenhalgh (Con):** My Lords, I genuinely thank all Members of this House for their positive engagement. The Cross Benches, the Liberal Democrats, the Opposition—at the end of the day everybody wants to see a better Bill, and I certainly understand that. I thank the noble Earl, Lord Lytton. I learned a lot from his contribution on behalf of the Cross Benches. It was incredibly thoughtful and practical, understanding that this requires a firm hand from the Government and that we need to have a coherent programme as we move forward.

I am well aware that the building safety Bill, which already has around 120 clauses, will be considerably longer, in its passage through Parliament, than this three-clause Bill. But I want to make the point that we have seen constructive and more opportunistic contributions, and I want to put them into three buckets. The very constructive contributions, as this returns to the other place, are around the competence and capacity of the professionals who will have to work with the system day to day. We not only want to have nice documents and a good fire risk assessment, we need to ensure that fire safety management works and that the people in the buildings know how to prevent these things from happening in the first place. The identification of a responsible person is also important. Accountability underpins all this, so that was very helpful, as was the discussion about the recording of fire risk assessments and their availability to occupants. Some of those points were incredibly constructive—there were more, but I put them in the "constructive and relevant" bucket.

Then we have the "constructive, but this is not the right legislative hook" bucket. Electrical safety is incredibly important, since its lack is the cause of many fires in dwellings. We recognise that we need to find the right vehicle, but this is not it and I think noble Lords accept that.

Then we had the more opportunistic comments. There is a real commitment to implement the phase 1 inquiry findings from this Government, from the Opposition Benches and from the Liberal Democrats, but we had to consult, and the fire safety consultation had more than 200 responses. We need to use that as the vehicle, through regulation, to ensure that the crisis that happened three and a half years ago never happens again. Although you can never say "never", that is the purpose of these packages of reform and we stand by that commitment. We just want to find the most practical and proportionate ways of achieving that end point, by talking to the people who have to manage that system day to day.

Also more opportunistic were the comments around decades-long poor construction and poor quality. We are talking about decades of problems and, unfortunately, they are going to take a long time to resolve. The question of who pays for this remediation requires careful balance. We want building owners to be responsible for this. We want developers to build high-quality buildings, so that we do not have to remediate in the future to the extent that we do today, and that we face today with our future buildings. We want developers to pay, and they have paid. We have seen this with the ACM fund. However, the extent of how bad this is, beyond cladding, has not really been calculated. It has just been guesstimated, but it runs into many billions of pounds. Therefore, in wanting to have personal accountability but also appropriate action by the state, we have options.

*1.45 pm*

How much does the taxpayer front up? We have already fronted up £1.6 billion; we will probably have to look at more in due course, but at the moment we are spending the first billion. The taxpayer should stump up, because sometimes the warranty claims are not there. The warranty system is, frankly, not fit for purpose, as I have said before at the Dispatch Box. The noble Lord, Lord Kennedy of Southwark, has also made that point: often, a 10-year period is not enough when you are buying a home for life, and two years for defects is not enough to cover substantial structural issues, as we are finding out.

Beyond the taxpayer, we can then look at levies, as have been raised in Australia; but levies do not raise very much, and you have to balance that with the need to build more homes. So, levies can be looked at by government, but they are no silver bullet. Lastly, we can look at loans. Loans are a vehicle to make something that is unaffordable affordable, but at this stage we have not announced policy, and this is not the legislation to announce policy around how we deal with the cost of historic remediation. So, I consider this a little opportunistic, yet I do think it is constructive, because it is a serious issue that the Government have to grapple with.

I finish by thanking noble Lords, and I beg to move that the Bill do now pass.

*1.46 pm*

*Bill passed and returned to the Commons with amendments.*

## Arrangement of Business

*Announcement*

*1.51 pm*

**The Deputy Speaker (Lord Alderdice) (LD):** My Lords, hybrid proceedings will now resume. Some Members are here in the Chamber, respecting social distancing, others are participating remotely, but all Members will be treated equally. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

For consideration of the Bill in Committee, I will call Members to speak in the order listed in the annexe to today's list. Members are not permitted to intervene spontaneously. The Chair calls each speaker. Interventions during speeches or "before the noble Lord sits down" are not permitted. During the debate on each group, I invite Members, including Members in the Chamber, to email the clerk if they wish to speak after the Minister. I will call Members to speak in order of request and will call the Minister to reply each time.

The groupings are binding, and it will not be possible to degroup an amendment for separate debate. A Member intending to press an amendment already debated to a Division should have given notice in the debate. Leave should be given to withdraw amendments. When putting the question, I will collect voices in the Chamber only. If a Member taking part remotely intends to trigger a Division, they should make that clear when speaking on the group.

## Covert Human Intelligence Sources (Criminal Conduct) Bill

*Committee (1st Day)*

*1.52 pm*

*Relevant documents: 10th Report from the Joint Committee on Human Rights and 19th Report from the Constitution Committee*

***Clause 1: Authorisation of criminal conduct***

*Amendment 1*

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

**1:** Clause 1, page 1, line 10, leave out "in the course of, or otherwise in connection with, the conduct of" and insert "by"

Member's explanatory statement

This amendment is to probe why the criminal conduct cannot be described more simply; and how close must the connection be in order to fall within section 26.

**Baroness Hamwee (LD) [V]:** My Lords, this may look like a very long group, but it almost entirely concerns a couple of points, so I hope it need not detain your Lordships too long. Amendments 1, 2, 4, 10, 13 and 38 are probing. I appreciate the need for precision in legislation, which—I hope the drafters will not take this amiss—often means the wording can be a bit clunky. I would therefore be grateful for a detailed unpacking of two points on the wording.

First, I wondered whether

"criminal conduct in the course of … conduct"

is something to do with how Section 26 of the Regulation of Investigatory Powers Act 2000 is constructed. Section 26(1) applies to

"the conduct and use of covert human intelligence sources."

Is there a concern that there is a need to provide for something different to that? Is there a concern that what is to be covered cannot be separated from that? For instance, there might be a need for separate authorisations. In other words, why not have a straightforward authorisation of criminal conduct by a CHIS? It may be because it needs to be made clear that there is no wholesale authorisation of criminal conduct by a CHIS, but surely that would be only when they are acting as a CHIS. Would not the authorisation cover that? I would be grateful if the Minister could unpack that phrase for the Committee.

The second phrase is conduct "in connection with" the conduct of a CHIS. How closely connected must the second category be? I am particularly concerned to be clear whether this is to catch, or ensure that it does not catch—it occurs to me that "catch" may not be the best term here—the person giving an authorisation, the person to whom he reports and anyone overseeing that authorisation. I would be concerned if it applied to that person inciting or being an accessory to a crime, or conspiring. Would this not mean that someone is authorising himself? What is intended by this? I have omitted to welcome the Minister to what I assume is his first outing in a Committee; can he be clear about the position of those who in other situations—ordinary criminals, if you like—would be an accessory to, inciting or conspiring in a crime? Amendment 40 addresses the same point, although the phrase is conduct "in relation to" a CHIS.

Amendment 37 has been tabled to probe whether the authorisation can be retrospective, relating to past conduct. I note that Amendment 50 from the noble Lord, Lord Davies of Gower, which we will come to next week, would allow for retrospective authorisation, subject to criteria. I do not want to steal his thunder; no doubt he will talk about the operational realities which will sometimes make it very difficult to anticipate what will happen on the ground. If there is to be immunity for conduct which has been authorised ex post facto, the criteria and limitations will be very important. I beg to move Amendment 1.

**Lord Anderson of Ipswich (CB) [V]:** My Lords, I am grateful to the noble Baroness, Lady Hamwee, and the noble Lord, Lord Paddick, for each of the probing amendments in this group. Most of them, as the noble Baroness has said, are directed at essentially the same point: the intended scope of criminal conduct authorisations. I echo her remarks in finding the phrases she identified less than clear.

For me, the underlying question is whether it is intended that the conduct of any person other than a CHIS should be entitled to the protection of a criminal conduct authorisation, and if so in what circumstances. Are we talking about protections from criminal and civil recourse for the CHIS handler, controller or authorising officer, or more generally for the public

[Lord Anderson of Ipswich]
authority that employs them, or are we talking about the protection of other people who are neither a CHIS nor employed by the authorising authority? I hope the Minister will make the position clear and, if he does not favour the simpler formulations in these amendments, explain why.

Amendment 37 raises a slightly different issue. It suggests that an authorisation cannot be retrospective, which is surely right and was confirmed by the Solicitor-General at Second Reading in the other place when he said:

"The Bill does not seek to enable the retrospective granting of a criminal conduct authorisation".—[*Official Report*, Commons, 5/10/20; col. 707.]

A close reading of the Bill confirms that, on balance, it does not provide for retrospective authorisations: new Section 29B(6), for example, refers to what

"could reasonably be achieved by other conduct",

not to what could reasonably have been achieved. However, this is indirect and intricate stuff; clarification in the Bill would be welcome, and this amendment provides it.

*2 pm*

**Baroness McIntosh of Pickering (Con):** I am delighted to follow the noble Lord. I would like to speak briefly to Amendments 1, 2, 4, 10, 13 and 38, just to make these brief comments. I share the concern of, among others, the Law Society of Scotland that what the Bill proposes here in its original form, without these amendments, does not provide the necessary clarity. Indeed, if anything it seems to increase the uncertainty between national security law and the way that criminal law operates in practice.

The question I would like to put to my noble and learned friend the Minister is: does he share my concern that there may be a flood of cases in the courts to clarify the original wording without these amendments? It appears in the original wording of the Bill that there are no limits on the types of criminal conduct which could be permitted under this authorisation. Is my understanding in that regard correct?

I should perhaps state that when I was calling to the Faculty of Advocates, there were a number of courses that I had not taken as an undergraduate, because my first love being Scots law, then Roman law, I wanted to go off and practise European law—which I did, in a very modest way. I remember the sheriff who marked my criminal law paper actually wrote on it, "This candidate does not have a criminal mind". I have always taken that as a compliment, but I am not quite sure it was entirely meant like that.

With those brief remarks, I will be very grateful if my noble and learned friend could clarify if my concern is well meant, or if he could put my mind at rest in this regard.

**Baroness Whitaker (Lab) [V]:** My Lords, I would just add, in respect of Amendment 37, that we are rightly chary of imposing retrospective guilt, so how can it be right to impose retrospective immunity for something that was accepted at the time of perpetration as a crime not conferring immunity? When it was committed, the perpetrator therefore could be said to have had criminal intent.

**Baroness Jones of Moulsecoomb (GP):** My Lords, I am going to speak quite a lot of times today. I do not really want to apologise for that, but I do want to explain it: I have been interested in this particular area of policing for more than a decade, ever since I found out that the Metropolitan Police was actually spying on me, tracking my movements and reporting back on what I was doing. At the time, I was an elected councillor in Southwark, an elected Assembly Member and, for a year of that time, I was Deputy Mayor of London—when there was only one Deputy Mayor of London, not all these other deputy mayors. At the time, I think I was quite naive about the fact that the police did this sort of thing. When I got into it, of course, it became obvious that they do quite a lot of it.

The spy cops inquiry that is happening at this moment—actually, it is not happening at this moment, it is taking a break, but it will be happening again in 2021—has made it obvious that there are huge problems with this area of policing. This Bill does not solve them, and in fact it goes further—it makes more problems than it might be said to solve. I did try to be a core participant in the spy cops inquiry, but the judge at the time ruled that, because I had been spied on by the ordinary police, not by undercover police, I did not qualify. That was obviously a matter of huge sadness to me.

I congratulate the noble Lord, Lord Paddick, and the noble Baroness, Lady Hamwee, on tabling these amendments, because they are, I would say, quite necessary. For example, the language is quite confusing. I am going to say it in my own words, because we have had some very good lawyerly comments on this, but I thought I should say it in the way that I see it. These amendments would replace

"in the course of, or otherwise in connection with, the conduct of"

a covert human intelligence source, or a police spy, with the word "by" a police spy. These are important amendments to probe how tightly or loosely criminal conduct can be authorised. The Minister needs to give a clear and thorough explanation of the intention behind the words

"in the course of, or otherwise in connection with, the conduct of".

What does "otherwise in connection with" mean? What do the Government say would be the effect of removing those words, and having the much simpler word "by"?

It is important to recognise that many police spies are recruited from the ranks of criminals. To what extent can their existing or ongoing criminal conduct be authorised? I know that the noble Baroness or the noble and learned Lord will explain that it is only future conduct, but at the same time, of course, when they are doing future conduct, they will also be doing the past conduct continually. Amendment 37 probes this issue further, making it clear that only future conduct can be authorised. Without this, there is a risk that past criminal conduct can be authorised, so that criminals would essentially be let off the hook in exchange for future co-operation with the police.

Then there is the question of how all this interacts with the Proceeds of Crime Act. If criminal conduct is authorised under this Bill, does that shield any criminal

profits from being recovered under the Proceeds of Crime Act? For example, can a drug dealer or human trafficker rake in huge amounts of cash while working on the side for the police as a spy, or would this money be confiscated by the state? This legislation must not create legalised criminal enterprises—state-endorsed mafias—where the profits are irrecoverable by the state. That would be a very dangerous situation. So I am hoping that the two Ministers we have with us today will tell me that that is a ridiculous suggestion and it could never happen, because the Government will make sure that it never happens.

**Lord Cormack (Con):** My Lords, I rather wish this Bill were called the "Authorised Criminal Conduct Bill". I find it very difficult to get my mouth around this very cumbersome title, and I utterly loathe the term "CHIS". I wonder if my noble and learned friend who will reply could earn himself undying gratitude from those of us who care about the English language by coming up with something else.

These are probing amendments, and they seek essentially one thing: clarity. The noble Baroness, Lady Hamwee, made that very plain in her admirably brief introduction to this short debate. Clarity is of such importance when we are swimming in such murky waters and dealing with such very questionable matters.

The noble Lord, Lord Anderson of Ipswich, said that he felt the matter of retrospection had probably been dealt with by the remarks of, I think, the Solicitor-General in another place. But there is still a certain lurking doubt, and it would therefore be good to put something on the face of the Bill while it is in your Lordships' House to make it plain beyond any peradventure that retrospective authorisation is not possible.

I do not want to detain the House any longer, but clarity, I would emphasise, is what we are after here.

**Baroness Chakrabarti (Lab) [V]:** My Lords, I can be very brief, because others have put the point so well and also because of the next debate to follow. I would simply say that this degree of micro-precision becomes particularly important because the Bill goes further than the status quo and creates these advanced criminal and civil immunities. I will leave it at that, because I think we are all really quite keen to hear the Minister's response.

**Lord Rosser (Lab) [V]:** As drafted, the Bill refers to criminal conduct as conduct

"in the course of, or otherwise in connection with"

the conduct of a covert human intelligence source, and as

"conduct by or in relation to the person"

who is specified as the covert human intelligence source. As has been said, the amendments would establish that criminal conduct is conduct by the covert human intelligence source in the absence of any explanation as to why the additional words to which I have referred are needed, and what the consequences would be, and for whom, if they were not in the Bill. A further amendment in this group also puts on the face of the Bill that a criminal conduct authorisation cannot retrospectively give clearance for behaviour that has already happened before the date the authorisation is given.

The Joint Committee on Human Rights also raised these issues in its report on the Bill when it said that the definition of what amounts to "criminal conduct" for the purpose of an authorisation is wider than simply criminal activity by a covert human intelligence source, and referred to the wording which the amendments in this group would delete. The only explanation for this which the Joint Committee on Human Rights could find was in the draft code of practice, which states that

"a criminal conduct authorisation may authorise conduct by someone else 'in relation to' a

covert human intelligence source,

"namely those within a public authority that are involved in or affected by the authorisation."

No doubt the Government will wish to respond in some detail setting out why the words "in connection with" and "in relation to" are essential, what exactly they mean and, giving examples, explaining why it is considered necessary to enable a public authority to authorise criminal conduct by someone other than the covert human intelligence source, which some might feel is rather at odds with the title of the Bill.

**The Advocate-General for Scotland (Lord Stewart of Dirleton) (Con):** My Lords, having made my maiden remarks at Second Reading, it is a pleasure now to assist the House in scrutinising the detail of this legislation. I hope to reassure noble Lords with regard to the scope, safeguards and limits to conduct that can be authorised under a criminal conduct authorisation. I recognise the feeling of the House on the last appearance of the Bill as a recognition of the complexities and difficulties which attach to this field of criminal investigation.

With regard to the remarks by my noble friend Lord Cormack, he will perhaps recollect that when I spoke at Second Reading I recognised the inelegance of the expression "CHIS", and I fully share his concerns about it. However, until such time as we have evolved a suitable replacement, if that is possible, I trust I will not trespass on his patience if I continue to use the expression.

The Bill is drafted to allow things to be authorised which are certainly connected to the conduct of the CHIS but not the same thing as it: actions which are connected to the activities of the CHIS but which are not the CHIS activities themselves. This is deliberate and it is to allow for activity which facilitates and supports the core conduct of the CHIS, most obviously to allow the CHIS to avoid detection in order to remain in place and to provide the intelligence needed. The purpose of the expressions "in connection with" and "in relation to" is to ensure that such activity may be authorised. This language also serves the function of ensuring that the scope of a criminal conduct authorisation is properly limited. It helps to make it clear that it is not the case that any and all criminality by a CHIS may be authorised. It cannot be some private venture that the CHIS has involved himself or herself in. The criminal conduct to be authorised must be connected to the conduct of a CHIS and to the criminal conduct authority.

*2.15 pm*

I will provide an example of circumstances where an authorisation may be "in connection with" the conduct of a CHIS, to use the expression in the Bill. This relates to the membership of a terrorist organisation. As discussed in the House at Second Reading, in order to operate CHIS in terrorist organisations, they often need to be members of those organisations. Being a member of such an organisation is connected to the conduct of a CHIS but is not necessarily the same thing. With regard to

"conduct by or in relation to"

a CHIS, as the code of practice explains, a criminal conduct authorisation may authorise conduct by someone else in relation to a CHIS. This language is intended to enable the Bill to protect those within a public authority who are involved with the authorisation.

Let me be clear. The Bill is intended to cover the CHIS themselves and those involved in the office authorisation process within the relevant authority. The public authority often provides support or assistance to the CHIS in carrying out criminal conduct. This is a reflection of the close oversight that a public authority will have over the criminal conduct authorised. Most obviously, the public authority will task the CHIS to perform criminal activity. In itself, that tasking will often be activity "in relation to" the criminal conduct of a CHIS, and this provision is intended to cover that type of activity.

I shall answer a point raised most recently by the noble Lord, Lord Rosser. Those within the public authority may also provide practical assistance. Let us suppose that in becoming a member of a terrorist organisation, a CHIS is required to fill out a membership form. While that sounds mundane, such things are by no means unheard of. The CHIS will seek assistance from his or her handlers in doing so. Together, they will wish to ensure that they do not put anything on that form which places the CHIS at risk, either of prosecution or from the terrorist group itself, which may vet that information. The handlers may therefore assist in the filling out of the form and may even fill out the form themselves on behalf of the CHIS. We wish to be clear that in carrying out such activities in relation to the CHIS's criminal conduct, and in connection with the purpose of a CHIS, that activity is also rendered lawful. We think that it is right that, in these instances, an official has similar reassurance that they cannot be prosecuted in this activity. Overall, I note that any criminal activity by an official in public authority that falls outside the narrow parameters of the authorisation will still be considered for prosecution by the independent prosecuting authorities, as is the case now.

On the terms of Amendment 37, which seeks to prevent any risk of retrospective authorisation, I will be clear: the Bill regime does not allow for retrospective authorisation of any criminal conduct.

My noble friend Lady McIntosh raised a concern anent floods of cases which may emerge to test the scope of the legislation. My assessment of the terms of the provision and what I advance as the degree of clarity which it provides is sufficient to allow me to answer that concern by saying that I do not anticipate such a flood of litigation arising out of these provisions.

**The Deputy Chairman of Committees (Baroness Morris of Bolton) (Con):** I have received no requests to speak after the Minister, so I now call the noble Baroness, Lady Hamwee.

**Baroness Hamwee (LD) [V]:** My Lords, I start by apologising to the noble Lord, Lord Cormack: I do not like the term CHIS either—and I find it even more difficult when I try to render it in the plural, which I think lengthens the "i" in the middle.

The noble Lord, Lord Anderson, and other noble Lords made my points much more crisply than I did. On the point about retrospection, I certainly do not want to rely on an imbalanced interpretation—albeit accompanied by what I would have to describe as an assertion rather than an explanation from the Dispatch Box. Of course, after this debate, I will read *Hansard* to see whether I have missed something, and my apologies if I have.

To take up the point made by the noble Baroness, Lady Jones, we should be able to express issues such as this in our own words, and I am still having difficulty doing that, but I am most alarmed that my points raised wider issues than I had anticipated: in particular, who is covered by the authorisation. I have not heard any argument that a person who gives the authorisation must not authorise what he himself does. I think I am right to be concerned about this rendering lawful incitement, being an accessory and conspiring—it can go much wider than membership of an organisation. Understandably, the example which the Government have chosen to put forward is something that sounds relatively mild.

I am glad that we have brought these issues out. Clearly, we will have to consider what we do at the next stage, which is not how I would have hoped to start remarks in Committee, but there we are. For now, I beg leave to withdraw the amendment.

*Amendment 1 withdrawn.*

*Amendment 2 not moved.*

**The Deputy Chairman of Committees (Baroness Morris of Bolton) (Con):** We now come to the group beginning with Amendment 3. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate, and anyone wishing to press this or any other amendment in the group to a Division should make that clear in debate.

*Amendment 3*

*Moved by* ***Baroness Chakrabarti***

**3:** Clause 1, page 1, leave out line 17

Member's explanatory statement

This amendment is linked to the amendment in name of Baroness Chakrabarti at page 1, line 19.

**Baroness Chakrabarti (Lab) [V]:** My Lords, Amendment 3 is linked to Amendment 5, which is at the nub of all this. I am supported in that amendment by the noble Lord, Lord Paddick, and the noble Baronesses, Lady Ritchie of Downpatrick and Lady Warsi.

Over many years, including in recent days, when the devil is in the detail in general and when the rule of law is in jeopardy in particular, your Lordships' House really comes into its own. This is necessarily the case when, as with this Bill, the proceedings in the other place were so truncated and when such a complex but vital area of policy was not foreshadowed in an election manifesto. I say that to emphasise the importance of your Lordships' consideration of the detail of the Bill.

I will begin with two preliminary points that are vital background to Amendment 5, in particular. To head off the noble Lord, Lord Cormack, at the pass, I will try to use the phrase "undercover operative" instead of "covert human intelligence source", or CHIS. I cannot say "undercover officer", because of course, so many of the people involved in this activity are not officers of any state agency. They are not James Bond or even Constable Bond, they are members of the community, including the criminal community, as we know.

First, I accept that undercover operatives must sometimes commit crimes in the public interest. It is unsavoury, but it is vital sometimes to keeping their cover or just operating. As we heard from the Minister a few moments ago, that includes the offence of being a member of a banned organisation, but might also include being in possession of banned items in such an organisation or in a criminal fraternity of some kind, and the crimes might go further still into minor property offences, and, who knows—subject to the public interest, in a particular, very dangerous but potentially life-saving operation. I want to put that on the record at the outset.

Secondly, I must accept that current litigation still before the courts that challenges the legal foundation of present arrangements whereby undercover operatives will sometimes be authorised and guided in crimes connected with their work potentially risks the viability of current arrangements in a way that would not be satisfactory to me or anyone trying to discharge the burden of government.

This amendment has been drafted with the acceptance that the Bill is necessary to create a clearer statutory foundation than is currently the case, but there is a very important difference between regularising current arrangements—necessary and even vital evils in the public interest—and, on the other hand, violation of the rule of law. It can be a very fine line, and it is that line that I attempt to correct and safeguard with Amendment 5.

Amendment 5 removes the current "lawful for all purposes" civil and criminal immunity used in the Regulation of Investigatory Powers Act and is completely appropriate in that place for the purposes of surveillance; in other words, a necessary and proportionate interference with people's privacy. It may be perfectly appropriate for surveillance, subject to appropriate checks and balances, but not, I would argue, for other criminal offences. They may be significant property offences or even offences against the person, or other serious interferences with, if not violations of, people's rights and freedoms. That is why "lawful for all purposes" is not appropriate. We could even be getting into physical harm to people, which does not happen in the case of privacy intrusion or surveillance by themselves.

*2.30 pm*

In Amendment 5, I have sought to replace complete and advance immunity with, effectively, a public interest defence—a public interest safeguard in relation to any decision to prosecute an undercover agent who had been properly authorised and had done his or her best to do their duty under cover of that authorisation. Any prosecutor considering whether to bring charges against them would have to take into account the nature of the authorisation and the compliance with it in the public interest. To be clear, in the overwhelming majority of cases, the likelihood and desire to prosecute an undercover operative for just doing their duty would not be in the public interest, which, I suspect, is the position now.

Amendment 5 also provides a safeguard in the event that some rogue or perverse prosecutor does not take the hint and decides to go ahead and bring charges anyway, notwithstanding the public interest in the undercover operative, and others like him or her, doing their best in very difficult and possibly life-threatening circumstances. If that rogue prosecutor were to bring charges against our innocent and brave undercover operative, any lawyer in any court would be able to take into account the authorisation, its nature and compliance with it when considering any potential defences to charges of criminal conduct. That might well include public interest and reasonable excuse defences where they exist in a statutory context of a particular offence, or, where none existed, we would be in the territory, as would be the case today, of those rare but none the less important defences such as self-defence, including defence of other people, and even necessity and duress.

The criminal lawyers among noble Lords will know that those defences are rarely successful, but it is rarer still that an undercover operative is prosecuted for just doing their job. My point here is to give comfort to the undercover operative that, were a rogue prosecutor to go after them unfairly and perversely, the court would be able, through the provisions in my amendment, to activate such common-law defences, or any potential defences, by way of the criminal conduct authorisation.

The final part of this amendment relates to the current "lawful for all purposes" immunity from civil redress. This is important too because in the context of these vital, necessary operations, there will sometimes, sadly and even tragically, be collateral civilian damage.

Think, for example, of a properly authorised high-speed car chase in which an undercover operative, or CHIS—I ask the noble Lord, Lord Cormack, to forgive me—is authorised to breach the usual traffic laws, speed limits and so on, and a completely innocent bystander is seriously injured. We would not want the "lawful for all purposes" provision in RIPA to mean that the innocent bystander had no redress against any agency or agent of the state. What should happen is that the state agency that had authorised the undercover operative, or CHIS, ought to pick up the tab and settle the claim in reasonable terms. If it chose not to do so and started quibbling with the agent, officer or undercover operative, it would therefore be open to a court when considering a dispute between a first and second defendant

[Baroness Chakrabarti]
to take into account the criminal conduct authorisation in relation to any potential civil liability on the part of that person and the quantum of damages.

Why do I say that this amendment is so much better than the "lawful for all purposes" immunity currently provided in the Bill? First, if the rule of law means anything at all—in our nations at least, as opposed to elsewhere—it must mean that there is one law of the land that binds everyone. If any of us during our normal lives thought, for example, that terrible violence was about to be done to someone in a neighbouring property, and there was no time to call the police, if we broke into that property in good faith to try to save the neighbour, we would rely on the kind of public interest consideration that I have attempted to set out in a statutory formulation for the purposes of undercover operatives.

We as ordinary citizens are of course not in that situation on a daily or regular basis, and that is why we do not need such a complex system of authorisation. However, the underlying principle should be the same. The law is, and has always been, capable of recognising difficult, grey areas of life and practice but does not like giving advance blanket immunities to agents of the state, because it is dangerous. In other places, tyranny has followed in the wake of such a provision.

That is the constitutional and theoretical point: one law for everybody is a concept that members of the public understand well. We know their feelings of outrage when there is any suggestion of hypocrisy, whether in following lockdown laws or any other aspect of the law. People like the idea that, in the United Kingdom, there is one law for everyone.

The second practical issue regarding any necessary criminal conduct by undercover operatives is that, in practical terms, the only real safeguard in the context of a fast-moving undercover situation is that which operates in the mind of the operatives themselves: the possibility that their conduct will be second-guessed after the event, albeit through highly sympathetic eyes. But the idea that because they have an advanced ticket, whatever they do, subject to the authorisation, will not be examined is a step too far and a recipe for abuse.

We know that abuses by undercover operatives have emerged in recent years and have partly led to the ongoing Mitting inquiry. It is unfortunate that the Government feel the need to legislate in advance of the conclusion of that inquiry, but, given the pending litigation, one can forgive that. However, it is harder to forgive going further than my suggestion, which is to put the status quo in relation to the public interest on a statutory footing, rather than to make a further land grab, as it were, for total and advance immunity.

This is particularly important when we remember that possibly the overwhelming majority of these operatives are not trained officers of the security services and agencies, or even the police. These are members of the community, and many, if not the bulk, are members of the criminal community. An ethical check and a practical disincentive from overstepping the mark is incredibly important.

I wonder how reasonable and sensible it is to think that these authorisations can be very narrowly and particularly drawn. Is it really possible to authorise criminal damage to x amount and not y amount in a fast-moving situation? Is it really reasonable to authorise a common assault but not one occasioning actual bodily harm? I do not know whether that is practical. I look forward to hearing from the noble Lord, Lord Paddick, in particular; unlike most of us, he has been an undercover police officer.

I commend to noble Lords a short comment piece in today's *Independent* by Neil Woods, who was an undercover officer involved in drugs policing. He talks about immunity as the aspect of the Bill that really changes everything, more than anything else. I do not say this to minimise other noble Lords' attempts at various safeguards but the full wealth of amendments that have been tabled, few of which we will even get to today, highlight the many complexities and practical difficulties with alternative approaches.

For example, there are real constitutional and practical questions about involving judges before the fact rather than adjudicating afterwards, which is their normal constitutional role. I understand the instinct; I am in two minds about it, and possibly even sympathetic to it. However, it is one thing to involve judges in issuing a search warrant, or even a warrant for covert human intelligence, which is far more intrusive than a search; I suspect that some will have concerns about judges authorising criminal conduct in advance of its perpetration.

It seems to me that this anti-immunity amendment is far simpler and less ethically difficult. It does less violence to the overall scheme of this legislation as it is currently crafted and gives real protection to undercover agents. It protects them from unlawful proportionate orders and from criminal conduct authorisations that were perhaps disproportionate and possibly breached the Human Rights Act to some degree. The amendment has been drafted so that if agents act in accordance with an authorisation, the nature and compliance will be taken in account—regardless, to some extent, of whether the authorising officer got the balance completely right. The individual ethics of the undercover operatives themselves must always be at play. The "I was just following orders" defence should never be a good one in British law, I suggest.

I believe that the amendment is the best possible safeguard in this very serious legislation. It recognises the really difficult work that undercover operatives have to engage in but none the less protects the rule of law and the wider community. I beg to move.

**Baroness Ritchie of Downpatrick (Non-Afl) [V]:** My Lords, it is a pleasure to follow the noble Baroness, Lady Chakrabarti, and support the amendments in her name and the names of the noble Lord, Lord Paddick, the noble Baroness, Lady Warsi, and myself.

I want to emphasise the point made quite rightly by the noble Baroness, Lady Chakrabarti: the rule of law should never be placed in jeopardy. I shall concentrate on the position of immunity from civil redress and give examples from the Northern Ireland perspective, where we have had widespread experience.

*2.45 pm*

On the one hand, this legislation seeks to regulate in statute the use of undercover operatives. On the other hand, it gives CHIS handlers a licence to kill. The recruitment of agents is of course necessary as part of intelligence-led policing; any such recruit should be a fit person, properly recruited with free and informed consent and operating to high rights standards in police-led operations.

These amendments seek to preserve the current legal status quo whereby those authorised to engage in criminal conduct are not rendered immune from either civil or criminal liability. Instead, compliance with an authorisation will be relevant to any public interest consideration to prosecute, any existing legal defences and any court considerations of civil liability and/or damages.

As I said, Northern Ireland has particular experience to note. We are a living example of what happens when, unfortunately, the state, or the state through its agents, commits serious crimes including murder. Consider the continuing investigation into the agent known as Stakeknife, otherwise known as Freddie Scappaticci. Probably dozens were murdered on the instructions of those in command and control of the IRA, with the knowledge and approval of those in command and control of a British security agency. Ken Barratt, a British agent, was involved in the murder of the lawyer Pat Finucane, which a former Prime Minister—David Cameron—conceded involved shocking levels of collusion. There is also the case of Mark Haddock, an RUC Special Branch agent believed to have been involved in more than 20 murders.

Northern Ireland is a lesson from history, particularly regarding the issues thrown up by the amendments in the names of the noble Baronesses, Lady Chakrabarti and Lady Warsi, the noble Lord, Lord Paddick, and myself. Serious crimes and murder committed by state agencies or agents of the state lead first to a generation of victim and survivors, secondly to alienation and thirdly to conflict. Yet this legislation would allow agents to commit serious crimes, with extravagant powers given to handlers and a severe deficit in relation to authorisation and post-operational accountability.

The noble Lord, Lord Patten, carried out a review of policing in Northern Ireland. It reported in 1999 with 175 recommendations; the report formed the basis of the Police (Northern Ireland) Act 2000 and the new Police Service of Northern Ireland, including the Office of the Oversight Commissioner and the Police Ombudsman for Northern Ireland—all the architecture of new policing. I am sure that the noble Lord, Lord Cormack, will be aware of that as a former chair of the Northern Ireland Affairs Committee.

Among the 175 Patten recommendations on new policing arrangements, accepted but not addressed, was the recommendation:

"There should be a commissioner for covert law enforcement in Northern Ireland."

Consequently, there is no dedicated Northern Ireland covert oversight agency, and the UK arrangements to interrogate phone tapping or search authorisations should be more extensive.

This legislation compounds the problem with even less oversight of the authorisations that would arise under the provisions than is the case currently. The Bill is deeply problematic because it would work against the need to tackle criminality and paramilitarism—issues to which all of us in your Lordships' House are opposed. There is a need to ensure that those who are authorised to engage in activities are not rendered immune from prosecution, because all of us should act within the law.

I hope that the Minister will respond positively to these amendments. There can be, as the noble Baroness, Lady Chakrabarti, said, only one law of the land that binds every one of us, and we should all be able to adhere to it.

**Baroness Warsi (Con) [V]:** My Lords, I will speak to Amendments 3 and 5, to which I have added my name alongside those of the noble Baronesses, Lady Chakrabarti and Lady Ritchie of Downpatrick, and the noble Lord, Lord Paddick. As I said at Second Reading, no one can reject the importance of covert human intelligence sources or the need to protect them, and no one can doubt the importance of putting existing practices, the status quo, on a statutory footing. Existing practices, as far as they relate to the security services, have been part of security services guidelines for nearly a decade; they have served and continue to serve us well. I therefore support this Bill in principle, to the extent that we have a statutory basis for the current position. These amendments seek to do that without making all conduct lawful for all purposes and without granting absolute immunity, ensuring that victims, often innocent bystanders, are not left without any form of redress.

The amendments would preserve the current legal status quo. Those who are authorised to engage in criminal acts would not be rendered immune from either civil or criminal liability. Instead, the current public interest consideration not to prosecute, existing legal defences and any court considerations as to civil liability will remain. At Second Reading, the noble Baroness, Lady Chakrabarti, the noble Lord, Lord Paddick, and other noble Lords reminded the House of a fact that I hope my noble and learned friend the Minister will acknowledge, because it has been repeated in today's debate; namely, that large numbers of individuals for whom this immunity and lack of appropriate safe-guards in legislation would operate as a carte blanche to commit offences—these covert human intelligence sources, these agents—are not in fact all trained security agency officers or undercover police, as the Bill has presented them. Many are criminals who are still engaged in criminality, because that is what allows them to inhabit the spaces where they can go unnoticed. They include, as was said at Second Reading,

"extremely troubled, volatile and vulnerable people, including children."—[*Official Report*, 11/11/20; col. 1071.]

Even professional agents are not and should not be above scrutiny. They should remain, as they are now, incentivised to exercise their necessary criminal conduct responsibly. We are of course still in the midst of a public inquiry that is hearing how even professional covert human intelligence sources have succumbed to the abuse of authority and have even fallen into inciting rather than preventing crime. This Bill in its current

[Baroness Warsi]
format would have far-reaching consequences far beyond professional security services agents and trained undercover police officers. It therefore must not be presented by the Government in narrow terms, even if that is simply to win support for the Bill.

Examples have been given during the passage of the Bill that include criminal damage to premises and the personal property of innocent bystanders by those working, for example, for the Food Standards Agency at the less severe end, through to sexual offences by criminals posing as gang members at the other. Surely we cannot be comfortable about creating a culture of absolute immunity in this space, nor should we easily sweep away the protection currently afforded to victims of crime who currently have access to redress via criminal proceedings brought either through state or private prosecutions and civil action in the civil courts or an application for compensation through the Criminal Injuries Compensation Authority. An absolute immunity would sweep away all these protections, which I believe would leave us in breach of the European convention, which at Second Reading my noble friend said the Government were seeking not to do.

The four people who have put their name to these amendments are very different people, from very different parts of the United Kingdom, and indeed from different communities, different backgrounds and different political parties. This is not a party-political issue but a national interest issue. At any one time we are the custodians of the core values of our country, one of which is that the rule of law is essential. So I encourage my noble friends and colleagues to think again to ensure that the Bill seeks to put the current position on a statutory footing but does not extend ways which the Government have stated in the past are not their intent and would cut across the very British and indeed deeply conservative principle of our commitment to the rule of law.

**Lord Thomas of Gresford (LD) [V]:** My Lords, it is always a pleasure to follow the noble Baroness, Lady Warsi, and I share her abhorrence of the idea of absolute immunity, to which she spoke so eloquently. Over 800 years, we have evolved a system of dealing with crime in this country where the guilt or innocence of an individual is established by a tribunal of ordinary citizens. In serious crime we rely on a jury, and in lesser, summary offences on a magistracy drawn from the community. The standard of proof is high. So the outstanding feature of the British approach to criminal activity is that the ultimate decision on guilt and on punishment is not in the hands of an agent of a government department. The judge who presides over a trial in a serious case is fiercely independent. The prosecutor, as exemplified by the CPS and the Director of Public Prosecutions, is also independent of government. It is necessary to restate these principles when faced with a Bill such as this, where the proposition is that an agency of the state, whether the security services, the police or a gaggle of government agencies, should authorise criminal activity and can do so without any independent check.

We have to this point had such a check. Authorisation of criminal activity for the purposes of covert intelligence does not of itself relieve the individual of criminal liability. Whether an individual is prosecuted is a matter for the discretion of the CPS and ultimately the Director of Public Prosecutions. There is a further procedure where a covert intelligence gatherer is protected from the results of his criminality. Your Lordships may not be aware of the role of the brown envelope. Very often, when a person is an informer or is otherwise acting on behalf of the security services or the police, it is deemed necessary that he should stand his trial along with the people against whom he has informed, for the obvious reason of protecting his role and his safety. In such circumstances, a brown envelope will be handed to the judge out of court to inform him of the true position of the defendant and his motivation. Sometimes that will result in a reduced penalty and sometimes it results merely in the early release of the individual from whatever sentence of imprisonment is passed on him. To my mind, the system we operate at the moment gives greater protection to the individual and to the public while preserving a proper measure of control.

As for civil liabilities, it is clearly highly undesirable that a victim, whether direct or indirect, of the covert agent should have no remedy. Obviously, where an individual is authorised to engage in certain conduct that causes harm, he does not pay any damages himself; it is the state that stands behind him and pays the price. If this Bill means that no civil liability at all accrues to the covert agent, or to the state behind the covert agent, it is not the agent who will gain anything but the state. We will see when the overseas operations Bill comes before the House that the abolition of civil liability for the individual soldier's acts benefits not him but the state, which pays the damages.

*3 pm*

It is for these reasons that I wholly support the amendments in the group. They would preserve the discretion of the CPS and the DPP to make prosecution decisions in the public interest. They would also leave it open to the defendant to run the defence that he was acting on behalf of the state and consequently did not have the necessary intent to commit a crime. It so happens that I ran exactly that defence some years ago in a trial that lasted many weeks and was held entirely in camera, thus permitting the defendant to reveal the authorisation of his conduct—a fact that was not actually in dispute. Finally, by leaving open the question of civil liability, the victim would still be able to claim damages. I would like the Minister specifically to deal with the issue of immunity from suit at the hands of the victim, which could benefit only the state.

**Baroness Jones of Moulsecoomb (GP):** My Lords, it is a pleasure to follow the noble Lord, Lord Thomas of Gresford. I love these two amendments because they get to the heart of one of the two biggest problems with the Bill, which is immunity. I take the point from the noble Baroness, Lady Chakrabarti, about using the phrase "undercover operatives". I have personally been saying "police spies", which is a more generally understood concept for people outside the Chamber.

The Minister did not answer my questions in the previous debate. He did not address the proceeds of crime or the concept of ongoing crime that is not specifically given immunity but will happen anyway. Is that given immunity as well?

The Government are claiming that the Bill just puts everything on a regular footing and that we can all relax because we know exactly what will happen, but it is in fact nothing to do with that. It is about heading off all the legal uncertainty caused by the current legal challenge—the spy cops inquiry. It is nothing to do with protecting the general public. I find it infuriating that the two groups that are constantly referred to as being vulnerable to this legislation are paedophiles and terrorist organisations when we all know perfectly well that other organisations will be contaminated by this system and have undercover operatives and police spies. It will be unions and political groups, such as campaign groups, as we are seeing at the moment with the spy cops inquiry.

It is obvious that the Bill hugely expands the state's ability to authorise criminal conduct and grant legal immunity to criminals. It is worrying that criminal conduct will go unpunished because of the Bill, but also, as several noble Peers have already mentioned, that the victims of these crimes will have no legal rights. They are left by the Government as collateral damage, which we have again seen in the spy cops inquiry. We have seen just how badly people have been harmed by undercover policing: innocent women's lives ruined, children fathered by police officers using fake identities who then run off and avoid all their parental responsibilities because they have another family elsewhere who they want to go back to, and people betrayed by state agents.

The Bill's provisions will prevent any entitlement to compensation for the damage caused by a police spy. You were tricked into a sexual relationship with a police officer? Too bad. Your house was burgled by a police spy? Too bad. You were beaten up by a gang acting as informants for the police? Too bad. Innocent people will be hit by the Bill. It is so obviously wrong. Innocent lives will be ruined. Surely the Government understand this and can see that it is wrong to try to legislate like this.

**Baroness Bryan of Partick (Lab) [V]:** My Lords, it is an honour to follow the speakers before me, who have such a range of experience. Many excellent amendments to the Bill have been proposed. Some are probing, looking for a response that might help to clarify the Government's intentions. Others could serve to safeguard individuals who might be recruited as undercover operatives or those who might be affected by their actions.

Amendments 3 and 5, tabled by my noble friend Lady Chakrabarti and others from across the House, take us to the very heart of the issue. The ultimate safeguard we have from criminal activity is the rule of law. The very well-argued briefing from Justice points out that granting prior immunity would completely undermine the core principle of criminal law: that it should apply equally to all, both citizen and state.

At the briefing the Minister provided early in November, she was asked what would happen if an undercover operative exceeded their criminal conduct authorisation. To my mind there was not a clear answer. Another participant pointed out that the second part of the CPS test when deciding whether to proceed with a prosecution allows for public interest factors to be taken into account. During the Second Reading debate, I asked the Minister whether she could give an example of an undercover operative being prosecuted after having been authorised. She did not answer that point. My understanding is that the current test of the public interest has protected such activity, so why is there a need for prior immunity?

The statement made by the Minister for Security during the debate in the other place that criminal action can become lawful is a clear example of doublethink, whereby we can accept two mutually contradictory beliefs as correct: the action is criminal, but it is lawful. We have been reassured repeatedly that actions carried out cannot be in breach of the European Convention on Human Rights. The Minister assured us that

"nothing in the Bill detracts from a public authority's obligations under the Human Rights Act"

and that

"there are checks in place to ensure that no activity is authorised that is in breach of human rights obligations"—[*Official Report*, 11/11/20; cols. 1046-47.]

but, as the Justice briefing points out, the very act of granting immunity might be a breach by denying a victim of the crime the right to an effective remedy.

In seeking to give reassurance at Second Reading, the noble and learned Lord, Lord Stewart of Dirleton, directed us to the covert human intelligence source draft code of practice. He said that this would give authorising authorities

"clear and detailed guidance that they must follow in deciding whether to grant an authorisation."—[*Official Report*, 11/11/20; col. 1045.]

The code accepts that there will sometimes be mistakes and there is a section covering that eventuality headed "serious errors". It says:

> "In deciding whether it is in the public interest for the person concerned to be informed of the error, the Commissioner must in particular consider: The seriousness of the error and its effect on the person concerned; The extent to which disclosing the error would be contrary to the public interest or prejudicial to: national security; the prevention or detection of serious crime; the economic well-being of the United Kingdom; or the continued discharge of the functions of any of the intelligence services."

These were the very criteria used to issue the erroneous CCA in the first place.

I support Amendments 3 and 5 and the retention of the public interest test, which has, over the years, been sufficient protection for CHIS activity. I hope that we can take this amendment forward to the next stage.

**Lord Thomas of Cwmgiedd (CB) [V]:** My Lords, on the evidence I see great merit in these amendments. Our history of criminal law shows that the state has always gone to considerable lengths to protect those who assist it in the detection of crime. The prosecution service and judiciary have ensured that that works. I echo what the noble Lord, Lord Thomas of Gresford, said a few moments ago—that the system works well. My experience from a different perspective is that is so.

The question for this House is what is wrong with the current law and why it needs to be changed, because it has worked well. [*Inaudible*.] Of course, if one is going to a system where the authorisation authorises the commission of a crime, it is very important that we know how precisely that authorisation will be

[Lord Thomas of Cwmgiedd]
drafted. Precision was unnecessary under the present law, but it will be necessary in future, bearing in mind the civil and criminal immunity that it grants. Therefore, I asked whether I could be shown examples of what it was intended to do. I wanted that in particular in areas of substantial difficulty relating to drugs and youth gangs, and I ran into a difficulty.

I understand the position of the officers with whom the noble Baroness put me in touch, who take the view, with which I profoundly disagree, that providing examples, even hypothetical ones, might endanger future operations of the police. That presents us with a difficulty, because we can neither look at what is wrong with the current system nor properly examine the future system.

Of course, we could take matters on trust, but I would be very reluctant to do so. I do not wish in any way to cast any doubt on the good faith, hard work or enormous risks that people take, but errors of judgment and maybe more have been traversed in the past. I need not set out the details of those, although I will if necessary at a later stage in Committee.

Therefore, I have given some thought to how the House deals with a very difficult problem—being satisfied that changes are needed and that the changes will work better. I ran into that insuperable problem on evidence only yesterday and so have not had the opportunity to discuss this more widely with the Minister. But under Standing Order 8.118, a public Bill can be committed to a committee, either in its entirety or in an issue, so that the committee can examine the Bill. This happens rarely; it happened with the Constitutional Reform Act, which is why I happen to know of this process. I have also inquired whether such a committee could take evidence in private, and it can; it can operate without transcripts being taken and, of course, what it publishes will be private. We can see whether this is necessary in the course of examining the Bill, but we ought not to make changes to the law and impose a new regime without proper evidence—and that is the responsibility of the legislature.

What we should consider, which I do not want to propose now but want to raise as an idea, is that at the conclusion of the Committee it may well be desirable, because the evidence cannot be given in public, for a small committee of the House, which can look at the matter, representing all the different interests, to take evidence and report. Immediate objection would be made that it is very difficult to report, but I do not agree. There was a case that concerned a real threat to life, with which I was involved, known as WV. We were able to report in detail the circumstances of that case without in any way compromising the life of the person involved. There are techniques for doing that.

I hope that the Minister will either come to a view that more evidence can be provided openly or, if that is not possible, consider the alternative of having a committee that can look at this and report to the House that, for reasons that cannot be set out, there are deficiencies in the law, and the new system will work well. At the moment, I regret to say that I cannot see this change to the law being necessary, and I foresee tremendous difficulties with going to the new system, particularly bearing in mind the way in which the police have discharged so badly in many cases the crafting of search warrants. That can obviously be put right, but commission of crimes cannot.

*3.15 pm*

**Lord Hendy (Lab) [V]:** My Lords, it is a particular pleasure for me to follow the noble and learned Lord, Lord Thomas of Cwmgiedd, and support the amendment moved by my noble friend Lady Chakrabarti, the noble Lord, Lord Paddick, and the noble Baronesses, Lady Ritchie and Lady Warsi. Without that amendment or another to the same effect, I shall have no alternative but to vote against this Bill. As a matter of conscience, I cannot support a Bill that gives the state the power to grant immunity for future crimes committed by agents on its behalf. This is contrary to the rule of law, as so many noble Lords have said.

The rule of law prescribes that all are bound equally to observe the law, not least the criminal law. Giving the state the power to exempt prospectively its agents from criminal law is the contrary of that principle. The rule of law is an easy phrase; it has a particular poignancy to someone like me, who has 48 years of practice at the Bar. But the fact is that it is a foundation stone of democracy, a point made so eloquently by the noble and learned Lord, Lord Judge, in the debate on the internal market Bill. Without respect for the rule of law, we face the dark prospect of anarchy or, worse, fascism.

Let me make my position clear through a number of propositions. First, I accept that every state necessarily deploys undercover agents to protect itself and the rule of law. Secondly, I accept that in the course of their work, on occasion, it will be found necessary to break the law, including the criminal law. Thirdly, I have no problem with the state, through the Director of Public Prosecutions or the CPS, considering after the event whether a prosecution is warranted by applying, as they do, and should do, the public interest, the objective and the proportionality of the crime committed, the possible defences to a prosecution, to the European Convention on Human Rights and their experience and discretion.

The evil here is the prospective immunity to be granted based only on an assessment of the possible situation. A decision to prosecute or not should be granted only retrospectively when the facts and circumstances of the alleged crime are known. This is the status quo. As far as is known, it has worked satisfactorily for the last 200 years. I have enormous sympathy for and support wholly what the noble and learned Lord, Lord Thomas, said a moment ago and reiterate the question that he posed. What evidence justifies changing this system? Of course, we should bear in mind the point made by the noble and learned Lord, Lord Mackay, at Second Reading—if I do him justice—that if the object of conduct that would otherwise be a crime is to prevent a crime, the conduct will not in any event amount to a crime or be susceptible to prosecution. The noble Lord, Lord Thomas of Gresford, made that point a moment ago more eloquently than me.

My noble friend Lady Chakrabarti and the noble Baroness, Lady Warsi, have reminded us that this Bill does not confine CCAs to professional undercover officers of the state, responsible, trained and alive to

the requirements of the rule of law. CCAs are proposed by the Bill to be granted to lay persons, often or usually criminals, deficient in civic responsibility and careless of the demands of the rule of law. Many will have only the weakest grasp of the limits of the criminal conduct authorised by their CCA. They should not be given carte blanche; it is right that they should be in fear of retrospective review and the possibility that the CPS might charge them.

I find myself unable to trust prospectively either the officer granting the CCA or the agent to whom it is given. Only a retrospective review, by a professional prosecutor when all the circumstances are known, is tolerable. A particular source of my lack of trust is the evidence presented to the undercover police inquiry chaired by Sir John Mitting, in which I represent a number of trade unions. The conduct of those who directed the undercover officers was not such as to encourage trust. One thousand groups, campaigns and unions were spied on. So far, it is not evident that any useful information was gleaned to prevent crime. As one undercover officer put it, the only useful information revealed by her infiltration of a women's liberation group was that it was not likely to be violent, cause disorder or commit a crime.

As has been mentioned by the noble Baroness, Lady Jones, what of the systematic abuse of women, over 30 of whom were groomed into having sexual and intimate relationships with men with fake identities—often those of dead children—fake beliefs and fake personalities? This was not a tactic devised by a couple of rotten apples; it was conduct reported to those in charge and clearly authorised by them. Whether or not this was a crime I leave to the criminal lawyers, but it inspires no trust in the issue of CCAs by such senior officers. The inquiry has revealed that undercover police committed crimes. One, for example, is said to have acted as an agent provocateur in planning to firebomb a well-known store.

I have one final point in support of Amendments 3 and 5. Currently, as I understand it, an undercover officer may not be instructed by superiors to commit a crime. If the Bill becomes law, an officer will be refusing to obey a lawful instruction if she or he refuses to commit a crime when instructed to do so by a superior who has obtained a CCA. That will be a disciplinary offence, potentially justifying dismissal. It is a powerful argument against prior authorisation. I do not think that many rank-and-file officers would wish to be put in that position.

**Baroness Blower (Lab) [V]:** My Lords, it is a great pleasure to follow my noble friend Lord Hendy and the noble and learned Lord, Lord Thomas of Cwmgiedd, who spoke before him, and to support the amendments in the names of my noble friend Lady Chakrabarti, the noble Baronesses, Lady Warsi and Lady Ritchie of Downpatrick, and the noble Lord, Lord Paddick. It is a great pleasure to be in the House and listen to such eloquent speeches on a very significant matter.

The Bill before your Lordships is flawed. It is indeed so flawed that, without Amendments 3 and 5 being accepted, I will find it difficult to see how I will ever vote for it. As I said at Second Reading, of course I want to live in a well-regulated society. I therefore recognise, as I am sure all your Lordships do, that covert operations or information from covert human intelligence sources is sometimes necessary and that it may involve criminal activity.

Having accepted that, I also want to live in a society—in a state—that observes the rule of law, with a legal system in which there is one law for all. At the outset of the passage of the Bill, there were attempts to make the case that the Bill would merely, but importantly, put on a statutory footing practice that had been in place over the years. Such attempts are no longer in play, because the Bill plainly does something entirely other: it creates immunity for CHIS. As we have already heard, immunity is serious: it creates a situation in which criminal conduct is no longer a crime and in which acts, elsewhere considered criminal, are lawful for all purposes. I cannot sign up to this proposition.

An argument may be advanced that, without such complete and blanket immunity, CHIS might be deterred from fulfilling the covert function. I cannot accept that as reasonable, in a state that accepts the necessity of the rule of law. Surely the present status quo, in which the authorisation can be advanced in defence, is sufficient. If CHIS are to be granted immunity without let, hindrance or potential consequences, the notion of safeguards is absent. We have to be mindful that many CHIS are from the criminal community. The status quo provides that necessary and proportionate acts can be carried out to prevent further crime. "Necessary and proportionate", in conjunction with the CHIS being aware of the potential consequences of their actions, should be the safeguard to ensure that conduct is with due caution, rather than abandon. I am grateful to Justice for its briefing on this and other points.

If the Minister for Security in the other place was correct in saying:

> "A correctly granted authorisation will render conduct lawful for all purposes, so no crime will have been committed",—[*Official Report*, Commons, 15/10/20; col. 611.]

where is the rule of law and the equality before the law, so that there is one law for all? This proposition is excessive when considered in conjunction with the equivalent legislation in Canada, for example, which affords a defence to prosecution, rather than complete immunity.

There is also the matter of victims. If, legally, no crime has been committed, given the CCA, access to redress is removed, whether through criminal or civil proceedings or by recourse to the Criminal Injuries Compensation Authority, as alluded to by my noble friend Lady Chakrabarti and the noble Baroness, Lady Warsi. Victims must have their rights protected, as they are by Article 13 of the ECHR. If domestic legislation fails to provide an effective remedy, the UK will be in violation of Article 13. I do not believe that noble Lords and noble and learned Lords would find that an acceptable proposition.

Prior to having read the Justice briefing, I was unaware of this from the former Supreme Court Judge Lord Bingham:

"the purpose of the criminal law"

is

"to proscribe, and by punishing to deter, conduct regarded as sufficiently damaging to the interests of society".

[Baroness Blower]

This amendment would provide that, although CHIS may engage in criminal conduct to prevent further crime, it cannot be without caveats. Such criminal conduct must comply with an existing authorisation and that will be relevant to any public interest consideration as regards prosecutions. The safeguard is needed to ensure that the rule of law obtains. As the noble Lord, Lord Thomas of Gresford, said, 800 years of principles of law are potentially at stake.

In conclusion, to ensure that it has been heard by the Minister, I repeat the question posed by my noble friend Lady Bryan: can the noble Lord respond on criminal proceedings taken against CHIS in the past, under the current arrangements—the status quo? The amendments can save us from a Bill that would do immense damage to the rule of law in the UK and I am therefore happy to support them.

*3.30 pm*

**Lord Paddick (LD) [V]:** My Lords, as the noble Baroness, Lady Chakrabarti, said in her opening remarks, these amendments are about maintaining the status quo—the public interest defence. She described additional safeguards against a rogue prosecutor—potentially of self-defence, necessity and duress—but of course these mechanisms are already in place, and they are put into the amendment to provide clarity.

I am very glad to have heard from the noble Baroness, Lady Richie of Downpatrick, with her valuable experience in Northern Ireland. As the noble Baroness, Lady Warsi, said in her very powerful remarks, the co-signatories to the amendment are from very different backgrounds. I remind the Committee that I was a police officer for over 30 years and was at one time a controller of informants—covert human intelligence sources, as we now call them.

As I said, these amendments, to which I have added my name, are about keeping the status quo by ensuring that there is a legal power that allows public authorities to authorise CHIS to participate in crime but leaving the question of immunity from prosecution to prosecutors, looking at all the circumstances after the fact.

At Second Reading, the Government made two arguments against maintaining the status quo: first, that it is "undesirable" for the police, for example, to authorise people to commit crime, and, secondly, that it is "unfair and unreasonable" for CHIS to operate under the possibility that they might be prosecuted. In other words, the status quo is not desirable, not fair and not reasonable.

Let me deal, first, with the argument that it is "undesirable". Can the Minister please explain to the Committee the difference between it being undesirable to create an express power for public authorities to authorise activity that remains criminal and it being undesirable to create an express power for public authorities to make criminal activity legal? Or, to put it another way, what is more or less desirable—a public authority telling someone to commit crime or giving a public authority the power to say something that is a crime is not a crime?

Is it not fundamental to the rule of law that the law applies to everyone equally and that it is clear what is and is not a crime? The Government propose to make legal an act that would otherwise be a crime, and to make the criminal law apply to everyone, except CHIS, who are authorised under CCAs. For example, Section 11 of the Terrorism Act 2000 would in effect change to "a person commits an offence if he belongs or professes to belong to a proscribed organisation, unless he is authorised to belong to it by a criminal conduct authority, in which case he does not commit an offence". The law, in effect, becomes "it is an offence/it is not an offence, and it applies to some people but not all".

The effect of accepting these amendments is to say that, of course, belonging to a terrorist group is an offence, but it is clearly not in the public interest to prosecute this person because he was asked to belong to, or to continue to belong to, a proscribed organisation by an agent of the state, and that was necessary and proportionate. Immunity from prosecution should be based on an independent prosecutor deciding whether it is in the public interest to prosecute, not on an agent of the state saying that this crime is not a crime, as many noble Lords have said.

At Second Reading, the Minister—the noble Baroness, Lady Williams—said:

"It is also undesirable to create an express power for public authorities to authorise activity that remains criminal."—[*Official Report,* 11/11/20; col. 1115.]

Paying criminals to pass information to the police is undesirable, and paying terrorists to pass information to the security services is undesirable, as is paying those employed by hostile foreign powers to commit treason by passing information to the UK—it is all undesirable, or murky waters, as the noble Lord, Lord Cormack, said on the last group—but, however undesirable those things are, they are necessary. Although it may be undesirable to create an express power for public authorities to authorise activity that remains criminal, it is necessary, and it is not as undesirable as the alternative. To quote the noble Lord, Lord Anderson of Ipswich, for whom I know the whole House, including the noble Baroness the Minister, has the highest regard:

"The Bill would give power to police superintendents to confer immunity on members of the public, and of their own organisations, for the commission of crimes. That proposition is startling, and the potential for abuse obvious."—[*Official Report,* 11/11/20; col. 1064.]

I shall now deal with the "unfair and unreasonable" argument. At Second Reading, the noble Baroness the Minister said that

"it seems unfair and unreasonable for the state to ask an individual to engage in difficult and potentially dangerous work while leaving open the possibility of the state prosecuting them for the exact same conduct. That tension has existed for many years."

It has, but we need a reality check here. What might seem unfair and unreasonable to the Government, and indeed to some noble Lords, is not the same as what might seem unfair and unreasonable to undercover operatives, who, whether they be criminals or undercover cops, have willingly volunteered to do this work not for years or for decades but, I am sure, for well over 100 years.

If a handler thought that it was unfair and unreasonable, he would not authorise a CHIS to participate in crime; if a CHIS thought it was unfair and unreasonable, he would not participate in crime. What the noble Baroness the Minister seems to want to address is a sense of unfairness and unreasonableness

which the Government have but which is not shared by the overwhelming majority of those who are directly affected—the handlers and the undercover agents.

The second question that has to be asked is: what is the possibility of the state prosecuting them, and is the status quo a real deterrent? The noble Baroness the Minister—again, at Second Reading—talked about what would happen if a CHIS were to undertake criminal activity that fell outside the strict parameters of a CCA:

"The prosecuting authorities are in a position to consider whether to bring a prosecution. This has been done before and will be done again if required."—[*Official Report,* 11/11/20; col. 1115.]

So the answer is, "It has been done before and will be done again if necessary", but it has not been done so often as to put off either undercover police officers or criminals from participating in criminal activity at the request of their handlers, who have willingly engaged on the understanding that, provided you stick to what you have been authorised to do, the CPS is unlikely to prosecute.

There have, no doubt, been rare occasions when a criminal has asked for a written guarantee of immunity and has backed away when it could not be given, but the system has clearly not been seen by the overwhelming majority of those involved—neither the handlers nor the undercover operatives—as unfair or unreasonable, no matter what we might think, otherwise they simply would not do it. In any event, any guarantee of immunity would be conditional only on the CHIS doing precisely what he is authorised to do, which in itself presents problems, as we will see in future groups.

I argue that the potential unintended consequences of what is proposed in the Bill on the question of immunity, as the noble Lord, Lord Anderson of Ipswich, pointed out, are too high a price to pay just to make us feel better, because we feel it is unfair and unreasonable not to give immunity up front. CHIS engage willingly in criminal activity at the request of their handlers, despite the possibility of prosecution. The proposed solution, to a problem that does not exist, is startling and the potential for abuse obvious, which is why I support the amendments.

**Lord Falconer of Thoroton (Lab):** My Lords, it is a pleasure to follow the noble Lord, Lord Paddick, who brings experience that none of the rest of us who have spoken in the debate have. It has been a powerful and significant debate. It arises because, under the Bill, a consequence of authorising criminal conduct is that it is rendered "lawful for all purposes", which creates an immunity both from criminal prosecution and from civil liability for the person carrying out the authorised crime.

As this debate has identified, that gives rise, in effect, to two issues. First, it is a departure from the existing arrangement whereby the effect of the Upper Tribunal's decision in the Third Direction case was that the relevant authorities had the power to authorise the criminal conduct, but the power to authorise it did not render it immune from prosecution. In consequence, it was a matter for the relevant prosecutor to determine whether or not the fact that the CHIS was acting in accordance with the authority given to him meant that the CHIS—I apologise to the noble Lord, Lord Cormack—should not be prosecuted.

From the point of view of the Government—and very much of this debate—reasons have to be given why that principle is being departed from. The arguments fluctuate between, "It's a useful power to have", "For the prosecutor to determine", to, "Actually, it makes no difference". Can the Minister give an authoritative answer to the question why it is immunity now, rather than depending on prosecutorial discretion? In particular, is it because it makes no difference? Has it made a difference in the past and, if so, why is the principle being departed from?

Noble Lords speaking in this debate have asked penetrating questions. The noble and learned Lord, Lord Thomas of Cwmgiedd, said, in effect, "Tell us why the policy is being changed." We on this side of the House want to hear answers to those questions before we make up our minds on this issue. The second and separate issue—here, we believe there is definitely a defect in the Bill—is that the consequence of the "lawful for all purposes" approach is that there is plainly no remedy for the victims of the conduct authorised by the criminal conduct authorisation. That is fundamentally wrong.

*3.45 pm*

The *Legislative Scrutiny: Covert Human Intelligence Sources (Criminal Conduct) Bill* report of the Joint Committee on Human Rights addresses this issue in detail at pages 28 to 31. It draws attention to three points. First, the effect of the Human Rights Act is that victims of crime are entitled to be protected by Articles 1 and 2, and there needs to be an effective remedy. If they are the victims of crime and yet the crime is lawful because of that Act, how is that consistent with the duty of the state under the Human Rights Act? Can the Minister answer that?

Secondly, what is the position in relation to criminal injuries compensation schemes? If it is rendered lawful, does the victim of such a crime have the right to make a claim under the scheme? Thirdly, if it is rendered lawful, that brings to an end the right to civil liability. Why is that not a breach of the obligation on the state to protect victims of crime under the Human Rights Act? Surely, the right course is not to deprive the victims of any remedy but, if necessary and appropriate, to ensure that the CHIS, acting in accordance with a due authority, is indemnified in respect of any liability he or she may have to a victim.

**Lord Stewart of Dirleton (Con):** My Lords, Amendments 3 and 5 from the noble Baroness, Lady Chakrabarti, seek, as she said, to maintain the status quo but on a statutory footing. They would maintain the existing legal position whereby an undercover operative, a CHIS—I demur from the noble Baroness's use of the phrase "police spy", which, in addition to pejorative overtones, carries an undercurrent of the 19th-century Russian novel—could still be prosecuted for the activity that the state had tasked them to do.

In answer, first, to the point raised by the noble and learned Lord, Lord Falconer of Thoroton, it has been a deliberate decision to draft the legislation in a way which renders correctly authorised conduct lawful in order to provide greater certainty and protection to undercover operatives—CHIS—where they are carrying

[Lord Stewart of Dirleton]
out activity that they may have been authorised to undertake. To expand that in answer to the matters raised by the noble Baroness, Lady Chakrabarti, this approach is in keeping with other powers in relation to the investigation of crime, such as interference with equipment, interference with property, and the Regulation of Investigatory Powers Act, including an underlying Section 29 covert human intelligence source use and conduct authorisation.

As noble Lords have accepted—and they have not needed to be persuaded—our position is that it is grossly unfair and unreasonable for the state to ask an individual to engage in difficult and dangerous work to frustrate serious crimes while leaving open the possibility of the state prosecuting them for that very same conduct. That answers a point raised by the noble Lord, Lord Hendy, in his contribution to the debate.

The noble Baroness, Lady Chakrabarti, has framed her argument in terms of an illustration: a passer-by breaking into a house to save a neighbour. The analogy is that, in that position, the passer-by would have had available to them legal defences, and that the undercover operative—the CHIS—should simply rely upon the discretion of prosecutors rather than enjoy at the outset the full protection of the law for activities carried out within the narrow and tightly constrained boundaries of the criminal conduct authorisation.

We consider the analogy drawn by the noble Baroness is inapposite. The CHIS is not a mere passer-by stumbling across wrong-doing, but rather is placed deliberately in the company of wrong-doers by the state to help the state, or is someone who may have come into contact with wrong-doers and gone on to offer assistance to the police or investigating authorities. In so doing, such a person will often be asked to go along with the criminal activity of those people to earn their trust, so that their criminal activity may be frustrated. They do so in the public interest and often at risk of harm. Our position is that if the state thinks that it is right to ask them to act in this way and can consider the matter in advance, it is not comparable to the situation of a member of the public acting as a good citizen, responding to an unexpected event and going to the assistance of a fellow citizen in danger.

It is a credit to the skill of the handlers, and to the commitment and trust of covert human intelligence sources, that they have been prepared to continue with the prospect of prosecution always alive. However, as we understand the situation, we must accept that we have lost intelligence and failed to recruit undercover operatives because we have not been able hitherto to give them confidence that the state will not prosecute them for the things that the state has asked them to do. This tension has existed for many years and it is right that we use the Bill to resolve it. In fact, making this legal position clear is likely to help with the recruitment and retention of human intelligence sources.

It would also be undesirable from a legal perspective to create an express power for public authorities to authorise activity which remained criminal. However, I reassure the noble Baroness that where a CHIS, or an undercover operative, commits any criminality outside the tight parameters of the authorisation, the prosecuting authorities can of course consider it in the normal way. The Bill does not prevent those impacted by an authorisation seeking redress. I include in that the matter raised by noble Lords in relation to civil redress. The Investigatory Powers Tribunal has the same powers to grant remedy as other courts.

The noble Baroness, Lady Warsi, and the noble Lord, Lord Hendy, were concerned that the Bill may be seen as something which allows a CHIS carte blanche to commit criminal activities. That is not the case. Criminal conduct authorisations are tightly drawn. Persons acting undercover will be working within a relationship with their handler, who is trained and experienced in conducting such work, and subject to a powerful oversight regime. A CHIS will never be granted carte blanche to commit any or all crimes. This is communicated clearly to people finding themselves in that situation, appointed to that position or recruited to that position. Where a covert human intelligence source commits criminality outside the tight provisions of the authorisation, the prosecuting authorities will consider the matter in the usual way.

In response to the noble Baronesses, Lady Jones of Moulsecoomb and Lady Blower, and the noble Lord, Lord Paddick, it is the case—as I think the noble Lord acknowledged, albeit with substantial caveat—that covert human intelligence sources acting outside authorised conduct have been prosecuted in the past. The Bill ensures that that can happen in future if the boundaries of the authority under which they work are transgressed. It is precisely to combat the sort of outrages identified by the noble Baroness, Lady Jones of Moulsecoomb, that the Bill is framed. That is why it seeks to build on the oversight of the commissioner and the Investigatory Powers Tribunal.

The noble and learned Lord, Lord Thomas of Cwmgiedd, asked about the visibility of authorisation forms and the effectiveness of the regime. I assure him and others in the Committee that there will be oversight of the new regime. That is the role the Investigatory Powers Commissioner's Office plays in overseeing all authorisations. That body will provide public commentary on the effectiveness of the regime as part of the reports which it prepares. It has access to all documents and all information bearing upon the CCAs about which we were speaking.

The noble Baroness, Lady Blower, spoke about the situation applying according to the law of Canada. We have looked carefully at the provisions applying in countries with legal systems similar to ours. However, similar though the legal system of Canada is, none the less there is a different regime of control, as the security imperatives in Canada are different from ours.

Finally, I shall comment on the observations by the noble Lord, Lord Paddick. We consider that the status quo is not desirable in the current situation. We acknowledge the decisions in the Third Direction case. We look to place the activities of people fulfilling these necessary functions on a statutory basis. I think—if I have gauged correctly the views of the Committee—that placing these powers on a statutory footing is more or less universally considered desirable. Clearly where we will potentially be at odds is in the framing of the terms of the statute. However, my respectful conclusion is to say that the continuation of the status quo is not desirable.

For the reasons that I have identified, we consider it desirable—in spite of the qualifications and concerns raised by the noble Lord, Lord Hendy, and others—to render the situation whereby criminal conduct, tightly defined in individual circumstances, will be identified in advance rather than excused retrospectively.

**The Deputy Chairman of Committees (Baroness Fookes) (Con):** I have received one request, so far, to speak after the Minister. I call the noble Lord, Lord Paddick.

**Lord Paddick (LD) [V]:** My Lords, I thank the noble and learned Lord for his remarks. He is right that there is widespread support for placing the involvement of covert human intelligence sources in crime on a statutory footing. The issue is immunity, to which these amendments are directed. Will the Minister clarify? He says that the change that this Bill brings about around immunity is to provide greater certainty and protection. It is an assertion, but the noble and learned Lord has not produced any evidence about why greater certainty and protection are needed.

The Minister went on to say that noble Lords have accepted that leaving a CHIS under the threat of prosecution is unfair and unreasonable. I do not know whether he was temporarily distracted, or whether he did not understand what I said, at length: while we and the Government may think that it is unfair and unreasonable, clearly CHIS and their handlers, in the overwhelming majority of cases in the past, have not felt that it is unfair and unreasonable, because they have carried out this activity without a promise up front of immunity from prosecution.

*4 pm*

The Minister also talked about covert human intelligence sources sometimes walking away and losing valuable evidence because there was not this promise of up-front immunity. Can the noble and learned Lord tell the Committee how many times, or in what percentage of cases, that has happened? The Committee must know the nature and extent of the problem that this Bill is trying to address in terms of immunity, bearing in mind the overwhelming downsides to following a particular path.

Finally, can the Minister address what my noble friend Lord Thomas of Gresford described as the brown envelope issue, where, for example, a member of an armed gang who is an informant appears in the dock alongside the fellow criminals and, out of sight, the judge is tipped off that the informant helped the police and so should be treated more leniently? What happens when that member of the gang does not appear in the dock with all the others, clearly giving away the fact that he is a police informant and placing his life at risk?

**Lord Stewart of Dirleton (Con):** My Lords, the noble Lord clearly heard what I said about the view that we have lost intelligence and failed to recruit CHIS, and that failing to introduce a power in these terms is likely to impair the recruitment and retention of CHIS. I do not have to hand the figures that he seeks, but I undertake to write to him.

On the "brown envelope" scenario, when it is drawn to the attention of a presiding judge passing sentence that a member of a criminal organisation—a gang, a conspiracy or whatever—has actively assisted the police and the investigating authorities in bringing the prosecution, it is important that we maintain a proper boundary. A person becoming aware that the police are aware of criminal activity, who elects to go to the police in their own interests in order to assist them, and by so doing earns a degree of mitigation, is very different from a person becoming a CHIS in the course of criminal activity, or one who is associated with criminal organisations for that direct and specific purpose. The noble Lord shakes his head, but I insist that we must maintain boundaries. A person who, during or prior to a prosecution, assists the prosecution and the police, is different from a person inserted into an organisation with the purpose of deriving intelligence about its activities.

The noble Lord, Lord Thomas of Gresford, spoke about the appointment of a committee to look into these matters; as he said himself, this was a matter which occurred to him shortly before this debate. I will look into the implications and communicate further with him.

**Baroness Chakrabarti (Lab) [V]:** This Committee has made it a privilege to be a Member of your Lordships' House, which today I have heard at its best, expressing with great care and detail the sheer strength, depth and wisdom of noble Lords' concerns about the Bill in its current form. Many other noble Lords have similar concerns, but for various reasons were unable to participate. The noble Baroness, Lady Ritchie, rightly pointed up the Northern Ireland experience, and with all matters of human rights and the rule of law, we ignore that voice and that particular experience at our peril.

The noble Baroness, Lady Warsi, rightly pointed out that supporters of these amendments come from all sides of the House. That should give the Minister pause for thought. So much has been said in these polarised times in our nations about extremism versus moderation. Sometimes I do not even know what these words mean any more, save that the ultimate moderation that holds our nations together is the rule of law. My friend—if not my noble friend—the noble Baroness, Lady Warsi, rightly describes this as a very conservative principle and tradition. However, equally for liberals and progressives, there can be no human rights or even democracy without the preservation of the rule of law.

The noble Lord, Lord Thomas of Gresford, pointed to our legal traditions, but also made a particular point about successful work of his own at the Bar deconstructing the mens rea of someone who had no criminal intent because they were acting in the public interest; that ties in with my amendment very well indeed. The noble Baroness, Lady Jones of Moulsecoomb, may have used colourful language which offended the Minister, but it is how many members of the public will feel about what is being provided for here without the safeguard of the amendments that I have put forward.

My noble friend Lady Bryan was right to point up the excellent briefing from Justice. I neglected to declare an interest as a member of Justice, but I hope that

[Baroness Chakrabarti]
noble Lords will forgive me, because I suspect that many of them, particularly noble and learned Lords, are members of that wonderful law reform organisation. My noble friend Lady Bryan made the crucial point: where are the hard cases of undercover operatives who are just doing their work and doing no more than necessary being prosecuted by rogue prosecutors against the public interest and common sense, because we have not seen them?

Of course, there is only one thing better than one Lord Thomas, and that is two Lords Thomas contributing so eloquently to a debate, particularly when one of them is the former Lord Chief Justice of England and Wales. I will let that hang in the air for a moment, because I know that the Minister will not have ignored that very powerful intervention from the noble and learned Lord, Lord Thomas of Cwmgiedd. What is wrong with the current law? Where is the evidence? How can we do our duty without the ability to examine the case for moving from the status quo that has served our nations so well in this difficult and grey area and held the ring for so long?

My noble friend Lord Hendy was absolutely right to bring up the ongoing Mitting inquiry, in which he represents some of those who have been subject to abuse of power. There have been abuses under the current law; how much greater will the possibility of abuse be if we cross this Rubicon into granting blanket advance immunities to so many agents of the state, including from the criminal fraternity?

What of the victims, as my noble friend Lady Blower so rightly pointed out? She reminded us of perhaps the greatest jurist of my lifetime: Lord Bingham, who articulated equality before the law as a vital rule of law principle. She also reminded us that Article 13 of the ECHR requires an "effective remedy" for victims of crime. I know that the Minister attempted to address this, but how can "lawful for all purposes" possibly square with giving an appropriate remedy to a victim of a crime that is suddenly rendered no longer a crime?

The noble Lord, Lord Paddick, has been a police officer for 30 years, and, as my noble and learned friend Lord Falconer suggested, that gives his practical experience in the field particular weight. I imagine that noble Lords listening and those who will read his intervention tomorrow will be very careful to consider his wholesale dismantling of the argument against maintaining the so-called tension, which operates as a safeguard against the abuse of power. It is good for operating on the mind and ethical framework of any CHIS or undercover operative, particularly one who is not even an officer of the state but is a mere agent and, I repeat, quite possibly from the criminal fraternity.

My noble and learned friend Lord Falconer also rightly took us to the very powerful report from the Joint Committee on Human Rights, which expresses so many concerns about the Bill in its current form. There is so much potential for violations of human rights and abuse if the Bill is unamended. I have tried to engage constructively by way of this amendment, which does minimal violation to the scheme of the Bill and addresses the problem posed by the ongoing litigation but, none the less, preserves the status quo that has served us so well and is about preserving the rule of law.

It is said to be a breach of the rules of theatre to break the fourth wall, but, for all its beauty and glory, your Lordships' House is not a theatre; it is a legislature. I want to be fair to the Minister, who is new to your Lordships' House and to this Bill and who cannot possibly have been involved in the earlier stages of the policy formulation that led to its precise drafting. It is very difficult to be in the Chamber for one of these Committees, to listen to all the arguments—particularly when they are so powerful and come from all sides—and to respond on the spot, on your feet and immediately, as he has had to do. None the less, I hope that he will listen to the sheer breadth and depth of concern, which might well be addressed by way of my amendments or something like them.

The noble and learned Lord takes issue with my analogy about other citizens and passers-by. He says that these agents of the state are not mere passers-by, but that argument cuts both ways. The mere passer-by is mostly not from the criminal fraternity and normally does not have a vested interest, of whatever kind, in getting a particular outcome, quite possibly, even as an agent provocateur, as we have seen in the past. Why should an undercover operative, a CHIS, quite possibly a civilian or even someone from the criminal fraternity, have a protection in law that even a uniformed police officer does not have when he or she puts themselves in harm's way on a daily basis? The so-called tension is a healthy one, and it should not be resolved by way of the absolute immunity that is the ultimate evil in this Bill.

Finally, I am beginning to suspect that the "lawful for all purposes" formulation was not adopted with a great deal of deliberation. I am beginning to suspect that it was used because it was used before and is in the framework of RIPA, where it is, pretty much, appropriate because that is about surveillance. As the Minister has said, it has been used in certain narrow confines before, but this Bill authorises unlimited criminal conduct and, potentially, very serious crimes, as the Joint Committee on Human Rights has pointed out. Therefore, a "lawful for all purposes" advance immunity that is appropriate for bugging, surveillance and minor criminal damage is simply not acceptable or conscionable in this case.

*4.15 pm*

I am hoping that the Minister will graciously listen, consider, go back to his team and talk to his colleagues. In that hope and optimistic belief, I beg leave to withdraw Amendment 3—but only for today.

*Amendment 3 withdrawn.*

*Amendments 4 and 5 not moved.*

**The Deputy Chairman of Committees (Lord Alderdice) (LD):** We now come to the group beginning with Amendment 6. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this or anything else in the group to a Division should make that clear in the debate.

*Amendment 6*

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

**6:** Clause 1, page 1, line 19, at end insert—

"(3A) In section 27(2) of that Act insert—

"(c) is not criminal conduct authorised in accordance with the Covert Human Intelligence Sources (Criminal Conduct) Act 2020.""

Member's explanatory statement

This amendment will ensure that victims of crimes authorised under this Bill can seek civil redress.

**Lord Paddick (LD) [V]:** My Lords, in moving Amendment 6, in my name and that of my noble friend Lady Hamwee, I will speak also to the other amendments in this group.

Section 27(2) of the Regulation of Investigatory Powers Act 2000 states:

"A person shall not be subject to any civil liability in respect of any conduct of his which … is incidental to any conduct"

that, for the purposes of this Bill, is authorised by a criminal conduct authority. Our Amendment 6 removes this immunity from civil liability. My support in the last group should make it absolutely clear to the Committee that I feel that that is the solution to this problem. It would be only in the very unfortunate circumstance that those amendments are not incorporated into the Bill that I would revert to this amendment.

This part of RIPA was intended to deal with the interception of communications. This might involve placing a listening device in a car or a room or intercepting phone calls, text messages or emails. This could be done only if it was authorised in advance by an Investigatory Powers Commissioner and by the relevant Secretary of State, and against only the most serious criminals, such as terrorists. While intercepting communications is a serious matter, the physical or financial harm to the—suspected—very bad person targeted is likely to be minimal.

The criminal conduct authorities—CCAs—under this Bill authorise undercover operatives to commit crimes in which innocent members of the public could be involved and seriously harmed. A frequent scenario in the past would have been recruiting a member of a gang of armed robbers, who was allowed to participate in an armed robbery during which, by either accident or design, the undercover operative working for the police may have harmed the security guard, potentially very seriously.

Noble Lords will also be familiar with—and other noble Lords have already mentioned—undercover police officers befriending and entering into sexual relationships with environmental activists. Despite the Government's implied promise at Second Reading that such things would never happen again, in fact, what the Government have said is that an undercover operative would never be "authorised" to have sex with someone they were tasked to enter into a relationship with, not that it would never happen again.

There are two clear and distinct issues here, where someone may seek civil damages. One is where the handler authorises a CHIS to engage in a crime in a way that is not lawful, necessary or proportionate. The other is where the CHIS, whether an undercover officer or, potentially, a member of a terrorist group who passes information back to the police, goes beyond the authority of a CCA. This could be something

"incidental to any criminal conduct"

they have been authorised to do.

An undercover police officer could argue that he had no choice but to become intimately involved with the activist he was tasked to befriend, and that even if the sexual activity was not specifically authorised, it was "incidental to" the conduct that he was authorised to engage in. To grant him, and potentially the police force concerned, immunity from being sued for damages in such circumstances is repugnant. This illustrates that RIPA was never intended for, and is ill suited to, granting immunity under criminal conduct authorities.

The Government will say that, even if the CHIS evades civil action, the police force that tasked him, for example, will not. However, that seems to be cast into doubt by what the Minister said in the first group about the extent of the immunity granted, in that that immunity would extend also to the person tasking the CHIS. Again, there are two distinct issues with this. The first is that if the conduct authorised under a CCA is "lawful for all purposes", it seems to me that the police force, too, is immune from civil action. The second is that—I speak from personal experience in the police service, as others have—racist and sexist behaviour in police forces reduced only when police officers and their police chief found themselves personally liable for their behaviour. If they had not acted in the course of their duties as a constable, the chief constable could deny vicarious liability, and the officer would be personally liable for any damages. It is the threat of legal action, whether criminal or civil, that ensures that handlers and CHISs keep within the law. Removing civil liability from a CHIS would remove another important check on their behaviour.

We cannot support Amendment 8, for a number of reasons. First, it says that criminal conduct under the authority of a CCA is lawful for the purpose of the criminal law. Clearly, we do not agree with that. As I have argued in the previous group, we do not believe that that should be the case. Secondly, it requires the authorising body to indemnify the CHIS against having civil action taken against him. For the reasons I have just explained, the personal liability of the CHIS in such circumstances is an important check on their behaviour.

Amendment 71 would allow a complaint to be brought before an Investigatory Powers Tribunal, which may award compensation. But there is normally a time limit of one year after the taking place of the conduct to which the complaint relates, which seriously reduces the scope for compensation to be applied for, compared with the normal seven-year limit for other civil actions. I do, however, believe that the proposal has some merit, and perhaps with further adjustment it may be more acceptable. I beg to move.

**Baroness Massey of Darwen (Lab) [V]:** My Lords, it is a pleasure to follow the noble Lord, Lord Paddick, with his eloquence and experience. I shall speak to Amendment 8.

[Baroness Massey of Darwen]

I am a member of the Joint Committee on Human Rights. This committee scrutinised the Bill, received expert opinion on it and made the report referred to earlier, most recently by my noble and learned friend Lord Falconer of Thoroton. This report raises many issues of human rights that will need to be teased out and possibly resolved as we go through this Bill.

Amendment 8 is there so that victims of criminal conduct carried out under criminal conduct authorisation can access compensation. This is from paragraphs 104 to 110 in chapter 8 of the report. The report notes that the Bill as introduced is potentially incompatible with human rights legislation. Article 1 of the European Convention on Human Rights requires the UK to secure the rights of all those within its jurisdiction, including victims of crime. Where crime also amounts to a human rights violation, the victim has a right to an "effective remedy" under Article 13, mentioned earlier. A victim also has a right, under Article 6, to have any claim relating to his or her civil rights and obligations brought before a court or tribunal.

Since the Bill would render all authorised criminal conduct "lawful for all purposes", it would prevent a victim of authorised crime vindicating their rights by bringing a civil claim for compensation. It would seemingly also prevent a claim for compensation under the criminal injuries compensation scheme.

My amendment mirrors the regime in Australia, which, as the report states,

"provides *indemnification* for any participant who incurs civil liability in the course of an undercover operation."

In other words, a civil claim can be brought against the perpetrator by the victim, and compensation secured, but the state will then step in to indemnify the perpetrator against his or her losses. The effect of this provision would be to ensure that the person authorised to carry out criminal conduct

"would not suffer the consequences of civil liability, but it would also ensure that the victim of the conduct would obtain civil redress while secrecy is maintained."

This Bill has been described as promoting the concept of "one size fits all", framed more eloquently by my noble friend Lady Chakrabarti. It is simply not acceptable or possible to do that. In relation to my Amendment 8, I have mentioned specific issues on human rights legislation, which is the core of the report I have quoted today. I look forward to the Minister's response.

**Lord Dubs (Lab) [V]:** My Lords, I am also a member of the Joint Committee on Human Rights, along with my noble friend Lady Massey, and I am speaking in support of Amendment 8. My noble friend has put the case so well that I am just going to add one or two very minor comments. I am going to do so by quoting from the recommendations in the report that the Joint Committee put forward—a report that has set the tone for much of the debate and many of the amendments that we are discussing today. To quote from the recommendations:

"By rendering criminal conduct lawful for all purposes, the Bill goes further than the existing MI5 policy by removing prosecutorial discretion. The reason for this change in policy has not been made clear. It has significant ramifications for the rights of victims. The Government has missed an opportunity to include within the Bill provision for victims of authorised criminal conduct, both legally and practically. This is another reason why the Bill requires additional safeguards to ensure there can be no authorisation of serious criminality."

I will go on very briefly to the next recommendation in the Joint Committee's report, which is:

"The Government must explain why the existing policy on criminal responsibility, which retained prosecutorial discretion, has been altered in the Bill to a complete immunity. Victims' rights must be protected by amending the Bill to ensure that serious criminal offences cannot be authorised. In respect of civil liability, the Government must confirm that authorising bodies will accept legal responsibility for human rights breaches by CHIS or alter the Bill to provide that CHIS will be indemnified rather than made immune from liability."

This is a very clear proposal, and this is a very clear amendment that would safeguard the rights of individuals who will otherwise have no rights left if the Bill goes through unamended.

*4.30 pm*

**Lord Cormack (Con):** My Lords, I have considerable sympathy with the remarks of the noble Lord, Lord Paddick, in moving his amendment. It has been a very instructive afternoon, sitting here and listening to the previous, very long but extremely enlightening debate. The more I listened and the more I reflect on what we are discussing, the more uneasy I am about the Bill. I do not dispute the need—any more than the noble Lord, Lord Paddick, the noble Lord, Lord Thomas, or the noble and learned Lord, Lord Thomas, or anybody else has disputed it—to recognise that for the greater safety of the nation, we have to allow some of these things to happen. However, the noble and learned Lord, Lord Thomas of Cwmgiedd, made a very sober and sensible suggestion about perhaps having some special committee to look at this.

The Bill has far-reaching tentacles, because we are not just talking about the security services. We are talking about a whole range of agencies; we will come to that next week and I have tabled some amendments to delete most of those agencies. But we are discussing a really serious Bill, with far-reaching and unknowable implications. I am bound to say that I very much warmed to the suggestion of the noble Baroness, Lady Chakrabarti, that we refer to "undercover operatives" rather than CHISs. I was delighted when my noble friend took that up in his speech. I urge him to use that term henceforth, not something that the world outside will not understand if they turn on "Yesterday in Parliament" in a fit of insomnia.

Given the extraordinary wealth of legal experience that we have in this House—we have a former Lord Chancellor answering from the Opposition Front Bench—and that we have people who have experience in the police, and all the rest of it, we really are equipped to give this the most careful scrutiny, and we should. It deserves no less and demands no less. I hope that as we go through Committee and prepare for Report, where there will be some serious issues to debate and possibly to divide on, we will have at the back of our minds the suggestion of the noble and learned Lord, Lord Thomas of Cwmgiedd.

**Baroness McIntosh of Pickering (Con):** My Lords, I thank the noble Lord, Lord Paddick, and the others who have tabled amendments in this group. I pay huge respect to him for his experience in this field. In the

words of the noble Lord opposite, the noble Lord, Lord Paddick, stands out as one of the few who have personal experience of this. One listens with great respect to him when he shares his views with the House on occasions such as this.

All three amendments in this group seek to achieve the same thing: to enable those who have been victims of the crimes authorised under the Bill to seek civil redress. I congratulate my noble and learned friend Lord Stewart of Dirleton, the Minister, on his sterling debut performance and his manner in approaching the Bill. I think we are all extremely grateful to him. I listened carefully to the words he used in summing up on the previous group of amendments. Following on from the third direction case, I heard him refer to placing responsibilities on a statutory basis and I think he has the support of all the House in this. That is the whole purpose of the Bill and I lend him my personal support in that regard.

I also heard my noble and learned friend say, and I hope I heard correctly, that civil redress is not excluded. In regard to this small group of amendments, is it the case that civil redress is not excluded? Are there any limitations, either under the Bill or the current law as he understands it, on civil redress being so required? If that is the case, I am sure he will be able to tell us that these amendments, albeit well-intentioned, may not be needed. Personally, I would obviously welcome civil redress in that regard and these amendments are very helpful in enabling us to probe him on that.

**Lord Judd (Lab) [V]:** My Lords, we are indeed fortunate to have working for us, in both Houses, the Joint Committee on Human Rights. I find its reports invariably well argued and well researched. The arguments and logic of those reports are not to be easily dismissed. We have been fortunate this afternoon to hear the noble Baroness, Lady Massey, and my noble friend Lord Dubs putting their experience on the committee at our disposal. They have argued the case very well.

It is unthinkable that innocent members of the public who are adversely, and perhaps grievously, affected by covert action have no clear means of recourse. That needs to be clarified and written into the Bill. It is also important that those involved in all such covert action, which must be authorised by people with judicial authority and experience—the will of the House has come across clearly in all the debate—have limits on what can and cannot be done, and who is to be held responsible and in what way. These amendments help to clarify that situation. In that sense, they should be taken extremely seriously. I am grateful to have heard the experience of those who have worked on this so thoroughly in the Joint Committee on Human Rights being shared with us this afternoon.

**The Deputy Chairman of Committees (Lord Alderdice) (LD):** The noble Baroness, Lady Jones of Moulsecoomb, has withdrawn so I call the noble Lord, Lord Anderson of Ipswich.

**Lord Anderson of Ipswich (CB) [V]:** My Lords, this group of amendments focuses on compensation for crimes committed pursuant to a criminal conduct authorisation. I suggest that the applicable principles should be these.

First, it would be unfair to expose undercover operatives to personal civil liability for doing something they were expressly authorised by a public authority to do, just as it is generally considered unfair and contrary to the public interest to prosecute them for that. This, despite my profound respect for the noble Lord, Lord Paddick, and for all his police experience is my problem with Amendment 6.

Secondly, some means of compensation should exist for injury or loss caused by a crime committed pursuant to a criminal conduct authorisation: not from the person who perpetrated the crime but from the authority which authorised it, or from the state more generally. So what should that means of compensation be?

The first and obvious route, already referred to by the noble and learned Lord, Lord Falconer of Thoroton —but not, I think, responded to by the Minister—is via the Criminal Injuries Compensation Authority and its equivalent in Northern Ireland. That is not expressly referred to in these amendments, but can the Minister confirm whether it is available to the victims of crime committed pursuant to criminal conduct authorisations under the scheme of the Bill and if not, why not?

The second possible route to compensation, suggested by Amendment 8, is for the CHIS who perpetrates a crime to be capable of being sued and then, if necessary, indemnified by the authorising authority. I see the attraction of that, but of course criminals are rarely perceived as having deep enough pockets to be worth suing. I can also see considerable practical difficulties in keeping their status as a CHIS secret once the indemnity comes into play. It was interesting to hear from the noble Baroness, Lady Massey of Darwen, that this amendment is based on an Australian model. It would be interesting to know how much that model is actually used.

The third possible route is by proceeding directly against the authorising authority in the Investigatory Powers Tribunal. Amendment 71 is designed to give effect to that, but I wonder whether it actually adds to what is already in RIPA. A new subsection (5)(g) is proposed for its Section 65, so as to include conduct authorised under new Section 29B. But new Section 29B will be in Part II of RIPA, which is already specified in Section 65(5)(d).

How would a person be made aware of the possibility of proceedings in the IPT? The Investigatory Powers Act 2016 already requires IPCO not only to inform a person of a serious error, where it is in the public interest to do so, but, by Section 231(6), to inform them of any right they may have to apply to the IPT. By Section 232, IPCO is required to give any necessary assistance to the IPT. So far so good, although I wonder how often, as a matter of practice, it will be considered by a judicial commissioner to be in the public interest to inform a person of a serious error of this kind. To do so will often risk blowing the cover of the CHIS, notwithstanding the fact that the IPT proceedings themselves are very secure.

In short, it seems to me that the Amendment 8 route could be created, and that the Amendment 71 route may already exist, but that both are likely to be hamstrung in practice by the requirements of keeping

[Lord Anderson of Ipswich]
secret the existence and identity of a CHIS. That rather points up the advantages of ensuring that the Criminal Injuries Compensation Authority is available to the victims of crimes committed by undercover operatives in the same way as it is to the victims of other crimes. I hope the Minister will feel able to comment.

Finally and more generally, I make a procedural suggestion, following the proposal of the noble and learned Lord, Lord Thomas of Cwmgiedd, that a special committee be appointed to take evidence from the police and MI5 on matters considered too sensitive, perhaps, for the ears of the rest of us. I know the Minister is thinking about that proposal, but should it not meet with favour, an alternative might be to task the Independent Reviewer of Terrorism Legislation with investigating the position and reporting back. The current reviewer, Jonathan Hall QC, is highly expert in all matters relating to police law, not only counter-terrorism. He is widely respected for his impartiality and has, of course, the very highest security clearance. I recall, as independent reviewer, performing a similar function when the Bill that became the Justice and Security Act 2013 was going through Parliament, and though I cannot commit the independent reviewer, I should be happy to share that experience if others see merit in the idea.

**Baroness Chakrabarti (Lab) [V]:** My Lords, I can be brief on this group—because I gave my views on the importance of removing both civil and criminal immunity in the earlier discussion—save to take the opportunity to wholly welcome the cogent, powerful and accessible report of the Joint Committee on Human Rights, and to congratulate my noble friends Lady Massey and Lord Dubs, as well as all the other members of that committee. The committee has been one of the greatest success stories coming from the Human Rights Act. Some once thought the Act would be just a recipe for litigation, and human rights would be just a box of lawyers' tricks to wield in court, but the Joint Committee on Human Rights has been the missing ingredient that allows for human rights principles to be included in the consideration of legislation before it is even passed. I say this knowing that that the Minister will take that report incredibly seriously when he considers his approach to the next stage of the Bill.

On civil immunity, it is worth saying that, for a lot of victims, this is as important as criminal immunity. For a lot of innocent third parties, who may have lost property or even suffered grave injuries through no fault of their own, it is very important that there is the possibility of compensation. It may not be enough for it to be left to the CICA, although I will be interested in what the Minister advises. It would seem completely unconscionable for a state agent to be authorised to commit a crime, for an innocent citizen to suffer grave damage to property or person and for there to be no mechanism for them to have compensation. Further, the civil courts, when combined with investigative journalism, have been a place where a great many scandals and human rights violations of recent decades have been exposed, so "lawful for all purposes" is just as potentially worrying in the civil context as it is in relation to the criminal law.

*4.45 pm*

**Lord Falconer of Thoroton (Lab):** I am delighted to follow my noble friend Lady Chakrabarti, who has made a real contribution to the quality of the debate in this Committee and will make a real contribution to the changes necessary to the Bill. I shall speak particularly to Amendment 71, in the name of my noble friends Lord Rosser and Lord Kennedy. As the noble Lord, Lord Anderson of Ipswich, previewed, it seeks to make it clear that there is a jurisdiction in the Investigatory Powers Tribunal to give compensation to people.

This group concerns compensation for innocent victims. It seems to me that innocent victims can take two forms. One is somebody who is completely innocent and, pursuant to a crime authorised by a CHIS, gets beaten up, for example, by the CHIS. What remedy does that person have? Secondly and separately, there is the person who is a target of CHIS activity; for example, somebody who, it is thought, might be about to commit a crime and their premises might be burgled, pursuant to an authorisation under the Bill. What remedy does that person have? Let us assume, particularly, that the whole authorisation was wrongheaded from the start because, as everybody accepts in this process, errors get made. So, there is the innocent victim of crime on one hand and, on the other, the target of CHISery who is the wrong target and a judicial review would be allowed in relation to that.

On the face of the Bill, if it is all lawful, then there is no remedy at all. Will the Minister please explain what remedy there is? The noble Lord, Lord Anderson of Ipswich, made it clear that he thinks activities under Part II of the Regulation of Investigatory Powers Act 2000, which this is amending, already provide a remedy. Indeed, in the Commons in answer to this amendment, the Security Minister replied:

> "Let me be clear: there is no barrier under the Bill for affected persons seeking a judicial review of a decision made by a public authority. Similarly, the Investigatory Powers Tribunal already has jurisdiction in relation to conduct to which part 2 of RIPA applies, which will include the amendments made by the Bill. I am, though, listening to concerns expressed by Members about the Bill's potential impact on routes of redress, and I am happy to consider whether anything further is needed."—[*Official Report*, Commons, 15/10/20; col. 613.]

It would be helpful to have, first, a repetition of the assurance that the IPT covers judicial review-type relief—on the basis, presumably, that the original authorisation is unlawful—and therefore the reference to the fact that whatever is done under the authority is lawful does not apply to the original grant of the authority.

Secondly, will the noble and learned Lord deal with the issue of the innocent victim of the crime when there is a lawfully authorised criminal conduct authorisation, and the consequence of that is that somebody is, for example, severely beaten up? What remedy does that totally innocent victim have in such circumstances? The effect of the Bill is to say that the conduct is rendered "lawful for all purposes". It cannot mean that. It cannot mean that the totally innocent victim, who has other remedies, is deprived of all those remedies because it is authorised under a criminal conduct authorisation: it cannot have intended that.

As the noble Lord, Lord Anderson of Ipswich, said, it may be key that we focus on the public authority which provided the authorisation and do not lose sight

of the person giving the authority by focusing on the liability of the CHIS themselves. This point was clearly considered by the Joint Committee on Human Rights in suggesting its amendment to try to deal with this.

People are very concerned about the innocent victims. I strongly invite the noble and learned Lord to deal also with the practical issues referred to by the noble Lord, Lord Anderson of Ipswich. For all the remedies in the world you create, if you can never tell the victim what has happened, how does that person get a remedy? That is an important point.

**Lord Stewart of Dirleton (Con):** My Lords, Amendments 6 and 8 seek to remove the exemption from civil liability for CHIS criminal conduct. While I understand the intent behind these amendments, which is to allow those impacted by a criminal conduct authorisation to be able to seek civil redress, there are good reasons why the Bill has been drafted in this way.

I explained in response to amendments tabled by the noble Baroness, Lady Chakrabarti, why the Bill has been drafted to render correctly authorised conduct lawful for all purposes. Those reasons apply equally to criminal and civil liability. An authorisation will have been granted because it was deemed necessary and proportionate to tackle crime, terrorism or hostile state activity. Where that authorisation has been validly and lawfully granted, it is right that criminals or terrorists cannot then sue the undercover operative—the CHIS—or the state for that same activity.

I appreciate that the spirit of these amendments is to ensure that any innocent persons impacted by an authorisation can seek redress where appropriate. I reassure noble Lords that all authorisations are, in the first place, very tightly bound and, as part of the necessity and proportionality test, the authorising officer will consider any other risks of the deployment. An authorisation must consider and minimise the risk of impacting those who are not the intended subject of the operation.

The Bill does not create an exemption for all and any civil liability. For example, the conduct that is the subject of the Undercover Policing Inquiry would not be exempt from civil liability under the Bill's regime.

I also seek to offer reassurance that routes of redress will be available to those who have been impacted by a criminal conduct authorisation where that authorisation has been unlawfully granted, following the observations from the noble and learned Lord, Lord Falconer, on the situation where the wrong stems from the authorisation granted being improper or too broad. The Bill does not prevent affected persons from seeking a judicial review of a public authority's decision to authorise criminal conduct. If a judge concluded that the decision had not been lawfully made, the affected person could seek a remedy through the courts. The noble and learned Lord referred to the statement made in the other place on this. Equally, as with other investigatory powers, any affected person or organisation can make a complaint to the Investigatory Powers Tribunal which will then be independently considered by the tribunal.

A further important safeguard is the obligation on the Investigatory Powers Commissioner to inform a person of a serious error that relates to them, where it is in the public interest. This includes situations where the commissioner considers that the error has caused significant prejudice or harm to the person concerned. The commissioner must also inform the person of any rights they have to apply to the Investigatory Powers Tribunal. That is an example of the commissioner actively seeking out persons who have been wronged as part of their remit to consider all documentation, facts and circumstances surrounding the granting of a CCA.

Amendment 71, tabled by the noble Lord, Lord Rosser, is unnecessary. Any person or organisation can already make a complaint to the Investigatory Powers Tribunal with regard to conduct under Part II of RIPA; that complaint will be considered independently by the tribunal. The IPT operates one of the most open and transparent systems in the world for investigating allegations that agencies have breached human rights. It hears cases in open where possible and publishes detailed reports on its work and rulings. This will remain unchanged under the Bill.

These criminal conduct authorisations are very tightly bound so that they meet the necessity and proportionality test. A number of routes of redress will be available to persons wronged to challenge the validity or lawfulness of the authorisation and then seek the appropriate remedy, whether through judicial review or a complaint to the independent tribunal.

The matter of applications to the Criminal Injuries Compensation Authority was raised by the noble Lord, Lord Anderson, and others. I regret to advise the House that I do not have information specific to the CICA in front of me, but I will write to him and others who have expressed an interest on that point.

On a point raised by the noble and learned Lord, Lord Falconer, it is important to bear in mind that RIPA already excludes civil liability for authorised CHIS conduct, so what is introduced in the Bill is not new.

**The Deputy Chairman of Committees (Lord Alderdice) (LD):** I have received a request to speak after the Minister from the noble and learned Lord, Lord Falconer of Thoroton.

**Lord Falconer of Thoroton (Lab):** It is new, because CHIS conduct under the existing Bill significantly did not include criminal conduct. There was a little bit that was included, but this is a wholly different regime and I do not think it is right to say there is no change there. However, I did not rise to say that; I wanted to raise the point about being lawful for all purposes. If it is lawful for all purposes, tortious claims cannot be brought by the totally innocent victim—the person beaten up pursuant to the authority, assuming the person beaten up is not the subject of the CHIS but is just somebody caught up in it. Putting aside the Criminal Injuries Compensation Authority, which the noble and learned Lord will come back to us on, why should that person—singularly, throughout the whole of English civil law—not have a remedy? Is he saying that person does not have a remedy? If he is saying that they do, what is that remedy? Everyone else beaten up in the course of a crime has a tortious remedy.

**Lord Stewart of Dirleton (Con):** The remedy lies in the approach to the tribunal and the obligation on the commissioner to notify a person who is wronged of their right.

**Lord Falconer of Thoroton (Lab):** Can the Minister confirm that the totally innocent victim can go to the Investigatory Powers Tribunal and make a claim for damages for assault and battery?

**Lord Stewart of Dirleton (Con):** I am happy to confirm that.

**Lord Paddick (LD) [V]:** My Lords, I am grateful to all noble Lords who have spoken in this debate. In speaking to the comments of the noble Lord, Lord Anderson of Ipswich, I do not want to get into an argument over who has more respect for whom, but I have the utmost respect for him and his experience as a former Independent Reviewer of Terrorism Legislation. There is a fundamental disagreement he has surfaced with the noble Baroness, Lady Chakrabarti, and me over what was described in a previous group as the tension in the fact that a CHIS committing a crime is potentially subject to criminal prosecution and being sued for civil damages. I note that the noble Lord does not believe that is right, whereas the noble Baroness and I think it is.

*5 pm*

On the question of how a CHIS can be sued without their identity being revealed, I go back to my noble friend Lord Thomas of Gresford's example. Say one member of an armed gang is working with the police. All of them are involved in an armed robbery but when they get to court, under this Bill, the one who has been given immunity from prosecution is not there. How do you preserve that CHIS's anonymity in those circumstances? I raise this not to make a clever point but because, as we will see in going through all the groups of amendments in Committee, granting anonymity in advance creates all sorts of problems to which there is seemingly no answer.

The Minister said that the criminal conduct authorisation would be granted only for a good reason, that it would be necessary and proportionate and that, in those circumstances, somebody should not be allowed to sue the CHIS. The police are not infallible, as we will discuss in our upcoming debates. The authorisation may not be necessary and proportionate, or the CHIS may go beyond what they are authorised to do. The Minister also talked about authorisations being tightly bound and said that the authorising officer will consider all the risks. As we will discuss later, it is not possible to legislate for every possible risk in the scenarios in which many CHIS are operating.

The Minister keeps making assertions with no evidence to support them. He asserted that the inappropriate conduct being surfaced by the undercover police inquiry would not be exempt from civil litigation but, again, he gave no explanation why. At this stage, I will withdraw my amendment but I am sure that we will return to this issue on Report.

*Amendment 6 withdrawn.*

**The Deputy Chairman of Committees (Baroness Morris of Bolton) (Con):** My Lords, we now come to the group beginning with Amendment 7. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this or anything else in this group to a Division should make that clear in debate.

*Amendment 7*

*Moved by* ***Baroness Ritchie of Downpatrick***

**7:** Clause 1, page 1, line 19, at end insert—

"(3A) In section 27(3) of that Act (lawful surveillance etc.), after "Part" insert "(other than conduct authorised under section 29B)"."

Member's explanatory statement

The effect of this amendment is that criminal conduct authorisations would not be encompassed by the provisions of section 27(3) RIPA which expressly provides that "The conduct that may be authorised under this Part includes conduct outside the United Kingdom."

**Baroness Ritchie of Downpatrick (Non-Afl) [V]:** My Lords, I support both amendments in this group; obviously, I particularly support Amendment 7, which is in my name. The effect of my amendment is that

"criminal conduct authorisations would not be encompassed by the provisions of section 27(3)"

of RIPA 2000, concerning conduct outside the UK.

Again, I come to this issue with experience from Northern Ireland. Human rights organisations, including the Committee on the Administration of Justice in Northern Ireland, are concerned about the extraterritorial reach of this Bill in terms of committing offences. There is a deep concern that, in addition to criminal conduct authorisations making criminal acts by an informant "lawful for all purposes", the extraterritorial provision of Section 27(3) of the Regulation of Investigatory Powers Act 2000 could also apply—namely:

"The conduct that may be authorised under this Part includes conduct outside the United Kingdom."

I urge the Minister to outline from the Dispatch Box whether this is the case.

If it is, MI5 could, for example, authorise from its Belfast base the conducting of a serious criminal offence by a paramilitary informant in the Republic of Ireland. That offence would be unlawful under UK law but clearly this would not change an act being a criminal offence under Irish law. In a recent parliamentary answer to a Member of the Dáil, the Irish Parliament, the relevant Justice Minister said that all persons in the jurisdiction—the Republic of Ireland—are fully subject to its laws and any evidence of a breach of criminal law will be fully pursued in the normal way by the relevant authorities. My amendment therefore seeks to disapply the provisions of Section 27(3) of RIPA, which expressly provides that conduct can be authorised outside the UK.

This raises a number of questions, which I asked at Second Reading but did not receive answers from the Minister. Perhaps she can provide them this evening. Will the UK authorities inform their Irish counterparts if they authorise a crime in their jurisdiction? If not, the UK will be secretly authorising criminal activity in

the Irish jurisdiction. If the UK intends to notify the Irish authorities, will the Gardai—the Irish police—enforce Irish law and arrest the informant for the crime in question? If not, in essence, would the Irish authorities also be de facto legalising crimes authorised by the UK in the Irish jurisdiction?

Also, can the Minister confirm whether the UK consulted the Irish Government, and other Governments with whom it maintains diplomatic relations, on the content and implications of this Bill, including its direct association with other legislation? Were the Bill and its implications the subject of discussions at the last meeting between the Prime Minister and Taoiseach Micheál Martin earlier this year at Hillsborough?

I realise that Amendment 9, in the names of the noble Lord, Lord Paddick, and the noble Baroness, Lady Hamwee, is similar to mine. I support them on that because we cannot tolerate crimes outside the UK or the extraterritorial reach of such provisions. I therefore beg to move Amendment 7.

**Lord Thomas of Gresford (LD) [V]:** My Lords, obviously, a government agency cannot grant to an individual immunity from prosecution by a foreign power for offences committed on its soil—a point made strongly a moment ago by the noble Baroness, Lady Ritchie, who referred to the comments of a Minister in the Dáil. One understands the particular sensitivities in Ireland.

We are dealing with offences for which this country has extraterritorial jurisdiction, of which there are not many. At the moment, these offences consist of murder, manslaughter, crimes against humanity, torture and sexual offences where the victim of the crime is under 18. Under the Council of Europe's Convention on Preventing and Combating Violence Against Women and Domestic Violence—the Istanbul Convention—the Government, in a paper published on 17 August 2020, indicated that they will extend the jurisdiction of the courts of this country to sexual offences committed against persons over the age of 18 and to domestic abuse.

Given that that is the current extension of extraterritorial offences, I would like the Minister to outline which of them any government agency would authorise. A current highly offensive issue that has been referred to many times this afternoon is that of covert policemen entering into relationships with individuals from whom they seek to extract information or to ingratiate themselves with a group under surveillance. That amounts to the offence of sexual intercourse without consent—another definition of rape. Is there a licence to kill, effectively to rape or to torture in overseas jurisdictions? Should there be? Would we be happy to see such immunities enjoyed by agents of a foreign power in this country? I suspect not.

As for the protection of the European Convention on Human Rights, I recall from my experience in the Baha Mousa case the vociferous complaints made by Lieutenant-Colonel Nicholas Mercer, the senior legal adviser in Iraq in 2003, all the way to the top of the Ministry of Defence, against the torture of prisoners by hooding and the use of stress positions against prisoners. These matters had been outlawed in Ireland. He said such conduct was against the European convention and was told that the Attorney-General of the day had advised otherwise, and if he were right, the senior civil servant told him, he should be Attorney-General himself. Of course, the Supreme Court later held that Lieutenant-Colonel Mercer was right that the convention did apply. Right-wing elements on the Government Benches have grumbled ever since about "lawfare". That is a fight for another day. Their argument that squaddies should be allowed to torture without risk of prosecution or civil liability is for a Bill which will soon be heading towards us. But does this Bill permit such conduct to be authorised for covert agents? I ask the Minister specifically to reply to that point.

**Baroness McIntosh of Pickering (Con):** My Lords, I lend my support to Amendment 7 as a probing amendment, which was so eloquently moved by the noble Baroness, Lady Ritchie of Downpatrick. I have a very simple question for my noble friend Lady Williams. Is it an unintended consequence of the Bill that it may inadvertently have extraterritorial effects reaching beyond its original intention? That possibly goes to the heart of one of the conclusions of the legislative scrutiny performed by the Joint Committee on Human Rights, which says at paragraph 52:

> "There appears to be no good reason why the Bill cannot state clearly that certain offences or categories of offences are incapable of authorisation."

I therefore believe that the noble Baroness, Lady Ritchie of Downpatrick, has raised genuine issues of concern, as there are in Amendment 9, and I am sure that my noble friend will wish to put our minds at rest.

**Baroness Jones of Moulsecoomb (GP):** My Lords, this is an interesting pair of amendments, because they go to the territorial extent of the Bill. Does the Bill seek to authorise state agents to commit crimes in foreign countries? That opens a whole legal and diplomatic mess. What happens if somebody is given permission to commit crimes abroad but is then caught and prosecuted in that foreign jurisdiction? Can the UK Government really seek some sort of immunity for their agents in that sort of situation? It raises the further question: to what extent do the Government think this recreates the status quo under the current system? Do they claim to have the ability to authorise crimes by their agents in other countries at the moment?

**Baroness Chakrabarti (Lab) [V]:** The noble Baroness, Lady Ritchie, points out an enormous sensitivity, in relation not just to extraterritoriality but to immunity, in the context of Northern Ireland in particular. Noble Lords are particularly jealous in their protection of the Good Friday agreement, as we have seen in other debates, and they should be no less jealous of that precious peace in their consideration of this Bill. As we have just heard from the noble Baroness, Lady Jones, it will not just be a problem in relation to the peace in Northern Ireland but will be a significant issue for our diplomatic relations with all sorts of countries and our status in the world, at a particularly sensitive moment for that status, if the Minister is not able to give some reassurance in her reply.

I have no doubt that for ever, a tight group of agents of the state probably have been informally or rather more formally authorised in the context

[Baroness Chakrabarti]
of espionage work—perhaps vital espionage work—to sometimes commit criminal offences. But again, it creates a much bigger problem, including for diplomatic relations, if we are purporting to give immunity not just to direct officers, employees or trained personnel but to "civilians" around the world of necessarily dubious genesis. So I look forward to the reply from the noble Baroness, Lady Williams.

*5.15 pm*

**Baroness Hamwee (LD) [V]:** My Lords, Amendment 7 in the name of the noble Baroness, Lady Ritchie, and our amendment, are directed to the same issue; I can only think that I may have drafted ours before I had seen hers. RIPA allows for the use of CHIS outside the UK, and the noble Baroness, with her very particular perspective, must not be ignored. As has been said, that experience should inform all of what we are discussing.

Quite apart from the propriety and ethics, how would extraterritorial jurisdiction work in this case? We cannot legislate for what other countries regard as a crime or how decisions about whether to prosecute are taken. My noble friend Lord Thomas listed the offences where there is extraterritorial jurisdiction and where prosecutions can take place here. It struck me as I was listening to him reading them that they are very close to the crimes that noble Lords are seeking to take out of the scope of criminal authorisations, which we will come to later—except that I was interested to hear the reference to domestic abuse.

I had wondered whether minds in the Government had been directed to the military and intelligence services outside the UK on this issue; my noble friend also mentioned the Baha Mousa case. But this is not the Bill for that. As he said, we have other legislation that we will come to soon, when we will also no doubt be considering the issue of rendition. But to leave open any suggestion that anyone should have free rein anywhere in the world because they are acting on behalf of the state is certainly something we want to see quashed.

**Lord Rosser (Lab) [V]:** Amendment 7 in this group would ensure that criminal conduct authorisations are not covered by the provisions of Section 27(3) of the Regulation of Investigatory Powers Act 2000, which provides that:

"The conduct that may be authorised under this Part includes conduct outside the United Kingdom."

Amendment 9 in this group specifies that conduct outside of the United Kingdom may not be authorised under this Act and amends the Regulation of Investigatory Powers Act 2000 to similar effect as Amendment 7.

As far as I can see, the code of—[*Inaudible*]—covert operations occurring in UK embassies, military bases and detention facilities where the subject of investigation is a UK national or is likely to become the subject of criminal or civil proceedings in the UK, or if the operation is likely to affect a UK national or give rise to material likely to be used in evidence before a UK court.

The noble—[*Inaudible*.]

**The Deputy Chairman of Committees (Baroness Morris of Bolton) (Con):** Lord Rosser, we are losing you—we cannot hear you.

**Lord Parkinson of Whitley Bay (Con):** I think we might have lost connection with the noble Lord, Lord Rosser. If he can hear us and forgives us, I think we should move on to hear from the Minister.

**The Deputy Chairman of Committees (Baroness Morris of Bolton) (Con):** I now call the Minister, the noble Baroness, Lady Williams of Trafford.

**The Minister of State, Home Office (Baroness Williams of Trafford) (Con):** I thank all noble Lords who have taken part in this debate. I am sorry not to have heard the end portion of the comments of the noble Lord, Lord Rosser, but I am sure he will come back once his wi-fi is restored and I have responded.

Amendments 7 and 9 seek to remove the provision that allows for a criminal conduct authorisation to be granted in relation to conduct that takes place outside of the UK. The activity that will be authorised under the Bill is UK focused, but of course there will be times when the activity begins in the UK and progresses overseas. It does not remove the possibility of criminal prosecutions overseas, but an authorisation will only, and can only, take effect under UK law.

The noble Baroness, Lady Ritchie of Downpatrick, asked if the UK will inform the Irish authorities. I can tell her that, although the content of the Bill is reserved in Wales and Northern Ireland, we have consulted with the devolved Administrations and their respective devolved agencies about their inclusion in the Bill. It is up to the respective devolved agencies to determine whether there is an operational need to be included.

It is important that we do not restrict the ability of our public authorities to tackle what are often international crimes. If we removed this provision, it would hinder our public authorities' ability to tackle what are often very serious crimes, including drug transportation, human trafficking, et cetera. Noble Lords do not need to be told that crimes do not respect borders.

The noble Lord, Lord Thomas of Gresford, asked if this is a "licence to kill" Bill. The Bill is constrained by both the ECHR and the Human Rights Act, so these are the two constraints on activity. We have heard quite a lot today from noble Lords about undercover police making people pregnant, et cetera. This was never lawful; the sort of activity the noble Lord talked about is not lawful and would not be lawful in the future.

To go back to the case studies that I produced to accompany the Bill, one of them relates to the important overseas work by HMRC to tackle the illegal importation of goods from abroad. In this scenario, an HMRC covert human intelligence source is engaged with an organised crime group to import counterfeit tobacco from overseas. They might be required to travel abroad to meet members of the group, undertake other preparatory work or even transport the goods to the UK. Without that ability to authorise criminal conduct

authorisations for the full scope of the activity, the effectiveness of this and similar operations would be undermined.

Authorising the activity not only ensures that those involved are protected as a matter of UK law but, importantly, means that the safeguards contained in the regime apply consistently and in relation to all CHIS criminal conduct, both in the UK and overseas. If we prohibit the authorisation of activity overseas, we risk displacing activity to these jurisdictions. Criminals might then seek increasingly to conduct part of their activity in other countries, and our ability to tackle it would be constrained.

The amendments risk having serious unintended consequences, including impacting on our public authorities' ability to keep the public safe from harm, and it is for that reason that we cannot accept them. I forgot to mention: the noble Lord, Lord Thomas of Gresford, talked about the extraterritorial jurisdiction on things like domestic violence; we do exercise that jurisdiction. With that, I ask noble Lords not to press their amendments.

**The Deputy Chairman of Committees (Baroness Morris of Bolton) (Con):** My Lords, I think we have managed to re-establish connection with the noble Lord, Lord Rosser.

**Lord Rosser (Lab) [V]:** Yes—I am in some difficulty, because I do not know how much of what I said was heard. I think the best thing I can do is to read the Minister's response and see the extent to which it actually replied to the issues I raised. I think I had best leave it in that context.

**The Deputy Chairman of Committees (Baroness Morris of Bolton) (Con):** I have received no requests to speak after the Minister, so I now call the noble Baroness, Lady Ritchie.

**Baroness Ritchie of Downpatrick (Non-Afl) [V]:** This has been a very interesting, albeit short, debate. My anxieties have not necessarily been dissipated by the Minister's answer. I would like to examine *Hansard* before deciding whether to bring the amendment back on Report, because there are issues around human rights provisions and European human rights provisions as well.

The noble Lord, Lord Thomas of Gresford, outlined the various types of offences that can occur, and asked if the Government were sanctioning those activities outside the UK. The noble Baroness, Lady McIntosh of Pickering, asked about the unintended consequences and if there were extraterritorial consequences. The noble Baroness, Lady Jones of Moulsecoomb, talked about state agents being used outside the territorial remit of the UK and the impact on diplomatic relations. The noble Baroness, Lady Chakrabarti, talked about the sensitivities associated with this legislation and the use of RIPA, particularly in the context of extraterritorial initiatives. In Northern Ireland and Ireland, the Good Friday agreement and human rights and equalities provisions have to be respected.

This is a significant issue for diplomatic relations. I am afraid that the Minister answered the question solely in terms of the devolved Administrations; I was asking about consultations with the Republic of Ireland and, therefore, acts of criminality that could be sanctioned by the Government outside the UK territory in Ireland itself. I did not get a satisfactory answer to that.

The amendment in the name of the noble Baroness, Lady Hamwee, is similar to mine and is directed to the same issue—how RIPA allows extraterritorial offences, how that presents issues of ethics and how these extraterritorial provisions will be exercised. Both the noble Baroness, Lady Hamwee, and the noble Lord, Lord Thomas of Gresford, referred to rendition, which obviously will be subject to other legislative provision and is not covered by this legislation. The noble Lord, Lord Rosser, dealt with overseas criminality and authorisations for that.

I will withdraw the amendment but, on reading *Hansard*, I may come back on Report to explore this matter further because I am not satisfied with the answers that I have received. I beg leave to withdraw the amendment.

*Amendment 7 withdrawn.*

*Amendments 8 to 10 not moved.*

*5.30 pm*

**The Deputy Chairman of Committees (Baroness Morris of Bolton) (Con):** My Lords, we now come to the group beginning with Amendment 11. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate and that anyone wishing to press this or anything else in this group to a Division should make that clear in the debate.

*Amendment 11*

*Moved by* ***Lord Dubs***

**11:** Clause 1, page 2, line 8, at end insert—

"(1A) Authorisations granted under this section require judicial approval in accordance with section 29C."

Member's explanatory statement

This amendment imposes a requirement for prior judicial approval of CCAs (with provision for urgent cases), and relates to the amendment to Clause 1, page 3, line 16 in the name of Lord Dubs.

**Lord Dubs (Lab) [V]:** My Lords, I remind the Committee again of my membership of the Joint Committee on Human Rights and the fact that the amendments in this group stem from the committee's report, published some time ago, looking into the overall workings of the Bill.

There is widespread agreement that there should be oversight of criminal conduct authorisations. However, there is a dispute over whether that oversight should take place after or before the event. The point of the amendment is that there should be a requirement for prior judicial approval of such authorisations, with a possible provision for urgent cases in exceptional circumstances. The Bill does not provide for any independent scrutiny of criminal conduct authorisations before they are made and acted upon. There is the possibility of a review of such authorisations through

[LORD DUBS]
the Investigatory Powers Commissioner but that would be after the event, by which time it is too late to influence whether an authorisation should have been granted. Nor does the Bill provide for the IPC to be informed of authorisations at the time they are made so that proper scrutiny can take place. That is surely the nub of the matter. Under the Bill, there would be no chance to look at authorisations until some time after the event.

The Joint Committee on Human Rights report stated that the lack of prior independent scrutiny for CCAs under the Bill stands in marked contrast to the procedures in place for other investigative functions such as police search warrants and phone tapping. That was mentioned at Second Reading. The noble Lord, Lord Macdonald, a former Director of Public Prosecutions, has stated:

"Under this bill it will be easier for a police officer to commit a serious crime than to tap a phone or search a shed."

That is a pretty powerful statement. The powers of oversight are not proportionate to what is at stake, which is much more crucial than deciding whether the police can tap a phone or search a shed, important as those things are.

I should like to give a number of examples. If we had had oversight before the event, certain procedures would not have been followed. The most obvious was in Northern Ireland in relation to the death of Patrick Finucane and looked at in a report by Sir Desmond de Silva QC. He made a number of important points about the need for proper scrutiny of the powers being exercised, which would be exercised more freely, I contend, under the Bill. He said in his report:

"It is essential that the involvement of agents in serious criminal offences can always be reviewed and investigated and that allegations of collusion with terrorist groups are rigorously pursued."

He did not quite say that that should happen before the event, but I contend that if it had been possible to do so, the tragic death of Patrick Finucane might not have happened and things would have been stopped in their tracks. Sir Desmond made some powerful conclusions that are entirely consistent with the requirements of human rights law. I will not quote all his comments, but the key question asked by the JCHR report is:

"Does the Bill provide the rigorous framework of oversight and accountability necessary to safeguard against abuse of the exceptional power to authorise criminal conduct?"

The committee also received evidence from the human rights organisation, Justice, which described the Bill as being,

"extremely limited in its oversight mechanisms"

and summarised its safeguards as "woefully inadequate".

We all know about the tragic racist murder of Stephen Lawrence. The Lawrence family was apparently kept under surveillance afterwards. I contend that if there had been a proper system of oversight before that type of surveillance was exercised, it would not have been allowed and would have been stopped in its tracks, yet it went unheeded. I fear that anything similar would not be stopped by the safeguards in the Bill because they are woefully inadequate, as Justice said.

The third group of surveillance victims would be trade unions and other active organisations. We know that trade unions and environmental groups have been kept under surveillance. Those things would not have happened if such an amendment had been in place. It seems perfectly reasonable to require the tightest oversight of such extreme powers in a democracy—they are not minor powers—before the event. If something is being authorised that should not be, we would have at least one layer of safeguard to stop it going any further.

Amendment 59 is a let-out, providing that urgent CCAs can be granted without prior approval but must be confirmed by a judicial commissioner within 48 hours of being granted or they will cease to be valid. These powers would be applied only when there is an urgent case.

It is clear that whereas we all agree on oversight, what really matters is oversight before the event. The Bill must be amended to include a mechanism for prior judicial approval of CCAs in order to safeguard the human rights that we all believe in. I beg to move.

**Baroness Kennedy of The Shaws (Lab) [V]:** My Lords, by and large, I endorse what my noble friend Lord Dubs said. It is right that there need to be greater safeguards than there are in the Bill, which are not sufficient. Having public bodies essentially authorise themselves to conduct surveillance and undercover operations is unsatisfactory.

Criminal conduct authorisations are particularly invasive and warrant more scrutiny. The lack of scrutiny could be remedied by introducing approval from a judicial commissioner. This is where I am refining what my noble friend is asking for. I should declare that I am the president of Justice, which has carried out a significant amount of work on this issue and is the organisation that brings the legal profession's expertise to it. It is suggested that there is already a cohort of very experienced judges who are used to dealing with difficult, sensitive material, as there would be in these cases.

We recommend that there should be judicial commissioners who are expert judges, senior in the profession, experienced in making quick decisions on sensitive material and—I say this in relation to the urgency issues so that my noble friend Lord Dubs can take that off the table—are available 24/7 when necessary. It is a bit like the need for judges to be on call for injunctions: if something comes up and there is a need for urgency they can deal with that because they have the expertise to sift difficult material and make complex decisions. It is important to emphasise that they are already part of the Investigatory Powers Commissioner's Office. There is no reason why they cannot adapt. Judges are eminently adaptable, especially when they are of this seniority and experience, where they can do it as a prior scrutiny operation. They are used to dealing with these types of difficult operations and they are not junior members of the judiciary. I am anxious that my noble friend's suggestions might lead to rather low-level judges overseeing this. They tend to be more inclined to accept things that the police and security services say to them.

For those reasons, I make the plea that the Government look at judicial commissioners as the appropriate place for creating some kind of proper scrutiny. Unfortunately,

the Government are currently saying that there is no need for authorisation from a judge or judicial commissioner by way of a warrant, nor approval by the Secretary of State. The flaw in all this is that they are saying that it is enough, as the main safeguard against a public body carrying out unjustified surveillance or inappropriate undercover operations, for a senior official in their own organisation to authorise it. I am afraid that is marking your own homework. Even the most diligent official can struggle to be objective under pressure, particularly if their organisation has to meet targets or achieve certain results because of public demand at a particular time. We sometimes see that in relation to things such as terrorism.

The pre-existing safeguards in the present RIPA regime are already insufficient for the creation of undercover agent operations. Judicial approval is all the more necessary for the exercise of this new power. The Government claim that prior judicial authorisation is not necessary. James Brokenshire MP, the Minister for Security, only last month said in the House of Commons:

"The use of CHIS requires deep expertise and close consideration of the personal qualities"

of that particular undercover operation,

"which then enables very precise and safe tasking."—[*Official Report*, Commons, 5/10/20; col. 662.]

I am sure that that is true, but this argument, which prioritises operational need over independent assessment, is not convincing. There is a significant difference between authorising passive undercover observation and proactive criminal conduct.

Our former Director of Public Prosecutions, the noble Lord, Lord Macdonald, has been quoted already. He agrees with me and my noble friend Lord Dubs that there has to be much better scrutiny. He would actually go further than my noble friend and thinks that it has to be at a high level. He says:

"There is no comfort in allowing senior figures in the police or the intelligence agencies the power to sanction lawbreaking, without the need to first obtain independent warrants from judges or some other"

judicial "authority".

The benefits of judicial authorisation are further detailed in the case of Szabó and Vissy v Hungary, where the court held that it offers the best guarantees of independence, impartiality and a proper procedure. It is particularly pertinent in the case of surveillance, which is, to quote from that case,

"a field where abuse is potentially so easy in individual cases and could have such harmful consequences for democratic society".

The quote concludes that

"it is in principle desirable to entrust supervisory control to a judge".

Such scrutiny could be highly compelling for the potential use of CCAs.

*5.45 pm*

These judicial commissioners, who already exist, as I said, are well practised in making complex assessments of sensitive material in an independent, detached manner at short notice. We therefore reiterate that this recommendation—I here join with my noble friend Lord Dubs—is for scrutiny. We want to see amendments to the Bill that create judicial commissioners who should be mandatory for each CCA application. As my noble friend Lord Dubs said, there should be prior judicial authorisation. If this were introduced, there would be no need for the urgent procedure that my noble friend said could be a standby if necessary because, as I mentioned, there is a roster of these judges and there is always somebody available 24/7 to meet the demand of urgency. They are highly expert and capable of making quick decisions on sensitive, complex material. On this basis, I urge the Government to introduce this component into the Bill: greater scrutiny by a cohort of judges who already perform a role that is not dissimilar.

**Lord Anderson of Ipswich (CB) [V]:** My Lords, I shall speak to Amendment 46 and its Scottish equivalent, Amendment 73, which I trailed briefly at Second Reading. I do so with the support of the noble Lords, Lord Butler and Lord Carlile, and the noble Baroness, Lady Manningham-Buller.

My report *A Question of Trust*, published in 2015, recommended a new authorisation and oversight structure in relation not to undercover operatives but to other covert powers exercised by intelligence agencies and the police, including the interception of communications and equipment interference. Its most radical recommendation was to introduce a requirement of prior approval by judicial commissioners—the senior judges in what is now known as IPCO, whose functions were so well described just now by the noble Baroness, Lady Kennedy—before warrants for the exercise of such powers could enter into force. That principle was given effect in the Investigatory Powers Act 2016.

I was converted to the idea of prior judicial approval by detailed observation of the practice in the United States and Canada, both of which introduced such systems many years ago after well-publicised abuses of executive power. Their systems work well and so, I believe, does ours. I have great respect for the formidable array of noble Lords, led by the noble Lord, Lord Dubs, who, by signing some of the amendments in the group, have proposed extending that system to the authorisation of CHIS criminality. However, an amendment to that effect was heavily defeated in the Commons. Where an alternative presents itself that offers adequate protection and a realistic chance of making its way into the Bill, I am concerned that we should not miss the chance to consider it. That alternative, as set out in my amendments, is notification of criminal conduct authorisations to judicial commissioners in real time, or as close to real time as is reasonably practicable. I will try to explain it.

The person who approves the interception by a public authority of telephone communications must assess the likely operational dividend against the likely intrusive effects—a task that judges are abundantly suited to perform, usually on the basis of a careful written assessment. Whether to use and how to task a CHIS requires decisions of a quite different nature based on immersion in the human complexities of fast-changing situations. Those decisions depend on close personal knowledge of a person's character, which will often be unreliable and volatile, and on assessments of the underworld group in which that person is embedded. The authorisation of criminality is simply one part of that complex human relationship.

[Lord Anderson of Ipswich]

It may sometimes be decided at very short notice to authorise participation in criminality to preserve a CHIS's cover and his or her safety. The person who tasks a CHIS, including by authorising criminality, thus takes on a weighty duty of care towards not only any potential victims of that crime but an often unpredictable human being for whom exposure could mean injury and even death. Where non-police CHIS are concerned, that person is also licensing a private individual, rather than an agent of the state, to commit crime.

As someone who until this year was an investigatory powers commissioner himself in Guernsey and Jersey, I frankly admit that this is not a function I would have felt well equipped for. Some judges, I am sure, are made of sterner stuff: with a great deal of training, I accept that prior judicial authorisation might well be made to work. My points are simply that this is a long way from the classic realm of prior judicial approval; that it is an uncomfortable solution, a feeling that I was interested to hear is shared by the noble Baroness, Lady Chakrabarti; and that there is an alternative which has not already been rejected.

The distinction between the tasking of CHIS and the operation of other forms of covert surveillance is recognised in other jurisdictions. It was North American traditions of judicial authorisation, as I have mentioned, that inspired *A Question of Trust* and the Investigatory Powers Act 2016. But the Canadian CSIS Act, much praised for its other qualities in previous debates on the Bill, does not, so far as I can see, provide for independent authorisation of CHIS criminal conduct. Nor are judges involved in the tasking of undercover operatives by the FBI. Otherwise, illegal activity requires approval by, at most, a senior field agent or, for more serious crimes, the US Attorney's Office. Nor, if I recall rightly, was the Strasbourg case cited by the noble Baroness, Lady Kennedy—Szabó and Vissy—one that concerned the tasking of undercover operatives.

There is also precedent in our own law for a system of real-time notification to judicial commissioners, such as I propose in these amendments. It is the system introduced in 2013, when the "spy cops" scandal first broke, to monitor undercover police deployments of less than 12 months' duration. It has operated satisfactorily since then, judging by the annual published reports of IPCO and its predecessor body. Indeed, the wording of my amendment is taken with little alteration from the relevant statutory instrument of 2013/2788. I add that any reservations I have about involving judges in the highly sensitive and fact-dependent decision to authorise criminal conduct are multiplied severalfold by the proposal that a hard-pressed Secretary of State should be given this responsibility. Accordingly, with respect to the very distinguished names that it has attracted, I am not at all convinced by Amendment 15.

Real-time notification would bring real advantages. It concentrates the minds of authorising officers to know that their authorisation will soon be on the desk of a High Court judge, sometimes before any criminality has taken place. Some officers will seek preliminary advice or guidance before acting, a course that it is open to IPCO to encourage, and that is of particular value for those authorities that make only occasional use of a power. Notification may prompt questions, observations or recommendations for that case or for the future. This is the core of IPCO's demanding oversight work, much of which is implemented by its highly skilled inspectorate and whose detail is only hinted at in IPCO's annual reports. A serious error report under Section 231 of the Investigatory Powers Act 2016, as we have discussed previously, may be accompanied by a notification of affected persons that they have a right to apply to the Investigatory Powers Tribunal, at least in any case where the judicial commissioner judges that to be in the public interest.

Accordingly, I commend Amendments 46 and 73 to the House as a workable alternative, given the stance of the Government, and one that is perhaps more suited to the particular skills of our judges in the very particular circumstances in which CHIS handling takes place.

**Lord Hunt of Kings Heath (Lab):** My Lords, it is a great pleasure to follow the noble Lord, Lord Anderson, in speaking to my Amendment 76. I must apologise because I was not able to be present for Second Reading; it clashed with the Medicines and Medical Devices Bill, to which I had tabled several amendments. If I had been able to speak, I would have supported the intention to place on a statutory basis the covert activity covered by the Bill. Equally, I would have sought that that should have taken place within appropriate boundaries and safeguards. Rather, as the noble Lord, Lord Cormack, said earlier, the debate this afternoon has reinforced in me the need for this Bill to be seriously amended to make sure that those safeguards are in place. It also underpins the importance of the amendments in this group and the role of the independent Investigatory Powers Commissioner, who monitors the use of these powers through inspections, as we have heard, and publishes an annual report.

Amendment 76 is very much probing in nature to ask the Minister about the role of police and crime commissioners. It follows from discussions with the West Midlands PCC, David Jamieson, and has the support of my noble friend Lord Bach, the PCC for Leicestershire, who will speak later to this group of amendments.

As we have heard, police forces are subject to IPCO inspections, yet as I understand it, under current legislation, there is no role for PCCs in relation to covert intelligence. The argument made by PCCs is that as they are responsible for holding the chief constable to account, they should at least have some strategic oversight into the inspection process. Locally, my own force, the West Midlands Police, has previously arranged for briefings from the IPCO in the inspection outcome, and those engagements have been extremely useful in understanding how the force is complying with RIPA and providing reassurance in respect of the powers used. The PCC holds the chief constable to account in a number of ways, but partly through an annual report to the strategic policing and crime board on the use of RIPA. This is presented and discussed in private session in recognition of the highly sensitive nature of the activity.

Looking to the IPCO report of 2018, which is the latest I could find published on the web, there is a specific and lengthy section on law enforcement agencies. It looks at how it has used powers under the Investigatory

Powers Act, including covert intelligence sources and surveillance activities under RIPA. The IPCO noted in general that the existence of experienced and specialist teams was important to establishing and maintaining a good level of compliance. It concluded that, although standards vary across law enforcement agencies, the appropriate processes are in place and cases are handled in compliance with the code of practice. This is good to hear, but what if a police force was found to be performing inadequately? What intervention, for instance, would take place with the chief constable and how could that happen without the involvement of the PCC? I would be grateful if the Minister could respond to the question.

The advent of this Bill provides an opportunity to address the issue and formally add a provision that gives PCCs a strategic oversight role in IPCO inspections of local police forces. Of course that has to be strategic, recognising the sensitivity of the work. I am not proposing an exact mirror of the role that PCCs have, for example, in relation to Her Majesty's Inspectorate of Constabulary and fire and rescue service inspections. As a minimum, I ask that PCCs should be engaged in a debrief following the inspection in order to understand any urgent issues and how the force needs to address them. This is not a major amendment, but it is important that we understand how the accountability of chief constables operates in the process. If the IPCO finds that a police force is not acting satisfactorily, it is important that appropriate action is taken.

**Baroness Clark of Kilwinning (Lab):** I wish to speak to Amendment 77, which has been put down in my name and that of my noble friend Lady Whitaker and the noble Baroness, Lady Jones of Moulsecoomb. It has been drafted by the National Union of Journalists. The amendment seeks to ensure that any new powers enshrined in the Bill do not override existing legal protections on press freedom.

The amendment requires a judicial commissioner to give approval for authorisations to identify or confirm journalistic sources, and would require the commissioner to have regard to both the public interest in protecting a source of journalistic information and the need for there to be another overriding public interest before a public authority seeks to identify or confirm a journalistic source. This reflects the current law.

The Investigatory Powers Act 2016 introduced a requirement that when any application is made to identify confidential journalistic sources, prior authorisation is required by a judicial commissioner. The amendment simply seeks to maintain the protections that whistleblowers currently enjoy and to enable journalists to carry out their role. These protections are enshrined in the Investigatory Powers Act 2016, and I understand that they honour a manifesto commitment in the Conservative Party manifesto for the 2015 general election. This followed on from detailed and sustained representations by the National Union of Journalists and others outlining serious concerns that compromising journalistic confidentiality and the protection of sources was undermining the ability of whistleblowers to make disclosures to journalists in the public interest, therefore rendering journalists unable to uphold their own ethical commitments to professional privacy.

*6 pm*

These are, of course, fundamental rights in a free society, and there has been considerable case law on these issues, including at the European Court of Human Rights, which underscores the importance of the principle. The case law has accepted that such protections are required by Article 10 of the European Convention on Human Rights on freedom of expression. The fear is that the Bill is creating an avenue to access confidential journalistic material and sources without any prior judicial oversight. This may not be the Government's intention, and this amendment would ensure that the current legislative framework of protections is maintained.

The right to protect journalistic sources is recognised by international law, the United Nations, the Council of Europe and many other international institutions as a key element of freedom of expression. Indeed, the Government themselves have spoken in support of that principle on many occasions. I do not intend to press the amendment to a vote on this occasion but would be grateful for an explanation of the Government's thinking on this issue, given their previous support for the principle of the protection of journalistic sources.

**Baroness Massey of Darwen (Lab) [V]:** My Lords, I, too, remind colleagues that I am a member of the Joint Committee on Human Rights, as is my noble friend Lord Dubs. I will be brief in supporting my noble friend's excellent contribution on Amendments 11 and 59 concerning the requirement for prior judicial approval of criminal conduct authorisations, also mentioned by my noble friend Lady Kennedy of The Shaws and the noble Lord, Lord Anderson of Ipswich.

The amendments are based on the JCHR's examination of the Bill and refer to chapter 7 of its report. Paragraph 94 refers to lack of prior independent scrutiny or approval of CCAs, and paragraph 95 gives examples where the Bill is in contrast to other investigative procedures, highlighted by my noble friend.

Retention of data is also an issue. Privacy is a vital right protected under Article 8 of the European Convention on Human Rights, but the authorisation of criminal conduct risks more damaging human rights violations, including physical violence. Paragraph 97 of the report states that

"the Bill as it stands imposes no requirement that the belief of the individual making the CCA that it is necessary must be a reasonable belief".

The report concludes that:

"Bringing CCAs within the review function of the IPC provides some reassurance of independent scrutiny of their use after the event. However, this is insufficient protection for human rights",

and the Bill must be amended accordingly.

**Lord Hain (Lab) [V]:** My Lords, I shall speak to my Amendment 15, and I am grateful to my noble friend Lady Kennedy of The Shaws, the noble Lord, Lord Cormack, and the noble Baroness, Lady Wheatcroft, for having added their names. I am also grateful to my noble friend Lord Blunkett, a former Home Secretary, who would also have added his name had not the list been full.

This amendment is very straightforward. It ensures that:

"The granting of criminal conduct authorisations under subsection (1) may not take place until a warrant has been issued by the Secretary of State."

[Lord Hain]

My noble friend Lord Blunkett and I both signed hundreds of warrants for surveillance operations under the Regulation of Investigatory Powers Act 2000—RIPA—which was updated by the Investigatory Powers Act 2016. When I was Secretary of State for Northern Ireland in 2005-07, I regularly signed warrants to place under surveillance dissident IRA splinter groups planning to kill, bomb and fundraise through drug and other crimes, and I signed warrants for surveillance on loyalist paramilitaries and hardcore criminals. If the Home Secretary was not available, I also signed warrants that he would normally have signed, sometimes with very short notice, in real time—on one occasion, to prevent Islamist terrorists in a south London house unleashing a bomb in London.

The point that I wish to underline is that these were absolutely essential security and policing operations, yet they required ministerial authorisation at a high level. Why was that so? Because ultimately that brings ministerial responsibility and therefore direct accountability. The operational decision was for the police or intelligence services, but the accountability was ultimately governmental and political. The time has come to bring that principle into the sphere of undercover policing, because it has involved far too many abuses for decades and, if there is not the same kind of accountability as for surveillance, there will inevitably be even more abuse.

I met undercover officers doing brave work trying to prevent dissident IRA splinter groups and loyalist groups killing and bombing. I was also briefed about vital undercover work around Islamist terrorist cells to prevent terrorist bombing and killing. In other words, I have direct experience of how undercover officers can perform vital functions to save lives and prevent crimes or terrorist attacks. But I am also due to give evidence early next year in what is described as a non-police, non-state core participant role to the official inquiry on undercover officers established by Prime Minister Theresa May and chaired by Sir John Mitting, a former High Court judge. It was established because undercover policing has got out of control and needs to be made accountable. That is important.

From 1969-70, undercover officers spied on me at anti-apartheid and anti-racist meetings, including when I was an MP in the early 1990s. As confirmed by evidence given to the Mitting inquiry, a British police or security service officer was in almost every political meeting that I attended, private or public, innocuous and routine, or serious and strategic, like stopping all white apartheid sports tours and combating pro-Nazi activity. Why were they not targeting the criminal actions of the apartheid state responsible for, among other things, fire-bombing the London office of Nelson Mandela's African National Congress in March 1982 and, in 1970, murdering South African journalist Keith Wallace, who had threatened to expose apartheid security service operations in the UK? Why did they show no interest whatever in discovering who in South Africa's Bureau of State Security sent me a letter bomb in June 1972? It was so powerful that it could have blown up me, my family and our south-west London home were it not for a technical fault in the trigger mechanism. Scotland Yard's bomb squad, then chasing down the IRA, took it away and made it safe, but I heard nothing more.

Another victim was ecological activist Kate Wilson, whom I mentioned at Second Reading. Agree or disagree with her views and actions, she is not a criminal. Kate was at primary school with my two sons in the 1980s, and our families remain friends. Undercover officer Mark Kennedy formed an intimate and what she described afterwards as an abusive relationship with her for over seven years, even reporting back to his superiors on contacts with my family when I was a Cabinet Minister. I would like to think that a Home Secretary presented with a warrant to assign Kennedy to target Kate Wilson would at least have asked, "Why are our police wasting their time targeting her, an environmental activist, instead of drug barons, human traffickers, criminals and terrorists?" A warrant procedure would force police chiefs to stop and ask that question too, instead of morphing policing from the overtly criminal into the covertly political sphere.

Another widely reported example was referred to by my noble friend Lord Dubs. Doreen Lawrence, now my noble friend Lady Lawrence, is a law-abiding citizen, yet her family's campaign to discover the truth about her son Stephen's brutal racist murder was infiltrated by undercover officers. Why were they not targeting the racist criminals responsible for Stephen's murder? A warrant procedure would have forced police chiefs to stop and ask that question, too, instead of morphing policing from the overtly criminal into the covertly political sphere.

Why did an undercover officer going under the name of Sandra infiltrate the north London branch of the Women's Liberation Front between 1971 and 1973? She conceded to the Mitting inquiry that she failed to discover any useful intelligence whatever. Some of the meetings were attended by just two activists, she reported. She told the inquiry on Wednesday 18 November, last week:

> "I could have been doing much more worthwhile things with my time."

She worked for the Met's special demonstration squad. She went on:

> "Women's liberation was viewed as a worrying trend … There was a very different view towards the women's movement then as compared to today."

Sandra told the inquiry that she did not think that her work

> "really yielded any good intelligence".

That is nice to know now, over 40 years later, but why was there no proper accountability for her deployment? I like to think that a Secretary of State might have asked a few questions if a request came to authorise her infiltration of a women's rights group. Knowing that the Home Secretary would take a look, maybe police chiefs would never have deployed Sandra on this scandalous and wasteful mission.

In each of these cases, the police were on the wrong side of justice, the law and history: harassing anti-apartheid activists campaigning for Nelson Mandela's freedom, instead of pursuing crimes by the apartheid state in our country; infiltrating the family of a climate change activist, instead of combating climate change; covering

up for a racist murder, instead of catching the murderers; and targeting women's rights campaigners, instead of promoting gender equality, including within the police of that time. Why were undercover police officers trying to disrupt all of us, diverting precious police resources away from catching real criminals, such as drug traffickers, human traffickers, terrorists and criminal gangs?

When I give evidence next year to the undercover inquiry, I will also show that there was a systematic pattern of malevolence, deceit and exaggeration by undercover officers. One, named as Mike Ferguson, claimed to be my right-hand man when I chaired the campaign to stop sports apartheid tours by all-white rugby and cricket teams. It was a straight lie; I had no right-hand man. If he is the person I vaguely recollect, he was on the periphery of the central core around me. Mike Ferguson claimed our campaign intended to attack the police at Twickenham when England played the Springboks—a lie. We did not. He also claimed that we planned to sprinkle tin tacks on the pitch—another lie. We did not, and indeed were at pains to avoid personal injury to players, as we ran on to pitches in acts of nonviolent direct action, sometimes being beaten up by rugby stewards or the police. Mike Ferguson reported that we planned to put oil on Lord's cricket pitch and dig it up—again a lie. We never did. Giving evidence only the other week, another undercover officer who had infiltrated our campaign admitted that this allegation about oil and digging up pitches was false. Undercover officers also played agent provocateur on occasion, daring militant but non-violent protesters into criminal activity.

A warrant procedure would have forced police chiefs to stop and ask serious questions about all this before seeking authorisation from the Home Secretary over Mike Ferguson's role, instead of morphing policing from the overtly criminal into the covertly political sphere.

This is not ancient history; it has happened over recent decades and could well be happening still. There needs to be a structure of proper accountability to ensure that undercover policing or covert surveillance through embedded agents is performing a legitimate function, not an illegitimate one, as in the examples I have mentioned, including those involving me. Otherwise, how do we stop legitimate undercover police or intelligence work sliding over into the illegitimate and the blatantly political? Even in our era of modern legislatively accountable policing and intelligence work, things are still going badly wrong, such as when counterterrorism police recently put non-violent Extinction Rebellion on their list of terrorist groups, doubtless for undercover operations, which are presumably continuing now, as well.

This covert human intelligence sources Bill does not address any of the key questions that I have asked, which is why I believe that the amendment, which would ensure that a warrant was signed by a Secretary of State before undercover policing was authorised, is vital and why I hope that it will be put to a vote on Report.

*6.15 pm*

**Lord Thomas of Gresford (LD) [V]:** My Lords, I have previously today made a case against permitting the authorisation of criminal conduct by an organ of the state without any independent check or oversight. The noble Lord, Lord Dubs, in introducing his amendment, referred to the Finucane case and the strong comments made by Desmond de Silva QC in his inquiry, calling for a strong framework of control.

This group of amendments puts forward alternative approaches. I prefer the approach of the noble Lord, Lord Dubs, which is simple and straightforward in operation. An application to a judge who is always available 24 hours a day for prior authorisation is, in my opinion, far preferable to the giving of notice after the authorisation has been made. The noble Lord, Lord Hain, strongly made that point. He pointed to the fact that the police being out of control in many ways lies behind the institution of the Mitting inquiry. He asks: who is the target, and why?

The noble Baroness, Lady Chakrabarti, referred obliquely in the debate on the second group today to concerns that this involves the judge, if he is approached, in the commission of a crime which has not yet happened. I disagree: the role of the judge—or, as the noble Lord, Lord Hain, would have it, the Secretary of State—is not to authorise the crime but to ensure that all the safeguards are in place against abuse of a necessary but dangerous tool in the detection of crime. That is an important part of the framework for which Desmond de Silva called.

After the event notice given to the Investigatory Powers Commissioner is proposed by the formidable array led by the noble Lord, Lord Anderson of Ipswich. The problem with their solution is that, in my view, it has no teeth. I listened to the noble Lord's exposition. He thought that a decision referring to the authorisation of a CHIS depended on a close consideration of the character of the CHIS in the very difficult circumstances in which he might find himself. He said that it was too unpredictable and that he would not himself find it an easy decision to make. It would be an uncomfortable position. However, his proposal requires confidence that the security services, the police or other authorities will properly give a full explanation of what they have authorised to the IPC. This was an issue raised by my noble friend Lord Macdonald, as quoted by the noble Baroness, Lady Kennedy.

A case in 2019 showed that the intelligence services kept their errors secret. As Megan Goulding of Liberty said after the judgment,

> "they've been trying to keep their really serious errors secret—secret from the security services watchdog, who's supposed to know about them, secret from the Home Office, secret from the prime minister and secret from the public."

The Investigatory Powers Commissioner, Lord Justice Adrian Fulford, a man of great integrity and experience, as I know, said that MI5 had a "historical lack of compliance" with the law. He said that the Security Service would be placed under greater scrutiny by judges when seeking warrants in future. He compared the service to a failing school which needed to be placed in "special measures".

[Lord Thomas of Gresford]

Amendment 47 in the names of my noble friends Lord Paddick and Lady Hamwee would indeed give teeth in that, if the commissioner is not satisfied with the authorisation, conduct will not be lawful and ultimately the Director of Public Prosecutions would become involved—that is if the model suggested by the noble Lord, Lord Anderson, received the favour of the Government. The reformulation of the Anderson amendment in Amendment 73 again has no teeth.

The refining of the amendment proposed by the noble Lord, Lord Dubs, put forward by the noble Baroness, Lady Kennedy of The Shaws, to appoint experienced judicial commissioners is preferable. Authorisation would require the approval of a judicial commissioner before it took effect. Further it ensures that the judicial commissioner has to be satisfied that there are reasonable grounds for the authorisation and it specifically contains the safeguard that conduct contrary to the European convention is not authorised. Since the Government suggest that the only control on the authorisation should simply be the convention rights granted by the ECHR, so that they are not broken, I cannot see what objection the Government could have to such a proposal. Of course, I believe it preferable to specify in the Bill the particular offences which cannot be authorised, but that is a matter for later argument.

**Lord Cormack (Con):** My Lords, this is another fascinating debate. A number of your Lordships are seeking to put forward solutions to what I think is a gaping hole in the Bill. I was glad to add my name to the amendment tabled by the noble Lord, Lord Hain. We have had some powerful speeches not only from the noble Lord, Lord Hain, who speaks with truly unique personal experience as well as experience as a very accomplished Secretary of State, which I saw at first hand in Northern Ireland, but we have other suggestions put forward, most notably by the noble Lord, Lord Anderson, and the very powerful quartet of the noble Lords, Lord Anderson, Lord Butler of Brockwell and Lord Carlile, and the noble Baroness, Lady Manningham-Buller, and we heard a powerful speech a moment or two ago from the noble Lord, Lord Thomas of Gresford.

Fundamentally, what it comes down to is this: what we are doing in the Bill is giving authority for people to commit crimes. We all accept the basic necessity when it is a matter of national security. I am not convinced, and I will need a lot of convincing, that we have to give similar powers to the Environment Agency, the Competition and Markets Authority, the Financial Conduct Authority, the Food Standards Agency and the Gambling Commission. There are others on this list, such as the Serious Fraud Office, the National Crime Agency and the intelligence services, that one would approve, but wherever one is approving, one is giving potentially a vast range of people the authority to authorise crimes and to launch these agents into a world where they can do great damage to individual innocent people. We touched on this earlier when we talked about compensation.

I believe it is absolutely crucial that these permissions are not granted without the authority of a senior judicial figure or a Secretary of State. The argument in favour of a Secretary of State, made very pointedly by the noble Lord, Lord Hain, is that there is a degree of public accountability to Parliament for decisions that, one would hope, have been taken in good faith, but which may go wrong in a bad way. What we need is for my noble friend the Minister, and, doubtless, some of her ministerial colleagues, to sit down with those who have proposed these various amendments and try to come to agreement on an amendment for Report stage that the Government can back.

This Bill as it stands just will not do. It could be called the "carte blanche Bill"; in this field, that is not acceptable. I urge my noble friend when she replies to share some reflection on that idea. The noble Lords, Lord Anderson, Lord Butler of Brockwell, Lord Hain—all these people and others—have experience that they can draw upon and advice that they can proffer. We cannot have this Bill giving so many bodies authority to authorise the commission of crimes. I keep coming back to that, because that is what we are talking about. This has to be handled with firmness, sensitivity and, above all, the knowledge that the last thing we want to become is a state in which the police have virtually unbridled powers.

Police are public servants. We all honour them; we believe we are extremely fortunate in the quality of our police forces even though there have been some terrible recent examples, some of them talked about in this broad context by the noble Baroness, Lady Jones, a little while ago. At the moment—I have half-joked about this in the House recently—we are living in a benign police state where we can be prevented and fined for seeking to sit down with members of our family. It is all very serious, and underlines the seriousness of what this Bill is about.

I beg my noble friend to listen to those who have spoken with great experience and authority, putting forward ideas that are practical and workable; some doubtless better than others, but we must have a system where a person of real seniority, answerable for his or her decisions, can give the authorisation before the crime is committed.

**The Deputy Chairman of Committees (Baroness Fookes) (Con):** My Lords, I understand that the noble Baroness, Lady Wheatcroft, has withdrawn, so I call the noble Lord, Lord Butler of Brockwell.

**Lord Butler of Brockwell (CB) [V]:** My Lords, I have put my name to the amendment from my noble friend Lord Anderson. Over the years of my career in government, I was involved in successive pieces of legislation governing intrusion by state institutions. They were necessitated by the European Convention on Human Rights judgments of the European Court, as well as by the growing availability of technology making such intrusion possible. It is many, many years since it could be said that the intelligence agencies could bug and burgle their way around London without let or hindrance.

This Bill deals with a specific form of intrusion—namely, infiltration into groups or activities for the purposes of gathering intelligence. That gives rise to profoundly difficult issues. The noble Lord, Lord Hain, has spoken powerfully on this issue and illustrated

how things can go grievously wrong, but despite having been the victim of surveillance himself, he none the less acknowledges that such surveillance is often necessary.

*6.30 pm*

I have come to the conclusion that this matter of authorising criminal human intelligence sources, who may have to be involved in criminal activity, cannot be left simply to the discretion of the prosecuting authorities after the event. I do not think that the present system works, and that is why I support this Bill. In the interests of the agent and the authorising agency, the criminal activity has to be limited, defined and, as far as possible, supervised in real time.

Earlier in the debate, the noble Lord, Lord Dubs, mentioned the case of the informer Nelson, who was involved in the murder of the lawyer Patrick Finucane. I remember that vividly because, at the time, the late Lord Mayhew, who was then Attorney-General, had to decide whether Nelson should be prosecuted. Nelson was a valued informer, whose intelligence had saved many lives, but the limits of his criminal activity had never been defined. When evidence of his involvement in the murder of Finucane arose, the late Lord Mayhew had to decide whether, despite all that was owed to Nelson as an informer, he should, nevertheless, be prosecuted for his involvement. It was an agonising decision, but Lord Mayhew, in my view, came to the correct decision, and Nelson was prosecuted. The extent of his licence to engage in criminal activity had not been defined or limited, nor was he properly supervised; that was unfair to him and the authorities.

The point of my noble friend's amendment and the other amendments in this group is to provide such authorisation and supervision. I think we are all agreed that it is not sufficient for the state agencies listed in the Bill, in authorising such activity, to be judge and jury in their own case; nor is it sufficient for authorisations to be subject only to an annual review by the Investigatory Powers Commissioner or, after the event, by the Intelligence and Security Committee of Parliament. In a moving situation, oversight in something closer to real time is needed.

A question then arises—and this is one of the differences between the movers of the amendments in this group: who should exercise that authority? I share the view of my noble friend Lord Anderson that this is a matter for a specialist overseer, which is the role for which we have the Investigatory Powers Commissioner. It is not like the authorisation of a specific act, like a search warrant or an act of interception. These are moving situations; they require specialism and people who can continue to exercise scrutiny over them. There is merit in my noble friend's suggestion. I understand that the Minister has indicated that the Government are amenable to further consideration of this issue, and I hope that that will lead to progress in the direction of closer authorisation and real-time oversight. One of those forms is advocated by my noble friend.

**Lord Carlile of Berriew (CB) [V]:** My Lords, it is a privilege to follow my noble friend Lord Butler of Brockwell. His clarity and measured critical faculty provide an example to us all at all times.

I speak in support of Amendments 46 and 73, which were moved with such clarity by my noble friend Lord Anderson. I have added my name to each. Because his argument was so cogent and full, I do not need to repeat any of it, and I shall try to make a short speech. I did want to say, near the outset, that I am surprised that so few noble Lords have spoken clearly in support of MI5 and the police of today. I agree with much of the criticism of the authorities of yesteryear, but we are talking about the authorities of today. They protect our country and our citizens, and they deserve our proportionate support, which, I would suggest to your Lordships, Amendments 46 and 73 provide.

I preceded my noble friend Lord Anderson as Independent Reviewer of Terrorism Legislation. Between us, we were independent reviewer for 16 of the last 20 years. Both of us, in our different ways and in different times, have observed, in real time, the operation of CHIS in the terrorism arena. I, as a barrister who has been involved in many criminal cases, have observed the way in which CHIS have brought many serious criminals to justice. We must put aside our prejudices, often formed from anecdote, and we must aim to provide operational practicality together with rigorous scrutiny. That balance must be achieved based on current practice of those services of today to which I referred a few moments ago.

The Government are right to introduce legislation as we have before us today that seeks to set out clearly how such authorities should behave. I do not believe anyone in this debate has referred to the code of practice of the handling of CHIS, which, as I said at Second Reading, should be required reading for everybody talking on these issues. We must look at the provisions in the Bill alongside that code of practice, which, as has been said frequently, is legally enforceable. Together, they provide the proportionate support for the process that I mentioned earlier.

It was said at one point in the debate by a noble Lord for whom I have great respect that the police are being given unbridled power. With respect, that is a gross exaggeration. The whole aim behind this Bill and the code of practice has been to dilute police and MI5 powers, such as they are, by bringing them under regulatory control that is strict but proportionate. In my view, this part of the Bill sets out and distinguishes a proper role for the investigators and judges in IPCO respectively. We do not have an investigatory system of justice, with investigating magistrates, in this country. However able judges are, not one of them, as far as I am aware, has ever been an operational investigator in the difficult area we are discussing. But they have experience, often brilliant experience, in after-the-event scrutiny. That is what judges do.

I urge the Government therefore to accept the modifications in the amendments which I support, recognising that some strengthening of the Bill's provisions as they stand is needed, but to resist a system which would cause delay and would not improve the skills applied to the kinds of operations that we are considering.

**Baroness Manningham-Buller (CB) [V]:** My Lords, I am delighted to speak to Amendment 46 and to say a few general words. I have heard lots of excellent

[Baroness Manningham-Buller]
speeches today. Unfortunately, I could not be at Second Reading, but I listened to the debate afterwards, and I am sure that, as with most legislation that comes before your Lordships' House, we will improve the Bill. I welcome this legislation, for many of the reasons said by other noble Lords, most recently the noble Lord, Lord Carlile. It is long overdue, and I declare a strong interest as a former member of MI5 for 33 years. It is on that experience that many of my comments today are based.

Running agents, as we call them—I draw this to the attention of the noble Lord, Lord Cormack—is a central part of the work of MI5, and always has been. I can remember—I have checked with former colleagues, who have found paperwork going back 27 years to 1993—raising with Governments the need for legislation to cover the activities of what were then called "participating agents". I do not apologise for reminding the House of a little history; that date was before the Intelligence Services Act, which put SIS and GCHQ on a statutory footing, and before the establishment of the Intelligence and Security Committee. My service's request always ended up in the "too difficult" tray, but MI5 seeking legislation was part of a pattern of which I am proud. It argued for a security service Act, for a parliamentary oversight body, and for what became RIPA, long before others did.

Why did we want that legislative framework? Because a robust legislative framework provides clarity and confidence for the public, who need to help us in our work, for those members of my old service, for others doing intelligence and security work, and for our agents, our covert human intelligence sources. I do not accept the argument that they are unconcerned by this. I am afraid that it is not true. Legislation also builds in oversight and accountability. The current litigation has led to uncertainty, so there is an overwhelming operational requirement for this legislation.

So why this particular Bill? Although it is good housekeeping, it is not just that, and here I will talk about some of these covert human intelligence sources and agents. Every day, brave men and women, usually members of the public, in my experience, risk violence, and even torture and death, to obtain intelligence which may well save lives. There are extensive examples of thousands of lives that have been saved as a result of their work, although generally that cannot be made public in any detail because we have a moral obligation to look after them for the rest of their lives. I am afraid that I do not accept that they are people who lack civic responsibility, that they do it for the money or that they are engaged in very questionable activity. They are brave men and women, and we should all be thankful to them. They should not risk prosecution for work they are asked to do on behalf of the state, in most cases at considerable personal risk. It may be proportionate and necessary for them to commit crimes in order to be trusted or to prevent more serious crime. I absolutely cannot conceive of their ever being authorised to commit the sort of crimes which it is their role to try to prevent.

I note that in its 2018 report, IPCO said that all authorisations by MI5 for its sources to commit crimes were,

"proportionate to the anticipated operational benefits"

and met the high-necessity threshold. Of course I understand the disquiet of the House about authorising crime, although this has happened for decades, and I see the attraction of extending the powers of IPCO by asking that body to give prior authority. I have no objection to that in principle, and doing so might give some comfort to the handlers and the agents. But—and it is a very big "but"—I cannot see that it is practical.

*6.45 pm*

This is not like intercepting a telephone, planting a microphone or authorising somebody to be followed. The microphone and telephone are, at some level, technical issues. They intrude into privacy, but they can be switched on and off. Human sources are different, not least in the risks they run, and you cannot switch them off like an intercept. It is critical that decisions are made by the handler, who knows the individual, their strengths and weaknesses, knows what they have been briefed on, has agreed plans for emergencies with them, has outlined to them what is acceptable and what is not, and who fully understands what may be a very long and complex background. It is worth adding that MI5 can run agents for many years.

The handler will know the context, the others involved and the threat on the ground, which may be shifting. I am afraid that even the wisest judge will not have the professional expertise and the extensive training to fulfil this role. However, I feel very strongly that it is important that IPCO is informed of the authorisations, with the responsibility to challenge decisions it is concerned about. That already happens, but not in real time. This amendment would ensure that that occurs and that, if IPCO were concerned, the activity would clearly not continue. I would expect that to lead to constructive improvements, as it has done in the data-handling issue that the noble Lord, Lord Thomas of Gresford, mentioned in an earlier speech.

If he will forgive me, I shall quote what Lord Justice Fulford said last October:

"I have been impressed by MI5's reaction to our criticisms, in particular the speed, focus and dedication with which they acted to rectify the situation"—

which was a data-handling error of some significance. I think that if errors were made by my former colleagues and they reported them in real time to IPCO, it would react in a similar way.

**Baroness Hamwee (LD) [V]:** My Lords, the House has been privileged to hear from the noble Baroness, Lady Manningham-Buller, on this subject. My noble friend Lord Paddick and I have tabled Amendment 47 as an amendment to Amendment 46, which she supports. I am a little diffident about what may appear to be a challenge to the "quartet", as the noble Lord, Lord Cormack, called them, of four noble Lords who all have considerable experience, in their different ways, of dealing with these issues directly. I think my points are relevant to some other amendments as well.

Our Amendment 47 explores what the next steps should be after the steps set out in subsections (8A) to (8C) in Amendment 46. My noble friend Lord Paddick will deal with what I think he might describe as the operational realities that make prior authorisation impractical. Allied to that, I note the phrase of the

noble Lord, Lord Anderson, "human complexities". I take his point about aiming for what might be possible in political terms in this area.

In our view, there should be further steps after notice has been given to the commissioner. Of course, he could and should deal with notices of criminal conduct authorisations in his annual report—in addition, he can deal with them in reports to the Prime Minister—but if the notice is to have teeth, as my noble friend Lord Thomas put it, something needs to be there to follow through. Even a decision to do nothing would be an active decision.

We propose that the commissioner should consider subsection (4) of proposed new Clause 29B—one of the new provisions in the Bill—including whether the criteria of necessity and proportionality are satisfied, and any other matters introduced under subsection (4)(c) by the Secretary of State. Of course, I am aware that the question of what is believed—whether that is an objective or subjective test—is rather begged by my amendment, but we will come to that in the debate on the next group.

Perhaps noble Lords are attracted to something like our proposal. I am sure that it would need expanding—for instance, to allow inquiries by the commissioner, questioning the person giving notice and so on. If the commissioner considers that subsection (4) has not been satisfied, we suggest that two things should follow. The first should be that the conduct would not be lawful for all purposes, which would reintroduce the question of redress, including applications to the criminal injuries compensation fund. Secondly, the matter must be reported to the head of the relevant public authority—the National Crime Agency, the Gambling Commission, whoever. In turn, the authority should refer it to the DPP, and the usual steps should then follow. For good measure, our amendment makes direct mention of the annual report.

In other words, our amendment is a development of Amendment 46, which would introduce a circle that we think needs rounding off. I hope that, to pick up on the point made by the noble Lord, Lord Carlile, this is regarded as proportionate support. My noble friend Lord Paddick will have observations on the other amendments in this group when he speaks from our Benches.

**Baroness Penn (Con):** My Lords, I beg to move that the debate on this amendment be adjourned.

*Motion agreed.*

*House resumed.*

*6.53 pm*

*Sitting suspended.*

## Covid 19: Winter Plan

*Statement*

*The following Statement was made in the House of Commons on Monday 23 November.*

"With permission, Mr Speaker, I will make a Statement on the Government's Covid winter plan. For the first time since this wretched virus took hold, we can see a route out of the pandemic. The breakthroughs in treatment, testing and vaccines mean that the scientific cavalry is now in sight, and we know in our hearts that next year we will succeed. By the spring, these advances should reduce the need for the restrictions we have endured in 2020 and make the whole concept of a Covid lockdown redundant.

When that moment comes, it will have been made possible by the sacrifices of millions across the UK. I am acutely conscious that no other peacetime Prime Minister has asked so much of the British people, and just as our country has risen to every previous trial, so it has responded this time, and I am deeply grateful. But the hard truth is that we are not there yet. First, we must get through winter without the virus spreading out of control and squandering our hard-won gains, at exactly the time when the burden on our NHS is always greatest. Our winter plan is designed to carry us safely to spring.

In recent weeks, families and businesses in England have, once again, steadfastly observed nationwide restrictions, and they have managed to slow the growth of new cases and ease the worst pressures on our NHS. I can therefore confirm that national restrictions in England will end on 2 December, and they will not be renewed. From next Wednesday people will be able to leave their home for any purpose and meet others in outdoor public spaces, subject to the rule of six; collective worship, weddings and outdoor sports can resume; and shops, personal care, gyms and the wider leisure sector can reopen.

But without sensible precautions, we would risk the virus escalating into a winter or new year surge. The incidence of the disease is, alas, still widespread in many areas, so we will not replace national measures with a free for all, the status quo ante Covid. We are going to go back instead to a regional, tiered approach, applying the toughest measures where Covid is most prevalent. While the previous local tiers cut the R number, they were not quite enough to reduce it below 1, so the scientific advice, I am afraid, is that, as we come out, our tiers need to be made tougher.

In particular, in tier 1 people should work from home wherever possible. In tier 2, alcohol may be served in hospitality settings only as part of a substantial meal. In tier 3, indoor entertainment, hotels and other accommodation will have to close, along with all forms of hospitality, except for delivery and takeaways. I am very sorry, obviously, for the unavoidable hardship that this will cause for business owners who have already endured so much disruption this year.

Unlike the previous arrangements, tiers will now be a uniform set of rules—that is to say, we will not have negotiations on additional measures with each region. We have learned from experience that there are some things we can do differently. We are, therefore, going to change the 10 pm closing time for hospitality so that it is last orders at 10 pm, with closing at 11 pm. In tiers 1 or 2, spectator sports and business events will be free to resume inside and outside—with capacity limits and social distancing—providing more consistency with indoor performances in theatres and concert halls. We will also strengthen the enforcement ability

of local authorities, including specially trained officers and new powers to close down premises that pose a risk to public health.

Later this week—on Thursday, I hope—we will announce which areas will fall into which tier, based on analysis of cases in all age groups, especially the over-60s; the rate by which cases are rising or falling; the percentage of those tested in a local population who have Covid; and the current and projected pressures on the NHS. I am sorry to say that we expect that more regions will fall—at least temporarily—into higher levels than before, but by using these tougher tiers and using rapid turnaround tests on an ever greater scale to drive R below 1 and keep it there, it should be possible for areas to move down the tiering scale to lower levels of restrictions.

By maintaining the pressure on the virus, we can also enable people to see more of their family and friends over Christmas. I cannot say that Christmas will be normal this year, but in a period of adversity, time spent with loved ones is even more precious for people of all faiths and none. We all want some kind of Christmas—we need it and we certainly feel we deserve it—but what we do not want is to throw caution to the winds and allow the virus to flare up once again, forcing us all back into lockdown in January.

So, to allow families to come together, while minimising the risk, we are working with the devolved Administrations on a special, time-limited Christmas dispensation, embracing the whole of the United Kingdom and reflecting the ties of kinship across our islands. The virus will obviously not grant us a Christmas truce—it does not know that it is Christmas—and families will need to make a careful judgment about the risk of visiting elderly relatives. We will be publishing guidance for those who are clinically extremely vulnerable on how to manage the risks in each tier, as well as over Christmas.

As we work to suppress the virus with these local tiers, two scientific breakthroughs will ultimately make these restrictions obsolete. As soon as a vaccine is approved, we will dispense it as quickly as possible. But given that that cannot be done immediately, we will simultaneously use rapid-turnaround testing—lateral flow testing—that gives results within 30 minutes, to identify those without symptoms so they can isolate and avoid transmission. We are beginning to deploy these tests in our NHS and in care homes in England, so people will once again be able to hug and hold hands with loved ones instead of waving at them through a window. By the end of the year, this will allow every care home resident to have two visitors, who can be tested twice a week.

Care workers looking after people in their own homes will be offered weekly tests from today. From next month, weekly tests will also be available to staff in prisons and food manufacturing, and those delivering and administering Covid vaccines. We are also, as the House knows, using testing to help schools and universities to stay open. Testing will enable students to know they can go home safely for Christmas, and back from home to university.

There is another way of using these rapid tests, and that is to follow the example of Liverpool, where in the last two and a half weeks over 200,000 people have taken part in community testing, contributing to a substantial fall in infections. Together with NHS Test and Trace and our fantastic Armed Forces, we will now launch a major community testing programme, offering all local authorities in tier 3 areas in England a six-week surge of testing. The system is untried and there are many unknowns, but if it works, we should be able to offer those who test negative the prospect of fewer restrictions—for example, meeting up in certain places with others who have also tested negative. Those towns and regions that engage in community testing will have a much greater chance of easing the tiering rules they currently endure.

We will also use daily testing to ease another restriction that has impinged on many lives. We will seek to end automatic isolation for close contacts of those who are found positive. Beginning in Liverpool later this week, contacts who are tested every day for a week will need to isolate only if they themselves test positive. If successful, this approach will be extended across the health system next month, and to the whole of England from January. Of course, we are working with the devolved Administrations to ensure that Wales, Scotland and Northern Ireland also benefit, as they should and will, from these advances in rapid testing.

Clearly, the most hopeful advance of all is how vaccines are now edging ever closer to liberating us from the virus, demonstrating emphatically that this is not a pandemic without end. We can take great heart from today's news, which has the makings of a wonderful British scientific achievement. The vaccine developed with astonishing speed by the University of Oxford and AstraZeneca is now one of three capable of delivering a period of immunity. We do not yet know when any will be ready and licensed, but we have ordered 100 million doses of the Oxford vaccine and over 350 million in total—more than enough for everyone in the UK, the Crown dependencies and the overseas territories. The NHS is preparing a nationwide immunisation programme, ready next month, the like of which we have never witnessed.

Mr Speaker, 2020 has been, in many ways, a tragic year when so many have lost loved ones and faced financial ruin, and this will still be a hard winter. Christmas cannot be normal and there is a long road to spring, but we have turned a corner and the escape route is in sight. We must hold out against the virus until testing and vaccines come to our rescue and reduce the need for restrictions. Everyone can help speed up the arrival of that moment by continuing to follow the rules, getting tested and self-isolating when instructed, remembering 'hands, face, space', and pulling together for one final push to the spring, when we have every reason to hope and believe that the achievements of our scientists will finally lift the shadow of this virus.

I commend this Statement to the House."

*7 pm*

**Baroness Smith of Basildon (Lab):** My Lords, this has been a year in which everyone, at home and abroad, has seen their lives change, some irrevocably. There is now huge excitement about the development

of vaccines to tackle Covid. We have seen extraordinary human endeavour to bring about this remarkable achievement and I hope we will find an appropriate way to honour those scientists and their teams.

There is now a sense of optimism that life will, at some point in the foreseeable future, start to return to normal—I see smiles all round. But the road that leads to that normality is not going to be easy; until a vaccine or vaccines can be successfully rolled out, the actions and preventive measures we take will make a real difference in containing the virus. No one likes lockdowns or welcomes greater restrictions. We know that they are not pain-free but, if done properly alongside other measures, they are essential in containing the virus and reducing the R rate. So it is obvious that we cannot let up on wearing masks, on washing hands or on social distancing. The mistakes made on test, trace and isolate must be replaced by an effective system across the whole country.

I appreciate that the finer details will not be available until Thursday, but I hope that the Leader will be able to respond today to some of the broader questions, including on the long-term implications and plans. I want to ask first about regional tiers, because she will be aware of the concerns about the effectiveness of the previous tier system. Rather than one tier preventing movement into a higher tier, it seemed that tier 2 was in fact a route into tier 3 and that there was no clarity around the exit strategy. I understand that the plans to be announced on Thursday will be different, but I hope that we will have far greater clarity. It is crucial that we have clear guidelines relating to when regions go into a particular tier and what their route out is. Can the Leader assure us that such detail will be made available when Parliament is updated this week?

The other lesson learned previously was that measures are at their most effective when there is local co-operation. My understanding is that the new restrictions will apply in a uniform manner. Can the Leader provide any clarity about what that means for local engagement? Clearly, there must be urgent improvements in test, trace and isolate, along with support for those who have to isolate. Will this be managed locally or nationally? Importantly, can she confirm that any new contracts will be awarded on proven competence?

On Wednesday 9 September, the Prime Minister said that life could be back to normal by Christmas. That was overly optimistic and it jarred with the view of the Chief Medical Officer, Chris Whitty, who, speaking alongside him, cautioned that our difficulties would last until the spring. Mr Johnson now recognises that Christmas will not be the same this year—certainly, no mistletoe. Nevertheless, it is a time for family and friends, of all faiths and none, to come together. I welcome that the Government are consulting with the devolved Governments to plan a UK-wide approach. The Statement refers to a special time-limited dispensation. It would be helpful if the Leader could provide some details on that today. Where are the discussions at now, and what is the nature of the agreement being sought with the devolved Administrations?

Earlier this month, the noble Baroness, Lady Harding, as the head of test and trace, told the Commons Health and Social Care Committee that she could not have been expected to predict the surge in cases when students returned to university. But risks can be foreseen, and when foreseen they can be mitigated. The Chief Medical Officer has been clear that lifting restrictions over Christmas brings some risks. Most people will be well aware of them and will want to do all they can to minimise them, to share quality time with friends and family.

What modelling and planning have been done to understand and gauge the likely levels of infection post Christmas? Based on that evidence, will some groups—whether determined by age, health or some other criteria—expect to be advised that the personal risk to them is higher? If the Government have not estimated or modelled that level of risk, have SAGE or anyone else been tasked to do so? If so, can the Leader say when we expect that additional advice to be made public? If no such modelling is planned, will the dispensation from the rules apply equally to everybody? She will understand that the advice to care homes will be particularly important.

Following the Transport Secretary's warning about having to book trains early and limited capacity, has there been any discussion with train and coach companies about capacity and ticket prices, to ensure that travellers are protected?

On financial support into the longer term, the Prime Minister made it pretty clear yesterday that we will have to expect some level of restrictions until early spring and perhaps Easter. I appreciate that the Leader might not be armed with anything too detailed today, but I would like some real insight into the strategic preparations now being made within government for the first few months of next year. If she can give some assurances that lessons, positive and negative—what was good, what was bad, what worked and what did not—have been learned from the past nine months, that might help us all get through the next four or five. Can she give us a steer on how the Government plan to support, compensate and encourage and give some examples, particularly for freelance workers and the self-employed, who currently fall outside the existing support schemes?

Companies in the hospitality and entertainment sectors must feel they have had a rollover of bad luck, as each lockdown and set of restrictions not only put paid to their activities as businesses but completely undermined their planning for a return to normality. Sectors such as the travel sector have traditionally been reliant on advance bookings and are now suffering the additional impact of people feeling uncertain about the future and risking the losses that come with cancellations. Similar questions are relevant for other sectors. The point I am making is that viable businesses need support now if they are to survive and be part of the post-Covid recovery, and they tell us that what they need most is certainty.

As a broader point across all this, what planning is taking place within government that will offer reassurance that there is a clear, thought-out path through what has been a truly awful period for everyone, leading into the end of the pandemic and perhaps a rather more hopeful future?

**Lord Newby (LD):** My Lords, this is the most positive Statement the Prime Minister has been able to give since March, as we now have the real prospect of effective mass vaccination against coronavirus, which offers a route—of whatever length—back to normality. Huge congratulations are due to the team in Oxford and the other groups which produced the vaccine in record times. Reading accounts of how this has been achieved, I see that the key improvement on normal practice has been a willingness to work outside the normal silos in which scientists and others usually work. I hope this lesson will be learned for future vaccines, other areas of scientific research and public policy more generally.

There will no doubt be valid discussions about which groups other than those in care homes and the elderly should have priority on vaccine programmes, but the experience of the flu vaccination programme earlier this autumn should give us all some confidence that the programme can be undertaken speedily and effectively. I have one question about the vaccination programme. Do the Government intend that all those who receive the vaccine will get a vaccination certificate? One can certainly see many attractions of this, not least in that, if it were part of an international agreement to recognise such certificates, it could facilitate the return to greater normality in international travel, with the attendant benefits for the airline and tourism sectors.

The Statement sets out four criteria against which decisions on the placing of regions into tiers will be based and says that the tiering will be reviewed on a fortnightly basis. Can the noble Baroness clarify how that will work? The Prime Minister said yesterday that there will be a uniform approach, but the Health Secretary said it would depend on local circumstances. Which is it to be?

It is clear that, in tier 3 areas, the hospitality sector will continue to be very badly hit. Obviously, I understand the need for that, but will the Government look at additional, narrowly targeted support for this sector so that, when the toughest restrictions are lifted, there is still a hospitality sector able to reopen?

The Statement says that another £7 billion will be allocated to the test and trace system, bringing the total spend on this to some £22 billion—a huge sum which is, for example, greater than the total cost of Crossrail. I do not think that a single person believes that this has been money well spent so far. I hope that the new rapid tests will prove effective, but unless people who should get tested actually do so and then self-isolate if necessary, they will be ineffective. Equally, unless the tracking system also works, the money will be wasted. On all those grounds, the system to date has underperformed, to put it kindly.

In Liverpool, although the headline number of people tested is high, in the most deprived areas the take-up has been only 4% of residents. How do the Government aim to tackle this particular take-up problem? The proportion of people who self-isolate when asked to do so is still abysmally low. This is in no small measure due to the financial costs of doing so. There is of course the grant of £500 per week theoretically available so that those on low pay can be compensated for isolating. However, this is subject to so many conditions that, at the moment, apparently some 80% of all applications are rejected—this from a Government who have shown no such rigour when doling out PPE contracts worth millions of pounds. Will the Government now urgently recast the £500 scheme so that it can be accessed by those who need it?

Finally, I have a very specific question, of which I have given the noble Baroness prior notice. Page 24 of the winter plan document states that places of worship will be allowed to reopen but that there will be limits, depending on the tier, on the number of people with whom congregants can "interact". Can the noble Baroness explain what "interact" means in this context, given that before the lockdown people were required to socially distance, wear masks and certainly not touch each other? Does it mean that there will be more or less "interaction" in churches now than there was a month ago?

**The Lord Privy Seal (Baroness Evans of Bowes Park) (Con):** I thank the noble Lord and the noble Baroness for their questions. We have published our winter plan, the aim of which is to take us through to spring. I will first answer a few questions on the tier system, which both the noble Baroness and the noble Lord touched on.

We have adapted our tiers in this plan on evidence that gives us the best chance to control the virus, developing community testing with scientific advice from national advisers and local directors of public health. The noble Baroness is right: these tiers are designed to reduce and keep the R below 1 and to support areas moving down tiers. That is the aim of where we are going. I will move on to vaccines, mass testing and other elements that we think will play an important part as we move towards the spring and, I hope, some kind of normality.

The noble Lord and the noble Baroness are absolutely right. To provide clarity and consistency, all tier restrictions have been standardised and will not be negotiated locally—so that is tiers 1, 2 and 3. Both asked about decisions on moving out of tiers. Decisions on the areas that go in and out of tiers will be based on a range of indicators, including: case detection rates in all age groups; case detection rates in the over-60s; the rate at which cases are rising or falling; the positivity rate—so the number of positive cases detected as a percentage of tests taken; and pressure on the NHS, including current and projected occupancy. Tiering allocations will be reviewed every 14 days, so there is a process and range of measures that will be published around which decisions will be made. While we appreciate that people would like to see firm thresholds, because areas and localities are different we will need to take into account local factors as well, but the indicators that I mentioned are key ones.

The noble Baroness rightly asked about local engagement on the basis that there is now some consistency among tiers. Absolutely, there will be local engagement. In particular, we will offer local authorities in tier 3 areas the opportunity to participate in a new community asymptomatic testing programme to help to find people who have the virus but do not show symptoms. Local authority directors of public health will be able to select their own approaches for delivering tests and priority testing targets and, as the noble

Lord said, we hope that will mean that there is proper targeting of local areas, and some of the issues around take-up that he mentioned can be addressed through this local programme.

The programme will involve a six-week surge of testing capability to enable regular testing to be rolled out to the community in a way that works for the local authority with support from national government, including sufficient test supply, funding to cover support set-up costs and staffing test sites and support for extra contact tracing to break up clusters before they become outbreaks. That is where the additional funding that the noble Lord mentioned for test and trace will be focused.

The noble Baroness asked about contracts, and I can only reassure her that we will, of course, follow all the proper processes, procedures and oversights in awarding any future contracts.

In relation to Christmas, just as we came in discussions finished with the devolved Administrations, and they have reached some conclusions. Between 23 and 27 December, up to three households will be able to join together to form an exclusive Christmas bubble. The noble Baroness rightly asked about the clinically extremely vulnerable. Everyone must continue to take personal responsibility for spreading the virus and protecting their loved ones. For someone who is clinically extremely vulnerable, forming a Christmas bubble carries additional risk, but it will be a personal choice. People should take all precautions, including maintaining social distance from those they do not live with at all times, and they should consider seeing their bubble outside, where the risks are lower—but that will be a personal choice for people.

From 23 to 27 December, travel will be permitted between tiers and nations for the purposes of joining a Christmas bubble. People coming to or from Northern Ireland—and I see the noble Lord sitting there—will be permitted to travel a day either side of 23 and 27 December. I am sure there will be further information coming out, but that has come hot off the press.

In relation to care homes, we have launched testing pilots across 20 care homes, using PCR and the new rapid turnaround tests to allow up to two specific visitors to take two tests a week so they can do indoor visits to residents, including some physical contact. We intend to roll out this approach in a phased way across December, because we have made a commitment to provide tests to enable care home residents to have two visitors tested twice a week.

The noble Baroness and the noble Lord asked about vaccines, which is a key part of our route out by spring, we hope. It is about a combination of the mass testing that I have talked about and, obviously, the improved therapeutics that we have, which are having an impact when people are in hospital, but also vaccines. We anticipate that a number of safe and effective vaccines will be available in 2021, and we have taken steps to ensure that the UK has access to them. As everyone will know, we have agreements with seven separate vaccine developers, but we accept that the shift will not happen overnight, which is why spring is the timescale that we are looking towards.

The noble Lord, Lord Newby, asked about a vaccination certificate. I am not aware of that, but I will take that issue back and raise it. I reassure him that an enormous amount of preparation is taking place to make sure that we have adequate provision, transport, PPE and logistical experts to ensure that the rollout is successful. As he rightly says, the NHS is working from a great base—every year for the flu vaccine we have to roll out a vaccination programme, so we are starting from a good base.

I will attempt to answer the question from the noble Lord, Lord Newby, on interaction in places of worship. Social distancing rules should continue to be followed within places of worship, including during communal worship, which can of course now take place in all three tiers. That means that in areas under tier 1 restrictions, people should attend only in groups of up to six—the rule of six—and in tiers 2 and 3, people must not mix outside their household or household bubble. People should stay socially distanced. There should be closer distance only when absolutely essential to enable a faith practice to be carried out—for example, contact with a faith leader—and time spent in such contact should be kept to an absolute minimum.

**The Deputy Speaker (Lord Haskel) (Lab):** My Lords, we now come to the 30 minutes allocated for Back-Bench questions. I ask that questions and answers be brief so that I can call the maximum number of speakers.

*7.20 pm*

**Lord Kakkar (CB) [V]:** My Lords, I draw attention to my declared interests. In his Statement in the other place, the Prime Minister made reference to the imminent initiation of a mass vaccination programme for the UK population. Have Her Majesty's Government considered creating a prospective research cohort from among the millions of citizens who will be vaccinated in the early months of this programme? This would facilitate individual follow-up and invaluable data collection, better inform our understanding of pandemic epidemiology and provide invaluable insights into the future development of novel vaccine platforms.

**Baroness Evans of Bowes Park (Con):** I thank the noble Lord for his question, and I also pay tribute to all the fantastic work that has been done in relation to the vaccinations. Indeed, obviously a lot of research and testing has been done to develop the vaccines. We will certainly learn from that as we roll out the vaccination programme, and from his very useful comments and observations about things we may consider. I am very happy to take that back to the Department of Health, which I am sure will be considering these things and talking to experts, such as himself, throughout the industry to make sure that we roll out this programme as effectively as possible.

**Lord Bates (Con):** Mindful that we live in one of the richest nations on earth, that we have one of the best healthcare systems, some of the most brilliant scientists and pharmaceutical companies, and that they have developed the best Covid vaccine to date, will my noble friend reaffirm the commitment made at the G20 summit last weekend to ensure fair and affordable

[Lord Bates]
access to the vaccine for the vast majority of the world, who are not nearly as fortunate as we are yet whose need is just as great?

**Baroness Evans of Bowes Park (Con):** I am very happy to provide that reassurance to my noble friend. We are absolutely committed to ensuring rapid and equitable access to safe and effective vaccines, therapeutics and diagnostics, and we have committed up to £829 million of ODA to this. We have announced up to £500 million to the COVAX advanced market commitment, supporting 92 low and lower-middle income countries to gain access to a vaccine.

**The Deputy Speaker (Lord Haskel) (Lab):** The right reverend Prelate the Bishop of St Albans has withdrawn, so I now call the noble Lord, Lord Knight of Weymouth.

**Lord Knight of Weymouth (Lab) [V]:** My Lords, with regard to the Minister's news regarding us being able to have up to three households together at Christmas, does the rule of six still apply and, if not, what will be the limit on people celebrating together? I spoke in the debate on the regulations to put us into lockdown, and asked the noble Lord, Lord Bethell, about the nonsense of children being able to play with their friends bubbling with them in school but not play with the same children out of school. He said he would definitely look into it, but since then I have heard nothing. Can I ask the Minister to please urgently pursue this? Whatever tier we are to move into next week, please can the Government ensure that children have this right to play with their school bubble-mates after school and at weekends?

**Baroness Evans of Bowes Park (Con):** As I said, the decisions on Christmas have just been made, so I probably do not have full information. As I said, between 23 and 27 December, up to three households will be able to join together to form an exclusive Christmas bubble. Everyone can be in one bubble only and cannot change that bubble during this time period. The bubble will be able to spend time together in private homes, attend places of worship or meet in a public outdoor place. Beyond this, people should follow the local restrictions in the area in which they are staying. I will speak to my noble friend Lord Bethell about the noble Lord's other question.

**Baroness Jolly (LD) [V]:** My Lords, I echo the plaudits of my noble friend Lord Newby for the team in Oxford that developed a viable, stable, successful and inexpensive vaccine. Does the noble Baroness have any clear idea when the vaccination programme will start? Will it start all across England at the same time? Who will be responsible for carrying out the vaccinations? How many will be trained to do this? They do not need to be clinicians.

On behaviour in churches, can congregations now sing?

Moving to testing, last month, in round figures, of the 315,000 people who were identified as having come into close contact with someone who tested positive, only 60% were reached and asked to self-isolate, and that figure was little changed from the record low of the previous month. It means that 126,000 people with coronavirus were not contacted and, therefore, were not isolating and so were infecting others. Are the Government satisfied with this? We have had months to make this more effective. Why can we not do better?

**Baroness Evans of Bowes Park (Con):** Well, there will be further guidance on carol singing, I am assured, so the noble Baroness can keep an eye out for that.

On vaccines, obviously the safety of the public comes first. A Covid vaccine will be approved for use only once it has met robust standards. In relation to the Pfizer/BioNTech vaccine, the Health Secretary has asked the MHRA to begin its assessment of this vaccine, and Pfizer/BioNTech has begun supplying data to the MHRA. But it is an entirely independent process, so that will be done in time. As I have said, we anticipate that a number of safe and effective vaccines will be available in 2021.

**Baroness Watkins of Tavistock (CB) [V]:** My Lords, I welcome this approach, particularly to care home testing, but have concerns in relation to SI 1292, which came into force on 17 November to provide an exemption from travel restrictions to allow poultry workers into the UK to assist with turkey slaughter. Many are coming from eastern European countries experiencing high levels of Covid-19 infection. I understand that testing and other requirements are based on individual workers showing coronavirus symptoms. Could the noble Baroness the Leader of the House explain why there are no plans for routine testing of these workers to protect public health, as there is the potential for asymptomatic transmission from these workers? Has the Department for Transport undertaken a thorough review of this situation, together with the Department of Health? Could the noble Baroness inform us on this issue and investigate it if she is unable to answer at this time?

**Baroness Evans of Bowes Park (Con):** What I can say is that this is one of the areas in which the mass testing programme rollout can be used. For instance, local authority directors of public health may wish to roll out one of their programmes to higher-risk industries. Those are exactly the kinds of situations where local authorities may wish to use this programme to deal with the very issues that the noble Baroness set out.

**Lord Farmer (Con):** My Lords, at great personal cost, as well as social and financial cost to the country, millions have now had Covid and therefore have antibodies. I am indeed one of them. Significant savings can be made by excluding anyone who has contracted the disease in, say, the last six months, from needlessly being traced, tested or required to isolate, including after returning from abroad. So what has been decided about such people and where they should come in the pecking order for vaccination?

**Baroness Evans of Bowes Park (Con):** In relation to the pecking order, as my noble friend said, for the vaccination, it will be for the independent Joint Committee on Vaccination and Immunisation to advise the Government on which vaccine should be used and what the priority groups are—and the committee has indeed issued some interim advice on this already.

Another initiative that we are launching which will, to a degree, help to address my noble friend's points going forward, is the plan to introduce frequent testing as an alternative to the need to self-isolate for people who have had close contact with someone who has had Covid. The contacts would have regular tests during an isolation period and would have to self-isolate only if they tested positive.

**Lord Sikka (Lab) [V]:** My Lords, 18% of those for whom self-employment makes up at least half their income are ineligible for the Self-employment Income Support Scheme, while 38% of those with any self-employment income are still ineligible. When will the Government address this wrong? Secondly, can the Government publish a list of businesses that have received subsidies through the Coronavirus Job Retention Scheme?

**Baroness Evans of Bowes Park (Con):** We have put in place one of the world's most comprehensive economic responses, backed by over £200 billion, to protect jobs, incomes and businesses throughout this period and beyond the pandemic. Our support for the self-employed has been more comprehensive and generous than almost any other country's, with around £13.5 billion for over 2.5 million people.

**Lord Taylor of Goss Moor (LD) [V]:** First, as the father of three young boys, I associate myself with the comments of the noble Lord, Lord Knight, about children being able to meet with other children from their school bubble, who they work with every day, outside the school. It is critical to their socialisation and enjoyment of the coming weeks.

More specifically, it only takes walking down the high street to see how many businesses have shut over the last months—permanently, not just for lockdown. Hospitality businesses are at enormous risk of long-term closure now if they are not able to operate during the critical weeks up to Christmas. Will the Government extend specific support beyond that already being given to them, as they will be required to miss their most important trading time?

**Baroness Evans of Bowes Park (Con):** I completely accept and acknowledge the difficulty for hospitality businesses in particular over the past few months. As the noble Lord is aware, we have provided a comprehensive array of economic support packages, through the furlough scheme, grants to businesses forced to close as a result of the restrictions, business rate relief and the extension of various schemes. We are cognisant of this and will continue to support the hospitality sector. To get all businesses back on their feet, we want to find the pathway out of this pandemic. With vaccines, mass testing and improved therapeutics, I hope we are getting towards that, so that businesses can start to open and return to some sense of normality, which we and they all want.

**Lord Craig of Radley (CB) [V]:** The agreement of a UK-wide approach to Christmas rules is welcome. Will a UK-wide approach also be sought for the distribution and allocation of vaccines? Do the Government agree that, after prioritising key NHS and care workers, it is preferable that those who contribute to economic recovery and growth, and education, are prioritised over the more elderly, who have successfully kept free from the virus by isolation?

**Baroness Evans of Bowes Park (Con):** I reassure the noble and gallant Lord that a vaccine will be deployed across the whole UK. We are working closely with the devolved Administrations to ensure that it is deployed fairly. As I mentioned, the independent Joint Committee on Vaccination and Immunisation will advise on which vaccines should be used and what the priority groups are. The initial advice is that the vaccine should first be given to care home residents and staff, followed by people over 80 and health and social care workers, and then the rest of the population in order of age and risk.

**The Deputy Speaker (Lord Haskel) (Lab):** The noble Lord, Lord Blencathra, has withdrawn, so I now call the noble Lord, Lord Dodds of Duncairn.

**Lord Dodds of Duncairn (DUP):** I thank the noble Baroness for the Statement. The Prime Minister said that the scientific cavalry is now in sight. Can I be assured that the squadrons of cavalry will all arrive on the battlefields of the United Kingdom together, so that care home workers, clinical staff and all the rest will be vaccinated and have access to rapid testing at roughly the same time?

**Baroness Evans of Bowes Park (Con):** I hope that I have made it clear that we are working very closely with the devolved Administrations to make sure that these programmes and vaccines are rolled out. Obviously, the mass testing programme in England is the only testing programme, but we will be working with all the devolved Administrations to make sure that they have access to the tests and vaccines they need in order that we can all move forward together and, I hope, see some light at the end of the tunnel come the spring.

**Lord Liddle (Lab) [V]:** My Lords, this is a moment of hope. One hopeful thing that caught my eye in the Government's White Paper was paragraph 79, which sets out a plan to legislate by the end of this year, requiring care home providers to restrict all but essential movement of staff between settings. This is very desirable, but does the noble Baroness accept that these movements are in part because of the scandalous pay and conditions of people working in the care sector, their need to combine several part-time jobs and their poverty, which makes them reluctant to isolate? Will the legislation proposed by the end of the year include a statutory framework to improve pay and conditions in the care sector, and will the Government consult the trade unions on it?

**Baroness Evans of Bowes Park (Con):** The noble Lord is right in the sense that one issue that care homes have faced is the movement of staff who work in a number of them. We have extended the infection control fund and ring-fenced over £1 billion to support social care providers, exactly to help ensure that workers do not have to go between care homes. We have also made over £4.6 billion available to help local authorities

[Baroness Evans of Bowes Park]
respond to the pressures caused by the pandemic in key services such as adult social care. So we are very cognisant of the issues that he has raised.

**Lord Bradshaw (LD) [V]:** The Prime Minister likened the work of Oxford and other universities to the cavalry riding to the rescue over the hill. Two years ago, Oxford attracted more European funding than any other academic institution in the Union, much of which we will lose as we move into the EEC. Will the Government make good these losses? Our universities defend us from disease, feed us, and find ways of tackling climate change and cybercrime, but they are run by much-derided public servants, many from overseas. They are motivated by finding answers to problems. University research must be financed, staff must receive reasonable salaries or they will go elsewhere, and in many cases they will need visas. Will the Leader of the House speak up for these university staff, who are not well paid, so that they are supported in their work and are available to deal with more challenging problems ahead?

**Baroness Evans of Bowes Park (Con):** I am very happy to again pay tribute, as the noble Baroness, the noble Lord and others have done, to the fantastic scientists who have worked on these vaccines and indeed who work across universities. I very much hope that the exciting developments we have seen at Oxford and other universities will encourage young people to think about this work as a career. It is incredibly impressive and challenging work, and I hope that some of the coverage and interest in it will encourage more people to think about it as a career, ensuring that we continue to have fantastic scientists working in this country.

**Lord Bilimoria (CB) [V]:** My Lords, we rejoice at the wonderful news of the Oxford-AstraZeneca vaccine. However, in the meantime, does the noble Baroness agree that a six-week mass, rapid and affordable lateral flow antigen testing surge could be a game-changer? Now that these tests will be manufactured in the UK at very low cost—perhaps even as low as £3—do the Government agree that they should be freely distributed to enable as much of the population as possible to self-test regularly? This would reduce the R rate rapidly, within weeks, and, in the words of the Prime Minister, would be the boxing glove that truly pummels the virus.

**Baroness Evans of Bowes Park (Con):** I agree with the noble Lord, and that is exactly why we are offering all local authorities in tier 3 areas the opportunity to participate in the sort of programme that he has suggested. It will be called the kick out Covid testing challenge and will build on the positive results from the Liverpool pilot.

**Lord Lansley (Con) [V]:** My Lords, my noble friend will be aware of the risks associated with large numbers of students returning home in the run-up to Christmas, and of course in some cases travelling between higher tier areas to lower tier homes. Will she ensure that the Government will work with universities so that all of them provide two tests for each student to ensure that they return home only when they have a negative test result that is immediately available?

**Baroness Evans of Bowes Park (Con):** I can certainly reassure my noble friend that we are working closely with universities. As he will know, between 3 and 9 December, students will be allowed to travel home on staggered departure dates set by universities. Tests will be offered to as many students as possible before they travel home for Christmas, targeted using a range of factors, including local prevalence rates, whether a testing history is already available, and the percentage of high-risk students in each institution.

**Lord Rooker (Lab) [V]:** I thank the Leader of the House for repeating the Statement. I assume that an estimate has been made of the extra people who will be killed in January as a result of this crazy five-day three-family rule. What is it? I have just watched Professor Sridhar at Edinburgh University advise on the Channel 4 news programme: "Don't travel. Don't put your family at risk. Why throw away the gains of the past few weeks?" Does the Leader agree?

**Baroness Evans of Bowes Park (Con):** Regardless of faith, Christmas is a time when family and friends come together. It has been an incredibly difficult year for everyone, and time with loved ones is very important. We have been very clear about the rules and we have also been clear that it is for people and families to make judgments about how comfortable they feel in terms of the importance of seeing loved ones with regard to their vulnerability. However, I personally would say no to stopping people seeing family for Christmas. I would prefer to see my family, but obviously I will have to make judgments with them about how comfortable we feel, and I think that that is quite important.

**Lord Greaves (LD) [V]:** My Lords, I am reminded of the line from the poem,

"If winter comes, can Spring be far behind?"

It seems that this is the Government's last chance to get things right on a lot more testing and distribution of the vaccines. The Royal Blackburn Hospital reports that despite the fact that the number of infections in east Lancashire has started to go down at last, it has twice as many Covid cases in hospital as it had in the spring. That is putting huge pressure on all its services.

I asked about the Nightingale hospitals in a recent Question and was told that each Nightingale team has been developing a clinical model that can be scaled up as and when additional capacity is required. Why are we not using the Nightingale facilities in places like Manchester and Harrogate to relieve the pressure on hospitals like Blackburn?

**Baroness Evans of Bowes Park (Con):** The NHS Medical Director has made it clear that the NHS has carefully planned to make sure that we can deal with additional demand using, as the noble Lord has rightly said, the mobilisation of the Nightingale hospitals and through partnerships with the independent sector. They will ensure that this is rolled out as and when it is

needed. I am sure that they will be cognisant of the situation in Blackburn and will be monitoring it very carefully.

**Viscount Waverley (CB) [V]:** My Lords, will the noble Baroness kindly clarify further her response to the noble Lord, Lord Newby? Do the Government plan to relax international travel restrictions to allow for air travel over the Christmas and new year period on the proviso that compliance is upheld in the country of destination? More generally, do the Government anticipate accepting negative test results within any 72-hour criteria being allowed towards the proposed five-day criteria when that test has been taken at an overseas clinic?

**Baroness Evans of Bowes Park (Con):** On travel over Christmas under the new tier system, people will be permitted to travel abroad, but those in tier 3 areas are being advised to avoid leaving the area for any reason other than work, education or caring responsibilities. The noble Lord may be aware that from 15 December, passengers arriving in England from countries not featured on the travel corridor list will have the option to take a private test after five days of self-isolation with a negative result, releasing them from the need for self-isolation.

**Baroness Stroud (Con) [V]:** I thank my noble friend for her response on Christmas—that it is a matter for all families to make educated judgments on their own risk. This is a much better way of leading the British people through a crisis. Given that there is strong evidence that infections peaked in the UK in the weeks before the lockdown in March due to voluntary action, in the weeks before the current lockdown nationally, and in most regions across all tiers—1, 2 and 3—due to the changing community perceptions of the virus, what intention do Her Majesty's Government have to pivot to a strategy of public health messaging to improve adherence and enable voluntary, as opposed to mandatory, measures that empower citizens to take responsibility for their own health and the health of their families and communities?

**Baroness Evans of Bowes Park (Con):** Well, I assure my noble friend that the legal consistency of the new tiers—as I said, they are now standardised—will be complemented by targeted communications and public health campaigns to inform and influence behaviours to strengthen the sense of personal responsibility in behaviours that will be important to combat the spread of the virus over the winter, together with using local mass testing programmes, with local knowledge about how to encourage people to use them. All that will lead to the kinds of conversations and messaging that my noble friend talks about.

**Lord Hunt of Kings Heath (Lab):** My Lords, does the noble Baroness agree that the public health campaigns she just referred to need also to be targeted at people over uptake of vaccines? Is she concerned about the rise in anti-vaccine sentiment? A UCL survey recently showed that, while 78% of people were willing to get the vaccine, only half considered themselves "very likely to", with 10% saying that they were "very unlikely to". There is pernicious anti-vaccine sentiment around. What action will the Government take to deal with it?

**Baroness Evans of Bowes Park (Con):** We have a central government unit that will be working on this, but also DCMS is working very closely with social media platforms to help identify false claims, exactly as the noble Lord said, about both the virus and the vaccine and, where necessary, promoting authoritative sources of information in their place. I assure the noble Lord that we are very cognisant of these issues and are working hard to make sure that the rollout of the national vaccination plan is accompanied by a public health strategy and message to make sure that people understand that we will always put the safety of the public first, and that any vaccine that is approved will have gone through an incredibly rigorous process to pass that hurdle, as the noble Lord will well know.

**Baroness Rawlings (Con) [V]:** My Lords, it is very encouraging news that vaccines will be available in 2021—a remarkable feat. We should all congratulate Oxford, which is not only supplying 100 million vaccines to our Government but is doing so on a not-for-profit basis. Is Pfizer, the supplier of the first vaccine to be announced, which is supplying us with 40 million doses, doing so on the same basis? More importantly, deal or no deal, as the Pfizer vaccine is, I believe, coming from Belgium, will there be import duties or tariffs?

**Baroness Evans of Bowes Park (Con):** Well, we have secured more than 40 million doses of the Pfizer vaccine, as my noble friend rightly said, which is enough for about a third of our population, and in total we have secured early access to more than 355 million doses through a portfolio of promising new vaccines—so we are very well placed to take advantage of both the Pfizer and Oxford vaccines, which have now reached the stages they have, and other vaccines that will hopefully follow through on the back of their success.

**Lord Haselhurst (Con) [V]:** As it is very usual for couples, whether or not they have children, but particularly when they do, to split their time at Christmas by visiting in turn the homes of their respective parents, is there any possibility that the grand easing of restrictions will stretch enough to include such behaviour, which is so highly valued by the elderly and the very young alike?

**Baroness Evans of Bowes Park (Con):** As I have said, there was a COBRA meeting this afternoon with the devolved Administrations, and details of the decisions made were released just before we came into the Chamber, so I am afraid the only information I have is the information I provided earlier, which is that between 23 and 27 December up to three households will be able to join together to form an exclusive Christmas bubble.

**Viscount Ridley (Con) [V]:** Does my noble friend agree that all three vaccines are fine examples of the benefits of genetic modification? If she is happy to

[Viscount Ridley]
have them injected into her body, as I am, why do we still not allow the planting of genetically modified potatoes in our fields?

**Baroness Evans of Bowes Park (Con):** I would be very happy to have the vaccine injected into my body. I will let my noble friend eat his genetically modified potatoes, but I look forward to sharing a meal with him once again when he returns to the House once we are through this crisis.

*House adjourned at 7.50 pm.*

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