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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

Questions
Eswatini 1075
Diplomatic Influence Post Brexit 1077
Nuclear Weapons 1081
Energy Prices 1085
Police, Crime, Sentencing and Courts Bill
Report (5th Day) 1088

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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 SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
Lab Co-op	Labour and Co-operative Party
LD	Liberal Democrat
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

No party affiliation is given for Members serving the House in a formal capacity or for the Lords spiritual.

House of Lords

Wednesday 12 January 2022

3 pm

Prayers—read by the Lord Bishop of Gloucester.

Eswatini
Question

3.07 pm

Asked by ***Lord Jordan***

To ask Her Majesty's Government, further to the International Trade Union Confederation (ITUC) report *Holding eSwatini to Account: Assessing the Country's Compliance with the Commonwealth Charter*, published on 5 March 2021, what plans they have to use their position as a member of the Commonwealth Ministerial Action Group to initiate an investigation into potential breaches of the Commonwealth Charter by the government of Eswatini; and what steps they will take to support the implementation of the recommendations in the ITUC report.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, Her Majesty's Government frequently raise concerns about human rights and governance within eSwatini. My colleague, the Minister for Africa, Vicky Ford, recently visited and spoke to the Prime Minister and, at his request, the King about the civil unrest and tackling its underlying causes, many of which were highlighted by the ITUC. The Commonwealth Ministerial Action Group is a confidential forum that subsequently enables discreet engagement by members. I cannot comment on the detail of the action the UK will take as a member of that group.

Lord Jordan (Lab): My Lords, I thank the Minister for his reply. All that has really been achieved are belated promises of dialogue made by the last absolute dictatorship on the African continent, after a year of government repression and killing with no progress on the reforms the protesters are demanding. The intervention by SADC and the Commonwealth Secretariat has been completely ineffective. Will the Minister tell them to toughen up their approach? Will he ensure that the UK's representative in Eswatini engages with the local trade union movement? Will the Minister meet our TUC, which commissioned this damning report, to discuss its recommendations and what the Commonwealth Ministerial Action Group can do to address them?

Lord Ahmad of Wimbledon (Con): My Lords, I am always willing to meet. I will work with the noble Lord to arrange that meeting. On what is happening in country in Eswatini, the noble Lord is quite right to draw attention to the work of the African countries, particularly SADC. As he will know, the President of South Africa, Cyril Ramaphosa, visited and met directly with the King of Eswatini. The three countries involved through SADC are also Commonwealth countries, so we are engaging in a very co-ordinated way. Our ambassador regularly makes representations directly to the Government. I spoke to him only two days ago.

Lord Purvis of Tweed (LD): My Lords, the strength of the ITUC report is that it includes African members of the Commonwealth too. Shortly before the lockdown, I led a CPA UK delegation to Namibia. The Namibian TUC is one of the organisations that has been raising consistent concerns. Can the Minister go a little further about the role of the UK chair-in-office? We currently have a cherished position before the next CHOGM regarding the protection of human rights, freedom of assembly and expression, and media freedom. I know that this is a priority for the Minister. What can we do as chair-in-office as practical action steps, rather than purely dialogue, to emphasise the benefits of the Commonwealth family?

Lord Ahmad of Wimbledon (Con): My Lords, I pay tribute to the work of the noble Lord—he is aware that I very much appreciate his insights on the countries he visits. Specifically on what the Commonwealth can do, CMAG is different from our role as chair-in-office, so that we can provide support and funding for human rights, and have done so. On the specifics in Eswatini, we are also aware of like-minded partners. For example, on the education side, an initiative was taken recently by a trade union within Eswatini and a trade union in South Africa, supported by a trade union in Finland, to provide support and to stand up for justice and the rights of workers.

Lord Collins of Highbury (Lab): My Lords, the Minister just mentioned the position of chair-in-office since the London CHOGM. The London CHOGM achieved quite a lot on significant issues on LGBT rights. One of the sad things in the ITUC's report is the terrible conditions for LGBT people and the fact that the sexual and gender minorities group has been banned. Can the Minister tell us what we are doing to try to ensure that this issue is covered in dialogue?

Lord Ahmad of Wimbledon (Con): My Lords, the noble Lord is right to draw attention to our role as chair-in-office. We put LGBT rights at the heart of our work on human rights within the Commonwealth. I am pleased to share with him that a number of countries, particularly South Africa and Botswana, have made progressive steps on this agenda and they are engaging directly on this issue with the Eswatini Government.

Lord Flight (Con): My Lords, this has clearly become a venal regime. How best might it be removed?

Lord Ahmad of Wimbledon (Con): My Lords, democracy is one way, and all power to the people.

Lord Lea of Crondall (Non-Afl): My Lords, I am very pleased to hear the Minister's agreement to meeting the TUC and the international TUC because this is an excellent report. Does the Minister agree that, given our long history of close association with the people

[Lord Lea of Crondall]
of what people of my generation used to call Swaziland—that is where we are talking about—this would be a good opportunity to encourage local participation in dialogue which could be the main road to a positive outcome?

Lord Ahmad of Wimbledon (Con): My Lords, as it is the preference of the country, I will continue to refer to it as Eswatini. The engagement and the proposal that SADC has put forward are to ensure that all communities are represented. There is a tinkhundla system of government within Eswatini and we need to ensure that local representative voices are leveraged.

Lord Boateng (Lab): My Lords, I served as high commissioner to Eswatini. I do not doubt for one moment the Minister's commitment to the Commonwealth, but can he point to one single thing that this discreet and confidential engagement by the ministerial action group has produced by way of improvements in human rights in Eswatini, Cameroon or anywhere else in the Commonwealth where human rights are daily abused?

Lord Ahmad of Wimbledon (Con): My Lords, there is a lot we have achieved in our role as chair-in-office. The noble Lord will know from his experience in Eswatini that it is right that there is a level of discretion and confidentiality when it comes to discussions within the CMAG group, which he will know well. In this regard, the Commonwealth Secretariat has engaged directly. When you profile issues, such as the abuse of human rights, on an international stage and have representatives of multilateral organisations, such as the Commonwealth, visiting and making the case, it makes a difference. We will continue to act in unison with our Commonwealth partners.

Lord Monks (Lab): My Lords, are the Government considering getting in touch with the International Labour Organization to see what it can do to help in this unsatisfactory situation? Eswatini is a blot on southern Africa in the way that it treats workers' rights.

Lord Ahmad of Wimbledon (Con): My Lords, I can assure the noble Lord that the ILO itself, because of its interests, is already involved in discussions in this respect. I will certainly follow up to see whether it can play a further role when it comes to the issues currently in Eswatini.

Diplomatic Influence Post Brexit

Question

3.15 pm

Asked by ***Lord Balfe***

To ask Her Majesty's Government what assessment they have made of the change in the United Kingdom's diplomatic influence since it ceased to be a participant in the political cooperation meetings of the European Union.

The Minister of State, Department for the Environment, Food and Rural Affairs and Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con): My Lords, we continue to work closely with all our allies, including the EU and European states, to build a network of liberty and tackle shared foreign policy challenges and threats. We do not need to attend formal EU meetings in order to do so effectively. Our recent achievements, including our presidencies of the G7 and COP 26, have shown that we retain significant diplomatic influence, supported by the best diplomats in the world.

Lord Balfe (Con): I thank the Minister for his reply, in which he did not actually deal with the Question: whether we have lost diplomatic influence since we ceased to be a participant in the political co-operation meetings of the European Union. At lunchtime today, the members are meeting in Paris to talk about migration. This evening, the EU Defence Ministers are meeting in Brest. We will be missing from both those meetings. Are we not losing influence?

Lord Goldsmith of Richmond Park (Con): My Lords, I think the opposite is the case, as we have shown over the last couple of years. The UK has exerted extraordinary influence around the world through various fora. At the G7, which we hosted, the UK led the way in underlining members' unwavering commitment to Ukraine's sovereignty and territorial integrity, for example. Last year, the Prime Minister and President Biden signed a new UK-US Atlantic Charter. We established the AUKUS defence partnership and agreed new free trade agreements with both Australia and New Zealand. There are many examples from last year alone where the UK performed globally in a way that I think is almost unprecedented.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, as a corollary to the Question from the noble Lord, Lord Balfe, can I ask the Minister whether there has been a diminution in co-operation or in the sharing of criminal intelligence following the exclusion of British police forces from the various policing institutions in the European Union?

Lord Goldsmith of Richmond Park (Con): My Lords, we have shown that we do not need a separate institutional treaty to work effectively with the EU on foreign policy and security, whether that is co-ordinating on Belarus sanctions or responding jointly to Russian aggression, Iran or anything else. We maintain good diplomatic relations with the European states, which generally share our foreign policy goals on all the big issues of the day.

Lord Purvis of Tweed (LD): In the policy areas the Minister has outlined, we were able to do that while we were a member of the European Union. When I watched the German election night coverage live, there was a home truth for me when I saw Anthony Gardner, former US ambassador to the EU, say that the election was of key importance to the US. He said that Germany is now the leader of the 27, since the UK has left.

We have heard repeatedly that we have left the EU but not Europe, so can the Minister say what European policy areas we are currently leading?

Lord Goldsmith of Richmond Park (Con): My Lords, Germany is an essential ally and one of our most important international partners. The new German coalition Government described the UK as one of Germany's closest partners just a few days ago. Wherever it is in our common interests, the UK works extremely closely with the European Union, as noble Lords would expect, on security, counterterror and a whole range of different issues. The noble Lord asks where in particular we have led in recent months or years. The most obvious area relates to climate change, where we have galvanised the European Union into a position that greatly exceeds the position it held only 12 months ago.

Lord Robathan (Con): Can my noble friend the Minister tell the House what our effective political influence actually was when we attended these political co-operation meetings as a member of the EU? For instance, what was said when we suggested that Nord Stream 2 was not a good idea?

Lord Goldsmith of Richmond Park (Con): The noble Lord makes a really important point. We have always been concerned that Nord Stream 2—it is an obvious thing to say—risks entrenching European energy dependence on Russia and undermining Ukraine's security. The noble Lord raises a broader point, and in the areas where I work in government, particularly in the department for the environment, it is not only the case that we have not lost a seat at the table by leaving the European Union; we have gained a seat at the table. In forums such as CITES, the UK is able to influence votes and actual outcomes in a way that we were never able to before, because we had to pool our voice with a whole bunch of other countries that did not always agree with us.

Baroness Chapman of Darlington (Lab): My Lords, there is a risk here of the Minister sounding complacent. This matters. The prosperity and security of the United Kingdom depend on us having significant diplomatic influence. Surely we must be seen to stick to our agreements. With that in mind, I encourage Ministers to resolve outstanding issues with the EU regarding the Northern Ireland protocol as a matter of urgency. Does the Minister agree that Russia's hostile activity demonstrates our need to facilitate close security partnerships with the EU and our European partners as well as NATO?

Lord Goldsmith of Richmond Park (Con): I certainly do not intend to sound complacent. I simply push back on the idea that the UK has lost influence. All the evidence over the last two years shows that we have extraordinary influence around the world, disproportionate to the size of our country and even to the size of our economy—notwithstanding that we are the fifth biggest economy in the world. However, the noble Baroness is right: post-Brexit relations with the EU remain heavily influenced by the resolution of outstanding exit priorities, principally the Northern Ireland protocol, where talks need to proceed with renewed urgency this month. I have every hope that we will see success at the end of those talks.

Lord Stirrup (CB): My Lords, the Prime Minister has recently appointed a special envoy to the western Balkans. This is a welcome appointment, but what processes and mechanisms will be available to that envoy for co-ordinating with the EU, which has such an important presence on the ground in the western Balkans?

Lord Goldsmith of Richmond Park (Con): As I said, my Lords, we retain good diplomatic relations with European states and share foreign policy goals with them, particularly on issues around Russia, Iran and China and indeed on the issue that the noble and gallant Lord raises. The trade and co-operation agreement provides for future co-operation on emerging security challenges—everything from counterterror to cyber-crime. It also provides for an agreement on security of information that will allow the UK and the EU to exchange classified information on a voluntary basis.

Lord Wallace of Saltaire (LD): I remind the Minister that Lord Carrington and Geoffrey Howe, two of the main architects of the institutions of European foreign policy co-operation, said on many occasions that this was one of the most valuable aspects of our membership of the European Union; that should not be forgotten. It was agreed in the Foreign Office 20 years ago that we could cut our staff in bilateral embassies across Europe because we did so much of the business in Brussels. Has the Foreign Office now accepted that we need to increase substantially our staff in bilateral embassies across Europe, even as the overall diminution in the size of the Diplomatic Service is still under way? We need to increase those bilateral staff if we are to maintain our contacts.

Lord Goldsmith of Richmond Park (Con): In the last decade our diplomatic network has expanded by over 10%, making it the fourth largest global network of embassies and high commissions after China, the US and France. We now oversee one of the world's largest diplomatic networks, with 282 posts covering 179 countries and territories, including 161 embassies or high commissions. In the EU, the Foreign Office has carried out a comprehensive review of resources across Europe to ensure that we have the right staff focused on the right priorities. However, the noble Lord makes an important point that is fully accepted by the Foreign Office.

Lord Hamilton of Epsom (Con): My noble friend Lord Balfe mentioned that we were absent from the EU defence committee that met the other day. How can EU defence come to anything if it does not have serious contributions from the French and the Germans? When we last looked at German defence capability it was ill equipped and ill trained, and this Government seem to be more pacifist than the one they replaced.

Lord Goldsmith of Richmond Park (Con): My Lords, I do not know whether my noble friend is referring to this Government or the French Government. Our

[Lord Goldsmith of Richmond Park]
defence capabilities have been consistently growing over the last few years, as noble Lords will know. As I have said, there is no shortage of dialogue between ourselves, Germany, France and other European powers when it comes to issues of security that are in our common interest.

Lord Watts (Lab): My Lords, the Government seem to believe that the less engagement we have with our European friends, the more influence we have. Surely that is not the case. Now that we have left the European Union, do we not need to find new ways of engaging with our partners in order to look after Britain's interests?

Lord Goldsmith of Richmond Park (Con): My Lords, that is not the Government's view at all. We engage on a very regular basis with our friends and allies across the European Union. It is also worth mentioning the obvious point of NATO. Continental European security is directly linked to UK security. We work closely through NATO, the Joint Expeditionary Force, and bilaterally on counterterror, serious organised crime and illegal migration—a particularly live issue today. As one of only two European nations with truly global military reach, Europe needs our defence and security capability.

Viscount Stansgate (Lab): My Lords, if the United Kingdom's diplomatic influence is as high as the Minister is claiming, why has the UK still not joined the Horizon Europe programme? Our absence from it is damaging to British science.

Lord Goldsmith of Richmond Park (Con): My Lords, I would love to have time to give lots of examples of where we have exerted disproportionate influence over the last year or two. On the specific issue that the noble Viscount raises, we are keen to formalise our association with programmes such as Horizon; we regard that as a win-win for all, so we are disappointed there have been delays from the European Union and I hope we will overcome them.

Nuclear Weapons

Question

3.25 pm

Asked by ***The Lord Bishop of Coventry***

To ask Her Majesty's Government what steps they are taking to reconcile differences between nuclear possessor states and non-nuclear possessor states at the Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, the United Kingdom recognises its responsibilities as a bridge builder among nuclear weapon and non-nuclear weapon states at the 10th review conference on the Treaty on the Non-Proliferation of Nuclear Weapons. To support discussions, we are submitting working papers on transparency, verification and peaceful uses. We will host side events including a joint P5 event on doctrines and policy.

The Lord Bishop of Coventry: I thank the Minister for his response and wholeheartedly welcome the recent P5 affirmation of the Gorbachev-Reagan principle. But in an unstable world where nuclear proliferation is a growing threat and widespread arsenal modernisation is a reality, these words must be backed up by actions—since the grand bargain of the NPT is that non-proliferation can be successful only if pursued in tandem with disarmament. Would the Government consider initiating a P5+ process to allow nuclear weapon states and non-possessor states to work collaboratively on key areas of concern? Mindful of the upcoming TPNW first meeting of states parties, will he explain the strategy for engaging constructively with the concerns underlying the TPNW in preparation for the forthcoming NPT conference in the common cause of disarmament?

Lord Ahmad of Wimbledon (Con): My Lords, within the NPT, as the right reverend Prelate will know, there are three key strands: disarmament, non-proliferation, and the peaceful uses of nuclear energy. Like him, I recognise the importance earlier this month of the P5 declaration. The UK was instrumental in getting that over the line. We are looking forward to the review conference of the NPT, which was unfortunately delayed because of Covid, but I understand it will now take place in August. On the issue of nuclear against non-nuclear states, through the P5 format we are engaging directly with those countries. With the exception of four or five countries, everyone else has signed up to the NPT and we have a structured programme of engagement. On the TPNW specifically, the UK firmly believes that the only way to achieve a world without nuclear weapons is through gradual multilateral disarmament, and the best way to do that is through the NPT.

Lord Collins of Highbury (Lab): Picking up that last point, can the Minister explain how the Government support multilateral disarmament initiatives while announcing in the integrated review an increase in the number of nuclear warheads the UK can hold?

Lord Ahmad of Wimbledon (Con): My Lords, the announcements that we made in that respect are totally consistent with our obligations under the NPT. Specific elements and aspects within the NPT ensure that we meet those obligations. Requirements within the NPT ensure that all countries that have signed up to it fulfil their obligations, and the United Kingdom does just that.

Lord Hannay of Chiswick (CB): My Lords, will the Minister accept how welcome it was that the Government —perhaps a little belatedly—agreed to the P5 statement that

"a nuclear war cannot be won and must never be fought"

which was issued last week? What do the Government intend with regard to the strategic dialogue among the P5 for achieving a reduction in the risk of nuclear war? What is the timetable for further meetings and what content are the Government putting into that dialogue?

Lord Ahmad of Wimbledon (Con): My Lords, first, I do not agree with the noble Lord. The United Kingdom was actually central in its convening role in pushing for the P5 statement and we were delighted that all countries committed. Notwithstanding many of the issues that we debate in your Lordships' House, there needs to be a recognition that all five countries signed up to this, and we take direct encouragement from that. We work in a structured way with other P5 members in relation to other countries. For example, we work closely on issues that are currently under way in Geneva, through the JCPOA discussions on Iran, and on issues around the DPRK to ensure that we focus particularly on the non-proliferation element.

Lord Trefgarne (Con): My Lords, can my noble friend confirm that, every hour of every day and every night, somewhere in the world one of our Trident submarines is on patrol, ready to respond should our supreme national interest so require? And I mean "on patrol", not on the way out or on the way back.

Lord Ahmad of Wimbledon (Con): I am sure that I share with my noble friend and everyone in your Lordships' House a real admiration for all elements of our military, including our naval assets. Of course, I cannot discuss specific operational aspects, but I can say to my noble friend that we have one of the best militaries, and indeed navies, in the world.

Baroness Smith of Newnham (LD): My Lords, the noble Lord, Lord Collins, asked the Minister how he could justify the increase in the number of warheads. He says that that is in line with our commitments under the NPT. If that is the case, what actions are Her Majesty's Government actually taking to look for disarmament? The Minister said that we support multilateral disarmament, yet we seem to be increasing our armaments. So what, in practical terms, are we doing to meet our commitments?

Lord Ahmad of Wimbledon (Con): My Lords, on the specific point about our own capacity, ultimately of course we retain our defensive capacity. Referring back to the P5 statement, it was encouraging that all countries have underlined the importance of the defensive nature of being nuclear states. On specific aspects of what we are doing, we have, for example, recently had discussions with other countries, including the likes of New Zealand, specifically looking at elements of the NPT. We also ensure that we look at issues of disarmament through regular reviews, ensuring that bodies are set up to review the capacity of countries to develop nuclear weapons and ensure that they do not do so. We work together with our P5 partners to ensure that that remains the case.

Lord Campbell of Pittenweem (LD): My Lords, exactly how are the Government proposing to meet the cost of the 40 additional nuclear warheads referred to in the integrated review—or are they to be funded out of the already overstretched defence budget?

Lord Ahmad of Wimbledon (Con): My Lords, on the specifics of that question, I will of course defer to my colleagues at the Ministry of Defence and will write to the noble Lord. But, as he will be aware, in the recent review that took place we increased our defence spending, and that was long overdue.

Lord Alton of Liverpool (CB): My Lords, Nikita Kruschev said that, in the event of a nuclear war, the living would envy the dead. The noble Lord has said that the P5 have rightly said that there should be no first use of nuclear weapons and that this would lead to mutually assured destruction. Having said that, the noble Lord has also referred to rogue states, such as North Korea—the DPRK. Can he tell the House more about its development of hypersonic missiles, its use of submarines and the threats that it is making to its neighbours?

Lord Ahmad of Wimbledon (Con): My Lords, first, on the P5 element, all countries have sustained their position on nuclear weapons being a defensive mechanism —I stress that point again. The noble Lord rightly raised the current issues in the DPRK. It is clear that the missile test that recently took place was in direct contravention of the UN Security Council resolutions, and we are undertaking discussions on that element directly with our UN colleagues.

Lord West of Spithead (Lab): My Lords, would the Minister agree that the reason we have not had a world war since 1945 is nuclear weapons? Would he also agree that we should have some pride that our nation has only one system for nuclear weapons and have reduced them to an absolute minimum—to such a scale that I think we had to say that we would get some more weapons while we were doing a changeover? However, I agree with the noble Lord, Lord Hannay, that we really must get methods of engaging with countries such as Russia because, otherwise, something will go wrong. The nuclear clock is moving towards midnight, and we must really strain ourselves to get links with these countries so that something does not go wrong. There is no doubt that, for example, if we did not have nuclear weapons at all and Russia had them, with Mr Putin there, it would go ahead and do what it wanted. We really have to make that effort.

Lord Ahmad of Wimbledon (Con): My Lords, on the point raised by the noble Lords, Lord Hannay and Lord West, I agree that we must continue to engage. As the Minister for the United Nations, I recognise that where we have issues of disagreement with other nuclear states, including Russia, it is vital that we continue to engage, and we are doing just that. While they are specific not to the nuclear issue but to the wider security situation in Europe and Ukraine, we are today holding meetings through our NATO partners. My colleague, Minister Cleverly, is present. He will meet, among others, the Russian Deputy Foreign Minister to discuss security issues.

On the noble Lord's first point, that nuclear weapons have ensured that we have kept peace in Europe, and on his second, that we have the best forces, my answer to him is yes and yes.

Baroness Bennett of Manor Castle (GP): My Lords, the P5 statement that a nuclear war cannot be won and must never be fought is of course hugely welcome,

[Baroness Bennett of Manor Castle]
but it did not repeat a phrase used in earlier, similar statements that reaffirmed denuclearisation as an "unequivocal undertaking". Does the Minister agree that that is the case?

Lord Ahmad of Wimbledon (Con): My Lords, what I can say to the noble Baroness—and as the noble Lord, Lord West, has pointed out—is that the primary aim of nuclear weapons being in the armoury of any country, including our own, is to be a deterrent. We have achieved that objective, but we must work together as P5 members to ensure the key elements: that for those countries that have nuclear weapons we look towards disarmament and that for those countries that do not have nuclear weapons we look at non-proliferation.

Energy Prices
Question

3.36 pm

Asked by ***Lord Dodds of Duncairn***

To ask Her Majesty's Government what assessment they have made of the impact of rising energy prices on the most vulnerable people in society, and the most effective means of helping them.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, the largest element of gas and electricity bills, which is wholesale costs, has increased significantly. The Government are committed to protecting customers, especially the most vulnerable. Households will continue to be protected through the winter by the price cap and through the warm home discount, winter fuel payment and cold weather payment schemes. A new £500 million household support fund has also been made available to councils to help the most in need over the winter.

Lord Dodds of Duncairn (DUP): My Lords, I thank the Minister for his Answer. We are looking at extraordinarily steep increases in energy prices over a relatively short period, coming on top of already big increases. This is causing real fear and anxiety among vulnerable people, especially the elderly, about the financial severity and hardship to come. So can the Minister go further today and announce new measures that will deal with the immediate crisis that people are facing, especially in the context of other cost-of-living pressures which are coming the way of hard-pressed families and individuals?

Lord Callanan (Con): I totally understand the point that the noble Lord makes. Unfortunately, I am not in a position today to announce further measures, but I can tell him that we are actively engaging with stakeholders and energy companies. The Prime Minister and the Chancellor are in urgent discussions and we hope to announce some action shortly.

Baroness Ritchie of Downpatrick (Lab): My Lords, was it not entirely predictable that there would be a surge in gas prices, and in such circumstances what further work will BEIS and the Government undertake? Why did they not have further plans at the ready to address the situation to help struggling households and to mitigate the impact of deepening fuel poverty as a result of those rising costs, as already referenced by the noble Lord, Lord Dodds?

Lord Callanan (Con): I am not clear what further plans the noble Baroness is referring to, but, as I mentioned, we have a whole series of mitigations in place to protect precisely the people whom she mentioned. For example, the warm home discount scheme has helped millions of people at a cost of several billion pounds, and we will continue with policies such as that to help the most vulnerable.

Lord Howell of Guildford (Con): My Lords, is it appreciated in this drama of exceptionally high prices that the whole process of moving to a decarbonised world and energy transition requires the most careful management of balance between supply and demand? If supply is discouraged or undermined while demand is still rising, we will get again and again the huge, volatile and extremely damaging rise in fuel and power prices that we have now. Is that not the main lesson to be learned from the mess that we are in now?

Lord Callanan (Con): I know that my noble friend, as a former Energy Minister himself, is very experienced in these matters. Of course, the underlying point that he makes is right—but it is a transition that will take place over many years and, in the meantime, there will of course be considerable demand for fossil fuels.

Lord Newby (LD): The Minister has just talked about mitigations that the Government have in place, but those mitigations were inadequate before the price rise that we have seen, and clearly will be completely inadequate in dealing with the huge increases with which vulnerable families will be faced in the next few months. On measures that the Government might take that will require expenditure, have they considered raising the money required by imposing a windfall tax on those oil and gas companies whose profits have soared as prices have soared?

Lord Callanan (Con): There are a number of different policies under consideration but, of course, the situation is never as simple as the noble Lord would have us believe. Many of the North Sea producers over which we would have taxation control have long-term contracts in place at fixed prices to supply wholesalers in the United Kingdom. So it is not clear that there are excessive profits being made—but I am sure that this is something that the Chancellor will want to look at in his review, to see what else we can do in this area.

Baroness Lister of Burtersett (Lab): My Lords, if the Government want to focus any help with the cost of living crisis on those in greatest need, the simplest and fastest way in which to do so is to boost social security. Why are they not proposing such a boost?

Lord Callanan (Con): Let me tell the noble Baroness what we are doing. The winter fuel payment provides all pensioners across Britain with between £100 and

£300 to put toward their fuel bills, which costs £2 billion a year. The cold weather payment provides vulnerable households on qualifying benefits with payments of £25 during periods of cold weather, and the Government have spent £100 million on that. We will continue to spend considerable sums of money to help those most in need.

Lord Hannan of Kingsclere (Con): My Lords, one thing that we have learned over the past 22 months is that government targets sometimes have to be adjusted in the light of circumstance. Would there be a situation in which the Government might reconsider their net-zero timetable; for example, if costs on consumers or taxpayers were disproportionate and if there were a realistic prospect that technological improvement would mean a significant fall in those costs with a deferral?

Lord Callanan (Con): Of course, we want to keep all these things under review but, as my noble friend is well aware, net zero is a legally binding commitment, legislated for by Parliament—and, of course, it is the duty of government to carry out the wishes of Parliament. If a future Parliament or Government wish to reconsider that, I am sure that the Government at the time would want to take full cognisance of that.

Lord Grantchester (Lab): My Lords, we all wish to protect vulnerable households, and there are many support schemes targeting approximately 3 million households. The expected increase in the price cap in April is around £600 per household to a total of £1,865 a year. While the Government continue to dither, Labour has announced costed, detailed plans to reduce the size of the exposure and extend help to more households to limit increases to just £5 a year for the most vulnerable. What target do the Government have in mind to reduce the size of the exposure in the forthcoming price cap rise, to be announced on 7 February?

Lord Callanan (Con): Before I answer the noble Lord's question, I understand that this is his last outing as a member of the Opposition Front Bench. From my point of view, it has been a pleasure sitting opposite him and dealing with his questions and points. I am sure that he will have a lot to contribute to the House from the Back Benches in future, and I certainly wish him well.

Of course, the price cap is a matter for the independent regulator—Ofgem—and we will find out in a couple of weeks' time what it will be. The Government have already announced £500 million for local authorities to support vulnerable householders across the country with essentials, including utility bills. As I said in response to earlier questions, we are looking at what else we can do.

Lord Lilley (Con): When my noble friend considers the impact of higher energy prices, will he bear in mind the fact that, wherever the cost of meeting net-zero targets has become an electoral issue, with the gilets jaunes in France, the elections in Australia and Canada and the municipal elections in the Netherlands, the party opposing higher taxes on energy has won?

Lord Callanan (Con): We have taken careful note of the points that my noble friend has made. I know that we have discussed this in previous debates but, as I said to my noble friend Lord Hannan, net zero is a legally binding commitment that Parliament has placed upon the Government and, as long as that remains the case, that will be the policy of the Government.

Baroness Janke (LD): My Lords, what is the Government's response to the predictions of National Energy Action that children will be forced to do homework in cafés, libraries, the homes of friends and relatives and even A&E departments due to rising energy bills at home? What support will the Government provide to prevent further educational disadvantage to children and young people from poorer homes whose education has already suffered enormously as a result of the pandemic?

Lord Callanan (Con): I outlined in earlier answers the support that we are providing for vulnerable families for their energy bills to do precisely that. As I also said, we are currently engaging with stakeholders and looking to see what else we can do in this area.

Baroness Altmann (Con): My Lords, the winter fuel payment is currently less than it was in 2009, the cold weather payments are the same as they were in 2008, and the warm homes discount—which I agree is an excellent measure—has stayed the same since 2011. Given that the cost of fuel is rising so substantially and also that most of these benefits are available only to those who are claiming pension credit, will the Government now look at urgent measures to increase the take-up of pension credit, which has been stuck at 40% of people not claiming it since 2010? It would be a direct way of getting help to people immediately.

Lord Callanan (Con): My noble friend is asking about social security policy, which, I am sorry to say, is not within my speciality, but I will certainly write to her with details on that. On the warm homes discount, she will of course be aware that we consulted last year on increasing the discount and extending the number of eligible households that would qualify for it. We will be responding to that consultation soon.

Police, Crime, Sentencing and Courts Bill

Report (5th Day)

3.47 pm

Relevant documents: 1st, 2nd, 4th and 6th Reports from the Joint Committee on Human Rights, 6th, 13th and 15th Report from the Delegated Powers Committee, 7th Report from the Constitution Committee

Amendment 103

Moved by ***Baroness Meacher***

103: After Clause 172, insert the following new Clause—

"Restorative justice

The Secretary of State must, every five years—

(a) prepare an action plan on restorative justice for the purpose of improving access, awareness and capacity of restorative justice within the criminal justice system,

(b) publish a copy of the action plan, and

(c) publish a report on progress in implementing the previous action plan."

Baroness Meacher (CB): My Lords, Amendment 103 seeks to ensure that the regular action plans on restorative justice provided by the Ministry of Justice until 2008 be restored and also that they should be published and a report produced on progress on the previous action plan as well. It is a more modest amendment than the one I moved in Committee. At that point, we wanted the Government to produce action plans every three years; we are now talking about every five years, which at least reduces the pressure on the department. The amendment would be an enormous improvement on the complete absence of national leadership on this issue since 2018.

But, first, what is restorative justice? It is an interpersonal approach that enables people who have been a victim of criminal or other harmful behaviour to meet the perpetrator, generally face to face, and others closely involved in the case to ask questions of that perpetrator and express how the incident affected them personally. It also enables perpetrators to express what was going on for them when they committed their crime or whatever they did and also to listen and understand the personal impact of that action, so that something that was a very impersonal action turns into something very personal. That is in fact a very important point.

Restorative justice is very much a voluntary process. No one is forced into it—both the victim and the perpetrator have to want to go through it. It can also go alongside other criminal justice activities or procedures. It is highly cost effective; for every pound spent on it, £8 are saved for the criminal justice system. That seems a very good reason for the Minister to take this amendment very seriously, as I hope he will, albeit I will not press it to a vote.

Why do we need the amendment included in this legislation? Every PCC area in England and Wales has a local restorative justice provider which takes referrals for restorative justice. Youth offending teams have a member of staff who leads on it. The victims' code of practice from 2020 entitles every victim of crime to be informed about restorative justice and have access to it. However, this is simply not happening. The Office for National Statistics data showed, I think in 2020, that only 5% of victims are aware of being told anything about restorative justice at all. I hope the Minister will agree that that really is not satisfactory when these victims have a right to that information.

This problem seems to be driven by a lack of strategic direction from the centre. That is the whole point of this amendment. Also, the Ministry of Justice ceased to provide any funding to PCCs to support these important services. Before introducing the PCSC Bill, the Government published a White Paper highlighting the importance of restorative justice:

"We believe restorative justice is an important part of the justice system and has significant benefits both for the victim and for the rehabilitation of offenders."

That is absolutely right. We know that reoffending drops by 14% if people have been involved in restorative justice. That is where the £8 saving for every £1 spent comes from. The White Paper went on to refer to opportunities to increase the use of restorative justice by using deferred sentencing and setting restorative conditions as part of out-of-court disposals.

Despite all this, restorative justice has been absent from the Bill. Can the Minister explain why it was promoted in the White Paper but does not feature in the Bill? I hope he will want to put this right. The amendment is relatively minor in its impact on the Ministry of Justice, yet it could have really far-reaching impacts, both for victims and for perpetrators. I hope the Minister will look favourably on Amendment 103.

Lord Cormack (Con): My Lords, I made a very brief reference to restorative justice in one of our debates on Monday. I am glad to have an opportunity to comment briefly on the amendment just moved by the noble Baroness, Lady Meacher. I agree with her wholeheartedly. We should always do everything we can to keep people out of prison; to repeat myself from Monday, although sending people to prison is the punishment and the aim is rehabilitation, it does not always work like that. I know that from experience in my former constituency, which had a very large prison—Featherstone—and a young offender institution at Brinsford just a mile or so away. I believe a lot of the young people in Brinsford would have benefited enormously by not going to prison and would have benefited from restorative justice.

I became totally convinced in this view when I had the privilege to be the chairman of the Northern Ireland Affairs Committee for the last of my Parliaments in the other place, 2005 to 2010. I saw at first hand the effect of restorative justice in Northern Ireland, and a lot of young people who would perhaps have gone on to a long life of crime were rehabilitated and came to terms with their victims. As the noble Baroness said, there has to be agreement from both sides, as it were, but it was wholly beneficial in a vast number of cases.

Following the White Paper to which the noble Baroness, Lady Meacher, referred, it seems very strange indeed that there is no provision or recognition in the fairly massive Bill before us. One of my criticisms of the Bill is that it is too long. It should be three Bills rather than one—but that is another story and we have touched on that in the past. But although the noble Baroness, Lady Meacher, said that she will not press this to a Division—I do not dissent from her on that—I hope nevertheless that my noble friend the Minister will be able to make some favourable and encouraging comments about the importance of restorative justice and its place in the criminal justice system.

Lord Hodgson of Astley Abbotts (Con): My Lords, I intervene to express my support for this modest but worthwhile amendment and, like my noble friend Lord Cormack, to urge my noble friend the Minister to give a sympathetic response when he winds up in a moment or two.

I have had an interest in RJ—restorative justice—for a number of years. In particular, I have followed the work of Why Me?, which has briefed us on the debate

this afternoon. My noble friend the Minister will be aware of my concern, which I know is shared across the House, about the levels of reoffending, which seem a reproach to us all: a moral reproach, a societal reproach, a financial reproach—you name it. This high rate of reoffending is not a new problem; it has bedevilled our society and our prison system for many years.

It is said that the definition of stupidity is doing the same thing over and over again and expecting different results. That seems to be one of the positions we have got to with regard to trying new ideas which may—maybe at the margin—help cut the underlying reoffending rate. I am sure we need to try a new approach, or new approaches. To use the cricketing analogy, if I may, in light of the results of the test match in Australia, we need to change the bowling—

A noble Lord: It is the batting.

Lord Hodgson of Astley Abbotts (Con): Well, shall we change them both? I think changing the batting is a fair comment.

My noble friend and I have had one go round on reoffending over the bunching of Friday prisoners, and we now have a situation where three-sevenths of all prisoners released come out on a Friday, with all the problems of the weekend. We discussed this at some length. It was a cost-free option being put forward from across the House, but my noble friend could not accept it—though he has offered us, and has committed to, a consultation process as part of the prisons White Paper. But we are therefore in a holding pattern now for two or three years, doing the same thing over and over again and expecting different results, because it will be two or three years before we can find a place in a Bill for that measure.

With Amendment 103 on RJ, we have a chance to change the batting and try a different approach. I absolutely accept and I agree with the noble Baroness, Lady Meacher, that it is not a silver bullet. It is not, by any manner of means, cost-free, because it requires very careful handling by trained staff and, as she said, it works only where both parties, particularly the perpetrator, have a moral commitment to making it work. Obviously, there are also touchy-feely aspects, which can be ridiculed in the media.

However, as the noble Baroness said, where it works, its results are remarkable, and remarkable in one unique sense. The victim can begin to understand how they found themselves in this difficult position when they see how the life chances of the perpetrator were so badly damaged. One of the problems in crime is that the victim finds that their life is ruined, but this can enable them to mend their life because they see that the perpetrator has had poor life chances and is now wishing to make amends.

4 pm

This is a modest amendment, merely preparing, as the noble Baroness said, an action plan with plans to follow it up. My noble friend has produced his *Prisons Strategy*, but a paper with "strategy" in the title always worries me because it looks like an overarching result—a sort of deus ex machina which will put the whole problem to bed. In my experience of the human condition, it very rarely results in that. Particularly with prisons and reoffending, results are likely to come about inch by inch, with hard yards of trying things, some which fail and some which succeed, and building on success. I would like us to do something different—something incremental. Let us stop doing the same thing over and over again; we are really not that stupid.

Baroness Jones of Moulsecoomb (GP): My Lords, it is a pleasure to follow the noble Lords, Lord Cormack and Lord Hodgson, and to agree with what they say. I support this amendment very strongly and I regret that we will not vote on it, because this is so important for justice. At the moment, justice just means taking something away from everyone instead of trying to add things back, both to all the people involved but also to society. Crime has to be seen partly as the result of a broken society; this is what it indicates. It cannot only be addressed—and it certainly cannot be fixed—by policing and punishment. There has to be something more that adds back and enriches us.

Effective restorative justice deals constructively with both the victim and the offender. The primary aim has to be to restore and improve the position of the victim and the community by the offender making amends. It recognises that a person convicted of a crime has the ability to improve the community. We do not at the moment employ restorative justice; we focus instead on punishing the offender, which means more prisons, more stress and more degradation in our society. Therefore, I regret that we will not vote on this, because it is a very important move.

Lord Ramsbotham (CB): My Lords, I rise to strongly support this amendment, which was so ably introduced by my noble friend Lady Meacher, particularly if it is matched by a strong commitment to restorative justice among all sections of Her Majesty's Prison and Probation Service, particularly prison governors. I have witnessed an unfortunate case in which a governor admitted to me that none of the recommendations of the very good police officer who was chairing the conference could be provided by the prison concerned, to the detriment of the whole process.

Lord Sentamu (CB): My Lords, I too support this amendment. It asks the Secretary of State to prepare an action plan and to show how it is being implemented or otherwise, so it is not asking that which is beyond common sense.

I take your Lordships back to the Truth and Reconciliation Commission in South Africa, chaired by Archbishop Desmond Tutu. In front of him is a police officer who was responsible for setting alight a young man. The young man dies and the mother comes, and all that is left is just ash—the body is gone. Desmond Tutu asks, not the person who committed the crime but the mother: "What do you want to say to him?" The mother says, "I lost my son. In the light of what you have been saying to us about the need to address the maladies that have happened and to reconcile people, I say this. I have a broken heart; I lost my son. I want to take this police officer to the place where my son was burnt alive. When we have gone there and have actually touched the earth, I will adopt him as my son, because I no longer have a son." Desmond Tutu

[LORD SENTAMU]
broke down in tears. They go to the place where this had happened, and the mother takes in that police officer as her own son. That is the effect of restorative justice. It never asks the question: "Who has done this? What punishment do they deserve?" It asks the question: "Now that this rather unhappy fact has happened, what are we going to do about it?"

For nearly 20 years I have been lecturing all over the world on restorative justice. In this country, at an international conference gathered by the Bar Council, we had a great debate and discussion; but unfortunately, although we talk about restorative justice, in the light of our criminal justice system we really do not give a major role to what Desmond Tutu's Truth and Reconciliation Commission did. Had it not been for restorative justice, a lot of people would have been revenging for what had happened. They were very angry and wanted to lock people away and throw away the key, but because of that mission and Desmond Tutu believing that, without forgiveness, there can be no peace—and that forgiveness is a consequence of restoration; it does not come out of nowhere—South Africa, where many people committed terrible, awful crimes, continued to live in peace.

I know that we will not be voting on this amendment, but somewhere, we must find words that express what the noble Baroness has put before us, because if there is no restoration of the relationships that have been fractured by a crime, you just think that that is it. After a big victory in a battle, George Washington started befriending the people fighting on the other side. Those on his side said to him, "Why do you want them to be your friends?" He said, "Well, if they don't become my friends, they will still be protesting. The only way to overcome an enemy is to make them your friend; then, they stop protesting."

There are so many people in our country for whom crimes have caused untold difficulty—take the Stephen Lawrence murder. It would have been good if some kind of restorative justice had happened. Neville Lawrence says, "Those five young men did a terrible thing to my son, but I have now realised that if I continue to be angry, it is me who is being destroyed." Unfortunately, he is not being given the opportunity to go through the restorative justice process. I support the amendment.

Lord Laming (CB): My Lords, perhaps I may make three quick points in support of this important amendment. First, we all accept that short sentences are extremely expensive to manage and expensive to our society, and we ought to do our best to provide alternatives to them. They are also expensive in other ways because they introduce often naive offenders to much more serious crime. Secondly, short sentences are extremely disruptive to the individual concerned. They often lose whatever jobs they have and a whole range of things that are important in their life. Thirdly, restorative justice is a learning experience. Would that there were other parts of the criminal justice system that I could say with confidence were a learning experience.

Restorative justice is the opportunity for an offender to reflect carefully on what has happened as a result of their behaviour and on why it is important that they learn from that experience and change their way of life. This is an important amendment that I hope the Government will take seriously.

Lord Paddick (LD): My Lords, I remind the House that at one stage in my police career I was the lead for the Metropolitan Police on restorative justice, working with Professor Larry Sherman. The evidence from that experience and other academic studies shows that the benefits to victims, in terms of allaying fear and victim satisfaction, and to perpetrators, in terms of engagement with the criminal justice process, and by being confronted, as the noble Lord, Lord Laming, has just said, by their offending behaviour, and in terms of reducing recidivism, are unequivocal.

The only objection to the amendment would be political, because restorative justice is wrongly perceived by those who do not understand the process as going soft on offenders; it is the opposite. I agree with the noble Lord, Lord Laming, about short sentences. However, on the point made by the noble Lord, Lord Cormack, it does not necessarily have to be an alternative to prison in very serious cases. The important outcomes are victim satisfaction and the offender having to confront their offending behaviour.

The Minister may argue that people get a long time in prison in which to reflect on their wrongdoing. However, a colleague of mine did some research on street robbery and went to a young offenders' institution to interview those who had been convicted and incarcerated for that offence. Many of those he spoke to did not understand why they were in the young offenders' institution. The process was so detached from them—they just sat at the back of the court while other people spoke and dealt with the case, without their involvement at all. They genuinely did not understand why they were in prison. That is why restorative justice is important.

The question is: are the Government going to be led by the evidence and support this amendment, or are they going to object to it, based on misconceptions?

Lord Ponsonby of Shulbrede (Lab): My Lords, I, too, support the amendment. It is modest and worth while, and is another step down the road.

I remember that the noble Lord, Lord McNally, introduced the phrase restorative justice into the statute book. I cannot remember which piece of legislation it was but at that point he spoke perceptively when he said that it was going to be a long road to get restorative justice embedded within the criminal justice system, whether in terms of probation, YOTs or prison. He was right and the necessity for the amendment proves that because the noble Baroness, Lady Meacher, gave a number of examples, including where the funding or initiatives have stalled and the momentum with restorative justice has been lost. From memory, the initial introduction of restorative justice was through a separate funding stream for YOTs to use these programmes. So I very much support the amendment. It needs constant activity and oversight by a Minister to get the restorative justice programmes embedded in the system as a whole.

One reason why what I am saying is perhaps more relevant than what some noble Lords have said is that I have some scepticism on the issue. I am happy to

have a cup of tea with the noble Baroness, Lady Meacher, to express my scepticism. While I support the amendment, it requires a long-term programme, and it is for the Government to make sure that that programme is implemented.

4.15 pm

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Wolfson of Tredegar) (Con): My Lords, I am pleased that the noble Baroness, Lady Meacher, is able to be with us this afternoon—and in good health, I hope—having been unavoidably detained during the debate in Committee. It is good to have been able to hear from her directly on an issue that is of evident interest to a number of Members of your Lordships' House. I have listened carefully to the points made by everyone, including the noble Baroness, Lady Jones of Moulsecoomb, the noble Lords, Lord Ramsbotham and Lord Laming, the noble and right reverend Lord, Lord Sentamu, my Front Bench colleagues and others to whom I will come.

I hear and feel the mood of the House and the noble Lords who spoke in support of the amendment. I also heard my noble friends Lord Cormack and Lord Hodgson of Astley Abbotts ask for some favourable and encouraging comments from me. The truth is that I do not really need any persuading on the importance and use of restorative justice. I agree that, in the right circumstances, it can certainly have far-reaching benefits.

Indeed, since we discussed this in Committee, I have spoken at the Council of Europe Justice Ministers meeting, which was specifically about restorative justice. On the upside, the meeting was held in Venice; on the downside, I had to appear virtually. Despite that, I was pleased to welcome the declaration on restorative justice made by that meeting. I talked about our history in the UK of exploring and embedding the appropriate use of restorative justice across the criminal justice system. The Venice declaration calls for the sharing of knowledge, best practice and scientific research on restorative justice. We are committed to playing our full part in this.

Turning to the amendment, it seems to be intended to address a concern that the Bill does not include provision for restorative justice by requiring the Secretary of State to publish an action plan every five years. As I explained in Committee, restorative justice is not just communication between victim and perpetrator. We consider that the concept of restorative justice extends to other parts of the Bill in the sense that we now have a new system for out-of-court disposals because the conditions attached to those disposals again provide an opportunity for intervention and support for offenders and appropriate input from the victim of the crime.

The new statutory two-tier framework replaces the current adult out-of-court disposal options. There must be conditions attached to both of the new proposed cautions, fulfilling one of three objectives: rehabilitation, reparation or punishment. These provide an opportunity for intervention and support for offenders. A restorative justice referral could also be an appropriate condition of a caution where the victim and offender agree to this.

I agree with my noble friend Lord Cormack that we should divert people from prison where we can; indeed, that is part of the Sentencing Code. I also agree with the noble Lord, Lord Paddick, that prison and restorative justice are not necessarily—I emphasise "necessarily"—alternatives. I remind the noble Baroness, Lady Meacher, that, so far as the sentencing White Paper is concerned, the Bill provides for the greater use of deferred sentencing; this also provides opportunities for restorative justice in the deferred sentencing process.

Over and above that, we are concerned that victims know about restorative justice. Under the victims' code, they now have the right to be provided with information about restorative justice and how to access restorative justice services in their local area. We continue to provide funding to PCCs to provide support services for victims of crime, which include restorative justice as well.

On 9 December, we launched a consultation, "Delivering Justice for Victims", the first step towards what we hope will be a landmark victims' law—a Bill which will build on the foundations of the victims' code to substantially improve the victim's experience of the criminal justice system. We propose to place the key principles of the code in primary legislation and are considering the roles and duties of PCCs in relation to victims. However, to repeat a point that I made in Committee—I think that it was also the point that the noble Lord, Lord Ponsonby of Shulbrede, was reaching for—restorative justice is not always appropriate. For some more serious types of offending, it may not be appropriate. The welfare of the victim must always be paramount. I am thinking of some sexual violence and rape cases. We should not have an exhaustive list—even for those cases it is a case-by-case basis—but there will be cases where restorative justice would be unfair on the victim. The victim must always consent but should never feel forced into a process that they are not 100% comfortable with.

The probation service is also working on a new framework for restorative justice, to ensure a more consistent approach, focusing on the people for whom it will make the biggest difference. Having said that, the broad policy aim is that all victims can, if they wish, take part in restorative justice at a time that is right for them. Again, restorative justice does not have to be immediately at the sentencing date. It could be months or even years in the future. It is not a one-time-only option.

It remains the case that we are working very hard in this area. We share the aims and ambitions of the noble Baroness. The evidence base for restorative justice exists. Services are available. Victims should and will be made aware more clearly of their availability. However, requiring rolling action plans will simply create an unnecessary and overly bureaucratic burden. It will cost a lot more without any concrete benefit.

I support restorative justice in principle. I hope that is crystal clear. I cannot promise my noble friend Lord Hodgson of Astley Abbotts that we will see restorative justice, or any other form of justice tempered with mercy, from the Australian cricket team, but that lies well outside my capabilities. So far as the amendment is concerned, with a strong endorsement of the principles of restorative justice, I invite the noble Baroness to withdraw it.

Lord Paddick (LD): My Lords, the Minister seemed to suggest that, in any form of restorative justice, a victim might be compelled or forced to engage in the process. I think that is what he said. Can he reassure me that it was not?

Lord Wolfson of Tredegar (Con): I was saying absolutely the opposite and, if it came out wrong, it came out wrong. The whole point of restorative justice is that the offender and the victim have to consent. That is the point which I was making about crimes of sexual violence. The victim there should not feel under any compulsion or pressure to engage in restorative justice if they do not want to. Victim choice and free-will participation is at the heart of restorative justice. I hope that I have made that very clear.

Baroness Meacher (CB): My Lords, I thank the Minister for the warm and encouraging words that we were asking for. Unfortunately, they do not give us any reassurance that there will be a restoration of some sort of national leadership on this issue. As I explained in my brief comments, this is what is missing and why restorative justice is languishing. He said that victims should have access to restorative justice, which is very difficult when only 5% of them are aware of being told about it. There is a major issue of lack of information, lack of understanding and lack of national leadership. This was a small suggestion to put these things right and I very much regret that the Government will not take it on. Having said that, of course I will withdraw my amendment.

Amendment 103 withdrawn.

Amendment 104

Moved by ***Lord Marks of Henley-on-Thames***

104: After Clause 172, insert the following new Clause—

"Royal Commission on criminal sentencing

(1) Within six months of the passing of this Act, the Secretary of State must establish a Royal Commission to carry out a full review of criminal sentencing.

(2) In particular the Commission must make recommendations on—

(a) how to reduce the prison population;

(b) how to reduce violence and overcrowding in prisons;

(c) addressing the particular needs of young people in custody;

(d) addressing the particular needs of women in custody;

(e) how to ensure that sentencing for offences is focussed upon reform and rehabilitation of offenders and reducing reoffending;

(f) how to reduce the over-representation of people from Black, Asian and minority ethnic backgrounds in prison;

(g) the imposition and management of non-custodial sentences; and

(h) the abolition of some mandatory or minimum prison sentences."

Member's explanatory statement

This amendment would establish a Royal Commission to review criminal sentencing.

Lord Marks of Henley-on-Thames (LD): My Lords, this amendment seeks the establishment of a royal commission to carry out a full review of criminal sentencing. The urgent need for such a review arises in particular because this Bill continues and worsens an alarming trend towards sending offenders to prison for ever-longer periods. These Benches have consistently argued that we need to reduce the prison population, not increase it. This country imprisons more people than any other in western Europe, without any evidence that there is more criminality here than elsewhere or that prison works.

As has been said repeatedly in our debates, we have seen our prison estate fall into disgraceful disrepair. Gross overcrowding is standard and, although the Government are committed to providing more new prison places, the increase in prisoner numbers to be expected from longer prison sentences threatens to use up all that extra space. In any case, the new space will not become available for some time. Meanwhile, the overcrowding and squalor get worse.

Understaffing means that prisoners are stuck in their overcrowded cells for very long periods, bored, fractious and angry without relief. Even though recruitment levels aim to increase staffing, it is by nowhere near enough to do more than relieve a little of the pressure, without improving the overall standards of welfare in our prisons. All this breeds violence, of which we have seen appalling levels over recent years. Lack of opportunities for education, work and recreation, attributable at least in part to the lack of staff to deliver them, has made all this worse, so there has been little progress on rehabilitation.

Against this background, the Bill will introduce minimum sentences, longer sentences and later release dates. All this will fuel sentence inflation because, unsurprisingly, sentences will seek to ensure some kind of fairness in comparisons between them across the board, causing them to rise generally. The Bill will have a far more far-reaching effect on sentences than even its draconian provisions suggest. Yet, in our consideration of the Bill to date, we have been unable to deflect the Government from this unswerving and one-sided course. There is little in the Bill about community sentences, rehabilitation, the role of the probation services, or keeping people out of the criminal justice system or altogether out of custody. That is why we need an overall review of sentencing: to consider the topics mentioned in proposed new subsection (2) in the amendment.

So far, I have concentrated on reducing the prison population and reducing violence and overcrowding in prisons, but the other topics crying out for review include: addressing the needs of young people and women in custody; reducing the effect of what is undoubtedly an in-built discrimination against people of minority-ethnic backgrounds within the criminal justice system; keeping people generally out of custody where possible; and refocusing custodial sentences on rehabilitation and reform, not just keeping prisoners locked away from the public to address the perceived threat they present. This is not least because, in fact, the threat they present on release is exacerbated by the appalling conditions in which we incarcerate them. In short, we need to redress the manifest and politically driven imbalance inherent in this legislation.

The Government's position and their answer to our criticisms were expressed in Committee. I am grateful to the Minister for meeting me last Friday and for his comprehensive email to me last weekend, setting out the Government's perspective on this and other matters. The Government maintain that their intention in the Bill is to introduce a range of measures aimed at the most serious and dangerous offenders. However, they maintain that this is offset by an intention to focus, at the other end of the spectrum, on community sentencing measures aimed at diverting low-level offenders away from crime, addressing issues of mental health, drug and alcohol abuse, and making more use of electronic monitoring or problem-solving approaches.

4.30 pm

That would all be very welcome if it were delivered, and we do take heart from the reform of the probation services, or at least the reversal of the ill-fated Grayling measures, which did so much damage to them. However, frankly, we have heard it all before. Over many years we have been promised concentration on rehabilitation, more resources for the Prison Service and better conditions. Yet the response is this Bill, so our concern remains about the lack of balance.

The Government seem to be set on a course that will increase the prison population and sentence inflation without concentrating significantly on cutting reoffending through helping offenders to avoid crime, thereby achieving an overall reduction in the levels of crime and its huge social and economic costs for society. That is why we need an independent and serious royal commission on criminal sentencing. Such a commission would focus government and public attention on the great deal of real, hard evidence that there is about the ineffectiveness of long prison sentences, and the need for a new, rebalanced, humane and evidence-based approach to using the criminal justice system to cut reoffending through rehabilitation and reform. I beg to move.

Lord Thomas of Cwmgiedd (CB): I will speak briefly in support of this amendment. There are five reasons for my support.

First, the debates on this Bill have shown the enormous disparity of views that can be expressed about sentencing. We have ranged from restorative justice, which I warmly support, to long prison sentences. We need to look at it in whole and strategically.

Secondly, the Sentencing Code shows how complicated the system we have devised is. It needs simplification so that people can understand the system better.

Thirdly—and this is a point on which I have found Her Majesty's Treasury more enlightened than many—are we getting value for money? I doubt whether the present system is delivering value for money.

Fourthly, a royal commission in itself is value for money. It is certainly far better value for money than management consultants, who are often deployed to look at these issues.

Finally, the time is right. I see no reason why we cannot take a comprehensive and strategic view of where we are going. I have expressed no views on what the outcome should be; I am interested solely in the mechanism of getting a strategic approach that simplifies sentencing and delivers value for money.

Lord Beith (LD): My Lords, I agree with all the arguments my noble friend brought forward for having an overall look at sentencing and how it operates, and how that needs to be done at arm's length from government. I will simply add two questions to the list he created, which the noble and learned Lord just very helpfully added to.

The first question is: can we find a way in which society can assert its abhorrence at various kinds and levels of criminality that does not automatically increase the amount of time people spend in prison, or the amount of money we as a society spend on prison? Sentences are often used as ways of indicating, quite necessarily, that society will not stand for crimes of various kinds, but simply spending a lot of money keeping someone in prison, feeding them for the next decade or two, is not necessarily a cost-effective way to achieve that.

That leads me to my second point. Prison commands resources. It does so automatically. The impact statement for this Bill indicates that the Government anticipate that 300 more prison places will be required by the measures in the Bill, quite apart from all the other factors, leading us to spend more money on prisons. We have to ask: is that a good use of money for the purpose of preventing further crime?

Very interesting discussions took place in the US, particularly in Texas, in which the lead in changing the approach was taken by some of those on the Republican side, who said, "This is the taxpayer's dollar, and it's our responsibility to spend it efficiently and effectively." In our country, it is our responsibility to spend the taxpayer's pound efficiently and effectively to achieve the reductions in crime that taxpayers would like to see. Pouring money into more and more prison places is not demonstrably a way of achieving that objective, and we ought at least to look at how it might be done differently.

The Lord Bishop of Gloucester: My Lords, I fully support the amendment. Sometimes I feel a bit as if I am in "Groundhog Day" as we listen to things that are said again and again. When we first discussed the Bill in this House, many people far more learned than me commented on all the issues with the Bill and the fact that so much of it is piecemeal—that we are trying to put sticking plasters over things without looking at the issues holistically and without looking at evidence. So much of it seems to be a reaction—often to populist headlines, let us be honest. There is so much evidence that we are not looking at, and so much of what we are discussing is not backed up by the evidence.

For that reason, I warmly recommend taking a holistic look at what we are doing, why people end up in prison in the first place, what we are doing when we sentence people, what is going on in our prisons and what it means for when people come out through the gate. As has been said, even if people are utterly callous and care only about finance, what we are doing at the moment makes no financial sense whatsoever. I wholeheartedly applaud this amendment.

Baroness Jones of Moulsecoomb (GP): My Lords, I also support the amendment. The noble Lord, Lord Marks of Henley-on-Thames, has given us an opportunity

[Baroness Jones of Moulsecoomb]
to make things a lot better. During that quite irritable debate two days ago—I was irritable, anyway, and I think people got irritable with me—on this policing Bill, it struck me that we just should not have as many women in prison. Some of the things that women go to prison for are ridiculous. It costs a lot of money; it disrupts lives, especially for the women, their children and their support networks; and there is an opportunity cost when compared to the opportunities that we should be providing via rehabilitation and reintegration. Women go to prison for things like not paying their TV licence or their council tax, and that really should not happen. It is hugely disruptive, the cost of doing so exceeds the unpaid debt many times over, and lives are ruined.

For the vast majority of women in the criminal justice system, solutions within the community are much more appropriate. Community sentences could be designed to take account of women's particular vulnerabilities and their domestic and childcare commitments. Existing women's prisons should be replaced by suitable, geographically-dispersed, small multifunctional custodial centres. More supported accommodation should be provided for women on release in order to break the cycle of offending and custody. Prisoners should have improved access to meaningful activities, particularly real work, education and artistic and creative facilities. And, of course, all prisoners should be able to attain levels of literacy sufficient to allow them to function effectively in modern society.

That all seems so obvious, but it does not happen at the moment because this Government are obsessed with being "tough on crime". What does that mean? If it means sending more and more people to prison then it is a very disruptive and damaging way of handling the problem of crime. A royal commission seems an incredibly sensible way forward just to rethink the way in which we handle prisons, prisoners, crime and, in particular, women in prison who really ought not to be there.

Lord Brown of Eaton-under-Heywood (CB): My Lords, I too support this proposal. The objectives set out in each of the paragraphs (a) to (h) of proposed subsection (2) of the amendment are plainly and urgently needed. It should not be necessary to establish a royal commission to focus on, pursue and achieve these objectives, but plainly it is necessary. These deficiencies have been identified, recognised and discussed for years but, as for getting anywhere in terms of achievement—on the contrary.

The main parties on both sides of the House, not least this Government, seem ever more intent on winning the law and order vote. Sentences are being increased; minimum and mandatory terms are being imposed. We now need the impetus, the force, of no less than a royal commission to start to recognise the intense problems of our whole penal system and to start to set the matter right.

Lord Macdonald of River Glaven (CB): My Lords, I do not regard the United Kingdom's place at the top of the incarceration league table for western European countries as a badge of honour. It seems to me that this fact in itself calls for a broad strategic view of how sentencing is working in this country and why it is that we send so many more people to prison than other countries do.

One of the issues seems to be that criminal justice, particularly sentencing, has become a political football. A sort of auction has been going on between the main political parties over the last 20 years or so to discover who can present themselves as the toughest on this issue. I do not mean to minimise the effect of crime on victims or on society as a whole, but short sentences in particular are surely counterproductive. The best way to school a young man in crime and anti-social behaviour is to send him to prison for three or six months.

It seems to me that one of the great possible achievements of a royal commission would be to take some of the political sting out of this issue and to inject some rationality and even some science into it. I strongly support the amendment.

Lord Bach (Lab): My Lords, may I ask the Minister a question? A few years ago, when I was a police and crime commissioner, it came across our desk a lot that it was government policy to have a royal commission on the criminal justice system. What has happened to that proposal? Is it still there? Is it still the Government's hope to do that? If it was, I would be very much in support of it. If it is not, I very much support the amendment that the noble Lord, Lord Marks, has moved.

Baroness Fox of Buckley (Non-Afl): My Lords, I have thought long and hard about this amendment, and I am still torn about it. The other evening, in that rather fractious discussion about trans prisoners in women's prisons, the Minister rather took me up on my quotes from Twitter, as though I was using Twitter as hardcore evidence, which I was not. He made a valuable point, because he said that putting management and protection first was what was done, rather than following public opinion or what was on Twitter or anywhere else. I have some regard for that. In fact, I had made the same point to the Minister in relation to Harper's law at the beginning of this Report stage, when I said that sentencing should not be a consequence of an outraged public reaction to something, a campaign or what have you. I would rather feel that sentencing was decided in the cold light of day, much more rationally, and so on. I worry about knee-jerk legislation.

I suppose I want to ask a couple of questions, of both the Minister and the mover of the amendment. Sentencing often seems subject to caricature on both sides. People are caricatured as bleeding-heart liberals who want everybody to be let out of prison, and anyone who is concerned about increasing sentencing is caricatured as "lock them up and throw away the key". It seems to me that there needs to be some relationship between sentencing and the public and their views about it, but we do not want it to be arbitrary and reactive.

So, in that sense, I was very positive about the notion of a royal commission that could look at this in the round, take it away from the political world in some ways and allow, if you want, a more rational and considered public debate, as well as a commission looking at it in detail. That seemed to me to be a way forward.

4.45 pm

But I was rather concerned by the way that the amendment was framed with a particular view of sentencing—one that I might well share, by the way, because I am at heart a bleeding-heart liberal myself—

Noble Lords: Oh!

Baroness Fox of Buckley (Non-Afl): I know that some may be shocked. I actually worry a lot about prison reform, authoritarian tendencies and prison being used as an answer to all problems. There are a lot of draconian aspects of the Bill—the threat of jail for protesters, for example, which we are about to discuss—and all these things concern me.

However, I would not want a royal commission to be there to endorse what I or the movers of the amendment want. Therefore, a long list of things that are wrong with long sentences does not seem to be the basis of a royal commission—I would want it to look at sentencing without prejudice and bearing in mind public concerns about safety. It is absolutely the case that, despite my liberal qualms, there are times when people should probably be locked up for longer—but the prisons should then be reformed to make them more humane while you are in them for longer.

Lord Cormack (Con): Well, my Lords, I had never really thought of the noble Baroness as a bleeding-heart liberal, but we all come in different guises, depending upon the subject. I find myself very taken by many of the points made by the noble Lord, Lord Marks of Henley-on-Thames, and by many others who have long been learned in the law.

I spoke to my noble friend the Minister after what the noble Baroness referred to as the slightly fractious debate on Monday. Funnily enough, I said to him that I thought that a royal commission would be a good way—better than an amendment to a Bill—to look at the issue that we were discussing: women in prison. Of course, this provision in the amendment moved by the noble Lord, Lord Marks of Henley-on-Thames, could be incorporated.

On balance, I would favour a royal commission on the criminal justice system. I do not suppose that the noble Lord would be particularly opposed to that, rather than the specific amendment that he is moving today. But we need to look at these things because—coming back to a point made on Monday and today—we are failing in our criminal justice system because there is far too much recidivism and far too many lives are not amended and rehabilitated but further broken and eroded by spending time in prison. We have not got the balance right.

I have always been opposed to the simplistic view sometimes expressed, not by bleeding-heart liberals like the noble Baroness but by some on my own side: "Lock them up and keep them in." That is no way to tackle things. So, although I would understand if, in responding to this debate, my noble friend the Minister said that he could not accept this amendment, I nevertheless strongly appeal to him on the Floor of the House, as I have privately, to consider very carefully the merits of a royal commission on the criminal justice system.

It can do no harm. We all remember Harold Wilson on royal commissions—they sit for years and take minutes—but that is not necessarily what royal commissions do. They can be given a timeframe or asked to report back within a certain period. If, by chance, my noble friend is not able to give the positive response I hope he might, we have many in your Lordships' House who are indeed learned in the law, and this might be an ideal subject for one of the special committees that we set up each year in your Lordships' House. It would have perhaps the most distinguished membership of any such committee ever established and I am sure it could make a powerful report, but I would still favour the royal commission approach. I hope that when my noble friend comes to respond, he will be able to give us some encouragement.

Lord Faulks (Non-Afl): Before we hear from the Minister and the noble Lord for the Opposition, I shall simply add that of course the aims identified in this amendment are probably shared by everybody in your Lordships' House but, ultimately, is it not for the Government of the day to decide on these things? I think we can probably predict what most royal commissions would recommend following the terms of reference reflecting this amendment. Ultimately, a Government have to decide whether in certain circumstances, as was the case in the Bill, there need to be mandatory sentences or the prison estate needs more money spent on it. These are matters for government. I will be interested to hear what the noble Lord for the Opposition says about this; during the course of the Bill, I do not think the Labour Party has opposed the increased mandatory sentences in various areas. That is a position it is entitled to take. A royal commission can recommend; a Government have to decide.

Lord Ponsonby of Shulbrede (Lab): My Lords, we support this amendment and every element of what the noble Lord, Lord Marks, said when he was introducing it. It is about criminal sentencing. My noble friend Lord Bach raised the question of a royal commission on the criminal justice system as a whole, and I will be interested to hear the Minister's response on that.

The noble Lord, Lord Faulks, correctly identified that in this Bill the Opposition have supported some measures that have led to increased sentences. In a sense, the heart of the problem is that the constant inflation of sentences is leading to the overarching problem we have now with overcrowding and squalor in our prisons and a lack of effectiveness in our out-of-court sentences. I understood that to be the main purpose of the royal commission.

I want to give a very simple example of my role as a magistrate sentencing, as I was yesterday, in a magistrates' court in London. As a magistrate, I have powers to sentence up to six months' custody for a single offence. When, on occasion, I do that, I simply do not know how long that person will spend in custody. When I first became a magistrate about 14 years ago, I used to say to the offender, "You will spend half your time in custody and then, at the discretion of the prison governor, you will get out". I do not say that any more because I do not know whether it is true. Sometimes

[Lord Ponsonby of Shulbrede]
the offender will get out after one-quarter of their sentence, if there are particular reasons and it is a non-violent offence, and sometimes, if they commit relatively less serious offences while they are in prison, they may serve their whole term, so I simply do not say that any more when I am sentencing.

That is a very particular example; there are many examples within sentencing as a whole where any sentencer, including a magistrate, is asked to use fairly obscure phrases which are not simple to understand for the person being sentenced. There is a role for an overall look at this to try to have consistency in sentencing and the words used while sentencing. The noble Lord's amendment goes further than that as it is looking at community sentences as well. There really is a strong need for an overarching view of criminal sentencing.

Lord Wolfson of Tredegar (Con): My Lords, this amendment, tabled by the noble Lord, Lord Marks of Henley-on-Thames, would require the Secretary of State to establish a royal commission to review and report on criminal sentencing. The amendment was tabled in Committee and I am glad to have the opportunity to further clarify the Government's position on this matter.

First, let me pick up the direct question put to me by the noble Lord, Lord Bach, which I think was echoed by my noble friend Lord Cormack and mentioned by the noble Lord, Lord Ponsonby of Shulbrede. The 2019 Conservative manifesto did commit, as noted in Committee, to set up a royal commission on the criminal justice system. Work to set up that royal commission was slowed at the onset of the pandemic to focus on the very practical matter of ensuring that the criminal justice system could continue to operate—as it did, thanks to a lot of hard work by staff up and down the country—in a Covid-safe environment. As work on the commission was paused, officials were redeployed to other work and other roles in government.

Significant new programmes of work have now been stood up to support recovery and build back a better criminal justice system. That means that many of the areas the royal commission was due to look at are now being progressed more quickly, for example on efficiency and effectiveness of the system. That includes ensuring that all component parts of the extremely complex system—which we call the criminal justice system but is an amalgam of all sorts of systems—work together to deliver swifter justice for victims. As I said on the last group, on 9 December we announced our consultation on a new victims' Bill to improve the level of service victims can expect from the criminal justice system. We remain committed to delivering our manifesto commitments. However, we think it is right to continue to pause the work on the royal commission on the criminal justice system while we focus on delivering these priorities over the coming months. We will then revisit what further role there is for the royal commission.

At the same time, let me clarify a point of confusion, which may have been behind the noble Lord's question—I do not know. To be very clear, the amendment, as drafted, calls for a royal commission on criminal sentencing, not a royal commission on the criminal justice system. For the record and to make it very clear, when my noble and learned friend Lord Stewart of Dirleton previously responded and assured the Committee that a royal commission of this nature was unnecessary, it was the royal commission on criminal sentencing in the amendment that he was referring to. I see the noble Lord nodding and I am grateful; I did not want there to be any confusion on the point.

The sentencing White Paper published last year set out the Government's proposals for reform to the sentencing and release framework. Work is under way on the non-legislative commitments made there; the legislative measures are being delivered by the Bill. I can assure the noble and learned Lord, Lord Thomas of Cwmgiedd, that we want to adopt a strategic approach here. We believe that the White Paper delivers that, but I am sure that the conversations on these points will continue. I agree with the noble Lord, Lord Beith, that the taxpayer's pound is an important factor here. We want value for money in this and other areas of government. The rationale of the White Paper is to deliver a smarter, more targeted approach to sentencing. The most serious violent and sexual offenders should serve sentences that reflect the severity of their offending behaviour.

I say to the House in general, responding in particular to the point made by the noble Baroness, Lady Fox of Buckley, that it is crucial that the Government listen when there are issues on which the public feels strongly, and there are some offences that society finds particularly concerning and, indeed, offensive. At the same time, for lower-level crimes, we are making community sentences more effective, so they can offer an appropriate level of punishment and address the underlying drivers of offending. As part of that—to pick up the point made by the noble Baroness, Lady Jones of Moulsecoomb—we do of course look at the particular issues facing women in prison. We have discussed that on a number of occasions, and I intend no discourtesy by not repeating now what I have said before. We have spoken, and we have focused as a Government, on the needs of women in prison and sentencing women to prison, particularly the primary carers issue, which we have discussed and debated.

5 pm

The amendment as drafted specifies a number of areas that a royal commission on sentencing should make recommendations on. My noble and learned friend Lord Stewart gave assurances in Committee in regard to the programmes and reforms under way in relation to each of these areas, so I shall not repeat that now, but I assure the right reverend Prelate the Bishop of Gloucester that we look at evidence in this context. I can also assure the noble and learned Lord, Lord Brown of Eaton-under-Heywood, that we consider each of the matters set out in this amendment as part of our work. I certainly would not accept that we are engaged in any sort of auction, to use the word of the noble Lord, Lord Macdonald of River Glaven. However, I agree with him, as we have discussed in other debates on this Bill, that short sentences require very careful consideration indeed.

As my noble friend Lord Faulks mentioned, there is an important role here for government. This is not something that should just be outsourced to a royal

commission. I draw a distinction between what I was talking about in the transgender debate, which was management of prisoners and conditions in prison, on the one hand, and sentencing policy on the other hand. They are two different things and, as I said earlier, it is absolutely right for the Government to take account of and listen to the concerns of the public on sentencing.

I should add that, since the debate in Committee, on 7 December, as I mentioned in the last group, we published our prison strategy White Paper, but I shall not repeat what I said then, as we have a lot of business to get through this evening.

Finally, to pick up on a point made by a number of contributors, on the transgender issue—and I do not want to go back to it, because I still bear the scars on my back and my front from that debate—as I said to my noble friend Lord Cormack privately, and am happy to repeat publicly, it is not the sort of commitment that I can give on my feet at the Dispatch Box. But what I can commit to is that I shall continue the conversation with him—and, indeed, with others in this House—on that very difficult issue, which I know raises passions across the House.

To come back to this amendment, I hope that the House is assured of the Government's position on the matter, and I urge the noble Lord to withdraw the amendment.

Lord Davies of Stamford (Lab): My Lords, I have listened to the debate this afternoon with great pleasure, and I must say with growing agreement with what was said—until I heard the contribution of the noble Lord, Lord Faulks, who said that sentencing should be a matter for the Government of the day. That is a very dangerous approach, because it means that sentencing becomes a reflection of the political pressures on the Government of the day. Somebody used the term "auction". You would get competition between people who were seeking votes from the public in projecting themselves as being tough on crime, and the resulting sentencing guidelines—

Baroness Scott of Bybrook (Con): I am sorry, but the Minister had already sat down. We can only take a question if it is very short.

Lord Marks of Henley-on-Thames (LD): My Lords, in those circumstances I think that it is for me to respond. I do not know whether the Minister wishes to respond to any question—although there has not really been a question.

Lord Faulks (Non-Afl): My Lords, I believe this is in order, because I did not suggest for a moment that it was for the Government to send people to prison or to make up their mind. Ultimately, the policy that is reflected in this amendment is something that a Government would have to decide upon.

Lord Marks of Henley-on-Thames (LD): My Lords, at the end of this interesting debate, I say first that I am very grateful to all who have spoken and to the noble Lord the Minister for his careful response. Two things strike me: first, this amendment enjoys overwhelming support and, secondly, there has been a distinct theme to the contributions to the debate from noble Lords from all around the House, expressed perhaps by the noble and learned Lord, Lord Thomas of Cwmgiedd, when he talked about a comprehensive and strategic approach. Others have talked about a holistic approach.

The aim has been to address the failures of the criminal sentencing system, as part of the criminal justice system, identified by, among others, the noble Lords, Lord Cormack and Lord Ponsonby. It is a rethink that is required—to use the expression of the noble Baroness, Lady Jones. Another important matter was identified by two dissimilar figures in general approach. The noble Lord, Lord Macdonald of River Glaven, talked about taking the political sting out of issues arising on sentencing. This was put in a similar way by the noble Baroness, Lady Fox of Buckley. I share the slight surprise of the noble Lord, Lord Cormack, at being told that she was a bleeding-heart liberal, but I take the point.

I do not intend the royal commission that we have described in this amendment to prejudge the issues. What we are calling for overwhelmingly is an evidence-based approach to sentencing, rather than a politically based approach or one that simply responds to public opinion or the perception of public opinion. I completely agree with the noble Lord, Lord Faulks, that the question is not one where the Government are excluded from making decisions. The point about the royal commission is, as he put it, that the royal commission recommends and the Government then act on those recommendations. What distinguishes a royal commission, I suggest, is that its recommendations are widely seen by the public, the Government and the Opposition as authoritative. It is that quality of being authoritative that I believe gives the royal commission its weight.

It is a question not of outsourcing the decision-making process but of setting up a process to advise and direct the future. This Bill does none of that. It contains sentencing in its Short Title, yet it is piecemeal and bitty and lacks a philosophy. The Minister set out a philosophy that is two-sided, but only one of those sides is reflected in the Bill. We believe that a royal commission would address that, which is why I would like to see this amendment agreed. That said, however, what the noble Lord has said about the Royal Commission on Criminal Justice as a whole is of some encouragement, because I take criminal justice to include criminal sentencing. I hope I see him nod in agreement with that. I am waiting—he is not going to commit to the terms of reference, but it seems to me that that offers some hope for the future.

I am concerned about the use of the word "paused". It should not be paused; it is urgent. If the Government take anything from this debate, I hope they will take the feeling around the House that this is an urgent matter requiring urgent attention and will revisit it. That said, and in the confidence that they will approach it in that way and that the royal commission will proceed, I beg leave to withdraw the amendment.

Amendment 104 withdrawn.

Amendment 104A

Moved by ***Lord Rosser***

104A: After Clause 172, insert the following new Clause—

"Child criminal exploitation

In section 3 of the Modern Slavery Act 2015 (meaning of exploitation), at the end insert—

"Child criminal exploitation

(7) Another person manipulates, deceives, coerces or controls the person to undertake activity which constitutes a criminal offence and the person is under the age of 18.""

Member's explanatory statement

This new Clause would introduce a statutory definition of child criminal exploitation.

Lord Rosser (Lab): My Lords, a similar amendment was debated in Committee as part of a series of amendments relating to ensuring that safeguarding and tackling the criminal exploitation of children are a central part of the duty to reduce serious violence as set out in Part 2, with its duties on specified authorities to collaborate and plan to prevent and reduce serious violence. Children who are groomed and exploited by criminal gangs are the victims and not the criminals. A statutory duty to reduce violence cannot be effective on its own without a statutory duty to safeguard children. This amendment would provide a statutory definition of child criminal exploitation, putting a recognised definition in law for the first time.

The present lack of a single clear statutory definition has contributed to local authorities responding differently to this form of exploitation across the country. The Children's Society says that just one-third of local authorities have a policy in place for responding to it, yet child criminal exploitation does not stop at local authority boundaries and requires a shared understanding and approach nationally. Barnardo's has said that it has found that agencies, including police forces, do not routinely collect or record information on this type of exploitation. It reports that a number of reviews have found that children at risk are passed between agencies without meaningful engagement. Indeed, many children are not seen as victims of exploitation and abuse but instead receive punitive criminal justice responses.

A statutory definition, as we now have for domestic abuse, would improve awareness and understanding of child exploitation and its signs, and encourage joined-up working not only across the justice system but across all partners included in the serious violence reduction duty. It would give a common definition of what we are seeking to tackle in response to the abhorrent coercion and manipulation of children and vulnerable young people. This is not a minor issue. More than 25,000 children in the United Kingdom are presently at risk of gang exploitation, according to the Children's Commissioner.

The response of the Government in Committee to establishing a statutory definition of child criminal exploitation was that they had considered it with a range of operational partners and had concluded that the definitions of exploitation within the Modern Slavery Act were sufficient to respond to a range of child criminal exploitation scenarios. However, the operational partners with whom presumably the Government considered a statutory definition will include the local authorities which according to the Children's Society do not have a policy in place for responding to child criminal exploitation, the police forces and other agencies which Barnardo's found are not routinely collecting or recording information on this type of exploitation, and the agencies which pass children at risk between each other without meaningful engagement. The evidence indicates that there is no consistency of approach across the agencies on child criminal exploitation, so it is clear that the existing definitions on which the Government relied when rejecting this amendment in Committee are not assisting in the way they should in responding to abhorrent child criminal exploitation scenarios.

I hope that the Government will be prepared to reflect further on this issue of a much-needed definition of child criminal exploitation as provided for in this amendment, which I move.

Baroness Jones of Moulsecoomb (GP): I would be remiss if I did not point out to the Benches opposite that this is an issue that I have talked about quite a lot, in the context not of county lines and gangs but of the Met Police. I did not even realise that there was not a statutory definition, so I welcome this amendment. The definition talks about another person who manipulates and so on, and, of course, the Met Police manipulates children. We are assured constantly that it is a very small number, but it happens and does so apparently lawfully because the Government have not stopped it, so the Government are complicit in a crime.

5.15 pm

I can see therefore that, sadly, although the noble Lord, Lord Rosser, has brought forward a very good amendment, it is very unlikely to be passed. Obviously it is completely wrong that the police, instead of rescuing children from situations of criminal exploitation, can send them back into dangerous situations to work for them as undercover spies. It is not enough to say that they give loads of good intelligence and so on; I have seen from many years of watching undercover police that they suffer trauma and extremely miserable lives and come out with all sorts of PTSD from those undercover situations. It is very hard to be a different person day after day with some potentially very dangerous people. If it can happen to trained police officers, how much worse is it for young children who have to do that sort of thing? They have to lie to all their compatriots and cover up meetings with their handlers. It is exceptionally nasty and I wish the Met police would understand that it is a wrong, illegal thing to do. They call them juvenile CHISs—covert human intelligence sources—which sort of neutralises the moral outrage because no one really understands what they are. However, it is by definition child criminal exploitation. If we could put the definition on the statute book, we would be one step closer to ending this vile practice undertaken by our own police—and Government.

The Lord Bishop of Gloucester: My Lords, I speak in place of my right reverend friend the Bishop of Derby, who sadly cannot be here today. She and I support this amendment, to which she has added her name. I declare her interest as vice-chair of the Children's Society. These are her words.

In Committee, my right reverend friend the Bishop of Durham spoke in the place of my right reverend friend the Bishop of Manchester. I will not repeat all that was said, but I will reiterate a few fundamental points as we consider this amendment. As a Church living and working in every corner of this nation, we support families and children, often in the most vulnerable of contexts. We have seen the devastating consequences when children are coerced and exploited, including through serious violence. Those consequences have ripple effects through not only the life of that child but the wider community. Visiting young offender institutions, I am struck by how many of these children and young people are victims first. Their stories could have been very different if intervention had occurred earlier. They have been groomed and coerced in the same way as children groomed for sexual exploitation; as such, they should be treated as victims. They need support rather than the further trauma of being charged and prosecuted.

I share with noble Lords the story of a young person supported by the Children's Society which illustrates how many victims of child criminal exploitation are not recognised as such. Bobby—not his real name—aged 15, was picked up with class A drugs in a trap-house raid by the police. Bobby had been groomed, exploited and trafficked across the country to sell drugs. After his arrest, he was driven back to his home by police officers, who had questioned him alone in the car and used that information to submit a referral through the national referral mechanism, which did not highlight Bobby's vulnerability—instead, it read like a crime report. Bobby had subsequently been to court in Wales and, because his referral to the NRM failed and his barrister did not understand the process, he was advised to plead guilty, which he did.

At this time, he was referred to the Children's Society's "Disrupting Exploitation" programme. With its help, Bobby challenged the NRM decision and worked to ensure that he was recognised as a victim instead of an offender, enabling him to retract his plea of guilty. The Children's Society was able to work with Bobby, his family and the professionals around him to ensure that they recognised the signs of exploitation and how it can manifest.

But for many young people who are criminally exploited, that is not the case. Many will be prosecuted and convicted as offenders, while those who groomed and exploited them walk free. Agencies that come into contact with these children are not working to the same statutory definition of what constitutes child criminal exploitation.

What this amendment hopes to achieve is for statutory services to recognise that these children have not made a choice to get involved in criminal activity. I wholeheartedly agree that local multiagency safeguarding arrangements are key to responding to child exploitation. However, we need a clear, national definition and understanding of the types of child exploitation that they must safeguard against. Front-line agencies all agree: there is no evidence that the system as it stands is working consistently to protect these children from exploitation.

We are committed to the flourishing of all people. That includes children and young people from the most marginalised and disadvantaged circumstances—those for whom real choice is out of their grasp. We must do all within our power to give hope to victims and dare to dream of a different future for these children.

Lord Paddick (LD): My Lords, in Committee I recalled my own experience of visiting the only young offender institution in Scotland, where the governor told us that every young person in her institution had suffered multiple adverse childhood experiences, or ACEs. These are potentially traumatic events that occur in childhood and include experiencing violence, abuse or neglect, particularly head trauma; witnessing violence in the home or community, something that is becoming all too common; and having a family member attempt or die by suicide. Also included are aspects of the child's environment that can undermine their sense of safety, stability and bonding, such as growing up in a household with substance use problems, mental health problems or instability due to parental separation or household members being in prison.

ACEs also make children particularly vulnerable to criminal exploitation and it is important that this is recognised in statute to ensure that a trauma-informed approach is taken to child victims of criminal exploitation, rather than a criminalising, punitive approach. This amendment provides that statutory definition and we strongly support it.

Lord Sharpe of Epsom (Con): My Lords, I am grateful to the noble Lord, Lord Rosser, for setting out the case for the amendment and to all noble Lords who took part in this short debate. I wholly agree that the targeting, grooming and exploitation of children who are often the most vulnerable in our society for criminal purposes is deplorable. This Government are committed to tackling it.

Before I start, I say to the noble Baroness, Lady Jones of Moulsecoomb, that the Government are not complicit in crime. I remember CHIS being debated quite extensively in your Lordships' House. They are subject to significant and stringent safeguards, so I think that we can leave that there.

This amendment seeks to establish a statutory definition of child criminal exploitation. As I indicated in Committee, the noble Lord, Lord Field of Birkenhead, the noble and learned Baroness, Lady Butler-Sloss, and Maria Miller MP undertook an independent review into the Modern Slavery Act 2015, the findings of which were published in May 2019. The definition of exploitation in Section 3 of the Act was explored as part of this review in response to calls that it should be amended to explicitly reflect new and emerging forms of exploitation, such as county lines.

The review heard evidence from the CPS, which warned against expanding the scope of the meaning of exploitation or defining exploitation so precisely that it would lack flexibility when applying the legislation to a changing profile of criminal conduct. The authors of the review agreed and recommended that the definition should not be amended, as it is sufficiently flexible to cover a range of circumstances, including new and emerging forms of modern slavery.

We agree that front-line practitioners need to have a clear understanding of child exploitation; the noble Lord, Lord Rosser, made these points very well. That is

[Lord Sharpe of Epsom]
why child exploitation is already defined in statutory guidance, including the *Keeping Children Safe in Education* and *Working Together to Safeguard Children* statutory guidance. It is also set out in non-statutory practice documents for those working with young people, such as the Home Office *Child Exploitation Disruption Toolkit* and the county lines guidance.

We recognise that the vast majority of child criminal exploitation cases occur in the context of county lines. That is why the Home Office is providing up to £1 million this financial year to the St Giles Trust to provide specialist support for under-25s and their families who are affected by county lines exploitation. The project is operating in London, the West Midlands and Merseyside, which are the three largest exporting county lines areas. We also continue to fund the Missing People's SafeCall service. This is a national confidential helpline service for young people, families and carers who are experiencing county lines exploitation.

I listened carefully to the right reverend Prelate the Bishop of Gloucester, who made some powerful points. She mentioned the Children's Society. I should point out that the Home Office is funding the Children's Society's prevention programme, which works to tackle and prevent child criminal exploitation, child sexual abuse and exploitation, modern-day slavery and human trafficking on a regional and national basis. This has included a public awareness campaign called "Look Closer", which started in September. It focuses on increasing awareness of the signs and indicators of child exploitation and encourages the public and service, retail and transport sector workers to report concerns to the police quickly.

Back to county lines and drugs. They devastate lives, ruin families and damage communities. That is why this Government have recently introduced a 10-year strategy to combat illicit drugs using a whole-system approach to cut off the supply of drugs by criminal gangs and give people with a drug addiction a route to a productive and drug-free life. Through the strategy, we will bolster our flagship county lines programme, investing up to £145 million to tackle the most violent and exploitative distribution model yet seen.

Clearly, we are all in agreement that tackling child criminal exploitation must be a priority. I have set out some of the steps that the Government are taking to do just that. However, the Government remain unpersuaded that defining child criminal exploitation in statute would aid understanding of the issue or help such exploitation. As I have indicated, we should pay heed to the conclusions of the independent review of the Modern Slavery Act, which commended the flexibility afforded by the current definition of exploitation. For these reasons, I ask the noble Lord to withdraw his amendment.

Lord Rosser (Lab): First, I thank the right reverend Prelate the Bishop of Derby and the noble Lord, Lord Paddick, for adding their names to this amendment. Indeed, I thank all noble Lords who spoke in this debate.

Basically, the Government have repeated what they said in Committee. There is nothing new and no response to the point that a statutory duty to reduce violence cannot be effective without a statutory duty to safeguard children, which is what this amendment would provide by putting a recognised definition in law for the first time. There has not really been a response to that.

I made the point that the evidence indicates that there is no consistency of approach across the agencies on child criminal exploitation. Clearly, the definitions on which the Government relied in Committee, which they have now repeated on Report, are not assisting in the way that they should in responding to child criminal exploitation scenarios. It is a bit depressing to find no movement at all on the Government's stance and, if I may say so, no attempt to respond to my point that, bearing in mind the inconsistencies, the existing definitions are clearly not doing the job that the Government claim they should be doing and, indeed, claim they are doing. That clearly is not the case.

I do not intend to test the opinion of the House on this. I say only that the issue is not going to going away. If we continue, as I suspect we will, with the inconsistencies of approach that have been identified by Barnardo's and the Children's Society and referred to during this debate—that is, if the Government do not address them, which is what this amendment in effect invites them to do—this matter will not go away. I am quite sure that it will be the subject of further discussion and debate if the present highly unsatisfactory situation continues in respect of child criminal exploitation. I beg leave to withdraw the amendment.

Amendment 104A withdrawn.

5.30 pm

Amendment 104B

Moved by ***Lord Ponsonby of Shulbrede***

104B: After Clause 172, insert the following new Clause—

"Video recorded cross-examination or re-examination of complainants in respect of sexual offences and modern slavery offences

(1) Section 28 of the Youth Justice and Criminal Evidence Act 1999 comes into force in relation to proceedings to which subsection (2) applies on the day on which this Act is passed.

(2) This subsection applies where a witness is eligible for assistance by virtue of section 17(4) of the Youth Justice and Criminal Evidence Act 1999 (complainants in respect of a sexual offence or modern slavery offence who are witnesses in proceedings relating to that offence, or that offence and any other offences).

(3) This section has effect notwithstanding section 68(3) of the Youth Justice and Criminal Evidence Act 1999."

Lord Ponsonby of Shulbrede (Lab): My Lords, the proposed new clause in Amendment 104B would bring Section 28 of the Youth Justice and Criminal Evidence Act 1999, which provides for the cross-examination of vulnerable witnesses to be recorded rather than undertaken in court, fully into force for victims of sexual offences and modern slavery offences. When we debated this in Committee, the point was made that there have been a number of pilots of this approach in, I believe, three Crown Courts in England and Wales. A further point

was made in the response by the noble and learned Lord, the Advocate-General for Scotland, that it would be judge-intensive to have judges present when recording the evidence. For those reasons, we were invited to reject the amendment.

In response to those points, I ask the Minister when the results of the pilot will come forward, so we can have an informed decision about whether to roll out this approach. I also question the assertion that this is a very judge-intensive process because judges have to be present when the recordings are made. I made this point to the Minister when we met in private a few days ago. I have done this procedure several times within youth court and, as far as I am aware, there was never a judge or magistrate present then. I have also done this process in Crown Court and for an appeal. On that instance, I was sitting as a winger and there was a Crown Court judge in the middle. We heard the evidence by videolink and, again, as far as I was aware, there was no judge present. So I question the assertion that it would be very judge-intensive to use this approach in the adult court for victims of sexual offences and modern slavery offences.

The proposed new clause in Amendment 104C would give the complainant a right of representation with legal aid, if they are financially eligible, to oppose any application to admit Section 41 material about them. It would also give complainants the right to appeal to the Court of Appeal if the application is allowed, in whole or in part. The proposed new clause also provides that the complainant is not compellable as a witness at the application. I am grateful to the noble Baroness, Lady Jones of Moulsecoomb, for putting her name to this amendment.

This issue was again explored at some length in Committee. My noble and learned friend Lord Falconer made the point that it is very sensitive. If there is the possibility of somebody's sexual history becoming known in a wider context within court, it acts as a cooling method for people making allegations. This is a way around that problem to try to give people the confidence to come forward and make complaints of sexual assaults.

Amendment 107C is in the name of my noble friend Lord Coaker. It would require police forces to have a specialist rape and serious sexual offences, or RASSO, unit. As background, I have three facts to share with the House. First, two-fifths of police forces currently do not have one of these units, which specialise in the prosecution of rape and serious sexual offences and supporting victims of these offences. Secondly, the current prosecution rate for reported rapes is about 1.4%. No matter how many times we hear this statistic, it remains deeply shocking. Finally, Home Office figures show that the number of victims dropping out of prosecutions has increased to a record 41%. In each of these cases, we are failing to deliver justice for a victim and to tackle a dangerous predator.

MPs and noble Lords from across this House have worked, with limited success, to make tackling violence against women and girls a part of this Bill, including explicitly recognising violence against women and girls as serious violence under the serious violence reduction duty. We are in a situation where this Government may pass a flagship piece of criminal justice legislation without including any specific plans to improve the investigation and prosecution of rape and serious assaults. This issue needs to be taken forward in partnership with the police and finally recognised as a priority. I look forward to what I hope will be a positive response from the Minister and beg to move.

Baroness Jones of Moulsecoomb (GP): I reassure noble Lords that I will not be speaking on every amendment today, but I regret that all those that we have discussed so far, including this one, will not go to a vote. That is a real shame, because they are so sensible.

I congratulate the noble Lord, Lord Ponsonby, on tabling the amendment to which I have put my name. I support all the amendments in this group, not just Amendment 104C. The criminal justice system is hugely distrusted by survivors of sexual violence, based on the way they are treated when they come forward to make a complaint. There have been some important steps forward over the years, but trust is still far lower than it needs to be for survivors to come forward, go through the whole criminal justice system and have their lives pored over. Granting the right to complainants to be represented by a lawyer in an appeal to adduce evidence on questions of sexual conduct would be an important leap forward. The complainant is seen as a neutral third party with no particular legal rights, rather than someone deserving legal protection and representation, and this really has to change.

Lord Paddick (LD): My Lords, my noble friend Lord Marks of Henley-on-Thames is leading for us on this group, but I want to speak on Amendment 107C. I was commissioned by the then Commissioner of the Metropolitan Police, now the noble Lord, Lord Blair of Boughton, to conduct a review of rape investigation in the Metropolitan Police, working together with Professor Betsy Stanko OBE.

At that time, the Metropolitan Police had specialist rape investigation units. Their performance was mixed, but they were considerably better than the experiment in community policing that was being conducted in one part of London. Small teams of detectives were allocated to each part of the borough to investigate all crime there, including rape and serious sexual offences. In addition to being overwhelmed by large numbers of more minor criminal investigations, they lacked the experience and expertise of officers who specialise in rape and other sexual offences.

I know from practical experience on the ground within the police service that specialist rape and serious sexual offences units provide much better outcomes for the victims and survivors of these types of crime. I doubt that legislation such as this amendment can override the operational independence of chief constables, but the principle is right and the Home Secretary, the College of Policing Limited—we will come to that in an upcoming group—HMICFRS and police and crime commissioners should all exert pressure on chief constables to ensure that they are established.

Lord Marks of Henley-on-Thames (LD): My Lords, we support all the amendments in this group. First, I will consider Amendment 104B. As explained by the noble Lord, Lord Ponsonby, this amendment would

[Lord Marks of Henley-on-Thames]
authorise a special measures direction to enable videorecording of cross-examination of complainants in criminal proceedings for sexual offences or modern slavery offences, in order to enable their evidence to be given remotely.

This is a sensible measure for the protection of witnesses not only from alleged perpetrators but from the trauma of giving evidence in these difficult and painful cases. We have heard many times in debates on this Bill and on the Domestic Abuse Act how painful an ordeal giving evidence is likely to be. In the absence of a special measures direction, complainants who are witnesses have to give evidence before strangers, often in the presence of their assailants or exploiters and often under hostile questioning, to relive some of the most painful experiences of their lives. Nor should we forget how, in these cases, recording the evidence of complainants might well be the very best way of securing truthful and accurate evidence so that courts might be better placed to do justice than if they had to rely on the live oral evidence of very frightened and intimidated witnesses.

We also support Amendment 104C in the names of the noble Lord, Lord Ponsonby, and the noble Baroness, Lady Jones of Moulsecoomb, because we have heard that Section 41 applications, if granted, permit the most intrusive and personal questioning of complainants about their previous sexual history. Such questioning might sometimes legitimately be regarded by a court as necessary in the interests of justice, but even when that is the case it nevertheless involves a gross invasion of the privacy, the sense of decency and the perceived rights of the complainant. The noble Lord and the noble Baroness are entirely right to seek the protections for the complainant that the amendment involves: the right to take part in the application or not at her choice, because it is generally a woman's choice; to be legally represented; and to have a right of appeal against a direction admitting questioning or evidence of previous sexual conduct.

These Section 41 applications and the fear of the questioning they involve have been a reason for the large numbers of sexual offences going unreported or unprosecuted, as complainants are not prepared to go through the hell of facing such cross-examination and they pull out of cases for fear of it. They should be entitled to significant legal protection, just as if they were parties, when such an important issue for their personal integrity is considered by the courts. The protections proposed in the amendment are fully justified.

Finally, we support Amendment 107C on rape and serious sexual offences units—the so-called RASSO units—for the reasons given by the noble Lord, Lord Ponsonby, on behalf of the noble Lord, Lord Coaker, and by my noble friend Lord Paddick. I will try not to repeat the points he made.

Historically, there has been a problem, which we should not seek to deny, in ensuring that police forces treat rape and serious sexual assault with the importance these offences merit. It might be that the situation has improved, and I have no doubt it has. In most forces, victims are treated sympathetically, with tact and care, and derive support from the officers handling their case. However, the public, and women in particular, still lack confidence in the treatment they are likely to and do receive from the police if they are victims of sexual assault. This is one of the factors again driving the low rate of reporting and prosecutions, and the high rate of the withdrawal of complaints. The noble Lord, Lord Ponsonby, gave us the figures, with which we have become familiar.

Specialist units are likely to concentrate expertise and experience of dealing with rape and serious sexual offences in the hands of those who really know about them. This amendment concentrates on the specialist training of the staff in such units. That is critical. Such units have the potential to improve the evidence-gathering process and ultimately, one would hope, the reporting and the prosecutions of offences and the conviction rates, which, as we know, are appallingly low.

All the amendments in this group identify serious issues and propose practical, worthwhile and achievable solutions. In respect of each of them, I suggest it would be helpful for the Government simply to accept them or to come back with alternatives to similar effect at Third Reading.

Lord Wolfson of Tredegar (Con): My Lords, I recognise that behind all these amendments is a dedication to improving the way in which the criminal justice system handles sexual offences cases and supports victims. On both those points, that dedication is shared by the Government. It is absolutely right that we do as much as we can to support all victims, including those of sexual offences, and help bring to justice those guilty of those very serious crimes. I know that there is no disagreement between us on the need to continue to improve the victims' experience of the criminal justice system, and of the important role that special measures, such as Section 28, can play in supporting victims and witnesses to provide their best evidence.

5.45 pm

We recognise the benefit that pre-recorded cross-examination and re-examination—I will use the shorthand, Section 28—can have in helping to improve the experience of victims. It enables them to give their evidence earlier in the process and outside the live trial. We are committed to extending this measure so that more may have access to it. That is why, although the noble Lord, Lord Ponsonby of Shulbrede, mentioned three Crown Courts where the pilot commenced—he was absolutely right: on 3 June 2019 we commenced the pilot in Leeds, Kingston upon Thames and, I am happy to say, Liverpool—in September 2019 we rolled it out to a further four courts, so we now have seven: Durham, Harrow, Isleworth and Wood Green. That fulfils a commitment in the rape review as well.

We have since announced plans to extend Section 28 for this cohort of cases even further. We are working to roll it out to all Crown Courts nationwide as soon as practicable. We are working with the police, the judiciary and the CPS to make the various operational changes needed to support the expansion. We hope this will enable more victims to use Section 28 to give their best evidence. I underline that, ultimately, the use of Section 28 in any particular case is a matter for the trial judge, who remains a master of his court—forgive

the slightly sexist language there; I was struggling for the neutral term, but noble Lords will know what I mean.

We have also committed to testing the provision of video recorded evidence within the youth courts for vulnerable victims and witnesses, which should help us to see whether further expansion of the wider provision will support longer-term plans. We hope to begin this work in the spring. We have already started preparations with judicial colleagues and other partners in the criminal justice system, but we cannot support an immediate full rollout to all courts, as the amendment would require. We believe that our priority must be to roll out Section 28 in the Crown Court first. This is to ensure that complainants of rape and sexual offences can access it around the country as soon as possible. This is where the measure is already in place for vulnerable witnesses and victims of the most serious crimes.

There are a number of risks that we are concerned about if we did this too fast. It could place unknown and untested pressures on some of our partners in the criminal justice system. We want to see how the measure would work in other courts, such as magistrates' courts or the family court. There are different operational requirements there. Operational considerations include the impact on the police and the resources required to support an increase in achieving best evidence interviews, which the police would need to undertake ahead of the Section 28 hearing. We also want to ensure that the Section 28 technology can physically accommodate the increase.

On the two specific questions put to me, the review of the pilot is ongoing. I do not have a date when it will be completed, but I undertake to keep the noble Lord fully informed of that. When we have a date, we will obviously provide it.

On the issue of judge involvement, I listened very carefully to the noble Lord, who referred to a conversation that we had. The information that I have is that the judge, counsel and defendant need to be present for the Section 28 hearing in the same courtroom, with the witness live video-linked into it for the hearing itself. The judge will obviously also need to be present when the Section 28 recording is played back in the live trial. But I listened carefully to what the noble Lord said, and it may be that it is worth continuing a discussion on that, because his personal experience appeared to be different—so I am happy to continue discussing that.

I turn to Amendment 104C. As my noble and learned friend Lord Stewart reassured the House in the previous debate, we are committed to improving the way in which the criminal justice system handles sexual offence cases. We want to ensure that Section 41 functions effectively and strikes a balance. In response to the noble Baroness, Lady Jones of Moulsecoomb, it is a balance. We have to balance the victim's right to privacy with making sure that the defendant receives a fair trial. That is what Section 41 is trying to do. As I have said in previous groups, however, I am very much alive to the need to make sure that victims are properly looked after in the criminal justice system.

We have asked the Law Commission to review the use of a wide range of evidence, including how evidence relating to previous sexual behaviour is used in court. That review is now under way—it launched formally on 17 December last year. Its terms of reference specifically cover the two areas of this amendment:

"whether the complainant should be a party to the application to admit evidence of their sexual history; and … whether a right of appeal should be introduced in relation to decisions under section 41".

The Law Commission will obviously look at that with its usual care. A background paper and consultation are to be published this year, and we expect final recommendations next year, so we are certainly alive to that. But I suggest that, given where we are and the work of the Law Commission, we should not introduce the amendments to the present Bill.

Lastly, I turn to Amendment 107C, which would require each police force to have a RASSO unit. As our end-to-end review of the handling of rape showed, rape is a distinctive crime that requires a specialised approach. We are investing a large sum of money in Operation Soteria, and, in the rape review progress update, we have also committed to a programme of its expansion to a further 14 police force areas and their corresponding CPS areas. We are doing that work in addition to our wider investment in policing. We have proposed a total police funding settlement of £16.9 billion in 2022-23, which is an increase of up to £1.1 billion from last year.

The amendment also highlights the importance of appropriate and effective support for victims. Importantly, we are investing £27 million in the recruitment of independent sexual violence advisers—ISVAs—which we have discussed on a number of occasions. We know that they work: they play a vital role in supporting victims to remain engaged in the system and in stopping that awful phrase, "victim attrition", which is terrible. There is a real victim behind each use of that phrase.

As I said on previous groups, we have launched our consultation on the victims Bill. However, ultimately, on the deployment of officers, I have to defer to individual chief constables: forces in different areas may legitimately take different views on the precise allocation of their resources. But we want to ensure that forces drive progress, while allowing them the flexibility that our policing system affords them.

I hope that I have responded on each of the amendments. Although I appreciate that a few points of difference between us will remain, I hope that the noble Lord will none the less be able to withdraw the amendment.

Lord Ponsonby of Shulbrede (Lab): My Lords, I thank the noble Lord for his assurances, and I beg leave to withdraw my amendment.

Amendment 104B withdrawn.

Amendment 104C not moved.

Amendment 104D

Moved by ***Baroness Chapman of Darlington***

104D: After Clause 172, insert the following new Clause—

"Offence of destroying or damaging life-saving equipment

(1) The Criminal Damage Act 1971 is amended as follows.

(2) In section 1(2), at the end of paragraph (b), insert "or

(c) intending to destroy or damage any property which is considered life-saving equipment, including life-belts, life jackets and defibrillators.""

Baroness Chapman of Darlington (Lab): My Lords, I rise to move the amendment tabled by my noble friend Lord Ponsonby on life-saving equipment. It deals with a specific issue in relation to criminal damage: the effect of vandalism on safety equipment.

Noble Lords who were present in Committee will have heard my noble and learned friend Lord Falconer of Thoroton speak about the death a young man from Rotherham, Sam Haycock. His parents, Simon and Gaynor Haycock, went to see their MP, Sarah Champion, who moved an amendment in the other place. Sam went swimming in Ulley reservoir in Rotherham in May 2021. He was leaving school that day and was just 16 years old. He was helping a friend who was in trouble in the water. At this reservoir in Rotherham—I believe that this is not unique to it—there was a throw line with a lifebelt attached to it that you can throw into the water to help someone in trouble. The problem was that it was kept in a locked cupboard and, to access it, you need to phone 999 and get a PIN from the police. Obviously, this takes time, and when someone is in distress in the water, you do not have time. The delay in getting the throw line might well, and in this case did, have tragic consequences. It is behind a locked door with a PIN to prevent vandalism of the safety equipment.

In regional media, I have found several similar instances where life-saving equipment has been vandalised. One was at Salford Quays. Manchester Council felt it lacked the ability to prevent and deal with this, so it has taken to using public space protection orders to try to deal with the issue. There was also a case in Uckfield in Sussex where a defibrillator was rendered unusable by vandals. These acts clearly cause costly damage but, most importantly, they also pose a very clear risk to life and can be shown to have cost lives in some instances.

The amendment is very straightforward: it proposes that it is made a specific offence to intend

"to destroy or damage any property which is considered life-saving equipment, including life-belts, life jackets and defibrillators."

In terms of criminal damage, the value of what is damaged may be relatively minimal in the case of a lifebelt and a throw line, compared to other criminal damage offences. As my noble and learned friend Lord Falconer said in Committee, it would already be an offence to vandalise such equipment, but it matters a great deal that the law should indicate that this is something regarded with particular hostility because of the cost to life, including that of Simon and Gaynor's precious son, Sam.

Earl Attlee (Con): My Lords, I rise briefly to support the noble Baroness in moving her amendment. This might not be something that we want to send back to the Commons today, but I hope that my noble friend the Minister will tell us what he will do about this problem, because of the effects so ably described by the noble Baroness.

Baroness Jones of Moulsecoomb (GP): I promise that this is the last time that I will speak—this evening; there will be other times. I rise to support this amendment, obviously, and also to troll the Government. Amendment 104D, which they obviously do not support, shows the huge inconsistency that the new statues statute will create. If the Government do not accept this amendment, it is hard to justify the whole plan to bring in a severe criminal penalty for toppling the statue of a slaver. To penalise that but not the destroying of life-saving equipment seems to me very strange, so I would like the Minister to explain that discrepancy to me.

It just shows me that the Government are still in the coloniser mindset. Between 2 million and 4 million enslaved African people died being shipped to America, with no criminal punishment to the slavers. It was just money—they had lots of money—and that is why the Colston statue was standing where it was standing. Somehow, toppling the statue of a slaver is what gets the harsher penalty. The Minister has got to make that make sense.

6 pm

Lord Marks of Henley-on-Thames (LD): My Lords, the effect of Amendment 104D would be to increase the maximum sentence for criminal damage with intent to destroy life-saving equipment from 10 years' imprisonment to life imprisonment. I listened very carefully to the noble Baroness, Lady Chapman of Darlington, and her harrowing accounts of the vandalising of life-saving equipment and the damage and consequences of that. I also listened to the noble Earl, Lord Attlee, and the noble Baroness, Lady Jones of Moulsecoomb, and it is very clearly necessary that the Government make it clear how they will respond to the issue of vandalising life-saving equipment.

The behaviour comprising the offence is extremely serious because it carries the risk that life will be endangered by the damage caused. However, if I may adopt a slightly lawyerly approach to the amendment, I question whether it is necessary. The scheme of the Criminal Damage Act, as amended, is that under Section 4 an offence of criminal damage generally carries a maximum sentence of 10 years. However, Section 1(2)(b) of that legislation states that where the offence is arson or, as stated, is committed by a person

"intending by the destruction or damage to endanger the life of another or being reckless as to whether the life of another would be thereby endangered",

the maximum sentence is increased to life imprisonment. That is the combined effect of that subsection and subsection (4).

I understand that the intention of the noble Baroness in moving the amendment on behalf of the noble Lord, Lord Ponsonby, would be to cover criminal damage to life-saving equipment with the intention of endangering life. However, given that by Section 1(2)(b) the offence is committed where a person commits criminal damage recklessly as well as intentionally in relation to endangering life—which means where the offender deliberately takes a risk that the damage he causes may endanger the life of another—I cannot at the moment see that such behaviour does not cover intentionally destroying or damaging life-saving equipment without lawful excuse. Nor can I at the moment see

how, in the absence of such an intention or recklessness as to life being endangered, a maximum sentence in excess of 10 years would be justified on normal principles.

Consequently, I await hearing from the Minister with interest. He may or may not accept the slightly lawyerly approach that I put, but I hope that he will give some reassurance about how the Government propose to respond to the problem of vandalising life-saving equipment.

Lord Wolfson of Tredegar (Con): My Lords, this amendment was debated just a few weeks ago when the Government set out why we believed it was unnecessary, given the scope of the Criminal Damage Act 1971. I will come back in a moment to what the noble Lord, Lord Marks, called a lawyerly point.

However, it is right first to remind ourselves, as the noble Baroness, Lady Chapman, did, of the very real consequences of this sort of behaviour. On the death of Sam Haycock in Ulley reservoir, can one begin to imagine what his parents Simon and Gaynor went through and are, no doubt, continuing to go through? One only has to say it to try to grasp to enormity of that. The noble Lord, Lord Marks, used the word "harrowing". That is spot on. This relates to the appalling behaviour of the people vandalise equipment, which results in the requirement of having to make a telephone call to get hold of a life ring, defibrillator or whatever life-saving equipment it happens to be.

I turn to the legal position, as I am afraid we have to, given that we are considering an amendment to a Bill. The noble Lord, Lord Marks, is correct. I explained that it is already an offence intentionally or recklessly to damage or destroy property, including life-saving equipment. Section 1(2) of the Criminal Damage Act 1971 makes a specific provision for an aggravated offence of criminal damage where the defendant intends to endanger life or is reckless about such endangerment. To that extent, it goes beyond the scope of the amendment, which relates only to intention and does not include recklessness. As the noble Lord said, that offence already attracts the possibility of life imprisonment.

Of course, I understand that part of the reason why it is proposed to add a specific offence is to put beyond doubt that the law will punish those who damage and destroy vital life-saving equipment, whether they intend to do so or are reckless as to the risk. The concern was raised in Committee that it is not well known that causing damage to life-saving equipment means that Section 1(2) of the Criminal Damage Act 1971 could be in play and therefore carry a potential life sentence. However, if the concern is that that is not well known, I would question whether it would make a real difference if this Bill were amended essentially to repeat that point of law. The ordinary citizen, particularly the people who carry out this appalling behaviour, is still as unlikely to understand or perhaps care about the consequences and penalties associated with the crime. Therefore, I suggest that the ultimate problem here is not a question of a gap in legislation or a lacuna in the criminal law but people knowing what the law is and bringing home to people the likely criminal consequences of their actions.

In response to my noble friend Lord Attlee, as I suggested in Committee, if the law is not enough of a deterrent, we must focus on those responsible for water safety, health and safety, and law enforcement to come together to find out what is not working and identify workable solutions that might include sign-posting more clearly on the equipment the consequences of damaging that equipment. That might be a way forward. However, I share with the noble Baroness, Lady Chapmen, that these are abhorrent acts of criminal damage that should be prosecuted. The sentence must fit the crime. There is a potential maximum sentence of life imprisonment.

The noble Baroness, Lady Jones, put the question: why are the Government making destroying statues a criminal offence if destroying life-saving equipment is not a criminal offence? The problem with that question is that destroying life-saving equipment is a criminal offence. So far as statues are concerned, the next instalment is due on Monday, so I will leave the matter for then.

However, so far as today is concerned, while sharing very much the sympathies behind the amendment, I invite the noble Baroness to withdraw it.

Baroness Chapman of Darlington (Lab): I am grateful to the Minister for what he had to say and I do understand that creating a new offence or separate provision may not have the desired effect of reducing these horrendous instances. It is right that we want to stop that happening and I welcome his comments about working together, perhaps with local authorities and police forces, to do more creative things to try to prevent this. I beg leave to withdraw the amendment.

Amendment 104D withdrawn.

Amendment 104E

Moved by ***Lord Ponsonby of Shulbrede***

104E: After Clause 172, insert the following new Clause—

"Offence of requiring or accepting sexual relations as a condition of accommodation

(1) It is an offence for a person (A) to require or accept from a person (B) sexual relations as a condition of access to or retention of accommodation or related services or transactions.

(2) For the purposes of this section, A is—

(a) a provider of accommodation,

(b) an employee of a provider of accommodation,

(c) an agent of a provider of accommodation, or

(d) a contractor of a provider of accommodation.

(3) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for a maximum of 7 years."

Lord Ponsonby of Shulbrede (Lab): My Lords, this group of amendments seeks to introduce new offences to make it illegal to have sex-for-rental accommodation. Currently, sex for rent was affirmed as a sexual offence in 2017 by the Ministry of Justice. Under the current legislation, an individual can be prosecuted for such a crime only under Section 52 of the Sexual Offences Act 2003—causing or inciting prostitution for gain. Only one person has been charged in a sex-for-rent case, and only as recently as a year ago.

[Lord Ponsonby of Shulbrede]

The law itself has made it extremely difficult for sex-for-rent victims to seek justice. According to the law, victims must be legally defined as prostitutes, which is a huge deterrent in their access to justice. Another reason why this scandal continues virtually unchecked is that landlords are able to advertise sex for rent in their properties very easily. Landlords still post on sites such as Craigslist, where they talk about free house shares, room shares or even bed shares, and even some of the postings are extremely explicit about the requirement of sex for rent.

Amendment 104E would create a new offence of requiring or accepting sexual relations as a condition of rental accommodation, with a maximum sentence if convicted of seven years. Amendment 104F would create a new offence of arranging or facilitating the requirement or acceptance of sexual relations as a condition of rental accommodation, with a maximum fine of £50,000. That would of course be for those who allow the advertisements on their websites or allow any other form of this type of advertising.

Amendment 114A would put a requirement on the Secretary of State to establish a review into the prevalence of, and the response of the criminal justice system to, the offence of administering a substance with intent under Section 61 of the Sexual Offences Act 2003. This is a separate point, and it is something that has had a lot of publicity recently. What is not known is how much of that has been drummed up by the press, if I can put it like that, and how much is real. Nevertheless, the concern that has been raised is certainly real, and this amendment would put an obligation on the Government to get to the bottom of the matter and see whether it is a real problem that nightclubs and other people need to take action to stamp out.

Amendment 114B would put a requirement on the Secretary of State to establish a review of the offence of exposure under Section 66 of the Sexual Offences Act. Again, this is a separate and wider issue, which has ramifications regarding violence against women and girls and the question of whether it is a step along that road. It is right that it should be viewed in its wider context. As a sitting magistrate I see these cases fairly often; they are highly variable and the perpetrators range completely across the social spectrum. Nevertheless, the impact on the women and girls who are subject to these exposures is real, and I am sure there is sufficient data to see whether people who expose themselves progress to much more serious offences.

However, it is fair to say that the main purpose of this group of amendments is to put in new offences of illegalising sex for rent. I beg to move.

Earl Attlee (Con): My Lords, I am grateful to the noble Lord, Lord Ponsonby of Shulbrede, for tabling Amendments 104E and 104F, because this gives me an opportunity to speak to them as I was not available at an earlier stage.

My first point is that sex for rent is invariably immoral and abhorrent and frequently evil, so I agree with the sentiments expressed by the noble Lord today and by noble Lords the last time we debated it. Unfortunately, I share the concerns expressed by the noble Lord, Lord Marks, in Committee on 22 November last year. Like the noble Lord, I am worried about the unintended consequences. He asked:

> "What about the landlady of the bed and breakfast who seduces the potential paying guest and offers him or her a free room in return?"—[*Official Report*, 22/11/21; col. 684.]

The problem is not so much in the drafting but in the way that the amendment works. For instance, I worry about the use of the word "provider". Does the proposed offence catch a young, affluent male student who has a spare bed or room to offer a female student, partially or wholly in exchange for sex or an intimate relationship?

6.15 pm

The amendments are morally correct but, looking around the corner, could they have unintended and undesirable consequences? Take a young girl whose moral compass is not yet fully stabilised, calibrated and adjusted. If these amendments had the effect desired, she would no longer be able to secure her accommodation directly by immoral means. The risk is that she would be more likely to seek an arrangement with an escort agency, which would involve numerous sexual partners rather than just one, with the obvious attendant health risks. We are of course already seeing this problem arise, and we need to do something about it.

In Committee the noble Baroness, Lady Kennedy, made the point that it should not be necessary for young people, particularly girls, to have to sell themselves in this way, and she was absolutely right. It is disappointing to read that the Government appear to have wimped out on planning reform, which means that developers will continue to concentrate on meeting the needs of the affluent at the expense of the poor.

What I have said does not mean that my noble friend the Minister has escaped. I am not convinced that Sections 52 and 53 were designed with this problem in mind. Because of the way that they work, the Section 54 definition of a prostitute is very wide. By the way, I think the term "prostitute" is a horrible, derogatory term when a very large proportion of them are victims of their own circumstances. I agree with noble Lords who suggest that Sections 52 and 53 do not work in the way that the Government suggest. We cannot expect many victims to stand up in court and agree that they are prostitutes, even if protected by anonymity, as explained by the noble Lord, Lord Ponsonby.

I see the problem with the amendments not as one of drafting but as more fundamental: the noble Lord, Lord Ponsonby, may have selected the wrong solution. I think he should perhaps have sought to insert a new provision into Section 75(2) of the 2003 Act, which deals with consent in rape and sexual assault cases. In egregious cases we would expect to see a gross disparity in economic power, age, socioeconomic group and possibly ethnicity, and therefore it would be obvious that there was not genuine consent. In egregious sex-for-rent cases appropriate for prosecution, that would not be difficult for a jury to determine.

I urge my noble friend the Minister to reject these amendments but to look instead very carefully at the issue of the lack of genuine consent in sex-for-rent cases.

Lord Pannick (CB): My Lords, I do not share the concerns that have just been expressed. It seems to me that Amendment 104E makes it very clear what the mischief is; it is making it a condition of access to accommodation that sexual services are provided. We all know what that means, and juries will know what it means. It is a real mischief and it needs to be addressed. If the noble Lord, Lord Ponsonby, divides the House on Amendments 104E and 104F, he will certainly have my support.

However, I have concerns about the drafting of Amendment 104F. My concern is that in several places it uses the concept of "arranging" an offence—not simply facilitating the offence but arranging or facilitating it. I do not really understand what the difference is and what is added by "arranging an offence". I am not myself aware of other contexts where that concept has been used. It is a very vague concept and, I think, a rather undesirable one.

I am also troubled by proposed new subsection (3)(c) of Amendment 104F, which makes it an offence if a publisher is informed that its actions

"had enabled the arrangement of or facilitated an offence"

and it then

"failed to take remedial action within a reasonable time."

All that is extremely unclear and uncertain as to the ingredients of the offence. No doubt that can be dealt with at Third Reading if others share my view. I emphasise that I support the amendments, but I draw attention to those matters that cause me concern.

Lord Hope of Craighead (CB): My Lords, I have one point to add to what has been said by my noble friend Lord Pannick. The word "publisher" troubles me a bit. It is not defined in the amendment, and I am not quite sure what that word is directed to. Is it somebody in business as a publisher or somebody who simply publishes something, describing the activity rather than the trade? The amendment would be improved if something was said in it as to what exactly is meant by the word "publisher".

Baroness Kennedy of Cradley (Non-Afl): My Lords, I speak briefly in support of Amendments 104E and 104F, in the name of my noble friend Lord Ponsonby of Shulbrede. In doing so, I declare my interest as director of Generation Rent.

Predators online attempt to coerce men and women to exchange sex for a home by exploiting their financial vulnerabilities. They have used the economic effects of the pandemic as a marketing technique. This is already a crime, and it is not a new crime, but there has only ever been one charge for this offence, and that was in January last year. However, back in 2016, Shelter found that 8% of women had been offered a sexual arrangement. Two years later, its polling estimated that 250,000 women had been asked for sexual favours in exchange for free or discounted rent, and its more recent research showed that 30,000 women in the UK were propositioned with such an arrangement between the start of the pandemic in March 2020 and January 2021.

This is a crime that goes on, openly and explicitly, through adverts on online platforms. Despite the adverts being clear in their intention, they go unchecked, are placed without consequence and are largely ignored by law enforcement and the online platform providers. The fact that there has only ever been one charge for this crime shows how inadequate the law and CPS guidance are in this area.

The victims of this exploitation have been failed. As my noble friend said, for a victim to get justice, they need to be defined as a prostitute for a criminal case to progress, which is a huge deterrent that has to be changed. The online platforms—that is what I believe is meant by "publisher"—allow this crime to be facilitated, and they must have action taken against them. That is why I very much support the amendments tabled by my noble friend.

In closing, I pay tribute to the honourable Member for Hove in the other place for his campaigning on this issue, and the many journalists who have kept this issue on the agenda, including the team at ITV, whose research I understand helped to lead to the one charge for this crime that there has ever been. No one should ever be forced by coercion or circumstance to exchange sex for her home. There is a housing emergency in this country. It continues to hit new lows—so low that sexual predators can deliberately take advantage of people's desperation to find a home. For me, Amendments 104E and 104F are an opportunity to protect some of the country's most vulnerable renters.

Lord Marks of Henley-on-Thames (LD): My Lords, I shall be brief because we have a lot to get through. I should have preferred Amendments 140E and 104F, the sex-for-rent amendments and the facilitating amendments, to be rather more tightly drawn. I note that the points I made in Committee were taken by the noble Earl, Lord Attlee. However, I have been persuaded by re-reading the speech made in Committee by the noble Baroness, Lady Kennedy of Cradley, and what she said today, with her extensive experience as director of Generation Rent—that there is a serious need for criminal legislation to stop what is a particularly nasty form of predatory behaviour. I also took the points made by the noble Lord, Lord Pannick, on the interpretation of Amendment 140E, implicitly supported by the noble and learned Lord, Lord Hope, so we will support those amendments. We will also of course support the amendment calling for a review of the criminal law relating to exposure offences and spiking offences, for the reasons given by the noble Lord, Lord Ponsonby, and which we supported in Committee.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, as the noble Lord, Lord Ponsonby, explained, these amendments relate to three matters we debated in Committee: namely, whether there should be a bespoke offence to tackle so-called sex for rent and whether the police, prosecutors and courts are doing enough to tackle offences relating to spiking and exposure. If I may, I shall take each issue in turn.

Amendments 104E and 104F are intended to address the so-called sex-for-rent issue, whereby exploitative landlords, and others, require sexual relations in return for housing or accommodation. This is an abhorrent phenomenon, which takes advantage of very vulnerable people, as noble Lords have said, and it has no place in our society.

[Baroness Williams of Trafford]

Under the Sexual Offences Act 2003, there are existing offences which may be used to prosecute this practice, including the Section 52 offence of causing or inciting prostitution for gain and the Section 53 offence of controlling prostitution for gain. Both offences carry a maximum penalty of seven years' imprisonment. They can capture instances of sex for rent, depending on the circumstances of the individual case.

In 2019, the Crown Prosecution Service amended its guidance on prostitution and exploitation of prostitution to include specific reference to the availability of charges for offences under Sections 52 and 53, where there is evidence to support the existence of sex-for-rent arrangements. In January of last year, the CPS authorised the first charge for sex-for-rent allegations under Section 52. The individual against whom these allegations were made has pleaded guilty to two counts of inciting prostitution for gain. To better protect tenants from rogue landlords convicted of certain criminal offences, banning orders were introduced through the Housing and Planning Act 2016. A banning order prohibits named individuals engaging in letting and property management work. The Government have been clear that housing associations and local authorities should use these orders if needed. Action will be taken against landlords who exploit vulnerable people. This behaviour simply is not tolerated.

I thought I might say something about a victim having to identify as a prostitute for the Section 52 and 53 offences to be used. I must stress that anyone making a report to the police would benefit from the anonymity provisions in the Sexual Offences (Amendment) Act 1992. The Section 52 offence applies when an identified victim has been caused to engage in prostitution or incited to do so, whether the prostitution takes place or not. The Section 53 offence applies whether the victim has, on one or more occasions, provided sexual services to another person in return for financial gain.

Moving on to Amendment 104F, I definitely agree with the noble Lord, Lord Pannick, about the woolly terminology of "arranging an offence", and the point made by the noble and learned Lord, Lord Hope of Craighead, about "publisher", but on the amendment itself, the forthcoming online safety Bill will require companies to put in place systems and processes to remove certain types of illegal content as soon as they become aware of it.

I move on now to spiking, the subject of Amendment 114A. This would require the Secretary of State to review

"the prevalence of, and the response of the criminal justice system to, the offence of administering a substance with intent under section 61 of the Sexual Offences Act 2003".

I share the concerns expressed by the noble Lord about this offence, particularly the recently reported phenomenon of spiking by needles. This is understandably causing considerable anxiety among young people, especially in our university towns and cities, but there is no need to create a statutory obligation on the Government to review the operation of Section 61 as this issue is already very much on the Government's radar. Indeed, a statutory requirement setting out a specific agenda risks hindering the Government's ability to respond flexibly to the problem.

6.30 pm

As I have set out previously, my right honourable friend the Home Secretary has already asked the National Police Chiefs' Council to review the scale and nature of needle spiking and is receiving regular updates. As the noble Lord, Lord Ponsonby, said, the picture is still emerging and there is currently little evidence of needle spiking being linked to sexual offending—but we are monitoring the situation closely and will not hesitate to take any action should the reports from the police indicate that this is necessary. In the meantime, I encourage anyone who believes that they have been a victim of spiking to report the matter to the police as soon as they become aware of it, as this will greatly assist the investigation.

I move finally to Amendment 114B on exposure, which would require a review into the operation of the offence of exposure under Section 66 of the Sexual Offences Act 2003. Again, I do not think that it is necessary, for the simple reason that the Ministry of Justice, together with the Home Office, already keeps the operation of the criminal law under review. But I make it very clear that we share the noble Lord's desire to ensure that the criminal law is up to date and provides consistent and effective protection against this intrusive and inexcusable behaviour. We listen to the voices of victims alongside the concerns of stakeholders and practitioners and, if reform or further scrutiny of the criminal law is required, we respond.

For example, we were made aware of concerns that the Section 66 offence may not fully capture indecent exposure online, including the sending of unsolicited indecent photographs to others over, for example, social media and dating apps. I believe that this practice is known as cyberflashing. As a result of such concerns and others expressed around the development of new technology, social media and the new methods of offending that such developments can bring, we commissioned a Law Commission review into harmful online communications. We wanted to ensure that there was no gap in the law in this area. The Law Commission has now published its report and made a number of recommendations, including the creation of a new criminal offence to capture specifically the practice known as cyberflashing. I can assure noble Lords that we are actively and carefully considering the recommendation.

In addition to this work to ensure that the criminal law is up to date, we also need to ensure that the existing law is properly enforced. To support police forces in this regard, just last month the College of Policing published guidance to forces on tackling street harassment. This includes a section on exposure and sets out the various civil protection orders that could be used to protect the public and tackle perpetrator behaviour.

I hope I have been able to reassure the noble Lord that we take all three of these offences very seriously and that we will continue to work with the police, prosecutors and others to prevent such offending and ensure that victims of these crimes get the justice and protection they deserve. With that reassurance in mind, I hope the noble Lord will be content to withdraw his amendment.

Lord Ponsonby of Shulbrede (Lab): My Lords, I thank all noble Lords who have taken part in this debate. It has been quite quick but focused on the issues raised in this group of amendments.

The noble Earl, Lord Attlee, raised some reservations and talked about the nature of the victims. I advise the noble Earl to read very carefully what my noble friend Lady Kennedy said when she itemised the victims of this offence. It is overwhelmingly women who are victims of this offence. The numbers are very large and it has been going on for years. My noble friend is an expert on this matter and I think his remarks were misplaced, if I can put it like that.

Earl Attlee (Con): My Lords, I have no issue with what the noble Lord said, nor with what the noble Baroness said. This problem has been going on for a very long time and large numbers are involved; I do not disagree with that.

Lord Ponsonby of Shulbrede (Lab): My Lords, I move on to the comments of the noble Lord, Lord Pannick, and the noble and learned Lord, Lord Hope. I am grateful for their support. They raised drafting issues, if I can put it like that, around the word "arranging" in Amendment 104F, and the noble and learned Lord, Lord Hope, questioned the use of the word "publisher"—although my noble friend Lady Kennedy said that she regards "publisher" as including online platforms. Nevertheless, I am not stuck with the specific wording in front of us. I think the purpose of the amendments is perfectly clear, and I am glad that both the noble Lord and the noble and learned Lord are nodding their heads.

I was disappointed with the answer given by the Minister. She made it clear that the Government take these issues seriously and said that they are constantly reviewing the law on these matters, but here is an opportunity to change it right now. There has been a very effective campaign on this issue, and it would have been an opportunity for the Government to change their approach. So I think that we on this side of the House should force the issue and test the opinion of the House, just to see the strength of opinion on this long-standing problem.

6.37 pm

Division on Amendment 104E

Contents 206; Not-Contents 176.

Amendment 104E agreed.

Division No. 1

CONTENTS

Aberdare, L.
Addington, L.
Adonis, L.
Allan of Hallam, L.
Alli, L.
Alton of Liverpool, L.
Anderson of Swansea, L.
Andrews, B.
Austin of Dudley, L.
Bach, L.
Bakewell of Hardington Mandeville, B.
Barker, B.
Bassam of Brighton, L.
Beith, L.
Benjamin, B.
Bennett of Manor Castle, B.
Berkeley, L.
Best, L.
Blackstone, B.
Blake of Leeds, B.
Boateng, L.
Bonham-Carter of Yarnbury, B.
Bradley, L.
Brinton, B.
Brooke of Alverthorpe, L.
Browne of Ladyton, L.
Bruce of Bennachie, L.
Bull, B.
Burt of Solihull, B.
Campbell of Pittenweem, L.
Campbell of Surbiton, B.
Campbell-Savours, L.
Carlile of Berriew, L.
Carter of Coles, L.
Cashman, L.
Chakrabarti, B.
Chandos, V.
Chapman of Darlington, B.
Chidgey, L.
Clancarty, E.
Clark of Windermere, L.
Clement-Jones, L.
Coaker, L.
Collins of Highbury, L.
Colville of Culross, V.
Corston, B.
Coussins, B.
Craigavon, V.
Crawley, B.
Crisp, L.
Davies of Brixton, L.
Davies of Oldham, L.
Donaghy, B.
Drake, B.
D'Souza, B.
Elder, L.
Falconer of Thoroton, L.
Faulkner of Worcester, L.
Featherstone, B.
Foster of Bath, L.
Foulkes of Cumnock, L.
Garden of Frognal, B.
German, L.
Golding, B.
Grantchester, L.
Greengross, B.
Greenway, L.
Grey-Thompson, B.
Griffiths of Burry Port, L.
Grocott, L.
Hacking, L.
Hain, L.
Hamwee, B.
Hannay of Chiswick, L.
Hanworth, V.
Harris of Haringey, L.
Harris of Richmond, B.
Hayman of Ullock, B.
Hayman, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Hendy, L.
Hogan-Howe, L.
Hollick, L.
Hope of Craighead, L.
Howarth of Newport, L.
Humphreys, B.
Hunt of Bethnal Green, B.
Hussain, L.
Hussein-Ece, B.
Janke, B.
Jolly, B.
Jones of Cheltenham, L.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Judge, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kennedy of The Shaws, B.
Kerslake, L.
Khan of Burnley, L.
Kidron, B.
Knight of Weymouth, L.
Kramer, B.
Krebs, L.
Lawrence of Clarendon, B.
Layard, L.
Lea of Crondall, L.
Lennie, L.
Liddle, L.
Lipsey, L.
Lister of Burtersett, B.
Londesborough, L.
Macdonald of River Glaven, L.
Mackenzie of Framwellgate, L.
Mallalieu, B.
Mann, L.
Marks of Henley-on-Thames, L.
Masham of Ilton, B.
McIntosh of Hudnall, B.
McNally, L.
McNicol of West Kilbride, L.
Meacher, B.
Merron, B.
Monks, L.
Morgan of Huyton, B.
Morgan, L.
Morris of Yardley, B.
Newby, L.
Newlove, B.
Nye, B.
Oates, L.
O'Loan, B.
Osamor, B.
Paddick, L.
Palmer of Childs Hill, L.
Pannick, L.
Parminter, B.
Pinnock, B.
Pitkeathley, B.
Ponsonby of Shulbrede, L.
Prashar, B.
Purvis of Tweed, L.
Randerson, B.
Ravensdale, L.
Razzall, L.
Rebuck, B.
Redesdale, L.
Reid of Cardowan, L.
Rennard, L.
Ritchie of Downpatrick, B.
Robertson of Port Ellen, L.
Rooker, L.
Rosser, L.
Royall of Blaisdon, B.
Russell of Liverpool, L.
Sawyer, L.
Scott of Needham Market, B.
Scriven, L.
Sentamu, L.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Sikka, L.
Smith of Basildon, B.
Smith of Finsbury, L.
Smith of Newnham, B.
Snape, L.
St John of Bletso, L.
Stansgate, V.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Teverson, L.

Thomas of Cwmgiedd, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
Thornton, B.
Thurso, V.
Tope, L.
Touhig, L.
Triesman, L.
Tunnicliffe, L.
Uddin, B.
Wallace of Saltaire, L.
Walmsley, B.
Walney, L.
Warwick of Undercliffe, B.
Watkins of Tavistock, B.
Watson of Invergowrie, L.
Watts, L.
Waverley, V.
West of Spithead, L.
Wheatcroft, B.
Wheeler, B.
Whitaker, B.
Whitty, L.
Wilcox of Newport, B.
Willis of Knaresborough, L.
Woodley, L.
Young of Norwood Green, L.
Young of Old Scone, B.

NOT CONTENTS

Agnew of Oulton, L.
Ahmad of Wimbledon, L.
Altmann, B.
Altrincham, L.
Anelay of St Johns, B.
Arbuthnot of Edrom, L.
Ashton of Hyde, L.
Astor of Hever, L.
Attlee, E.
Balfe, L.
Barran, B.
Barwell, L.
Bellingham, L.
Berridge, B.
Bethell, L.
Blackwood of North Oxford, B.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bottomley of Nettlestone, B.
Bridgeman, V.
Bridges of Headley, L.
Brougham and Vaux, L.
Brown of Eaton-under-Heywood, L.
Buscombe, B.
Caine, L.
Caithness, E.
Callanan, L.
Carrington of Fulham, L.
Chalker of Wallasey, B.
Choudrey, L.
Clarke of Nottingham, L.
Colgrain, L.
Cormack, L.
Courtown, E.
Crathorne, L.
Cruddas, L.
Davies of Gower, L.
De Mauley, L.
Deben, L.
Deighton, L.
Duncan of Springbank, L.
Eccles of Moulton, B.
Eccles, V.
Erroll, E.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fairhead, B.
Farmer, L.
Faulks, L.
Fellowes of West Stafford, L.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Oxton, B.
Fox of Buckley, B.
Framlingham, L.
Fraser of Craigmaddie, B.
Frost, L.
Gadhia, L.
Geddes, L.
Gilbert of Panteg, L.
Godson, L.
Gold, L.
Goldie, B.
Goldsmith of Richmond Park, L.
Goodlad, L.
Grade of Yarmouth, L.
Greenhalgh, L.
Grimstone of Boscobel, L.
Hamilton of Epsom, L.
Hannan of Kingsclere, L.
Harding of Winscombe, B.
Harlech, L.
Haselhurst, L.
Hayward, L.
Herbert of South Downs, L.
Hill of Oareford, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Hunt of Wirral, L.
Jenkin of Kennington, B.
Jopling, L.
Kamall, L.
Keen of Elie, L.
Kinnoull, E.
Kirkham, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lancaster of Kimbolton, L.
Lansley, L.
Leicester, E.
Leigh of Hurley, L.
Lexden, L.
Lilley, L.
Lingfield, L.
Liverpool, E.
Mancroft, L.
Manzoor, B.
Marlesford, L.
Maude of Horsham, L.
Mawson, L.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
McLoughlin, L.
Meyer, B.
Mobarik, B.
Moore of Etchingham , L.
Morgan of Cotes, B.
Morrissey, B.
Moylan, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Nicholson of Winterbourne, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
Offord of Garvel, L.
Parkinson of Whitley Bay, L.
Patel, L.
Pickles, L.
Pidding, B.
Polak, L.
Popat, L.
Rawlings, B.
Reay, L.
Redfern, B.
Robathan, L.
Rogan, L.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Sassoon, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Sharpe of Epsom, L.
Sheikh, L.
Sherbourne of Didsbury, L.
Shinkwin, L.
Shrewsbury, E.
Smith of Hindhead, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Strathclyde, L.
Stroud, B.
Sugg, B.
Taylor of Holbeach, L.
Trefgarne, L.
Trenchard, V.
Trevethin and Oaksey, L.
True, L.
Tugendhat, L.
Udny-Lister, L.
Vaizey of Didcot, L.
Vere of Norbiton, B.
Verma, B.
Wasserman, L.
Wei, L.
Wellington, D.
Wharton of Yarm, L.
Willetts, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

6.52 pm

Amendment 104F

Moved by ***Lord Ponsonby of Shulbrede***

104F: After Clause 172, insert the following new Clause—

"Offence of arranging or facilitating the requirement or acceptance of sexual relations as a condition of accommodation

(1) It is an offence for a person, who may in particular be a publisher, to arrange or facilitate an offence under section (Offence of requiring or accepting sexual relations as a condition of accommodation).

(2) A person commits an offence if they intend to arrange or know that their actions would facilitate an offence under section (Offence of requiring or accepting sexual relations as a condition of accommodation).

(3) A publisher commits an offence if they—

(a) know they are arranging or facilitating an offence under section (Offence of requiring or accepting sexual relations as a condition of accommodation),

(b) reasonably should know their actions would enable the arrangement of or facilitate an offence under section (Offence of requiring or accepting sexual relations as a condition of accommodation), or

(c) were informed that their actions had enabled the arrangement of or facilitated an offence under section (Offence of requiring or accepting sexual relations as a condition of accommodation) and failed to take remedial action within a reasonable time.

(4) A person found guilty of an offence under this section is liable on conviction on indictment to a fine of £50,000."

Amendment 104F agreed.

Amendment 104FA

Moved by ***Lord Bach***

104FA: After Clause 172, insert the following new Clause—

"Police and crime commissioners: limit on age of disqualification for conviction

In section 66(3)(c) of the Police Reform and Social Responsibility Act 2011, after the first "offence" insert "committed after the age of 21"."

Lord Bach (Lab): My Lords, Amendment 104FA stands in my name of those of the noble Lord, Lord Pannick, and my noble friend Lord Hunt of Kings Heath. It is hard to think of two more respected, valued and experienced Members of the House, and I know that other noble Lords would be happy to have supported this amendment. I am very grateful to them. I thank the Minister for suggesting a meeting, which we had online yesterday; I am very grateful to him for it. I enjoyed our discussion, and it was particularly good that part of that discussion was with a senior civil servant who is advising him and who, many, many moons ago, advised me when I sat in his place.

In Committee, my amendment was slightly differently drafted, but the point remains a simple matter of principle. It is not of world-shattering interest, but it is still a matter of principle that all people of good will, including the Government, should support. The Bill in the House tonight is a legitimate and timely moment to put right a minor wrong. We should not waste that opportunity. Section 66 of the Police Reform and Social Responsibility Act 2011 makes it clear that if a person has at any stage in their life a conviction for any offence which, if they were over 18 at the time, could carry a sentence of imprisonment —whether or not it did carry one is irrelevant—that person will remain ineligible for the rest of their lives to stand as a police and crime commissioner: not just until the Rehabilitation of Offenders Act applies, or for five, 10, 15 or 20 years, but for their whole life.

In Committee, three case histories were given which I hope helped the Committee to feel that the present position is a nonsense. Two of those cases were given by me and one by the noble Lord, Lord Carlile of Berriew, to whom I was grateful. They showed how ridiculous, absurd and unique Section 66 is. There will be other cases that the House will not have heard of. Let me briefly repeat one of those examples. It concerns a boy aged 16 in 1972, and an old scooter. He and his friends visited a hospital. His mate handed him an old scooter helmet, which was apparently completely useless. He foolishly placed it in his family garage. He was charged with handling and fined £5. Since then, it goes without saying that he has never been in trouble. He has had a highly successful career in journalism. He has been head of a regional media outfit and worked for the NSPCC as a communications officer. In addition, he has been a TA soldier for many years and, indeed, was the company sergeant-major. He is a county councillor in his local area and is in his fourth term. He is also an ex-member of the local police authority that existed until the creation of police and crime commissioners. Now that there are PCCs, he is on the police and crime panel, which has authority to hold to account the local police and crime commissioner. One can imagine his surprise when, 40 years on, in 2012, the year of the first police and crime commissioner elections, he was told that he could not stand because of an offence he committed and a conviction he got when he was 16, in 1972. I suggest to the House that that is absurd.

I suppose it could be understood if anyone who had been convicted of such an offence at any stage in their life was considered ineligible to apply for the following jobs: Member of Parliament, councillor, lawyer, judge, Home Secretary, Prime Minister, archbishop—if the noble and right reverend Lord, Lord Sentamu, whom I warned that might mention in passing, will forgive me—or, even more extraordinarily, police officer. If people were prevented from doing those jobs throughout their lives merely because they had a conviction when they were 15 or 16, it would have at least some logic and sense to it, but that is not the position. Each of those important and responsible jobs is open to someone like the example I have given, who may have offended when they were a youngster but have since lived sensible, law-abiding lives. The position is quite rightly much more flexible for those others, so why on earth is it so strict for those who want to be a police and crime commissioner? There is no automatic bar for anybody else, so why should there be for this post? Is there something in the position of police and crime commissioner that is so remarkable —so close to heaven, perhaps I could say—that people must pass this incredible test and, if they fail it when they are 16, they fail it for life? The rigidity is absurd.

7 pm

Let me make this clearer. No one is suggesting that an adult who has committed offences should be allowed to stand. The current issue around a particular police and crime commissioner alleged—I emphasise that—to have committed other offences as an adult, every one of them a few years ago, is wholly irrelevant to the case I am trying to make. What is relevant to this argument is this utter unfairness in preventing, for all time, someone who as a young person committed an offence from standing as or becoming a police and crime commissioner. This may be a very minor discrimination in the great scheme of things but it is still discrimination. As such, we should be prepared—I would argue in the traditions of this House—to remove such discrimination.

I will finish by returning to my example of the 16 year-old with a scooter helmet. If the relevant police officer in 1972 had decided not to charge him with this offence—a first and minor offence—but to caution him instead, 40 years later he would have been absolutely entitled and eligible to stand and perhaps be elected as a police and crime commissioner. Should an outstanding individual who has served his community for years with distinction and who holds the local police and crime commissioner to account as a member of the police and crime panel have his freedom to stand or not decided by a decision taken 40 years earlier, no doubt on the hoof, as to whether there should be a £5 fine or a caution? Perhaps nothing demonstrates more clearly the irrational and weird state of affairs that exists in this area. It is time for the Government to move on this issue. I beg to move.

Lord Pannick (CB): My Lords, I respectfully agree with everything the noble Lord, Lord Bach, said. I will add just one point. The problem is not simply the unfairness to the individuals concerned, although that is bad enough, but the damage to the public interest that otherwise eligible and fine candidates are prevented from serving. It is a basic principle of our constitutional law that Parliament can do anything it likes, but there are limits, and we ought to get rid of this manifest absurdity.

Lord Brown of Eaton-under-Heywood (CB): My Lords, I too support this amendment; I did at Second Reading. Indeed, I have added my name to the amendment but too late for it to appear on the fifth Marshalled List. The case for it could hardly be simpler or more compelling. Frankly, the illustration of the scooter helmet from the noble Lord, Lord Bach, ought of itself to be enough to carry this. I am against absolutism and total purity and inflexibility routinely, but flexibility and discretion are almost invariably required to be welcomed and valued, and they are here. It is nothing short of bizarre, absurd and conspicuously unfair to single out this one public office as one from which people are uniquely disqualified in the circumstances already sufficiently indicated. I need not waste another word. My only regret is that the amendment is not being put to the vote.

Earl Attlee (Con): My Lords, I have worked with the noble Lord, Lord Bach, for many years in this House —sadly, on opposite sides of it—but I have never heard him make a stronger argument for anything. The only reason why I cannot say that I will support him is because I have not written a little note to my noble friend the Chief Whip.

Baroness Fox of Buckley (Non-Afl): My Lords, I cannot say that I know many teenagers who, growing up, aspire to be police crime and commissioners. However, I was convinced by the arguments made in Committee and I wanted to just make a couple of additional small points. For me it is not just about unfairness; there is a principle here. If you work with teenagers and one of them has made a mistake and has been fined or has broken the law in some way, you say to them, "Now we want you to rehabilitate and become a fine upstanding citizen", and, "The world is your oyster and you can do anything." I cannot imagine anything that is more proof of being fine and upstanding than growing up and then saying, "I want to be a police and crime commissioner." I do not even know whether I agree with the idea of police and crime commissioners, but that is not my point.

The other thing, on a kind of principle, is that increasingly I would like public servants and people taking on roles such as police and crime commissioners to have some real-life experience—and that might involve youthful indiscretions.

I completely support the amendment. There are principles here that could easily be upheld by the Government simply accepting it; it makes perfect sense. I think even the public would cheer.

Lord Sentamu (CB): My Lords, since I have been gratuitously referred to, I ought to say some words. Archbishop Robert Runcie said, "A saint is a person whose life has never been fully examined." All our lives have never been fully examined, but I confirm that I never committed any crime at the age of 15 or 16, and have not done even now. Even if I committed one, I am already excluded from becoming an archbishop again because I am now 72. Age would discriminate against me and push me out.

What I do not get is why being a police commissioner is the only calling where there is discrimination if something was done at the age of 16. I would have thought that, 40 years on, the person has done their time. Yes, there is a record but it does not have to be the only thing over which you exclude them, because they have come on in age. In wanting to remove this for police commissioners, we are not sending out a message that it does not matter whether you commit a crime at the age of 16. We are saying: why is there this hindrance to this profession? Because one day I may become a saint and my life will never be fully examined, I want to vote for this amendment. I hope that the Minister will just accept it and it will be put into statute without more debates, because this just does not make sense. But I speak like a fool.

Baroness Jolly (LD): My Lords, as we said in Committee, we are in principle supportive of this amendment. However, we would want in an ideal world a balancing amendment to ensure the possibility of recall and by-election should a police and crime commissioner be found guilty of misconduct, along the lines of the Recall of MPs Act 2015. I agree with the noble Lord, Lord Bach, about the discrimination of early offences. Currently, because police and crime commissioners are democratically elected, they can be replaced only by means of another election, and as things stand there is no mechanism to force such a by-election. It is hoped that a disgraced PCC would resign but this should not be at the sole discussion of the PCC concerned. Therefore, we are reluctant to support the amendment without another along the lines of the one described earlier. My noble friend Lord Paddick says that he thinks it is unfortunate that the noble Lord, Lord Bach, did not take the hint that he gave him in Committee.

Lord Rosser (Lab): My Lords, I will be brief. I recall that the Minister said in Committee on this amendment

"I fear that my ice thins a little here".

One can only say that I think it has got even warmer since then. The Government said in Committee:

"Having said all that, I have heard everything that has been said around the Chamber this evening, across party, and I will make sure that those arguments are reflected back to the Home Office."

What happened when those arguments were then reflected back to the Home Office, to whom in the Home Office were they reflected back to, and what was the response?

The rules on previous convictions, which the Government said in Committee were necessary to ensure

"the highest levels of integrity on the part of the person holding office and to protect the public's trust in policing"

do not seem to have been very effective or relevant in North Yorkshire on two occasions already where two different PCCs have already departed the scene in interesting circumstances.

I conclude, in indicating our support for this amendment and thanking noble Lords for all the arguments and points made, that in Committee the Government referred to part 2 of the review of police and crime commissioners. They said that it is "currently under way" and that

"this review will also assess the benefits and demerits of a trigger mechanism for the recall of PCCs; it is being debated."—[*Official Report*, 22/11/21; cols. 649-50.]

Will this part of the review of PCCs also now look at the issue of the current bar, in its present form, on a potential candidate being able to stand for the position of police and crime commissioner, which is the issue we are debating tonight? If the Government cannot even say that this will now be included in part 2 of the review, what is the reason for that stance?

I very much hope, like my noble friend Lord Bach, that the Government will accept this amendment, or at the very least agree to reflect on it further prior to Third Reading so that it can be brought back again if the Government's reflections are not very satisfactory.

Lord Sharpe of Epsom (Con): My Lords, first, I thank the noble Lord, Lord Bach, for giving us a further opportunity to discuss the disqualification criteria for those wishing to be elected as police and crime commissioners and for joining the meeting yesterday when we discussed this issue online. I thank all noble Lords who have participated in this debate and, to the point made by the noble Lord, Lord Rosser, I do fear my ice is rather thinner.

However, this latest amendment would allow anyone convicted of an imprisonable offence before the age of 21 to stand as a police and crime commissioner. I commend the noble Lord for seeking some middle ground to address this issue, but the amendment would still dilute the current high standard of integrity we expect of PCCs—namely, preventing anyone convicted of an imprisonable offence to stand for or hold the office of PCC.

As I said on this matter in Committee, the rules governing who can stand as a PCC are the strictest of all elected roles in England and Wales. We believe that this is necessary to ensure the highest levels of integrity of the person holding office and thus protect the public's trust in policing. Any dilution of that high standard, as proposed by the noble Lord, could still undermine public confidence in a PCC.

Under the noble Lord's amendment, it would be open to a person convicted of and imprisoned for a very serious violent offence at the age of 20, for example, to stand for election as a police and crime commissioner. That is inappropriate, given the nature of the role the PCC plays in holding the chief constable and the force to account. I suggest that were a PCC to hold office with a previous conviction for an imprisonable offence, both the PCC and the chief constable may find it untenable to maintain a professional and respectful relationship.

The current standard was set with cross-party agreement and the support of senior police officers. If the current standard is lowered, the Government maintain that it would be a very serious risk to public confidence and the integrity of the PCC model at a time when we should be doing all we can to protect and increase public confidence in the police.

7.15pm

I recognise that there are contrary views on how strict the eligibility rules for PCC candidates should be in relation to previous convictions. At the very least these require further debate and, as noble Lords will be aware, we are conducting a review of PCCs, as referred to by the noble Lord, Lord Rosser. We have already published the findings of part 1 of the review and we aim to publish the conclusions of part 2 in the coming weeks. In answer to his specific questions, that is where I got to with my deliberations with the Home Office.

In answer to the question asked by the noble Baroness, Lady Jolly, I think part 2—I will come back to her if I am wrong on this—involves looking at powers of recall. Some of the review's recommendations will require legislation, which we will bring forward when parliamentary time allows. That would afford the noble Lord a further opportunity to raise this issue.

To conclude, the Government remain firmly of the view that the current disqualification criteria should remain and any dilution risks undermining public confidence in policing. I therefore invite the noble Lord to withdraw his amendment.

Lord Pannick (CB): Before the noble Lord sits down, may I ask him this question? Why is it that public confidence requires, in his view, this absolute rule, when I can serve as a Supreme Court Justice even if I was convicted of an imprisonable offence at the age of 17 or 18?

Lord Sharpe of Epsom (Con): With regard to public confidence, I go back to what I said earlier: this was originally designed with cross-party support and with the assistance and advice of police chiefs.

Lord Rosser (Lab): My Lords, before the noble Lord sits down, may I have a response to my question? Bearing in mind that in Committee the Government were prepared to tell us that part 2 of the review will

"also assess the benefits and demerits of a trigger mechanism for the recall of PCCs; it is being debated,"—[*Official Report*, 22/11/21; col. 649.]

may I ask for an assurance that part 2 of the review will also look at the issue raised by my noble friend Lord Bach in this amendment about the bar on being able to seek office as a PCC? May I have that assurance?

Lord Sharpe of Epsom (Con): I am sorry I forgot to answer the noble Lord's specific question. The problem is that I do not have the terms of reference to hand so I cannot give him the assurance he seeks, but I will write to him.

Earl Attlee (Con): The noble Lord told the House that we agreed on a cross-party basis that these arrangements were appropriate. Was that by means of a vote or did we just acquiesce to it?

Lord Sharpe of Epsom (Con): I am afraid I do not know. It predates me, sorry.

Lord Lexden (Con): Is it the Government's view that, by retaining the ban—as it is at the moment—for PCCs, there would be a case for extending it so that, if it should emerge that the noble Lord, Lord Pannick, committed an imprisonable offence before the age of 21, he should be barred from becoming a Supreme Court judge? Does one thing not follow the other?

Lord Sharpe of Epsom (Con): The noble Lord will forgive me for not venturing an opinion on that.

Lord Bach (Lab): I forgive the Minister anything. I was in his position many years ago when I had to defend the completely indefensible. All Governments do it; it is not an attack on this Government. Somehow there is a collective—I am going to use the word "idiocy", which is perhaps too high, but collective mistakes are made. Individual Ministers know very well that something such as this should be got through easily and the matter of principle—the noble Baroness, Lady Fox, is right—can be put right and we can move on. But somehow, "The Government say no".

I do not think any of the reasons so articulately put by the Minister really hold water at all to be honest, particularly the argument on the public being really offended by something such as this and losing what confidence they have—which I hope is high but may not always be—in police and crime commissioners. I do not honestly think the public would care a jot and, if they did, they would be surprised by how the law stood. I have to say that I do not find placing reliance on part 2 of the inquiry, and particularly on when legislation might come to this House again on this matter, very convincing.

We have a lot of important business to do tonight—I understand that. I am reluctant to withdraw, given the strength of feeling—and I want to thank everybody who has spoken in this debate; very distinguished Members of this House have spoken, and I am really very grateful to them. However, in the circumstances, while inviting the Minister to take this issue back to the Home Office again and to show other Ministers and officials what was said tonight in *Hansard*, I hope that it may move the Government to do the right thing on this before very long. I beg leave to withdraw my amendment.

Amendment 104FA withdrawn.

Amendment 104FB not moved.

Amendment 104FC

Moved by ***Baroness Kennedy of Cradley***

104FC: After Clause 172, insert the following new Clause—

"Section 6 of the Sexual Offences Act 1956: removal of time limitation

(1) Proceedings for the offence under section 6 of the Sexual Offences Act 1956 (intercourse with a girl between thirteen and sixteen) are not barred only by virtue of the passage of time since the date of the alleged offence.

(2) Nothing in this section permits the trial of a person who has already been convicted of an offence relating to the sexual intercourse in question."

Baroness Kennedy of Cradley (Non-Afl): My Lords, men who seduced girls between the ages of 13 and 16 before 1 May 2004 are effectively immune from prosecution because of a procedural time limit. The law therefore stops historic child abusers from being held accountable for their actions; the law denies justice to women in England and Wales who were groomed for sex as teenage girls before 1 May 2004 as they cannot bring charges against the people who took advantage of them. Let me take a minute to explain why.

Abusers are immune from prosecution because sexual offences committed before 1 May 2004 must be prosecuted under the Sexual Offences Act 1956. Under that Act, the applicable offence is unlawful sexual intercourse, as outlined in Section 6. In the 1956 Act, and there is a time limit of one year from the alleged commission of the offence under Section 6. Proceedings must therefore be instituted within a year from then. This time limit is clear and unambiguous and can be found in paragraph 10 of Schedule 2 to the Act.

Amendment 104FC would remove the time limit and therefore remove the legal barrier which protects abusers of underage girls from prosecution. Some may read this speech and question why I am using the phraseology "girl" and not "child". This is because, remarkably, the time limit applies only to girls; if the victim were a boy, it would be different, as historical cases of sexual intercourse between men and boys under 16 can still be prosecuted. How can the law deny justice and discriminate in this way, and this House not seek to put it right?

The time limit has to be removed, especially as no such time limit applies to offences of this nature committed after 1 May 2004. If a man had sexual intercourse with a girl aged between 13 and 16 after 1 May 2004, he can be prosecuted for the new offence of sexual activity with a child. That was created by the Sexual Offences Act 2003, where no equivalent time limit is applied. This time limit is therefore a procedural anomaly that clearly stands in the way of justice.

This problem had been going on for some time, since before May 2004, but prosecutors were for a long time able to evade the time limit. Instead of charging for underage sexual intercourse, which could not be done if the offence was discovered or prosecuted too late, they would charge for indecent assault in relation to the same underage sexual intercourse. But in 2004, when this House also acted in its judicial capacity, it considered an appeal by a Mr J, who argued that his charge of indecent assault was a device to circumvent the time limit and was an abuse of the court—and the House accepted his argument. Since that time, therefore, men who procured sexual intercourse from vulnerable and impressionable girls before 1 May 2004 have been immune from prosecution.

Some may say that this may be an unnecessary change and ask how many people it would actually affect—but, as the CPS does not keep a record of how many cases are discounted at an early stage because of issues like time limits, there is no data for us to know whether this is affecting one woman, 1,000 women or more. What we do know is that, sadly, historic sexual abuse comes to light all too frequently. We know that girls can be threatened into silence for long periods of time. It is well known that very many girls, victimised in these ways, only recognise themselves as victims, or only have the confidence to go to the police much later than one year afterwards, or something else comes to light that encourages them to bravely break their silence. There must be hundreds of thousands of cases where men seduced a girl aged between 13 and 16 before 1 May 2004, but those victims for various reasons never told the police during the year.

I do not believe that we should need much evidence of the extent of the problem to justify the removal of this arbitrary time limit and allow justice to be done. Some may argue that you cannot retrospectively make law in this way, but applying that argument to this amendment I believe is incorrect. It is true that you cannot retrospectively create new offences and punish people for them—but here, the relevant offence always existed. This amendment would just change the rules relating to trial for those offences. It has always been understood that rules of evidence and procedure can be amended and have immediate effect in subsequent trials, regardless of when the acts complained of actually happened. Article 7 of the European Convention on Human Rights, as I understand it, applies to the definition of offences and defences; it does not apply to matters of procedure, including time limits.

Finally, some may argue that this amendment risks exposing those who were prosecuted and successfully used the time limit to avoid prosecution to further conviction. That is not my intention with this amendment, which is why subsection (2) of my proposed new clause states:

"Nothing in this section permits the trial of a person who has already been convicted of an offence relating to the sexual intercourse in question."

I am aware that that this is a complex matter, and I thank Dr Jonathan Rogers, assistant professor in criminal justice at Cambridge University, who has been arguing for a change in the law to address this issue for many years. I thank him for all his advice and support on this issue. I also thank the noble Lord, Lord Wolfson of Tredegar, for meeting Dr Rogers and me last week to discuss this matter. We are conscious that our meeting lasted twice as long as expected, so I thank him for the time that he gave and for the further discussions that were facilitated between Dr Rogers and the Civil Service team. However, my view remains that this issue needs resolving; there are still women who are denied justice for what happened to them in their early teenage years and men who can be fairly tried. This time limit is wrong —the amendment would remove it and, in doing so, close a loophole which protects sex offenders. I beg to move.

Lord Ponsonby of Shulbrede (Lab): My Lords, I support my noble friend, who is quite right in everything she has said. Sexual abuse and rape can quite often take decades to come to light. The anomaly, which she has outlined very clearly, is within the power of the Government to put right, and I urge the Minister to do so.

Lord Wolfson of Tredegar (Con): My Lords, before I turn to this amendment, I begin with an apology. I made an incorrect statement in an earlier group. On Amendment 104B, I said that in September 2019, we rolled Section 28 out to a further four courts" and then I identified them. I should have said "September 2021", not "September 2019". I have already sent a written note to the noble Lord, Lord Ponsonby of Shulbrede, correcting the point, but I take this opportunity to correct the record and apologise to the House for that error.

I thank the noble Baroness, Lady Kennedy of Cradley, for tabling the amendment, which is aimed at a narrow but important category of cases that remain subject to a highly unusual time limit—we do not usually have time limits in our criminal law—and I thank her for the very useful discussions that we have been able to have on this topic. The amendment affects offences under Section 6 of the Sexual Offences Act 1956 of unlawful but consensual sexual intercourse with a girl aged 13 to 15 that were committed before 1 May 2004, when the Sexual Offences Act 2003 came into force and replaced the 1956 Act. It was a requirement under the earlier statute that a prosecution for this under Section 6 had to be commenced within 12 months of the offence. There is no time limit for the offences under the 2003 Act that have been chargeable since 1 May 2004, but when the offence was committed before that date, the 12-month limit for commencing a prosecution continued to apply. That, of course, has long since expired.

As my noble and learned friend Lord Stewart of Dirleton explained in Committee, Parliament usually acts on the principle of non-retroactivity. Although removing the time limit in circumstances where a prosecution was already time-barred would not have amounted to substantive retroactivity in the sense of criminalising conduct that was not previously unlawful, it still would have exposed a person to criminal liability where there had not been any before.

7.30 pm

When this matter was touched on in the House of Lords case referred to by the noble Baroness—R v J, 2004, UKHL 42—Lord Steyn simply observed without further comment:

"The change in the law is, of course, not of retrospective effect."

The question now is whether it would be right, 18 years later, to legislate to render the time bar ineffective. The Government's position has been that it would not be right, although I accept that we are not talking about making illegal something that was legal at the time; we are talking about removing a time bar with retrospective effect. However, there is more than one view on this subject. The contrary view was expressed clearly by the noble Baroness in support of her amendment. I am grateful to her for our discussions last week and for bringing along Dr Jonathan Rogers of Cambridge University, who really illuminated the discussion. He has written several important and helpful articles on this point; they repay careful reading.

It is fair to say that the position as regards the ECHR points is somewhat unclear. The question was expressly left open by the Strasbourg court in the case of Coëme and others v Belgium in 2000. Dr Rogers has argued that, in fact, the ECHR itself imposes a positive obligation on the Government to lift the time bar that would otherwise prevent prosecutions for this offence.

More recently, a case in the European Court of Human Rights called Antia reported in 2020. It is not particularly easy to follow but the interpretation on the court's website suggests that the retrospective removal of a bar to prosecution might be in breach of Article 7 of the convention. The question is: can you retrospectively adversely affect the rights of defendants to give effect to the rights of victims? I accept that Antia is not conclusive as the offence was against the state, which cannot itself be a victim in convention law.

[Lord Wolfson of Tredegar]

I hope it is clear from what I have said, if noble Lords are still with me on this, that this is a question involving complex but important legal issues—and one on which, it is fair to say, a variety of legal views can reasonably be held. Bearing in mind, therefore, that we are on Report, the Government's position is that this issue would benefit from further consideration outside the time constraints of this Bill. I will ensure that it is given suitable consideration; I am happy to continue the discussions with the noble Baroness and Dr Rogers. On the understanding that it will be reconsidered and continually considered, I urge the noble Baroness, Lady Kennedy, to withdraw her amendment.

Baroness Kennedy of Cradley (Non-Afl): My Lords, I am grateful to the Minister for his response and for the large amount of time last week that he and his advisers gave me and Dr Rogers from Cambridge University, whose writing, as the Minister said, has rightly put this issue into the public arena.

I note the Government's concerns about Article 7, but I also note that Governments have taken greater risks with Article 7 before when the political will has been there. I believe that there is cross-party consensus that men who continually seduced underage girls, in many cases ruining their young lives for their own amusement, in the 1980s and 1990s still deserve to be punished.

There is also Strasbourg case law, which condemns states for relying on arbitrary procedural rules that act as barriers to effective justice in cases of sexual offences against the young. My noble friend Lady Chakrabarti referred to one such case in Committee. However, as the Minister suggests, we should pause to consider whether Article 7 might protect a man who would be prosecuted after the original time limit expired. The European Court of Human Rights in Strasbourg has expressly said that the propriety of this is yet to be decided; on that basis, I accept that there is a risk that merits further consideration. I appreciate that this needs more time to resolve than the timing of the Bill allows. I therefore very much welcome the Minister's offer to keep the discussions on this issue going with the Minister who is directly responsible for this area of policy. Today is only the start of the discussion on this issue.

I remain hopeful that, through discussion with the Government, more can be done to quantify the exact risk of losing a case under Article 7. If it is low, I hope that we will have the courage of our convictions and change the law for the better, as we did with the double jeopardy rules in 2003. I am grateful to the Minister for his offer to facilitate further deliberations on this issue; I look forward to future discussions with him and other Ministers.

I beg leave to withdraw my amendment.

Amendment 104FC withdrawn.

Amendment 104FD

Moved by ***Baroness Coussins***

104FD: After Clause 172, insert the following new Clause—

"Spoken word interpreters: minimum standards

Within six months of commencement of this section, spoken word interpreters appointed to a court or tribunal must—

(a) be registered on the National Register of Public Service Interpreters ("NRPSI"),

(b) possess a Level 6 Diploma in Public Service Interpreting, or comply with NRPSI Rare Language Status protocols, and

(c) have completed the requisite number of hours' experience of court interpreting commensurate with the category of case complexity, as agreed by the Secretary of State in conjunction with relevant professional bodies."

Member's explanatory statement

This amendment would establish minimum standards for qualifications and experience for interpreters in courts and tribunals, along the lines of the Police Approved Interpreters Scheme.

Baroness Coussins (CB): My Lords, I remind the House of my interests as vice-president of the Chartered Institute of Linguists and co-chair of the All-Party Parliamentary Group on Modern Languages.

I am very grateful indeed to the Minister for the interest he has taken in the issue of court interpreters and my concerns about the weaknesses of the present system, as well as for his willingness to meet several times and discuss candidly the detail of my amendment. This dialogue has been very constructive and leads me to be hopeful that we can reach a positive outcome.

My amendment seeks to establish minimum standards for court interpreters based on their qualifications, experience and registration with the National Register of Public Service Interpreters—NRPSI. Obviously, I am not going to repeat the detail of the case I set out in Committee, but perhaps I could just comment on the response I had at that stage from the noble and learned Lord, Lord Stewart of Dirleton.

There seemed to be three main reasons for rejecting my amendment. The first was that the MoJ system is already fit for purpose. For example, the noble and learned Lord said:

"All interpreters are required to complete a justice system-specific training course before they are permitted to join the register."—[*Official Report*, 22/11/21; col. 659.]

This refers to the MoJ's register. My understanding, however, is that that course takes four hours to complete, which does not strike me as remotely adequate for such potentially demanding and specialist work. It remains the case that the current MoJ register will admit people who would not be considered sufficiently qualified or experienced to be on the NRPSI—nor, indeed, on the Police Approved Interpreters and Translators scheme. The DPSI at level 6 is considered by all the specialist professional bodies in the field to be the correct minimum qualification for any court interpreting work.

The noble and learned Lord, Lord Stewart, also claimed that the MoJ system is fit for purpose because the complaint rate is less than 1%. I had claimed that the failure rate following spot checks was 50% but, in our subsequent meetings and correspondence, the noble Lord, Lord Wolfson, has clarified that the 50% figure I quoted in Committee applied only to referrals of quality-based complaints, and that the overall failure rate is actually 5% of all assessments. I still think that a failure rate of 50% after a referral from a court or mystery shop is unacceptably high. I would also contend

that even an overall rate of 5% out of hundreds of thousands of assignments each year could potentially lead to a significant drain on the public purse through the costs of rescheduling adjourned hearings or keeping defendants in custody for longer—not to mention the avoidable stress and confusion for victims, defendants and witnesses.

Secondly, the noble and learned Lord, Lord Stewart, thought that my amendment fell short because it would not be right to take a one-size-fits-all approach, given that there are various levels of case complexity. But I agree with that: the point is explicitly acknowledged in my amendment, which specifies that the number of hours' experience required should reflect case complexity and, crucially, should be agreed between the department and "relevant professional bodies". In discussions with the noble Lord, Lord Wolfson, over the past few weeks, it has been repeatedly pointed out to those of us supporting this amendment that there are no fewer than 1,000 different types of assignment. The mind boggles—well, mine does anyway. I would certainly love to see a list spelling out exactly what those 1,000 different categories are.

Thirdly, the obstacle of the rules on public procurement was raised as a reason why my amendment's provision for the NRPSI registration was unacceptable. I still find this a bit odd and confusing as an argument, as the NRPSI is not a membership organisation, nor a supplier. It is worth remembering that it was established at the request of the judiciary in the first place after the interpreting calamity of the Begum case. It is surely just akin to the professional registers in many other fields, such as teaching, medicine or law, from which we would always expect and require practitioners to be drawn. There appears to be at least one significant precedent in that the Metropolitan Police Service mandates that all its listed interpreters must have continuous NRPSI registration. Of its annual 25,000 face-to-face assigned interpreters, only 2.5% are not NRPSI registered, and then for a very good reason—for example, to do with the need for a rare language speaker or the need for a super-speedy appointment in highly urgent or dangerous situations.

I accept, of course, that this whole system is complex and that there are inherent challenges to any solution that I have not touched on today, such as the supply chain of interpreters. I also acknowledge that the wording of my amendment may not be perfect, although I have tweaked it since Committee to try to build in a transition period, as suggested in Committee by the noble Lord, Lord Marks. But I have been encouraged by the approach of the noble Lord, Lord Wolfson, in our discussions in that he acknowledges that if there are improvements that could or should be made, it would be sensible for them to be made before the current contract is due to be retendered in 2023. The challenge, of course, is to get to the bottom of precisely what those improvements are, and I am extremely concerned that there should be no more delay in establishing and achieving them than absolutely necessary. The current contract expires in October 2023, so presumably a revised tender will need to be issued some months before that in order to achieve a seamless transition.

With this in mind, we raised with the Minister the possible option of conducting a detailed and independent inquiry into exactly what the standards of qualifications and experience and other matters should be. I am hopeful that the Minister might be able to say something about that proposal when he comes to reply today. Such an inquiry would need to be conducted on a genuinely independent basis and cover all aspects of the MoJ's responsibility for interpreting services, with a commitment to apply its findings to the next contract. I believe that such an independent inquiry would also have the credibility to help attract back into public service the many hundreds of professional interpreters who have left because of low pay, bad conditions or a lack of acknowledgement of their professional status. This exercise would have the potential to make a long-term strategic impact on the service, as well as knocking into shape the terms of the next contract. I look forward to the Minister's response and beg to move.

Lord Pannick (CB): My Lords, I pay tribute to the noble Baroness, Lady Coussins, for pursuing this important matter, and to the Minister for his engagement on a number of occasions with those of us who support the noble Baroness and are concerned about this. During those discussions, I expressed the view that it is striking that there is such a radical difference of view between the noble Baroness, Lady Coussins, with her enormous expertise in this area, and civil servants as to how the system is working in practice. I therefore suggested to the Minister that one way forward in this important area would be for him to agree that there should be an independent assessment—an independent inquiry—of an outfacing nature that can rely on the expertise of the noble Baroness, Lady Coussins, and others in order to inform the department as to the way forward. That seems to be a constructive way forward, and I very much hope that the Minister will be able to say that the department is prepared to do that.

Lord Hope of Craighead (CB): My Lords, I too pay tribute to my noble friend Lady Coussins for the determination with which she has pursued this argument. As a user of the court, it is crucial to have complete confidence in the interpreter. Most of us do not have the complete gift of language—which perhaps my noble friend has—over a wide range of languages. You have to rely on the interpreter; confidence in what the interpreter is doing is crucial to the way the proceedings are conducted, so the highest standards should be aimed for. I must say, I am surprised that it is taking so long for the advice my noble friend has offered to be accepted and put into practice.

7.45 pm

Lord Hogan-Howe (CB): My Lords, I support the noble Baroness, Lady Coussins, as I have from the beginning, as a layman who does not understand an awful lot about interpreting standards but does understand the importance of evidential matters going through tribunals needing to be of a high standard.

What has confused me from the beginning—as I think the noble and learned Lord, Lord Hope, suggested —is that the Government's response is that they do not prefer the standard that the noble Baroness,

[Lord Hogan-Howe]
Lady Coussins, offers and that they therefore want to rely on the standards that are in the contract. However, it is not at all clear what that standard is, because the easiest response would be that the standard in the contract is far better than the standard she offers, but no one is saying that. There is clearly a differential standard for different acts; the Minister mentioned something of the order of a thousand different scenarios leading to different qualities of interpretation, but I am not sure that that would lead to a thousand different standards.

It is clear from the Metropolitan Police's experience that, broadly, there is a split between face-to-face contact and other types, but the real split is whether the material interpreted is going to be evidential. Often, a person who is arrested needs to have a conversation with the charging sergeant about who they are and whether they need medical attention—all the common tactical things that people need to talk about—or the police may need to talk with a victim at the scene of a crime. That can be achieved by telephone. That immediate conversation has some value, of course, but not in the context of an evidential test. When it comes to an interview, a prosecution decision and, obviously, attendance in court, it is vital that that standard is of the highest level.

Therefore, I support the amendment of the noble Baroness, Lady Coussins, but if it cannot be achieved in this Bill, I think the proposal for an independent inquiry is a reasonable next step.

Lord Marks of Henley-on-Thames (LD): My Lords, I spoke at length on this amendment in Committee and attended the meeting with the noble Lord, Lord Pannick, the noble Baroness, Lady Coussins, and the right reverend Prelate the Bishop of Leeds, who also signed the amendment. It has led to a full and thorough response from the Minister, and we expect him to announce a full and independent review. If that is right, that is extremely welcome news. I join the noble Baroness, Lady Coussins, in saying that it would be extremely helpful to have an indication of the timescale of such a review—if that is to be announced—because of the imminence of the renewal of the contracts. It would also be extremely helpful for us to have an indication of how the independence of the review will be assured, because independence is a relatively flexible word, and it is an extremely important part of this.

For all the reasons given by the noble Lord, Lord Hogan-Howe, the standard of interpretation is incredibly important to the maintenance of justice where there are litigants, parties or witnesses for whom English is not their first language. We talked about the importance of having the undisguised and unchanged evidence of the witness before the court in an evidential case without the interpreter's view of matters intervening. That calls for the very highest standards of quality and for any review to be completely independent.

Lord Berkeley of Knighton (CB): My Lords, I too spoke in Committee, and I have been copied in on the very helpful response from the noble Lord, Lord Wolfson. I felt he was trying to embrace this important subject. To extend the point made by the noble and learned Lord, Lord Hope, a little, one has to understand that when people are in court, it is not just a question of interpretation; quite often, it is case of compassion and being able to communicate with a witness or a defendant. If there is a language barrier, those are the first things that tend to go out of the window.

Just to lower the conversation slightly, I mentioned in Committee an occasion on which the word "cow" was confused with the word "car"—a cow was observed travelling at 90 miles an hour.

I think it would be good to finish my brief contribution to this debate by repeating the explanatory statement of the noble Baroness:

> "This amendment would establish minimum standards for qualifications and experience for interpreters in courts and tribunals, along the lines of the Police Approved Interpreters Scheme."

I find it very hard to see why the Government would not want to embrace that.

Baroness Chapman of Darlington (Lab): Clearly, we agree with everything that has been said. Rather than repeat it all, I will just compliment the noble Baroness, Lady Coussins, on her amendment. We will listen carefully to what the Minister has to say.

Lord Wolfson of Tredegar (Con): My Lords, having begun my response to the previous group with an apology for getting a date wrong, I then went on to get another date wrong. The case of Antia is, for those noble Lords keen to read it, 2020 and not 2000. The rest of the legal analysis, I hope, remains unchanged. I will seek to avoid any reference to dates in what I am about to say.

This amendment would restrict the Ministry of Justice to appointing in our courts and tribunals only interpreters who are registered on the National Register of Public Service Interpreters and who possess a level 6 diploma in public service interpreting or comply with the national register's rare language status protocols. I place on record at the outset my thanks to the noble Baroness, Lady Coussins, the noble Lords, Lord Pannick and Lord Hogan-Howe, and others for their time engaging with me.

This is a very important issue. The noble Lord, Lord Berkeley of Knighton, noted that it goes to compassion, which is correct. As the noble and learned Lord, Lord Hope of Craighead, said, it also goes to the heart of the justice process. Anyone who has done a case with interpreters knows how important their role is. Indeed, I remember one case where, when the witness answered a question of mine, it was interpreted through a language I knew, and I knew that it had been interpreted wrongly. The judge also picked up that the interpretation was wrong and the witness himself criticised the interpretation, thus illustrating that the presence of the interpreter was unnecessary, and they were dispensed with.

We currently commission the service of interpreters for our courts and tribunals through our contracted service providers, thebigword and Clarion interpreting. The contract has a clearly defined list of qualifications, skills, experience and vetting requirements interpreters must meet, which have been designed to meet the particular needs of the justice system. The highest complexity level has qualification criteria comparable

to those set by the NRPSI. They are sourced from the MoJ register, which is audited by an independent language service provider, The Language Shop. All interpreters must have 100 hours of experience and complete a justice system-specific training course before they can join the register.

As the noble Baroness said, the overall failure rate of all quality assurance assessments remains low, at 5%. We believe that illustrates the effectiveness of the auditing measures. Complaints about quality are also carefully monitored and independently assessed by The Language Shop. The complaint rate remains low, at less than 1%.

I am confident that there are no systemic quality issues with the current arrangements. None the less, I discussed this in some detail with the noble Baroness and others and we want to improve the quality of the service we provide, if that is possible, right across the justice system. That is why I am commissioning a full independent review of our existing qualifications and standards and the requirements for each type of assignment our contract covers. There are over 1,000 of these—I do not have a list to hand. This will also consider experience levels and rare language requirements. The review will be completed in time to inform the retendering of our contracts in 2023. It will establish a detailed framework of the standards and qualifications required for all assignments covered by the contracts, with clear explanations and justifications for each. The aim is to ensure that our contracts continue to meet the demands of all our court users.

We will continue to consult external stakeholders, including the NRPSI—its input is highly valued. We will learn from other schemes, including the police-approved interpreter and translation scheme, which adopts a level 6 diploma in public service interpreting as a minimum qualification standard, but with safeguards to allow for exceptions as needed to ensure timeliness in progressing a case.

We understand that there are issues about the availability of NRPSI-registered interpreters in some parts of the country—40% of them are based in London. Under our current arrangements, we can control and direct recruitment for our register based on geographical and language needs. This is tied in to the supplier's obligation to fulfil bookings and ensures that we can dictate recruitment trends to meet our requirements.

I cannot say at this stage whether the police-approved interpreter and translation scheme would be suitable for the Ministry of Justice. We are concerned not to have a one-size-fits-all approach; even within a court setting, interpreting in a criminal court is quite different from interpreting, for example, in the family jurisdiction. It is not only court settings; there is telephone interpreting for court custody officers, and service centres require interpreting assistance to support court users paying fines or responding to general inquiries. However, we will look at the outcome of the review. All the options we consider will need to be fully costed in accordance with government policy for large government procurements to ensure value for money for the taxpayer.

The review will be undertaken. We have already started some work; we want to establish the most appropriate and cost-effective solution, one which meets the current and future needs of the justice system and promotes the continued development and progression of new entrants into the interpreting profession. With renewed thanks to the noble Baroness for her time and the discussions we have had, including on the option of a full independent review, which I hope I have set out clearly, I respectfully urge her to withdraw the amendment.

Baroness Coussins (CB): I thank all noble Lords who have contributed to this debate. I especially offer my thanks to the Minister and warmly welcome his decision to commission a full independent inquiry into the qualifications, experience and overall standards of all the different types of interpreters for court work. I look forward to seeing the terms of reference, the timetable and other details of this inquiry. I feel optimistic that professional bodies in the field will also feel encouraged by this development and welcome the decision. With that in mind, I beg leave to withdraw my amendment.

Amendment 104FD withdrawn.

Amendment 104FE

Moved by ***Lord Coaker***

104FE: After Clause 172, insert the following new Clause—

"Fast-track public space protection orders

In the Anti-social Behaviour, Crime and Policing Act 2014, after section 61 (variation and discharge of orders) insert—

"61A Fast-track public spaces protection orders

(1) A local authority may make a fast-track public spaces protection order where the conditions under subsections (2) or (3) are met.

(2) The conditions under this subsection are—

(a) the public space to which the order will apply is a school within the local authority area;

(b) activities carried on, or likely to be carried on, in the vicinity of the school have had, or are likely to have, a detrimental effect on the quality of life for pupils and staff; and

(c) consent for the order to be applied has been granted by—

(i) the leadership of the school to which the order will apply,

(ii) a chief officer of police of the police area in which the school to which the order will apply is located, and

(iii) the leader of the local authority which will make the order.

(3) The conditions under this subsection are—

(a) the public space to which the order will be applied is a venue providing NHS vaccination services to the public;

(b) activities have been carried on, or are likely to be carried on, in the vicinity of the venue with the intent of—

(i) harassing or intimidating members of the public using the service, or staff or volunteers providing the service, or

(ii) impeding members of the public from accessing the service, or staff or volunteers from providing the service; and

(c) consent for the order to be applied has been granted by—

(i) the NHS body with responsibility for provision of the service to which the order will apply,

(ii) a chief officer of police of the police area in which the venue to which the order will apply is located, and

(iii) the leader of the local authority which will make the order.

(4) A public spaces protection order granted under this section may come into effect immediately on the fulfilment of the requirements in subsection (2) or (3).

(5) Restrictions in section 72(3), that consultation must take place before an order is made, do not apply to public spaces protection orders made under this section.

(6) The local authority must carry out the necessary consultation, as defined in section 72, following the making of an order under this section.

(7) A fast-track public spaces protection order may not have effect for a period of more than 6 months unless extended under this section.

(8) Before the time when a fast-track public spaces protection order is due to expire, the local authority that made the order may extend the period for which it has effect if satisfied on reasonable grounds that doing so is necessary to prevent—

(a) occurrence or recurrence after that time of the activities identified in the order, or

(b) an increase in the frequency or seriousness of those activities after that time.

(9) A fast-track public spaces protection order under this section may not be extended for a period of more than 6 months.""

Member's explanatory statement

This would allow fast-track public spaces protection orders, which can come into effect immediately, to be made for schools and vaccination centres. Usual statutory consultation on the order would still be held, but would not delay the start date of the order.

Lord Coaker (Lab): My Lords, I start this debate by deploring—I hope the Minister will pass this on—the anti-vaxxers who targeted the home of Sajid Javid MP, the Health Secretary, in early January when his children were there. We all deplore that.

Amendment 104FE fast-tracks public spaces protection orders. It would provide for fast-track public spaces protection orders—what we know as buffer zones—around schools and vaccination centres. It builds on existing powers in the Anti-social Behaviour, Crime and Policing Act 2014. It does not create new powers. The Government have already accepted the need for and use of these buffer zones. The amendment simply provides that, in specified circumstances, a buffer zone around a school or vaccination centre can be put in place immediately, without being delayed by a lengthy consultation process. The required consultation process would still take place, but it would do so alongside the operation of the order—community views would still be taken account of and changes would be made to the order as necessary.

8 pm

The key point is the ability to take immediate action where there is hostile behaviour which is impacting education or intimidating people attempting to access NHS vaccine services. It is not a blanket ban on any protest, which was a concern rightly raised by the noble Baroness, Lady Fox, in Committee. I want to reassure the noble Baroness about that, because it was an important point that she raised.

The specifics of the amendment are that, for a school, a fast-track order would be permitted where activities planned or carried on near the school had had or were likely to have a detrimental effect on the quality of life for pupils and staff. For vaccination centres, the amendment applies to venues providing an NHS vaccination service. It would permit a fast-track buffer zone to be set up where activities were being done or planned with the intent of harassing or intimidating the public or staff, or impeding members of the public from accessing the service, or staff or volunteers from providing the service.

In both the cases that I have just outlined, the buffer zone can be set up only with the agreement of the school leadership or the NHS body responsible for the vaccine service, the local chief of police and the local authority leader. Where each of those bodies agrees that there is an immediate need to prevent hostile or intimidating behaviour, or behaviour aimed at preventing children accessing school or people being able to get life-saving vaccines, this amendment would allow us to take action there and then.

As I said in Committee, the need for the amendment is shown by the distressing anti-vaccination protests that have been happening outside schools, targeting teachers and young children. They have happened—as I know the Government accept—in every part of the UK, from Glasgow to Dorset. The Association of School and College Leaders found that 420 schools had experienced some sort of protest activity, 18 schools said that demonstrators had gained access to the school and 20 had received communications threatening harm. I know that the Government accept, as I know each and every Member of this House accepts, that this is totally unacceptable. All the amendment seeks to do is say that in certain specific cases, where there is the agreement of the people that I have outlined to the Chamber, there is the possibility of taking immediate action. Of course, the legislation allows that, but it is with a consultation process that could take days and in certain circumstances could take weeks. So, while the protest was going on, while children, staff and parents were being intimidated or people prevented from accessing NHS vaccination centres without harassment, the amendment would allow for those orders to be put in place with immediate effect.

It is a sensible amendment; it is a sensible way forward. There is no point of difference between the Government and us, except on the requirement for the legislation to allow immediate implementation rather than a delay caused by a consultation period. I beg to move.

Baroness Fox of Buckley (Non-Afl): My Lords, as has already been noted, I raised concerns about an earlier version of this amendment in Committee, when I argued that, ultimately, it felt like it was legitimising a climate of demonising protests based on a subjective assessment of whether those protests were politically approved of or not.

Specifically, this new amendment relates to attitudes to Covid vaccines, which I want to look at. To put it beyond any doubt, I support the use of vaccines, although not vaccine passports or mandated vaccines—I say that too—but I do not believe that those who are

opposed to vaccines, whether they are tennis players, NHS anaesthetists, fearful pregnant women or even conspiratorial cranks, should be criminalised or discriminated against because of their views, and I am concerned that aspects of that would happen from this amendment.

This new amendment would expand the use of the proposed fast-track public space protection orders beyond activities outside schools to venues providing NHS vaccination services to the public. We all have in mind those scenes—they have already been described—of vaccination centres being invaded, with equipment trashed and abuse shouted and so on. As it happens, like everyone else, I condemn that activity. However, if, as the amendment notes, such activities involve harassment, intimidation or impeding members of the public accessing a service that they want to access or impeding the staff or volunteers providing that service, surely we have laws on the statute book to deal with this, and those laws should be applied.

My question really is: why do we need to use PSPOs, and why are they proposed for non-specified activities outside schools, which could obviously be used, for example, to prohibit anything from leafleting to collecting names on a petition for any cause? In relation to the schools part of the amendment, anti-vaccine issues are not mentioned. I confess that I have long been an opponent of PSPOs. Sadly, I feel, they are used as arbitrary powers, issued by councils acting as though they run fiefdoms. I have written about the issue regularly in council publications such as the *Municipal Journal* since 2014 when they were brought in.

PSPOs do not ban any particular activities, which is why they are so broadly interpreted, often depending on the pet hates of local councils. Their name is something of a misnomer because, rather than protecting the public, they are used mainly to eject the public from public space, effectively privatising public space. Indeed, they are regularly used as dispersal orders for, for example, groups of individuals "hanging around", often young people, or for political vigils or leafleters. Often, they are dispersed by authorised private security guards with the power to issue on-the-spot fines—one has to consider who would police the PSPOs in this amendment.

No wonder the civil liberties group the Manifesto Club has warned that PSPOs fundamentally undermine rights of free association and free expression in the public square. Indeed, in 2017, the Home Office recognised the overuse and overreach of PSPO powers and produced amended statutory guidance—but to no discernible effect as they are now being issued at an increased, and rising, rate.

The fast-track PSPOs proposed in this amendment have conditions, but those conditions simply use the phraseology usually associated with the orders in terms of activities that various individuals consider have

"a detrimental effect on the quality of life for pupils and staff",

or whoever is being discussed. The phrase "detrimental effect on the quality of life" has been critiqued by many opponents of PSPOs as very vague and elastic. It has led councils in recent years to use PSPOs to restrict everything from cycling, charity collecting, rough sleeping, walking dogs without leads, begging and busking. A couple of dozen councils have used that phrase and PSPOs to ban—two of my favourites—swearing and loitering. I do not know whether any noble Lords have ever dropped their kids off at the school gates, but loitering in groups—often involving a little swearing, I confess—is almost a compulsory activity for parents.

More seriously, as the Manifesto Club has regularly noted, the test of "detrimental effect" is an unprecedentedly low legal test for criminal intervention, but there is also no requirement to show any substantial evidence of such detrimental effect. There is no proper democratic oversight locally, with no requirement for PSPOs to be passed through internal scrutiny procedures within a council.

Normally there is a requirement for consultation, but, as has been explained, this amendment would dispense with that. The consultations are usually fairly procedural, and many PSPOs have been passed with as few as 10 respondents. Anyway, in this instance we would remove even the formal need for consultation. Therefore, the PSPO would be issued. It would be signed off, as we have been told, by three people—the police chief officer, the school leadership and the local authority leader—and the public would be consulted only after the order is issued, which is laughable and contemptuous.

Also, there is no workable system for appealing PSPOs locally beyond an appeal to the High Court. Finally, to note the wording of the amendment, these fast-track PSPOs can be issued for activities not just carried on but

"likely to be carried on",

and that not just have had a detrimental effect but are "likely to have" a detrimental effect. These are weasel words, wholly open to speculation and a pre-crime-like interpretation.

I hope those noble Lords who, on Monday, will oppose the swathe of legislative proposals that threaten to close down protests and chill the rights of free assembly will also oppose this amendment. I find the views of hardcore anti-vax protesters distasteful, nihilistic and absolutely things I would argue against. I actually feel the same about Extinction Rebellion, but that misses the point. We need to be very careful about picking and choosing which protesters we support. If there is a problem of obstruction or any kind of unlawful activity outside schools or vaccine centres it should be dealt with, but I fear this amendment would give succour to the Government ahead of Monday's battles. I will therefore oppose it.

Lord Walney (CB): My Lords, surprisingly, my remarks will overlap substantially with the noble Baroness's speech, although they come from a somewhat different perspective.

I thought that the opening speech from the noble Lord, Lord Coaker, was convincing and I look forward to hearing the Minister's reply before I make my mind up on how to vote. But it left me wondering whether this approach ought not to be actively considered for extension around not simply schools and vaccination centres but seats of democracy such as Parliament and potentially local councils, where we have seen pretty disgraceful activities that are clearly designed to intimidate

[LORD WALNEY]
elected members—anti-vaccine activists have pursued a highly aggressive strategy. It is notable that that is off the table in the amendment.

There is no reason why this issue should necessarily be covered, but—this is my point of overlap with the noble Baroness—I raise it because I will be listening with interest to what Members of the Opposition and from all sides of the House say about the very controversial measures that are due to come on Monday. I share the concern that we have a real tendency as a House and a legislature to find ourselves in instinctive agreement with measures designed to avoid intimidation from groups whose causes we do not agree with; yet we find ourselves, often subconsciously, contemplating what can be equally intimidatory methods of protest deployed in the name of a cause whose broader case we do agree with. It is really important that we guard against doing that.

8.15 pm

Lord Paddick (LD): My Lords, the noble Baroness, Lady Fox of Buckley, talked about demonising protest—I bet she is looking forward to Monday. The noble Lord, Lord Walney, talked about exclusion zones around Parliament; there are significant powers to protect Parliament from this sort of thing.

As the noble Lord, Lord Coaker, has explained, this amendment is a significantly improved version of the one considered in Committee, with numerous safeguards. Unlike the noble Baroness, Lady Fox of Buckley, I am "glass half full" man: I think that the safeguards here are actually quite significant, in that it requires the consent of the leadership of any school affected or of the NHS body responsible for any vaccination centre affected and, in addition, of the local police chief. Generally speaking, the police are very averse to making political decisions and siding with one particular protest group against another, so that is a significant safeguard. It also requires the consent of the local authority leader, which is another significant safeguard. The potential for selective protection orders based on the issue being protested about—the one the noble Baroness raised in Committee—is therefore significantly reduced.

In addition, contrary to what the noble Baroness said, the statutory duty to consult the public on the order is not waived at all but can take place concurrently with the order taking effect, if the matter is urgent. It also cannot last more than 12 months; the initial grant is for six months, and it can be extended only once. If only the Government were to take such a reasonable approach to the renewal of orders in other aspect of the Bill.

In the light of recent events such as the invasion of the test and trace centre in Milton Keynes last month, we have seen the importance of such orders and the need for the police to secure intelligence and take action to prevent such interference with the vaccination effort, which does not seem to be going away any time soon. There is ample recent evidence of the need for this amendment, and we support it.

Baroness Williams of Trafford (Con): My Lords, I start by joining the noble Lord, Lord Coaker, in deploring the anti-vaxxers who stood outside my right honourable friend Sajid Javid's house. I deplore it every time they disrupt our public services such as schools and hospitals. More recently, they have taken part in some very disruptive and abusive activity. On the point about Parliament made by the noble Lord, Lord Walney, we will of course debate that on Monday.

I actually share the aims of this amendment, and I am grateful for the further opportunity to debate the policing of anti-vax protests and consider the merits of fast-track public space protection orders, or PSPOs. The amendment is very similar to one debated in Committee that sought to provide the fast-track PSPOs to protect schools from harmful protests, but it goes further, also allowing for fast-track PSPOs outside premises providing NHS vaccination services. It also removes the need for a consultation in advance of a PSPO outside these premises being implemented.

As the noble Baroness, Lady Fox, pointed out, I set out in Committee the powers of the police to protect pupils, teachers and staff from disruptive protest activity outside schools, as well as the benefits that some of the new measures in the Bill will bring. Many of these existing or new powers apply also to disruptive protests at vaccination sites. I sympathise with the noble Lord's intention to protect schools and vaccination sites from harmful protests, but this amendment will not help to achieve that aim. It removes the need for a consultation prior to a PSPO being put in place, instead requiring consent from the relevant school or NHS body, the chief of police, and the leader of the local authority. This is unlikely to materially speed up the process in which a PSPO can be implemented as there is currently no minimum consultation period required before a PSPO can be put in place. I struggle to understand how we can implement the PSPO and run a consultation concurrently.

It is also important to note that in making a PSPO under this amendment a local authority would still be accountable, potentially in legal proceedings, for demonstrating that the order is compliant with Articles 10 and 11 of the ECHR. Consultations can provide supporting evidence to demonstrate this compliance, meaning that a local authority could find itself subject to increased legal risks if it does not perform a consultation prior to implementing a PSPO, even if legislation states that it is not necessary. I share the unease of the noble Lord, Lord Walney, and the noble Baroness, Lady Fox, that it would, at the hands of a very few people, allow local areas to pick and choose which protests were politically acceptable.

Although I support the underlying aims of the amendment, in the sense that no one working at a school, hospital or other vaccination site should be subject to abusive or highly disruptive protests, powers are in place, which we are strengthening through the Bill, to assist the police and others to tackle such protests. We will be discussing many of them on Monday. The powers already include the ability for local authorities to make, at speed, a PSPO. Given this, I hope that the noble Lord, Lord Coaker, is happy to withdraw his amendment.

Lord Coaker (Lab): My Lords, I thank the Minister for her reply and for the courteous way in which she always tries to engage with the issues. I also thank all noble Lords who joined the debate. The noble Baroness, Lady Fox, can call me naive, but I was, though the

amendment and the changed amendment, trying to address some of the concerns that she raised, particularly in trying to make it clear that it was not a blanket ban but was dealing with a very specific problem that has resulted in and around some schools—

Baroness Fox of Buckley (Non-Afl): My Lords, I was reading my speech, but I acknowledge that the noble Lord said that in his opening. It is perhaps an unintended consequence, but can he see from the Minister's response that it fuels arguments that they will be using on Monday? That was always my concern.

Lord Coaker (Lab): That is a different point. I accept some of that. It was not what the Minister was saying, but I take the point. The noble Baroness raises legitimate points. I do not agree with her on many of them, which is fine. It is not a problem. It is the whole point of debate and discussion. The fundamental point is that the amendment seeks to do what the public space protection orders do not do. They are not a blanket ban on protests. They do not allow people to pick and choose in the way that some people, including the Minister, have highlighted.

I agree with the noble Lord, Lord Paddick, and do not believe that school leaders, local authority leaders, NHS vaccine providers and the chiefs of police for an area would pick and choose protests. I do not believe it. The school leaders in our country know and understand what causes alarm and distress to parents and pupils in their area and they would not abuse that power—nor, in 99.9% of cases, would local chiefs of police, NHS vaccine providers or local authority leaders of whatever political party. They are upstanding public servants who understand the responsibility that comes with their post and would not seek to use one of these orders inappropriately, just because there happened to be a protest outside a school.

I was a deputy head teacher. There were numerous protests at different times, about different things. We did not seek to ban or stop them. One occasion was when I reintroduced school uniform. There were people saying how ridiculous it was that Coaker was reintroducing school uniform, but I did not stop them doing that; nor do I believe that school leaders, police chiefs or others in an area would do that.

The amendment seeks, for particular circumstances that we have all seen on our televisions and read about in our newspapers, to give an immediate power for people to act reasonably, not to prevent any protests but to deal with a specific situation where alarm or distress is being caused. Whatever the current law says, it is not dealing with people in that situation. All we seek, in a reasonable way, is to give those people the power, in situations where there is consensus and agreement, to take immediate action to protect those going for a vaccine, or children, staff or parents going to school. It is perfectly reasonable to ask the law to provide that and, because of that, I ask to test the opinion of the House on my amendment.

8.26 pm

Division on Amendment 104FE

Contents 157; Not-Contents 145.

Amendment 104FE agreed.

Division No. 2

CONTENTS

Addington, L.
Allan of Hallam, L.
Alli, L.
Alton of Liverpool, L.
Anderson of Swansea, L.
Andrews, B.
Austin of Dudley, L.
Bach, L.
Bakewell of Hardington Mandeville, B.
Barker, B.
Bassam of Brighton, L.
Beith, L.
Benjamin, B.
Bennett of Manor Castle, B.
Berkeley, L.
Blackstone, B.
Blake of Leeds, B.
Boateng, L.
Bonham-Carter of Yarnbury, B.
Bradley, L.
Brinton, B.
Browne of Ladyton, L.
Bruce of Bennachie, L.
Campbell of Pittenweem, L.
Campbell-Savours, L.
Carter of Coles, L.
Cashman, L.
Chakrabarti, B.
Chandos, V.
Chapman of Darlington, B.
Clark of Windermere, L.
Coaker, L.
Collins of Highbury, L.
Colville of Culross, V.
Corston, B.
Crawley, B.
Crisp, L.
Davies of Brixton, L.
Donaghy, B.
Drake, B.
Elder, L.
Falconer of Thoroton, L.
Featherstone, B.
Finlay of Llandaff, B.
Foster of Bath, L.
Foulkes of Cumnock, L.
Garden of Frognal, B.
German, L.
Golding, B.
Grantchester, L.
Griffiths of Burry Port, L.
Hacking, L.
Hain, L.
Hamwee, B.
Hannay of Chiswick, L.
Hanworth, V.
Harris of Haringey, L.
Harris of Richmond, B.
Hayman of Ullock, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Hendy, L.
Hollick, L.
Howarth of Newport, L.
Humphreys, B.
Hunt of Bethnal Green, B.
Hussain, L.
Jolly, B.
Jones of Cheltenham, L.
Jones of Whitchurch, B.
Judge, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kennedy of The Shaws, B.
Khan of Burnley, L.
Kilclooney, L.
Knight of Weymouth, L.
Kramer, B.
Lawrence of Clarendon, B.
Layard, L.
Lea of Crondall, L.
Liddle, L.
Mackenzie of Framwellgate, L.
Mallalieu, B.
Mann, L.
Marks of Henley-on-Thames, L.
Masham of Ilton, B.
McIntosh of Hudnall, B.
McNally, L.
McNicol of West Kilbride, L.
Meacher, B.
Merron, B.
Morgan of Huyton, B.
Morris of Yardley, B.
Newby, L.
Nye, B.
Oates, L.
O'Loan, B.
Osamor, B.
Paddick, L.
Pannick, L.
Parminter, B.
Patel, L.
Pinnock, B.
Pitkeathley, B.
Ponsonby of Shulbrede, L.
Purvis of Tweed, L.
Randerson, B.
Ravensdale, L.
Razzall, L.
Rebuck, B.
Redesdale, L.
Ritchie of Downpatrick, B.
Robertson of Port Ellen, L.
Rooker, L.
Rosser, L.
Royall of Blaisdon, B.
Scriven, L.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Sikka, L.
Smith of Basildon, B.
Smith of Finsbury, L.
Smith of Newnham, B.
Snape, L.
Stansgate, V.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
Thornton, B.
Thurso, V.
Tope, L.
Trees, L.
Triesman, L.
Tunnicliffe, L.
Uddin, B.
Wallace of Saltaire, L.

Walmsley, B.
Walney, L.
Warwick of Undercliffe, B.
Watson of Invergowrie, L.
Watts, L.
Wheeler, B.
Whitaker, B.
Whitty, L.
Wilcox of Newport, B.
Willis of Knaresborough, L.
Wood of Anfield, L.
Woodley, L.
Young of Old Scone, B.

NOT CONTENTS

Aberdare, L.
Agnew of Oulton, L.
Ahmad of Wimbledon, L.
Altrincham, L.
Anelay of St Johns, B.
Ashton of Hyde, L.
Astor of Hever, L.
Attlee, E.
Barran, B.
Bellingham, L.
Berridge, B.
Bethell, L.
Blackwood of North Oxford, B.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bridges of Headley, L.
Browne of Belmont, L.
Caine, L.
Callanan, L.
Carrington of Fulham, L.
Chalker of Wallasey, B.
Choudrey, L.
Colgrain, L.
Cormack, L.
Courtown, E.
Crathorne, L.
Cruddas, L.
Davies of Gower, L.
De Mauley, L.
Deighton, L.
Dodds of Duncairn, L.
Duncan of Springbank, L.
Dundee, E.
Eccles of Moulton, B.
Eccles, V.
Empey, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fairhead, B.
Faulks, L.
Fellowes of West Stafford, L.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Oxton, B.
Fox of Buckley, B.
Fraser of Craigmaddie, B.
Frost, L.
Gadhia, L.
Godson, L.
Goldie, B.
Goschen, V.
Greenhalgh, L.
Grimstone of Boscobel, L.
Hamilton of Epsom, L.
Hannan of Kingsclere, L.
Harding of Winscombe, B.
Harlech, L.
Haselhurst, L.
Hayward, L.
Herbert of South Downs, L.
Hill of Oareford, L.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Hunt of Wirral, L.
Jenkin of Kennington, B.
Kamall, L.
Kinnoull, E.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lancaster of Kimbolton, L.
Leicester, E.
Leigh of Hurley, L.
Lexden, L.
Lingfield, L.
Liverpool, E.
Mancroft, L.
Manzoor, B.
Mawson, L.
McCrea of Magherafelt and Cookstown, L.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
McLoughlin, L.
Meyer, B.
Mobarik, B.
Morgan of Cotes, B.
Morrow, L.
Moylan, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Offord of Garvel, L.
Parkinson of Whitley Bay, L.
Pickles, L.
Pidding, B.
Polak, L.
Popat, L.
Rawlings, B.
Reay, L.
Redfern, B.
Robathan, L.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Sharpe of Epsom, L.
Sheikh, L.
Sherbourne of Didsbury, L.
Shinkwin, L.
Shrewsbury, E.
Smith of Hindhead, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Stroud, B.
Sugg, B.
Taylor of Holbeach, L.
Trefgarne, L.
Trenchard, V.
True, L.
Tugendhat, L.
Udny-Lister, L.
Vere of Norbiton, B.
Verma, B.
Watkins of Tavistock, B.
Wei, L.
Wharton of Yarm, L.
Wheatcroft, B.
Willetts, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

8.39 pm

Clause 44: Pre-charge bail

Amendment 104G

Moved by ***Lord Blencathra***

104G: Clause 44, page 38, line 43, at end insert—

"(4) Part 6 of Schedule 4 does not have effect unless the College of Policing is re-established under an Act of Parliament."

Lord Blencathra (Con): My Lords, this amendment is in my name and those of the noble and learned Lord, Lord Judge, and my noble friend Lord Hodgson of Astley Abbotts. I say to my noble friend Lord Sharpe that I am sorry that Ministers in this House once again have to take the brunt of my ire over Home Office matters for which they are not responsible and entirely blameless. I also say to the Government that I am not a natural rebel. I made the mistake of sitting in on the last debate and was utterly convinced by the arguments of the noble Lord, Lord Coaker, but nevertheless as a former Chief Whip felt that I had better support the Government, only because I had not told them in advance that I would rebel.

The College of Policing employs more than 700 people, and last year spent more than £47 million. The Bill, like others before it over the last seven years, gives the college the right to prepare guidelines to be implemented by the police, which will affect the public. In this case, it is pre-trial bail. Your Lordships may have assumed that a body called the College of Policing to which the Home Office has been granting regulatory authority is a statutory body set up by Parliament, and that perhaps you had missed the Bill setting it up when it went through this House. That is what I thought until recently, when I discovered that it has no statutory authority whatever but is a private limited company, limited by guarantee. Not many people know that, as the great Sir Michael Caine denies he ever said. It was announced by the then Home Secretary, Theresa May, on 24 October 2012, and this is what she said—sorry, this is not what she said; it was merely a Written Statement, with no questions asked:

"My Department has now legally incorporated a company limited by guarantee under the name 'College of Policing Limited'. The college will become operational in December 2012. The college will be established on a statutory basis as soon as parliamentary time allows."—[*Official Report*, Commons, 24/10/12; col. 62WS.]

Nine years and 20 Home Office Bills later, there has apparently been no time to put this powerful arm's-length body on a statutory footing. Do your Lordships believe that this is simply an oversight? I am afraid that I am a cynical person, and I do not. I suggest that it is a deliberate attempt by the Home Office to avoid parliamentary scrutiny for this organisation.

I serve on two arm's-length bodies and they, like dozens of others, were created by statute. It is not rocket science for the Home Office to simply copy the

usual format of 10 to 15 clauses setting out the general powers of the organisation and a schedule with the technical stuff about salaries, appointments and all that sort of thing. Our statute book is full of such creations of statutory arm's-length bodies. Indeed, the Home Office has done all the homework already; this private company, of course, has a memorandum and articles of association, which Companies House requires. It is not rocket science for the Home Office simply to lift all that from the memorandum and articles of association and add it to a Home Office Bill such as this Christmas tree one, or introduce a new one. I can conclude only that the Home Office has deliberately not done it, and it cannot say that it has had no time to do that after nine years of this limited company operating.

Let me make it clear that I do not challenge the honesty, integrity or desire of the police officers and civilians running this organisation to try to do good and reduce crime. Indeed, in my time as a Police Minister I never met a policeman who did not believe that if he or she had that little bit of extra power—to be able to take the fingerprints and DNA of everyone and keep them on file in case they are needed—they would make a huge difference in cracking down on crime. They are right, of course, but if one were to grant those powers it should be done by Parliament. I do not challenge its honesty and integrity, but I challenge its right to exist as a powerful arm's-length body without a single minute of parliamentary time, either in the other place or in this House, devoted to considering its establishment, powers, rights and duties.

If I may say so, it gets worse. In a recent Parliamentary Answer, the Home Office confirmed that the college has put in a bid for a royal charter. Can your Lordships imagine that—a private limited company, already exempt from parliamentary creation, getting a royal charter? Who do they think they are? Of course, if it got it and if MPs or Peers—someone like me—then began to question its activity, it would say that it had a royal charter and was above repute, and how dare I question them and to mind my own business. My instinct tells me that this is simply not right.

8.45 pm

I put down this amendment because I do not want this body to be given the right to create more regulations bypassing Parliament until both Houses of Parliament have passed a Bill creating it and granting it the powers to make laws, if we decide to do that. Some of the regulations this body makes have to be laid before Parliament by the Home Secretary without questions asked unless the Home Secretary has grievous reasons for refusing to do so. They are just laid before Parliament, stuck in the Library and not debated in this House.

I was inspired to look into this because of the guidance being issued by the police on Covid. This House passed regulations on wearing masks and the two-metre rule and then, a few days later, the college seemed to issue contrary instructions to the police on how they should be enforced. I was therefore concerned that the college was issuing guidance which may have been illegal. The Cabinet Office calls the college part of the What Works Network. It may work quite well for the college, but I do not think it works well enough for the public, who are affected by illegal guidance.

When I tabled this amendment, I had absolutely no idea that the Court of Appeal would, just a few days before Christmas, rightly condemn the college for issuing guidance on recording 120,000 innocent people as having criminal records for committing non-crime hate incidents. The court said that the college acted unlawfully, and that was exactly my fear. Even if there were an SI on this matter that had been through both Houses of Parliament, it might have been struck down on judicial review, but I suggest that there would be a much smaller possibility of that if it had been debated in both Houses of Parliament rather than being merely a rule invented by a private limited company.

As your Lordships know, the Home Office has rushed in an amendment to partly tackle that illegal behaviour by the College of Policing. It will be dealt with on Monday, so now is not the time or place to talk about it. I will say more on it on Monday. However, it seems to make the point abundantly clear that when guidance is invented not in an Act, not even by secondary legislation, but by a third party outside parliamentary control, the rights of the subject can be imperilled, no matter the decency or the integrity of the people making those regulations. The College of Policing no doubt does some good work, but it should be an arm's-length government body approved by Parliament, not a private limited company. All I want to hear from the Minister tonight is when this organisation will be put on a statutory footing in an Act approved by Parliament. I beg to move.

Lord Judge (CB): My Lords, I put my name to this amendment because it raises some important and delicate issues. I follow the noble Lord in asking: can we please have a date? Can we at least be told that somebody is considering the position of the College of Policing? As he said, it is a company under the control of the Secretary of State with no statutory basis.

There is no problem with the College of Policing issuing guidance to police officers about how police officers should go about their responsibilities, as that is what it is there for. However, the college, a non-statutory body, is being required or invited by the schedule to this Bill—we are not going to look at that now, because it is too late and we all want to go home and there is a lot more business to come—to issue guidance which will impact on bail decisions. Bail is a question of liberty; it will impact on that. We are told not to worry because there is no liability one way or the other for not following the guidance, but we are also told that a court considering an issue such as this may take into account whether the guidance issued by the College of Policing on this issue has been followed. My point is very simple and very small compared to the major issue raised by the noble Lord, Lord Blencathra. It is: should instructions or guidance issued by the College of Policing have any impact whatever on a decision made by a court that a citizen should or should not be granted bail?

Lord Hodgson of Astley Abbotts (Con): My Lords, I support my noble friend Lord Blencathra. He and I have been chasing down issues with secondary and, tonight, tertiary legislation for some months and have produced reports to that effect that I think have found favour in your Lordships' House, bearing mind the

[Lord Hodgson of Astley Abbotts]
number of noble Lords who wished to speak in the debate tabled by the noble Baroness, Lady Cavendish, last Thursday.

Government by Diktat, the title of a report by the Secondary Legislation Scrutiny Committee, which I chair, is alive and well and living with the situation that my noble friend wishes to remedy. The issues of regulation and guidance, of who provides the guidance and of how enforceable it is are questions with which the SLSC has been struggling. However, if we have been struggling with that, when it comes to this latest idea the guidance will not even touch the sides of the regulatory process of your Lordships' House. We as a House will be presented with a series of faits accomplish, and unless somebody is able to persuade the usual channels to find time to debate something, we will just be told, "There it is and off we go".

That is not a satisfactory situation. It is part of a much wider issue of how we deal with secondary and, in this case, tertiary legislation, but my noble friend Lord Blencathra has done a valuable service by bringing this case to the surface. We will make progress in this area only if every time we see this sort of thing emerging we raise it, talk about it and try to deal with it. That is why I support the amendment and put my name to it.

Lord Paddick (LD): My Lords, as the noble Lord, Lord Blencathra, said, in December 2011 the then Home Secretary announced the establishment of the College of Policing and the Government said that as soon as parliamentary time allowed, the College of Policing would be established as a statutory body, independent of government.

Now it is 10 years later. In addition to supporting what other noble Lords have said, I say that the College of Policing being a limited company undermines its credibility, which is not strong among operational police officers in any event. There is an anti-intellectual culture in the police service and the very name gets operational cops' backs up. To then see documentation that the college produces marked as copyright of the College of Policing Ltd, an organisation headed by someone called a chief executive rather than a chief constable, further undermines its status and credibility in the eyes of operational police officers.

For these reasons, we support bringing forward legislation this calendar year that would go further than re-establishing the professional body for policing under an Act of Parliament. The college should be renamed and the head of the organisation should have the title "Chief Constable".

Lord Coaker (Lab): My Lords, I have listened carefully to this short debate and the points made by the noble Lords, Lord Blencathra and Lord Paddick, and the noble and learned Lord, Lord Judge. It will be interesting to hear what the Minister has to say about placing the College of Policing on a statutory basis. I also listened to the point made by the noble and learned Lord, Lord Judge, and it would be interesting if there were a long debate about pre-charge bail.

However, it is important to say something about the schedule that is mentioned in the amendment. We strongly support the provisions in the Bill on pre-charge bail. The House is aware that the changes that have been brought forward are known as Kay's law, after Kay Richardson, who was murdered by an abusive ex-partner after he was released when he was under investigation, rather than placed on pre-charge bail. Our concern, picking up the point rightly made by the noble and learned Lord, Lord Judge, is that the guidance under Part 6 of Schedule 4 should be clear and effective and should accurately reflect the necessary changes made to the use of pre-charge bail under the Bill.

We understand that this was brought forward as Kay's law, and all of us will have abhorred the horror of what happened. Notwithstanding that, it will be interesting to hear the Minister's response to all of that.

Lord Sharpe of Epsom (Con): My Lords, I thank my noble friend Lord Blencathra for explaining the amendment, which in substance relates to the power conferred on the College of Policing to issue guidance about pre-charge bail. I recognise that my noble friend has made a wider point about the appropriateness of the College of Policing in its current guise issuing any operational guidance to the police.

The set of reforms in Schedule 4 to the Bill, known collectively—as the noble Lord, Lord Coaker, mentioned—as Kay's law, aims to establish a pre-charge bail system which is fairer and more efficient, with the removal of the presumption against bail and changes to pre-charge bail timescales. My noble friend's amendment would require the College of Policing to be placed on a statutory footing before it can issue guidance on pre-charge bail. In practical terms, this would mean that the guidance, and therefore the whole pre-charge bail reform package, would need to be delayed while an appropriate legislative vehicle was found for this fundamental change to the college's status.

Guidance to underpin these changes is essential to secure the effective implementation of the reforms, and I think I should stress again that the guidance is about pre-charge bail, not court-ordered post-charge bail. Policing partners have made it clear throughout the drafting of the provisions that clear statutory guidance aimed at operational experts is required to build a system which is consistently applied across all forces.

I understand that my noble friend's amendment probes the issue of the College of Policing's status, but it is important to note that a number of the college's functions have statutory underpinning. Among other things, Sections 123 to 130 of the Anti-social Behaviour, Crime and Policing Act 2014 enable the college to issue codes of practice for chief officers and guidance about the experience, qualification and training of police staff. The provisions in Schedule 4 to the Bill enabling the college to issue guidance about pre-charge bail would thus be an extension of these existing powers.

As the college is the professional body for policing, the Government consider it entirely appropriate that it should be able to issue guidance which police officers are required to have regard to when exercising functions to which the guidance relates. The Government do not believe that the fact that the college is not a body established by statute alters that fact. It is relevant, however, that the guidance to be issued under Part 6 of Schedule 4 is subject to the approval of the Home

Secretary, who is, as my noble friend Lord Blencathra said, accountable to Parliament, and must be laid before Parliament. It is therefore open to either House to scrutinise the guidance at any time.

The college does hold the long-term aim of achieving royal charter status, as my noble friend noted, but the noble and learned Lord, Lord Judge, asked whether its status was being considered in any other ways. It is. The college chair, my noble friend Lord Herbert of South Downs, is currently undertaking a fundamental review of the college, which may include recommendations about its status. Obviously, the Government will consider the recommendations flowing from the review when it is published, but I am afraid I do not know when that will be, to pre-empt any questions.

As I indicated, regardless of the college's legal status, we believe it is entirely proper that it should be able to issue guidance of this kind to which police officers must have regard. I should reiterate that the practical effect of this amendment would be unacceptably to delay the implementation of these necessary reforms, which, as the noble Lord, Lord Coaker, noted, have wide support and would better help protect the victims of crime. It is crucial that Kay's law is delivered in a timely way, supported by robust guidance issued by the professional body for policing, and the current provisions do exactly that.

I am afraid that I cannot answer my noble friend Lord Blencathra's specific question about when space may be found to alter that. I would be surprised if that answer surprised him, but I hope that, having had this opportunity to debate the role and status of the College of Policing, he will be content to withdraw his amendment.

Lord Blencathra (Con): My Lords, I think that my noble friend has inadvertently answered the question of when it will be done. It is quite clear, reading between the lines, that the Home Office does not intend to do it ever. So do the Home Office, he and the Home Secretary still stand by the promise of the then Home Secretary in 2012 that this would be put on a statutory footing?

If I may say so, the Home Office, in drafting my noble friend's speech, has been a bit disingenuous. It knows fine I am not opposed to the schedule. The schedule was the mechanism by which we could debate the principle of the college not being on a statutory footing. I discussed this with the Public Bill Office. I looked at various ALBs, including the two of which I am a member, and asked the staff whether I could lift 12 clauses from one of them, change the name to the College of Policing and lift the schedule. They said, "That would be 12 clauses to debate. It would be easier, Lord Blencathra, just to find a mechanism to say that the college must be put on a statutory footing before this schedule is approved."

I am not opposed to the schedule—no one is. It was a mechanism in order that we could debate the principle. I must say that I am rather concerned by my noble friend's reply—but also how delighted I am that, on this occasion, the noble Lord, Lord Paddick, and I are on the same side, despite some strenuous disagreements in the past few weeks. I must say to my noble friend that, if I had realised, and had had the nous and wit beforehand to discuss with the Lib Dems and possibly the Labour Party what this amendment was about, we could have had agreement tonight and I could have forced it to the vote and won it. Of course, I am not going to do that tonight, but I can tell the Home Office that this issue will not go away. I detect the mood among other parties here, and I hope among my noble friends as well, that we must honour the Home Secretary's promise to have this body put on a statutory footing.

9 pm

It may be jolly good that my noble friend Lord Herbert is doing an internal review to decide what should be done. Jolly good luck to him—but it is not up to the College of Policing to determine its own future and then tell the Home Office that it is quite happy to continue in the present guise. It is up to Parliament to decide the future of this organisation. An important point on which the Home Office has relied is that the 2014 Act gave the college the power to invent more regulations. It has the power to do it but it does not have the authority; just shovelling on more and more regulations, such as the one on pre-charge bail tonight, and giving the college more of that to do, does not legitimise its status. It simply adds more wrongs to the fact that a private limited company is in charge.

I am very grateful to my noble friend for his reply, because he has inspired me to let off steam. I think the Government have lost the argument, but they did not really make the argument tonight to justify this body still being a private limited company. We will return to this in due course—and, possibly, next time we will have votes on it. In that spirit, I beg leave to withdraw my amendment.

Amendment 104G withdrawn.

Amendment 105 not moved.

Clause 46: Positions of trust

Amendment 106

Moved by ***Lord Beith***

106: Clause 46, page 39, line 17, after "sport" insert ", dance, drama, music"

Member's explanatory statement

This is intended to address a potential gap in the law related to other teaching or supervisory positions/ of trust.

Lord Beith (LD): My Lords, in moving this amendment, I seek to bring music, drama and dance within provisions that the Government have included in the Bill in respect of sport and religion. The Bill takes the Sexual Offences Act 2003 and imports the position of trust of someone who is training in sport or religion into the mechanism of the Sexual Offences Act. That makes the concept of positions of trust apply not simply in institutions such as schools but to individuals carrying out training on a private basis or as part of a community organisation and in any number of other ways.

It has puzzled me from the beginning how the Government have identified sport and religion alone as fields in which abuse can take place—when people who have close personal charge in a training role of a young individual can have undue influence that could

[Lord Beith]
be put to the wrong use, as a means of sexual abuse or a route into sexual abuse. I do not know anybody who believes that this problem exists only in the areas of religion and sport and not in other areas where very close contact is involved in training, instruction and development. The Government concede one small part of my amendment by taking the view that dance is already included, which must be true, in the wording of the legislation, if the dance is preparation for "competition or display". I can imagine that an Irish or Scottish dancing group for which individual training was taking place might well be covered. I am less convinced that professional ballet might be covered; that is an area in which we have seen very serious abuse of people undergoing training by a professional ballet instructor.

It is very difficult to understand why the Government have alighted on those two areas alone and not others, because the characteristics of the situation are very similar in all these different areas of activity. There are some distinctive features but so many similar characteristics: being alone with someone quite a lot; a competitive situation in which the person being trained is desperate to be included in the display or team; a desire to please; and the developing of a close personal relationship. They are all elements that we find in a number of other areas, so I wonder what the Government's argument is.

I have had very helpful discussions with the Minister, who has been generous with his time and his staff's attention to this matter. However, despite all his efforts, he has not succeeded in convincing me that the Government have a logical case at all. The argument that the Government resort to is that extending these provisions to music and drama would have the effect of raising the age of consent, so relationships that would not be unlawful at present would become unlawful if we extended them into music and drama. That is a very odd argument because that is precisely what the Government are doing for sport and religion: they say that the danger of predatory sexual activity is so serious that we must protect people aged 16 to 18 from this being done in a training situation, but only if their training is in sport or religion.

I simply do not understand that argument or why, if the Government think it is such a serious objection, they are prepared to do exactly that for sport and religion but not in other areas. If it is because of abuse by sexual predators that such provisions are being considered and provided for those two areas, it makes no sense that these other areas are excluded. However, they can be included subsequently because the Government have given themselves the power by affirmative order in this legislation to add other activities, or indeed to remove either of the two activities currently included.

As I thought about this, I wondered what the circumstances were in which the Government would decide to add one of the areas that I have identified—music teaching or drama teaching—to the condition where people are regarded as having a position of trust when they are engaging in training. What would lead the Government to make that change? It would probably be cases coming to light. Such cases will come to light, because in all these areas we know that, despite many thousands of people conscientiously providing this kind of training, there are those who get into these roles with predatory intent, and others who might be regarded as having done so where perhaps it has arisen more innocently between two relatively young people but in a situation that we cannot simply ignore.

When those cases arise, the question will be asked: why is the perpetrator not being charged as someone in a position of trust would be? The answer will be that the Government decided that we did not need this provision in respect of music or drama, even though we need it for sport and religion. I think future Ministers will find that a very uncomfortable question to deal with from the Dispatch Box when we then point out that cases have arisen that could have been pursued under the kind of provisions that they see as necessary for sport and religion.

The Government are in an illogical position, and their only way out of it is at some point to decide to add other areas to the list. That may come at a time when more bad cases have arisen, and then they will have a difficult case to answer. I invite the Minister to think further about this matter, but for the time being I beg to move.

Lord Paddick (LD): My Lords, as my noble friend Lord Beith explained, the amendment would extend the position of trust to include people who coach, teach, train or instruct on a regular basis in dance, drama and music.

I am sure the Minister will correct me if I am wrong, but I seem to remember him saying in Committee that the Government wanted evidence that these amendments were necessary before they were able to accept them. On 20 October 2021, the *Guardian* reported that a former ballet teacher and principal dancer at the English National Ballet had been sentenced to nine years in prison for more than a dozen counts of sexual assault against his students—I think that is dance. On 30 September last year the *Sun* reported that a drama teacher had been convicted of sexually abusing girls as young as 15 over five years, abusing his position of power and targeting teens who wanted to become actresses by sexually assaulting them at the theatre group he had set up in Northamptonshire—I think that is drama. The *Edinburgh Evening News* reported on 22 December, just last month, that a retired music teacher in Scotland had been sentenced to eight years' imprisonment for raping and sexually abusing former pupils—I think that is music.

There is the evidence. What is stopping the Government now? We strongly support my noble friend's amendments.

Lord Pannick (CB): My Lords, the noble Lords, Lord Beith and Lord Paddick, make a very strong case. Clause 46 addresses a serious mischief: abuse of trust to gain sexual advantage. Like them, I cannot understand why this is to be addressed only in the context of sport and religion and not in the context of dance, drama and music.

I have one other question for the Minister. I also cannot understand why sport is only to be covered in relation to games in which physical skill is the predominant factor. What if there is an abuse of trust by someone who is training young people in chess or bridge?

Why is it not equally objectionable if they take sexual advantage of those young people? Why should that not be included within the scope of the offence?

Lord Ponsonby of Shulbrede (Lab): My Lords, I thank the noble Lord, Lord Paddick, for giving those very good and relevant examples of abuses of trust in dance, music and drama. I remember the points that the Minister made when we had this debate in Committee: he did indeed ask for examples, and I thank the noble Lord for providing them.

Surely, the similarity in everything that we are talking about is the nature of the relationship. It is a trusting relationship where a lot of time may well be spent alone with the young person, and it is open to abuse. The Minister had other arguments about why dance, music and drama should not be included, and I would be interested to hear how he rehearses them, given that there is unanimity in the views expressed in today's debate. I do not know whether the noble Lord will press his amendment to a vote—I think probably not—nevertheless, I will listen to the Minister's answer.

Lord Wolfson of Tredegar (Con): My Lords, I am very grateful to the noble Lord, Lord Beith, for again raising this matter for debate. I am also grateful to the noble Baroness, Lady Jones of Moulsecoomb, who is not in her place but who gave up a lot of time last week to discuss this with me and the noble Lord.

I start by clarifying what we mean by a "position of trust" in this context—there may have been some confusion in Committee. The position of trust offences that we are discussing are set out in Sections 16 to 19 of the Sexual Offences Act 2003. They are necessarily narrow in scope and were never intended to apply in all scenarios in which a person might have contact with, authority over or a supervisory role over another person, even those aged under 18. Rather, these offences were created to tackle potentially abusive relationships between those under 18 and adults who were in specific positions of trust.

The existing positions of trust, as set out in Section 21 of the 2003 Act, were so drafted in an attempt to capture situations where the young person had a high level of dependency on the adult involved, often combined with some vulnerability. These included those caring for a young person in a residential care home, hospital, school or educational institution. In these contexts, the power dynamic is such that Parliament considered that any sexual activity should be criminalised.

The law was created, therefore, in recognition of the risk inherent in these types of position and the power the individual could have over the young person, which could impact on and affect the young person's ability to consent. As such, the offences are committed as soon as the adult in one of these specified positions engages in sexual activity with the young person they are caring for; there is no need to prove any abuse or actual manipulation.

9.15 pm

Expanding the situations in which consensual sexual activity between a person aged 16 or over and an adult is criminalised is therefore a delicate matter. Framing these offences too widely could prohibit any person aged 18 or over engaging in sexual activity with anyone aged 16 to 17, which effectively raises the age of consent by stealth. A broad approach also risks legislating beyond the original intention of the current provisions: to protect young people in those relationships which, by their nature, involve unique opportunities to manipulate and abuse, rather than any relationship with an element of supervision. Therefore, it is essential, as I said—I will come to the examples from the noble Lord, Lord Paddick, a little later—that any expansion of these provisions is backed by evidence.

We in the department led a review of the law in this area, which did not deal only with abuse in sport and religion, and we engaged with representatives from a wide range of backgrounds and sectors. After that careful review of the law, the Government have concluded that those who teach, train, supervise, instruct or coach in a sport or a religion are particularly influential over a child's development and should be captured under the position of trust laws. That is what Clause 46 does.

Lord Beith (LD): To clarify, is the noble Lord saying that when the department looked into this matter it discovered more evidence in respect of sport and religion than in other fields, or some specific evidence that made it clear that this was much more likely to occur in sport or religion?

Lord Wolfson of Tredegar (Con): As I say, we discussed this with a wide range of people, and it seemed to us from looking at all the material that sport and religion are the particular areas where law at the moment should intervene. I was coming to this point. The noble Lord presented the amendment saying, "Abuse can take place in other relationships too", and of course he is absolutely right. However, abuse can take place where there is no relationship at all, and I am afraid it can take place in lots of different relationships. The question here is when the law should intervene to prohibit automatically, regardless of the particular 17 or 19 year-old and whether any abuse is taking place, to prevent any sexual contact. For those reasons, we consider that at the moment, we should intervene—I will come to the delegated power—in sport and religion only. Those settings involve high levels of trust, influence, community recognition, power and authority, and these figures are often well-established, trusted and respected in the community.

The report of the Independent Inquiry into Child Sexual Abuse found that religious organisations

"may have a significant or even dominant influence on the lives of millions of children"

and that

"what marks religious organisations out from other institutions is the explicit purpose they have in teaching right from wrong."

Also, both sport and religion can provide a young person with a strong sense of belonging, whether in a team, a squad, a community or a faith. Such deep feelings held by the young can provide unique opportunities for predators to exploit or manipulate and can make it more difficult for the young person or concerned relatives to report abuse.

[Lord Wolfson of Tredegar]

With respect to sport specifically, the physical nature of the activities means that coaches often ostensibly have legitimate reason physically to touch the children and young persons they are coaching. A sports coach will often have opportunities for closer and more prolonged physical contact compared with other roles, and this can be manipulated by abusers. That is why, to respond to the point made by the noble Lord, Lord Pannick, the 18 and a half year-old tennis coach would be prohibited from having a relationship with a 17 and a half year-old tennis student, but the 18 and a half year-old chess coach could have such a relationship —assuming for these purposes that chess is not a sport; I do not need to decide that because it is a physical definition that is in the Act—because there is not that scope, ostensibly, for a physical relationship.

The noble Lord's amendment addresses dance specifically. Again, let me reassure him that the definition of "sport" in Clause 46 includes types of physical recreation engaged in

"for purposes of competition or display".

We consider that this includes dance.

On the delegated power for the Secretary of State to amend new Section 22A, we accept that new evidence may emerge that may justify legislating further. Let me reassure the House and put it on record that this power will not be used lightly, but nor will we wait until instances of abuse are brought to our attention. We will proactively monitor data on child sexual abuse to ensure that we have the evidence needed to inform policy and act decisively where required, including evidence relating to the nature of roles and the institutional or organisational context, the level of power and control, other factors which we have seen contribute to abuse including opportunities for extensive unsupervised contact, and any inherent risks posed to young people as well as any data on incidents of concern. We are establishing channels through which partners such as the police, the CPS and local authorities can share emerging evidence and highlight patterns of behaviour.

Some of the behaviour that has been mentioned this evening and in Committee is already covered under other offences within the Sexual Offences Act 2003. Let us be clear: sexual activity with someone under the age of 16 is a crime. Non-consensual sexual activity such as rape is obviously a crime. I certainly heard the word "rape" in at least one example mentioned by the noble Lord, Lord Paddick. We are not talking about that—that is the point—because rape is already a crime. We are talking about sexual activity which would otherwise be lawful and consensual. I did not quite catch all the examples, but one cited was from a newspaper in Scotland where somebody had done something. How old was the person? If they were under 16, it is already caught. Was there consent? If there was not, it is already caught. One has to be careful when one is talking about evidence. We will be proactive in looking for that evidence and, for the avoidance of any doubt, we will of course re-read the examples that he gave us.

I accept that Clause 46 does not represent everybody's preferred approach, but we believe that, on the material that we have at the moment, our approach strikes the appropriate balance between the protection of young people and the sexual freedoms and rights otherwise granted to 16 and 17 year-olds, while still allowing for rapid responses to emerging patterns of abuse in the future. For those reasons, I respectfully invite the noble Lord to withdraw the amendment.

Lord Paddick (LD): Before the Minister sits down, can he clarify two points? First, is he saying that those people who teach drama, music and dance should be allowed to exploit their positions up until the point that they rape or indecently assault somebody, or does he agree with my noble friend that action should be taken to prevent that in the first place? Secondly, what is to stop a teacher of a young person who wants to engage in sexual activity with them distancing themselves from their teaching role to enable that to take place? How on earth does this amendment change the age of consent?

Lord Wolfson of Tredegar (Con): I am struggling with that second point, but let me try to answer the first. On whether I am saying that anybody should be allowed to exploit a young person, the answer is no. Frankly, I do not understand how the noble Lord has reached that conclusion. There is nothing in the provisions about justifying exploitation or abuse up to the point of rape and assault. Maybe this is the confusion that he is under in relation to the second question. At the moment, if someone is caught in a position of trust—let us say, for example, a minister of religion who is 18 and a half—that person is prevented from having any sexual contact with, say, a 17 and a half year-old congregant. Before that person was ordained or appointed to the position as a minister of religion, that person could have had a sexual relationship with a 17 and a half year-old. That is why I am talking about changing the age of consent, because that 17 and a half year-old is able to sleep with an 18 and a half year-old but not if that 18 and a half year-old is, for example, her minister of religion. I hope that answers the noble Lord's second question, although I confess I did not quite understand it because, if I may say so, it seemed to proceed from a fundamental misapprehension of what we are talking about.

Lord Beith (LD): My Lords, one thing I want to say in response to the Minister is that, as I said earlier, there are many thousands of people engaged in the training of young people in many contexts, but particularly in some of these fields very close contact and continuous interchange is involved, including activities in which the contact is physical. That applies not just to sport but to teaching someone how to hold their violin and their violin bow; it applies to all sorts of activities. There are spheres too in which the relationship is affected by the authority of the training person, the desire to please that person and to be successful in the activity. The more the Minister described those activities, the more it seemed that what he described happens not just in sport and religion but in many other areas as well.

It is important that we remind society that vast numbers of people are engaged in this kind of training work entirely selflessly and giving great service to young people. They are people we recognise and support. A very small number of people do everybody else so

much damage by the kind of abuse referred to in the course of the debate. Unfortunately, we still have to deal with it, which means we have to talk about it, debate it and devise laws that work for that purpose.

I would much have preferred to see a wider clause that used the concept of a position of trust in a series of places in which it is clearly relevant. The Government have preferred to retain power by statutory instrument to make extensions to the list, and the Minister, in response to my request, tried to give a bit more indication of the sort of circumstances involved. He has said that they are not just waiting for cases; they will look to the views and experience of organisations in the field. That could usefully be done. If organisations in any of the fields I have talked about respond to the Government by saying, "Yes, it would help us in our disciplinary and regulatory arrangements if this power was extended", then I hope that is the kind of information that might lead Ministers to come before the House to make use of those powers. I certainly do not want them to be waiting for cases. I am serious in my concern that some cases will arise where abuse has taken place that otherwise falls within the definitions in this clause but where the position of trust appellation has not been applied because it is in one of the other groups—it is not sport or religion.

This is a serious problem that undermines the wonderful work that so many people do with young people, and the wonderful achievements of those young people in sport, drama, music and the arts. We have to keep it under continuous review but, at this stage, I beg leave to withdraw the amendment.

Amendment 106 withdrawn.

Amendment 107 not moved.

Amendment 107A

Moved by ***Lord Wolfson of Tredegar***

107A: After Clause 46, insert the following new Clause—

"Voyeurism: breast-feeding

(1) Section 67A of the Sexual Offences Act 2003 (voyeurism: additional offences) is amended as follows.

(2) After subsection (2) insert—

"(2A) A person (A) commits an offence if—

(a) A operates equipment,

(b) A does so with the intention of enabling A or another person (C), for a purpose mentioned in subsection (3), to observe another (B) while B is breast-feeding a child, and

(c) A does so—

(i) without B's consent, and

(ii) without reasonably believing that B consents.

(2B) A person (A) commits an offence if—

(a) A records an image of another (B) while B is breast-feeding a child,

(b) A does so with the intention that A or another person (C) will look at the image for a purpose mentioned in subsection (3), and

(c) A does so—

(i) without B's consent, and

(ii) without reasonably believing that B consents."

(3) In subsection (3), for "and (2)" substitute "to (2B)".

(4) After subsection (3) insert—

"(3A) In this section a reference to B breast-feeding a child includes B re-arranging B's clothing—

(a) in the course of preparing to breast-feed the child, or

(b) having just finished breast-feeding the child.

(3B) It is irrelevant for the purposes of subsections (2A) and (2B)—

(a) whether or not B is in a public place while B is breast-feeding the child,

(b) whether or not B's breasts are exposed while B is breast-feeding the child, and

(c) what part of B's body—

(i) is, or is intended by A to be, visible in the recorded image, or

(ii) is intended by A to be observed.""

Member's explanatory statement

This new Clause creates new offences of recording images of, or otherwise observing, breast-feeding without consent or a reasonable belief as to consent. To be guilty of the offence the perpetrator must be acting for the purpose of obtaining sexual gratification or of humiliating, alarming or distressing the victim.

Lord Wolfson of Tredegar (Con): My Lords, in moving government Amendment 107A, I first thank sincerely all those in both Houses who have campaigned on this important issue, particularly the noble Baroness, Lady Hayman, and all those who spoke in the debate in Committee in this House. I know that she wanted to be here this evening, but I am afraid the hour has prevented her doing so. It is right to put on record my thanks for the tireless work she has done in this area, and for the time she gave on a number of occasions to discuss this issue with me. The noble Lord, Lord Pannick, has also been extremely helpful on this point, and I thank them for joining me in putting their names to the amendment.

I made it clear in Committee that the Government supported the aims of the original amendment put down by the noble Baroness but considered that it was too broadly drawn and would capture conduct that ought not to be criminalised. In particular, I explained in a series of to-and-fro discussions with the noble Lord, Lord Pannick, that the issue of intention needed to be more carefully addressed.

9.30 pm

What I thought was an interesting and, indeed, constructive legal discussion in your Lordships' House in Committee led—no doubt because of the subject matter rather than the inherent attraction of the legal topic of mens rea—to a short piece in the diary column in the *Times* that mused about my own holiday snaps; to my first mention on "Have I Got News for You", which revealed that the panel's grasp of the finer points of criminal law was sadly lacking; and to an article in the *Guardian* that opened by nominating me as 2021's Most Embarrassing Politician, which your Lordships might think to be a rather crowded field, and concluded with the stirring cri-de-coeur "Free the breasts, abolish the barons"—although why the first should necessitate the second is not immediately apparent, at least to me.

It is therefore with some trepidation that I again venture into the field, but this time I am armed with a government amendment. The truth is that I am proud

[Lord Wolfson of Tredegar]
to be moving this amendment, because although this might seem a topic of fun to some outside this House, it is not a matter for amusement at all. This amendment, which has been the subject of careful consideration, will support and protect parents and children. I hope that it will be supported in this House today as it has been publicly greeted with acclamation by campaigners in the other place, including Stella Creasy and Jeff Smith—I should mention them in particular for their work in this area—as well as organisations working to protect women from abuse.

This amendment would create new offences to criminalise recording images of, or operating equipment to observe, a person at a time when they are breastfeeding without that person's consent or a reasonable belief that they consent. For the offences to be made out, the perpetrator must be acting for the purposes of obtaining sexual gratification or of humiliating, alarming or distressing the victim.

Although, as I made clear in Committee, the Law Commission is currently reviewing the law around the non-consensual taking and sharing of intimate images, including whether photographs of partially covered breasts and breastfeeding should be considered intimate images, we believe that this amendment will ensure that parents are protected from non-consensual photography and can feel safe to breastfeed in public ahead of the publication of the Law Commission report in spring this year. Obviously, when the Law Commission reports, we will look at its report and the whole area of this law as a unit. For those reasons, I beg to move.

Lord Pannick (CB): As the Minister said, the noble Baroness, Lady Hayman, is unable to be in her place tonight. She has asked me to say that she joins me in thanking the Minister, who has engaged with us sympathetically on this topic and secured this welcome change in the law. That is a tribute to his persuasive powers not just in this House but in government.

I hope that the Minister's remarks tonight will receive as much publicity as his speech in Committee, which, as he said, featured not just in *Hansard* but elsewhere. He mentioned his appearance—or his remarks' appearance—on "Have I Got News for You"; well, the news tonight is that this amendment has achieved a welcome change in the law that will be appreciated not just by breastfeeding women but by their partners and relatives.

Lord Blencathra (Con): My Lords, I intervene to ask my noble friend a question. I listened carefully to what he said and I completely support the amendment, but does it go far enough? I cannot find any excuse or justification for anyone who is not a family member to take any photographs of a woman breastfeeding. It would seem from what my noble friend said on the amendment that mens rea has to be proved—there has to be a proven intent to get sexual gratification from it—but why should that be the case? In my view, there can be no justification for anyone outside the family—a stranger—to want to photograph a woman doing this. This is a simple question from my simple little mind.

Lord Marks of Henley-on-Thames (LD): My Lords, we welcome the Government's decision to accept the force of the amendment pursued by the noble Baroness, Lady Hayman, and supported by the noble Lord, Lord Pannick, to outlaw this unpleasant practice and introduce this amendment.

Over recent years, we have achieved considerable progress in the area of taking, procuring or disclosing what I would generically call voyeuristic images. Revenge porn was outlawed under the Criminal Justice and Courts Act 2015, and this was finally extended to threats to disclose intimate images in the Domestic Abuse Act last year. The unpleasant practice of upskirting was outlawed by the Voyeurism (Offences) Act in 2019.

Recording images of breastfeeding mothers is another example of voyeurism. It is easy to forget, certainly when the practice is made light of, that this is demeaning, embarrassing and humiliating for a breastfeeding mother. It is also frightening, because the mother is in a uniquely vulnerable position. A mother who is breastfeeding, if she is being photographed, is left in the entirely invidious position that she can either stop, in which case she has to close or adjust her clothing, giving more subjects to the photographer and depriving her infant of food, or go on and continue the agony of being photographed. That is a horrible position for a mother to be in.

We agree that this is a serious issue. These amendments are directed at an arrogant and frankly misogynistic practice. It is right to criminalise it for the protection of the women affected and we fully support the two amendments.

Baroness Chapman of Darlington (Lab): We wholeheartedly welcome this, and we welcome how the Minister can laugh at himself and bring good humour to this. I think it is okay to have a sense of humour about this issue; what matters is that we are finally dealing with it. This really is important. Encouragingly, breastfeeding rates are improving in this country; over 80% of women start to breastfeed their baby when they are born, but the rates fall quite dramatically, with around 25% continuing at six weeks. There are lots of reasons for that, but one of them is about feeling uncomfortable breastfeeding in public. We should be doing everything we can to normalise breastfeeding and make breastfeeding mothers feel welcome and supported, wherever and however they choose to feed their babies.

There are two amendments in this grouping: one is the government amendment, which we completely support, and there is also the issue about needing to show intent for sexual gratification or humiliation. It was thoughtful of the Government to include that word, and I just want assurance that the perception of humiliation that ought to matter is that of the woman breastfeeding and being photographed. That ought to be sufficient to prove that there was an intent to humiliate. I would welcome some clarification from the Minister on that point.

We warmly welcome this measure. Breastfeeding women will be very pleased that the Government have come to a place where they see things in the way that they do.

Lord Wolfson of Tredegar (Con): My Lords, I am very grateful for the warm words from across the House and for the support this amendment has received. I will

pick up a couple of the points made. First, I respectfully agree with the noble Baroness, Lady Chapman, that we want to normalise and support—to use her verbs—women who are breastfeeding; that is very important. It is a matter for my department in this legislation and for other government departments in other areas. That is certainly our aim.

I will try to answer the question put by my noble friend Lord Blencathra. This amendment is modelled on the upskirting offence in the Voyeurism (Offences) Act 2019. We want—without getting myself on "Have I Got News for You" for a second time—to avoid capturing people within the offence who ought not to be captured. Let me try to give a different example. The point made by my noble friend was about forgetting intention and purpose. The problem there, for example, could be that if you were running CCTV in a children's play area and a mother was breastfeeding, you would be taking images of her; you would not have her consent, nor any reasonable basis to think that she was consenting to being filmed. Therefore, you could be committing a criminal offence. That is why here, just like the upskirting offence, there has to be a purpose of sexual gratification or humiliating, alarming or distressing the person photographed.

The noble Baroness asked me about "humiliating". I again thank her for spotting that word, which comes from the other Act. It is a really important word. I will put it this way: the fact that the person subjectively feels humiliated does not necessarily mean that it is done for the purpose of humiliation. There is not a one-for-one correlation. However, any court will have to ask the question: was this for the purpose of humiliation? That is a question for the court to decide. You look at the circumstances objectively. The fact that the person feels very humiliated is a very important part of answering that question. But I cannot go so far as to say that the subjective feeling of humiliation necessarily answers the legal question. I hope that has answered the noble Baroness's question. This is an issue that arises in other areas of criminal law as well. Without delaying the House, I hope that that is a sufficient answer for this evening. I am very happy to engage with the noble Baroness further on this.

Baroness Chapman of Darlington (Lab): I appreciate that and understand what the Minister is saying. Is he saying that, if it could be reasonably expected that a breastfeeding woman would feel humiliated in the particular circumstances, that would be interpreted as humiliation? On the point about the CCTV, I think most breastfeeding women would not feel humiliated in that circumstance.

Lord Wolfson of Tredegar (Con): The question which has to be asked is: was this done for the purpose of humiliating the woman breastfeeding? To answer that you would look at all the relevant circumstances. I would suspect that, rather like the upskirting offence, in the vast majority of cases the question almost answers itself, given our experience from upskirting.

In this area, as in all areas, if, once the offence has gone into the law, it turns out that there is a problem in prosecuting—for this reason or any other—we will keep it under review, because our intention is to stop the conduct, to make it criminal and thereby punish people who engage in it—but, I hope, to stop it. If there are problems, we will keep it under review, and I am very happy to continue the conversation on that. I will draw my remarks to a close and invite the House to support the amendment.

Amendment 107A agreed.

Amendment 107B

Moved by ***Lord Wolfson of Tredegar***

107B: After Clause 46, insert the following new Clause—

"Time limit for prosecution of common assault or battery in domestic abuse cases

After section 39 of the Criminal Justice Act 1988 insert—

"39A Time limit for prosecution of common assault or battery in domestic abuse cases

(1) This section applies to proceedings for an offence of common assault or battery where—

(a) the alleged behaviour of the accused amounts to domestic abuse, and

(b) the condition in subsection (2) or (3) is met.

(2) The condition in this subsection is that—

(a) the complainant has made a witness statement with a view to its possible admission as evidence in the proceedings, and

(b) the complainant has provided the statement to—

(i) a constable of a police force, or

(ii) a person authorised by a constable of a police force to receive the statement.

(3) The condition in this subsection is that—

(a) the complainant has been interviewed by—

(i) a constable of a police force, or

(ii) a person authorised by a constable of a police force to interview the complainant, and

(b) a video recording of the interview has been made with a view to its possible admission as the complainant's evidence in chief in the proceedings.

(4) Proceedings to which this section applies may be commenced at any time which is both—

(a) within two years from the date of the offence to which the proceedings relate, and

(b) within six months from the first date on which either of the conditions in subsection (2) or (3) was met.

(5) This section has effect despite section 127(1) of the Magistrates' Court Act 1980 (limitation of time).

(6) In this section—

"domestic abuse" has the meaning given by section 1 of the Domestic Abuse Act 2021;

"police force" has the meaning given by section 3(3) of the Prosecution of Offences Act 1985;

"video recording" has the meaning given by section 63(1) of the Youth Justice and Criminal Evidence Act 1999;

"witness statement" means a written statement that satisfies the conditions in section 9(2)(a) and (b) of the Criminal Justice Act 1967.

(7) This section does not apply in relation to an offence committed before the coming into force of section (Time limit for prosecution of common assault or battery in domestic abuse cases) of the Police, Crime, Sentencing and Courts Act 2022.""

Member's explanatory statement

This amendment extends the time limit for commencing proceedings for an offence of common assault or battery in certain cases where the alleged behaviour of the accused amounts to domestic abuse.

Lord Wolfson of Tredegar (Con): My Lords, this government amendment meets a commitment to bring forward proposals on Report to address concerns that the time limit for bringing prosecutions for common assault or battery involving domestic abuse is unfairly short. I am very grateful that, joining my name on this amendment are the names of the noble Lord, Lord Russell of Liverpool, and the noble Baroness, Lady Greengross.

In response to the amendment tabled by my noble friend Lady Newlove in Committee, we acknowledged that such cases are disproportionately likely to time out. I am pleased now to present our solution to this problem—in the form of government Amendment 107B—to the House.

9.45 pm

The position currently is that a prosecution for common assault or battery must be brought within six months of an offence occurring, in accordance with Section 127 of the Magistrates' Court Act 1980—I underline at the outset that this is the lowest level of criminal offence in this area; I am not diminishing or demeaning it, but I underline it because the more serious offences do not suffer from this time problem. However, we know that, for obvious reasons, victims of domestic abuse may understandably take some time to report an offence. That can leave the police and the CPS with little time—sometimes no time at all—to conduct an investigation and prosecute the offender. As I say, sometimes the time limit has expired even before the victim approaches the police.

This amendment introduces a new Section 39A into the Criminal Justice Act 1988, which will extend the time limit for commencing a prosecution for the offence of common assault or battery when it arises out of domestic abuse. The amendment provides that the time limit is still six months, but it does not run from the date of the offence, it runs from when it is formally reported to the police through either a witness statement or a video recording made with a view to its use as evidence. There is an overall time limit of two years from the offence. We are confident that this provides the best protection for victims of this abhorrent crime. The reason that it applies only from the witness statement or videoed interview is that, sometimes, a victim can go to the police, have a chat with the desk sergeant and then, for understandable reasons, say, "I'll come back; I'll think about it." If the clock were to start then, we might again have problems of timing out. We have thought about this quite carefully and we think that the witness statement or video recording is the better time to start.

I am therefore delighted to present this as a solution to a problem that I think requires a solution. It will make a real difference to victims of domestic abuse and will stop perpetrators, in effect, hiding behind an unfair limitation on victims' ability to seek justice. I beg to move.

Lord Russell of Liverpool (CB): My Lords, I thank the Minister for what he has just said and for the actions he has taken. I thank his colleague in the other place, Victoria Atkins, for having given the original commitment, and I thank the noble and learned Lord, Lord Stewart, who responded in a very positive way to the amendment from the noble Baroness, Lady Newlove, in Committee.

I also particularly thank Yvette Cooper in another place because the beginning of this was when one of her constituents came to her who had suffered an assault and had been timed out. That was really the first time that Yvette Cooper had come across this; it was one of those problems that was hidden in plain sight. It took a series of freedom of information requests to try to get the necessary information to understand the nature of the problem and, indeed, the scale of it. If this was not a government amendment and we were still trying to persuade the Government, I would have stood up to say, "I do not rise to speak briefly, because I am going to make 12,982 different points", as that is the number of cases of alleged common assault that were timed out within a five-year period. That was revealed by the freedom of information requests, albeit only 70% of the police forces that received the FoI requests actually bothered to respond, so that number is probably an underestimate.

I am extremely grateful for this. The noble Baroness, Lady Newlove, would have been here, but she was sitting at the back earlier, doing her impression of the young noble Lord, Lord Young of Graffham, in his usual place, with a large cushion behind her, because her back has been giving her a lot of problems, so she has gone back to her hotel to rest it. On her behalf, I pay tribute to the work that she has done and thank her for having put it forward in Committee.

In a very helpful online call with the Minister, in which he explained what the Government were intending to do, we discussed how it is one thing to have laws, and laws which are well intended, but laws which are well intended, even forensic, are of little use if they are not applied properly and understood effectively. The issue we must focus on is when the police start responding in a different way to some of these allegations of assault. The ability to understand the exact nature of what is required and the ability to move very quickly to get it into a form where it is prosecutable within the six-month time limit is extremely important. I thank the Minister and the Government for this amendment, but can the Minister ensure that the combination of the Ministry of Justice, the Home Office, the College of Policing and the National Police Chiefs' Council will keep a really close eye on the enactment of this new legislation, to ensure that what we hope and intend should happen is happening, and that if it is not proceeding as we hoped and intended, to keep that under review and, if necessary, adjust it? Again, I thank the Government very much for bringing this amendment forward.

Lord Marks of Henley-on-Thames (LD): My Lords, we add our thanks to the Minister to those of the noble Lord, Lord Russell of Liverpool, for his approach to changing the time limit for common assault prosecutions in the context of domestic abuse, and for engaging with us on this and other issues over the last few weeks.

It is clearly a sensible compromise for the six-month time limit to start from the first formal step in criminal proceedings of taking a witness statement or a formal recorded interview. We understand the reason for retaining

the overall time limit of two years. It is a compromise in these cases between the need for finality and recognition that it frequently takes some time for victims—generally women in these cases—to report assaults formally, even though, as the noble Lord said, they may have some sort of informal interaction with the police at an earlier stage. We warmly support this amendment and thank the Government for coming to this view.

Lord Ponsonby of Shulbrede (Lab): My Lords, I was sitting in the City of Westminster magistrates' court yesterday with our Bench chairman, Jane Smith, who was aware of this government concession. We had a very constructive discussion about how welcome it was. In Westminster magistrates' court we have a specialist DA court, which is not that common among magistrates' courts. While the noble Lord, Lord Russell, described the problem cleverly—in the best sense; I mean that as I say it—as being hidden in plain sight, it is a problem that we see regularly in that court. It shows that when the Government listen and move quickly, that does get wider recognition. This was certainly recognised and appreciated by my Bench chairman.

Lord Wolfson of Tredegar (Con): My Lords, I am very grateful for the support that the amendment has received across the House. This ought to be a cross-party issue and I am very pleased that it has been. I repeat my thanks to all those who worked with me and my ministerial colleagues to get this amendment before the House this evening. As it is a cross-party matter, it is quite right for me also to thank Yvette Cooper in the other place, who did a lot of work on this issue. Sometimes parties do not matter; it is about the work that we do. I thank her for getting the ball rolling on this very important issue.

We will keep the matter under review, as we do with all legislation, and certainly for something such as this. Again, I do not want to take the House's time, although this is an important topic. I instead invite the House to join me in supporting the amendment.

Amendment 107B agreed.

Amendments 107C to 109 not moved.

Amendment 109A

Moved by ***Lord Rooker***

109A: After Clause 50, insert the following new Clause—

"Application of Police and Criminal Evidence Act 1984 to National Food Crime Unit of Food Standards Agency

In the Police and Criminal Evidence Act 1984, after section 114B, insert—

"114C Application to National Food Crime Unit of Food Standards Agency

The Secretary of State may by regulations apply any provisions of this Act to investigation of offences conducted by officers of the National Food Crime Unit in respect of search and seizure.""

Member's explanatory statement

This amendment is intended to avoid the police having to obtain these powers from a court on behalf of NFCU. The officers dealing with offences could present the case.

Lord Rooker (Lab): My Lords, I beg to move Amendment 109A, which proposes a new clause. I freely admit that the content of what I am about to say is really nothing to do with the Bill; the Bill is a vehicle for a change quite unconnected with its main thrust. Oh! You can forget to take your mask off.

During Oral Questions on 22 February, I raised the issue of food-related crime and the resources devoted to it. The then Minister, the noble Lord, Lord Bethell, pointed out that the Food Standards Agency constituted the National Food Crime Unit in 2014 and that Ministers were in dialogue about increasing its powers. Indeed, in his supplementary answer later he went further and said that

"its investigatory powers could be enhanced and its impact improved. That is the view of the Government, industry and the police, and that is why we are committed to the dialogue, first suggested by the Kenworthy review".—[*Official Report*, 22/2/21; col. 614.]

The food crime unit's work is about tackling serious organised or complex cases of food crime. The unit, and indeed the Food Standards Agency—which, of course, is a non-ministerial department—can use the powers of RIPA and CHIS, and the unit can access the police national computer and the automatic number plate recognition system. But in key aspects, the unit cannot get into the serious complex cases without the support of hard-pressed partners in policing and local government.

The police have never taken food crime seriously and admit that it is not a high priority. I first came across food crime when I went into MAFF in 1997. I had the same issue when I arrived at Defra a dozen years later. I am not criticising; this is the reality. It is not counted as proper crime, yet billions of pounds are involved—and what is more, there is the risk to public health. There is an issue there.

Delays owing to competing higher-risk police priorities have proven detrimental to a number of food crime unit investigations. The unit needs the powers to be able to go to the courts rather than have the police doing it once removed. In fact, all the unit needs is access to the powers in the Police and Criminal Evidence Act. There have been some cases in the recent past where the police have been unable, unavailable or reluctant to apply for warrants on behalf of the unit. There have been delays when the food crime unit has had to wait for police officers to become available or when police withdrew support because of other priorities.

The gangmasters authority, among others, has secured these powers. In fact, my amendment is a straight copy of the amendment put into the Police and Criminal Evidence Act on its behalf, so I did not have any trouble drafting anything. Of course, the Public Bill Office was incredibly helpful, but I am just following a process that has happened before.

The lack of these powers is affecting staff in the unit due to it being a real constraint. The officers of the unit, none of whom I have spoken to, are well qualified to present cases directly. They consist of ex-police officers of very senior rank, ex-National Crime Agency officers and ex-police intelligence officers, so they are fully qualified in other circumstances to go to court to get the warrants. We are talking about seizure and search; that is the limit of what is in the amendment. The former

[LORD ROOKER]
chair of the Food Standards Agency, Heather Hancock, has said that the National Food Crime Unit cannot do its job relying on the kindness of the police to lend their powers in important cases.

10 pm

The issue was considered by the National Audit Office in its report *Ensuring Food Safety and Standards*, HC 2217, in June 2019. Paragraph 13 said:

"The regulatory system lacks the full range of enforcement powers to ensure businesses supply safe food."

Paragraph 1.30 said:

"The NFCU does not yet have the statutory enforcement powers it needs to investigate food crime such as powers of search and seizure. As an interim measure, it has agreed protocols to work with police forces, but to operate independently in the longer term it will need new powers conferred by Parliament."

So the Food Standards Agency, a non-ministerial government department, wants the powers; the National Police Chiefs' Council agrees that it should have the powers; and the National Audit Office agrees that it needs the powers to act independently.

Is the scale of food crime such that these extra powers could be used? The unit was set up in 2014, after my term at the FSA finished in 2013, and came as a result of the brilliant work of Professor Chris Elliott, who looked into aspects of the horsemeat scandal. None of that ever went to court. Food companies do not sue each other in court, which is too open and transparent; there were other ways of dealing with that. We were lucky that it was not a public health issue—it could easily have been. The point is that when the unit was set up, it was worked out that 10 full-scale investigations could be managed by the unit in a year. When I looked at this for my Oral Question in February—I have not chased it up since—data from the first quarter of 2020 showed that more than 30 operations had been opened, in addition to the 40 pre-existing operations.

This is a very simple amendment. It is not new, because the Gangmasters Licensing Authority had the same amendment put in place for exactly the same reasons, so there cannot be anything technically wrong with the amendment. Everybody involved wants it. I see the noble Lord, Lord Blencathra, who of course cannot speak on this as a member of the Food Standards Agency board, nodding in approval, for which I am very grateful. The noble Lord, Lord Krebs, who was the first chair of the Food Standards Agency, wanted to speak tonight, but he had to return to Oxford. The problem is that this was always going to be debated too late.

The answer to the problems lies in this very simple amendment. The morale of the National Food Crime Unit will be vastly enhanced by Parliament giving it this extra bit of power. It will not be putting pressure on the police, first to take an interest in the issue it raises, which the police are not really too bothered about. It also saves the police being involved in going to court to get the warrants. The unit is more than well qualified to deal with the issue on its own.

I arrived here today with two expectations. One was that I would be on my feet at midnight. The other was that it is so simple—everybody wants it—that the Government would accept it. I beg to move.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I am delighted to be able to support this amendment from the noble Lord, Lord Rooker, whose knowledge on this subject is extensive. He has set out his case, and I agree with his arguments.

As has been demonstrated throughout the passage of the Bill, the police are overworked and stretched to their limit. Food crime is not at the top of their list of priorities. A couple of years ago, I went out with the district council's environmental health officer. Although most of the premises that we visited were providing good-quality catering facilities to both residents in homes and the general public, we visited one that had been closed due to the intervention of the police and the council, in a successful prosecution, for providing food that was unfit for human consumption. This was a very minor case, but it took several attempts before the police were eventually brought on board.

Given the increase in serious crime that the police are now facing, it is not surprising that they are unable to support the National Food Crime Unit in the way that the FSA would like. As the noble Lord, Lord Rooker, indicated, the available information shows that, in 2020, more than 30 operations were opened, while 40 were already running. This is clearly more than the police can deal with, given their current resources.

Organised crime has long tentacles, and that includes food crime. Surely it is better for the FCU to be able to apply directly to the courts than for the public to be put at risk by food crime. The FCU has to wait for the police to support it. Delays will occur, and some crimes will go unpunished. The Food Standards Agency supports this amendment. I hope that the Minister will be able to offer his support to it and allow the National Food Crime Unit to get on with its job unhindered.

Lord Paddick (LD): My Lords, as other noble Lords have just said, serious and organised food crime can have very serious consequences. To free up scarce police resources by giving the National Food Crime Unit the powers that it needs seems sensible. According to the noble Lord, Lord Rooker, the National Police Chiefs' Council supports this change, so I am looking forward to hearing from the Minister what I am missing, because I cannot immediately see any reason why this amendment should not be accepted.

Lord Rosser (Lab): As has been said, this amendment raises the issue of food-related crime and the powers and resources available to tackle it. I will make just one or two comments that may seem almost irrelevant, in view of the very strong case that my noble friend Lord Rooker has already made, as we anticipated he would.

As my noble friend said, the National Food Crime Unit, which is part of the Food Standards Agency, works to tackle serious organised cases of food-related crime. My noble friend Lord Rooker powerfully and persuasively made the case that there are blocks on the powers that the unit can access and that it is often reliant on the police, who are overstretched across competing priorities, to be able to use certain powers or apply for warrants, for example. The amendment that my noble friend has moved would allow the unit to access powers directly, under the Police and Criminal Evidence Act, rather than waiting for police support to become available.

I will spell out exactly the Oral Question that my noble friend asked in February last year:

"My Lords, does the Minister accept that the National Food Crime Unit is operating against organised crime with its hands tied? Investigations are being hampered. Does the Minister agree that investigation powers should be strengthened to include powers to collect the necessary evidence to a higher standard? In other words, will the Government agree that the Police and Criminal Evidence Act powers should be granted to the National Food Crime Unit? The National Police Chiefs' Council agrees to this to remove the burden from local police forces, which actually agree that food crime is not a high priority."

As my noble friend said, the Minister replied:

"The noble Lord entirely has a point. I completely agree with him that the National Food Crime Unit has a formidable task ahead of it and that its investigatory powers could be enhanced and its impact improved. That is the view of the Government, industry and the police, and that is why we are committed to the dialogue".—[*Official Report*, 22/2/21; col. 614.]

That is what the Government said in reply.

We welcome this commitment and would have given appropriate support to a resulting legislative process, which is why we are supportive of what my noble friend Lord Rooker seeks to achieve with this amendment. The Government have thus previously recognised that this is a problem, but what action has been taken so far since that clear recognition, which was repeated last February? Will the Government now accept the amendment my noble friend has moved? If not, why not?

Lord Sharpe of Epsom (Con): My Lords, I am grateful to the noble Lord, Lord Rooker, for raising this important matter. I acknowledge that there is considerable experience of the Food Standards Agency in your Lordships' House. We support, in principle, the proposal to increase the investigative powers available to the National Food Crime Unit. The fraud cases of which we have been made aware by the chair of the Food Standards Agency, Professor Susan Jebb—as referred to by the noble Lord—are truly shocking.

Food crime is a very serious issue, with fraud in our food supply chains costing billions of pounds each year. The National Food Crime Unit, which was established to investigate these crimes, should be empowered to tackle them, to improve the response to these cases and to reduce the burden on its colleagues in law enforcement. As such, we are still committed to working with the Food Standards Agency and DHSC, its sponsoring department, on extending certain Police and Criminal Evidence Act powers to the National Food Crime Unit. However, in doing so, we need to work through the implications of this. It may assist the noble Lord if I briefly set out some of the issues we think we would need to explore further.

First, the exercise of any PACE powers by the National Food Crime Unit must be necessary, proportionate and legitimate. As such, it is important that there are suitable governance, accountability, oversight, investigations and complaints arrangements in place, as there are for the police. The National Food Crime Unit is not a statutory body, nor does it have a separate legal identity. Oversight, governance and the complaints processes sit with the Food Standards Agency board, which commissions independent reviews and facilitates a complaints process which ultimately reports to the Parliamentary and Health Service Ombudsman. There is therefore no formal independent oversight.

There is also a lack of clarity on the necessary protocols when PACE powers would be exercised, including in relation to post-incident procedures on seizure, retention and evaluation of evidence, and the treatment of arrested persons without police presence. These are all issues which, I have no doubt, can be resolved but I am sure noble Lords would agree on the necessity of ensuring that the appropriate accountability and governance arrangements are in place, given that we are dealing with intrusive powers of the state. As such, we do not believe that it would be appropriate to extend the search and seizure powers in PACE to the National Food Crime Unit without further consultation on the issues I have described. I do not think the noble Lord, Lord Paddick, misses very much, but that is the answer to his question.

I reassure the noble Lord, Lord Rooker, that we are committed to taking this work forward with the Food Standards Agency. I do not have a specific answer to the question of the noble Lord, Lord Rosser, on where the dialogue is at the moment. On that basis, I hope that the noble Lord will be content to withdraw his amendment.

Lord Rooker (Lab): I remind the House that I said that the Food Standards Agency, and therefore the unit, can use the powers of RIPA and the CHIS Act that we passed last year. We are not dealing with some little quango here; this is a government department. If the Government were serious, between February last year and today they would have sorted this out.

I have not campaigned on this. I left it in February and thought, "All I have to do is wait until a vehicle comes along and check if it has been dealt with or not." The fact is that I am not going to let the Minister get away with it. Someone is going to have to go to the members of the FSA board, and therefore the unit, and say to them, "The Government stopped this change." When the next big scandal comes along—there are scandals of different scales, and it is nine years since horsemeat so we are due another any time now—no one over there will be able to say, "We were going to do this but Lord Rooker withdrew the amendment." As such, I am going to test the opinion of the House.

10.15 pm

Division on Amendment 109A

Contents 32; Not-Contents 20.

Amendment 109A agreed.

Division No. 3

CONTENTS

Alton of Liverpool, L.
Bakewell of Hardington Mandeville, B.
Beith, L.
Bennett of Manor Castle, B.
Blencathra, L.
Brinton, B.
Campbell-Savours, L.
Chakrabarti, B.
Coaker, L.
Corston, B.
Finlay of Llandaff, B.
Foster of Bath, L.
Hamwee, B.
Harris of Richmond, B.
Hendy, L.
Jones of Cheltenham, L.
Kilclooney, L.
Mackenzie of Framwellgate, L.

Marks of Henley-on-Thames, L.
Oates, L.
Paddick, L.
Patel, L.
Ponsonby of Shulbrede, L.
Purvis of Tweed, L.
Rooker, L.
Rosser, L.
Shipley, L.
Smith of Newnham, B.
Strasburger, L.
Suttie, B.
Thomas of Winchester, B.
Young of Norwood Green, L.

NOT CONTENTS

Ashton of Hyde, L.
Courtown, E.
Dodds of Duncairn, L.
Evans of Bowes Park, B.
Flight, L.
Harlech, L.
Hunt of Wirral, L.
Mancroft, L.
Moynihan, L.
Parkinson of Whitley Bay, L.
Sandhurst, L.
Scott of Bybrook, B.
Sharpe of Epsom, L.
Sheikh, L.
Stewart of Dirleton, L.
Stroud, B.
Taylor of Holbeach, L.
Wharton of Yarm, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.

Consideration on Report adjourned.

House adjourned at 10.29 pm.